

**MEMORANDUM OF INCORPORATION**

**OF**

**SAQCC FIRE**



Registration No. 1999/001937/08, which is a Non-Profit Company with Members, have a minimum of 3 (Three) Directors, and is referred to in this rest of this Memorandum of Incorporation as “**the Company**”.

**Adoption of Memorandum of Incorporation**

The Company is a Non-Profit Company as defined in Companies Act No. 71 of 2008 (“**Act**”), and as such, continues to exist as a Non-Profit Company as set out in section 13(1)(a)(ii) of the Act, was adopted by special resolution of the Members of the Company on \_\_\_\_\_ which replaces and supersedes the pre-existing Memorandum and Articles of the Company immediately prior to the filing hereof and this Memorandum.

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**THOMAS ANDRIES DREYER**

on behalf of the board of directors  
of the Company, who warrants that  
he is duly authorised to do so.

***Amended 17<sup>th</sup> July 2020: Section 5.1***

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## 1. DEFINITIONS

1.1 In this Memorandum of Incorporation, unless the context indicates otherwise:

1.1.1 "**Act**" means the Companies Act 71 of 2008, as amended;

1.1.2 "**Auditors**" means the auditors of the Company from time to time;

1.1.3 "**Authorised/Competent Person**" means a person who has the necessary qualifications, training and experience to perform the duties designated by a Sub-Committee and who is registered with the Registering Authority;

1.1.4 "**Authorised Representative**" means a person authorised to act as the representative of a company;

1.1.5 "**Board of Directors**" means the Board of Directors of the Company and "**Board**" shall have a similar meaning;

1.1.6 "**Business Day**" means any day but excluding Saturdays, Sundays and proclaimed public holidays in the Republic of South Africa, and "**day**" or "**days**" shall have a similar meaning;

1.1.7 "**Certificate of Competency**" means a certificate issued by a SAQCC-Fire recognised and approved training institute, to any person who has successfully passed the assessments;

1.1.8 "**Commissioner**" means the Commissioner for the South African Revenue Service appointed in terms of section 6 or the Acting Commissioner designated in terms of section 7 of the South African Revenue Services Act;

1.1.9 "**Company**" means SAQCC Fire (Previously an Association Incorporated under Section 21) a Non-Profit Company incorporated in terms of the Act, as amended;

1.1.10 "**Director**" means a member of the Board of Directors of the Company, elected in accordance with this Memorandum;

1.1.11 "**Duly Certified**" in relation to copies, shall mean and denote a copy certified by an appropriate Public Officer or Notary Public; or such other form of certification as the Director may from time to time in their sole discretion accept;

1.1.12 "**Executive Committee**" means the main controlling committee of the Company and its primary function shall be to control and oversee the main objectives of the Company as well as ensure that the Sub-Committees shall function as directed by the Board;

1.1.13 "**Fire Equipment**" means any item of equipment used for detection, suppression or extinguishing of a fire, be it fixed or portable equipment;

1.1.14 "**Fundamental Transactions**" means the disposal of all or the greater part of its assets or undertaking; or amalgamating or merging with another non-profit company;

1.1.15 "**General Meeting**" means any general meeting of the Company and includes an annual general meeting and extra-ordinary meeting;

1.1.16 "**Income Tax Act**" means the Income Tax Act No. 58 of 1962 as amended;

1.1.17 "**Member**" means:

1.1.17.1 An Authorised / Competent Person;

- 1.1.17.2 A Representative of a special/corporate body;
- 1.1.18 “**Memorandum**” means this Memorandum of Incorporation;
- 1.1.19 “**Register**” means the register of Members kept in terms of the Act;
- 1.1.20 “**Registering Authority**” means the institution recognised by the Department of Labour for the registration of an Authorised/Competent Person involved with the Fire Equipment;
- 1.1.21 “**Registration Categories**” means the different categories set by Sub-Committees;
- 1.1.22 “**Registration Identification Card**” means the official identification card, issued by the Company and which is annually renewable;
- 1.1.23 “**South African Revenue Services Act**” means the South African Revenue Services Act No. 34 of 1997 (as amended);
- 1.1.24 “**Special Body**” means any of the following bodies who may have a representative on a Sub-Committee:
- 1.1.24.1 the official representative of the relevant government department;
- 1.1.24.2 the Automatic Sprinkler Inspection Bureau (ASIB);
- 1.1.24.3 The Fire Detection Installers Association (FDIA);
- 1.1.24.4 The Fire Fighting Equipment Traders Association (FFETA);
- 1.1.24.5 The Fire Protection Association of Southern Africa (FPA);
- 1.1.24.6 The Industrial Fire Technology Association (IFTA);
- 1.1.24.7 The Institute of Fire Engineers (IFE);
- 1.1.24.8 The South African Bureau of Standards (SABS);
- 1.1.24.9 The Southern African Emergency Services Institute (SAESI);
- 1.1.24.10 SAQCC-Gas;
- 1.1.24.11 Any other corporate body or trade union as approved by the Company on written request to the Executive Committee;
- 1.1.25 “**Sub-Committee**” means any committee that is established for a specific purpose and shall have the powers granted to it by the Executive Committee;
- 11.26 “**Training Centre**” means any training facility that is approved and authorized by any Sub-Committee and ratified by the Executive Committee, used for training of an Authorised/Competent Person.

## 2. INTERPRETATION OF THIS MEMORANDUM OF INCORPORATION

- 2.1 Words in this Memorandum denoting the singular shall include the plural and *vice versa* and words denoting the masculine shall include the feminine gender. Words denoting natural persons shall include legal persons.

