

This is the Memorandum of Incorporation which was submitted to and adopted by the members of SAMAC NPC on _____ 2018 as part of the approved establishment of a non-profit company registered as such in terms of the Companies Act 71 of 2008

CHAIRMAN OF THE BOARD OF DIRECTORS

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008**

MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY WITH MEMBERS

Name of Company: MACADAMIAS SOUTH AFRICA NPC

Shortened Name: SAMAC NPC

2017/656242/08

Registration Number

(Hereinafter referred to as "SAMAC NPC" or "the Company")

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A.

The Memorandum of Incorporation in the prescribed form as contemplated in section 13(1)(a)(i) of the Companies Act of 2008 shall not apply to SAMAC NPC.

B.

The provisions of the Memorandum of Incorporation are as follows:

1. INTERPRETATION

In this Memorandum of Incorporation, unless the context otherwise requires –

- 1.1 **"the Act"** means the Companies Act 71 of 2008, as amended or any act which replaces it, read with the Companies Regulations 2011;
- 1.2 **"Annual General Meeting"** means the annual general meeting of members of SAMAC NPC as contemplated in clause 9.1 and section 61(7) of the Act;
- 1.3 **"associate members"** means those members as defined in clause 5.2.1;
- 1.4 **"the Board"** means the Board of Directors of SAMAC NPC as constituted from time to time;
- 1.5 **"chief executive officer"** means a person appointed by the Board as envisaged in clause 14.3 who is responsible for the overall day to day management and administration of the affairs of SAMAC NPC;
- 1.6 **"committees"** means such committees that shall be appointed by the Board from time to time as envisaged in clause 14.6;
- 1.7 **"director"** means a person who is a member of the Board of Directors;
- 1.8 **"DNIS"** means dry nut in shell at 1.5% kernel moisture content;
- 1.9 **"Income Tax Act"** means Act 58 of 1962, as amended or any act which replaces it;
- 1.10 **"grower members"** means those members as defined in clause 5.1.1;
- 1.11 **"handler members"** means those members as defined in clause 5.1.2;
- 1.12 **"honorary life members"** means those members as defined in clause 5.2.2

- 1.13 **“Macadamias”** means macadamia nuts and related or derivative products;
- 1.14 **“member in good standing”** means a member whose financial responsibilities towards SAMAC NPC have been fully complied with and/or whose membership has not been suspended as provided for in clause 8;
- 1.15 **“membership fee”** means the amount paid to SAMAC NPC annually for membership in accordance with clause 7;
- 1.16 **“Memorandum”** means this Memorandum of Incorporation of SAMAC NPC as adopted by members and as amended from time to time;
- 1.17 **“ordinary resolution”** means a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution;
- 1.18 **“Province”** means a province in the Republic, and provincial shall have corresponding meaning;
- 1.19 **“surplus”** includes, *inter alia*, net income and capital gains;
- 1.20 **"register"** means the register of members kept in terms of the Act;
- 1.21 **"the Republic"** means the Republic of South Africa;
- 1.22 **“SAMAC NPC”** or **“the Company”** means South African Macadamia Growers’ Organisation NPC, a company registered as a non-profit company with members in South Africa in terms of the provisions of the Companies Act of 2008;
- 1.23 **“special resolution”** means a resolution adopted with the support of at least 67% (sixty seven percent) of the voting rights exercised on the resolution;
- 1.24 **"the Statutes"** means the Companies Act and every other statute or ordinance from time to time in force concerning companies and necessarily affecting SAMAC NPC;
- 1.25 reference to members present or acting in person shall include legal entities represented or acting in the manner prescribed in the Act;
- 1.26 expressions defined in the Companies Act, or any statutory modification thereof, in force at the date on which this Memorandum become binding on SAMAC NPC shall have the meanings so defined; and

- 1.27 words in the singular number shall include the plural and words in the plural manner shall include the singular, words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

2. PRELIMINARY

- 2.1 If the provisions of this Memorandum are in any way inconsistent with the provisions of the Statutes, the provisions of the Statutes shall prevail, and this Memorandum shall be read in all respects subject to the Statutes.
- 2.2 Notwithstanding the omission from this Memorandum of any provision to that effect, SAMAC NPC may do anything which the Companies Act empowers a non-profit company to do.
- 2.3 This Memorandum may be altered or amended only in the manner set out in sections 16, 17 or 152(6)(b) of the Act.
- 2.4 The Board must publish a notice of any alteration of this Memorandum, made in terms of section 17(1) of the Act, within 10 (ten) business days after being approved by the Board, by delivering a copy of those alterations to each member by electronic communication.

3. INCORPORATION AND NATURE OF SAMAC NPC

- 3.1 SAMAC NPC is incorporated as a non-profit company with members, as defined in the Act.
- 3.2 SAMAC NPC is incorporated in accordance with, and governed by:
- 3.2.1 the unalterable provisions of the Act that are applicable to non-profit companies;
 - 3.2.2 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 Memorandum; and
 - 3.2.3 the provisions of this Memorandum.
- 3.3 Except to the extent necessarily implied by the stated Purpose and Goals as set out in clause 4, the purposes and powers of SAMAC NPC are not subject to any restriction, limitation or qualification as contemplated in section 19(1)(b)(ii) of the Act. SAMAC NPC is furthermore not subject to any restriction contemplated in section 15(2)(b) or (c) of the Act.

