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### Approval

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# CHARTER OF THE NYDA BOARD OF DIRECTORS

The National Youth Development Agency (NYDA or the Agency) is the national youth Agency for South Africa and is established in terms of the National Youth Development Agency Act 54 of 2008. The NYDA is a Schedule 3(a) public entity as defined by the Public Finance Management Act No 1 of 1999. The NYDA Board of Directors has decided to apply the corporate governance principles of the Protocol on Corporate Governance in the Public Sector, and the King IV Code on Corporate Governance, to their activities in order to regularize and improve the corporate governance of the NYDA.

This Board Charter sets out the corporate governance policies of the NYDA, as adopted by the Board.

## 1. GLOSSARY OF TERMS AND INTERPRETATION

In this Charter, unless the context otherwise indicates:

- 1.1 “Accounting Authority” means the Board of Directors of the NYDA.
- 1.2 “Board” means the Board of Directors of the NYDA as constituted from time to time.
- 1.3 “Directors” means the Board of Directors of the NYDA as constituted from time to time.
- 1.4 “The Act” means the National Youth Development Agency Act 54 of 2008, as amended.
- 1.5 “Companies Act” means the Companies Act No. 71 of 2008, as amended.
- 1.6 Chairperson: means the executive director referred to in section 9(1)(a) of the NYDA Act who has been designated as the president in terms of section (9) (5) (a) of the NYDA Act.
- 1.7 Deputy Chairperson: means the executive director referred to in section 9(1)(a) of the NYDA Act who has been designated as the president in terms of section (9) (5) (a) of the NYDA Act.
- 1.8 “Executive Authority” means the Cabinet member who is accountable to Parliament for the NYDA or in whose portfolio it falls.
- 1.9 “Government” means the Government of the Republic of South Africa as defined in the Constitution of the Republic of South Africa.
- 1.10 “PFMA” means the Public Finance Management Act No. 1 of 1999, as amended.
- 1.11 “President” means the President of South Africa.
- 1.12 “The Protocol” means the Protocol on Corporate Governance in the Public Sector (2002).

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- 1.13 “NYDA” means the National Youth Development Agency**
- 1.14 “Shareholder” means the Executive Authority.**
- 1.15 “DPME” means Department of Planning, Monitoring and Evaluation in the Presidency.**
- 1.16 “Treasury” means the National Treasury established in terms of Section 5 of the PFMA.**

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## 2. PREAMBLE

2.1 This Charter aims to regulate the parameters within which the Board will operate and to ensure the application of the principles of good corporate governance in all dealings by, in respect and on behalf of the NYDA.

2.2 Whilst this Charter of necessity includes references to minimum acceptable standards of governance, in pursuit of its underlying ideals, it is critical that substance prevails over form. The Board reaffirms its intention to exceed these corporate governance standards wherever reasonable, having due consideration to:

- 2.2.1 recognised standards of governance;
- 2.2.2 best practice locally and internationally;
- 2.2.3 the recommendations of the King Code on Governance (King IV);
- 2.2.4 the Protocol on Governance of the Public Sector (the Protocol); and
- 2.2.5 the provisions of the Act.

2.3 Each Director will sign a copy of this Charter and will constitute an integral part of each Director's terms and conditions of appointment.

## 3. PURPOSE

3.1 The purpose of this Board Charter is to:

- 3.1.1 set out the vision, mission, roles and responsibilities of the Board of the National Youth Development Agency;
- 3.1.2 ensure that all Board members are aware of their individual and collective duties and responsibilities;
- 3.1.3 ensure that Board Members are aware of the various legislation, regulations and policies affecting their conduct;
- 3.1.4 ensure that the principles of corporate governance are applied in their dealings in respect of, and on behalf of the NYDA.

3.2 This Charter aims to regulate the parameters within which the Board will operate and to ensure the application of the principles of good corporate governance in all dealings by, in respect and on behalf of the NYDA.

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## 4. COMPOSITION, SIZE AND APPOINTMENT OF THE BOARD

- 4.1 The NYDA subscribes to a unitary Board, consisting of Non-Executive and Executive Directors that both lead and control the Agency.
- 4.2 The Board consists of a majority of Non-Executive Directors as required by the NYDA Act.
- 4.4 The composition of the Board shall reflect the need to protect the interests of its stakeholders.
- 4.5 The Board membership shall comprise a wide range of skills, knowledge, views and experience to achieve the balance necessary to meet its strategic objectives.
- 4.6 In line with the Act, Board membership of NYDA shall consist of 7 (seven) members as follows:
- (a) Two Executive Directors;
  - (b) Five Non –Executive Directors; and
  - (c) The Chief Executive Officer, who is an ex-officio member of the Board with no voting rights.
- 4.7 The President of the Republic shall, from time to time in line with the Act, appoint and remove as members of the Board the persons appointed as members of the Board. The Members of the Board shall, save for the Chairman and Deputy Chairman as per the Act, be Non-Executive members of the Agency. The President shall designate one member of the Board as Chairperson and designate another member as Deputy Chairperson. The Chief Executive Officer shall be appointed by the Board.

