



**MEMORANDUM OF INCORPORATION OF  
COMENSA NPC REGISTRATION NUMBER 2005/017895/08**

<b>Policy:</b>	MOI	<b>Effective:</b>	<b>8 March 2016</b>
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<b>Approved by:</b>		<b>Date:</b>	

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**MEMORANDUM OF INCORPORATION OF  
COMENSA NPC REGISTRATION NUMBER 2005/017895/08**

**Adoption of Memorandum of Incorporation**

WHEREAS the Company was incorporated as an Association Incorporated under Section 21 of the Companies Act, 61 of 1973, being a company not having a share capital;

AND WHEREAS the Company is now incorporated as a Non-Profit Company in terms of the Companies Act, 71 of 2008, which replaced the Companies Act, 61 of 1973, with effect from 1 May 2011;

AND WHEREAS the Company wishes to replace the Articles of Association and Memorandum of Association that governed it in terms of the Companies Act, 61 of 1973, as well as its Constitution which existed independently of its Articles of Association and Memorandum of Association, with a new Memorandum of Incorporation, as required in terms of the Companies Act, 71 of 2008;

AND WHEREAS this Memorandum of Incorporation is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Companies Act, 71 of 2008, and has been adopted by the Members of the Company in accordance with section 13(1), in substitution for the Articles of Association and the Memorandum of Association of the Company, which were the constitutional documents of the Company under the Companies Act, 61 of 1973 (now repealed).

**NOW THEREFORE THE DIRECTORS AND MEMBERS OF THE COMPANY AGREE THAT THE FOLLOWING WILL CONSTITUTE THE COMPANY'S MEMORANDUM OF INCORPORATION:**

**1. INTERPRETATION**

1.1. In this Memorandum of Incorporation:

- 1.1.1. "**AGM**" means the annual general meeting of Members held in accordance with the provisions of article 11.1 of this MOI;
- 1.1.2. "**Board**" means the board of Directors of the Company, being the body responsible for the management of the Company, as constituted in article 9 of this MOI;
- 1.1.3. "**Companies Act**" means the Companies Act 71 of 2008, as amended from time to time;
- 1.1.4. "**Companies Regulations**" means the Companies Regulations promulgated by the Minister responsible for companies in terms of section 223 of the Companies Act, as amended from time to time;
- 1.1.5. "**Director**" means those persons appointed as such in terms of article 9 of this MOI;
- 1.1.6. "**file**", when used as a verb, means to deliver a document to the Companies and Intellectual Property Commission (established in terms of section 185 of the Companies Act) in the manner and form, if any, prescribed for that document;
- 1.1.7. "**Income Tax Act**" means the Income Tax Act 58 of 1962, as amended from time to time;
- 1.1.8. "**Member**" means a person or entity that holds membership in the Company as determined in article 8 of this MOI;
- 1.1.9. "**MOI**" meaning this Memorandum of Incorporation;
- 1.1.10. "**Republic**" means the Republic of South Africa;

1.1.11 "**the Company**" means Coaches and Mentors of South Africa, which has been incorporated in the Republic of South Africa as COMENSA NPC, with registration number 2005/017895/08);

1.1.12 . a reference to a "**section**" by number refers to the corresponding section of the Companies Act, unless otherwise specifically indicated in the context;

1.1.13 . a reference to a "**Regulation**" by number refers to the corresponding regulation in the Companies Regulations; and

1.1.14. words that are defined in the Companies Act or the Income Tax Act bear the same meaning in this MOI as in those Acts.

## **2. INCORPORATION AND NATURE OF THE COMPANY**

2.1. The Company is incorporated as a non-profit company with Members, as defined in the Companies Act.

2.2. The Company is incorporated as a public benefit organisation in terms of section 30 of the Income Tax Act, as read with Part I of the Ninth Schedule of the Income Tax Act, and may, if approved by the majority of Members, seek to apply for tax-exempt status as regulated by the applicable provisions of the Income Tax Act.

2.3. The Company is, in terms of section 19(1)(c) read with section 15(2), incorporated in accordance with and governed by:

2.3.1.the unalterable provisions of the Companies Act that are applicable to non-profit companies, specifically the provisions of Schedule 1 of the Companies Act;

2.3.2.the alterable provisions of the Companies Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this MOI; and

2.3.3.the provisions of this MOI.

## **3. OBJECTS AND POWERS OF THE COMPANY**

3.1. The main object of the Company is to support coaches and mentors through the

establishment of standards of good practice, a code of ethics and conduct, the provision of a platform for discussion and the encouragement of continuous professional development to effect positive change in the Republic.

3.2. Should the Company elect to apply for tax-exempt status as set out in article 2.2 above, the Directors will take steps to ensure that the main object and the activities carried on by the Company is as contemplated in Part I of the Ninth Schedule of the Income Tax Act, and may amend the MOI to ensure such compliance, if necessary.

3.3. In support of this object the Company will:

3.3.1. Endeavour to be a recognised professional association representing and supporting the self-regulation of coaching and mentoring in the Republic of South Africa;

3.3.2. Keep abreast of and communicate to Members, good practice and trends in coaching and mentoring by means of digital media, workshops and seminars, and to provide a resource for information on coaching and mentoring;

3.3.3. Maintain and administer a central register of Members available to prospective clients of coaching and mentoring services;

3.3.4. Raise the awareness and credibility of coaching and mentoring;

3.3.5. Provide a platform within which coaches and mentors may network, share ideas and values, and develop a sense of community;

3.3.6. Provide a credentialing process for coaches and mentors, supervisors and training providers, with a view to upholding standards and maintaining the quality of the services provided by the industry.

3.4. The objects of the Company are as set out in this article 3 and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are subject to the restrictions, limitations or qualifications as set out in article 4, as contemplated in section 19(1)(b)(ii).

3.5. The Company is not subject to any provision contemplated in section 15(2)(b) or (c).

#### 4. SPECIAL CONDITIONS

4.1. Special conditions, other than those specified in the Companies Act are as follows:

4.1.1. The Company shall carry out its activities in a non-profit manner and with an altruistic or philanthropic intent.

4.1.2. The income and property of the Company, howsoever derived, shall be applied solely towards the promotion of its main object, or in the course of conducting a public benefit activity, as defined in the Income Tax Act (if the Company is tax-exempt). No portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to any Member or Director of the Company or to the Company's holding company or subsidiary, if any, otherwise than for the attainment of its object: Provided that nothing herein contained shall prevent the payment, in good faith, of reasonable remuneration to any officer or servant or employee of the Company, in return for any services actually rendered to the Company.

4.1.3. Notwithstanding the aforesaid, to the extent that the funds are not so applied, the Company should invest its funds in such prudent investments as the Directors may determine, on an arms-length basis, provided that such investment shall always aid the promotion or achievement of the main object.

4.1.4. The Company may retain 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 the Company by way of donation, bequest or inheritance.

