

# **CONSTITUTION**

of

**THE [ INSERT FULL NAME ] BRANCH**

**OF**

**THE BOTANICAL SOCIETY OF SOUTH AFRICA**

**[Adopted at a special meeting of the Branch on [INSERT DATE] by a majority of 75% of those branch members present and voting]**

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**[General Drafting Note: This document is intended to provide generic provisions that will be required in most cases, but it will need to be modified to meet the requirements of each association.]**

## **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 "**Botsoc**" means the voluntary association known and constituted as "**The Botanical Society of South Africa**", of which this Association is a branch;

1.1.3 "**Branch**" means the voluntary association, being the **[INSERT FULL NAME]** branch of Botsoc and constituted in accordance with the provisions hereof;

1.1.1 "**Chairperson**" means the Chairperson of the Branch as contemplated in clause 15.4;

1.1.2 "**Committee**" means the committee contemplated in clause 155;

1.1.3 "**Committee Members**" means the members of the Committee from time to time;

1.1.4 "**Commissioner**" means the Commissioner for the South African Revenue Service;

1.1.5 "**Constitution**" means the Branch's constitution contained in this document, including all annexures (if any) hereto;

1.1.6 "**Council**" means the Botsoc council;

1.1.7 "**Council Members**" means the Botsoc members of the Council from time to time;

1.1.8 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;

1.1.9 "**General Manager**" means the general manager of Botsoc (if any);

1.1.10 "**Head Office**" means the Botsoc head office;

1.1.11 "**Income Tax Act**" means the Income Tax Act, No 58 of 1962;

1.1.12 "**Members**" means the members of the Branch who are also members of Botsoc as provided in clause 13.1.2 below, from time to time;

1.1.13 "**National Botanical Gardens**" means the national botanical gardens as administered and managed by SANBI from time to time;

- 1.1.14 **"Non-profit Organisation"** means a Non-profit organisation as defined in the NPO Act;
- 1.1.15 **"NPO Act"** means the Non-profit Organisations Act, No 71 of 1997;
- 1.1.16 **"NPO Director"** means the Director of Non-profit Organisations, designated in terms of section 8 of the NPO Act;
- 1.1.17 **"PBO"** means a public benefit organisation as defined in terms of the Income Tax Act;
- 1.1.18 **"Register"** means the register of Members of the Branch, kept by Head Office in whatever form may be suitable from time to time;
- 1.1.19 **"Secretary"** means the secretary of the Branch, to the extent one is appointed in terms of clause 13.4.4;
- 1.1.20 **"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; and
- 1.1.21 **"South Africa"** means the Republic of South Africa.
- 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 Members wish to establish the Branch as an independent, voluntary association for supporting Botsoc as well as the conservation, cultivation, study and wide use of the indigenous flora and vegetation of Southern Africa and the [● INSERT] region.
- 2.2 The Branch will have its own independent powers and authority in carrying out its activities, separate from Botsoc.
- 2.3 Botsoc is registered as an NPO with NPO registration number 003-394 and as a PBO with PBO registration number 930 000739.
- 2.4 The Branch may apply for its own registration as a NPO and/or PBO, should it wish to do so.
- 2.5 The Members wish to record in writing their agreement in respect of the above and matters ancillary thereto.

## 3 NAME

- 3.1 The name of the Branch shall be the [●] branch of The Botanical Society of South Africa or such other name as may be resolved by the Members from time to time in accordance with the further provisions hereof.
- 3.2 The principal office of the Branch shall be at [INSERT FULL ADDRESS, South Africa].

## 4 LEGAL STATUS

- 4.1 The Branch 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 Branch in the name of the Branch, and the Committee may authorise any person or persons to act on behalf of the Branch and to sign all such documents and to take all such steps as may be necessary about any such proceedings.

## 5 **MISSION STATEMENT**

Mindful of the role of the people of South Africa as custodians of amongst the world's richest floral heritage, it the Branch's 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 Branch are to –

- 6.1 support Botsoc and its activities in every possible way that the Branch may deem fit, including but not limited to the raising of funds to be donated to Botsoc, through the Branch's activities;
- 6.2 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;
- 6.3 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;
- 6.4 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 the [●] region and to support appropriate study and research projects;
- 6.5 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;
- 6.6 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 and/or the [●] Botanical Gardens or the [●] garden; and
- 6.7 generally, to promote the best interests of the Branch and to do all such other things as may be reasonably ancillary thereto.