- 3.4 As a non-profit company, SAMAC NPC:
- 3.4.1 must apply all of its assets and income, however derived, to advance its stated Purpose and Goals set out in clause 4; and
 - 3.4.2 subject to clause 3.4.1, may:
 - 3.4.2.1 acquire and hold securities issued by a profit company; or
 - 3.4.2.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects;
 - 3.4.3 may not:
 - 3.4.3.1 amalgamate or merge with, or convert to, a profit company; or
 - 3.4.3.2 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 disposition of an asset occurs in the ordinary course of the activities of SAMAC NPC.
- 3.5 Any proposal by SAMAC NPC to:
- 3.5.1 dispose of all or the greater part of its assets or undertaking; or
 - 3.5.2 amalgamate or merge with another non-profit company;
- must be submitted to the members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Act respectively.
- 3.6 SAMAC NPC may not provide a loan to, or secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a director of SAMAC NPC or a director of a related or inter-related company, or to a person related to any such director. For purposes of this clause, “related” and “inter-related” shall have the meanings ascribed thereto in section 2 of the Act. The provision of this clause does not prohibit a transaction if:
- 3.6.1 it is in the ordinary course of the business of SAMAC NPC and for fair value;
 - 3.6.2 it constitutes an accountable advance to meet:

- 3.6.2.1 legal expenses in relation to a matter concerning SAMAC NPC; or
- 3.6.2.2 anticipated expenses to be incurred by the individual on behalf of SAMAC NPC;
- 3.6.3 it is to defray the individual's expenses for relocation at the request of SAMAC NPC; or
- 3.6.4 it is in terms of an employee benefit scheme generally available to all employees or a specific class of employees of SAMAC NPC.

4. PURPOSE AND GOALS

4.1 Purpose Statement

The company's purpose is to deliver inspirational and innovative industry leadership with the aim of developing sustainable wealth through Macadamias. SAMAC NPC provides this leadership through broad based research and development, focusing on the commercial and technical fundamentals of Macadamias and ultimately the prosperity of our members.

We strive for the sustainable development of the Macadamia Industry in South Africa.

4.2 Goals

Based on the purpose statement, the goals of SAMAC NPC are to:

- 4.2.1 Lead world class research in support of:
 - continuous improvement in production yields, processing and quality
 - growing the demand ahead of supply through inter alia the health benefits for consumers as reasons to increase consumption
 - continuously gauge market evolution and be agile to industry changes and identify drivers of future change
- 4.2.2 Establish and improve collaborative government relations in order to:
 - facilitate favourable market access
 - leverage transformation advantages to SAMAC NPC and beneficiaries
 - ensure long term goodwill for the industry amongst legislators
 - manage local and export minimum quality standards
 - minimise product theft

- respond constructively from a single voice to new legislation and have a unified/standardised implementation and response to change

4.2.3 Deliver value for money to growers:

- interpret and make research results available and useful to growers (publish best practices and productivity benchmarking)
- continually improve technology by connecting growers to appropriate sources for technical advice
- represent South Africa on the global Macadamia stage

4.2.4 Develop and implement a formal communications strategy to communicate:

- internally to the industry
- externally
- communicate the results and benefits of SAMAC NPC's achievements on behalf of the industry

4.2.5 Build and maintain a professional and lean organisation to:

- deliver value and quality
- outsource to the best-in-class service providers
- focus on execution excellence of the core fundamentals

5. MEMBERSHIP

There shall be two classes of members namely voting members and non-voting members:

5.1 Voting Members

Voting members will consist of:

5.1.1 **Grower Members** being South African legal entities and individuals, actively engaged or intending to engage in commercial growing/production of Macadamias for sale;

5.1.2 **Handler Members** being South African legal entities and individuals, that process macadamias and / or consolidate macadamias for sale as nut in shell.

5.2 Non-voting Members

Non-voting members will consist of:

5.2.1 **Associate members** being legal entities and individuals that have an interest in the industry including but not limited to: nurserymen, agricultural advisors, roasters, packagers, wholesalers, retailers, exporters, marketers, input and equipment suppliers, researchers and educators. Associate members will also include International members who are legal entities or individuals situated outside of South Africa. This membership class will also include Special members who shall be any persons who, in the sole discretion of the Board of Directors, merit membership by virtue of special qualifications or experience of value to the macadamia industry.

5.2.2 **Honorary life members** being individuals who will be appointed by the Board in recognition of special or extraordinary services rendered to the macadamia industry.

6. APPLICATION FOR MEMBERSHIP

6.1 Any legal entity or individual wishing to become a member of SAMAC NPC shall apply to the Board in writing in the format prescribed. The written application must be accompanied by the information as required by the Board to enable the Board to establish the extent to which the applicant meets the criteria for membership, including amongst others:

6.1.1 a written statement endorsing the Memorandum of Incorporation of SAMAC NPC and undertaking to at all times uphold the SAMAC NPC Code of Conduct as determined and communicated by the Board; and

6.1.2 an indication as to what class and type of membership is being applied for.

6.2 The Board shall receive and review the applications for membership and shall be entitled to approve or reject such application and to inform the applicant accordingly without any obligation to provide reasons for its decision. The Board shall identify the category of membership of each approved application for membership.

6.3 The Board shall maintain a register of members to be kept at the registered office of SAMAC NPC as required in terms of the Act. All Member information shall remain confidential and the Board shall process all members' personal information in accordance with the applicable laws, such as, but not limited to, the Protection of Personal Information Act.

7. MEMBERSHIP FEES

- 7.1 The membership fees shall be as determined from time to time by the Board.
- 7.2 The membership fees as determined by the Board each year shall be paid annually in advance by the members within 30 (thirty) days from date of invoice.
- 7.3 New members whose applications have been approved as envisaged in clause 6.2 shall be expected to make payment of a pro rata amount of the membership fee for the remainder of the financial year within which the membership application is approved, within 30 (thirty) days from date of invoice.
- 7.4 Failure by a member to pay the membership fee within the stipulated time as per clauses 7.2 and 7.3 shall result in such member no longer being in good standing.

