

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008

MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY

NAME OF COMPANY : BUSINESS WESTERN CAPE NPC

Registration Number : / /

("BWC")

This MOI was adopted in accordance with a proposal by the Board issued on 9 MARCH 2023 and adopted by a Special Resolution taken by the voting members at a meeting of the Business Western Cape held on 2 June 2023.

The memorandum of incorporation contained in Form COR 15.1E of the Companies Regulations, 2011 shall not apply to the Company.

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MEMORANDUM OF INCORPORATION OF BUSINESS WESTERN CAPE

which is referred to in the rest of this Memorandum of Incorporation as “BWC”

1. INTRODUCTION

BWC is incorporated as a Non-Profit Company (NPC) consisting of voting members as contemplated in Section 10(3) and (4) of the Act, 71 of 2008 and functioning as a provincial business network.

2. INTERPRETATION

In the interpretation of this memorandum of Incorporation (“MOI”) and unless contrary to or excluded by the subject or context:

2.1. Any word herein signifying:

2.1.1. The singular shall include the plural and vice versa;

2.1.2. The masculine shall include the feminine and the neuter;

2.2. Any word herein which is defined in the Act and is not defined under clause 2.5 below shall bear that statutory meaning in this MOI;

2.3. Any word, phrase or sentence herein which is not defined in the Act or in clause 2.5 shall bear its usual meaning;

2.4. Each term, power or authority herein shall be given the widest possible interpretation;

2.5. Each of the following words and expressions herein shall have the meaning stated opposite it and, where applicable, cognate expressions shall have a corresponding meaning, namely:

2.5.1. “the Act” shall mean the Companies Act, 71 of 2008, together with the Companies Regulations 2011, as amended or substituted from time to time;

2.5.2. “Annual General Meeting” shall mean a meeting to be held within 9 (nine) months after completion of the financial year. The Annual General Meeting is the highest decision-making body of BWC;

2.5.3. “the Board” shall mean the board of directors of BWC elected in terms of this MOI;

2.5.4. “Auditors” shall mean the appointed auditors of BWC from time to time;

2.5.5. “BWC” shall mean BUSINESS WESTERN CAPE (NPC), Registration Number _____;

2.5.6. “Board of Directors” shall mean the following persons: the elected Chairperson, Two (2) Deputy Chairpersons, Secretary

and a maximum of seven (7) other Directors.

The Board of Directors is the strategic and operational body of BWC;

- 2.5.7. "Business day" means any day which is not a Saturday, Sunday or Public Holiday in the Republic of South Africa;
- 2.5.8. "Chairperson" shall mean the Chairperson of the Board for the time being of BWC, elected in terms of clause 25;
- 2.5.9. "Committee" shall mean any committee consisting of such member or members of BWC as the Board of Directors may constitute in terms of this MOI and to whom the Board of Directors may delegate such of their powers as they deem appropriate;
- 2.5.10. "Country" shall mean the Republic of South Africa;
- 2.5.11. "Directors" shall mean the directors for the time being of BWC, elected in terms of clause 22;

- 2.5.12. "Electronic Communication" has the meaning set out in the Electronic Communications and Transactions Act 25 of 2002;
- 2.5.13. "Members" shall mean voting and non-voting members, and are as such persons or organisations as the Board of Directors shall admit to membership in accordance with this MOI;
- 2.5.14. "MOI" shall mean this Memorandum of Incorporation;
- 2.5.15. "Ordinary Resolution" means a resolution adopted with the support of more than 50% (Fifty percent) of the voting members eligible to vote;
- 2.5.16. "Rules" shall mean the rules made by the Company as contemplated by Sections 15(3) to 15(5) of the Act;
- 2.5.17. "Special Resolution" means a resolution adopted at a General Meeting with the support of more than 75% (Seventy-Five Percent) of the voting members who are eligible to vote;
- 2.5.18. "General Meeting" shall mean any general meeting of BWC or any adjournment thereof, including an Annual General

Meeting convened in terms of clause 15;

2.5.19. "the Financial Year" shall mean the period stretching from 1 March until 28 February;

2.5.20. "Income Tax Act" shall mean the Income Tax Act 58, of 1962, as amended from time to time.

3. INCORPORATION

3.1. This MOI does not impose any liability on any person for the liabilities or obligation of BWC in addition to those set out in the Act.

3.2. BWC is incorporated as a Non-Profit Company, as defined in the Act; as such BWC must apply all its assets and income, however derived, to advance its stated object as set out in this MOI.

3.3. BWC is incorporated in accordance with, and governed by –

3.3.1. The unalterable provisions of the Act, that are applicable to Non-Profit Companies;

3.3.2. The alterable provisions of the Act, that are applicable to Non-Profit Companies, subject to any limitation, extension, variation, substitution set out in this MOI.

