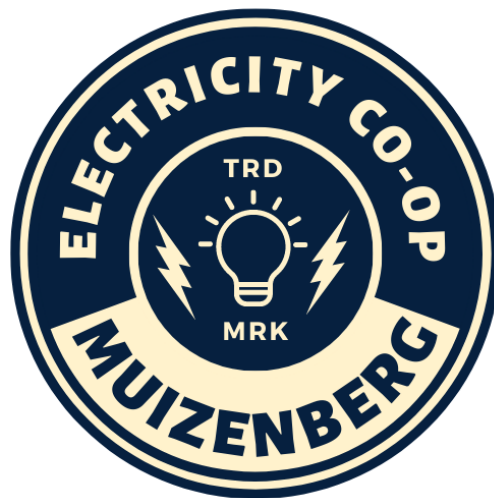


CONSTITUTION
MUIZENBERG ELECTRICITY
CO-OPERATIVE LIMITED



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1. **NAME**

- (a) The name of the Co-operative is Muizenberg Electricity Co-operative Limited.
- (b) The abbreviated name is Muizenberg Electricity Co-op Ltd (if applicable).
- (c) The Co-operative is authorised to use a trademark name registered to it by the registrar.

2. **FORM OF CO-OPERATIVE**

- 2.1 This is the constitution of a business undertaking formed as a Category A Primary Co-operative with limited liability in terms of the provisions of the Co-operatives Amendment Act, 2013 (Act 6 of 2013) as amended.
- 2.2 The Co-operative may conclude transactions with members and non-members.
- 2.3 The Co-operative issues no shares.

3. **DEFINITIONS OR INTERPRETATION OF TERMS**

In this constitution, unless the context indicates otherwise, a word or expression to which a meaning is attached in the Co-operatives Act, 2013 (Act 06 of 2013) shall have a similar meaning and -

“Activity plan” means a document that summarizes the operational and financial objectives of the co- operative for the next financial year, including –

- (a) clear business goals with reasons why these goals are believed to be attainable; and
- (b) how funds in the co-operative will be utilized;

“Annual report” means a report prepared by the Board containing financial statements, a social report and the management decision report;

“Annual return” annual submission of Form Co-op 08 together with the co-operative’s annual report as well as social and management decision reports;

“Board”	means the Board of directors elected by the members of the co-operative to manage the affairs of the co-operative
“Cooperative”	in addition to the meaning as defined in the Act, it also refers to this co-operative to which this constitution relates
“Distribution”	Any amount derived from the annual surplus and not transferred to the General Reserve at the discretion of the board
“Entrance fee”	means a once off fee payable to obtain membership of the co-operative, and is paid on application for membership;
“Financial Statement”	(a) Statement of financial position (balance sheet); (b) Statement of profit or loss & other comprehensive income (an income statement); (c) A statement of changes in equity; (d) A statement of cash flows; and (e) Notes, comprising a summary of accounting policies and other explanatory notes ¹
“Gender”	a reference in this constitution to the masculine gender shall also include the feminine gender and vice versa;
“General Reserve”	means an indivisible reserve of the Co-operative of not less than 1% and not more than 5% of the Co-operative’s net asset value as reflected in the most recent annual report;
“Member”	means member of the co-operative by virtue of clause 7 below;
“Member loan”	means a loan made by a member to a Co-operative in terms of clause 9;
“Membership fee or subscription fee”	means an annual fee payable towards the running of the co-operative, and may be paid off in equal monthly instalments;

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¹ Financial statements are prepared by the Board (or persons appointed by the Board) but approved by members at the annual general meeting.

² The payment of an entrance fee may be waived at the sole discretion of the board depending upon the financial circumstances of the applicant

"Monthly dues"	any user payments due or fees imposed by the board from time to time in addition to the entrance fee and annual fee.
"Present"	means, in relation to meetings, to be present in person or (unless the wording stipulates the person is to be physically present) able to participate in the meeting by means of a telephonic, electronic or other communication facility if this facility permits participants to communicate adequately with each other during the meeting, or to be represented by a proxy who is present with each other during the meeting, or to be represented by a proxy who is present in person or able to participate in the meeting by of a similar telephonic, electronic or other communication facility;
"Patronage proportion"	dividend distribution according to how much each member has used the co-op's services, bears to the value of the transactions conducted by all the members during the same period with or through the Co-operative;
"Registrar"	the registrar of the Companies & Intellectual Property Commission (CIPC)
"Secretary"	means the secretary of the Co-operative as appointed by the Board;
"Share"	means a common share in Muizenberg Electricity Cooperative Ltd
"the Act"	means the Co-operatives Act, 2013 (Act 6 of 2013);
"User pay"	means a system used by the co-operative to recover the running cost of the co-operative based on the number of transactions done by the member or services used by the member.

4. **REGISTERED OFFICE AND PLACE OF BUSINESS**

(a) The main place of business of the Co-operative is situated at.....
.....
.....(Physical Address),.....
.....Province.....

(b) The postal, electronic address, telephone and fax numbers of the co-operative are as follows:

Postal Address:.....

.....

E-mail:

Tel:

Fax number:

- (c) Any change of the registered office, place of business, postal address, electronic address, and telephone or fax numbers must be submitted to the registrar within fifteen days of such change.