## 7 RESTRICTIONS

- 7.1 The Branch is formed for non-profit purposes, and is not formed and does not exist primarily for carrying on any business that has for its object the acquisition of gain by the Branch or its individual Members.
- 7.2 Notwithstanding clause 7.1, the Branch is permitted to carry on ancillary profit-making activities, to generate income, provided that the income and assets of the Branch 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 Branch 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 Branch;
  - 7.3.2 reasonable remuneration for professional or business services rendered to or on behalf of the Branch with the prior approval of the Committee;
  - 7.3.3 reasonable actual costs, expenses and other commitments incurred on behalf of the Branch with the prior approval of the Committee;
  - 7.3.4 expenses incurred by Committee Members in the performance of their duties;
  - 7.3.5 all administrative and operating expenses payable by the Branch; and
  - 7.3.6 donations to Botsoc of funds raised by the Branch for this purpose, with the prior approval of the committee,

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

## 8 POWERS OF THE BRANCH

- 8.1 Subject to the provisions of clause 7, the Branch 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 –
- 8.1.1 to acquire any movable or immovable property and to maintain, improve and alter any such property;
  - 8.1.2 to institute, conduct, defend, compound or abandon any legal proceedings by or against the Branch or its officers, or otherwise concerning the affairs of the Branch;
  - 8.1.3 to open bank and building society accounts in the name of the Branch 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 Branch;



- 8.1.4 to invest and deal with any monies of the Branch not immediately required for the purposes of the Branch;
- 8.1.5 to 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;
- 8.1.6 to secure with the approval of Members by way of an ordinary resolution for a specific transaction passed at an annual general meeting or Special General meeting, the fulfilment of any contracts or engagements entered into by the Branch by the mortgage of all or any part of the property of the Branch;
- 8.1.7 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 Branch and/or Botsoc, or the establishment or promotion of which may be beneficial to the Branch and/or Botsoc, provided that no subscription shall be paid to any such other association out of the funds of the Branch except with the approval of the Committee *bona fide* in furtherance of the interests of the Branch and/or Botsoc;
- 8.1.8 to support and subscribe to any institution or society which may be for the benefit of the Branch or for its employees whether past or present;
- 8.1.9 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 Branch or by mortgage of all or any part of the property of the Branch; and
- 8.1.10 subject to the provisions of clause 7, to make donations, loans, exchanges, leases and any other forms of contract whatsoever, including the sale and purchase of property of any kind whatsoever to Botsoc or in the interests of Botsoc; and
- 8.1.11 conduct its affairs in terms of its registration under the NPO Act as amended to the extent that it has registered as an NPO and its registration as a PBO, to the extent that it has registered as a PBO
- 8.2 The powers of the Branch shall be exercised by the Committee and the sub-committees.

## 9 SPECIAL PROVISIONS RELATING TO TAX EXEMPTION AND NPO REGISTRATION

- 9.1 The provisions of this clause 9 relating to the requirements in the NPO Act shall only be applicable to the Branch to the extent that it has registered as an NPO and the provisions in this clause 9 relating to the Income Tax Act shall only be applicable to the extent that the Branch has been approved by the Commissioner as a PBO as contemplated in section 30(3) of the Income Tax Act and therefore the receipts and accruals of the Branch 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 Branch shall always comply with the provisions of clauses 9.2 to 9.15.

- 9.2 The income and property of the Branch howsoever derived shall be applied solely towards the promotion of the Branch'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 Branch's objects; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Branch in return for any services actually rendered to the Branch.
- 9.3 The Branch shall take reasonable steps to ensure that each activity carried on by the Branch is for the benefit of, or is widely accessible to, the public at large, including any sector thereof.
- 9.4 The Branch 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 Branch are directed in the furtherance of its objects.
- 9.5 Upon its dissolution the assets of the Branch remaining after the satisfaction of all its liabilities, shall be given or transferred to Botsoc and/or some other association or institution or associations or institutions having objects similar to the Branch's objects, which has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act.
- 9.6 There shall always be a minimum of 3 (three) Committee Members who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Branch and no single person shall directly or indirectly control the decision-making powers relating to the Branch. For purposes of this Constitution "connected person" has the meaning ascribed to that term in the Income Tax Act.
- 9.7 The Branch 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.
- 9.8 The Council shall submit copies of any amendments to the Constitution to the Commissioner and to the NPO Director.