3.4. No person or organisation shall solely by reason of being an incorporation or director of BWC, be liable for any liabilities or obligations of BWC.

4. OBJECTIVES AND POWERS OF BWC

- 4.1. The objectives of BWC are to promote the economic and business interests of its members and the Western Cape by means of active participation as a multi sectoral business organisation, and in doing so to:
- 4.1.1. position BWC as a representative voice for micro, small, medium and large business enterprises within the Western Cape on issues relevant to economic growth and development;
 - 4.1.2. provide value-adding services to all its members to meet their respective identified needs;
 - 4.1.3. initiate and facilitate key economic engagements through alliances, associations and collaborations with stake holders that will act as a catalyst for economic growth.
 - 4.1.4. Except to the extent necessarily implied by the stated objectives of BWC, the objectives, purposes and powers of BWC are not subject to any restriction, limitation or qualification, as contemplated in Section 19(1)(b)(ii) of the Act.
 - 4.1.5. BWC is not subject to any provision contemplated in Section 15(2)(b) or (c) of the Act.
 - 4.1.6. Notwithstanding the omission from this MOI of any provisions to that effect, BWC may do anything which the Act empowers it to do, as if so authorised by this MOI.
 - 4.1.7. Upon dissolution of BWC, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Act.

5. CONDITIONS

- 5.1. BWC shall ensure that substantially the whole of its activities are directed to the furtherance of its purpose and objectives and not for the specific benefit of an individual member or minority group.
- 5.2. BWC is prohibited from having a share or other interest in any business, profession or occupation which is carried on by the members.
- 5.3. BWC must not:
 - 5.3.1. Directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of BWC, or who is a member or Director of BWC, except as:
 - 5.3.1.1. Reasonable remuneration for goods delivered or services rendered to, or at the direction of the Board of Directors of BWC; or
 - 5.3.1.2. Payment of, or reimbursement for, expenses incurred to advance a stated object of BWC; or
 - 5.3.1.3. As a payment of an amount due and payable by BWC in terms of a *bona fide* agreement between BWC and that person or another; or
 - 5.3.1.4. As a payment in respect of any rights of that person, to the extent that such rights are administered by BWC in order to advance a stated object of BWC; or
 - 5.3.1.5. In respect of any legal obligation binding on BWC.

5.4. BWC shall substantially utilise its entire funds for the objects for which it has been established.

5.5. BWC may not, directly or indirectly, distribute any of its funds or assets to any person other than in the furtherance of its objectives.

5.6. BWC shall not become a party to and will not permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

6. MEMORANDUM OF INCORPORATION, COMPANY RULES AND OPTIONAL PROVISIONS

6.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors in the MOI (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects), which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Act.

6.2. The MOI does not restrict, limit, or qualify the power of the Board to make, amend or repeal any necessary or incidental rules relating to the governance of BWC in respect of matters that are not addressed in the Act, or this MOI, in accordance with the provisions of section 15(3) of the Act.

6.3. In the event that BWC is approved as an association in terms of section 30B of the Income Tax Act:

6.3.1. Any amendments to this MOI shall be submitted to the Commissioner of South African Revenue Service within 30 (thirty) days from such amendment; and

6.3.2. BWC shall comply with such reporting requirements as may be determined by the Commissioner of South African Revenue Service from time to time.

6.4. If the Board makes any rules, it must file a copy of those rules in the manner prescribed in the Act and must publish them by sending a copy of those rules via electronic communication to each member.

6.5. If the Board or any individual authorised by the Board, alters this MOI or any rules or repeal such rules made by it in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, it must publish a notice of such alteration or repeal by sending a copy of the altered rules or MOI or repealed rules, as the case may be, electronically to each member and must file a notice of alteration in the manner prescribed by the Act.

6.6. BWC elects in terms of Section 34(2) to comply voluntarily with the provisions of Chapter 3 of the Act, to the extent that it shall appoint an auditor and that it shall have its financial statement audited on an annual basis

7. MEMBERS AND MEMBERSHIP OF BWC

7.1. Incorporating members of BWC and that shall be admitted as members against the registration of the MOI shall be:

- The AHI (means the Afrikaanse Handels Instituut Western Cape, a Section 21 Company not for gain);
- NAFCOC (means the National African Federated Chamber of Commerce and Industry, a voluntary association not for gain);
- WECBOF (means the Western Cape Business Opportunities Forum, a section 21 Company not for gain)
- Black Business Chamber

7.2. Members of BWC consist of persons or organisations as described below, namely:

7.2.1. **BUSINESS CHAMBERS**

Any business chamber situated in the Western Province and who is prepared to pay a membership fee that is determined from time to time, may become a Business Chamber member of BWC, subject to approval of the Board of Directors.