## 5. MEMBERSHIP

- 5.1 Membership of the Board must be fairly representative of the demographic and geographic spread of the Republic.
- 5.2 The roles of the Executive Chairperson, Executive Deputy Chairperson and Chief Executive Officer shall be separate, and a clearly accepted division of responsibilities to ensure a balance of authority and power such that no one individual has unfettered powers of decision-making and to avoid situations of conflict.

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- 5.3 Notwithstanding that the NYDA is not subject to the Companies Act, Section 77 of the Companies Act No 71 of 2008) or similar provisions in its successor Act shall be observed as to the disqualification from appointment as directors. Board appointees should be ascertained to be “fit and proper”, and shall have clear criminal and credit backgrounds that will not adversely affect the reputation or operations of the Agency.

### **6 PERIOD OF OFFICE**

- 6.1 The term of office of a member of the Board shall be three years. Any person, who replaces a member who vacates his /her office, must serve for the balance of the term of the member who has been replaced.
- 6.2 The Chief Executive Officer's term of office shall be for such period not exceeding five years. The Chief Executive Officer shall be eligible for reappointment. It is good practise that Chief Executive Officer should not hold office for more than two terms.

### **7 ROLE AND RESPONSIBILITIES OF THE BOARD**

- 7.1 The Board accepts that it is ultimately accountable and responsible for the affairs of the Agency. To this end, the Board shall:
- (a) Retain full and effective control of the Agency;
  - (b) Be responsible for implementing the “Objects of the Agency” and “Principles of Youth Development” as defined in the Act;
  - (c) Fulfil the Agency's responsibility in terms of ‘Reporting by Agency’ as defined by the Act;
  - (d) Appoint the Chief Executive Officer;
  - (e) Determine the Agency's values;
  - (f) Determine the strategy to achieve its purpose;
  - (g) Approve, on an annual basis, the Business Plan, Budgets and Reporting Framework of NYDA;
  - (h) Exercise leadership, enterprise, integrity and judgement in directing the Agency so as to achieve sustainability for the Agency;
  - (i) Monitor and evaluate the implementation of Strategies, Policies and Management performance criteria and business plans;
  - (j) Identify key risk areas and key performance indicators of the Agency in order for it to achieve its objectives in a sustainable manner so as to enhance stakeholder value;

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- (k) Regularly review processes and procedures to ensure effectiveness of internal systems of control and accept responsibility for the total process of risk management;
- (l) Identify and monitor relevant Non-Financial matters;
- (m) Ensure that the Agency complies with all relevant laws, regulations and leading practices;
- (n) Ensure that technology and systems are adequate to run NYDA properly and for it to provide world class products and services through efficient use of its assets, processes and human resources;
- (o) Creation, enforcement, monitoring and auditing of development and progress of an organisational culture, structures and process that seek to support the development of people and the optimisation of their potential;
- (p) Address and correct any inequalities in staff profiles and organisational practices;
- (q) Establish procedure for induction programme for incoming Directors;
- (r) Regularly assess Board performance and effectiveness as a whole, and that of individual directors, including that of the Chief Executive Officer;
- (s) Ensure that the Agency has developed a succession plan for the Executive Directors and Senior Management;
- (t) Ensure that the Agency communicates with Shareholders and relevant Stakeholders openly and promptly;
- (u) Review the Shareholders Compact and any amendments thereof prior to submission to the Executive Authority for conclusion;
- (v) Recommend proposals of transaction in terms of S54 of the PFMA to the Executive Authority;
- (w) Recommend remuneration of directors and independent specialist for approval by the Executive Authority; and
- (x) Inform the Executive Authority of any act misconduct against a director as prescribed in section ten (10) of the NYDA Act.

## 8 ROLE OF THE EXECUTIVE CHAIRPERSON

8.1 The Chairperson is the Executive Director and the head of the Board. His responsibilities include, but are not limited to:

- (a) Ensuring that all Board members are fully involved and informed of any business issue on which a decision is taken;



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- (b) Ensuring that Non-Executive Board Members monitor the business and contribute to the business decisions of the Agency;
- (c) Formulate with the Chief Executive Officer and the Company Secretary the yearly workplan for the Board against agreed objectives and playing an active part in setting the agenda for Board meetings;
- (d) Ensuring that the performance of the CEO is appraised on an annual or other more frequent basis;
- (e) Ensuring that the Board functions properly; that it meets its obligations and responsibilities; and that the Board ensures the fulfilment of the NYDA mandate as stipulated in the NYDA Act; and
- (f) Reporting to the Minister in the Presidency: Planning, Monitoring & Evaluation (DPME) and maintaining open communication with the Chief Executive Officer and the Company Secretary;
- (g) Provide overall leadership to the Board without limiting the principle of collective responsibility for Board decisions while at the same time being aware of the individual duties of Board members;
- (h) Act as the link between the Board and the Chief Executive Officer and the Company Secretary;
- (i) Monitor how the Board functions as a collective and how individual directors perform and interact at meetings;
- (j) Encourage mentorship and skills development programmes that will enhance directors confidence and encouraging them to speak and make active contribution at meetings;
- (k) Ensure that material matters in respect of the business or governance of the NYDA that he is aware of, are tabled at Board meetings.