5. OBJECTIVES

The objectives of the Co-operative are: -

- 5.1 hire, buy or otherwise acquire and to let, sell or otherwise supply requisites, necessary or used for or in connection with solar voltaic and/or battery storage and/or renewable energy operations;
- 5.2 manufacture or develop battery modules, solar modules, electricity inverters or other solar power and renewable energy requisites;
- 5.3 hire, establish or erect and to use or make available for use facilities necessary for or useful in connection with renewable energy and/or the offsetting of carbon emissions;
- 5.4 hire, buy or otherwise acquire, or produce or manufacture and to let, sell or otherwise supply services or things required for the purposes of producing renewable energy and/or the offsetting of carbon emissions;
- 5.5 render services necessary for or useful in connection and interconnection with renewable energy technology;
- 5.6 render any other services, including services relating to the buying, selling and leasing of movable and immovable property for the above purposes;

- 5.7 to undertake such other businesses that may add value to renewable energy operations and/or the offsetting of carbon emissions, including and not restricted to biological and non-biological resources, digital networks, electric vehicles and the like;
- 5.8 acquire rights in any intellectual property that may be to the benefit of the Co-operative;
- 5.9 provide appropriate education and training and support to members, elected representatives and employees of the Co-operative;
- 5.10 do all things necessary to comply with good corporate governance; and
- 5.11 undertake projects aligned to the business of the Co-operative that are aimed at community development, education and furthering the cooperative model across the country;
- 5.12 form partnerships, business relationships, alliances and similar networks for mutual benefit.

6. **SERVICES TO MEMBERS AND RESTRICTIONS ON BUSINESS**

- 6.1 The business of the Co-operative is to conduct:-
 - 6.1.1 the business set out in clause 5;
 - 6.1.2 all business necessary and/or desirable to achieve the main objectives outlined in clause 5 above; and/or
 - 6.1.3 all business ancillary to the above.
- 6.2 Subject to the foregoing, there are no restrictions on the business of the Cooperative and the Co-operative has unlimited powers and may do all things necessary and legal in the carrying out of its objectives.
- 6.3 Without prejudice to the provisions of clause 6.2 it is specifically noted that the Cooperative may:
 - 6.3.1 obtain loans from members and registered financial institutions to carry out the objectives of the Co-operative;
 - 6.3.2 encumber any assets of the Co-operative whether movable or immovable, corporeal or incorporeal by way of any recognised form of security to secure any loans for the Co-operative;

- 6.3.3 invest monies in registered financial institutions;
- 6.3.4 let, sell, purchase or otherwise dispose of movable and immovable property, including rights thereon, which are not immediately required for the carrying out of its objectives; and
- 6.3.5 take any necessary measures to protect its interests.

7. MEMBERSHIP

7.1 Minimum requirements for membership

- 7.1.1 Any natural person, who is over the age of 18 years, or a juristic person may, on application to the Board, become a member of the Co-operative.
- 7.1.1 If the membership of the co-operative is reduced to a number less than the number required for registration, and it remains as such for six months, the co-operative must either be de-registered or converted into another legal entity as required in terms of section 26 of the Act.

7.2 Additional Categories of Membership

- 7.2.1 The board may at its sole discretion institute additional categories of membership with respect to natural or juristic persons that wish to become donors, sponsors or sustaining members. These non-ordinary members may be required to pay annual fees and dues according to an attached membership schedule. Non-ordinary members may only vote if they are natural persons.

7.3 Application for membership to the co-operative

- 7.2.1 Application for membership shall be made on the form provided for that purpose and shall be accompanied by the entrance fee³.
- 7.2.2 The Board must consider every application for membership and has the right to accept or reject an application at its sole discretion.

³ The payment of an entrance fee may be waived at the sole discretion of the board depending upon the economic circumstances of the applicant.

7.2.3 The Board must, within 3 months after receipt of an application for membership, notify the applicant of its decision and, in the event of an application for membership being rejected; any amount paid by the applicant to the Co-operative must be refunded to the member.

7.2.4 A person becomes a member of the Co-operative when his or her application for membership has been accepted by the Board. Non-ordinary members are required to be ratified by the ordinary members at the annual general meeting or at the general meeting.

7.3 **Entrance Fee and Membership Fee / Subscription Fee**

7.3.1 An entrance fee according to the attached fee schedule must be paid on application for membership. Such fee is not refunded on termination of membership.

7.3.2 A membership fee/subscription fee according to the attached fee schedule must be paid annually or alternatively in equal monthly instalments. Membership fees are paid towards the cost of running the co-operative and shall not be refunded on termination of membership.

7.4 **Rights of members**

A member shall have the following rights:-

7.4.1 Members have the right to access the services offered by the Co-operative and to do business with or through the Co-operative;

7.4.2 Members that are not suspended or expelled from the co-operative, have the right to attend meetings of the co-operative, and to call a special general meeting as provided for herein;

7.4.3 During voting at meetings of members, each member has the right to one vote.

7.4.4 Members have the right to be allocated and credited or paid a portion of the surplus ("The Distribution") that is not transferred to the General Reserve should such an allocation be made by the Board in accordance with the provisions of clause 19.5 below.

7.5 **Obligations of members**

- 7.5.1 All members shall adhere to and abide by this Constitution and any rules, by-laws and policies of the Co-operative.
- 7.5.2 Members shall participate in the business of the Co-operative subject to the terms of this Constitution and must comply fully with the terms of the Co-operative's standard trading agreements from time to time.
- 7.5.3 Members must uphold the ethos of the Co-operative and may only participate with reference to the guidelines set out in the attached schedule.
- 7.5.4 Members must notify the Co-operative whenever any of their personal details change, for example when their physical addresses change.
- 7.5.5 Members which are juristic persons must notify the Co-operative immediately of any changes in ownership;
- 7.5.6 Members may appoint a representative to act on their behalf in all matters related to the member and notify the Co-operative accordingly. Any actions taken by the representative shall be regarded as duly authorised by the said representative.

