

CONSTITUTION

of the

VOLUNTARY ASSOCIATION

known as

BIOFEEDBACK ASSOCIATION OF SOUTH AFRICA (Abbreviated name: "BFSA")

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1.

ESTABLISHMENT

1.1 There is hereby established a Voluntary Association to be known as

**BIOFEEDBACK ASSOCIATION OF SOUTH AFRICA
(Abbreviation : "BFSA")**

upon the terms and subject to the conditions set out in this Constitution.

1.2. The Association shall be a juristic person, separate and distinct from its members and office bearers; and shall continue to exist, notwithstanding changes that may occur in the composition of its membership and/or the identity of its office bearers.

2.

DEFINITIONS AND INTERPRETATION

In this Constitution, unless the context clearly otherwise indicates:

2.1. The following words and phrases shall have the meanings assigned to them as follow, viz:-

2.1.1 "Allied Health Professions Act" means the Allied Health Professions Act No. 63 of 1982, as amended.

2.1.2 "Associate Members" means such persons as may from time to time be admitted to this category of non-voting membership, by decision of the Executive Committee at its sole and absolute discretion, in accordance with the provisions of clause 5.1.2, in recognition of their concern with and support for the practice known as Biofeedback.

- 2.1.3 "Biofeedback" means the training of self-regulatory processes, which are directed to enabling individuals to gain greater awareness of, and control over certain physiological processes, including heart rate, respiration, skin conductance, skin temperature, muscle tension, and brainwaves, facilitating enhancement and improvement of daily human performance.
- 2.1.4 "Business Days" means the number of days which elapses between one event and another, on a basis which:-
- 2.1.4.1. Excludes the day on which the first such event occurs;
 - 2.1.4.2. Includes the day on or by which the second event is to occur; and
 - 2.1.4.3. Excludes any Public Holiday, Saturday or Sunday that falls on or between the days contemplated in the preceding subparagraphs.
- 2.1.5 "The Association" means the Voluntary Association, hereby established, to be known as the "Biofeedback Association of South Africa".
[Abbreviated name : "BFSA"]
- 2.1.6 "The Commissioner" means the Commissioner for The South African Revenue Service ("SARS").
- 2.1.7 "Income Tax Act" means The Income Tax Act No. 58 of 1962, as amended.
- 2.1.8 "Executive Committee" means the Committee to be established with plenary powers and authority in accordance with clause 7.

- 2.1.9 "Full Members" means, initially, the persons who have signed this Constitution in that capacity as founding Members of the Association; and thereafter, such other eligible persons as may from time to time be admitted to the status of Full Members by decision of the Executive Committee, at its sole and absolute discretion, in accordance with the provisions of clause 5.1.1.
- 2.1.10 "Minister" means The Minister of Finance.
- 2.1.11 "Nonprofit Organisations Act" means The Nonprofit Organisations Act, No. 71 of 1997.
- 2.1.12 "Prescribed Fiscal Conditions" means the provisions prescribed from time to time in terms of Section 30B of the Income Tax Act, with respect to entities approve by the Commissioner as tax-exempt membership associations. Such provisions as are applicable at the date of adoption of this Constitution are set out in Schedule "B" hereto, but remain subject to any amendments or additions thereto as may be enacted or prescribed.
- 2.1.13 "Prescribed NPO Provisions" means the statutory provisions, which are prescribed in respect of Non-Profit Organisations registered in terms of Section 13 of the Non Profit Organisations Act No. 71 of 1997, as amended, as referred to in Attachment "C" to this Constitution.
- 2.1.14 "Public Benefit Organisation" means an Organisation duly approved as such by the Commissioner in terms of Section 30 of the Income Tax Act.
- 2.1.15 "Republic" means the Republic of South Africa.

- 2.1.16 "Rules" mean any such Rules as may at any time be made and adopted by the Executive Committee, in accordance with the provisions of Clause 6 of this Constitution.
- 2.2 The masculine shall include the feminine; the singular shall include the plural; and terms referring to persons shall include juristic persons; and *vice versa* in each instance.
- 2.3 Any reference to the Income Tax Act; the Nonprofit Organisations Act; or any other Statute mentioned or referred to hereunder, including the Schedules and Regulations applicable thereto, shall be deemed to denote such Statutes, Schedules, and Regulations, as they may be amended from time to time, including any legislation constituting a re-enactment or substitution thereof.
- 2.4 The Association shall be a Body Corporate; and as such, may in its own name, enter into contracts; sue or be sued; acquire and hold assets; undertake liabilities; and generally engage in any transactions which the Executive Committee may deem appropriate from time to time.

3.

SOLE OR PRINCIPAL OBJECT

The Association is constituted, on a non-profit basis, to guide and educate members in the modality of Biofeedback; including the development of appropriate Codes of Conduct and Ethics for members to adhere to; and generally to promote greater public awareness and knowledge of Biofeedback.

4.

