



**CONSTITUTION OF  
THE NETWORK OF SEX WORK PROJECTS**

**August 2002**

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## **1. NAME**

A voluntary association is hereby established under the name of:

### **The Network of Sex Work Projects**

(hereafter referred to as the “Network”)

## **2. OBJECTIVES**

2.1 The Network is a public, non-profit organisation established for the object of:

- providing practical information and opportunities for information sharing among organizations and projects which provide services to men, women and transsexuals and transgendered persons who work in the sex industry internationally,
- raising awareness of the health and welfare needs of sex workers,
- advocating at regional and global level for policies and action which further the human rights of sex workers,
- developing and maintaining links between service providers, sex worker organizations and relevant international institutions and agencies, and
- facilitating opportunities for the voices of sex workers to be heard in relevant international forums.

## **3. LEGAL STATUS**

The Network is a body corporate with its own legal identity which is separate from its individual members. The Network shall continue to exist, even if the members change. The Network may own property, enter into contracts, and sue or be sued in its own name.

## **4. NON-PROFIT DISTRIBUTING CHARACTER**

4.1 The income and property of the Network shall be used solely for the promotion of its stated objectives. The members and the office-bearers shall have no rights to the property or other assets of the Association solely by virtue of them being members or office-bearers. No portion of the income or property of the Network shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member of the Network, except as:

4.1.1 reasonable compensation for services rendered to the Network;

- 4.1.2 reimbursement of costs or expenses reasonably incurred on behalf of the Network.
- 4.2 Upon the dissolution of the Network, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other non-profit organisation which the Management Committee (and failing which any division of the High Court) considers appropriate and which has objectives the same or similar to the objectives of the Network; and should the Network become an approved public benefit organisation:
- 4.2.1 is a similar public benefit organisation which has been approved in terms of section 30 of the Income Tax Act, or
- 4.2.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA), which has as its sole or principal object the carrying on of any public benefit activity, or
- 4.2.3 any department of state or administration in the national or provincial or local sphere of government of the Republic contemplated in section 10(1) (a) or (b).
- 4.3 The Network intends to apply to the Commissioner for the South African Revenue Service for income tax exemption and from other appropriate taxes and duties. In compliance with Section 30 of the Income Tax Act of South Africa, the provisions set out in the attached **Schedule A** shall bind the Network and qualify this Constitution upon approval by the Commissioner.

## 5. POWERS

The Network, acting through its Board, shall have all the powers necessary for it to carry out its stated objectives effectively. Such powers shall include, but not be limited to, the General Investment and Administrative Powers set out in the attached **Schedule B**.

## 6. MEMBERS

- 6.1 The initial membership shall be those persons whose names and appear on the attached **Schedule C**.
- 6.2 The Board may admit further members from time to time:
- 6.2.1 Subject to due compliance with any conditions of membership (including payment of any membership fees) which the Board may stipulate from time to time.
- 6.3 The Board may suspend or terminate the membership of any member provided that:
- 6.3.1 At least (14) fourteen days prior written notice is given to all members of the Board of the intention to terminate a membership; and

- 6.3.2 At least (14) fourteen days prior written notice is given to the member concerned. The notice shall invite the member to make written or verbal representations to the meeting as the member may consider appropriate.

## **7. STRUCTURE OF THE NETWORK**

### **7.1 The Board**

#### 7.1.1 Powers

The affairs of the Network shall be controlled and managed by the Board. Subject to the terms of this constitution.

#### 7.1.2 Election

- 7.1.2.1 The members of the first First Board shall be appointed elected at the First Meeting at which this Constitution is adopted, and shall hold office until the 3<sup>rd</sup> Annual General Meeting held after their appointment. At such 3<sup>rd</sup> Annual General Meeting and at every subsequent Annual General Meeting held thereafter, not less than one third of the Board members shall retire by rotation. The Board Members to retire shall be those who have been in office the longest since their last appointment. As between Board Members of equal seniority, the Board Members to retire, in the absence of agreement between them, shall be determined by ballot.

