

**CONSTITUTION  
OF THE  
OVERBERG-  
AGULHAS BIODIVERSITY INITIATIVE (ABI)  
VOLUNTARY ASSOCIATION**

## 1. NAME AND DEFINITIONS

- 1.1 The name of the Voluntary Association shall be known as the “ABI IN THE OVERBERG” ASSOCIATION (also hereinafter referred to “the Association”).
- 1.2 In this Constitution, unless the context clearly indicates a contrary intention, the following words and phrases shall have the following meanings:
  - 1.2.1 “**ABI in the Overberg**” **Area** means the area of the four municipalities of the Overberg: Cape Agulhas, Overstrand, Swellendam and Theewaterskloof, as demarcated in the map attached as Addendum A;
  - 1.2.2 “**ABI in the Overberg**” **Community**” initially means the organisations and individuals operating in the Overberg District ABI Area;
  - 1.2.3 “**Biodiversity**” means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species, and of ecosystems;
  - 1.2.4 “**Ecosystem**” means a community of plants, animals and smaller organisms that live, feed, reproduce and interact in the same area or environment;
  - 1.2.5 “**Ecosystem Service**” means the benefits people obtain from ecosystems, distinguishing them into the following four categories: Provisioning Services, Regulating Services, Supporting/Habitat Services and Cultural Services.
  - 1.2.6 “**Ecosystem goods**” include food, medicinal plants, construction materials, tourism and recreation, and wild genes for domestic plants and animals;
  - 1.2.7 “**Portfolio**” means the duties of office ascribed to a member for his/her personal attention;
  - 1.2.8 “**Standing Committee**” means a Committee appointed on a permanent basis as provided for in the constitution of the Association;
  - 1.2.9 “**Technical Committee**” means a Committee appointed on an ad hoc basis to assist the Association or a Committee in any or various technical matters as provided for in the constitution of the Association;
  - 1.2.10 “**Sub-Committee**” means a sub-Committee appointed on an ad hoc basis to assist the Executive Committee with various non-technical matters provided for in the Constitution of the Association;
  - 1.2.11 “**Executive Committee**” means an Executive Committee appointed as provided for in the constitution of the Association;
  - 1.2.12 “**in writing**” means written, printed or partly written and partly printed;
  - 1.2.13 “**the “act”**” means the Companies Act 1973 (Act 61 of 1973);
  - 1.2.14 Words importing the singular shall include the plural and vice versa.
  - 1.2.15 Words importing the masculine gender shall include the feminine and vice versa.
  - 1.2.16 Words importing persons shall include corporate bodies.

1.2.17 Headings to a clause or series of clauses shall not be considered in interpreting such clauses.

1.2.18 Subject to the above definitions, words and expressions defined in the act shall have the same meaning when used in these articles as in the act.

## **2. LEGAL STATUS**

2.1 The Association is and shall continue to be a distinct and separate legal entity and body, with the power to acquire, to hold, to encumber and to alienate property of every description whatsoever, and with the capacity to acquire rights and obligations and having perpetual succession.

2.2 All actions or suits, proceedings at law and any arbitration shall be brought by or against the Association in the name of the Association and the Committee may authorise any person or persons to act on behalf of the Association and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.

## **3. AIMS AND OBJECTIVES OF THE ASSOCIATION**

**3.1 The primary objective of the Association is:**

To foster biodiversity through sustainable and integrated socio-cultural-, economic and environmental development in the Overberg.

**3.2 The activities of the Association shall be the following primarily in order to achieve the primary objective in 3.1:**

3.2.1 Convening members for any purpose deemed necessary by the Association;

3.2.2 Communications and servicing of the membership;

3.2.3 Generating, gathering, collation and communication of data and information;

3.2.4 Conceptualization of new approaches, programmes, projects and activities;

3.2.5 Sourcing capital, financing and funding for approved projects

**3.3 The activities listed in paragraph 3.1 shall be pursued on the basis that:**

3.3.1 all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;

3.3.2 no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Association, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and

3.3.3 at least 85 % of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic.