4.1.5. Upon its winding-up, deregistration or dissolution, the assets of the Company remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to its main object, which must be an approved public benefit organisation, as defined in the Income Tax Act, determined by the Members of the Company at or before the time of its dissolution or, failing such determination, by the Court, provided that in any event such other association or institution shall be a public benefit organisation within the

Republic which, if the Company is exempt from tax, is itself exempt from tax.

4.1.6. The Company may not carry on any business undertaking or trading activity, otherwise than to the extent that:

4.1.6.1. The gross income derived from such activities does not exceed the amounts stipulated in section 30(3)(b) of the Income Tax Act, or supervening legislation; or

4.1.6.2. The undertaking or activity is:

4.1.6.2.1. Integral and directly related to its object; and

4.1.6.2.2. Is carried on or conducted on a basis, substantially the whole of which is directed towards the recovery of costs and which would not result in unfair competition in relation to taxable entities or, if not integral and directly related to its sole object, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation, or the undertaking or activity is approved by the Minister of Finance by notice in the Gazette, having regard to:

4.1.6.2.2.1. The scope and benevolent nature of the undertaking or activity;

4.1.6.2.2.2. The direct connection and interrelationship of the undertaking or activity with the Company's sole purpose;

4.1.6.2.2.3. The profitability of the undertaking or activity: and

4.1.6.2.2.4. The level of economic distortion that may be caused by the Company's tax exempt status (if any).

4.1.7. The Company shall not accept 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 of the Income Tax Act.



- 4.1.8. The Company shall not accept any donation in respect of which the donor imposes any condition which could enable him or any connected person in relation to him, as defined in the Income Tax Act, to derive some direct or indirect benefit from the application of such donation.
- 4.1.9. The Company shall not be party to 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 any fiscal statute in the Republic, or any other Act administered by the Commissioner, South African Revenue Service (or his successor).
- 4.1.10. The Company may pay remuneration to any employee, office bearer, servant or other person for services actually rendered, but shall not pay any remuneration to any employee, office bearer, servant or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 4.1.11. The Company shall comply with all lawful reporting requirements as may be determined by the Commissioner, South African Revenue Service (or his successor) from time to time.
- 4.1.12. The Company shall to the extent that it provides funds to any association of persons carrying on a public benefit activity, as defined in the Income Tax Act, take reasonable steps to ensure that the funds are utilised for the purpose for which they have been so provided.
- 4.1.13. The activities of the Company shall be confined to the Republic or any other country as approved by the Board.
- 4.1.14. The Company may not lend or invest funds, or in any way facilitate the lending or investing of funds by third parties, to or in any Member or office bearer of the Company, or any other individual or organisation, nor may it enter into any indemnity, guarantee and/or suretyship or to secure payment thereunder in any way.
- 4.1.15. The Company may register in terms of section 13(5) of the Non-Profit

Organisations Act, 71 of 1997, and comply with any other requirements imposed in terms of that Act, if required.

4.1.16. Subject to article 5 of this MOI, the Company may amalgamate with other companies or associations having the same or similar objects to the Company, not being an object or objects excluded in terms of article 4 of this MOI, and not being otherwise in conflict with the provisions of this MOI, and not involving the personal interest of any office-bearer of the Company, and only in terms of a special resolution by the Company's Members.

4.1.17. Subject to article 5 of this MOI, the Company may form and have an interest in any company or companies or associations having the same or similar objects to the Company, not being an object or objects excluded in terms of article 4 of this MOI, and not being otherwise in conflict with the provisions of this MOI, and not involving the personal interest of any office-bearer of the Company, and only in terms of a special resolution by the Company's Members.

4.1.18. The Company may take part in the management, supervision and control of the business or operations of any other company or business and to enter into partnerships having the same or similar objects to the Company, not being an object or objects excluded in terms of article 4 of this MOI, and not being otherwise in conflict with the provisions of this MOI, and not involving the personal interest of any office-bearer of the Company, and only in terms of a special resolution by the Company's Members.

4.1.19. The Company shall be entitled to bind Members to contribute by way of subscriptions and/or levies towards the funds of the Company, and to enforce payment of, and to collect and receive from Members, such contributions and levies.

4.2. It is hereby specifically recorded that the Company will not engage in or be responsible for the following matters or activities:

4.2.1. To act as a training provider and to assess and/or certify competence of Members against qualifications, unit standards or training programmes, whether or not registered with or approved by the South African Qualifications

Authority (SAQA) or any Sector Education and Training Authority (SETA) in terms of the National Qualifications Framework (NQF) and related legislation;

4.2.2. To provide, or facilitate the provision by third parties of, professional liability insurance or other risk management or risk mitigation service, to any Member or other individual or organisation;

4.2.3. To act as employment broker, finder or business agent for any Member or other individual or organisation, other than to provide prospective clients of coaching and mentoring services with basic database information on Members without express or implied warranty as to the competence or suitability of such Members;

4.2.4. To define or recommend any professional fee or tariff structure for application by any Member or other individual or organisation.

## **5. FUNDAMENTAL TRANSACTIONS**

5.1. The Company may not:

5.1.1. amalgamate or merge with, or convert to, a profit company; or dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

## **6. AMENDMENT OF THE MOI**

6.1. This MOI may be altered or amended only in the manner set out in section 16 or 17, being:

6.1.1. in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:

6.1.1.1. publishing a notice of the alteration, in any manner required or permitted by this MOI or the rules, policies and/or procedures of the Company; and

6.1.1.2. filing a notice of the alteration, or

6.1.2. in compliance with a Court order, effected by a resolution of the Directors; or

6.1.3. at any other time only if a special resolution to amend the MOI is proposed and adopted at a properly quorate meeting of Members.

6.2. The Directors must file a notice of amendment of the MOI within 5 (five) business days and the amendment will take effect on the date the notice of amendment is filed or such later date as is specified in the notice of amendment.

6.3. The Company shall submit to the Commissioner, South African Revenue Service (or his successor), a copy of any amendment to this MOI, if the Company is tax-exempt or if this is required by the Income Tax Act.

## **7. RULES, POLICIES AND PROCEDURES**

7.1. The Directors may make, amend or repeal any necessary or incidental rules, policies and/or procedures relating to the governance of the Company in respect of matters that are not addressed in the Companies Act or this MOI, by:

7.1.1. publishing a copy of those rules, policies and/or procedures, in any manner required or permitted by the MOI, or the rules, policies and/or procedures of the Company; and

7.1.2. filing a copy of those rules, policies and/or procedures.

7.2. A rule, policy and/or procedure contemplated in article 7.1:

7.2.1. must be consistent with the Companies Act and this MOI, and any such rule, policy and/or procedure that is inconsistent with the Companies Act or this MOI is void to the extent of the inconsistency; and

7.2.2. takes effect on a date that is the later of:

7.2.2.1. 10 (ten) business days after the rule, policy and/or procedure is filed;

or

7.2.2.2. the date, if any, specified in the rule, policy and/or procedure.