7.2.2. **BUSINESS MEMBERS**

Any person, partnership, association, company, co-operation or other organization involved in any way in the business life of the Western Province and which subscribes to the aims of BWC, and who is prepared to pay a membership fee that is determined from time to time, may become a Business Member of BWC, subject to approval of the Board of Directors.

7.2.3. **AFFILIATED MEMBERS**

Any trade, industrial or financial organization situated in the Western Province that is involved in the economic structure of the Western Province, and who is prepared to pay a membership fee that is determined from time to time, may become an Affiliated Member of BWC, subject to approval of the Board of Directors.

7.2.4. **CORPORATE MEMBERS**

Any person, partnership, association, company or other organization that trades, does business or is in any way involved in the Western Province's business life and who is prepared to pay a

membership fee that is determined from time to time, may become a Corporate Member of BWC, subject to approval of the Board of Directors.

8. APPLICATION FOR MEMBERSHIP

- 8.1. There is no limitation on the number of members of BWC.
- 8.2. When admitting persons or organisations to membership of BWC the Board of Directors shall clearly identify the category of membership to which such person or organisation has been admitted.
- 8.3. Applications for membership shall be in such form as may be prescribed by the Board of Directors from time to time and shall be duly signed by the applicant. The Board of Directors shall have an absolute discretion as to whether any such persons' or organisations' application for membership shall be accepted and shall not be bound to assign any reason for refusing an application for membership.
- 8.4. All applications for membership to BWC by an individual or organisations shall only be considered if there are no existing member chambers within the area where such individual or organisation operates in or are based.
- 8.5. If the application is approved, the signature of the applicant on the application for membership form will be regarded as an acknowledgment that the applicant regards itself as bound by the MOI.

9. TRANSFERABILITY OF MEMBERSHIP

The rights of a member shall not be transferable.

10. RESIGNATION OF MEMBERSHIP

- 10.1. Any member may resign as a member of BWC by giving written notice to BWC to that effect.
- 10.2. On acceptance of a resignation by the Board of Directors, the members' membership shall automatically be terminated.

11. TERMINATION OF MEMBERSHIP

- 11.1. A member shall cease to be a member of BWC upon written notice from the member of his or her resignation from BWC.
- 11.2. The Directors shall have the power in their sole and absolute discretion to terminate a member's membership if:
 - 11.2.1. the member has any direct or indirect personal or private interest in BWC;
 - 11.2.2. the member is guilty of conduct detrimental to the interest and/or objects of BWC;
 - 11.2.3. the member is sequestrated, surrenders his estate, or being a company is wound up or placed under judicial management;
 - 11.2.4. the member has contravened the code of conduct of BWC through its actions, omissions or in any other way;
 - 11.2.5. it is detrimental to the interests of BWC that the member should continue to be a member of BWC;

11.2.6. the member, after written notice by BWC, fails to pay the prescribed membership fee that may be due and payable within a reasonable time of such notice.

12. MEMBERSHIP FEES (INCLUSIVE OF OTHER OBLIGATIONS.)

12.1. The annual membership fees payable by the respective members shall be determined by the Board of Directors from time to time;

12.1.1. Membership fees shall be payable at the beginning of every financial year, annually in advance. No pro-rata membership fees will be applicable;

12.2. Any member who fails to pay its membership fees within 30 (thirty) days of the due date thereof, or within 30 (thirty) days of his admission to membership, shall be in breach of its obligations to BWC.

12.3. A member whose membership of BWC has been terminated, as indicated in clause 11 above, shall remain liable for all membership fees due to BWC as up to the date of termination of the membership of such member.

13. ELECTRONIC MAIL ADDRESSES, POSTAL ADDRESSES, REGISTERED ADDRESSES AND PRINCIPAL PLACE OF BUSINESS OF MEMBERS

13.1. A member must give written notice to the Board of Directors of its electronic mail address, postal address, registered address and principal place of business, and any subsequent alteration thereof.

13.2. A notice directed and sent by BWC to a member by mail or electronic mail to its electronic mail address or registered address is deemed to be

delivered to the relevant member within one (1) day after being sent, or in the case of physical delivery, when the delivery has been effected.

14. RIGHT TO INFORMATION

14.1. The rights to access information are restricted as set out in Section 26(1) of the Act.

15. ANNUAL GENERAL MEETINGS

15.1. BWC shall in each year hold an Annual General Meeting, provided that:

15.1.1. not more than 15 (fifteen) months shall elapse between the date of one annual general meeting and that of the next; and

15.1.2. an Annual General Meeting shall be held within 9 (nine) months after the end of BWC's financial year.