- 2.2 Where appropriate, meanings ascribed in defined words and expressions in the definition clause, shall impose substantive obligations on the parties as provided for in the definition concerned.
- 2.3 The section headings in this Memorandum have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.4 Words and expressions defined in any section or sub-section(s), for the purposes of the section / sub-section of which that sub section forms part, bear the meaning assigned to such words and expressions in that section or sub-section.
- 2.5 Unless otherwise indicated, any expression to which a meaning is ascribed in the text of this Memorandum shall bear that meaning whenever such expression appears thereafter.
- 2.6 If any provision in a definition in this Memorandum is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of this Memorandum, notwithstanding that it is only in the definition section.
- 2.7 In this Memorandum, unless the contrary intention appears:
- 2.7.1 a reference to a recital, section, schedule or annex is a reference to a section or recital, schedule or annex to this Memorandum and references to this Memorandum include any recital, schedule or annex;
- 2.7.2 a reference to a statute, ordinance, code or other law includes rules and other instruments under it and consolidations, amendments, re-enactment or replacements of any of them.
- 2.8 A reference to a day is to be interpreted to the period of time commencing at midnight and ending 24 (Twenty Four) hours later.
- 2.9 If an event must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day.
- 2.10 A reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to any one or more of them.
- 2.11 A reference to a month or a year shall be construed as a calendar month or year, as the case may be.
- 2.12 When any number of days is described in this Memorandum, same shall be reckoned exclusively of the first day and inclusively of the last day unless the last day is not a Business Day in which case the last day shall be the next succeeding Business Day.
- 2.13 Any issue not specifically addressed in this Memorandum, shall be governed by the provisions of the Act.
- 2.14 Unless the context clearly indicates otherwise, a person elected, nominated and/or appointed to a position in accordance with this Memorandum shall remain in that position until he/she is disqualified and/or replaced by his/her successor in accordance with this Memorandum.

### **3. ARTICLE 1 - INCORPORATION, MANAGEMENT AND NATURE OF THE COMPANY**

#### **3.1 Incorporation of the Company**

- 3.1.1 The Company is incorporated as a Non-Profit Company as defined in the Act.
- 3.1.2 The Company is incorporated in accordance with, and governed by:

- 3.1.2.1 the unalterable provisions of the Act that are applicable to Non-Profit Companies;
- 3.1.2.2 the alterable provisions of the Act that are applicable to Non-Profit Companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
- 3.1.2.3 the provisions of this Memorandum.

## 3.2 **Objectives and Powers of the Company**

- 3.2.1 The main objective of the Company shall be to establish and implement procedures for the qualification and certification of the Authorised/Competent Persons, by creating an environment that will ensure safety, quality of work and high standards of excellence in the fire equipment industry as directed by the Department of Labour (“the Main Objective”).
- 3.2.2 The Company shall have all powers which are necessary, conducive or incidental to the attainment or furtherance of its objects and shall include but is not limited to:
  - 3.2.2.1 establish procedures for the qualification, registration and certification of all personnel involved in the design, installation, service and repair of Fire Equipment;
  - 3.2.2.2 register and regulate all Authorised/Competent Persons involved in the fire industry;
  - 3.2.2.3 monitor competency levels and to maintain a national competency register;
  - 3.2.2.4 raise finances to fund expenses that arise from the various activities of the Sub-Committees to reach the objectives of the Company;
  - 3.2.2.5 adopt and ensure compliance with the Standards as determined by the SABS;
  - 3.2.2.6 approve training centres in order to complete the prescribed courses for all Authorised/Competent Persons;
  - 3.2.2.7 Except to the extent necessarily implied by the stated object, the purposes and powers of the Company:
    - 3.2.2.7.1 are subject to any provisions contemplated in section 15(2)(b) or (c);
    - 3.2.2.7.2 are subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

## 3.3 **FUNDING**

- 3.3.1 The Company shall:
  - 3.3.1.1 apply all of its assets and income to advance its Main Objective as contemplated in clause 3.2 and shall not directly or indirectly distribute its income or assets to any person; and
  - 3.3.1.2 direct substantially the whole of the activities of the Company to the furtherance of its Main Objective and not for the specific benefit of an individual Member or minority group.
- 3.3.2 Subject to clause 3.3.1 the Company:
  - 3.3.2.1 may acquire and hold securities issued by a profit company; and/or
  - 3.3.2.2 directly or indirectly, alone or with another person, carry on any business, trade or undertaking consistent with or ancillary to its Main Objective.

3.3.3 With reference to clause 3.3.2, the Company shall not acquire any shares and/or have any other interest in any business, profession or occupation as contemplated in clause 3.3.2 which is carried on by its Members.

3.3.4 Substantially the whole of the Company's funding shall be derived from the Membership Fees as contemplated in clause 7.2.5 (Membership Fees) or from an appropriation by the government of the Republic in the National, Provincial or Local Sphere.

#### **4. ARTICLE 2 - MEMORANDUM OF INCORPORATION AND COMPANY MEMBERSHIP RULES**

4.1 This Memorandum may be altered or amended by Members only in the manner as set out in sections 16, 17 or 152 (6)(b) of the Act.

4.2 The Board has the authority to make, amend, repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this Memorandum and otherwise as contemplated and in accordance with section 15(3) to (5), which authority is limited or restricted in any manner by this Memorandum.

4.3 The Board must publish any rules made in terms of section 15(3) to (5) of the Act and/or any amendment thereto, in accordance with the following requirements:

4.3.1 A copy of the relevant rules must be delivered to each Member by electronic communication or registered mail or, if the Company has a website, by publishing the relevant rules on the Company's website.

4.3.2 If the Memorandum or rules are altered in accordance with section 17(1) of the Act in order to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, the Company must publish a notice of alternation of the Memorandum or the rules by delivering a copy of the relevant alterations to each Member by electronic communication or registered mail, or, if the Company has a website, by publishing the relevant alterations on the Company's website.

4.4 The Board, shall submit the amended Memorandum as contemplated in clause 4.1 or other written instrument as contemplated in clause 4.2 to the Commissioner within 30 (Thirty) days of the aforementioned Memorandum and/or written instrument's amendment.

#### **5. ARTICLE 3: APPLICATION OF OPTIONAL PROVISIONS OF THE ACT**

5.1 The extended accountability requirements set out in Chapter 3 of the Act shall not apply to the Company, except as provided for in section 84(1) (c) (i) of the Act.

