

Your Ref:

Our Ref:

Room 701, Bram Fischer Building

Date: 22 February 2018

Council Item

Speaker

Councillor MA Siyonzana

SOUTH AFRICAN CITIES NETWORK – PROPOSAL FOR REVISED LEGAL STRUCTURE

1. Purpose

To request Council to consider the submission to approve the following:

- a) Memorandum of Incorporation (**MOI**) concerning the revised legal structure of the South African Cities Network (**SACN**);
- b) SACN Council Protocol and governance arrangements;

The supporting documents for the above are attached as the following annexures to this memorandum:

- a) Annexure A: Memorandum of Incorporation of a non-profit company without members;
- b) Annexure B: SACN Council Protocol;

2. Background

- 2.1 The South African Cities Network (**SACN**) is an independent research provider and "urban think-tank" that encourages the exchange of information on urban development and city management among its member municipalities and other partners. At present, it is a non-profit company (**NPC**) incorporated under section 21 of the Companies Act 61 of 1973 with 8 municipalities as "members". Apart from its members, the Department of Cooperative Governance and Traditional Affairs (**COGTA**) and the South African Local Government Association (**SALGA**) have played a strategic role as founding partners together with the Departments of Human Settlements and Public Works.
- 2.2 While the Local Government: Municipal Systems Act 32 of 2000 (**Systems Act**) restricts municipalities from participating in the establishment of a new NPC or taking up a new membership in an NPC, at present, the member municipalities' continued participation in SACN as members is lawful owing to the transitional provisions in the Local Government: Municipal Systems Amendment Act 44 of 2003 (**Systems Amendment Act**).
- 2.3 To bring SACN's structure closer to applicable legislation and address the long-term sustainability of the organisation, the SACN Board of Directors requested a legal opinion to guide the restructuring of the organisation.

- 2.4 Three options were presented; an NPC without membership, a multi-jurisdictional service utility, and a state-owned profit company.
- 2.5 At the SACN Board meeting of 4 April 2017, the Management Committee recommended that the "NPC without members" option will be least disruptive, as it preserves the access to information held by municipalities, allows SACN to retain its tax exemption, which contributes to financial sustainability, and allows for the accommodation of non-municipal partners.

3. Discussion

3.1 Memorandum of Incorporation (MOI) & revised legal structure

- 3.1.1 The restructured SACN will be an NPC without any members. This is specifically allowed for in the Companies Act 71 of 2008 (**Companies Act**) and is becoming a common vehicle for NPCs. This requires the signing of a new Memorandum of Incorporation (MOI – Annexure A) to constitute the new structures of the SACN.
- 3.1.2 Previously, SACN member cities and strategic partners sat on the SACN Board of Directors. However, if municipal officials were to continue to serve as directors in the SACN, following the restructuring process, the relevant municipality would be prohibited from making a procurement award to the SACN.
- 3.1.3 In the revised structure, the preferable position would be for the creation of an SACN Council which can appoint executive directors to the Board. SACN should then ensure a strong and active reporting and information sharing relationship between the Board and the SACN Council.
- 3.1.4 An SACN Council will thus be created, made up of key stakeholders of the SACN and its founding municipalities, together with COGTA and SALGA.
- 3.1.5 The SACN Council has the following responsibilities:
 - 3.1.5.1 To provide direction on the research agenda of the SACN;
 - 3.1.5.2 The appointment and removal of directors of the SACN;
 - 3.1.5.3 Funding and strategic support to the SACN for it to deliver its mandate.
- 3.1.6 The SACN Council will be guided by a SACN Council Protocol (Annexure B) that includes details of its roles and responsibilities, criteria for new SACN Council members, and criteria and procedure for the removal of Council Organisations.
- 3.1.7 Proposed Council members will only be accepted onto the SACN Council through a formal invitation extended by existing Council members, after which the Council member may enter into a Council Funding Agreement with SACN.
- 3.1.8 The Board has a fiduciary duty in terms of common law and the Companies Act to the SACN Council to act in the best interests of the SACN Council.

3.2 Memorandum of Agreement and the new funding regime

- 3.2.1 To date, the SACN has used the "subscription model" together with Memoranda of Agreement (MOAs) with member municipalities and memorandums of understanding (**MOUs**) with other national bodies (e.g. the Department of Public Works) as the basis upon which these funders provide grants or contract with the SACN.

- 3.2.2 The SACN will pursue MOAs with Council Organisations as a way to achieve a “foundation-based” funding model where these organisations may make a long-term contractual commitment that will involve a fixed contribution (their subscription fee plus an agreed supplement for major new programmes) and a variable contribution (for additional projects they have individually specified) which may be subject to specific or additional Service Level Agreements.
- 3.2.3 The SACN Council Protocol (Annexure B) requires Council Organisations to endeavour to make an annual contribution to fund the SACN and give due consideration to entering into funding agreements with the SACN. The funding of the SACN by municipalities shall be approved in a separate Council Resolution.
- 3.2.4 Funding by a Council Organisation must take the form of grant funding under the Local Government Municipal Finance Management Act 56 of 2003 (**MFMA**).
- 3.2.5 The Council Organisation shall comply with the requirements of section 67 of the MFMA when providing grant funding to the SACN.
- 3.2.6 Municipalities wishing to procure [additional] services from the SACN should apply the Supply Chain Management (**SCM**) Regulations by submitting a justification to procure services solely from SACN relying on a deviation from a SCM policy in terms of Regulation 36 of the Supply Chain Management Regulations, possibly on the basis that such goods and services “are produced or available from a single provider only”. The motivation for the ‘uniqueness of SACN’, over the short term, can be made on the following basis:
- 3.2.6.1 SACN has achieved a track record and level of recognition for its research and advocacy in championing the urban agenda locally and internationally which is unparalleled. Since 2002 (15 years), SACN has been recognized and cited in key policies such as the National Development Plan (NDP 2030), the Integrated Urban Development Framework (IUDF), and most city strategies; and major multi-lateral, network and development partner organisations that are active in the urban development space .
- 3.2.6.2 The type of work done by the SACN is unique and no other service provider is capable of providing the collective, city-driven, and knowledge based products to Council Organisations. As such, the SACN is able to motivate that its services should be preferred above those of other service providers.
- 3.2.7 In parallel with the first appointment of non-municipal officials as directors of SACN, SACN/the municipalities will seek an exemption for SACN from the Minister of Finance from the provisions of Regulation 44 of the Municipal Supply Chain Management Regulations published under the MFMA. The exemption will also seek an exemption from the SCM requirements for SACN for follow up services flowing directly from grant funded activities. This will be sought by outlining the public interest nature of the organisation and the fact that the organisation is serving public and municipal interests through its research agenda, etc.

4. What needs to happen

- 4.1 As a member of SACN, Mangaung Metro Municipality hereby:

- 4.1.1 Mandates any existing director of the SACN appointed by the City to do all things necessary for restructuring of the SACN as per the MOI and the SACN Council Protocol, pending the termination of its term of office;
- 4.1.2 Agrees to adopt the new MOI;
- 4.1.3 Agrees that from the date the MOI comes into effect, the City will cease to be a "member" of the SACN;
- 4.1.4 Appoint an authorised representative to attend the meeting of the members of the SACN to be held in August and carry out the mandate of the City at the meeting.

As a Council Organisation of the SACN Council to be established:

- 4.1.5 Agrees to be a founding Council Organisation in the SACN Council on the terms set out in the SACN Council Protocol and, to this end, to accede to the SACN Council Protocol once the SACN Council is established; and
- 4.1.6 Nominates Representatives to sit on the SACN Council once the SACN is established and to represent the City in the SACN Council, including voting on the appointment of directors of the SACN Board of Directors.