### 8.2 More specifically, the Chairperson shall:

- (a) Support the CEO to develop the strategic plan which will provide strategic direction which is formalised through the Shareholders Compact with the Executive Authority i.e. Minister in The Presidency: DPME
- (b) Ensure that it effectively monitors all managerial and NYDA decisions and transactions;
- (c) Communicate with External Stakeholders including partnership development and external relations especially with Legislative and Executive arms of Government;

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- (e) Lobby and advocate – within the context of the NYDA mandate & the provisions of the NYDA Act;
- (f) Ensure a functional relationship with the Executive Authority;
- (g) Set and guide the research agenda of the NYDA; (i)Oversee the work of External (independent) Chair of Audit Committees;
- (j) Present Status of Youth reports to Parliament as prescribed in the NYDA Act;
- (k) Governance – fiduciary responsibilities including:
  - i. Chairing meetings of the NYDA Board;
  - ii. Ensuring that Board and Board Committees perform their duties in accordance with the relevant Charters.
  - iii. Act as liaison and maintain effective communication with all other Board Members to ensure functionality and effectiveness of the Board and its Committees;
  - iv. Ensures that the Board receives adequate and regular updates from the Executing Authority and Chief Executive Officer on all issues important to the welfare and future of the NYDA;
  - v. Meets periodically with the Chief Executive Officer to optimise his liaison function and to ensure efficient communication between management and the Board;
  - vi. At the request of and in coordination with the Executing Authority and the Chief Executive Officer, provide assistance on major policy issues such as expansion and capital expenditure and other similar strategic initiatives with significant operational and budgetary implications ; and

### **8.3 The Deputy Chairperson must:**

- i. When the chairperson is absent or unable to perform his or her duties, act in his or her stead and when so acting, perform any function of the Chairperson. It is a preferred practice that the Executive Chairperson & Deputy share responsibilities
- ii. He/she shall also implement special projects determined by the Board from time to time, provided these are in line with the strategic objectives of the organisation. See Appendix IV for a list special project.

## **9. CHIEF EXECUTIVE OFFICER**

### **9.1 APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER**

- (a) The Board must appoint a suitably qualified person as Chief Executive Officer

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- (b) The Chief Executive Officer is an employee of the Agency and is accountable to the Board
- (c) The Chief Executive Officer holds office for an agreed term not exceeding 5 years and may be reappointed upon expiry of that term of office.
- (d) The Board must conclude a written performance agreement with the Chief Executive Officer;
  - i. within three months after the appointment of the Chief Executive Officer and;
  - ii. thereafter, annually within one month of the commencement of each financial year.
- (e) The performance contract must include;
  - i. measurable performance objectives and targets that must be met, and must provide for time-frames within which those performance objectives and targets must be met;
  - ii. standards and procedures for evaluating performance and intervals for evaluation and consequences of substandard performance

### **9.2 DUTIES OF THE CHIEF EXECUTIVE OFFICER**

The Chief Executive Officer is responsible for, amongst others:

- (a) exercising an appropriate level of leadership for the organisation;
- (b) effectively communicating a vision, management philosophy, and business strategy to the Agency's employees;
- (c) the general and active management of the business affairs of the Agency;
- (d) the general supervision and direction of all other officials of the Agency;
- (e) developing and recommending to the Board a sound long term strategy for the Agency that meets the needs of the Agency, government, communities, employees and other stakeholders;
- (f) ensures that the strategies of the Agency are effectively implemented with timely progress towards strategic objectives;
- (g) obtaining and allocating resources consistent with strategic objectives and making timely adjustments in strategies when market conditions and other forces demand change;
- (h) carrying out a comprehensive budgeting process and monitoring the Agency's financial performance against the budget;
- (i) submitting annual reports, inclusive of the annual financial statements of the Agency to the Audit Committee;

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- (j) developing an annual strategic plan and budget in accordance with the Public Finance Management Act; and
- (k) Approving the delegation policy for all matters not reserved for the Board.

### 9.3 ROLE OF THE COMPANY SECRETARY

9.3.1 The NYDA Company Secretary ensures that the Board complies to all provisions of the Act and submits all submissions in terms of the Public Finance Management Act of 1999, as amended (PFMA) timeously.

