

Republic of South Africa

Co-operatives Act, 2005

CONSTITUTION FOR A

PRIMARY CO-OPERATIVE

Name of co-operative: **SOUTHERN AFRICAN MUSIC RIGHTS ORGANISATION CO-OPERATIVE LIMITED**

Registration No.: [●]

Abbreviated name of the co-operative: **SAMRO (CO-OP) LTD**

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1. INTERPRETATION

In this Constitution, unless the context clearly indicates otherwise:

- 1.1. the terms defined below shall have the corresponding meaning when used in this Constitution:
- 1.1.1. **%Administer+**, in relation to the Administered IP Rights, includes the rights of the Co-operative to hold, control, administer, make use of, commercialise, license, or enforce, as the case may be, any Administered IP Rights on behalf of or for the benefit of Members, Affiliates or Contracting Participants, as the case may be, in accordance with this Constitution and the Administration of IP Rights Agreement or an agreement contemplated in clause 34; and **%Administered+**, **%Administration+** and **%Administering+** shall have corresponding meanings;
 - 1.1.2. **%Administered IP Rights+** means all Performing Rights, Mechanical Rights or Needletime Rights, or any other IP Rights which are Administered by the Co-operative in accordance with this Constitution and the related Administration of IP Rights Agreement, which IP Rights shall continue to be associated with the particular Member, Affiliate or Contracting Participant, as the case may be, who agreed to them being Administered by the Co-operative and where the Member's interest in such rights has been transferred to a Permitted Successor, associated with the relevant Permitted Successor;
 - 1.1.3. **%Administration of IP Rights Agreement+** means an agreement concluded from time to time between the Co-operative and Applicant or Member (including a Permitted Successor) Contracting Participant or Affiliate pursuant to which such a Person appoints the Co-operative to Administer their IP Rights, as contemplated in clause 29 (*Administration of IP Rights*) in the case of Members including any further agreement or addendum entered into in accordance with clause 29.4 and in clause 34 in the case of Contracting Participants, as amended, supplemented or replaced from time to time;
 - 1.1.4. **%Administration Rights+** means the rights granted to and the related IP Rights vested in the Co-operative for the purposes of Administering the Administered IP Rights as required by or contemplated in this Constitution read together with the Administration of IP Rights Agreement;
 - 1.1.5. **%Affiliate+** means an Affiliated Society and, where relevant, includes its members, and **%Affiliates+** shall have a corresponding meaning;
 - 1.1.6. **"Affiliated Society"** means any Person in the Principal Territory or other countries which conducts a business similar or related to that of the Co-operative and that the Co-operative becomes a member of or enters into any joint venture, union of interests, co-operation, reciprocal concession or other arrangement with, in connection with the administration, commercialisation or use of IP Rights or for

sharing profits in relation to the administration, commercialisation or use of IP Rights at the relevant time;

- 1.1.7. **%Applicant+** has the meaning ascribed thereto in clause 9.4;
- 1.1.8. **%Annual General Meeting+** means an annual meeting of the Members to *inter alia* consider the matters set out in clause 16.2;
- 1.1.9. **%Assign+** has its ordinary meaning read together with the IP Related Legislation, and in regard to Members and Applicants, unless agreed otherwise in writing, includes the Assignment that results in the transfer of the rights comprising the Administered IP Rights to the Co-operative by the Applicant or Member vested with such rights (**%Assignor+**) in order to enable the Co-operative to be vested with the Administered IP Rights for the purpose of empowering the Co-operative to exclusively Administer the Administered IP Rights in its own name, for the benefit of the Assignor (or the Assignor's Permitted Successor in this Constitution) as contemplated and subject to the terms and restrictions in its Constitution and the Administration of IP rights Agreement (including Permitted Deductions), and **%Assignment+** shall have a corresponding meaning;
- 1.1.10. **"Associate Member"** means a member of the Co-operative elected to Associate Membership pursuant to clause 9.6 and having the rights, privileges and obligations as set out in this Constitution applicable to Associate Membership;
- 1.1.11. **%Audit Committee+** means any audit committee of the Co-operative that may be appointed or elected in accordance with clause 15.3, and which may be combined with a risk committee, or any other committee of the Co-operative;
- 1.1.12. **%Auditing Profession Act+** means the Auditing Profession Act (26 of 2005), as amended from time to time or any legislation which replaces it;
- 1.1.13. **%Auditor+** means the auditor of the Co-operative, appointed in accordance with clause 15.4.1
- 1.1.14. **"Author"** means an author as defined in section 1 of the Copyright Act and the equivalent in jurisdictions outside South Africa including, without limitation, a lyricist, Composer and, adapter or translator of any words which are or may be associated with any music but excludes any Permitted Successors in title to an author's interests in the relevant copy right;
- 1.1.15. **"Ballet"** means a choreographic work having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing and/or miming, but does not include country or folk dancing, nor tap dancing, nor precision dance sequences;
- 1.1.16. **%Board+** means the board of Directors of the Co-operative, tasked to manage the affairs of the Co-operative;

- 1.1.17. **%Business Day+** means any day which is not a Saturday, Sunday or recognised public holiday in South Africa;
- 1.1.18. **%Business Rescue+** means business rescue as contemplated in section 128(1)(b) of the Companies Act, or the equivalent in any other jurisdiction;
- 1.1.19. **%Business Rescue Practitioner+** shall have the meaning ascribed thereto in section 128(1)(d) of the Companies Act;
- 1.1.20. **"Candidate Member"** means a member of the Co-operative elected to Candidate Membership pursuant to clause 9.6, and having the rights, privileges and obligations as set out in this Constitution applicable to Candidate Membership;
- 1.1.21. **%CISAC+** means the Confédération Internationale des Sociétés d'Auteurs et Compositeurs (English translation, ~~the~~ International Confederation of Societies of Authors and Composers), an international, non-governmental, not for profit organisation composed of Societies administering rights in all categories of copyright, founded in France in 1926 and currently having its headquarters in Paris;
- 1.1.22. **%Cinematograph Film+** means any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of image capable, when used in conjunction with any other mechanical, electronic or other device, of being seen as a moving picture and of reproduction, and includes the sound embodied in a sound track associated with the film;
- 1.1.23. **%Companies Act+** means the Companies Act (71 of 2008), as amended from time to time or any legislation which replaces it;
- 1.1.24. **"Composer"** means a composer or arranger of any music;
- 1.1.25. **"Constitution"** means this constitution including all schedules and annexures hereto;
- 1.1.26. **%Contracting Participants+** are those Persons who, as clients of the Co-operative, contract with the Co-operative to Administer their Administered IP Rights on a purely contractual basis as contemplated in clause 34.1 and who do not become Members of the Co-operative;
- 1.1.27. **%Contracting Participant Administration Rules+** means the Governance Rules relating to the agreements with Contracting Participants and the Administration of their IP Rights;
- 1.1.28. **"Conversion Date"** means the date on which the entry of the conversion from a company to a co-operative (as contemplated in section 67(3)(a) read with section 68 of the Co-operatives Act) is made in the register of co-operatives and the substitution of the Co-operatives' previous constitutional documents (as a company) with this Constitution becomes effective as contemplated in section 68(f) of the Co-operatives Act;

- 1.1.29. **%Co-operative+** means the Southern African Music Rights Organisation Co-operative Limited (with the registration number set out on the first page of this Constitution) that adopted this Constitution, or by whatever other name it may be known from time to time;
- 1.1.30. **"Co-operatives Act"** means the Co-operatives Act (14 of 2005), as amended from time to time or any legislation which replaces it;
- 1.1.31. **%Copyright Act+** means the Copyright Act (98 of 1978), as amended from time to time or any legislation which replaces it;
- 1.1.32. **%Diffusion Service+** means a telecommunication service of transmissions consisting of sounds, images, signs or signals, which takes place over wires or other paths provided by material substance and intended for reception by specific members of the public; and diffusion shall not be deemed to constitute a Performance or a broadcast or as causing sounds, images, signs or signals to be seen or heard; and where sounds, images, signs or signals are displayed or emitted by any receiving apparatus to which they are conveyed by diffusion in such manner as to constitute a Performance or a causing of sounds, images, signs or signals to be seen or heard in public, this shall be deemed to be effected by the operation of the receiving apparatus;
- 1.1.33. **%Director+** means a person appointed as member of the Board in terms of section 33 of the Co-operatives Act and clause 19.3 of this Constitution;
- 1.1.34. **"Dramatico-musical Work"** means an opera, operetta, musical play, revue, pantomime or sketch, in so far as it consists of words and music written expressly therefore (but does not include a Cinematograph Film);
- 1.1.35. **%Election Date+** has the meaning ascribed thereto in clause 9.6 below;
- 1.1.36. **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Co-operative by the Member;
- 1.1.37. **%Electronic Communication+** means communication by means of a telephonic, electronic or other communication facility, as contemplated in the Electronic Communications and Transactions Act (25 of 2002);
- 1.1.38. **%Exchange Control Regulations+** means the South African exchange controls of the South African Reserve Bank regulated and promulgated in terms of the Currency and Exchanges Act (9 of 1933) and the related regulations, including the Exchange Control Regulations (1961), as amended or replaced from time to time;

- 1.1.39. **"Full Member"** means a member of the Co-operative elected to Full Membership pursuant to clauses 9.6, 9.10 or 9.13, and having the rights, privileges and obligations as set out in this Constitution applicable to Full Membership;
- 1.1.40. **%General Meeting+** means a meeting of the Members who are entitled to exercise Voting Rights in relation to a matter to be considered at such meeting and includes an Annual General Meeting;
- 1.1.41. **%Governance Rules+** means rules as contemplated in section 14(2)(i) of the Co-operatives Act and clause 8 (*Governance Rules*) of this Constitution;
- 1.1.42. **%Grand Rights+** means Performing Rights in respect of the following classes of works, unless such acts are done by means of Cinematograph Films:
- 1.1.42.1. Dramatico-musical Works in their entirety;
- 1.1.42.2. excerpts from Dramatico-musical Works consisting of a complete act;
- 1.1.42.3. excerpts from Dramatico-musical Works which, not consisting of a complete act, have a total duration in excess of 20 (twenty) minutes when broadcast by television, or in excess of 25 (twenty-five) minutes when broadcast by sound radio or performed otherwise than by broadcasting, and excerpts which, not consisting of a complete act and not exceeding the durations mentioned in this clause, form a consecutive sequence which preserves all the essential elements of the original work and does not interrupt the dramatic action; and
- 1.1.42.4. the music and any words associated therewith composed or used for a Ballet, if accompanied by a visual representation of such Ballet in excess of 15 (fifteen) minutes in total duration of 50% (fifty percent) of the total length of the Ballet;
- 1.1.43. **%Grant of Rights Payment+** has the meaning ascribed thereto in clause 30.3;
- 1.1.44. **%Intellectual Property+** means the subject matter of any IP Rights;
- 1.1.45. **%IP Related Legislation+** means:
- 1.1.45.1. the Designs Act (195 of 1993), as amended;
- 1.1.45.2. the Copyright Act;
- 1.1.45.3. the PerformersqProtection Act; and/or
- 1.1.45.4. any other legislation applicable in respect of the Administration of IP Rights Agreement between the Co-operative and Members from time to time;

- 1.1.46. **%IP Rights+** means all intellectual property rights of whatsoever nature in the Principal Territory or anywhere else in the world (and whether or not such rights are registered or capable of being registered) including without limitation, copyright, Needletime Rights, trademarks, patents, rights in inventions, rights in designs, domain names, trade and business names (and all associated goodwill, rights to sue for passing off or for unlawful competition), moral rights, know-how, trade secrets, rights in information and confidentiality and any other similar, related or pending rights (for example, without limitation, any application or right to apply for registration of any of such rights) subsisting now or in the future and including all applications for, and renewals or extensions of, such rights for their full term and includes any licences or rights of use of such intellectual property;
- 1.1.47. **%Licence Revenue+** means the royalties, license fees, and other proceeds received by the Co-operative directly from the Co-operative's Administration of the Administered IP Rights of Members (to be determined and attributed by the Board in applying the Payment Rules);
- 1.1.48. **"Mechanical Right"** means the right to make, in respect of any Work in any part of the world, a Record embodying that Work and all related IP Rights;
- 1.1.49. **%Mechanically Reproduce+** means any reproduction of the Musical Work with or without lyrics including, but not limited to, a reproduction in the form of a record, the conversion into another format such as, by way of example only, a digital format or a reproduction made from a reproduction of the Work;
- 1.1.50. **"Member"** means a registered member of the Co-operative, whether a Full Member, an Associate Member or a Candidate Member, and **%Membership+** shall have a corresponding meaning;
- 1.1.51. **%Membership Rules+** shall have the meaning attributed to it in clause 8.5, essentially being the Governance Rules principally relating to the Membership of the Co-operative at the relevant time;
- 1.1.52. **%Member's Administered IP Rights+** means the Administered IP Rights associated with a Member that are Administered by the Co-operative at the relevant time, whether or not such rights are vested in the Co-operative;
- 1.1.53. **%Member's Certificate+** means the certificate issued to a Member by the Co-operative reflecting such Member's membership, which certificate shall be in such form as the Board may determine from time to time;
- 1.1.54. **%Members' Register+** means a register including information in respect of Members as set out in clause 14.6.6;
- 1.1.55. **%Musical Work+** means a Work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;

- 1.1.56. **%Needletime Right+** means the right in respect of a Performer, in terms of the Performers Protection Act to receive remuneration in respect of the broadcast, transmission in a Diffusion Service and communication to the public of his/her recorded Performance and all related IP Rights;
- 1.1.57. **%Needletime Rights Members+** means those Members whose Needletime Rights are Administered by the Co-operative at the relevant time under consideration in regard to their Needletime Rights only;
- 1.1.58. **%Needletime Trust+** means the Performers Organisation of South Africa Trust (Masters reference number IT1991/10) which has been established by the Co-operative for the purpose of, amongst other things, Administering Needletime Rights;
- 1.1.59. **%Net License Revenue+** means the amount equal to the License Revenue minus the Permitted Royalty Deductions;
- 1.1.60. **%Non Licence Revenue+** means proceeds received by the Co-operative from its various investments, as determined by the board from time to time;
- 1.1.61. **%Ordinary Resolution+** means a resolution adopted with the support of more than 50% (fifty percent) of the Voting Rights exercised thereon at a General Meeting;
- 1.1.62. **%Operating Surplus+** means surplus as defined in section 1 of the Co-operatives Act, being the financial surplus arising from the operations of the Co-operative in a financial year;
- 1.1.63. **“Operating Surplus Payment+** means a payment of Operating Surplus to Members as defined in clause 31;
- 1.1.64. **%Payment Rules+** shall have the meaning attributed to it in clause 8.6, essentially being the Governance Rules principally relating to the attribution of License Revenue and payments to Members, applicable at the relevant time;
- 1.1.65. **%Perform+** and/or **%Performance+** means any mode of audiovisual or audio presentation of a Work including, but not limited to, such presentation by the operation of a loud speaker, a radio, a television or diffusion receiver or by the exhibition of a Cinematograph Film or by the use of a Record or by any other means;
- 1.1.66. **%Performer+** means a natural person falling within the definition of a ~~pe~~ performer in section 1 of the Performers Protection Act who has an interest in a Recorded Performance and is used solely in relation to that persons rights under the Performers Protection Act;
- 1.1.67. **%Performers’ Protection Act+** means the Performers Protection Act (11 of 1967), as amended from time to time or any legislation which replaces it;

- 1.1.68. **"Performing Right"** includes the right to do or authorise the doing of any of the following:
- 1.1.68.1. performing the Work in public;
 - 1.1.68.2. broadcasting the Work;
 - 1.1.68.3. causing the Work to be transmitted in a Diffusion Service, unless that service transmits a lawful broadcast, including the Work, and is operated by the original broadcaster, and includes the comparable right in any jurisdiction outside of South Africa,
- 1.1.69. **%Permitted Royalty Deductions+** has the meaning ascribed thereto in clause 30.4;
- 1.1.70. **%Permitted Successor+** means a Person to whom a Member is permitted to transfer his/her Membership and/or rights in relation to the Member's Administered IP Rights and Administration of IP Rights Agreement, as contemplated in clause 11 (*Transfer of Membership*), read with clause 10 (*Termination of Membership*);
- 1.1.71. **%Person+** includes natural and juristic persons;
- 1.1.72. **%Predecessor+** in relation to a Permitted Successor, means the prior Member of the Co-operative that originally appointed the Co-operative to Administer his/her associated Administered IP Rights;
- 1.1.73. **%Present+** means, in the context of any General Meeting, a Member:
- 1.1.73.1. present in person; or
 - 1.1.73.2. represented by proxy who is present in person;
- 1.1.74. **%Previous Constitutional Documents+** means the Memorandum and Articles of Association of the Co-operative as a company prior to its conversion to a co-operative which were in effect immediately prior to the Conversion Date;
- 1.1.75. **%Primary Co-operative+** has the meaning ascribed thereto in section 1 of the Co-operatives Act;
- 1.1.76. **%Principal Territory+** means South Africa, Lesotho and Swaziland;
- 1.1.77. **"Publisher"** means, prior to any Assignment of the Administered IP Rights to the Co-operative, the owner or licensee of the relevant IP Rights and, if and after, such Assignment, the Applicant or Member associated with the relevant Administered IP Rights, but excludes an Author and a Performer in relation to Needletime Rights;
- 1.1.78. **"Record"** shall have the meaning ascribed to the term in section 1(1) of the Copyright Act;