15.2. The Directors shall have the power to convene other general meetings of BWC at such time and place as the Directors may determine.

15.3. The Directors shall also convene other general meetings where a requisition is made by the number of members of BWC as set out in Section 61(9) of the Act.

16. NOTICE OF GENERAL MEETINGS

16.1. Subject to the provisions of the Act:

16.1.1. not less than 21 (Twenty-One) days' notice in writing of an annual general meeting or of a general meeting at which a

special resolution is to be proposed, shall be given to all members:

- 16.1.2. not less than 14 (Fourteen) clear days' notice in writing of any other general meeting shall be given to all members.
- 16.2. The notice period as provided for in clause 16.1 shall be exclusive of the day on which the notice is served or deemed to be served and exclusive of the date of the meeting.
- 16.3. The notice of a general meetings shall state –
 - 16.3.1. the place, day and hour of that meeting; and
 - 16.3.2. the matters which will be considered at such meeting.
- 16.4. A meeting of BWC shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by a majority of the members having a right to attend and vote at the meeting, being a majority holding not less than 75% (seventy-five per cent) of the total voting rights of all the members.
- 16.5. The inadvertent omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings at that meeting.

17. PROCEEDINGS AT GENERAL MEETINGS

- 17.1. The Annual general meeting shall deal with and dispose of all matter prescribed by the Act, including the consideration of the annual audited financial statements, the election of Directors and the appointment of an auditor and may deal with any other business laid before it.

- 17.2. Subject to the provisions of the Act, no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, a quorum at any general meeting shall be 50% (fifty percent) of the members entitled to vote and who are present in person at the commencement and throughout the meeting.
- 17.3. If within half-an-hour after the time appointed for the meeting a quorum is not present the meeting, if convened upon the requisition of members, shall be dissolved, in any other case it shall stand adjourned to a day not earlier than 7 (seven) days and not later than 21 (twenty-one) days after the date of the meeting and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the members present in person or by proxy shall be a quorum.
- 17.4. Where a meeting has been adjourned as aforesaid the Directors of the Board of BWC shall, upon a date not later than 2 (two) days after the adjournment, advise all members of BWC electronically of:
- 17.4.1. the date, time and place to which the meeting has been adjourned;
 - 17.4.2. the matters before the meeting when it was adjourned; and
 - 17.4.3. the grounds for the adjournment.
- 17.5. The Chairperson of the Board shall preside as chairperson at every general meeting of BWC.
- 17.6. If at a general meeting there is no Chairperson or the Chairperson is not willing to act or is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, a Deputy Chairperson of the Board or 1 (one) of the appointed Directors present shall be chairperson of the meeting.

- 17.7. Subject to the provisions of the Act, the chairperson of the meeting may, with the consent of the majority of members present at any meeting at which a quorum is present (and shall, if so, directed by the meeting) adjourn the meeting, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of articles 17.3 and 17.4 shall *mutatis mutandis* apply to such adjournment.
- 17.8. The members may participate in a meeting of Members by means of electronic communication including, but not limited to, conference, telephone or similar equipment by means of which all persons participating in the meeting can hear each other at the same time and any such participation in a meeting shall constitute presence in person at the meeting.

18. VOTES OF MEMBERS AT GENERAL MEETINGS

- 18.1. Every **Business Chamber Member** who is represented either by its representatives in person or by proxy at a general meeting shall have a maximum of 3 (three) votes per such member.
- 18.2. All other members who are represented either by its representatives in person or by proxy at a general meeting shall have 1 (one) vote per such member.
- 18.3. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before the declaration of the result of the show of hands) demanded by:
- 18.3.1. the chairperson of the meeting; or

- 18.3.2. by at least 3 (three) members present in person or by proxy having the rights to vote at meeting.
- 18.4. Any demand for a poll may be withdrawn.
- 18.5. The poll shall be taken in such a manner as the chairperson of the meeting directs and the result of the poll shall be deemed to be the result of the meeting.
- 18.6. Where a poll is not demanded, a declaration by the chairperson of the meeting that a resolution has been passed (as well as a making of an entry to that effect in the book containing the minutes of the proceedings of general meetings), 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, that the resolution was so passed.
- 18.7. In the case of an equality of votes, the chairperson of the meeting shall have a second or casting vote.
- 18.8. No member shall be entitled to vote at any General Meeting unless all moneys (if any) presently payable by him to BWC have been paid.
- 18.9. Any organisation which is a member of BWC may by resolution of its Council or other governing body authorise such person as it thinks fit to act as its representative at any meeting of BWC, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which he represents as the organisation could exercise if it was an individual member of BWC.
- 18.10. In the event that a dispute arises during any voting process which result in any interested party disputing the correctness of the results of the voting, the relevant matter will be directed to the Board of Directors to

adjudicate the matter. The decision by the Board of Directors shall be final and not subject to any appeal or revision process.

