

CONSTITUTION

of

THE BOTANICAL SOCIETY OF SOUTH AFRICA

[REPLACES THE CONSTITUTION ADOPTED ON 13 JUNE 2013]

TABLE OF CONTENTS

| | | |
|----|---|----|
| 1 | INTERPRETATION..... | 2 |
| 2 | INTRODUCTION..... | 5 |
| 3 | NAME AND HEAD OFFICE | 5 |
| 4 | LEGAL STATUS..... | 5 |
| 5 | MISSION STATEMENT | 6 |
| 6 | OBJECTS | 6 |
| 7 | RESTRICTIONS..... | 7 |
| 8 | RIGHTS OF MEMBERS | 7 |
| 9 | LIABILITY OF MEMBERS..... | 8 |
| 10 | POWERS OF THE SOCIETY | 8 |
| 11 | SPECIAL PROVISIONS RELATING TO TAX EXEMPTION | 9 |
| 12 | SIGNATURES..... | 11 |
| 13 | FINANCE | 11 |
| 14 | MEMBERSHIP OF THE SOCIETY..... | 12 |
| 15 | PAYMENT OF SUBSCRIPTIONS..... | 14 |
| 16 | REINSTATEMENT AND READMISSION OF MEMBERS..... | 15 |
| 17 | BRANCHES..... | 15 |
| 18 | COMPOSITION AND ELECTION OF THE COUNCIL..... | 17 |
| 19 | TERMINATION OF OFFICE OF COUNCIL MEMBERS..... | 19 |
| 20 | INTERIM COUNCIL | 20 |
| 21 | MANAGEMENT OF THE AFFAIRS OF THE SOCIETY..... | 20 |
| 22 | MEETINGS OF THE COUNCIL..... | 21 |
| 23 | ELECTRONIC MEETINGS | 22 |
| 24 | EXECUTIVE COMMITTEE | 23 |
| 25 | STANDING COMMITTEES AND SUB-COMMITTEES OF COUNCIL..... | 25 |
| 26 | ALLOCATION AND CONTROL OF FUNDS..... | 25 |
| 27 | GENERAL MEETINGS OF THE SOCIETY..... | 26 |
| 28 | PROXIES, REPRESENTATIVES AND POSTAL VOTES | 29 |
| 29 | AMENDMENT OF CONSTITUTION..... | 30 |
| 30 | GENERAL MANAGER | 30 |
| 31 | PROVISION OF CONSTITUTION, RULES AND OPERATIONAL HANDBOOK | 31 |
| 32 | INDEMNITY..... | 31 |
| 33 | DISSOLUTION OF THE SOCIETY..... | 32 |
| 34 | RESOLUTION OF DISPUTES..... | 33 |
| 35 | NOTICES | 34 |
| 36 | SEVERABILITY | 35 |
| 37 | CONTINUING EFFECTIVENESS OF CERTAIN PROVISIONS | 35 |

1 INTERPRETATION

- 1.1 In this Constitution, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings —
- 1.1.1 "**Accounting Officer**" means an "accounting officer" as defined in the NPO Act;
- 1.1.2 "**Adoption Date**" means the date upon which this Constitution is adopted by the Members;
- 1.1.3 "**Branch**" means a branch of the Society as contemplated in clause 17;
- 1.1.4 "**Branch Model Constitution**" means the branch model constitution as approved by the Council from time to time;
- 1.1.5 "**Chairperson**" means the chairperson of the Society and/or Council as contemplated in clause 18.1.1.1
- 1.1.6 "**Commissioner**" means the Commissioner for the South African Revenue Service;
- 1.1.7 "**Constitution**" means the constitution contained in this document, including all annexures (if any) hereto;
- 1.1.8 "**Council**" means the council contemplated in clause 18;
- 1.1.9 "**Council Members**" mean the members of the Council from time to time;
- 1.1.10 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.11 "**General Manager**" means the general manager of the Society contemplated in clause 30;
- 1.1.12 "**Head Office**" has the meaning contemplated in clause 3.2;
- 1.1.13 "**Income Tax Act**" means the Income Tax Act, No 58 of 1962;
- 1.1.14 "**Members**" means the members of the Society from time to time;
- 1.1.15 "**National Botanical Gardens**" means the national botanical gardens as administered and managed by SANBI from time to time;
- 1.1.16 "**Non-Profit Organisation**" means a Non-Profit organisation as defined in the NPO Act;
- 1.1.17 "**NPO Act**" means the Non-Profit Organisations Act, No 71 of 1997;

- 1.1.18 **"NPO Director"** means the Director of Non-Profit Organisations, designated in terms of section 8 of the NPO Act;
- 1.1.19 **"PBO"** means a public benefit organisation as defined in terms of the Income Tax Act;
- 1.1.20 **"Previous Constitution"** means the previous constitution of the Society adopted on 13 June 2013;
- 1.1.21 **"Register"** means the register of Members referred to in clause 14.11, in whatever form may be suitable from time to time;
- 1.1.22 **"SANBI"** means the South African National Biodiversity Institute, a Schedule 3A Public Entity established in terms of the National Environmental Management-Biodiversity Act, No 10 of 2004, and its successors in title from time to time;
- 1.1.23 **"Society"** means the voluntary association named on the first page of this document and constituted in accordance with the provisions hereof;
- 1.1.24 **"South Africa"** means the Republic of South Africa; and
- 1.1.25 **"Standing Committee"** means any semi-permanent committee created by Council from time to time which continues to operate from year to year and which at the Adoption Date shall include but is not be limited to—
- 1.1.25.1 Executive Committee (administration and finance);
- 1.1.25.2 Flora & Conservation Standing Committee;
- 1.1.25.3 Education Standing Committee;
- 1.1.25.4 Publications/marketing Standing Committee; and
- 1.1.25.5 Honours and Awards Standing Committee;
- 1.1.26 **"Treasurer"** means the treasurer of the Society as contemplated in clause 18.1.1.2 .
- 1.2 In this Constitution –
- 1.2.1 clause headings and the heading of the Constitution are for convenience only and are not to be used in its interpretation;
- 1.2.2 an expression which denotes –
- 1.2.2.1 any gender includes the other genders;
- 1.2.2.2 a natural person includes a juristic person and *vice versa*;
- 1.2.2.3 the singular includes the plural and *vice versa*;

- 1.2.2.4 a Member includes a reference to that Member's successors in title and assigns allowed at law; and
- 1.2.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last-mentioned clauses.
- 1.3 Any reference in this Constitution to –
- 1.3.1 "**business hours**" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.3.2 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.3.3 "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "**law**" shall have a similar meaning; and
- 1.3.4 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 1.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Any substantive provision, conferring rights or imposing obligations on any person and appearing in any of the definitions in this clause 1 or elsewhere in this Constitution, shall be given effect to as if it were a substantive provision in the body of the Constitution.
- 1.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Constitution.
- 1.7 Unless otherwise provided, defined terms appearing in this Constitution in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the date of the last signature to this Constitution and as amended or substituted from time to time.
- 1.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.10 If the due date for performance of any obligation in terms of this Constitution is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 1.11 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.12 Any reference in this Constitution to "**this Constitution**" or any other agreement or document shall be construed as a reference to this Constitution or such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 1.13 In this Constitution the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to this Constitution.

2 INTRODUCTION

- 2.1 The Society was originally established in 1913, at the same time as Kirstenbosch Garden, by its founding members as a voluntary association for the purpose of providing private sector support for the establishment of the National Botanical Garden.
- 2.2 The Society is registered as an NPO with NPO registration number 003-394 and as a PBO with PBO registration number 930 000739.
- 2.3 The purpose of this document is to replace the Previous Constitution.

