

# NAMIBIAN SOCIETY OF COMPOSERS AND AUTHORS OF MUSIC

*(An Association Not for Gain)*

## THE CONSTITUTION

### 1. NAME

#### 1.1. Full Name

The Name of the organization shall be the “*Namibian Society of Authors and Composers of Music*”, hereinafter referred to as the Society.

#### 1.2. Abbreviation

The organization shall be referred to by its official acronym *NASCAM*.

### 2. OBJECTIVES

2.1. The Society shall be established as an organization for the collective management and administration of the rights of composers and authors of music and those occupied in related activities to facilitate and guarantee the proper implementation of any legislation affecting the rights and obligations of these composers and authors of music and, consequently, the assertion of the national cultural identity.

#### 2.2. The Society shall strive to achieve the following objectives:

(a) To promote and protect the copyright interests of all classes of musical works by composers and authors of music provided they meet prescribed conditions for the subsistence of copyright in respect of their rights as defined in the legislation regulating copyright and related rights.

(b) To act as a collective administrative organization that collects and distributes royalties or other remuneration accruing to copyright holders in respect of their rights as provided for in the appropriate legislation or as determined by the Board of Directors of the Society.

- (c) The respective composer and / or author shall vest the Society with his or her rights to represent him or her by transfer, mandate or other legal means.
- (d) To establish appropriate licensing and royalty distribution procedures, efficient methods of administration and international cooperation to enable the Society to collect the members' royalties abroad.
- (e) The licensing of the Society shall be based on the principles governing the rights conferred on the composers and authors by the relevant legislation.
- (f) The Society shall endeavor to be guided by the concern for equity and not make exorbitant demands but rather seek to reconcile the interests of the composers and authors with those of users with the objective of maintaining the vital balance that will enable the composers and authors to receive fair and equitable remuneration.
- (g) To publicise the rights of the authors and composers of music and other copyright holders and advise on ownership where there is a dispute or infringement.
- (h) To print, publish, issue or circulate any information, reports, periodicals, books, pamphlets, leaflets or any other material relating to copyright, expression of folklore and rights of composers and authors of music.
- (i) To advise relevant Government Ministries on all matters pertaining to the promotion and protection of the copyright interests and any rights and obligations of composers and authors of music and to recommend any corrective measures or amendments.

- (j) To perform a public service and develop within the Namibian structures social, cultural, professional and legal functions in the interests of and to the benefit of the Society's members and the general public.

### 3. LEGAL STATUS

**3.1.** The Society shall be a body corporate with perpetual succession and shall, subject to the provisions of the *Constitution of the Republic of Namibia and any other appropriate legislation*, the *Constitution of the Society*, and the *Society's Code of Ethical Practice and Professional Conduct*, be capable of suing and be sued, of purchase or otherwise acquiring, holding, hiring, letting, exchanging, selling or otherwise alienating movable and immovable property, of entering into contracts and generally of doing or performing any such acts or things as bodies corporate may by law do or perform.

**3.2.** The Society shall be an organization not for gain.

**3.3.** The Society shall be under the control, management and direction of a Board of Directors, which shall act on behalf of and under the name of the Society.

### 4. LOCATION AND HEAD OFFICE

The Head Office of the Society shall be located in the capital city of the Republic of Namibia or such other place as may be recommended by the Board of Directors and decided upon by the Annual General Meeting.

### 5. EMBLEM AND MOTTO

**5.1.1.** The emblem of the Society shall be as it implemented or amended by the AGM.

**5.1.2.** The motto of the Society shall be "Protect the interest of Authors, Composers and Publishers of Music".

## 6. MEMBERSHIP

### 6.1. Eligibility

Any composer, author or owner of copyright, authors' association, rights holder or any person, institution or association interested in the objectives of the Society shall be eligible for membership.

### 6.2. Categories of Membership

The membership of the Society shall be categorized as follows

- (a) Ordinary Membership granted to any person who has satisfied the Society's requirements for membership.
- (b) Institutional or Corporate Membership awarded to any institution, body or company that has satisfied the Society's requirements for membership.
- (c) Honorary Membership bestowed upon any person whom , in view of his or her exceptional achievements or contributions in the field of copyright, protection and promotion of the rights and interests of composers and authors of music and on the recommendation of the Board of Directors or the Annual General Meeting.

### 6.3. Registration as a Member

- (a) Application for membership registration shall be made to the Board of Directors of the Society.
- (b) Upon lodging the application for registration, the applicant shall endorse and undertake to abide by the *Constitution of the Society* and its *Code of Ethical Practice and Professional Conduct*.
- (c) All applicants shall be and shall be required to remain members of the Society in good standing.

#### 6.4. Vacation of Membership

Membership may be lost through the following:

##### (a) Death

Membership shall cease upon the demise of the concerned member.