5. Recommendations

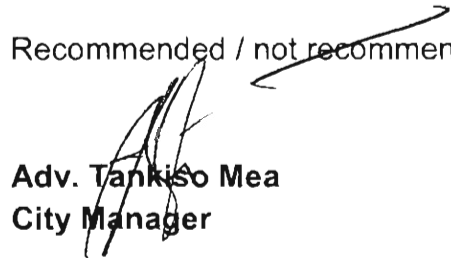
It is therefore recommended that:

- 5.1 Council approves the report.
- 5.2 Council approves that MMM continue with its membership of SACN.
- 5.3 Council decides on its representatives (one Councillor and one official) MMM in the SACN Council, including voting on the appointment of directors of the SACN Board of Directors.



Me. Bonga Mncube
Head: Office of the Speaker

Recommended / not recommended



Adv. Tankiso Mea
City Manager

Approved / not approved



Councilor Mxolisi Siyonzana
Speaker

COMPANIES ACT, 71 of 2008

("the Act")

**MEMORANDUM OF INCORPORATION
OF A NON-PROFIT COMPANY WITHOUT MEMBERS**

NAME OF COMPANY:

SOUTH AFRICAN CITIES NETWORK NPC

("the Company")

REGISTRATION NUMBER:

2002/031754/08

INDEX

1.	INTERPRETATION	3
2.	NON-PROFIT COMPANY	4
3.	OBJECTS OF THE COMPANY	4
4.	POWERS OF THE COMPANY	5
5.	OPTIONAL PROVISIONS DO NOT APPLY	5
6.	COMPLIANCE PROVISIONS	5
7.	MEMBERS	6
8.	DIRECTORS OF THE COMPANY	6
9.	FINANCES	13
10.	FINANCIAL YEAR	14
11.	ACCOUNTING RECORDS AND FINANCIAL STATEMENTS	14
12.	AUDITOR.....	14
13.	ALTERATION OF THIS MEMORANDUM	14
14.	DISSOLUTION AND WINDING-UP	15
15.	NOTICES	15
16.	INDEMNITIES.....	16
1.	PROVISIONS IMPOSED BY SECTION 30 OF THE INCOME TAX ACT.....	17

1. INTERPRETATION

- 1.1 In this Memorandum, including the introduction above, and unless the context requires otherwise:
- 1.1.1 words importing any one gender shall include the other two genders;
 - 1.1.2 the singular shall include the plural and vice versa;
 - 1.1.3 any word or expression which is defined in the Act and is not defined in 1.1.6, shall bear the statutory meaning in this Memorandum;
 - 1.1.4 the headings have been inserted for convenience only and shall not be used for or assist or affect the interpretation of this Memorandum;
 - 1.1.5 any references to sections are references to sections of the Act;
 - 1.1.6 each of the following words and expressions shall have the meaning stated opposite it and cognate expressions shall have a corresponding meaning, namely:
 - 1.1.6.1 **ABM** means an annual Board meeting of the Directors of the Company;
 - 1.1.6.2 **the Act** means the Companies Act 71 of 2008, together with the Companies Regulations, 2011, as amended or substituted from time to time;
 - 1.1.6.3 **the Board** means the Board of Directors of the Company;
 - 1.1.6.4 **Business Day** means any day except a Saturday, Sunday or South African public holiday;
 - 1.1.6.5 **the Commissioner** means the Commissioner of the South African Revenue Services;
 - 1.1.6.6 **Compliance Provisions** means the provisions referred to in clause 6;
 - 1.1.6.7 **Director** means a director of the Company who has been appointed as such in terms of the Memorandum;
 - 1.1.6.8 **Electronic Communication** bears the same meaning as defined in section 1 of the Electronic Communications and Transactions Act 25 of 2002;
 - 1.1.6.9 **the Income Tax Act** means the Income Tax Act 58 of 1962, as amended or substituted from time to time;
 - 1.1.6.10 **Memorandum** means the Memorandum of Incorporation of the Company for the time being in force;
 - 1.1.6.11 **Month** means a calendar month;
 - 1.1.6.12 **Ninth Schedule** means the Ninth Schedule to the Income Tax Act;
 - 1.1.6.13 **Ordinary Resolution** means a resolution supported by: 1) a simple majority of the Directors present at a duly convened and quorate Board meeting; or 2) signed or assented to by a simple majority of the Directors of the Company in the manner contemplated in clause 8.10;

- 1.1.6.14 **PBO** means Public Benefit Organisation;
- 1.1.6.15 **Public Benefit Activities** means the following activities: 1) public benefit activities as defined in section 30(1) of the Income Tax Act, which activities include those listed in Part I of the Ninth Schedule; and 2) 18A Activities;
- 1.1.6.16 **the SACN Council** means the body, established by the Company, but which operates independently of the Company in accordance with the terms of the SACN Council Protocol;
- 1.1.6.17 **the SACN Council Protocol** means the document governing the affairs of the SACN Council, as amended by the Company from time to time, after consultation with the SACN Council;
- 1.1.6.18 **Special Board Resolution** means a resolution adopted in the manner stipulated in clause 13;
- 1.1.6.19 **South Africa** means the Republic of South Africa; and
- 1.1.6.20 **18A Activities** means those Public Benefit Activities that are listed from time to time in Part II of the Ninth Schedule.

2. **NON-PROFIT COMPANY**

- 2.1 The Company was originally incorporated as an association not for gain in terms of section 21 of the now repealed Companies Act 61 of 1973.
- 2.2 By virtue of items 2 and 4 of Schedule 5 to the Act, the Company is now deemed to be a non-profit company as contemplated in section 1 of the Act and, accordingly:
- 2.2.1 is incorporated for a public benefit or other object as required by Item 1(1) of Schedule 1 to the Act; and
- 2.2.2 its income and property are not distributable to its incorporators, directors, officers or persons related to any of them, except to the extent permitted by Item 1(3) of Schedule 1 to the Act.
- 2.3 The Company is governed by:
- 2.3.1 the unalterable provisions of the Act that apply to non-profit companies; and
- 2.3.2 the provisions of this Memorandum.
- 2.4 The alterable provisions of the Act that apply to non-profit companies do not govern this Company, except to the extent that those alterable provisions are included in any provision of this Memorandum, whether expressly or by necessary implication.

3. **OBJECTS OF THE COMPANY**

- 3.1 In accordance with the provisions of Item (1) of Schedule 1 to the Act, the Principal Object of the Company is to promote good governance and management of South African cities by:
- 3.1.1 analysing strategic challenges facing South African cities, particularly in the context of globalisation and national economic development;

- 3.1.2 collecting, collating, analysing, assessing, disseminating and applying the experience of a large city government in a South African context;
 - 3.1.3 promoting partnership between the different spheres of government to support the governance of South African cities; and
 - 3.1.4 undertaking its activities in five year strategic planning cycles to coincide with the term of office and planning horizon of municipalities in South Africa.
- 3.2 Without in any way limiting the general nature of clause 3.1, the main object of the Company includes:
- 3.2.1 collaborating with any other person or entity for the purpose of achieving the Principal Object; and
 - 3.2.2 accepting donations and implementing fund-raising projects in accordance with the Fund-Raising Act and in terms of section 18A of the Income Tax Act, with the view of making funds available for the achievement of the objects of the Company and by encouraging the participation and involvement in the Company of corporate and international agencies interested in promoting these objects.

4. **POWERS OF THE COMPANY**

- 4.1 The Company has all of the legal powers and capacity of a natural person, except to the extent that:
 - 4.1.1 a juristic person is incapable of exercising any such power, or having any such capacity; or
 - 4.1.2 any such power or capacity is restricted, limited or qualified by:
 - 4.1.2.1 any unalterable provision of the Act that applies to non-profit companies; or
 - 4.1.2.2 any express provision of this Memorandum.