3 NAME AND HEAD OFFICE

- 3.1 The name of the Society is the "**The Botanical Society of South Africa**" or such other name as may be agreed by the Members from time to time in accordance with the further provisions hereof.
- 3.2 The principal office of the Society ("**Head Office**") shall be at Kirstenbosch, Newlands, Western Cape Province, South Africa.

4 LEGAL STATUS

- 4.1 The Society is and shall continue to be a distinct and separate legal entity and body corporate, with the power to acquire, to hold and to alienate property of every description

whatsoever, and with the capacity to acquire rights and obligations and having perpetual succession.

- 4.2 All actions or suits, proceedings at law or any arbitration shall be brought by or against the Society in the name of the Society and the Council may authorise any person or persons to act on behalf of the Society and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.
- 4.3 The Society shall be entitled to raise contributions locally and internationally for the attainment of its objects.

5 **MISSION STATEMENT**

Mindful of the role of the people of South Africa as custodians of amongst the world's richest floral heritage, it is our mission to win the hearts, minds and material support of individuals and organisations, wherever they may be, for the conservation, cultivation, study, enjoyment and wise use of the indigenous flora and vegetation of southern Africa.

6 **OBJECTS**

The objects of the Society are to –

- 6.1 promote a caring attitude towards the indigenous flora and vegetation of southern Africa amongst all people and to provide a forum for positive collective action by offering its membership to all individuals and organisations which comply with the membership requirements of this Constitution;
- 6.2 promote and actively be involved in the conservation, cultivation and wise, sustainable use of the indigenous flora and vegetation of southern Africa and encourage public interest in the attainment of this object;
- 6.3 increase knowledge and understanding of the indigenous flora and vegetation of southern Africa through educational programmes and general enlightenment, aimed primarily at the people of South Africa and to support appropriate study and research projects;
- 6.4 liaise, co-operate and work in partnership when considered appropriate, with organisations such as SANBI, its successor and others with similar objects in the attainment of the above; and
- 6.5 interest the people of South Africa and other countries in the progress and development of all the National Botanical Gardens and to encourage active support of local National Botanical Gardens by the Branches; and
- 6.6 generally, to promote the best interests of the Society and to do all such other things as may be reasonably ancillary thereto.

7 RESTRICTIONS

Notwithstanding anything to the contrary herein contained –

- 7.1 The Society is formed for Non-Profit purposes, and is not formed and does not exist primarily for carrying on any business that has as its object the acquisition of gain by the Society or its individual Members.
- 7.2 Notwithstanding clause 7.1, the Society is permitted to carry on ancillary profit-making activities, to generate income, provided that the income and assets of the Society shall be applied solely for investment and for the promotion of the objects for which it is established.
- 7.3 No part of the income or assets of the Society shall be paid, directly or indirectly, by way of dividend, donation or otherwise, to any person save in respect of –
- 7.3.1 salaries, wages and bonuses payable to *bona fide* employees of the Society;
- 7.3.2 reasonable remuneration for professional or business services rendered to or on behalf of the Society with the prior approval of the Council;
- 7.3.3 reasonable actual costs, expenses, bursaries and other commitments incurred on behalf of the Society with the prior approval of the Council;
- 7.3.4 any expenses incurred by Council Members in the performance of their duties;
- 7.3.5 all administrative and operating expenses payable by the Society,

to the extent required to fulfil the objects and purpose of the Society as contemplated in this Constitution.

8 RIGHTS OF MEMBERS

- 8.1 Membership of the Society confers upon a Member the privilege of Membership subject to such charges and reasonable restrictions as the Council may from time to time impose and subject to the rules of the Society in force for the time being, but does not and shall not give any Member a right to any of the monies, property or assets of the Society.
- 8.2 A Member whose application for Membership has been accepted shall be bound by this Constitution and any rules of the Society which are then in force, or which subsequently may be altered or amended and in force at any future time.
- 8.3 No Member shall be absolved from the effect and application of this Constitution, and any rules because such Member may not have received a copy hereof
- 8.4 Member information will be held confidential and only used in matters pertaining to the Society.

9 LIABILITY OF MEMBERS

The liability of Members is limited to the amount of unpaid subscriptions or other monies owing by them to the Society.

10 POWERS OF THE SOCIETY

10.1 Subject to the provisions of clause 7, the Society shall have all such powers as are necessary for the proper attainment of the objects set out in clause 6 and shall have the following express powers –

- 10.1.1 to acquire any movable or immovable property for the Society calculated to benefit the Society and to advance its objects and to maintain, improve and alter any of the Society's property;
- 10.1.2 to institute, conduct, defend, compound or abandon any legal proceedings by or against the Society or its officers, or otherwise concerning the affairs of the Society;
- 10.1.3 to open bank accounts in the name of the Society and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques and other negotiable instruments connected with the business and affairs of the Society;
- 10.1.4 to invest and deal with any monies of the Society not immediately required for the purposes of the Society;
- 10.1.5 to secure the fulfilment of any contracts or engagements entered into by the Society by the mortgage of all or any part of the property of the Society;
- 10.1.6 to establish, promote or assist in establishing or promoting and to subscribe to or become a member of any association or society whose objects are similar or partly similar to the objects of the Society, or the establishment or promotion of which may be beneficial to the Society, provided that no subscription shall be paid to any such other association out of the funds of the Society except with the approval of Council in furtherance of the interests of the Society;
- 10.1.7 to support and subscribe to any institution or society which may be for the benefit of the Society or for its employees whether past or present;
- 10.1.8 to borrow or raise and give security for money by the issue of bonds, debentures, debenture stock, bills of exchange, promissory notes or other obligations or securities of the Society or by mortgage of all or any part of the property of the Society;
- 10.1.9 subject to the provisions of clause 7, to make, receive and conclude donations, loans, exchanges, leases, sponsorships and to enter into any other forms of contract whatsoever, including the sale and purchase of property of any kind whatsoever;

- 10.1.10 determine and/or increase the subscriptions from time to time within 5 percentage points of the increase in the consumer price index, as published in the *Government Gazette*, in the period between one annual general meeting and another, or as otherwise approved by the Members in general meeting from time to time;
- 10.1.11 conduct the Society's affairs in terms of its registration under the Non-Profit Act 71 of 1997 as amended and its registration as a Public Benefit Organisation under section 30(4) of the Income Tax Act 58 of 1962 as amended.
- 10.2 The powers of the Society shall be exercised by the Council and the sub-committees of the Council.

11 SPECIAL PROVISIONS RELATING TO TAX EXEMPTION

- 11.1 The Society has been approved by the Commissioner as a public benefit organisation as contemplated in section 30(3) of the Income Tax Act and therefore the receipts and accruals of the Society are exempt from normal tax to the extent set out in section 10(1)(cN) of the Income Tax Act. To retain such tax exemption, the Society shall always comply with the provisions of clauses 11.2 to 11.15.
- 11.2 The income and property of the Society howsoever derived shall be applied solely towards the promotion of the Society's objects or be invested and no portion thereof shall be paid or transferred, directly or indirectly, to any person other than in the course of the promotion of the Society's objects; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Society in return for any services actually rendered to the Society.
- 11.3 The Society shall take reasonable steps to ensure that each activity carried on by the Society is for the benefit of, or is widely accessible to, the public at large, including any sector thereof.
- 11.4 The Society shall comply with such conditions, if any, as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the Society are directed in the furtherance of its objects.
- 11.5 As recorded in clause 33.2, upon its dissolution the assets of the Society remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to the Society's objects, which has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act.
- 11.6 There shall always be a minimum of 3 (three) Council Members who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Society and no single person shall directly or indirectly control the decision-making powers relating to

the Society. For purposes of this Constitution "connected person" has the meaning ascribed to that term in the Income Tax Act.