POWERS AND LIMITATION OF POWERS

- 4.1 The Executive Committee shall have plenary powers to govern and administer the affairs of the Association, including the General Management, Investment and Administrative Powers set out in Attachment "A", which shall be limited insofar as may be necessary to ensure due compliance with the relevant statutory provisions, viz:-
- 4.1.1 The Prescribed Fiscal Provisions, insofar as they may be or become applicable to the Association, as contemplated by Attachment "B" hereto;
- 4.1.2 The Prescribed NPO Provisions, insofar as they may be or become applicable to the Association upon its Registration in terms of the Non-Profit Organisations Act, as contemplated by Attachment "C" hereto.
- 4.1.3 Any such further statutory provisions as may be or become applicable to the Association in terms of relevant legislation.
- 4.2 Without derogating from the generality of the foregoing, the Executive Committee shall have all necessary powers to undertake the activities of the Association; and to determine the manner in which the resources of the Association shall be invested, and appropriated from time to time; including the power to determine how surplus funds should be invested, with the intent and purpose that all such funds shall be held, invested, and appropriated by the Executive Committee, as it may deem appropriate in its sole discretion; provided that the income and property of the Association whencesoever derived must be applied solely towards the promotion of its Sole or Principal Object as stated in clause 3; and no portion thereof may be distributed, directly or indirectly, to Members or Employees of the Association; provided that nothing herein contained shall prevent the Association from giving financial assistance to other approved tax-exempt organisations having the same or similar purposes; nor shall the foregoing prevent the payment in good faith by the Association of reasonable remuneration (commensurate with services

actually rendered) to any person, including a Member or Employee, in return for services rendered.

- 4.3 In the event of the dissolution and winding up of the Association, any assets remaining after the satisfaction of all its liabilities shall be given or transferred to one or more other approved tax-exempt Associations or Public Benefit Organisations approved by the Commissioner for purposes of Section 30 and/or 30B of the Income Tax Act, and having the same or similar objects to those of this Association, as may be determined by the members in General Meeting in accordance with the provisions of clause 17.4, but subject to the approval of the Commissioner for the South African Revenue Service (SARS), and subject further to compliance with all other Prescribed Statutory Provisions as may then be applicable.

5.

MEMBERSHIP

- 5.1 The Membership of the Association shall comprise of three categories, viz:-

5.1.1 Full Membership, which shall denote such persons (including the initial signatories to this Constitution) and as are admitted from time to time to this category of membership by decision of the Executive Committee at its sole and absolute discretion; with the intent and purpose that Full Members shall be persons who are regarded by the Executive Committee as having the necessary formal qualifications and accreditation, or other substantially equivalent qualifications and experience with respect to the modality known as Biofeedback; and

5.1.2 Associate Membership, which shall denote such persons (including the initial signatories to this Constitution, if any) and as are admitted from time to time to this category of membership by decision of the Executive Committee at its sole and absolute discretion; with the intent and purpose that Associate Members shall be persons who are regarded by the Executive Committee as having a special interest in, and providing support for, the modality known as Biofeedback, including other health practitioners, research scientists, donors, and concerned members of the general public.

5.1.3 Student membership : which shall denote such persons (including the initial signatories to this Constitution, if any) and as are admitted from time to time to this category of membership by decision of the Executive Committee at its sole and absolute discretion; with the intent and purpose that Student Members shall be persons who are regarded by the Executive Committee as current students at institutions of higher learning that can provide proof of their student enrolment and as having a special interest in the modality known as Biofeedback.

Initially, the persons admitted to membership in each such Category shall be those whose names are reflected in the Schedules attached to this Constitution.

- 5.2 For the avoidance of doubt, it is further provided that the Executive Committee may from time to time establish such further categories of non-voting membership as it may deem appropriate, including, but not limited to, a Subscriber Membership; a Life / Honorary Membership.
- 5.3 Further Members in any such Category may be admitted from time to time at the sole and absolute discretion of the Executive Committee, subject to compliance with any such eligibility criteria and qualifications and subject to the payment of such fees, if any, as may be determined from time to time by the Executive Committee.
- 5.4 For the avoidance of doubt, it is hereby confirmed that the Association and its Executive Committee shall have a complete and unfettered discretion with regard to the acceptance or rejection of applications for membership, including the power to suspend or terminate such membership, as may be deemed appropriate and in the best interests of the Association. Neither the Association nor its Executive Committee shall be under any obligation, express or implied, to provide reasons with respect to decisions made with respect to the admission, refusal, suspension, or termination of membership of the Association.

6.

