

## CHARTER

### INDEPENDENT CANDIDATES' ASSOCIATION SOUTH AFRICA NPC

This is the Charter of ICA which has been adopted by the Board of Directors of ICA by resolution dated **[insert date]**

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Director

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## 1. DEFINITIONS

In this Charter, unless a contrary intention clearly appears, the following terms shall have the meaning assigned to them hereunder, namely:

“Associates”	means, collectively, the Independent Candidates, Organisational Affiliates and Individual Affiliates from time to time and for the time being and each, an “Associate”.
“Board of Directors”	the board of Directors of ICA.
“Charter”	this Charter, together with any amendments or schedules hereto.
“Companies Act”	the Companies Act 71 of 2008, as amended.
“Deed of Affiliation”	each Deed of Affiliation signed by an Associate in the form of the Schedule hereto.
“ICA”	Independent Candidates Association South Africa NPC (registration number 2021/616521/08).
“Independent Candidate”	any natural person who (i) has been included in a list of candidates submitted to the Independent Electoral Commission of South Africa; (ii) has been nominated for election; (iii) has accepted such nomination; (iv) has made him/self available for election or intends to stand for election or has already been appointed; and who has adhered to this Charter by way of signing a Deed of Affiliation, which has been accepted by ICA.
“Individual Affiliate”	any natural person who is engaged in work to promote democracy in South Africa and who has adhered to this Charter by way of signing a Deed of Affiliation, which has been accepted by ICA.
“Memorandum of Incorporation”	the Memorandum of Incorporation of ICA, as may be amended from time to time.

“Organisational Affiliate”	any organisation that is engaged in work to promote democracy in South Africa and who has adhered to this Charter by way of signing a Deed of Affiliation, which has been accepted by ICA.
“person”	any person, whether a natural person or a juristic person, unless the context specifically indicates otherwise.
“Representative Non-executive Director”	each representative non-executive director appointed to the Board of Directors by the Voting Individuals, as contemplated in clause 8.
“Voting Individuals”	Independent Candidates and Individual Affiliates.

## 2. PREAMBLE

We, the Independent Candidates Company South Africa NPC, having realised the importance of having an organisation to hold independent candidates accountable and to build a national organisation of independent candidates and affiliate organisations and individuals, commit ourselves to building a transformed, organised organisation which is non-racial, non-sexist, democratic, representative, transparent and accountable to all whom it serves and to the public at large.

## 3. LEGAL STATUS

- 3.1 ICA is a non-profit company with its own separate legal identity, having perpetual succession and which is capable of, amongst other things, owning property, entering into contracts, and suing or being sued in its own name.
- 3.2 Through this Charter ICA wishes to provide for persons who conduct themselves democratically in accordance with this Charter and in pursuit of the Vision and Objectives set out in clauses 4 and 5, to become associated with ICA. This Charter has been adopted by the Board of Directors of ICA.
- 3.3 ICA's area of jurisdiction shall be the boundaries of the Republic of South Africa.

## 4. VISION AND MISSION

4.1 Our vision is to be the leading and preferred organisation for independent candidates in South Africa; an association of independent candidates and a variety of affiliate organisations and individuals that represent the interests of independent candidates and direct democracy in South Africa.

4.2 Our mission is to be the custodian of a platform that will activate, empower and hold independent candidates accountable to their communities and to the values of ICA.

## 5. **OBJECTIVES**

ICA is a non-profit company established for the following objectives:

5.1 promote on a national basis the common interests of Independent Candidates and the welfare of the Independent Candidates, having regard at all times to the broader interests of the public whom the Independent Candidates serve, and to endeavour to reconcile, where they may conflict, the interests of the Candidates and the public;

5.2 safeguard and maintain the independence and integrity of the Independent Candidates;

5.3 initiate, consider, promote, support, oppose or endeavour to improve and strengthen legislation, whether existing or proposed;

5.4 represent and promote the interests of the Independent Candidates;

5.5 deal with any disciplinary matters referred to it regarding the Independent Candidates.

## 6. **ASSOCIATION WITH ICA**

6.1 Association with ICA on the basis set out in this Charter will be voluntary and open to the public, subject to the basic eligibility criteria set out in clause 6.4.

6.2 Any person who wishes to apply to become affiliated with ICA shall do so in writing in the form of the Deed of Affiliation, and shall provide such details, documents and information as may be required by ICA from time to time.

6.3 The Board of Directors shall be responsible for considering any application by a person who wishes to become affiliated with ICA and determining the outcome of such application in its sole discretion.