- 11.7 The Society is 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 public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 11.8 The Council shall submit copies of any amendments to the Constitution to the Commissioner and to the NPO Director.
- 11.9 The Society shall not knowingly be a party to or permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was 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.
- 11.10 The Society will not pay any remuneration, as defined in the Fourth Schedule of the Income Tax Act, to any employee, office bearer, Councillor or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and will not economically benefit any person in a manner which is not consistent with the objects of the Society.
- 11.11 The Society shall submit the required income tax returns together with the relevant supporting documents to the South African Revenue Service annually and comply with all such other reporting requirements as may be determined by the Commissioner.
- 11.12 The Society will not use the Society's resources directly or indirectly to support, advance or oppose any political party.
- 11.13 All financial transactions of the Society shall be conducted by means of a banking account.
- 11.14 Any books of account, records or other documents relating to the Society must, regardless of whether such documents are kept in book form or not, be retained and carefully preserved by the Society for a period of not less than 10 years after the date of the last entry in any book or document.
- 11.15 The Society shall be entitled but not obliged to procure that donations to the Society shall be allowed to be deducted from the taxable income of a taxpayer, as contemplated in

section 18A of the Income Tax Act, and such other tax exemptions as are available in law, and/or as the Commissioner may allow. In that event the Society shall –

- 11.15.1 comply with any additional requirements imposed in terms of section 18A(1) of the Act that are prescribed for donations to be allowed as a deduction for the purposes of section 18A of the Act; and
- 11.15.2 ensure that an audit certificate is provided upon submission by the Society to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Society in that year, in respect of which section 18A receipts were issued by the Society, were utilised in the manner contemplated by that section.
- 11.16 Within 2 (two) calendar months after drawing up the Society's financial statements, the Society must arrange for a written report to be compiled by an Accounting Officer (which may be the auditor of the Society) and submitted to the Society stating if –
 - 11.16.1 the financial statements of the Society are consistent with its accounting records;
 - 11.16.2 the accounting policies of the Society are appropriate and have been appropriately applied in the preparation of the financial statements; and
 - 11.16.3 the Society has complied with the provisions of the NPO Act and of this Constitution which relate to financial matters.
- 11.17 The Society shall preserve each of the Society's books of account, supporting vouchers, income and expenditure statements, balance sheets and Accounting Officer's reports, in an original or reproduced form, for such period as may be prescribed from time to time in terms of the NPO Act, and in any event for a period not less than that referred to in clause 11.14 or 10 years, which is the longer.

12 SIGNATURES

All cheques, electronic releases, promissory notes, contracts, deeds and other documents which require to be signed on behalf of the Society shall be signed in such manner as the Council shall determine from time to time.

13 FINANCE

- 13.1 The Council shall operate and cause to be opened in the name of the Society such banking accounts as the Council shall deem necessary and shall ensure that all the financial transactions of the Society are conducted through the medium of such accounts.

- 13.2 The Council shall cause proper books of account to be kept in which all transactions of the Society are duly recorded and shall specifically ensure that such books and all receipts issued on behalf of the Society in respect of monies received are properly recorded.
- 13.3 The financial year of the Society shall end on the last day of March each year unless otherwise resolved by Council from time to time.
- 13.4 Financial statements (including capital and revenue accounts) shall be prepared at least once each year, in accordance with generally accepted accounting practice and shall clearly reflect the affairs of the Society. The books of account and financial statements shall be audited and certified in the customary manner by an independent practising chartered accountant.
- 13.5 A copy of the annual financial statements, audited and certified as aforesaid, shall be made available to the Members as soon as possible after the end of the financial year of the Society and in any event not later than 15 days before the annual general meeting.

14 MEMBERSHIP OF THE SOCIETY

14.1 Classes and qualification of Members

The Society shall have the following classes of membership which may be granted, refused, awarded or cancelled by the Council subject to such processes as the Council may reasonably from time to time, determine—

- 14.1.1 "**Honorary Life Members**", duly elected by the Members at any General Meeting of the Society on the nomination of Council or a Branch. Each such Member shall have 1 vote;
- 14.1.2 "**Benefactors**", who subscribe for a set amount, determined by the Council from time to time, within a period of two years or donate property or services of not less than such value to the Society. Each such Member shall have 1 vote;
- 14.1.3 "**Patrons**", who subscribe not less than one quarter of the amount determined for purposes of clause 14.1.2 above by the Council from time to time, in one payment or donate property or services of not less than such value to the Society. Each such Member shall have 1 vote;
- 14.1.4 "**Life Members**" who subscribe an amount determined by the Council from time to time, in one payment. Such members must have been members of the Society for at least five (5) years and be 55 years or older. Each such Member shall have 1 vote;
- 14.1.5 "**Corporate Members**", referred to in 14.5 below who pay an annual subscription. Each such Member shall have 1 vote;

- 14.1.6 **"Family Members"**, (two (2) adults and two (2) of their school-going children) who pay an annual subscription. Any additional school going children may be included for a small additional amount determined from time to time by Council, in which event, the 2 two adult Members, will each have a vote;
- 14.1.7 **"Ordinary Members"**, who pay an annual subscription. Each such Member shall have 1 vote;
- 14.1.8 **"Overseas Members"** who pay an annual subscription. Each such Member shall have 1 vote;
- 14.1.9 **"Senior Citizen Members"**, which shall be open only to persons over the age of 65 years who pay an annual subscription. Provision shall also be made for a Senior Citizen Couple's Membership in which event, each of them shall be a Member and each such Member shall have 1 vote; and
- 14.1.10 **"Student Members"**, full-time students up to the age of 25 years, who pay an annual subscription. Each such Member shall have 1 vote.
- 14.2 The Council shall have the power to create a further class or classes of membership and to define the terms of such membership, subject to the approval of the Members at an annual general meeting or Special General Meeting of the Society.
- 14.3 The Society may upon application and with unanimous Council approval, admit to membership or affiliation other bodies having as their aim in whole or in part the conservation of the indigenous flora of southern Africa. Anybody so admitted shall contribute towards the funds of the Society a sum which may be fixed by the Council in consideration of such affiliation.
- 14.4 The Subscriptions payable by the Members in all the categories where an amount is payable for such class of membership, shall be determined annually by the Council and be subject to the approval of the Members at an annual general meeting or Special General Meeting of the Society.
- 14.5 Local Authorities, societies, institutions, companies, corporations, firms and other artificial or juristic persons are eligible for membership as Benefactors, Patrons or Corporate Members only, and they may authorise a representative to attend and vote at all meetings of the Society.
- 14.6 Members shall be admitted to membership upon payment of their required subscription. Annual subscriptions must be paid annually before the date stipulated by the Society, failing which the Member in question shall not be in good standing.
- 14.7 The Council's power to refuse or cancel membership shall not be exercised arbitrarily.

14.8 The Council may from time to time determine conditions and criteria for membership, which shall be subject to the approval of the Members in general meeting and refuse applications from persons who do not comply with such conditions and criteria.

14.9 Discretion is vested in the Council to adjudicate applications for Membership in the best interests of the Society.

14.10 On the admission of a Member, the General Manager or, if there is no such General Manager, the Chairperson, shall notify such person, who shall be entitled, on application, to a copy of the Constitution and any rules of the Society.