- 1.1.79. **%Record Date+** means the date set by the Board for the purpose of determining which Members are entitled to:
- 1.1.79.1. receive notice of a General Meeting;
 - 1.1.79.2. participate in and vote at a General Meeting;
 - 1.1.79.3. receive a payment; or
 - 1.1.79.4. be allotted or exercise other rights;
- 1.1.80. **%Recorded Performance+** means a recording of the Performance of a Performer in a sound recording, either through the initiative of such Performer or through the commissioning of the owner of the copyright in the sound recording;
- 1.1.81. **%Registered Office+** means the registered office of the Co-operative, as contemplated in section 20 of the Co-operatives Act, at the Conversion Date situate at Fifth Floor, SAMRO Place, 20 de Korte Street, Braamfontein, 2001, Johannesburg;
- 1.1.82. **%Registrar+** means the Registrar of Co-operatives as in terms of the Co-operatives Act, being the Commissioner of the Companies and Intellectual Property Commission established in terms of the Companies Act;
- 1.1.83. **"Round Robin Resolution"** means a resolution passed other than at a meeting of the Directors, being a resolution signed by the required number of Directors, as contemplated in section 34(5) of the Co-operatives Act and clause 24.13 of this Constitution;
- 1.1.84. **%Royalty Payment+** has the meaning ascribed thereto in clause 30.1;
- 1.1.85. **%Run-out Period+** has the meaning ascribed thereto in clause 10.12.1;
- 1.1.86. **%Section 14 Associates+** means an associate member appointed in terms of clause 34.7;
- 1.1.87. **%South Africa+** means the Republic of South Africa;
- 1.1.88. **%Special Resolution+** means a resolution adopted with the support of at least 75% (seventy five percent) of the Voting Rights exercised thereon at a General Meeting (abstentions to be ignored for the purpose of calculating the majority);
- 1.1.89. **%Statutory Reserve Fund+** means the reserve fund set up in compliance with section 46 of the Co-operatives Act, as contemplated in clause **Error! Reference source not found.** below;
- 1.1.90. **%Subsidiary+** has the meaning ascribed thereto in section 1 of the Companies Act, *mutatis mutandis*;

- 1.1.91. **%Taxes+** means all forms of taxation including income, withholding, corporation, capital gains, inheritance, value added, employment, property, sales, goods, wealth, provisional tax, customs and other import or export duties, excise duties, stamp duties, transfer taxes, royalties, annual fees owing to the Companies and Intellectual Property Commission in South Africa, social security or other similar contributions and all charges, duties, imposts and levies of a similar nature, and any interest, penalty, surcharge or fine relating to such taxation;
- 1.1.92. **%Territory Performing Rights Royalty Payments+** means the amount of the Royalty Payments paid or credited to Members, attributed by the Board to the Performing Rights in the Principal Territory (having regard to the Payment Rules) forming part of the Administered IP Rights, which (for the sake of clarity) excludes, without limitation, amounts paid or credited to Members in respect of Mechanical Rights, Needletime Rights and any Administered IP Rights outside of the Principal Territory, regardless of the nature of the rights;
- 1.1.93. **%Transitional Period+** has the meaning ascribed thereto in clause 10.8.2;
- 1.1.94. **%VAT+** means value-added tax in terms of the Value-Added Tax Act (89 of 1991);
- 1.1.95. **%Voting Rights+** means the right of a Member to vote on the matter under consideration;
- 1.1.96. **%Work+** notwithstanding the definition in the Copyright Act, means a Musical Work with or without words unless otherwise stated; and
- 1.1.97. **%Worldwide Basis+** in regard to IP Rights and the Administration of IP Rights means. the relevant IP Right (including comparable rights where there is no direct correlation in the relevant jurisdiction) in every jurisdiction and nation in the world and if such rights are included in the Administered IP Rights then the Administration of such IP Rights shall extend to all such jurisdictions and nations and **%Worldwide+** shall have a corresponding meaning;
- 1.1.98. **"Writing"** and **%Written+** includes Electronic Communication but as regards any Member entitled to vote, only to the extent that such Member has notified the Co-operative of an Electronic Address;
- 1.2. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.3. references to Members entitled to vote Present or acting in person shall include juristic persons represented by duly authorised representatives as contemplated in section 30 of the Co-operatives Act;
- 1.4. all references to "section/s" in this Constitution refer to the sections of the Co-operatives Act unless the context indicates otherwise;
- 1.5. the headings are for reference purposes only and shall not affect the interpretation of this Constitution;

- 1.6. without limitation to the defined terms ~~%Person+~~, words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the other genders;
- 1.7. if any term is defined within the context of any particular clause in the Constitution, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in this interpretation provision;
- 1.8. where any clauses of this Constitution must be interpreted, a reasonable interpretation should be allowed that accords with the context of the relevant clause, this Constitution as a whole and the Co-operatives Act;
- 1.9. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Constitution;
- 1.10. when a particular number of days is provided for between the happening of one event and another, the number of days must be calculated by:
 - 1.10.1. excluding the day on which the first such event occurs;
 - 1.10.2. including the day on or by which the second event is to occur; and
 - 1.10.3. in the case of Business Days, excluding any official public holiday in the South Africa, a Saturday or Sunday that falls on or between the days contemplated in clauses 1.10.1 and clause 1.10.2 respectively; and
- 1.11. references to the Co-operatives Act and the IP Related Legislation shall be read as including references to any related applicable ordinance or regulation to the extent applicable to the Co-operative.

2. **RECORDAL**

- 2.1. The Co-operative is converted from a company to a co-operative (as contemplated in section 68 of the Co-operatives Act) with effect from the Conversion Date and the shareholders of the company accordingly become the Members of the Co-operative, provided that nothing in this Constitution shall purport to amend any existing contractual rights or obligations of any Member as at the Conversion Date that cannot be amended by way of an amendment to the Previous Constitutional Documents.
- 2.2. Those persons who served as directors of the company shall continue to serve as Directors of the Co-operative, except if a person is incompetent to be a Director (as contemplated in clause 19.7) or is not a Full Member (as contemplated in clause 19.3.1), in which case such person shall be deemed to have resigned with effect from the day preceding the Conversion Date.

3. **FORM OF CO-OPERATIVE**

This is the constitution of a business undertaking formed as a Primary Co-operative with separate juristic personality and limited liability in terms of the provisions of the Co-operatives Act. A Person is not, solely by reason of being a Member or a Director of the Co-operative, liable for any liabilities or obligations of the Co-operative.

4. **BUSINESS OF THE CO-OPERATIVE**

Without limitation to the capacity and powers of the Co-operative, the main business of the Co-operative shall be to Administer the IP Rights of its Members, Affiliates and Contracting Participants and to pursue the Co-operative's objectives.

5. **OBJECTIVES OF THE CO-OPERATIVE**

5.1. The principle objects of the Co-operative are to provide services to its Members and to facilitate the development of the community of Authors, Publishers or Performers and the development of Intellectual Property and enforcement of Intellectual Property Rights, including without limitation the following ancillary and related objects:

5.1.1. to hold, control, administer, make use of, commercialise, exercise and/or enforce Administered IP Rights on behalf of, or for the benefit of, Members, as contemplated in this Constitution;

5.1.2. to acquire by way of Assignment or by means of licence or other means the rights to Administer the Administered IP Rights including, without limitation, to authorise:

5.1.2.1. the reproduction of copyright works in any manner or form;

5.1.2.2. the performance of copyright works in public;

5.1.2.3. the broadcasting of the copyright works;

5.1.2.4. the causing of the copyright works to be transmitted in a Diffusion Service; and

5.1.2.5. the licensing of Performers' protection rights in sound recordings.

5.1.3. to develop, maintain, collaborate in appropriate tools and facilities to store, in a usable manner, the information related to the Administered IP Rights;

5.1.4. to make available the information regarding the copyright works and Needytime Rights as well as the information regarding Authors, Publishers and Performers of their Works and Administered IP Rights to relevant authorities and bodies for protection and Administration;

- 5.1.5. to make available, authorise, licence or grant permission for the use or commercial exploitation of any Administered IP Rights and to collect and receive and give effectual discharges for all royalties, fees and other monies payable in connection the Administered IP Rights;
- 5.1.6. without limitation to the generality of the right to Administer to Administered IP Rights, to in its own name or on behalf of any or all Members:
 - 5.1.6.1. enforce the Administered IP Rights and any agreements or arrangements in respect of the Administration of the Intellectual Property by any legal means necessary or desirable;
 - 5.1.6.2. to take remedial action in respect of any infringement of any of the Administered IP Rights or breach of agreement including, without limitation, recover damages or apply for a restraint or any other remedy;
 - 5.1.6.3. to institute any necessary or desirable proceedings or action or dispute resolution process (including referral to court or arbitration) in relation to the Administration of the Administered IP Rights or carrying out of any other objects and to release or compromise any such proceedings, actions or process or dispute;
- 5.1.7. to process, compute or apportion the fees and royalties received or collected after deduction of expenses, deductions necessary for the continued operation of the Cooperative and other deductions that are permitted and / or approved as contemplated in this Constitution;
- 5.1.8. to provide support for the social wellbeing of Members and the encouragement of the national arts and other social and cultural objectives in the Principal Territory as determined by the Board, provided that the amount to be allocated by the Board for these objectives in any financial year may not exceed 8.5% of the gross License Revenue received in the financial year preceding the allocation;
- 5.1.9. to receive by way of transfer, cession or Assignment, and to use, hire, obtain, take over or otherwise acquire and to improve, protect, manage, develop, make use of, commercialise, enfranchise, let, deliver, turn to account, deal in, transfer away or otherwise dispose of, and to exercise and enforce on behalf of any person including the Members of the Co-operative or anyone else, any and all Intellectual Property and including any and all rights, obligations, powers, duties and remedies arising under the IP Related Legislation and/or under any law;
- 5.1.10. to incorporate or acquire subsidiaries;
- 5.1.11. to exercise any powers or carryout any actions provided for in this Constitution or the Co-operatives Act or which are necessary or desirable (in the view of the Board) to conduct its business and implement the provisions of this Constitution or any related matters;

- 5.1.12. to adapt its operating model in line with changing legislation, direct or indirect competition, and any changes in the business environment now known or unknown for the preservation of its ability to fulfil its objects and mandate as contained in this Constitution;
- 5.1.13. to contract with Affiliates, Section 14 Associates and Contracting Participants to Administer their (or their members) Intellectual Property and/or take Assignment of their Intellectual Property or any related rights with clauses 5.1.1 to 5.1.9 applying equally adapted as is appropriate (*mutatis mutandis*);
- 5.1.14. hold, control, administer, make use of, commercialise and/or enforce any Intellectual Property licensed to, owned or held by or vested in the Co-operative;
- 5.1.15. to, subject to the Co-operatives Act, make and from time to time alter or vary any rules for regulating the governance of the Co-operative, the Administration of the Administered IP Rights, the calculation and payment of payments to Members, Affiliates, Section 14 Associates and Contracting Participants, the attribution of Licence Revenue of Administered IP Rights and social and cultural activities and benefits including, without limitation, the matters specified in clause 8;
- 5.1.16. to carry on or acquire any business which may seem to the Directors capable of being conveniently carried on in connection with the above objects though any entity, person, joint venture or partnership;
- 5.1.17. to invest the assets of the Co-operative, including without limitation to:
 - 5.1.17.1. to invest and deal with the monies of the Co-operative in such manner as may from time to time be determined by the Directors and to apply the proceeds of such investments in any manner consistent with this Constitution; and
 - 5.1.17.2. establish any company, take or otherwise acquire and hold shares in any other company, or carrying on any business that, in the view of the Board, is anticipated or capable of being conducted so as directly or indirectly to benefit this Co-operative, the Members or further any of its objects;
- 5.1.18. to establish any trust, including without limitation, to Administer all or part of the Administered IP Rights of Members and other Persons and to donate or transfer property (in the widest sense) of the Co-operative to such trust;
- 5.1.19. to amalgamate with other co-operatives, to divide into two or more co-operatives, and to convert to a company;
- 5.1.20. to purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, shares, debentures and every other kind or description of movable and immovable property;

- 5.1.21. to open and operate banking accounts and to overdraw such accounts, to borrow or raise or secure the payment of money in such a manner as the Directors shall think fit and in particular by pledge, mortgage, hypothecation charged upon all or any of the Co-operative's property, both present and future, movable and/or immovable, and to purchase, redeem or pay off any such securities and provide financial assistance to any subsidiary;
 - 5.1.22. to remunerate and incentivise any Person for services rendered or to be rendered;
 - 5.1.23. to sell or dispose of the undertaking of the Co-operative or any part thereof for such consideration as the Directors may think fit, and in particular for shares, debentures or securities of any other company;
 - 5.1.24. to own immovable property, to register security over immovable property, to lease its immovable property to any Person, to lease immovable property from any Person;
 - 5.1.25. to attend to the payment and/or administration of any Taxes on behalf of any Member, Affiliate, Section 14 Associate or Contracting Participant; and
 - 5.1.26. to appoint any agent or agents for the collection and recovery of any monies receivable by the Co-operative in the exercise of its powers or otherwise for the purpose of the exercise of any of such powers;
 - 5.1.27. to do all or any of the above things in any part of the Principal Territory or elsewhere outside the Principal Territory and as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with others;
 - 5.1.28. to enter into contracts outside the Republic and to execute any contracts, deeds and document in any foreign country;
 - 5.1.29. to procure the Co-operative to be registered or recognised in any foreign country or place;
 - 5.1.30. to pursue any other objects and do all such other things as are in the opinion of the Directors incidental or conducive to the attainment of the above objects, or any of them.
- 5.2. Each of the above objectives shall be self standing and shall not be limited by any of the other objectives.

6. **POWERS AND CAPACITY OF THE CO-OPERATIVE**

- 6.1. The Co-operative has all the powers and capacity of a natural person for the purpose of pursuing its objectives (as set out in clause 5 (*Objectives of the Co-operative*)).
- 6.2. Notwithstanding the omission from this Constitution of any provision to that effect, the Co-operative may do anything which the Co-operatives Act empowers a co-operative to do if so authorised by its Constitution.

7. **AMENDMENTS TO THE CONSTITUTION**

All amendments of the Constitution must be approved by a Special Resolution and shall be effected in accordance with section 18 of the Co-operatives Act.

8. **GOVERNANCE RULES**

8.1. Subject to the Co-operatives Act and clause 8.2 and 8.4 of this Constitution, the Board may make, amend or repeal rules (~~%Governance Rules~~) regulating the governance of the Co-operative, the Administration of the Administered IP Rights, the calculation and payment of payments to Members, Affiliates, Section 14 Associates and Contracting Participants, the attribution of Licence Revenue to Administered IP Rights and social and cultural activities and benefits. Such Governance rules can, without limitation, include rules in respect of:

- 8.1.1. the mode in which the Musical Works with or without and/or performances of Members are to be communicated or declared by them to the Co-operative;
- 8.1.2. the mode in which, the periods or period for which, and the conditions under which, the Members are to authorise the Co-operative to exercise and enforce the rights and remedies aforesaid of the Members in respect of such Works and/or performances as aforesaid;
- 8.1.3. the attribution of License Revenue to MembersqAdministered IP Rights and valuation thereof;
- 8.1.4. the mode and proportions in which, and the times at which, the Net Licence Revenue (after deduction of the Permitted Deductions) apportioned amongst and paid to the Members interested therein respectively as Royalty Payments;
- 8.1.5. Permitted Royalty Deductions;
- 8.1.6. the determination, calculation, apportionment, and mode and times of payment, of the Grant of Rights Payments;
- 8.1.7. the determination, calculation, apportionment, and mode and times of payment, of any Operational Surplus Payment;
- 8.1.8. the provision, through trusts or associations or otherwise for social and cultural objectives, including without limitation by way of the provision, through trusts or associations or otherwise, of gratuities, donations, pensions or other benefits for Members, ex-Members or employees of the Co-operative, Contracting Participants and Section 14 Associates or their wives, husbands, widows, widowers, families or dependants;
- 8.1.9. the administration and management of the property or business of the Co-operative and any matters incidental thereto;

- 8.1.10. the regulation of the Co-operatives contractual arrangements with Contracting Participants; and
- 8.1.11. any other ancillary matters.
- 8.2. The first Governance Rules shall be the Governance Rules approved by the Members contemporaneously with the adoption of this Constitution..
- 8.3. Subject to clause 8.2, no Governance Rules or any alterations of such Governance Rules, shall not take effect or come into operation unless or until the same have been approved by the Co-operative in General Meeting, except in the case of rules falling within clause 8.1.7 which shall have immediate effect and are not required to be approved by the Members. The Board shall publish a copy of any Governance Rules on its website, unless, in making the Governance Rules in question, the Board determines that another method of publication shall be used.
- 8.4. If any Governance Rules, any amendments thereto or the repeal thereof, relate directly to the Administration of Needletime Rights or will have a material impact on such Administration, then they shall only become effective if, in addition to the requirements under the Co-operatives Act, a separate meeting of Needletime Rights Members also approve the Governance Rules (or amendment thereto or repeal thereof) at a separate General Meeting of such Needletime Rights Members by way of a resolution passed by a majority of 50% (fifty percent) or more of the votes cast, and all the provisions of this Constitution applicable to the convening and conducting of General Meetings, voting and the passing of resolutions by the Members (as contemplated in clause 16 (*General Meetings*)) shall apply to such separate General Meeting of the Needletime Rights Members adapted, as is appropriate, except that the necessary quorum to begin and consider the Governance Rules shall be Needletime Rights Members Present with Voting Rights comprising at least 10% (ten percent) of the aggregate Voting Rights of all the Needletime Rights Members.
- 8.5. The Governance Rules principally relating to the Membership of the Co-operative essentially being those contemplated in clauses 8.1.1 and 8.1.2 are referred to as the **%Membership Rules+**
- 8.6. The Governance Rules principally relating to the attribution of License Revenue, Permitted Deductions the determination and payment of Royalty Payments, Grant of Rights Payments and Operating Surplus Payments essentially being those contemplated in clauses 8.1.3 8.1.7 are referred to as the **%Payment Rules+**
- 8.7. Membership Rules and Payment Rules shall be deemed to be incorporated into and form part of the contract between the Co-operative and the Member in respect of the Administration of the Member's IP Rights.

9. **MEMBERS AND QUALIFICATION FOR AND DETERMINATION OF MEMBERSHIP**

- 9.1. The number of Members shall, subject to the Co-operatives Act and this Constitution, be unlimited.

