

MEMORANDUM OF INCORPORATION

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008**

**THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC)
REGISTRATION NUMBER 2005/027643/08**

(hereinafter referred to in the rest of the Memorandum of Incorporation as “the Association”)

NON-PROFIT COMPANY

**INCORPORATED FOR A COMMUNAL OR GROUP INTEREST BENEFIT OR A PUBLIC
BENEFIT**

SECTION 10 – SCHEDULE 1 ASSOCIATION

DEFINITIONS

In the Memorandum of Incorporation, the following words and expressions shall, unless the context otherwise requires, have the meanings assigned to them below and related expressions shall bear corresponding meanings:

“Act” or “the Act” – the Companies Act, Act 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to the Act (Companies Regulation 2(h) 2011);

“Alternate Director” – a person elected or appointed to serve, as the occasion requires, as a member of the Board of the Association in substitution for a particular elected or appointed Director of that Association (section 1 of Act 71/2008);

“Audit” – has the meaning set out in the Auditing Profession Act, 2005 (Act 26 of 2005) but does not include an “independent review” of Annual Financial Statements, as contemplated in section 30(2)(b)(ii)(bb) (section 1 of Act 71/2008);

“Consideration” – anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, includes:

(a) any money, property, negotiable instrument, investment credit facility, token or ticket;

(b) any labour, barter or similar exchange of one thing for another; or

(c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly (section 1 of Act 71/2008);

“Director” – a member of the Board as contemplated in section 66 or an alternate Director, from time to time, and includes any person occupying the position of a Director or alternate Director, by whatever name designated. Director includes alternate Director and a Prescribed Officer or a person who is a Member of a Committee of a Board of the Association or of the Audit Committee of the Association, if applicable, irrespective of whether or not the person is also a Member of the Association’s Board (section 1 of Act 71/2008);

“External Company” – a foreign Company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2) (section 1 of Act 71/2008);

“Financial assistance” – is not defined in the Act but includes lending money, guaranteeing a loan or other obligation, and securing any debt or obligation; but does not include: lending money in the ordinary course of business by the Association whose primary business is the lending of money; an accountable advance to meet legal expenses in relation to a matter concerning the Association; or anticipated expenses to be incurred by the person on behalf of the Association; or an amount to defray the person’s expenses for removal at the Association’s request in terms of section 45 of the Act;

“Financial Reporting Standards” – with respect to any particular Association’s financial statements, means the standards applicable to that Association, as prescribed in terms of section 29(4) and (5) (section 1 of Act 71/2008);

“Financial statements” – includes: Annual Financial Statements and provisional Annual Financial Statements; interim or preliminary reports; group and consolidated financial statements in the case of a group of Companies; and financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on (section 1 of Act 71/2008);

“Financial year end” – is not defined in the Act but means the end of the accounting period covering 12 (twelve) consecutive months over which the Association determines earnings and profits. The financial year serves as a period of reference for the Association and does not necessarily correspond to the calendar year;

“Holder” – includes a person who holds a Membership in the Association (section 117(1)(e) of Act 71/2008);

“IFRS” – means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body (Companies Regulation 26(1)(b) 2011);

“IFRS for SMEs” – means the International Financial Reporting Standards for Small and Medium Enterprises as issued from time to time by the International Accounting Standards Board or its successor body (Companies Regulation 26(1)(c) 2011);

“Incorporator” – when used with respect to the Association incorporated in terms of the Act, means a person who incorporated that Association, as contemplated in section 13; or with respect to a pre-existing Association, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that Association (section 1(a)(b) of Act 71/2008);

“Independently compiled and reported” – means that the Annual Financial Statements are prepared:

- (a) by an independent accounting professional;
- (b) on the basis of financial records provided by the Association; and
- (c) in accordance with any relevant financial reporting standards (Companies Regulation 26(1)(e)(i) to (iii) 2011);

“Independent reviewer” – means a person referred to in Companies Regulation 29(4) and who has been appointed to perform an independent review under this Regulation (Companies Regulation 29(1)(a) 2011);

“Member” – subject to the provisions of section 57, the holder of any Membership in the Association who is entered as such in the Association’s Members’ register. Section 57(1) stipulates that Member also includes a person who is entitled to exercise any voting rights in relation to the Association attached (section 1 of Act 71/2008);

“Members’ meeting” – with respect to any particular matter concerning the organisation, means a meeting of those Members of the Association who are entitled to exercise voting rights in relation to that matter (section 1 of Act 71/2008);

“Non-profit Association” – means a Association –

- (a) incorporated for a public benefit or other object as required by Item 1(1) of Schedule 1, and
- (b) the income and property of which are not distributable to its Incorporators, Members, Directors, Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1.

“Ordinary Resolution” – a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8): at a Members’ meeting; or by Members acting other than at a meeting, as contemplated in section 60 (section 1 of Act 71/2008 as amended by section 1(1)(u) of Act 3/2011);

“Prescribed Officer” – a person who, within the Association, performs any function that has been designated by the Minister in terms of section 66(10) despite not being a Director of a particular Association. A person is a “prescribed officer” of the Association for all purposes of the Act if that person exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the Association; or regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the Association (section 1 of Act 71/2008 as amended by section 1(1)(x) of Act 3/2011);

“Professional Body” – is a member-based organization seeking to further a particular profession in this instance the B-BBEE verification and consulting profession, advance the the interests of individuals engaged in the profession, and safeguard the public interest.

“Quorum” – is not defined in the Act but means the minimum number of Members, who are entitled to vote, that must be present to make a Members’ Meeting valid;

“Restrictive conditions” – is not defined in the Act but means conditions that limit, restrict or qualify the purposes, powers or activities of the Association in terms of section 15(2), section 16 and section 19(1) of Act 71/2008;

“Ring-fenced provisions” – is not defined in the Act but mean provisions specified in the Association’s Memorandum of Incorporation that limit, restrict or qualify the Association’s powers, capacity, purposes or activities in some way, provided for in terms of sections 15(2)(b) and (c) of the Act. The Act ensures that the general public is alerted to a Association’s restricted powers or capacity by requiring that such a Association’s name be immediately followed by the expression ‘(RF)’, an acronym for ‘ring-fenced’. Specifically, section 11(3)(b) provides that, if a Association’s Memorandum of Incorporation includes any provision contemplated in sections 15(2)(b) and (c) restricting or prohibiting the amendment of any particular provision of the Memorandum of Incorporation, its name must be immediately followed by the expression ‘(RF)’. There is a further requirement in section 13(3) which provides that, if a Association’s Memorandum of Incorporation includes any provision contemplated in sections 15(2)(b) or (c), the Notice of Incorporation: Ring-fencing Provisions filed by the Association must include a prominent statement drawing attention to each such provision, and its location in the Memorandum of Incorporation;

“Section” or “Sections” – refers to a section or sections of the Companies Act, Act 71 of 2008, as amended;

“Solvency and Liquidity Test” – has the meaning attributed thereto in section 4; being the test the Association satisfies if at a particular time, considering all reasonably foreseeable circumstances at that time:

- (a) the Association’s assets, as fairly valued, equal or exceed its liabilities. It is the assets of the particular Association which must be valued (including any investment in subsidiaries). The Association must have a positive net asset value at a specific point in time. This is the solvency element of the test. It is also called the ‘Balance Sheet Solvency’ Test; and
- (b) it appears that the Association will be able to pay its debts as they become due in the ordinary course of business for a period of 12 months after the date on which the test is considered or 12 months following the distribution. This is the liquidity element of the test. It is also called the ‘Commercial Solvency Test’ (section1 of Act 71/2008);

“Special Resolution” – means:

- (a) in the case of the Association, a resolution adopted with the support of at least 75% (seventy five percent) of the voting rights exercised on the resolution in terms of section 65(8) or a different percentage as contemplated in section 65(10) at a Members’ Meeting, being any lower or higher percentage as provided for in section 65(9) read with section 65(10), provided that there must at all times be a margin of at least 10% between the Ordinary and Special Resolution; or by Members acting other than at a meeting, as contemplated in Section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated (section1 of Act 71/2008 as amended by section 1(1)(cc) of Act 3/2011) ;

“Voting rights” – with respect to any matter to be decided by the Association, means the rights of a Member to vote in connection with the matter, in the case of a non-profit Association (section1 of Act 71/2008).

Contents

| | |
|--|----|
| ARTICLE 1 – INCORPORATION AND NATURE OF THE ASSOCIATION | 4 |
| 1.1 Incorporation..... | 4 |
| 1.2 Powers of the Association | 5 |
| 1.3 Memorandum of Incorporation and Association Rules..... | 5 |
| 1.4 Solvency and Liquidity Test..... | 5 |
| 1.5 Interpretation of the Memorandum of Incorporation, anti-avoidance, exemptions and substantial compliance | 5 |
| 1.6 Members Agreement and Association Rules..... | 6 |
| 1.7 Amending Memorandum of Incorporation..... | 7 |
| 1.8 Alterations, translations and consolidations of Memorandum of Incorporation | 8 |
| 1.9 Authenticity of versions of Memorandum of Incorporation | 8 |
| 1.10 Legal status of the Association..... | 9 |
| 1.11 Validity of the Association's Actions | 9 |
| ARTICLE 2 – MEMBERS' RIGHTS AND MEETINGS..... | 10 |
| 2.1 Interpretation and Application of the Memorandum of Incorporation | 10 |
| 2.2 Members' right to be represented by proxy | 11 |
| 2.3 Record date for determining Members' rights | 12 |
| 2.4 Members acting other than at a meeting | 12 |
| 2.5 Members' meetings..... | 13 |
| 2.6 Notices..... | 15 |
| 2.7 Notice of Members' meetings | 15 |
| 2.8 Conduct of meetings | 16 |
| 2.9 Meeting Quorum and Postponement..... | 17 |
| 2.10 Adjournment of Members' meetings | 18 |
| 2.11 Votes of Members..... | 18 |
| 2.12 General Meetings..... | 21 |
| 2.13 Termination of Membership..... | 22 |
| ARTICLE 3 – BOARD, DIRECTORS AND PRESCRIBED OFFICERS | 23 |
| 3.1 First Director or Directors | 23 |
| 3.2 Election of Directors | 23 |
| 3.3 Governance of the Board | 24 |
| 3.4 Vacancies on Board | 25 |
| 3.5 Removal of Directors..... | 26 |
| 3.6 Board Committees | 27 |
| 3.7 Board Meetings..... | 28 |
| 3.8 Board Quorum | 29 |
| 3.9 Board Resolutions..... | 29 |
| 3.10 Directors acting other than at Meeting..... | 31 |
| 3.11 Register of Directors | 31 |
| 3.12 Directors' Remuneration..... | 31 |
| 3.13 Financial Assistance | 32 |
| 3.14 Directors' personal financial interests | 32 |
| 3.15 Standards of Directors' conduct | 32 |
| 3.16 Liability of Directors and Prescribed Officers | 33 |
| 3.17 Indemnification and Directors' Insurance..... | 35 |
| ARTICLE 4 – TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY OF THE ASSOCIATION | 36 |
| 4.1 Access to the Association's Records and Financial Statements | 36 |
| 4.2 Financial Year End of the Association | 36 |
| 4.3 Accounting Records of the Association | 37 |
| 4.4 Financial Statements and Financial Year | 37 |
| 4.5 Annual Financial Statements..... | 38 |
| 4.6 Appointment of Auditor..... | 39 |
| 4.7 Registration of Auditor..... | 40 |
| 4.8 Rights and restricted functions of Auditors | 40 |

| | | |
|--|--|----|
| 4.9 | Rotation of Auditors..... | 41 |
| 4.10 | Resignation of Auditors and Vacancies..... | 41 |
| 4.11 | Use of the Association’s Name and Registration Number..... | 41 |
| 4.12 | Annual Return..... | 42 |
| 5.1 | Disposals, Mergers and Amalgamations..... | 43 |
| 6.1 | Winding-Up or Dissolution..... | 45 |
| ARTICLE 7 – ASSOCIATION SIGNATURE..... | | 46 |
| 7.1 | Association Signature..... | 46 |

MEMORANDUM OF INCORPORATION OF A NON-PROFIT ASSOCIATION (NPC)
REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, ACT NO 71 OF 2008

THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) which is a Non-Profit Association, Registration Number 2005/027643/08, and which is hereinafter referred to as "the Association" in the rest of the Memorandum of Incorporation, has the prescribed minimum number of at least 3 Directors in terms of section 66(2)(b), where the Incorporators may be its first Directors and its first Members and whereas every Member of the Association is also a Director of the Association. *Item 3 of Schedule 1*

If, before the general effective date, the Association had adopted any binding provisions, under whatever style or title, those provisions continue to have the same force and effect as of the general effective date, for a period of 2 (two) years or until changed by the Association; and after the 2 (two) year period, to the extent that they are consistent with the Act. *Item 4(1)(a) of Schedule 5*

Every pre-existing Association incorporated in terms of section 21 of the previous Act is deemed to have amended its Memorandum of Incorporation as of the general effective date to expressly state that it is a Non-Profit Company, and to have changed its name in so far as required to comply with section 11(3) of Act 71 of 2008, by changing its name to end with the expression NPC. *Item 4(1)(a) of Schedule 5. Section 126(3)(a) of Act 3 of 2011*

In this Memorandum of Incorporation:

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, Act No 71 of 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act;
- (c) any reference to the Association is a reference to THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC);
- (d) the Schedules, Annexures and Forms attached to this Memorandum are part of the Memorandum of Incorporation.

At any time within 2 years immediately following the general effective date of the Act, the Non-Profit Company may file without change:

- (a) an amendment to its Memorandum of Incorporation to bring it in harmony with the Act, and
- (b) a notice of name change and a copy of a Special Board Resolution contemplated in section 16(i)(c)(i)(aa) of the Act to alter its name to meet the requirements of the Act. *Item 4(1)(a) of Schedule 5. Section 126(3)(a) Act 3 of 2011.*

Adoption of Memorandum of Incorporation

The former Memorandum of Association and Articles of Association adopted in terms of the repealed Companies Act, Act 61 of 1973, as amended, was repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation in accordance with the Companies Act, Act 71 of 2008, as amended, and adopted by Special Resolution of Members of the Association on 22 August 2013.

The Memorandum of Incorporation was signed by the Board of Directors of the Association in accordance with section 13(1) of the Companies Act, Act 71 of 2008, as amended, as evidenced by the following signatures of each Director or by proxy on their behalf in the Table of Signatories of Directors.

Default Memorandum of Incorporation not to apply

The standard form Memorandum of Incorporation for a Non-Profit Association referred to in Regulation 15(1)(a) shall not apply to the Association. The Memorandum of Incorporation is in a form unique to the Association as contemplated in section 13(1)(a)(ii).