14.11 **Register of Members**

14.11.1 Upon admission to Membership, all Members shall, to the extent that such information was not included in their applications for Membership, furnish the Society with details of their physical addresses, telefax numbers and email addresses, and thereafter furnish details of any changes in such details from time to time.

14.11.2 The Council (or the General Manager, if a General Manager is appointed) shall maintain a register of all Members, together with their physical addresses, telefax numbers and email addresses, which register shall be available for inspection by *bona fide* Branch officials or Branch committee members on request, subject to the constraints imposed by the provisions of the Protection of Personal Information Act No 4 of 2013.

14.12 **Termination of Membership**

14.12.1 Subject to the provisions of clause 16, the Membership of a Member shall terminate in the event of –

14.12.1.1 receipt by the Society of notice in writing to that effect from the Member concerned;

14.12.1.2 the death of a Member who is a natural person;

14.12.1.3 the issue of a final order of liquidation of or commencement of business rescue proceedings in respect of the Corporate Member concerned;

14.12.1.4 the circumstances contemplated in clause 15.2 arising; or

14.12.1.5 the Council resolving to terminate the Membership of the Member concerned, provided that such Member is given at least 14 days' written notice of the Council meeting at which the resolution will be proposed and considered and is afforded the opportunity to make written or verbal representations at the Council meeting.

15 **PAYMENT OF SUBSCRIPTIONS**

15.1 All subscriptions shall be payable annually on or before the date determined by the Council.

- 15.2 A Member who has not paid his/her subscription on the due date thereof, shall forthwith cease to enjoy the privileges of membership of the Society. If such Member has not paid his/her subscription within 3 months after it became due, shall not, unless otherwise agreed by the Council in its discretion, be allowed to continue as a Member while his/her subscription is unpaid, and any such person shall forthwith cease to be a Member of the Society, without notice, and his/her name shall be erased from the Register.
- 15.3 If a Member is a member of more than one Branch, the Branch which does not receive a subscription allocation in respect of that Member may levy an additional subscription on that Member.

16 REINSTATEMENT AND READMISSION OF MEMBERS

- 16.1 The Council may reinstate a defaulting Member on payment by such person of all subscriptions in arrear and any other amounts owing to the Society, on such conditions as the Council may deem fit.
- 16.2 The Council shall have power to readmit a Member who for any reason has relinquished Membership of the Society, on such terms and conditions as the Council shall determine in each case.

17 BRANCHES

- 17.1 Any Member or group of Members may make representations to Council to form a Branch to carry out the functions of the Society at branch level. The function could be restricted to a geographical area, site (e.g. a National Botanical Garden) or a specific theme or interest, or a specific garden, including a municipal garden.
- 17.2 The Council shall in so far as it may be possible and/or practical allocate a geographical area to a Branch, which allocation and/or any changes to an allocation, shall happen in a transparent manner and be agreed with the Branch in question. In the event of this allocation affecting other Branches, the re-allocation may only take place with full agreement of all affected Branches.
- 17.3 Only Members shall be the members of a Branch and may be those who reside (full time or temporarily) in the geographical area of the Branch in question, or certain interest groups approved by Council or any Member who elects to belong to a specific Branch, which is not in that Member's usual residential area. Members may be members of more than one Branch.
- 17.4 Each Branch shall be constituted as a voluntary association, with separate legal personality, for conservation, cultivation, study, enjoyment and wise use of the indigenous flora and vegetation of Southern Africa and shall—

- 17.4.1 as its primary object, be constituted for fully supporting the Society and carrying out the functions of the Society;
- 17.4.2 adopt as its other objects, the Society's objects as contained in clause 6, as amended from time to time;
- 17.4.3 adopt the Branch Model Constitution, substantially in the form of the branch model constitution prescribed by the Society from time to time;
- 17.4.4 in the Branch constitution provide that—
 - 17.4.4.1 it may not be amended without prior written approval of the Council;
 - 17.4.4.2 it shall have the right to open and operate bank accounts;
 - 17.4.4.3 it shall have the sole right to appoint employees and pay reasonable salaries to those employees for services rendered to the Branch and shall have the sole right to discipline and/or terminate the employment of such persons;
 - 17.4.4.4 if there is a conflict between this Constitution and the Branch's constitution, the provisions of this Constitution shall prevail;
 - 17.4.4.5 it shall draw up financial statements within 90 days after its year end and such statements will be subject to an annual review by an independent firm of accountants or a review by an Accounting Officer.
- 17.4.5 be entitled to raise funds to advance the objects of the Society, via the Branch's activities;
- 17.5 Council shall have the right to refuse or impose amendments to a representation as it deems desirable before sanctioning a Branch, ensuring that operational requirements fall within the bounds of the Society's Constitution.
- 17.6 All Branches are accountable to the Society and will be required to report to the Society in a format as reasonably determined by the Council from time to time.
- 17.7 The Branches shall all have a year-end as suggested by Council, so that the Branches' year ends are aligned to enable them to complete their annual financial statements in such manner so that their financial situation may also be reflected in the Society's annual reports.
- 17.8 Any duly constituted Branch shall be eligible to receive from the Society such financial contributions to its legitimate expenses as Council shall annually determine, in addition to its right to raise funds locally for the fulfilment of the Society's Objects.
- 17.9 The curator of a National Botanical Garden with which a Branch is associated, shall be an *ex officio* member of the Branch's management committee but may not be its chairperson.

- 17.10 A Branch may own assets, operate bank accounts and employ persons to assist that Branch with its activities.
- 17.11 The Council in office at the Adoption Date and that Council's successors shall use its best endeavours and in good faith, allocate and return assets of the Society which were before the Adoption Date, operated and/or managed by a specific Branch and/or historically regarded as assets of that specific Branch.
- 17.12 The Executive Committee must always avail itself to Branches that require assistance and/or ascertain whether any of the other Branches are able to help or assist a Branch in need.

18 COMPOSITION AND ELECTION OF THE COUNCIL

- 18.1 Subject to clause 19, the Council shall comprise—
- 18.1.1 9 persons, existing Members, **elected** by the Members at each annual general meeting of the Society as further provided herein, comprising—
- 18.1.1.1 the Chairperson, which shall be a separate specific election, apart from the election of the Treasurer and the ordinary Council Members;
- 18.1.1.2 the Treasurer of the Society, which shall be a separate election, apart from the election of the Chairperson and the ordinary Council Members, which person shall be a suitably qualified person with an accounting and/or a financial qualifications or background. Only a suitably qualified person with an accounting and/or financial qualifications or background may replace the Treasurer if the position becomes vacant for any reason;
- 18.1.1.3 7 ordinary Council members, each of whom shall be elected separately from the election of the Treasurer and the Chairperson; and
- 18.1.2 2 *ex officio* but non-voting members of Council, being—
- 18.1.2.1 SANBI's chief executive officer or such other executive officer of SANBI as SANBI may nominate; and
- 18.1.2.2 the General Manager (if any).
- 18.2 The Council shall in each year, not later than 90 days before the date of the annual general meeting of the Society, by written or published notice to the Members, call for written nominations of potential Council members in the various categories to be elected to the Council for the ensuing year, which are to be made and contain such information as the Council may reasonably determine. The said notice shall contain a reasonable deadline, which shall not be less than 21 days before the annual general meeting by which date and

time nominations of Members in good standing, for the election to Council, must be received by the sitting Council at that time.