5.2 The Annual Financial Statements of the Company are not required to be audited in terms of this Memorandum, and shall only be so audited for a particular financial year, if specifically so determined by the Board, or if so required in terms of the Companies Regulations, 2011. These annual financial statement will:

5.2.1.1 include an Auditor's report or an Independent Reviewer's Report whichever is applicable at the time as authorised by the Board of Directors.

5.2.1.2 include a report by the Directors with respect to the state of affairs, the business and profit or loss of the Company, or of the group of companies, if the Company is part of a group, including any matter material for the members to appreciate the Company's state of affairs;

5.2.1.3 any other prescribed information;

5.2.1.4 be approved by the Board and signed by an authorised Director; and



5.2.1.5 be presented to the Annual General Meeting after the statements have been approved by the Board.

## **6 ARTICLE 4 : REMUNERATION**

6.1 The Company shall not directly or indirectly pay any portion of its income regardless of how it was derived to any person who is or was a incorporator of the Company, a Member, Director, a person appointing a director, any employee or any other person, except:

6.1.1 i) as a remuneration for goods delivered or services rendered to, or at the direction of the Company; or

(ii) as reasonable payment of or reimbursement for expenses incurred as to advance the Main Objective;

6.1.2 as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;

6.1.3 as a payment in respect of any rights of a person, to the extent that such rights are administered by the Company in order to advance the Main Objective; or

6.1.4 in respect of any legal obligation binding on the Company.

6.1.5 The remuneration and/or payments as referred to in clauses 6.1.1 to 6.1.4 shall not be any remuneration as defined in the Forth Schedule which is excessive having regard to what is generally considered reasonable in the sector and in relation to the services rendered.

## **7 ARTICLE 5: MEMBERSHIP**

### **7.1 Members of the Company**

As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has Members.

### **7.2 Terms and Conditions of Membership**

#### **7.2.1 Categories of Membership**

7.2.1.1 The Company shall have 2 (Two) classes of Members, namely:

7.2.1.1.1 Voting Members; and

7.2.1.1.1 Non-Voting Members.

7.2.1.2 The Company shall have the following categories Membership for voting Members:

7.2.1.2.1 An Authorised/Competent Person;

7.2.1.2.2 An office Bearer of the Executive Committee or Sub-Committee or any specialist as required by the Sub-Committee to assist the Sub-Committee for a limited period;

7.2.1.2.3 A Representative of a Special Body.

7.2.1.3 The Company shall also have the power, by Special Resolution duly adopted by the Members of the Company, regarding the two classes of Membership to accord to each of the classes of Membership such rights and obligations as may be determined by the Company with reference thereto.

#### **7.2.2 Admission to Membership**

- 7.2.2.1 The Board shall ensure that there are at all times a minimum of 3 (Three) Members.
- 7.2.2.2 For the avoidance of doubt, the Board, acting in what they perceive to be the best interest of the Company, shall be entitled to decline to admit a particular applicant to Membership, notwithstanding such applicant's willingness to fulfil the usual requirements for Membership. Subject to Item 4 of Schedule 1 of the Act, the Board shall provide reasons for their decision.

### **7.2.3 Requirements for Membership**

The following requirements shall apply for each Member:

- 7.2.3.1 All Members must be familiar with the Memorandum of Incorporation;
- 7.2.3.2 All Voting Members must have a Registration Identification Card.
- 7.2.3.3 The Board may in its discretion, add additional requirements or permit the relaxation of the requirements for Membership at any time.

### **7.2.4 Process for Applying for Membership**

Prospective candidates who want to apply for Membership must:

- 7.2.4.1 comply with the requirements for Membership as set out in clause 7.2.3 of the Memorandum;
- 7.2.4.2 apply for Membership on the prescribed form provided by the Company; and
- 7.2.4.3 lodge the application with the Board.
- 7.2.4.4 This process may be reviewed and altered by the Board in their own discretion.

### **7.2.5 Membership Fees**

- 7.2.5.1 The Members shall be obliged to pay the admission and/or Membership Fees as determined by the Board at the General Meeting.
- 7.2.5.2 All Members whose Membership Fees are not paid up to date at the time of the General Meeting, shall not be entitled to vote on any matter.

### **7.2.6 Rights and Obligations of Membership**

- 7.2.6.1 The Members shall submit himself/herself to the Main Objective of the Company.

### **7.2.7 Cessation of Membership**

- 7.2.7.1 Notwithstanding anything to the contrary herein contained or implied, Membership of the Company shall be terminable at any time, in the event of a Resolution to this effect being passed by a quorate General meeting of Members of the Company, or of the Board of Directors, which is supported by a majority representing no less than  $\frac{2}{3}$  (Two-Thirds) of the persons present and entitled to vote at such meeting.
- 7.2.7.2 Membership of the Company may likewise be terminated by a General Meeting or by the Board, in the event of a Member's failure to satisfy and eligibility criteria for Membership as set out in clauses 7.2.3 to 7.2.5 that may be applicable from time to time. Nothing herein contained shall preclude the Company from allowing a period of grace for compliance, to such extent, and for such reasons as may be deemed appropriate.

- 7.2.7.3 Subject to Item 4 of Schedule 1 of the Act, the General Meeting of Members and/or the Board of Directors, shall furnish reasons for, or motivate decisions with respect to the admission, refusal, or termination of Membership, as aforesaid.
- 7.2.7.4 Membership of the Company shall also be terminated *ipso factor*:
- 7.2.7.4.1 upon the death of a Member who is a natural person; or upon the voluntary dissolution, or final liquidation, of any Member which is a company or other corporate body; or
- 7.2.7.4.2 upon receipt by the Company, at the Office, of the written resignation of the Member concerned; or
- 7.2.7.4.3 in the event that a Member is found guilty of the crime of theft, fraud or any other crime of which dishonesty is an element and is sentenced to a minimum of one year imprisonment and/or a fine; or
- 7.2.7.4.4 in the event that a Member is dismissed in terms of the Disciplinary Code and/or Code of Conduct applicable to each Sub-Committee.
- 7.2.7.4.5 In the event of termination of Membership, the Member may within 10 (Ten) days calculated from the date of termination of Membership, lodge a notice of appeal with the Board. The notice of appeal must set out the grounds and reasons for his/her appeal against the termination. A General Meeting shall be conducted by the Members to confirm or cancel the termination.