**3.4 The activities of this Association shall be carried on:**

- 3.4.1 by this Association for the benefit of the general public at large, including any sector thereof, or be widely accessible to them;
- 3.4.2 by this Association for the benefit of the poor and needy, or be readily accessible to them.
- 3.4.3 by this Association with at least 85 % to be funded by donations, grants from any organ of state or any foreign grants.
- 3.4.4 by this Association supported by a co-ordination structure, unit or suitable person (s) responsible for all such activities as deemed necessary for the smooth co-ordination of the Association and its activities

#### **4. A NON-PROFIT ASSOCIATION**

Notwithstanding anything to the contrary herein contained:

- 4.1 The Association is not formed and does not exist for the purpose of carrying on any business that has for its object acquisition or gain by the Association or its individual members;
- 4.2 The income and assets of the Association shall be applied solely for the investment and for the promotion of the objects for which it is established;
- 4.3 No part of the income or assets of the Association shall be paid directly or indirectly, by way of dividend, donation or otherwise to any person;
- 4.4 The Association shall not be entitled to carry on any trading or other profit-making activities or participate in any business, profession or occupation carried on by any of its members or provide to any of its members financial assistance and any premises or continuous service or facilities for the purpose of carrying on any business, profession or occupation.

#### **5. POWERS OF THE ASSOCIATION**

- 5.1 The Association may exercise all the powers of a corporate body including:
  - 5.1.1 The owning of assets in its own name;
  - 5.1.2 The right to conduct legal proceedings in its own name and the power to sue and be sued;
- 5.2 This Association shall follow a policy of minimum interference in the activities of its members.
- 5.3 This Association shall have all the powers which are necessary, conducive or incidental to the attainment of or furthering of its objective subject to the laws of the Republic of South Africa, and in particular without limiting the generality of the foregoing, it may
  - 5.3.1 admit to membership or exclude from membership natural persons in their own personal capacity, and/or as duly authorised representatives of companies, trusts, Associations, institutions, statutory and other bodies;
  - 5.3.2 make rules and regulations for the Association including in regard to its internal administration (such as an appropriate voting system);

- 5.3.3 acquire by purchase, exchange, lease donation or otherwise, own, improve or dispose of by sale, exchange, lease, donation, mortgage or otherwise, moveable or immovable property of whatsoever nature and description;
- 5.3.4 receive and apply monies to the advancement of the Association or its members, contribute to subscribe to bodies with aims similar to those of this Association and invest surplus monies upon such security and in such a manner as it may from time to time determine;
- 5.3.5 borrow and guarantee or otherwise secure the repayment of money in such a manner and on such terms as its member s think fit;
- 5.3.6 open and operate a banking account;
- 5.3.7 develop, negotiate and regulate relations amongst members and between the Association and other legal and natural persons including but not limited to the ABI Community.

## **6. MEMBERSHIP**

- 6.1 Membership of the Association shall be open to government bodies, public benefit bodies and commercial bodies, as well as individuals.
- 6.2 Membership of the Association shall be restricted to the representatives of the ABI Community or their duly authorized representatives provided that all members must formally, by signature, adopt the Constitution of the Association.
- 6.3 Initial membership of the Association shall be the signatories to this agreement as listed below.
- 6.4 Upon receiving an application from a prospective new member, the Association may, at its discretion, grant membership to the applicant on the same terms and conditions prevailing in respect of other members.
- 6.5 The Association may at an annual general meeting invite to honorary membership in an individual of representative capacity any person who is not eligible for ordinary membership, provided that:
  - 6.5.1 honorary members shall not have voting rights ; and
  - 6.5.2 all reference to “member” in this agreement shall be deemed to exclude honorary members unless the context clearly implies the contrary.

## **7. RIGHTS OF MEMBERS**

- 7.1 Membership of the Association does not and shall not give any members a right to any of the moneys, property or assets of the Association, but only confers upon such members the privilege of membership subject to such changes and reasonable restriction as the Committee may from time to time impose.
- 7.2 A member whose application for membership has been accepted shall be bound by the Constitution, rules and resolutions of the Association which are then in force, or which subsequently may be altered or amended and in force at any future time. No person shall be absolved from the effect and application of the Constitution, rules and resolutions by reason of the fact that he may not have received a copy thereof.

## **8. DISCLOSURE OF INTERESTS**

- 8.1 A member who has a direct or indirect pecuniary interest in a proposal being considered or about to be considered for support as soon as possible after the member becomes aware of the proposal, disclose the nature of his or her interests to the relevant committee.
- 8.2 A disclosure made in terms of 8.1 must be recorded in the minutes of the meeting of the relevant committee.
- 8.3 A member referred to in 8.1 must not, unless the relevant committee otherwise determines:
  - 8.3.1 be present during any deliberations of the relevant committee with respect to that proposal; or
  - 8.3.2 take part in any decision of the relevant committee with respect to that proposal.