9.3.2 In addition, he/she must ensure that:

- (b) The Board complies to the Charter
- (c) The Board annually conducts self-evaluations and evaluation of the Committees of the Board;
- (d) Board members are timeously and adequately inducted and made aware of their fiduciary duties as directors. Board Members may request the Company Secretary for additional training as directors;

9.3.3 The Company Secretary must develop annual training needs of the Board and ensure that induction of new Board is conducted within the first three months of appointment

- (a) The minutes of all board meetings and the meeting of the Committee's of the Board are properly recorded
- (b) All original Agency documentation is securely stored, including the Shareholders Compact, resolutions, round robins, minutes of meetings and submissions to the Executive Authority by the Board
- (c) The Company Secretary must ensure records of directors are maintained. The record should contain in respect of each director, that person's:
  - i. Full name, any former names;
  - ii. Copy of identify document;
  - iii. Curriculum vitae;
  - iv. Nationality and passport number;
  - v. Occupation;
  - vi. Date of the most recent appointment as director of the entity; and
  - vii. The name and registration number of every other entity of which the person is a representative
  - viii. Providing advice on legal compliance matters affecting the company;

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- 9.3.4 The role and responsibilities of the Company Secretary is outlined in the Companies Act and the King IV Code of Corporate Governance. The guidelines issued by the Chartered Secretaries Southern Africa (CSSA) (*Description of the function of the Company Secretary in South Africa*) should be referred to.

### 10 BOARD PROCEDURES

- 10.1 The conduct of Directors shall be consistent with their accountability to the Agency and responsibility to all stakeholders.
- 10.2 The Board shall be disciplined in carrying out its role, with the emphasis on strategic issues and policy.
- 10.3 Director's responsibilities and limitation are set out in the Public Finance Management Act No 1 of 1999 (as amended), and best practise as stipulated in codes such as the King reports.
- 10.4 The Board's discussions shall at all times be open, objective and constructive. All decision of the Board must be made preferably by consensus, and as a last resort, by voting, of all members present. Discussions and records shall remain confidential unless with specific direction from the Board to the contrary.
- 10.5 The Board has sole authority over its agenda. However, any Director may request the addition of an item on the agenda. The agenda shall be exercised through the Chairman.
- 10.6 The Directors are entitled to have access, at reasonable times, to the entire relevant Agency's information and to management. The use of external service providers for professional advice should follow the Agency's normal procurement policies and procedures.
- 10.7 The Directors are entitled to seek professional, advice subject to strict adherence to observing the restrictions to the use and confidentiality of Agency's information.
- 10.8 At each quarterly Director's meeting, the Board shall consider:
- (a) An operational report from the Chief Executive Officer;
  - (b) Summary Reports on the activities from the Agency's individual business units;
  - (c) A financial report, after review by the Audit Committee, as prepared by the Chief Financial Officer;
  - (d) Financial forecasts for the remainder of the financial year;

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- (e) Proposals for transaction as per Section 54 of the PFMA;
- (f) Major issues and opportunities for Board consideration;
- (g) Approve the quarterly management accounts
- (h) The reports of the meetings of all Board Committee's; and
- (i) Ratifying the decisions made at meetings of Board Committee's through review of minutes of the respective Committee's.

10.9 At intervals of not more than one year, the Board shall:

- (a) Review the Agency's goals and objectives;
- (b) Review and approve the Annual Strategic Plan for achieving those goals and objectives;
- (c) Approve the Annual Budget that supports the Annual Strategic Plan;
- (d) Approve the Annual Financial Statements and reports to the Shareholder as per Section 6(2) of the Act
- (e) Approve the Strategic Risk Register;
- (f) Approve the Directors report to be published in the annual report
- (g) Disclose in the Annual report whether the Audit Committee performed its responsibilities for the year in compliance to its terms of reference;
- (h) Review the Board's performance, composition, structure succession;
- (i) Review the Agency's external audit report;
- (j) Review the performance of, necessity for, and composition of Board committees;
- (k) Approve the Chief Executive Officer's remuneration;
- (l) Approve remuneration policies and practices in general, including incentive schemes for management as recommended by the Human Resources and Remuneration Committee;
- (m) Review risk assessment policies and controls, including compliance with legal and regulatory requirements;
- (n) Review the Agency's code of conduct and ethical standards;
- (o) Review the Shareholder and client relations;
- (p) Meet with all the Committee's of the Board to ensure they meet their responsibilities in terms of their respective charters