7.3. The Directors must publish any rules, policies and/or procedures made, amended or repealed and make such rules, policies and/or procedures available to members on request.

## **8. MEMBERSHIP**

8.1. Persons (individuals and/or corporate entities) meeting the respective requirements

and paying the required annual membership fee may be admitted to the membership categories of the Company specified herein.

- 8.2. Persons who do not meet the membership criteria, or whose credentials prove to be invalid, may be refused admission to membership or admitted to membership under a different membership category, or required to resign membership. In the event of a dispute regarding eligibility for membership, the decision of the Executive Committee shall be final. The Company shall not be required to furnish reasons for refusal of membership.
- 8.3. Once membership has been formally bestowed, a Member shall remain a Member until her/his membership lapses or is terminated or amended in accordance with the provisions hereof.
- 8.4. Members are expected to conduct their affairs with the values of integrity, ethics, accountability, inclusivity and professionalism. If, in the opinion of the Executive Committee, the conduct of a Member has been improper or is calculated to injure the good name of the Company, the Executive Committee may suspend or expel that Member from membership.
- 8.5. A Member in good standing shall be defined as a Member, whether individual or corporate, registered within the appropriate membership category of the Company, who complies with the Code of Professional Ethics, Standards of Professional Competence and Policy on Supervision of the Company (if any), and whose membership fees are fully paid up at all relevant times.
- 8.6. Any Member who has resigned or has been excluded or suspended shall not have any claim of any nature against the Company.
- 8.7. Application for membership shall be on such form as the Executive Committee may prescribe from time to time, and the Executive Committee shall carry out such checks, and may require such supporting documentation as they in their sole discretion may decide from time to time.
- 8.8. The rights and benefits of membership shall not be transferable and shall terminate upon death, or as the case may be, winding up of membership.

8.9. The Company shall maintain at its registered office a register of Members of the Company as provided in the Act. The register of Members shall be open to inspection as provided in the Act.

8.10. There shall be 3 (three) categories of membership:

8.10.1. Individual Members (divided into Individual Voting Members and Individual Non- Voting Members);

8.10.2. Organisational Members; and

8.10.3. Honorary Members.

8.11. In respect of **Individual Members**, membership shall be open to all persons irrespective of race, creed, colour, religious affiliation, sexual preference, disability or similar grouping or classification who:

8.11.1. Satisfy the eligibility criteria for individual membership defined by the Executive Committee in terms of:

8.11.1.1. relevant professional qualification (or recognition of prior learning) and professional experience and continuing professional development, or progress towards any or all of these achievements, or

8.11.1.2. undertaking studies into coaching or mentoring; and who -

8.11.2. Agree to be bound by:

8.11.2.1. the rules, policies and procedures of the Company as defined by the Executive Committee and by the Members in general meeting, and by -

8.11.2.2. the MOI; and who

8.11.3. Have been admitted to membership; and who

8.11.4. Pay an annual contribution to be determined by the Executive Committee from time to time.

8.11.5. Individual Members shall furthermore be classified into Individual Voting Members and Individual Non-Voting Members, as follows:

8.11.5.1. Individual Voting Members shall include:

8.11.5.1.2. COMENSA Member;

- 8.11.5.1.3. COMENSA Registered Coach / Mentor;
- 8.11.5.1.4. COMENSA Credentialed Practitioner (Coach or Mentor);
- 8.11.5.1.5. COMENSA Senior Practitioner ;
- 8.11.5.1.6. COMENSA Master Practitioner

8.11.5.2. Individual Non-Voting Members shall comprise Student Members.

8.11.5.3. The criteria for classification and categorisation of Individual Voting Members and Individual Non-Voting Members shall be as determined by the Executive Committee from time to time, whose decision shall be final and binding.

8.11.5.4. Individual Non-Voting Members shall not be entitled to any vote in terms of this MOI.

8.11.5.5. Each Individual Voting Member shall be entitled to 1 (one) vote.

8.12. In respect of **Organisational Members**, membership shall be open to all organisations which:

8.12.1. Satisfy the eligibility criteria for organisations defined by the Executive Committee in terms of being:

8.12.1.1. companies of coaching and/or mentoring practitioners; or

8.12.1.2. training institutions that train coaches or mentors; or

8.12.1.3. interested parties being companies or organisations not earning income from coaching and/or mentoring; or

8.12.1.4. companies or organisations that are users or buyers of external coaching and/or mentoring services or that use coaching and/or mentoring methodology; and which -

8.12.2. Agree to be bound by:

8.12.2.1. the rules, policies and procedures of the Company as defined by the Executive Committee and by the Members in general meeting, and by -

8.12.2.2. the MOI; and which -

8.12.3. Have been admitted to membership; and which

8.12.4. Pay an annual contribution to be determined by the Executive Committee from time to time.

8.12.5. Organisational Members shall comprise:

8.12.5.1. Coach/Mentor Training Provider;

8.12.5.2. COMENSA Registered Coach/Mentor Training Provider;

8.12.5.3. COMENSA Recognised Coach/Mentor Training Provider;

8.12.5.4. Coaching/Mentoring Company;

8.12.5.5. Corporate Member

8.12.6. Each Organisational Member shall be entitled to 1 (one) vote.

8.13. In respect of **Honorary Members**, the Executive Committee may invite persons who have rendered distinguished or exceptional services to the Company, or such eminent persons who hold some public office, or such persons whom they wish to co-opt for special purposes, to become Honorary Members of the Company for such periods as they may determine. Honorary Members, who will not be required to pay subscriptions, may enjoy the benefits of membership, including the right to vote.

8.14. All Individual and Organisational Members shall be liable for the payment of an annual membership fee, the levels of which for the respective categories of membership shall be determined by the Executive Committee, tabled at the AGM in conjunction with and in support of an annual budget for the Company, and approved by the Members at the AGM.

8.15. Membership fees are due on submission of application for membership, and thereafter within 30 (thirty) days of the date of the invoice raised by the Company in respect of membership renewals, such invoices to be issued on or about the anniversary of the date on which membership was formally approved. Failure to pay the required membership fee by the relevant date shall cause the membership concerned to lapse.

8.16. Membership benefits shall be defined by the Executive Committee from time to time.



8.17. Members in good standing have the right to assert their membership of the Company in the specific category for which they have been accepted.

8.18. Members in good standing (excluding Individual Non-Voting Members) have the right to elect office-bearers onto the Executive Committee and their respective Provincial Chapter Committees.

8.19. Members in good standing have the right to hold the Board accountable in general meeting for:

8.19.1. the achievement of the Company's objectives; and

8.19.2. the effective, efficient and economical leadership and management of the Company, in full compliance with:

8.19.2.1. the provisions of this MOI;

8.19.2.2. the Companies Act and other applicable statutes;

8.19.2.3. generally-accepted accounting practice (GAAP); and

8.19.2.4. the recommendations of the King III Report on Corporate Governance insofar as these are applicable.