MEMBERSHIP LEVIES AND RULES

- 6.1 With the prior approval of the Full Members in General Meeting, the Executive Committee shall be entitled to levy, an Initial and/or periodic Membership Fee, which shall be payable by prospective new members upon application, or by existing members annually, failing which Membership may be refused, suspended or terminated at the discretion of the Executive Committee.
- 6.2 Should the Executive Committee at any time deem this necessary or desirable, it shall also be empowered to issue Guidance Notes, and to make Rules binding upon Members, including such as relate to the manner of practice of Biofeedback; and due compliance with such Rules shall constitute a condition for the admission and/or continuance of Membership. The Executive Committee shall be entitled in the event of a material or persistent failure to conform to such Rules, including a failure to comply with a Code of Conduct and Ethics, to suspend or terminate the status of Membership, should the Executive Committee deem this to be appropriate and in the best interests of the Association, and in order to secure the reputation and standing of the profession. Nothing herein contained shall preclude the Executive Committee at its discretion from extending a period of grace to enable a defaulting Member to make good any such issue of compliance as the Executive Committee in its sole discretion may deem appropriate in the circumstances.

7.

EXECUTIVE COMMITTEE

- 7.1 An Executive Committee shall be constituted from time to time, and shall comprise a minimum of THREE (3) and a maximum of ELEVEN (11) persons, to be elected biannually at a General Meeting of Full Members. One of the persons serving on the Executive Committee shall be designated as the President. Other Office Bearers may be appointed from time to time by the Executive Committee, as may be considered appropriate, including (without limitation thereto):-
- 7.1.1 A Vice-President; and/or
 - 7.1.2 A Secretary; and/or
 - 7.1.3 A Treasurer.
- 7.2 The initial members of the Executive Committee shall comprise those persons whose names are reflected on the relevant Schedule which is attached to this

Constitution. Such initial members of the Executive Committee shall hold office until the first-occurring General Meeting occurring after the adoption of this Constitution, but they shall remain eligible thereafter for re-appointment, if available, thereafter in terms of the succeeding provisions.

- 7.3 Accordingly, save as stipulated in terms of Clause 7.2 in respect of the Initial Members of the Executive Committee, the members thereof shall be elected for a period of 2 years at scheduled General Meetings, and they shall serve in that capacity until the next-occurring General Meeting.
- 7.4 Subject to the maximum number of Members stated above, the Executive Committee may at its discretion from time to time, by majority decision, co-opt other persons to serve as additional members of the Executive Committee, and any such co-opted persons shall likewise hold office until the next- occurring General Meeting following their co-option; but shall remain eligible for election or further co-option thereafter, as the case may be.
- 7.5 Notwithstanding anything to the contrary set out above, the Executive Committee, by Resolution adopted by no less than Two-thirds ($\frac{2}{3}$) of its members at the relevant time (excluding the person concerned), shall be entitled to remove or suspend from office any member of the Executive Committee, whether elected or co-opted, should it deem this appropriate and in the best interests of the Association. In such event, the Executive Committee shall be under no obligation to furnish reasons for, or to justify its decision/s, with respect to such removal or suspension.

8.

VACATING OF OFFICE

Members of the Executive Committee shall vacate office in the event that any of such appointees:-

- 8.1 dies or tenders her/his resignation in writing; or
- 8.2 completes the term of office for which she/he is appointed, without subsequent re-election or co-option; or
- 8.3 becomes of unsound mind; or otherwise unfit or incapable of acting in this

capacity;

- 8.4 becomes disqualified in terms of The Trust Property Control Act, or The Companies Act, or any legislation substituted therefor, from acting as a Trustee, Director, or in any other fiduciary capacity; or
- 8.5 is removed from office in terms of a Resolution duly passed in accordance with the provisions of clause 7.5 above.

9.

PROCEDURE AT EXECUTIVE COMMITTEE MEETINGS

The Executive Committee shall conduct its meetings and regulate its proceedings, as it may find convenient, provided that:

- 9.1 The President, or in his/her absence, the Vice-President, if any, shall chair all meetings of the Executive Committee. In the absence of both the President and the Vice-President, the remaining members of the Executive Committee shall elect an acting President from their number.
- 9.2 The President or Vice-President, may at any time requisition and convene a meeting of the Executive Committee; and shall be obliged to do so, if so requested in writing at any time by any Two (2) members of the Executive Committee.
- 9.3 The quorum necessary for the transaction of the business of the Executive Committee shall be at least three (3) of its members.
- 9.4 At all meetings of the Executive Committee each member shall have ONE (1) vote.
- 9.5 All questions arising shall be decided by a majority of votes, provided that in the event of an equality of votes, the person chairing the meeting shall have a second or casting vote.
- 9.6 Proper minutes shall be kept of all proceedings of the Executive Committee, including a record of persons present at the meeting. Such Minutes shall be

signed by the person who chairs the meeting, and shall be available for inspection or copying by each member of the Executive Committee.