- 9.2. All Persons registered as members of the company on the Conversion Date shall, with effect from the Conversion Date, remain Members of the Co-operative.
- 9.3. In addition to the basic categories of Candidate Member, Associate Member and Full Member, Membership is also categorised in respect of those Members that are Authors, Performers (Needletime Rights Members) and Publishers and some of the rights and obligations of Membership are also determined with reference to these categories and the corresponding Administered IP Rights or the nature of the Administered IP Rights. It is noted that these categories are not exclusive and a Member can fall into more than one of these categories, for example a Member can be an Author and a Publisher.

Application for Membership

- 9.4. Subject to clause 9.2, in order for a Person to be considered for qualification for Membership, the Person vested with IP Rights (prior any Assignment thereof to the Co-operative) (~~%Applicant+~~) must apply to the Board for Membership. Such application must be in writing in the form prescribed by the Board from time to time, and the Applicant shall only be eligible for consideration for election to Membership:
- 9.4.1. if such Applicant is an Author, Publisher, Performer, or a Permitted Successor of any of the former;
- 9.4.2. if such Applicant has signed an Administration of IP Rights Agreement with the Co-operative conforming with the requirements set out in clause 29 on terms acceptable to the Board and delivered same to the Board (together with the application form referred to above), in terms of which such Applicant agrees to appoint the Co-operative to Administer his/her Administered IP Rights (or in the case of a Permitted Successor agreed that the Co-operative can continue to Administer the Administered IP Rights that the Predecessor appointed the Co-operative to Administer); and
- 9.4.3. once the Administered IP Rights forming the subject of the Administration of IP Rights Agreement signed by the Applicant (as contemplated in clause 9.4.2) has started earning Licence Revenue.
- 9.5. An Applicant shall not be entitled to any payments or benefits from SAMRO in respect of the Applicantsqinterests in the IP Rights that are the subject of the executed Administration of IP Rights Agreement unless and until the applicant has been elected to Membership.
- 9.6. The Board may, in its sole and absolute discretion, elect an Applicant meeting the requirements set out in clause 9.4 to Membership, in which event the Board shall cause a Written communication to be made to the Applicant (in such form as the Board may determine from time to time) informing the Applicant of such election and advising as to the class of Membership to which the Applicant will be admitted. Upon the relevant entry being made in the MembersqRegister (~~%Election Date+~~) the Applicant shall become a Member. Subject to the provisions applicable to the transfer of Membership in clause 11 (*Transfer of Membership*), the Board in making such election can elect an Applicant directly to Associate Membership or Full Membership if the Applicant meets the requirements

applicable for such Membership. The Board shall not be required to give reasons for any decision not to elect an Applicant to Membership.

- 9.7. The Board may issue to such new Member a certificate of membership, in such form as the Board may prescribe, and signed by a Director and countersigned by a duly authorised officer or manager of the Co-operative.

Rights, privileges and obligations of Membership

- 9.8. Members shall have the rights, privileges, and be subject to such obligations, as:

9.8.1. set out in this Constitution and the Governance Rules; and

9.8.2. the Board may determine from time to time.

- 9.9. A Full Member meeting the required qualifications shall be eligible for appointment as a Director in accordance with clause 19 (*Election of Directors and Casual Vacancies*), if he/she/it is competent for such appointment (as contemplated in clause 19.7).

Election to Associate and Full Membership

- 9.10. A Candidate Member shall be eligible (without further application) to be elected by way of Board resolution for conversion of his/her/its Membership into Associate Membership (or directly to Full Membership, if the Candidate Member qualifies) if, in the Board's view (in the its absolute discretion), the Candidate Member qualifies for such a change in Membership, in accordance with the qualifications set out in **Schedule 2** hereto read together with the Membership Rules, and:

9.10.1. upon the effective date of such electing Board resolution, the Candidate Member shall become an Associate Member (or Full Member, if applicable); and

9.10.2. the Co-operative may issue the Member with a Member's Certificate evidencing the Associate Membership (or Full Membership, if applicable) against surrender of the Member's Certificate reflecting Candidate Membership.

- 9.11. If the Board has not elected to convert a Candidate Member to an Associate Member or Full Member (as contemplated in clause 9.10) within 2 (two) years (or an extended period, as contemplated in clause 9.12) after the Candidate Member (or in the case of a Permitted Successor, its Predecessor) became a Candidate Member, the Membership of a Candidate Member shall automatically terminate, the provisions of clauses 10.16 to 10.18 shall apply and the former Candidate Member shall have no further rights against the Co-operative. For the sake of clarity, the calculation of the relevant period shall take into account Membership prior to the Conversion Date.

- 9.12. The Board may, from time to time, elect by way of a resolution to extend the maximum duration of a Candidate Member's Membership in the Co-operative contemplated in clause 9.11 beyond the initial 2 (two) years or beyond any prior extension (i.e. multiple extensions are permitted).
- 9.13. An Associate Member shall be eligible (without further application) to be elected by way of Board resolution for conversion of his/her/its Membership into Full Membership if, in the Board's view (in its absolute discretion), the Associate Member qualifies for such a change in Membership, in accordance with the qualifications set out in **Schedule 2** hereto read together with the Membership Rules, and:
- 9.13.1. upon the effective date of such electing Board resolution, the Associate Member shall become a Full Member; and
- 9.13.2. the Co-operative may issue the Member with a Member's Certificate evidencing the Full Membership against surrender of the Member's Certificate reflecting Associate Membership (if same was issued to it).
- 9.14. The transfer of Membership is subject to the restrictions in clause 11 (*Transfer of Membership*).

10. **TERMINATION OF MEMBERSHIP**

- 10.1. Membership shall terminate on the following events:
- 10.1.1. Termination due to a Candidate Member not being elected to Associate Membership or Full Membership within the time period referred to in clause 9.10 read with clause 9.11;
- 10.1.2. termination by notice by either the Member or the Co-operative as contemplated in clauses 10.2 to 10.5;
- 10.1.3. termination pursuant to termination of Administration Rights or lapse of Member's IP Rights as contemplated in clauses 10.6 and 10.7;
- 10.1.4. termination subsequent to the death of a Member that is a natural person, subject to the possible transfer of Membership to a Permitted Successor as contemplated in clauses 10.8 to 10.11; and
- 10.1.5. termination subsequent to the insolvency or winding-up of a Member as contemplated in clauses 10.12 to 10.15.

Member's termination by notice

- 10.2. Subject to clauses 10.8 to 10.11, any Member may terminate his/her/its Membership by giving Written notice to the Co-operative not less than 3 (three) calendar months prior to 30 April of any year and, if such notice is duly received by the Co-operative, the Member's Membership and participation in the Co-operative shall, subject to

clause 10.3, cease with effect from 30 April of the following year (i.e. if notice is given on 1 March 2020, Membership will cease on 30 April 2021) and the provisions of clause 10.16 shall apply.

10.3. The Board may, in its absolute discretion, resolve, following receipt of the notice referred to in clause 10.2, that the termination of the Membership shall:

10.3.1. only take effect from 30 June (instead of 30 April) of the following year; or

10.3.2. take effect earlier than 30 April of the following year,

provided that the Board shall as soon as practicable supply the Member with Written notice and reasons for such resolution.

Co-operatives termination by notice

10.4. The Board may at any time terminate the Membership of any Member by giving such Member no less than 14 (fourteen) days prior Written notice, signed by any officer or manager of the Co-operative, and the Member's Membership shall cease on the date stipulated in such notice, subject to clause 10.5.

10.5. If, before the expiration of the 14 (fourteen) day notice period referred to in clause 10.4, the Member receiving such notice delivers a Written demand to the Board demanding that the Board's decision to terminate his/her/its Membership be approved by an Ordinary Resolution of the Members in an extraordinary General Meeting, his/her/its Membership shall not terminate unless and until the Co-operative in an extraordinary General Meeting approves such termination of his/her/its Membership. If, at such General Meeting, the Co-operative approves the termination of his/her/its Membership, the Member shall cease to be a Member with effect from the date of such approval at the General Meeting.

Termination pursuant to termination of Administration Rights or lapse of Members' Administered IP Rights

10.6. If at any time the Co-operative ceases to have the right to Administer any of a Member's Administered IP Rights, for any reason whatsoever (including as a result of the cancellation or termination of the Administration of IP Rights Agreement with the relevant Member), then, unless the Board determines otherwise within 10 (ten) Business Days of such cessation of the Co-operative's Administration Rights, the Member's Membership and participation in the Co-operative shall terminate on the lapse of the abovementioned 10 (ten) Business Day period (and the termination of such Membership shall be deemed to be effective from the date of the cessation of the Co-operative's Administration Rights in respect of such Member).

10.7. The Membership of any Member shall *ipso facto* cease upon the expiration of subsistence of the last of the rights in respect of the Member's Administered IP Rights which are Administered by the Co-operative in respect of which the Member is entitled to receive Royalty Payments. On such cessation, the Member shall cease to have any rights in the Co-operative (including without limitation any claim to the assets of the Co-operative) and the Membership of the Member shall immediately (*ipso facto*) be terminated.

Termination pursuant to death

- 10.8. On the death of a Member, the Membership shall not be transmitted or transferred to any other Person, other than to a Permitted Successor in terms of clause 11 (*Transfer of Membership*), however the Co-operative shall, in so far as is lawful, retain all IP Rights vested in the Co-operative and continue to Administer the deceased Member's Administered IP Rights until the earlier of:
- 10.8.1. any permitted transfer of the deceased Member's Membership to a Permitted Successor(s) in terms of clause 11 (*Transfer of Membership*) prior to the lapse of the Transitional Period in clause 10.8.2, after which the Co-operative will continue to Administer the deceased Member's Administered IP Rights for the benefit of such Permitted Successor(s) for the duration of the Permitted Successor(s)'s Membership and the provisions of this clause 10 (*Termination of Membership*) shall apply on termination of the Permitted Successor(s)'s Membership; and
- 10.8.2. the 31st (thirty first) day of December in the 7th (seventh) year immediately following the year in which the Member died (~~the Transitional Period~~) and during this period clause 10.2 shall not apply and the estate of the Member can only terminate these arrangements or the Administration of IP Rights Agreement with the written agreement of the Co-operative.
- 10.9. From the date of death of any Member, until the earlier of the date on which a deceased Member's Membership is transferred to a Permitted Successor (as contemplated in clause 10.8.1, read with clause 11 (*Transfer of Membership*)), and the end of the Transitional Period, any Royalty Payments or Grant of Rights Payments to which the Member would, if living, have been entitled in relation to the Member's Administered IP Rights; shall be made to the executor of the Member's deceased estate, or to any lawful heir of such Member in the event that the estate having been wound-up.
- 10.10. Upon the transfer of the deceased Member's Membership to any Permitted Successor (as contemplated in clause 10.8.1, read with clause 11 (*Transfer of Membership*)), any future Royalty Payments to which the deceased Member would, if living, have been entitled in accordance with the Payment Rules, in respect of any period subsequent to such transfer, shall be made to such Permitted Successor(s) subject to the provisions of clause 11 (*Transfer of Membership*).
- 10.11. If the deceased Member's Membership has not been transferred to a Permitted Successor at the expiry of the Transitional Period:
- 10.11.1. the deceased Member's Membership shall terminate;
- 10.11.2. the Administration of IP Rights Agreement shall terminate and the Co-operative's right to Administer the deceased Member's Administered IP Rights shall cease;

- 10.11.3. if any Administered IP Rights of the deceased Member are vested in the Co-operative at the relevant time, such Administered IP Rights shall revert to the deceased Member's estate, or to any lawful heir of such Member in the event that the estate has been wound-up and, to the extent necessary, the Co-operative hereby agrees to Assign such IP Rights to the estate of Member or relevant heir, with effect from the date following the expiry of the Transitional Period; and
- 10.11.4. the Co-operative shall not be liable for any claims whatsoever, arising from the use, commercialisation nor any failure to use or commercialise the Administered IP Rights and no further payments shall be made.

Termination on business rescue, administration, insolvency or sequestration

- 10.12. Subject to clause 10.15, in the case of a Member being a juristic person being liquidated or being placed under administration or resolving or being ordered to begin Business Rescue proceedings, the Member's Membership shall terminate; however, Co-operative shall, in so far as is lawful, retain all IP Rights vested in the Co-operative and continue to Administer the Member's Administered IP Rights, subject to clause 10.13:
- 10.12.1. for a period ending on the 31st (thirty first) day of December in the 7th (seventh) year following the year in which the liquidation, administration or Business Rescue proceedings commenced (~~Run-out~~ **Run-out Period**) and during this period clause 10.2 shall not apply and the Member (or its liquidator, Business Rescue Practitioner or administrator of the estate of the Member) can only terminate these arrangements or the Administration of IP Rights Agreement with the written agreement of the Co-operative; and
- 10.12.2. any Royalty Payments and Grant of Rights Payments to which such juristic person would (were it not for the commencement of the liquidation, administration or Business Rescue proceedings) have been entitled in accordance with the Payment Rules in respect of the Run-out Period, shall be made to the liquidator, administrator or Business Rescue Practitioner (as the case may be) or in accordance with the directions of the liquidator, administrator or Business Rescue Practitioner (as the case may be).
- 10.13. If, during the Run-out Period, the former Member comes out of Business Rescue or its administration is terminated without the Member being liquidated and the Member retains its interest in the Member's Administered IP Rights, then the former Member's Membership shall revive and revert to normal.
- 10.14. Unless clause 10.13 is applicable, upon the lapse of the Run-out Period:
- 10.14.1. the Administration of IP Rights Agreement shall terminate and the Co-operative's right to Administer the Member's Administered IP Rights shall cease;

- 10.14.2. if any IP Rights of the juristic Member are vested in the Co-operative at the relevant time, the Co-operative shall Assign such IP Rights in accordance with the directions of the liquidator, administrator or Business Rescue Practitioner (as the case may be); and
- 10.14.3. the Co-operative shall not be liable for any claims whatsoever, arising from the use or commercialisation nor any failure to use or commercialise the Administered IP Rights and no further Royalty Payments, Grant of Rights Payments or Operating Surplus Payments shall be made to the Member.
- 10.15. In the event of a Member being a company or corporation that is liquidated or deregistered by way of voluntary liquidation for the purpose of reconstitution or an amalgamation (~~%Liquidating Member~~), such Liquidating Member may, prior to such liquidation, apply to the Board for approval of the shareholder(s) of such company or a newly constituted company to take transfer of the Liquidating Member's Membership and to assume all of the Liquidating Member's obligations and rights under the Administration of IP Rights Agreement (in terms of a new Administration of IP Rights Agreement to be entered into between the Co-operative, the Liquidating Member and the shareholders of the Liquidating Member or the newly constituted company (as may be required by the Board), or on such other terms as may be agreed to by the Board in Writing). If the Board so agrees, then the shareholders of the Liquidating Member or the reconstituted or amalgamated company (as the case may be) will step into the position of the Liquidating Member and it shall be a condition of the transfer of the Membership that all rights or interests of the Liquidating Member in the Liquidating Member's Administered IP Rights and rights and obligations under any Administration of IP Rights Agreement are transferred (including the cession of all rights and delegation of all obligations) together with the Membership. If the Board does not agree to the voluntary liquidation or transfer of Membership and the Member proceeds with such liquidation, then the provisions of clause 10.12 shall apply, adapted appropriately (*mutatis mutandis*).

Effect of Termination of Membership

- 10.16. Except where expressly provided otherwise, on the effective date of the termination of a Member's participation as a Member in the Co-operative pursuant to clauses 10.11, 10.12 or 10.14:
- 10.16.1. the Member shall from that date immediately (*ipso facto*) cease to have any rights, privileges and obligations in respect of the Co-operative and, in particular, but without prejudice to the generality of the foregoing, the Member concerned shall cease to have any claim upon the assets of the Co-operative, shall not be entitled to vote at General Meetings and shall not be entitled to participate in any further payments by the Co-operative; provided that the former Member shall not be relieved of the former Member's obligations to the Co-operative arising in respect of the period prior to such termination);

- 10.16.2. any amounts owed by the Member to the Co-operative shall become immediately due and payable, and the Co-operative may elect to set-off any amounts so owed by the Member against any amounts owed by the Co-operative to the Member;
- 10.16.3. the Administration of IP Rights Agreement shall terminate; and
- 10.16.4. if any IP Rights of the Member are vested in the Co-operative at the relevant time, such IP Rights shall revert to such Member and to the extent necessary the Co-operative shall Assign such IP Rights to the Member, with effect from the date of termination of the Member's Membership.
- 10.17. If any proceedings have been instituted by or against the Co-operative in respect of a Member's Works, either in the name of the Co-operative or of the Member, and such Member ceases to be a Member prior to the conclusion of the proceedings, the Co-operative shall retain any Administered IP Rights forming the subject of such proceedings which were vested in the Co-operative by such Member until such proceedings are finally disposed of.
- 10.18. The Member shall at the request of the Co-operative do all such things and execute all such documents necessary or desirable to give effect to the provisions of this clause 10 (*Termination of Membership*), and the Member hereby grants the Co-operative a power of attorney to, on behalf of the Member (*in rem suam*), do such things and execute such documents necessary, or in the reasonable view of the Board desirable, to give effect to this clause 10 (*Termination of Membership*).

11. TRANSFER OF MEMBERSHIP

- 11.1. Except as provided for in this Constitution, Membership in the Co-operative, and any rights in relation to any Administration Rights shall not be:
- 11.1.1. transferred, ceded, transmitted (including transmission by law), or disposed of (which for the purposes of this clause 11 (*Transfer of Membership*) shall be collectively referred to as ~~%transferred+~~ and ~~%transfer+~~, ~~%transferee+~~ and ~~%transferor+~~ shall have a corresponding meaning); or
- 11.1.2. pledged, sold or encumbered in any manner.
- 11.2. Without limitation to the above, no Member shall be entitled or have the power or right to transfer, cede, delegate or otherwise dispose of its Membership or any rights or obligations comprising such Membership or under this Constitution to any other Person, or to alienate or exercise the Member's Administered IP Rights or any rights or obligation or interests of the Member in relation to the Co-operative in connection with the Administered IP Rights, except in accordance with, and to the Persons specified in, clauses 11.3 to 11.7.
- 11.3. The restrictions in clauses 11.1 and 11.2 shall be deemed to be an original incidence of Membership and limiting the rights relating to Membership in the Co-operative. Any purported transfer counter to these restrictions shall be void.