19. PROXIES

- 19.1. The instrument appointing a proxy shall be in writing and signed by the appointer or by his agent duly authorised in writing.
- 19.2. The holder of a general or special power of attorney, given by a member, shall be entitled to attend meetings and to vote, if duly authorised under the power to attend and take part in the meetings.
- 19.3. No representative of any member shall be entitled to hold more than 3 (three) proxies at any meeting of BWC.
- 19.4. The instrument appointing a proxy to vote at a meeting of BWC shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of the Act, a demand by a proxy shall be the same as a demand by a member.
- 19.5. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarial certified copy of such power of attorney, shall be deposited at the office not less than 48 (forty-eight) hours before the time for holding the meeting at which the person named in the instrument proposes to vote and in default of complying herewith, the instrument of proxy shall not be treated as valid.
- 19.6. No instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date when it was signed, unless so specifically stated in the proxy itself and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

19.7. The instrument appointing a proxy shall, subject to the provisions of the Act, be in the following set out below or as near thereto as circumstances permit:

BUSINESS WESTERN CAPE NPC

("BWC")

I/We _____

Of _____

Being a member of BWC, hereby appoint

Of _____

Or failing him _____

Of _____

as my/our proxy to attend and speak and vote on a poll for me/us and on my/our behalf at the annual general meeting or general meeting (as the case may be) of BWC to be held on the _____ day of _____ 20____ and at any adjournment thereof, as follows:

SIGNED this _____ day of _____ 20_____.

SIGNATURE

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy needs to be a member of BWC).

20. RECORDS OF GENERAL MEETINGS

- 20.1. The Directors shall cause a record to be made of the proceedings at every general meeting, including all resolutions passed at such meetings and shall cause such record and all resolutions passed to be inserted in a book provided for that purpose.
- 20.2. Any copy of any record or resolution referred to in clause 20.1, which purports to be signed by any Director or the Chairperson, shall be *prima facie* evidence of the matters stated therein.

21. RESOLUTION PASSED BY SIGNATURE OF ALL MEMBERS

- 21.1. Subject to the provisions of the Act, an ordinary resolution in writing signed by all members of BWC entitled to attend and vote at a general meeting shall be as valid and effective as if it had been passed at a general meeting properly held on the date on which the last signature is affixed.
- 21.2. Such resolution may consist of several documents in the same form, each of which is signed in terms of this article, by one or more members and shall be deemed (unless a statement to the contrary is made on that resolution) to have been passed on the date on which it was signed by the last member.

22. DIRECTORS

- 22.1. The Board of Directors of Business Western Cape shall not comprise less than 8 (eight) directors and not more than 12 (twelve) directors.
- 22.2. The Directors of BWC may not be connected persons in relation to each other as defined in the Income Tax Act, 58 of 1962.

- 22.3. The Directors of BWC shall hold office for a period of 3 (three) years from date of appointment but shall be eligible for re-election or appointment for 1 (one) further 3 (three) year term.
- 22.4. A vacancy occurring on the Board of Directors during any term of a director's office shall be filled as soon as reasonably practicable after the vacancy arises, by a person appointed by the remaining Directors.
- 22.5. In the event of a vacancy created by an Elected Director, the person appointed in terms of clause 22.4 above shall serve as an appointed director only until the Annual General Meeting following the vacancy arose at which Annual General Meeting the vacancy shall be filled by the election process by which a director shall be appointed in that vacancy.
- 22.6. A director duly elected as such to fill the vacancy of an Elected Director shall serve as director for the full remaining term.
- 22.7. The Board of Directors may appoint persons who possess the skills and qualifications beneficial to the board of directors to achieve the goals of BWC.
- 22.8. The Directors shall, on an annual basis, from amongst their number elect one or more office bearers as deemed necessary from time to time including, but not limited to, a Chairperson, Deputy Chairpersons and a Secretary.

23. AUTHORITY OF THE BOARD OF DIRECTORS

- 23.1. The authority of Business Western Cape's Board of Directors to manage and direct the business and affairs of Business Western Cape, as set out in section 66(1) of the Act, is not limited, or restricted by this Memorandum.