- 18.3 As regards the nomination of persons for election as Council Members—
- 18.3.1 any nomination must be made in writing, be made only by—
- 18.3.1.1 a Branch and be signed by 3 members of the relevant Branch committee; or
- 18.3.1.2 not less than 10 individual Members who must all sign such nomination;
- 18.3.2 no Branch may in any election, nominate more than the Chairperson and 4 other persons, one of whom may be nominated as Treasurer, for election as Council Members.
- 18.4 Each Council Member, other than the *ex officio* Council Members, shall be a Member.
- 18.5 Each Council Member shall be entitled to appoint an alternate who may perform all functions in his/her stead, provided that such alternate Council Member shall be an existing Council Member.
- 18.6 Should the Chairperson not be present at any meeting of the Council, the Council Members present shall elect from their number an *ad hoc* chairperson for that meeting.
- 18.7 Each elected Council Member shall hold office for the period concluding at the end of the annual general meeting of the Society after that at which he/she was elected and, upon the expiry of such period, such elected Council Member shall automatically retire from office but shall be eligible for re-election, provided that he/she remains qualified for election.
- 18.8 No person shall serve on Council for more than 4 consecutive years.
- 18.9 The Chairperson shall not hold office for more than 3 consecutive years.
- 18.10 Voting for the election of the Council Members at the annual general meeting of the Society or any other general meeting of the Society, by the Members, shall be by way of secret ballot of members present, represented by proxy or by postal vote as provided hereunder in clause 28.
- 18.11 In the event of any Council Member ceasing to hold office for any reason prior to the end of the period contemplated in clause 18.7 —
- 18.11.1 the remaining Council Members may co-opt any other person eligible as a Council Member to fill the vacancy so arising provided that—
- 18.11.1.1 such co-opted Council Member shall have 1 vote on any matter before Council;

- 18.11.1.2 shall not be taken into consideration to calculate whether a quorum of the Council is constituted or not; and
- 18.11.1.3 the Council may not co-opt more than 2 such members and if more than 2 members must be co-opted, the Council shall be obliged to call for an election or a general meeting of the Members to elect the further Council Members.
- 18.11.2 should the remaining Council Members fail to co-opt a person as contemplated in clause 18.11.1 within 60 days of such vacancy arising, or should there be no remaining Council Members, the Members shall be entitled to call for a general meeting of the Members or an election, to elect such eligible person as a Council Member, in which event —
- 18.11.2.1 such person shall have all the powers, functions and duties of a Council Member as if he had been duly elected in terms hereof including the right to vote; and
- 18.11.2.2 the term of office of such co-opted Council Member shall terminate at the end of the annual general meeting of the Society immediately following his or her co-option or election.

19 TERMINATION OF OFFICE OF COUNCIL MEMBERS

A Council Member shall cease to hold office as such upon –

- 19.1 his or her furnishing the Council with written notice of his resignation;
- 19.2 the expiry of the period ending after the annual general meeting of the Society immediately following the annual general meeting at which he was elected;
- 19.3 his or her ceasing to meet the requirements set out in clause 18.4;
- 19.4 his or her estate being sequestrated or in the event of his filing 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 or composition with his creditors generally;
- 19.5 his or her becoming disqualified to act as a director of a company on any of the grounds contemplated in section 69(8) of the Companies Act, No 71 of 2008;
- 19.6 his or her removal by the decision of the majority of the Members on any grounds at any general meeting of the Society;
- 19.7 the death of such a Council Member;
- 19.8 his or her ceasing to hold any qualification on which his or her appointment was predicated;
or

- 19.9 his or her being absent from 3 or more consecutive meetings of the Council without leave of the Council otherwise than on the business of the Society.

20 **INTERIM COUNCIL**

- 20.1 The terms of the Council Members in office as at the Adoption Date, shall terminate at the commencement of business on the first business day following the Adoption Date.
- 20.2 Notwithstanding any other provision contained herein, the Council Members replacing those in clause 20.1 shall—
- 20.2.1 be those elected by majority decision of the Members on the Adoption Date, in terms of a separate motion from the motion to adopt this Constitution;
- 20.2.2 hold office as Council Members until the next annual general meeting following the Adoption Date.
- 20.3 The interim Council shall have all the powers and authority granted to and duties imposed on the Council, in terms of this Constitution.

21 **MANAGEMENT OF THE AFFAIRS OF THE SOCIETY**

- 21.1 The management and control of the affairs of the Society shall vest in the Council which shall have full power and authority to do any act, matter or thing which could or might be done by the Society excepting such matters as are in this Constitution especially reserved to be dealt with at a general meeting of Members.
- 21.2 In addition to the general powers and authorities hereby conferred on the Council, and without in any way limiting such powers and authorities, the Council shall have the following specific powers –
- 21.2.1 to exercise the powers of the Society for achieving the Society's objects only;
- 21.2.2 to appoint such agents as the Council thinks fit, and to vest them with such powers as it may think expedient, and to determine their duties and fix and vary their salaries or emoluments (if any) and to require security in such instances, and to such amounts, as it may think fit, and to suspend or discharge any such persons at its discretion;
- 21.2.3 to execute any contracts in the name of the Society;
- 21.2.4 to refer any claim or demand by or against the Society to arbitration and to perform, or refuse to perform, the award;
- 21.2.5 to make and give receipts, releases and other discharges for monies payable to the Society and for the claims and demands of the Society;

- 21.2.6 to appoint persons who shall be entitled, on behalf of the Society, to sign bills of exchange, cheques receipts and negotiable instruments;
- 21.2.7 to make, vary and repeal rules for the regulation of the affairs of the Society, its officers and employees, any sub-committee, or the Members, provided that such rules are not inconsistent with or contrary to the provisions of this Constitution;
- 21.2.8 to co-opt additional non-voting members to Council for a specific stated purpose, which decision will require the approval of not less than 75% of the voting Council Members; and
- 21.2.9 to appoint an audit committee and any other Standing Committee and/or sub-committee that it may deem fit and in the interest of the Society and to supply such a committee with written terms of reference and to create, appoint and delegate to any Standing Committee, sub-committee and/or Standing Committees and/or sub-committees all or any of the authorities conferred on the Council by this Constitution and such sub-committee shall have such powers as may be conferred on it at the time of its appointment, or thereafter.
- 21.3 The Society in a general meeting may review, approve or amend any decision of the Council, but no such decision of the Society shall invalidate any action taken by the Council in accordance with this Constitution.
- 21.4 Any Standing Committee and/or sub-committee appointed by the Council, may co-opt any person or body to that Standing Committee and/or sub-committee and any person so co-opted to that Standing Committee and/or sub-committee shall have a vote on a matter tabled for decision in that Standing Committee and/or sub-committee.

22 MEETINGS OF THE COUNCIL

- 22.1 The Council may regulate its meetings and proceedings as it finds convenient subject to the following –
- 22.1.1 the Chairperson shall chair all meetings of the Council;
- 22.1.2 if the Chairperson is not present within 15 minutes of the appointed time of the meeting, the Members present at the Council meeting shall elect a Chairperson for that meeting;
- 22.1.3 the Council shall meet at least 4 times each year. In addition, meetings of the Council may be called as and when necessary. At least 10 business days' notice shall be given of all meetings of the Council unless all Council Members agree to accept shorter notice or waive the notice requirements;
- 22.1.4 the quorum for any meeting of the Council shall be elected Members comprising not less than 6 Council Members;

