

COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION

REPUBLIC OF SOUTH AFRICA



In accordance with s 16(1)(c)

MEMORANDUM OF INCORPORATION OF

**AFRIKA BURNS CREATIVE PROJECTS NPC**

Registration Number: 2007/020812/08

('the Company')

The Company is a non-profit company with members, and with the following object:

**To advance a culture of creativity: upholding and promoting freedom and diversity of expression, inclusive community building and volunteerism with the aim of fostering positive social change, which:**

- **Creates a blank canvas to actualise and promote a wide spectrum of arts and culture in South Africa at and through the annual AfrikaBurn and other events;**
- **Implements developmental, creative social outreach projects that uplift and include the marginalised and underprivileged;**
- **Innovates and collaborates with local and international partners to foster cultural, skills and knowledge exchange in the AfrikaBurn community, the Burning Man Regional Network and beyond; and**
- **Implements and supports projects which enrich education, provide bursary support, preserve and regenerate the planet and protect non-human life from abuse and degradation.**

**This object of the Company shall be carried out in a non-profit manner and with an altruistic or philanthropic intent, and in line with the eleven guiding principles set out in Annexure A of this Memorandum of Incorporation.**

*In this Memorandum of Incorporation and annexure ("MOI"):*

- (a) *A reference to a section by number refers to the corresponding section of the Companies Act, 2008 ('the Act');*
- (b) *A reference to a clause by number refers to the corresponding clause in this MOI; and*
- (c) *Words that are defined in the Act bear the same meaning in this MOI as in the Act.*

**1. INCORPORATION AND AMENDED MOI**

- 1.1 The Company is a pre-existing company as defined in the Act.
- 1.2 The Company was incorporated as a section 21 Company under the Companies Act 61 of 1973 on 24 July 2007.
- 1.3 The Company, as a pre-existing company as defined in the Act, continues to exist as a Non-Profit company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of Schedule 5 to the Act.

1.4 This amended MOI was adopted by the Members of the Company in accordance with section 16(1)(c) of the Act, as evidenced by the special resolution to which this MOI is annexed.

1.5 The Company is governed by:

1.5.1 The unalterable provisions of the Act, that are applicable to Non-Profit companies; and

1.5.2 The alterable provisions of the Act, that are applicable to Non-Profit companies, subject to any limitation, extension, variation or substitution set out in this MOI; and

1.5.3 The provisions of this MOI.

## **2. OBJECTS AND POWERS OF THE COMPANY**

2.1 The objects of the Company are as set out on the first page of the MOI and the Company shall have all the legal powers and capacity of an individual:

2.1.1 Provided that these powers may only be exercised in pursuing its stated objects;

2.1.2 Except to the extent that a juristic person is incapable of exercising such a power or having such a capacity; and

2.1.3 Subject to the restrictive conditions, limitations or qualifications contained in this MOI.

2.2 The powers of the Company may only be executed in accordance with the main object of the Company.

2.3 The Company may not:

2.3.1 Amalgamate or merge with, or convert to, a profit company;

2.3.2 Dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposal of an asset occurs in the ordinary course of the activities of the Company; or

2.3.3 Knowingly become a party to or knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act 58 of 1962, as amended ("the Income Tax Act").

2.4 The Company is not subject to any provision contemplated in section 15 (2)(b) or (c).

## **3. MEMORANDUM OF INCORPORATION AND COMPANY RULES**

3.1 This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in section 16, 17 or 152 (6) (b) subject to the following:

3.1.1 If the Company is exempted from payment of normal tax a copy of any amendment shall be sent to the Commissioner for the South African Revenue Service or their authorised representative;

3.1.2 If the Company is registered as a NonProfit organisation then a copy of any amendments shall be sent to the Directorate of Nonprofit Organisations.

3.2 The authority of the Company's Board of Directors to make rules for the Company, as contemplated in sections 15(3) to (5) is limited or restricted in that the Board cannot make and/or alter rules for the Company in respect of the following:

3.2.1 The appointment and/or election of Directors;

- 3.2.2 The disposing of assets over the value of R 100,000.00; or
- 3.2.3 Changing any limitations on financial powers set by the Members.
- 3.3 The Board must publish any rules made in terms of sections 15(3) to (5) by delivering a copy of those rules to each director by ordinary mail.
- 3.4 The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17(1) by delivering a copy of those rules to each director by ordinary mail.