24. INDEMNIFICATION OF DIRECTORS

- 24.1. The authority of Business Western Cape's Board of Directors to advance expenses to a director, or indemnify a director in respect of legal proceedings, as set out in section 78(3) of the Act, is not limited, or restricted by this Memorandum.
- 24.2. The authority of Business Western Cape's Board of Directors to indemnify a director in respect of liability, as set out in section 78(5) of the Act, is not limited, or restricted by this Memorandum.
- 24.3. The authority of Business Western Cape's Board of Directors to purchase insurance to protect Business Western Cape, or a director, as set out in section 78(6) of the Act, is not limited, or restricted by this Memorandum.

25. OFFICERS

- 25.1. The Directors shall at their first meeting from amongst their number elect a Chairperson, two (2) Deputy Chairpersons and a Secretary.
- 25.2. The Chairperson, Deputy Chairperson and Secretary shall cease to be an officer of BWC if they cease to be a Director.
- 25.3. Within 30 (thirty) days of an officer ceasing to hold that office either because he resigns from that office or for any other reason, a replacement shall be elected in terms of this MOI.
- 25.4. The Directors may from time to time confer upon any officer such of the powers and authority vested in them as they may think fit, for such time, for such purposes, upon such terms and conditions and with such

restrictions as they may think fit and the Directors may from time-to-time revoke or vary all or any of such powers and authority.

- 25.5. The authority of the Business Western Cape's Board of Directors to appoint committees and to delegate to any such committee any of the authority of the Board as set out in section 72(1) of the Act, or to include in any such committee persons who are not directors, as set out in section 73(2)(a) of the Act, is not limited or restricted by this Memorandum.
- 25.6. The authority of a committee appointed by Business Western Cape's Board, as set out in section 72(2)(b) and (c) of the Act, is not limited or restricted by this Memorandum but shall be confined to the terms of reference by which it is created.
- 25.7. In the event that Directors are to be remunerated this decision shall be determined by a special resolution by the membership at the Annual General Meeting.

26. DISQUALIFICATION OF DIRECTORS AND ALTERNATE DIRECTORS

- 26.1. Any director or alternate director shall cease to be a director of BWC on the happening of any of the following events:
- 26.1.1. his estate is finally sequestrated;
 - 26.1.2. he files a petition for the surrender of his estate as insolvent;
 - 26.1.3. he is placed under curatorship by any court with competent jurisdiction;

- 26.1.4. a written notice to that effect signed by 50% (fifty per cent) of the Directors is delivered at the office with effect from the date stated in that written notice;
- 26.1.5. he delivers a notice of his resignation at the office with effect from:
 - 26.1.5.1. the date on which that notice is delivered; or
 - 26.1.5.2. any later date stated in that notice to which the Directors agree;
- 26.1.6. if he fails to attend 4 (four) consecutive meetings of Directors without prior apology and/or without good cause; or
- 26.1.7. if he is directly or indirectly interested in any contract or proposed contract with BWC and fails to declare his interest and the nature thereof in the manner required by the Act.
- 26.1.8. passes, publishes or cause to be published any information to the press or media, directly or indirectly, which information is confidential or which information will bring the reputation of BWC in disrepute and/or intends to be detrimental to BWC in any way.
- 26.1.9. becomes incapable by reason of mental disorder, illness or injury of managing and administering his own affairs.

27. DUTIES OF DIRECTORS

- 27.1. Without in any way derogating from the generality of the duties of the Directors, the Directors shall be obliged to:

- 27.1.1. administer any donations accepted in clause 30 and shall accept any donations which may be made by testamentary bequests or by donations *inter vivos* or by any other means, subject to the conditions set out in clause 30.2.
 - 27.1.2. from time to time open and/or hold a banking or similar account with an accredited financial institution in the name of BWC and to deposit in such account all moneys which are due to BWC in the first instance;
 - 27.1.3. administer the funds of BWC and income accruing to BWC in order to achieve the object and purpose of BWC;
 - 27.1.4. keep proper and comprehensive books of account and records;
 - 27.1.5. retain any records or other documents in respect of BWC for a period of five (5) years;
 - 27.1.6. utilise the funds of BWC solely for the object and purpose of BWC or to invest funds available for investment only in accordance with the provisions of section 30 of the Income Tax Act 58 of 1962, as amended from time to time.
 - 27.1.7. remain informed and updated with regards to the current minutes, policies and codes of business of BWC, and to keep themselves updated by attending the required meetings.
- 27.2. The Directors shall not have the power to use the funds of BWC for the carrying on of any business or trading activity in the name of BWC other than to the extent permitted in terms of section 30 of the Income Tax Act 58 of 1962, as amended from time to time.