- 7.1.2.2 Resigning Board members shall be eligible for re-election or co-option.

- 7.1.2.3 Board members shall be members of the Network.

#### 7.1.3 Composition

- 7.1.3.1. The Board shall compromise of at least three (3) members. The Board must appoint from its ranks, a Chairperson, a Treasurer and a Secretary and may appoint other persons as members from time to time as it deems appropriate.

- 7.1.3.1.2 the Chairperson,

- 7.1.3.1.3 the Treasurer;

- 7.1.3.1.4 the Secretary;

- 7.1.3.1.5 The Board may co-opt up to four (4) additional non-voting members as it may consider appropriate from time to time. The co-opted members shall serve for such period as the Board considers appropriate.

#### 7.1.4 Board Member Vacating Office

- 7.1.4.1 The office of a Board member shall be vacated if a member:

- 7.1.4.1.1 resigns; or
- 7.1.4.1.2 becomes unfit and/or incapable of acting as such; or
- 7.1.4.1.3 is removed by the Board, by resolution adopted by at least two-thirds (2/3) of its members in office from time to time, being not less than the required minimum of three (3). The Board shall not be obliged to furnish reasons for its decision/s regarding removal except to the member removed.
- 7.1.4.2 Should a position on the Board fall vacant, the Board, by resolution adopted at least two-thirds (2/3) of its members, may (and if the vacancy reduces the number of members to less than three [3], shall) co-opt a member/s to fill the vacancy/ies.
- 7.1.5 Procedure at Management Board Meetings
- 7.1.5.1 The Board shall conduct its meetings which include meetings held by teleconference and electronic mail (email) and regulate its proceedings as it finds convenient, provided that:
  - 7.1.5.1.1 The Chairperson, or in his or her absence, shall chair all meetings of the Board which he or she attends. In the absence of the Chairperson, the remaining members of the Board shall elect a chairperson from those attending.
  - 7.1.5.1.2 The Chairperson shall convene a meeting of the Board, quarterly and at the written request of any two (2) members of the Board and may convene such a meeting at any other time.
  - 7.1.5.1.3 The quorum necessary for the transaction of any business by the Board shall be two thirds (2/3) of the Board members serving at any given time.
  - 7.1.5.1.4 At meetings of the Board each member shall have one (1) vote.
  - 7.1.5.1.5 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
  - 7.1.5.1.6 Proper minutes shall be kept of the proceedings of the Board, and a record of the persons present at each meeting. The minutes shall be signed by the member appointed by the Board, and shall be available at all times for inspection or copying by any member of the Board, and on two (2) days' notice to such appointed member or his or her deputy, by any member of the Network
  - 7.1.5.1.7 A resolution agreed to by all members of the Board shall be as valid as if passed at a duly convened meeting of the Board.
- 7.1.6 The Board may delegate any of its powers to any of its members, or to a special purpose committee. The member, committee, employee or agent to whom such delegation is made shall conform to any regulations and procedures that may be stipulated by the Board from time to time.

- 7.1.7 The Board may appoint a Chief Executive and other officers and employees as it may consider necessary from time to time upon such terms and conditions as it may consider appropriate.

## **7.2 General Meetings**

### **7.2.1 Annual General Meeting**

- 7.2.1.1 An Annual General Meeting of the Network shall be held within a period of fifteen (15) months of the adoption of this Constitution. Subsequent Annual General Meetings shall be held within three (3) months of the end of each financial year.

- 7.2.1.2 Annual General Meetings shall be convened by the Chairperson on not less than twenty-one (21) days prior written notice to all members entitled to attend the meeting. This notice shall state the manner in which the meeting will take place and in broad terms the business to be transacted at the meeting.

- 7.2.1.3 The business of an Annual General Meeting shall include:

- 7.2.1.3.1 the presentation and adoption of the Annual Report of the Chairperson;
- 7.2.1.3.2 the consideration of the Annual Financial Statements;
- 7.2.1.3.3 the election of members to serve on the Board for the following year;
- 7.2.1.3.4 the appointment of Auditors;
- 7.2.1.3.5 other matters as may be considered appropriate.