- 11.4. Subject to clause 11.6., the Membership held by a Member which is a natural person may, on the death of such person, be transferred to his/her heir(s) (within the Transitional Period), provided that the following provisions shall apply:
- 11.4.1. unless otherwise accepted in writing by the Board, the executor of the deceased estate (as the transferor) and the heir(s) must execute the agreements and documents referred to in clause 11.6 and the deceased Member's interests, rights and obligations in the Member's Administered IP Rights must be Assigned to the same heir(s);
 - 11.4.2. subject to any Membership or Payment Rules to the contrary, where the deceased has more than one heir:
 - 11.4.2.1. each heir shall become a Member of the same class of Membership as the deceased Member in respect of the heir's interest in the deceased Member's Administered IP Rights and shall be entitled to attend and vote at General Meetings; and
 - 11.4.2.2. in regard to any Grant of Rights Payments to the heirs of a single deceased Member (including any heir's heirs) any part to be determined with reference to the status of Membership shall be calculated on the basis that all such heirs will be regarded as single undivided Member and a single payment amount determined and then apportioned between the heirs in proportion to their respective interests in the deceased member's Administered IP Rights;]
 - 11.4.2.3. where reference is made to any License Revenue attributed to a Member's Administered IP Rights, it shall be determined with reference the particular heirs interest in the deceased Member's Administered IP Rights;
 - 11.4.3. any other conditions or terms the Board reasonably requires;
 - 11.4.4. the provisions of this clause 11.4 shall apply *mutatis mutandis* to the heirs of any heir.
- 11.5. In addition to clause 11.4 but subject to clauses 11.6 and the other provisions of this Constitution and the Governance Rules, on application, the Board may authorise the transfer of the Membership to any single Person or the Assignment (in so far as is possible in law) of part of an existing Member's interest in any Administered IP Rights to another existing Member only. Any such permitted transfer of Membership or Assignment of a Member's interest in any Administered IP Rights may only be made with the Board's prior Written authorisation to the particular authorised transferee. The Board shall have full and unrestricted discretion to refuse any such application for transfer without Assigning any reason for such refusal. Every application for transfer or Assignment, as the case may be, shall be made to the Board in Writing in such form as the Board may prescribe; and on such application being accepted by the Board, it shall cause a Written communication to be made to the applicant Member, advising such applicant of the Board's approval, in such form as the Board may prescribe, signed by a

Director and countersigned by a duly authorised officer of the Co-operative. In this regard to an Assignment of a Member's interest in any Administered IP Rights an appropriate addendum to the respective Member's Administration of IP Rights Agreement shall be executed by the parties recording the Assignment on such terms as the Board may reasonably require.

- 11.6. Unless the Board agrees otherwise in Writing prior to the transfer, no Membership may be transferred to any Person, unless the transferor and the transferee first conclude a Written agreement with the Co-operative on terms satisfactory to the Board providing for either:
- 11.6.1. a new Administration of IP Rights Agreement with the Co-operative in respect of the Administration of the transferring Member's interest in the Administered IP Rights for the benefit of the transferee cancelling or substituting any Administration of IP Rights Agreement with the transferee; or
 - 11.6.2. all rights, obligations and interests of the transferring Member in respect of the Member's Administered IP Rights (e.g. the existing Administration of IP Rights Agreement with the transferor) to be ceded and delegated to the transferee (or transferees).
- 11.7. The rights attaching to the transferred Membership shall be determined with reference to the transferring Member's Administered IP Rights and proceeds administered by the Co-operative in relation to the Membership.
- 11.8. A Member shall only be entitled to be either a Candidate Member, or an Associate Member or a Full Member at any time (i.e. one Member cannot hold Membership in more than one class of Membership).
- 11.9. If an existing Membership is transferred to another existing Member in terms of this clause 11 (*Transfer of Membership*), then the transferee shall retain his/her/its existing Membership status (unless clause 11.10 is applicable) but the Voting Rights and rights and obligations attaching to such existing Membership shall as from the effective date of such transfer be determined with reference to the combined Administered IP Rights (i.e. the Administered IP Rights attaching to the transferring Member together with the Administered IP Rights attaching to the existing Member).
- 11.10. Notwithstanding clause 11.9, on or before transfer, the transferee Member shall be entitled to elect by Written notice to the Board to adopt the Membership status of the transferring Member instead if:
- 11.10.1. the transferring Member is of a higher class of Membership and the transferring Member's interest in the Administered IP Rights is transferred to the transferee; and
 - 11.10.2. the historic Territory Performance Royalty Payments to the transferring Member during the immediately preceding completed financial year constitute more than 50% (fifty percent) of the combined Territory Performance Royalty Payments paid by the Co-operative during the same financial year to the transferring Member and the transferee Member.

- 11.11. Regardless of whether the transferee Member retains its existing Membership status (as contemplated in clause 11.9) or whether the transferee Member adopts the Membership status of the transferring Member (as contemplated in clause 11.10), the rights attaching to the Membership shall be determined with reference to the Performing Right Royalty Payments in respect of both the Administered IP Rights attaching to the transferee's existing Member and the Administered IP Rights attaching to the transferring Member's Performing Right Share.
- 11.12. Where a Member is granted permission by the Board to acquire another Member's interest in any Administered IP Rights (without also acquiring such Member's Membership):
- 11.12.1. upon the acquisition becoming effective the acquired interest in the Administered IP Rights shall be deemed to form part of the acquiring Member's Administered IP Rights and no longer part of the disposing Member's Administered IP Rights and on termination of the Membership of the acquiring Member the Co-operative shall Assign the rights vested in the Co-operative associated with the acquired interest to the acquiring Member and the disposing Member shall not have any rights to such Administered IP Rights vested in the Co-operative; and
- 11.12.2. if the disposing Member is of a higher class of Membership than the acquirer, then the acquiring Member shall be entitled to apply for conversion of its current Membership to the higher class of Membership if the historic Territory Performance Royalty Payments during the immediately preceding completed financial year attributed by the Board to the acquired interest in the disposing Member's Administered IP Rights constitutes more than 50% (fifty percent) of the combined Territory Performance Royalty Payments during the same financial year attributed to the acquiring Member's Administered IP Rights prior to the acquisition and the acquired interest in the disposing Member's Administered IP Rights.
- 11.13. The transferor of Membership shall be deemed to remain the Member until the name of the transferee is entered in the Members Register, unless the Board resolves otherwise.
- 11.14. Subject to the Co-operatives Act, the Board may charge a reasonable fee on the registration or receipt of any transfer and/or of any letters of administration, probate, certificate of death or marriage, power of attorney or other notice or instrument affecting the title to or the right to transfer Membership or interest in any Administered IP Rights.
- 11.15. The Co-operative shall not be bound to allow the exercise of any act or matter by an agent for a Member unless a duly certified copy of such agent's authority is produced and filed with the Co-operative.
- 11.16. All instruments of transfer which shall be registered shall be retained by the Co-operative, but any instrument of transfer which the Directors may decline to register shall (except in the case of fraud), on demand, be returned to the Person depositing the same.

11.17. The Co-operative must make an entry in its Members Register for every transfer of Membership and if it keeps a register of Member Administered IP Rights it shall update such register to reflect any change in a Member Administered IP Rights.

12. TRANSMISSION OF MEMBERSHIP BY OPERATION OF LAW

Subject to the restrictions on termination and transfer of Membership under clauses 10 (*Termination of Membership*) and 11 (*Transfer of Membership*) (which shall in so far as is lawful also restrict a transmission by law):

- 12.1. the parent or guardian or curator of any Member who is a minor;
- 12.2. subject to clauses 10.13 to 10.16, the trustee of an insolvent former Member;
- 12.3. the liquidator of a former Member which is a juristic person or body corporate;
- 12.4. the tutor or curator of a Member under disability; or
- 12.5. the executor or administrator of the estate of a deceased Member,

shall, where the transfer is permitted under this Constitution upon production of such evidence as may be required by the Directors and the conclusion of a Administration of IP Rights Agreement on terms satisfactory to the Board, have the rights and obligations to perform the Member obligations and in such capacity exercise the rights and to receive the payments due to the registered Member, save where expressly provided to the contrary.

13. FINANCIAL YEAR

The financial year end of the Co-operative is 30 June. **[S 14(1)(o)]**

14. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 14.1. The Co-operative shall maintain the necessary accounting records which shall be accessible from its Registered Office. The accounting records shall be retained for a period of 5 (five) years after the end of the financial year to which they relate.
- 14.2. The Co-operative shall prepare its financial statements in accordance with generally accepted accounting practices, and shall have its annual financial statements audited.
- 14.3. Subject to section 48(1) of the Co-operatives Act (which section currently permits the Board to circulate draft financial statements to Members prior to the Annual General Meeting), the Co-operative may not issue, publish or circulate copies of the financial statements unless the financial statements are:
 - 14.3.1. approved by the Annual General Meeting (in accordance with clause 15.2) and signed by the chairperson (in accordance with clause 15.2.1); and

- 14.3.2. accompanied by a report of the Auditor. **[S 48(4)]**
- 14.4. A Director or employee who becomes aware of any error or misstatement in a financial statement that the Auditor or former Auditor has reported on, must notify the Auditor without delay.
- 14.5. If the Auditor or former Auditor is notified in accordance with clause 14.4, or in any other manner becomes aware of a material error or misstatement in a financial statement on which they have reported, such Auditor must inform the Board accordingly, and the Board must:
 - 14.5.1. prepare and issue revised financial statements; or
 - 14.5.2. inform the Members and the Registrar of the error or misstatement.
- 14.6. The following records shall be kept at the Registered Office of the Co-operative, which records may be examined by Members during the normal business hours of the Co-operative (as set out on the website of the Co-operative from time to time) and Members may make copies of records after payment of the fee as determined by the Board, subject to clause 14.7:
 - 14.6.1. this Constitution;
 - 14.6.2. amendments to the Constitution;
 - 14.6.3. any Governance Rules;
 - 14.6.4. minutes of General Meetings (complying with section 31 of the Co-operatives Act) in a minute book;
 - 14.6.5. minutes of meetings of the Board (complying with section 35 of the Co-operatives Act) in a minute book;
 - 14.6.6. a list of the Members, setting out in respect of each Member:
 - 14.6.6.1. his/her/its name and address;
 - 14.6.6.2. the date on which he/she/it became a Member;
 - 14.6.6.3. the date on which his/her/its Membership was terminated (if applicable); and
 - 14.6.6.4. the amount of any Membership fees paid and the number and amount of Member loans (if applicable);
 - 14.6.7. a register of Directors, setting out in respect of each Director and each former Director:
 - 14.6.7.1. his/her name, address and identity number;

- 14.6.7.2. the date of which he/she became or ceased to be a Director; and
- 14.6.7.3. the name and address of any other co-operative, company or close corporation where he/she was a member or director;
- 14.6.8. a register of Directors' interests in contracts and undertakings (as contemplated in section 38 of the Co-operatives Act and clause 25 (*Disclosure of Interests of Directors and Managers*)); and
- 14.6.9. adequate accounting records, including records reflecting the transactions between each Member and the Co-operative for the purpose of calculating the Operating Surplus Payment, as contemplated in clause 14.8. **[S 21 & S 22]**
- 14.7. Subject to the Promotion of Access to Information Act (2 of 2000), the Board may, for a reasonable period of time, refuse information relating to any commercial transaction of the Co-operative if there are reasonable grounds to believe that the disclosure may be to the disadvantage of the Co-operative. **[S 22(2)]**
- 14.8. In addition to clause 14.6, the Members shall have the right of access to information in respect of the Administration of their Administered IP Rights and the calculation of Licence Revenue attributed to their Administered IP Rights and all related deductions.
- 14.9. Apart from the Members to the extent that they are entitled to information in terms of the Co-operatives Act, in so far as is lawful, no other Person shall be entitled to inspect any of the documents of the Co-operative unless expressly authorised by the Directors.

15. **AUDIT COMMITTEE AND AUDITOR**

- 15.1. The Board must ensure that an audit of the affairs of the Co-operative is conducted annually in respect of each financial year, in order to:
 - 15.1.1. ensure that financial statements are drawn up in conformity with generally accepted accounting practices;
 - 15.1.2. verify that the Co-operative has maintained adequate records in accordance with the requirements of the Constitution and the Co-operatives Act;
 - 15.1.3. report generally as to whether the assets and facilities of the Co-operative are being properly managed and the operations of the Co-operative are being conducted in accordance with co-operative principles as set out in section 3 of the Co-operatives Act; and
 - 15.1.4. report on any other matter the auditors are required to report on by this Constitution. **[S 47]**
- 15.2. At each Annual General Meeting, the Co-operative shall consider approval of the Auditor's report and the financial statements of the Co-operative, as follows:

- 15.2.1. the chairperson of the Board (or the person acting as chairperson at the meeting where the auditor's report and financial statements are approved), shall sign the Auditor's report and financial statements to confirm the approval;
 - 15.2.2. within 15 (fifteen) days of the approval of the Auditor's report and financial statements, the Board shall submit a copy of the Auditor's report and financial statements to the Registrar;
 - 15.2.3. for at least 21 (twenty one) days after the Auditor's report and financial statements are approved, the Auditor's report and financial statements shall be made available for inspection at the Registered Office;
 - 15.2.4. if, for any reason, the Annual General Meeting does not approve the Auditor's report and financial statements, the Board shall notify the Registrar within 15 (fifteen) days of the reasons for the non-approval and the action that the Co-operative proposes to take in order to address the situation. **[S 48(2), (3), (5) & (6)]**
- 15.3. The Board may appoint an Audit Committee and determine its members, powers and functions. The Board may combine such Audit Committee with a risk committee, or any other committee of the Co-operative.
- 15.4. Appointment of the Auditor
- 15.4.1. The Members of the Co-operative shall appoint an Auditor at its Annual General Meeting, to hold office until the close of the next Annual General Meeting, provided that if no Auditor is appointed:
 - 15.4.1.1. the incumbent Auditor continues in office until a successor is appointed; or
 - 15.4.1.2. if clause 15.4.1.1 does not apply, the Registrar may approve the Person nominated by the Board to audit the books of the Co-operative for 1 (one) financial year, in which case the fees payable to such auditor must be approved by the Registrar. **[S 50(1), (2), (3) & (4)]**
 - 15.4.2. If an Audit Committee has been appointed, such Audit Committee (failing which, the Board) shall nominate an Auditor for the Co-operative at the Annual General Meeting; however, the Members of the Co-operative are not required to appoint the Auditor nominated by the Audit Committee.
 - 15.4.3. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless:
 - 15.4.3.1. the retiring auditor is no longer qualified for appointment; or
 - 15.4.3.2. the retiring auditor is no longer willing to accept the appointment, and has so notified the Co-operative; or

- 15.4.3.3. the retiring auditor required to cease serving as Auditor in terms of the Co-operatives Act or this Constitution; or
 - 15.4.3.4. the Audit Committee objects to the re-appointment; or
 - 15.4.3.5. the Co-operative has notice of an intended resolution to appoint some other Person or Persons in place of the retiring Auditor.
- 15.4.4. A Person is disqualified from being the Auditor of the Co-operative:
- 15.4.4.1. if that Person has a personal or material interest in the Co-operative or in any of its affiliates or in any of its subsidiaries or in the business of any of its directors or senior employees; or
 - 15.4.4.2. in any other circumstances that are considered to constitute a conflict of interest in terms of accounting practice. **[S 49]**
- 15.4.5. A Person to be appointed as the Auditor of the Co-operative in accordance with clause 15.4.1 shall be:
- 15.4.5.1. an auditor registered as such in terms of the Auditing Profession Act; **[S 1(1)]** and
 - 15.4.5.2. acceptable to the Audit Committee in terms of being independent from the Co-operative.
- 15.4.6. The same individual may not serve as the Auditor of the Co-operative for more than 5 (five) consecutive financial years.
- 15.5. The Auditor has the right to:
- 15.5.1. request the Members, Directors, employees, agents or mandataries of the Co-operative to provide it with any information, explanations, and access to any documents of the Co-operative (or any of its subsidiaries) that are, in the opinion of the Auditor, necessary for the purposes of the audit, and such Persons are obliged to comply with the Auditor's request; **[S 53(1)]**
 - 15.5.2. request the Directors to obtain, from any present or former Directors, employees, agents or mandataries of the Co-operative, the information and explanations that such Persons are reasonably able to provide and that are, in the Auditor's opinion, necessary for the purpose of the audit, and the Directors are obliged to comply with the Auditor's request; **[S 53(2)]**
 - 15.5.3. receive notice of any General Meeting at which a report of the Auditor is to be discussed and to:
 - 15.5.3.1. attend such General Meeting, at the expense of the Co-operative; and

- 15.5.3.2. address such General Meeting on matters relating to the Auditor's duties. **[S 52(1)]**
- 15.6. The Auditor or a former Auditor may be required by a Director or Member to attend a General Meeting (at the expense of the Co-operative) and answer questions relating to the Auditor's duties:
- 15.6.1. provided that the Auditor or former Auditor is given written notice of 10 (ten) days of such meeting;
- 15.6.2. and such Director or Member must also send a copy of such written notice to the Co-operative at the same time. **[S 52(2) & (3)]**
- 15.7. The Auditor ceases to hold office when such Auditor dies, resigns (in accordance clause 15.8), is removed in accordance with clause 15.9 or is struck off the roll of auditors. **[S 50(5)]**
- 15.8. The Auditor may resign from office by written notice to the Co-operative, provided that such resignation is effective on the later of:
- 15.8.1. the date of which the written resignation is received by the Co-operative; and
- 15.8.2. the date specified in the resignation. **[S 50(6)]**
- 15.9. The Members may by Ordinary Resolution remove an auditor from office. **[S 51(1)]**
- 15.10. A vacancy created by the removal or resignation of an auditor must:
- 15.10.1. be filled at the meeting at which the auditor is removed; or
- 15.10.2. if not filled at the meeting, be filled within 30 days of the creation of a vacancy, by the Board, subject to the Registrar's approval. **[S 51(2)]**
- 15.11. An auditor appointed by the Board to fill a vacancy (as contemplated in clause 15.10) holds office for the unexpired term of his/her predecessor. **[S 51(3)]**
16. **GENERAL MEETINGS**
- 16.1. All Members shall be entitled to attend and vote at all General Meetings.
- 16.2. The Co-operative shall convene an Annual General Meeting once in every calendar year, but no more than 6 (six) months after the end of the preceding financial year, which must, at a minimum, provide for the following business to be transacted:
- 16.2.1. appointment of an Auditor (as contemplated in clause 15.4.1);
- 16.2.2. approval of a report of the Board on the affairs of the Co-operative for the previous financial year;