## **9. TERMINATION OF MEMBERSHIP**

- 9.1 A member may resign by notifying the secretary of the Association thereof in writing.
- 9.2 The Committee may terminate the membership of a member for any reason which the Committee may have. The Committee will be obliged to notify such member of the reason(s) for the Committee's decision.
- 9.3 The Committee may also terminate the membership of a member, and will be obliged to notify such member of the reason(s) for the Committee's decision, should it be of the opinion that such a member –
  - a) no longer subscribes to the objects of the Association
  - b) is guilty of misconduct
  - c) has acted in breach of the constitution of the rules or resolutions of the Association; or
  - d) Has brought the Association into disrepute for any other reason.
- 9.3 Any member whose membership is terminated in terms of clause 9.1, 9.2 or 9.3 above, remains liable for all outstanding membership fees due at the date of termination of membership.
- 9.4 The Committee may reinstate a member whose membership was terminated for any reason, on such terms and condition as the Committee may determine in each particular case.

## **10. LIABILITY OF MEMBERS**

The liability of members is limited to the amount of unpaid subscriptions, if for any other moneys owing by them to the Association.

## **11. MEETING OF MEMBERS**

- 11.1 The members present at the first meeting of the members of the Association shall be deemed to properly constitute the first meeting of members.

- 11.2 The first meeting of the members of the Association shall elect its Committee which shall be constituted as provided in clause 12 below.
- 11.3 A resolution in writing, signed by one half plus one of the members of the Association shall be deemed to be a decision of the Association that is as valid and effective as if it had been passed at a properly constituted general meeting of the members of the Association. Any such resolution may consist of several documents in the same form each of which is signed by one or more members of the Association, and shall be deemed to have been passed on the date on which it was signed by the last member who signed it.
- 11.4 A meeting of members shall be held quarterly. 50% of members plus 1 member present shall be deemed a quorum.
- 11.5 Members may constitute and/or dissolve a working group or any other functional structure as they may deem necessary to achieve the objectives of the Association.
- 11.6 The Chairman shall have the casting vote.

## **12. COMMITTEE**

- 12.1 The business of the Association shall be conducted by a Committee or other structure, which shall exercise the powers of the Association and shall consist of;
  - 12.1.1 Five (5) persons elected to the Committee;
  - 12.1.2 Not more than three (3) additional persons whom the Committee may nominate and appoint to the Committee;

## **13. ELECTION OF COMMITTEE**

- 13.1 Each member of the Committee shall hold office for the period concluding with the end of the next annual general meeting of the Association and, upon the expiry of such period, such member shall automatically retire as a member of the Committee provided that he/she retains his qualification.
- 13.2 At the annual general meeting voting for the election of members of the Committee shall be by way of ballot of those members present or by show of hands as the chairperson may decide.
- 13.3 Election of Committee member(s) by way of resolution in writing, and signed by at least 10% of all the members of the Association, to elect one or more Committee members, shall be as valid and effective as if passed at an annual general meeting.

## **14. CONTROL AND MANAGEMENT OF THE ASSOCIATION**

- 14.1 The management and control of the Association shall vest in the Committee, which shall have the full power and authority to do any act, matter or thing which could or might be done by the Association, excepting such matters as specifically reserved by this constitution to be presented to membership for approval e.g. policies and procedures, finance, communication etc.

- 14.2 The Committee shall have the following further special powers:
- a) to appoint such agents, officers, clerks and service providers for permanent, temporary or special services as they think fit, and to invest them with such powers as they may think fit or 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 they may think fit, and to suspend or discharge any such persons at their discretion.
  - b) to execute in the name of the Association any contracts and to authorize persons to sign such contracts on behalf of the Association;
  - c) to refer any claim or demand by or against the Association to arbitration and to perform, or refuse to perform, the award.
  - d) to institute any legal proceedings in the name of the Association, to dispute any legal and court actions against the Association, to handle any other legal matters involving the Association, and to appoint attorneys, advocates and other legal advisers and represent the Association in any of these matters;
  - e) to make and give receipts, releases and other discharge for moneys payable to the Association and for the claims and demands of the Association;
  - f) to appoint persons who shall be entitled, on behalf of the Association, to sign bills of exchange, cheques, receipts and negotiation instruments;
  - g) to make, vary and repeal rules for the regulation of the affairs of the Association, its officers and servants, or the members of the Association, provided that such are not inconsistent with or contrary to this constitution;
  - h) to fix the remuneration of the Association's auditor or audits, if appointed;
  - i) to terminate or suspend membership;
  - j) to accept or claim membership fees, donations, legacies, levies and any other benefits of whatever nature from any person or body;
  - k) to pay the travel and other costs of any member, officer or official, incurred in the course of his duties;
  - l) to organize any meeting or gathering for the benefit of the Association;
  - m) to make awards and give prizes.
- 14.3 The Association in a general meeting may review, approve or amend any decision of the Committee, but no such decision of the Association shall invalidate any action taken by the Committee in accordance with this constitution.



