



REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 71 OF 2008

MEMORANDUM OF INCORPORATION

OF

**THE SOUTH AFRICAN MUSIC PERFORMANCE RIGHTS
ASSOCIATION NPC**

A NON-PROFIT COMPANY WITH MEMBERS
REGISTRATION NUMBER: 2000/028009/08

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Neither the short nor the long standard form of Memorandum of Incorporation for a Non Profit Company, shall apply to the Company.

This Memorandum of Incorporation is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Act.

Adoption of Memorandum

This Memorandum of Incorporation was adopted by Special Resolution passed on 21 September 2017 and has been amended by Special Resolution of the Company passed on the 30 October 2018.

1. INTERPRETATION

In the interpretation of this MOI and unless contrary to or excluded by the subject or context:

- 1.1 any word or reference herein signifying:
 - 1.1.1 the singular shall include the plural and vice versa;
 - 1.1.2 any one gender, whether masculine, feminine or neuter, includes the other;
 - 1.1.3 a person or persons, shall include, without being limited to, any individual, juristic person, body corporate, unincorporated Company or other entity recognized under any law as having separate legal existence or personality;
 - 1.1.4 references to a statute or statutory provision include any subordinate legislation made from time to time under that statute or provision, and references to a statute or provision include that statute or provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this MOI.
- 1.2 any word herein, which is defined in the Act and is not defined in Article 1.6 shall bear that statutory meaning in this MOI;
- 1.3 any word, phrase or sentence herein which is not defined in the Act or in Article 1.6 shall bear its usual meaning;
- 1.4 each term, power or authority herein shall be given the widest possible interpretation;

- 1.5 all the headings and sub-headings in this MOI are for convenience only and are not to be taken into account for the purposes of interpreting it;
- 1.6 each of the following words and expressions bear the meaning stated opposite it:
- 1.6.1 **“Annual General Meeting”** means the Annual General Meeting held between the Members of the Company on an annual basis pursuant to Article 11;
- 1.6.2 **“Applicant”** means any person or entity applying for Membership of the Company;
- 1.6.3 **“Auditors”** mean the auditors of the Company from time to time;
- 1.6.4 **“Board”** means the board of Directors for the time being of the Company, as constituted and authorised to act pursuant to this MOI;
- 1.6.5 **“Business Day”** means any calendar day excluding Saturdays, Sundays or statutory public holidays in the Republic;
- 1.6.6 **“CEO”** means the Chief Executive Officer appointed by the Board from time to time;
- 1.6.7 **“Companies Act”** means the Companies Act, 71 of 2008 as amended, consolidated or re-enacted from time to time, and includes all schedules and Regulations of such act;
- 1.6.8 **“Company”** means THE SOUTH AFRICAN MUSIC PERFORMANCE RIGHTS ASSOCIATION NPC, a non-profit company with members incorporated with registration number 2000/028009/08;

- 1.6.9 **“Company Rules”** means the rules of the Company made from time to time in terms of section 15(3) to (5) of the Companies Act;
- 1.6.10 **“Co-operation and Settlement Agreement”** means the Co-operation and Settlement Agreement concluded on or about 4 September 2014 between the Company, RISA, SAMRO and POSA Trust;
- 1.6.11 **“Copyright Act”** means the Copyright Act 98 of 1978 as amended, consolidated or re-enacted from time to time, and includes all schedules and regulations of such act;
- 1.6.12 **“Copyright Owner”** means the owner of copyright in any musical work and/or sound recording as contemplated in the Copyright Act;
- 1.6.13 **“Copyright Owners’ Chamber”** means the chamber which comprises all Members of the Company who are Copyright Owners;
- 1.6.14 **“Copyright Owners Chamber Committee”** means the committee of the Copyright Owners’ Chamber, as constituted and authorised to act pursuant to this MOI in terms of Article 17;
- 1.6.15 **“Copyright Tribunal”** means tribunal created in terms of the Copyright Act;
- 1.6.16 **“Director”** means a director of the Company;
- 1.6.17 **“Firm”** means a business, whether incorporated or not;
- 1.6.18 **“General Meeting”** means a meeting of Members of the Company convened in terms of this MOI and the Companies Act and shall be construed as including a reference to an Annual General Meeting

unless the context indicates a contrary intention;

- 1.6.19 **“Good Standing”** means, in relation to a Member, a Member who is not the subject of any disciplinary or sanction under the Company Rules or the MOI;
- 1.6.20 **“Independent Chairperson”** means the independent chairperson of the Company as appointed in terms of Article 15;
- 1.6.21 **“Industry”** means the industry for the exploitation of sound recordings and musical works;
- 1.6.22 **“Income Tax Act”** means the Income Tax Act, 58 of 1962 as amended, consolidated or re-enacted from time to time, and includes all schedules and regulations of such act;
- 1.6.23 **“Licence Fee/s”** means the fees paid by Users to the Company which are determined in accordance with the provisions of the Copyright Act from time to time;
- 1.6.24 **“Member”** means a member of the Company whether a Performer or a Copyright Owner admitted to membership in terms of this MOI and/or the Company’s Rules, and who has the rights, privileges and obligations provided for Members in the Company’s Rules and **“Members”** and **“Membership”** shall bear the corresponding meaning;
- 1.6.25 **“MOI”** means this memorandum of incorporation as amended from time to time;
- 1.6.26 **“Non-Profit Company”** means a non-profit company as defined in the Act;

- 1.6.27 **“Office”** means the principal office of the Company for the time being;
- 1.6.28 **“Ordinary Resolution”** means an ordinary resolution of Members present or represented at a General Meeting, referred to in Article 11;
- 1.6.29 **“Performer”** means a performer who has authorised the fixation of his/her recorded performances of musical works;
- 1.6.30 **“Performers Chamber Committee”** means the committee of the Performers’ Chamber, as constituted and authorised to act pursuant to this MOI in terms of Article 16;
- 1.6.31 **“Performers’ Chamber”** means the chamber which comprises all Members of the Company who are Performers;
- 1.6.32 **“Performers Protection Act”** – Performers Protection Act 11 of 1967 as amended, consolidated or re-enacted from time to time, and includes all schedules and regulations of such act;
- 1.6.33 **“Performance Rights”** means the rights vested in Copyright Owners (in terms of the Copyright Act) and Performers (in terms of the Performers Protection Act) and which are administered by the Company, specifically to do or to authorise the doing in relation to Sound Recordings, the acts of –
- 1.6.33.1 communicating same to the public;
- 1.6.33.2 transmitting same in a diffusion service; and/or
- 1.6.33.3 the broadcasting of same;
- 1.6.34 **“POSA Trust”** means the Performers’ Organisation of South Africa

Trust, Registration No. IT 1991/10;

- 1.6.35 “**Repertoire**” means the body of Sound Recordings licensed to Users by the Company;
- 1.6.36 “**Republic**” means the Republic of South Africa;
- 1.6.37 “**RISA**” means the Recording Industry of South Africa NPC (registration number 1995/005158/08);
- 1.6.38 “**Royalty/ies**” means the royalties (including foreign royalties) paid by the Company to its Members;
- 1.6.39 “**SAMRO**” means the Southern African Music Rights Organisation NPC, Registration Number 1961/002506/08
- 1.6.40 “**Secretary**” means the secretary of the Company for the time being, or any person duly authorised by the Board acting in the place of such Secretary for the time being, or any person appointed by the Board to perform any of the duties of the Secretary;
- 1.6.41 “**Sound Recording**” with respect to the rights administered by the Company, shall mean a sound recording as defined in the Copyright Act ;
- 1.6.42 “**Special Resolution**” means a special resolution of Members present or represented at a General Meeting, referred to in Article 11;
- 1.6.43 “**User/s**” means any third party user/s of the Repertoire who in relation to the Repertoire –
- 1.6.43.1 communicate same to the public;

1.6.43.2 transmit same in a diffusion service; and/or

1.6.43.3 broadcast of same;

1.6.44 **“Vice Chairpersons”** means collectively the vice chairpersons as appointed in terms of Article 15 and **“Vice Chairperson”** shall refer to either one of them as the context may require;

2. **ADOPTION OF MOI OF INCORPORATION**

This MOI was adopted by the Members of the Company in accordance with section 13(1) of the Companies Act.