Objects of the Association

The object of the Association is to act both as an industry body and a professional body. *Item 1(1) (a) of Schedule 1 of the Act.*

ARTICLE 1 – INCORPORATION AND NATURE OF THE ASSOCIATION

1.1 Incorporation

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is incorporated from 2nd August 2005 as a Non-Profit Company, in terms of Schedule 1 and section 10 of the Companies Act, Act 71 of 2008 and section 122 of the Companies Amendment Act, Act 3 of 2011.
- (2) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is incorporated in accordance with and governed by the unalterable provisions of the Companies Act, 2008, meaning a provision of the Companies Act that does not expressly contemplate that its effect on any particular Association may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Association's Memorandum of Incorporation or rules and the alterable provisions of the Companies Act, meaning a provision of the Companies Act in which it is expressly contemplated that its effect on a particular Association may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Association's Memorandum of Incorporation, subject to the limitation, extensions, variations or substitutions set out in this Association's Memorandum of Incorporation, and the provisions of this Association's Memorandum of Incorporation, which forms the Constitution of the Association. *Section 1*
- (3) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall apply all of its assets and income, however derived, to advance its stated objects, as set out above in this Memorandum of Incorporation. The income and property of the Association shall not be distributable to its Incorporators, Members, Directors, Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1. *Item 1(2)(a) Schedule 1, item 1(3) Schedule 1*
- (4) The Memorandum of Incorporation does not limit or restrict the Association to acquire and hold securities issued by a profit Association or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects. The Non-Profit Company may conduct any business, including a commercial venture, as long as the funds generated are applied to advance the Association's primary object. *Item 1(2)(b)(i)(ii) Schedule 1*
- (5) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person, who is or was an Incorporator of the Association, or who is a Member or Director, or person appointing a Director, of the Association, except –
 - (5.1) as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Association, or payment of, or reimbursement for, expenses incurred to advance a stated object of the Association;
 - (5.2) as a payment of an amount due and payable by the Association in terms of a bona fide agreement between the Association and that person or another;
 - (5.3) as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance a stated object of the Association; or
 - (5.4) in respect of any legal obligation binding on the Association. *Item 1(3)(a)(i)(ii), Item 1(3)(b)(c)(d) Schedule 1 and section 122 (b) Act 3 of 2011.*
- (6) Incorporation as a Non-Profit Association in terms of this Act and compliance with the provisions of this Act does not necessarily qualify the Non-Profit Association for any particular status, category, classification or treatment in terms of the Income Tax Act, 1962 (Act 58 of 1962), or any other legislation, except to the extent that any such legislation provides otherwise. *Item 1(6) Schedule 1*

Section 10 of the Income Tax Act, 1962 (Act 58 of 1962) grants exemptions from income tax to public benefit organisations (PBOs) and in terms of section 30(3)(b) of the Income Tax Act, the Association meets stringent requirements for approval as a public benefit organisation, necessitating the amendment of the Association's Memorandum of Incorporation. *Item 1(6) Schedule 1*

1.2 Powers of the Association

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is not subject to any restrictive conditions nor to any prohibitions regarding the amendment of this Memorandum of Incorporation, other than those contained in the Act.

1.3 Memorandum of Incorporation and Association Rules

- (1) In terms of this Memorandum of Incorporation the Association is not limited from making, amending or appealing any Association Rules as contemplated in section 15(3) of the Act, and the Board's capacity to make such Rules is not hereby limited or restricted. *Section 15(3)*
- (2) The Board shall publish these Association Rules in terms of section 15(3), (4) and (5) by delivering a copy of the Rules to each Director and Member by publishing a copy of those Rules in any manner required or permitted by the Association's Memorandum of Incorporation, or the Rules of the Association, and filing a copy of those Rules. *Section 15(3)(a)(b)*
- (3) Any Rules proposed by the Board will take effect 10 (ten) business days after the filing of that Rule, or on the later date specified in the Rule. Any Rules proposed by the Board may not be filed if written objection by Members of 25% (twenty five percent) or more of the voting rights are received by the Board within 20 (twenty) business days after publication.

This provision shall have the effect of limiting the authority of the Board and may be omitted or adjusted. Any Rule that takes effect as contemplated in this sub-article shall remain binding on an interim basis until put to a vote at the next General Meeting of the Association and shall become permanently binding if ratified by an Ordinary Members Resolution. In the event that a Rule may not be filed, the Board shall promptly inform each Director and Member of this result by ordinary mail.

1.4 Solvency and Liquidity Test

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall satisfy the Solvency and Liquidity Test at a particular time if, considering all reasonably foreseeable financial circumstances of the Association at that time, the assets of the Association, as fairly valued, equal or exceed the liabilities of the Association, as fairly valued, and it appears that the Association will be able to pay its debts as they become due in the ordinary course of business for a period of 12 (twelve) months after the date on which the test is considered. *Section 4(1)(a) and (b) and section 2(a) of Act 3 of 2011*
- (2) In terms of the Memorandum of Incorporation, any financial information to be considered concerning the Association shall be based on accounting records that satisfy the requirements of Article: Transparency, Accountability and Integrity – Form and Standards, Article Transparency, Accountability and Integrity – Accounting Records of the Memorandum of Incorporation (section 28 of the Act) and financial statements that satisfy the requirements of Article: Transparency, Accountability and Integrity – Financial Statements of the Memorandum of Incorporation (section 29 of the Act). *Section 4(2)(a)(i)(ii)*
- (3) The Board or any other person applying the Solvency and Liquidity Test to the Association shall consider a fair valuation of the Association's assets and liabilities, including a reasonably foreseeable contingent assets and liabilities, or may consider any other valuation of the Association's assets and liabilities that is reasonable in the circumstances. *Section 4(2)(b)(i)(ii)*

1.5 Interpretation of the Memorandum of Incorporation, anti-avoidance, exemptions and substantial compliance

- (1) When, in the Memorandum of Incorporation, a particular number of 'business days' is provided for between the happening of one event and another, the number of days shall be calculated by excluding the day on which the first such event occurs, including the day on or by which the second event is to occur, and excluding any public holiday, Saturday or Sunday that falls on or between the days. *Section 5(3)(a)(b)(c)*
- (2) If there is an inconsistency between any provision of the Act and the Memorandum of Incorporation, and a provision of any other national legislation, the provisions of both Acts shall apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second, and to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the second, any applicable provisions of the Auditing Profession Act, Labour Relations Act, 1995 (Act 66 of 1995), Promotion of Access to Information Act, 2000 (Act 2 of 2000), Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), Public Finance Management Act, 1999 (Act 1 of 1999), Securities Services Act, 2004 (Act 36 of 2004), or Banks Act, Local Government: Municipal Finance Management

Act, 2009 (Act No 56 of 2003), or Section 8 of the National Payment System Act, 1998 (Act No 78 of 1998), shall prevail in the case of an inconsistency involving any of them, except to the extent provided otherwise in section 30(8) or section 49(4) of the Act, or the provisions of this Act prevail in any other case, except to the extent provided for in this clause of this sub-article of the Memorandum of Incorporation or section 118(4) of the Act, and if there is a conflict between a provision of Chapter 8 of the Act and a provision of the Public Service Act, 1994 (Proclamation No. 103 of 1994) the provisions of that Act prevail. *Section 5(4)(a), section 5(4)(b)(i), section 5(4)(b)(ii), section 5(4)(b)(iii) and section 5(5)*

- (3) Any Director, or Member of the Association may apply to the Companies Tribunal for an administrative order exempting an agreement, transaction, arrangement, resolution or provision of the Association's Memorandum of Incorporation or Rules from any prohibition or requirement established by or in terms of an unalterable provision of this Act, other than a provision that falls within the jurisdiction of the Panel. *Section 6(2)*
- (4) An unaltered electronically or mechanically generated reproduction of any document, may be substituted for the original for any purpose for which the original could be used in terms of the Memorandum of Incorporation, subject to that reproduction satisfying any applicable prescribed requirements as to the form or manner of reproduction. *Section 6(7), section 6(9)(b)(i)(ii)*

If a provision of the Memorandum of Incorporation requires a document to be signed or initialled by or on behalf of a person, that signing or initialling may be effected in any manner provided for in the Electronic Communications and Transactions Act, or by two or more persons, it shall be sufficient if all of those persons sign a single original of the document, in person or in the manner provided for in the Electronic Communications and Transactions Act, or each of those persons signs a separate duplicate original of the document, in person or in the Electronic Communications and Transactions Act, and in such case, the several signed duplicate originals, when combined, constitute the entire document. *Section 6(12)(a), section 6(12)(b)(i)(ii)*

1.6 Members Agreement and Association Rules

- (1) Subject to the Board having the authority to make Association Rules, a rule in terms of clause 1 of this sub-article of the Memorandum of Incorporation shall be consistent with the Act and the Association's Memorandum of Incorporation, and any such rule that is inconsistent with the Act or the Association's Memorandum of Incorporation shall be void to the extent of the inconsistency, shall take effect on a date that is the later of 10 (ten) business days after the rule is filed in terms of clause 1 of this sub-article of the Memorandum of Incorporation, or the date, if any, specified in the rule, and shall be binding on an interim basis from the time it takes effect until it is put to a vote at the next General Members' meeting of the Association, and on a permanent basis only if it has been ratified by an Ordinary Resolution of Members at the said meeting.

Within 10 (ten) business days after any rules of the Association have been put to a ratification, the Association shall file a Notice in Form CoR 16.2 indicating whether the rules have been ratified or rejected. *Section 15(4)(a), section15(4)(b)(i)(ii), section15(4)(c)(i)(ii), Regulation16(2)*

- (2) If a rule that has been filed in terms clause 1 of this sub-article of the Memorandum of Incorporation is subsequently ratified in terms of this sub-article of the Memorandum of Incorporation, the Association shall file a notice of ratification within 5 (five) business days in the prescribed manner and form, or not ratified when put to a vote, the Association shall file a notice of non-ratification within 5 (five) business days after the vote, in the prescribed manner and form, and the Association's Board is prohibited by the Memorandum of Incorporation from making a substantially similar rule within the ensuing 12 (twelve) months, unless it has been approved in advance by Ordinary Resolution of the Members. Any failure to ratify the rules of the Association shall not affect the validity of anything done in terms of those rules during the period that they had an interim effect as provided in clause 2 of this sub-article of the Memorandum of Incorporation. *Section 15(5)(a), section 15(5)(b)(i)(ii), section 15(5A)*
- (3) Within 10 (ten) business days after any rules of the Association have been amended, altered or repealed the Association shall file a Notice in Form CoR 16.1 indicating the extent and effect of the change. *Regulation 16(3)*
- (4) The Association's Memorandum of Incorporation, and any rules of the Association, are binding between the Association and each Member, between or among the Members of the Association, and between the Association and each Director of the

Association, or any other person serving the Association as a Member of a committee of the Board, in the exercise of their respective functions within the Association. *Section 15(6)(a)(b), section 15(6)(c)(i)(ii)*

- (5) The Memorandum of Incorporation does not limit or restrict the Members of the Association entering into any agreement with one another concerning any matter relating to the Association, but any such agreement shall be consistent with the Act and the Association's Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with the Act or the Association's Memorandum of Incorporation shall be void to the extent of the inconsistency. *Section 15(7)*

1.7 Amending Memorandum of Incorporation

- (1) the Association's Memorandum of Incorporation may be amended subject to Article Incorporation – Powers of the Association:

(1.1) in compliance with a Court Order in the following manner: an amendment to a Association's Memorandum of Incorporation required by any Court Order must be effected by a resolution of the Association's Board and does not require a Special Resolution as set out in this clause; or

(1.2) at any other time if a Special Resolution to amend it:

(1.2.1) is proposed by the Board of the Association or Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a Resolution and

(1.2.2) is adopted at a Members' meeting or in accordance with section 60; and

(1.2.3) any resolution for the amendment of the Memorandum of Incorporation, must be approved by the Commissioner of the South African Revenue Service in terms of the Income Tax Act.

If the Board, or any person authorised by the Board to do so, proposes to alter any of the provisions of this Memorandum of Incorporation to correct any patent errors in spelling, punctuation, reference, grammar or similar defect on the face of the Memorandum of Incorporation, by publishing and filing a notice of alteration in terms of the Board's statutory power to do so in section 17(1), then as a restrictive condition, contemplated by section 15(2)(b), the Board shall first cause that proposed alteration to be approved by Special Resolution of the Ordinary Members in terms of clause 1 of Article : Incorporation – Amendments and clauses 9 and 10 of Article Members Rights and Meetings Members Resolutions of this Memorandum of Incorporation (section 65(12) of the Act).

The notice convening the Ordinary Members' meeting for this purpose shall be accompanied by:

(1.3) a written confirmation by the Board that each proposed alteration to the Memorandum of Incorporation in the draft notice of alteration constitutes only a correction in terms of section 17 of a specific patent error in spelling, punctuation, reference, grammar or similar defect on the face of the Memorandum of Incorporation and

(1.4) a written explanation by the Board, explaining the reason for the effects of each of the specific alterations to the Memorandum of Incorporation.

A Notice of any such alteration must be sent to each Director and Member by ordinary mail at least 10 (ten) business days prior to the filing of the Notice of alteration with the Commission. This will allow the Directors and Members to approach the Tribunal in terms of section 17(2), only on the grounds if an alteration exceeds the authority to correct a patent error or defect. *Section 15(2)(b), section 16, section 17(10)(2), section 65(12)*

- (2) Within 10 (ten) business days after an amendment to the Association's Memorandum of Incorporation has been effected in any manner contemplated in this sub-article of the Memorandum of Incorporation, the Association shall file a Notice of Amendment in Form CoR 15.2, together with the relevant documents required by this sub-article of the Memorandum of Incorporation, and the fee set out in Table CR 2B.

- (3) The Memorandum of Incorporation does not contain any provision, the amendment of which is either subject to requirements for its amendment in addition to those set out in section 16 of the Act or that is prohibited from being amended, as contemplated in section 15(2)(b) or (c) of the Act.

1.8 Alterations, translations and consolidations of Memorandum of Incorporation

- (1) In the event that the Association has filed its Memorandum of Incorporation and wishes to file one or more translations of it, it may file it in any official language or languages of the Republic.

A translation of the Association's Memorandum of Incorporation shall be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete translation of the Memorandum of Incorporation.

A filed translation of the Association's Memorandum of Incorporation shall be accompanied by Form CoR 15.4, which shall include the sworn statement required by section 17(4), together with the fee set out in Table CR 1. *Section 17(3), section 17(4), Regulation 15(5)*

- (2) At any time after the Association has filed its Memorandum of Incorporation, and subsequently filed one or more alterations or amendments to it, the Association may file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, or the Commission may require the Association to file a consolidated revision of its Memorandum of Incorporation, as so altered or amended.

A consolidated revision of the Association's Memorandum of Incorporation shall be accompanied by Form CoR 15.5, which must include a sworn statement, or a statement by an attorney or notary, as required by this sub-article of the Memorandum of Incorporation, together with the fee set out in Table CR 1.