## **9. MANAGEMENT OF THE COMPANY**

### **9.1. General**

9.1.1. The management of the affairs and activities of the Company shall be under the control of the Board of Directors, in accordance with the stated objects of the Company and as envisioned in terms of section 66(1) of the Act. The Board may exercise all the powers of the Company which are not excluded by a statute or this MOI, and

9.1.2. the members of the Board shall for all intents and purposes be regarded as directors of the Company, as envisaged by the Act.

### **9.2. Composition of Board of Directors**

9.2.1. The Board shall comprise of not less than 3 (three) elected Directors. A minimum of 3 (three) of the Board members shall not be connected persons in relation to each other, as defined in the Income Tax Act.

9.2.2. Every member of the Board must satisfy the qualification and eligibility requirements set out in section 69 to become or remain a member of the Board.

9.2.3. The Board shall be comprised of the following offices, as a minimum:

9.2.3.1. President;

9.2.3.2. Vice-President;

9.2.3.3. Treasurer.

9.2.4. The members of the Board shall hold office for a period of 2 (two) years, commencing on the date of the relevant AGM at which they are appointed, and terminating on the date of the AGM held 2 (two) years thereafter. They shall thereafter be eligible for re-appointment, but only for a further period of 2 (two) years (whether immediately following their initial term of office or not), so that a member of the Board shall not hold office for a period in aggregate of more than 4 (four) years.

### **9.3. Election of Board members**

9.3.1. The election of members of the Board shall take place at the AGM in accordance with the standard procedure laid down in the Act, subject to the provisions of this MOI insofar as voting rights are concerned. Such elected members shall be formally appointed as Directors immediately after their election or appointment, as applicable.

9.3.2. Any Member of the Company (excluding Individual Non-Voting Members) has the right to nominate a Member (excluding Individual Non-Voting Members) for election as a member of the Board, provided that such nominee is seconded by a Member (excluding Individual Non-Voting Members) in good standing, and that the nominee has indicated in writing his or her willingness to stand.

9.3.3. Such nomination and acceptance by the nominee shall be on such prescribed form as drawn up by the Board.

9.3.4. Nominations must reach the registered office of the Company not less than 30 (thirty) days before the AGM.

9.3.5. Elected members of the Board are required to be Members of the Company in their own right, subject to the proviso that Individual Non-Voting Members may not be members of the Board, as set out in article 9.3.2 above.

9.3.6. In the event of a casual vacancy of members on the Board occurring during the course of a year, such vacancy may be filled by appointment by the Board (subject to the prior approval of the Governance Advisory Committee), and the person so appointed shall hold office for the remainder of his predecessor's term of office.

#### **9.4. Alternate Directors**

9.4.1. Any Director shall have the power to nominate another person (who may not already be an acting Director or an Individual Non-Voting Member) to act as alternate Director in his place during his absence or inability to act as such Director, and on such appointment being made, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors of the Company: Provided that such nomination of an alternate Director shall be subject to the approval of the majority of the Board. A person may not be appointed as alternate to more than 1 (one) Director.

9.4.2. The alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall cease on the happening of any event which, if he were a Director, would cause him to cease to hold office in terms hereof or if the Director who appointed him ceases to be a Director, or gives notice to the Company that the alternate Director representing him shall have ceased to do so.

#### **9.5. Powers, responsibilities and role of the Board**

9.5.1. The Board shall have all the powers of the Company which are not excluded by a statute or this MOI, and shall be responsible for carrying out all the powers in attaining the objects of the Company.

9.5.2. In addition to pursuing the main object and carrying out the powers of the Company, the Board shall have the power to:

9.5.2.1. Employ, discharge or suspend all persons necessary for any of the purposes set out herein on such terms of employment as shall be decided upon by the Board; and

9.5.2.2. Do all such other things as are conducive to the attainment of the Company's objects

9.5.3. The role of the Board is to *inter alia*:

9.5.3.1. monitor key and/or strategic developments in the fields of coaching and mentoring, and communicate these to Members;

9.5.3.2. formulate and implement strategic policies and plans in accordance with the wishes of Members expressed in general meetings to ensure that the Company achieves its objectives;

9.5.3.3. direct the strategic, operational and administrative management of the Company to ensure that its activities:

9.5.3.3.1. comply with the provisions of this MOI;

9.5.3.3.2. are effective, efficient and economical, and

9.5.3.3.3. comply fully with the Companies Act, generally-accepted accounting practice and the applicable recommendations of the King III Report on Corporate Governance;

9.5.3.4. constitute, co-ordinate and supervise the activities of sub-committees, as required; and

9.5.3.5. report to Members in general meeting on progress towards achievement of the Company's objectives.

## **9.6. Vacation of office**

9.6.1. The office of a Board member shall *ipso facto* be vacated when that Board member's term of office as Board member, if any, expires, or if such Board member:

9.6.1.1. dies;

9.6.1.2. without the consent of the Board holds any other office of profit under the Company;

9.6.1.3. resigns by notice in writing;

9.6.1.4. is convicted of fraud, theft, forgery, perjury or any other offence involving dishonesty;

9.6.1.5. for more than 6 (six) months is absent without permission of the Board from meetings of Board members held during that period;

9.6.1.6. is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required in the Companies Act;

9.6.1.7. has his/her estate finally sequestrated;

9.6.1.8. is placed under curatorship by any court of competent jurisdiction;

9.6.1.9. is removed in terms of article 9.7;

9.6.1.10. ceases to be a Member of the Company.

9.6.2. The provisions of clause 9.6.1 shall also apply *mutatis mutandis* to each member of a committee constituted in terms of article 10.1 hereof.

9.6.3. If the President is temporarily unable to exercise his/her office by reasons of health or other contingencies (including conflicting business engagements) not constituting a vacation of office as defined above, the Vice-President shall assume the role of President for the duration of the President's indisposition.

9.6.4. A resignation as envisioned in article 9.6.1.3 must be effected by giving no less than 1 (one) month's written notice.

## **9.7. Removal from office**

9.7.1. The removal of a Board member from the Board shall be governed in terms of section 71. The key provisions of section 71, and the extent to which they are permitted to be amended in terms of the Companies Act and are in fact so amended, are summarised below, however, said summary is at all times subject to section 71 itself.

9.7.2. The Board may, by ordinary resolution, at any time remove a Board member from

office:

9.7.2.1. for any reason whatsoever; or

9.7.2.2. where the Board member has:

9.7.2.2.1. become ineligible or disqualified in terms of section 69; or

9.7.2.2.2. become incapacitated, to the extent that the Board member is unable to perform the functions of a Board member, and is unlikely to regain that capacity within a reasonable time; or

9.7.2.2.3. has neglected, or been derelict in the performance of, the functions of Board member.