5. **OPTIONAL PROVISIONS DO NOT APPLY**

- 5.1 Except as expressly incorporated into this Memorandum, the Enhanced Accountability and Transparency provisions of Chapter 3 of the Act do not apply to the Company.

6. **COMPLIANCE PROVISIONS**

- 6.1 If, and for as long as the Company is approved by the Commissioner for the South African Revenue Service ("**the Commissioner**") as a public benefit organisation ("**PBO**"):
 - 6.1.1 the Company must comply with all the provisions of the Income Tax Act that apply to PBOs from time to time, whether set out in section 30 or elsewhere in the Income Tax Act;
 - 6.1.2 the provisions in clause 6.1.1 will be referred to in this Memorandum as the "Compliance Provisions"; and

6.1.3 if the Income Tax Act is amended so as to change the Compliance Provisions, Schedule Two to the Memorandum must be amended accordingly.

6.2 All the powers of the Company, and the powers and discretions of the board of Directors of the Company ("**the Board**"), will be limited to the extent set out in the Compliance Provisions.

6.3 The Compliance Provisions will take precedence over any contradictory or conflicting provision of this Memorandum.

7. MEMBERS

7.1 As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has no members.

8. DIRECTORS OF THE COMPANY

8.1 APPOINTMENTS, VACANCIES AND TENURE

8.1.1 The number of Directors of the Company shall not be less than 3 (three) and not more than 5 (five).

8.1.2 There are no ex officio directors of the Company.

8.1.3 Directors shall hold office for a period of not more than 3 (three) years, from the date of appointment but shall be eligible after the expiry of their initial term of 3 (three) years, for re-election or appointment for an additional 3 (three) years.

8.1.4 The Board must appoint the following office bearers:

8.1.4.1 A Chairperson, who must be a Director, who will be responsible for:

8.1.4.1.1 chairing meetings of the Board;

8.1.4.1.2 representing the Company both internally and externally; and

8.1.4.1.3 ensuring that the Company and its activities and assets are managed and administered effectively and efficiently, and in compliance with the provisions of this Memorandum.

8.1.5 Subject to the provisions of this Memorandum, the Directors of the Company are appointed and removed by the SACN Council in accordance with the SACN Council Protocol. The SACN Council is entitled, at their absolute discretion, at any time, and from time to time, to:

8.1.5.1 appoint any person of their choice as a Director of the Company;

8.1.5.2 remove any person from office as a Director.

8.1.6 Despite anything to the contrary contained in this Memorandum, the Board will be entitled, in its absolute discretion, by way of a resolution supported by at least two-thirds (2/3rds) of the Directors, to remove any Director from office.

8.1.7 If the number of Directors in office, for whatever reason, falls below the minimum stipulated in clause 8.1.1:

- 8.1.7.1 the remaining Directors must give notice in writing to the SACN Council, inviting them to appoint sufficient replacement Directors; and
- 8.1.7.2 if the SACN Council fails to appoint sufficient replacement Directors within thirty (30) days after the date of delivery of the notice referred to in clause 8.1.7.1, the remaining Directors must themselves, by way of a resolution supported by a simple majority, appoint sufficient replacements.
- 8.1.8 The people holding office as Directors as at the date of adoption of this Memorandum, and all people subsequently listed as Directors in the record of Directors of the Company, will hold office until their removal by the SACN Council or the occurrence of an event contemplated in clause 8.2.

8.2 DISQUALIFICATION AND REMOVAL OF DIRECTORS

- 8.2.1 A director will immediately lose his or her position if he or she:
- 8.2.1.1 becomes prohibited, or disqualified, by virtue of any provision of any law, from holding office as a trustee or a director;
- 8.2.1.2 dies, or resigns his or her office by notice in writing to the Company;
- 8.2.1.3 has or acquires a direct or indirect personal financial interest in any contract or proposed contract with the Company, other than an employment contract and fails to declare his or her interest and its nature in the manner required by the Act;
- 8.2.1.4 is removed from office in terms of clause 8.1.5 or clause 8.1.6;
- 8.2.1.5 is provisionally or finally sequestered, or placed under an administration order; or
- 8.2.1.6 is employed by the Company or a Councilor, and is suspended or dismissed from that employment for any reason whatsoever.

8.3 DIRECTORS' REMUNERATION AND REIMBURSEMENT

- 8.3.1 The Directors will be entitled to reimbursement of all reasonable travelling, subsistence, and other expenses properly incurred by them in the execution of their duties on behalf of the Company and which are authorised or approved from time to time by the Board, upon documentary proof of such expenses.
- 8.3.2 The Directors will not be remunerated for performing their official duties.
- 8.3.3 A Director will be entitled to contract directly or indirectly with the Company, or benefit from any contract that the Company may conclude, on condition that:
- 8.3.3.1 the Director declares his or her interest in the relevant contract in the manner stipulated in the Act; and
- 8.3.3.2 the Director does not participate in any proceedings of the Board during which the relevant contract is discussed or voted on; and

- 8.3.3.3 the conclusion of that contract is subject to the same procedures and criteria as any other similar contract concluded by the Company.

8.4 POWERS AND DUTIES OF THE BOARD OF DIRECTORS

- 8.4.1 **Powers:** The business and affairs of the Company must be managed by, or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company. Without in any way limiting the general nature of this clause, the Board will be entitled to exercise the following powers:

- 8.4.1.1 Co-option of Assistance: The Board will be entitled to co-opt any person of its choice to assist the Board or any committee of the Board in relation to any matter concerning the management or administration of the Company, or the conduct of any aspect of its activities, provided that it is in the best interests of the Company.

- 8.4.1.2 Divisions: The Board will be entitled to establish separate divisions of the Company, to perform any discrete or specialised functions of the Company. The Board must, from time to time, determine rules and procedures for the management and administration of any division, and must take all reasonable steps to ensure that such rules and procedures are complied with. The Board may, if deemed appropriate for administrative, fiscal or other reasons, keep separate books and account separately for each division.

- 8.4.1.3 Committees and Delegation: The Board may delegate any of its powers or assign any of its duties to individual Directors, committees comprising Directors and others, or to any agent or employee of the Company, as the Board chooses, on condition that:

- 8.4.1.3.1 the Board must take reasonable steps to ensure that any such person or committee, in exercising the relevant powers or carrying out the relevant duties, conforms to any rules, restrictions or procedures that may be imposed by the Board from time to time; and

- 8.4.1.3.2 the Board will not be divested of any power or duty by virtue of its delegation or assignment to any person; and

- 8.4.1.3.3 the Board will be entitled, in its absolute discretion, to vary or set aside any decision made under any delegation or in terms of any assignment, or to revoke or amend the terms of any delegation or assignment.

- 8.4.1.4 Borrowing Powers: The Board's borrowing powers will be unlimited, and the Board will be entitled to mortgage or otherwise encumber any or all of the assets of the Company as security for any debt, liability or obligation of the Company.

- 8.4.2 **Duties:** The Board must carry out all duties required of it by this Memorandum, or by the Act, or any other provision of law. Certain of those duties are set out below.

- 8.4.3 **Finances:** In managing the finances of the Company, the Board must ensure that the provisions of clauses 9 and 11 are complied with.

