

CONSTITUTION

of

INNOVATIVE PHARMACEUTICAL ASSOCIATION OF SOUTH AFRICA

(An Amendment of the 2013 Constitution)

TABLE OF CONTENTS

1	INTERPRETATION	1
2	GENERAL	3
3	OBJECTS AND PURPOSE	4
4	MEMBERS AND MEMBERSHIP	6
5	DUTIES OF MEMBERS.....	7
6	ADMISSION OF MEMBERS	8
7	TERMINATION OF MEMBERSHIP	9
8	RE-ADMISSION	10
9	FEES AND SUBSCRIPTIONS	10
10	MEMBERSHIP COUNCIL	11
11	PROCEEDINGS AT MEMBERSHIP COUNCIL MEETINGS.....	14
12	EXECUTIVE COMMITTEE	15
13	MANAGEMENT OF THE ASSOCIATION	18
13.1	Meetings and procedures of the Executive Committee.....	18
13.2	Quorum	18
13.3	Voting and Resolutions	18
13.4	Minutes.....	18
13.5	Vacancies on the Management Committee	19
14	ANNUAL GENERAL MEETING OR AGM	19
14.7	Other General Meetings	21
14.8	Quorum	21
14.9	Voting and Resolutions	21
14.10	Minutes.....	21
14.11	Powers of the General Meeting.....	22
15	ANNOUNCEMENTS.....	22
16	WRITTEN RESOLUTIONS AND PROXIES	22
17	RECORDS TO BE KEPT BY EXECUTIVE COMMITTEE	23

18	CHIEF EXECUTIVE OFFICER.....	23
19	WORKING GROUPS	23
20	ACCOUNTING RECORDS, ANNUAL FINANCIAL STATEMENTS AND AUDITOR.....	25
21	NOTICES	25
22	PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY.	25
23	DISSOLUTION	26
24	DONATIONS	26
25	LIMITATION OF LIABILITY OF MEMBERSHIP COUNCIL REPRESENTATIVES	26
26	AMENDMENTS TO THE CONSTITUTION.....	28
27	GOVERNING LAW	28

BACKGROUND

- A. The members have agreed to the provisions of this Constitution so as to establish an association not for gain by either the association or by the individual members of the association. The object of the association is to be a unified research-based pharmaceutical industry association that is credible, sought out and respected by key stakeholders in the public and private healthcare sectors, and is focused on building an environment for sustainable access to innovative research-based healthcare.
- B. Accordingly, the terms and conditions upon which the Association and the conduct of the members shall be regulated are set out in this Constitution.

CONSTITUTION

1 INTERPRETATION

In the interpretation of this Constitution and unless contrary to or excluded by the subject or context:

- 1.1 any word used in this Constitution shall have the meaning stated below and, where applicable, shall include the word or expression stated below:
- 1.1.1 the singular shall include the plural and vice versa;
- 1.1.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.1.3 any reference to a natural person includes a juristic person and vice versa;
- 1.2 each of the following words and expressions shall have the meaning stated below and, where applicable, shall include the word or expression stated opposite it:
- 1.2.1 "**Association**" – the Innovative Pharmaceutical Association of South Africa or IPASA;

- 1.2.2 **"Chief Executive Officer"** - the Chief Executive Officer of the Association, appointed terms of article 18, or any person authorised to act in his or her place and includes a person authorised by the Executive Committee to carry out any of the duties of the Chief Executive Officer in terms of this Constitution;
- 1.2.3 **"the Code"** – the Code of Marketing Practice published by the Marketing Code Authority;
- 1.2.4 **"company"** means a body corporate, whether a company or other legal entity, or partnership, as the case may be;
- 1.2.5 **"this Constitution"** means the Constitution of the Association for the time being in force, and includes all annexures hereto;
- 1.2.6 **"Executive Committee"** - the Committee constituted in terms of article 12 and responsible, in terms of this Constitution, for the day-to-day running of the affairs of the Association;
- 1.2.7 **"medicine"** – a registered medicine as registered by the Medicines Control Council and **"medicine product"** shall have the same meaning;
- 1.2.8 **"member"** or **"members"** - any of the members of the Association referred to in article 4;
- 1.2.9 **"Membership Council"** means the council of the Association as constituted in terms of article 10 below;
- 1.2.10 **"Membership Council Representatives"** means the representatives appointed onto the Membership Council by each member in terms of article 10.1 below;
- 1.2.11 **"President"** - the President of the Association appointed in terms of article 14.6.2 below;
- 1.2.12 **"the Republic"** - the Republic of South Africa;

- 1.2.13 **"the TRIPS agreement"** – the Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 320 (1999), 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994);
- 1.3 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Constitution;
- 1.4 where any term is defined within a particular clause other than this 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Constitution;
- 1.5 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day;
- 1.6 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.