- 22.1.5 if no quorum is present, the Council may make no decision, except to adjourn the meeting or to call a general meeting of the Members;
- 22.1.6 save as otherwise stipulated herein, any decision of the Council shall be by majority vote by show of hands of those present;
- 22.1.7 each person entitled to be present and to vote shall have 1 vote and the Chairperson of the meeting shall not have a casting vote in addition to his or her deliberative vote.
- 22.2 A resolution signed by not less than 75% of all Council Members shall be as valid and effectual as if passed at a duly convened meeting of the Council. Any such resolution may consist of several documents in the same form, each of which is signed by one or more Council Members, and shall be deemed (unless the contrary appears from that resolution) to have been passed on the date on which it was signed by the last Council Member entitled to sign it.
- 22.3 All acts done by any meeting of the Council or by any person acting as a Council Member shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Member or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Council Member.
- 22.4 The inadvertent omission to give notice of any meeting of the Council shall not invalidate the proceedings at any such meeting.
- 22.5 The proceedings of the Council shall be valid notwithstanding any temporary vacancy in the Council, provided a quorum was present for the duration of such meeting.
- 22.6 The General Manager shall convene a meeting of the Council on the instructions of the Chairperson or if there is no such General Manager, the Chairperson may convene such a meeting himself or herself or any of them shall call such a meeting upon receipt of the written request to that effect from at least any 2 Council Members.
- 22.7 The venue of Council meetings shall be rotated amongst the Branches in so far as that may be practical and possible.
- 22.8 The Council shall cause minutes to be kept of the appointment of officers and names of Council Members present at any meeting, together with minutes of all resolutions taken and all proceedings of any such meeting. All such minutes shall be duly entered into books properly kept and provided for that purpose. Any such minutes, or an extract signed by the Chairperson, shall be received as *prima facie* evidence of the matters therein stated.

23 ELECTRONIC MEETINGS

In addition to the physical meetings held in terms of clause 22 and the round robin resolutions

which may be passed in term of clause 22.2, the Council has the power to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, provided that, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting. Where a meeting of the Council is held in 2 (two) or more separate places pursuant to this clause, the meeting will be deemed to be held at 1 (one) of those places as determined by the Chairperson.

24 EXECUTIVE COMMITTEE

- 24.1 The Council will establish and appoint the Executive Committee to oversee the day to day management of the Society and Council in accordance with the policies and principles herein contained and as laid down from time to time by the Council. The Executive Committee must consist of not more than 5 Council Members which includes the Chairperson and the Treasurer. The General Manager shall be an *ex officio* member of the Executive Committee.
- 24.2 The purpose of the establishment of the Executive Committee is to delegate the day to day managerial duties and obligations of the Council to the Executive Committee, to afford the Council more time to concentrate and focus purely on the strategic planning and management of the Society and to introduce new corporate governance principles to the Society.
- 24.3 The management of the Society will be conducted by the Executive Committee in accordance with the following provisions—
- 24.3.1 questions arising at meetings of the Executive Committee will be decided by a simple majority;
- 24.3.2 meetings of the Executive Committee will be held monthly and minutes of such meetings must be supplied to the Council Members within 10 days of such meeting;
- 24.3.3 the Chairperson, any 2 Council Members or the Council may, by written notice to the Executive Committee, convene meetings of the Executive Committee at more frequent intervals;
- 24.3.4 the meetings of the Executive Committee will be conducted on the same basis as meetings of the Council as provided in clause 22;
- 24.3.5 notwithstanding anything to the contrary herein contained any Council Member appointed to the Executive Committee may be summarily removed by the Council (in respect of which resolution the relevant Council Member will not be entitled to vote) in the event of that all the other Executive Committee members voting in favour of such

removal. In such event the Council must appoint another Council Member to the Executive Committee;

- 24.3.6 the Executive Committee shall, subject to any approvals framework, any business plan, the budget and the principles and policies laid down by the Council from time to time, be responsible for the overall day to day management and operations of the Society and Council including but not limited to—
 - 24.3.6.1 all administrative and secretarial matters;
 - 24.3.6.2 all financial administrative matters;
 - 24.3.6.3 the implementation of systems and procedures relating to the business of the Society and Council;
 - 24.3.6.4 attending to promotion and marketing of the Society activities and business as may be required from time to time, which may be delegated to a Standing Committee;
 - 24.3.6.5 the appointment and dismissal of employees; and
 - 24.3.6.6 provision of information and procedures relating to staff, their conditions of employment and the manner of payment of wages and salaries.
- 24.3.7 the Executive Committee will provide the Council with such monthly information summaries as may be required by the Council from time to time;
- 24.3.8 the Executive Committee shall—
 - 24.3.8.1 undertake such additional duties and exercise such additional powers in relation to the Society and Council and its business as the Council may from time to time assign and vest in it;
 - 24.3.8.2 use its utmost endeavours to protect and promote the interests and the reputation and goodwill of the Society and Council;
 - 24.3.8.3 in the discharge of its duties and in the exercise of such powers observe and comply with all normal business practices required to ensure that the Society achieves its objects;
 - 24.3.8.4 be answerable to the Council for the due performance of its duties hereunder. Notwithstanding the foregoing and for the sake of clarity, the Executive Committee shall, subject to the provisions of the Society and Council approvals framework and the budget have —
 - 24.3.8.4.1 overall operational control of the Society;
 - 24.3.8.4.2 authority to act for and bind the Society in the ordinary course of its business;

- 24.3.8.4.3 authority to dismiss and engage those employees of the Society and Council who fall and serve under its direct control.

25 **STANDING COMMITTEES AND SUB-COMMITTEES OF COUNCIL**

- 25.1 Standing Committees may be established in the Council's discretion, are as a rule controlled by and report to Council and they are established for carrying out ongoing core functions of the Society.
- 25.2 Standing Committees should preferably be chaired by a Council Member but may have any number of ordinary Members (e.g. experts in their field) as members of that Standing Committees.
- 25.3 A sub-committee of council may be established by Council for any purpose, but it will usually be to carry out a specific task and it will typically have a limited duration.
- 25.4 Any Standing Committee and/or sub-committee of Council may regulate its meetings and proceedings as it finds convenient.
- 25.5 Each Standing Committee and/or sub-committee of Council shall cause minutes to be kept of the appointment of officers and names of that Standing Committee and/or sub-committee present at any meeting, together with minutes of all resolutions taken and all proceedings of any such meeting. All such minutes shall be duly entered into books properly kept and provided for that purpose. Any such minutes, or an extract signed by the chairperson of that sub-committee, shall be received as *prima facie* evidence of the matters therein stated.

26 **ALLOCATION AND CONTROL OF FUNDS**

- 26.1 Unless otherwise stated or stipulated by the testator/donor, 100% of each donation made, legacy, or inheritance received by the Society shall be paid into to a special account designated as "*The Partnership Fund for the South African National Biodiversity Institute*" (the "**Fund**"). The Fund shall be administered by a committee consisting of 3 persons appointed by the Council and by 3 persons appointed by SANBI. No decision of the said committee for the disbursement of any portion of the Fund shall be valid unless agreed to by not less than 4 members of the Committee.
- 26.2 The said committee shall submit to Council and the SANBI board an annual report of its transactions in the preceding year and its proposed policy for the ensuing year and a summary of that report must be presented to Members in Society's annual report. The tenure of office of the members of the committee nominated by the Council and by the SANBI board or its successor, shall be in discretion of the Council and the SANBI board respectively, who may also appoint alternates to the members appointed by them.

- 26.3 All subscriptions received by the Society from Benefactor, Patron and/or Life Members shall be invested by the Society and only the interest and dividends thereon shall form a part of the Society's income for disbursements.