8. CESSATION OF MEMBERSHIP

- 8.1 A member shall cease to be a member of SAMAC NPC if:
 - 8.1.1 being a legal entity, the member is placed under business rescue or an order for the final winding-up of the member is granted or a special resolution for the winding-up of the member is duly passed and registered in terms of the relevant legislation;
 - 8.1.2 the member is placed under curatorship;
 - 8.1.3 the member is removed as a member as envisaged in clause 8.3;
 - 8.1.4 being a member, the member does not meet the description of a member in good standing for a period of one year or more; and
 - 8.1.5 by notice in writing to the Board, the member resigns as a member subject to clause 8.2.
- 8.2 Any member must, should it decide to resign, submit its written resignation within 3 (three) months of the commencement of SAMAC NPC's financial year to the Board, failing which, all applicable membership fees will be charged for that financial year.
- 8.3 The Board can, after following the procedures described below, terminate the membership of any member of SAMAC NPC, should that member repeatedly neglect to

fulfil its obligations to SAMAC NPC or fail to comply with any other conditions and responsibilities associated with membership including those set out in clauses 7 and 8.6.

8.4 Any member who resigns or whose membership is terminated under the provisions of this clause 8:

8.4.1 forfeits all powers, privileges or say in the activities of SAMAC NPC as well as in the financial affairs or property of SAMAC NPC from the date of termination of membership; and

8.4.2 is liable for payment of outstanding fees up to the end of the financial year in which membership was terminated.

8.5 Prior to recommending the termination of membership of a member, the Board may, in its sole discretion, resolve to suspend the membership of a member who is guilty of conduct envisaged in clauses 8.3 and 8.6 to afford such member reasonable opportunity to correct its conduct, to the extent possible. The period of suspension and the decision to proceed with a recommendation for termination of membership shall be within the sole discretion of the Board.

8.6 For guidance purposes and in addition to failure to fulfil financial obligations, the Board may consider suspension and/or termination if a member:

8.6.1 acted willfully in contravention of any provision of this Memorandum or the SAMAC NPC Code of Conduct as published by the Board of Directors;

8.6.2 has been guilty of bringing SAMAC NPC into disrepute; and/or

8.6.3 has been guilty of conduct which has rendered or may render the member unfit to remain a member of SAMAC NPC.

8.7 The Board shall, on not less than 10 (ten) business days' written notice:

8.7.1 advise the member of the intention of the Board to consider the matter; and

8.7.2 invite the member to be present in order to make such representations and advance such facts as may be relevant to the matter to be considered.

8.8 The member may then within 10 (ten) business days make such representation and advance such facts in writing or may personally appear to do so at the time the matter is considered by the Board.

- 8.9 The Board may, on consideration of the matter and in an appropriate case, whether or not the member has availed itself of the rights set forth in clause 8.8:
- 8.9.1 make such ruling in the circumstances as it may deem just in the interests of the member and SAMAC NPC, including suspending the membership of the member for such period as the Board deem appropriate; or
- 8.9.2 resolve to terminate membership as contemplated in clauses 8.3 and 8.6. If the board has resolved to terminate the member's membership the member's name will be deleted from the register of members, whereupon the member shall cease to be a member of SAMAC NPC.
- 8.10 Any member whose membership is terminated as envisaged herein for whatever reason shall thereupon cease to be a member and shall have no claim whatsoever against SAMAC NPC or the Board arising from such termination and whether for charges, return of membership fees or otherwise.
- 8.11 Any member whose membership is suspended as envisaged herein for whatever reason shall not be entitled to vote at any meeting of members for such period as the suspension remains in place.
- 8.12 Notwithstanding the termination of the membership of a member as envisaged herein, SAMAC NPC shall have the right to institute legal action against such member to recover any outstanding monies due to SAMAC NPC including outstanding membership fees.

9. MEETINGS OF MEMBERS: ANNUAL GENERAL MEETING AND GENERAL MEETINGS

- 9.1 SAMAC NPC shall hold an annual general meeting of members:
- (a) initially, no more than 18 months after the company's date of incorporation; and
- (b) thereafter, no more than 12 months after the end of the financial year end.
- 9.2 The business to be transacted at an Annual General Meeting must at least include, but not necessarily be limited, to:
- (a) presentation of—
- (i) the directors' report;
- (ii) audited financial statements for the immediately preceding financial year; and
- (iii) an audit committee report;

- (b) election of directors, to the extent required by the Act or this Memorandum of Incorporation or the ratification of the appointment of independent directors; and
- (c) appointment of-
 - (i) an auditor for the ensuing financial year; and
 - (ii) an audit committee.

- 9.3 For clarification purposes, it is confirmed that any matter to be decided by the Annual General Meeting as provided for in this Memorandum (in addition to those matters normally dealt with at an annual general meeting as per section 61(8) of the Act and as listed in clause 9.2) may also be decided by members at a general meeting of members called by the Board for consideration of the specific matter/s as set out in the notice of such general meeting. Unless otherwise provided by the Act, any such matters may also be dealt with by way of written resolution as contemplated in section 60 of the Act and clause 10.14 of this Memorandum.
- 9.4 In addition to the Annual General Meeting, and as envisaged in clause 9.1, the Board may, whenever it thinks fit, convene a general meeting of members and a general meeting shall also be convened on a requisition by members representing not less than 10 (ten) percent of the weighted voting rights of SAMAC NPC (as per clause 11.2) at the date of the lodgment of the requisition or, in default, may be convened by the requisitions as provided by and subject to the provisions of the Act.
- 9.5 The Board may, in its sole discretion, decide on the invitation of observers at any meeting of members, including the Annual General Meeting.
- 9.6 The Board shall determine the date and venue of the Annual General Meeting at least three months in advance, which information shall immediately after determination by the Board be communicated to members in writing.
- 9.7 Subject to the provisions of the Act relating to meetings of which notice is required to be given as well as the provision of clause 9.6, formal notice of any meeting of members, including the Annual General Meeting, which notice shall include the agenda, proposed resolutions and meeting papers, shall be distributed to members no later than 10 (ten) business days' prior to the date of the meeting (the date of distribution being included in the calculation of the period and the date of the meeting being excluded).
- 9.8 The Company may conduct its General Meetings through regional meetings in multiple locations, provided that it must be done in accordance with rules to be established by the Board in respect of the conduct of the General Meetings and practical arrangements for members attending the meetings in multiple locations.