##### (b) Written Resignation

- (i) Any member may terminate his or her membership by written resignation to the Board of Directors.
- (ii) All outstanding fees shall, nevertheless, be due and payable by the member tendering his or her resignation.
- (iii) Membership shall be terminated at the end of the financial year for which the member concerned has paid his or her annual dues.

##### (c) Unpaid Membership Fees

The membership of any member who has not paid his or her annual dues within six (6) months of the account being rendered shall be terminated.

##### (d) Disciplinary Action

- (i) The Board of Directors shall be entitled to demand the resignation of a member who acts against the interest or to the detriment or discredit of the Society.
- (ii) In the event of such resignation not being received within the period of twenty-one (21) days after the notice demanding the resignation has been served, the Board of Directors shall effect the termination of membership of such member.

- (iii) As dictated and required by the rules of natural justice, such member shall, however, be afforded the opportunity to defend himself or herself and such member shall also have the right to appeal against the decision of the Board of Directors before the General Meeting of the members if the Chief Executive Officer is given such notice to appeal within a period of twenty-one (21) days after the termination of such member's membership.

## 7. MEMBERSHIP RIGHTS AND OBLIGATIONS

### 7.1. Rights

Members shall be entitled to:

- (a) Royalties paid by those who exploit their musical works in any manner.
- (b) A member's copyright will form part of his or her estate for a period of fifty (50) years after his or her death and form part of the estate he or she will leave to the beneficiaries when he or she passes on.
- (c) Each member of the Society is eligible to receive a *Social Fund Grant* during strenuous and grave periods, for instance, *death, fire disaster and physical injuries*, as may be determined by the Board of Directors.
- (d) Benefit from the objectives and functions of the Society as set out under clause 2 above.

### 7.2. Obligations

- (a) A member has an obligation to comply with the *NASCAM Code of Ethical Practice and Professional Conduct* and refrain from comportment and behavior which in any manner reflects badly upon the Society or which will bring the Society into disrepute.

- (b) A member has a duty and responsibility to pay his or her annual membership fees as determined by the Board of Directors.

## 8. BOARD OF DIRECTORS

### 8.1. Overall Remit

The administration and control of the Society shall vest in its Board of Directors.

### 8.2. Functions and Duties of the Board of Directors

The Board of Directors shall:

- (a) Direct, govern and be in effective control of the Society.
- (b) Collectively provide effective corporate governance that involves managing the relationships between the members and staff of the Society, the Board of Directors and all relevant stakeholders.
- (c) To exercise leadership, enterprise, integrity and judgement in directing the Society so as to achieve continuing survival and prosperity for the Society.
- (d) Administer the affairs of the Society and promote the best interest of the Society acting in good faith, honesty and generally adhering to the principles of corporate governance as outlined in the NamCode.
- (e) Be the policy making and executive authority of the Society and represent the Society in all relations.
- (f) Be competent to function, irrespective of any vacancies that may occur.

- (g) Determine its schedule of meetings provided that, at least, four meetings shall be held annually.
- (h) Submit a yearly report on its activities to the Annual General Meeting.
- (i) Manage the financial affairs of the Society and ensure that proper books of account are kept, auditors are appointed and that audited financial statements are laid before the Annual General Meeting.
- (j) Subject to the provisions of the *Constitution of the Society* and its *Code of Ethical Practice and Professional Conduct* decide upon the rules and procedures to be adopted at the Annual General Meeting, the meetings of the Board of Directors and sub-Committees and hearings.
- (k) Determine the time and any other general or extra-ordinary stipulations they may deem fit and which should be added to the *Constitution of the Society* and its *Code of Ethical Practice and Professional Conduct*.
- (l) Receive and record any information from its members in respect of the identification of composers and authors and their works.
- (m) Charge and collect royalties from the users of the works of composers and authors and pay such royalties to the appropriate beneficiaries.
- (n) Foster harmony and understanding between composers and authors as well as the users of their works with a view to protecting and promoting the rights of these composers and authors.
- (o) Promote activities for the dissemination of national cultural works in the Republic of Namibia and elsewhere.

- (p) Generally, do and perform all such acts and functions, as it may deem fit and necessary, to achieve the objectives of the Society exhibiting the duty of care, skill and diligence.

## 9. LIABILITY OF THE BOARD OF DIRECTORS

The members of the Board of Directors shall not be personally liable for any *bona fide* action they may take in their capacity as members of the Board of Directors.

## 10. MEMBERS OF THE BOARD OF DIRECTORS

### 10.1. The Board of Directors shall consist of the following persons:

- (a) The Chairperson – a lawyer or a person with copyright background;
- (b) A representative of the Musicians Union or Recording Industry of Namibia;
- (c) A representative of the Composers Association;
- (d) An Individual Author or Composer;
- (e) A representative of the Government Ministry responsible for Copyright and related matters;
- (f) A representative of the Ministry responsible for Arts and Culture; and
- (g) One additional member.