2 **GENERAL**

- 2.1 The name of the Association shall be Innovative Pharmaceutical Association of South Africa or IPASA.
- 2.1 The Association shall be a corporate body having a separate legal persona, with perpetual succession.
- 2.1.1 IPASA constitutes an *universitas*. Associations known as "*universitas*" are able to be created and operated notwithstanding the provisions of the Companies Act;
- 2.1.2 There are three requirements which must be met in order for an association to be considered an *universitas*, namely –

- 2.1.2.1.1 an *universitas* must have perpetual succession, meaning it must continue as an entity notwithstanding changes in membership;
 - 2.1.2.1.2 an *universitas* must hold property distinct from its members (it must be clear that no member has any rights by virtue of his or her or its membership to the property of the *universitas*); and
 - 2.1.2.1.3 an *universitas* cannot have been formed for the sole purpose of carrying on a business whose sole object is to acquire gain or profits by the *universitas* or by the individual members of the *universitas* (see *Nelson Mandela Metropolitan Municipality v Greyvenouw* CC 2003 JOL 10796 (SE)),
- 2.1.3 It is therefore apparent that IPASA's current Constitution partially fulfils two out of the three the requirements of an *universitas*, namely –
- 2.1.3.1 IPASA has perpetual succession; and
 - 2.1.3.2 IPASA was not formed for the purpose of carrying on a business whose sole object is to acquire gain or profits.
- 2.2 The Association shall continue to exist even when its membership changes whether in relation to members or any officer or employee.
- 2.3 The members agree that, through the establishment of a unified association representing research-based pharmaceutical companies and companies who locally represent overseas research-based pharmaceutical companies in the Republic, this Constitution organises the governing structures of the Association.
- 2.4 The provisions of this Constitution shall only be altered at the Annual General Meeting or at a specially constituted other General Meeting of the members of the Association in terms of the provisions of the Constitution.
- 2.5 Each member agrees to be bound by the provisions of this Constitution and to act in accordance with the terms and conditions of this Constitution.

3 OBJECTS AND PURPOSE

- 3.1 The principal objects of the Association shall be to be a research-based pharmaceutical industry association that is credible, sought out and respected key stakeholders in the public and private healthcare sectors and focused on

building an environment for sustainable access for all patients to innovative research-based pharmaceutical products.

3.2 In implementing the objects referred to in article 3.1, the Association shall endeavour to:

3.2.1 demonstrate its overall contribution to society and focus its efforts on enhancing access to research-based, innovative, quality, life-saving and life-enhancing pharmaceutical products that make a difference to people's lives;

3.2.2 represent and safeguard the interests of the research-based pharmaceutical industry in the South African health and business environments, by, amongst others participating in relevant forums, and to liaise with regional, African and international stakeholders and pharmaceutical associations;

3.2.3 promote integrity and adherence to all codes of conduct by its members and in all interactions conducted on behalf of the Association, including the specific requirement that all member companies shall sign up as members of the Code of Marketing Practice and the Marketing Code Authority and be subject to the sanctions imposed by the Marketing Code Authority. Should a member be found to have contravened the Code, the Association reserves the right in its discretion to suspend or terminate the membership of a member found to have repeatedly acted in violation of the Code. Such a decision shall be made by the Membership Council;

3.2.4 encourage ethical behaviour amongst all stakeholders in the pharmaceutical industry by demonstrating a commitment to promote research-based and innovative pharmaceutical products and engage in any policy discussions in an ethical manner;

3.2.5 create an environment within which stakeholders in the pharmaceutical industry recognise the value of research-based and innovative medicines and their contribution towards improving overall health of the population of the Republic;

3.2.6 create an environment that fosters innovation by, amongst other things, establishing policies that respect intellectual property and promote fair competition;

- 3.2.7 enable timely access for patients to innovative medicines by assisting and continually seeking to improve registration timelines for efficient and effective legal and regulatory processes;
 - 3.2.8 demonstrate that competitive market forces are the most equitable and efficient means to determine transparent market prices for medicines;
 - 3.2.9 enable timely access for patients to innovative medicines;
 - 3.2.10 participate or engage at the Council's discretion with certain pharmaceutical task groups;
 - 3.2.11 work with other stakeholders in the health and business sectors, as well as with government;
 - 3.2.12 influence and respond to new and existing socio-economic challenges in the health and business environments.
- 3.3 The Association respects the concept of competition posed by generic medicines subject to all parties complying with intellectual property rights and the Code.

4 MEMBERS AND MEMBERSHIP

- 4.1 Subject to the provisions contained in this article and article 6, the following persons shall be members of the Association, and the assessment of any person's compliance with these criteria shall rest within the discretion of the Executive Committee:
 - 4.1.1 all companies that had or have patent cover for all of their medicine products, which include biologicals, and have performed the original research and development themselves in respect of such a medicine product and/or are wholly-owned by the entity who has undertaken such research and development;
 - 4.1.2 companies which duly represent research-based entities that are not directly present in the Republic and/or who undertake research-based activities in the

Republic and whose research-based product sales functions may, in full or in part, be contracted to another entity, and this represents their core business.