A notice by the Commission requiring a Association to file a consolidated revision of its Memorandum of Incorporation must be in Form CoR 15.6. *Section 17(5)(a)(b), Regulation 15(6)(7)*

A consolidated revision of the Association's Memorandum of Incorporation shall be accompanied by a sworn statement by a Director of the Association, or a statement by an attorney or notary public, stating that the consolidated revision is a true, accurate and complete representation of the Association's Memorandum of Incorporation, as altered and amended up to the date of the statement. *Section 17(6)(a)(b)*

1.9 Authenticity of versions of Memorandum of Incorporation

- (1) The Memorandum of Incorporation of the Association as altered or amended, prevails in any case of a conflict between it and a translation filed and a consolidated revision filed, unless the consolidated revision has subsequently been ratified by a Special Resolution at a general Members' Meeting of the Association.

The latest version of the Association's Memorandum of Incorporation that has been endorsed by the Commission in terms of this Part prevails in the case of any conflict between it and any other purported version of the Association's Memorandum of Incorporation. *Section 18(1)(a)(b) and section 18(2)*

- (2) In regards to the Memorandum of Incorporation of the Association and authentication of documents, any Director or the Association Secretary (if applicable) or any person appointed by the Directors for the purpose shall have power to authenticate:

- (2.1) any document affecting the constitution of the Association;
- (2.2) any resolution passed at the General Meeting or at a meeting of the Directors or at a meeting of any committee; and
- (2.3) any book, record, document or account relating to the business of the Association, and to certify copies thereof or extracts therefrom as true copies or true extracts.

Where any book, record, document or account is elsewhere than at the registered office, the local Manager or officer of the Association having the custody of it shall be deemed to be a person appointed by the Directors for the purpose of this sub-article.

A document purporting to be a copy of any such resolution, or an extract from the minutes of any such meeting, which is certified, shall be conclusive evidence in favour of all persons dealing with the Association that such resolution has been duly passed or, as the case may be, that any minute so extracted is a true and accurate record of proceedings at a duly constituted meeting. *Section 18(1)(a)(b) and section 18(2)*

1.10 Legal status of the Association

- (1) From the date and time that the incorporation of the Association is registered, as stated in its registration certificate, the Association is a juristic person, which exists continuously until its name is removed from the Association's register in accordance with this Act, has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power, or having any such capacity, or the Association's Memorandum of Incorporation provides otherwise, is constituted in accordance with the unalterable provisions of this Act, the alterable provisions of the Act, subject to any negation, restriction, limitation, qualification, extension or other alteration that is contemplated in an alterable provision, and has been noted in the Association's Memorandum of Incorporation, and any further provisions of the Association as set out in the Association's Memorandum of Incorporation. *Section (1)(a), section 19(1)(b)(i), section 19(1)(c)(i)(ii)(iii)*
- (2) In terms of the Memorandum of Incorporation, no persons shall solely by reason of being an Incorporator, Member or Director of the Association, be liable for any liabilities and obligations of the Association. *Section 19(2)*
- (3) Incorporation as a Non-Profit Association in terms of the Act, or registration as an external Non-Profit Company in terms of the Act, and compliance by either with the provisions of the Act does not necessarily qualify the Non-Profit Company, or external Non-Profit Company, for any particular status, category, classification or treatment in terms of the Income Tax Act, 1962 (Act 58 of 1962), or any other legislation, except to the extent that any such legislation provides otherwise.

1.11 Validity of the Association's Actions

- (1) The Association's Memorandum of Incorporation limits, restricts, qualifies the purposes, powers or activities of the Association, or limits the authority of the Directors to perform an act on behalf of the Association. The Members Resolution may ratify any action by the Association or the Directors, that is inconsistent with any such limit, restriction or qualification, but such an action may not be ratified if it is in contravention of the Memorandum of Incorporation.

The Association's Memorandum of Incorporation limits, restricts or qualifies the purposes, powers or activities of the Association. No action of the Association is void by reason only that, the action was prohibited by that limitation, restriction or qualification, or as a consequence of that limitation, restriction or qualification, the Directors had no authority to authorise the action by the Association, and in any legal proceeding, other than proceedings between the Association and its Members and its Directors or its Members and Directors of the Association, no person may rely on such limitation, restriction or qualification to assert that an action contemplated in this clause of the Memorandum of Incorporation is void. *Section 20(1)(a)(i)(ii), section 20(1)(b)(i)(ii), section 20(2)(3)*

ARTICLE 2 – MEMBERS’ RIGHTS AND MEETINGS

2.1 Interpretation and Application of the Memorandum of Incorporation

- (1) A Member of the Non-Profit Company is a person who holds Membership in, and specified rights in respect of the Non-Profit Association, in terms of Schedule 1 of the Act.

A Member of the Non-Profit Company is a voting Member of the Association, and who is entered as such in the Membership register of the Association in terms of Item 1(9) of Schedule 1 of the Act and who is entitled to exercise any voting rights in relation to the Association. *Item 1(9) Schedule 1*

- (2) As contemplated in Item 4(1) of Schedule 1 of the Act, the Association has Members who are all in a single class, being voting Members, each of whom has an equal vote in any matter to be decided by Members of the Association. *Item 4(1) Schedule 1*
- (3) Each voting Member of the Non-Profit Association has at least one vote. *Item 1(7) of Schedule 1*
- (4) The Memorandum of Incorporation does not limit or restrict the Association to allow for Membership to be held by juristic persons, including any profit Companies. *Item 4(c) Schedule 1*
- (5) The Memorandum of Incorporation does not restrict or regulate, or provide for any restriction or regulation of, that Membership in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution. *Item 4(2) Schedule*
- (6) The Memorandum of Incorporation does not presume the Membership of any person, regard a person to be a Member, or provide for the automatic or ex officio Membership of any person, on any basis other than life-time Membership awarded to a person for service to the Association or to the public benefit objects set out in the Association’s Memorandum of Incorporation; and with that person’s consent. *Item 4(2)(b)(i)(ii) Schedule 1*
- (7) The terms and conditions and the qualifications for Membership, the process for applying for Membership, any initial or periodic cost of Membership in any class, the rights and obligations, if any, of Membership in any class and the grounds on which Membership may, or will, be suspended or lost, is set out in clause 8 of this sub-article and Article: Members’ Rights and Meetings – Termination of Membership. *Item 4(2)(i-v) Schedule 1*
- (8) In relation to the Association, and for purposes of this Memorandum of Incorporation, no person other than a Member or its authorised representatives or proxies in terms of Article: Members’ Rights and Meetings - Members’ Right to be represented by Proxy, shall be entitled to attend, speak and vote at a meeting of that class of Members. *Section 1, section 57(1)*
- (9) The Board shall admit to Membership any person eligible in terms hereof to be Members of the Association.

Any person shall be eligible to become a Member of the Association:

- (10.1) for one calendar year, if he pays the annual Membership subscription fee as determined by the Board of Directors from time to time; or
- (10.2) for life, if he pays the lifetime Membership subscription fee as determined by the Board of Directors from time to time;
- (10.3) on written application to the Board, when the Member’s name will be entered into the register.

The Board shall be entitled in its discretion to appoint any person as a lifetime Member or honorary Member of the Association, and such Member shall not be required to pay a subscription fee.

- (10) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall maintain a Member's register. *Section 24(4)(a)*

2.2 Members' right to be represented by proxy

- (1) At any time, a Member may appoint any individual, including an individual who is not a Member of the Association, as a proxy to participate in, and speak and vote at, a meeting of that class of Member, on behalf of the Member or give or withhold written consent on behalf of the Member to a decision to be taken by that class or by round-robin resolution, provided that the Member may not appoint more than one proxy to exercise voting rights on behalf of that Member.

The Memorandum of Incorporation hereby limits and restricts the appointment of proxies to the appointment of one proxy per voting Member in terms of section 58(3)(a).

The Member of an instrument of proxy or general Power of Attorney, given by a Member, shall be entitled to vote if duly authorised under that instrument or power to attend and take part in any meeting or proceeding of the Association, whether or not he is himself a Member in the Association.

Any Member may at any time appoint any natural person, including a natural person who is not a Member, as a proxy to participate in, and speak and vote at a Members' meeting on behalf of that Member, or give or withhold written consent on behalf of that Member to a decision in terms of section 60 of the Act. *Section 58(1)(a) and (b), section 58(3)(a), section 58 and section 60*

- (2) A proxy appointment shall be in writing, dated and signed by the Member and remains valid for 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration unless it is revoked or expires earlier as contemplated in the Act.

The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Association. The appointment is suspended at any time and to the extent that the holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote. *Section 58(2)(a)(b)(i)(ii)*

- (3) The authority of a Member's proxy to delegate the proxy's powers to another person, and to decide without direction from the Member whether to exercise or abstain from exercising any voting right of the Member, is not limited or restricted by this Memorandum of Incorporation, subject only to any restriction set out in the instrument appointing the proxy. *Section 58(3)(b)*

- (4) In terms of the Act and this Memorandum of Incorporation if a proxy is received duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.

Unless the instrument appointing a proxy provides otherwise, a Member's proxy may decide, without direction from the Member, whether to exercise or abstain from exercising any voting right of the Member, as set out in section 58(7) of the Act, and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation. *Section 58(7)*

- (5) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall not require that the proxy appointment be made irrevocable. *Section 58(8)(c)*

- (6) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall be entitled to disregard a proxy form or instrument appointing a proxy, and to disregard the vote of any proxy or purported proxy, if:

(6.1) the proxy form or instrument of proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed in section 58 of the Act or is inconsistent with or contravenes this Memorandum of Incorporation; or

(6.2) the authority of the proxy has been revoked by the Member (if applicable, through its authorised representative or through its legal representative terms of section 58(4)(b) and (c). *Section 58(4)(a), (b) and (c), section 58(7)*

- (7) Any person who is a proxy or purported proxy specified in a proxy form or instrument appointing a proxy which may be disregarded, or the voting of whom may be disregarded, shall not be entitled to attend, participate in, or speak or vote at the meeting of Members in question or by way of round-robin resolution in terms of section 60 of the Act, and shall forthwith remove himself from the meeting in question at the request of the chairman of the meeting. *Section 60*

2.3 Record date for determining Members' rights

- (1) The Board of the Association shall set a record date for the purpose of determining which Members are entitled to receive notice of a Members' meeting, participate in and vote at a Members' meeting, decide any matter by written consent or electronic communication, exercise pre-emptive rights, or be allotted or exercise other rights. *Section 59(1)(a)-(f)*
- (2) A record date determined by the Board may in terms of section 59(1) set the applicable record dates for the purposes of determining Member rights, in accordance with and as contemplated by section 59, including for purposes of determining that Members who are registered on a particular record date shall be entitled to:
 - (2.1) receive the notice of Members' meeting (section 59(1)(a)); or
 - (2.2) participate in and vote at a Members' meeting (section 59(1)(b)); or
 - (2.3) decide any matter by round-robin resolution (section 59(1)(c)).

Each applicable record date determined by the Board:

- (2.4) shall not be earlier than the date on which the record date is determined by the Board, i.e. shall not be a "retrospective" record date (section 59(2)(a)(i));
 - (2.5) shall not be more than 10 (ten) business days before the date on which the event or action for which the date is being set, is scheduled to occur (section 59(2)(a)(ii));
 - (2.6) must be published to every Member in terms of section 59(2)(b). *Section 59(1), section 59(1)(a), (b) and (c), section 59(2)(a)(i) and (ii), section 59(2)(b)*
- (3) For the sake of clarity, in relation to each Members' meeting, and having regard to the possible sequence of events or actions, separate record dates shall be determined, and published by the Board, to determine which Members shall be entitled to:
 - (3.1) receive the notice of Members' meeting;
 - (3.2) attend and vote at that Members' meeting, as it may be adjourned or postponed, receive notice of any adjourned or postponed Members' meeting, if notice is required or given; and
 - (3.3) attend and vote at the resumption of the adjourned meeting or the commencement of the postponed meeting. *Section 59*

2.4 Members acting other than at a meeting

- (1) A resolution that could be voted on at a Members' meeting, other than in respect of the election of Directors, may instead be submitted by the Board for consideration to the Members entitled to exercise voting rights in relation to the resolution and voted on in writing by Members entitled to exercise voting rights in relation to the resolution within 20 (twenty) business days after the resolution was submitted to them. *Section 60(1)(a) and (b)*
- (2) A resolution will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution at a properly constituted Members' meeting and if adopted, shall have the same effect as if it had been approved by voting at a meeting. *Section 60(2)(a) and (b)*

- (3) An election of a Director that could be conducted at a Members' meeting may instead be conducted by written polling of all of the Members entitled to exercise voting rights in relation to the election of that Director. *Section 60(3)*
- (4) In addition to a resolution passed in terms of this clause, a resolution in writing signed by all the Members entitled to vote thereon shall be as valid and effectual as if adopted at a duly convened Members' meeting.

Within 10 (ten) business days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this clause, the Association shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

Section 60(1)(a)(b), section 60(4)

2.5 Members' meetings

- (1) In terms of the Memorandum of Incorporation, the Board of the Association or a Member may call a Member's Meeting at any time. *Section 61(1)(2)*
- (2) Notice of Members' meetings shall be sent to each Member entitled to vote at such meeting and who has elected to receive such notice.
- (3) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall hold a Members' meeting or put the proposed resolution to Members entitled to vote:
 - (3.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members entitled to vote for decision;
 - (3.2) whenever the number of Directors fall below the minimum number prescribed in the Act and the Association is required to fill a vacancy on the Board.