10.2. The membership of the Board shall take into account balanced representation and diversity.

10.3. Members of the Board of Directors shall hold office for a period of three years (3) provided that the members serving on the Board may be eligible for re-election.

**10.4. Election of Board of Directors**

- (a) The Board of Directors shall be elected at the Annual General Meeting.
- (b) The members of the Board of Directors shall be elected pursuant to the following procedure:
  - (i) Members of the Board of Directors shall be elected by a simple majority vote.
  - (ii) A nomination must be in writing, duly signed by the proposer, seconder and nominee, in a form prescribed by the Society.
  - (iii) A nomination must reach the CEO at least seven days before the Annual General Meeting or the Special General Meeting called for that purpose.
  - (iv) A nomination form not duly signed by the proposer, seconder and nominee shall be null and void.
  - (v) In the event of an equality of votes at such election, the Chairperson shall have a casting vote.
  - (vi) The person acting as Chairperson at such an election will read out all nominations received and proceed to appoint two (2) Scrutineers to count the votes during such election.
  - (vii) Voting must take place by secret ballot.
  - (viii) A member eligible to vote may appoint another member to vote on his or her behalf by proxy.
  - (ix) Such proxy must be in writing in a form prescribed by the Society, signed by the person conferring such proxy and presented to the

Chairperson at the said Annual General Meeting or Special General Meeting.

- (x) If only one nomination is received for any of the positions listed, such candidate will be declared duly elected.

**10.5.** In the event of the death or resignation of a member of the Board of Directors or the termination of such member's membership of by the Board of Directors, the vacancy shall be filled by an appointee of the Board of Directors for the remainder of that term of office.

**10.6.** Termination of Office

The Board of Directors may require a member of the Board of Directors to vacate his or her office if it is satisfied that such member:

- (a) Has become insolvent or has assigned his or her estate for the benefit of or made a composition or other arrangement with his or her creditors.
- (b) Has been absent from three (3) consecutive Society meetings of which she or he had notice, without the leave of the Chairperson of the Society.
- (c) Has conducted him or herself in a manner that is contrary to the aims and objectives of the Society or in a manner which may bring the Society into disrepute or has failed to comply with the rules of the Society.
- (d) Has been convicted of a criminal offence within Namibia, or of an offence outside Namibia, which if committed within Namibia, would have been a criminal offence.
- (e) Has been sentenced to a term of imprisonment.

- (f) Is mentally or physically incapable of efficiently performing his or her duties as a member of the Board of Directors.
- (g) Has resigned from his or her office by notice in writing to the Board of Directors and the Board of Directors has accepted such resignation.

**10.7. Co-opting of Members and Appointment of Special Committees**

The Board of Directors shall have the power to:

- (a) In the event of any member of the Board of Directors being granted leave of absence, co-opt another person to fill the vacancy during such member's absence.
- (b) Co-opt any such other member(s), as they may consider suitably qualified, to assist the Society in its work and deliberations provided that such person shall not be entitled to vote at meetings of the Board of Directors.
- (c) Appoint any special committee it may deem necessary to deal with certain matters, including an Advisory Committee to declare a copyright works that has graduated into the "*Public Domain.*"
- (d) In case of the appointment of such committee(s), the terms and of conditions of service and reference should be spelled out and should, as a minimum, cover:
  - (i) Its composition;
  - (ii) Its objectives, purpose and activities;
  - (iii) delegated authority, including the extent of power to make decisions and / or recommendations;
  - (iv) Tenure; and
  - (v) Reporting mechanism to the Board of Directors.

**10.8.** The Board of Directors shall be empowered to employ persons full-time or part-time to perform the functions of the Society and determine such person's terms and of conditions of service.

**10.9.** Chief Executive Officer

(a) There shall be a Chief Executive Officer, hereinafter referred to as the CEO, who shall be an ex-officio member of the Board of Directors.

(b) The CEO shall be appointed by the Board of Directors of the Society.

(c) The terms and conditions of the CEO shall be determined by the Board of Directors and shall be signed by the Chairperson and the appointed CEO.

(d) Subject to such general directives as the Board of Directors may give on matters of policy, the CEO shall be responsible for the day to day administration and management of the Society.

(e) Developing the Society's strategy for the consideration of the Board of Directors.

(f) Preside over and guide the meetings of the executive / steering/ management meetings of the Secretariat which should be held regularly, and at least, once per week, to strategize, plan and co-ordinate the operations of the Society.

(g) Developing and recommending to the Board of Directors Annual Business Plans and budgets that support the Society's long-term strategy.

(h) Monitoring and reporting to the Board of Directors performance and conformance with the Society's strategic imperatives.