9.7.3. Before the Board members may consider a resolution contemplated in article 9.7.2, the Board member concerned must be given:

9.7.3.1. notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the Board member to prepare and present a response; and

9.7.3.2. a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.

9.7.4. A Board member may further be removed from office by order of the Court as contemplated in section 71(5) or (6).

## **9.8. Meetings**

9.8.1. The conduct of meetings of the Board shall be governed in terms of section 73. The key provisions of section 73, and the extent to which they are permitted to be amended in terms of the Companies Act and are in fact so amended, are summarised below, however, said summary is at all times subject to section 73 itself.

9.8.2. The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit: Provided that the Board must meet

together at least 4 (four) times a year for the dispatch of the business of the Company.

9.8.3. Notice of a Board meeting must be given to each Board member in writing, whether by post, fax or email, not less than 14 (fourteen) days prior to the meeting.

9.8.4. Where the Company has failed to give the required notice of the Board meeting, or there was a defect in the giving of the notice, such meeting may proceed, provided that all of the Board members:

9.8.4.1. acknowledge actual receipt of the notice; or are present at the meeting;  
or

9.8.4.2. waive notice of the meeting.

9.8.5. A Board meeting may be conducted by electronic communication, or one or more Board members may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

9.8.6. The quorum necessary for a meeting of the Board to proceed shall, so long as there are 3 (three) Directors, be 2 (two) Directors, at least 1 (one) of whom must be the President or Vice-President (who shall chair the meeting in the absence of the President); and as long as there are more than 3 (three) Directors, be 3 (three), provided that the President, Vice-President and Treasurer are present.

9.8.7. Each Board member shall be entitled to 1 (one) vote in regard to all business brought before the Board.

9.8.8. The President shall have a second or casting vote in the event of an equality of votes.

9.8.9. Unless otherwise provided in this MOI, a majority of the votes cast on a resolution is sufficient to approve that resolution.

9.8.10. A Board member shall not vote in respect of any contract or proposed contract with the Company in which he is interested, directly or indirectly, or any matter arising therefore, and if he does so vote, his vote shall be disregarded.

9.8.11. A decision that could be voted on at a Board meeting may instead be adopted by written consent of the required number of Board members, given in person, or by electronic communication, provided that each Board member has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.

9.8.12. Resolutions adopted by the Board:

9.8.12.1. must be dated and sequentially numbered; and

9.8.12.2. are effective as of the date of the resolution, unless the resolution states otherwise.

9.8.13. The Company shall keep minutes of all Board meetings, and any of its committees, and include in the minutes:

9.8.13.1. any declaration of personal financial interest given by notice or made by a Board member as required by section 75; and

9.8.13.2. every resolution adopted by the Board.

9.8.14. Any minutes of a Board meeting, or a resolution, signed by the President, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

## **9.9. Borrowing powers of Directors**

9.9.1. The Directors may not borrow or raise money from the Members or any other persons for the funding of current expenditure. The Directors may borrow or raise money from the Members or other persons only for the funding of capital expenditure, and only with the approval of Members as detailed in article 9.9.3, and only as budgeted for in terms of an annual business plan duly compiled and an annual budget duly framed by the Directors, both business plan and budget having been duly approved by Members in general meeting in compliance with following provisions:



- 9.9.1.1. The annual budget must fund the activities and objectives specified in the annual business plan;
- 9.9.1.2. The annual budget shall balance recurrent expenditure with projected revenue for the year in question. Funds may not be borrowed to finance recurrent expenditure;
- 9.9.1.3. If the business plan and/or budget for the current financial year is not approved by a majority of Members at the AGM, the following procedure shall be followed:
- 9.9.1.3.1. The Directors shall take immediate action to redress the situation in light of the discussion preceding the applicable resolution at the AGM.
- 9.9.1.3.2. A revised business plan and/or budget, as applicable, shall be forwarded within 1 (one) month of the AGM to all Members of the Company, who shall be deemed to have approved the revised business plan and/or budget.
- 9.9.2. The only exception to the rule in article 9.9.1 shall be that the Directors may secure short-term overdraft facilities at the Company's bank for the purpose of bridging gaps for periods of 3 (three) months or less between:
- 9.9.2.1. projected fee income from Members already registered and whose membership renewal fees are due, plus sponsorship and other income already secured, and
- 9.9.2.2. current operating expenditure explicitly budgeted for in the Company's annual budget to fund activities detailed in the Company's annual business plan.
- 9.9.3. All proposals to borrow or raise money except for the securing of short-term bank overdraft facilities, including the terms for repayment and for securing the repayment of any sums to be borrowed, must be proposed to the Board and approved by 2/3 (two-thirds) of the Board members. Such proposals must further be tabled separately from all other business as special resolutions for discussion and voting by Members in general meeting.

## 9.10. Indemnification

9.10.1. Subject to a resolution supported by no less than two-thirds (2/3) of the Board, the Board may:

9.10.1.1. advance expenses to a Board member to defend litigation in any proceedings arising out of that Board member's service to the Company; and

9.10.1.2. may directly or indirectly indemnify a Board member for expenses contemplated in article 9.9.1.1, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Board member, or arise in respect of any liability for which the Company may indemnify the Board member as provided in terms of sections 78(5) and (6).

9.10.2. The Board may indemnify a Board member in respect of any liability arising other than:

9.10.2.1. as set out in section 77(3)(a), (b) or (c), any liability arising as a direct or indirect consequence of the Board member having:

9.10.2.1.1. acted in the name of the Company, signed anything on behalf of the Company, or purported to bind the Company or authorise the taking of any action by or on behalf of the Company, despite knowing that the Board member lacked the authority to do so; or

9.10.2.1.2. acquiesced in the carrying on of the Company's business despite knowing that it was being conducted in a manner which is reckless, grossly negligent, intending to defraud any person or for any fraudulent purpose; or

9.10.2.1.3. been a party to an act or omission by the Company despite knowing that the act or omission was calculated to defraud a creditor, employee or Member of the Company, or had another fraudulent purpose, or

9.10.2.2. any liability arising from wilful misconduct or wilful breach of trust on the part of the Board member; or

9.10.2.3. any fine that may be imposed on a Board member of the Company, or on a director of a related company, as a consequence of that Board member having been convicted of an offence, unless the conviction was based on strict liability.

9.10.3. The Board may purchase insurance to protect:

9.10.3.1. a Board member against any liability or expenses for which the Company is permitted to indemnify a Board member in accordance with article 9.9.2; or

9.10.3.2. the Company against any contingency including, but not limited to:

9.10.3.2.1. any expenses that the Company is permitted to advance in accordance with article 9.9.1.1, or for which the Company is permitted to indemnify a Board member in accordance with article 9.9.1.2; or

9.10.3.2.2. any liability for which the Company is permitted to indemnify a Board member in accordance with article 9.9.2.

9.10.4. The Company is entitled to claim restitution from a Board member of the Company for any money paid directly or indirectly by the Company to or on behalf of that Board member in any manner inconsistent with this article 9.9.