### **7.3 Obligations on Cessation of Membership**

Notwithstanding anything to the contrary contained or implied in the Memorandum, the cessation of Membership shall in no way release a Member from any obligation undertaken by such Member prior to the cessation of Membership as a result of either:

- 7.3.1 the provisions of the Memorandum; or
- 7.3.2 any further or ancillary guarantee, commitment or obligation which such Member may have undertaken as a condition attaching to Membership or by virtue of any other cause.

### **7.4 Non-transferability of Membership**

Membership may not be assigned or transferred.

### **7.5 Register of Members**

- 7.5.1 The Company shall maintain the register at the Registered Office or at any other place where the work of making up such register is done within the Republic as provided in section 25 of the Act. The Register shall be open to inspection as provided in section 26 of the Act. The Board shall be empowered to make regulations as they deem appropriate relating to the opening and closing of such register, provided that such register shall not be closed for more than 60 (Sixty) days in any calendar year and provided further that notice of closing of the register shall be given in the Government Gazette.

### **7.6 Representative Members**

- 7.6.1 The Board shall be entitled (but not obliged) to recognise any person as a Member, *nomini officii*, by reason or appointment as:
- 7.6.1.1 the holder of any office or appointment by virtue of which such person has been recognised as a Member *nomini officii*;

7.6.1.2 the Liquidator of any Member which is a Body Corporate in the course of being wound-up.

7.6.2 Any Representative Member recognised by the Board in terms of these provisions, shall from the date of the Board's determination, and subject to the provision of any proof required by the Board with respect to the office or appointment concerned, be deemed, in all respects and for all purposes, to be a Member of the Company of the same category as the Member concerned, in the relevant capacity.

## 7.7 **Rights of Members**

### 7.7.1 **Members' Right to Information**

Every person who is a Member, in addition to the right to information as set out in section 26(1) of the Act, shall have full and unrestricted access to the Company's administrative, financial, accounting, company and other relevant records.

### 7.7.2 **Members' Authority to Act**

If, at any time, every Member is a member on the Board, as contemplated in section 57(4) of the Act, the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum.

## 7.8 **Representation by Concurrent Proxies**

7.8.1 The right of a Member to appoint persons concurrently as proxies, as set out in section 58(3)(a) of the Act is not limited, restricted or varied by this Memorandum.

## 7.9 **Requirements for Proxies**

7.9.1 The instrument appointing a proxy shall be in writing by the appointer or of her/his agent duly authorised in writing, or if the appointer is a juristic person or Body Corporate, by the duly authorised officer or agent.

7.9.2 A proxy shall remain valid:

7.9.2.1 for a period of one year after the date on which it was signed; or

7.9.2.2 any longer or shorter period expressly set out in the appointment, unless it is revoked as set out in clause 7.9.3 or expires earlier as contemplated in clause 7.9.4.

7.9.3 Irrespective of the form of instrument used to appoint a proxy, a member may revoke the proxy by:

7.9.3.1 cancelling it in writing, or making a later inconsistent appointment of a proxy; and

7.9.3.2 delivering a copy of the revocation instrument to the proxy and to the Company;

7.9.4 In the event where more than 2 (Two) persons are appointed as proxies, or supplies a form of instrument appointing the proxy, the proxy appointment remains valid only until the end of the meeting at which it was intended to be used, subject to the following provisions:

7.9.4.1 a proxy appointment constitutes a complete and final cancellation as the date stated in the proxy instrument; or

7.9.4.2 the date on which the revocation instrument was delivered to the proxy and the Company.

## 7.10 **Authority of Proxy to Delegate**

A proxy of a Member may not delegate his/her authority to act on behalf of a Member to another person as contemplated in section 58(3)(b) of the Act.

#### **7.11 Requirement to deliver Proxy Instrument to the Company**

The requirement that a Member must deliver to the Company a copy of the instrument appointing a proxy before the proxy may exercise the Member's rights at a meeting, as set out in section 58(3)(c) of the Act is varied as follows: The proxy instrument or other authority appointing a proxy shall be deposited at the Company's registered office as specified in the relevant notice despatched in respect of such members' meeting, at least 2 (Two) Business Days prior to the day of the meeting or the adjourned meeting at which such proxy intends to vote or at such place and/or within such time as the Board may from time to time direct and unless such instrument or authority is so deposited such proxy shall not be entitled to attend and/or vote at the meeting. The chairperson of the meeting has the discretion to accept a proxy instrument by way of a fax or electronic mail transmission.

#### **7.12 Deliberative Authority of Proxy**

7.12.1 A proxy is entitled to exercise, or abstain from exercising, any voting right of a Member without direction from the Member as to how the voting right should be exercised (or not as the case may be) as contemplated in section 58(7) of the Act, except to the extent that the instrument appointing the proxy provides otherwise.

7.12.2 A vote given by a proxy in accordance with the terms of the instrument appointing him/her shall be valid notwithstanding the previous death or insanity of the principal or revocation of the authority, unless notice in writing of the death, insanity or revocation has been received by the Company before the meeting concerned.

#### **7.13 Record Date for Exercising Members' Rights**

If, at any time, the Board fails to determine a record date, as contemplated in section 59 of the Act, the record date for the relevant matter is as determined in accordance with section 59(3) of the Act.