- 9.9 The notice as referred to in clause 9.6 shall meet the requirements of section 62 (3) of the Act and shall specify the place, the day and the hour of meeting, the general nature of the business and any specific purpose, if applicable, and shall include a copy of any proposed resolution to be considered at the meeting as well as an indication of the percentage of voting rights that will be required for that resolution to be adopted.
- 9.10 The notice shall be given in a manner hereinafter mentioned or in such other manner, if any, as may be approved by members, to such persons as are, under the provisions of this Memorandum, entitled to receive such notices from SAMAC NPC.
- 9.11 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 9.12 In addition to those matters included in the notice of the meeting by resolution of the Board, each member in good standing is entitled to submit any number of discussion points for inclusion in the notice, subject to the following:
- (a) the point/s for discussion must be submitted to SAMAC NPC (for attention of the chief executive officer at least twenty business days prior to the date of the meeting (to enable inclusion in the notice of the meeting prior to distribution); and
 - (b) all points of discussion shall be referred to the Board, at least 15 (fifteen) business days prior to the meeting, which shall co-ordinate the items and determine the agenda for the meeting.
- 9.13 In addition to submitting discussion points as envisaged in clause 9.12, any two members in good standing, acting in concert, may propose a formal resolution for consideration and adoption by members in good standing as envisaged in section 65(3) of the Act. Any such proposed resolution to be tabled at a meeting of members shall be submitted in the manner and within the timeframe as envisaged in clause 9.12.

10. PROCEEDINGS AT MEETINGS OF MEMBERS

- 10.1 Business may be transacted at any meeting of members only while a quorum is present. The minimum quorum requirements are:
- 10.1.1 Members holding at least 10% (ten percent) of the weighted voting rights, as per clause 11.2; and
 - 10.1.2 At least three members who are entitled to cast a vote.
- 10.2 Where a voting process by closed ballot (polled vote) has been announced as envisaged in clause 10.9, the weighted votes (calculated as at the record date) of members present in person or by proxy shall be counted.

- 10.3 Where voting will take place by show of hands as envisaged in clause 10.9, each member present in person or by proxy, shall have 1 (one vote) in respect of that matter. Accordingly, the weighted votes as per clause 11.2 will not be applicable. A member holding a valid proxy shall be entitled to cast one vote in terms of that proxy in addition to casting his own vote.
- 10.4 If, within 30 (thirty) minutes after the scheduled time for the meeting to begin, a quorum is not present, the meeting will be postponed without motion, vote or further notice (unless the venue of the meeting is changed) for a period of 10 (ten) business days and, if the postponed date falls on a public holiday, the meeting will be held on the first business day following such public holiday.
- 10.5 If, within 30 (thirty) minutes after the scheduled time for the postponed meeting to begin, a quorum as required in terms of clause 10.1 is not present, the meeting will proceed and will be deemed to be quorate.
- 10.6 The chairman of the meeting of members may extend the periods referred to in clauses 10.4 and 10.5 for a further 30 (thirty) minutes in the event of exceptional circumstances as contemplated in section 64(5) of the Act and such extension will be in the sole discretion of the chairman.
- 10.7 The chairman or any member of the Board shall preside as chairman at every meeting of members. If there is no such chairman or Board member, or if at any meeting he/they are not present within fifteen (15) minutes after the time appointed for holding the meeting or are unwilling to act as chairman, the members present shall choose a director, or if no director be present, or if all the directors decline to take the chair, members shall nominate any member present to be chairman of the meeting.
- 10.8 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned as a result of a direction given in terms of any applicable provision in the Act, notice of the adjourned meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment of the business to be transacted at an adjourned meeting.
- 10.9 Subject to clause 10.12, at any meeting of members, the manner in which a resolution is put to the vote of the meeting shall be decided as determined in the notice sent out prior to the meeting. Notwithstanding an indication that a motion will be determined by a show of hands, on request of:

- (a) the chairman of the meeting;
- (b) or at least 5 (five) members who have the right to vote on the matter, present in person or by proxy; or
- (c) members, present in person or by proxy, who are entitled to vote on the matter and who, in aggregate hold not less than 10% (ten percent) of the weighted voting right, as per clause 11.2, entitled to be voted on the matter;

a vote by closed ballot (polling) will be allowed without any discussion of the reasons for the request.

10.10 A declaration by the chairman that a resolution has been carried by show of hands, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the meeting, shall be conclusive evidence of the fact. Scrutineers may be appointed by the chairman to count the votes. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting. Any objection at a meeting as to the admissibility of any vote shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

10.11 In the case of an equality of votes, the chairman of the meeting shall be entitled to a casting vote, unless the matter relates to the re-election of the chairman, in which event the Board member acting as chairman shall have a casting vote. The Board member to act as chairman as indicated shall be nominated by the board whenever required.

10.12 Notwithstanding the provisions of clause 10.9, voting in respect of the following matters will at all times be done by way of a closed ballot based on the number of weighted votes allocated to a member:

10.12.1 Any changes to the Memorandum of Incorporation;

10.12.2 Any special resolution;

10.12.3 At the discretion of the Board any issue of significant consequence may be voted on by closed ballot. The method of voting will be announced in the notice of motion.

10.13 A member, being a legal entity, shall be represented at any meeting of members by one representative per member and the letter of representation shall be submitted to the chairman not later than 48 (forty eight) hours before the start of any meeting of members, provided that the chairman of the meeting may, in his sole discretion, allow the late

submission of a letter of representation at any time prior to the authorised representative wishing to exercise his authority in terms thereof.