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

3.1 The Company is incorporated as a Non-Profit Company with Members, as defined in the Companies Act.

3.2 The Company is incorporated in accordance with and governed by:

3.2.1 the unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit Companies;

3.2.2 the alterable provisions of the Companies Act, applicable to a Non-Profit Company subject to any limitation, extension, variation or substitution set out in this MOI; and

3.2.3 the provisions of this MOI.

4. **MAIN OBJECTS**

4.1 The main object of the Company is to promote the interests of its Members comprising Copyright Owners and Performers and more particularly the

Company is hereby authorised by and on behalf of the Members:

- 4.1.1 to license the Performance Rights in its Repertoire to Users;
 - 4.1.2 to collect Licence Fees;
 - 4.1.3 to determine the manner in which Royalties and consequential investment income shall be computed, allocated and distributed amongst its Members;
 - 4.1.4 to distribute Royalties amongst its Members (and the members of other organizations with which it is affiliated);
 - 4.1.5 to distribute investment income arising from non-distributed Licence Fees and Royalties amongst its Members; and
 - 4.1.6 do all such things and take all such steps as may be necessary in order to give effect to the terms contained in the Co-operation and Settlement Agreement.
- 4.2 In spite of the provisions of Item 2(b)(ii) of Schedule 1 of the Companies Act, the following shall not constitute ancillary objects which the Company shall be authorised to carry out:
- 4.2.1 the carrying on by the Company of any business, profession or occupation carried on by any of its Members; and
 - 4.2.2 the provision to any of its Members of financial assistance or of any premises or continuous services or facilities required by its Members for the purpose of carrying on any business, profession or occupation.
- 4.3 The activities of the Company shall be directed to the furtherance of its main

object.

- 4.4 The funds of the Company shall be invested:
 - 4.4.1 with a financial institution as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984;
 - 4.4.2 in securities listed on a licensed Stock Exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985; or
 - 4.4.3 in such other financial instruments as the Commissioner for the South African Revenue Service may approve.
- 4.5 Subject to Article 4.4 and Schedule 1 of the Companies Act, the Company may acquire and hold securities issued by a profit Company; or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects as set forth in this MOI.

5. **SEPARATE LEGAL IDENTITY OF THE COMPANY**

- 5.1 The Company shall be deemed to be a Non-Profit Company and shall have an identity and existence distinct from that of the Members.
- 5.2 Legal proceedings instituted by and against the Company may be instituted and defended in the name of the Company.
- 5.3 Howsoever or wherever the Company's assets may be held or registered they shall be held on and for the account of the Company and at no time shall the Members be deemed to acquire for themselves or their personal account or benefit any vested right or interest in the funds or assets of the

Company.

6. **BORROWING POWERS**

The Board may exercise all the powers of the Company to borrow and raise money and to mortgage or bind its undertaking and property or any part thereof.

7. **INDEMNITY**

Every office bearer or officer for the time being of the Company is indemnified out of the assets of the Company against all liability incurred by him/her as such in defending any proceedings, whether civil or criminal.

8. **WINDING-UP OF THE COMPANY**

- 8.1 The Company shall continue indefinitely notwithstanding any changes in the composition of its Membership until such time as the Members in Good Standing resolve, or are obliged by any duly authorised body, to wind-up the Company.
- 8.2 The Company may be wound-up by Special Resolution of the Members.
- 8.3 Upon the winding-up, de-registration or dissolution of the Company, the assets of the Company remaining after the satisfaction of all its liabilities shall be transferred to:
- 8.3.1 an organisation(s) which engages in similar public benefit activities as the Company having objects similar to its main objects which have been approved in terms of the Income Tax Act and is a registered non-profit company in terms of the Companies Act; or
- 8.3.2 any institution, Board or body which has its sole or principal object as

the carrying on of any public benefit activity,

as may be determined by the Board at or before the time of the winding-up of the Company and provided that any such transfer of assets is on condition that such assets are used solely for the purposes of carrying on one or more public benefit activities.

9. RESTRICTIONS ON POWERS OF THE COMPANY

The Company shall be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity or in accordance with the provisions of item 3 of Schedule 1 of the Companies Act) and is required to utilize its funds solely for the objectives for which it has been established, or to invest such funds with –

- 9.1 a financial institution as defined in Section 1 of the Financial Services Board Act 97 of 1990; and
- 9.2 such other prudent investments in financial instruments and assets as the Commissioner of the South African Revenue Services may determine after consultation with the Board Officer of the Financial Services Board and the Director of Non-Profit Organizations,

Provided that the provisions of this MOI shall not prohibit the Company from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it were acquired by way of donation, bequest or inheritance.

- 9.3 The Company shall be prohibited from carrying on any business undertaking

or trading activity unless approved per the Members by Ordinary Resolution in a General Meeting.

- 9.4 The Company shall be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor (other than a donor which is an approved public benefit organization or an institution, Board or body which is exempt from tax in terms of section 10(1)(A)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

10. ALTERATION OF MOI

- 10.1 The Board may alter the provisions of this MOI in the circumstances referred to in section 17 of the Companies Act.
- 10.2 The Company may, in accordance with the provisions of the Companies Act, amend this MOI by Special Resolution.

11. MEETINGS OF MEMBERS

- 11.1 The Company is not required to hold any meetings other than those specifically required by the Companies Act and this MOI.
- 11.2 The Company shall, during each financial year of the Company, convene and hold an Annual General Meeting.

11.3 Location of Members Meetings

11.3.1 The location of any Members' meeting shall be determined by Management, represented by the Chief Executive Officer, in consultation with the Independent Chairperson.

11.4 Notice of General Meetings

11.4.1 All General Meetings of Members (including the Annual General Meeting) must be called by not less than 15 (fifteen) Business Days' notice in writing. The notice is exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and must specify the place, the day and the time of the meeting and must be given in the manner hereinafter mentioned or in such other manner, as may be prescribed by the Company in the General Meeting from time to time, to such persons as are, under this MOI, entitled to receive notices from the Company.

11.4.2 Notice of every General Meeting of Members shall:-

11.4.2.1 state the date, time of commencement and place of the General Meeting;

11.4.2.2 state the business to be transacted at the General Meeting;

11.4.2.3 list all Special Resolutions and Ordinary Resolutions proposed to be voted on at the General Meeting;

11.4.2.4 state whether a Special Resolution or Ordinary Resolution proposed to be voted on has been designated by the Board as a Special Resolution or Ordinary Resolution solely relating to

and/or affecting either the Copyright Owners' Chamber and/or the Performers' Chamber;

11.4.2.5 include notices of special business to be raised by any Member in terms of article 11.4.3, if any;

11.4.2.6 in respect of Annual General Meetings, or any General Meeting at which such matters are required to be voted on –

11.4.2.6.1 if it is the elective year, state the names of Members, the name of the business under which they carry on business and the business addresses of any Member who has been nominated for election to the Board;

11.4.2.6.2 if it is the elective year, include the election of the Board;

11.4.2.6.3 call for the appointment of the Auditors and the fixing of the amount of the Auditors' remuneration;

11.4.2.6.4 include the receiving and consideration for the Annual Financial Statements;

11.4.2.6.5 include the consideration and approval for the Report of the Board; and

11.4.2.6.6 include the consideration of any other matter of which due notice has been given.

11.4.3 A Member who intends to propose a Special Resolution or Ordinary Resolution before a General Meeting shall, not less than 30 (thirty) business days before the day appointed for the said General Meeting,

serve upon the Company at its Office, a notice in writing signed by himself and one other Member containing the proposed resolution. Upon receipt of such notice, the Secretary shall, in any case where the notice is received before the notice of the General Meeting is issued include it in the notice of the General Meeting, and shall in any other case stand over until the next notice of General Meeting is issued by the Company.