- 9.9 The Branch 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.
- 9.10 The Branch 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 Branch.
- 9.11 The Branch 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.
- 9.12 The Branch will not use the Branch's resources directly or indirectly to support, advance or oppose any political party.
- 9.13 All financial transactions of the Branch shall be conducted by means of a banking account.
- 9.14 Any books of account, records or other documents relating to the Branch must, regardless of whether such documents are kept in book form or not, be retained and carefully preserved by the Branch for a period of not less than 10 years after the date of the last entry in any book or document.
- 9.15 The Branch shall be entitled but not obliged to procure that donations to the Branch 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 Branch shall –
- 9.15.1 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
- 9.15.2 ensure that an audit certificate is provided upon submission by the Branch to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Branch in that year, in respect of which section 18A receipts were issued by the Branch, were utilised in the manner contemplated by that section.

- 9.16 Within 2 (two) calendar months after drawing up the Branch's financial statements, the Branch must arrange for a written report to be compiled by an Accounting Officer (which may be the auditor of the Branch) and submitted to the Branch stating if –
- 9.16.1 the financial statements of the Branch are consistent with its accounting records;
  - 9.16.2 the accounting policies of the Branch are appropriate and have been appropriately applied in the preparation of the financial statements; and
  - 9.16.3 the Branch has complied with the provisions of the NPO Act and of this Constitution which relate to financial matters.
- 9.17 The Branch shall preserve each of the Branch'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 9.14.

## 10 ALLOCATION AND CONTROL OF FUNDS AND DONATIONS RECEIVED

- 10.1 Unless otherwise stipulated by the testator/donor, 100% of each legacy, donation or inheritance received by the Branch shall accrue to the Branch and be invested and/or applied as the testator/donor may have designated, failing which it shall be applied or invested in such manner as the Committee may deem fit. (the "**Fund**").
- 10.2 If retained and/or invested by the Branch (the "**Fund**"), the Fund shall be administered by a committee consisting of not less than 3 persons appointed by the Committee. No decision of the said committee for the disbursement of any portion of the Fund shall be valid unless unanimously agreed. The said Fund committee shall submit to the Committee an annual report of its transactions in the preceding year and its proposed policy for the ensuing year. The tenure of office of the members of the Fund committee appointed by the Committee shall be in discretion of the Committee who may also at any time appoint alternates to the members appointed by them.

## 11 SIGNATURES

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

## 12 FINANCE

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

- 12.2 The Committee shall cause proper books of account to be kept in which all transactions of the Branch are duly recorded and shall specifically ensure that such books and all receipts issued on behalf of the Branch in respect of monies received are properly recorded.
- 12.3 The financial year of the Branch shall end on [the last day of February] each year unless otherwise resolved by Members from time to time.
- 12.4 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 Branch. The books of account and financial statements shall be audited and certified in the customary manner by an independent practising chartered accountant. Provided if the Branch is too small to appoint its own auditor it must be audited by the Botsoc auditor and be consolidated into the Botsoc annual financial statements. The Branch may call on Head Office to provide professional assistance.
- 12.5 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 Branch.

### 13 MEMBERSHIP OF THE BRANCH

#### 13.1 Classes and qualification of Members

- 13.1.1 There shall be only one class of Members of the Branch, namely ordinary Members.
- 13.1.2 Membership of the Branch is limited to persons who are members of Botsoc and generally reside (permanently or temporarily) in the **[INSERT GEOGRAPHICAL AREA]** area or who apply to the Committee to be members of the Branch. Members may also be members of other Branches.

#### 13.2 Rights of Members

- 13.2.1 Membership of Branch confers upon a Member the privilege of membership subject to such charges and reasonable restrictions as the Committee may from time to time impose and subject to the rules of the Society in force for the time being.
- 13.2.2 A Member whose application for membership has been accepted shall be bound by this Constitution and any rules of the Branch which are then in force, or which subsequently may be altered or amended and in force at any future time.
- 13.2.3 No person shall be absolved from the effect and application of this Constitution, and any rules because such person may not have received a copy thereof.

