

## CONSTITUTION

of

THE SOUTH AFRICAN MEDICAL DEVICES INDUSTRY ASSOCIATION  
(hereinafter “SAMED” or “the Association”)

As adopted by special resolution by SAMED membership on 13 February 2014

## TABLE OF CONTENTS

1. INTERPRETATION .....	4
2. GENERAL .....	7
3. PURPOSE .....	9
4. OBJECTIVES .....	7
5. MEMBERS AND MEMBERSHIP .....	8
6. DUTIES OF MEMBERS .....	10
7. FEES AND SUBSCRIPTIONS .....	11
8. TERMINATION OF MEMBERSHIP .....	12
9. RE-ADMISSION TO MEMBERSHIP OF ASSOCIATION .....	14
10. GENERAL MEETINGS .....	14
11. PROCEEDINGS AT GENERAL MEETINGS .....	14
12. VOTES OF MEMBERS .....	17
13. COMPOSITION OF SAMED BOARD .....	18
14. ELECTION OF BOARD MEMBERS .....	18
15. DISQUALIFICATION AND TERMINATION OF BOARD MEMBERSHIP .....	20
16. VACANCIES ON THE BOARD .....	22
17. REMUNERATION OF BOARD- AND COMMITTEE MEMBERS .....	22
18. BORROWING POWERS OF THE BOARD .....	23
19. GENERAL POWER AND DUTIES OF THE BOARD .....	23
20. MEETINGS OF THE SAMED BOARD .....	25
21. EXECUTIVE COMMITTEE OF THE BOARD .....	27
22. DUTIES OF THE CHAIRPERSON, VICE-CHAIRPERSON AND TREASURER .....	28
23. COMMITTEES AND SUBCOMMITTEES .....	29
24. OFFICE STAFF OF THE ASSOCIATION .....	29

<b>25. NOTICES .....</b>	<b>30</b>
<b>26. ACCOUNTING RECORDS, ANNUAL FINANCIAL STATEMENTS AND AUDITOR.....</b>	<b>30</b>
<b>27. ACCOUNTS.....</b>	<b>31</b>
<b>28. PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY .....</b>	<b>31</b>
<b>29. DONATIONS .....</b>	<b>32</b>
<b>30. SIGNATURE OF DOCUMENTS .....</b>	<b>32</b>
<b>31. VALIDITY OF ACTS OF BOARD MEMBERS, COMMITTEES AND SUBCOMMITTEES.....</b>	<b>32</b>
<b>32. LIMITATION OF LIABILITY OF REPRESENTATIVES.....</b>	<b>32</b>
<b>33. DISSOLUTION OR WINDING-UP.....</b>	<b>33</b>

## BACKGROUND

- A. The signatories to this Constitution have agreed to re-constitute SAMED, which was previously established as a not-for-profit company by its founding members, to that of a voluntary association in order to be flexible and responsive to the healthcare environment and in so doing represent the interests of the medical device industry, the members of which are involved in the manufacturing, importation, selling, marketing and/or distribution of medical devices.
- B. Accordingly, the terms and conditions upon which the Association shall be regulated are set out in this Constitution and any by-laws and policies made in terms of this Constitution.

## CONSTITUTION

### 1. INTERPRETATION

- 1.1. In the interpretation of this Constitution and unless contrary to or excluded by the subject or context:
  - 1.1.1. any word herein signifying-
    - 1.1.1.1. the singular shall include the plural and vice versa;
    - 1.1.1.2. a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
    - 1.1.1.3. any reference to a natural person includes an artificial person and vice versa.
  - 1.1.2. each of the following words and expressions herein shall have the meaning stated opposite it and where applicable shall include the word or expression stated opposite it:

	<b>Word or Expression</b>	<b>Meaning</b>
1.1.2.1	"a company"	includes a body corporate, whether a company or other legal entity, or partnership, as the case may be;
1.1.2.2	"this Constitution"	the Constitution of the Association for the time being in force;
1.1.2.3	"associate member"	an entity or individual not involved primarily in the business of manufacturing, selling, marketing and / or as distributors of medical devices as its main business focus and admitted to SAMED as such a member;