### **7.2.2 Other General Meetings**

The Annual General Meeting (AGM) of the Network shall be conducted and regulated in accordance with the procedures provided for in paragraph 7.1.5..

## **7.3 Notices**

- 7.3.1 Notice of all meetings provided for in this Constitution, shall be delivered personally, or sent by prepaid post, or by electronic mail (email) to the last address notified by each person concerned to the Network, or in any other manner as the Board may decide from time to time.
- 7.3.2 The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.
- 7.3.3 If posted, notices shall be deemed to have been received seven (7) days after posting.

## **8. FINANCIAL MATTERS**

### **8.1 Bank Account**

The Board shall open a bank account in the name of the Network with a registered Bank. The Board shall ensure that all monies received by the Network are deposited in the abovementioned bank account as soon as possible after receipt.

### **8.2 Signatures**

All cheques, promissory notes and other documents requiring signature on behalf of the Network shall be signed by one (1) of the Board members and the Chief Executive Officer of the Network

### **8.3 Financial Year End**

The Network's financial year end shall be: 31<sup>st</sup> May

### **8.4 Financial Records**

The Board shall ensure that the Network keeps proper records and books of account which fairly reflect the affairs of the Network.

### **8.5 Annual Narrative Report and Financial Statements**

8.5.1 The Board shall ensure that the Network prepares an annual narrative report describing the Network's activities and an Annual Financial Statement for each financial year. The Annual Financial Statements shall conform with generally accepted accounting principles and shall include a statement of income and expenditure and a balance sheet of assets and liabilities.

8.5.2 Within two (2) months after drawing up the Annual Financial Statements, the Board shall ensure that the books of account and financial statements are audited and certified in the customary manner by an independent practising chartered accountant.

8.5.3 A copy of the Annual Financial Statements and annual narrative report shall be made available to all members of the Board as soon as possible after the close of the financial year.

## **9. AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION**

The terms of this Constitution may be amended, the name of the Network may be changed and the Network may be dissolved by resolution of 2/3 of the members of the Board present at a Board Meeting: provided that proper notice of the meeting is given not less than twenty-eight (28) days prior to the date of the Meeting and such notice states the nature of the resolution to be proposed.

**10. INDEMNITY**

- 10.1 Subject to the provisions of any relevant statute, members of the Board and other office bearers shall be indemnified by the Network for all acts done by them in good faith on its behalf. It shall be the duty of the Network to pay all costs and expenses which any such person incurs or becomes liable for as a result of any contract entered into, or act done by him or her, in his or her said capacity, in the discharge, in good faith, of his or her duties on behalf of the Network.
- 10.2 Subject to the provisions of any relevant statute, no member of the Network and or other office bearer of the Network 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 Network, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

**REQUIREMENTS OF THE COMMISSIONER FOR THE SOUTH AFRICAN RECEIVER OF  
REVENUE SERVICES FOR  
EXEMPTION FROM TAXES AND DUTIES**

As provided for in Clause 4.3 of this Constitution, the Network intends to apply to the Commissioner for the South African Revenue Service for income tax exemption from other appropriate taxes and duties. In compliance section 30 of the Income Tax Act, the following provisions shall bind the Network:

1. Carry out all its public benefit activities (or substantially the whole thereof) in the Republic, unless the Minister of Finance ("the Minister"), having regard to the circumstances of the case, directs otherwise.
2. Carry on its public benefit activities in a non-profit manner.
3. Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the organisation are directed in the furtherance of its objects.
4. Submit to the Commissioner a copy of and a copy of any amendment to this Constitution.
5. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Network and no other single person directly or indirectly controls the decision making powers relating to the Network: Provided that the provisions of this sub-paragraph shall not apply in respect of any trust established in terms of a will of any person who died on or before 31 December 2003.
6. In the event of the Network investing funds, invest such funds :
  - 6.1 with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); and/or
  - 6.2 in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) ; and/or
  - 6.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations;

provided that the provisions of this sub-paragraph do not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance.