- 4.2 Without detracting from the compulsory application of the aforementioned requirements, such companies are locally, and/or through their holding companies, directly or indirectly duly representative of such entities and predominantly engaged in the activities of researching and developing innovative pharmaceutical products;
- 4.3 Which companies support and agree to the importance of the protection of intellectual property rights in the Republic, and adherence of the Republic to the TRIPS agreement.
- 4.4 Membership of the Association does not detract from the right of companies to retain their individual views on matters of importance to them, and exercising this right may, in exceptional circumstances, require the inclusion of a caveat on Association presentations or submissions presented by that member.

5 DUTIES OF MEMBERS

- 5.1 Each member undertakes to the other members and to the Association to contribute appropriate time and resources to the management and operation of the Association, in accordance with the provisions of this Constitution, including, without being limited to, a member making its Chief Executive Officer (or a person in a similar role) available for appointment to the Membership Council and making appropriate representatives available for appointment to working groups constituted, from time to time, in terms of this Constitution.
- 5.2 Each member undertakes to implement mechanisms to ensure that it is apprised of developments within the Association.
- 5.3 Each member shall pay its annual subscription fees and any other levy that the Membership Council may impose on the members, from time to time, timeously in terms of article 9.
- 5.4 Each member undertakes to promote and adhere to the objects of the Association referred to in article 3.

- 5.5 Each member shall comply with all decisions taken by the Annual General Meeting, the Membership Council, the Executive Committee and with the provisions of this Constitution.

6 ADMISSION OF MEMBERS

Subject to the application of article 4 –

- 6.1 application for membership of the Association shall be made in writing to the Chief Executive Officer in a form approved by the Executive Committee. Such a form shall contain an undertaking by the applicant that upon admission to membership, it will be bound by and will accept and observe this Constitution and any by-laws framed hereunder or codes of conduct laid down by the Association;
- 6.2 the decision to grant an applicant admission as a member of the Association shall be made by the Executive Council;
- 6.3 all members will be notified by the Chief Executive Officer when a new application has been lodged, and members will have seven (7) days to lodge an objection to such an application with the Executive Committee. The Executive Committee shall consider the application and any objection made to such application and the criteria for membership and this Constitution. If an objection is valid, the applicant will be informed that membership has been denied;
- 6.4 a successful applicant company shall, on being informed of its admission as a member of the Association, submit to the Chief Executive Officer in writing the name of its Chief Executive Officer (or a person in a similar position in the organisation) who shall be the authorised to represent the company and to attend and vote at all meetings of the Association in terms of this Constitution; and
- 6.5 every new member shall register with the Chief Executive Officer its contact details as the Executive Committee may require and to which communications may be directed by the Association and every member shall advise the Chief Executive Officer, in writing, of any change to that member's postal, e-mail and physical address/es.

7 TERMINATION OF MEMBERSHIP

- 7.1 Every member shall remain a member until its membership is terminated in accordance with the provisions of this Constitution.
- 7.2 A member shall cease to be a member:
- 7.2.1 upon the passing of a resolution of 75% of the Membership Council (save for the Membership Council Representative appointed by the member concerned) ruling that the member no longer qualifies for membership in terms of the provisions of this Constitution;
 - 7.2.2 upon a member, which is a company, being wound up or dissolved;
 - 7.2.3 upon the member ceasing to carry on business in the Republic;
 - 7.2.4 upon receipt by the Association of 3 (three) months' written notice of resignation from the member concerned addressed to the Executive Committee, which notice period shall run from the date on which the written notice is received by the Executive Committee;
 - 7.2.5 upon the removal by the Membership Council of the name of the member from the membership roll in accordance with its powers under this Constitution;
 - 7.2.6 if a member's annual subscription or any other sum due to the Association by that member has been outstanding for more than 6 (six) months;
 - 7.2.7 upon the passing of a resolution of 75% of all members represented on the Membership Council (save for the Membership Council Representative appointed by the member concerned), ruling that it is undesirable and not in the interests of the Association that such a member should remain a member of the Association: Provided that no resolution as specified in this article 7.2.7 shall be effective unless the notice convening the meeting has indicated that the meeting will consider such a resolution and the said member has had the opportunity of attending either personally or by a representative in order to state its case and answer any charge or complaint brought against it.

- 7.3 A member whose membership is terminated in terms of article 7.2 shall remain liable for all sums that are due to the Association, which amounts shall become due and payable as at the effective date of the termination of the membership and the member shall not be entitled to any refund of any subscription monies already paid nor have any claim on the Association or its officers, its property or its funds.

8 RE-ADMISSION

- 8.1 No person, who shall have been a member of the Association and shall have ceased to be such, shall be eligible for re-admission as a member until it has paid all arrears of any amount due from it to the Association as at the date when its former membership ceased.
- 8.2 No person, whose former membership shall have been terminated by reason of its expulsion from the Association, as provided in this Constitution, shall be re-admitted as a member of the Association without the passing of a resolution of 75% of the Membership Council.