6.4 Any person who wishes to become affiliated with ICA shall be required to meet the following minimum eligibility criteria and must:

6.4.1 be ordinarily resident, or established, in South Africa;

6.4.2 be and remain, for so long as they are an Associate, independent from any political organisation (meaning, for the avoidance of doubt, that such person must not be directly or indirectly affiliated with any political party or organisation);

6.4.3 must share the values of ICA, as referenced in the Deed of Affiliation, and aim to advance the cause of electoral reform, independent candidates, direct democracy and democracy in South Africa.

6.5 All prospective Associates must sign a Deed of Affiliation, agreeing to be bound by the provisions of this Charter. Failure to uphold the values enshrined in this Charter by any such person shall be grounds for disciplinary procedures against such person, subject to the provisions of clause 10.

6.6 Each Associate shall be required to pay a fee determined annually by the Board of Directors. Associates shall not be remunerated for being a Candidate.

6.7 An Associate shall immediately cease to be an Associate:

6.7.1 in the circumstances contemplated in clause 10.2;

6.7.2 if, being a natural person, that person dies;

6.7.3 in the event of sequestration, liquidation, winding up or dissolution, as the case may be, whether provisional or final.

## **7. POWERS AND FUNCTIONS OF ICA**

7.1 Save as expressly otherwise provided herein, the autonomy of the Associates shall not in any way be altered, abridged or curtailed.

7.2 Each Associate undertakes, insofar as it does not conflict with any statutory duties, obligations, and responsibilities, to observe and to be bound by and to give effect to all decisions of the Board of Directors properly made in terms of this Charter and the Memorandum of Incorporation.

- 7.3 ICA shall have all the following powers (which are in addition to any other powers it may have, whether in terms of the Memorandum of Incorporation or otherwise in law):
- 7.3.1 to speak for its Independent Candidates nationally;
  - 7.3.2 to liaise with the State in all matters relating to Independent Candidates;
  - 7.3.3 to raise funds or to invite and receive contributions;
  - 7.3.4 to make regulations or guidelines for proper management, including procedure for application, approval or termination of affiliation of Associates;
  - 7.3.5 to hold Independent Candidates accountable to the standards and norms of ICA and the Constitution of the Republic of South Africa;
  - 7.3.6 to establish grounds for disciplinary proceedings against Candidates and to take disciplinary steps;
  - 7.3.7 to represent and assist Candidates in disciplinary matters before regulatory authorities and with alternative dispute resolution, to the extent determined by the Board of Directors, and provided that these matters are not in violation of the values, objectives, and norms of ICA;
  - 7.3.8 to establish relationships with those organisations sharing similar ideas, aims and objectives with ICA;
  - 7.3.9 lease, purchase or otherwise acquire, let, sell, exchange or alienate, mortgage, burden with a servitude or confer any real right in immovable property;
  - 7.3.10 hire, purchase or acquire, hire out, sell, exchange or alienate, pledge or confer any other real right in movable property;
  - 7.3.11 negotiate or co-operate with any government, provincial administration or local government, or any other board or person, in the Republic of South Africa or elsewhere, with regard to any matter which is directly or indirectly aimed at the achievement of the objects of ICA;
  - 7.3.12 open and administer offices which may be necessary or advisable for the effective and proper exercise of ICA's powers and the carrying out of its duties;

- 7.3.13 acquire insurance cover:
  - 7.3.13.1 for itself against any loss, damage, risk or liability which it may suffer or incur; and
  - 7.3.13.2 for ICA's employees in respect of bodily injury, disablement or death resulting solely and directly from an accident occurring when performing their duties as employees;
- 7.3.14 open and conduct banking accounts at a bank as defined in the Banks Act 94 of 1990 or a reputable foreign bank registered in terms of the banking legislation of the relevant foreign country;
- 7.3.15 draw up, make, publish and sell or make available free of charge books, guides, maps, publications, photographs, films, videos and similar matter intended to inform persons in the Republic of South Africa or elsewhere, of the activities of ICA;
- 7.3.16 gather, evaluate and process information relating to ICA's objectives and sell or otherwise make such information available;
- 7.3.17 employ and terminate the employment of persons;
- 7.3.18 establish, manage and administer any pension or provident fund or medical scheme for the benefit of ICA's employees, or have such fund or scheme administered by another person or body; and
- 7.3.19 any other powers as may be reasonably necessary for ICA to carry out its stated objectives effectively.