- (i) Keep a register in which shall be entered the names of all registered members of the Society.
- (j) Ensure that the Society complies with all relevant laws, policies and regulations.

#### 10.10 Board Secretary

- (a) There shall be a Board Secretary appointed by the Board of Directors.
- (b) The terms and conditions of the Board Secretary shall be determined by the Board of Directors and shall be signed by the Chairperson and the appointed Board Secretary.
- (c) The Board Secretary shall support and be accountable to the Board of Directors and be responsible for the preparation, collation and distribution of adequate and sufficient documentation for the Board of Directors and Board Committee meetings within agreed timeframes.
- (d) The Board Secretary should provide a central source of guidance and advice to the Board of Directors on matters of ethics and good governance as well as providing administrative support to the Board and Board Committees.
- (e) The Board Secretary should be tasked with the obligation of eliciting appropriate responses, feedback and input to specific agenda items in the Board of Directors and Board Committee deliberations.
- (f) The Board Secretary should also be able to raise matters that may warrant the attention of the Board of Directors.

### 11. Members' Meetings

- 11.1. The agenda, frequency, venue and times of members' meetings shall be determined by the Board of Directors.

**11.2.** An Annual General Meeting shall be held for the purpose of electing members of the Board of Directors and dealing with any such other business as may arise provided that at least six (6) weeks' notice shall be given of such Annual General Meeting.

**11.3.** A Special General Meeting may be called for the purpose of amending the Constitution of the Society or for any other matter by petition signed by sufficient members or by the Board of Directors after due notification of all members provided that, at least, three (3) weeks' notice shall be given of such Special General Meeting.

## **12. Voting**

**12.1.** At the Annual General Meeting or a Special General Meeting:

(a) An Ordinary Member shall have one (1) vote.

(b) An Honorary Member shall have one (1) vote.

(c) An Institutional or Corporate Member shall have two (2) votes.

**12.2.** All votes shall be decided by a simple majority provided that amendments to this Constitution shall be decided by a two-thirds majority of the members present.

## **13. Quorum**

**13.1.** General Meetings

The members present at the Annual General Meeting or Special General Meeting shall constitute a quorum.

**13.2. Meetings of the Board of Directors**

The quorum at any meeting of the Board of Directors shall be one more than half of the number of the Board of Directors.

**14. Rules of Procedure for Meetings**

The Rules of Procedure at the Annual and Special General Meetings of the Society are attached to this Constitution as Annexure 1.

**15. Code of Ethical Practice and Professional Conduct for Members**

The *Code of Ethical Practice and Professional Conduct for Members of the Society* are attached as Annexure 2 of this *Constitution of the Society*.

**16. Financial Affairs of the Society**

**16.1.** All property and funds shall vest in the Board of Directors, which shall hold such property and funds in trust on behalf of the members.

**16.2. The Board of Directors shall have the power to:**

(a) Buy, sell or hire, exchange, transfer, receive by way of donation or otherwise, movable or immovable property, including debentures, stocks and shares, and to invest the funds in government stocks, mortgage bonds or on fixed deposits or otherwise in banking institutions, building societies or similar organizations.

(b) Borrow money on the security of its assets; and

(c) Generally deal with the property and funds of the Society for the objects and functions of the Society.

**16.3.** The Funds of the Society shall consist of the following:

(a) Royalties.

(b) All other fees payable to the Society according to its functions.

(c) Fines, levies, penalties and damages to which the Society is entitled.

(d) Donations.

(e) Such other monies or assets as may vest in or accrue to the Society.

**16.4.** The CEO shall be responsible for all monies received by the Society and for the collection of membership fees, and receipts shall be issued in respect thereof.

**16.5.** All cheques issued on behalf of the Society shall be signed by the CEO and any one of the following office-bearers: the Chairperson, the Vice-Chairperson or any other person duly authorized.

**16.6.** Membership fees, payable annually, shall be determined at the Annual General Meeting following a recommendation by the Board of Directors.

**16.7.** The financial year of the Society shall commence on the 1<sup>st</sup> of January to the 31<sup>st</sup> of December each year.

## **17.** The Structure of the Society

The Structure of the Society is attached hereto as Annexure 3.

## 18. Dissolution of the Society

- 18.1.** The Society shall dissolve when, during an *Annual General Meeting* or a *Special General Meeting* called for that purpose, the voting members present decided by a two-thirds majority.
- 18.2.** A Notice of thirty (30) days is required for the holding of such meeting.
- 18.3.** Upon the dissolution of the Society, any assets it may own shall be made over to an organization with similar aims and objectives to be used for the promotion of copyright and related matters in the Republic of Namibia, or to disposed of as determined by the General Meeting at which the Society is dissolved.

## 19. Commencement

This Constitution shall come into force when it has been approved and adopted by the Society's General Meeting that has amended it.