#### **4. LIMITED APPLICATION OF OPTIONAL PROVISIONS OF COMPANIES ACT, 2008**

- 4.1 The Company may elect to comply voluntarily with some of the provisions of Chapter 3 of the Act, in that the Company may, by vote of the directors from year to year, appoint an auditor, in terms of sections 90 and 93.

#### **5. MEMBERS OF THE COMPANY**

- 5.1 As contemplated in Item 4 of Schedule 1 of the Act, the Company has two categories of members: voting and non-voting members. Voting members shall each have an equal vote on any matter to be decided by the Members of the Company.
- 5.2 Members shall be non-voting members:
  - 5.2.1 When they serve as a director of the Company for their period of service on the Board; and
  - 5.2.2 In the case of members who have been employees of the Company and who have left employment in circumstances which the Board deems, in its entire discretion, to be acrimonious or arising from conflict situations, for a period of one year following the date of termination of their employment .
- 5.3 The terms and conditions of admission to membership in the Company are the following:
  - 5.3.1 Membership to the Company shall be open to all qualified and interested parties who shall be individuals with professional or other interests in the operational areas of the Company. The majority of the membership (more than 50%) should be made up of individuals who represent the broader AfrikaBurn community and who are not salaried individuals within the operations of the Company (a "salaried individual" is defined as an individual who is paid to work for the company for 7 (seven) or more days a month, or 70 (seventy) days a year, whichever is fewer);
  - 5.3.2 Application for membership shall be made in writing, directed to the Members' Secretariat appointed by the Board to deal with the administration of Members' matters for the Company. Salaried individuals may apply for membership, but will only be admitted as Members to the extent that their admission does not result in the number of salaried individual Members exceeding the number of other Members;
  - 5.3.3 The prospective member/s applying for membership as contemplated in point 2 above shall be appointed by a majority vote in favour, of all eligible votes of the Members. Admission applications by persons who are not salaried individuals shall be processed before applications by salaried individuals, so that the correct ratios may be calculated and maintained. If the number of salaried individuals applying exceeds the number of spaces available for them the election will be conducted as a series of secret ballots, each of which is on the suitability of a single candidate. Candidates that receive a simple majority or more of the votes exercised in their ballot shall be ranked in order of votes received, and the vacancies shall be filled starting with the candidate with the most votes. In the event of a tie where there are not enough vacancies for the tied salaried individual candidates, a

subsidiary secret ballot shall be held between the tied candidates. Each voting Member or proxy is entitled to a single vote in this subsidiary vote;

- 5.3.4 The Members shall elect, from their number, a Member Chair at an annual meeting of the Members. The Member Chair shall serve a term of two years and shall not be able to serve more than two terms (four years) in total.
- 5.3.5 Any Member desiring to withdraw from membership may do so by giving written notice of withdrawal. If a Member has withdrawn or ceased to be a Member, they can be reinstated provided all their obligations to the Company have been met and a majority of all eligible votes of the Members votes in favour of their readmission. No Member who has been expelled shall be readmitted without prior approval of the Members in general meeting;
- 5.3.6 Membership of the Company shall not be transferable;
- 5.3.7 Membership of the Company shall cease:
- 5.3.7.1 Upon receipt by the Company, at its office, of notice in writing, ('writing' to include notification by email), to this effect from the Member concerned;
- 5.3.7.2 Upon the issue of a final order of sequestration of the Member concerned;
- 5.3.7.3 Upon the death of a Member, or upon the Member being declared mentally unstable or incapable of managing his/her own affairs;
- 5.3.7.4 Upon passing of a special resolution of the Members of the Company at which a quorum is present, provided that the notice convening the meeting shall specify the proposal to withdraw membership from the Member concerned; or
- 5.3.7.5 Upon failure to meet obligations of membership, as determined from time to time and published in the Members' Memorandum, and failure to provide a reasonable explanation, within 7 (seven) days of receiving notification of such failure, as to why these obligations were not met.

## **6. MEMBERS' AUTHORITY TO ACT**

- 6.1 If, at any time, every Member of the Company is also a director of the Company, as contemplated in section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

## **7. MEMBERS' RIGHT TO INFORMATION**

- 7.1 In addition to the rights to access information set out in section 26(1) of the Act, a Member may request further information. This request will not be unreasonably denied.