- 8.4.4 **Expertise:** The Board will be entitled to employ independent contractors, or other appropriate people, to provide the Company with such skills and expertise as it may require in order to achieve its objects.
- 8.4.5 **Company Records:** The Board must ensure that the Company maintains the following records, and retains them for a period of at least seven (7) years:
- 8.4.5.1 a copy of this Memorandum, and any amendments or alterations to it;
 - 8.4.5.2 a record of the Directors of the Company, including -
 - 8.4.5.2.1 all the information required in terms of section 24(5) of the Act in respect of each current Director at any particular time; and
 - 8.4.5.2.2 that same information with respect to each past Director.
 - 8.4.5.3 copies of all annual financial statements and accounting records of the Company, including any directors' report and auditor's report;
 - 8.4.5.4 notices and minutes of all general institutional meetings, including all resolutions adopted by the SACN Council;
 - 8.4.5.5 minutes of all meetings and resolutions of the Board, or committees of the Board;
 - 8.4.5.6 a register of Council organisations;
 - 8.4.5.7 a register of Representatives, including all the information required in terms of section 24(5) of the Act to be kept in respect of Directors; and
 - 8.4.5.8 a record of its auditors, including, in respect of each person appointed as auditor of the Company:
 - 8.4.5.8.1 the name of each such individual (or, if a firm or juristic person is appointed, the name, registration number and Registered Office address of that firm or juristic person); and
 - 8.4.5.8.2 the date of every such appointment; and
 - 8.4.5.8.3 any change in the above information, as and when it occurs, with the date and nature of the change.
- 8.4.6 **Location of Company Records:** The records of the Company referred to in clause 8.4.5 must be accessible at or from the Registered Office.
- 8.4.7 **Access to Company Records:** All the Directors, and every Representative, will be entitled, at any reasonable time, and from time to time, to inspect and make copies of any of the Company records referred to in article 8.4.5.
- 8.5 **AUDIT AND FINANCE COMMITTEE**
- 8.5.1 The Board shall after consultation with the SACN Council appoint an Audit and Finance Committee comprising of at least three (3) members.

- 8.5.2 The mandate, terms of reference and duties of the Audit and Finance Committee shall be set and amended from time to time by the Board, after consultation with the SACN Council, the Board may consider the relevant provisions of the Companies Act regarding an Audit Committee in setting these.
- 8.5.3 The majority of the members of the Audit and Finance Committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, actuarial, accounting, commerce, industry, public affairs or human resource management.
- 8.5.4 The Company must pay all expenses reasonably incurred by its Audit and Finance Committee, including, if the Audit and Finance Committee considers it appropriate, the fees of any consultant or specialist engaged by the Audit and Finance Committee to assist it in the performance of its functions.

8.6 HUMAN RESOURCES REMUNERATION COMMITTEE

- 8.6.1 The Board shall after consultation with the SACN Council appoint a Human Resources and Remuneration Committee comprising of at least three (3) members.
- 8.6.2 The mandate, terms of reference and duties of the Audit and Finance Committee shall be set and amended from time to time by the Board, after consultation with the SACN Council, the Board may consider the relevant provisions of the Companies Act regarding an Audit Committee in setting these.
- 8.6.3 The Company must pay all expenses reasonably incurred by its Human Resources Remuneration Committee, including, if the Human Resources Remuneration Committee considers it appropriate, the fees of any consultant or specialist engaged by the Human Resources Remuneration Committee to assist it in the performance of its functions.

8.7 STANDARD OF CONDUCT OF DIRECTORS

- 8.7.1 A Director of the Company must not use his or her position as such, or any information obtained whilst acting in the capacity of Director:
- 8.7.1.1 to gain an advantage for himself or herself, or for another person other than the Company; or
- 8.7.1.2 to knowingly cause harm to the Company.
- 8.7.2 A Director must communicate to the Board, at the earliest practical opportunity, any information that comes to the Director's attention, unless the Director :
- 8.7.2.1 reasonably believes that the information is immaterial to the Company, or is generally available to the public, or is known to the other Directors; or
- 8.7.2.2 is bound not to disclose that information by a legal or ethical obligation of confidentiality.

- 8.7.3 A Director must, when acting in that capacity, exercise the powers and perform the functions of Director:
- 8.7.3.1 in good faith and for a proper purpose; and
 - 8.7.3.2 in the best interests of the Company; and
 - 8.7.3.3 with the degree of care, skill and diligence that may reasonably be expected of a person:
 - 8.7.3.3.1 carrying out the same functions in relation to the Company as those carried out by that Director; and
 - 8.7.3.3.2 having the general knowledge, skill and experience of that Director.
- 8.7.4 Every Director must familiarise himself or herself with the provisions of section 76 of the Act, and must ensure that he or she is not guilty of any act or omission prohibited by that section.

8.8 DECISIONS AND MEETINGS OF THE BOARD OF DIRECTORS

- 8.8.1 The Directors may take decisions:
- 8.8.1.1 at Board meetings; or
 - 8.8.1.2 by way of a signed resolution.
- 8.8.2 Meetings of the Board are convened by the Chairperson of the Board.
- 8.8.3 The Chairperson may convene a Board meeting at any time, on at least seven (7) days' notice to all the Directors.
- ~~8.8.4~~ The Chairperson must convene a Board meeting if requested to do so in writing by:
- ~~8.8.5~~ twenty five (25) percent of the Directors, if the Company has twelve (12) or more Directors; or
 - ~~8.8.6~~ ~~8.8.4~~ any two (2) Directors, ~~if there are less than twelve (12) Directors on the Board.~~
- ~~8.8.7~~ ~~8.8.5~~ If the Chairperson fails to act on a written request to convene a Board meeting within seven (7) days after receiving that request, the Directors requesting that meeting may themselves convene it.
- ~~8.8.8~~ The quorum necessary for the transaction of any business at a Board meeting is ~~the greater of:~~
- ~~8.8.9~~ half the Directors; or
 - ~~8.8.10~~ ~~8.8.6~~ two (2) Directors.
- ~~8.8.11~~ ~~8.8.7~~ Each Director present at a Board meeting will be entitled to exercise one (1) vote on any matter put to the vote. A Director will be deemed to be present at a Board meeting if the Director, or his/her proxy, is present in person or participates in the meeting by electronic communication.

~~8.8.12~~8.8 A Director may appoint any other Director as his or her proxy at a Board meeting, subject to compliance with any procedures and formalities which may be stipulated by the Board from time to time.

~~8.8.13~~8.9 The Directors must make every reasonable effort to reach consensus on all matters arising at any Board meeting.

~~8.8.14~~8.10 If consensus cannot be reached, then the matter must be voted on.

~~8.8.15~~8.11 All matters voted on will be deemed to have been adopted if passed by way of an ordinary Board resolution, except the following, which will require special Board resolutions:

~~8.8.15.1~~8.11.1 a decision to amend this memorandum of incorporation;

~~8.8.15.2~~8.11.2 a decision to approve the voluntary winding-up of the Company;

~~8.8.15.3~~8.11.3 a decision to dispose of the whole or the greater part of the Company's assets;

~~8.8.15.4~~8.11.4 a decision that the Company should merge or amalgamate with another company.

~~8.8.16~~8.12 The Chairperson will be entitled to preside over all Board meetings. If the Chairperson is not present or willing to act within fifteen (15) minutes after the time set for the start of any Board meeting, the Directors present must choose one of their number to chair the meeting.

~~8.8.17~~8.13 In the case of a tied vote at a Board meeting:

~~8.8.17.1~~8.13.1 the Chairperson will not have a casting or deciding vote; and

~~8.8.17.2~~8.13.2 the matter being voted on will fail.

~~8.8.18~~8.14 A resolution put to a vote at a Board meeting may be voted on by a show of hands or by secret ballot, as decided by the Chairperson in his or her absolute discretion.

8.9 ELECTRONIC PARTICIPATION IN BOARD MEETINGS

8.9.1 A Director will be entitled to participate in a Board meeting by electronic communication.

8.9.2 The electronic communication facility employed for Board meetings must enable all Directors participating electronically in that meeting:

8.9.2.1 to communicate concurrently with each other without an intermediary; and

8.9.2.2 to participate effectively in the meeting.

8.10 SIGNED RESOLUTIONS

8.10.1 A resolution signed or assented to by the Directors in the manner referred to below will be as valid and effectual as if it had been passed at a duly convened and quorate Board meeting.