10.14 Subject to the provisions of the Act, a resolution in writing signed within 20 (twenty) business days of distribution on behalf of the requisite number of members in good standing by their duly authorised representatives shall be as valid and effectual as if it had been passed at a meeting of the members duly convened and held; provided that:

10.14.1 notice of such resolution shall have been given to all members meeting the criteria as set out herein;

10.14.2 in the event of an ordinary resolution, the resolution has been signed and supported on behalf of such number of members in good standing that may exercise more than 50% (fifty percent) of the total voting rights that can be exercised by members in good standing as per clause 7.4;

10.14.3 in the event of a special resolution, the resolution has been signed and supported on behalf of such number of members in good standing that may exercise at least two thirds (67%) of the total voting rights that can be exercised by members in good standing;

10.14.4 a statement describing the results of the vote, consent process or election shall be delivered by SAMAC NPC to every member in good standing within 10 (ten) business days after adoption of the resolution by the requisite majority as required in terms of section 60(4) of the Act; and

10.14.5 any resolution contemplated in this clause 10 may consist of several documents in the like form each signed on behalf of one or more of the members in good standing and signature shall be sufficient if made by a director of the member or its duly authorised representative. For the purposes of this clause, a resolution shall be deemed to have been signed if consent thereto has been given in a message transmitted by such electronic means as accepted by the Board and purporting to emanate from the person whose signature to such resolution is required.

11. VOTING RIGHTS OF MEMBERS

11.1 A member shall be entitled to vote on behalf of other members if duly authorised thereto by written proxy, provided that no member will be entitled so to vote on behalf of more than 5 (five) proxies.

11.2 The number of votes that a member may exercise at a meeting of members or by way of written resolution (not when voting by show of hands, as per clause 10.3) shall be

determined by the Board as per the table below, based on the relative contribution made by such member to the financing of SAMAC NPC during the previous three financial years as set out below, as at the record date of any meeting where voting is to take place. Grower members shall provide all requested data to SAMAC NPC to enable the calculation of voting rights, by the end of November of each year, failing which a zero production will be assumed:

Weighted voting system – Grower Members

Average production in tonnes DNIS over the past three years	Number of votes
0 to 50	1
>50 to 100	2
>100 to 175	4
>175 to 300	6
>300 to 500	8
>500	10

- 11.3 Handler Members will be entitled to one vote each.
- 11.4 In the event of a closed ballot, an authorised representative representing more than one member in good standing by written proxy shall be entitled to complete a ballot paper on behalf of each such member subject to the limitations contemplated in clause 11.1.
- 11.5 In the event of a written resolution as contemplated in clause 10.14 a member in good standing may exercise the number of votes that such member is entitled to.
- 11.6 Subject to the provisions of the Companies Act and unless otherwise provided for in this Memorandum contemplated in clause 10.9, all matters to be voted on by members in good standing will be passed by ordinary resolution.

12. DIRECTORS

- 12.1 The number of directors shall not be less than 7 (seven) and not more than 9 (nine).
- 12.2 The Board shall be made up as follows:
 - 12.2.1 The Board will comprise of 6 (six) directors who are also grower members or representatives of grower members (subject to clause 12.2.8(a)) and who shall be appointed by the provinces. No person who is actively involved in the day-to-day management of a handler (as described in clause 5.1.2) shall be eligible to act as a director.

- 12.2.2 Based on a province's contribution to the national crop (in DNIS tonnage terms) calculated over a three year rolling average, the members who contributed to the province's contribution shall be entitled to appoint a number of directors to the Company's board. A member operating in more than one province must select a single province to which his entire contributions will be allocated and he will accordingly cast his votes in that province. The board shall formulate rules with regard to the calculations.
- 12.2.3 The number of directors to be appointed by a province shall be as follows:
- (a) 0% to <12% contribution to the national crop: No directors;
 - (b) 12% to <24% contribution to the national crop: One director;
 - (c) More than 24% contribution to the national crop: Two directors.
- 12.2.4 The Board shall inform the provinces timeously of their entitlement (or not) to appoint a director(s) and the date by when the appointment must be finalized and confirmed. The board shall annually determine which provinces shall be entitled to appoint directors based on current and updated production data, the current composition of the board and the current directors' terms of office. Should the allocations in terms of clause 12.2.2 and 12.2.3 result in the potential appointment of more than 6 directors, the provinces with the largest contributions shall have preference to appoint their allocated number of directors.
- 12.2.5 The board shall determine rules for the Company to establish a process to facilitate the meeting of the province's members where the director(s) will be appointed.
- 12.2.6 The Board shall approve a Code for Nomination and Voting Procedures and amend same from time to time as deemed necessary by the Board.
- 12.2.7 In voting on the appointment of directors for a province, the members shall have the number of votes as set out in clause 11.
- 12.2.8 Any grower member who is an individual, or the representative of a grower member can be appointed as a director. The director(s) appointed by a province need not be a member of that province. The board shall indicate whether a director is to be appointed for a one year term or a two year term. Directors may be reappointed for further terms.

- (a) Provided that a representative of a member shall only qualify for appointment as a director for as long as he/she is employed by a grower member in the province where he/she was employed as at date of election. A director so appointed shall resign as soon as this condition is no longer met.

12.2.9 The Board shall formulate Company rules to provide for a situation where the number of directors to be appointed in terms of the criteria in 12.2.3 results in the appointment of less than 6 directors, which rules shall specify how the remaining positions shall be filled and by which provinces.

12.2.10 A minimum of 1 (one) and a maximum of 3 (three) independent external directors will be appointed by the board as and when necessary, considering the need for good governance and the appropriate skills and experience required by the board in fulfilling its role and on such terms and conditions as the Board in its sole discretion shall determine. Independent external directors should not be involved in the Macadamia industry or related industries.

12.2.11 Independent external directors will serve for a one year term and shall be eligible for reappointment for further terms.

12.2.12 The board shall establish and allocate functional board portfolios amongst themselves, from time to time, with the ideal for each board member who is not an independent external director to be assigned at least one such portfolio, but independent external director could be assigned to such a portfolio if deemed appropriate by the board.

12.3 Unless otherwise decided by a meeting of members and subject to clause 17.4, the Board may fill any casual vacancy occurring from time to time in respect of the category listed in clause 12.2.1. The director so appointed by the Board to fill any vacancy will retire as soon as the board is able to arrange for an appointment in terms of clauses 12.1 and 12.2, which shall be done as soon as reasonably possible.