## **8. PROXIES AND REPRESENTATIVES**

- 8.1 Any voting Member may at any time appoint any natural person, including a natural person who is not a Member, as a proxy to participate in, and speak and vote at, a Members' meeting on behalf of that Member; or give or withhold written consent on behalf of that Member to a decision contemplated in section 60.
- 8.2 A proxy appointment must either be in writing, dated and signed by the Member or in the form of an email sent from the Member's registered email address. A proxy remains valid for 1 (one) year after the date on which it was signed; or any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act.

- 8.3 The holder of a power of attorney or other written authority from a Member may, if so authorised thereby, represent such Member at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Member at a Members' meeting.
- 8.4 A voting Member may not appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3)(a) and nor may a Member's proxy delegate the proxy's powers to another person as set out in section 58(3)(b).
- 8.5 A Member or their proxy must deliver to the Company at its registered office a copy of the instrument appointing a proxy before the commencement of the meeting at which the proxy intends to exercise that Member's rights.
- 8.6 Unless the instrument appointing a proxy provides otherwise, a Member's proxy may decide, without direction from the Member, whether to exercise or abstain from exercising any voting right of the Member, as set out in section 58(7).
- 8.7 A Member may only hold a maximum of 2 (two) proxies in addition to its own vote.
- 8.8 A non-member, acting as a proxy, may only hold a maximum of 2 (two) proxies.
- 8.9 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Board may approve from time to time:

"I/We \_\_\_\_\_  
being a Member of Afrika Burns Creative Projects NPC ("Company") do hereby appoint

\_\_\_\_\_

or failing them \_\_\_\_\_

or failing them, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Company to be held at \_\_\_\_\_

on \_\_\_\_\_ and at any adjournment thereof as follows:

	In favour of	Against	Abstain	As per proxy
Special Resolution 1	.....	.....	.....	.....
Ordinary Resolution 1	.....	.....	.....	.....

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she thinks fit.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_.

\_\_\_\_\_  
MEMBER'S SIGNATURE

(Note -- A Member entitled to attend, speak and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead, and such proxy need not be a member of the Company)."

- 8.10 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy was given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

**9. MEMBERS' MEETINGS**

- 9.1 The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a Members' meeting at any time.

- 9.2 Subject to clause 9.1 and to the provisions of section 60 dealing with the passing of resolutions of Members otherwise than at a meeting of Members, the Company shall hold a Members' meeting:
- 9.2.1 At any time that the Board is required by the Act or this MOI to refer a matter to Members for decision; or
- 9.2.2 Whenever required in terms of the Act to fill a vacancy on the Board; or
- 9.2.3 When required by any other provision of this MOI.
- 9.3 The Board shall call a meeting of Members if 1 (one) or more written and signed demands calling for such a meeting are delivered to the Company and:
- 9.3.1 Each such demand describes the specific purpose for which the meeting is proposed; and
- 9.3.2 In aggregate, demands for substantially the same purpose are made and signed by the Members, at the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 9.4 Save as otherwise provided herein, the Company is not required to hold any Members' meetings other than those specifically required by the Act.
- 9.5 The Board may determine the location of any Members' meeting, provided that such location is in the Republic of South Africa.
- 9.6 The minimum number of days for the Company to deliver a notice of a Members' meeting to the Members as required by section 62 is as provided for in section 62(1) and, accordingly, any such notice shall be delivered to all Members as of the record date for the meeting at least 10 (ten) business days before the meeting is to begin. The Company may however call a meeting with less notice as contemplated in this clause 9.6, but such meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to waive the required minimum notice of the meeting, as set out in section 62(2A).
- 9.7 Subject to any other specific clause of this Memorandum of Incorporation, the quorum requirement for a Members' meeting to begin or for a matter to be considered are as set out in section 64 (1) subject to a minimum of 51% in substitution for the 25% required by that section and, accordingly:
- 9.7.1 A Members' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 51% (fifty one percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 9.7.2 A matter to be decided at a Members' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 51% (fifty one percent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.
- 9.8 The time periods allowed in section 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 (one) hour after the appointed time for a meeting to begin, the requirements of clause 9.7:
- 9.8.1 For that meeting to begin have not been satisfied, the meeting is postponed, without any motion, vote or further notice, for 1(one) week;
- 9.8.2 For consideration of a particular matter to begin have not been satisfied:
- 9.8.2.1 If there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or
- 9.8.2.2 If there is no other business on the agenda of the meeting, the meeting is adjourned, without any motion or vote, for 1(one) week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 3.7 may extend the 1 (one) hour limit allowed in clause 9.8 for a reasonable period on the grounds that—