## **15. TERMINATION OF OFFICE OF COMMITTEE MEMBERS**

- 15.1 Any member of the Committee absenting himself without leave of the Committee for more than two consecutive meetings held over a period of more than thirty (30) days, of which due notice has been given, shall cease to be a member of the Committee.
- 15.2 In the event of any member of the Committee ceasing to be a member of the Committee, the Committee shall have the power to fill such vacancy for the remainder of the period of office of such member.

## **16. MEETINGS OF THE COMMITTEE**

- 16.1 The Committee shall, at first meeting and thereafter after each annual general meeting of the Association, elect one of its members as chairperson, another as vice-chairperson, another as secretary, another as treasurer of the Committee and the Association.
- 16.2 Should both the chairperson and vice-chairperson not be present at any meeting of the Committee, the members thereof present shall elect from their number a chairperson for that meeting.
- 16.3 At least two (2) days notice of all Committee meeting shall be given unless all members of the Committee agree to accept shorter notice.
- 16.4 The quorum for a meeting of the Committee shall be four (4) members elected or co-opted to be present at the commencement of and during the meeting. Any decision of the Committee shall be by the majority vote by show of hands of those present. Each person entitled to be present and to vote shall have one vote and chairperson of the meeting shall have a casting vote in addition to his deliberative vote. No voting by proxy shall be permitted.
- 16.5 The secretary of the Association shall convene a special meeting of the Committee on the instructions of the chairperson or upon written request of at least two members of the Committee.
- 16.6 A resolution in writing which is signed by all members of the Committee and inserted in the minute book of the Committee shall be as valid and effective as if passed at a 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 members of the Committee and shall be deemed to have been passed on the date of which it was signed by the last member of the Committee entitled to sign it.
- 16.7 All acts done by any meeting of the Committee or by any person acting as a member of the Committee shall notwithstanding that it be afterward 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 member of the Committee.

- 16.8 The omission to give notice of any meeting of the Committee shall not invalidate the proceedings at any such meeting.
- 16.9 The proceedings of the Committee shall be valid notwithstanding any temporary vacancy in the Committee.
- 16.10 The Chairman shall have the casting vote.

#### **17. ANNUAL GENERAL MEETINGS**

- 17.1 The annual general meeting of members of the Association shall be held within 180 days after the end of the financial year at such time and place as the Committee may determine.
- 17.2 Notice of the date, time and place for the holding of the annual general meeting shall be sent by electronic mail or post by letter to each of the members of the Association at least two (2) weeks before the date fixed for the holding of such meeting.
- 17.3 The omission to send by post any such notice to any member shall not invalidate the holding of the meeting, or the passing of any resolution thereat.

#### **18. PROCEEDINGS AT ANNUAL GENERAL MEETINGS**

- 18.1 At the annual general meeting the Committee shall present a balance sheet and income statement for the preceding financial year, together with each report. The ordinary business to be done at an annual general meeting shall be as follows;
  - 18.1.1 to confirm the minutes of the previous annual general meeting and any special general meeting held since the previous annual general meeting;
  - 18.1.2 to receive and consider a report of the Committee and audited financial statement for the preceding financial year.
  - 18.1.3 to elect the members of the Committee of the Association
  - 18.1.4 to consider and to pass any resolution concerning the affairs of the Association

#### **19. SPECIAL GENERAL MEETINGS**

- 19.1 the Committee may at any time, through the secretary, call a special general meeting of members by giving not less than fourteen (14) days notice to members specifying the reason(s) the meeting is called.
- 19.2 The secretary shall convene a special general meeting of members of the Association, upon receiving a requisition on their behalf signed by not less than one tenth of the members, specifying any resolution or resolutions proposed to be moved or other business to be discussed. The secretary shall send by electronic mail or post to each member of copy of such notice at least fourteen (14) days prior to the holding of the meeting.
- 19.3 The omission to send by post any such notice to any member shall not invalidate the holding of the meeting, or the passing of any resolution thereat.