11.4.4 The Board may on such dates and at such times and places as it may determine, convene General Meetings in accordance with Section 61(1) of the Act.

11.4.5 The Board shall upon a request in writing made by Members in terms of Section 61(3) of the Act and in compliance therewith convene a General Meeting to consider such business for which a meeting is required to be held.

11.5 **Proceedings at all General Meetings**

11.5.1 No business may be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting is opened. Subject to the provisions of the Companies Act, a quorum shall be 3 Members of each of the Performers' Chamber and Copyright Owners' Chamber present in person, or, if a Member is a company or close corporation, by its registered representative

11.5.2 If within 30 minutes of the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day one week hence at the same time and place, and at the adjourned meeting the

Members present form a quorum.

- 11.5.3 The Independent Chairperson shall preside as chairperson over every meeting of Members.
- 11.5.4 The chairman of any General Meeting may, with the consent of the General Meeting decided by Ordinary Resolution, adjourn the same from place to place and from time to time, but no business may be transacted at an adjourned meeting other than business left unfinished at the meeting from which the adjournment took place.
- 11.5.5 Each resolution put to the vote of any General Meeting, shall be either a Special Resolution or an Ordinary Resolution.
- 11.5.6 Ordinary Resolutions which have been designated by the Board in terms of Article 11.4.2.4 to relate –
 - 11.5.6.1 solely to and/or affecting the Copyright Owners, shall require a majority of votes of all Members within the Copyright Owners Chamber present or represented at a meeting of the Members of the Copyright Owners Chamber;
 - 11.5.6.2 solely to and/or affecting the Performers, shall require a majority of all votes of all Members within the Performers Chamber present or represented at a meeting of the Members of the Performers Chamber;
 - 11.5.6.3 to and/or affecting both the Copyright Owners and Performers, shall require a majority of all votes of Members in each of the Copyright Owners Chamber and the Performers Chamber

respectively present or represented at the meeting.

- 11.5.7 Special Resolutions which have been designated by the Board in terms of Article 11.4.2.4 to relate –
- 11.5.7.1 solely to and/or affecting the Copyright Owners, shall require a three fourths of votes of all Members within the Copyright Owners Chamber present or represented at a meeting of the Members of the Copyright Owners Chamber;
- 11.5.7.2 solely to and/or affecting the Performers, shall require a three fourths of all votes of all Members within the Performers Chamber present or represented at a meeting of the Members of the Performers Chamber;
- 11.5.7.3 to and/or affecting both the Copyright Owners and Performers, shall require a three fourths of all votes of Members in each of the Copyright Owners Chamber and the Performers Chamber respectively present or represented at the meeting.
- 11.5.8 If the Board has not designated any Ordinary Resolution or Special Resolution to be one which relates solely to and/or affecting the Copyright Owners or the Performers, then it shall be deemed to be a resolution affecting both the Copyright Owners and the Performers.
- 11.5.9 For purposes of determining the number of votes available to each Member within the Performers' Chamber for purposes of Ordinary Resolutions and Special Resolutions, voting rights within the Performers' Chamber shall vest in individual Performers who are natural persons and shall be allocated within the Performers' Chamber

as follows –

- 11.5.9.1 each Member of the Performers' Chamber shall have one vote plus one vote for each one hundredth of a percent of the Royalties (rounded down to the nearest one hundredth of a percent) due to such Member calculated by reference to distribution plans prepared by the Company and approved by the Registrar of Copyright or his or her successor-in-title that have been made in respect of the two most recently completed calendar years;
- 11.5.9.2 all such calculations shall be made on the irrefutable presumption that each such Member of the Performers' Chamber shared equally with the Copyright Owner in every such Royalty, notwithstanding that any contract between such Member of the Performers' Chamber and such Copyright Owner might have provided for sharing other than an equal sharing;
- 11.5.10 For purposes of determining the number of votes available to each Member within the Copyright Owners' Chamber for purposes of Ordinary Resolutions and Special Resolutions, each Member of the Copyright Owners' Chamber shall have one vote plus one vote for each one-hundredth of a percent of the Royalties (rounded down to the nearest one hundredth of a percent) due to such Member calculated by reference to distribution plans prepared by the Company and approved by the Registrar of Copyright that have been made in respect of the two most recently completed calendar years.
- 11.5.11 In the case of an equality of votes, the Independent Chairperson shall

not have a casting vote and the vote shall fail.

11.6 Proceedings at Annual General Meetings

11.6.1 At each Annual General Meeting the Board must present the Annual Financial Statements of the Company drawn as at the conclusion of the preceding financial year, together with its report.

11.6.2 Subject to the Companies Act, the business to be transacted at the Annual General Meeting must include, but not limited to:

11.6.2.1 the consideration of the annual report of the Board, and the taking of decisions on any matters arising therefrom;

11.6.2.2 the consideration of the Annual Financial Statements and the taking of decisions on any matters arising therefrom;

11.6.2.3 if it is an elective year, the announcement of the nomination of Members of the Board;

11.6.2.4 if it is an elective year, the election of Members of the Board;

11.6.2.5 the consideration of resolutions proposed by Members of which due and proper notice has been given to the CEO;

11.6.2.6 the appointment of an Auditor.

11.7 Members' right to be represented by proxy

11.7.1 Subject to the provisions of article 20, a member may appoint any individual, including an individual that is not a member of the Company, as a proxy to participate in, and speak and vote at a meeting on behalf

of the Member or give or withhold written consent on behalf of the Member to a decision to be taken by a meeting in respect of which the proxy is given.

- 11.7.2 A Member may not appoint more than one proxy per a meeting.
- 11.7.3 Notwithstanding the provisions of paragraph 11.7.1 above, a Member shall not be entitled to appoint a proxy when considering a resolution in terms of Article 11.8 of this MOI.
- 11.7.4 A proxy appointment shall be in writing, dated and signed by the Member and remains valid for a period of 1 (one) year from the date it is given or any longer or shorter period indicated in the appointment.
- 11.7.5 A proxy appointment may be revoked by the Member at any time by cancelling it in writing and delivering a copy of the revocation instrument to the Company unless the proxy appointment expressly states otherwise.
- 11.7.6 The appointment is suspended at any time and to the extent that the Member chooses to attend the meeting or to act directly and in person in the exercise of any rights as a Member.
- 11.7.7 A Member's proxy may delegate the proxy's powers to another person and may decide without direction from the Member whether to exercise or abstain from exercising any voting right of the Member, subject to any restriction contained in the instrument appointing the proxy.
- 11.7.8 The Company shall be entitled to disregard an instrument appointing a proxy and to disregard the vote of any proxy or purported proxy, if:-

11.7.8.1 The instrument appointing the proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed by the Company from time to time; or

11.7.8.2 The authority of the proxy has been revoked by the Member.

11.7.9 Any person whose appointment as a proxy has been revoked or is disregarded due to failure to comply with requisite formalities shall not be entitled to attend, participate in, or speak or vote at the meeting of Members in question and shall forthwith remove himself from the meeting at the request of the chairperson of the meeting.

11.7.10 A copy of the instrument appointing the proxy must be delivered to the Company before the proxy exercises any rights of the Member at a meeting.

11.8 **Electronic Participation in General Meetings**

The authority of the Company to conduct a General Meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Companies Act, is not limited or restricted by this MOI.

11.9 **Meeting Minutes**

11.9.1 Minutes of the proceedings of every General Meeting shall be kept by the Secretary, or in the event of his absence, by any other person appointed for the occasion by the Independent Chairperson at the meeting, a fair copy of which minutes shall be entered into a minute book to be kept for that purpose and shall, subject to any necessary

correction having been made, be signed as correct by the Independent Chairperson at the first succeeding meeting of the Board.

11.9.2 Such minutes shall be held available at the offices of the Company for inspection, free of charge, by any Member on request.

11.9.3 Minutes shall be made of all resolutions and proceedings of General Meetings of the Company, and of meeting of the Board and each committee.