28. POWERS OF DIRECTORS

28.1. The Board of Directors shall manage BWC and shall carry out the objectives of BWC in such manner as it may deem fit and proper subject, however, to:

28.1.1. the general policy of BWC; and

28.1.2. any special instructions as may be laid down or given by the members in general meeting from time to time; and

28.1.3. the provisions of section 30, read together with section 18A, of the Income Tax Act 58 of 1962, as amended from time to time.

28.2. The Directors may exercise all such powers that are not prohibited or limited by the Act or any amendment thereof, and subject to such regulations not inconsistent with this MOI or provisions as may be prescribed by BWC in a general meeting; but no regulation made by BWC in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

28.3. The Board of Directors may delegate any of its powers to committees consisting of such persons as they think fit. Any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the Board.

29. BORROWING POWERS

29.1. The Directors may from time to time, in their discretion, raise or borrow from the members or other persons any sum/s of money for the purposes of BWC, provided that the aggregate amounts so raised or

borrowed shall not exceed such amount as may be determined by BWC in a general meeting from time to time.

- 29.2. The Directors may raise or secure the repayment of such monies in such manner and upon such terms and conditions in all respects as they think fit and by the execution of mortgage bonds or other forms of hypothecation upon all or any part of the property and rights of BWC, both present and future.

30. DONATIONS TO BWC

- 30.1. Provided BWC has been approved as a public benefit organisation, the Directors shall, in respect of every donation received, furnish to the donor in each case a receipt of which the following particulars are given:

30.1.1. the reference number of BWC issued by the Commissioner for the South African Revenue Service for the purposes of section 18A of the Act;

30.1.2. the date of receipt of the donation;

30.1.3. the name of BWC, together with an address to which enquiries may be directed in connection therewith;

30.1.4. the name and address of the donor;

30.1.5. the amount of and nature of the donation; and

30.1.6. a certificate to the effect that the receipt is issued for purposes of Section 18A of the Act, and that the donation has been or will be used exclusively for the main object of BWC.

- 30.2. The Directors shall not accept any donations to BWC unless they are irrevocable and subject to the terms and conditions of this MOI.

31. PROCEEDINGS OF DIRECTORS' MEETINGS

- 31.1. The Directors shall meet for the dispatch of business not less frequently than 4 (four) times a year.
- 31.2. Any Director is at all times entitled to convene a meeting of the Directors by giving fourteen (14) days' written notice to all Directors, or such shorter notice as may be agreed to by all the Directors.
- 31.3. The quorum necessary for the transaction of any business of the Directors shall be 50% (fifty per cent).
- 31.4. The Directors may participate in a meeting of the Directors by means of electronic communication including, but not limited to, conference, telephone or similar equipment by means of which all persons participating in the meeting can hear each other at the same time and any such participation in a meeting shall constitute presence in person at the meeting.
- 31.5. All resolutions and actions of the Directors shall be by way of a majority of votes. In the event of an equality of votes, the Chairperson shall have a second or casting vote.
- 31.6. Subject to the provisions of the Act, a Director may vote in respect of any contract or proposed contract with BWC in which he is interested, or any matter arising there from.
- 31.7. Subject to the provisions of the Act, a resolution in writing signed by all the Directors shall be as valid and effective as if it had been passed at a

meeting of the Directors duly called and constituted. Any such resolution may consist of several documents in a like form, each signed by one or more of the signatories of the resolution. A resolution of Directors passed in terms of this article shall be placed in a minute book of BWC and shall be noted at the next succeeding meeting of Directors and shall also be signed by the Chairperson of that meeting, whereupon the provisions of the Act shall be deemed to apply to the resolution.

- 31.8. All acts done in any meeting of the Directors or a committee of Directors or by any person acting as a director shall (notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid or that they are or were disqualified), be valid as if every such person had been duly appointed and qualified to be a director.

32. RECORDS OF DIRECTORS' MEETING

- 32.1. The Directors shall cause minutes to be kept of all appointment of officers made by the Directors, the names of Directors present at each Directors Meeting and all resolutions passed by the Directors at Directors meetings.

- 32.2. Minutes of any resolutions and proceedings mentioned in clause 31.7 appearing in one of the minute books of BWC shall be proof of the facts therein stated if signed by –

32.2.1. the Chairperson of the meeting to which it relates; or

32.2.2. any person present at the meeting and appointed by the Directors to sign in the Chairperson's place; or

32.2.3. the Chairperson of a subsequent meeting of the Directors.

- 32.3. Any extracts from or copy of those minutes purporting to be signed by the Chairperson of that meeting, or any Director shall be *prima facie* proof of the facts therein stated.

33. FINANCIAL YEAR

The financial year of BWC shall commence on 1 March and end on the last day of February of each year.