## **9.11. Remuneration**

9.11.1. The remuneration of the Directors shall be recommended by the Directors and shall be approved by the Members in general meetings, subject to the provisions of articles 4.1.2 and 4.1.10.

9.11.2. Where a Board member renders additional services to the Company, other than his/her services as a Board member, such Board member may be remunerated for such services, provided that such remuneration is fair and reasonable.

## **9.12. Reimbursements**

9.12.1. Board members may be reimbursed for reasonable expenses incurred in the performance of their duties, including travelling, subsistence and other

reasonable expenses properly incurred.

### **9.13. Loans**

9.13.1. The Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Board member of the Company, or to a person related to any such Board member, unless it:

9.13.1.1. is in the ordinary course of the Company's business and for fair value;  
or

9.13.1.2. constitutes an accountable advance to meet:

9.13.1.2.1. legal expenses in relation to a matter concerning the Company;

or

9.13.1.2.2. anticipated expenses to be incurred by the person on behalf  
of the Company, or

9.13.1.3. is to defray the person's expenses for removal at the Company's  
request; or

9.13.1.4. is in terms of an employee benefit scheme generally available to all  
employees or a specific class of employees.

### **10. OFFICERS AND COMMITTEES**

10.1. The Board may appoint any officers it considers necessary to better achieve the stated objects of the Company.

10.2. The Board may appoint any number of committees, and delegate to any such committees any of the authority of the Board.

10.3. Any committee appointed by the Board:

10.3.1. may include in any such committees persons who are not Board members, provided that any such person must not be ineligible or disqualified to be a

director in terms of section 69.

10.3.2. may consult with or receive advice from any person; and

10.3.3. has the full authority of the Board in respect of a matter referred to it.

10.4. The Board shall at the very least constitute the following committees:

10.4.1. Executive Committee;

10.4.2. Governance Advisory Committee.

10.5. In addition, the Board should give consideration to constituting the following committees:

10.5.1. Portfolio Committees (including, but not limited to, research, supervision, ethics, membership criteria and standards of competence, and marketing);

10.5.2. Provincial Chapter Committees;

10.5.3. Special interest groups.

**10.6. Executive Committee:**

10.6.1. The Executive Committee shall:

10.6.1.1. Comprise of the President, Vice-President, Treasurer, Company Secretary and Chairpersons of the Provincial Chapter Committees of the Company. The chairpersons of any other committees that have been constituted by the Board (if any) may, at the discretion of the Executive Committee, be invited to attend meetings of the Executive Committee, but shall not be entitled to vote;

10.6.1.2. Have such roles and responsibilities as set out in this MOI, which shall include management of the membership application and registration process and maintenance of the register of Members, or as determined by the Board from time to time.

**10.7. Governance Advisory Committee:**

10.7.1. The Governance Committee shall:

10.7.1.1. Be appointed by the Board;

- 10.7.1.2. Comprise of the Company Secretary, the chairperson of the Ethics Portfolio Committee and 2 (two) other persons as nominated by the Ethics Portfolio Committee, both of whom must be past office bearers;
- 10.7.1.3. Assist the Board with its management duties in accordance with the recommendations of the King III Report on Corporate Governance insofar as these are applicable, without diminishing the responsibilities of the Board in fulfilling any such duties, which shall include, without being limited to, the role performed and ordinarily expected from an audit committee as set out in section 94(7) of the Companies Act.

#### **10.8. Portfolio Committees:**

10.8.1. If constituted, Portfolio Committees shall:

- 10.8.1.1. Consist of at least 2 (two) and no more than 12 (twelve) Members;
- 10.8.1.2. Include the office of Portfolio Chairperson and Portfolio Secretary, to be elected by the members of the committee at the first meeting of the Portfolio Committee;
- 10.8.1.3. Define such other offices as desired to support their effective operation;
- 10.8.1.4. Be reconstituted annually under the supervision of the Vice-President, within 1 (one) month of the AGM, from Members in good standing;
- 10.8.1.5. Insofar as it is possible, have a representative from each Provincial Chapter Committee on each Portfolio Committee;
- 10.8.1.6. Provide technical support and assistance with the implementation of national policy and strategic plans adopted by the Board;
- 10.8.1.7. On being formally constituted, draft its own Terms of Reference, subject to the provisions hereof, for review and approval by the Board. These Terms of Reference shall cover the Committee's composition, objectives, purpose and activities, delegated authority and extent of power to make decisions and/or recommendations, tenure and reporting mechanisms to the Board;
- 10.8.1.8. Review its Terms of Reference annually immediately after its reconstitution

following the Company's AGM, and any amendments to the Terms of Reference shall be approved by the Board.

#### **10.9. Provincial Chapter Committees:**

10.9.1. It is desirable that Provincial Chapters be constituted to represent the interests of Members at local and provincial levels. These Provincial Chapters shall be governed by Provincial Chapter Committees.

10.9.2. Members shall automatically be entitled to participate in the establishment and governance of the Provincial Chapter Committee in their respective province by virtue of their membership of the Company, and not through a distinct or separate level, class or category of membership in the Provincial Chapter Committee itself.

10.9.3. Provincial Chapter Committees shall have the following roles:

10.9.3.1. To represent the views of Members at provincial level to the Board and the Executive Committee at national level, and thereby to ensure that all views are heard without geographic discrimination;

10.9.3.2. In representing and interacting with Members at provincial and local level, to support the undertaking of external functions by the Portfolio Committees in achieving the objectives of the Company;

10.9.3.3. To hold general meetings, particularly a chapter annual general meeting, in order to enable Members located within the province concerned to discuss issues of strategic importance to the Company;

10.9.3.4. To hold portfolio meetings at provincial level to enable Members of the national Portfolio Committees to brief Members on, and discuss with them, issues of importance;

10.9.3.5. To hold events such as seminars and workshops in support of the development of best practice in coaching and mentoring for Members within their respective provinces; and

10.9.3.6. To use the funding allocated to them by the Board to cover cash outlays on basic administrative and event co-ordination expenses, and to account for the use of such funds to the Board by submitting a report thereon, in a form prescribed by the Board, to the Treasurer via the Vice-President within 1 (one) month of the end of the Company's financial year.

10.9.4. Provincial Chapter Committees may not:

10.9.4.1. Establish or maintain membership of a Provincial Chapter as distinct from membership of the Company as a whole;

10.9.4.2. Levy membership or other fees on Members, other than entrance fees to events organised by the Provincial Chapter Committee, which entrance fees must be intended to cover only the venue, refreshment and other direct costs of such events.

10.9.5. Provincial Chapter Committees shall be established and governed in terms of Provincial Chapter constitutions, which must be drafted by the founding Members and submitted along with the charter application for approval by the Board, and which shall *inter alia* prescribe the Terms of Reference and rules of procedure of the respective Provincial Chapter Committees.