#### **7.14 Additional Rights of Members**

In addition to the rights of Members conferred by the Act, Membership shall also confer the following rights and prerogatives, viz:

7.14.1 The right to participate in the appointment of the members of the Board;

7.14.2 The right to inspect, and receive copies of the Annual Financial Statements of the Company;

7.14.3 The right to receive notice of, attend, speak and vote at General Meetings of the Company, in accordance with the provisions of the Act and this Memorandum.

#### **7.15 Interest in the Company**

The Members shall not directly or indirectly have any personal or private interest in the Company.

### **8. ARTICLE 6- MEMBERS' MEETINGS**

#### **8.1 Requirement to hold Meetings**

8.1.1 The Company can hold any Members Meetings other than those specifically required by the Act.

8.1.2 The Company shall hold an Annual General Meeting every year; provided that an Annual General Meeting shall be held within 4 (Four) months after the expiration of the financial year end of the Company.

8.1.3 Other General Meetings of the Company may be held at any time.

## **8.2 Members' Right to Requisition a Meeting**

The right of Members to requisition a meeting, as set out in section 61(3) of the Act, may be exercised by the holders of at least 10% (Ten Percent) voting rights entitled to be exercised in relation to the matter to be considered at the meeting, as provided for in that section. Such meeting, may, in the absence of the Board at the time, be in all respects arranged by one or more of such members who shall be regarded as acting on behalf of the Company for this purpose.

## **8.3 Location of Members Meetings**

The authority of the Board to determine the location of any Members Meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) of the Act is not limited or restricted by this Memorandum.

## **8.4 Notice of Members Meetings**

The minimum number of days for the Company to deliver a notice of a Members Meeting to the Members, as required by section 62 of the Act, is as provided for in section 62(1) of the Act.

## **8.5 Electronic Participation in Members Meetings**

The authority of the Company to conduct a meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act is not limited or restricted by this Memorandum.

## **8.6 Quorum for Members Meetings**

8.6.1 The quorum requirement for a Members Meeting (excluding Sub-Committee Meeting) to begin, or for a matter to be considered are 5% (Five Percent) of all Members.

8.6.2 The time periods allowed in section 64(4) and (5) of the Act apply to the Company without variation.

8.6.3 The authority of a meeting to continue to consider a matter, as set out in section 64(9) of the Act is not limited or restricted by this Memorandum.

8.6.4 The quorum requirement for a Members Meeting as set out in clause 7.6.1 must be present throughout the meeting for any decision of any matter at that meeting.

## **8.7 Adjournment of Members Meetings**

The maximum period allowable for an adjournment of a Members Meeting, is as set out in section 64(13) of the Act, without variation.

## **8.8 Members Resolutions**

8.8.1 For an ordinary resolution to be adopted at a Members Meeting, it must be supported by the holders of more than 50% (Fifty Percent) of the voting rights exercised on the resolution, as provided in section 65(7) of the Act.

- 8.8.2 For a special resolution to be adopted at a Members Meeting, it must be supported by the holders of at least 65% (Sixty Five Percent) of the voting rights exercised on the resolution, as provided in section 65(9) of the Act.
- 8.8.3 A special resolution adopted at a Members Meeting is not required for a matter to be determined by the Company, except those matters referred to in the Memorandum, the matters set out in section 65(11) or elsewhere in the Act.
- 8.8.4 A written resolution (which may consist of one or more documents in like form) signed by all Members and passed by Members holding the requisite number of votes, and inserted in the minute book, shall be valid and effective in accordance with its terms as if passed at a Members' Meeting, provided that such proposed resolution was delivered to all the Members by means of a written notice which calls for such resolution to be signed by all the Members willing to support such proposed resolution and be returned to the Company within a period which is not less than the period referred to in 62(1) of the Act.
- 8.8.5 Unless the contrary is stated herein, any such resolution shall be deemed to have been passed on the latest date on which it was signed by all Members.
- 8.8.6 A fax or electronic transmission of a Member's signed resolution shall be acceptable evidence that such resolution has been signed by the Member; provided that its signature (or that of its representative to the extent that same is stated on the face thereof to be duly authorised to sign on behalf of such Member) appears on the fax or electronic transmitted document.
- 8.8.7 It is recorded to avoid doubt, that, the provided notice of the proposed written resolution was duly given to each Member as contemplated in clause 8.8.4 and any failure by any Member to sign any written resolution within the period stipulated in the notice to the Member shall not affect the validity of such written resolution; provided further that such written resolution is passed by the Members holding the requisite number of votes.

## **8.9 Votes of Members**

- 8.9.1 Subject to any rights or restrictions for the time being, on a show of hands every Member present in person or represented by proxy shall have one vote and on a poll every Member present in person or represented by proxy shall have one vote.
- 8.9.2 The demand for a poll may be made at any time by not less than 3 (Three) Members, present or represented by proxy at the Meeting, and having the right to vote at such Meeting.
- 8.9.3 On a poll, each Member shall have 1 (One) vote.
- 8.9.4 In the case of an equality of votes, the Chairperson of the meeting shall not be entitled to a second casting vote.
- 8.9.5 The demand for a poll may be withdrawn.
- 8.9.6 If a poll is duly demanded, it shall be taken in such manner as the Chairperson directs.
- 8.9.7 A poll demanded on the election of a Chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairperson of the Meeting directs. The demand for a poll shall not prevent the continuation of a Meeting for the transaction of any business other than the question upon which the poll has been demanded.

## **9. ARTICLE 7: EXECUTIVE COMMITTEE**

### **9.1 Composition and Election of the Executive Committee**

9.1.1 Until otherwise determined by the Company in an General Meeting, the Executive Committee shall consist of the following persons:

9.1.1.1 all Members elected at the General Meeting;

9.1.1.2 the Office Bearers as elected at the General Meeting and shall consist of:

9.1.1.2.1 the Chairperson;

9.1.1.2.2 the Vice-Chairperson; and

9.1.1.2.3 the Treasurer.

9.1.1.3 The parties elected in clause 9.1.1.2 shall hold office for 3 (Three) years calculated from the date of election.