8.10.2 The resolution must be:

- 8.10.2.1 in writing;
- 8.10.2.2 circulated to all the Directors, either in printed or electronic form; and
- 8.10.2.3 signed or assented to by the requisite majority of the Directors in any of the following ways:
 - 8.10.2.3.1 by signing in hand on the original printed resolution; or
 - 8.10.2.3.2 by signing in hand on a copy of the original printed resolution; or
 - 8.10.2.3.3 by signing in hand on a copy of the original printed resolution, which is then transmitted by electronic communication; or
 - 8.10.2.3.4 by affixing an electronic signature; or
 - 8.10.2.3.5 by transmitting an electronic communication containing an assent to the resolution.

8.11 DIRECTORS DISQUALIFIED

- 8.11.1 Despite anything to the contrary contained in this Memorandum, all acts done by the Board or a committee of Directors, or by any person acting as a Director, will, even if it is discovered afterwards that there was some defect in their appointment, or that they were disqualified, be as valid as if they were duly appointed and qualified.

8.12 INADVERTENT FAILURE TO GIVE NOTICE

- 8.12.1 If a mistake is made, and a Director is inadvertently not given notice of a Board meeting, or if a signed resolution is not circulated to a Director in the prescribed way, this will not affect the validity of any decision taken by the Board at any such meeting or by way of any such resolution.

9. FINANCES

9.1 RESERVES

- 9.1.1 The Board may set aside and carry to a reserve fund all or any of the surplus funds of the Company, which may at its discretion be applied for any purpose for which such funds may properly be applied, in any manner the Board chooses.

9.2 BANKING AND INVESTMENT OF FUNDS

- 9.2.1 The Board must ensure that all money received by the Company is deposited in one or more bank accounts in the name of the Company with a bank established under the Banks Act 94 of 1990, or a mutual bank established under the Mutual Banks Act 124 of 1993.
- 9.2.2 The Board must, from time to time, determine, by way of an ordinary Board resolution:
 - 9.2.2.1 who will have authority to operate the bank accounts of the Company, sign cheques and other financial instruments and contracts on behalf of the Company, and otherwise disburse Company funds and incur commitments on behalf of the Company; and

9.2.2.2 the procedures to be followed in this regard.

10. FINANCIAL YEAR

The financial year end of the Company is 30 June of each year.

11. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 11.1 The Company elects to voluntarily Audit its annual Financial Statements as provided for in section 10(2)(d) of the Act.
- 11.2 The Board shall cause to be kept such accounting records as are prescribed by the Act, in order to fairly present the state of affairs and business of the Company and to explain the transactions and financial position of its trade or business. The accounting records shall be accessible from the Company's Registered Office or at such other place or places as the Board may deem fit.
- 11.3 The Company must maintain adequate records of all revenue received from donations, grants and fees (if any), or in terms of any funding contracts or arrangements with any person for a period of at least five (5) years.
- 11.4 The Company shall prepare its financial statements in accordance with the provisions prescribed by the Act and the International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body, and shall have its annual financial statements audited.
- 11.5 The Board shall provide the SACN Council and any Council organisation upon request and or in terms of an agreed schedule of disclosure with all company records that the SACN Council and any Council organisation requests including but not limited to this Memorandum, amendments to this Memorandum, records in respect of Directors, accounting records required to be maintained by the Company, reports to general institutional meetings, and annual financial statements. In addition, the SACN Council and any Council organisation has rights to information regarding Directors' declarations of interests.
- 11.6 Apart from the SACN Council and any Council organisation, no other person shall be entitled to inspect any of the documents of the Company unless expressly authorised by the Board or by ordinary resolution.
- 11.7 The Company shall notify the SACN Council of the publication of any annual financial statements of the Company and provide an unredacted and complete copy of those financial statements to the SACN Council.

12. AUDITOR

The Company shall appoint an auditor and comply with the provisions of Part C of Chapter 3 of the Companies Act.

13. ALTERATION OF THIS MEMORANDUM

- 13.1 As is contemplated in sections 16(2) and 16(3) of the Act, the Board may, having given at least one (1) month's notice to the SACN Council, in its absolute discretion, adopt a resolution to amend any or all of the provisions of this Memorandum, on condition that any such resolution must be a special Board resolution, namely one which is :
- 13.1.1 supported by seventy-five (75) percent of the Directors present at a duly convened and quorate Board meeting; or
- 13.1.2 signed or assented to by at least seventy-five (75) percent of the Directors in the manner contemplated in clause 8.10.

14. DISSOLUTION AND WINDING-UP

- 14.1 As provided for in Item 1(4) of Schedule 1 of the Act, despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company:
- 14.1.1 no past or present Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 14.1.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities in South Africa, voluntary associations or non-profit trusts:
- 14.1.2.1 having objects similar to the Company's objects; and
- 14.1.2.2 as determined:
- 14.1.2.3 in terms of this Memorandum;
- 14.1.2.4 by the directors of the Company at or immediately before the time of its dissolution; or
- 14.1.2.5 by the court, if this Memorandum, or the directors fail to make such determination.
- 14.1.3 The non-profit companies, registered external non-profit companies carrying on activities in South Africa, voluntary associations or non-profit trusts referred to in 14.1 above shall be approved by the Director of Fund-raising, appointed under section 3 of the Fund-Raising Act, if required by the Fund-Raising Act.

15. NOTICES

- 15.1 A notice may be given by the Company to a Director:
- 15.1.1 by giving it to the Director personally;
- 15.1.2 by sending it by prepaid registered post to the Director at his or her postal address as recorded in the Company's records;
- 15.1.3 by sending it by electronic communication to any electronic address or fax number supplied by the Director for this purpose; or

15.1.4 by publishing it on the Company's website.

15.2 Any notice:

15.2.1 sent by prepaid registered post will be deemed to have been received five (5) days after the proven date of posting;

15.2.2 sent by electronic communication will be deemed to have been received on the next business day after the proven date of dispatch;

15.2.3 published on the Company's website will be deemed to have been received five (5) days after publication.

16. **INDEMNITIES**

16.1 Subject to any contrary provision in the Act, every Director and other officer of the Company will be indemnified out of the funds of the Company against:

16.1.1 all costs, expenses and liabilities properly incurred by him or her with the authority of the Company, and in the course of the Company's business; and

16.1.2 any and all liability contemplated in article 16.2, but subject to the provisions of article 16.2.1.

16.2 No Director, officer or employee of the Company will be liable for the acts, receipts, omissions or defaults of any other Director, officer or employee; or for joining in any receipt or other act for conformity; or for

16.2.1 any loss or expense incurred by the Company as a result of the insufficiency or deficiency of any security on which any of the funds of the Company are invested;

16.2.2 any loss or damage arising from the liquidation, sequestration, insolvency or delictual act of any person with whom any funds or securities are deposited;

16.2.3 any loss or damage caused by any error of judgment or oversight on his/her part; or

16.2.4 any other loss, damage or misfortune that happens in the exercise of his/her functions as Director.

16.3 Nothing contained in this clause 16 serves to indemnify a Director in respect of:

16.3.1 any liability arising in terms of sections 77(3)(a), (b) or (c) of the Act;

16.3.2 any liability arising from willful misconduct or willful breach of trust on the part of the Director; and

16.3.3 any fine imposed on a Director as a consequence of the Director having been convicted of an offence, unless the conviction was based on strict liability.