## **8. ELECTION OF REPRESENTATIVE NON-EXECUTIVE DIRECTORS**

- 8.1 The Voting Individuals shall be entitled to elect a maximum of 2 (two) representatives to the Board of Directors of ICA, to serve ICA as Representative Non-executive Directors.
- 8.2 In addition to the eligibility criteria set out in the Companies Act and the Memorandum of Incorporation, a person may only be nominated and elected as a Representative Non-executive Director if that person is an Independent Candidate or an Individual Affiliate in good standing, and not subject to any disciplinary proceedings.



8.3 All Representative Non-executive Directors shall be elected by a simple majority vote of Voting Individuals present at a meeting to be convened in the following way:

8.3.1 Voting Individuals shall meet annually for purposes of voting on the election of Representative Non-executive Directors (including the removal of any existing Representative Non-executive Directors).

8.3.2 The Board of Directors will give at least 20 (twenty) days' notice of such meeting to the Voting Individuals.

8.3.3 Any Voting Individuals in good standing may nominate a person for appointment as a Representative Non-executive Director by written notice to ICA and the individual nominated to serve no later than 15 (fifteen) business days prior to the date of the meeting (though Voting Individuals may consent by agreement to a shorter notice period).

8.3.4 The quorum requirement for a meeting of Voting Individuals (excluding an adjourned meeting) to begin is a minimum of **[insert number, or percentage]** Voting Individuals in good standing, subject to clause 8.9 below.

8.4 If all of the Voting Individuals:

8.4.1 acknowledge actual receipt of the notice convening a meeting; or

8.4.2 are present at a meeting; or

8.4.3 waive notice of a meeting,

the meeting may proceed even if the Board of Directors failed to give the required notice of that meeting or there was a defect in the giving of the notice.

8.5 Each Voting Individual in good standing has 1 (one) vote in respect of the appointment or removal of a Representative Non-executive Director.

8.6 Any resolution in respect of the appointment or removal of a Representative Non-executive Director shall be passed by a simple majority of the votes.

8.7 In the event that the required votes to pass a resolution has not been obtained:

- 8.7.1 no Voting Individual shall have a deciding vote in addition to any deliberative vote;  
and
- 8.7.2 the matter being voted on fails.
- 8.8 In the event that any Voting Individual entitled to vote abstains from voting in respect of any resolution, such Voting Individual will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.
- 8.9 If a quorum is not present within thirty minutes after the time appointed for the commencement of any meeting of Voting Individual, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or, if that day is not a business day, the next business day), at the same time and place. If at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting, then, notwithstanding clause 8.3.4, the Voting Individual present will be deemed to constitute a quorum and will be sufficient to vote on any resolution which is tabled at that meeting.
- 8.10 Voting Individuals have the power to:
- 8.10.1 vote on the election of a Representative Non-executive Director by the written consent of a simple majority of the Voting Individuals, given in person or by Electronic Communication, provided that each Voting Individual has received notice of the matter to be decided;
- 8.10.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, provided that the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- 8.10.3 proceed with a meeting despite a failure or defect in giving notice of the meeting.
- 8.11 A Representative Non-executive Director may be removed from office if such person infringes any provision of this Charter or Deed of Affiliation.

- 8.12 Each Representative Non-executive Director shall serve on the Board of Directors for a period of two (2) years from their date of election, subject to the right to be re-elected at the end of their term. Resigning Representative Non-executive Directors (including those whose term has expired) shall be eligible for re-election.
- 8.13 The office of a Representative Non-executive Director shall be vacated if such Director:
- 8.13.1 resigns;
  - 8.13.2 becomes unfit and/or incapable of acting as such;
  - 8.13.3 would be disqualified, in terms of the Companies Act or equivalent legislation in force from time to time, from acting as a director of a company;
  - 8.13.4 ceases to be an Associate for any reason (including pursuant to clause 10);
  - 8.13.5 fails to uphold the values set out in this Charter or Deed of Affiliation;
  - 8.13.6 has publicly declared an unwillingness to serve any longer; or
  - 8.13.7 is removed by the Board of Directors in accordance with the provisions of the Memorandum of Incorporation.

## **9. POWERS OF THE BOARD OF DIRECTORS**

The affairs and day to day operations of ICA shall be managed by the Board of Directors in accordance with the provisions of the Memorandum of Incorporation. The Board of Directors may exercise all the powers of ICA, including, without limitation to:

- 9.1 suspend or terminate the membership of any Associate in the event that the Associate fails or meet or continue to meet the eligibility criteria as set out in clause 6.4;
- 9.2 appoint a disciplinary committee and facilitate and enforce disciplinary procedures in respect of Associates in accordance with clause 10;
- 9.3 publish notices or directives for purposes of relating to any procedural, administrative or disciplinary matters;
- 9.4 prepare and finalise a budget by no later than 30 (thirty) days prior to the commencement of each financial year;

- 9.5 open and operate the bank accounts of ICA;
- 9.6 keep and maintain the financial and accounting records of ICA;
- 9.7 oversee the general functions of ICA.