1.1.2.4	“association member”	Board	a member of the Board appointed by association members in terms of this Constitution to represent association members on the Board;
1.1.2.5	“association member”		health care association which association is admitted to SAMED as such a member;
1.1.2.6	“Board”		the Board of SAMED as appointed in terms of this Constitution, as the entity responsible for running of the affairs of the Association;
1.1.2.7	“calendar day”		any day including a Saturday, Sunday or public holiday;
1.1.2.8	“Chairperson”		the chairperson of the Board and the Association elected in terms of this Constitution;
1.1.2.9	“distributor”		a legal entity engaged in the purchase and sale of medical devices on behalf of a principal and excludes companies that exclusively provide logistic services for medical devices;
1.1.2.10	“Executive Officer”		The person appointed in terms of this Constitution as the operational head of the Association, carrying out the mandates of the Board and the objectives of the Association;
1.1.2.11	“Executive Committee”		the Committee constituted in terms of this Constitution, being a sub-committee of the Board and responsible for the day-to-day running of the affairs of the Association;
1.1.2.12	“general meeting”		the annual general meeting (“AGM”), any general meeting or any special general meeting (“SGM”) of the members of SAMED;
1.1.2.13	“honorary member”		a natural person who, in the opinion of the Board, has rendered exceptionally valuable or exemplary services to SAMED or the medical devices industry and has been granted honorary membership by the Board on the proviso that they do not fulfill any membership role within SAMED and are entitled to attend an Annual General Meeting, but not entitled to vote at any SAMED meeting, to receive general communications and be, at the discretion of the Board, invited to SAMED activities and functions;

1.1.2.14	“medical device”	shall bear the meaning accorded to it in terms of section 1 of the Medicines and Related Substances Act No. 101 of 1965, as amended or as defined in any subsequent law governing medical devices;
1.1.2.15	"member"	a member of SAMED as defined in this Constitution and “membership” has a corresponding meaning, which member is an entity active in, or associated with the medical device industry;
1.1.2.16	“membership category”	the membership categories as set out in this Constitution;
1.1.2.17	“membership band”	the categorization of members for purposes of voting for the Board and the setting of membership fees;
1.1.2.18	“natural person”	a human being and not a legal person or juristic person;
1.1.2.19	“ordinary member”	a registered company or division of a company or other legal entity carrying on business in the Republic of South Africa and involved in the manufacture, import; selling, marketing and/or is an agent/ distributor of medical devices;
1.1.2.20	"person"	includes a natural person, company or body corporate, a statutory body; a partnership or an association of persons, as the case may be;
1.1.2.21	“principal representatives”	natural persons employed by and designated by a member to represent it on SAMED during any of the activities or affairs or in the structures of SAMED;
1.1.2.22	“Republic”	The Republic of South Africa;
1.1.2.23	“SAMED”	the South African Medical Device Industry Association, juristic person and a voluntary association with limited liability operating in terms of this Constitution;
1.1.2.24	“sign/signature”	the reproduction of a signature by lithography, printing or any kind of stamp or any other mechanical or electronic process (or by a combination of any two or more of the said processes), and “signature” has the corresponding meaning;
1.1.2.25	“vacancy”	is an unfilled or unoccupied position or office held in terms of this Constitution, which comes in existence upon the date of resignation, - death, - serious disability, -termination, - restructuring or similar event and excludes instances where a

term of office of a Board member comes to an end and “vacant” has the corresponding meaning;

1.1.2.26 “vice-chairperson”

the vice-chairperson of the Board elected in terms of this Constitution.

1.2 References to members represented by proxy shall include members represented by an agent appointed under a general or special power in terms of this Constitution.

1.3 Where any number of days is to be calculated after a particular day, such number of days shall be calculated as excluding such particular first day and including the last day of such number of days, provided that if such last day falls on a Saturday or Sunday or public holiday, the following day shall constitute the last day of such number of days.

1.4 Any reference to months or years shall be a reference to calendar months or years, as the case may be.

## **2. GENERAL**

2.1 The name of the Association shall be The South African Medical Devices Industry Association (“SAMED”).

2.2 The Association shall be a corporate body having a separate legal personality, with perpetual succession.

2.3 The members agree that, through the establishment of an Association representing the medical devices industry as described in this Constitution, the legal structure of SAMED is being re-organised after the winding down of SAMED as a not-for-profit company.

2.4 The provisions contained herein shall be known as the Constitution of the Association, which provisions may only be altered by the Annual General Meeting or at a specially constituted Special General Meeting of the members in terms of the provisions of the Constitution.

## **3. PURPOSE**

3.1. SAMED's purpose is to safeguard and promote the common interests of our members, to encourage ethical principles and practices, to promote innovation and better patient outcomes and to ensure effective representation with all relevant authorities whether public or private.