9 FEES AND SUBSCRIPTIONS

- 9.1 The Executive Committee shall recommend the amount of the application fee payable by an applicant and annual subscription fees and/or any levies payable by each member to the Association.
- 9.2 Annual subscriptions shall be due and payable on each anniversary of the formation of this Association, or such other date as may be determined by the Executive Committee, whether or not statements of account in respect of the subscriptions have been received by members by that date.
- 9.3 No member shall be entitled, while any subscription or other sum due to the Association is more than 3 (three) months in arrear, to exercise any of the rights or privileges of membership as may be available to such members in terms of this Constitution.

- 9.4 The Membership Council shall have the right to prescribe from time to time additional levies payable by members at such times and calculated on such bases as the Membership Council may determine.
- 9.5 All decisions in relation to the determination and approval of any fee or levy payable in terms of this article 9 shall require the consent of 75% of all the members represented on the Membership Council.

10 MEMBERSHIP COUNCIL

- 10.1 Each member shall be entitled to appoint 1 (one) person to act as its representative on the Membership Council and who shall be its Chief Executive Officer (or a person in a similar position in the member's organisation).
- 10.2 The Membership Council may, in its discretion, invite a member of any of its working groups to present to it or to attend a part of a Membership Council meeting.
- 10.3 The Membership Council shall be responsible for the management and control of the affairs and interests of the Association and shall carry out the objects of the Association in such manner as it may deem fit and proper.
- 10.4 The day-to-day governance and operations of the Association shall be executed by the Chief Executive Officer under the supervision and direction of the Executive Committee, which may be guided by policies determined by the Membership Council. All decisions and actions of the Association shall be taken in terms of this Constitution. All decisions taken by the Executive Committee in respect of the Association are to be ratified by the Membership Council.
- 10.5 Without limiting the generality of the powers granted to the Membership Council in terms of article 10.3 above, the Membership Council shall have the following powers:
- 10.5.1 to do any or all things consistent with carrying out the objects and purpose for which the Association has been formed and to make codes and/or by-laws to further such objects and purpose;

- 10.5.2 to act on behalf of the Association and to pass resolutions which shall be binding upon the Association and its members including, but not limited to, requiring its members to subscribe to codes dealing with ethics or business or marketing practices;
- 10.5.3 to institute, defend, bring, carry or discontinue, or refer to arbitration any legal proceedings, court actions, court applications, legal claims and legal demands for or against the Association or in regard to any matter effecting the interests of the Association;
- 10.5.4 to assist any member to institute or defend any legal proceedings if the Membership Council is of opinion that the interests of the Association justify such a course of action;
- 10.5.5 to use the funds of the Association for any of the purposes provided for in this Constitution and according to the budget as approved, from time to time, by the Membership Council;
- 10.5.6 to defend legal proceedings instituted against any Membership Council Representative in relation to any matter or thing done or performed by such Membership Council Representative in his capacity as a Membership Council Representative and to indemnify him against all costs in any such legal proceedings;
- 10.5.7 to invite any person to attend any meeting of the Membership Council or any part of such meeting;
- 10.5.8 to constitute such working groups as the Membership Council may determine and require in order to achieve the objects and purpose of the Association;
- 10.5.9 to direct participation by the Association in any working group, task team, working groups, council or such other initiative as may be consistent with the objects and purpose of the Association;
- 10.5.10 to remove the name of a member from the membership roll and thus terminating such member's membership of the Association.

- 10.6 The Membership Council shall prepare a written report on its proceedings when it deems such a report to be necessary.
- 10.7 As representation on the Membership Council is linked to all members of the Association, and as only the Chief Executive Officer (or the equivalent person in a member company) may represent a member on the Membership Council, a Membership Council Representative shall cease to be appointed to the Membership Council upon:
- 10.7.1 the termination of the membership of the member;
- 10.7.2 removal, the resignation or dismissal of the Membership Council Representative from the employ of the member; or
- 10.7.3 written notice from the member concerned of a new appointment of a Membership Council Representative in accordance with the provisions above of article 10.1.
- 10.8 The Membership Council may, from time to time and in its discretion, raise or borrow from the members or other persons any sum or sums of money for the purposes of fulfilling the objects and purpose of the Association.
- 10.9 The Membership Council may raise or secure the repayment of the sum referred to in article 10.8 in such manner and upon such terms and conditions in all respects as it deems fit including, but not limited to, by the execution of mortgage bonds or other forms of hypothecation upon all or any part of the property and rights of the Association.
- 10.10 All decisions of the Membership Council in terms of this article shall require a decision by, at least, 75% of the majority consent of all the Membership Council Representatives.

11 PROCEEDINGS AT MEMBERSHIP COUNCIL MEETINGS

- 11.1 The Membership Council shall attempt to meet at least every 6 (six) weeks in a calendar year: provided that the Chief Executive Officer may, at any other

time and on the written request of any Membership Council Representative, convene a meeting of the Membership Council.