9.1.1.4 The following members of the Sub-Committee shall form part of the Executive Committee and shall attend as *ex officio*:

9.1.1.4.1 The Chairperson of each Sub-Committee;

9.1.1.4.2 The Vice-Chairperson of each Sub-Committee; and

9.1.1.4.3 The Treasurer of each Sub-Committee.

### **9.2 Authority of the Executive Committee**

9.2.1 The Executive Committee shall manage, control, oversee and co-ordinate the functions of the various Sub-Committees.

9.2.2 In addition to clause 9.2.1 the Executive Committee shall report to the Department of Labour regarding the development and implementation of the respective strategic initiatives of each Sub-Committee.

9.2.3 The Executive Committee's tasks shall include but is not limited to the following:

9.2.3.1 oversee and execute forward planning of each Sub-Committee;

9.2.3.2 financial control through bookkeeping, budgeting and cash control under the auspices of approved auditors;

9.2.3.3 all aspects to relevant training according to set Company standards;

9.2.3.4 review administration of all registrations as and when required;

9.2.3.5 ensure the implementation and application of fair employment procedures, including the fair and consistent applications of workplace rules; and

9.2.3.6 to ensure an ongoing relationship with authorities relevant to the industry. No ad-hoc meetings as a representative of the Company shall be conducted on a personal basis.



### **9.3 Meetings of Executive Committee**

#### **9.3.1 Requirement to hold General Meetings**

9.3.1.1 The Executive Committee is required to hold a General Meeting each year; provided that the General Meeting shall be held within 4 (Four) months after the expiration of the financial year end of the Company.

#### **9.3.2 Notice of Executive Committee Meetings**

9.3.2.1 The Company must deliver a notice of the meeting at least 15 (Fifteen) Business Days before the meeting is to begin.

#### **9.3.3 Electronic Participation in Executive Committee Meetings**

9.3.3.1 The authority of the Company to conduct a meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act is not limited or restricted by this Memorandum.

#### **9.3.4 Quorum for Executive Committee Meetings**

9.3.4.1 The quorum requirements for an Executive Committee Meeting to begin, or for a matter to be considered are subject to 50% (Fifty Percent) plus 1 (One).

#### **9.3.5 Adjournment of Executive Committee Meetings**

9.3.5.1 The maximum period allowable for an adjournment of an Executive Committee Meeting shall be 14 (Fourteen) days after, the date of the meeting.

#### **9.3.6 Votes of Executive Committee Members**

9.3.6.1 Every Executive Committee Member present in person or represented by proxy shall have 1 (One) vote.

9.3.6.2 In the case of equality of votes, the Chairperson shall have a casting vote.

#### **9.3.7 Minutes of Meetings**

9.3.7.1 Minutes of each meeting shall be ratified by the Chairperson and distributed to each Executive Committee Member within 5 (Five) Business Days of each meeting.

9.3.7.2 Should there be amendments to the minutes, the minutes shall be distributed to each Executive Committee Member within 5 (Five) Business Days thereof.

#### **9.3.8 Removal of Executive Committee Members**

9.3.8.1 Should any Executive Committee Member be absent from 3 (Three) meetings per year without a valid reason that is acceptable to the Chairperson, that Executive Committee Member shall be expelled and removed from further services of the Executive Committee.

9.3.8.2 The Executive Committee Member may be nominated and re-elected, in the event that he/she provides a valid reason for his/her absence from the meetings that is acceptable to the Chairperson.

9.3.8.3 In the case of clause 9.3.8.1, the Executive Committee Members may elect 1 (One) of the existing Executive Committee Members to fill the vacancy.

9.3.8.4 In the event the Chairperson vacating the chair, the Vice-Chairperson shall be deemed to fill the vacancy for the remaining period.

### **9.3.9 Extraordinary General Meetings of the Executive Committee**

9.3.9.1 An extraordinary General Meeting shall be convened by the Chairperson upon special request on the following provisions:

9.3.9.1.1 the request shall clearly state the reasons for the meeting and shall give full particulars regarding the meeting; and

9.3.9.1.2 the request shall be signed by at least 60% (Sixty Percent) of the Executive Committee Members unless it was approved at an Annual General Meeting.

9.3.9.2 The minimum number of days' notice for such meeting shall not be less than 30 (Thirty) days.

### **9.4 Indemnification of the Executive Committee Members**

9.4.1 The authority of the Company to advance expenses to an Executive Committee Member, or indemnify an Executive Committee Member, in respect of the defence of legal proceedings, as set out in section 78(4) of the Act is not limited, restricted or extended by this Memorandum.

9.4.2 The authority of the Company to indemnify an Executive Committee Member in respect of liability, as set out in section 78(5) of the Act is not limited or restricted by this Memorandum.

9.4.3 The authority of the Company to purchase insurance to protect the Company, or the Executive Committee Members, as set out in section 78(7) of the Act is not limited, restricted or extended by this Memorandum.

## **10 ARTICLE 8: SUB-COMMITTEE MEETINGS**

### **10.1 Requirements to hold Meetings**

10.1.1 Each of the Sub-Committees shall hold an General Meeting every year, provided that a General Meeting shall be held within 4 (Four) months after the expiration of the financial year end of the Company.

### **10.2 Notice of Sub-Committee Meetings**

10.2.1 The Company must deliver a notice of the meeting at least 15 (Fifteen) Business Days before the meeting is to begin.

### **10.3 Electronic Participation in Sub-Committee Meetings**

10.3.1 The authority of the Company to conduct a meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication as set out in section 63 of the Act is not limited or restricted by this Memorandum.

### **10.4 Quorum for Sub-Committee Meetings**

10.4.1 The quorum requirement for a Sub-Committee Meeting to begin, or for a matter to be considered are subject to 50% (Fifty Percent) plus 1 (One).

## **10.5 Adjourment of Sub-Committee Meetings**

10.5.1 The maximum period allowable for an adjourment of a Sub-Committee Meeting shall be 14 (Fourteen) days after the date of the Meeting.

