



EVELYN
FOUNDATION

Constitution

Table of Contents

Part A: Preamble	3
Part B: Interpretation	4
Part C: Purpose, Supremacy	4
Part D: The Constitution & Bylaws	5
1. Identity, Language	5
2. Principal Offices, Branches	5
3. Juristic Personality	5
4. Primary, Ancillary Objectives	6
5. Patronage	6
6. Income, Property, Other Assets	6
7. Taxation, Exemption Thereof	7
8. Powers, Limitations Thereof	8
9. Executive Board (The “Board”)	9
10. Foundation Policies	13
11. Membership, Meetings	13
12. Finances, Financial Reporting	16
13. Dispute Process	17
14. Constitution Amendments, Revisions	18
15. Dissolution, Winding Up	18
16. Indemnity	19
17. Governing Law	19
Part E: Acceptance of this Constitution	20

Part A: Preamble

About Non-Profit Organisations

Non-Profit Organisations (NPOs) are, by nature, committed to a number of values and principles that are different from those which are applicable to the commercial sector. The primary difference of purpose is that an NPO exists solely to serve the common good, and promote a public benefit, rather than to achieve individual profit or advance self-interest, which is the normal purpose of a for-profit entity.

They exist for the benefit of the general public or specific aspects or sections of the public, and are created specifically to serve the community. Any profit that is produced by an NPO must be used to make a greater impact in terms of its public purpose.

Most NPOs rely on donations, grants, and legacies via fundraising initiatives, as they often serve sections of the community that cannot afford to pay for the full cost of the service they provide.

In the Spirit of Ubuntu

They represent an applied manifestation of the principle known in the Nguni languages as 'ubuntu', which may be translated as 'humanness', and is often illustrated by the idiomatic expression *umuntu ngumuntu ngabantu* (a person is a person because of people). Ubuntu implies a relationship of mutual and reciprocal responsibility between individuals and communities. As such, the major purpose of NPOs is to meet a need or advance a purpose in the interest of the public. They are a means for communities to share resources, demonstrate concerns, promote values, and demonstrate a shared responsibility for those within society who are in need, or have difficulty in caring adequately for themselves.

Archbishop Desmond Tutu described ubuntu as 'the essence of being human', saying,

“Ubuntu speaks particularly about the fact that you can't exist as a human being in isolation. It speaks about our interconnectedness. You can't be human all by yourself, and when you have this quality – ubuntu – you are known for your generosity. We think of ourselves far too frequently as just individuals, separated from one another, whereas you are connected and what you do affects the whole world. When you do well, it spreads out; it is for the whole of humanity.

Accountability

NPOs are formed on the initiative of ordinary citizens, and are constituted independently of government. They remain accountable to the communities they represent and serve.

Part B: Interpretation

In this Constitution, unless the context otherwise requires, –

- a) “Act” shall refer to the Non-Profit Organisation Act (71 of 1991) and the regulations published thereunder;
- b) “Foundation” shall refer to “The Evelyn Foundation”, a voluntary, non-profit association/organisation constituted in terms hereof;
- c) “Board” shall refer to the collective Members of the Executive Board appointed to manage the affairs of the Foundation;
- d) “Constitution” shall refer to this subsisting and duly adopted Constitution of the Foundation;
- e) clause/part headings are for convenience purposes only, and shall thus be disregarded in interpreting this Constitution;
- f) words in the singular shall include the plural and vice-versa;
- g) words importing persons shall include created legal entities;
- h) where figures are referred to in numerals and words, the words shall prevail, should there be any conflict between the two; and
- i) when any number of days is prescribed in this Constitution for the issuing of a notice, the same shall exclude the first and include the last day from the date of issuing such notice, unless the last day falls on a Saturday, Sunday, or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday, or public holiday.

Part C: Purpose, Supremacy

This document forms the Constitution of The Evelyn Foundation and, as such, sets out the manner in which it operates.