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## 11 COMMITTEES

- 11.1 The Board is authorised to form Board Committees in the execution of its duties, powers and authorities, but at all times remains accountable to the Shareholder.
- 11.2 The following are Board committees:
- (a) Audit Committee
  - (b) Human Resource and Remuneration Committee
  - (c) Investment Committee
  - (d) Executive Management Committee
  - (e) Social & Ethics Committee
  - (f) ICT Steering Committee
- 11.3 Each Board Committee will have a Charter as approved by the Board.
- 11.4 The Board may establish any other Committee it deems necessary. However, the Board may, if it deems it necessary, form any other subcommittee of the Board or abolish any existing subcommittee save for a subcommittee, which is a creature of statute.
- 11.5 Board Committees must be constituted having regard to the skills, expertise and experience of Members with reference to the respective Committees' mandates. Where appropriate or necessary, independent external professionals with relevant skills and expertise may be appointed to assist or bolster the Committees where there is a shortage of such skills or expertise. Co-opted professionals shall form part of additional members to the Committee, shall form part of the quorum for meetings and shall have voting rights.
- 11.6 Committees must have due regard to the fact that they do not have independent decision-making powers. They make recommendations to the Board except in situations where the Board authorises the Committee to take decisions and implement them. Thus, in undertaking its duties, each Committee must have due regard to its role as an advisory body to the Board, unless specifically mandated by the Board to make decisions or as per the relevant charters and delegation of authority.
- 11.7 Formal report back, in writing, shall be provided by the Chairperson of each Committee to all Board meetings following the Committee meetings to keep the Board informed and to enable the Board to monitor the Committee's effectiveness.



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## 12 RISK MANAGEMENT

- 12.1 The Board is responsible for the governance of risk. The Board is also responsible for disclosures on Risk Management in the Annual Reports and Financial Statements.
- 12.2 The Board is furthermore ultimately responsible to ensure that a risk assessment is undertaken at least annually for the purpose of making its public statement on risk management as well as ensuring that at appropriately considered intervals, it receives and reviews reports on the risk management process.
- 12.3 The Board is responsible for considering the significant risk exposures that face the Agency and state that it has given these risks due consideration and application, as well as whether or not the Board believes that the business will be a going concern in the year ahead.
- 12.4 The Board is also responsible to report significant risks that affect decisions of stakeholders in their dealings with the Agency, and which should be disclosed in the annual report.
- 12.5 An effective, ongoing process shall be in place to identify risks, measure their impact and proactively manage and monitor these.
- 12.6 The fundamental element of the role of the Board will be satisfying themselves that Executive Management are managing risks in an appropriate and informed fashion.
- 12.7 The Audit Committee will assist the Board in discharging its responsibilities with respect to risk management as laid out in the King IV's Code of Corporate Practices and Conduct or similar provisions in its successor code and the Public Finance Management Act of 1999 (as amended)

## 13 CORPORATE GOVERNANCE

- 13.1 The Board shall be ultimately responsible for ensuring that an adequate and effective process of Corporate Governance is established and maintained.
- 13.2 The process shall be consistent with the nature, complexity and risk inherent in the Agency's activities. The process shall also respond to changes in the Agency's



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environment and conditions. The Board may appoint supporting committees to assist with its responsibilities, as and when required.

13.3 The external auditor shall be requested to assess the review of compliance annually.

13.4 A director of the Agency must:

- (a) not use the position, or any information obtained while acting in the capacity of a director to gain an advantage for the director, or for another person other than the Agency;
- (b) not knowingly cause harm to the Agency;
- (c) communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director reasonably believes that the information is immaterial to the Agency;
- (d) generally, be available to the public, or known to the other directors;
- (e) exercise the powers and perform the functions of director in good faith and for a proper purpose in the best interests of the Agency; and
- (f) exercise the degree of care, skill and diligence that may be reasonably be expected of a person carrying out the same function in relation to the Agency as those carried out by that director; and
- (g) have the general knowledge, skill and experience to be a director.

## 14 REMUNERATION

- 14.1 Members who are employed by an organ of state are not entitled to remuneration, or any allowance, but must be reimbursed for out-of-pocket expenses by the Board;
- 14.2 The remuneration of the Non-Executive Directors or Specialists who are not employed by an organ of state shall receive fees per meeting attended and preparation. Board Fees shall be from time to time be amended guided by the National Treasury Remuneration levels for Office Bearers and of Certain Statutory and other State Institutions;
- 14.3 The remuneration of the Executive Chairperson and Executive Deputy Chairperson is determined by the Executive Authority
- 14.4 The Chief Executive Officer is an employee of the Agency paid a level of remuneration appropriate to their office, which shall be reviewed annually by the Board after recommendation of the Human Resource & Remuneration Committee.

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- 14.5 No additional fees shall be paid to Executive Directors other than in accordance with their specific employment contracts.
- 14.6 Applicable taxation will be deducted.