- 9.8.2.3 Exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or
- 9.8.2.4 One or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of clause 9.7.
- 9.9 The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting.
- 9.10 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of 9.8 unless the location for the meeting is different from:
  - 9.10.1 The location of the postponed or adjourned meeting; or
  - 9.10.2 The location announced at the time of adjournment, in the case of an adjourned meeting.
- 9.11 If at the time appointed in terms of clause 9.8 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 9.7 have not been satisfied, the Members present in person or by proxy will be deemed to constitute a quorum.
- 9.12 The maximum period allowable for an adjournment of a Members' meeting is as set out in section 64(12), without variation.
- 9.13 The Member Chair shall preside as chairperson at every Member's meeting.
- 9.14 If there is no such chairperson, or if at any meeting they are not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Members present shall choose 1 (one) of their number to be chairperson.
- 9.15 The chairperson of a Members' meeting may:
  - 9.15.1 Appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting; and
  - 9.15.2 Act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 9.16 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless:
  - 9.16.1 It is brought to the attention of the chairperson at the meeting; and
  - 9.16.2 In the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.
  - 9.16.3 If a matter is placed upon the agenda of a meeting or arises during the course of a meetings or correspondence of members, and any member (or any person in relation to whom a members is a 'connected person' (as defined in the Income Tax Act), has a personal financial interest in that matter, the relevant members shall:
    - 9.16.3.1 Immediately and in advance of the matter being dealt with, disclose the fact and nature of such personal financial interest;

- 9.16.3.2 Inform the relevant meeting of material information and answer questions concerning the personal financial interest;
- 9.16.3.3 Not take part in any consideration of any matter involving, and leave the relevant meeting after disclosure concerning, the personal financial interest; and
- 9.16.3.4 Not be entitled to vote on or sign any document in relation to the matter in which the personal financial interest arises.
- 9.17 Any objection to the admissibility of any vote shall be raised at the meeting or adjourned meeting at which the vote objected to was recorded, and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
- 9.18 Even if they are not a Member, any director or the company's attorney (or where the company's attorneys are a firm, any partner or director thereof), may attend and speak at any general meeting, but may not vote, unless they are a Member or the proxy or representative of a Member.
- 9.19 The Company may conduct a Members' meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in section 63, and the power of the Company to do so is not limited or restricted by this Memorandum of Incorporation. Accordingly:
- 9.19.1 Any Members' meeting may be conducted entirely by Electronic Communication; or
- 9.19.2 One or more Members, or proxies for Members, may participate by Electronic Communication in all or part of any Members' meeting that is being held in person, so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 9.20 Any notice of any meeting of Members at which it will be possible for Members to participate by way of Electronic Communication shall inform Members of the ability to so participate and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Member or proxy concerned.
- 9.21 For an ordinary resolution to be approved it must be supported by at least 66% (sixty six percent) of the voting rights of Members exercised on the resolution, despite section 65(7).
- 9.22 For a special resolution to be approved it must be supported by at least 76% (seventy six percent) of the voting rights exercised on the resolution, despite section 65(9).
- 9.23 A special resolution adopted at a Members meeting is required for the following matters, some of which are in addition to the matters set out in section 65(11),:
- 9.23.1 Any amendment to or replacement of this MOI;
- 9.23.2 A material change of the nature of the business conducted by the Company which is not ancillary or incidental to its main object or the current business;
- 9.23.3 The borrowing of any money by the Company, other than as provided for in this MOI;
- 9.23.4 The granting or provision of any mortgage, pledge, notarial bond or other lawful encumbrance over any of the Company's assets;
- 9.23.5 Any change to the emoluments of directors, being director's fees, salaries and other benefits insofar as not approved in its annual budget or that director's service agreement or any



changes to staff and director salary bands which are not in line with accepted cost of living/inflationary adjustments;

- 9.23.6 The granting by the Company of any power of attorney outside the ordinary course of its business;
- 9.23.7 The disposal or encumbrance or licensing of any intellectual property rights owned or used by the Company;
- 9.23.8 The approval of the annual budget of the Company and any variation thereof;
- 9.23.9 The approval of strategic plans of the Company and any variation thereof; or
- 9.23.10 The approval or implementation of any decisions altering the Company's existing strategic plans and/or existing approach to its projects.