10.9.6. Such Provincial Chapter constitutions may not conflict in any respect with the provisions of this MOI, the Companies Act, or the applicable recommendations of the King III Report on Corporate Governance.

10.9.7. Only one Provincial Chapter Committee may be constituted in each province of the Republic. The provinces and their boundaries shall be those prescribed in Chapter 6 of the Constitution of the Republic of South Africa, Act 108 of 1996.

10.9.8. A Provincial Chapter Committee may constitute sub-provincial or local committee structures within its province in order to facilitate geographical coverage of the province and thereby assist it in its roles, in accordance with explicit provisions regulating the establishment and oversight of these sub-provincial structures within the constitution of that Provincial Chapter.

10.9.9. A resolution agreed by the majority of Company Members (excluding Individual Non-Voting Members) in good standing in attendance at a provincial general meeting, each Member having an address registered on the Company's register of members as being within the province concerned, and such majority comprising at least 20 Members, shall be required for a Provincial Chapter to be chartered.



10.9.10. A Provincial Chapter shall be established by the Board on submission of a written request by the founding Members, together with a copy of the minutes of the general meeting at which the founding Members resolved to apply for the charting of that Provincial Chapter, a signed register of attendance of the general meeting, and a copy of an appropriately drafted constitution for that Provincial Chapter.

10.9.11. A Provincial Chapter shall be formally constituted and recognised by the Board.

10.9.12. A Provincial Chapter Committee may be reconstituted or suspended, and the Provincial Chapter concerned may be suspended or combined with another Provincial Chapter, by the Board in its sole discretion if such Provincial Chapter Committee is found to be inactive or operating in contravention of the objectives of the Company or any material provisions of this MOI.

## **11. MEETINGS OF MEMBERS**

### **11.1. AGM**

11.1.1. The Company shall convene an AGM once in every calendar year, but no later than 3 (three) months after the end of the Company's financial year, at such place and time as the Board may decide, which meeting must, at a minimum, provide for the following business to be transacted:

11.1.1.1. Confirmation of the minutes of the previous AGM and any subsequent general meetings of Members;

11.1.1.2. Consideration of the President's annual report, which shall *inter alia* summarise the progress towards achievement of the Company's business plan for the preceding financial year, and summarise and explain any material deviations from that business plan and its associated budget;

11.1.1.3. Consideration of the Vice-President's report on portfolio or other committees' activities and developments for the preceding financial year, and on portfolio or other committees' planned activities for the current financial year;

11.1.1.4. Consideration of the Annual Financial Statements for the immediately

preceding financial year;

11.1.1.5. Consideration and approval of the business plan for the current financial year;

11.1.1.6. Consideration and approval of the budget for the current financial year, including the specification of annual membership fees;

11.1.1.7. Election of Members (excluding Individual Non-Voting Members) to fill any vacancies in the Board;

11.1.1.8. Appointment of an Auditor for the ensuing year and fixing their remuneration;

11.1.1.9. Consideration of any matters raised by Members, including consideration and voting on any resolutions proposed for adoption.

11.1.2. The Board shall rotate the location of the AGM between the provinces within which the Company is active.

## **11.2. Other general meetings**

11.2.1. In addition to the AGM the Board shall have the power at any time to call general meetings to deal with specific matter requiring the approval of Members.

11.2.2. The Board shall also call general meetings to deal with specific matters requiring the approval of Members, on the requisition of Members holding at least 5% (five Per Cent) of the voting rights of Members having on the date of lodgement of the requisition the right to vote at general meetings

## **11.3. Notice of meetings**

11.3.1. An AGM and any other general or special meeting, including a meeting calling for the passing of a special resolution, shall be called on at least 15 (fifteen) clear business days' notice in writing.

11.3.2. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting.

- 11.3.3. In the case of a special resolution, the terms and effects of the resolution and the reasons for it shall be given in the prescribed manner.
- 11.3.4. Provided that the Board has taken reasonable steps to give notice of a general or special meeting, the accidental omission to give and/or the accidental giving of a defective notice (provided that by reason of such defect it is not misleading) of a general or special meeting to, or the non-receipt of such notice by, any Member entitled to receive notice shall not invalidate the proceedings of that general or special meeting.
- 11.3.5. The Board shall issue notice of, and proxy forms for, general and special meetings, including the AGM, and shall include with this notice copies of all documents to be tabled for discussion at the meeting.

#### **11.4. Quorum and voting**

- 11.4.1. All Members in good standing of the Company shall be entitled to attend general meetings in person or by proxy if individual Members, or duly represented if corporate Members.
- 11.4.2. Business may be transacted at any Members meeting only while a quorum is present when the meeting proceeds to business.
- 11.4.3. The quorum necessary for the commencement of a Members meeting shall be one twentieth (1/20) of the Members entitled to vote, present in person or by proxy, provided that there must always be 3 (three) Members entitled to vote present in person. In the absence of a quorum within 30 (thirty) minutes of the time fixed for the meeting, it shall stand adjourned to such time, place and date as the President (as Chair of the meeting) shall decide. At such adjourned meeting, the Members entitled to vote and present shall be deemed to be a quorum.
- 11.4.4. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by the President, or the Members so qualified as referred to hereunder, and, unless a poll is so demanded, a declaration by the President that a resolution has, on a show of hands been

carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution.

11.4.5. A poll may be demanded by the President or by not fewer than 5 (five) Members having the right to vote at such a meeting.

11.4.6. If a poll is demanded it shall be taken in such manner as the President directs, either at once or after an adjournment, and the result of the poll shall be deemed the resolution of the meeting.

11.4.7. In the case of an equality of votes, whether on a show of hands or on a poll, the President shall be entitled to a second or casting vote.

11.4.8. Every Member of the Company, except Individual Non-Voting Members, shall have voting rights, subject to the position that:

11.4.8.1. Every Member (excluding Individual Non-Voting Members) present in person or by proxy or represented and entitled to vote shall be entitled to 1 (one) vote; and

11.4.8.2. In order to vote, Members must qualify as Members in good standing, and all membership fees, subscriptions or any other amounts owing by the Members concerned must be fully paid up, regardless of the provisions of article 8.15 of this MOI.

11.4.9. Non-approval of business plan and/or budget:

11.4.9.1. If the business plan and/or budget for the current financial year is not approved by a majority of Members at the AGM, the following procedure shall be followed:

11.4.9.1.1. The reconstituted Board shall take immediate action to redress the situation in light of the discussion preceding the applicable resolution at the AGM.

11.4.9.1.2. A revised business plan and/or budget, as applicable, shall be forwarded within 1 (one) month of the AGM to all Members of the

Company in good standing, who shall be deemed to have approved the documents in question.

## **11.5. Resolutions**

11.5.1. For an ordinary resolution to be approved by Members, it must be supported by more than 50% (fifty per cent) of the voting rights exercised on the resolution.

11.5.2. For a special resolution to be approved by Members, it must be supported by at least 75% (seventy five per cent) of the voting rights exercised on the resolution.