12. MEETINGS OF THE PERFORMERS' CHAMBER

12.1 The Performers' Chamber shall meet as often and at a location determined by the Performers' Chamber Committee.

12.2 The Provisions of Article 11 relating to General Meetings shall apply *mutatis mutandis* to all meetings of the Performers Chamber.

13. MEETINGS OF THE COPYRIGHT OWNERS' CHAMBER

13.1 The Copyright Owners' Chamber shall meet as often and at a location determined by the Copyright Owners' Chamber Committee.

13.2 The provisions of Article 11 relating to General Meetings shall apply *mutatis mutandis* to all meetings of the Copyright Owners Chamber.

14. THE BOARD

14.1 Composition of the Board

14.1.1 The Board shall consist of 14 Directors (or such other number of persons as may be determined from time to time by Special Resolution

of the Members at an Annual General Meeting) comprised as follows

–

- 14.1.1.1 six Directors shall be Members of the Performers' Chamber;
 - 14.1.1.2 six Directors shall be Members of the Copyright Owners' Chamber;
 - 14.1.1.3 the CEO; and
 - 14.1.1.4 the Independent Chairperson.
- 14.1.2 Any persons forming part of the Board must either be Members or directors or employees of a Member (with the exception of the CEO and the Independent Chairperson).
- 14.1.3 The Board shall be elected and appointed in accordance with the provisions of Article 14.2.

14.2 Election and appointment of the Board

- 14.2.1 14.2.1 Subject to other provisions of this MOI, the Board shall be appointed to serve a term of two years calculated from the date of the Annual General Meeting at which they are so appointed. Notwithstanding the foregoing, at the Annual General Meeting held each year one third of Directors (rounded to the nearest whole number) shall retire from office by rotation.
- 14.2.2 The Directors so to retire are, in order of priority:

- 14.2.2.1 any Directors appointed to fill a casual vacancy within any period between the previous Annual General Meeting and the next Annual General Meeting; and
- 14.2.3 any Directors who have been longest in office since their last election: provided that where two or more Directors have been longest in office for an equal period, the Director or Directors to retire shall be determined by secret ballot.
- 14.2.4 Notwithstanding the provisions of Article 14.2.1, any Director retiring from office by rotation shall act as a Director throughout the Annual General Meeting at which he retires, and shall be eligible for re-election. Further to this, any Director whose term of office has or will expire at the Annual General Meeting in the normal course shall be eligible for re-election. A Director who retired by rotation but was re-elected at an Annual General Meeting, shall not be deemed to have vacated office but shall continue as a Director for the unexpired period of his term of office.
- 14.2.5 The Copyright Owners' Chamber shall collectively be entitled to nominate 50% of the Board on the basis that:
 - 14.2.5.1 nominations of candidates for election to the Board, in a form and manner prescribed by the Company, must be lodged with the CEO 14 days before the Annual General Meeting. The Board shall be entitled in writing to waive compliance with the time period set out in this MOI and to condone the late filing of a nomination to the Board in its sole and absolute discretion;

- 14.2.5.2 subject to Article 14.2.5.2, each Member within the Copyright Owners' Chamber may nominate no more than one candidate for election to the Board, provided that the maximum number of candidates which may be nominated to the Board by the Copyright Owners' Chamber shall at no time, exceed 50% of the Board;
- 14.2.5.3 Members within the Copyright Owners' Chamber which are subsidiary companies of holding companies which are Members with the Copyright Owners' Chamber, shall not be entitled to nominate candidates for election to the Board;
- 14.2.5.4 a candidate for election to the Board can only be proposed in writing by a Member who is in Good Standing and the person so nominated must signify willingness to accept nomination by signing the nomination form. The nominee shall be required to be Member in Good Standing or an employee or director of a Member in Good Standing;
- 14.2.5.5 if there are more vacancies than there are nominees, the person so nominated is deemed to have been elected with effect from the conclusion of the ensuing Annual General Meeting; and
- 14.2.5.6 if more persons are nominated as candidates than there are vacancies, an election must take place. The Directors of the Board, nominated by the Copyright Owners' Chamber shall be those candidates achieving the greatest number of votes at the Annual General Meeting.

- 14.2.6 The Performers' Chamber shall collectively be entitled to nominate 50% of the Board on the basis that:
- 14.2.6.1 nominations of candidates for election, in a form and manner prescribed by the Company, must be lodged with the CEO 14 days before the Annual General Meeting. The Board shall be entitled in writing to waive compliance with the time period set out in this MOI and to condone the late filing of a nomination to the Board in its sole and absolute discretion;
- 14.2.6.2 subject to Article 14.2.5.2, each Member within the Performers' Chamber may nominate no more than one candidate for election to the Board, provided that the maximum number of candidates which may be nominated to the Board by the Performers' Chamber shall at no time, exceed 50% of the Board;
- 14.2.6.3 a candidate for election can only be proposed in writing by a Member who is in Good Standing and the person so nominated must signify willingness to accept nomination by signing the nomination form. The nominee shall be required to be Member in Good Standing or an employee or director of a Member in Good Standing; and
- 14.2.6.4 if there are more vacancies than there are nominees, the person so nominated is deemed to have been elected with effect from the conclusion of the ensuing Annual General Meeting.
- 14.2.7 If more persons are nominated as candidates than there are vacancies, an election must take place. The Directors of the Board, nominated by

the Performers' Chamber shall be those candidates achieving the greatest number of votes at the Annual General Meeting.

14.2.8 No person may be appointed to the Board if such person is both a Member within the Copyright Owners' Chamber as well as a Member within the Performers' Chamber and/or is a representative of any such Members and/or has an interest in and/or employed by or engaged by any Firm which is/are such Member(s).

14.2.9 The Board may appoint a person to fill any casual vacancy occurring on the Board. The person so appointed holds office until the ensuing Annual General Meeting of the Company, unless the appointment is terminated under Article 14.4 or any other provision of the Act or this MOI. At such Annual General Meeting the person appointed to fill a casual vacancy shall retire from office but will be eligible for re-election.

14.2.10 Any Director on the Board shall be entitled to appoint an alternate to act in his stead, provided such alternate is a Member in Good Standing within his/her Chamber or an employee or a director of a Member in Good Standing within his/her Chamber

14.2.11 The provisions of this Article shall apply, mutatis mutandis, to Close Corporations and any other Firm.

14.3 **Meetings of the Board**

14.3.1 The Independent Chairperson shall preside as chairperson over every Board meeting. If the Independent Chairperson is unable, unwilling or if at any meeting he is not present within 15 (fifteen) minutes after the time appointed for holding such meeting, either of the Vice

Chairpersons , on a rotation basis, shall act as chairperson in his place. Should the Independent Chairperson and Vice Chairpersons not be present or willing to act as chairperson of the meeting, the Directors present at the meeting shall elect from themselves a Director to act as chairperson of the meeting.

14.3.2 The Board must meet at least once in each calendar quarter on such dates as it decides. Two weeks' notice at least must be given of all meetings of the Board unless the Directors on the Board agree to accept shorter notice.

14.3.3 To constitute a quorum for a meeting of the Board there must be:

14.3.3.1 two-thirds of the Voting Directors (as that term is defined in Article 14.3.5 below) present at the commencement of and throughout the meeting; and

14.3.4 If there is no quorum at any meeting ("**the Original Meeting**") of the Board, the Original Meeting shall be adjourned to the same time and same day two weeks later than the date originally set ("**the Adjourned Meeting**"), on the basis that written notice of the date and time of such Adjourned Meeting shall forthwith after the adjournment of the Original Meeting be given by the Company to all of the directors of the Company. Those Director(s) present at an Adjourned Meeting shall constitute a quorum.

14.3.5 Any decision of the Board requires a majority of votes by those Directors at the time appointed in terms of Article 14.2 (collectively referred to as "**Voting Directors**" and any reference to "**Voting**

Director” shall be a reference to any one of them as the context may require) on the basis however that the CEO and Independent Chairperson will not have a vote on any decision of the Board and shall participate in an advisory capacity only, except to the extent provided for by Article 14.3.6.