### 13.3 **Liability of Members**

The liability of Members is limited to the amount of monies owing by them to the Branch.

### 13.4 **Admission of Members**

13.4.1 Eligible candidates, who meet the criteria set out in clause 13.1.2, will automatically qualify for membership of the Branch but must apply to the Committee to be admitted as a Member of the Branch, and the Committee may admit such persons as Members, as it deems fit.

13.4.2 The Committee may from time to time determine additional conditions and criteria for membership, and may refuse applications from persons who do not comply with such conditions and criteria.

13.4.3 Membership of the Branch cannot be transferred by any Member to another person.

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

### 13.5 **Register of Members**

13.5.1 Upon admission to membership of the Branch, all Members shall, to the extent that such information was not included in their applications for membership, furnish the Branch 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.

13.5.2 The Committee (or the Secretary, if a Secretary 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.

### 13.6 **Termination of Membership**

13.6.1 Subject to the provisions of clause 14, the Membership of a Member shall terminate in the event of –

13.6.1.1 receipt by the Branch of notice in writing to that effect from the Member concerned;

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

13.6.1.3 the termination of a Member's membership of Botsoc, for any reason; or

13.6.1.4 the Committee resolving to terminate the Membership of the Member concerned, provided that such Member is given at least 14 days' written notice of the

Committee meeting at which the resolution will be proposed and considered and is afforded the opportunity to make written or verbal representations at the Committee meeting.

**13.7 Subscription fees**

13.8 The Member shall pay an annual subscription in respect of such Member's membership of Botsoc for whom Botsoc shall reimburse the Branch, and no additional subscription fee shall be payable to the Branch, except if a member is also a member of another Branch. 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 from the Society, may levy an additional subscription on that Member being the same levy it receives from Head Office in respect of all other Members.

**14 RE-INSTATEMENT AND RE-ADMISSION OF MEMBERS**

14.1 The Committee may re-instate a defaulting Member on payment by such person of all subscriptions in arrear to Botsoc, and any other amounts owing to the Branch.

14.2 The Committee shall have power to re-admit a Member, who for any reason has relinquished Membership of the Branch

**15 COMPOSITION AND ELECTION OF THE COMMITTEE**

15.1 Subject to clause 15.11, the Committee shall comprise at least 3 but not more 7 persons elected by the Members at the annual general meeting of the Branch as further provided herein.

15.2 Each Committee Member shall be a Member of the Branch.

15.3 Each Committee Member shall be entitled to appoint an alternate, who may perform all functions in his/her stead, provided that such alternate shall also be a Committee Member.

15.4 The Committee shall, at its first meeting after each annual general meeting of the Branch, elect one of its number as Chairperson of the Committee and of the Branch.

15.5 Depending on the size and requirements of the Committee, the Committee may elect one of its number as the treasurer and another as secretary of the Committee and of the Branch.

15.6 Should the Chairperson not be present at any meeting of the Committee, the Committee Members present shall elect from their number an *ad hoc* Chairperson for that meeting.

15.7 Each elected Committee Member shall hold office for the period concluding at the end of the annual general meeting of the Branch after that at which he/she was elected and,

upon the expiry of such period, such Committee Member shall automatically retire from office but shall be eligible for re-election, if he/she remains qualified for election.

- 15.8 No person may serve as Chairperson or as a Committee Member of the Branch for more than [5] consecutive years.
- 15.9 Voting for the election of members of the Committee at the annual general meeting of the Branch shall be by way of secret ballot of those Members present or represented by proxy or postal vote.
- 15.10 In the event of any Committee Member ceasing to hold office for any reason prior to the end of the period contemplated in clause 15.7 the remaining Committee Members shall co-opt any other person eligible for election as a Committee Member to fill the vacancy so arising, in which event –
- 15.10.1 such person shall have all the powers, functions and duties of a Committee Member as if he had been duly elected in terms hereof; and
- 15.10.2 the term of office of such co-opted Committee Member shall terminate at the end of the annual general meeting of the Branch immediately following his co-option,
- provided that if two-thirds or more of the elected Committee Members are no longer in office, then the Committee shall be obliged to hold an election in accordance with the provisions hereof to replace those Committee Members.
- 15.11 Notwithstanding any other provision contained herein, the Committee shall, until the election of Committee Members at the first annual general meeting following the date on which this Constitution is adopted, comprise –
- 15.11.1 [●], who shall serve as Chairperson of the Branch;
- 15.11.2 [●], who shall serve as Treasurer of the Branch;
- 15.11.3 [●], who shall serve as Secretary of the Branch; and
- 15.11.4 [●].