- 9.7 The Executive Committee shall be entitled to delegate any of its powers and prerogatives to one or more members of the Executive Committee; or to a Special Purpose Committee (which may include persons who are not members of the Executive Committee); or to an employee or agent of the Association, as it deems appropriate. The person/s to whom any such delegation is made shall, in the exercise of their delegated powers and prerogatives, conform to any directions or procedures that may be stipulated by the Executive Committee with respect thereto.
- 9.8 If exceptional circumstances should so require, a "round robin" resolution shall be as valid as if passed at a duly convened meeting of the Executive Committee, provided such resolution is supported in writing by not less than 75% of all the members of the Executive Committee then serving, who must number not less than the minimum number stated in clause 7.1 above. Unless stated to the contrary in the resolution itself, a round robin resolution shall be deemed to have been passed as at the date of the last signature thereto. A round robin resolution may be recorded in a single document or in several documents, as may be found convenient. A vote may be recorded not merely by signature, but also by such other secure means of communication, including intranet, internet, fax, e-mail, as the President, or in his/her absence the Vice President may regard as acceptable.
- 9.9 Notwithstanding any temporary vacancy in its membership, the Executive Committee shall be deemed to be duly mandated and authorised to act and exercise its powers and prerogatives, provided such vacancy does not extend beyond a period of Three (3) months. However, if and for so long as the number of Executive Committee is reduced below the minimum number hereinbefore stated, the Executive Committee may act only, for the time being:
- 9.9.1 in order to preserve, secure and ensure the continuity of the activities and operations of the Association; and
- 9.9.2 in order to initiate a process, which may include the summoning of a General Meeting of Members, to cause necessary vacancies to be filled.

- 9.10 All acts done by a meeting of the Executive Committee, or by any Committee duly delegated by it, or by any person/s acting under delegated authority from the Executive Committee, shall be valid and of full force and effect, notwithstanding that it may afterwards be discovered that there was some defect in the appointment of any person so acting in good faith, or that any such person was in fact disqualified to act in that capacity.
- 9.11 Meetings of the Executive Committee may be held at any time or times, and at any place or places, subject to due notice having been given; and such meetings may be held simultaneously in more than one place, provided the parties concerned are linked by telephone, video, tele-conference or other communication facility, in a manner which enables them to speak, hear, and participate effectively in the business of the meeting, without reliance upon an intermediary, as if actually present at the same time and place.

10.

GENERAL MEETINGS OF MEMBERS

General Meetings of members shall be convened from time to time as circumstances may require in order to undertake the role and responsibilities contemplated by this Constitution, as follows, viz:-

10.1 General Meetings

The First General Meeting of the Association shall be held within fifteen (15) months after the adoption of this Constitution; and subsequent General Meetings shall be held every 2 years, within three (3) months after the end of the second Financial Year;

The business of a Bi-Annual General Meeting shall include, *inter alia*:

- 10.1.1 Presentation and adoption of a Bi-Annual Report;
- 10.1.2 Consideration of Bi-Annual Financial Statements;
- 10.1.3 Consideration of a Bi-Annual Budget for the ensuing 2 years;
- 10.1.4 Election of persons to serve on the Executive Committee; and the election of a President (and other officers, if any), for the ensuing 2 years;

10.1.5 appointment of an Independent Reviewer ; and

10.1.6 such other matters as may be considered appropriate by the Meeting.

10.2 Other General Meetings

Other General Meetings of the Association may be convened from time to time as may be considered necessary, at the request of:

10.2.1 the Executive Committee; or

10.2.2 the President or Vice-President, (if any); or

10.2.3 any Three (3) Full Members of the Association.

10.3 Notices of General Meetings

Not less than Ten (10) Business Days prior written notice of General Meetings shall be given to all members of the Association. Such notices shall state in broad terms the business to be transacted at the Meeting. Should the Executive Committee having been duly requested, fail to give such notice within Five (5) Business Days of written request therefor, the persons requesting the Meeting shall themselves be entitled to give the necessary notice, and to convene the Meeting.

10.4 Resolutions and Voting

10.4.1 At all General Meetings, a Resolution put to the vote shall be decided by a show of hands; or if the President shall so determine, by a poll. The poll shall be taken as directed by the President, and the result of the poll shall constitute the Resolution of the Meeting.

10.4.2 Each Full Member present or represented at a General Meeting shall be entitled to One (1) vote, and all matters arising shall be determined by majority of their votes, provided that in the event of an equality of votes the President shall be entitled to a second or casting vote. For the avoidance of doubt, no person other than a Full Member shall have the right to vote, speak, or participate in a General Meeting of the Association.

10.5 Quorum

Subject to the terms of clause 10.6, a quorum in respect of any General Meeting of the Association shall be the lesser of:

10.5.1 Three (3) Full Members; or

10.5.2 One-third ($\frac{1}{3}$) of all the Full Members at the relevant time;

10.6 Adjournment

In the event that a General Meeting is duly convened but no quorum is present, such Meeting shall stand adjourned to another date, which shall be not less than Five (5) Business Days thereafter; and written notice reflecting such adjournment shall be given to all persons entitled to receive notice of a General Meeting. At such reconvened General Meeting, the Full Members then present or represented shall be deemed to constitute a quorum, notwithstanding the terms of clause 10.5.

11.