This Constitution shall supersede any other document that regulates the conduct of members, their relationship, or purports to confer authority to the Foundation or any structure falling under or formed by the Foundation. This Constitution shall bind the Board and all other structures established by the Foundation, whether under this Constitution or any document purporting to confer such authority.

Part D: The Constitution & Bylaws

1. Identity, Language

- a) The Foundation hereby constituted shall be called “The Evelyn Foundation”. There shall be no shortened name, barring wherever “TEF” is used (only in technical frameworks and systems).
- b) The Foundation is a voluntary association of individuals.
- c) The primary language of the Foundation shall be English. However, additional languages may be considered by the Board and then used, should the need to do so arise.

2. Principal Offices, Branches

- a) The Foundation shall have its principal offices within the Republic of South Africa, as the Board may designate or as the affairs of the Foundation may require from time to time.
- b) Further, the Foundation may open branches in order to boost operations in a particular area. If the Board elects to open one or more branches, it shall open such branches within the Republic of South Africa, and shall endeavour to formulate a Branch Charter that shall, by resolution of the Board, either be amended to this Constitution or adopted and enacted as a Foundation Policy, subject to the provisions set out in 10.a).

3. Juristic Personality

- a) As a Body Corporate (a legal entity identified by a particular name, as defined in 1.a)), the Foundation shall –
 - i) exist in its own right, distinct from its members;
 - ii) continue to exist, even when a change occurs in membership and/or office bearers (the Board, as defined);
 - iii) be able to own and dispose of property and other possessions;
 - iv) be able to sue and be sued in its own name; and
 - v) be incorporated as a Non-Profit Organisation (NPO), endowed with legal personality under the laws of the Republic of South Africa, in terms of the Act;

4. Primary, Ancillary Objectives

- a) The Foundation is established with the following primary public-benefit, not-for-profit objectives:
 - i) to provide direct or financial relief in terms of health and welfare and/or education programmes relating to, abandoned, abused, neglected, orphaned and/or homeless children, young women, or otherwise traumatised persons (hereinafter, “affected persons”);
 - ii) to promote and/or directly or financially support community-based projects relating to self-help, empowerment, capacity building, skills development, and anti-poverty for affected persons, and to formulate projects with the same objectives and principals; and
 - iii) to provide direct or financial aid relating to health-care services for affected persons and/or their families.
- b) Where applicable and/or necessary, the Foundation shall, as an ancillary objective, and in whichever method it deems fit, work with other registered organisations that have similar goals and objectives to the Foundation.

5. Patronage

- a) The Board may, at any time, invite any person(s) to become an officially recognised Patron of the Foundation.
- b) Unless otherwise determined by a resolution of the Board, the tenure for a Patron shall be five (5) years.
- c) A retiring Patron is eligible for re-election by the Board.
- d) The Patron shall act as a figurehead of the Foundation, and shall have no powers, obligations, or responsibilities in relation to the affairs of the Foundation, except as may be required by the Board.

6. Income, Property, Other Assets

- a) The Foundation shall derive its income from donations, legacies, public and private grants, sponsorships, aids and interest on investments, membership dues (where applicable), and event-revenue.
 - i) The Foundation shall adopt and enact a policy that sets out rules and guidelines pertaining to due diligence in accepting, receipting, documenting, and reconciling donations.

- b) The Foundation shall keep an accurate and continuously-up-to-date record of everything it owns. Records of assets shall be stored digitally on an asset-register, and shall contain any applicable information pertaining to such assets.
- c) The Foundation may not give any of its money to its members or office bearers, unless in payment for services rendered by them to the Foundation. Any such payments made to members or office bearers shall be a reasonable amount for services provided or work done.
 - i) Notwithstanding the above, members and office bearers may be compensated by the Foundation for any pre-authorised, verifiable (by means of the provision of an official [tax] invoice and/or receipt) expenses they may incur whilst providing services to the Foundation.
- d) The Foundation shall not make any loans to any person, including any member, employee, or service-provider of the Foundation.
- e) All members do not have, and shall not claim to have, any rights over any possessions and/or property that belong to the Foundation.