- 11.2 The Chief Executive Officer shall give notice either by e-mail, letter or facsimile of a meeting of the Membership Council to all of the Membership Council Representatives at least 7 (seven) days prior to the meeting, provided always that a shorter period of notice may be given and ratified by the Membership Council Representatives.
- 11.3 The notice referred to above in article 11.2 shall contain, inter alia, an agenda identifying the matters to be discussed at the meeting and shall be accompanied by copies of the relevant papers to be discussed at the meeting. Any matter that is submitted to the Membership Council for a decision and which is not identified in the notice shall not be decided upon, unless otherwise agreed by a decision of the Membership Council Representatives.
- 11.4 A quorum of the Membership Council shall be constituted by at least a third of the Membership Council Representatives or as represented by proxy, and which number shall include the President as chairperson and any of the Executive Committee if in attendance: Provided that, in any matter it deems appropriate, the Membership Council may also obtain the votes of Membership Council Representatives not in attendance at the meeting by means of proxy as set out in article 16 or by an email in order to ensure that either the requisite quorum is achieved or to ensure sufficient support from the membership in matters if it deems necessary to do so.
- 11.5 If there is no quorum of the Membership Council, the members present may still meet to be updated or to discuss matters indicated on the agenda, but no vote shall be taken on matter so updated or discussed.
- 11.6 Each Membership Council Representative shall have 1 (one) vote.
- 11.7 Decisions at Membership Council meetings, shall be made by means of consensus, failing which a majority vote as set by articles 11.4 and 11.9, shall carry any resolution; save for matters for which a higher voting threshold is indicated in this Constitution.

11.8 Subject to articles 11.4 and 11.9 the acceptance of any matter arising at any meeting of the Membership Council shall require the consent of 50% (fifty percent) plus one vote of the Membership Council Representatives voting at the meeting of the Membership Council in order to constitute a valid resolution of the Membership Council.

11.9 Membership Council Representatives may participate in a meeting of the Membership Council by means of a conference telephone or similar equipment and any such participation in a meeting shall constitute presence in person at the meeting.

12 EXECUTIVE COMMITTEE

12.1 There shall be an Executive Committee responsible for the management of the day-to-day affairs of the Association and, without detracting from the generality of this power, to -

12.1.1 appoint a Chief Executive Officer who may, in turn, appoint any other employee as may be approved by the Membership Council;

12.1.2 delegate the management of the day-to-day affairs of the Association, or any other power referred to in this article 12, to the Chief Executive Officer;

12.1.3 approve the appointment of full- or part-time employees, who shall hold office for such periods and perform such duties and receive such remuneration upon such terms as the Executive Committee may, from time to time, determine, so as to give effect to the objects and purpose of the Association;

12.1.4 decide on the principal place of business of the Association;

12.1.5 appoint or nominate or authorise any person to act on behalf of the Association for the purpose of entering into any contract;

12.1.6 oversee the implementation of resolutions of the Association;

12.1.7 approve and oversee any operational plan determined by the Chief Executive Officer, in line with the objects and purpose of the Association; and

- 12.1.8 delegate any or all of the abovementioned powers to the Chief Executive Officer who, when executing any one or more of the abovementioned powers, shall report directly to the Executive Committee in respect of any such action taken by him.
- 12.2 The Executive Committee shall meet as often as it deems necessary to ensure the efficient day-to-day management of the Association.
- 12.3 The Executive Committee, who shall serve for the period of 24 (twenty-four) months, shall be constituted by natural persons who are the Chief Executive Officers (or a person in a similar position in the member's organisation). The Executive Committee shall consist of the following members:
- 12.3.1 the President of the Association elected at the Annual General Meeting of the Association according to article 14.6.2;
- 12.3.2a Vice President and four Executive Committee Members as elected at the Annual General Meeting of the Association according to article 14.6.2; and
- 12.3.3 the Chief Executive Officer as an ex officio member.
- 12.4 In the event of a vacancy in the position of President, the Vice President will step into the position of the President to fulfil that role until the end of the President's term.
- 12.5 In the event of a vacancy in the position of the Vice President, another Vice President, being an existing member of the Executive Committee, will be elected at a Membership Council meeting. The candidates for Vice President shall be nominated and their names made available to Membership Council Representatives for consideration. The Vice President will be elected from the nominees provided by means of a majority vote. The Vice President so elected will serve for the remainder of unexpired term of the Vice President whom he replaced.
- 12.6 In the event of a vacancy in the position on the Executive Committee, a new member must be nominated for election onto the Executive Committee by the Membership Council. The successful nominee will be elected by a majority vote of the Membership Council and will serve as a member of the Executive

Committee for the remainder of the unexpired term of the members of Executive Committee whom he replaced.

12.7 For the sake of clarity -

12.7.1 as no position on the Executive Committee is held by a company, no vacancy on the Executive Committee may be filled automatically by a natural person who, in a member company, succeeds the natural person who held a position on the Executive Committee;

12.7.2 a member of the Executive Committee shall be disqualified to continue to be such a member where he is no longer the Chief Executive Officer (or a similar position) of the member company he represents.