MINUTES AND MINUTE BOOK

11.1 Written Minutes shall be kept of all General Meetings and of all meetings of the Executive Committee, which shall include:-

11.1.1 The names of the persons present or represented; and

11.1.2 A record of the proceedings and of the decisions adopted.

11.2 The Minutes shall be signed by the person chairing the Meeting, or in his/her absence, by the person chairing the next succeeding Meeting.

11.3 Once approved, the Minutes may be inspected and copies shall be made available to each person present or entitled to be present at the Meeting, or their duly authorised representative.

12.

PROXIES

- 12.1 A Full Member who is unable to be present at a General Meeting shall be entitled to be represented at the meeting by another person appointed as an authorised proxy. The instrument appointing a proxy shall be in writing under the hand of the appointing Full Member, or her/his agent, duly authorised in writing.
- 12.2 Although the Chairperson of a General Meeting may condone any non-compliance with these formalities, the Association shall be obliged to give effect to the appointment of a Proxy if the signed instrument shall have been delivered, faxed or e-mailed to the Association at least Twenty-Four (24) hours prior to the time for the commencement of the Meeting, or any adjournment thereof.
- 12.3 The instrument appointing a Proxy shall be in the following form, or in such other substantially equivalent form as may be acceptable to the Chairperson of the Meeting:-

FORM OF PROXY

*I the undersigned, _____ [Full Names]
being a Full Member of the Association known as*

**BIOFEEDBACK ASSOCIATION OF SOUTH AFRICA
("BFSA")**

do hereby appoint:

_____ of _____

whom failing _____ of _____

as my Proxy, to attend, vote and speak on my behalf at a General Meeting of the Organisation to be held at _____ on the _____ day of _____ 20____; and at any adjournment thereof, _____ as follows, viz:

	<i><u>In favour of</u></i>	<i><u>Against</u></i>	<i><u>Abstain from voting</u></i>
<i>Resolution to</i>			
<i>Resolution to</i>			
<i>Resolution to</i>			

(Indicate instruction to proxy by way of a cross in space provided above)

Unless so instructed, my proxy may vote as s/he thinks fit.

Signed this day of 20 .

(Note: A Full Member entitled to be present at a General Meeting, shall be entitled to appoint any other person as his/her Proxy, to attend and speak, and on a poll to vote, in her/his stead.)

13.

REMUNERATION AND REIMBURSEMENT

- 13.1 Persons appointed from time to time to serve as members of the Executive Committee shall serve in an honorary capacity; provided that, should circumstances so require such persons may be granted a nominal honorarium, in recognition of a significant commitment of time, and of substantive responsibilities assumed, but subject in each instance to the approval of the Full Members in General Meeting.
- 13.2 Notwithstanding the foregoing, persons serving on the Executive Committee may be granted reimbursement of reasonable travelling, subsistence, and other expenses necessarily incurred in addressing their duties and responsibilities on behalf of the Association.
- 13.3 In conformity with what is commonly regarded as "best practice", the Annual Financial Statements of the Association shall include particulars showing, on an individual basis, the amount of any such honorarium or reimbursement that may be awarded to a person serving on the Executive Committee, excluding ordinary remuneration paid to any person in the fulltime employment of the Association, who serves in an *ex officio* capacity.

14.

CONFLICTS OF INTEREST

No transaction involving the Association shall be void or voidable merely by reason of the existence of a conflict of interest between the Association and one or more of the persons serving on the Executive Committee, as the case may be, provided that:

- 14.1 Any person having a conflict of interest must promptly declare the existence of such interest prior to any decision or resolution being taken in respect of an affected transaction;
- 14.2 The person concerned must make full disclosure in good faith of all relevant facts and circumstances affecting such interest;
- 14.3 Following such disclosure, the person concerned must be recused from any further part in the discussion or consideration of the affected transaction;
- 14.4 Approval of the transaction shall require a Resolution to be passed unanimously by all other members of the Executive Committee, present at the relevant meeting, who must represent at least sufficient to constitute a quorum;
- 14.5 All material details of the transaction, and of the discussions leading up to the vote, must be minuted and recorded.

15.

ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT, AND ANNUAL FINANCIAL STATEMENTS.

- 15.1 The Annual Financial Year of the Association shall be from 1 March in each year to the last day of February in the succeeding year.
- 15.2 The Executive Committee shall ensure that the Association maintains proper books of account, and accounting records. Financial Statements (including Capital and Revenue accounts) shall be prepared at least once a year, in accordance with generally accepted accounting practice in South Africa, in order to clearly reflect the financial affairs of the Association. The books of account and financial records of the Association, and its Annual Financial Statements shall be Independently Reviewed by a certified Independent Reviewer of a reputable Professional Accounting Institute, who is to be

appointed by members at the Annual General Meeting.

- 15.3 A copy of the Annual Financial Statements shall be made available to each Member of the Association as soon as possible after the close of the financial year.
- 15.4 The Accounting Records shall be kept at such place as the Executive Committee may approve, and shall be open to inspection on request by any person serving on the Executive Committee at all reasonable times.