7. Taxation, Exemption Thereof

- a) The Foundation may apply to the Commissioner of the South African Revenue Services (SARS) for approval as a Public Benefit Organisation (PBO), in terms of Section 30 of the Income Tax Act (58 of 1962).
- b) Upon approval, the Foundation shall –
 - i) be required to have at least three (3) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Foundation;
 - ii) ensure that no single person directly or indirectly controls the decision making powers relating to the Foundation;
 - iii) be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and be required to utilise its funds solely for the object for which it has been established;
 - iv) be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of Section 18A; provided that a donor may not impose

conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;

- v) ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner;
- vi) submit to the Commissioner a copy of any amendment to this Constitution;
- vii) not pay any remuneration to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- viii) comply with such reporting requirements as may be determined by the Commissioner;
- ix) take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule of the Act are utilised for the purpose for which they are provided; and
- x) not use its resources directly or indirectly to support, advance or oppose any political party.

8. Powers, Limitations Thereof

- a) The Foundation shall have the same powers as those of a company under the Companies Act, as amended. These shall include the power(s) to –
 - i) institute or defend any legal or other proceedings, and to settle any claims;
 - ii) raise funds and invite and receive financial and in-kind contributions, provided the terms and conditions set forth any enacted Foundation Policies are met, and that Executive Board and any assigned committees comply with any legal requirements;
 - iii) prudently invest funds of the Foundation;

- (1) Funds available for investment may be invested only in –
 - (a) one or more financial institutions as defined in Section 1 of the Financial Services Board Act (97 of 1990);
 - (b) one or more securities listed on a licensed stock exchange, as defined in the Stock Exchanges Control Act (1 of 1985);
 - (c) one legally registered entity designed to house the Foundation's investment portfolio; or
 - (d) one or more business enterprises designed to provide a sustainable monetary fund for the Foundation.
- iv) buy, attain, maintain, lease, sell, or in any way deal with property and assets of the Foundation;
- v) donate and transfer assets and property of the Foundation to any other PBO with similar objectives;
- vi) borrow and use assets and property of the Foundation as security for borrowing;
- vii) execute any act or deed in any deeds registry, mining titles, or other public office;
- viii) exercise all executive and management powers ordinarily vested in the Board of Directors of a Company; and
- ix) carry out all the powers and authority of the Foundation in the Republic of South Africa.

9. Executive Board (The “Board”)

- a) **Powers:** The Board shall manage the affairs of the Foundation in accordance with the resolutions of members in General Meetings.
- b) **Purpose:** The Board, consisting of Executive Members (defined in 9.e)), shall have three major roles:
 - i) to provide leadership and direction;
 - ii) to represent the Foundation in public; and
 - iii) to administer the affairs of the Foundation.
- c) **Good Standing:** Executive Members appointed to represent the Foundation may not have criminal records or judgments of any kind against their names. They must be adults of good standing, and be well-

regarded by their peers. The Foundation reserves its right to carry out any checks as may be necessary to ensure that this is the case.

- i) Should any Executive Member attain a criminal record or judgement against their name during the course of their service on the Board, the remaining Executive Members must be notified immediately, and the Executive Member in question shall resign with immediate effect.
- d) **Obligation(s):** All Executive Members shall exercise the following legal obligations whilst serving on the Board:
 - i) act in good faith and in the best interests of the Foundation;
 - ii) refrain from placing the public image or reputation of the Foundation at risk;
 - iii) prevent any personal interests from conflicting with the interests of the Foundation;
 - iv) apply their mind to decision-making and exercise independent discretion; and
 - v) refrain from acting beyond the Foundation's powers or limitations thereof, in terms of this Constitution.
- e) **Number and Portfolios:** A minimum of three (3), but no more than eight (8) members shall serve on the Board (the "Executive Members", who are the office bearers of the Foundation). The following portfolios shall be held by the minimum of three (3) members:
 - i) the *Board Chair*, who shall provide leadership to the Board, develop an agenda for meetings, monitor financial planning and reporting, play a leading role in fundraising activities, make annual evaluations of the Foundation's performance in achieving its mission, negotiate on behalf of the Foundation if given a mandate, and evaluate the performance of the Board on a regular basis;
 - ii) the *Vice Chair & Secretary*, who shall perform all of the Board Chair's duties in their absence, report to the Board Chair directly, maintain records of the Board and ensure effective logistics at meetings, manage and maintain minutes of meetings, and ensure legal compliance with the South African legal framework; and
 - iii) at least one (1) *Board Member*, who shall attend Annual General Meetings, Special General Meetings, and other important Board-related meetings, stay informed on all common matters of the