12.8 The duties of the President shall include but not be limited to the following:

12.8.1 to set, with the Chief Executive Officer, the agendas of the meetings over which he presides;

12.8.2 to be the chairperson of the Annual General Meetings, Special General Meetings and all meetings of the Membership Council and the Executive Committee;

12.8.3 to sign the minutes of the meetings over which he presides after the minutes have been adopted; and

12.8.4 subject to article 15, to make public statements on behalf of the Association or to mandate another Executive Member or the Chief Executive Officer or another staff member of the Association to do so.

12.9 Four members of the Executive Committee shall constitute a quorum for any meeting of the Executive Committee. The President shall have a casting vote in addition to his deliberative vote but such a casting vote may only be used at meetings of the Executive Committee.

12.10 In the absence of the President, the Vice-President shall fulfil the functions of the President.

13 MANAGEMENT OF THE ASSOCIATION

13.1 Meetings and procedures of the Executive Committee

13.1.1 The Executive Committee must hold at least 2 (two) ordinary meetings each year and may meet once every six weeks.

13.1.2 The Chairperson, or 2 (two) members of the Executive Committee, may convene a special meeting, provided that the other Executive Committee members are given written notice of the proposed meeting not less than 10 (ten) business days before it is due to take place. The notice must also stipulate which issues will be discussed at the meeting.

13.1.3 The Chairperson shall act as the Chairperson of the Executive Committee meetings. If the Chairperson does not attend a meeting, then the members of the Executive Committee who are present shall appoint one of them to chair that meeting.

13.2 Quorum

A quorum shall be two thirds of the members of the Executive Committee. Should a necessary quorum not be achieved at a duly convened meeting, then the provisions of 14.8.2 shall apply mutatis mutandis.

13.3 Voting and Resolutions

13.3.1 At all Executive Committee meetings, a proposed resolution shall be decided by means of a show of hands. All resolutions shall be determined by simple majority.

13.3.2 Each member present or represented by proxy shall be entitled to one vote.

13.3.3 Should any deadlock occur then, the Chairperson shall have the casting vote.

13.3.4 A resolution signed by all the members of the Executive Committee shall be valid as if passed at a duly convened meeting of the Executive Committee.

13.4 Minutes

13.4.1 Proper minutes shall be kept of the proceedings of all Executive Committee meetings, which minutes shall be approved and signed by the Chairperson. Copies

of the minute shall be available for inspection to any Executive Committee member on 5 (five) business days' written notice.

13.4.2 Any minutes of an Executive Committee meeting, or a resolution, signed by the Chairperson of that meeting, or by the Chairperson of the following Executive Committee meeting, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

13.5 Vacancies on the Management Committee

If an Executive Committee member-

13.5.1 resigns;

13.5.2 becomes unfit and/or incapable of acting as such;

13.5.3 becomes disqualified in terms of the Companies Act No. 71 of 2008 or equivalent legislation in force from time to time, from acting as a director in a company; or

13.5.4 is removed by the Executive Committee by resolution adopted by no less than two thirds of its members,

the Executive Committee may, by a resolution of no less than two thirds majority, appoint a member to fill the vacancy, which appointment shall only be valid until the following annual general meeting, unless such appointment is confirmed by the members of the Association at such meeting.

14 ANNUAL GENERAL MEETING OR AGM

14.1 An AGM shall be called by not less than 21 (twenty-one) business days' notice in writing. The notice period shall be calculated exclusive of the days on which it is served or deemed to have been served and the day of the annual general meeting.

14.2 An AGM may be called by shorter notice than that specified in article 14.1. In so far as a shorter notice period for an AGM is provided, the AGM shall be deemed to have been duly called if it is so agreed to by at least a third of members having a right to attend and vote at the meeting, such approval being

secured prior to the notice being issued and such approval may be secured by electronic means or by facsimile.

14.3 All AGM notices shall specify the place, the day and the hour of the AGM and an agenda shall be provided setting out the matters to be discussed at the AGM together with the necessary supporting documents and information, which shall be provided to members within a reasonable time.

14.4 The quorum at an AGM and a AGM shall, subject to article 14.5, be 50% of all members of the Association entitled to participate in the AGM and each such member shall have 1 (one) vote.

14.5 An AGM notice shall be given only to paid-up members of the Association and shall be directed to the Chief Executive Officer (or a person in a similar position in the organisation) of the member.

14.6 **The purpose of the AGM is to –**

14.6.1 approve the annual financial report of the Association;

14.6.2 elect by a simple majority and secret ballot and on the basis of nominations received by the Chief Executive Officer before the AGM, the President, the Vice President, four Executive Committee members of the Association who shall serve for the next 24 (twenty-four) months from the date of the AGM;

14.6.3 receive reports from the Chief Executive Officer and the President, on behalf of the Executive Committee, and any other person on the activities of the Association, including the implementation of any strategic plan and any projects and programs of the Association;

14.6.4 adopt amendments to this Constitution, which amendments shall only be effective if approved by a majority vote of members entitled to attend an AGM of at least 75%;

14.6.5 appoint the auditors of the Association;

14.6.6 deal with any other matter placed on the agenda by a member provided notice of such a matter was received by the Chief Executive Officer at least seven business days prior to the date of the AGM.