16.

BANKING ACCOUNTS AND SIGNATURES

- 16.1 One or more banking accounts, as may be deemed necessary by the Executive Committee, shall be established from time to time in the name of the Association with a duly registered banking institution; and all payments received shall be promptly deposited to the credit of such banking account/s, through which the Association's financial transactions must be conducted.
- 16.2 All cheques, promissory notes, and other banking instruments requiring signature or authorisation on behalf of the Association, shall be signed or authorised for payment, as the case may be, in such manner and by such persons as the Council may so authorise and depute, from time to time.

17.

AMENDMENTS TO CONSTITUTION AND DISSOLUTION

- 17.1 By Resolution duly adopted by the Full Members in a General Meeting, which has been duly convened and at which sufficient Full Members are present or represented by Proxy to constitute the required Quorum:-
- 17.1.1 the terms of this Constitution may be amended; and/or
 - 17.1.2 the name of the Association may be changed; and/or
 - 17.1.3 the Association may ultimately be dissolved;

Provided that written notice of any such proposed Resolution must be given to all Full Members at least Twenty-One (21) Business Days prior to the date of

the Meeting at which it is to be considered; and provided further that such notice must clearly state the nature of the Resolution to be proposed.

Any such Resolution shall be deemed to have been duly adopted if it is supported by no less than Two-Thirds ($\frac{2}{3}$) of the Full Members present at a duly convened and quorate General Meeting.

- 17.2 Notwithstanding anything to the contrary hereinbefore contained, a Resolution signed by all the Full Members of the Association, shall be as valid as if passed at a duly convened General Meeting.
- 17.3 A copy of any Amending Deed, or Resolution, as the case may be, shall be submitted forthwith upon its adoption, to the Commissioner, and if applicable, also to the Director appointed in terms of the Nonprofit Organisations Act.
- 17.4 In the event of the dissolution of the Association, any net residue of funds or assets remaining after due provision for all liabilities and expenses, shall be given or transferred to one or more other tax-exempt Associations or Public Benefit Organisations approved by the Commissioner in terms of Section 30 or 30B of the Income Tax Act, as may be determined by a General Meeting of the Full Members of the Association.

18.

INDEMNITY

- 18.1 Subject to any limitations imposed by law, all persons serving on the Executive Committee, and other office-bearers of the Association, shall be absolved from liability in respect of acts done and decisions taken by them in good faith on the Association's behalf.
- 18.2 No person serving on the Executive Committee or other office-bearer of the Association shall be held liable for acts, receipts, neglects or defaults of any other person, or for having joined in any receipt or other act for conformity, or for any loss or expense suffered by the Association through the insufficiency or deficiency of title to any property acquired by the Association; or for the insufficiency or deficiency of any security in or on which the monies of the Association may be invested; or for any loss or damage arising from the bankruptcy, insolvency or delictual act of any person with whom any

monies, securities or effects are deposited or for any loss or damage caused in any other way, which occurs in the execution of their roles and responsibilities, unless it arises in consequence of that person's own dishonesty, recklessness, or failure to exercise that degree of care, diligence and skill that is required by law.

FULL MEMBERS

FULL NAMES

SIGNATURE

DATE

ASSOCIATE MEMBERS

UPON THE INITIAL FORMATION OF THE ASSOCIATION, THERE ARE NO INITIAL ASSOCIATE MEMBERS.

FULL NAMES

SIGNATURE

DATE

EXECUTIVE COMMITTEE

FULL NAMES

SIGNATURE

DATE

ATTACHMENT "A"

MANAGEMENT, INVESTMENT AND ADMINISTRATIVE POWERS

Subject to any applicable limitations set forth in the **Prescribed Fiscal Conditions** (Attachment "B"), in administering the affairs of the Association, the Executive Committee shall have the following Powers, in addition to any other powers and discretions which are referred to or implied by the attached Constitution, viz:

1. To receive and administer membership subscriptions, donations, grants, subsidies, and bequests for purposes of the ASSOCIATION; and to enter into contracts or tenders with National, Provincial and Local tiers of Government, in furtherance of the Objects of the ASSOCIATION.
2. To acquire assets, and to invest and reinvest the funds of the ASSOCIATION in a manner permitted by law, as may be deemed appropriate, in the sole and entire discretion of the Executive Committee.
3. To retain, or take over assets and investments made available to the ASSOCIATION; and to retain them in the form in which they are received, or to realise and re-invest the proceeds thereof.
4. To realise or vary any investments from time to time forming part of the funds of the ASSOCIATION, and re-invest the proceeds thereof in any authorised investments.
5. To allow funds and investments forming part of the assets of the ASSOCIATION to remain uninvested, or in their original state of investment upon acquisition by the ASSOCIATION.
6. To lend money, with or without security, and with or without provision for interest, as may be deemed appropriate in the furtherance of the Objects of the ASSOCIATION.
7. To borrow on such terms and conditions as may be considered appropriate for purposes of the ASSOCIATION, including to enable the repayment of liabilities; the making of loans in furtherance of its Objects; the acquisition or development of real estate; the preserving or acquisition of assets or investments; the subscription of shares, with powers from time to time to

consent to alterations or variations in the terms applicable thereto; and as security for any moneys so borrowed, the Association shall be entitled to mortgage, pledge, either generally or specifically, or otherwise encumber, all or any portion of the assets of the ASSOCIATION, in such manner and upon such terms and conditions as it may deem fit, with the right also to replace any such borrowings or security.