10.5.2 In the case of equality of votes the Chairperson shall be entitled to a casting vote.

## **10.6 Minutes of Meetings**

10.6.1 Minutes of each meeting shall be ratified by the Chairperson and distributed to each Sub-Committee Member within 5 (Five) Business Days of each meeting.

10.6.2 Should there be amendments to the minutes, the minutes shall be distributed to each Member within 5 (Five) Business Days thereof.

## **10.7 Extraordinary General Meetings of Sub-Committees**

10.7.1 An extraordinary general meeting shall be convened by the Chairperson upon special request on the following provisions:

10.7.2 the request shall clearly state the reasons for the meeting and shall provide full particulars regarding the meeting; and

10.7.3 the request shall be signed by at least 60% (Sixty Percent) of Sub-Committee Members unless it was approved at a General Meeting.

10.7.4 The minimum number of days' notice for such a meeting shall not be less than 30 (Thirty) days.

## **11 ARTICLE 9: BOARD AND OFFICERS**

### **11.1 Composition and Election of the Board**

11.1.1 Until otherwise determined by the Company in General Meeting, the number of Directors shall not be less than 3 (Three) persons who are not connected persons in relation to each other. The Board shall consist of the following persons:

11.1.1.1 The Chairperson of the Executive Committee;

11.1.1.2 The Vice-Chairperson of the Executive Committee;

11.1.1.3 the Treasurer of the Executive Committee.

11.1.2 The Directors shall be entitled, at their discretion, by majority decision, to co-opt such additional Directors as may be necessary in order to fill temporary vacancies occurring from time to time; in which event such co-opted Directors shall serve until the next occurring Annual General Meeting of the Company but shall then be eligible for election.

11.1.3 No person shall be capable of being appointed as a Director of the Company, unless the provisions of the Act have been duly complied with.

11.1.4 The continuing Directors may act, notwithstanding any vacancy in their number, but if and for so long as their number is reduced below the minimum number of Directors required to act as such for the time being, the continuing Director/s may act only:

11.1.4.1 to preserve, secure and ensure the continuity of the assets and activities of the Company;

- 11.1.4.2 to cause vacancies to be filled, and the number of Directors to be increased to the required minimum; and/or
- 11.1.4.3 to initiate a process, which may include the summoning of a General Meeting for that purpose; provided that if there is no Director able or willing to act, then any Member may initiate such process or convene the necessary General Meeting.
- 11.1.5 Unless the Director is removed in terms of the Act, each Director shall serve for a period of 3 (Three) years.
- 11.1.6 In addition to satisfying the qualification and eligibility requirements set out in section 66 of the Act, to become or remain a Board Member or a prescribed officer of the Company, a person does not need to satisfy any further eligibility requirements or qualifications.
- 11.1.7 The authority of the Company's board to fill any vacancy on the Board on a temporary basis, as set out in section 68(3) of the Act is not limited or restricted by this Memorandum.
- 11.1.8 A Director shall be disqualified as Director of the Company as contemplated in section 69 of the Act.
- 11.1.9 A Director may be removed from the Board, if the majority vote a vote of no confidence during a General Meeting of the Executive Committee.
- 11.1.10 The elected directors as referred to in clause 11.1.1 shall accept the fiduciary responsibility of the Company and as more fully described in section 74 of the Companies Act when managing and directing the business and affairs of the Company as contemplated in clause 11.2.

## **11.2 Authority of the Board**

The authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Act is not limited or restricted by this Memorandum.

## **11.3 Meetings**

- 11.3.1 The authority of the Board to consider a matter other than at a meeting, as set out in section 74 of the Act is not limited or restricted by this Memorandum.
- 11.3.2 The right or the Directors to requisition a meeting of the Board, as set out in section 73(1) of the Act, may be exercised by at least 2 (Two) Directors, as provided in that section.
- 11.3.3 The authority of the Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Act is not limited or restricted by this Memorandum.
- 11.3.4 The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4) of the Act is not limited or restricted by this Memorandum.
- 11.3.5 The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) of the Act is not limited or restricted by this Memorandum.
- 11.3.6 The quorum requirement for a Board meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, is set out in section 73(5) of the Act, without variation.

## **11.4 Directors' Compensation and Financial Assistance**

11.4.1 The authority of the Company to pay remuneration to the Directors as contemplated in clause 6 to reimburse the Directors for traveling, subsistence and other expenses incurred in the execution of the mandated duties of the Director, shall be determined in accordance with a special resolution approved by the Members subject to the provisions of sections 66(8) and (9) of the Act.

11.4.2 The Board may not, subject to the provisions of Item 5(4) of Schedule 1 of the Act, authorise the Company to provide financial assistance to a director other than a person referred to in Item 5(4) of Schedule 1 of the Act.

## **11.5 Indemnification of the Board**

11.5.1 The authority of the Company to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78(4) of the Act is not limited, restricted or extended by this Memorandum.

11.5.2 The authority of the Company to indemnify a Director in respect of liability, as set out in section 78(5) of the Act is not limited or restricted by this Memorandum.

11.5.3 The authority of the Company to purchase insurance to protect the Company, or the Board, as set out in section 78(7) is not limited, restricted or extended by this Memorandum.

## **11.6 Committees of the Board**

11.6.1 The authority of the Board to appoint committees, and to delegate to any such committees any of the authority of the Board, as set out in section 72(1) of the Act, and to include in any such committees persons who are not Board members, as set out in section 72(2)(a) of the Act is not limited or restricted by this Memorandum.

11.6.2 The authority of a committee appointed by the Board, as set out in section 72(2)(b) and (c) of the Act is not limited or restricted by this Memorandum.

## **12 Article 10: General Provisions**

### **12.1 Company Records**

The Company shall keep such company, administrative financial, accounting and other records as may be required to satisfy the requirements of the Act or any other law, including without limitation as may be required for the preparation of the Company's financial statements.