## **20. VOTING**

- 20.1 A quorum for general meetings of this Association shall not be less than 50% +1 of the number of members entitled to vote.
- 20.2 If a quorum is not present at the appointed time, the meeting shall be adjourned for one week to reconvene at the same place and time seven (7) days later. If a quorum is still not present those who are present shall form a quorum unless the meeting was called as a special general meeting in which case the meeting shall not be deemed to be properly constituted.
- 20.3 Any member entitled to vote at a meeting may appoint in writing another member as his/her/its proxy to represent him/her/it and voted on his/her/its behalf at such meeting provided that no one member shall act as proxy for more than 1 other member except the Chair who may be nominated for one or more proxy votes. Save as otherwise provided in this constitution any business, resolution or question submitted to such meeting for decision, shall be decided by a majority vote of those present and entitled to vote by show of hands or ballot.
- 20.4 Voting at a general meeting shall be by show of hands of those entitled to vote unless a secret ballot is requested by any one member present.
- 20.5 Any resolution approved and signed, whether on a single document or several identical contingent documents, by all members of the Association or their duly authorized representatives shall be deemed to be a valid resolution whether a meeting was held or not and whether or not notice of the resolution was given to all members.

## **21. AMENDMENTS TO CONSTITUTION**

The constitution of the Association, or any part thereof, shall not be repealed or amended, save by a resolution adopted by a two-thirds majority of the members of the Association present at an annual or special general meeting of members of the Association. Twenty-one (21) days notice shall be given to the secretary of a motion to amend or repeal the constitution and the secretary shall forthwith send a copy of such notice to each member.

## **22. INTERPRETATION**

- 22.1 Save where the context otherwise requires, singular words shall be deemed to import the plural and vice versa and the masculine gender shall be deemed to include the feminine and neuter genders and vice versa.
- 22.2 In case of bona fide doubt of dispute as to the meaning and interpretation of any provisions of the constitution of the Association, or in connection with any other matter whatsoever, the Committee for the time being shall rule thereon and be the arbiter, and its decision shall be binding upon the members of the Association, subject to any resolution taken by a general meeting of the Association thereon.

### **23. REGISTER OF MEMBERS**

All members shall communicate their addresses from time to time to the secretary who shall keep a register of the names of members and of their addresses.

### **24. COPY OF CONSTITUTION, RULES AND RESOLUTIONS**

A copy of the constitution, rules, policies and resolutions and of any appeal or amendment thereto or new rules affected from time to time, shall be available for the inspection by members upon application to the secretary.

### **25. NOTICES**

A notice or account to members shall be deemed to be properly delivered or sent by electronic mail or by posting it to the members address as appearing in the register of members.

### **26. INDEMNITY**

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

### **27. WINDING-UP**

The Association may be dissolved by a resolution passed at a special general meeting called for that purpose, provided that such resolution is passed by a two-thirds majority of the members present and entitled to vote at such meeting. Such meeting shall also have power to pass resolutions by majority vote for the appointment of a liquidator and the disposal of the surplus funds and assets of the Association after winding-up and the payment of all the debts and obligations of the Association, provided that any surplus assets shall be given or transferred to some other Association or institution with objects similar to those of the Association.

### **28. FINANCIAL**

The financial year of the Association ends on the last day of February each year.

#### **Expenditure**

28.1 Revenue received from subscriptions and admissions shall be used to finance the ordinary expenditure. The Committee shall control all expenditure of the funds of this Association and shall not incur any liability nor enter into any commitment which cannot be discharged from the flow of funds to the secretariat save for any loans members have arranged and for which the members have stood as guarantors.

### **Special Levies**

28.2 A special levy may be imposed on the members from time to time by the Committee/secretariat in order to finance special expenditure or to supplement the short fall in ordinary revenue if such be insufficient to meet ordinary expenditure. The levy shall be imposed only if agreed to by a majority decision at a general meeting and provided notice of such resolution is given to members in the notice of the meeting. In case of an emergency the Association may submit the resolution for a special levy together with all information relevant thereto to the members for their decision by postal or electronic vote in such a manner as the Committee may prescribe and in such even the resolution shall be binding as if agreed to by a poll majority decision.

### **29. DISPUTE RESOLUTION**

29.1 In the event of a dispute between any of the Parties concerning the interpretation or implementation of this Constitution, the Parties concerned shall notify the Committee of the dispute and shall seek a solution through negotiation.

29.2 If the parties concerned cannot settle the dispute through negotiation then the dispute will be referred to the Committee for resolution.

### **30. ACCEPTANCE**

The members by their signatures hereto accept the adoption of this constitution; and undertake to jointly and severally carry out and perform all the terms and conditions of this constitution