8. **LOANS**

8.1 **Prohibited and permitted loans and security**

- 8.1.1 The co-operative may give financial assistance by means of a loan or the provision of security to -
 - (a) any person in the ordinary course of business if the lending of money is part of the ordinary business of the co-operative;
 - (b) any person on account of expenditures incurred or to be incurred on behalf of the co-operative;
 - (c) employees of the co-operative or of any of its members:-
 - (i) to enable or assist them to purchase or erect a photovoltaic and/or battery storage system for their own use; or

- (ii) in accordance with a plan for collective business of the co-operative or any of its members to be conducted by or held by any party to the business, for the purposes of generating renewable energy; and
 - (d) members, if the financial assistance is available to all members on substantially the same terms.
- 8.1.2 The co-operative may not give financial assistance in terms of clause 8.1.1 whether directly or indirectly if there are reasonable grounds to believe that:-
- (a) the co-operative, after giving the financial assistance, will be unable to pay its liabilities as they become due; or
 - (b) the realisable value of the assets of the co-operative, after giving the financial assistance, will be less than the aggregate of its liabilities, share capital and reserves.
 - (c) the member has failed a background credit check and/or there is no prospect of the member paying back the loan and/or is already in breach of the requirement to pay back or service a previous loan.
- 8.1.3 In determining the realisable value of the assets of the co-operative contemplated in sub-clause 9.1.2 [b] above, the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee must be excluded.

8.2 **Restrictions relating to unsecured members loans**

- 8.2.1 The co-operative shall not borrow or raise money or overdraw a banking account except on authority of a special resolution: Provided that the co-operative may borrow or raise money or overdraw a banking account without the said authority up to an amount not exceeding one half of the aggregate of its capital and general reserve.
- 8.2.2 The board may, if so, authorized by members in terms of sub-clause 8.2.1 above, in addition to the loans secured by some or all the assets of the co-operative, the issue of secured debentures and loans obtained from the commercial banks or any other financial institution, further raise loans from members subject to the following conditions:

- (i) No loan from any individual member shall amount to less than R1 000 (one thousand rand) and, for the purpose of this paragraph, every successive loan from any member shall be regarded as a separate loan;
- (ii) No loan shall be repaid within 12 (twelve) months after receipt;
- (iii) Interest shall be paid on loans at a rate per annum to be determined by the board from time to time.
- (iv) An acknowledgement of debt shall be issued in respect of each loan.
- (v) The acknowledgement of debt shall be freely transferable by means of a cession duly registered by the co-operative.
- (vi) Receipt of each loan shall be acknowledged by the following 'acknowledgement of debt', which shall incorporate either of the conditions [ii] or [iii] mentioned below -

"ACKNOWLEDGEMENT OF DEBT"

We, the undersigned, director and secretary of the Muizenberg Electricity Co-operative hereinafter called the co-operative, hereby acknowledge having received the sum of R..... (.....Rand) from (name) of (address) hereinafter called, the owner, subject to the conditions: - Interest at the rate of (..... percent) per annum or such rate as the board may determine from time to time, shall be payable to the owner on or at the date of repayment.

- [ii] The owner shall not have the right to demand repayment, but the co-operative, after having had the loan for not less than 12 (twelve) months, may repay such loan at any time after having given not less than 30 (thirty) days' notice of its intention to repay such loan.

Or

- [iii] The loan shall be repayable on the day of 20..... (which may not be less than 12 (twelve) months from the date of this acknowledgement of debt): Provided that the board of the co-operative may defer the repayment if the circumstances of the co-operative at the date of repayment of the loan, render such deferment necessary: Provided further that the board of the co-operative shall submit for confirmation to the first succeeding general meeting of members its resolution to defer repayment of a loan and if the resolution of the board is not confirmed by that meeting of the co-operative, the loan shall be repaid within 7 (seven) days of the date of such meeting.

Dated at this day of 20.....

DIRECTOR

SECRETARY

9. **LIMITATION OF LIABILITY**

- 9.1 The liability of a member is limited to an amount equal to any amount as is owed to the Co-operative pursuant to his membership of the Co-operative, as well as any obligations of that member to the Co-operative pursuant to a contract between the member and the Co-operative.
- 9.2 Members are therefore liable for such amounts owed to the co-operative in terms of any unpaid fees, user-pay or co-payments and loans granted in terms of section 8.
- 9.3 The Cooperative will not be held responsible for death, personal injury or fraud relating to its upstream and downstream supply chain.
- 9.4 The Cooperative disclaims any liability arising from its members agreement to participate in any group technology builds, home installations, communal activities and the like.

10. **ASSOCIATE MEMBERS**

- 10.1 Non-members who want to or provide support services or who benefit from the co-operative may, upon application and approval by the Board, be appointed as associate members of the co-operative.
- 10.2 Associate membership is temporary and is valid for a period not exceeding 12 months. Associate members may, however, at any time apply for full membership.
- 10.3 After the period of 12 months, an associate member, subject to the approval by the Board of the co-operative –

(a) May apply to become a full member of the co-operative; or

(b) May apply to have his/her associate membership renewed for a further period of 12 months.

10.4 Associate members may be elected as non-executive Directors.

10.5 Associate members do not have any voting rights and they do not participate in any annual bonus distributions.

11. TRANSFER OF MEMBERSHIP, MEMBERS LOANS AND DISTRIBUTION

11.1 Membership, Member Loans and any entitlement to the Distribution may be transferred only with the approval and on the authority of the Board which shall satisfy itself that the proposed transferee is qualified to be a member of the Co-operative.

11.2 The Board may at any time refuse to approve and register a proposed transfer.

11.3 The transfer of any membership shall be in writing in such form and signed in such manner as the Board from time to time may stipulate.