- 16.2.3. approval of the financial statements and the Auditor's report (if applicable) for the previous financial year;
 - 16.2.4. election of Directors; and
- decide the future business of the Co-operative. **[S 29]**
- 16.3. The Co-operative must hold a General Meeting:
- 16.3.1. at any time that the Board is required by the Co-operatives Act or this Constitution to refer a matter to Members entitled to vote for decision;
 - 16.3.2. if requested by the Members (as contemplated in clause 16.5); and
 - 16.3.3. whenever required to fill a vacancy on the Board. **[S 14(1)(x)]**
- 16.4. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information or explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the General Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 16.5. The Board or, if the Co-operative has no Directors, any single Member entitled to vote, may, whenever he/she/it thinks fit, convene a General Meeting. A General Meeting must be convened if one or more Written and signed demands for such a General Meeting is/are delivered to the Co-operative, and:
- 16.5.1. each such demand describes the specific purpose for which the General Meeting is proposed; and
 - 16.5.2. in aggregate, demands for substantially the same purpose are made and signed, at the earliest time specified in any of those demands, by at least 10% (ten percent) of the total number of Members who are entitled to exercise Voting Rights in relation to the matter proposed to be considered at the General Meeting. **[S 14(1)(w) & (cc)]**
- 16.6. Every General Meeting shall be held where the Board determines from time to time. No Person may attend a General Meeting by means of Electronic Communication. A Member must be Present in order to be included in the quorum and to be heard and vote at the General Meeting. **[S 28(1)]**
- 16.7. Subject to clause 16.8, a General Meeting shall be called by at least 15 (fifteen) Business Days' notice delivered by the Co-operative to all Members entitled to vote at the General Meeting or otherwise entitled to receive notice. **[S 14(1)(f) & (w)]**

- 16.8. The Co-operative may call a General Meeting with less notice than required by clause 16.7, but such a General Meeting may proceed only if 90% (ninety percent) of all Persons that are entitled to exercise Voting Rights in respect of any item on the meeting agenda:
- 16.8.1. are Present at the General Meeting; and
 - 16.8.2. vote to waive the required minimum notice of the General Meeting.
- 16.9. Subject to clause 16.8, a Member entitled to vote, who is Present at a General Meeting:
- 16.9.1. is regarded as having received or waived notice of the General Meeting if at least the required minimum notice was given;
 - 16.9.2. has a right to:
 - 16.9.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the General Meeting; and
 - 16.9.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and
 - 16.9.3. except to the extent set out in clause 16.9.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the General Meeting.
- 16.10. A notice of a General Meeting must be in writing, in plain language and must include:
- 16.10.1. the date, time and place for the General Meeting, and the Record Date for the General Meeting;
 - 16.10.2. the general purpose of the General Meeting, and any specific purpose contemplated in clause 16.2, if applicable;
 - 16.10.3. a copy of any proposed resolution of which the Co-operative has received notice, and which is to be considered at the General Meeting (including the proposed amendment in the event of an amendment to the Constitution as contemplated in clause 7 (*Amendments to the Constitution*)) and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted; **[S 18(2)]**
 - 16.10.4. in the case of an Annual General Meeting:
 - 16.10.4.1. the financial statements to be presented or a summarised form thereof; or
 - 16.10.4.2. directions for obtaining a copy of the financial statements to be presented; and
 - 16.10.4.3. directions for obtaining a copy of the complete annual financial statements for the preceding financial year;

- 16.10.5. a statement that participants in a General Meeting are required to furnish satisfactory identification in order to reasonably satisfy the chairperson of the General Meeting as to their identity;
- 16.10.6. a reasonable prominent summary of the provisions of clauses 16.31, 16.32, 16.33, 16.34 and 16.35; and
- 16.10.7. a form of proxy to be completed if the Member elects to appoint a proxy (as contemplated in clause 16.31), and such form of proxy must include adequate blank space to enable the Member to:
 - 16.10.7.1. write in the name of the proxy, and an alternative proxy; and
 - 16.10.7.2. indicate whether the proxy is to vote in favour of, or against any resolution put to the General Meeting, or is to abstain from voting.
- 16.11. A General Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 16.12, only if every Person who is entitled to exercise Voting Rights in respect of each item on the agenda of the General Meeting is Present and votes to approve the ratification of the defective notice.
- 16.12. If a Material defect in the form or manner of giving notice of a General Meeting relates only to one or more particular matters on the agenda for the General Meeting:
 - 16.12.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
 - 16.12.2. the General Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 16.13. An immaterial defect in the form or manner of delivering notice of a General Meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed, does not invalidate any action taken at the General Meeting.
- 16.14. The quorum for commencement of the General Meeting shall be 100 (one hundred) Members, which must include at least 3 (three) Full Members. **[S 14(1)(y)]**
- 16.15. If within 30 (thirty) minutes (or any extension thereof in terms of clause 16.16) from the time appointed for the General Meeting to commence, a quorum has not been achieved for commencement of the General Meeting, the General Meeting shall be postponed, without motion, vote or further notice, subject to clause 16.20, for 1 (one) week to the same time on the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday. If at such adjourned General Meeting a quorum is not achieved within 30 (thirty) minutes from the time appointed for the General Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.

- 16.16. The person intended to preside at a General Meeting that cannot begin due to the operation of clause 16.14, may, in his/her reasonable discretion, extend the 30 (thirty) minute limit referred to in clause 16.15, for a reasonable period.
- 16.17. A General Meeting may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights held by all of the Persons who are present at the General Meeting at the time.
- 16.18. Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be delivered to Members) as agreed at the General Meeting. No business shall be transacted at the resumption of any adjourned General Meeting, other than the business unfinished at the General Meeting from which the adjournment took place.
- 16.19. A General Meeting may not be adjourned beyond the earlier of:
- 16.19.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date; or
 - 16.19.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 16.20. Save where the adjournment or postponement is until further notice in terms of clause 16.15 or clause 16.17, no further notice is required to be delivered by the Co-operative of a General Meeting that is postponed or adjourned as contemplated in clause 16.15 or clause 16.17, if the location or time for the General Meeting:
- 16.20.1. is the same as the location or time of the postponed or adjourned General Meeting; or
 - 16.20.2. in the case of an adjourned General Meeting, was announced at the time of adjournment.
- 16.21. After a quorum has been established for a General Meeting, the General Meeting may continue, for as long as at least 1 (one) Person with Voting Rights entitled to be exercised at the General Meeting, is Present.
- 16.22. The chairperson of the Board (as contemplated in clause 24.7) shall preside as chairperson at every General Meeting. If there is no such chairperson, or if at any General Meeting he/she is not present within 15 (fifteen) minutes after the time appointed for holding the General Meeting or is unwilling to act as chairperson, the vice-chairperson shall chair the meeting and if the vice-chairperson is also not present or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall elect a Director present at the General Meeting, or if no Director be present at the General Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall elect one of their number which is present to be chairperson of the General Meeting.
- 16.23. At any General Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands:
- 16.23.1. a poll shall be demanded by:

16.23.1.1. not less than 5 (five) Persons having the right to vote on that matter; or

16.23.1.2. a Person/s entitled to exercise not less than 1/10th (one tenth) of the total Voting Rights entitled to vote on that matter;

16.23.2. the chairperson elects to vote by poll, **[S 14(1)(aa)]**

and, unless a poll is so demanded or elected, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Co-operative, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the General Meeting or adjourned General Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such General Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the General Meeting, whose decision shall be final and conclusive, in so far as is lawful.

16.24. If a poll is duly demanded or elected it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll was demanded or elected. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the General Meeting, shall be deemed to be the resolution of the General Meeting at which the poll is demanded. The demand for a poll shall not prevent the continuation of a General Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.

16.25. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the General Meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

16.26. Any Person entitled to Membership in terms of clause 12 (*Transmission of Membership by Operation of Law*) may vote at any General Meeting in respect thereof in the same manner as if he/she/it were the Member, provided that (except where the Directors have previously accepted his/her/its right to vote) 48 (forty eight) hours at least before the time of holding the General Meeting at which he/she/it proposes to vote, he/she/it shall have satisfied the Directors that he/she/it is entitled to exercise the right referred to in clause 12 (*Transmission of Membership by Operation of Law*).

16.27. Subject to clause 37.1, every resolution of Members is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this Constitution, shall require to be adopted with the support of more than 50% (fifty percent) of the Voting Rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this Constitution, shall require to be adopted with the support of at least 75%(seventy five percent) of the Voting Rights exercised on the resolution.

16.28. On a show of hands:

- 16.28.1. a Member entitled to vote that is Present at the General Meeting shall have only 1 (one) vote; and
- 16.28.2. a proxy shall, irrespective of the number of the Members entitled to vote which he/she represents, have 1 (one) vote.

16.29. On a poll:

- 16.29.1. subject to clause 16.29.2:
 - 16.29.1.1. a Member entitled to vote that is Present at the General Meeting shall have only 1 (one) vote; **[S 3(1)(b) & S 14(1)(e)]** and
 - 16.29.1.2. a proxy shall have 1 (one) vote for each of the Members entitled to vote which he/she represents;
- 16.29.2. notwithstanding the provisions of clause 16.29.1, if at any time in future the Co-operatives Act is amended and the requirement that each member of a Primary Co-operative may only have 1 (one) vote removed, clause 16.29.1 shall not apply and the voting shall be determined as follows:
 - 16.29.2.1. every Member entitled to vote who is Present shall have the number of votes determined in accordance with the Voting Rights associated with the Membership in question;
 - 16.29.2.2. Members shall each have votes equal to the greater of:
 - 16.29.2.2.1. 1 (one) vote; and
 - 16.29.2.2.2. the figure in South African Rand (rounded down to the nearest whole Rand) of the aggregate Territory Performing Royalty Payments to the Member, during the completed financial year immediately preceding the General Meeting at which the voting takes place, provided that the maximum number of votes exercisable by any one Member shall not exceed 2% (two percent) of the total Voting Rights of all Members having the right to attend and vote at a General Meeting;
 - 16.29.2.3. a proxy shall exercise the vote(s) of each Member for which it has been appointed as proxy (as determined in clause 16.29.2.2 in respect of each Member) separately from the vote(s) of each other Member for which it acts as proxy; and
 - 16.29.2.4. any calculation of number of votes of a Member by a show of hands or the poll votes of the Members by an Auditor or a professional scrutineer shall be conclusive proof of the votes of the relevant Members, unless the contrary is proved.

- 16.30. If more than one Person is registered in respect of a single Membership, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Members; and for this purpose seniority shall be determined by the order in which the names stand in the Members Register.
- 16.31. A Member may elect to appoint any individual (including an individual who is not a Member of the Co-operative) as a proxy to attend and vote at a General Meeting on that Member's behalf (and may appoint an alternative proxy), by way of completing and signing the form of proxy attached to the notice of the General Meeting (as contemplated in clause 16.10.7) and delivering same to the Co-operative or any Person which it has identified in the notice of meeting as being the Person to whom proxies may be delivered on behalf of the Co-operative, within 48 (forty eight) hours prior to the time appointed for commencement of the General Meeting, provided that no person may act as a proxy for more than 20% (twenty percent) of the Members entitled to vote at that General Meeting.
[S 14(2)(d)]
- 16.32. The appointment of a proxy (as contemplated in clause 16.31):
- 16.32.1. remains valid until the termination of the General Meeting (or the termination of any subsequent meeting constituted as a result of the adjournment or postponement of that General Meeting, as contemplated in clause 16.15 or clause 16.17), unless it is revoked by way of making a later inconsistent appointment of a proxy, or cancelling it in Writing and delivering a copy of the revocation instrument to the proxy and to the Co-operative (or to any Person which it has identified in the notice of meeting as being the Person to whom proxies may be delivered on behalf of the Co-operative), in which case the cancellation of the proxy's authority shall be effective as from the time on which such later form of proxy or revocation instrument was delivered; and
- 16.32.2. is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.
- 16.33. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in Writing of such death, insanity or revocation as aforesaid shall have been received by the Co-operative at its Registered Office before the commencement of the General Meeting (or commencement of any subsequent meeting constituted as a result of the adjournment or postponement of that General Meeting, as contemplated in clause 16.15 or clause 16.17).
- 16.34. A proxy may delegate his/her authority to act on behalf of the Member to another person, unless the form of proxy provides otherwise.
- 16.35. If a form of proxy is received duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may vote or abstain from voting as he/she sees fit, unless the form of proxy indicates otherwise.

17. **RECORD DATE**

- 17.1. If the Board determines the Record Date for a General Meeting or other event or action, it may not be earlier than the date on which the Record Date is determined by the Board nor more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.
- 17.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is:
- 17.2.1. in the case of a General Meeting, the latest date by which the Co-operative is required to deliver to Members entitled to vote, notice of that Member Meeting; or
- 17.2.2. the date of the action or event, in any other case.

18. **STATUTORY RECORDS**

- 18.1. The chairperson of a General Meeting must:
- 18.1.1. cause minutes of General Meetings to be kept in 1 (one) of the official languages of South Africa; and
- 18.1.2. keep the minutes at the Registered Office of the Co-operative (as contemplated in clause 14.6.4). **[S 31(1)]**
- 18.2. Minutes in respect of any General Meeting must be:
- 18.2.1. provided to Members on request;
- 18.2.2. presented for approval at the next General Meeting. **[S 31(2)]**
- 18.3. The minutes for any General Meeting which have been signed by the chairperson, or a resolution adopted in terms of this Constitution is, in the absence of evidence to the contrary, proof of the outcome of the vote or the resolution. **[S 31(3)]**

19. **ELECTION OF DIRECTORS AND CASUAL VACANCIES**

- 19.1. Subject to clause 19.10, the minimum number of Directors shall be 4 (four) and the maximum 13 (thirteen). **[S 32(1) & S 14(1)(h)]**
- 19.2. Subject to clause 2.2, the Directors of the Co-operative at the Conversion Date shall continue to be Directors, until removed in accordance with the provisions of this Constitution on the basis that their term of office shall be regarded as having commenced on the date of their election to office prior to the Conversion Date.
- 19.3. Each of the Directors shall be elected, in accordance with clause 19.6, to serve for a maximum period of 4 (four) years subject to rotation in accordance with clause 19.4 and cessation of office in accordance with clause 20

(*Cessation of Office as Director*), and may be reappointed for a second or further term of office, provided that:

[S 14(1)(i)]

- 19.3.1. no person who is not a Full Member shall be appointed to act as a Director, provided that in the case of a juristic person being a Full Member, there may be appointed as a Director any person being either a director, partner, officer or manager in the permanent and exclusive employment of such juristic person, notwithstanding that such person is not himself/herself a Members and is not eligible for election; **[S 14(1)(dd)]**
- 19.3.2. not less than one-half of the number of Directors in office shall be Authors (including the representative of a juristic person that is an Author) and not less than one-third shall be Publishers (including the representative of a juristic person that is a Publisher) and where the Director is both an Author and a Publisher (or a representative of a juristic person that is both an Author or a Publisher), then the Director shall be regarded as a Publisher for the purposes of this clause; and
- 19.3.3. the Board may appoint Directors as contemplated in (and subject to) clause 19.9.
- 19.4. Subject to clause 19.3, at the Annual General Meeting held each year, as from the Conversion Date, 25% (twenty five percent) of the Directors (rounded to the nearest whole number), shall retire from office. The Directors so to retire at each Annual General Meeting shall be:
- 19.4.1. firstly, those Directors who will exceed the maximum 4 (four) year term of office if they remain in office for a period of 6 (six) months after the date of the next Annual General Meeting and those Directors appointed in accordance with clause 19.9 and subject to retirement at the Annual General Meeting; and
- 19.4.2. thereafter, those who have been longest in office since their last election and as between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot.
- 19.5. A Director retiring by rotation at an Annual General Meeting shall act as a Director throughout the Annual General Meeting at which she/he retires and shall be eligible for re-election. The length of time a Director has been in office shall be computed from the date of her/his last election subject to clause 19.2. Retiring Directors shall be eligible for re-election. No person other than a Director retiring at the Annual General Meeting shall be eligible for election to the office of Director at any Annual General Meeting unless they qualify and have been recommended by the Directors (or any nomination committee) for election or nominated for election by a Member duly qualified to be Present and vote at the Annual General Meeting who has given notice to the Board in Writing, at least 27 Business Days prior to the date of the convened Annual General Meeting, of the nomination together with the nominee's written acceptance of the nomination.

- 19.6. In any election of Directors, the Chairperson shall determine the sequence of the elections in order to ensure that the spread as set out in clause 19.3 is achieved and the election is to be conducted as follows:
- 19.6.1. a series of votes of those entitled to exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and
- 19.6.2. in each vote to fill a vacancy:
- 19.6.2.1. each Voting Right entitled to be exercised may be exercised once; and
- 19.6.2.2. the vacancy is filled only if a majority of the Voting Rights exercised support the candidate. **[S 14(1)(dd) & (ee)]**
- 19.7. No person shall be elected as a Director if he/she is not competent to act as such and any such election shall be a nullity. A person is not competent to act as a Director if such person: **[S 33(2)]**
- 19.7.1. is of unsound mind;
- 19.7.2. is an unrehabilitated insolvent;
- 19.7.3. has been convicted (whether in South Africa or elsewhere) of theft, fraud, forgery, perjury or any offence involving dishonesty in connection with the formation or management of a co-operative or other corporate entity;
- 19.7.4. is regarded as ineligible or disqualified to be a director of a company in terms of the Companies Act;
- 19.7.5. has been or is placed on probation under conditions that are inconsistent with continuing to be a Director;
- 19.7.6. files a petition for the surrender of his/her estate or to place it under administration or applies for debt review under the National Credit Act (34 of 2005);
- 19.7.7. assigns his/her estate for the benefit of his/her creditors, or files a petition for the liquidation of his/her affairs, or compounds generally with his/her creditors;
- 19.7.8. has been removed from office in accordance with clause 20.1.6; or
- 19.7.9. acts as a director of an entity which competes with the Co-operative to a material degree in administering and/or licensing IP Rights similar to the IP Rights Administered by the Co-operative in the Operational Territory.