Except at any time when there is only one Member or when a resolution may be passed otherwise than at a meeting of Members, the Association shall hold a Members' meeting:

- (3.3) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
 - (3.4) whenever required in terms of the Act to fill a vacancy on the Board;
 - (3.5) when demanded by Members;
 - (3.6) when required by any other provision of this Memorandum of Incorporation. *Section 61(2)(a) and (b)*
- (4) This Memorandum of Incorporation does not provide a different period of notice of Members' meetings to the period prescribed by the Act and this does not prejudice the Association's rights to call a meeting on less notice pursuant to section 62(2A) of the Act. *Section 62(1) and (2)*
- (5) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall, as determined by the Board either hold a Members' meeting in order to consider one or more resolutions, or as regards such resolution(s) that could be voted on at a Members' meeting, other than an Annual General Meeting, instead require them to be dealt with by round robin resolution of Members entitled to vote. Within 10 (ten) business days after the Members entitled to vote by round robin resolution, the Association must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the round robin resolution. *Section 61*
- (6) The Board or any Director of the Association authorised by the Board to do so may call a meeting of Members at any time and must do so if and when required by the Companies Act or this Memorandum of Incorporation to do so. The Board must call a meeting of Members demanded by Members in terms of section 61(3). If there are no Directors or all of the Directors

of the Association are incapacitated, the Association hereby authorises any Member of the Association to call a Members' meeting for purposes of and in the circumstances contemplated in section 61(11). *Section 61(1), (2), (3) and (11)*

- (7) The Board of the Association or any Member or any other person specified in the Association's Memorandum of Incorporation or Association Rules, shall call a Members' meeting if one or more written and signed demands for such a meeting are delivered to the Association and each such demand describes the specific purpose for which the meeting is proposed and in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting, in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, and the right of Members to requisition a meeting as set out in section 61(3) may be exercised by the Members of a lower percentage of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, despite the provision of section 61(3). *Section 61(3)(a)(b), section 61(4)*
- (8) At any time before the start of a Members' meeting a Member who submitted a demand for that meeting may withdraw that demand and the Association shall cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continue to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting. *Section 61(6)(a-b)*
- (9) The authority of either the Board or Members to determine the location of any Members' meeting, and to hold any such meeting in the Republic of South Africa, or in any foreign country, is not limited or restricted by this Memorandum of Incorporation. *Section 61(9)(a)(b)*
- (10) With respect to the location(s) and venue(s) of a Members' meeting, the Board may determine that a meeting will take place at several locations and venues and may determine such arrangements as it in its sole discretion appropriate and practical in any circumstances to address the location and venue where the Chairman of the meeting will preside ("the main meeting place") the numbers of persons attending at any particular location or venue, the safety of persons attending at any particular location or venue, the facilitators of attendance of persons at any particular location or venue, the entitlement of persons to attend at any particular location or venue, and the electronic participation of persons in the meeting, and may from time to time vary any such arrangements. A Member who in person or as represented attends a Members' meeting physically at any of the various locations and venues for a meeting shall be deemed to be present at the meeting in question, and counted towards the quorum, while so attending. *Section 62(9)*
- (11) In regards to Members' meetings the Board may convene a Members' meeting whenever it thinks fit. If, at any time, there are insufficient Members within the Republic of South Africa capable of acting to form a quorum, any Director or any Member of the Association may convene a Members' meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board. *Section 61(11)(a)*
- (12) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is not required to hold any Members' meetings other than those specifically required by the Act.
- (13) The Chairman of the Board or in his absence, the lead independent non-executive Director, shall preside as Chairman at every Members' meeting. If there is no such Chairman, or if at any Members' meeting he is not present within 30 (fifteen) minutes after the time appointed for holding the Members' meeting or is unwilling to act as Chairman, the Members entitled to vote which are present shall select a Director present at the Members' meeting, or if no Director be present at the Members' meeting, or if all the Directors present decline to take the chair, the Members entitled to vote shall select one of their number which is present to be Chairman of the Members' meeting.
- (14) Notwithstanding anything to the contrary contained in the Act or this Memorandum of Incorporation, all Members' meetings that are called for may be held in person.

- (15) Any failure to hold a meeting does not affect the existence of the Association, or the validity of any action by the Association. *Section 61(14)*
- (16) Each Director of the Association shall be present for the entire duration of each Members' meeting, unless a Member or his representative or proxy requests one or more or all the Directors to withdraw and leave the meeting or any part of the meeting in which event, such Director(s) as have been requested to leave, shall leave the meeting for the period as requested.

2.6 Notices

- (1) Each Member (or the agent) shall notify the Association in writing of an electronic mail address, a fax number, and a physical or postal address, each of which shall be deemed to be the Members' registered address within the meaning of the Memorandum of Incorporation, and if the Member has not notified the Association of at least one of the above, the Member shall be deemed to have waived his right to be served from any notice of the Association.

2.7 Notice of Members' meetings

- (1) In terms of the Act and the Memorandum of Incorporation a notice of a meeting of Members must be delivered contemporaneously to each Member registered as such as of the applicable record date for delivery of that notice, determined in terms of the record date, read with section 59(1)(a) of the Act, of the class of Member entitled to vote on any of the resolutions to be considered at the meeting, and to the Auditors for the time being of the Association in terms of section 93(1)(c)(ii) of the Act; and if expressly required in terms of an instrument appointing a proxy which has been delivered to the Association, to the proxy or proxies of a Member (section 58(6) of the Act), in form and content as prescribed in section 62(3), at least 10 (ten) business days before the date on which the meeting is to begin. Any failure to comply with this clause shall not affect the validity of the General Meeting. *Section 58(6), section 59(1)(a), section 62(1)(a)(b) and section 93(1)(c)*
- (2) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) may call a meeting with less notice than required by this Memorandum of Incorporation, but such a meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to waive the required minimum notice of the meeting. *Section 62(2A)*
- (3) A notice of a Members' meeting shall be in writing in plain language and shall include:
- (3.1) the date, time and place for the meeting, and the record date for the meeting;
- (3.2) the general purpose of the meeting, and any specific purpose if applicable:
- (3.2.1) a summarised form of the financial statements to be presented and directions for obtaining a copy of the complete financial statements for the preceding financial year;
- (3.2.2) a copy of any proposed resolution of which the Association has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that Resolution to be adopted;
- (3.3) a reasonably prominent statement that:
- (3.3.1) a Member entitled to attend and vote at the Members' meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by round-robin resolution of the relevant holders entitled to vote;
- (3.3.2) a proxy need not be a Member entitled to vote; and

(3.3.3) participants in a Members' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Members' Meeting. *Section 62(3)(a - e)*

(4) The notice of a meeting or of an adjourned meeting:

- (4.1) must inform Members of the availability of participation in the meeting and of participation in any postponement or adjournment of the meeting, by electronic communication and must provide the necessary information to enable Members or their proxy or proxies to access the available medium or means of electronic communication for the meeting and for any postponement or adjournment thereof in terms of section 63(3)(a) of the Act;
- (4.2) should, for the sake of clarity, specify the record date determining which Members are entitled to receive the notice of the meeting (section 59(1)(a) and 59(2)(b) of the Act);
- (4.3) must comply with the requirements set out in section 62(3) as to formalities and content, including specifying the record date for determining which Members are entitled to attend, participate in and vote at the meeting (section 59(1)(b) and 59(3)(b) of the Act);
- (4.4) must specify whether any proposed resolution is to be voted on by polling and
- (4.5) should, for the sake of clarity, specify the applicable record dates which would be applicable in terms of section 59(1)(a) and (b) of the Act should the meeting be postponed or adjourned.

2.8 Conduct of meetings

(1) In terms of the Act and this Memorandum of Incorporation, a person wishing to attend or speak at or participate in or vote at a Members' meeting as a Member personally or as an authorised representative or as a proxy for a Member, or as the legal representative of a Member, or as the Auditors or representative of the Auditors, must for purposes of identification present reasonably satisfactory identification and evidence of their authority or entitlement to represent the Member in question or to attend the meeting, to the Chairman of the meeting 30 (thirty) minutes before the appointed time for that meeting to begin or, if the meeting is adjourned, 30 (thirty) minutes before the appointed time for that adjourned meeting to resume, as the case may be, stipulated in the notice of the meeting or adjourned meeting in question.

If applicable, the Auditors for the time being of the Association shall be entitled to attend any Members' meeting and be heard on any part of the business of the meeting that concerns the Auditor's duties or functions. *Section 63(1)(a), section 93(1)(c)(i) and (iii)*

(2) In terms of the Act and this Memorandum of Incorporation, the Association has the authority to conduct a Members' Meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, is not limited or restricted by the Memorandum of Incorporation.

THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) entitles a Members' meeting to be conducted entirely by electronic communication; or one or more Members, or proxies for Members, to participate by electronic communication in all or part of a Members' Meeting that is being held in person, as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting.

Every meeting of Members must be reasonably accessible within or outside the Republic of South Africa for electronic participation by Members, irrespective of the physical location of the meeting.

Members (or if applicable their representatives or proxies) may participate in all or part of a meeting (including the meeting as adjourned) which they are entitled to attend, by electronic communication, at their own expense.

The electronic communication employed by the Association must ordinarily enable all participants in the meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

A resolution adopted by Members, some or all of whom were connected electronically, where:

- (2.1) Members connected electronically remained connected for the duration of that part of the meeting during which the resolution was discussed; and
- (2.2) the subject matter of the resolution has been discussed; and
- (2.3) the Chairman of the meeting or any other person present in person or electronically at the meeting certifies in writing that the aforementioned requirements have been met;

shall be deemed to have been passed on the date on which the resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a resolution at a meeting or where some or all of the Members were connected and participated electronically, the Association shall:

- (2.4) deliver to each Member a copy of the resolution proposed, accompanied by a statement describing the results of the vote, consent process or election, as the case may be; and
- (2.5) insert a copy of the said resolution and statement in the minute book of the Association.

A Member who in person or as represented participates in a meeting at any time electronically in terms of this article shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating. *Section 60(4), section 61(10), section 63(2)(a)(b), section 63(2)(b)*

- (3) In the event that the Association provides for participation in a meeting by electronic communication, as set out in clause 2 of this sub-article, the notice of that meeting shall inform Members of the availability of that form of participation and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication, and access to the medium or means of electronic communication is at the expense of the Members or proxy. *Section 63(3)(a) and (b)*

2.9 Meeting Quorum and Postponement

- (1) In terms of the Act, this Memorandum of Incorporation specifies that at least 20 members in person or by proxy of all the voting rights that are entitled to be exercised in respect of:
 - (1.1) at least one matter to be decided at any Members' meeting must be present for that meeting to begin; and
 - (1.2) a matter to be decided at any Members' meeting for that matter to begin to be considered at that meeting, provided that 3 (three) Members entitled to attend and vote are present at the time of the meeting.

After a quorum has been established for a Members' meeting, or for a matter to be considered at a Members' meeting, the Members' meeting may continue, or the matter may be considered, so long as all the Members' for such quorum are present at the Members' meeting.

The quorum shall be sufficient persons present at the Members' meeting to exercise, in aggregate, at least 20% (twenty members) of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the Members' meeting.

2.10 Adjournment of Members' meetings

- (1) In terms of the Act and this Memorandum of Incorporation an adjournment of a meeting, or of consideration of a matter being debated at the meeting shall be either to a fixed time and place, or until further notice, as agreed at the meeting and requires that a further notice be given to Members only if the meeting determined that the adjournment was until further notice.

THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall not be required to give further notice of a meeting that is postponed or adjourned unless:

- (1.1) the location for the meeting is different from:
 - (1.1.1) the location of the postponed or adjourned meeting (section 64(7)(a) of the Act); or
 - (1.1.2) the location announced at the time of adjournment, in the case of an adjourned meeting (section 64(7)(b) of the Act); or
- (1.2) it is necessary to inform registered Members of the availability of participation in the postponed or adjourned meeting by electronic means; or
- (1.3) the meeting has been adjourned "until further notice" in terms of this Article of the Memorandum of Incorporation.
Section 64(7)(a)(b) and section 64(11)

If the location of the meeting is different from the location of the adjourned meeting, the Association shall publish a notice in the newspaper circulating in the province, where the head office of the Association is situated stating the date, time and place to which the set has been adjourned.

- (2) In terms of the Act and this Memorandum of Incorporation subject to any requirements of the Memorandum of Incorporation, the quorum at any adjourned meeting shall be the Members present thereat personally or by proxy, who may transact the business for which the meeting was called.

If at any adjourned meeting a quorum is not present within 30 (thirty) minutes from the appointed time for such meeting to commence, the Members who are present or represented by proxy and entitled to vote shall constitute a quorum and may proceed to transact the business of the meeting.

- (3) No business shall be transacted at any adjourned Members' meeting of the Association other than business left unfinished at the meeting from which the adjournment took place.
- (4) After a quorum has been established for a meeting or for a matter to be considered at a meeting, the meeting may continue or the matter may be considered, so long as at least one registered Member with voting rights entitled to be exercised at the meeting, or on that matter, is present or presented at the meeting. *Section 64(9)*

2.11 Votes of Members

- (1) In terms of the Act and this Memorandum of Incorporation, subject to any special rights or restrictions as to voting by or in accordance with the Memorandum of Incorporation, at a meeting of the Association:
 - (1.1) every person present, either personally or by proxy, and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
 - (1.2) on a poll any person who is present at the meeting, whether as a Member or as a proxy for a Member, has the number of votes determined in accordance with voting rights held by that Member; and

(1.3) voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Members if a demand is made for such a vote by:

(1.3.1) at least 5 (five) persons having the right vote on that matter, either as Members or as proxies representing Members; or

(1.3.2) a Member who is, or Members who together are, entitled, as Members or proxies representing Members, exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or the Chairman of the meeting.

At any meeting of the Association a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of this clause, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such Resolution. The demand for a poll may be withdrawn.

If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Member is entitled.

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

(2) The passing of an Ordinary Resolution is to be subject to the approval of more than 50% plus 1 (of the vote cast by all Members present in person or represented by proxy, at the General Meeting convened to approve such Resolution and shall be subject to a minimum notice period of 10 (ten) business days.

(3) The passing of a Special Resolution is to be subject to the approval of at least 61% (sixty one per cent) of the votes cast by all Members present in person, or represented by proxy, at the General Meeting or the Annual General Meeting convened to approve such resolution and shall be subject to a minimum notice period of 10 (ten) business days.

(4) A Special Resolution shall be required to:

(4.1) ratify a consolidated revision of a Association's Memorandum of Incorporation as contemplated in section 18(1)(b) of the Act;

(4.2) ratify actions by the Association or Directors in excess of their authority in terms of in clause 1 of Article: Incorporation – Validity of Association's Actions and clause 12 of Article: Members' Rights and Meetings – General Meeting of this Memorandum of Incorporation (section 20(2) of the Act);

(4.3) approve the voluntary winding up of the Association in clause 1 of Article: Winding-up – Voluntary Winding-up of Solvent Association of this Memorandum of Incorporation (section 80(1) of the Act);

(4.4) approve the winding up of a Association in clause 1 of Article: Winding-up – Winding-up of Solvent Association by Court Order of this Memorandum of Incorporation (section 81(1) of the Act);

- (4.5) approve an application to transfer the registration of the Association to a foreign jurisdiction in clause 1 of Article: Winding-up – Dissolution of Association of this Memorandum of Incorporation (section 82(5) of the Act);
- (4.6) approve any proposed fundamental transaction to the extent required by Part A of Chapter 5 or 30;
- (4.7) revoke a resolution in clause 9 of Article: Remedies and Enforcements – Dissenting Members' Appraisal Rights of this Memorandum of Incorporation (section 164(9)(c) of the Act);
- (4.8) a Special Resolution adopted at a Members' Meeting is required in terms of this Memorandum of Incorporation, in addition to the matters set out above in terms of section 65(11), for:

(4.8.1) dis-applying pre-emptive rights that would otherwise apply. *Section 65(11)(a-m)*

- (5) A Special Resolution adopted at a Members' Meeting is not required for a matter to be determined by the Association, except those matters set out in section 65(11), or elsewhere in either the Act or the Memorandum of Incorporation. *Section 65(11), section 65(12)*
- (6) In terms of the Act and this Memorandum of Incorporation, round-robin resolutions of Members entitled to vote, will be passed if signed by Members entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members' meeting.

If a Member entitled to vote is a Body Corporate, represented, at any Members' meeting shall have only 1 (one) vote, A proxy shall only 1 (one) vote on a show of hands.

Within 10 (ten) business days after the adoption or failing of a round-robin resolution, the Association shall:

- (6.1) deliver to each Member a copy of the resolution proposed, accompanied, by a statement describing the results of the vote, consent process or election, as the case may be, (section 60(4)); and
- (6.2) insert a copy of the resolution and statement referred to in the minute book of the Association.