11.4 When such transfer has taken place the Board shall issue to the transferee a membership card, and/or a Member Loan Certificate and/or a Distribution Certificate.

12. CONDITIONS AND PROCESSES FOR TERMINATION OF MEMBERSHIP

12.1 Termination on demise

12.1.1 The membership of a member who has died may in terms of this clause be transferred to a member of that deceased member's family or another person appointed by the executor of the deceased member's estate subject to the approval by the Board. In the event of such transfer not taking place, the membership of the deceased member shall be terminated by resolution of the Board.

- 12.1.2 Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member or his estate is liable.

12.2 Termination on change of place of residence

- 12.2.1 The membership of a member who no longer resides in the area served by the Co-operative may on application of the member or by decision of the Board, be terminated by resolution of the Board.
- 12.2.2 Upon such cancellation the Co-operative must refund to the ex-member, the paid up amount of the nominal value of any distribution awards made by the board.
- 12.2.4 Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member is liable.

12.3 Termination when a member is non-active or in liquidation

- 12.3.1 Whenever a member does not actively participate in the activities of the Co-operative for a period of one year or has neglected to notify the Co-operative of any change in his address, whereby the Co-operative is prevented from contacting him, his or her membership may, be terminated by resolution of the Board, or
- 12.3.2 a member is in liquidation or business rescue his membership may be terminated by resolution of the Board and the member shall be notified accordingly.
- 12.3.2 The membership of such member may be cancelled by resolution of the Board.
- 12.3.4 Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member is liable.

12.4 Termination on De-registration

- 12.4.1 The membership of a member which is a company or close corporation which has become de-registered shall be deemed to have terminated on the day prior to the date of de-registration, and any other amount due to the member by the Co-operative (after any set-offs) shall be transferred to a special reserve.

- 12.4.2 Should the de-registered member's registration be reinstated, it may re-apply to the Board for membership in terms of clause 7.
- 12.4.3 Should the Board accept the application within three years of the date of termination of membership the Board may, at its discretion, reinstate some or all of the rights (including monetary rights) that had accrued to the deregistered member as at the date of termination of membership. Any amount remaining in the special reserve after three years of the date of termination of membership shall be transferred to the General Reserve.

13. **WITHDRAWAL OF MEMBERSHIP**

- 13.1 The resignation of a member comes into operation at the first meeting of the Board held after the Co-operative has received the written resignation of the member.
- 13.2 The membership of a member, who has resigned, shall be terminated by resolution of the Board.
- 13.3 Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member or his estate is liable.
- 13.4 Withdrawal of a member from the co-operative does not release the member from any debt or obligation to the co-operative or any contract between the member and the co-operative.

14. **CONDITIONS AND PROCESS FOR SUSPENSION AND EXPULSION**

- 14.1 A member who repeatedly contravenes a provision of this constitution or who refuses to comply with such provision or to meet an obligation imposed on the member by the Act or in terms of this constitution or which he agreed to meet, may -
- (a) by resolution of the Board, be suspended as a member for a period to be determined by the Board but which shall not be longer than the date of the next annual general meeting;
 - (b) by special resolution be suspended as a member for a period not longer than 12 (twelve) months from the date on which he is suspended

- (c) by special resolution be expelled from the co-operative.

14.2 The suspension of a member may be revoked by resolution of the Board at any time.

14.3 Before a member can be suspended or expelled in terms of clause 15.1, he or she must be given prior written notice of the intention of the Board.

14.4 The notice to such member must contain the following particulars-

- (a) the reasons for the proposed suspension or expulsion; and
- (b) a time when, and place where the member may appear in person, with or without witnesses, before the Board or to which he may send a written statement signed by the member setting out his objections to the proposed suspension or expulsion.

14.5 The Board must notify the member in writing if it has decided to suspend or expel a member, by specifying the following -

- (a) the reasons for the suspension or expulsion;
- (b) the date on which his suspension or expulsion comes into effect;
- (c) the period during which the suspension will apply; and
- (d) the disciplinary measures which will be taken.

15. **DISCIPLINARY MEASURES**

16.1 While under suspension a member forfeits his right to attend general meetings or to vote by proxy.

16.2 The members by special resolution or the Board may furthermore stipulate that certain or all transactions with a member must be suspended for the period of his suspension.

16.3 The membership of an expelled member must be terminated by resolution of the board and upon such termination the member forfeits his membership fees and the amount paid in respect thereof must be credited to the general reserve.

16.4 Any amount payable by the Co-operative to the expelled member shall be set off against any debt for the payment of which the member is liable.

16. **GOVERNANCE OF THE CO-OPERATIVE**

16.1 BOARD OF DIRECTORS

- 16.1.1 The affairs of the Co-operative must be managed by a Board of Directors consisting of a minimum of two and a maximum of five Directors. Directors must be elected at the annual general meeting. The Directors must exercise the powers and perform the duties of the Co-operative.
- 16.1.3 In the event of a vacancy the Board may by way of a resolution appoint a director for the remainder of the period referred to in clause 16.1.1
- 16.1.4 provided that such resolution must be ratified by members at the next general meeting.
- 16.1.5 Associate members may be elected as non-executive directors.
- 16.1.6 Only directors who are full members of the co-operative shall have voting rights.