SCHEDULE 1 TO THE MEMORANDUM OF INCORPORATION

OF THE SOUTH AFRICAN CITIES NETWORK:

COMPLIANCE PROVISIONS

1. PROVISIONS IMPOSED BY SECTION 30 OF THE INCOME TAX ACT

- 1.1 For as long as the Company is approved as a PBO, the Company must comply with the following requirements, conditions and restrictions, which will override any inconsistent or contradictory provision of this Memorandum:
- 1.1.1 The sole or principal object of the Company must be and remain to carry on one or more Public Benefit Activities, on condition that:
- 1.1.1.1 All such activities must be carried on in a non-profit manner and with an altruistic or philanthropic intent.
- 1.1.1.2 No such activity may be intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
- 1.1.1.3 Each such activity carried on by the Company must be for the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
- 1.1.2 The Company must have at least three (3) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility for the Company, and no single person may directly or indirectly control the decision-making powers relating to the Company.
- 1.1.3 The Company may not distribute any of its funds directly or indirectly to any person (otherwise than in the course of undertaking any Public Benefit Activity) and must utilise its funds solely for the Objects for which the Company has been established.
- 1.1.4 If and when the Company is wound-up or dissolved in any manner provided for in this Memorandum of Incorporation, or as required by law, the net remaining assets of the Company, after all the obligations and commitments of the Company have been met, must be transferred to:
- 1.1.4.1 any PBO; or
- 1.1.4.2 any institution, board or body which is exempt from tax under the provisions 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; or
- 1.1.4.3 the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of the Income Tax Act,
- which is required to use those assets solely for purposes of carrying on one or more Public Benefit Activities.

- 1.1.5 The Directors will be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor other than a donor which is an approved PBO or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, and which has as its sole or principal object the carrying on of any Public Benefit Activity may not impose conditions which could enable that donor or any connected person in relation to that donor to derive some direct or indirect benefit from the application of the donation.
- 1.1.6 The Directors must submit to the Commissioner a copy of any amendment to this Memorandum of Incorporation, and must ensure that the Company submits the required income tax returns together with the relevant supporting documents.
- 1.1.7 The Directors must comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in the furtherance of its Objects.
- 1.1.8 The Directors must make sure that the Company does not knowingly become a party to, or does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.
- 1.1.9 The Company must not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, Director or other person which is excessive, having regard to what is generally considered reasonable in the sector in which the Company operates, and in relation to the service rendered, and must not economically benefit any person in a manner which is not consistent with its Objects.
- 1.1.10 The Directors must comply with such reporting requirements as may be determined by the Commissioner.
- 1.1.11 The Directors must ensure that any books of account, records or other documents relating to the Company:
- 1.1.11.1 where kept in book form, are retained and carefully preserved for a period of four (4) years after the date of the last entry in any such book; or
- 1.1.11.2 where not kept in book form, are retained and carefully preserved for a period of four (4) years after completion of the transactions, acts or operations to which they relate.
- 1.1.12 The Company must not use its resources directly or indirectly to support, advance or oppose any political party.

1.2 PROVISIONS IMPOSED BY SECTION 18A OF THE INCOME TAX ACT

- 1.2.1 When the Company issues receipts to donors in terms of section 18A(2) of the Income Tax Act, the Company must ensure that the donations from those donors are used solely to carry on the Company's own 18A Activities, namely those activities of the Company which are contemplated in Part II of the Ninth Schedule.
- 1.2.2 Where the Company, in any year of assessment, issues receipts to donors in terms of section 18A(2) of the Income Tax Act, the Company must obtain and retain an audit certificate confirming that all the donations received or accrued in that year in respect of those receipts, were used by the Company in the manner contemplated in paragraph 1.2.1 above.
- 1.2.3 The Company must not issue a receipt in terms of section 18A(2) of the Income Tax Act in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar rights, or which constitutes an intangible asset or financial instrument, unless that financial instrument is:
 - 1.2.3.1 a share in a listed company; or
 - 1.2.3.2 issued by a financial institution as defined in section 1 of the Financial Services Board Act 97 of 1990.

PROTOCOL OF THE SACN COUNCIL

INTRODUCTION:

- A. The South African Cities Network NPC (the **SACN**) is established to promote good governance and management of South African cities by:
- i. analysing strategic challenges facing South African cities, particularly in the context of globalisation and national economic development;
 - ii. collecting, collating, analysing, assessing, disseminating and applying the experience of a large city government in a South African context;
 - iii. promoting partnership between the different spheres of government to support the governance of South African cities; and
 - iv. undertaking its activities in five year strategic planning cycles to coincide with the term of office and planning horizon of municipalities in South Africa.
- B. As such it is vital to the ongoing relevance and success of SACN that it aligns its activities with the interests and needs of its most important stakeholders, being the **metropolitan** municipalities of South Africa, government departments at national and provincial level concerned with local government and organized associations of local government.
- C. The Board of Directors of the SACN (the **Board**) has accordingly determined that it should establish a Council comprised of its important stakeholders which will direct the research agenda of the SACN and also, amongst other things, appoint the Directors of the SACN.

ACCORDINGLY THE BOARD RESOLVED ON 28 JUNE TO CREATE THE SACN COUNCIL WHICH WILL OPERATE INDEPENDENTLY FROM THE BOARD AND IN ACCORDANCE WITH THE TERMS SET OUT IN THIS SACN COUNCIL PROTOCOL, AND THE SACN UNDERTAKES TO COMPLY WITH THE PROVISIONS OF THIS SACN COUNCIL PROTOCOL WHICH ARE APPLICABLE TO IT:

1. PURPOSE OF THE SACN COUNCIL

- 1.1 The principal purpose of the SACN Council is to support the SACN in the achievement of its objectives as set out in the Memorandum of Incorporation (**MOI**) and to ensure that the SACN, its activities and assets are managed and administered effectively and efficiently, and in compliance with the provisions of the MOI and this SACN Council Protocol (**Protocol**).
- 1.2 The SACN Council will be responsible for directing the strategic research agenda and related business activities of the SACN. To this end it will:
 - 1.2.1 Receive and consider on an annual basis:

- 1.2.1.1 An updated five (5) year strategic research agenda and related business plan prepared by the SACN (**Strategic Plan**);
- 1.2.1.2 An annual report from the SACN on its activities in the previous year and the implementation of the existing Strategic Plan during the previous year (the **Annual Report**);
- 1.2.1.3 The form of and content of the Strategic Plan and Annual Report may be agreed between the SACN and the SACN Council and amended by them from time to time as an addendum to this Protocol.
- 1.2.2 Make proposals for matters to be included and removed from the updated Strategic Plan and if necessary request further drafts of the Strategic Plan from the SACN. In making any requests for matters to be included and excluded, the SACN Council will give due regard to all relevant considerations, including the cost of such proposals and the available resources of the SACN;
- 1.2.3 Give due regard to the timing implications of any requests for further drafts of the updated Strategic Plan and endeavour to minimize delays in approving the updated Strategic Plan. To this end, the SACN Council may, at its discretion, provide for an informal mechanism to receive initial comments from SACN Council Organisations on the updated Strategic Plan;
- 1.2.4 Approve, by ordinary resolution at a duly constituted meeting of the SACN Council on an annual basis, the updated Strategic Plan of the SACN;
- 1.3 The SACN Council is constituted of key stakeholders of the SACN, as well as the key funders of the SACN and accordingly the SACN has determined to give the SACN Council certain oversight responsibilities to ensure that the SACN continues to properly serve its stakeholders and administer its resources in an appropriate manner. To this end the SACN Council may:
 - 1.3.1 Appoint and remove the Directors of the Board. In doing this, the SACN Council will be guided by:
 - 1.3.1.1 the provisions of the Memorandum of Incorporation of the Company and the Companies Act, 2008;
 - 1.3.1.2 the provisions of municipal legislation including regarding restrictions on procuring from entities which have directors "in the service of the state;"
 - 1.3.1.3 striking a balance between independent directors and executive directors.
 - 1.3.2 Appoint and remove two **(2)** members of the Audit and Risk Committee established by the Board and two **(2)** members of the Human Resources and Remuneration Committee established by the Board;
 - 1.3.3 Consider and provide comments to the Board, on an annual basis, on the audited financial statements of the SACN;