12.4 Each member in good standing shall be entitled to nominate for election and vote at that member's provincial meeting for the appointment of Board Members.

12.5 The independent external directors appointed by the Board in terms of clause 12.2.10 shall stand down at the first Annual General Meeting following such appointment by the Board, for the appointment to be ratified by the members in good standing by ordinary resolution, failing which the appointed individual must vacate his office. Once ratified, there is no need for a re-appointment of such individual by the Board to again be ratified by members.

13. REMUNERATION OF DIRECTORS

- 13.1 The fees of the directors, if any, for services rendered as directors, if any, shall from time to time be approved by the Annual General Meeting by way of special resolution and in accordance with section 66.
- 13.2 The Board may pay any director who serves on any committee or who devotes special attention to the business of SAMAC NPC, or otherwise, performs services, which in the opinion of the Board are outside the scope of the ordinary duties of a director, such extra remuneration as they may determine and provided such remuneration has been approved by a special resolution of the members as required in section 66.

14. POWERS OF DIRECTORS

- 14.1 The Board shall have the authority to make rules as contemplated in section 15(3) to (5) in the Act.
- 14.2 Unless otherwise specified in this Memorandum, the authority of the Board to manage and direct the business and affairs of SAMAC NPC, as set out in section 66(1) of the Act is not limited or restricted.
- 14.3 The Board may from time to time appoint an individual to the office of Chief Executive Officer for such a period and generally on such terms as they may think fit.

The Board may from time to time entrust to and confer upon a Chief Executive Officer for the time being such of the powers vested in the Board as the Board may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as the Board may think expedient; and the Board may confer such powers either collateral or to the exclusion of, and in substitution for, all or any of the powers of the Board, and may from time to time revoke or vary all or any of such powers.

- 14.4 The Board shall have the power from time to time to delegate, or to allocate, to any one of its members or to any other person, whether in the Republic or not, such of the powers as are vested in the Board pursuant to the Act or under this Memorandum, as the Board may deem fit.
- 14.5 The Board may delegate, or allocate any of its powers to committees consisting of such member or members of their body as they think fit and with such mandate as the Board may determine; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board. Save as

aforesaid, the meetings and proceedings of a committee consisting of more than one member shall be governed by the provisions of the terms of reference of such committee as approved by the Board from time to time.

- 14.6 In line with best practice and good corporate governance recommendations, the Board shall from time to time consider the appointment of standing Board Committees as deemed appropriate by the Board in its sole discretion, which may include, but not limited to, an audit and/or risk committee, a remuneration committee and/or a nominations committee.
- 14.7 Without derogating from the generality of the aforementioned, the powers of the Board, which may also be delegated as envisaged above, will include, but not be limited to:
- 14.7.1 purchase or otherwise acquire for SAMAC NPC any property rights or privileges which SAMAC NPC is authorised to acquire at such price and generally on such terms and conditions as the Board shall deem fit;
 - 14.7.2 pay for any property rights or privileges acquired by or services rendered to SAMAC NPC;
 - 14.7.3 borrow money for the purposes of SAMAC NPC and to mortgage or charge its undertaking and property as security for any debt, liability or obligation of SAMAC NPC;
 - 14.7.4 appoint, remove or suspend such managers, officers, other staff and agents for permanent, temporary or special services as the Board may from time to time think fit and to determine their powers and duties; and determine their salaries or remuneration;
 - 14.7.5 institute, conduct, defend, compound or abandon any legal proceedings by or against SAMAC NPC or its officers or of otherwise concerning the affairs of SAMAC NPC and to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against SAMAC NPC;
 - 14.7.6 make and give receipts, releases and other discharge for money payable to SAMAC NPC and for the claims and demands of SAMAC NPC;
 - 14.7.7 determine who shall be entitled to sign, on behalf of SAMAC NPC, any documents that are required to be signed by SAMAC NPC;

- 14.7.8 invest and deal with any of the moneys of SAMAC NPC not immediately required upon such securities and in such manner as the Board shall think fit and to vary or realise such securities;
- 14.7.9. enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things in the name and on behalf of SAMAC NPC as the Board may consider expedient for or in relation to any of the foregoing matters or otherwise for the purpose of SAMAC NPC; and
- 14.7.10. submit such strategic policies, impacting on the agricultural industry and/or the members of SAMAC NPC, as deemed necessary in the discretion of the Board to the Annual General Meeting or via written resolution for approval by members.

15. DISQUALIFICATION OF DIRECTORS

- 15.1 A director shall cease to hold office as such if:
 - 15.1.1 he is ineligible or disqualified to continue as a director by virtue of any of the provisions of the Act or becomes prohibited from being a director by reason of any order made under the Act; or
 - 15.1.2 his estate is sequestered or he files an application for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement with his creditors generally; or
 - 15.1.3 he is removed by a resolution of the Board or the members as provided in section 71 of the Companies Act; or
 - 15.1.4 the members from the province who appointed him in terms of clause 12, pass an ordinary resolution at a meeting of those members to remove him as a director; or
 - 15.1.5 he resigns his office by notice in writing addressed to the chairman of the Board of SAMAC NPC; or
 - 15.1.6 being a non-executive director appointed by the board, he is not re-appointed by the board; or
 - 15.1.7 his term of office expires and he is not re-appointed in terms of clause 12; or

- 15.1.8 he fails to attend the meetings of the Board for three consecutive meetings, unless excused by the Board for reasons satisfactory to the Board, and the secretary of the Board shall certify that fact to the Board;
 - 15.1.9 the condition of his/her appointment, as set out in clause 12.2.8 is no longer met; or
 - 15.1.10 he/she dies.
- 15.2 Subject to the provisions of the Act having been complied with, no director or intending director shall be disqualified by his office from contracting with SAMAC NPC in any manner whatsoever. The director's obligation to disclose personal financial interests in terms of section 75 of the Act shall at all times be adhered to in the event of any director or a related party (as defined in section 2 of the Act) to such director having a personal financial interest in any matter concerning SAMAC NPC.