27 GENERAL MEETINGS OF THE SOCIETY

27.1 Annual General Meeting

- 27.1.1 The Council must each year convene an annual general meeting of the Society in accordance with the following provisions of this Constitution.
- 27.1.2 The first annual general meeting must be held within 6 months after the Adoption Date or the usual annual general meeting of the Society, whichever is the later.
- 27.1.3 All other annual general meetings thereafter must be held within 5 months after the end of each financial year of the Society.
- 27.1.4 At least 21 days' written notice must be given to all Members entitled to attend the meeting and must state the date, time and place of the annual general meeting and the business to be transacted at the meeting.
- 27.1.5 The place of the annual general meeting shall be held in the town or city where the Head Office may be situated from time to time, provided that every third annual general meeting shall be held in a town or city other than where the Head Office is located.
- 27.1.6 The business of each annual general meeting must include —
- 27.1.6.1 confirmation of the minutes of the previous annual general meeting;
 - 27.1.6.2 the Chairperson's report on the activities of the Society;
 - 27.1.6.3 the Treasurer's report on the financial situation of the Society;
 - 27.1.6.4 consideration and approval of the annual audited financial statements of the Society;
 - 27.1.6.5 the election of the Chairperson, the Treasurer and ordinary Council Members for the following year;
 - 27.1.6.6 the appointment of the independent auditors of the Society;
 - 27.1.6.7 the consideration of any resolutions concerning the affairs of the Society of which notice has been given to the General Manager (and, failing the General Manager, the Chairperson) by any Member or Branch, at least 15 days prior to the date of the annual general meeting or within such other period as the Chairperson may reasonably allow.

27.1.7 the quorum for an annual general meeting shall be not less than 50 members present and voting, which shall include those members represented by proxy.

27.2 **Special General Meetings**

27.2.1 The Council may at any time convene other general meetings of the Society ("**Special General Meetings**") and shall be obliged to do so upon receipt of a written request signed by not less than 30 Members.

27.2.2 At least fourteen 14 days' written notice must be given to all Members entitled to attend the Special General Meeting and must state the date, time and place of the Special General Meeting and the business to be transacted, as well as all motions and/or proposals to be tabled at the Special General Meeting.

27.2.3 If the Council fails to give notice within 7 days of receipt of any request referred to in clause 27.2.1, the Members concerned shall be entitled themselves to give notice of and to convene the Special General Meeting.

27.2.4 All Special General Meetings called by the Council shall be held in such town as the Council may decide from time to time, but a Special General Meeting called by Members shall be held in the town or area where the written request referred to in clause 27.2.1 or the notice in clause 27.2.3 came from.

27.2.5 The quorum for a Special General Meeting shall, subject to the provisions of clause 29 below, be not less than 50 Members present and voting, which shall include those Members represented by proxy.

27.3 **Failure to give notice to a Member**

The accidental omission to send any notice in any manner contemplated in clause 27.1.4 and/or 27.2.2 to any Member shall not invalidate the holding of any meeting or the passing of any resolution thereat.

27.4 **Independent Scrutineer**

An independent, suitably qualified scrutineer shall be appointed by the Council for each annual general meeting or Special General Meeting to—

27.4.1 approve any communication to Members about any vote to be held so that the intent of the proposed motion or issue is accurately reflected;

27.4.2 approve any forms about the voting process (which may include electronic voting forms); and

27.4.3 receive, verify and scrutinise the instruments of proxy, postal votes and electronic voting forms.

27.5 **Proceedings at General Meetings**

- 27.5.1 The Chairperson shall chair all general meetings of the Society.
- 27.5.2 If the Chairperson is not present within 15 minutes of the appointed time of the meeting, the Members present at the general meeting shall elect a Chairperson for that meeting.
- 27.5.3 The quorum for general meetings of the Society shall be 50 Members present in person or represented by proxy, all of whom must be in good standing, provided that if no quorum is present within 15 minutes after the time fixed for the meeting, it shall, in the case of an annual general meeting or a special general meeting called by the Council, be postponed to the same day and time in the following week and at such adjourned meeting the Members present shall be deemed to be a quorum for the transaction of the business of the meeting. In the case of a special general meeting called by requisition of Members, if no quorum is present upon the date fixed, and within 15 minutes after the time fixed for the meeting, it shall be dissolved.
- 27.5.4 A resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot shall be held only if so required by the Chairperson or demanded by not less than 5 Members present, or represented by proxy.
- 27.5.5 Each Member present or represented by proxy shall be entitled to 1 vote on each matter to be decided at such general meeting. If the matter in question allows for postal votes, postal votes shall be counted and taken into consideration.
- 27.5.6 Except where this Constitution requires a higher threshold, questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall not have a casting or second vote.
- 27.5.7 The Council shall for each voting event ensure that the votes are counted by a suitably qualified independent scrutineer and/or returning officer.
- 27.5.8 Proper minutes and attendance records shall be kept of all general meetings.
- 27.5.9 The Chairperson shall sign the minutes which shall be available always for inspection or copying by any Member of the Society on 2 days' prior notice to the General Manager.

27.6 **Adjournment of General Meetings**

The Chairperson of any general meeting may, with the consent of the meeting decided by majority vote, adjourn the meeting from place to place and from time to time but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting from which the adjournment took place.

28 PROXIES, REPRESENTATIVES AND POSTAL VOTES

28.1 Any Member may at any time appoint any natural person who is a Member, as a proxy to participate in, and speak and vote at, a general meeting on behalf of that Member.

28.2 A proxy appointment –

28.2.1 must be in writing, dated and signed by the Member; and

28.2.2 remains valid for the relevant general meeting and any adjournment or postponement thereof.

28.3 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Council may approve from time to time –

Proxy

"I _____

being a member of the Botanical Society of South Africa (the "**Society**") do hereby appoint

or failing him/her

or failing him/her, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Society to be held at _____ on _____ and at any adjournment thereof as follows _____

| | In favour of | Against | Abstain |
|--------------|--------------|---------|---------|
| Resolution 1 | | | |
| Resolution 2 | | | |
| Resolution 3 | | | |
| Resolution 4 | | | |

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

Signed this _____ day of _____ 20_____.

Member's Signature

- 28.4 A Member or his proxy must deliver to the Society's Head Office a copy of the instrument appointing such proxy not later than 24 hours before the commencement of the meeting at which the proxy intends to exercise that Member's rights.
- 28.5 Unless the instrument appointing a proxy provides otherwise, a Member's proxy may decide, without direction from the Member, whether to exercise or abstain from exercising any voting right of the Member and none of such rights or powers are limited, restricted or varied by this Constitution.
- 28.6 Any member in good standing who is not able to attend an annual or Special General Meeting of the Society may apply to the Society's head office to cast postal votes on the issues to be decided at that meeting. Official voting papers, which may include electronic voting forms, shall be made available on request from Head Office. These papers, which may include electronic voting forms, must be submitted for verification and registration by the cut-off date indicated on the voting paper the independent scrutineer referred to in clause 27.4.

29 **AMENDMENT OF CONSTITUTION**

The terms of this Constitution may be amended by a resolution passed at a special general meeting called for that purpose or at any annual general meeting of the Society, provided that –

- 29.1 not less than 30 days' notice is given of such meeting (other than an annual general meeting), stating the precise nature and wording of the amendments to be proposed;
- 29.2 the quorum for a Special General Meeting at which this Constitution may be amended, shall be not less than 100 Members present and voting, which shall include those Members represented by proxy; and
- 29.3 such resolution to amend this Constitution is passed by a majority of not less than 75% of the Members present in person, represented by proxy and entitled to vote at such meeting or whom casted postal votes.

30 **GENERAL MANAGER**

- 30.1 The Council may appoint a General Manager –
- 30.1.1 for such term;
- 30.1.2 at such remuneration; and
- 30.1.3 upon such conditions,

as it may think fit. The Council may subject to due process having been followed, dismiss such General Manager.