Foundation, make reviews and/or comments on minutes of meetings, build collegial relationships with other Executive Members, and participate in annual performance reviews and planning exercises.

- f) **Election:** All members of the Board shall be members of the Foundation. The Board shall be elected by the members of the Foundation at an Annual General Meeting.
- g) **Tenure:** Each Executive Member shall serve for on the Board for a period of four (4) years at a time, subject to re-election by the members of the Foundation. There is no limit of time for which an Executive Member may serve on the Board, so long as the services of such Executive Member are still required by the Foundation.
- h) **Vacancies:** The Board must, as soon as reasonably possible, appoint a person to fill any vacancy that reduced the number of Executive Members to less than three (3). The next General Meeting must confirm the office of any Executive Member appointed, failing which it shall lapse.
- i) **Co-option:** The Board may co-opt additional non-voting members as it may consider appropriate.
- j) **Resignation, Disqualification, Removal:** An Executive Member may resign from office in writing. An Executive Member shall be disqualified from office upon termination of membership to the Foundation and becoming incapable by reason of mental illness. An Executive Member may be removed from office through a full resolution of the remaining Executive Members of not less than two (2).
- k) **Delegation of Powers:** The Board may delegate any of its powers or functions to a committee, provided that –
 - i) such delegation and conditions are reflected in the minutes for that meeting;
 - ii) at least one Executive Member serves on such committee;
 - iii) the Board, in advance, approves all expenditure incurred by such committee; and
 - iv) the Board retains its right to revoke the delegation or amend the conditions at any time, with or without reason.
- l) **Procedures at Board Meetings:** The Board may regulate its meetings and proceedings as it deems fit, subject to the following:

- i) The Board Chair shall chair all meetings of the Board.
- ii) Meetings of the Board may be conducted face-to-face or electronically via video conference.
- iii) If the Board Chair is not present within fifteen (15) minutes of the appointed time of a meeting, the Vice Chair shall chair such meeting. In both their absence, the meeting shall be postponed, unless there are five (5) or more members serving on the Board, in which case the remaining Executive Members (not less than three (3)) shall elect a chair for such meeting.
- iv) The Board Chair shall convene a meeting of the Board at least quarterly, and at the written request of any other Executive Member.
- v) The quorum for a meeting of the Board shall be two-thirds (2/3) of the serving Executive Members.
- vi) If no quorum is present, the Board may make no decision, except to preserve the assets of the Foundation and to call a meeting of general members.
- vii) Each Executive Member present or represented through written proxy shall be entitled to one (1) vote.
- viii) Questions arising shall be decided by a majority of votes by the Executive Members. Should there be an equality of votes (a tie), the Board Chair shall have a casting or second vote to clear the tie.
- ix) Proper minutes and attendance records must be kept for all meetings of the Board. The meeting chair shall sign the minutes, which shall then be available at all times for inspection or copying by any member of the Foundation on two (2) days' notice to the Board Chair or Vice Chair.
- x) A resolution, signed by all Executive Members, shall be as valid as if passed at a duly convened meeting of the Board.
- xi) The Board may appoint employees and/or independent consultants (any person, firm, or corporate entity, as the Board may deem fit), upon such lawful terms and conditions as it may deem necessary.
- m) **Action without a Meeting:** Any action required or permitted at any meeting of the Board may be taken without a meeting, without prior notice, and without a vote, provided that all Executive Members entitled to vote thereon consent in writing. Such written consent(s) shall be filed with

the minutes of the proceedings, and shall have the same effect as a vote for all intents and purposes.