16.2 POWERS AND RESTRICTIONS ON DIRECTORS

- (a) The directors have the power to open a bank account in the name of the co-operative
- (b) Directors have the power to enter contracts on behalf of the co-operative for the day- to-day running of the business of the co-operative or to delegate such power by resolution to such authority to the senior management of the co-operative.
- (c) The directors have the power to suspend by resolution a member for a period to be determined by the Board, but which shall not be longer than the date of the next annual general meeting.
- (d) The directors have the power to acquire or hire movable or immovable property on behalf of the co-operative.
- (e) The Directors are empowered to do all things necessary to execute their duties as provided or in the Act and this constitution and their powers in this regard are unrestricted.
- (f) The Board has the power to make rules consistent with this constitution and the Act concerning the holding of meetings or any other matter of procedure.
- (g) The Co-operative is to determine a reasonable term of office for directors.

(h) The director shall not make donations on behalf of the co-operative to any person or organisations.

(i) The director may not award himself or herself a loan without authorisation of the board and subject to section 8, any authorisation of loans by directors to any member is subject to approval by the members at the annual general meeting.

17 **DIRECTORS' REMUNERATION**

17.1 Directors shall be entitled to reasonable fees and allowances which must be approved by members at the annual general meeting.

17.2 **Persons not competent to be Director**

No person shall hold the office of Director if -

- (a) A person is of unsound mind⁴;
- (b) A person is an unrehabilitated insolvent;
- (c) A person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery, perjury, or any offence involving dishonesty in connection with the formation or management of a Co-operative or any other corporate entity.

17.3 **Term of office**

17.3.1 The term of office of the Directors of the Co-operative shall be a minimum of (2) two years

17.3.2 Retiring Directors are eligible for re-election.

17.3.3 The Directors to retire each year shall be those who have been longest in office since their last election at the annual general meeting, but as between members who became Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by ballot.

17.4 **Nomination of Directors and voting for Directors**

⁴ Please note that the Mental Health Care Act was amended in 2002 to exclude determinations made according to sociopolitical, economic, cultural or religious background.

17.4.1 Candidates for the position of Director shall be nominated openly at the annual general meeting held for the purpose electing one or more Directors.

17.4.2 Without prejudice to the provisions of sub-clause 17.3 a member, including a retiring Director, qualifies for election as Director only if he is nominated in terms of sub-clause 16.1.1

(a) If the number of candidates nominated does not exceed the number of vacancies on the Board to be filled such candidate or candidates shall be declared elected at the annual general meeting.

(b) If the number of candidates nominated exceeds the number of vacancies on the Board, as many Directors as there are vacancies shall be elected from the nominees at the annual general meeting.

(c) If insufficient or no candidates are nominated to fill the vacancies on the Board, such vacancies shall be regarded as casual vacancies to be filled in accordance with section 17.5.

17.6.3 The method to be followed in electing Directors shall be as determined by the Chairperson of the meeting and agreed by members.

17.6.4 At the election of Directors a member shall vote for as many candidates as there are vacancies to be filled on the Board and those candidates receiving the highest number of votes shall be declared elected.

17.5 **Filling of a vacancy on the Board**

Any vacancy occurring on the Board during the year shall be filled until the next annual general meeting by a member appointed, by the remaining Directors. At the said annual general meeting a member shall, subject to the provisions of this constitution, be elected to fill the vacancy. Any Director elected at such annual general meeting shall not hold office for a period longer than the unexpired portion of the period of office of the Director whose office became vacant.

17.6 **Conditions for Vacation of office**

A Director shall vacate his office -

- (a) If he becomes incompetent in terms of clause 17.3 of this constitution to hold the office of Director; or
- (b) If the member absents him or herself from more than three consecutive ordinary meetings of the Board without its leave; or
- (c) Upon the expiry of 30 (thirty) days, or such shorter period as may be approved by the Board, after he has resigned as a Director of the Co-operative.

17.7 **Conditions and Processes for the appointment of the Chairperson, Vice- Chairperson and**

Acting Chairperson of the Board

- 17.7.1 At the first meeting of the Board held after the formation meeting and thereafter at the first meeting of the Board held after every annual general meeting of members or when the necessity arises, the Directors shall elect from among themselves a Chairperson and Vice-Chairperson.
- 17.7.2 The Vice-Chairperson shall act as Chairperson whenever last-named is absent or unable to act as Chairperson, and if both the Chairperson and Vice-Chairperson are absent or unable to carry out the functions of the Chairperson, the Board must elect another Director to be Acting-Chairperson during such absence or incapacity
- 17.7.3 The Chairperson of the Board of the Co-operative shall vacate the office of Chairperson if he or she -
 - (a) Ceases to be a member of the co-operative; or
 - (b) Ceases to be a Director of the Co-operative; or
 - (c) Resigns as Chairperson; or
 - (d) Is relieved of the office of Chairperson by the Board.
- 17.7.4 The provisions of clause 17.8.3 shall *mutatis mutandis* apply to the vice-Chairperson of the Board.

17.8 **Board meetings and Quorum**

17.8.1 A meeting of the Board must be convened by the Board or the Chairperson of the Board or any two Directors of the Co-operative.

17.8.2 The majority of Directors shall constitute a quorum of a meeting of the Board.

17.8.3 Questions arising at a meeting of the Board shall be determined by a majority of the Directors present at the meeting and in the case of an equality of votes, the Chairperson of the Board or the person acting as Chairperson shall have a casting vote in addition to his deliberative vote.

17.9 **By-laws**

The Board has power to make by-laws provided they are not repugnant to this constitution.

17.10 **Delegation of powers and/or functions to a committee, director or manager**

17.10.1 The Board may delegate one or more of its powers and/or functions to a Director or to a Committee, director or manager appointed by the Board or Manager of the Co-operative.

17.10.2 Any Director or Committee or Manager so appointed must in the exercise of the powers and/or functions so delegated, abide by such rules as may be made and follow such instructions as may be issued, in regard thereto, by the Board.