## **10. COMPOSITION OF THE BOARD OF DIRECTORS**

- 10.1 The number of Directors shall not be less than 3 (three) (three of whom are not 'connected persons' [as defined in the Income Tax Act] in relation to one another) and not more than 9 (nine) . No single person shall, directly or indirectly, control the decision-making powers of the Company.
- 10.2 There shall be no more than three Executive Directors appointed at any time, and the number of Non-Executive Directors shall always exceed the number of Executive Directors:
  - 10.2.1 Non-Executive Directors who are independent of the Company are elected to the directorship to bring an independent perspective to the work of the Board and to develop and oversee the implementation of the strategy of the Company in line with the vision and mission set by the Members; and
  - 10.2.2 Executive Directors are senior management of the Company who are appointed to the Board to implement the strategy of the Company in line with the vision and mission set by the Members, and to provide a direct link to the operations of the Company so that the decisions of the Board may be more efficiently executed.
- 10.3 Subject to clause 10.1, the Members shall determine by an ordinary resolution, ahead of the start of any election or appointment process being advertised the total number of Directors which they seek to appoint at that time
- 10.4 In order to become or remain a Director or prescribed officer of the Company, the person must satisfy the qualification and eligibility requirements set out in section 69 of the Act and the requirements, as determined and altered from time to time by the Members, which are published on the AfrikaBurn website.
- 10.5 The process for determining the Directors shall be as follows:
  - 10.5.1 Executive Directors shall be appointed by an appointment committee. The appointment committee shall utilize a fair recruitment process involving: public advertisement, shortlisting of candidates against an agreed criteria, and interviews.
    - 10.5.1.1 If the members have determined that there will be fewer than three (3) Non-Executive Directors, the appointment committee shall be established by the membership by way of ordinary resolution;
    - 10.5.1.2 If the members have determined that there will be three Non-Executive Directors, the appointment committee shall be proposed by the Non-Executive Directors and ratified by an ordinary resolution of members;

- 10.5.1.3 The composition, powers, duties and process of the appointment committee are detailed in the Guiding Document as adopted by the members from time to time.
- 10.5.2 Non-Executive Directors shall be elected in terms of section 68(1) by the persons entitled to exercise voting rights in such election, being the voting Members of the Company.
- 10.6 In any election of Directors:
- 10.6.1 The election is to be conducted as a series of secret ballots, each of which is on the suitability of a single candidate. Candidates that receive 67% or more of the votes exercised in their ballot shall be ranked in order of votes received, and the vacancies shall be filled starting with the candidate with the most votes;
- 10.6.2 In the event of a tie where there are not enough vacancies for the tied candidates, a subsidiary secret ballot shall be held between the tied candidates. Each Member or proxy is entitled to a single vote in this subsidiary vote;
- 10.6.3 The process set out in 10.7.2 shall apply to the ballots contemplated in both 10.7.1 and 10.7.2.
- 10.7 The Non-Executive Directors of the Company shall serve terms of a maximum of 3 (three) years before being required to stand for re-election. No Director may serve more than 3 (three) consecutive terms, after which a 1 (one) year break shall be required before being eligible to stand for election. In each year, one third of the Directorship should change as detailed below:
- 10.7.1 Every year before the AGM the one third (rounded down) of Non-Executive Directors who have served the longest consecutive number of years since last being voted in, must stand down;
- 10.7.2 In the event of a tie for longest serving, the Non-Executive directors should attempt to reach consensus amongst themselves as to who will stand down;
- 10.7.3 If they are unable to reach consensus the persons standing down should be selected, from amongst those tied, by the drawing of lots. This process must be overseen by the membership.
- 10.8 Executive Directors shall serve as directors for so long as they hold the office in the Company giving rise to their appointment or unless/until they become ineligible to serve or are removed from office in terms of section 70.
- 10.9 A vacancy in the number of Directors shall only arise in the event of any Director ceasing to hold office or becoming disqualified from holding office as such for any reason; and/or any of the other circumstances contemplated in section 70(1) arising.
- 10.10 Director Affiliations:
- 10.10.1 Subject to the provisions of the Act, a Director may become a director or officer of any other Company provided that Executive Directors, as employees of the Company may only serve as non-executive directors of other companies and if this service does not conflict with or hinder the performance of their duties to the Company;
- 10.10.2 A Director may not be employed in any other capacity in the Company unless their appointment is approved by the members in an ordinary resolution;
- 10.10.3 No Director shall be entitled to vote in respect of their own appointment as an employee or in respect of their own performance appraisal or remuneration.
- 10.11 A Director may act, or any company of which they are a member or any other entity in which they have an interest, may act in a professional capacity (other than that of auditor) for the Company or