- 1.3.4 Consider and provide comments to the Board on the appointment of an Auditor for the SACN on an annual basis;
- 1.3.5 Access on request, and according to an agreed timetable of disclosure, all company records of the SACN including but not limited to the MOI, amendments to the MOI, records in respect of Directors including Directors' declarations of interests, accounting records required to be maintained by the SACN, reports on internal and external meetings of the SACN, its annual financial statements and all records relevant to the preparation of its annual financial statements.
- 1.4 Any SACN Council Organisation is entitled individually to request access to the information referred to in clause 1.3.5 above from the SACN which shall be provided to it by the SACN as soon as possible.
- 1.5 The SACN agrees, within its available resources, to timeously:
 - 1.5.1 prepare an updated Strategic Plan on an annual basis and respond to any requests for further drafts of the Strategic Plan; furthermore, provide all relevant information to the SACN Council regarding the costs and other implications of changes requested to the Strategic Plan;
 - 1.5.2 prepare an annual report on its activities in the previous year, and the implementation of the existing Strategic Plan during the previous year;
 - 1.5.3 present the audited financial statements of the SACN to the SACN Council for comments , on an annual basis, within three months of the finalization of the audited financial statements by the auditor;
 - 1.5.4 present the SACN choice of auditor to the SACN Council for comments on an annual basis;
 - 1.5.5 through its Management Board, establish an Audit and Risk Committee and a Human Resources and Remuneration Committee of Board and appoint and remove the designated SACN Council Representatives to these committees;
 - 1.5.6 provide the information requested by the SACN Council or any SACN Council Organisation pursuant to clauses 1.3.5 and 1.4 above.

2. COUNCIL ORGANISATION PARTICIPANTS ON THE SACN COUNCIL

- 2.1 The Board has invited the key stakeholders of the SACN to become the first Council Organisations on the SACN Council, on the terms and conditions set out in this Protocol.
- 2.2 There shall be two categories of Council Organisation: Municipal Council Organisations and Stakeholder Council Organisations. In general, both categories are referred to as a "Council Organisation" in this Protocol but certain provisions are specific to only one category of Council Organisation.

The Council Organisations listed below have accepted this invitation and, by adoption of this Protocol, agreed to its terms and conditions. Accordingly, the first Council Organisations of the SACN Council are:

Municipal Council Organisations

Buffalo City Municipality;

City of Johannesburg;

City of Tshwane;

Ekurhuleni Metropolitan Municipality;

Ethekewini Metropolitan Municipality;

Mangaung Municipality;

Msunduzi Municipality;

Nelson Mandela Metropolitan Municipality;

Stakeholder Council Organisations

The National Department of Cooperative Governance And Traditional Affairs;

The National Department of Human Settlements;

The National Department of Public Works, and

The South African Local Government Association.

Appointment of Additional Council Organisations

Organs of state or other entities that make a significant contribution or are significant stakeholders in urban development in South African Cities may be invited to apply to the SACN Council for a position as a Council Organisation in a particular category of Council Organisation.

Applications for a position as a Council Organisation may be made only on invitation by the SACN Council.

The SACN Council will request comments on the application from the SACN before deciding on the application, the SACN will, amongst other things, advise the SACN Council whether an MOA/Council Funding Agreement has been entered into with the applicant.

The SACN, in its absolute discretion, may accept or reject such applications for a position as a Council Organisation by way of an ordinary resolution of an SACN Council meeting.

A successful applicant must accede to this Protocol to complete its appointment as a Council Organisation.

Removal of Council Organisations

- 2.2.1 A Council Organisation will immediately lose its position and be removed as Council Organisation if:

it is removed as a Council Organisation by the SACN Council by way of an ordinary resolution, provided it has been given notice of the meeting at which this resolution is considered and is given an opportunity to respond to the proposed resolution; or

it makes a request in writing to the SACN for its removal as a Council Organisation.

The SACN may request the SACN Council to consider a motion to remove a Council Organisation if the Council Organisation has:

consistently failed to honour the terms of this SACN Council Protocol; or

has defaulted on any MOA/Council Funding Agreement which the SACN has with the Council Organisation.

3. DUTIES OF COUNCIL ORGANISATIONS

3.1 By accepting a position as a Council Organisation of the SACN, a Council Organisation agrees to:

3.1.1 Adhere to this Protocol and use its best endeavours to participate in all the activities of the SACN Council in fulfilling the purpose of the SACN Council set out in clause 1 above;

3.1.2 Subject to any laws which govern the internal affairs of the Council Organisation, collaborate in the work of the SACN and provide information to the SACN on request to assist It in carrying out its research mandate;

3.1.3 Endeavour, within the financial and other resources of the Council Organisation, and subject to the approval requirements of any laws which govern the Council Organisation, to make an annual contribution to fund the SACN as per the annual contribution table determined by the Board with reference to the Strategic Plan of the SACN in place from time to time;

3.1.4 Give due consideration to entering into a long-term (three year) MOA/Council Funding Agreement with the SACN recording the terms upon which ongoing financial contributions to the SACN will be made;

3.1.5 Appoint Representative(s) to represent it at meetings of the SACN Council and in other interactions with the SACN, including the Board; and

3.1.6 Attend, through a Representative, meetings of the SACN Council from time to time and give due consideration to the matters placed before the SACN Council for consideration.

4. REPRESENTATIVES

4.1 A Municipal Council Organisation may appoint two **(2)** natural persons as its Representatives. When making such appointments a Municipal Council Organisation may, but is not obliged to, appoint one Representative that is a political office-bearer of the Municipal Council Organisation and one Representative that is an employee of the Council Organisation and that is not a political office-bearer.

4.2 A Stakeholder Council Organisation may appoint one **(1)** natural persons as its Representative.

- 4.3 A Council Organisation shall inform the SACN Council in writing of the appointment(s) of its Representative(s).
- 4.4 Representatives will receive notices and communications from the Company and will exercise the rights of that Council Organisation, whether at meetings of the SACN Council or otherwise.
- 4.5 A Council Organisation may remove a person as its Representative at any time by written notice to the SACN Council and shall at the same time appoint a new Representative.

A Representative will immediately lose his or her position if he or she:

dies, or resigns his or her office by notice in writing to the SACN Council;

has or acquires a direct or indirect personal financial interest in any contract or proposed contract with the Company, and fails to declare his or her interest and its nature in the manner required by the Act;

is removed from office in terms of clause 4.5;

is provisionally or finally sequestered, or placed under an administration order; or

is employed by a Council Organisation, and is suspended or dismissed from that employment for any reason whatsoever.

If a Representative loses his or her position, the Council Organisation whom it represented will appoint another Representative within a reasonable time.

5. MEETINGS OF THE SACN COUNCIL

5.1 GENERAL

- 5.1.1 The Representatives must appoint from their number, from time to time the following office bearers, who shall be appointed (or removed) by the Representatives present at a quorate SACN Council meeting:
- 5.1.1.1 A Chairperson, who must be a Representative, who will be responsible for:
- 5.1.1.1.1 Chairing meetings of the SACN Council;
- 5.1.1.1.2 Liaising and engaging with the SACN outside of SACN Council meetings;
- 5.1.1.1.3 Calling meetings of the SACN Council;
- 5.1.1.2 A Deputy Chairperson, who must be a Representative, and who will be responsible for:
- 5.1.1.2.1 acting for the Chairperson at meetings of the SACN Council (in the event of the absence of the Chairperson); and
- 5.1.1.2.2 supporting the Chairperson in his or her role.
- 5.1.2 The office bearers shall serve for a renewable one (1) year basis subject to the right of the Representatives to remove them at any time.