16. PROCEEDINGS OF DIRECTORS

- 16.1 The chairman may, and shall on the requisition of at least 2 (two) directors, call a meeting of the Board.
- 16.2 In the interest of good governance and to ensure the effective and efficient functioning of the Board, it shall endeavour to meet at least on a quarterly basis with such additional meetings being called by the chairman as and when required.
- 16.3 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings, as the directors think fit. Meetings of the Board may also be held via electronic communication, subject to the requirements of the Act.
- 16.4 Matters arising at any meeting of the Board shall be decided by a majority of votes and each director (non-executive and executive) shall have 1 (one) vote.
- 16.5 In the event of an equality of votes, the chairman shall have a second or casting vote.
- 16.6 The Board may determine what period of notice shall be given of meetings of the Board and may determine the means of giving such notice, which may include any electronic means.
- 16.7 A quorum shall consist of at least 50% of directors in office from time to time. For the purpose hereof, a director who has authorised in writing another director to vote for him

at a meeting in terms of clause 16.10 shall, if the director so authorised is present at the meeting, be deemed to be present himself.

- 16.8 The continuing directors (or sole continuing director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the minimum number fixed by or pursuant to this Memorandum, the continuing directors or director may act only for the purpose of implementing the procedures in clause 12 for the appointment of additional directors. If there are no directors or director able and willing to act, then any two members from a province may summon a meeting of the members of that province for the purpose of appointment of directors in terms of clause 12.
- 16.9 Subject to section 74 of the Act, a resolution in writing, including through the medium of electronic communication, supported by a majority of directors in office from time to time shall be as valid and effectual as if it has been passed at a meeting of the Board duly called and constituted, provided that each director has received notice of the matter to be decided. The resolution may consist of several documents; each signed by one or more directors.
- 16.10 A director unable to attend a Board meeting may authorise any other director to vote for him at that meeting, and in that event the director so authorised shall have a vote for each director by whom he is so authorised in addition to his own vote. Authority in terms of this clause must be in writing (which may take any electronic form) and must be handed to the chairman of the meeting at which it is to be used.

17. CHAIRMAN AND VICE-CHAIRMAN

- 17.1 The Chairman and Vice Chairman must be elected by the Board for a period of two years, following the AGM, subject to the provisions of clause 12.
- (a) A Chairman or Vice Chairman could be removed and replaced at any stage through a resolution by the Board, provided that the Chairman or Vice Chairman to be removed in terms of the vote, shall not have a vote in such proceedings.
- 17.2 The Chairman shall immediately resign from any political or other post, which in the opinion of the Board, could have an adverse effect on the execution of his/her duties as office-bearer of SAMAC NPC with the undertaking to refrain from making him/herself available for any public political positions in the term of office.
- 17.3 Notwithstanding the provisions of clause 12.3, should a permanent vacancy occur in the respect of the office of Chairman, the Vice Chairman shall fill this post until the board convenes a meeting within 30 days, or as soon thereafter as reasonably possible, to elect a new Chairman.

- 17.4 Should a permanent vacancy occur in respect of the office of vice-chairmen, the Board shall fill such vacancy as provided for in clause 12.3.

18. VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES

As regards all persons dealing in good faith with SAMAC NPC, all acts done by any meeting of the Board or of a committee of the Board or of any executives, or by a person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any such directors or persons acting as aforesaid, or that they or any of them were disqualified or had ceased to hold office or were not entitled to vote, be as valid as if every such person had been duly appointed or was qualified or had continued to be a director or was entitled to vote, as the case may be.

19. RESERVES

- 19.1 The Board shall formulate Company rules, in line with this clause and other relevant provisions of this Memorandum, in terms of which any surplus funds of the company shall be dealt with.
- 19.2 The Board may set aside out of the surplus of SAMAC NPC and carry to reserve such sums, as they think proper. All sums standing to the credit of income and general reserve shall at the discretion of the Board be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of SAMAC NPC, for repairing, improving or maintaining any property of SAMAC NPC, for meeting losses on realisation of or writing down investments either individually or in the aggregate, or for any other purpose to which surplus funds of a non-profit company may appropriately be applied.
- 19.3 Pending such application as envisaged above, such sums may either be employed in the business of SAMAC NPC (without being kept separate from the other assets of SAMAC NPC) or be invested. The Board may divide the reserve into such special reserves as they think fit and re-allocate the amounts of such reserves either in whole or in part to other special or general reserves and may consolidate into one reserve any special reserves or any parts of any special reserves into which the reserve may have been divided. The Board may also carry forward any surplus without placing them to reserve.

20. NOTICES

- 20.1 Subject to the provisions of the Act, all communication with a member, including but not limited to notices of meetings, copies of annual financial statements and other documents to be tabled at meetings of members, may be done via electronic means to such e-mail address as provided by the member in writing from time to time.

- 20.2 A notice by SAMAC NPC to any member shall be regarded as validly given if it is sent by electronic mail, or delivered personally to the member or sent prepaid through the post to him at his last known address.
- 20.3 SAMAC NPC shall not be bound to enter any person in the register of members until that person gives SAMAC NPC an address (at least one of either a physical, postal or email address) for entry in the register and paid its initial subscription fees.
- 20.4 Any notice, if given by registered post to the member's last known address, shall be deemed to have been served 14 business days following that on which the letter or envelope containing such notice is posted, and in proving the giving of the notice sent by post it shall be sufficient to prove that the letter containing the notice was properly addressed and dispatched by the Company.
- 20.5 Any notice, if given by electronic means as envisaged in clause 20.1, shall be deemed to have been served on the day that the message has been sent to the e-mail address as provided by the member and in proving the giving of the notice sent by electronic means it shall be sufficient to prove that the message was properly sent.