14.7 Other General Meetings

14.7.1 Other general meetings of the Association may be convened by the Chairperson at any time and must be convened by the Chairperson if requested to do so in writing by 2 (two) members of the Association or 2 (two) members of the Executive Committee, subject to notice being given.

14.7.2 Should the Chairperson fail to give notice of a general meeting within 7 (seven) business days after having been requested to do so in terms of 14.7.1, such meeting may be convened by the requesting Executive Committee members or members of the Association, as the case may be.

14.8 Quorum

14.8.1 The quorum constituting a general meeting of the Association shall be 3 (three) members.

14.8.2 Should there not be enough members present to constitute a quorum at any general meeting, such meeting having been properly convened, the meeting shall be adjourned to the same day the following week, or if such day is not a business day, the business day following that day, and the members present at the adjourned meeting shall constitute a quorum.

14.9 Voting and Resolutions

14.9.1 At all general meetings, a proposed resolution shall be decided by means of a show of hands. Unless otherwise stipulated in this Constitution, all resolutions shall be determined by simple majority.

14.9.2 Each member present or represented by proxy shall be entitled to one vote.

14.9.3 Should any deadlock occur, then the Chairperson shall have the casting vote.

14.10 Minutes

14.10.1 Proper minutes shall be kept of the proceedings of all general meetings, which minutes shall be approved and signed by the Chairperson. Copies of the minute

shall be available for inspection to any member on 5 (five) business days' written notice.

14.10.2 Any minutes of a general meeting, or a resolution, signed by the Chairperson of that meeting, or by the Chairperson of the following general meeting, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

14.11 Powers of the General Meeting

14.11.1 A duly convened general meeting of the Association shall have the capacity to carry out all the objectives and to exercise all the powers of the Association as set out in this Constitution.

14.11.2 Notwithstanding 14.11.1, the general meeting may review, approve or amend any decision taken by the Executive Committee, but no such resolution of the Association shall invalidate any prior action taken by the Executive Committee provided that such action was taken in accordance with the provisions of this Constitution.

15 ANNOUNCEMENTS

None of the Membership Council Representatives or any member or official or employee of the Association shall make any public announcement or statement including, but not limited to, a press release, media interview and/or presentation in connection with or on behalf of the Association without first having obtained the permission of the Membership Council, which permission shall be set out in a resolution taken by the Membership Council in accordance with its powers in terms of this Constitution.

16 WRITTEN RESOLUTIONS AND PROXIES

16.1 A resolution, in writing, signed by all of the Membership Council Representatives shall be as valid and effective as if it had been passed at a meeting of the Membership Council properly having been held on the date on which the last signature is affixed to the resolution. Confirmation of a resolution by email qualifies as the affixing of a signature to a resolution.

- 16.2 Any member of the Association may exercise its right to vote at any meeting of the Association by means of a proxy. The proxy form must be properly completed and delivered to the office of the Chief Executive Officer on or before 7 (seven) business days before the AGM indicating the person who will carry the proxy and, if the member so deems it amend proxy form necessary, the manner in which that proxy shall be exercised. Only the proxy form that is made available by the Association may be used as a valid proxy.

17 RECORDS TO BE KEPT BY EXECUTIVE COMMITTEE

The Executive Committee shall cause minutes and records to be made for the purposes of:

- 17.1 recording all appointments of officers made by the Association or persons designated by the Association to fulfil any activities on behalf of the Association;
- 17.2 recording the names of the members present at each meeting;
- 17.3 recording all resolutions and minutes of proceedings at all meetings of the Association including all meetings of any working group.

18 CHIEF EXECUTIVE OFFICER

The Executive Committee shall appoint a Chief Executive Officer of the Association, upon recommendation of an interview and recruitment panel established by the Membership Council for that purpose, on such terms, in a written agreement between the Association and the Chief Executive Officer, as to remuneration or otherwise, as it deems fit, to fulfil the duties determined by the Executive Committee. The duties of the Chief Executive Officer shall be set out in the aforementioned agreement.

19 WORKING GROUPS

- 19.1 The Membership Council may provide for the management of the business and affairs of the Association in any location, in such manner as it deems fit, and the provisions contained in article 19.2 shall be without prejudice to the general powers conferred by this article 19.1.

19.2 The Membership Council may:

19.2.1 establish working groups and/or teams (hereinafter "**working groups**") to manage any part of the business and affairs of the Association;

19.2.2 appoint from amongst the Membership Council Representatives, a chairperson for each working group the Membership Council has established, and require of such chairperson to report on the progress made by such working group at any Membership Council meeting;

19.2.3 authorise the members of a working group, or any of them, to fill any vacancies on that working group;

19.2.4 delegate, on such terms and conditions and with such restrictions as it deems fit, to a working group any of the power, authority and discretion vested in the Membership Council and the Membership Council may revoke, withdraw, alter or vary any such delegation.