any company of which it is a member, and they, or their firm, shall be entitled to remuneration for those professional services subject to the provisions of 10.8.3.

## **11. AUTHORITY OF THE BOARD OF DIRECTORS**

11.1 The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) is limited or restricted to the extent that the powers of the Company and Directors are limited in this MOI.

## **12. BOARD OF DIRECTORS MEETINGS**

12.1 The Company's Board of Directors may consider a matter other than at a meeting, as set out in section 74.

12.2 For Directors to requisition a meeting of the Board, at least 20% of the Directors shall agree on the need for and call the meeting, by notice to the other Directors.

12.3 The Company's Board of Directors may determine the manner and form of providing notice of its meetings, as set out in section 73(4).

12.4 The Company's Board of Directors may proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5).

12.5 The directors shall appoint a Chairperson, from the Non-Executive Director then serving number, who shall preside over all meetings of the Board and perform the tasks set out in this MOI and all the other usual functions of a Chairperson of the Company, provided that aspects of the role may be delegated to other Non-Executive Directors.

12.6 The Chairperson shall remain in office for a term of no fewer than 6 months and no longer than three years or until they are no longer a Non-Executive Director, whichever is sooner. If no Chairperson is elected, or if the Chairperson is not present at a meeting within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to preside at that meeting.

12.7 The rules for directors' meetings are as follows:

12.7.1 The directors shall meet together not less often than quarterly for the dispatch of business, but shall otherwise regulate their meetings as they think fit;

12.7.2 The quorum necessary for the transacting of business of the Board shall be 50% plus one directors when the number of directors exceeds three and, when the number does not exceed three, shall be two directors;

12.7.3 Each director shall have one vote on a matter before the Board, except as provided in 12.7.5;

12.7.4 Except as otherwise provided in this document, a majority of the votes cast on a resolution will be sufficient to approve that resolution;

12.7.5 In the case of a tied vote, the Chairperson may cast a deciding vote, in addition to his/her deliberative vote OR the matter being voted on shall fail; and

12.7.6 If a matter is placed upon the agenda of a meeting or arises during the course of meetings or correspondence of directors, and any director (or any person in relation to whom a director is a 'connected person' (as defined in the Income Tax Act), has a personal financial interest in that matter, the relevant director shall:

12.7.6.1 Immediately and in advance of the matter being dealt with, disclose the fact and nature of such personal financial interest;

- 12.7.6.2 Inform the relevant meeting of material information and answer questions concerning the personal financial interest;
- 12.7.6.3 Not take part in any consideration of any matter involving, and leave the relevant meeting after disclosure concerning, the personal financial interest; and
- 12.7.6.4 Not be entitled to vote on or sign any document in relation to the matter in which the personal financial interest arises.
- 12.7.7 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in the minutes:
- 12.7.7.1 Any declaration given by notice or made by a director as required by section 75 with reference to the personal financial interests of the director, whether it be an advance declaration of interests, or a specific declaration with reference to a specific matter; and
- 12.7.7.2 Every resolution adopted by the Board, which resolutions shall be dated, sequentially numbered, and will be effective from the date of the resolution, unless the resolution states otherwise.

### **13. INDEMNIFICATION OF DIRECTORS**

- 13.1 The Company's Board of Directors may advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78(3).
- 13.2 The Company's Board of Directors may indemnify a director in respect of liability, as set out in section 78(5).
- 13.3 The Company's Board of Directors may purchase insurance to protect the Company, or a director, as set out in section 78(6).