### **15 MEETINGS AND BOARD ATTENDANCE**

- 15.1 Meetings of the Board shall be held at least once every quarter at the premises of the Agency or as the Chairperson deems appropriate.
- 15.2 The quorum for decisions of the Board shall be fifty percent (50%) plus one (01) which must include the Chairperson or Deputy Chairperson, as stipulated in the Act. The quorum should be present in person and/or via teleconferencing or video conferencing throughout the meeting of the Board.
- 15.3 No meeting shall be held in the absence of either the Chairperson or the Deputy Chairperson.
- 15.4 The Chief Financial Officer and Risk shall have standing invite to Board meetings.
- 15.5 Members and attendees are required to arrive on time in all the Board and Board Committee meetings and behave in a professional manner for the common interest of the NYDA.
- 15.6 There would be a minimum cancellation notice period of 48 hours for a meeting.
- 15.7 Directors shall use their best endeavours to attend Board meetings and to prepare thoroughly.
- 15.8 Directors are expected to participate fully, frankly and constructively in Board discussions and other activities and to bring the benefit of their particular knowledge, skills and abilities to the Board table and in so doing, add value to the Board. Directors who are unable to attend a meeting shall advise the Company Secretary prior to the commencement of the meeting.

### **16 PROCEEDINGS AT MEETINGS**

- 16.1 Except under exceptional circumstances, the notice of meetings together with the agenda of the meeting will be sent to the members and invitees at least fourteen (14) days' (including weekends and holidays)..

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16.2 Supporting documentation or briefing materials, shall be provided to the members of the Committee and all invitees at least seven days (including weekends and holidays) before the meeting.

16.3 The Directors shall, cause minutes to be kept:

- (a) of names of Directors present at every meeting of the Agency; and
- (b) of all proceedings at all Board and Committee meetings of the Agency.

16.4 Minutes of the meeting shall be taken by the Company Secretary and shall be circulated to all members of the Board within ten working days after the meeting. Such minutes shall be signed by the Chairperson of the meeting or by the Chairperson of the succeeding meeting.

### **17 PROFESSIONAL OR BUSINESS SERVICES PROVIDED BY DIRECTORS**

17.1 Non-Executive Directors should, as a general rule, not provide any professional or business services to the Agency.

### **18 ROUND ROBIN RESOLUTIONS**

18.1 The Board is eligible to sign off Round Robin Resolutions. Accompanying the document should be all documentation necessary for members to make an informed decision.

18.2 If the decision is regarding a matter not previously discussed at a Board meeting then all directors are required to sign the round robin.

18.3 If the matter has been discussed at a prior board meeting then the Round Robin Resolutions shall be signed by all the members present at the original meeting.

18.4 A round robin should be ratified at the next board meeting.

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## 19 BOARD EVALUATIONS

- 19.1 The Board shall each year critically evaluate its composition, own performance, processes and procedures to ensure that they are designed to assist the Board in effectively fulfilling its role. Guidance in the King Code of Corporate Practices and Conduct (King IV) or similar provisions in its successor code shall, at a minimum, be adopted.

## 20 DECLARATION OF INTEREST

- 20.1 A conflict of interest is defined as a situation in which a person, either directly or indirectly, has a private or personal interest, which is sufficient to create a reasonable perception that the objective exercising or performance of official duties may be compromised.
- 20.2 Directors shall at all times observe the legal requirements in respect of the declaration of interests and do everything reasonably possible to avoid a conflict of interest in the execution of their duties and responsibilities to the Agency.
- 20.3 Formal written declarations of interest in the prescribed format should be completed and registered with the Company Secretary annually. This includes declarations regarding service providers who are next of kin; interest in juristic entities, details of private work conducted outside the Agency and any services received from or contracts entered into with the Agency by the member or his/her next of kin.
- 20.4 Declaration of Interest will be a standing agenda item for all Board and its sub-committee meetings.
- 20.5 Generally Directors are discouraged from having a conflict of interest.
- 20.6 Any possible conflict of interest shall at all times be declared up front and the Director concerned shall not participate in a discussion, or vote, on the subject matter.
- 20.7 A director, or his next of kin, who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract, which has been or is to be entered into by the Agency or who so becomes interested in any such contract after it has been entered into, shall declare his or his next of kin's interest and full particulars thereof.

## CHARTER OF THE NYDA BOARD OF DIRECTORS

- 20.8 A general notice in writing given to the directors of the Agency by a director thereof to the effect that he, or his next of kin, is a member of a specified company or firm and is to be regarded as interested in any contract which may after the date of the notice be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract or proposed
- 20.9 contract so made or to be made, if-
- (a) the nature and extent of the interest of the said director in such company or firm is indicated in the said notice; and
  - (b) at the time the question of confirming or entering into the contract in question is first considered or at the time such director becomes interested in a contract after it has been entered into, the extent of his interest in such company or firm is not greater than is stated in the notice.
- 20.10 A director, or his next of kin, who is in any way, whether directly or indirectly, materially interested in any proposed contract to be entered into by him on behalf of the Agency, shall, before entering into such contract, declare his interest and the full particulars thereof at a meeting of directors, and shall not enter into such contract unless and until a resolution has been passed by the directors approving thereof.
- 20.11 If a director or his next of kin, of the Agency is in any way, whether directly or indirectly, materially interested in a contract or proposed contract which is placed before the Agency's at any meeting thereof for confirmation or authorization, the notice convening any such meeting shall state the full particulars of the interest in such contract of the director concerned.
- 20.12 "Contract" includes a contract entered into by the Agency for operational purposes or for the purpose of deliverance of its services in terms of its mandate and includes loans and grants.
- 20.13 "Next of kin" means ones closest living relative like father, mother, brother, sister, spouse or children (including adopted children or a child of which the member is a guardian).
- 20.14 Although "next of kin" is limited to relatives as defined above one should also always take into account the definition of "Conflict of interest" as defined in 31.1.
- 20.15 This section is be read in conjunction with the Fraud Prevention Plan and Fraud Prevention Policy of the Agency.