- 19.8. No election of a Director shall take effect until he/she has delivered to the Co-operative a Written consent to serve. A person who is not competent to act as Director (as contemplated in clause 19.7) must not consent to be elected as a Director, nor act as a Director.
- 19.9. Any casual vacancy occurring on the Board may be filled by the Board, but so that the total number of the Directors shall not at any time exceed the maximum number fixed, but the individual so appointed shall cease to hold office at the termination of the first General Meeting to be held after the appointment of such individual as a Director, unless he/she is elected at such General Meeting.
- 19.10. The continuing Director(s) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by clause 19.1, the continuing Director(s) may act only for the purpose of summoning a General Meeting for the election of Directors as contemplated in clause 19.3.(read with clause 19.6) and to manage the Co-operative pending such General Meeting. If there is no Director able and willing to act, then any Member entitled to exercise Voting Rights in the election of a Director may convene a General Meeting for the purpose of electing Directors.

20. **CESSATION OF OFFICE AS DIRECTOR**

- 20.1. A Director shall cease to hold office as such: **[S 14(1)(ee)]**
- 20.1.1. immediately after he/she becomes incompetent as contemplated in clause 19.7;
- 20.1.2. when his/her term of office contemplated in clause 19.3 expires;
- 20.1.3. when he/she retires as contemplated in clause 20.2;
- 20.1.4. when he/she dies;
- 20.1.5. 1 (one) month, or earlier if permission has been granted by the Board, after he/she has given notice in Writing of his/her intention to resign (subject to the Co-operatives Act);
- 20.1.6. immediately, if the other Directors adopt a resolution for the Director's removal from office (for any reason whatsoever) and it is passed with the support of a majority of 75% (seventy five percent) of all the Directors other than the Director being removed from office;
- 20.1.7. if the Director ceases to be a Full Member, or, in the case of a Director appointed as the nominee of a juristic person, if such juristic person ceases to be a Full Member;
- 20.1.8. if the Director (without special leave of absence from the Board) absents himself/herself from 3 (three) successive meetings of the Board, or from 3 (three) successive meetings of any committee to which he/she has been appointed to; or

20.1.9. if he/she is otherwise removed in accordance with any provisions of this Constitution or the Co-operatives Act.

20.2. A Director shall retire at the end of the first Annual General Meeting after the Director reaches the retirement age as determined by the Board from time to time.

20.3. A retiring Director (as contemplated in clause 20.2), or a Director whose term of office expires (as contemplated in clause 19.3 or clause 20.1 (excluding clauses 20.1.2 and 20.1.4), shall act as a Director throughout the Annual General Meeting at which he/she retires, or at which his/her term of office expires.

21. REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD COMMITTEES

21.1. The Directors or members of Board committees shall be entitled to such remuneration for their services as Directors or members of Board committees as may have been determined from time to time by Ordinary Resolution within the previous 2 (two) years. The recommendation of the Co-operatives remuneration committee (if any) shall be put to the Members before the moving of such Special Resolution.

21.2. In addition, the Directors shall be entitled to all reasonable expenses properly and necessarily incurred by them in and about the business of the Co-operative, and in particular for travelling (including expenses incurred in respect of accommodation) to and from meetings of the Directors, Board committees and Members, as is determined by the Board (or any remuneration committee to which such power may be delegated), which may be either in addition to or in substitution for any other remuneration.

21.3. A Director or member of a Board committee may hold office or be employed in any other capacity in the Co-operative (other than as a director) or as a Director, office holder, or employee of a company controlled by the Co-operative and in that event, his/her appointment and remuneration in respect of such other office or employment must, in addition to any other approvals required in terms of the Co-operatives Act, be determined by the Board in compliance with clause 25 (or any remuneration committee to which such power may be delegated), provided that any remuneration for the holding of such office or such employment shall not form part of the Director's remuneration for his/her services as Director (even if the Director concerned does not receive any other remuneration for his/her services as Director), unless the payment of such remuneration is also approved by the Members in accordance with clause 21.1.

21.4. Unless otherwise determined by the Board (which determination may only be prospective), any Director or member of a Board committee shall not have to account to the Co-operative for any approved profits by virtue of holding such office or employment.

21.5. A Director or manager of the Co-operative may not accept any commission, remuneration or reward from any Person for, or in connection with, any transaction to which the Co-operative is a party, unless such commission, remuneration or reward is paid or given in the course of the usual business or profession of such Director or manager and the Director or manager has disclosed his/her interest to the Board. **[S 38]**

22. GENERAL POWERS AND DUTIES OF DIRECTORS

22.1. The business and operations of the Co-operative shall be conducted and managed by the Board, who may exercise all such powers of the Co-operative as are not, by the Co-operatives Act, or by this Constitution, required to be exercised by the Co-operative in General Meeting, subject nevertheless to the provisions of the Co-operatives Act and this Constitution. **[S 14(1)(j) & S 32(2)]**

22.2. The Board may:

22.2.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and

22.2.2. give pensions, gratuities and allowances to and make payments for or towards the insurance of,

any persons who are employees or office bearers or ex-employees or ex-office bearers (including Directors or ex-Directors) of the Co-operative, or of any entity which is or was in any way allied to or associated with it, and the husbands, wives, widowers, widows, families and dependants of such persons.

22.3. Subject to the requirements of the Co-operatives Act, the Board may from time to time:

22.3.1. appoint any person as employee to the office of managing Director (provided that such person meets the requirements for appointment as Director, as contemplated in clauses 19.3 and 19.7) or chief executive officer (who need not be a Director) or executive chairperson of the Co-operative (complying with clause 21.3, where applicable) for such period, at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) and on such terms as it may deem fit (provided that any appointment of a Director to such position may be for a period exceeding the maximum period of the appointment of the Director concerned set out in clause 19.3) and generally on such terms as they may think fit, and (subject to any contract entered into between the Board and such managing Director or chief executive officer) may from time to time remove him/her and appoint some other person as managing Director or chief executive officer in his/her place; and it may be made a term of his/her appointment that he/she be paid a pension, gratuity or other benefit on his/her retirement from office. Such managing Director shall immediately cease to hold office of managing Director if he/she is removed from the office of Director or his/her employment by the Co-operative is terminated for any reason whatsoever (including cancellation);

22.3.2. entrust to and confer upon a managing Director or chief executive officer or executive chairperson for the time being such of the powers vested in the Board as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers. A managing Director or chief executive officer or

executive chairperson appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him/her by the Board in terms hereof he/she shall be deemed to derive such powers directly from this clause;

- 22.3.3. appoint any 1 (one) or more persons (who need not be a Member) as employee to the office of management of the Co-operative or as senior manager (if such person has experience in business management, either gained from working for the Co-operative or another company, or has special knowledge and/or experience in the application of the IP Related Legislation and/or the administration of copyright) for such period, at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) and on such terms as it may deem fit, and (subject to any contract entered into between the Board and such person) may from time to time remove him/her and appoint some other person as to the management of the Co-operative in his/her place; and it may be made a term of his/her appointment that he/she be paid a pension, gratuity or other benefit on his/her retirement from office;
- 22.3.4. by power of attorney appoint any company, corporation, person, or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Co-operative for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution), and for such period, and subject to such conditions, as it may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him/her.
- 22.4. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Co-operative, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.
- 22.5. In so far as is permissible under the Co-operatives Act, the Directors shall have the power to delegate to any Person(s) (as long as they are not incompetent as contemplated in clause 19.7) any of their authority, powers and discretions and to give to any such Person(s) the power of sub-delegation. The aforementioned delegation does not prevent the Board from performing the delegated functions. **[S 14(1)(gg) & S 36]**
- 22.6. The Board may authorise the payment of donations by the Co-operative to any pension fund established by the Co-operative and to such religious, charitable, public or other bodies, clubs, funds or associations or Persons as may seem to them advisable or desirable in the interests of the Co-operative.

23. **BOARD COMMITTEES**

- 23.1. The Board may appoint any number of Board committees and, in so far as is permissible under the Co-operatives Act, delegate to such committees any authority, powers and discretions of the Board, and to give to such

committees the power of sub-delegation. The aforementioned delegation does not prevent the Board from performing the delegated functions. **[S 14(1)(gg) & S 36]**

- 23.2. The members of any such committees may include persons who are not Directors, but who shall not be able to vote.
- 23.3. No person shall be appointed as a member of a Board committee, if he/she is not competent (as contemplated in clause 19.7) and any such appointment shall be a nullity. A person who is not competent (as contemplated in clause 19.7) must not consent to be elected as a member of a Board committee, nor act as a member of a Board committee.
- 23.4. A member of a Board committee shall cease to hold office as such immediately after he/she becomes incompetent (as contemplated in clause 19.7) or is removed by resolution of the Board.
- 23.5. Committees of the Board may consult with or receive advice from any Person.
- 23.6. Subject to the Co-operatives Act and the mandate given by the Board, meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this Constitution regulating the meetings and proceedings of Directors, and in compliance with the Co-operatives Act.
- 23.7. Without limitation and subject to the above provisions in respect of Board committees, the Board may establish a separate Board committee to attend to such matters relating to or affecting Needletime Rights and the Administration of such Needletime Rights as they regard appropriate and to appoint trustees of the Needletime Trust as members of such committee.

24. **PROCEEDINGS OF DIRECTORS**

- 24.1. The chairperson or the Board:
- 24.1.1. may, at any time, summon a meeting of the Directors; and
- 24.1.2. must call a meeting of the Directors if required to do so by at least 2 (two) Directors. **[S 34(1)]**
- 24.2. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice, which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even to those absent from South Africa for the time being.
- 24.3. If all of the Directors:
- 24.3.1. acknowledge actual receipt of the notice;
- 24.3.2. are present at a meeting of the Directors; or

24.3.3. waive notice of the meeting,

the meeting may proceed even if the Co-operative failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

- 24.4. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 24.5. Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors 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. **[S 36(3)]**
- 24.6. The quorum for a Directors meeting is 3 (three) Directors. **[S 34(2)(a)]**
- 24.7. The chairperson and vice-chairperson of the Co-operative, of whom at least 1 (one) shall be a Author, shall be elected by the Board of Directors from among themselves, and shall be respectively the chairperson and vice-chairperson of the Board. Unless removed by Board resolution earlier, they shall hold their respective offices concurrently until they are required to retire in terms of clause 19.4 (provided that such retiring chairperson and vice-chairperson shall act as chairperson and vice-chairperson throughout the Annual General Meeting at which they retire), unless reappointed at such General Meeting. They shall be eligible for re-appointment so long as they respectively remain qualified to act as Directors. If no such chairperson is elected, or if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, then the vice-chairperson shall chair the meeting and if the vice-chairperson is also not present, then the Directors present may elect one of their number to be chairperson of the meeting. The Directors may at any time revoke such an appointment. **[S 14(1)(ff)]**
- 24.8. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution. In the case of a tied vote, the chairperson (or vice-chairperson) shall have a second or casting vote. **[S 34(2)(b) & (c)]**
- 24.9. A resolution passed by the Board, or an act performed under the authority of the Board, is not invalid by reason only of the fact that when the resolution was passed, or the act was authorised:
- 24.9.1. there were less Directors than the required minimum (as contemplated in clause 19.1); or
- 24.9.2. a person was sitting on the Board who was incompetent (as contemplated in clause 19.7) to sit on the Board,

if the resolution was passed, or the act was authorised, by the requisite majority of the Directors competent to sit as Directors who were present at the time. **[S 34(6)]**

- 24.10. The Board must keep minutes of the meetings of the Board, and any of its committees, which minutes must:
- 24.10.1. be taken in 1 (one) of the official languages of South Africa;
 - 24.10.2. be kept at the Registered Office in accordance with clause 14.6.5;
 - 24.10.3. indicate which Directors were present at the meeting;
 - 24.10.4. include any disclosure in terms of clause 25 (*Disclosures of Interests by Directors and Managers*), as contemplated in clause 25.2;
 - 24.10.5. be circulated to the Directors as soon as possible after the meeting; and
 - 24.10.6. be presented for approval at the next Board meeting. **[S 35(1), (2) & (3)]**
- 24.11. Resolutions adopted by the Board:
- 24.11.1. must be dated and sequentially numbered; and
 - 24.11.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 24.12. Any extract from such minutes, or extract from any Round Robin Resolution, if signed or executed by the chairperson of the meeting, are receivable as proof (in any court) of what took place in that meeting. **[S 35(5)]**
- 24.13. A resolution of Directors (a ~~%Round Robin Resolution~~) shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted, provided that:
- 24.13.1. each Director has received notice of the matter to be decided upon; and
 - 24.13.2. such resolution is adopted by way of Written consent, given in person or by Electronic Communication, of a majority of the Directors. **[S 34(5)]**
- 24.14. Such a Round Robin Resolution:
- 24.14.1. shall be deemed to have been passed on the date upon which it was signed or executed by the last Director required to sign or execute it. Where it states a date as being the date of its signature by any Director, that document shall be *prima facie* evidence that it was signed or executed by that Director on that date; and
 - 24.14.2. constitutes a decision of the Board and must be entered into the minute book of the Co-operative. **[S 35(4)]**

24.15. A meeting of the Directors at which the quorum requirements are met shall be competent to exercise all or any of the authorities, powers and discretion, provided by or under this Constitution or the Co-operatives Act, of the Co-operative for the time being vested in or exercisable by the Directors generally.

25. **DISCLOSURE OF INTERESTS OF DIRECTORS AND MANAGERS**

25.1. Except in relation to an interest in a contract or transaction that is available to and customarily entered into between the Co-operative and the Members (if the contract or transaction is on terms generally available to members), a Director or manager of the Co-operative must, in writing, disclose to the Co-operative:

25.1.1. the nature and extent of any interest that he/she has in a material contract or transaction, or a proposed material contract or transaction, with the Co-operative; and

25.1.2. any material change to such interest. **[S 37(1) & (2)]**

25.2. Any disclosure must be recorded in the minutes of the meetings of the Board. **[S 37(3)]**

25.3. A disclosure in terms of this clause, must:

25.3.1. be made at the first Board meeting at which the proposed contract or transaction is first considered or, if the Director or manager did not have an interest in the proposed contract or transaction at the time of the Board meeting, such interest must be made at the first meeting after the Director or manager acquired an interest in it;

25.3.2. if there is a material change in the interest of the Director or manager, be made at the first meeting after the change;

25.3.3. if the Director or manager acquires an interest in the contract or transaction after it has been concluded, be made at the first meeting after the Director or manager acquires that interest;

25.3.4. if the Director or manager had an interest in the contract or transaction before becoming a Director or manager, be made at the first meeting after becoming a Director or manager;

25.3.5. if the contract or the transaction is one that would in the ordinary course of business not require the approval of Directors, be made as soon as the Director or manager becomes aware of the contract or transaction;

25.3.6. must be made in writing for submission to the Board, if the person making the disclosure is not a Director. **[S 37(4) & (5)]**

25.4. The Board must keep a register of Directors and managers' interests in contracts or undertakings containing full particulars of every disclosure of interest made in terms of this clause (as contemplated in clause 14.6.8).

- 25.5. Subject to the exceptions in clause 25.6, where the Board is considering a matter in respect of which a Director has made a disclosure as contemplated in clause 25.1, and the non-interested members of the Board determines that a material personal financial conflict of interest exists for such Director in relation to the particular matter, such Director shall recuse himself/herself from voting on such matter, but shall be counted for the purposes of determining a quorum and shall provide information to the Board and may form part of the discussion and consideration of the matter at the request of the other Board members (to the extent permissible by law, having regard to such Director's conflicting duties). If the non-conflicted Directors request that the conflicted Director recuse himself/herself from the meeting, then the conflicted Director shall do so immediately.
- 25.6. Notwithstanding clause 25.5, without limitation:
- 25.6.1. where a conflict interest arises as a result of a Director serving on the board of directors of, or being employed by, any company or entity directly or indirectly controlled by the Co-operative, such Director shall not solely by virtue of holding such office or employment be regarded as having a conflict and shall not be required to recuse himself/herself or abstain from voting on any resolution put to the Board, unless there is some other ground upon which the Director has a material personal financial interest in the matter that gives rise to a conflict of interests; and
- 25.6.2. the provisions of clause 25.5 shall not apply to any matter:
- 25.6.2.1. in respect of which all of the Directors are conflicted, in which case they can all participate in consideration of the matter and vote but may decide to refer the matter to the Members or a committee comprised of non-conflicted members for determination; and
- 25.6.2.2. that generally affects a class of persons which includes the Director despite the fact the Director is a member of the class of persons, provided that the class is not comprised solely of Directors.
- 25.7. Subject to the restrictions in section 38 of the Co-operatives Act:
- 25.7.1. no Director or intending Director shall be disqualified by her/his office from contracting with the Co-operative, either with regard to such office or as vendor, purchaser or otherwise;
- 25.7.2. shall any such duly approved contract, in which any Director shall be in any way interested, be or be liable to be avoided solely on the basis that it is concluded with a Director; nor
- 25.7.3. shall any Director so contracting or being so interested in a duly approved contract be liable to account to the Co-operative for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established.

26. **INDEMNITY AND INSURANCE**

In so far as is lawful and without limitation, the Co-operative may indemnify a Director, manager, officer or employee of the Co-operative for any breach of duty or any liability connected to their office or employment except where arising out of the intentional wrongdoing, and may take out insurance protecting the Directors, manager, officer or employee of the Co-operative or protecting the Co-operative against any such liability.