14.3.6 Each Voting Director entitled to be present and to vote has one vote and the Independent Chairperson, in the case of a tied vote of the meeting shall have a casting and final vote. Should there be a tied vote at any meeting at which the Independent Chairperson is not present (as set out in Article 14.3.1), then neither the Vice Chairpersons nor any Director present at the meeting acting as chairperson thereof in terms of Article 14.3.1 shall have a casting or final vote and as such the matter being voted upon should stand to fail.

14.3.7 The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Companies Act, is not limited or restricted by this MOI, 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.

14.3.8 A resolution in writing which is signed by all Directors on the Board entitled to vote thereon and inserted in the minute book of the Company is as valid and effective as if passed at a meeting of the Board. Any such resolution may consist of several documents in the same form

each of which is signed by one or more Directors on the Board and is deemed (unless the contrary appears from that resolution) to have been passed on the date on which it was signed by the last member entitled to sign it. A resolution is deemed to have been signed if consent thereto has been given in a message transmitted by email, telegram, teleprinter or telefax and purporting to emanate from the person whose signature to such resolution is required.

14.3.9 Acts done by any meeting of the Board or by any person acting as a Director on the Board are, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, as valid as if every such person had been duly appointed and was qualified to be a Director on the Board.

14.3.10 The inadvertent omission to give notice of any meeting of the Board does not invalidate the proceedings at any such meeting.

14.3.11 The proceedings of the Board are valid notwithstanding any vacancy in the Board.

14.4 **Disqualification of Directors on the Board**

14.4.1 A Director on the Board shall cease to hold office if –

14.4.1.1 he/she ceases to be a Member of the Company, or

14.4.1.2 the Member of the Company who employed the Director ceases to be a Member of the Company, or

14.4.1.3 the Director ceases to be a director, employee or the

representative of a Member of the Company for any reason whatsoever; or

14.4.1.4 he is absent without leave of the Board for more than three consecutive meetings held over a period of more than 90 days of which due to notice has been given; or

14.4.1.5 he resigns his office by notice in writing to the Company; or

14.4.1.6 is removed from the office pursuant to any other provision of the Companies Act or the MOI; or

14.4.1.7 he contravenes Article 14.2.8.

14.5 **Suspension of Directors on the Board**

A Director may be temporarily suspended from holding his/her position on the Board if and to the extent that such Director has a judgment against his/her name which hampers the Company from conducting its affairs.

14.6 **Directors' remuneration and financial assistance**

14.6.1 Director shall receive remuneration for any services as directors as determined by Ordinary Resolution of Members at a General Meeting.

14.6.2 The Company may not provide any loan, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related company, or to a person related to any such Director.

- 14.6.3 Nothing herein shall prohibit the payment by the Company to a Director in respect of a transaction -
- 14.6.3.1 if it is in the ordinary course of the Company's business and for fair value;
- 14.6.3.2 it constitutes an accountable advance to meet –
- 14.6.3.2.1 legal expenses in relation to a matter concerning the Company; or
- 14.6.3.2.2 anticipated expenses to be incurred by the person on behalf of the Company; or
- 14.6.3.2.3 is to defray the person's expenses for removal at the Company's request; or
- 14.6.3.2.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 14.6.4 If any Director commits a breach of this article, he/she must forthwith vacate his/her appointment and will not be eligible for re-election.

15. **INDEPENDENT CHAIRPERSON AND VICE CHAIRPERSONS**

- 15.1 There shall at all times be an -
- 15.1.1 independent chairperson ("**Independent Chairperson**"); and
- 15.1.2 2 (two) vice chairpersons ("**Vice Chairpersons**").
- 15.2 The Independent Chairperson and Vice Chairpersons shall be appointed in accordance with the provisions of Articles 15.3 and 15.4.

15.3 Independent Chairperson

15.3.1 To become or remain an Independent Chairperson of the Company, a person need not satisfy any qualification or eligibility requirements other than those stipulated in section 69 of the Companies Act.

15.3.2 Notwithstanding anything to the contrary contained in this MOI, the Independent Chairperson shall be appointed and removed by the Voting Directors.

15.3.3 The Board (being only those Voting Directors) shall, in their absolute discretion, subject to Article 15.3.4:

15.3.3.1 appoint any independent person of their choice as Independent Chairperson; and

15.3.3.2 remove any person as Independent Chairperson.

15.3.4 Despite anything to the contrary contained in this MOI, a resolution of the Board (being only the Voting Directors) for the appointment or removal of the Independent Chairperson must be adopted:

15.3.4.1 at a meeting with a quorum of all the Voting Directors present; and

15.3.4.2 by way of a resolution supported by a two-thirds of votes exercised by the Voting Directors, either by way of proxy and/or electronic participation as provided for in this MOI.

- 15.3.5 Employees or Members of either the Performers' Chamber or the Copyright Owners' Chamber shall not be eligible for appointment to the office of Independent Chairperson.
- 15.3.6 The Independent Chairperson shall serve for a term of 12 months from the date of appointment and shall automatically continue to act as Independent Chairperson for consecutive 12 month terms thereafter, unless removed from office in terms of Article 15.3.4 or upon his or her resignation from such office.
- 15.3.7 Should the Independent Chairperson be removed from office in terms of Article 15.3.4 or resign from such office, the provisions of Article 15.3.4 as it applies to the appoint of the Independent Chairperson shall apply *mutatis mutandis* to the appointment of a new Independent Chairperson.
- 15.3.8 The Voting Directors may, by way of an ordinary majority of votes, determine what remuneration (if any) the Independent Chairperson will receive for performing his or her duties. Any such remuneration must be reasonable, taking into account the nature of the work done, the time spent in doing it, and the sector in which the Company operates.

15.4 **Vice Chairpersons**

- 15.4.1 The Vice Chairpersons shall be constituted as follows:
- 15.4.1.1 the six Directors of the Board elected and appointed by the Copyright Owners' Chamber in accordance with Article 14.2.4 ("**Copyright Directors**") shall nominate any Director from among themselves to act as a Vice Chairperson; and

- 15.4.1.2 the six Directors of the Board elected and appointed by the Performers' Chamber in accordance with Article 14.2.6 ("**Performers Directors**") shall nominate any Director from among themselves to act as a Vice Chairperson.
- 15.4.2 The Vice Chairpersons shall serve a term equal to their term of appointment as Directors unless the Directors appointing such Vice Chairperson remove him/her from that position before the end of his/her term as a Director.
- 15.4.3 The Vice Chairpersons shall be entitled to receive any remuneration for performing their duties as Vice Chairpersons of the Company.

16. **THE PERFORMERS' CHAMBER COMMITTEE**

16.1 **Composition of the Performers' Chamber Committee**

- 16.1.1 The Performers' Chamber Committee shall be elected and appointed in accordance with the provisions of Article 16.2.
- 16.1.2 The appointment of members of Performers' Chamber Committee shall subsists until the earlier of the termination of the appointment by the Performers' Directors or the end of the term of the Performers Directors making the appointment.
- 16.1.3 The Performers' Chamber Committee shall consist of any number of persons so determined by the Performer Directors.
- 16.1.4 Any persons forming part of the Performers' Chamber Committee need not be Members or directors or employees of a Member.

16.2 Election and appointment of the Performers' Chamber Committee

16.2.1 The Performers' Chamber Committee shall be elected by the Performers Directors and appointed by the Board (upon reasonable motivation from the Performer Directors) as a Chamber Committee of the Board to manage and administer such specialised functions relating to Performers.

16.2.2 The persons elected and appointed to the Performers' Chamber Committee shall be entitled to be paid such reasonable remuneration for their services to the Performers' Chamber Committee, as may be approved by the Board by way of an ordinary majority of votes, provided that the remuneration to be paid falls within the budget of the Company. In addition, persons on the Performers' Chamber Committee may be paid all their reasonable expenses properly and necessarily incurred by them in and about the business of the Performers Chamber, provided the CEO's prior written approval is obtained.