- n) **Conflict of Interest:** Any actual, potential, or perceived conflict of interest on the part of any Executive Member, on a matter pertaining to the Foundation, must be disclosed in writing to the Board, which shall record such conflict of interest in the minutes of the Board meeting. Such member may be requested by the Board to state their position in the matter [arising], or to respond to pertinent questions, but shall not vote or use their influence on the matter and shall not be counted for the purposes of determining a quorum for the meeting where voting takes place.
- o) **Confidentiality:** All matters pertaining to litigation, security measures, contractual negotiations, employment matters, and any other matters deemed confidential by the Board, must be treated as such, and only the actual decisions may be disclosed to the general public.

10. Foundation Policies

- a) The Board shall adopt and enact any necessary Foundation Policies as it deems necessary. Such policies shall be in full force and effect from the date on which they are signed-off and published by the Board.
 - i) **Severability:** If any term, provision, covenant, or condition of such policy shall be come illegal, null, void, or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null, void, or against public policy, the remaining provisions of such policy shall remain in full force and effect, and shall not be affected, impaired, or invalidated thereby. The *pro non scripto* term, provision, covenant, or condition that is so invalidated, voided, or held to be unenforceable shall be modified or changed by the Board to the extent possible to carry out the mission and objectives of the Foundation.

11. Membership, Meetings

- a) **First and Subsequent Members:** The First Members shall sign Schedule A of this Constitution. The Board may admit natural persons over the age of eighteen (18) [and legal persons] as members of the Foundation.
- b) **Conditions and Criteria:** The Board may determine the conditions and criteria for membership. Applications for membership that do not comply with such conditions and criteria may be refused by the Board.
- c) **Membership Transfers:** Membership is not transferrable.

- d) **Membership Registry:** The Board must keep a registry with all the names and addresses of its members. Such registry shall be recorded on hard- and soft-copy (printout and digital recording respectively).
- e) **Automatic Termination of Membership:** Membership shall automatically terminate upon the receipt by the Foundation of a notification of death of a natural member, or of the dissolution of a legal member (organisational member), and/or written resignation.
- f) **Membership Termination by the Board:** Membership terminates if a member is removed by a resolution of the Board, provided the member has been given an opportunity to make written or verbal representations at a meeting of the Board pertaining to the proposed termination, and the Board's decision to terminate membership was confirmed by resolution of two-thirds of the members present at the next general meeting, otherwise it will lapse.
- g) **Binding:** By virtue of their application to become a member, each member is deemed to have agreed to be bound by this Constitution.
- h) **Dues:** If applicable, the Board shall decide what entrance fees, annual subscriptions and other levies shall be paid by any class, group or sub-group of members determined by the Board from time to time.
- i) **Annual General Meetings:** All Annual General Meetings (AGMs) must be held within six (6) months after the end of the Foundation's Fiscal Period, as defined in 12.c). At least twenty-one (21) days' written notice must be given to all members of the Foundation stating the date, time, venue, and agenda of the AGM, which agenda must include –
 - i) the minutes of the previous AGM – to be approved and signed;
 - ii) the Board Chair's Annual Report, including any Constitutional changes to be read out by the Board Chair and discussed;
 - iii) the Treasurer's Annual Report, including the presentation of the Foundation's Annual Audited Financial Statements;
 - iv) the election of Executive Members;
 - v) the appointment or re-election of Auditors;
 - vi) resolutions regarding general policy; and
 - vii) other matters of interest, allowed by the Board Chair.