- 30.2 The Council shall determine the scope and functions of the General Manager.
- 30.3 The General Manager shall report to the Council and to the Executive Committee.
- 30.4 The General Manager shall act in the best interests of the Society.
- 30.5 The "Executive Director" in office as at the Adoption Date shall become the first General Manager.

31 PROVISION OF CONSTITUTION, RULES AND OPERATIONAL HANDBOOK

- 31.1 A copy of this Constitution (as amended from time to time) and any rules of the Society made from time to time shall be available for inspection by any Member at all reasonable times upon application to the General Manager or, if there is no such General Manager, the Chairperson.
- 31.2 Every person, upon becoming a Member of the Society, shall, on written request by such person directed to the General Manager or, if there is no such General Manager, the Chairperson, be entitled to receive a copy of this Constitution and any rules of the Society, as amended from time to time.
- 31.3 The Operational Handbook and the Code of Good Practice existing at the Adoption Date shall be reviewed urgently by suitable experts appointed by the Council, within 90 days after the Adoption Date. The purpose of such review shall to consider the suitability of the provisions contained in the Operational Handbook and the Code of Good Practice and the Council shall amend and/or remove the provisions as recommended by the experts. The provisions of the Operational Handbook and the Code of Good Practice, are to be treated as guidelines and may not directly or indirectly amend or undermine the provisions of this Constitution.
- 31.4 If ever there is a conflict between the provisions of this Constitution and/or the provisions of any Operational Handbook and/or any Code of Good Practice, the provisions of this Constitution shall prevail.
- 31.5 The provisions of the Operational Handbook and the Code of Good Practice are not binding on any Branch and serve as guidelines to the Branches.

32 INDEMNITY

Every Council Member shall be indemnified by the Society against all costs, losses and expenses which he may incur or for which he may become liable because of any act or thing done by him in the discharge of his duties as Council Member, unless the loss in question is caused by his own gross negligence, dishonesty or breach of trust.

33 DISSOLUTION OF THE SOCIETY

- 33.1 The Society may be dissolved by a resolution passed at a special general meeting called for that purpose, provided that –
- 33.1.1 not less than 30 days' notice is given of such meeting stating the nature of the resolution/s to be proposed; and
- 33.1.2 such resolution is passed by a majority of not less than 75% of the Members present in person or represented by proxy and entitled to vote at such meeting or whom casted postal votes.
- 33.2 In the event of a resolution for the dissolution of the Society being passed at any meeting contemplated in clause 33.1, that meeting shall also have power to pass resolutions by way of majority vote for the appointment of a liquidator and the disposal of the surplus funds and assets.
- 33.3 Despite any provision in any law or agreement to the contrary, upon the winding—up or dissolution of the Society –
- 33.3.1 no past or present Member or Councillor of the Society is entitled to any part of the net value of the Society after its obligations and liabilities have been satisfied; and
- 33.3.2 the entire net value of the Society must be distributed to one or more Non-Profit companies, registered external Non-Profit companies carrying on activities within the Republic, voluntary associations or Non-Profit trusts –
- 33.3.2.1 having objects similar to the Society's main object;
- 33.3.2.2 as determined –
- 33.3.2.2.1 in terms of this Constitution; or
- 33.3.2.2.2 by the Members, failing whom the Council, at or immediately before the time of its dissolution; or
- 33.3.2.2.3 by the court, if no such determination is made in this Constitution or by the Members or Council; and
- 33.3.2.3 which has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act.
- 33.4 Notwithstanding the foregoing the Life Membership Fund and the Partnership fund for the South African National Biodiversity Institute shall be transferred to the South African National Biodiversity Institute or its successor.

34 RESOLUTION OF DISPUTES

- 34.1 In the event of there being any dispute or difference between any persons bound by this Constitution, including any dispute or difference arising out of or in respect of –
- 34.1.1 any of the provisions of this Constitution; and/or
 - 34.1.2 any relationship between any 2 or more persons in their capacities as Members; and/or
 - 34.1.3 any relationship between any person, in its capacity as a Member, on the one hand, and the Society on the other hand; and/or
 - 34.1.4 any relationship between any person, in his or her capacity as a Council Member, on the one hand, and the Society on the other hand; and/or
 - 34.1.5 any relationship between any person, in his or her capacity as a prescribed officer of the Society, on the one hand, and the Society on the other hand; and/or
 - 34.1.6 any relationship between any person, in his or her capacity as a member of a committee of the Council, on the one hand, and the Society on the other hand; and/or
 - 34.1.7 any right and/or obligation of any Member, in its capacity as a Member, against or to the Society and/or any other Member; and/or
 - 34.1.8 any right and/or obligation of the Society against or to any Member (in its capacity as a Member), and/or any Councillor (in his or her capacity as a Council Member), and/or any prescribed officer of the Society (in his or her capacity as a prescribed officer of the Society), and/or any other person serving the Society as a member of a committee of the Board with reference to such service; and/or
 - 34.1.9 any right and/or obligation of any Councillor (in his or her capacity as Council Member) against or to the Society; and/or
 - 34.1.10 any right and/or obligation of any prescribed officer of the Society (in his or her capacity as a prescribed officer of the Society) against or to the Society; and/or
 - 34.1.11 any right or obligation of any other person serving the Society as a member of the committee of the Board with reference to such service,

such dispute or difference shall, except to the extent that provision is made elsewhere in this Constitution for the final resolution of the dispute or difference in question, on written demand by any such person be submitted to mediation.

- 34.2 Upon written notice from any dispute party to the other(s) (the "**Dispute Notice**") the dispute shall be referred to a suitably qualified independent mediator, whose identity shall be agreed between the parties in writing, within 7 (seven) days of receipt of the Dispute

Notice, and failing agreement as aforesaid, to a suitably qualified independent mediator appointed by the President for the time being of the Cape Law Society (or its successor body in the Western Cape). The mediator shall be an Africa Centre for Dispute Settlement accredited mediator. Unless otherwise agreed between the parties to the dispute, the mediation shall take place in accordance with the United Nations Commission on International Trade Law Model Conciliation Rules in force at the time of the dispute.

34.3 If for any reason, a dispute is not settled by mediation within 30 (thirty) days of receipt of the Dispute Notice or such longer period as may be agreed to in writing, then the dispute shall be referred to arbitration in accordance with the provisions below.

34.4 The arbitration shall be held at Cape Town before a single arbitrator in accordance with the rules of the Arbitration Foundation of South Africa ("**AFSA**"), which arbitration shall be administered by AFSA.

35 **NOTICES**

35.1 Any Member shall be deemed to have chosen as his *domicilium citandi et executandi* the address furnished by him to the Society and recorded in the Register from time to time for giving or sending any notice arising out of or in connection with this Constitution.

35.2 A Member may change his *domicilium* to any other physical address, email address or telefax number by written notice to the Society to that effect. Such change of address will be effective 5 business days after receipt of the notice of the change.

35.3 All notices to be given in terms of this Constitution will be given in writing and will –

35.3.1 be delivered by hand or sent by email;

35.3.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

35.3.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

35.4 Notwithstanding the above, any notice given in writing, and received by the Member to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 35.

36 **SEVERABILITY**

All provisions and the various clauses of this Constitution are, notwithstanding the way they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Constitution which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Constitution shall remain of full force and effect.

37 **CONTINUING EFFECTIVENESS OF CERTAIN PROVISIONS**

The expiration or termination of this Constitution shall not affect any of the provisions of this Constitution which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

ADOPTED AT A SPECIAL GENERAL MEETING OF THE SOCIETY HELD AT _____
ON THE _____ DAY OF _____ 2018

CERTIFIED CORRECT

CHAIRPERSON OF SPECIAL GENERAL MEETING