8. To guarantee (either gratuitously, or for a consideration) the performance of contracts or obligations of any third party, in order to promote the Objects of the ASSOCIATION, upon such conditions, and with or without security, as the Executive Committee in its sole and absolute discretion may deem fit; provided such transaction is entered into in pursuance of the Object of the ASSOCIATION.
9. To exercise the voting powers attached to any shares forming part of the assets of the ASSOCIATION, as may be considered appropriate and in the best interests of the ASSOCIATION; and to enter into arrangements as may be considered necessary for the purpose of causing the liquidation, reconstruction, or amalgamation of any Company, Trust, or other entity.
10. To deal with, and turn to account, any of the assets of the ASSOCIATION, by development, exchange, sale, lease or otherwise and in exercising any powers of sale, to cause such sale to be effected by public auction, tender, or private treaty as may be considered appropriate.
11. To purchase or otherwise acquire movable and immovable property for the advancement of the purposes and activities of the ASSOCIATION in pursuance of its Objects.
12. In respect of any immovable property donated to, or forming part of the assets of the ASSOCIATION, at any time:
 - 12.1 to develop, maintain, exchange, sell, lease or otherwise deal with any such immovable property or any portion thereof, and to grant rights or options in respect thereof; including Leasehold; Life Rights and other rights of use and occupation; to register mortgage bonds; and to procure the maintenance, repair, improvement, demolition or reconstruction of any buildings situated thereon;

- 12.2 to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation, or otherwise, in any Deeds Registry, Mining Titles or other public office; to deal with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessations, releases, reductions, substitutions or otherwise generally relating to any deed, bond or document; and to obtain copies of deeds, bonds or documents for any purposes, and generally to do or cause to be done any act whatsoever in any such Registry or office.
13. To transfer shares, property rights, or other assets into the name of a Nominee Company or other fiduciary, to hold such assets on behalf and for the benefit of the ASSOCIATION.
14. To cause any Company, Trust, or other entity to be formed, and to appoint its Directors, Trustees or other office bearers; or otherwise exercise control over its activities and affairs, directly or indirectly, for the purpose of holding specific assets or undertaking specified activities which serve to promote the Objects of the ASSOCIATION.
15. To sue for, recover and receive all debts or sums of money, goods, effects and other things whatsoever, which may become due, owing, payable or vested in the ASSOCIATION; and bring sequestration, liquidation or judicial management proceedings against any person.
16. To defend, oppose, adjust, settle, compromise or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the ASSOCIATION and any person and, for the purposes aforesaid, to do and execute all necessary acts or documents.
17. To attend meetings of creditors indebted to the ASSOCIATION whether in insolvency, liquidation, judicial management or otherwise, and vote for the election of a Trustee, liquidator or judicial manager, and also vote on all questions submitted to any such meeting of creditors, and generally exercise the rights of a creditor.

18. To exercise the voting powers attaching to any share, stock, debenture, or unit, in such manner as the ASSOCIATION may deem fit, for the purpose of amalgamation, merger or compromise.
19. To exercise and take up or sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debenture, or unit forming part of the assets of the ASSOCIATION.
20. To appoint a Chief Executive Officer and such other personnel as may be considered appropriate, from time to time, whether in a part-time or full-time capacity; and to determine their remuneration, and terms of employment, and delegate to the Chief Executive Officer or any other designated person, such powers and authorities with respect thereto as may be deemed appropriate.
21. To establish employee benefit schemes, pension and retirement funds, and to make such other provision for the wellbeing of employees as may be considered appropriate and desirable.
22. To give receipts, releases or other effectual discharges for any sums of money or things recovered.
23. To treat as income any periodic receipts, though received from wasting assets; and to make provision for the amortisation thereof, if deemed necessary and appropriate.
24. To determine what receipts shall be treated as income and what receipts shall be treated as capital, in respect of any liquidation dividend, or return of capital, or capitalisation of profits, in the case of companies whose shares are being held as portion of the assets of the ASSOCIATION; and generally to decide any question which may arise as to what constitutes capital and what constitutes income, by effecting an apportionment in such manner as the ASSOCIATION may consider fit.
25. To employ accountants, attorneys, agents, brokers, or other professional advisers to transact any business or furnish any service of whatever nature required to be done in furtherance of the Sole or Principal Object of the ASSOCIATION; and to pay all such charges and expenses so incurred as a first charge, and not to be responsible for the default of any such appointees,

or for any loss occasioned by their employment.