**10. DISCIPLINARY PROCEDURE**

- 10.1 In the event that the majority of the Board of Directors, or Associates constituting at least ten percent (10%) of all of the Associates of ICA who deliver a notice in writing to the Board of Directors, become dissatisfied with any Associate, the Board of Directors shall be entitled to investigate the matter further. Pending the results of the investigation, the Board of Directors shall be entitled, acting reasonably, to discipline the Associate as it deems fit. For the purpose of this clause 10, each Associate (whether a natural person or a juristic person) will be entitled to one vote.
- 10.2 In the event that the Board of Directors determines that the relevant Associate has acted in a manner which is detrimental to the interests of ICA or is guilty of misconduct, such Associate may be ejected from and shall cease to be an Associate of ICA, or may be suspended from ICA for a period determined by the Board of Directors, on such terms as may be determined by the Board of Directors.
- 10.3 An Associate shall cease to be entitled to any of the benefits of being associated with ICA, including the right to vote, and shall be deemed to be out of good standing during any time when such Associate is under suspension in terms of this Charter.

**11. INCOME AND EXPENSES**

The income and property of ICA shall be used solely for the promotion of its stated objectives, and in accordance with the provisions of the Memorandum of Incorporation. The Associates and the office-bearers of ICA shall have no rights to the property or other assets of ICA solely by virtue of them being Associates or office-bearers. No portion of the income or property of ICA 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 Associate or any member of the Board of Directors, except as:

- 11.1 salary or wages to any person employed by ICA;
- 11.2 reasonable compensation for services actually rendered to ICA;

11.3 reimbursement of actual costs or expenses reasonably incurred on behalf of ICA.

## 12. DISPUTE RESOLUTION

12.1 In the event of a serious disagreement regarding the interpretation of this Charter then any two (2) Directors or any five (5) Associates shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and be addressed to the Board of Directors.

12.2 The Board of Directors shall consider such declaration within two (2) weeks of receiving it. Should the Board of Directors not be able to resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred either to a mediator or arbitrator.

12.3 Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Board of Directors must agree on a suitable mediator and to the costs of such mediation. A mediator may recommend an appropriate resolution of the dispute.

12.4 In the absence of agreement regarding a mediator or should mediation not resolve the dispute within one (1) month of the dispute being declared or within such further time as may be agreed, 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 of Directors may mutually agree. Alternatively, each of the parties shall be entitled to nominate one 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. In the case of any dispute involving a matter of law, the arbitrator(s) must be an advocate or attorney of at least ten (10) years' experience.

12.5 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.

12.6 The arbitrator may base her/his award not only upon the applicable law but also upon the principles of equity and fairness.

12.7 The person(s) declaring the dispute and the Board of Directors, beforehand, may 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.

12.8 The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of Court on application by any of them.

### 13. **INTERPRETATION PROVISIONS**

13.1 Any provision in this Charter which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Charter shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as though it had not been written and severed from the balance of this Charter, without invalidating the remaining provisions of this Charter or affecting the validity or enforceability of such provision in any other jurisdiction.

13.2 The clause headings in this Charter have been inserted for convenience only and will not be taken into consideration in its interpretation.

13.3 In this Charter, unless a contrary intention clearly appears:

13.3.1 words importing any one gender include the other two genders;

13.3.2 words importing the singular include the plural and vice versa; and

13.3.3 reference to natural persons include juristic persons (which includes trusts) and vice versa (unless expressly stated to the contrary).

13.4 When any number of days is prescribed in this Charter, same shall be reckoned exclusively of the first and inclusively of the last day.

13.5 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

### 14. **NOTICES**

14.1 Notwithstanding any provision to the contrary in this Charter, if ICA establishes a website, then notices published on its website shall be deemed to have been given to Candidates, on the date of publication, for all purposes under this Charter and there shall be no need to send emailed or other written notifications to any Associate in addition thereto.