17.11 **Supervisory committee**

17.11.1 A supervisory committee may be elected at the annual general meeting when the Board is elected.

17.11.2 The supervisory committee must consist of members who are not directors.

17.11.3 The supervisory committee is responsible to supervise the Board by representing the interests of members.

17.12 **Additional Committees**

17.12.1 Additional committees may be constituted under this constitution in order to supervise, educate and otherwise conduct activities which promote the Co-operative ethos.

18. **GENERAL MEETINGS**

18.1.1 The Co-operative must hold:-

- (a) Its first annual general meeting within **18** months of registration of the Co-operative;
- (b) Subsequently annual general meetings within **6** months after the end of the preceding financial year.

18.1.2 The co-operative must circulate its audited report/independently reviewed report/annual report to all members at least fourteen days prior to the date of the annual general meeting.

18.1.3 The annual general meeting must:

- (b) Consider and discuss the annual report for the previous financial year against the activity plan of the previous year to take resolutions on the future conduct of the business of the co-operative;
- (c) Consider and agree the activity plan presented by the Board for the next financial year;
- (d) Elect directors; and
- (e) Elect a supervisory committee if necessary.

18.2 **Special General Meetings**

The Co-operative may from time to time in addition to its annual general meeting hold Special general meetings of its members to dispose of any matter relating to its affairs specifically set out in the notice convening the meeting.

18.3 **Convening of Meetings**

18.3.1 An annual general meeting shall be convened on authority of the Board.

18.3.2 A special general meeting shall be convened -

- (i) by the supervisory committee, if it exists; or
- (ii) or by five or more members of the Co-operative constituting in number at least 10% (ten percent) of all the members of the Co-operative: Provided that such members shall not be entitled to convene a special general meeting unless

they have beforehand in writing petitioned the Boards to convene such a meeting and the meeting is not convened within 21 (twenty one) days from the date the petition was lodged, or unless for any reason there are no Directors to whom such a petition can be addressed.

18.3.3 A meeting convened in terms of sub-clause 18.3.2 shall, as far as possible, be convened and held in the same manner as is prescribed for meetings convened and held by the Board and any reasonable expense incurred through the hosting of such meeting, in sending notices of the meeting to them and hiring of a venue for the hosting of the meeting if so resolved by such meeting, shall be refunded to the host of the meeting by the Co-operative

18.4 **Notice of general meeting**

18.4.1 A general meeting shall be convened by at least 14 days notice in writing to each member of the Co-operative.

18.4.2 The notice convening the meeting shall in addition to the time and place of the meeting state the purpose for which it is convened.

18.4.3 A notice may be delivered personally, forwarded by post to the member at his registered address, emailed to registered email address of the member or faxed the registered fax number of the member and may, in the case of an annual general meeting, be published on the Co-operative's website or otherwise distributed.

18.4.4 A notice will be deemed to be received by a member:

(a) If it is delivered personally, on the day it is delivered;

(b) If it is sent by post, on the fifth day after posting;

(c) If it is sent by email or fax, on the day after it is sent;

(d) If, in the case of an annual general meeting, it is published on the Cooperative's website or otherwise published, 30 days after such publication.

18.4.5 Non-receipt by a member of a notice of a general meeting of the Co-operative does not render such meeting in valid.

18.4.6 If a notice of a meeting is returned to the Co-operative because the member to whom it was sent is no longer resident at the registered address, the email address or fax number does not exist or does not function, the Co-operative shall be relieved of its obligation to send further notices of meetings to the member concerned unless the member makes an appearance and requests that such notices be sent to his new address.

18.4.7 No business other than that stipulated in the Notice of the meeting shall be considered or discussed, at such a general meeting.

18.5 **Quorums**

18.5.1 A quorum for a general meeting shall be constituted -

- (a) by at least five members, if the number of members of the Co-operative is not more than fifty;
- (b) by at least one tenth of the members of the Co-operative, if the number of members of the Co-operative is more than fifty but not more than two hundred;
- (c) by twenty members plus at least one percent of the members of the Co-operative in excess of two hundred, if the number of members of the Co-operative is more than two hundred.

18.5.2 No item of business shall be transacted at any general meeting unless a quorum of members is present during the time when the meeting is considering that item.

18.5.3 If within one hour from the time appointed for the meeting a quorum is not present, the meeting

- (a) if convened by members or in consequence of a petition of members, must be cancelled;
- (b) if otherwise convened, must be adjourned to the same day in the next week at the same time and place, or if that day is a public holiday, to the next day following which is not a public holiday.

18.5.4 If the same hall or building is not available for an adjourned meeting it may be held at another venue within convenient distance if members are advised of the change of venue either by notice posted at the original venue or by some other means.

18.5.5 If a quorum is not present within one hour after the time fixed for an adjourned meeting, the members present, provided they are not less than five in number, shall be deemed to constitute a quorum: Provided that a special resolution may not be passed by such a meeting.

18.6 **Chairperson of general meetings**

The Chairperson of the Board or in his absence the Vice-Chairperson or in the absence of both, another Director elected by the meeting shall act as Chairperson of the convened meeting.

18.7 **Voting by members**

18.7.1 At a general meeting, voting may either be by show of hands, or by polling.

18.7.2 If voting is by show of hands, any person who is present at the meeting, whether as a member or as proxy for a member and entitled to exercise voting rights has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise.

18.7.3 If voting on a particular matter is by polling, any person who is present at the meeting, whether as a member or as proxy for a member, has the number of votes determined in accordance with the voting rights of that person plus the voting rights of the members for whom he is a proxy.