27. **FINANCIAL ASSISTANCE**

27.1. If so determined by the Board, but subject to clause 27.2 and the Co-operatives Act, the Co-operative may give financial assistance by means of a loan or the provision of security to any Person. **[S 45(1)]**

27.2. The Co-operative may not give financial assistance in terms of clause 27.1 (whether directly or indirectly) if there are reasonable grounds to believe that:

27.2.1. the Co-operative, after giving the financial assistance, will be unable to pay its liabilities as they become due; or

27.2.2. the realisable value (as determined in accordance with clause 27.3) of the Co-operative's assets, after giving the financial assistance, will be less than the aggregate of its liabilities and reserves. **[S 45(2)]**

27.3. In determining the realisable value of the Co-operative's assets (as contemplated in clause 27.2.2) the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee must be excluded. **[S 45(3)]**

28. **SOCIAL AND CULTURAL**

28.1. The Board shall determine the social and cultural projects, activities and funds of the Co-operative which may include, without limitation:

28.1.1. the granting of gratuities, bursaries, donations, pensions, funeral policies, medical aid contributions and emoluments to any Member or ex-Member of the Co-operative, Contracting Participant or any person at any time in the employment of the Co-operative, or engaged in any business acquired by the Co-operative, and the wives, widows, families and dependants of any such persons;

28.1.2. contributions to any benevolent, pension, funeral or similar fund which may be established for the benefit of Members, Contracting Participants, ex-Members or employees of the Co-operative or their wives, husbands, widows, widowers, families or dependants;

28.1.3. payments by way of loan or gift or on such terms as may be thought fit for any purpose conducive to the improvement or advancement of the composition, teaching, or performance of music, or for the encouragement or advancement of the national arts, or for any purposes calculated to benefit the

industry in which the Co-operative operates or Members or ex-Members or persons employed by or having dealings with the Co-operative, or to make such payments to or for the benefit of any society, associated company, fund, trust or institution whose objects shall include any such purpose;

- 28.1.4. subscribing money or assets to, or otherwise assisting, charitable or benevolent objects or entities;
- 28.1.5. providing sponsorship, particularly but without limitation, in connection with any industry in which the Co-operative, or any of its Member operate, including without limitation, by sponsoring events, functions, bursaries related to such industries, associated businesses entities or activities; and/or
- 28.1.6. the establishment of any funds for these purposes.

29. ADMINISTRATION OF IP RIGHTS

Administered IP Rights

- 29.1. In order to qualify as a Member after the Conversion Date, a Person must conclude an Administration of IP Rights Agreement with the Co-operative (as contemplated in clause 9.4 of this Constitution) together with a deed of assignment of the Administered IP Rights to the Co-operative, unless the Board determines that an alternative right will be granted to the co-operative as contemplated in clause 29.8.
- 29.2. All existing Members on the Conversion Date shall, unless expressly agreed otherwise in Writing, be deemed to have agreed that their Administered IP Rights, which are Administered by the Co-operative on the Conversion Date, shall continue to be Administered by the Co-operative in accordance with the provisions of this Constitution and any existing Assignment or contract, which existing contract shall be deemed to be an Administration of IP Rights Agreement, subject only to those existing contractual terms with the Member that cannot be altered by way of an amendment to the Co-operative's Constitution, if any.
- 29.3. Subject to the exceptions in clauses 29.5, 29.6, 29.7, 29.8 29.9 and 34.3, every Applicant for Membership shall sign an Administration of IP Rights Agreement on terms acceptable to the Board (as contemplated in clause 9.4.2), which agreement shall provide for the Administration by the Co-operative of at least all the Worldwide Performing Rights (including any share or part thereof) in all or any Works or parts of Works, present and future, of which the Applicant is the Author or Publisher which:
 - 29.3.1. the applicant has at the date of application for Membership; and
 - 29.3.2. which subsequently are acquired by, or vest in, the Applicant after submission of the application for Membership until either the application is declined or the Member's Membership is terminated and the Co-operative has ceased to Administer the Member's IP Rights.
- 29.4. In addition to conclusion of the Administration of IP Rights Agreement in respect of the Administration of Performing Rights referred to in clause 29.3 (and subject to clause 29.8), every Applicant or Member may, when

applying to become a Member (and/or at any time thereafter), on request by the Co-operative, enter into an agreement with the Co-operative (which can be part of or an addendum to the agreement referred to in clause 29.3 but shall be deemed to be part of the Administration of IP Rights Agreement) providing for the Administration by the Co-operative of:

- 29.4.1. the Worldwide Mechanical Right in all or any Works, present and future, of which he/she/it is the Author and/or Publisher, and/or the whole or any part of the Mechanical Right in any Work or part of a Work to the extent that any such right or part of a right is or shall during his/her/its Membership be or become vested in him/her/it; and/or
 - 29.4.2. the Needletime Rights in South Africa in every Recorded Performance of such Member.
- 29.5. Notwithstanding the default requirements in regard to the territory applicable to the Administered IP Rights, the Board may exempt an Applicant or an existing Member from the default territories or regions applicable to the IP Rights to be Administered by, and Assigned to, the Co-operative (e.g. on a Worldwide Basis) and instead accept a more limited territory or region (e.g. in the Principal Territory only) in respect of all or part of the Administered IP Rights.
- 29.6. Subject to clause 29.8, in order to facilitate the Administration of the Administered IP Rights, all Applicants (and Members adding additional categories of Administered IP Rights as contemplated in clause 29.4) shall be required to, together with the execution of the Administration of IP Rights Agreement, in so far as is lawfully possible, Assign to the Co-operative the IP Rights (including, without limitations, all rights to payment of royalties and licence revenue) to be Administered by the Co-operative and shall contemporaneously with the execution of the Administration of IP Rights Agreement execute a deed of assignment on terms satisfactory to the Board (which can be part of or annexed to the Administration of IP Rights Agreement). In so far as it is not lawfully possible to Assign all or part of the relevant IP Rights to the Co-operative, the Applicant shall be required to, in so far as is lawfully possible, grant the Co-operative an exclusive licence to Administer the relevant IP Rights (or part thereof) on terms satisfactory to the Board. In the event that the Board subsequently comes to the view that any deed of assignment or exclusive licence agreement is unlawful, defective, problematic or unsatisfactory for any reason whatsoever, the Board may require the relevant Member to execute a new deed of assignment or exclusive licence agreement on the Co-operative's then standard terms and conditions adapted in so far as is necessary to address the issue, and the Member shall be obliged to execute such deed of assignment or exclusive licence agreement.
- 29.7. The Board may, in its discretion, agree to or accept the exclusion of any Grand Rights or other IP Rights from the Performing Rights required to be included in the Administered IP Rights in terms of clause 29.3.
- 29.8. Notwithstanding clause 29.6, the Board may determine, in relation to any or all Applicants or existing Members, that it is permissible for such Persons to not Assign all or part of their IP Rights to the Co-operative, but to instead grant to the Co-operative any other right or mode of authority (including by appointment of the Co-operative as

agent for the applicant, or the granting of an exclusive licence over the IP Rights to the Co-operative) in relation to such IP Rights (or certain of such IP Rights), which right or authority facilitates the Administration of such IP Rights by the Co-operative, and which is acceptable to the Board and consistent with the provisions of this Constitution. The Board may also agree in writing to an amendment to any Administration of IP Rights Agreement or deed of assignment from time to time.

- 29.9. A Person who becomes a Member of the Co-operative solely in respect of Needletime Rights is not required to be a Member of the Co-operative also in respect of any of the other category of Administered IP Rights (for example Performing Rights or Mechanical Rights).
- 29.10. Any of the IP Rights referred to in clauses 29.3 and 29.4, agreed to be Administered by the Co-operative, shall be included in the Members' Administered IP Rights and unless otherwise agreed to in Writing by the Co-operative, the Administration Rights granted in terms of the Administration of IP Rights Agreement shall be deemed to include the exclusive right to hold, control, administer, make use of, commercialise or enforce the relevant Administered IP Rights.
- 29.11. Notwithstanding anything to the contrary, the Co-operative shall be entitled to, in so far as is lawfully possible, Assign or licence all or part the Administered Needletime Rights, together with the Administered IP Rights, to the Needletime Trust or another entity controlled by the Co-operative. The trustees of the Needletime Trust, or the board of such other controlled entity, shall be entitled to formulate any rules relating to the Administration of Needletime Rights, provided that, subject to the deed of the Needletime Trust, the Co-operative shall require that such rules shall, prior to implementation, first be ratified by the Board of the Co-operative, the Members by Ordinary Resolution and the Needletime Rights Members in the manner contemplated in clause 8.4.
- 29.12. Unless otherwise approved by the Board and agreed to in Writing, any Administration of IP Rights Agreement and deed of assignment executed pursuant to the provisions of this clause 29 shall be in the form prescribed by the Co-operative and shall operate for and during the period of the Member's Membership of the Co-operative and for any longer period provided for in clause 10. The Co-operative may at any time, by notice in Writing to any Member, decline to exercise the whole or any part of the Administration Rights, and thereupon the provisions of this clause 29 shall cease to apply to such right, and any related rights and obligations in the Administration of IP Rights Agreement or Assignment thereof already made to the Co-operative by such Member shall be terminated by the Co-operative and the Co-operative's Administration Rights shall terminate and the Co-operative shall Assign any of the excluded IP Rights vested in it as part of its Administration Rights back to the Member, provided always that the Co-operative may at any time, and from time to time, by further notice in Writing to such Member, withdraw such notice in respect of all or any of the IP Rights comprised therein, whereupon the provisions of this clause 29 shall again apply to such IP Rights and they shall be included in the Co-operative's Administration Rights and the Members' Administered IP Rights.

Constitution and Governance Rules Prevail

- 29.13. Notwithstanding anything to the contrary in a Administration of IP Rights Agreement, except where divergence is expressly permitted, any Administration of IP Rights Agreement (excluding any deed of assignment itself) shall be subject to and be deemed to incorporate the provisions of this Constitution and the Governance Rules as amended from time to time, and in the event of a conflict, the provisions of the Constitution and the Governance Rules shall prevail.
- 29.14. The Co-operative may accept and act upon the authority of any Member to exercise the Administration Rights in the Members Administered IP Rights to a greater extent than as defined or contemplated in this Constitution.

Restrictions

- 29.15. Except as expressly provided for in this Constitution, no Member shall be at liberty to cede or delegate any of its rights or obligations in respect of its Administered IP Rights, or the Administration of its Administered IP Rights by the Co-operative, or to alienate or exercise the Administration Rights granted to and/or vested in the Co-operative by the Member, or controlled by the Co-operative in connection with his/her/its Membership, or by this Constitution required to be so vested or controlled, without the prior Written authorisation of the Co-operative.
- 29.16. No Member shall, without the prior Written consent of the Co-operative, enter into any contract under which such Member shall or may be required, whether for valuable consideration or not, to write or compose any Work for any non-Member whether as employee or otherwise, without inserting in such contract an express provision reserving to such Member the Performing Right in any such Work.
- 29.17. The Members acknowledge the objects of the Co-operative and its Administration of the Administered IP Rights shall not be exclusively conducted for profit and in carrying out the Administration it shall also be entitled to pursue its non-profit objects and make use the Permissible Deductions for this purpose.
- 29.18. Unless agreed otherwise in Writing in the Administration of IP Rights Agreement (including any agreement entered into pursuant to clause 29.4), on becoming a Member, the Member grants to Co-operative the sole power and authority to Administer the Member's Administered IP Rights in any manner howsoever as may be determined by the Board, including, without limitation, the right (but not obligation) to:
- 29.18.1. grant the right or licence the use and exercise of the Administered IP Rights, which may be in the form of granting of blanket licences in respect of all the Administered IP Rights (including the Administered IP Rights of all Members and the Administered IP Rights of Contracting Participants and Affiliates), and the allocating of the revenue arising therefrom between the Members, Contracting Participants and Affiliates;
- 29.18.2. authorise or permit or forbid the exercise of the Administered IP Rights;

- 29.18.3. collect and receive and give effectual discharges for, royalties, fees, subscriptions and all monies in connection with the Administered IP Rights or any related agreements or arrangements including by way of damages or compensation for unauthorised use or commercialisation of any Administered IP Rights by all necessary or desirable actions or other proceedings, and to recover such monies, and to restrain and recover damages for the infringement of the Administered IP Rights or any other related rights of the Members or of the Co-operative;
- 29.18.4. institute and prosecute proceedings against all Persons infringing the Administered IP Rights and, to defend or oppose any proceedings taken against the Co-operative or any Member in respect of the Administered IP Rights, and to compound, compromise, refer to court, arbitration or submit to judgment in any such proceedings, actions, disputes or differences, and generally to represent the Member in all matters concerning the said Administered IP Rights or the Administration thereof;
- 29.18.5. protect, generally, the Administered IP Rights and exercise and enforce all rights and remedies in this regard to the Administered IP Rights;
- 29.18.6. delegate authority to do any acts as aforesaid to any Affiliated Person or to appoint any agent, trustee or representative in territories overseas or elsewhere within the Republic, for the purpose of exercising the Co-operative's Administration Right in respect of the Administered IP Rights in such territories;
- 29.18.7. in the Administration of any Administered IP Rights, without limitation, make, and from time to time to rescind, alter or vary any arrangements and agreements with respect to any such use and commercialisation of the Administered IP Rights and to enforce such agreements;
- 29.18.8. obtain from the Members such powers of attorney or other authorities or instruments as may be deemed necessary or expedient by the Board for enabling the Co-operative to exercise and enforce in its own name, or otherwise, all the Administered IP Rights;
- 29.18.9. execute any agreements and other instruments and carry out any acts as may be deemed necessary or expedient for the purpose of the Administration of the Administered IP Rights;
- 29.18.10. on behalf of Members, administer any VAT on payments required to be made by Members and any related Taxes, and including the issue of tax invoices on behalf of Members and to deduct such amounts from any monies due to the Members;
- 29.18.11. do all or any of the above things in the territory in respect of which the Co-operative Administers the Administered IP Rights and as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with others; and

- 29.18.12. do all such other things as are in the opinion of the Directors incidental or conducive to the Administration of the Administered IP Rights.
- 29.19. Except as expressly provided for in this Constitution, the Co-operative may without the Members' consent Assign, cede and delegate its rights and obligations under the Administration of IP Rights Agreement, or alienate or further Assign any Administration Rights and, in so far as is lawfully possible, the Administered IP Rights Assigned to it for the purpose of Administration to a third party, except that the Co-operative shall only be entitled to do so:
- 29.19.1. to an entity wholly-controlled by the Co-operative and formed solely for purposes of Administering the Administered IP Rights; or
- 29.19.2. with the approval of the Members by way of Special Resolution, to a trust or company established for the purpose of Administering such Administered IP Rights, provided all Administration of IP Rights Agreements and Administration Rights in respect of all Members of the Co-operative are Assigned to such trust or company and the rights of the Members are not generally materially negatively affected.
- 29.20. Notwithstanding anything to the contrary contained in the Administration of IP Rights Agreement, and the fact that the Administration Rights or any of the Administered IP Rights may in law be vested in the Co-operative (primarily for the purpose of facilitating the Administering and use of such Administered IP Rights for the benefit of the Members), the Co-operative shall in relation to the use and Administration of Members' Administered IP Rights Administer and receive money, proceeds and benefits from the exercise and enforcement of such Administered IP Rights for the benefit of the Members pursuant to the rights of the Members in terms of this Constitution, subject to the Permitted Royalty Deductions and fees set out in this Constitution, any Governance Rules or any agreement with the Member as the case may be.

30. **ROYALTY PAYMENT EXPENSE AND GRANT OF RIGHTS PAYMENT EXPENSE**

- 30.1. Subject to clause 30.5, in consideration for the use of the Administered IP Rights and Administration Rights granted to the Co-operative pursuant to the Administration of IP Rights Agreement, the Co-operative shall, after settling and providing for any other matters contemplated in this Constitution, pay to the Members periodically as stipulated in the Payment Rules:
- 30.1.1. the Royalty Payment, as determined in accordance with clause 30.2; and
- 30.1.2. the Grant of Rights Payment, as determined in accordance with clause 30.3; and
- 30.1.3. the Operating Surplus Payment as determined in accordance with clause 31.
- 30.2. Subject to clause 30.5, an amount equal to the Licence Revenue received by the Co-operative during the relevant financial year minus the Permitted Royalty Deductions, shall be paid by the Co-operative to the Members (~~("%Royalty Payment")~~), as reasonably determined by the Board, applying the Payment Rules with reference to the Licence Revenue attributed to the respective Members' Administered IP Rights. The Board shall determine the

attribution of the License Revenue to the respective Members' Administered IP Rights and the proportions in which such Royalty Payment shall be apportioned between the Members, applying the Payment Rules. Royalty Payments shall be made at such times as are determined by the Board in accordance with the Payment Rules, provided that such payments shall be made before the end of the next financial year end. The Payment Rules may provide that any interest (after bank charges) that accrues on Net Licence Revenue while held by the Co-operative in an interest earning bank account or money market investment pending payment of the Royalty Payment shall be included in the Royalty Payment.