## 16 MANAGEMENT OF THE AFFAIRS OF THE BRANCH

- 16.1 The management and control of the affairs of the Branch shall vest in the Committee which shall have full power and authority to do any act, matter or thing which could or might be done by the Branch excepting such matters as are in this Constitution especially reserved to be dealt with at a general meeting of Members.



- 16.2 In addition to the general powers and authorities hereby conferred on the Committee, and without in any way limiting such powers and authorities, the Committee shall have the following specific powers –
- 16.2.1 to appoint such agents as the Committee 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;
  - 16.2.2 to execute any contracts in the name of the Branch;
  - 16.2.3 to refer any claim or demand by or against the Branch to mediation or arbitration and to perform, or refuse to perform, the award as aligned with the Botsoc constitution;
  - 16.2.4 to make and give receipts, releases and other discharges for monies payable to the Branch and for the claims and demands of the Branch;
  - 16.2.5 to appoint persons who shall be entitled, on behalf of the Branch, to sign bills of exchange, cheques receipts and negotiable instruments;
  - 16.2.6 to make, vary and repeal rules for the regulation of the affairs of the Branch, its officers and employees, any subcommittee, or the Members, provided that such rules are not inconsistent with or contrary to the provisions of this Constitution; and
  - 16.2.7 to delegate to any subcommittee or subcommittees all or any of the authorities conferred on the Committee by this Constitution and such subcommittee shall have such powers as may be conferred on it at the time of its appointment, or thereafter.
- 16.3 The Branch in a general meeting may review, approve or amend any decision of the Committee, but no such decision of the Branch shall invalidate any action taken by the Committee in accordance with this Constitution.

## 17 **TERMINATION OF OFFICE OF COMMITTEE MEMBERS**

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

- 17.1 his or her furnishing the Committee with written notice of his resignation;
- 17.2 the expiry of the period ending after the annual general meeting of the Branch immediately following the annual general meeting at which he/she was elected;
- 17.3 his or her ceasing to meet the requirements for membership set out herein;
- 17.4 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;

- 17.5 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;
- 17.6 his or her removal by the decision of the majority of the Members on any grounds at any general meeting of the Branch;
- 17.7 the death of such a Committee Member;
- 17.8 his or her ceasing to hold any qualification on which his or her appointment was predicated; or
- 17.9 his or her being absent from 3 or more consecutive meetings of the Committee without leave of the Committee otherwise than on the business of the Society.

## 18 MEETINGS OF THE COMMITTEE

- 18.1 The Committee may regulate its meetings and proceedings as it finds convenient subject to the following –
  - 18.1.1 The Chairperson shall chair all meetings of the Committee.
  - 18.1.2 If the Chairperson is not present within 15 (fifteen) minutes of the appointed time of the meeting, the Members present at the Committee meeting shall elect a Chairperson for that meeting.
  - 18.1.3 The Committee shall meet at least every third month, but otherwise at such frequency as they may decide]. In addition, meetings of the Committee may be called as and when necessary. At least 10 days' notice shall be given of all meetings of the Committee unless all Committee Members agree to accept shorter notice or waive the notice requirements or agree to meet on fixed days.
  - 18.1.4 The quorum for any meeting of the Committee shall be persons comprising not less than 75% of the Committee Members.
  - 18.1.5 If no quorum is present, the Committee may make no decision, except to adjourn the meeting or to call a general meeting of the Members.
  - 18.1.6 Any decision of the Committee shall be by majority vote by show of hands of those present.
  - 18.1.7 Each person entitled to be present and to vote shall have one vote and the Chairperson of the meeting shall **not** have a casting vote in addition to his deliberative vote.