- j) **Special General Meetings:** The Board, or not less than one-third (1/3) of all members of the Foundation, may call a Special General Meeting (SGM) of the Foundation. At least fourteen (14) days' written notice must be given all members required to attend such SGM stating the date, time, venue, and agenda for the SGM. If the Board fails to give notice within seven (7) days of the request of one-quarter (1/4) of the members shall be entitled themselves to give notice of and to convene the meeting.
- k) **Powers of General Meetings:** The members in a properly convened General Meeting of the Foundation is the highest decision-making structure of the Foundation, as set out in this Constitution. The members in a General Meeting may review, approve, or amend any decision taken by the Board, in accordance with the provisions of this Constitution.
- l) **Procedures at General Meetings:** The members may regulate their meetings and proceedings as it finds fit, subject to the following:
 - i) The Board Chair shall chair all general meetings.
 - ii) General Meetings of the Foundation shall be conducted face-to-face or electronically via video conference.
 - iii) If the Board Chair is not present within fifteen minutes of the appointed time of a meeting, the Vice Chair shall chair such meeting. In both their absence, the members present at the General Meeting shall elect a chair for that meeting.
 - iv) The quorum for General Meetings of the Foundation shall be one quarter (1/4) of the members of the Foundation.
 - v) If a quorum is not present within fifteen (15) minutes of the appointed time of a General Meeting, such meeting must be adjourned to another date, within fourteen (14) days thereafter. Notice, as provided for under the Constitution, of such adjournment must be given to all members of the Foundation.
 - (1) If no quorum is present at the reconvened General Meeting within fifteen minutes of the appointed time, the members present, or represented by authorised proxy, shall deem to constitute a quorum for that meeting. In such event, this shall be recorded in the minutes for that meeting.
 - vi) A resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot can be demanded by not less than one-third (1/3) of the members present, or represented by authorised proxy.

- vii) Each member present or represented by authorised proxy shall be entitled to one (1) vote.
- viii) Except where this Constitution requires a higher threshold, questions arising shall be decided by a majority of votes by the Executive Members. Should there be an equality of votes (a tie), the Board Chair shall have a casting or second vote to clear the tie.
- ix) Proper minutes and attendance records must be kept for all General Meetings. The chair for the meeting shall sign the minutes, which shall then be available at all times for inspection or copying by any member of the Foundation on two days' notice to the Board Chair or Vice Chair.
- m) **Notices of Meetings:** All notices in terms of this Constitution must be given to members in writing (by hand, post, or electronic communication) to the applicable addresses provided by the members. The accidental omission to address notices to any member shall not annul the proceedings of any meeting. A member present in person at any meeting shall be deemed to have received notice of such meeting. If posted, notices shall be deemed to have been received seven (7) days after posting.

12. Finances, Financial Reporting

- a) **Banking Account:** The Board must open at least one (1) banking account in the name of the Foundation with a registered bank.
- b) **Signing:** Cheques and other documents requiring signature on behalf of the Foundation shall be signed by the Board Chair and/or the Vice Chair.
- c) **Fiscal & Accounting Periods:** The Fiscal Period (financial year) of the Foundation shall begin on 1 January, and end on 31 December (a calendar year). Additionally, the Foundation shall have four (4) internal Accounting Periods of three (3) months each per Fiscal Period.
- d) **Financial Report:** The Board must ensure that proper records and books of account (accounting records) which fairly reflect the affairs of the Foundation are kept and, within six (6) months after the end of its Fiscal Period, a report is compiled by an independent practising auditor registered in terms of the Auditing Profession Act stating whether or not the financial statements of the Foundation are consistent with its books of account, the accounting/financial policies have been appropriately applied with in preparing the financial statements, and the Foundation has complied with the financial provisions of this Constitution.