- 30.3. The Co-operative shall make an additional payment to those Members whose Performing Rights have generated Licence Revenue during the preceding financial year, in an amount reasonably determined to by the Board equal to any net Non-Licence Revenue (if any) after (i) settling or providing for any expenses or liabilities not included in Permitted Royalty Deductions deducted from the Licence Revenue and (ii) providing for any other amount the Board reasonably regards as required or desirable for the operations or objectives of the Co-operative or for the prudent management of the Co-operative having regard to the cash flow requirements, expected expenditure, anticipated operations and investments or any other matters the Board reasonably regards as relevant applying any relevant Payment Rules (~~%Grant of Rights Payment+~~). The Board shall determine the proportions in which the amount of the Grant of Rights Payment shall be apportioned between the Members whose Performing Rights generated Licence Revenue during the relevant financial year applying the Payment Rules.
- 30.4. In determining the Royalty Payment due to the Members, the Co-operative shall deduct from the Licence Revenue of the Co-operative, such amounts as are determined by the Board to be required to settle or provide for the following matters (~~%Permitted Royalty Deductions+~~) in accordance with the Payment Rules in force at the relevant time:
- 30.4.1. the payment of, or provision for, the expenses and liabilities (including all Taxes due or payable) incurred by the Co-operative in connection with the Administration of Administered IP Rights or otherwise in carrying out the purposes and operations of the Co-operative (which liabilities are not limited to those expenses and liabilities incurred in respect of any particular Members' Administered IP Rights);
- 30.4.2. payments or provision for any contributions or payments for any social or cultural purposes as may be reasonably determined by the Board, provided that such social and cultural deductions may not exceed the maximum percentage of the Licence Revenue as stipulated by CISAC (failing which its success body) or guidelines from time to time; and
- 30.4.3. set aside out of the revenue of the Co-operative such sums as it thinks proper as a reserve to meet contingencies, and/or for future distribution, and/or for such other purposes as the Board shall in its discretion think reasonable, and may invest such reserves as it may think fit, and from time to time deal with or vary such investments and dispose of all or any part thereof, and may divide the reserve

fund into such special funds as it thinks fit, and employ the reserve fund or any part thereof for any reasonable purpose.

30.5. The License Revenue generated by Needletime Rights and the Royalty Payments payable to Needletime Rights Members and the permitted deductions shall be regulated by the provisions of the Needletime Trust and shall:

30.5.1. not be payable by the Co-operative, but shall instead be paid to such Needletime Members by the Needletime Trust (or any other entity as contemplated in clause 29.11); and

30.5.2. not apportioned between the Needletime Rights Members by the Board, but such apportionment shall instead be determined by the trustees of the Needletime Trust (or the board of such other entity as contemplated in clause 29.11).

31. OPERATING SURPLUS PAYMENT

31.1. The Operating Surplus of the Co-operative in respect of each financial year, shall be determined by the Board in accordance with the Co-operatives Act and:

31.1.1. at least the required portion transferred to a reserve fund as contemplated in clause **Error! Reference source not found.**; and

31.1.2. the balance shall be allocated and credited or paid to Members in accordance with the Co-operatives Act in proportion to the value of the transactions conducted by a Member with the Co-operative in the year under consideration, which shall generally be regarded as the Licence Revenue received by the Co-operative during the preceding financial year in respect of the Administration of the Member's Administered IP Rights, as determined or attributed by the Board in applying the Payment Rules (**Operating Surplus Payment**), the Administration of IP Rights Agreement being regarded as an ongoing transaction with the Co-operative.

32. GENERAL PROVISIONS REGARDING PAYMENTS TO MEMBERS

32.1. For the purposes of this clause 32, **Payments** shall include any Royalty Payment, Grant of Rights Payment and Operating Surplus Payment.

32.2. The Board may decide to make interim payments to Members based on anticipated estimates, pending determination of the Payments to each of the Members.

32.3. Unless the Board determines otherwise, all unclaimed Payments shall not bear interest against the Co-operative. If the Board does determine that any unclaimed Payments shall bear interests, it shall determine the rate of interest from time to time. The Board may instead determine that any interest actually accruing on any funds held in respect of unclaimed Payments shall accrue for the benefit of the relevant Member. All unclaimed Payments may be invested or otherwise be made use of by the Directors for the benefit of the Co-operative until claimed,

provided that Payments remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable may be forfeited by resolution of the Directors for the benefit of the Co-operative. If the Co-operative is wound-up or deregistered, any such monies that were due to Members in respect of which the 3 (three) year period has not yet lapsed, shall be paid into the Guardian Fund.

- 32.4. The Co-operative shall be entitled at any time to delegate its obligations in respect of any unclaimed Payments to any one of the Co-operative's bankers from time to time.
- 32.5. The Directors may resolve that any Payments made to all or any Members whose registered addresses are outside South Africa or who have given Written instructions requesting payment at addresses outside South Africa, shall (subject to any Exchange Control Regulations in force at that time) be paid in such other currency or currencies as may be stipulated by the Directors. The Directors may also stipulate the date (hereinafter referred to as ~~the~~ **Currency Conversion Date**) upon which, and a provisional rate of exchange at which, the currency of South Africa shall be converted into such other currency or currencies, provided that the currency conversion shall be within a period of 30 (thirty) days prior to the date of payment. If, in the opinion of the Directors, there is no material difference between the rate(s) of exchange ruling on the Currency Conversion Date and the provisional rate(s) of exchange stipulated by the Directors, then the currency of South Africa shall be converted at such provisional rate(s). If, in the opinion of the Directors, there is a material difference, then the currency of South Africa shall be converted into such other currency or currencies at the rate(s) of exchange ruling on the Currency Conversion Date, or at a rate or rates of exchange which, in the opinion of the Directors, is/are not materially different. Any subsequent rise or fall of rate(s) of exchange determined as above shall be disregarded.
- 32.6. The Co-operative may cease, subject to the provisions of this Constitution, to send any cheque, warrant or order by post, or by Electronic Communication, for any Payment which is normally paid in that manner if, in respect of at least 3 (three) consecutive Payments payable to such Member, the cheque, warrant, or order has been returned undelivered or remains uncashed, but shall recommence sending cheques, warrants or orders in respect of the Payments payable to such Member if the Member (or Person entitled by transmission as contemplated in clause 12 (*Transmission of Membership by Operation of Law*)) claims the arrears of the Payments and does not inform or instruct the Co-operative to pay future Payments in some other way.

33. MEMBERS FUNDS

- 33.1. Subject to the Co-operative's Act and the Governance Rules, the Board may, at any time, establish 1 (one) or more funds of Members on such terms as the Board may determine, and may dissolve such funds at any time (in which case any amount standing to the credit of a Member in such fund must be paid to such Member). The Board may without limitation determine that:
- 33.1.1. any interest or growth in such funds shall accrue for the benefit of the Members; or
- 33.1.2. such funds shall attract interest at a rate determined by the Board from time to time.

34. **THIRD PARTY AGREEMENTS**

- 34.1. The Board may contract with any Person in relation to the Administration of such Person's IP Rights by the Co-operative only on a contractual basis, without such Person (**Contracting Participant**) becoming a Member of the Co-operative and may adopt Governance Rules regulating such Administration as contemplated in clause 8 and/or establish standard terms and conditions that may be applied to such arrangements.
- 34.2. The Board may further contract with any Affiliate on such terms as the Board may agree to in its sole and absolute discretion.
- 34.3. Subject to any applicable the Contracting Participant Administration Rules, the agreement contemplated in clause 34.1 may contain any such terms as the Board may agree to in its sole and absolute discretion. The Co-operative may grant blanket licenses in respect of some or all of the Administered IP Rights (including the Administered IP Rights of all Members and the Administered IP Rights of Contracting Participants and Affiliates) and, subject to the relevant agreements, the Board shall attribute the revenue arising therefrom and related expenses between the Members, Contracting Participants and Affiliates.
- 34.4. A Person who is a member of an Affiliated Society in respect of such Person's Performing Rights that has not agreed to the Administration by the Co-operative of its Performing Rights, shall be allowed to be a Member of the Co-operative by virtue of:
- 34.4.1. agreeing to the Co-operative Administering its Mechanical Right; and
- 34.4.2. agreeing to enter into an Administration of IP Rights Agreement providing for the Administration by the Co-operative of such rights.
- 34.5. The Co-operative may exercise and enforce the Administered IP Rights in respect of members or shareholders of any Affiliated Society, pursuant to the terms of any contracts now existing or which may hereafter be concluded between the Co-operative and such Affiliated Society.
- 34.6. The Co-operative may accept and act upon the authority of an Affiliated Society to exercise any IP Rights they or their Members have in any manner whatsoever.
- 34.7. The Board may determine to appoint any Contracting Participant or Affiliate as an **associate member** as contemplated in section 14(2)(e) of the Co-operatives Act.

35. **LOSS OF DOCUMENTS**

The Co-operative shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *ejusdem generis*) any other document (whether material or immaterial) sent through the post, Electronic Communication, or any other manner, to the registered address of any Member or to any other address requested by the Member.

36. NOTICES

- 36.1. The Co-operative may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Member, or by sending them prepaid through the post or by transmitting them by telegram, telex, fax or any other method. The Co-operative must give notice of any General Meeting to each Person entitled to vote at such General Meeting who has elected to receive such notice, other than proxies.
- 36.2. Any Member who/which has furnished an Electronic Address to the Co-operative, by doing so authorises the Co-operative to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him/her/it.
- 36.3. Any notice, document, record or statement or notice of availability of the foregoing sent by the Co-operative shall, where applicable to a method of delivery set out in **Schedule 1**, be deemed to have been delivered on the date and time determined in accordance with **Schedule 1**. If a notice, document, record or statement or notice of availability is sent by non-registered post, it shall be deemed to have been delivered on the 7th (seventh) day after the letter, envelope or wrapper containing the same is posted and, in proving such service, it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and posted. All references in this Constitution to ~~be delivered~~ / ~~be delivered~~ shall include reference to deemed delivery as aforesaid. The Co-operative shall not be bound to enter any Person in the Members Register as Member until that Person gives the Co-operative an address for entry in the Members Register.
- 36.4. Notwithstanding the date on which a Person becomes a Member, such Person shall be bound by all notices, documents, records or statements or notices of availability published by the Co-operative prior to such date.
- 36.5. As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

37. WINDING-UP

- 37.1. The Co-operative may be wound-up voluntarily by a resolution adopted by at least 75% (seventy five percent) of the Members.
- 37.2. In the event of and upon the winding-up or deregistered (collectively referred to as **winding-up**) of the Co-operative, whether voluntary or otherwise:
- 37.2.1. all Administration of IP Rights Agreements shall immediately terminate and the Administration Rights granted to the Co-operative shall lapse;

- 37.2.2. any IP Rights vested in the Co-operative shall revert to the Member (or his/her/its representative) on whose behalf such rights are held (and the Co-operative shall Assign such IP Rights back to the respective Members with effect from the date of the winding-up of the Co-operative); and
- 37.2.3. the residual assets of the Co-operative (including accumulated profits) shall, in so far as they are available for such distribution after settling all creditors, be distributed to the Members at the date of such winding-up in the proportion to the aggregate Operating Surplus Payments (or, if no Operating Surplus Payments were made, then the aggregate Royalty Payments) received by each such Member over the period of 5 (five) financial years immediately prior to such winding-up. **[S 75(4)]**

Schedule 1 - Methods of delivery

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
Any Person	<p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>	<p>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the date and at the time recorded by the computer used by the Co-operative.</p> <p>On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
Any natural Person	<p>By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
A company or similar body corporate	By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;	On the date and at the time recorded on a receipt for the delivery.

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	<p>By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>

Schedule 2 - Membership Qualification

Introduction

In all instances the duration of Membership in regard to qualification shall take into account Membership of the company prior to the Conversion Date and the conversion to a co-operative.

Associate Member Qualification

1. The qualifications for Associate Membership are that:

1.1. the Candidate Member must have been a Member for at least two years; and

1.2. the Member's average Royalty Payments for any two consecutive financial years must be:

1.2.1. in the case of Authors, at least one ten thousandth of the total Royalty Payments to all Members; and

1.2.2. in the case of Publishers, one two thousandth of the total Royalty Payments to all Members.

1.2.3. a person that is a Member solely in respect of the administration of Needletime Rights cannot qualify.

Full Membership Qualifications

2. The criteria for a member to be selected for consideration for promotion to Full Membership is:

2.1. All Members with the membership status of Candidate or Associate Member are eligible for promotion.

2.2. Only Members with a category status of Author or Publisher are eligible for election to Full Membership.. Subject to paragraph 2.4, Affiliated Societies and beneficiaries are not Members and not eligible for election. A person that is a Member solely in respect of the administration of Needletime Rights does not qualify.

2.3. Members who are Members solely in respect of a deceased Predecessor's Administered IP Rights (ie with Membership status equal to ~~Deceased~~) and Terminated are not selected for promotion.

2.4. Both Persons who are Members of the Co-operative only (i.e. ~~Ordinary-Elected Members~~), and Persons who are Members of the Co-operative and members or shareholders of another Affiliated Society, or were at some stage, members or shareholders of an Affiliated Society, (i.e. ~~Multiple-Elected Members~~) are eligible for election to Full Membership, provided that such Persons must have been a Member of the Co-operative or such Affiliated Society for 10 (ten) or more years. If the

Person was a Member of the Co-operative only (i.e. Ordinary-Elected Member) then the first recorded date of election/subscription to Membership of the Co-operative shall be used to determine the period of eligibility. If the Person is a Member of the Co-operative and a member or shareholder of another Affiliated Society, or was at any stage a member or shareholder of an Affiliated Society (i.e. Multiple-Elected Member), then the date that such Person became a Member of the Co-operative or a member or shareholder of the Affiliated Society, whichever came first, shall be used to determine the period of eligibility. Should there have been an interruption in a Person's membership or shareholding (such as when a Person may, after becoming a Member of the Co-operative, have terminated such Membership), then the first date of election into Membership after the interruption shall be used to determine eligibility.

2.5. The factors chosen, the rationale and the points weightings are reflected in the table below:

Factor	Rationale	Points
Number of years of membership	<ul style="list-style-type: none"> ○ Points have been allocated to this criterion to satisfy it. 	30
Number of Works	<ul style="list-style-type: none"> ○ The number of Works which a Member has written points to the Member's contribution to South African music, as well as to his/her/its loyalty to the Co-operative. 	5
Percentage of Musical Works which are documented	<ul style="list-style-type: none"> ○ Percentage documentation points to a Member's diligence in ensuring that all his/her/its Works are notified. Naturally, the better the percentage of documentation, the less costly for the Co-operative to maintain his/her/its Works and the less the burden on other Members as well. 	5
Time value of Works	<ul style="list-style-type: none"> ○ Number of Works on its own does not necessarily point to good contribution e.g. a Member with 300 jingles has not made the same contribution as a Member with 300 full Works. Bringing the time value of these Works into the equation, levels the playing field 	25

Financial good standing	<ul style="list-style-type: none"> ○ values to be populated into this field are No Loan, Good or Poor ➤ No Loan . if the Advance Balance on the Administration system is zero ➤ Good . every non-paid-up advance, that a member has, which is greater than 12 months old, has a minimum of 25% repaid or the member has no loans older than 12 months old ➤ Poor - Any non-paid-up advance . if a loan is older than 12 months, then 25% should have been recovered, if older than 24 months, then 75% should have been recovered, if older than 36 months, then it should have been repaid in full, else considered poor. 	10
Average earnings	<ul style="list-style-type: none"> ○ All royalty credits for all distribution types are included ○ This factor takes account of royalties paid in the last 10 distributions . excluding current distributions in progress. ○ Level of Royalties Payments also points to the level of contribution, but the points value for this element has been restricted, as contributions may be made by individuals whose Works are not popular yet may be of significant cultural value, so their Royalty Payments may be small 	5
Awards won	<ul style="list-style-type: none"> ○ This factor was introduced to reflect the prominence or prestige awarded to a member within the sphere of creative or performing Works. Credit is given for any contribution to a Work that is the subject of any award around the world 	10
Percentage of foreign earnings	<ul style="list-style-type: none"> ○ The factor was introduced to reflect the contribution to the development and exposure of South African Music abroad. Naturally, the higher the foreign earnings percentage, the greater the level of exposure to South African music 	10
Total points		100

3. Two factors not included in the calculation for publishers are:

3.1. loans, which are not provided to publishers, and

3.2. awards.

Thus, for Publishers only the remaining 8 (eight) factors are taken into account in determining the Publishers to be promoted. Furthermore, the following factors are adjusted in respect of Publishers in order to make them more appropriate, namely:

1. number of Works
2. time value of Works
3. average earnings

These factors are multiplied by 100 and thus the qualifying criteria have been amended for Publishers to take account of these changes. Scoring of the factors is done in accordance with the following table for Members:

Factor	Max points	Points allocated				
Length of membership	30	> 40 yrs	> 30 yrs	> 20 yrs	> 15 yrs	> 10 yrs
Points allocated		30	25	20	15	10
Number of Works	5	>200	>150	>100	>70	>40
Points allocated		5	4	3	2	1
% documented	5	>80%	>70%	>60%	>50%	>40%
Points allocated		5	4	3	2	1
Time value of Works	25	>600m	>500m	>350m	>150m	>50m
Points allocated		25	20	15	10	5
Financial good standing	10	no loans	good standing	poor standing		
Points allocated		10	5	0		
Average earnings	5	>250k	>150k	>100k	>50k	<50
Points allocated		5	4	3	2	1
Awards won	10	>5	>4	>3	>2	>1
Points allocated		10	8	6	4	2
% foreign earnings	10	>50%	>40%	>30%	>20%	>10%
Points allocated		10	8	6	4	2

4. In summary, the differences between a Author and a Publisher member in terms of criteria that vary are as follows:

Criterion	Number		Points
	Author	Publisher	
Number of Works	>200	>2000	5
Time value of Works	>600	>6000	25
Average earnings	>R250k	>R2500k	5

5. As a consequence of the foregoing, the cut-off for promotion of Publishers is different to that of Author Members, as their criteria are different. A Member that is both a Author and a Publisher may qualify by virtue of meeting the requirements of either category.
6. The initial basis for qualification for election is the aggregate points of a Member expressed as a percentage out of 100. Members with the highest point values, being the most eligible to be considered for promotion.
7. The Board then in its discretion will determine:
- 7.1. a cut off points value for election to Full Membership; and/or
 - 7.2. a limited number of Members to be elected to Full Membership with the Members with the highest points score being eligible for promotion by way of election.
8. For example, currently the Board has determined that:
- 8.1. only the top fifteen Members in respect of the relevant year with an allocated points score of 60 or above, shall be eligible for promotion to Full Membership;
 - 8.2. where more than fifteen Members have an allocated points score of 60 or above, an elimination process based on:
 - 8.2.1. the number of points scored; then if the Members have equal points;
 - 8.2.2. the highest score obtained by the members in respect of the time value of the Works Administered by the company; and, if these are equal as well, then,
 - 8.2.3. the highest score obtained in respect of the percentage of documented Works;
- shall be used, until the number of fifteen eligible Members has been reached.