- 18.1.8 A resolution signed by all Committee Members shall be as valid and effectual as if passed at a duly convened meeting of the Committee. Any such resolution may consist of several documents in the same form, each of which is signed by one or more Committee 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 Committee Member entitled to sign it.
- 18.2 All acts done by any meeting of the Committee or by any person acting as a Committee 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 Committee Member.
- 18.3 The inadvertent omission to give notice of any meeting of the Committee shall not invalidate the proceedings at any such meeting.
- 18.4 The proceedings of the Committee shall be valid notwithstanding any temporary vacancy in the number of Committee Members.
- 18.5 The Secretary shall convene a meeting of the Committee on the instructions of the Chairperson, and the Chairperson –
- 18.5.1 if there is no such Secretary, may convene such a meeting him/herself; and
- 18.5.2 shall convene (or, if there is a Secretary, procure that the Secretary convenes) such a meeting upon the written request of at least 2 Committee Members.
- 18.6 The Committee shall cause minutes to be kept of the appointment of officers and names of Committee 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.
- 18.7 Committee Members serve as representatives of Members of the Branch and not in a personal capacity.

All acts done by any meeting of the Committee or by any person acting as a Committee 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

## 19 **ELECTRONIC MEETINGS**

The Committee 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 Committee 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.

## 20 GENERAL MEETINGS OF THE BRANCH

### 20.1 Annual General Meeting

20.1.1 The Committee must each year convene an annual general meeting of the Members of the Branch in accordance with the following provisions of this Constitution.

20.1.2 The first annual general meeting must be held within 15 months after the adoption of this Constitution.

20.1.3 All other annual general meetings thereafter must be held within 3 months after the end of each financial year of the Branch.

20.1.4 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.

20.1.5 The business of each annual general meeting must include –

20.1.5.1 confirmation of the minutes of the previous annual general meeting;

20.1.5.2 the Chairperson's report on the activities of the Branch;

20.1.5.3 the consideration of the annual financial statements of the Branch;

20.1.5.4 the election of Committee Members for the following year;

20.1.5.5 the appointment of the Accounting Officer or refer to Head Office for professional assistance;

20.1.5.6 the consideration of any resolutions concerning the affairs of the Branch of which notice has been given to the Secretary (and, failing the Secretary, the Chairperson) by any Member at least 14 days prior to the date of the annual general meeting or within such other period as the Chairperson may reasonably allow].

### 20.2 Other General Meetings

20.2.1 The Committee may at any time convene other general meetings of the Branch ("**Special General Meetings**") and shall do so upon receipt of a written request signed by not less than 10 Members or 10% of the Members, whichever is the lower.

20.2.2 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 at the Special General Meeting.

20.2.3 If the Committee fails to give notice within 7 days of any request referred to in clause 20.2.1, the Members concerned shall be entitled themselves to give notice of and to convene the Special General Meeting

20.2.4 The quorum for a Special General Meeting shall, subject to the provisions of clause 22.2.2 below, be not less than 25% of the Members or 20 Members present and voting (whichever is the lower), which shall include those Members represented by proxy.

### 20.3 **Failure to give notice to a Member**

The bona fide omission to send any notice in any manner contemplated in clause 20.1.4 and/or 20.2.2 to any Member shall not invalidate the holding of any meeting or the passing of any resolution thereat.

### 20.4 **Proceedings at General Meetings**

20.4.1 The Chairperson shall chair all general meetings.

20.4.2 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.

20.4.3 The quorum for general meetings of the Branch shall be 25% of the Members or 20 Members, whichever is the lower, present in person or represented by proxy, 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 Committee, 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 (fifteen) minutes after the time fixed for the meeting, it shall be dissolved.

20.4.4 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 demanded by not less than 20% of the Members present, or represented by proxy. Any vote by ballot must allow for postal votes too.

20.4.5 Each Member present or represented by proxy shall be entitled to one vote.

- 20.4.6 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.
- 20.4.7 Proper minutes and attendance records shall be kept of all general meetings.
- 20.4.8 The Chairperson shall sign the minutes which shall be available always for inspection or copying by any Member of the Branch on 2 days' notice to the Chairperson.