16.2.3 The provisions of Articles 14.3, 14.4 and 14.5 shall apply *mutatis mutandis* to the Performers Chamber Committee.

17. THE COPYRIGHT OWNERS' CHAMBER COMMITTEE

17.1 Composition of the Copyright Owners' Chamber Committee

17.1.1 The Copyright Owners' Directors shall elect and appoint the Copyright Owners' Chamber Committee in accordance with the provisions of Article 17.3.

17.1.2 The appointment of members of Copyright Owners' Chamber Committee shall subsists until the earlier of the termination of the appointment by Copyright Owners' Directors or the end of the term of the Copyright Owners' Directors making the appointment

17.1.3 The Copyright Owners' Chamber Committee shall consist of any number of persons so determined by the Copyright Directors.

17.1.4 Any persons forming part of the Copyright Owners' Chamber Committee need not be Members or directors or employees of a Member.

17.2 **Election and appointment of the Copyright Owners' Chamber Committee**

17.2.1 The Copyright Owners' Chamber Committee shall be elected by the Copyright Directors and appointed by the Board (upon reasonable motivation from the Copyright Directors) as a Chamber Committee of the Board to manage and administer such specialised functions relating to Copyright Owners.

17.2.2 The persons elected and appointed to the Copyright Owners' Chamber Committee shall be entitled to be paid such reasonable remuneration for their services to the Copyright Owners' Chamber Committee, as

may be approved by the Board by way of an ordinary majority of votes, provided that the remuneration to be paid falls within the budget of the Company. In addition, persons on the Copyright Owners' Chamber Committee may be paid all their reasonable expenses properly and necessarily incurred by them in and about the business of the Copyright Owners' Chamber Committee provided the CEO's prior written approval is obtained.

- 17.2.3 The provisions of Articles 14.3, 14.4 and 14.5 shall apply *mutatis mutandis* to the Copyright Owners Chamber Committee.

18. FUNDING OF THE COMPANY

- 18.1 Substantially the whole of the Company's funding must originate from Licence Fees collected by the Company.
- 18.2 The Company shall, in accordance with the provisions of sub-regulation 6(2) of Government Gazette Notice 28894 promulgated under the Copyright Act, maximise the economic exploitation of the rights of Members in the Repertoire, for the benefit of Members, by:
- 18.2.1 granting licences to users of the Repertoire, invoicing and recovering Licence Fees in connection with the Repertoire (in accordance with the tariffs in place in terms of the Copyright Act from time to time); and
- 18.2.2 deducting the administrative expenses incurred by the Company in connection with the recovery of the Licence Fees, determined by reference to:-
- 18.2.2.1 such deduction being done in accordance with an approved

budget referred to in Article 18.3; and

18.2.2.2 the limitations, restrictions and requirements applicable in terms of the Copyright Act.

18.3 The CEO shall, each year before the commencement of each financial year of the Company, prepare a comprehensive budget ("**Budget**") setting out all revenues anticipated to be invoiced and collected in the forthcoming financial year together with all expenses anticipated to be incurred by the Company in connection with its affairs for the same period consequently, and the proposed surplus available for distribution in that financial year. The Budget shall be presented by the CEO to the Board prior to the commencement of the financial year to which it relates for approval by the Board. If approved by the Board as aforesaid, the Budget shall form the basis upon which and the parameters in which the Company shall be required to be operated in that financial year subject to same being amended or varied from time to time on *mutatis mutandis* the terms of this Article 18.3.

18.4 Neither the CEO nor any officer shall take any steps which have not been approved of by the Board by resolution beforehand, which are not adequately catered for in the Budget.

19. **MEMBERS' RIGHT TO INFORMATION**

Each Member has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company:

19.1 the Company's MOI and any amendments to it, and any Company Rules, as referred to in section 24(3) (a) of the Companies Act;

- 19.2 the records in respect of the Company's Board, as mentioned in section 24(3)(b) of the Companies Act;
- 19.3 the reports to annual meetings, and Annual Financial Statements as mentioned in section 24(3)(c)(i) and (ii) of the Companies Act;
- 19.4 the notices and minutes of Annual General Meetings, and communications mentioned in section 24(3)(d) and (e) of the Companies Act, must be regarded in the case of a Non-Profit Company as referring to a meeting of Members, or communication to Members, respectively; and
- 19.5 the Members register as mentioned in section 24(4) of the Companies Act.

20. **REPRESENTATION OF MEMBERS**

- 20.1 A director of a company which is a Copyright Owner Member and any member of a Close Corporation which is a Member is deemed to be authorized to represent that Member unless the directors of the Company or the members of the Close Corporation, as a body, gives the Company, written notice to the contrary. In such event, the Company or Close Corporation may, from time to time, by notice in writing to the Company, nominate a representative who are, for all purposes, entitles to exercise powers and duties of that Member on its behalf.
- 20.2 Unless the Board, in its discretion, otherwise decides, any document requiring the signature of a Member must be signed by the Member personally or on behalf of that Member by its representative recognized in accordance with the foregoing provisions.
- 20.3 Notwithstanding the foregoing, the Board is entitled, at any time, for such

reasons as it may deem fit, to require a person purporting to represent a Member to produce satisfactory verification of that fact.

20.4 A Member appointing a representative is entitled, by notice in writing to the Company, to appoint, replace and remove such representative and an alternate to such representative who, on appointment, may exercise all the powers of a representative.

20.5 By virtue of the foregoing, Members which are not natural persons are not entitled to be represented by proxy as commonly understood.

20.6 Only a Member who is a natural person is entitled to appoint another person as his or her proxy to attend, speak and vote in his or her stead at a meeting of the Company. The instrument appointing such a proxy must be in writing under the hand of the appointer and must be deposited at the registered office of the Company not less than 48 hours before the time for holding the meeting at which the Member proposes to vote, and in default of complying herewith, the instrument of proxy may not be treated as valid. No instrument appointing a proxy is valid after the expiration of three months from the date when it was signed.

21. RECORD DATE FOR EXERCISE OF MEMBER RIGHTS

If at any time the Board fails to determine a record date as contemplated in section 59 of the Companies Act the record date for the relevant matter is to be determined in accordance with section 59(3) of the Companies Act.

22. REGISTER OF MEMBERS

22.1 The Company must maintain a register of Members.

- 22.2 It is the responsibility of each Member to ensure that the entries relating to it in the register are correct, more particularly with regard to:
- 22.2.1 the name of the Member;
 - 22.2.2 the postal and street addresses of the Member;
 - 22.2.3 any telephone, telex, teletex, fax or other electronic address or of the Member;
 - 22.2.4 the full name of the owner or the Member or, if the Member is a partnership, close corporation or company, the full name of each partner, Member or director, as the case may be;
 - 22.2.5 the full name of any representative and any alternate representative of the Member; and
 - 22.2.6 whether the Member participates as a Member in the Performers' Chamber and/or in the Copyright Owners' Chamber.
- 22.3 The Company is under no liability for any action taken on any communication purporting to emanate from a Member, representative or alternate representative.

23. CORRECTION OF REGISTER

If at any time the Board has reason to believe that a Member has been or has become incorrectly registered, it may call for such evidence as it thinks fit as to the correctness of the registration and if satisfied that the Member has been or is incorrectly, registered, it shall correct the register and issue an amended certificate. The former certificate shall cease to have effect, and shall be returned forthwith to

the Office of the Company.