14.2 When an Associate applies to become affiliated with ICA it shall be a requirement to provide an email address and physical address for that Associate. Any notice that is

delivered to such email address or physical address shall be deemed to be delivered, in the case of email, on the date of dispatch and in the case of the physical address, on the date of delivery by hand. Notices sent by registered post to a physical or postal address shall be deemed to be received on the 7<sup>th</sup> calendar day after posting. Associates may amend their email and/or physical address on written notice to their Board of Directors, save that they must at all times retain an email address and physical address in South Africa and changes which would cause this not to be the case will be void.

14.3 A notice which is actually received by an Associate, even though it is not delivered in the manner contemplated in this clause 14, will be deemed to have been received.

14.4 Emails and hand delivery shall be deemed to be delivered, in the case of email, on the date of dispatch and in the case of the physical address, on the date of delivery by hand. The Associate in question may amend these details from time to time in relation on notice to the Board of Directors.

14.5 The addresses in clauses 14.2 shall be the address nominated by an Associate for all purposes under this Charter or any legal proceedings in relation thereto.

## 15. ACCESS TO RECORDS AND CONFIDENTIALITY

15.1 Associate shall only have rights of access to records, documents and information of ICA as the Board of Directors may determine in its sole discretion.

15.2 Associate are obliged to keep all records, documents or information of ICA that come into their possession, for whatever reason, confidential and may not disclose them to any person or make use of them for any reason except where required:

15.2.1 to perform their duties in relation to ICA; or

15.2.2 where required by law; or

15.2.3 where records, documents or information are in the public domain or accessible to the general public through publicly accessible sources.

15.3 This clause 15 shall continue to apply to an Associate for three years after such person ceases to be an Associate.

## 16. AMENDMENTS TO THIS CHARTER

The terms of this Charter may be amended by a 75% (seventy five percent) majority vote of the Board of Directors.



DEED OF AFFILIATION

CHARTER OF THE INDEPENDENT CANDIDATES ASSOCIATION SOUTH AFRICA NPC

To: The Board of Directors of The **Independent Candidates Association South Africa NPC**

**[insert details]**

Date: **[insert]**

Dear Sirs

We/I hereby apply to become an Associate affiliated with the Independent Candidates Association South Africa NPC (“ICA”) on the terms and subject to the conditions of the Charter, and embracing the values contained in this Deed of Affiliation.

We/I confirm that we/I have received a copy of the Charter, have read and understand the provisions thereof and further hereby confirm that this application is made on and subject to the terms and conditions of the Charter.

We understand that the Board of Directors of ICA may, in their sole and absolute discretion, acting in accordance with their powers and duties as set out in the Charter and the Memorandum of Incorporation of ICA, reject this application.

Your written acceptance of this application shall constitute us/me as an Associate affiliated with ICA on the terms and conditions set out in the Charter.

We/I accept and confirm that this application to become an Associate affiliated with ICA is made solely on the basis of the Charter and, to the extent applicable, the Memorandum of Incorporation of ICA, as amended from time to time. Our/my application is not made in reliance on any other information, representations or warranties, whether express or implied, whether oral or written, by the Board of

Directors, other Associates or from whatsoever source or in whatsoever form. We/I understand and confirm that we/I submit this application voluntarily.

The laws of South Africa govern this Deed of Affiliation.

We choose the following physical address for the purpose of any notice to be served on us pursuant to the Charter, and this address shall be our chosen domicilium citandi et executandi:

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or by e-mail to: \_\_\_\_\_

and marked for the attention of: \_\_\_\_\_

Signed,

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Signature(s)

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Date

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Name of Applicant

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Name of Signatory, who warrants being duly authorised hereto

Accepted by ICA:

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Signature

(duly authorised)

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Date

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## THE VALUES OF ICA

We believe in a just society in which all citizens can live together peacefully and prosper. We do so by being activists where we campaign on behalf of all citizens and hold government and civic society accountable for their actions.

ICA is working to build a society where:

- There can be racial, cultural and gender harmony and tolerance amongst all citizens.
- Citizens can fairly and equitably participate in our economy and prosper.
- We build a society where everyone is equal before the law and has the right to equal protection and benefit of the law.
- Our students, young and old, can have access to a world-class education that empowers them for a future of their choice and capability.
- Our citizens can be able to live free from crime and corruption.
- We can address the historical injustices of South Africa and any future injustices perpetrated.
- Build a government that is capable, agile, transparent, and future-focused.
- Public representatives will be chosen directly by the people and are accountable to the people.
- We can live in a sustainable environment that we can hand over to future generations.
- There is complete human dignity for all that can never be taken away.

This is our pledge and if we work together locally and across the continent of Africa, we can build a future for generations to uphold.

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