### **14. OFFICERS AND COMMITTEES**

- 14.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- 14.2 The Company's Board of Directors may appoint committees of directors, and delegate to any such committee any of the authority of the Board as set out in section 72(1), or include in any such committee persons who are not directors, as set out in section 72(2)(a).
- 14.3 A committee appointed by the Company's Board may have the powers set out in section 72(2)(b) and (c).

### **15. ACCOUNTING RECORDS, BANKING AND RECEIPT OF DONATIONS**

- 15.1 The directors shall cause those accounting records as are prescribed by Section 28 of the Act to be kept.
- 15.2 The accounting records shall be kept in the registered office of the Company or at such other place or places as the directors think fit and shall always be open to inspection by the Members and directors.
- 15.3 The financial transactions of the Company shall be administered via one or more bank accounts which shall be opened in the name of the Company.
- 15.4 The Company shall be entitled to accept revocable and conditional donations provided that:
- 15.4.1 The Company may only accept revocable donations where the reason for the revocation is:

- 15.4.1.1 A material failure to conform to the designated purposes and conditions of such donation; OR
- 15.4.1.2 Any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act;
- 15.4.2 A donor (other than a donor which is an approved public benefit organisation or an institution or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

## 16. EXPENDITURE AND USE OF RESOURCES

- 16.1 The income and property of the Company, however derived, shall be applied solely towards the promotion of its main object or invested and no funds will be distributed to any person other than in the course of undertaking any 'public benefit activity' (as defined in the Income Tax Act) and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly, to the directors or persons appointing directors of the Company; provided that this shall not prevent:
- 16.1.1 The payment in good faith of reasonable remuneration to any officer or servant of the Company, for any services rendered to the Company;
- 16.1.2 Payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
- 16.1.3 Payment in respect of any rights of that person, to the extent that those rights are administered by the Company in order to advance a stated object of the Company; or
- 16.1.4 Payment in respect of any legal obligation binding on the Company.
- 16.2 No remuneration (as defined in the Fourth Schedule to the Income Tax Act) shall be paid to any employee, office bearer, Member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, and no person shall be economically benefited in any way which is not consistent with the objects of the Company.
- 16.3 No activity of the Company shall be intended to directly or indirectly promote the economic self-interest of any director, officer or employee of the Company, otherwise than by way of reasonable remuneration payable to that director, officer or employee.
- 16.4 The Company shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a director of the Company or of a related or inter-related company, or to a person related to any such director, unless it:
- 16.4.1 Is in the ordinary course of the Company's business and for fair value;
- 16.4.2 Constitutes an accountable advance to meet legal expenses in relation to a matter concerning the Company; or
- 16.4.3 Anticipated expenses to be incurred by the person on behalf of the Company;
- 16.4.4 Is to defray the person's expenses for removal at the Company's request; or
- 16.4.5 Is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 16.5 The Company shall not use its resources directly or indirectly to support, advance or oppose any political party.
- 16.6 No expenditure shall be incurred by or on behalf of the Company except on authority of the board or of the person or persons to whom the board has generally or specifically delegated the power to authorise expenditure.

- 16.7 All scholarships, bursaries or awards granted by the Company will be *bona fide* and be granted to an individual on grounds of objective merit or need.
- 16.8 No scholarship, bursary or award granted by the Company will be:
- 16.8.1 revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary or award;
- 16.8.2 subject to the conditions which would enable the donor of the funds of that scholarship, bursary or award or any connected person in relation to that donor, to derive some direct benefit from the application of that scholarship, bursary or award; or
- 16.8.3 granted to any person who is or will become an employee of the donor of the funds of that scholarship, bursary or award, or the Company (or any associated institution in relation to that donor or Company) or any relative of that person, unless circumstances indicate that the scholarship, bursary or award would have been granted to that person or their relative, even if that person had not been an employee of the donor, the Company or associated institution.
- 16.9 All decisions regarding the granting of scholarships, bursaries and awards must be made by a duly constituted committee consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted; and
- 16.10 All scholarships, bursaries and awards granted by the Company in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted:
- 16.10.1 to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic for a period of at least the period of that study, research or training was funded by the organisation, or
- 16.10.2 to refund the full amount of the scholarship, bursary or award should they decide not to apply the knowledge as contemplated in 16.10.1