34. ACCOUNTING RECORDS FINANCIAL STATEMENTS AND AUDITOR

- 34.1. BWC shall maintain the necessary accounting records, which shall be accessible from its registered office, in accordance with section 28 of the Act.

- 34.2. Without limiting the contents of clause 35.1 above, BWC must maintain adequate records of all revenue received from donations, grants, and members' fees or in terms of any funding contracts or arrangements with any party.

- 34.3. BWC shall prepare its financial statements in accordance with the provisions of the Act.

- 34.4. BWC shall appoint an auditor and shall have its financial statements audited on an annual basis.

35. SAFE CUSTODY OF DOCUMENTS

Any mortgage bond, title deed of other security belonging to or held by BWC shall be registered in the name of BWC and no such security may be transferred, disposed of or otherwise be alienated except with the approval of the Board. All such securities shall be kept in safe custody as the Board may determine.

36. INDEMNITY

Subject to the provisions of the Act, the members of the Board and officers of BWC shall be indemnified by BWC against all proceedings, costs and expenses incurred by reason of any claim made against them in connection with their conduct of the affairs of BWC, not arising from their negligence, dishonesty, or fraud.

37. NOTICES

37.1. A notice may be given by BWC to any member either by electronic communication or personally, or by sending it by post in a prepaid registered letter addressed to such member at his registered address or (if he has no registered address in the Republic) at the address (if any) within the Republic supplied by him to BWC for the giving of notices to him.

37.2. Notice of every general meeting shall be given in any manner authorised:

37.2.1. to every member of BWC except, in the case of notices to be given personally or sent by post, those members who (having no registered address within the Republic) have not supplied to BWC an address within the Republic for the giving of notices to them;

37.2.2. to the auditor for the time being of BWC.

37.3. No other person shall be entitled to receive notice of general meetings.

37.4. Any notice by registered post shall be deemed to have been served at the time when the letter containing the notice was posted and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

- 37.5. Any notice by electronic communications shall be deemed to have been sent on the date of dispatch of the communication to the known address of the party concerned.

38. PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY

The income and property of BWC, whensoever derived, shall be applied solely toward the promotion of BWC's object and purpose and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever to the members of BWC or to its controlling or controlled company, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of BWC, or to any member thereof, as remuneration for any services actually rendered to BWC.

39. WINDING-UP

- 39.1. Upon the winding-up, de-registration of BWC, the assets of BWC remaining after the satisfaction of all its liabilities shall be given or transferred to:

- 39.1.1. an organisation(s) which is approved by the Commissioner in terms of section 30B of the Income Tax Act;
- 39.1.2. a public benefit organisation approved in terms of section 30 of the Income Tax Act;
- 39.1.3. any institution, board or body which is exempt from tax under section 10(1) of the Income Tax Act, or
- 39.1.4. any department of state or administration in the national, provincial or local sphere of government of the Republic of South Africa.

39.1.5. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of BWC, no past or present Member or Director, or person appointing a director is entitled to any part of the net value of BWC after its obligations and liabilities have been satisfied; and the entire net value of BWC as determined by the Members at or immediately before the time of its dissolution, or by the court if the Members fail to make such a determination, must be distributed in accordance with the provisions of clause 39.1 above.

40. LIMITATION OF LIABILITY OF DIRECTORS

Each Director, alternate director, manager, Executive Officer and other officer of BWC, and person employed by BWC as its auditor, shall be indemnified by BWC against any liability incurred by him from time to time in that capacity in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted or in respect of any of those proceedings which are abandoned or in connection with any application made under the Act in which relief is granted to him by a court of competent jurisdiction.

41. DISPUTE RESOLUTION

41.1. If any dispute arises out of or in connection with this Memorandum, or related thereto, whether directly or indirectly, including the enforcement of the provisions hereof, the Board may, in its sole discretion, refer such dispute for resolution by way of arbitration.

41.2. A dispute within the meaning of this clause exists once the Board notifies the relevant parties in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.

- 41.3. Within 10 (ten) business days following such notification, the matter will be referred to arbitration as envisaged in the clauses below.
- 41.4. The arbitration will be held as an expedited arbitration in accordance with the then current rules for expedited arbitration of the Arbitration Company of Southern Africa (“AFSA”) by 1 (one) arbitrator appointed by agreement between the Board and the relevant disputing party/ies. If the parties cannot agree on the arbitrator within 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA.
- 41.5. The decision of the arbitrator shall be final and binding on all parties and there shall be no further right of appeal.
- 41.6. The provisions of this clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters pending finalisation of this dispute resolution process.

ADOPTED ON THE 2ND OF JUNE 2023.

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CHAIRPERSON