Every resolution of Members is either:

- (6.3) an ordinary resolution in terms of the Companies Act (section 65(1)); or
- (6.4) a special resolution in terms of the Companies Act, as required in terms of the Companies act or as required in terms of this Memorandum of Incorporation (section 65(1) read with section 65(9), (11) and (12)); or
- (6.5) the Board may propose any resolution to be considered by Members and may determine whether that resolution will be considered and voted on at a meeting of Members or by Round Robin Resolution ([Section 65(2)]) except if one of matters to be decided by special resolution as per 2. 11 (4) above?

Any 2 (two) or more Members may by notice to the Board require the Board to propose a resolution concerning a matter in respect of which such Members are each entitled to exercise voting rights, and when proposing the resolution may require to Board to determine that the resolution be submitted to Members for consideration at a meeting of Members called, or at the next scheduled Members' meeting, or by round-robin resolution. (Section 65(3))

Any resolution proposed must comply with the requirements as to form and content, and supporting information or explanatory material, specified in section 65(4).

THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is not obliged to file with the Commission any Members' resolution (including any Special Resolution), except if required to do so in terms of the Companies Act or this Memorandum of Incorporation and the Board may decide whether the Association is obliged to file with the Commission any Members Resolution. *Section 65(11), section 59(1)(c), section 60(1)(a), section 60(1)(b), section 60(2), section 60(3), section 60(4), section 60(5), section 65(1), section 65(2), section 65(3), section 65(4), section 65(9), section 65(11), section 65(12)*

2.12 General Meetings

- (1) Except at any time when there is only one Member or when a Resolution may be passed, otherwise, than at a meeting of Members, the Association shall hold a Members' meeting:
 - (1.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
 - (1.2) whenever required in terms of the Act to fill a vacancy on the Board;
 - (1.3) when demanded by Members; or
 - (1.4) when required by any other provision of this Memorandum of Incorporation *Section 61(2)(a)(b)*

- (2) In the event that the Association elects to hold a Members' meeting, the business of the Members' Meeting shall be to receive and consider the following:
 - (2.1) the presentation of the Directors' report;
 - (2.2) the election of Directors to the extent required by section 66(4)(b) of the Act or the Memorandum of Incorporation;
 - (2.3) the presentation of a summarised form of Audited Annual Financial Statements, for the immediate preceding financial year of the Association and directions for obtaining a copy of the complete Financial Statements for the preceding financial year of the Association, if so required by the Act or the Memorandum of Incorporation, if applicable for the Association;
 - (2.4) the presentation of the Audit Committee report if so required by the Act or the Memorandum of Incorporation, if applicable for the Association;
 - (2.5) The presentation of proposed membership fees for approval at the AGM;
 - (2.6) the appointment of an Auditor for the ensuing financial year if
 - (2.7) the election of any other officers of the Association in the place of those retiring by rotation or otherwise;
 - (2.8) any other matter or business determined by the Board;
 - (2.9) any matters raised by the Members, with advance notice to the Company;
 - (2.10) any other business which ought to be transacted at an Annual General Meeting, and any business which is brought under consideration by the reports of the Board laid before such meeting;
 - (2.11) all other business transacted at the Annual General Meeting and all business transacted at any other Members' meeting shall be deemed special; and/or
 - (2.12) a copy of any proposed resolution of which the Association has received notice, and which is to be considered at the meeting,
 - (2.13) a notice of the percentage of voting rights that will be required for that resolution to be adopted,
 - (2.14) a reasonably prominent statement that:
 - (2.16.1) a Member entitled to attend and vote at the Members' meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' meeting in the place of the Member entitled to

vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by round robin resolution of the relevant Members entitled to vote,

(2.16.2) a proxy need not be a Member entitled to vote, and

(2.16.3) participants in a Members' meeting are required to furnish satisfactory identification in terms of section 63(1) of the Act in order to reasonably satisfy the person presiding at the Members' meeting.

(3) At least 10 (ten) business days before the date of the Members' Meeting, a copy of the Annual Financial Statements of the Company shall be delivered to all Members, save for any Member who waives his right to receive such statements.

2.13 Termination of Membership

(1) The membership of a Member may terminate if:

(1.1) the Member resigns by giving 30 (thirty) days written notice the Company;

(1.2) the Member, being a natural person, dies or his estate is surrendered or sequestrated in terms of the Insolvency Act 1936 as amended;

(1.3) the Board of Directors may terminate a Membership, if proven that such Member's continuous behaviour is regarded as being damaging to the Company's image and reputation;

(1.4) the Member fails to pay the Membership subscription fee on or before the date on which it is due, provided that the Board may in its discretion reinstate any Member who makes payment of arrear Membership subscription fee within a period of 30 (thirty) days after the date on which it is due.

(1.5) in case of a Member being a Company or Close Corporation, it is finally wound up or deregistered in terms of the Companies, or Close Corporations legislation in place from time to time.

ARTICLE 3 – BOARD, DIRECTORS AND PRESCRIBED OFFICERS

3.1 First Director or Directors

- (1) Each Incorporator of the Company is a first Director of the Association and serves until sufficient other Directors to satisfy the minimum requirements of this Memorandum of Incorporation, have been first elected in accordance with the Association's Memorandum of Incorporation. *Section 67(1)(a)(b)*
- (2) In the event of the number of Incorporators of the Association together with any ex officio Directors, or Directors to be elected in terms of clause 1 of this sub-article is fewer than the minimum number of Directors required for the Association in terms of the Act, or the Association's Memorandum of Incorporation, the Board shall call a Members' meeting within 40 (forty) business days after incorporation of the Association for the purpose of electing sufficient Directors to fill all vacancies on the Board at the time of the election. *Section 67(2)*
- (3) The Board must comprise in the case of this Non-Profit Company at least 3 (three) Directors in terms of section 66(2)(a).
- (4) This Memorandum of Incorporation provides for the Association to have Directors and voting Members and the Directors are to be elected by the voting Members, the Memorandum of Incorporation provides for the election of at least one-third of those elected Directors each year. *Item 5(1)(b) Schedule 1*

3.2 Election of Directors

- (1) The Memorandum of Incorporation provides for
 - (1.1) a person to be an ex officio Director of the Association as a consequence of that person holding some other office title, designation or similar status;
 - (1.2) the election of one or more persons as alternate Directors of the Association. *Section 66 (4)(a)(i – iii), Item 5 and Schedule 1.*
- (2) A person becomes entitled to serve as a Director of this Association when that person –
 - (2.1) has been elected in accordance with Item 5 of Schedule 1, or holds an office, title, designation or similar status, entitling that person to be an ex officio Director of the Association and
 - (2.2) has delivered to the Association a written consent to serve as its Director. *Section 66(7)(a)(b). Section 44(b) Act 3 of 2011*
- (3) Any particular Director may be elected to more than one committee of the Association and when calculating the minimum number of Directors required for this Association, being not less than 3 (three) Directors, a Director who has been elected to more than one committee must be counted only once. *Section 66(12)*
- (4) A person contemplated in clause 1 of this sub-article who holds office or acts in the capacity of an ex officio Director of a Association has all the –
 - (4.1) powers and functions of any other Director of the Association, except to the extent that the Association's Memorandum of Incorporation restricts the powers and functions or duties of an ex officio Director, and
 - (4.2) duties, and is subject to all of the liabilities, of any other Director of the Association. *Section 66(5)(b)(i)(ii)*
- (5) The Board may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Association on a temporary basis until the vacancy has been filled by election in terms of this Memorandum

of Incorporation. During that period, any person so appointed has all the powers, functions and duties and is subject to all of the liabilities of any other Director of the Association. *Section 68(3)*

- (6) A person elected or appointed as an alternate for a Director acts for all intents and purposes in the place of, and not for or as a representative of, the Director for whom he is an alternate, and shall be treated as a Director of the Association while he acts in the place of the Director for whom he is an alternate.

While acting in the place of the Director for whom he is an alternate, the alternate Director may generally exercise all the rights of that Director and shall, in all aspects, be subject to the terms and conditions existing with reference to the appointment, rights and duties as Director and the holding of office of that Director, and shall not have any claim of any nature whatsoever against the Association for any remuneration with respect to his services as a Director or his appointment as an alternate.

A person may be elected or appointed as an alternate for one or more Directors. *Section 66(4)(b)*

- (7) An alternate shall only be entitled to vote at any meeting if the Director for whom he is an alternate is not present at that meeting, provided that the alternate may also attend a meeting at which the Director for whom he is an alternate is present if the other Directors present at the meeting, resolve that he may attend, provided further, that in the circumstances when the Director for whom he is an alternate, is present, then the alternate shall not be counted towards a quorum and shall recuse himself from the meeting if requested by any Director to do so.

Any person attending a meeting of Directors as an alternate for one or more Directors in the absence of such Director(s) shall only have one vote and shall not be entitled to more than one vote at any such meeting.

An alternate shall only be entitled to sign a round-robin resolution if the Director for whom he is an alternate is then absent from the Republic of South Africa or is out of reach of communication or is incapacitated.

The appointment of an alternate shall cease, and he shall vacate his office as an alternate, if:

- (8.1) the alternate was appointed by the Board and the Board gives notice to that alternate terminating his appointment;
- (8.2) the person (for whom another person has been elected or appointed as an alternate) ceases to be a Director of the Association or ceases to be entitled to serve as a Director, for any reason; or
- (8.3) an event occurs or circumstances arise, in relation to an alternate, which if he were a full Director would cause him to cease to be entitled to serve as a Director in terms of the Companies Act or this Memorandum of Incorporation. *Section 66(4)(b)*

3.3 Governance of the Board

- (1) In terms of the Act and this Memorandum of Incorporation the business and affairs of the Association shall be managed by or under the direction of its Board, which has the authority to exercise all of the powers and perform any of the functions of the Association, as set out in section 66(1), is limited, restricted and qualified by this Memorandum of Incorporation except to the extent that the Act and this Memorandum of Incorporation provides otherwise in terms of section 66(1) Memorandum of Incorporation and to the extent set out in Item 11(1) of Schedule 5 of the Act. The Directors may from time to time, at their discretion, raise or borrow or secure the payment of any sum or sums of money for the purposes of the Association. *Section 66(1)*
- (2) The Directors may at any time and from time to time by Power of Attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Association for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation including the right of sub-delegation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any Association, the Members, Directors, Nominees or Managers of any Association or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly

or indirectly by the Directors. Any such Power of Attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Association, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.

3.4 Vacancies on Board

(1) In terms of this Memorandum of Incorporation, a person shall cease to be a Director and a vacancy arises on the Board of the Association:

(1.1) when the person's term of office as Director expires, or

(1.2) in any case, if the person:

(1.2.1) resigns or dies;

(1.2.2) in the case of an ex officio Director, ceases to hold the office, title, designation or similar status that entitled the person to be an ex officio Director;

(1.2.3) becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time subject to section 71(3);

(1.2.4) is declared delinquent by a court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Association in terms of section 162;

(1.2.5) becomes ineligible or disqualified in terms of section 69 subject to section 71(3); or

(1.2.6) is removed:

(1.2.6.1) by resolution of the Members in terms of section 71(1);

(1.2.6.2) by resolution of the Board in terms of section 71(3); or

(1.2.6.3) by order of the court in terms of section 71(5) or (6). *Section 70(1)(a), (b), (i-vi)*

(2) If a vacancy arises on the Board, the Board may in terms of section 68(3) elect a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Association on temporary basis until the earlier of the vacancy being filled by election by the Ordinary Members in terms of section 68(2) or the conclusion of the next General Meeting of the Association after the temporary filling.

If a vacancy arises on the Board and as a result thereof, the Association does not have the minimum number of Directors required by the Act or the Memorandum of incorporation, the Board shall within the period of 3 (three) months from the date such a vacancy arose, continue to function in terms of section 66(11) and shall fill the vacancy on a temporary basis as provided for above or convene a General Meeting or propose a Round-Robin Resolution for the purposes of the Ordinary Members conducting an election to fill such vacancy in terms of section 68(2).

After the expiry of the 3 (three) month period, the remaining Directors on the Board shall only be permitted to act for the purposes of filling the vacancy or calling a General Meeting of Ordinary Members or proposing a round-robin resolution for purposes of an election in terms of section 68(2)

If at any time the number of Directors falls below the number required as a quorum the continuing Directors may act for the purpose of appointing sufficient Directors to constitute a quorum or for convening a General Meeting but for no other purpose.

- (3) If a person has ceased to be a Director of the Association and a vacancy on the Board has arisen, such vacancy must be filled as provided for in section 70(3), subject to section 70(4) as follows:
 - (3.1) the Association is not required to hold a General Meeting, the vacancy must be filled within six (6) months after the vacancy arose:
 - (3.1.1) at a Members' meeting called for the purpose of electing the Director, or
 - (3.1.2) by a poll of the persons entitled to exercise voting rights in an election of the Director in terms of section 60(3). *Section 70(3)(a),(b),(i),(ii)*

3.5 Removal of Directors

- (1) In terms of section 71(1) a Director elected by Ordinary Members may be removed by an Ordinary Resolution adopted at an Ordinary Members' Meeting entitled to exercise voting rights in the election of that Director, despite anything to the contrary in the Memorandum of Incorporation, or any agreement between the Association and that Director, or between any Members and that Director as follows:
 - (1.1) before the said Members may consider the above resolution:
 - (1.1.1) the Director concerned must be given notice of the meeting and the resolution. The notice must be equivalent to that which a Member is entitled to receive, irrespective of whether or not the Director is a Member of the Association; and
 - (1.1.2) the Director must be afforded a reasonable opportunity to make a presentation to the meeting either in person or through a representative before the resolution is put to a vote. *Section 71(1) and section 71(1)(2)(a)(b)*
- (2) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) has at least 3 (three) Directors, and if a Member or a Director contends that a person should be removed as a Director of the Association by the Board on any of the following grounds set out in section 71(3)
 - (2.1) has become;
 - (2.1.1) ineligible or disqualified in terms of section 69; or
 - (2.1.2) incapacitated to the extent that the Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time
 - (2.2) or has neglected or been derelict in the performance of the functions of a Director,

that Member or Director shall first submit to the Board each of its contentions and the specific grounds of each such allegation and shall submit to the Board all evidence available on which the Member or Director relies for making the contention and allegation. On receipt thereof the Board must study such submission, investigate the allegation and determine the matter by Resolution in accordance with and subject to the procedures and its power to do so as set out in section 71(3) to (10).

- (3) The Memorandum of Incorporation prohibits the removal of a Director by round-robin resolution of Members in terms of section 60 or Directors acting other than at a meeting in terms of section 74 where a decision may be adopted by written consent of the majority of Directors, given either in person or by electronic communication, since the Director concerned must be afforded a reasonable opportunity to make a presentation at a Board meeting, in person or through a representative, before the resolution to remove him is put to a vote. *Section 71*
- (4) A Director shall be entitled to resign as Director on 30 (thirty) days' written notice to the Association or on such shorter notice as the Board may determine.

3.6 Board Committees

- (1) In terms of the Act and the Memorandum of Incorporation, the Memorandum of Incorporation does not limit, restrict or qualify the authority of the Board to appoint any number of committees of Directors; or to delegate to any such committee any of the authority of the Board.