7. Be prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that:
  - 7.1 the gross income derived from such business undertaking or trading activity does not exceed the greater of :
    - 7.1.1 fifteen percent (15%) of the gross receipts of the Network; or
    - 7.1.2 twenty five thousand Rand (R25 000,00);
  - 7.2 the undertaking or activity is:
    - 7.2.1 integral and directly related to the sole object of the Network; and
    - 7.2.2 carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost, and which would not result in unfair competition in relation to taxable entities;
  - 7.3 the undertaking or activity, if not integral and directly related to the sole object the Network as contemplated in clause 7.2.1, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
  - 7.4 the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to:
    - 7.4.1 the scope and benevolent nature of the undertaking or activity;
    - 7.4.2 the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;
    - 7.4.3 the profitability of the undertaking or activity; and
    - 7.4.4 the level of economic distortion that may be caused by the tax-exempt status of the public benefit organisation carrying out the undertaking or activity.

8. 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 (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on or any public benefit activity) 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.
9. 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.
10. Has not and will not pay any remuneration as defined in the Fourth Schedule, 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 and has not and will not economically benefit any person in a manner which is not consistent with its objects.
11. Comply with such reporting requirements as may be determined by the Commissioner.
12. Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in section 30(b)(iii) of the Act are utilised for the purpose for which they are provided.
13. Become registered in terms of section 13(5) of the Non-Profit Organisations Act, 1997 (Act No. 71 of 1997), within such period as the Commissioner may determine, and comply with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director or Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997, on good cause shown, otherwise directs.
14. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

15. Ensure that any books of account, records or other documents relating to its affairs are:
  - 15.1 where kept in book form, retained and carefully preserved by any person in control of the Network , for a period of at least four years after the date of the last entry in any such book; or
  - 15.2 where not kept in book form, are retained and carefully preserved by any person in control of the Network, for a period of four years after the completion of the transaction, act or operation to which they relate.

**GENERAL ADMINISTRATIVE AND INVESTMENT POWERS**

1. To employ staff and hire professional and other services.
2. To institute or defend any legal or arbitration proceedings and to settle any claims made by or against the Network
3. To open and operate accounts with registered banks and building societies.
4. To make and vary investments and re-invest the proceeds of such investments on condition that any investments made by the Network shall be with Financial Institutions as defined in Schedule A Clause 6 above.
5. To accept donations made to the Network and retain them in the form in which they are received, or sell them and re-invest the proceeds.
6. With regard to movable and immovable property and tangible and intangible assets of whatsoever nature:
  - 6.1 to purchase or acquire property and assets;
  - 6.2 to maintain, manage, develop, exchange, lease, sell, or in any way deal with the property and assets of the Network;
  - 6.3 to donate and transfer the property and assets of the Network to organisations with the same or similar objectives and the same exemptions from taxes and duties to those of the Network.
7. To borrow and to use the property or assets of the Network as security for borrowing;
8. To guarantee the performance of contracts or obligations of any person on condition that any such person is primarily engaged in activities which further the objectives of the Network.
9. To execute any act or deed in any deeds registry, mining titles or other public office.
10. To work in collaboration with other organisations and to amalgamate with any organisation with the same or similar objectives and the same exemptions from taxes and duties to those of the Network.
11. To exercise all the management and executive powers that are normally vested in the Board of Directors of a Company.
12. To exercise all the powers and authority of the Network not only in the Republic of South Africa but in any other part of the world.

## SCHEDULE OF INITIAL MEMBERS

Name	Address	Date	Signature
1. Paulo Longo			
2. Dinon Khartini bin Slamah			
3. Dr Penelope Saunders			
4. Jo Doezema			
5. Dr Melissa Ditmore			
6. Dr Smarajit Jana			
7. Ana Lopes			
8. Andrew Hunter			
9. Joshua Fletcher			