# CHARTER OF THE NYDA BOARD OF DIRECTORS

## 21 GENERAL

- 21.1 The Board in carrying out its tasks under these terms of references, may obtain such outside or other independent professional advice, as it considers necessary to carry out its duties pursuant to the NYDA.
- 21.2 The selection and appointment of professional advisors shall be in accordance with the Agency's standard procurement policies and processes.
- 21.3 The travel of the Board members and external Board committee members shall be in accordance with the NYDA Travel Policy.
- 21.4 The Board may from time to time amend these terms of references, as and when required.
- 21.5 This charter should be read in conjunction with the Act.
- 21.6 Should a conflict between this Charter and any statutory law or regulation arise, that statutory law or regulation shall take precedence.
- 21.7 Non-compliance to this charter by a member constitutes an offence in terms of the PFMA.

## 22 INDEMNITY OF MEMBERS

- 22.1 Board Committee members shall use reasonable skill and care in the provision and delivery of the services and the deliverables required.
- 22.2 All findings and recommendations shall be made by the Board Members in good faith and based on information available at the time. Accordingly, no statement in any report, letter or document issued or adopted by the Board Members is to be deemed to be under any circumstances a representation, undertaking, warranty or guarantee and that no claim whatsoever will lie against the Board Members if such statement proves inaccurate.

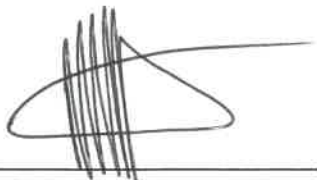
## CHARTER OF THE NYDA BOARD OF DIRECTORS

### 23 APPROVAL

#### APPROVAL OF THIS CHARTER

This Charter of the Board of Directors as set out above was approved by the

Board of Directors on the 29 day of MARCH 2019

  
\_\_\_\_\_  
**CHAIRPERSON**  
\_\_\_\_\_  
**DEPUTY CHAIRPERSON**

# CHARTER OF THE NYDA BOARD OF DIRECTORS

## APPENDIX I: DIRECTOR APPOINTMENT AND DEVELOPMENT

### PRE-APPOINTMENT CHECKLIST

1. Is there an appropriate mix of Board members, given the nature and size of NYDA?
2. What qualifications, specialist skills and experience are required from the new Board candidate?
3. What is the contribution and value-add required from the candidate?
4. Discuss culture and values with the candidate.
5. Enquire their level of understanding of King IV and the PFMA.
6. Obtain details of shareholdings in companies, directorships and related third party transactions.
7. Obtain candidate's consent to perform qualifications, criminal and credit clearance.
8. Will the candidate be able to devote sufficient time to the position?

### DIRECTOR'S CONTRACT CHECKLIST

1. Period of appointment;
2. Remuneration amount and method of payment;
3. Specific requirements (e.g. Board attendance);
4. Details of committee membership(s);
5. Explanation of common law fiduciary duties of good faith;
6. Explanation of common law duties of care, skill and diligence;
7. Explanation of duties of responsibilities and accountability;
8. Explanation of duty to ensure that the principles of good governance, as set out in the King II Code of Corporate Practices, are adhered to;
9. Duty to act within their powers and those of the Agency;
10. Duties as regards to any conflict of interest;
11. Details of any notice requirements;
12. Details of any qualification shareholding required (not applicable to NYDA / Sec 21);
13. Statement regarding director's position i.r.o. legal barriers to qualification as a director;
14. Explanation of any powers available to remove director from office before completion of appointment and the director's rights in this regard;
15. Requirements to disclose any material interests in companies and other entities;
16. Requirement to disclose any material interests in contracts;



## CHARTER OF THE NYDA BOARD OF DIRECTORS

17. Details of indemnification or insurance taken by the Agency for directors' liability when acting in good faith;
18. Details of directors' rights to:
  - access to Agency information;
  - reimbursement of expenditure;
  - discharge duties without restriction;
  - obtain external professional advice at the Agency's expense to discharge duties effectively;
  - take part in the Agency's management (if applicable) and attend and vote at all Board meetings;
19. Details of formal orientation programme or training required for director
20. Details of regular director evaluation programme being used by the Agency;
21. Details of guidance manual available for directors;
22. Specific reference to Agency's Code of Conduct and directors' responsibility;
23. Any other contractual responsibilities.