18.7.4 A polled vote must be held on any matter to be voted on at a meeting if a demand for such a vote is made by:-

18.7.4.1 at least five persons having the right to vote on that matter, either as a member or a proxy representing a member;

18.7.4.2 or a person who is, or persons who together are, entitled, as a member or proxy representing a member, to exercise at least 10% of the voting rights entitled to be voted on that matter.

18.7.5 For the purpose of a polled vote each member will get up to four additional votes on the following basis:

18.7.5.1 one additional vote if the total value of his business with the Co-operative during the last preceding financial year exceeded 0.0625% of the total turnover of the Co-operative;

18.7.5.2 two additional votes if the total value of such business exceeded 0.125% of the total turnover;

18.7. 5.3 three additional votes if the total value of such business exceeded 0.25% of the total turnover;

18.7.5.4 four additional votes if the total value of such business exceeded 0.5%.

18.7.6 A vote by polling must be held in such manner as the chairperson stipulates. Scrutineers must be nominated to determine the result of the vote.

18.7.7 A declaration by the chairperson that a resolution has, on a show of hands or by ballot, been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the meeting, shall be conclusive proof thereof.

18.7.8 If no objection is raised at the relevant meeting in terms of the provisions of this constitution against the validity of any vote cast at the meeting, whether on a show of hands or by poll, every vote cast at the meeting that has not been disallowed shall for all purposes be deemed to be valid.

18.7.9 In the case of an equality of votes, whether on a show of hands or in a vote by poll, the chairperson of the meeting shall have a casting vote in addition to his deliberative vote.

18.7.10 Every matter submitted to a general meeting for resolution, except for a matter requiring a special resolution, shall be determined by a majority of votes recorded at the meeting.

18.8 **Special resolutions**

A resolution by a general meeting of the Co-operative shall, constitute a special resolution if -

- (a) the notice by which the general meeting was convened specified particulars of the proposed resolution and stated the intention to propose same as a special resolution;
- (b) the resolution has been passed by not less than two thirds of the members present, both in a vote on the show of hands and a vote by ballot; and
- (c) the resolution related to the winding-up of the Co-operative and was passed by at least 75 percent of the votes of all the members of the Co-operative, both in a vote on the show of hands and a vote by ballot.

18.9 **Proxies**

18.9.1 A member of the co-operative may appoint another member of the co-operative as a proxy to participate in and vote at a general or special meeting on behalf of the member concerned, provided that the member does not appoint more than one proxy to exercise that member's voting rights;

18.9.2 If the co-operative has less than 20 members, a member may only carry one proxy. If the co-operative has more than 20 members, the number of proxies a member may carry may not be more than 5 per cent of the membership of the cooperative.

18.9.3 A proxy appointment must be in writing, must clearly set out the details of the vote to be cast on behalf of the member in respect of each decision on the agenda and remains valid for the period expressly set out in the appointment unless it is revoked in writing by the member concerned prior to the meeting;

18.9.4 The number of votes by proxy during any general or special meeting may not exceed 25 per cent of the total membership of the co-operative.

19. **FINANCIAL MANAGEMENT**

19.1 **Banking account**

19.1.1 The Co-operative must open a banking account in the name of the Co-operative in which all monies received shall be deposited as soon as possible after receipt thereof.

19.1.2 Cheques drawn on the banking account shall be signed by one of the Directors and must be countersigned by the Secretary of the Board: Provided that a cheque shall not be signed and countersigned by the same person and that all officers who are authorized to sign or countersign cheques must furnish adequate security.

19.2 **Financial year**

The financial year of the Co-operative shall end on the last day of February of each year.

19.3 **Financial records**

19.3.1 The Co-operative must keep such accounting records as are necessary fairly to reflect the state of affairs and business of the Co-operative and to explain the transactions and financial position of the business of the Co-operative.

19.3.2 The accounting records shall be kept at the registered office of the Co-operative and shall be available at all times for examination by members and Directors for a period of five years after the end of the financial year to which they relate.

19.4 **ANNUAL FINANCIAL STATEMENTS**

19.4.1 An annual report depending on the category of primary co-operative, of the affairs of the co-operative must be conducted annually in respect of each financial year in order to –

- (a) ensure that financial statements are drawn up in conformity with generally accepted accounting practices;
- (b) verify that the co-operative has maintained adequate records in accordance with the requirements of this constitution and the Act;

- (c) report generally as to whether the assets and facilities of the co-operative are being properly managed, and the operations of the co-operative are being conducted in accordance with co-operative principles; and
- (d) report on any other matter the auditors are required to report on in terms of the constitution.

19.4.2 The provisions of clause 19.4.1 are applicable to the annual financial statements of the Co-operative and its company subsidiaries.

19.5 **SURPLUSES**

19.5.1 The surplus resulting from the operations of the Co-operative during any financial year shall, on the recommendation of the Board, be applied by resolution of the annual general meeting for that year: -

- (a) At the end of each financial year the Co-operative shall transfer a portion of any surplus in that financial year into the General Reserve: Provided that the Board may increase this percentage if the General Reserve nears 1% of the Co-operative's net asset value as reflected in its most recent financial report, or decrease this percentage if the indivisible reserve nears 5% of the Co-operative's net asset value as reflected in its most recent audited report.
- (b) The Board may transfer any part or the whole of any surplus that is not transferred to the General Reserve to any other reserve which may or may not be divisible.

19.5.2 The General Reserve may be utilised for the following purposes:-

- (a) To sustain the Co-operative during periods of financial distress;
- (b) To finance capital expenditure;
- (d) To finance training;
- (e) Any other purpose as approved by the Board.