26. To cause the ASSOCIATION to be merged with any other approved Public Benefit Organisations having the same or similar purposes; and/or to incorporate the ASSOCIATION as a Non-Profit Company, and to transfer all or any of its assets in favour of such other entity, subject to the approval of the Commissioner, and due compliance with all relevant prescribed and contractual obligations.
27. Generally, to deal with assets or investments in such manner as may be considered to be in the interests of the ASSOCIATION and for the advancement of its Sole or Principal Object.

PRESCRIBED FISCAL CONDITIONS - ASSOCIATIONS

[In terms of Section 30B of the Income Tax Act No. 58 of 1962, as amended]

Upon approval of the Association as an "Entity" for purposes of Section 30B of the Income Tax Act, the Association shall be obliged at all times to conform to the conditions prescribed thereunder with respect to "Associations" (as defined in terms of Section 30B) which are approved by the Commissioner thereunder. Accordingly, the relevant statutory Conditions as are presently applicable at the date of incorporation of the Association are repeated hereunder; but remain subject to any amendments or additions thereto as may from time to time be enacted or prescribed.

(The Association being hereinafter referred to, as in the legislation, as "the Entity".)

1. The Entity must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity;
2. No single person may directly or indirectly control the decision-making powers relating to that Entity;
3. The Entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
4. The Entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;
5. No member may directly or indirectly have any personal or private interest in that Entity;
6. Substantially the whole of the activities of the Entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
7. The Entity may not have a share or other interest in any business, profession or occupation which is carried on by its members;

8. The Entity must not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
9. Substantially the whole of the Entity's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere;
10. The Entity must as part of its dissolution transfer its assets to:-
 - 10.1 Another Entity approved by the Commissioner in terms of this section;
 - 10.2 A Public Benefit Organisation approved in terms of Section 30;
 - 10.3 An institution, board, or body which is exempt from tax under Section 10(1)(cA); or
 - 10.4 The Government of the Republic in the national, provincial or local sphere.
11. The persons contemplated in paragraph clause 1 will submit any amendment of the Constitution or written instrument of the Entity to the Commissioner within 30 days of its amendment.
12. The Entity will comply with such reporting requirements as may be determined by the Commissioner from time to time.
13. The Entity is 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 contemplated in Part IIA of Chapter III, or a Transaction, operation or scheme contemplated in Section 103 (5).

ATTACHMENT "C"

PRESCRIBED NPO PROVISIONS CONCERNING REGISTERED NON-PROFIT ORGANISATIONS (NPO'S) REGISTERED IN TERMS OF THE NON-PROFIT ORGANISATIONS ACT, NO. 71 OF 1997, AS AMENDED.

By reason of the ASSOCIATION being registered in terms of the Nonprofit Organisations Act, No 71 of 1997, as amended, this Constitution makes due provision for the eligibility requirements prescribed in terms of Section 12(2) of that Act, as follows:-

1. The ORGANISATION'S name is stated in clause 1 of this Constitution.
2. The ORGANISATION'S main and ancillary objectives are stated in clause 3 of this Constitution.
3. The ORGANISATION'S income and property shall not be distributable to its members, or to its Directors or other office-bearers, except as reasonable compensation for services rendered, as stated in clause 4.2 of this Constitution.
4. The ORGANISATION is a body corporate, and shall have an identity and existence distinct from its Members, Directors, and other office-bearers, as stated in clause 2.4 of this Constitution.
5. The ORGANISATION shall continue to exist notwithstanding periodic changes that may occur in the composition of its membership and office-bearers, as stated in clause 5 of this Constitution.
6. The members of the ORGANISATION and its office-bearers shall have no rights in the property or other assets of the ORGANISATION by virtue of their being members, or other office-bearers, as stated in clause 4.2 of this Constitution.
7. The powers of the ORGANISATION are referred to in clause 4, as read with Attachment "A" to this Constitution.

8. The structures and mechanisms for governance of the ASSOCIATION are set forth in clause 7 *et seq* of this Constitution.
9. The rules for convening and conducting meetings, including quorums required for, and the minutes to be kept at those meetings, shall be as stated in clauses 9 and 10 of this Constitution.
10. The manner in which decisions are to be made shall be as stated in clauses 9 and 10 of this Constitution.
11. The ORGANISATION'S financial transactions must be conducted by means of a banking account, as stated in clause 16 of this Constitution.
12. The date for the end of the ORGANISATION'S financial year shall be as stated in clause 15.1 of this Constitution.
13. The procedure for changing the provisions of this Constitution shall be as stated in clause 17 of this Constitution.
14. The procedure by which the ORGANISATION may be wound up or dissolved shall be as stated in clause 17 of this Constitution.
15. If the ORGANISATION is wound up or dissolved, any asset remaining after all liabilities have been met, must be transferred to another eligible non-profit Organisation, as stated in clauses 4.3, 17.4 and 10 of Schedule "B" of this Constitution.