11.5.3. A special resolution is required to:

11.5.3.1. amend the MOI;

11.5.3.2. ratify actions by the Company or members of the Board in excess of their authority;

11.5.3.3. amalgamate with other companies, as envisaged in article 4.1.16;

11.5.3.4. form an interest in other companies, as envisaged in article 4.1.17;

11.5.3.5. take part in the management of other companies, as envisaged in article 4.1.18;

11.5.3.6. authorise the Board to grant financial assistance in the circumstances contemplated in section 45(3)(a)(ii) of the Companies Act (financial assistance to directors);

11.5.3.7. approve the voluntary winding up of the Company;

11.5.3.8. approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the Companies Act.

## **11.6. Proxies**

11.6.1. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form provided that it is in writing. The Company shall supply a generally standard form of proxy upon request by a Member entitled to vote.

11.6.2. No person shall be appointed a proxy, who is not a Member of the Company and entitled to vote.

11.6.3. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration, but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.

11.6.4. The signed form appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a certified copy of such power or authority, shall be delivered to the Company not less than 48 (forty eight) hours prior to the time scheduled for the commencement of the Members meeting, such delivery including delivery by means of physical delivery, postal delivery, email (including attachments) and/or fax delivery.

## **12. COMPANY SECRETARY**

12.1. The Board shall appoint a Company Secretary on such terms and conditions and for such period as they may deem fit.

12.2. The Company Secretary shall:

12.2.1. Have the requisite knowledge of, or experience in, the relevant laws applicable to the Company; and

12.2.2. Be a permanent resident of the Republic of South Africa, and remain so while serving in that capacity.

12.3. The Company Secretary shall have the duties as set out in section 88 of the Companies Act, including inter alia:

12.3.1. Providing the Directors collectively and individually with guidance as to their duties, responsibilities and powers;

12.3.2. Making the Directors aware of any law relevant to or affecting the Company;

12.3.3. Reporting to the Board any failure on the part of the Company or a Director to comply with the MOI, the rules, policies and/or procedures (if any) or the Companies Act;

12.3.4. Ensuring that minutes of all meetings of Directors, Members and committees are properly recorded; and

12.3.5. Ensuring that the annual return is filed.

### **13. FINANCIAL AFFAIRS**

#### **13.1. Registered office**

13.1.1. The registered office of the Company from time to time shall be at such location within the Republic as the Board may from time to time determine.

#### **13.2. Company records and accounting records**

13.2.1. All company records contemplated by section 24, and all accounting records contemplated by section 28 and Regulation 25, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company, or in the case of all or any of the company records at or from such other location or locations within the Republic as the Board may from time to time determine.

#### **13.3. Financial year**

13.3.1. The financial year of the Company shall end on the last day of February of each year.

#### **13.4. Annual financial statements**

13.4.1. Each year, the Company must prepare annual financial statements within 4 (four) months after the end of its financial year.

13.4.2. The annual financial statements must be either:

13.4.2.1. audited if the Company becomes required to have its annual financial statements audited in terms of sections 30(2) and (7), read with

Regulation 28; or

13.4.2.2. audited voluntarily if the Board so determines;  
or

13.4.2.3. independently reviewed in a manner that satisfies the provisions of  
Regulation 29.

13.4.3. The annual financial statements must:

13.4.3.1. include an auditor's report, if the statements are audited;

13.4.3.2. include a report by the Board with respect to the state of affairs, the  
business and profit or loss of the Company, including:

13.4.3.2.1. any material matter relating to the Company's state of affairs;

and

13.4.3.2.2. any prescribed information,

13.4.3.3. be approved by the Board and signed by an authorised Board member.

### **13.5. Annual returns**

13.5.1. Each year, the Company must file an annual return in the prescribed form with  
the prescribed fee, and within the prescribed period after the end of the  
anniversary of the date of its incorporation, which return must:

13.5.1.1. include a copy of the Company's annual financial statements, if the  
Company is required to have such statements audited in terms of  
section 30(2) and (7), read with Regulation 28;

13.5.1.2. designate a Board member, employee or other person who is responsible  
for the Company's compliance with the transparency, accountability and  
integrity requirements in terms of Part C of Chapter 2 of the Companies  
Act, and the requirements of Chapter 3 of the Companies Act, if these  
requirements apply to the Company; and

13.5.1.3. any other prescribed information.



### **13.6. Enhanced accountability and transparency**

13.6.1. The Company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act. However, the Company may, but is not obliged to, appoint a person to serve as company secretary and/or appoint a person to serve as an auditor, and/or establish an audit committee.

13.6.2. Where the circumstances of the Company require it to have its annual financial statements audited in terms of sections 30(2) and (7), read with Regulation 28, it shall comply with the provisions of Chapter 3 of the Companies Act.

### **14. WINDING UP OR DISSOLUTION OF THE COMPANY**

14.1. The Company may be wound up voluntarily by the Board upon the passing of a special resolution of the Members. Any such voluntary winding up shall be effected in accordance with section 80.

14.2. Upon the dissolution of the Company, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Companies Act, as follows:

14.2.1. no past or present Board member of the Company, or person appointing a Board member of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

14.2.2. the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts:

14.2.2.1. having objects similar to its stated object; and

14.2.2.2. as determined:

14.2.2.2.1. by its Members, at or immediately before the time of its dissolution; or

14.2.2.2.2. by the Court, if the Members fail to make such a determination.

Rev. No.	Paragraph/Summary of Changes	Date	Approved By:
1.0	New Document	13-05-2015	AGM
2.0	<ul style="list-style-type: none"> <li>• Bring in consistency with regard to reference to “rules, policies and/or procedures”, all of which are available to members on request.</li> <li>• Membership (Chapter 8): amended to reflect revisions to the categories of membership</li> <li>• Reference to an “annual strategy” or “annual strategic plan” was amended to annual business plan (since a strategy applies across a longer time span, except where “strategic plan” is the intended meaning.</li> <li>• Article 4.1.1: The Company shall carry out its activities in a non-profit manner and with an altruistic or philanthropic intent.</li> <li>• Article 8.7.1.2 amended: 2 (two) other persons as nominated by the Ethics Portfolio Committee, both of whom must be past office bearers.</li> <li>• Article 8.12.6: Each Organisational Member shall be entitled to 1 (one) vote.</li> <li>• Article 9.13.1.4 deleted</li> <li>• Article 9.13.1.3 amended: “is to defray the person’s expenses for removal at the Company’s request.”</li> <li>• Article 9.13.1.1 be deleted</li> <li>• Article 13.4.2 amended: “The annual financial statements must be audited, irrespective of whether the Company becomes required to have its annual financial statements audited in terms of the Companies Act and Regulations.”</li> <li>• Article 13.4.3.1 amended: “include an auditor’s report.</li> <li>• All numbering and formatting corrected.</li> </ul>	26-05-2016	