Except to the extent that the Board or a Member Resolution establishing a committee provides otherwise, the Members of the committee:

- (1.1) may include persons who are not Directors of the Association but any such persons must not be ineligible or disqualified to be a Director in terms of section 69 of the Act;
 - (1.2) may consult with or receive advice from any person;
 - (1.3) may be remunerated for their services as such; and
 - (1.4) provided that the Committee is duly constituted, have the full authority of the Board in respect of any matter referred to it. *Section 72(1)(a)(b) and section 72(2)(a)(b)*
- (2) The Members of each Board committee shall hold and conduct their meetings in accordance with the provisions of the board and Board Committees Charter and the Rules of the Association governing the holding and conduct of such meeting, which provisions are binding on each board committee member in terms of section 15(6)(c)(ii). Any board committee formed shall conform to any regulations that may from time to time imposed upon it by the Board, provided that the meetings and proceedings of any Board committee consisting of two or more members shall be governed by the provisions contained in this Memorandum of Incorporation regulating the meetings and proceedings of the Board, so far as the same are applicable thereto, and are not superseded by any regulation made by the Board.
 - (3) If the Association has in any 2 (two) of the previous 5 (five) years, scored above 500 (five hundred) points in terms of its Public Interest Score, the Association shall appoint a Social and Ethics Committee, unless it is a subsidiary of another Association that has a Social and Ethics Committee and the Social and Ethics Committee of that other Association will perform the functions required by this regulation on behalf of that subsidiary Association; or it has been exempted by the Tribunal. *Regulation 43(2)(a)(b)*
 - (4) If and for as long as it is required to do so in terms of the Act or the Regulations and unless the Association is exempted from doing so by the Tribunal, in terms of section 72(5) of the Act, the Board may appoint a Social and Ethics Committee having the powers and functions prescribed in terms of section 72(4) of the Act and Regulation 43(2), which committee shall comprise not less than 3 (three) Directors or Prescribed Officers of the Association, at least 1 (one) of whom must be a Director who is not involved in the day to day management of the Association's business, and must not have been so involved within the previous 3 (three) financial years. (Regulations 43(2) and (4)). The Social and Ethics Committee is governed by, and is subject to the terms and conditions of, the Board and Board Committees Charter read with the Act and the Regulations. *Section 15(6)(c)(ii), section 72(1), section 72(2)(a)(i)(ii), section 72(2)(b)(c), section 72(4), Regulation 43(2) and Regulations 43(4)*

- (5) The Board shall have the power to appoint, and at its discretion to remove or suspend, a local Board committee or Board committees in any foreign country whatsoever and to fix and vary their remuneration; to establish and keep registered offices and branch registers in any foreign country whatsoever and to close same at its discretion; and to appoint and remove agents who represent the Association for such purposes as the Board may determine. The Board shall have the power to, at any time and from time to time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Association for the purposes of this item with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board in terms of the Act and this Memorandum of Incorporation) for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment, may if the Board thinks fit, be made in favour of the members of any foreign committee established as aforesaid, or in favour of any Association, or of the members, directors, nominees or managers of any Association or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board. Any such Power of Attorney may contain provisions for the protection or convenience of persons dealing with such attorneys as the Board thinks fit. Any such delegates as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it. *Section 72(1)(a)*

Sections 73 to 78 are not applicable where Members act in their capacity as Members. When acting in their capacity as Directors, then sections 73 to 78 hereafter apply.

3.7 Board Meetings

- (1) A Director authorised by the Board of the Association may call a meeting of the Board at any time, and shall call such a meeting if required to do so by at least 25% (twenty five percent) of the Directors or 2 (two) Directors in any other case. *Section 73(1)(a)(b)*
- (2) The Director(s) of the Association convening a Board meeting may determine the location of the meeting, including the location of a meeting which has been adjourned, provided that the location shall be registered office of the Association or a suitable venue within a 20 (twenty) km radius of the registered office of the Association or a suitable venue in the Republic of South Africa which is reasonably accessible to each Director.
- (3) In terms of the Act and the Memorandum of Incorporation, the authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, is not limited or restricted by the Memorandum of Incorporation.

The electronic communication facility employed by the Association must ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting. *Section 73(3)*

A resolution adopted by Directors, some or all of whom were connected electronically, where:

- (3.1) Directors connected electronically remained connected for the duration of that part of the meeting when the resolution was discussed;
- (3.2) the subject matter of the resolution has been discussed; and
- (3.3) the Chairman of the meeting or any other Director present in person or electronically certifies in writing that the aforementioned requirements have been met,

shall be deemed to have been passed on the date on which the resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a resolution at a meeting or where some or all of the Directors were connected and participated electronically in terms of this clause the Association shall:

(3.4) deliver to each Director of the Association a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and

(3.5) insert a copy of the resolution proposed and statement in the minute book of the Association.

A Director who participated in a meeting at any time electronically in terms of this article shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating.

The Board determines the manner, form and time of providing notice of its meetings as set out in section 73(4) and is not limited or restricted by the Memorandum of Incorporation. The Directors may meet together for the dispatch of business, adjourn or otherwise regulate their meetings as they see fit, subject to the provisions of the Act and the Memorandum of Incorporation.

In terms of item 11(2) of Schedule 5, a notice given by any person to another person in terms of any provision of the previous Act, shall be considered as notice given in terms of any comparable provision of the Act, as from the date that the notice was given under the previous Act. *Section 73(4)(a)(b)*

- (4) If all of the directors of the Association acknowledge actual receipt of the notice; are present at a meeting; or waive notice of the meeting, the meeting may proceed even if the Association failed to give the required notice of that meeting, or there was a defect in the giving of the notice. *Section 73(5)(b)(c)(d)(e)*
- (5) In terms of the Act and the Memorandum of Incorporation minutes of Board and Board Committee meetings must include all resolutions adopted by the Board or Board Committees, as the case may be, and must include all declarations of personal financial interests given by notice or made by a Director in terms of section 75. *Section 73(6)*
- (6) Each resolution adopted by the Board must be dated and sequentially numbered and are effective as of the date of the resolution, unless the resolution states otherwise. *Section 73(7)(a)*
- (7) Signature of the minutes or of a resolution by the chair of the meeting (or by the chair of the next meeting) is evidence of the proceedings of that meeting, or adoption of the resolution, as the case may be.

An extract from such minutes or extract from any resolution in writing, if signed by any Director or the Association Secretary, shall be evidence of the matters stated in such minutes or extract. *Section 73(8)*

3.8 Board Quorum

- (1) A Board meeting may not begin unless 50% voting rights of the Directors are present in terms of section 73(5)(b).

A matter to be decided at the Board meeting may not begin to be considered unless the majority of the Directors are present.

For purposes of counting a quorum at any time, a Director or his alternate who is personally present at the meeting, or who participates in person electronically in terms of Article: Board, Directors and Prescribed Officers – Board Meetings at that time, shall be counted towards a quorum at that time.

A person whose election as Director including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not be counted towards any quorum of Directors.

3.9 Board Resolutions

- (1) The Board may propose any resolution to be considered by Members and may determine whether that resolution will be considered and voted on at a meeting of Members or by round-robin resolution. *Section 65(2)*
- (2) Each Director has 1 (one) vote on a matter before the Board in terms of section 73(5)(c) except that:

- (2.1) a Director whose ineligibility to serve as a Director has been determined in terms of the Memorandum of Incorporation, shall not have a vote in respect of that matter in terms of section 71(3);
- (2.2) a Director who has been suspended in terms of section 70(2) shall not have a vote on any matter before the Board;
- (2.3) a Director who has a personal financial interest in respect of a matter to be considered by the Board or who knows that a related person has a personal financial interest in the matter in terms of section 75(4) or 75(5), shall not have a vote in respect of that matter in terms of section 75(5)(f)(ii).

A majority of the votes of the Directors present and entitled to exercise and exercising their vote on a matter is sufficient to approve a Board Resolution, provided that there is at least a quorum of Directors present and so exercising their votes on a matter.

An abstention from voting shall not be counted as an exercise of a vote, and shall in terms of section 73(5)(d) be disregarded for purposes of calculating whether or not a majority has been obtained.

If a resolution of the Directors has failed because of a tie contemplated in this clause, the Board or any Director of the Association or any registered Member may refer the matter to the Ordinary Members for the Ordinary Members to resolve and facilitate the breaking of any deadlock at Director level, failure of which by the Ordinary Members and/or Directors shall not constitute grounds for the winding-up of the Association except in terms of section 81(1)(d), subject to section 81(2).

The vote of any person whose election as a Director, including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not with effect from the time that vote is cast be counted towards any vote of Directors.

A Director unable to attend a Board or Board Committee Meeting may, notwithstanding that this Director has an alternate, authorise any other Director to vote for him at that meeting, and in the event that the Director so authorised shall have a vote for each Director by whom he is so authorised in addition to his own vote. If both the Directors so authorised and an alternate of the Director who granted the authority, are present at the meeting, the alternate shall not be entitled to vote in the place of the absent Director. Authority in terms of this clause must be in writing and must be handed to the person presiding at the meeting at which it is to be used.

- (3) A resolution that could be voted on at a Board meeting other than a Board Resolution that the Association voluntarily begin business rescue proceedings and place the Association under supervision in terms of section 129(1), may instead of being voted on at a meeting be:
 - (3.1) submitted by the Directors proposing the resolution for consideration to each Director in terms of section 74(1));
and
 - (3.2) voted on in writing by Directors entitled to exercise voting rights on that matter within 10 (ten) business days after the resolution was submitted to them.

A resolution will have been adopted as a Board Resolution if it has been supported in writing by the requisite majority of the Directors in person or their alternates who are entitled to exercise voting rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a quorate Board meeting. *Section 74(1) and (2)*

A round-robin resolution of Directors shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution provided that the effective date is not a date earlier than the date the resolution was submitted to Directors for their consideration and, if deemed fit, adoption or, failing any such effective date being specified in

the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the Directors or their alternates entitled to do so voting in favour of the resolution or if that, or any other written approval is undated, the date on which such written approval was communicated to the Association within the 10 (ten) business days, which votes in favour of the resolution in aggregate are sufficient for the resolution to have been passed. *Section 73(7)(b)*

Within 10 (ten) business days after the adoption or failing of a round-robin resolution, the Association shall:

- (3.3) deliver to each Director a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and
- (3.4) insert a copy of the resolution and statement in the minute book of the Association.

3.10 Directors acting other than at Meeting

- (1) A decision that could be voted on at a meeting of the Board of the Association may instead be adopted by written consent of a majority of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided. *Section 74(1)*
- (2) A decision made in the manner in terms of this Article is of the same effect as if it had been approved by voting at a meeting. *Section 74(2)*

3.11 Register of Directors

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) must establish and maintain a record of its directors, including all the details about each director (including that director's email address) required in terms of and for the period stipulated in the Act and the Companies Regulations in a register of directors in terms of section 24(3)(b), section 24(5) and regulation 23.
- (2) For purposes of the Act and in relation to the register of directors required to be kept by the Association in terms of section 24(3)(b), a director is defined in section 1 to mean:
 - (2.1) a member of the Board, being a person previously appointed in terms of the Companies Act 1973 or elected as a director of the Association in terms of the Act;
 - (2.2) an alternate director for a member of the Board;
 - (2.3) any person, if any, occupying the position of director or alternate director but by whatever name designated,

And accordingly, the prescribed details of each such person is required to be included by the Association in the register of directors of the AssociationAssociation.

3.12 Directors' Remuneration

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the Association, or who is a member or director, or person appointing a director, of the Association, except –
 - (1.1) as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Association; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Association
 - (1.2) as a payment of an amount due and payable by the Association in terms of a bona fide agreement between the Association and that person or another;
 - (1.3) as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance a stated object of the Association; or

- (1.4) in respect of any legal obligation binding on the Association. *Item 1(3) of Schedule 1 and Section 122(b) Act 3 of 2011*

3.13 Financial Assistance

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is prohibited from providing a loan to, securing a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a director of the Association or of a related or inter-related Association, or to a person related to any such director. *Item 5(3) of Schedule 1.*
- (2) The Memorandum of Incorporation does not limit, restrict or qualify the said financial assistance, loan or securing a debt or obligation if it is in the ordinary course of the Association's business and for fair value; constitutes an accountable advance to meet legal expenses in relation to a matter concerning the Association or anticipated expenses to be incurred by the person on behalf of the Association, is to defray the person's expenses for removal at the Association's request; or is in terms of an employee benefit scheme generally available to all employees or a specific class of employees. *Item 5(4) of Schedule 1, section 122(a) of Act 3 of 2011.*

3.14 Directors' personal financial interests

- (1) At any time, a Director shall disclose any personal financial interest in advance, by delivering to the Board, or Members a notice in writing setting out the nature and extent of that interest, to be used generally until changed or withdrawn by further written notice from that Director. *Section 75(4)*
- (2) The Director:
- (2.1) shall disclose the interest and its general nature before the matter is considered at the meeting;
 - (2.2) shall disclose to the meeting any material information relating to the matter, and known to the Director;
 - (2.3) shall disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
 - (2.4) if present at the meeting, shall leave the meeting immediately after making any disclosure;
 - (2.5) not take part in the consideration of the matter;
 - (2.6) while absent from the meeting is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting, and is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - (2.7) shall not execute any document on behalf of the Association in relation to the matter unless specifically requested or directed to do so by the Board. *Section 74(2)*

3.15 Standards of Directors' conduct

- (1) In this clause, Director includes alternate Director and a Prescribed Officer or a person who is a Member of a committee of a Board of the Association or of the Audit Committee of the Association, if applicable, irrespective of whether or not the person is also a Member of the Association. *Section 76(1)(a)(b)*
- (2) A Director of the Association shall not use the position of Director, or any information obtained while acting in the capacity of a Director to gain an advantage for the Director or for another person other than the Association or a wholly-owned subsidiary of the Association or to knowingly cause harm to the Association or a subsidiary of the Association and communicate to the Board at the earliest practicable opportunity any information that comes to the Director's attention, unless the Director reasonably believes that the information is immaterial to the Association or generally available to the

public, or known to the other Directors; or is bound not to disclose that information by a legal or ethical obligation of confidentiality. *Section 76(2)(a)(i)(ii) and section 76(2)(b)(i)(ii)*

- (3) A Director of the Association shall exercise the powers and perform the functions of Director in good faith and for a proper purpose, in the best interests of the Association and with the degree of care, skill and diligence that may reasonably be expected of a person, carrying out the same functions in relation to the Association as those carried out by that Director, and having the general knowledge, skill and experience of that Director. *Section 76(3)(a)(b) and section 76(3)(c)(i)(ii)*
- (4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of Director in terms of in the best interest of the Association and with the necessary degree of care, skill and diligence of that Director,
 - (4.1) the Director shall take reasonably diligent steps to become informed about the matter;
 - (4.2) the Director has no material personal financial interest in the subject matter of the decision, and has no reasonable basis to know that any related person has a personal financial interest in the matter; or
 - (4.3) the Director shall disclose any personal financial interest in advance to either the Board, with regard to that matter, and the Director has a rational basis for believing and shall believe, that the decision was in the best interests of the Association and is entitled to rely on:
 - (4.3.1) the performance by one or more employees of the Association whom the Director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;
 - (4.3.2) legal counsel, accountants or other professional persons retained by the Association, the Board or a committee as to matters involving skills or expertise that the Director reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence. *Section 76(4)(a)(i iii), section 76(4)(b)(i)(ii), section 76(5)(a), section 76(5)(b)(i)(ii) and section 76(5)(c)*