### APPENDIX II: DIRECTOR EVALUATION AND BOARD EFFECTIVENESS

#### KING REPORT ON CORPORATE GOVERNANCE: Appendix IV

It is axiomatic that to assess the Board's performance in carrying out its responsibilities, the Board first must have a firm understanding of just what its responsibilities are. Therefore, the assessment process begins with a review of the Board's areas of responsibilities. In addition to Board consideration of its own view of its governance role, it might also be useful to consider the management's expectations of the Board. In this regard, the Chief Executive Officer could be invited to present the Board with a statement of his or her own expectations of the Board for the Board to consider as it defines its responsibilities.

Once the Board has reviewed, articulated, and prioritised its tasks and thereby identified the information it requires from management, it can then benchmark its own success against its expectations and identify substantive areas for improvement.

## CHARTER OF THE NYDA BOARD OF DIRECTORS

The Board shall develop a detailed self evaluation that covers the following categories<sup>1</sup> (each with a list of questions:

- ◆ Board Role and Agenda Setting (Monitoring Performance and Strategic Planning);
- ◆ Size, Composition and Independence of Board;
- ◆ Director Orientation and Development;
- ◆ Board Leadership, Teamwork and Management Relations;
- ◆ Board (and Committee) Meetings;
- ◆ Director and Board Evaluation, Compensation and Ownership;
- ◆ Management Evaluation, Compensation and Ownership;
- ◆ Succession Planning;
- ◆ Ethics;
- ◆ Constituencies;
- ◆ Management's View.

### APPENDIX III: PFMA CHAPTER 6 PART 2

#### 49. Accounting authorities.—

- (1) Every public entity must have an authority which must be accountable for the purposes of this Act.
- (2) If the public entity—
  - (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or
  - (b) does not have a controlling body, the chief executive officer or the other person in charge of the public entity is the accounting authority for that public entity unless specific legislation applicable to that public entity designates another person as the accounting authority.
- (3) The relevant treasury, in exceptional circumstances, may approve or instruct that another functionary of a public entity must be the accounting authority for that public entity.

[Sub-s. (3) substituted by s. 28 (a) of Act No. 29 of 1999.]

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<sup>1</sup> Board Self-Evaluation Guidelines adapted from the Report of the NACD Blue Ribbon Commission on Director Professionalism (2001 Edition)

## CHARTER OF THE NYDA BOARD OF DIRECTORS

- (4) The relevant treasury may at any time withdraw an approval or instruction in terms of subsection (3).

[Sub-s. (4) substituted by s. 28 (b) of Act No. 29 of 1999.]

- (5) A public entity must inform the Auditor-General promptly and in writing of any approval or instruction in terms of subsection (3) and any withdrawal of an approval or instruction in terms of subsection (4).

### **50. Fiduciary duties of accounting authorities. —**

- (1) The accounting authority for a public entity must—

- (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
- (b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
- (c) on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and
- (d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.

- (2) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not—

- (a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or
- (b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.

- (3) A member of an accounting authority must—

- (a) disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and
- (b) withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

### **51. General responsibilities of accounting authorities. —**

## CHARTER OF THE NYDA BOARD OF DIRECTORS

(1) An accounting authority for a public entity—

- (a) must ensure that that public entity has and maintains—
  - (i) effective, efficient and transparent systems of financial and risk management and internal control;
  - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and
  - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
  - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
- (b) must take effective and appropriate steps to—
  - (i) collect all revenue due to the public entity concerned; and
  - (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
  - (iii) manage available working capital efficiently and economically;
- (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;
- (d) must comply with any tax, levy, duty, pension and audit commitments as required by legislation;
- (e) must take effective and appropriate disciplinary steps against any employee of the public entity who—
  - (i) contravenes or fails to comply with a provision of this Act;
  - (ii) commits an act which undermines the financial management and internal control system of the public entity; or
  - (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;
- (f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by this Act;  
[Para. (f) substituted by s. 29 of Act No. 29 of 1999.]
- (g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative,

## CHARTER OF THE NYDA BOARD OF DIRECTORS

and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and

(h) must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity.

(2) If an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority in this Part, the accounting authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury.

### **52. Annual budget and corporate plan by Schedule 2 public entities and government**

#### **business enterprises. —**

The accounting authority for a public entity listed in Schedule 2 or a government business enterprise listed in Schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that public entity or government business enterprise, and to the relevant treasury, at least one month, or another period agreed with the National Treasury, before the start of its financial year—

- (a) a projection of revenue, expenditure and borrowings for that financial year in the prescribed format; and
- (b) a corporate plan in the prescribed format covering the affairs of that public entity or business enterprise for the following three financial years, and, if it has subsidiaries, also the affairs of the subsidiaries.

[S. 52 amended by s. 30 of Act No. 29 of 1999.]