24. **MANAGEMENT OF THE AFFAIRS OF THE COMPANY**

- 24.1 The management and control of the affairs of the Company vests in the Board which must pay all expenses incurred in promoting and incorporating the Company, subject to the general supervision and direction of the Members in General Meeting. The Board has full power and authority to do any act, matter or thing which might be done by the Company, except such matters as are in this MOI specially reserved to be dealt with by the Members in General Meeting. In addition to the general powers and authorities hereby conferred on the Board, and without any way limiting such powers and authorities, of the Board has the following further express powers:
- 24.1.1 to facilitate the exchange of ideas and cause the Company to act as a clearing house for ideas, priorities and problems;
 - 24.1.2 to acquire any movable or immovable property for the Company calculated to benefit the Company and to advance its objects, and to maintain, improve and alter any of the Company property;
 - 24.1.3 to institute, conduct, defend compound or abandon any legal proceedings by or against the Company or its officers, or otherwise concerning the affairs of the Company;
 - 24.1.4 to operate accounts with registered financial institutions in the name of the Company and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques and other financial instruments connected with the business and affairs of the Company;

- 24.1.5 as agent, to receive any moneys, including Licence Fees due by third parties to the Company or its Members, from time to time;
- 24.1.6 to invest and deal with any moneys of the Company not immediately required for the purposes of the Company;
- 24.1.7 to secure the fulfilment of any contracts or engagements entered into by the Company by the mortgage of all or any part of the property of the Company;
- 24.1.8 to establish, promote or assist in establishing or promoting and to subscribe to or become a Member of any Company or society as whose objects are similar or partly similar to the objects of the Company, or the establishment or promotion of which may be beneficial to the Company, provided that no subscription is paid to any such other Company out of the funds of the Company except bona fide in furtherance of the interests of the Company;
- 24.1.9 to support and subscribe to any institution or society which may be for the benefit of the Company or for its employees, whether past or present;
- 24.1.10 to borrow or raise and give security for money by the issue of bonds, debentures, debenture stock, bills of exchange, promissory notes or other obligations or securities of the Company or by mortgage of all or any part of the property of the Company;
- 24.1.11 to make donations, loans (other than to Members), exchanges, leases and any other forms of contract whatsoever, including sales and purchases of property of any kind whatsoever;

- 24.1.12 to appoint such agents, officers, clerks and servants for permanent, temporary or special services as they think fit, and to invest them with such powers as they may think expedient, and to determine their duties and fix and vary their salaries or emoluments (if any) and to require security in such instances, and to such amounts, as they may think fit, and to suspend or discharge any such persons at their discretion;
- 24.1.13 to establish such subcommittee and regional committees as may be required or desired and to prescribe for the control, management, administration and regulation of such subcommittees and regional committees and their affairs in so far as these are not regulated for herein, and to delegate to them such powers as may be deemed necessary;
- 24.1.14 to establish and support or aid in the establishment and support of any charitable Companies or institutions and to subscribe or guarantee money for charitable purposes in any way connected with the purposes of the Company or calculated to further any of its objects;
- 24.1.15 to constitute and appoint appeal boards;
- 24.1.16 to constitute and appoint enquiry boards;
- 24.1.17 to make and promulgate, and to add to, repeal and alter the Company Rules for the administration of the Company and the achievement of all its objects and, in particular, without limitation;
- 24.1.18 to endeavour to influence the industry and the conduct of business within the industry;

- 24.1.19 to determine the procedure for enquiries, investigation, hearings or meetings before any enquiry board or appeal board;
- 24.1.20 to prescribe the imposition of penalties for non-compliance with or contravention of particular Company Rules, including, without limitation, the imposition of reasonable fines and penalties;
- 24.1.21 to circumscribe the power of enquiry boards and appeal boards;
- 24.1.22 to delegate its powers;
- 24.1.23 to lay down a code for the conduct of Members their directors and their employees and to propose amendments and additions to any codes, for consideration and adoption by the Company in General Meeting;
- 24.1.24 of its own accord or on the application of any party who alleges that there has been a gross irregularity or illegality in any appeal Board proceedings, to review those proceedings and , where it is found that there has been a gross irregularity or illegality, to set aside the decision of such appeal Board and to require the appeal to be heard anew;
- 24.1.25 after holding an enquiry or hearing, to declare any person ineligible or unfit to hold office in the Company;
- 24.1.26 to enquire into and investigate, directly or by delegation, any matter relating to the industry, its running or conduct, and to make such decisions as it may consider expedient; provided that the enquiries, investigations, and adjudications into and upon breaches or contraventions of this MOI, any code of conduct or the Company Rules by any person must be conducted, undertaken and made by enquiry

Boards;

- 24.1.27 to interpret the meaning, effect and intent of any of the Company Rules or any code and Articles of this MOI;
- 24.1.28 to determine in such manner as it considers just any matter relating to the achievement of the objects of the Company which is not provided for in this MOI or in the Company Rules or any code;
- 24.1.29 At any time to publish or cause or authorize the publication of any conviction for any breach of this MOI or the Company Rules and any codes, the identity of the persons concerned, the facts relating to any decisions made, the decisions and penalties imposed and any other information as it may in its reasonable discretion deem fit;
- 24.1.30 to delegate to any subcommittee or subcommittees all or any of the authorities conferred on the Board by this MOI and such subcommittees has such powers as may be conferred on it at the time of its appointment, or thereafter, by the Board and be subject in all respects to such Company Rules or instructions as may from time to time be framed given or approved by the Board; and
- 24.1.31 to apply the Company Rules and amend same as required from time to time;

to do all such things as is incidental or conducive to the attainment of the above objects or any of them.

25. **DISTRIBUTION OF LICENCE FEES**

- 25.1 The Board shall prepare a distribution plan from time to time, which shall set

out the manner in which collected Licence Fees and all investment income received by the Company in respect thereof (collectively, "**Proceeds**") shall be distributed amongst Members ("**the Distribution Plan**").

25.2 The Board shall approve and implement the Distribution Plan in accordance with the Company Rules and shall amend, vary, update and alter the Company Rules from time to time in accordance with Article 26.1 provided always that the Distribution Plan complies with the principles recorded in this Article 25.

25.3 The Distribution Plan shall provide –

25.3.1 for the deduction of any administrative or other fees from Proceeds which shall be applied to Proceeds to provide net aggregate Proceeds ("**Net Proceeds**");

25.3.2 that collected Net Proceeds shall, per each track, be equally between the Performers featured in the track and (on the one hand) and Copyright (on the other hand);

25.4 It is a condition of Membership, in both Chambers of the Company, that a Member agrees that collected Net Proceeds per track shall be distributed equally between Performers featured in the track (on the one hand) and Copyright Owner (on the other hand), irrespective of any contractual agreement between any Performer and Copyright Owner, to the contrary. In the event that there is a dispute between a Performer and a Copyright Owner relative to the existence and/or application of a contractual agreement between them, the dispute shall be referred to the Copyright Tribunal.

25.5 The distribution of Net Proceeds in terms of this MOI constitutes a distribution

contemplated in Section 1(3) of Schedule 1 to the Companies Act insofar as such distributions constitute payments of amounts:-

- 25.5.1 by the Company to Members in terms of a bona fide agreement between the Company and the Member concerned;
- 25.5.2 in respect of rights that the Member has which are being administered by the Company in order to advance the stated object of the Company;
and
- 25.5.3 in respect of a legal obligation which is binding on the Company.

26. **RULES**

- 26.1 The Board may make Company Rules amend or repeal such Company Rules in respect of matters that are not specifically addressed in this MOI.
- 26.2 Company Rules shall be published on the Company's website and will be emailed to any then serving Director and shall be available for inspection by any Member at the Company's Office.
- 26.3 Company Rules must be consistent with the Companies Act and this MOI, and shall take effect on the date specified in the Company Rules, or 30 days after publication thereof.
- 26.4 New or amended Company Rules shall be binding until the next General Meeting Company where they shall be amended and adopted or ratified by Special Resolution.

26.5 . The Company Rules shall be lodged and filed in the manner prescribed by the Companies Act, with the Companies and Intellectual Property Commission.

26.6 Each Chamber shall adopt Rules to govern those matters relevant to each such Chamber which must include, but shall not be limited to, distribution rules applicable to such Chamber. Each set of rules adopted by each Chamber as aforesaid shall subject, to Article 25, constitute Rules adopted by the Company upon their adoption of the Chamber as an Ordinary Resolution.