## 17. ANNUAL FINANCIAL STATEMENTS AND RETURNS

- 17.1 The directors shall, in accordance with sections 29 and 30 of the Act, cause to be prepared and laid before the Members of the Company those annual financial statements as are referred to in those sections which annual financial statements:
- 17.1.1 Shall be prepared no longer than 6 months after the end of each financial year;
- 17.1.2 If audited, shall include an auditor's report;
- 17.1.3 Shall include a report by the directors as to the activities and financial state of the Company; and
- 17.1.4 Shall be approved by the Members of the Company and signed by an authorised director.
- 17.2 A copy of the annual financial statements to be presented at the AGM, or a summarised form thereof, shall be sent to every Member of the Company with the Notice of Meeting.
- 17.3 The Company shall file annual returns with the Companies and Intellectual Property Commission within 30 business days of each anniversary of its date of incorporation, along with such payment, documents and information as may be required from time to time.

## 18. WINDING UP, DEREGISTRATION OR DISSOLUTION

- 18.1 Upon its winding up, deregistration or dissolution no past or present Member or director of the Company, or person appointing a director of the Company, is entitled to any part of the net value of the Company, but the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other organisation or organisations to be determined by the

Members of the Company at or immediately before the time of its dissolution, or failing such determination, by the court and which:

- 18.1.1 Are non-profit;
- 18.1.2 Have objects similar to the Company's main object; and
- 18.1.3 If the Company is exempt from income tax, donations tax and estate duty, under the relevant laws of the country, are public benefit organisations which have been approved in terms of section 30 of the Income Tax Act, and are required to use those assets solely for purposes of carrying on one or more public benefit activities.

**ANNEXURE “A”: GUIDING PRINCIPLES**

AfrikaBurn seeks to be guided by its local interpretation of the Burning Man guiding principles, which are:

1.       **Radical Inclusion**  
Everyone should be able to be a part of AfrikaBurn. As an intentional community, committed to inventing the world anew, we actively pursue mechanisms to address imbalances and overcome barriers to participation, especially in light of past, current and systemic injustice.  
We welcome and respect the stranger. Anyone can belong.
2.       **Gifting**  
AfrikaBurn is devoted to acts of gift giving. The value of a gift is unconditional. Gifting does not contemplate a return or an exchange for something of equal value.
3.       **Decommodification**  
In order to preserve the spirit of gifting, our community seeks to create social environments that are unmediated by commercial sponsorships, transactions, or advertising. We stand ready to protect our culture from such exploitation. We resist the substitution of consumption for participatory experience.
4.       **Radical Self-reliance**  
Burning Man encourages the individual to discover, exercise and rely on his or her inner resources.
5.       **Radical Self-expression**  
Radical self-expression arises from the unique gifts of the individual. No one other than the individual or a collaborating group can determine its content. It is offered as a gift to others. In this spirit, the giver should respect the rights and liberties of the recipient.
6.       **Communal Effort**  
Our community values creative cooperation and collaboration. We strive to produce, promote and protect social networks, public spaces, works of art, and methods of communication that support such interaction.
7.       **Civic Responsibility**  
We value civil society. Community members who organize events should assume responsibility for public welfare and endeavour to communicate civic responsibilities to participants. They must also assume responsibility for conducting events in accordance with local, state and federal laws.
8.       **Leaving No Trace**  
Our community respects the environment. We are committed to leaving no physical trace of our activities wherever we gather. We clean up after ourselves and endeavour, whenever possible, to leave such places in a better state than when we found them.
9.       **Participation**  
Our community is committed to a radically participatory ethic. We believe that transformative change, whether in the individual or IN society, can occur only through the medium of deeply personal participation. We achieve being through doing. Everyone is invited to work. Everyone is invited to play. We make the world real through actions that open the heart.
10.      **Immediacy**  
Immediate experience is, in many ways, the most important touchstone of value in our culture. We seek to overcome barriers that stand between us and a recognition of our inner selves, the reality of those around us, participation in society, and contact with a natural world exceeding human powers. No idea can substitute for this experience.
11.      **Each One Teach One**  
As a self-reliant community, we believe the responsibility of spreading our culture lies with each and every one of us. All of us are custodians of our culture – when the opportunity presents itself, we pass knowledge on.