3.16 Liability of Directors and Prescribed Officers

- (1) In this clause, Director includes alternate Director and a Prescribed Officer or a person who is a Member of a committee of a Board of the Association or of the Audit Committee of the Association, if applicable, irrespective of whether or not the person is also a Member of the Association.
- (2) A Director of the Association shall be held liable for breach of a fiduciary duty, for any loss, damages or costs sustained by the Association as a consequence of any breach by the Director of a duty in relation to:
 - (2.1) a Director's personal financial interests in terms of section 75 of the Act;
 - (2.2) the use of the position of Director, or any information obtained to gain an advantage or to knowingly cause harm to the Association in terms of section 76(2)(a) of the Act;
 - (2.3) communicate to the Board of the Association any material information that may harm the Association to the board in terms of section 76(2)(b) of the Act;
 - (2.4) perform the functions of Director in good faith and for a proper purpose in terms of section 76(3)(a) of the Act;
 - (2.5) perform the functions of Director in the best interests of the Association in terms of clause section 76(3)(b) of the Act. *Section 77(2)(a)*

- (3) A Director of the Association shall be held liable in relation to delict for any loss, damages or costs sustained by the Association as a consequence of any breach by the Director of:
- (3.1) exercising the powers or performing the functions of Director with the degree of care, skill and diligence expected of that Director, carrying out the same functions in relation to the Association as those carried out by that Director and having the general knowledge, skill and experience of that Director in terms of Article: Board and Prescribed Officers – Standards of Conduct of this Memorandum of Incorporation (section 76(3)(c) of the Act);
 - (3.2) any provision of the Act;
 - (3.3) any provision of the Association's Memorandum of Incorporation. *Section 77(2)(b)(i - iii)*
- (4) A Director of the Association shall be held liable for any loss, damages or costs sustained by the Association as a direct or indirect consequence of the Director having:
- (4.1) acted in the name of the Association, signed anything on behalf of the Association or purported to bind the Association or authorise the taking of any action by or on behalf of the Association, despite knowing that the Director lacked the authority to do so in terms of section 77(3)(a);
 - (4.2) acquiesced in the carrying on of the Association business despite knowing that it was being conducted recklessly with gross negligence and with intent in terms of section 77(3)(b);
 - (4.3) been a party to an act or omission by the Association despite knowing that the act or omission was calculated to defraud a creditor, employee or Member of the Association or had another fraudulent purpose in terms of section 77(3)(c);
 - (4.4) signed, consented to, or authorised, the publication of:
 - (4.4.1) any financial statements that were false or misleading in a material respect; or
 - (4.4.2) a written statement that contained an 'untrue statement' or a statement to the effect that a person had consented to be a Director of the Association when no such consent had been given, despite knowing that the statement was false, misleading or untrue in terms of section 77(3)(d)(ii).
- (5) The liability of a person in terms of this clause is joint and several with any other person who shall be held liable for the same act, and any person who would be so liable is jointly and severally liable with all other such persons to pay the costs of all parties in a court unless the proceedings are abandoned, or exculpate that person, and to restore to the Association any amount improperly paid by the Association as a consequence of the impugned act, and not recoverable in terms of the Act. *Section 77(6) and section 77(8)(a)(b)*
- (6) Proceedings to recover any loss, damages or costs for which a person is or may be held liable shall not be commenced more than 3 (three) years after the act or omission that gave rise to that liability. In any proceedings against a Director, other than for wilful misconduct or wilful breach of trust, the Court may relieve the Director, either wholly or partly, from any liability. *Section 77(7) and (9)*
- (7) In terms of the Memorandum of Incorporation during a search, any Director, Prescribed Officer, Member, or employee of the Association may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information. If the Association or person in control of an article or document refuses to give that article or document to the person conducting the search, the person conducting the search may request the Registrar or Sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged. *Section 179(5)(6)*

3.17 Indemnification and Directors' Insurance

- (1) In terms of the Act and the Memorandum of Incorporation the authority of the Association to purchase market related insurance to protect the Association or a Director, as contemplated in section 78(7) in the Act, is not limited, restricted or extended by the Memorandum of Incorporation, giving authority to the Association to purchase insurance to protect a Director against any liability or expenses for which the Association is permitted to indemnify a Director or the Association against any contingency including, but not limited, to any expenses that the Association is permitted to advance or for which the Association is permitted to indemnify a Director.

THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) may purchase insurance to protect the Association or a Director as set out in section 78(7) of the Act, and the power of the Association in this regard is not limited, restricted or extended by the Memorandum of Incorporation.

- (2) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall be entitled to claim restitution from a Director of the Association or of a related Association for any money paid directly or indirectly by the Association to or on behalf of that Director, in any manner inconsistent with this clause of the Memorandum of Incorporation. *Section 78(8)*

ARTICLE 4 – TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY OF THE ASSOCIATION

4.1 Access to the Association's Records and Financial Statements

- (1) In terms of the Act and the Memorandum of Incorporation, no person, other than a Director, shall have any right to inspect any accounting records or document of the Association, except the right to do so as conferred by the Companies Act or as authorised by the Board.

The accounting records shall be kept at or be accessible from its Registered office. The accounting records shall be open to inspection by any of the Directors at any time. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions, the accounting records of the Association or any of them shall be open to inspection by holders, not being Directors, and subject to the rights granted to holders in terms of the Companies Act. No holder, other than a Director, shall be entitled to inspect the accounting records, unless authorised by the Directors.

The Board may from time to time in its discretion, grant any member, on such terms and subject to such conditions and for such period(s) as the Board may from time to time determine in writing, the right to access (inspect and/or copy) any information pertaining to the Association, but no such right if conferred may negate or diminish any mandatory protection of any record, as set out in Part 3 of the Promotion of Access to Information Act, No.2 of 2000, as amended, provided further that the confidential information of the Association is adequately safeguarded and protected.

A person not contemplated in this sub-article of the Memorandum of Incorporation, has a right to inspect or copy the members register of a Non-Profit Association that has members, or the register of directors of the Association, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection. *Section 24(5), section 26(1)(2)(3), section 50(3)(b), Regulation 23*

4.2 Financial Year End of the Association

- (1) The Association's financial year which is its annual accounting period, ends on a date set out in the Association's Notice of Incorporation, subject to any change made in terms of this sub-article of the Memorandum of Incorporation.

The first financial year of the Association begins on the date that the incorporation of the Association is registered, as stated in its registration certificate, and ends on the date set out in the Notice of Incorporation, which may not be more than 15 (fifteen) months after the date that the Incorporation of the Association is registered.

The second and each subsequent financial year of the Association begins when the preceding financial year ends; and ends on the first anniversary of the date that the incorporation of the Association is registered, unless the financial year end has been changed in terms of this sub-article of the Memorandum of Incorporation. *Section 27(1), section 27 (2)(a)(b), section 27(3)(a)(b) and section 27(6)*

- (2) In terms of the Act and this Memorandum of Incorporation, the financial year end of the Association, or any changes to the financial year end, shall be such period or adjusted period as the member by ordinary resolution from time to time approve. The board, may, with the prior approval of members by ordinary resolution, change the financial year of the Association in terms of section 27(4). *Section 27(4)*
- (3) The board of the Association may change its financial year end at any time, by filing a notice of that change by filing Form CoR 25, but the Association is prohibited in terms of the Memorandum of Incorporation to do so more than once during any financial year, the newly established financial year end shall be later than the date on which the notice is filed, and the date as changed shall not result in a financial year ending more than 15 (fifteen) months after the end of the preceding financial year. *Section 27(4)(a)(b)*

4.3 Accounting Records of the Association

- (1) In terms of the Act and the Memorandum of Incorporation the Association shall keep accurate and complete accounting records in one of the official languages of the Republic, as necessary to provide an adequate information base sufficient to enable the Association to satisfy all reporting requirements applicable to it, as set out in this sub-article, and to provide for the compilation of financial statements.

THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall maintain the necessary Accounting Records in accordance with section 28 of the Companies Act. *Section 28, section 28(1)(a) and Regulation 25(2)(a)(b)*

- (2) The accounting records shall include a record of any property held by the Association in a fiduciary capacity, or in any capacity or manner contemplated in section 65(2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) *Regulation 25(3)(b)(i)(ii)*

4.4 Financial Statements and Financial Year

- (1) The Association's financial statements, including any Annual Financial Statements, shall satisfy the financial reporting standards as to form and content, present fairly the state of affairs and business of the Association, show the Association's assets, liabilities and equity, as well as its income and expenses, set out the date on which the statements were published, and the accounting period to which the statements apply, and bear, on the first page of the statements, a prominent notice indicating whether the statements have been audited in compliance with any applicable requirements of this Act, if not audited, have been independently reviewed in compliance with any applicable requirements of this Act, or have not been audited or independently reviewed, and the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, those statements. *Section 29(1)(a – d), section 29(1)(e)(i)(aa)(bb)(cc), section 29(i)(e)(ii)*

- (2) Any financial statements prepared by the Association, including any Annual Financial Statements of the Association in terms of Article: Transparency, Accountability and Integrity – Annual Financial Statements of this Memorandum of Incorporation, shall not be false or misleading in any material respect, or incomplete in any material particular, subject only to clause 3 of this sub-article. *Section 29(2)(a)(b)*

- (3) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is not limited or restricted by the Memorandum of Incorporation to provide any person with a summary of any particular financial statements, but any such summary shall comply with any prescribed requirements, and the first page of the summary shall bear a prominent notice stating that it is a summary of particular financial statements prepared by the Association, and setting out the date of those statements, stating whether the financial statements that it summarises have been audited, independently reviewed, or are unaudited, in terms of clause 1 of this sub-article, stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the financial statements that it summarises, and setting out the steps required to obtain a copy of the financial statements that it summarises. *Section 29(3)(a), section 29(3)(b)(i - iv)*

- (4) The Memorandum of Incorporation permits the Association the flexibility to have its financial statements internally or independently compiled and reported. In the event that the statements are independently compiled and reported, it should be prepared by an independent accounting professional, on the basis of financial records provided by the Association, and in accordance with any relevant financial reporting standards. *Regulation 26(1)(e)(i)(ii)(iii) and Regulation 27(1)*

- (5) In terms of the Memorandum of Incorporation, any financial statements in terms of this sub-article and Article: Transparency, Accountability and Integrity – Accounting Records of this Memorandum of Incorporation shall comply with the applicable standards for the category of the Association as follows:

- (5.1) where the Association's Public Interest Score for a particular financial year is at least 350 (three hundred and fifty) one of IFRS or IFRS for SMEs provided that the Association meets the scoping requirements outlined in the IFRS for SMEs;

- (5.2) where the Association's Public Interest Score for a particular financial year is at least 100 (one hundred) but less than 350 (three hundred and fifty) one of IFRS or IFRS for SMEs provided that the Association meets the scoping requirements outlined in the IFRS for SMEs;
- (5.3) where the Association's Public Interest Score for a particular financial year is less than 100 (one hundred) and whose statements are internally compiled, the Financial Reporting Standards as determined by the Association for as long as no Financial Reporting Standards is prescribed.

"IFRS" means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body, and

"IFRS for SMEs" means the International Financial Reporting Standards for Small and Medium Enterprises, as issued from time to time by the International Accounting Standards Board or its successor body. *Regulation 27(4) and (5)*

- (6) The Directors shall, in accordance with sections 30 and 31 of the Companies Act, cause to be prepared and laid before the Association at its Annual General Meeting its audited or independently reviewed Financial Statements, subject to clause 3 of Article: Transparency, Accountability and Integrity – Annual Financial Statements, not less than 10 (ten) business days before the date of any annual general meeting, a summarised form of the Financial Statements to be presented at such meeting and directions for obtaining a copy of the complete Financial Statements for the preceding financial year shall be sent to every member, subject and in accordance with the provisions of the Companies Act and this Memorandum of Incorporation. Nothing contained in this clause, shall impose a duty on the directors to send copies of such documents to any person whose address is not known to the Association.

If a Member requests a copy of the Annual Financial Statements, the Association shall make same available to such Member free of charge.

4.5 Annual Financial Statements

- (1) The Association's Annual Financial Statements shall be prepared in accordance with the provisions of section 30(2)(b)(ii) of the Act and section 20(c) of Act 3 of 2011 and be audited voluntarily as required by the Memorandum of Incorporation, resulting in a statutory audit and the Annual Financial Statements shall be audited by the Auditor appointed in terms of the Memorandum of Incorporation.

Since the Association elects to be audited voluntarily as required by the Memorandum of Incorporation, section 90 (prohibitions on Auditor), section 91 (resignation of Auditor), section 92 (rotation of Auditor) and section 93 (restricted functions of an Auditor) do apply.