27. **ENQUIRY BOARD**

27.1 All enquiries, investigations and adjudication into and upon breaches or contraventions of this MOI or the Company Rules or code by any person must be conducted by an enquiry board.

27.2 An enquiry board must consist of such person or persons as are appointed in the sole discretion of the Board. The Board shall exercise this power of appointment by appointing persons (who may include one or more of its number) to a panel from which persons may be appointed to an enquiry board, and by appointing one or more persons from that panel as a convener or conveners of enquiry boards. The convener or conveners have the power to convene an enquiry board from among the persons on the panel provided that an enquiry board so constituted:

27.2.1 may consist of one or more persons of whom the convener must be and other conveners may be a Member or Members; and

27.2.2 must be constituted either specifically in such matters for which it may

be convened or generally for such purpose for such periods as the convener or conveners may determine.

- 27.3 An enquiry board has the powers:
- 27.3.1 to enquire into, investigate and adjudicate upon any alleged breach or contravention of this MOI or any Company Rules; and
- 27.3.2 in cases of a breach or contravention of this MOI or any Company Rules, to impose on a person any one or more of the following penalties: a reprimand; a caution; a warning; a fine; the expulsion of a Member; and
- 27.3.3 in its sole discretion, to co-opt at the commencement of any enquiry any person to sit on such enquiry board where it considers such person will be able to assist in the enquiry.
- 27.4 Where an enquiry board consists of more than one Member, the Vice Chairpersons shall act as chairpersons of the enquiry board and shall not have a casting or final vote.
- 27.5 All enquiry boards must act in accordance with and apply these Articles, the Company Rules and the code.

28. **APPEALS**

- 28.1 Appeals against decisions made or penalties imposed by an enquiry board are competent except where otherwise determined in the Company Rules and lie to an appeal board only.
- 28.2 An appeal board consists of such person or persons (including any person

who is not a Member or a representative of a Member) as are appointed in the sole discretion of the Board.

28.3 The Board shall exercise this power of appointment by appointing persons (which may include one or more of its number) to a panel from which persons may be appointed to an appeal board and by appointing one or more persons from that panel as convener or conveners of appeal board. The convener or conveners have the power to convene an appeal board from among the members on the panel, provided that an appeal board so constituted:

28.3.1 must consist of not less than three persons of whom the convener or conveners may be a member or members; and

28.3.2 must be constituted specifically to hear the particular appeal for which it was convened by the convener or conveners.

28.4 An appeal board, on hearing an appeal, has one or more of the following powers:

28.4.1 to allow the appeal;

28.4.2 to dismiss the appeal;

28.4.3 to substitute any finding or decision as it deems fit or substitute such penalty as it deems fit, including any increased penalty;

28.4.4 to make such order as in its opinion the circumstances may require including an order to remit the matter for the hearing of further evidence or an order for the hearing of an enquiry to be set aside and to be begun again;

- 28.4.5 to hear further evidence or receive any documents on such terms and conditions as it in its discretion may decide;
 - 28.4.6 to direct the enquiry board to determine a matter on an alternative charge or basis;
 - 28.4.7 to order a person to pay all or a portion of the actual costs and expenses incurred by the Company in connection with an appeal, in addition to any other penalty, if it is of the opinion that the appeal is unwarranted or unreasonable; and
 - 28.4.8 to make such rulings as it in its sole discretion determines.
- 28.5 The Independent Chairperson shall act as chairperson of the appeal board, who shall have a casting vote in addition to his deliberative vote (if any). Provided that three Members of the appeal board hearing an appeal are present continuously throughout the hearing of such an appeal, the absence of a Member of the appeal board on any occasion during the hearing of an appeal does not affect the validity of such proceedings. Any Member who has absented himself from any part of the hearing of an appeal is not permitted to take any further part in that appeal.
- 28.6 All appeal boards must act in accordance with and apply this MOI and the Company Rules.

29. **MINUTES**

The Board must cause minutes to be kept. Such minutes must be signed by the chairperson (whether it being the Chairperson or Vice Chairpersons) of the meeting at which the proceedings took place or by the chairperson (whether it

being the Chairperson or Vice Chairpersons) of the next succeeding meeting.

30. ACCOUNTING RECORDS

30.1 In terms of the Companies Act and this MOI, the Company shall keep accurate and complete accounting records as necessary to provide an adequate information base sufficient to enable the Company to satisfy all reporting requirements applicable to it and to provide for the compilation of financial statements. The Company shall maintain the necessary accounting records in accordance with section 28 of the Companies Act.

30.2 The accounting records must be kept at the registered office of the Company or at such other place or places as the Board thinks fit, and must always be open to inspection by the members of the Board.

31. ANNUAL FINANCIAL STATEMENTS

31.1 The Company elects to voluntarily submit its accounting records to an annual audit. As such, the Company shall appoint a person to serve as Auditor.

31.2 The financial year end of the Company is the last day of December each year.

31.3 The Board shall comply with the provisions of the Companies Act insofar as it relates to the keeping and auditing of financial accounts and ensure that Annual Financial Statements are prepared in respect of the Company at the end of each financial year and must file the same with the Commissioner for the South African Revenue Service.

32. TAX EXEMPTION CONDITIONS

- 32.1 In order for the Company's receipts or accruals to be exempt from income tax in terms of Section 10(1)(d)(iv)(bb) of the Income Tax Act, 58 of 1962 (**'the Income Tax Act'**) and for donations by or to the Company to be exempt from donations in terms of section 56(1)(h) of the Income Tax Act, the conditions set out below apply to the Company.
- 32.2 The Company may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives (as set out herein).
- 32.3 No Member of the Company may directly or indirectly have any financial interest in the Company (other than the situation where a member may also be an employee of the Company, and so be entitled to remuneration for their services).
- 32.4 Substantially the whole of the Company's activities must be directed to the furtherance of its main object and not for the specific benefit of an individual Member or minority group.
- 32.5 The Company may not have a share or other interest in any business, profession or occupation, which is carried on by its Members.
- 32.6 The Company may not pay any remuneration, as defined in the Fourth Schedule of the Income Tax Act to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 32.7 Substantially the whole of the Company's funding must be from its annual or other long-term members or from an appropriation by the government, a provincial administration or a municipality.

- 32.8 The Company shall comply with such reporting requirements as may be determined by the Commissioner of the South African Revenue Services from time to time.
- 32.9 The Company is and will not knowingly become a party to, and does not and will not knowingly permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part 11A of Chapter 111 of the Income Tax Act, or a transaction, operation or scheme as contemplated in section 103(5) of the Income Tax Act.
- 32.10 The Company shall ensure that it at all times has at least three persons who are not connected persons, as defined in the Income Tax Act, in relation to each other to accept fiduciary responsibilities of the Company, such persons to be appointed by the Board. No single person shall directly or indirectly control the decision-making powers relating to the Company.

33. **MEMBERSHIP**

- 33.1 A Member shall remain a Member until her/his/its Membership is terminated in accordance with the provisions hereof.
- 33.2 A person or entity wishing to be a member of the Company, will apply for Membership in the manner and form prescribed by the Company from time to time.
- 33.3 Applicants shall be admitted by a resolution of the board as provisional members until the Annual General Meeting following the date of their application. A membership certificate shall then be issued.

- 33.4 At the Annual General Meeting following their admission by resolution, the provisional members shall be taken into membership by a resolution passed at the Annual General Meeting.
- 33.5 Provisional members shall have the right to attend the Annual General Meeting at which their applications for membership are considered.
- 33.6 Provisional members admitted to membership of the Company shall:
 - 33.6.1 acquire the right to exercise their vote on any matter at the next Annual General Meeting following their admission.
 - 33.6.2 Immediately on admission be eligible to be appointed to any office within the Company.
- 33.7 Membership shall cease:
 - 33.7.1 upon a member resigning as a member of the Company; or
 - 33.7.2 expulsion in terms of the MOI or any Company Rules; or
 - 33.7.3 If a legal entity, upon winding up;
 - 33.7.4 If a natural person, upon death.