19.6 Any surplus that is not transferred to the General Reserve may be utilised for the following purposes:-

- (a) To pay interest on any amounts held to a member's credit, including any member loan;
- (b) To pay any portion of the surplus allocated to the members in accordance with section 20 below.
- (c) To pay any other money due to a member; and any other purpose as approved by the Board.

20. **PATRONAGE PROPORTION**

- 20.1 The Board may allocate and credit or pay to the members a portion of the surplus that is not transferred to the General Reserve in proportion to the value of transactions conducted by a member with the Co-operative during a financial year.
- 20.2 For the purpose of clause 20,
- 20.3 the Board will when determining the amount of business done by each member with the Co-operative in a financial year, take into account:-
 - (i) the quantity and value of goods and services bought, sold, handled, marketed or dealt with by the Cooperative; provided
 - (ii) that the transactions conducted with or through a division of the Co-operative of which the gross profit margin after discounts is 1% (one percent) or less, shall for the aforementioned purposes, not be taken into account.
- 20.4 Subject to section 13, the record date for determining which members are entitled to the allocation of the patronage proportion.

21. **RECORD KEEPING BY CO-OPERATIVE AND ACCESS TO INFORMATION**

- 21.1 The co-operative must keep at its offices the following:
 - (a) Its constitution, including any amendments thereto.
 - (b) The minutes of general meetings in a Minute Book.

- (c) The minutes of meetings of the board of directors and supervisory committee in a Minute Book.
- (d) A list of members or register of members setting out-
 - (i) the name, identity number (if a natural person) or business registration number (if juristic person) and address of each member.
 - (ii) the date on which each member became a member.
 - (iii) if applicable, the date on which a person's membership was terminated and the reason for termination of membership.
 - (iv) the amount of any membership fees paid, the amount of any membership user-pay and/or transactions and the number and amount of member loans.
- (e) A register of directors setting out:-
 - (i) the name, address and identity number of each director, including former directors.
 - (ii) the date on which such directors became directors of the co-operative
 - (iii) the date on which such directors ceased to be directors and the reason why they are no longer directors of the co-operative.
 - (iv) the name and address of any other co-operative, company or close corporation where both present and former directors are, or were, directors or members.
- (f) A register of director's interest in contracts or undertakings.
- (g) Information on the nature and value of contributions made by each member to the co-operative.
- (h) Adequate accounting records, including records reflecting the transactions between each member and the co-operative for the purpose of calculating the patronage proportion.

21.2 The co-operative must retain its accounting and financial statements as records for a period of five years after the financial year to which they relate.

- 21.3 Members of the co-operative may examine the records referred to in clause 20.1 and 20.2 during normal business hours of the co-operative and may make copies thereof after payment of an agreed fee.
- 21.4 Subject to the **Promotion of Access to Information Act, 2000**, the board of directors may, for a reasonable period of time, refuse information relating to any commercial transaction of the co-operative if there are reasonable grounds to believe that the disclosure may be to the disadvantage of the co-operative.
- 21.5 Where the constitution of a co-operative provides for the establishment of a supervisory committee, the supervisory committee must determine whether the board of directors is entitled to withhold information in terms of clause 21.4
- 21.6 Members are entitled to a record of their transactions involving the cooperative, their membership fees, subscriptions, any user-pay, co-payments and/or loan amounts

22. **AMENDMENT OF CONSTITUTION**

- 22.1 The constitution of the Co-operative may be amended at annual general meetings or by special resolution only.

23. **WINDING UP**

- 23.1 Members will be entitled to share in any residue after the winding up of the Cooperative after the payment of all costs and claims in accordance with their patronage proportion over the five years which preceded the commencement of the winding-up of the Co-operative.

24. **CONVERSION**

- 24.1 Should the members decide to convert the Co-operative into a profit company, all members shall become shareholders of the company and be allocated shares in accordance with their total value of transactions conducted over the 7 (seven) years which preceded the special resolution converting the Co-operative into a company.

25. **GENERAL**

- 25.1 The Co-operative shall sue and be sued in the name of the Co-operative and all powers of attorney and documents in connection therewith shall be signed by the chairman of the Board, the Secretary or any Director or manager lawfully acting in that capacity.

26. **TRANSITIONAL ARRANGEMENTS**

On the date (but immediately after) this constitution becomes effective:-

- 26.1 all pre-existing members of the Co-operative shall continue to be members and;
- 26.2 all donations to the Muizenberg Electricity Crisis Committee (MECC) will be converted into funds of the Muizenberg Electricity Co-operative.
- 26.3 all founders sitting on the interim board will be exempt from campaigning for re-election during the initial 18 months period and will be deemed to have a mandate from the general membership, their re-election will however be according to section 18.

NOTE: THIS PAGE MUST BE SIGNED BY ALL FOUNDER MEMBERS FOR PRIMARY CO-OPERATIVE

FULL FORENAMES, SURNAME AND IDENTITY NUMBER OF FOUNDER MEMBER (PRIMARY CO-OP)	PHYSICAL AND POSTAL ADDRESS OF FOUNDER MEMBER (PRIMARY CO-OP)
Full forenames..... Surname..... ID No Signature:	Home address..... Postal address.....
Full forenames..... Surname..... ID No Signature:	Home address..... Postal address.....
Full forenames..... Surname..... ID No Signature:	Home address..... Postal address.....
Full forenames..... Surname..... ID No Signature:	Home address..... Postal address.....
Full forenames..... Surname..... ID No Signature:	Home address..... Postal address.....
Full forenames.....	Home address.....

Surname.....
....	...
.....	Postal
...	address.....
ID No
.....	...
Signature:
.....	...

NAME OF CO-OPERATIVE