- (2) An Auditor must be appointed upon the Association's incorporation if the requirements to have its Annual Financial Statements audited applies when it is incorporated, or at the General Meeting at which the requirements to have its Annual Financial Statements audited first applies to the Association, and at each General Meeting thereafter. *Section 55 of Act 3 of 2011*

Any Auditor so appointed must be a Registered Auditor. If the Association appoints a firm as its Auditor, any change in the composition of the Members of that firm shall not by itself create a vacancy in the office of Auditor. *Section 90(1A) and 90(2)*

- (3) The audited Annual Financial Statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall:
- (3.1) satisfy as to form and content, the financial reporting standards of IFRS; and
- (3.2) subject to and in accordance with IFRS:

- (3.2.1) present fairly the state of affairs and business of the Association and explain the transactions and financial position of the business of the Association;
 - (3.2.2) show the Association's assets, liabilities and equity, as well as its income and expenses;
 - (3.2.3) set out the date on which the statements were produced and the accounting period to which they apply; and
 - (3.2.4) bear on the first page thereof a prominent notice indicating that the Annual Financial Statements have been audited as a statutory audit and the name and professional designation of the person who prepared them.
- (4) The Annual Financial Statements of the Association shall be approved by the Board, be signed by an authorised Director and be presented to the Members at the first Members' Meeting after the statements have been approved by the Board.
Section 30(3)(d) of the Act, section 55 of Act 3 of 2011

4.6 Appointment of Auditor

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is a Non-Profit Association and although it is not required by the Companies Act to comply with the extended accountability requirements in terms of Chapter 3 of the Act, the Association elects to comply with the extended accountability and transparency requirements of Chapter 3 of the Companies Act and the Companies Regulations. *Section 34(1) and (2), Part A, Chapter 3*
- (2) Subject to Article: Transparency, Accountability and Integrity – Annual Financial Statements the Association is required by the Act, or the Regulations to have its Annual Financial Statements audited every year, resulting in the Association being required in terms of section 34(1) to comply with the provisions of Chapter 3 – Enhanced Accountability and Transparency requirements of the Act. *Section 34(2), section 84(1)(c)(i)(ii) and Regulations 26 - 30*
- (3) The Memorandum of Incorporation requires the Association to appoint an Auditor.
- (4) Provided that no person who is ineligible (other than by virtue of being juristic person) or disqualified from serving as a Director of the Association in terms of section 69(7) or (8) shall be appointed as the Auditor. *Section 34(2), section 84(1)(c)(ii), section 84(a – c), sections 86-89, section 94 and Part A, Chapter 3*
- (5) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall appoint a person or a firm as an Auditor of the Association and the individual determined by that firm shall be a Registered Auditor. *Section 90(2)(a)*
- (6) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) prohibits in terms of the Memorandum of Incorporation to appoint any of the following persons as an Auditor of the Association:
 - (6.1) a Director or Prescribed Officer of the Association;
 - (6.2) an employee or consultant of the Association who was or has been engaged for more than 1 (one) year in the maintenance of any of the Association's financial records or the preparation of any of its financial statements;
 - (6.3) a Director, officer or employee of a person appointed as Association Secretary;
 - (6.4) a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work for the Association;
 - (6.5) a person who, at any time during the 5 (five) financial years immediately preceding the date of appointment, was any of the persons abovementioned or a person related to any of the persons abovementioned. *Section 90(2)(b)(i-vi)*

- (7) The Board shall be responsible for the appointment of a person or firm, and approved by Ordinary Resolution of the ordinary Members at the Members' Meeting of the Association, as the Auditors for the Association, on such terms and subject to such conditions and for such period(s) as the Board in its discretion deems fit, provided that any Registered Auditors appointed by the Association must be independent of the Association as contemplated in section 94(8), and subject to and in compliance with the requirements and criteria as to Auditors and their appointment set out in sections 90, 91 and 92, and any timeous determination by the Board of the fees to be paid to the Auditors and the Auditor's terms of engagement in terms of section 94(7)(b) if such determination has been made.

If the position of Auditors to the Association becomes vacant for any reason, the Board shall fill that vacancy by the appointment of another person (or firm) as the Auditors to the Association.

Any Auditors of the Association for the time being appointed in terms of Part C (Auditors) of Chapter 3 shall have the rights and restricted functions set out in section 93. *Section 90 and section 93*

4.7 Registration of Auditor

- (1) In the event that the Association appoints an Auditor, the Association shall in accordance with section 85, establish or cause to be established and maintain a record or Register of its Auditors, including, in respect of each person appointed as Auditor of the Association, the name, including any former name, of each such person and the date of every such appointment.

If a firm or juristic person is appointed, the Association shall maintain a record of the name, registration number and registered office address of that firm or juristic person, and if the Association appoints a firm as an Auditor, the individual determined by that firm in terms of the Auditing Profession Act, to be responsible for performing the functions of Auditor.

Section 85(1)(a)(i)(ii), section 85(1)(b)(i)(ii) and section 90(3)

- (2) Within 10 (ten) business days after making the abovesaid appointment or after the termination of service of such an appointment, the Association shall file a notice of the appointment or termination. *Section 85(3)*
- (3) The Incorporators of the Association may file a notice of the appointment of the Association's first Auditor as part of the Association's Notice of Incorporation. *Section 85(4)*

4.8 Rights and restricted functions of Auditors

- (1) Association of B-BBEE Professionals (ABP) NPC is prohibited from demanding services by the Association Auditor which would place the Auditor in conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act. *Section 93(3)(a)(b)*

- (2) Any Auditors of the Association for the time being shall have the rights and restricted functions set out in section 93 of the Act. The Association Auditor shall have the right of access at all times to the accounting records and all books and documents of the Association and entitled to require from the Directors or Prescribed Officers of the Association any information and explanations necessary for the performance of the Auditor's duties and shall be entitled to attend any general Members' Meeting, receive all notices of and other communications relating to any general Members' Meeting, and be heard at any general Members' Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions. *Section 93(1)(a) and section 93(1)(c)(i-iii)*

- (3) In the case of the Auditor of a holding Association, that Auditor shall have the right of access to all current and former financial statements of any subsidiary of that holding Association and is entitled to require from the Directors or officers of the holding Association or subsidiary any information and explanation in connection with any such statements and in connection with the accounting records, books and documents of the subsidiary as necessary for the performance of the Auditor's duties. *Section 93(1)(b)*

4.9 Rotation of Auditors

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is prohibited from employing the services of the Auditor or the designated Auditor of the Association for more than 5 (five) consecutive financial years. *Section 92(1)*
- (2) If an individual has served as the Auditor or designated Auditor of the Association for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated Auditor, the individual shall not be appointed again as the Auditor or designated Auditor of the Association until after the expiry of at least 2 (two) further financial years. *Section 92(2)*
- (3) In the event that the Association has appointed 2 (two) or more persons as joint Auditors, the Association shall manage the rotation as required by the Memorandum of Incorporation in such a manner that all of the joint Auditors do not relinquish office in the same year. *Section 92(3)*

4.10 Resignation of Auditors and Vacancies

- (1) If a vacancy arises in the office of Auditor of the Association at any time, the Board:
 - (1.1) must appoint a new Auditor within 40 (forty) business days if there was only one incumbent Auditor of the Association; and
 - (1.2) may appoint a new Auditor at any time, if there was more than one incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Association.
- (2) If the Association appoints a firm as its Auditor any change in the composition of the Members of that firm does not by itself create a vacancy in the office of Auditor for that year, but a change in more than ½ (one half) of the composition of the Members of that firm will constitute the resignation of the firm as Auditor of the Association, giving rise to a vacancy. *Section 91(4) and (5)*
- (3) A retiring Auditor may be automatically reappointed at a General Meeting without any resolutions being passed, subject to the restrictions set out in sections 90(6) and 92. *Section 90(6) and 92*
- (4) If the General Meeting of the Association does not appoint or reappoint an Auditor, the Board must fill the vacancy in the office within 40 (forty) business days after the date of the General Meeting. *Section 90(7)*

4.11 Use of the Association's Name and Registration Number

- (1) The Memorandum of Incorporation limits and restricts the Association to withhold its full registered name and registration number to any person on demand and prohibits the Association to misstate its name or registration number in a manner likely to mislead or deceive any person. *Section 32(1)*
- (2) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall have its name and registration number mentioned in legible characters in all notices and other official publications of the Association, including such notices and publications in electronic format as contemplated in the Electronic Communications and Transactions Act, and in all bills of exchange, promissory notes, cheques and orders for money or goods and in all letters, delivery notes, invoices, receipts and letters of credit of the Association. *Section 32(4)*
- (3) The Memorandum of Incorporation prohibits, limits and restricts the use of the name or registration number of the Association in a manner likely to convey an impression that the person is acting or communicating on behalf of the Association, unless the Association has authorised that person to do so, or using a form of name for any purpose if, in the circumstances, the use of that form of name is likely to convey a false impression that the name is the name of the Association. *Section 32(3)(a)(b)*
- (4) A contravention of this sub-article of this Memorandum of Incorporation constitutes an offence. *Section 32(5)*

4.12 Annual Return

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) shall file its annual return in Form CoR 30.1 together with the prescribed fee set out in Table CR 2B, unless exempt from such payment in terms of Regulation 30(8), within 30 (thirty) business days after each anniversary of its date of incorporation, in the case of a Association that was incorporated in the Republic, in compliance with section 33(1) of the Act read with Regulation 30, or the date that its registration was transferred to the Republic, in the case of a domesticated Association, including in that return a copy of its Annual Financial Statements, if it is required to have such statements audited in terms of Article: Transparency, Accountability and Integrity – Annual Financial Statements Memorandum of Incorporation (section 30(2) and (7) or the Regulations of the Act). *Section 33(1)(a)(b) and Regulation 30(1)(a)*
- (2) In the event that the Association is required in terms of the Memorandum of Incorporation and Regulation 28 to have its Annual Financial Statements audited, it must file a copy of the latest approved audited financial statements on the date that it files its annual return. *Regulation 30(2)*
- (3) In the event that the Association is not required in terms of the Memorandum of Incorporation or Regulation 28 to have its Annual Financial Statements audited, it may file a copy of its reviewed financial statements on the date that it files its annual return. *Regulation 30(3)*
- (4) In the event that the Association has been inactive during the financial year preceding the date on which its annual return becomes due in terms of clause 1 of this sub-article of the Memorandum of Incorporation, it may apply to the Commission for exemption from payment of the prescribed fee in terms of clause 1 of this sub-article of the Memorandum of Incorporation, provided that the application is supported by the financial statements indicating that the Association had in fact no turnover during that financial year. *Regulation 30(8)*

ARTICLE 5 – FUNDAMENTAL TRANSACTIONS

5.1 Disposals, Mergers and Amalgamations

- (1) THE ASSOCIATION OF B-BBEE PROFESSIONALS (NPC) is prohibited from amalgamating or merging with, converting to or disposing any part of its assets, undertaking or business to a profit Association, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Association. *Item 2(1)(a)(b) of Schedule 1*
- (2) Any proposal to dispose of all or the greater part of its assets or undertaking or amalgamate or merge with another Non-Profit Association shall be submitted to the voting members for approval. *Item 292)(a)(b) of Schedule 1*
- (3) A notice of a Members' meeting to consider a resolution to approve a disposal shall be delivered at least 10 (ten) business days before the date on which the meeting is to begin and in the prescribed manner, to each member of the Association and include a written summary of the terms of the transaction to be considered at the meeting. *Section 112(3)(a)(b)*
- (4) The resolution shall be effective only to the extent that it authorises a specific transaction. *Section 112(5), section 69(b) of Act 3 of 2011*
- (5) A proposed transaction shall be approved by a Special Resolution adopted by persons entitled to exercise voting rights on such a matter, at a meeting called for that purpose and at which sufficient persons are present to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised on that matter as required by the Association's Memorandum of Incorporation and by a Special Resolution by the Members of the Association's holding Company if the holding Company is a Association or an external Association; the proposed transaction concerns a disposal of all or the greater part of the assets or undertaking of the subsidiary; and having regard to the consolidated financial statements of the holding Association, the disposal by the subsidiary constitutes a disposal of all or the greater part of the assets or undertaking of the holding Association. *Section 115(2)(a)(b), and section 71(b)(c) of Act 3 of 2011*
- (6) Any part of the undertaking or assets of the Association to be disposed of shall be fairly valued at the date of the proposal. *Section 112(4)*
- (7) After a resolution approving an amalgamation or merger has been adopted by each Association that is a party to the agreement. Each of the amalgamating or merging Companies shall cause a notice of the amalgamation or merger to be given in the prescribed manner and form to every known creditor of that Association but does not apply to a Association engaged in business rescue proceedings, in respect of any transaction pursuant to or contemplated in the Association's business rescue plan. *Section 116(1)(a), section 116(2)*
- (8) A notice of amalgamation or merger shall be filed with the Commission and shall include confirmation that the amalgamation or merger – has satisfied the requirements of the Companies Act; has been approved in terms of the Companies Act, if so required by that Act; has been granted the consent of the Minister of Finance in terms of section 54 of the Banks Act, if so required by that Act and is not subject to further approval by any regulatory authority; or any unfilled conditions imposed by or in terms of any law administered by a regulatory authority; and the Memorandum of Incorporation of any Association newly incorporated in terms of the agreement. *Section 116(4)(a)(b).*
- (9) An amalgamation or merger takes effect in accordance with, and subject to any conditions set out in the amalgamation or merger agreement; does not affect any existing liability of a party to the agreement, or of a Director of any of the amalgamating or merging Companies, to be prosecuted in terms of any applicable law; civil, criminal or administrative action or proceeding pending by or against an amalgamating or merging Association, and any such proceeding may continue to be prosecuted by or against any amalgamated or merged Association; or conviction against, or ruling, order or judgment in favour of or against, an amalgamating or merging Association, and any such ruling, order or judgment may be enforced by or against any amalgamated or merged Association. *Section 116(6)(a)(b), section 72(c) of Act 3 of 2011*
- (10) When an amalgamation or merger agreement has been implemented the property of each amalgamating and merging Association becomes the property of the newly amalgamated or surviving merged Association or Companies; and each newly amalgamated, or surviving merged Association is liable for all the obligations of every amalgamating or merging

Association, in accordance with the provisions of the amalgamation or merger agreement, or any other relevant agreement, but subject to section 116(7)(a) and (b) substituted by section 72(d) of Act 3 of 2011.

- (11) If, as a consequence of an amalgamation or merger, any property that is registered in terms of any public regulation is to be transferred from an amalgamating or merging Association to an amalgamated or merged Association, a copy of the amalgamation or merger agreement, together with a copy of the filed notice of amalgamation or merger, constitutes sufficient evidence for the keeper of the relevant property registry to effect a transfer of the registration of that property.

Section 116(8)

- (12) If, with respect to a transaction involving a Association that is regulated in terms of the Banks Act, there is a conflict between this sub-article and a provision of section 54 of that Act, the provisions of that Act prevail. *Section 116(9)*

ARTICLE 6 – DISSOLUTION AND DISTRIBUTION OF NET VALUE OF ASSOCIATION

6.1 Winding-Up or Dissolution

- (1) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Association, no past or present director of the Association or person appointing a director of the Association is entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied and the entire net value of the Association shall be distributed to one or more Non-Profit Companies, registered external Non-Profit Companies carrying on activities within the Republic, voluntary associations or Non-Profit trusts having objects similar to its main object; and as determined in terms of the Association's Memorandum of Incorporation by its Members or Directors, at or immediately before the time of its dissolution, failing such determination, in terms of the provisions of the Companies Act 2008 or by order of Court. *Item 1(4)(a)(b) of Schedule 1*
- (2) Any Resolution for the winding-up or deregistration of the Association be approved by the Commissioner of the South African Revenue Service.

On dissolution or liquidation the excess funds and remaining assets of the Association be transferred to one or more of the following:

- (2.1) A similar organisation incorporated or established in the Republic which has been approved as a Public Benefit Organisation in terms of section 30 of the Income Tax Act
- (2.2) An organisation established under any law which is exempt from Tax in terms of section 10(1)(cA) of the Income Tax Act whose sole or principal object is the carrying on of an approved public benefit activity;
- (2.3) A department of State of Administration in the National, Provincial or Local sphere of Government of South Africa.

ARTICLE 7 – ASSOCIATION SIGNATURE

7.1 Association Signature

- (1) All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, shall be made, signed, drawn, accepted and endorsed, or otherwise executed by the person or persons from time to time authorised by a resolution of the Board of Directors.

- (2) The signature to any notice given by the Association may be:
 - (2.1) written or printed, or partly written and partly printed (section 6(12) of the Act);

 - (2.2) effected in any manner provided for in the Electronic Communications and Transactions Act (ECTA). *Section 6(12)(a) and section 13 of ECTA*