13. Dispute Process

- a) In the event of a serious disagreement between members regarding the interpretation of this Constitution, any two (2) Executive Members or any five (5) members of the Foundation shall be entitled to declare a dispute in writing. Such declaration shall state the issue in dispute, and be addressed to the Board.
 - i) The Board shall consider such declaration within two (2) weeks of receiving it. Should the Board not be able to internally resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred either to a mediator or arbitrator.
 - (1) Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Board must agree on a suitable mediator and the costs thereof. A mediator may recommend an appropriate resolution of the dispute.
 - (2) In the absence of agreement regarding a mediator, or should mediation not resolve the dispute, the dispute shall be referred to arbitration. The arbitrator shall be such suitably qualified person(s) as the person(s) declaring the dispute and the Board may mutually agree. Alternatively, each of the parties shall be entitled to nominate one (1) arbitrator, who shall act jointly with a third person to be nominated jointly by the respective nominees of the parties; on the basis that a majority decision of the appointed arbitrators shall be final and binding.
 - (a) The arbitration shall be held on an informal basis, and the arbitrator shall have the power to determine the procedure to be adopted, subject to principles of natural justice. The arbitrator may base their award not only upon the applicable law, but also upon the principles of equity and fairness.
 - (b) The person(s) declaring the dispute and the Board, may, beforehand, agree to share the costs of the arbitration. In the absence of such agreement the arbitrator shall decide which parties shall be liable for the costs. The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of the Court on application by any of them.

14. Constitution Amendments, Revisions

- a) This Constitution may be amended or revised by a two-thirds (2/3) majority of the Executive Members present at a Board meeting convened for the purpose.
- b) Proposed amendments and revisions shall be included in the agenda for such meeting. Notice of the proposed amendments and revisions shall be given to each Executive Member twenty-one (21) days prior to the Board meeting at which the amendment shall be considered, unless every voting member waives notice.
- c) A twenty-one (21) days' notice of the proposed amendments and revisions shall also be sent to every member of the Foundation. If any member objects, he/she must inform the Board in writing, giving their reasons and any suggested alternative(s), not later than seven (7) days before the meeting is set to take place. If ten percent (10%) of all members object in writing, the decision will be delayed to a general meeting. This provision shall not apply to formal amendments and revisions made by the Board to clarify or improve procedure, or to meet the requirements of SARS during the first year of operation of the Foundation.
- d) The amendments and revisions shall be reported to members at the following AGM, and a copy of the amendments and the Constitution shall be available for inspection. Copies of the amended Constitution shall be available for members on payment of the prescribed fee, if any.
- e) A Special General Meeting of Executive Members may be convened in terms of 11.j) to review and amend the Constitution. The Constitution may be amended at such a meeting by a resolution passed by not less than two (2) Executive Members voting in person or proxy, including the Board Chair.
- f) Per 7.b)vi), amendments and revisions to the Constitution shall be submitted for approval to the Commissioner for SARS (with effect from the time tax exemption has been approved by the Commissioner).

15. Dissolution, Winding Up

- a) The Foundation shall continue to exist and function until such time as it is officially voted out of existence by two-thirds (2/3) majority of all Executive Members serving on the Board.
- b) Upon dissolution of the Foundation, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed

amongst its members, but shall be transferred by donation to another Non-Profit Organisation which the Board (and, failing which, the members in a General Meeting) considers appropriate and which has objectives the same or similar to those of the Foundation, and should the Foundation be exempt from the payment(s) of any taxes and duties:

- i) Any similar Public Benefit Organisation approved in terms of Section 30 of the Income Tax Act;
- ii) Any institution, board, or body which is exempt from tax under the provisions of Section 10 (1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any Public Benefit Activity; or
- iii) Any department of state or administration in the national, provincial, or local sphere of government of the Republic of South Africa.

16. Indemnity

- a) Subject to the provisions of any relevant law, members, office-bearers, or appointed delegates of the Foundation shall be indemnified by the Foundation for all acts done by them in good faith on its behalf.
- b) Subject to the provisions of any relevant law, no member of the Foundation or appointed delegates shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Foundation, which occurs in the execution of the duties of his or her office, unless it arises as a result of their dishonesty, or failure to exercise the degree of care, diligence, and skill required by law.

17. Governing Law

- a) The validity and interpretation of this Constitution shall be governed by the laws of the Republic of South Africa.

External document: The final signatures have been removed from this version of The Evelyn Foundation's Constitution.
If you would like a copy of the document including the final signatures, please send an email to infodesk@evelyn.foundation containing your request.