21. INDEMNITY

- 21.1 The authority of the Board to advance expenses to a director or prescribed officer, or indemnify a director or prescribed officer in respect of legal proceedings, as set out in section 78(3) of the Act, is not limited or restricted by this Memorandum.
- 21.2 The authority of the Board to indemnify a director or prescribed officer in respect of liability, as set out in section 78(5) of the Act, is not limited or restricted by this Memorandum.
- 21.3 The authority of the Board to purchase insurance to protect SAMAC NPC, or a director or prescribed officer, as set out in section 78(6) of the Act, is not limited or restricted by this Memorandum.

22. WINDING UP

- 22.1 No motion for the liquidation or winding up of SAMAC NPC shall be considered unless it is done by recommendation from the Board and communicated to members by the Chief Executive Officer at least 3 (three) months prior to consideration of the motion at an Annual General Meeting or a general meeting of members.
- 22.2 SAMAC NPC shall be liquidated or wound up if the motion as contemplated in clause 22.1 is approved by a special resolution of members, taken by closed ballot.

- 22.3 Upon dissolution of SAMAC NPC, the property of SAMAC NPC not consisting of money, shall be sold and the proceeds together with so much thereof as shall consist of money shall be applied in satisfaction of the debts and liabilities of SAMAC NPC and subject thereto the balance shall be disposed of:
- 22.3.1 in the event of SAMAC NPC being a public benefit organisation or enjoying tax exemption status, to one or more public benefit organisations or to another entity with similar objects and which is approved in terms of section 10(1)(d)(iii) or (iv) of the Income Tax Act as determined by the members in a duly constituted meeting; or
 - 22.3.2 in the event of clause 22.3.1 not being applicable, to another entity with similar objects as determined by the members in a duly constituted meeting; or
 - 22.3.3 in the absence of such determination by members, as ordered by a court of law.

23. AMENDMENT OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation may only be amended, as envisaged by the Act, by special resolution passed at a duly constituted meeting of members.

24. ACCOUNTING RECORDS AND AUDITOR

- 24.1 The Board shall cause such accounting records as are prescribed by the Act to be kept. Proper accounting records shall not be deemed to be kept, if they do not fairly present the state of affairs and business of SAMAC NPC and explain the transactions and financial position of SAMAC NPC.
- 24.2 The accounting records shall be kept at the registered office of SAMAC NPC or at such other place or places as the Board think fit, subject to the provisions of the Act, and shall always be open to inspection by the directors.
- 24.3 Members shall be entitled to access to the Company's records in accordance with section 26 of the Act. The Board shall from time to time, in accordance with the provisions of the Act, cause to be prepared and presented to the members at the Annual General Meeting such audited annual financial statements as are referred to in those sections.
- 24.4 An independent auditor registered with the Public Accountants and Auditors Board of South Africa shall be appointed in accordance with the provisions of the Act.

25. ANNUAL FINANCIAL STATEMENTS

- 25.1 A copy of the audited annual financial statements which are to be presented to the members at Annual General Meeting, or a summarised version thereof as provided for in the Act, shall be sent together with the notice of the said Annual General Meeting where such annual financial statements are to be presented.
- 25.2 The Company elects to voluntarily comply with the enhanced accountability provisions of Chapter 3 of the Companies Act.

26. DISPUTE RESOLUTION

- 26.1 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.
- 26.2 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.
- 26.3 Within 10 (ten) business days following such notification, the matter will be referred to arbitration as envisaged in the clauses below.
- 26.4 The arbitration will be held as an expedited arbitration in accordance with the then current rules for expedited arbitration of the Arbitration Foundation 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.
- 26.5 The decision of the arbitrator shall be final and binding on all parties and there shall be no further right of appeal.
- 26.6 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.

27. REQUIREMENTS RELEVANT TO TAX STATUS

In order for SAMAC NPC to comply with the requirements relevant to a public benefit organisation or an entity enjoying tax exemption status as provided for in the Income Tax Act, and for the period while it is so registered or enjoying such status, it is expressly agreed that:

- 27.1 the sole objective of SAMAC NPC as described in this Memorandum shall at all times be to carry on one or more public benefit activities as defined in section 30(1) of the Income Tax Act;
- 27.2 no activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of SAMAC NPC otherwise than by way of reasonable remuneration;
- 27.3 no Member of SAMAC NPC, or entity related to such Member in terms of section 2 of the Act, may directly or indirectly have any private or personal interest in SAMAC NPC;
- 27.4 at least 3 (three) directors shall at all times be unrelated (in terms of section 2 of the Act) to the other directors, and no single director or prescribed officer shall directly or indirectly control the decision-making powers relating to SAMAC NPC;
- 27.5 substantially the whole of the funds of SAMAC NPC will be used for the objects for which it was established and it may not distribute any of its funds or assets to any person other than in the course of furthering its objectives, unless otherwise provided in this Memorandum;
- 27.6 substantially the whole of SAMAC NPC's funding shall be from its members, or from an appropriation by the government, a provincial administration or a municipality or from such other sources as allowed in terms of the Income Tax Act;
- 27.7 no remuneration will be paid to any employees, office bearer or other person which in the opinion of the Board is excessive, having regard to what is reasonable in the sector and in relation to the service rendered;
- 27.8 SAMAC NPC will not economically benefit any person in a manner that is inconsistent with its objects as described in this Memorandum;
- 27.9 substantially the whole of its activities must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or a minority group;
- 27.10 SAMAC NPC may not have a share or other interest in any business, profession or occupation which is carried on by its members;

- 27.11 SAMAC NPC will comply with such reporting requirements as may be determined by the Commissioner of the South African Revenue Services from time to time;
- 27.12 SAMAC NPC will not accept any donation that may be revoked by the donor for reasons other than SAMAC NPC failing to abide by the designated purposes and conditions of the donation;
- 27.13 SAMAC NPC is not knowingly and will not knowingly become a party to, and does not knowingly and will not 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; and
- 27.14 any amendment to this Memorandum of Incorporation will be submitted to the Commissioner of the South African Revenue Services within 20 (twenty) business days of such amendments being approved by members as envisaged in clause 23.