## 20.5 **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.

## 21 **PROXIES, REPRESENTATIVES AND POSTAL VOTES**

- 21.1 Any Member may at any time appoint any natural person, including a 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.
- 21.2 A proxy appointment –
- 21.2.1 must be in writing, dated and signed by the Member; and
- 21.2.2 remains valid for the relevant general meeting and any adjournment or postponement thereof.
- 21.3 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Committee may approve from time to time –

### **Proxy**

"I \_\_\_\_\_

being a member of the \_\_\_\_\_ branch of the Botanical Society of South Africa (the "**Branch**") 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 Branch 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

- 21.4 A Member or his proxy must deliver to the Branch a copy of the instrument appointing such proxy before the commencement of the meeting at which the proxy intends to exercise that Member's rights.
- 21.5 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.
- 21.6 Any member in good standing who is not able to attend an annual or special general meeting of the Branch may apply to the Branch Secretary to cast postal votes on the issues to be decided at that meeting. Official voting papers shall be made available on request by the Branch Secretary. These papers must be submitted to the Branch Secretary for verification and registration by the cut-off date indicated on the voting paper.
- 21.7 An independent suitably qualified scrutineer shall be appointed by the Committee for each annual general meeting or any postal vote event, to approve any communication to Members as regards any vote to be held so that the intent is accurately reflected, to approve any forms as regards the voting process, as well as to receive, verify and scrutinise the instruments of proxy and postal votes.

**22 CONSTITUTION AND AMENDMENT**

- 22.1 If there is a conflict between the provisions of this Constitution and the Botsoc constitution, the provisions of the Botsoc constitution shall prevail, save if it relates to a matter which is purely a Branch matter in which event this Constitution shall prevail.

22.2 The terms of Constitution may be amended by a resolution passed at a Special General Meeting called for that purpose, provided that –

22.2.1 not less than 30 days' written notice is given of such meeting stating the nature of the amendments to be proposed;

22.2.2 the quorum for a Special General Meeting at which this Constitution may be amended, shall be not less than 30% of the Members or 25 Members (whichever is the lower) present and voting, which shall include those members represented by proxy;

22.2.3 such resolution is passed by a majority of not less than 75% of the Members present in person or represented by proxy and/or by postal vote and entitled to vote at such meeting; and

22.2.4 no amendment of this constitution may take effect unless such amendment is, after such resolution is passed by the Branch Members, approved in writing by the Council which consent may not unreasonably be withheld or delayed.

## 23 PROVISION OF CONSTITUTION

23.1 A copy of this Constitution (as amended from time to time) shall be available for inspection by any Member at all reasonable times upon application to the Committee.

23.2 Every person, upon becoming a Member of the Branch, shall, on written request by such person directed to the Committee, be entitled to receive a copy of this Constitution as amended from time to time.

## 24 INDEMNITY

Every Committee Member of the Branch shall be indemnified by the Branch 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 Committee Member, unless the loss in question is caused by his own gross negligence, dishonesty or breach of trust.

## 25 DISSOLUTION OF BRANCH

25.1 The Branch may be dissolved by a resolution passed at a special general meeting called for that purpose, provided that –

25.1.1 not less than 14 days' notice is given of such meeting stating the nature of the resolution/s to be proposed; and

25.1.2 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.



- 25.2 In the event of a resolution for the dissolution of the Branch being passed at any meeting contemplated in clause 25.1, 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 of the Branch after winding-up and after the payment of all the debts and obligations of the Branch, provided that any surplus assets shall be given or transferred to Botsoc or some other association or institution, with objects similar to those of the Branch].

## 26 **SUPPORT**

The Members undertake always to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Constitution.

## 27 **NOTICES**

- 27.1 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.
- 27.2 A Member may change his *domicilium* to any other physical address, email address or telefax number by written notice to the Head Office and the Branch to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.
- 27.3 All notices to be given in terms of this Constitution will be given in writing and will –
- 27.3.1 be delivered by hand or sent by telefax or by way of email;
- 27.3.2 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
- 27.3.3 if sent by telefax or email during business hours, be presumed to have been received on the date of successful transmission of the telefax or email. Any telefax or 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.
- 27.4 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 27.

**28 SEVERABILITY**

All provisions and the various clauses of this Constitution are, notwithstanding the manner in which 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.

**29 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.