### **12.2 Company Obligations**

The Company shall, subject to this Memorandum and the Act:

12.2.1 comply with all statutory obligations applicable to the Company, including the filing of an annual return in terms of section 33 of the Act, and for the avoidance of doubt, in the event that the Company fails to file an annual return in terms of section 33 of the Act, any one of the Board Members or any Member (acting as attorney and agent for and on behalf of the Company, which appointment is hereby made by the Company) shall be entitled to file such annual return with the Commission for and on behalf of the Company;

12.2.2 comply with the provisions of any Members Agreement entered into between the Company and Members of the Company *inter se*; and

12.2.3 take out such insurance as may be recommended by the Board from time to time;

- 12.2.4 comply with the reporting requirements as may be determined by the Commissioner from time to time; and
- 12.2.5 not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of an impermissible avoidance arrangement as contemplated in Part IIA of Chapter III of the Income Tax Act or a transaction, operation or scheme as contemplated in section 103(5) of the Income Tax Act.

### **12.3 Single person controlling the activities**

- 12.3.1 It is specifically recorded that no person in his capacity as Member, Director, Executive Committee Member or Sub-Committee Member shall directly or indirectly control the decision making powers relating to the Company.

### **12.4 Notices**

- 12.4.1 A notice shall be delivered by the Company to all Members either:

- 12.4.1.1 personally; or

- 12.4.1.2 by sending it by registered mail to his/her registered address; or

provided that such Member has consented thereto in writing, by electronic communication to such address as the Member may advise the Company in writing from time to time. For the purposes of this clause 12.4, such "address", in relation to electronic communication, includes any number or address used for the purposes of such electronic communication.

- 12.4.2 If receipt of notice is disputed by a Member, such notice shall be deemed not to have been duly given, unless the Company can produce written confirmation of transmission, or a registered slip, indicating that the notice was properly addressed, transmitted or posted, as the case may be.

- 12.4.3 Any notice by registered mail shall be deemed to have been received 5 (Five) days after the latter containing the same was duly posted, as aforesaid.

- 12.4.4 In the event of the death, disability or insolvency (which shall include the liquidation of a Body Corporate) of a Member, the Company shall be entitled to give any notice required by these Memorandum, in any manner in which the same may have been given if the disability, death or insolvency had not occurred; provided that as soon as proof of the appointment of any substituted Member had been given to the Company, such notice shall thereafter be given by the Company to any person so deemed to be a Member duly addressed to such person by name, or by his/her title, or any like description, at the address (if any) in the Republic supplied for the purpose by such person, or (until such address has been so supplied) by giving the notice as aforesaid, at the Member's address recorded in the Register of the Company.

- 12.4.5 Proof that a notice contained in an electronic communication was sent in accordance with the provisions of the Electronic Communications and Transaction Act No. 25 of 2002 shall be conclusive evidence that the notice was given.

- 12.4.6 A notice given to any Member shall be binding on all persons claiming on his/her death or on any transmission of his/her interests.

- 12.4.7 The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

## **12.5 Winding Up**

12.5.1 The Company shall be wound up under the following circumstances:

12.5.1.1 by the Court;

12.5.1.2 voluntarily by majority of votes at a Members General Meeting; or

12.5.1.3 instructed by the Department of Labour.

12.5.2 If the Company is wound up, deregistered or dissolved, the assets of the Company remaining, after the satisfaction of all its liabilities, shall be given or transferred to:

12.5.2.1 another entity approved by the Commissioner;

12.5.2.2 a public benefit organisation approved in terms of section 30 of the Income Tax Act;

12.5.2.3 an institution, board or body which is exempt from tax under section 10(1)(cA)(i) of the Income Tax Act; or

12.5.2.4 the government of the Republic in the National, Provincial or Local Sphere.

## **12.6 Reserves**

12.6.1 Subject to any contrary provision in the Act, every Director and other Member shall be indemnified out of the funds of the Company against any reasonable and necessary costs and expenses properly incurred at the request, and with the authority, and in the course of the business of the Company.

12.6.2 No Director, Member or employee of the Company shall be liable for the acts, receipts, neglects or defaults of any other Director, officer or employee or for joining in any receipt or other act for conformity, or for loss or expenses happening to the Company through the insufficiency or deficiency of any security in or upon which any of the money of the Company shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom any money, securities or effect shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on the part of such person, or for any other loss, damage, or misfortune whatever which shall happen in the execution of the duties of office, or in relation thereto, unless the same happen through such person's own wrongful act, negligence, default, breach of duty or breach of trust.

## **12.7 Fees and Financial System**

12.7.1 Any fees including examinations, registrations, membership and sale of operation manuals shall be determined or reviewed annually by the Executive Committee and Sub-Committees of the Company.

12.7.2 The Company shall arrange for a bank account for the Company and for each of the Sub-Committees.

12.7.2.1 each Sub-Committee shall provide the Executive Committee of a budget for each financial year for the approval of the Executive Committee;

12.7.2.2 Each Sub-Committee shall manage their bank account according to the approved budget.

12.7.3 In the case of a Sub-Committee, there shall be 3 (Three) authorised signatories to the bank account and shall consist of the Chairperson, Treasurer and Secretary.

12.7.4 In the case of the Executive Committee, there shall be 3 (Three) authorised signatories to the bank account and shall consist of the Chairperson, Treasurer and Secretary.

## **12.8 Disciplinary and Appeal Hearings**

- 12.8.1 The Company shall have a Disciplinary Sub-Committee. This Disciplinary Sub-Committee shall be responsible for the disciplinary investigation and/or hearing that shall be conducted in accordance with the Disciplinary Code and/or Code of Conduct of the Company.
- 12.8.2 The Appeal Sub-Committee shall be responsible for any appeal hearing regarding the Disciplinary Sub-Committee's decision.
- 12.8.3 The Disciplinary Code and/or Code of Conduct shall be reviewed annually by the Executive Committee and shall be available on the Company's Website.