- 5.1.3 The business of the SACN Council and decisions by the SACN Council and the Representatives provided for in this Protocol will be conducted:
- 5.1.3.1 at meetings of the SACN Council; or
- 5.1.3.2 by way of a signed resolution.
- 5.1.4 Meetings of the SACN Council may be held at any time, and will be held at least twice a year;
- 5.1.5 Meetings of the SACN Council are convened by the Chairperson of the SACN Council.
- 5.1.6 The Chairperson may convene an SACN Council meeting at any time, on at least fourteen (14) days' written notice to all the Representatives.
- 5.1.7 Meetings of the SACN Council may also be convened at the request of:
- 5.1.7.1 the Chairperson of the Board or the Chairperson of the SACN Council;
- 5.1.7.2 any two (2) Directors; or
- 5.1.7.3 any two (2) Council Organisations.
- 5.2 If the Chairperson of the SACN Council fails, within seven (7) days after being requested to do so, to take the necessary steps to convene a SACN Council meeting, any one (1) of the Directors or Council Organisations requesting that meeting may themselves convene it.
- 5.3 **QUORUM**
- 5.3.1 No business may be transacted at any SACN Council meeting unless a quorum of Council Organisations is present through their Representatives.
- 5.3.2 A quorum consists of at least half of the Council Organisations appointed at the time of the meeting of the SACN Council.
- 5.3.3 If within thirty (30) minutes after the time set for the start of an SACN Council meeting, a quorum is not present, the meeting must be dissolved.
- 5.4 **DECISIONS OF THE SACN COUNCIL**
- 5.4.1 The Representatives must make every reasonable effort to reach consensus on all matters arising at any SACN Council meeting. If consensus cannot be reached on any matter, it may be put to the vote.
- 5.4.2 At any SACN Council meeting, a Resolution put to the vote of the meeting must be decided on a show of hands, unless a secret ballot is demanded (before or on the declaration of the result of the show of hands).
- 5.4.3 Unless a secret ballot is demanded, a declaration by the Chairperson that a Resolution has, on a show of hands, been carried or negatived, and an entry to that effect in the book containing the minutes of SACN Council meeting, will be conclusive evidence of that fact.

- 5.4.4 Except where this Protocol stipulates otherwise, a Resolution put to the vote will be carried if supported by a simple majority.
- 5.4.5 The demand for a secret ballot may be made at any time by the Chairperson or by not less than two (2) Representatives or proxies present in person at the meeting.
- 5.4.6 The demand for a secret ballot may be withdrawn.
- 5.4.7 If a secret ballot is demanded, it must be taken in such manner as the Chairperson directs.
- 5.4.8 A secret ballot demanded on the election of a person to chair the meeting, or on a question of adjournment, must be taken immediately.
- 5.4.9 A secret ballot demanded on any other question must be taken at such time as the Chairperson decides.
- 5.4.10 The demand for a secret ballot will not prevent the meeting continuing with business other than the question on which the ballot has been demanded.

5.5 **SIGNED RESOLUTION**

- 5.5.1 Despite anything to the contrary contained in this Protocol, a Resolution signed by the Representatives of two-thirds (2/3rds) of the Council Organisations, will be as valid and effective as if passed at a duly convened and quorate SACN Council meeting.
- 5.5.2 It will not be necessary for a Representative to sign the Original Resolution; signature of a true copy will be sufficient, as will be a copy that is signed (whether in hand or electronically) and then sent by way of electronic communication.
- 5.5.3 The signed Resolution must be kept with the minutes of meetings and decisions of the SACN Council.

5.6 **ELECTRONIC MEETINGS**

- 5.6.1 The SACN Council will not be obliged to convene face-to-face SACN Council meetings, but may convene and conduct such meetings by electronic communication; on condition that, if decisions are taken by the SACN Council other than at a duly convened and quorate face-to-face SACN Council meeting, those decisions will be of no force or effect unless they are:
- 5.6.1.1 recorded in writing;
 - 5.6.1.2 circulated to all the Council Organisations, whether by electronic communication or otherwise;
 - 5.6.1.3 signed by the Representatives of at least two-thirds (2/3rds) of the SACN Council in the manner contemplated in clause 5.5; and
 - 5.6.1.4 kept with the minutes of meetings and decisions of the SACN Council.

5.7 **MINUTES OF SACN COUNCIL MEETINGS**

5.7.1 The Board must assist the SACN Council and the Representatives to keep minutes of all SACN Council meetings, and all decisions taken and resolutions adopted by the SACN Council.

5.7.2 These minutes must be retained with the other records of the SACN, in printed or electronic form, as the Board chooses.

5.8 VOTES OF COUNCIL ORGANISATIONS

5.8.1 At an SACN Council meeting each Representative will have one (1) vote.

5.8.2 In the case of an equality of votes at a SACN Council meeting:

5.8.2.1 the Chairperson will not be entitled to a second or casting vote; and

5.8.2.2 the Resolution will be deemed not to have been carried.

5.9 PROXIES FOR SACN COUNCIL MEETINGS

5.9.1 The appointment of a proxy by a Representative to attend a SACN Council meeting must be in writing and signed by or on behalf of the Representative.

5.9.2 Although the Chairperson of a SACN Council meeting will be entitled to condone any non-compliance with these formalities, the Chairperson must give effect to the appointment of a proxy, where the document appointing the proxy, or a copy of it:

5.9.2.1 is delivered at the Registered Office, or is sent by electronic communication to the Company, not less than forty-eight (48) hours before the time of the holding of the meeting; and

5.9.2.2 was signed not more than twelve (12) months before the date of the meeting that the proxy wishes to attend.

5.9.3 The document appointing a proxy must be in a form acceptable to the Chairperson.

6. ALTERATION OF THIS PROTOCOL

6.1 The SACN Council may, having given at least (one) 1 calendar month's written notice to the Board, adopt a Resolution to amend any or all of the provisions of this Protocol, on condition that any such Resolution must be a Special Resolution, namely one which is :

6.1.1 supported by seventy-five (75) percent of the Representatives present at a duly convened and quorate SACN Council meeting; or

6.1.2 signed or assented to by at least seventy-five (75) percent of the Representatives.

6.2 Any such amendment which seeks to amend the obligations of the SACN under this Protocol must be assented to by the SACN in writing for the amendment to become of application to the SACN.

7. DISSOLUTION OF THE SACN COUNCIL

7.1 The SACN Council will dissolve upon the winding-up or dissolution of the Company.

8. NOTICES

8.1 A notice may be given by the SACN Council to any Council Organisation:

8.1.1 by giving it to the Representative personally;

8.1.2 by sending it by prepaid registered post to the Representative at his or her postal address as recorded in the Company's records; or

8.1.3 by sending it by electronic communication to any electronic address or fax number supplied by the Representative for this purpose.

8.2 Any notice:

8.2.1 sent by prepaid registered post will be deemed to have been received five (5) business days after the proven date of posting;

8.2.2 sent by electronic communication will be deemed to have been received on the next business day after the proven date of dispatch.

THIS PROTOCOL WAS ADOPTED BY THE SACN AND THE BELOW NAMED FIRST COUNCIL ORGANISATIONS OF THE SACN COUNCIL AT _____ ON _____

SACN

Represented by:

Signed _____

Buffalo City Municipality

Represented by:

Signed _____

City of Johannesburg

Represented by:

Signed _____

City of Tshwane

Represented by:

Signed _____

Ekurhuleni Metropolitan Municipality

Represented by:

Signed _____

Ethekewini Metropolitan Municipality

Represented by:

Signed _____

Mangaung Metropolitan Municipality

Represented by:

Signed _____

Msunduzi Municipality

Represented by:

Signed _____

Nelson Mandela Metropolitan Municipality;

Represented by:

Signed _____

National Department of Human Settlements

Represented by:

Signed _____

National Department of Public Works

Represented by:

Signed _____

The National Department of Cooperative Governance and Traditional Affairs

Represented by:

Signed _____

The South African Local Government Association

Represented by:

Signed _____