19.3 The meetings, procedures and acts of any working group shall be determined by the working group but shall not operate to contravene or contradict the provisions of this Constitution.

19.4 A working group shall only act within the mandate provided to it by the Membership Committee and in respect of any other matter the working group's decision-making powers shall be limited to the making of a recommendation to the Membership Council.

19.5 All working groups shall attempt to meet at least once a month or when reasonably practical.

19.6 It shall not be necessary for members of working groups to be members or Membership Council Representatives of the Association but the Membership Council must approve the membership of a person who is not a member of the Association or a Membership Council Representative and may limit the voting rights of such a person.

20 ACCOUNTING RECORDS, ANNUAL FINANCIAL STATEMENTS AND AUDITOR

- 20.1 The auditors of the Association shall be appointed by the AGM annually.
- 20.2 The financial year-end of the Association shall be 31 December in each year.
- 20.3 The Chief Executive Officer shall cause accounts to be kept of:
- 20.3.1 all sums of money received and expended by the Association and the matters in respect of which such receipts and expenditure took place;
- 20.3.2 sales and purchases of goods by the Association;
- 20.3.3 the assets and liabilities of the Association.

21 NOTICES

- 21.1 A notice may be given by the Association to any member either by email, by hand, or by post in a prepaid letter addressed to such member at its registered address or (if it has no registered address in the Republic) at the address (if any) within the Republic supplied by it to the Association.
- 21.2 Any notice delivered by email shall be deemed to have been received at the time when the email was sent and where a letter containing the notice was posted by registered mail, the notice shall be deemed to have been received within seven days of the date of it being posted and in proving the delivery of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

22 PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY

- 22.1 The income and property of the Association shall be applied solely towards the promotion of the Association objects and purpose and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the members of the Association: Provided that nothing in this article shall prevent the payment in good faith of any reasonable remuneration to any officer or employee of the Association or to any person in return for any bona fide services rendered to the Association.

- 22.2 For the purposes of article 22.1, the investment of surplus profits shall be permissible, provided that any profits occurring on such investments are applied solely towards the promotion of the objects and purpose of the Association.

23 DISSOLUTION

Upon the dissolution or winding-up of the Association, the assets of the Association remaining after the satisfaction of all the Association's liabilities, agreed to by a 75% quorum of voting members, shall be given or transferred to another association or institution or associations or institutions having objects similar to the Association's objects and purpose and which association or institution –

- 23.1 is or are exempt from income tax in terms of section 10(1)(d)(iv) (bb) of the Income Tax Act, 1962 (as amended); and
- 23.2 to be determined by the members of the Association at or before the time of the Association's dissolution or, failing such determination, by any person authorised to do so in law.

24 DONATIONS

The Association may only make donations to other companies, societies, or associations having objects similar to the Association's objects and purpose.

25 LIMITATION OF LIABILITY OF MEMBERSHIP COUNCIL REPRESENTATIVES

- 25.1 Each current or past Membership Council Representative, Executive Committee member, manager, director and other officer of the Association and any person employed by the Association as its auditor, shall be indemnified by the Association against any liability incurred by him from time to time in that capacity in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted or in respect of any of those proceedings which are abandoned.
- 25.2 Every current or past Membership Council Representative, Executive Committee member, manager, director or other officer or servant or auditor of

the Association shall be indemnified by the Association against all costs, losses and expenses which any such Membership Council Representative, manager, director or other officer or servant or auditor may incur or become liable to, by reason of any contract entered into or any act or deed done by him or her in the discharge of his duties on behalf of the Association. Without prejudice to the generality of the above the Association shall specifically indemnify every Membership Council Representative, Executive Committee member, manager, director or other officer or servant or auditor of the Association against all losses of whatsoever nature incurred arising out of any bona fides act done by him jointly or severally in connection with the discharge of his duties on behalf of the Association.

25.3 No current or past Membership Council Representative, Executive Committee member, manager, director or other officer or servant or auditor of the Association shall be liable for the acts, receipts, neglects or defaults of any other Membership Council Representative, Executive Committee member, manager, director or servant or auditor, or for joining in any receipt or other act for conformity, or for a loss or expense happening to the Association through the insufficiency or deficiency of title to any property acquired by order of the Membership Council for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto, unless the same happens through a lack of bona fides or a breach of duty or a breach of trust.

25.4 The Association shall ensure that sufficient professional and other indemnity cover is in place to cover its members, working groups, officials and staff from any liability that the Association may face as a result of any act by such member, working group, official or employee for and on behalf of the Association.

26 AMENDMENTS TO THE CONSTITUTION

- 26.1 The Constitution may be amended by a resolution of a general meeting; which resolution must be passed by a two thirds majority.
- 26.2 Written notice must be given not less than 10 (ten) business days before the meeting at which the changes to the Constitution are going to be proposed, which notice must indicate the amendments to the Constitution that will be proposed at the meeting.
- 26.3 No amendments may be made which would have the effect of the Association ceasing to exist.

27 GOVERNING LAW

This Agreement will in all respects be governed by and construed under the laws of the Republic.