## **4. OBJECTIVES**

4.1. In implementing the purpose referred to in article 3, the Association shall adhere to the following objectives:

- 4.1.1. ensure that all activities of SAMED shall have the best interests of its members as the primary objective, within applicable legal frameworks and provided that such shall not unreasonably diminish from the needs and rights of patients;
- 4.1.2. provide a forum for discussion on matters affecting the manufacturers, importers and distributors of medical devices in South Africa, provided that such discussions are permitted by South African competition law;
- 4.1.3. promote and encourage among its members ethical principles and practices, and to this end, publish, update and/or participate in any Code or Codes of Practice which shall be binding on all members;
- 4.1.4. communicate and represent, through elected, appointed or designated persons and/or structures, the medical device industry's standpoint on relevant matters and offer advice or make recommendations, within the confines of competition law, when the need arises to anybody or institution whose decisions and policies might affect the industry;
- 4.1.5. co-operate with governments and regulatory authorities, whether national or international, through its officials and structures, as appropriate;
- 4.1.6. work towards harmonization of standards and regulatory requirements relating to medical devices; and
- 4.1.7. promote a spirit of co-operation and shared responsibility among role-players in the public and private health care sectors, within the context of achieving effective, efficient and transparent health care delivery.

## **5. MEMBERS AND MEMBERSHIP**

- 5.1 Persons who had been members of The South African Medical Devices Industry Association, an association that was previously incorporated under Section 21 of the 1973 Companies Act, shall become members of this voluntary Association without having to apply and such membership shall be automatically transferred into the Association created by means of this Constitution.
- 5.2 Subject to the provisions contained in this section, the following persons shall be members of the Association, and the assessment of compliance with membership criteria shall rest with the Board:
  - 5.2.1 Ordinary members;
  - 5.2.2 Associate members;
  - 5.2.3 Association members; and
  - 5.2.4 Honorary members.



- 5.3 The founding members of the Association when it was established as a not for profit company were –
- 5.3.1 Brittan Healthcare Group;
  - 5.3.2 Browning Medical CC;
  - 5.3.3 Marcus Medical (Proprietary) Limited;
  - 5.3.4 Orthomedics (Proprietary) Limited;
  - 5.3.5 Safmed (Proprietary) Limited;
  - 5.3.6 Smith & Nephew (Proprietary) Limited; and
  - 5.3.7 Southern Implants (Proprietary) Limited.
- 5.4 The Board may admit any person as a member into the appropriate membership category who supports and agrees to abide by this Constitution and subject to such terms and conditions as may be prescribed by the Board from time to time. The Board shall determine and publish minimum criteria for membership, and shall be entitled to amend same from time to time, and, in the case of –
- 5.4.1 Ordinary members, applicants who qualify for membership by having its sole or principle business as an importer, manufacturer and/or distributor of medical devices, and who markets and sells such products to healthcare professionals, health facilities (hospitals, pharmacies and the likes);
  - 5.4.2 Associate members, applicants who qualify for membership by not being in the category of ordinary members, but which individual or entity has an interest in the medical device sector, such as medical device operator professional organisations, medical device maintenance professional organisations and provided that no competition law concerns arise out of such associate membership;
  - 5.4.3 Association members, applicants who qualify by virtue of having some overlapping objectives and interests to that of SAMED within the field of medical devices, but who have a separate organizational structure and where membership of the two organisations may overlap, and provided that no competition law concerns arise out of such associate membership.
- 5.5 Honorary members may be admitted by the Board to SAMED as members after receipt of a nomination, after –

- 5.5.1 Evaluation of such nominee has been made according to the SAMED policy relating to honorary members and found as compliant with such policy; and
- 5.5.2 After finding that such nomination complies with all procedural requirements set by the policy and forms.
- 5.6 Membership application shall be made to the Board in such manner and on such application form as the Board shall from time to time prescribe. Upon acceptance of membership, each member shall receive a letter of membership to confirm its membership to SAMED, and such member's name shall be entered into the SAMED membership register, or removed from the register as the case may be.
- 5.7 Should membership be denied, the Board will provide reasons for its finding to the applicant.
- 5.8 The successful applicant company, shall on being informed of its admission as a member of the Association, submit to the Executive officer ("EO") in writing the name of its principal representative who shall be the authorised representative of the company to attend and vote at all meetings of the Association as authorized in this Constitution.
- 5.9 Every new member shall register with the EO its contact details as the Board may require and to which communications may be directed and every member shall from time to time advise the EO in writing of any change to its contact details.

## **6. DUTIES OF MEMBERS**

- 6.1 Each member undertakes to the other members and to the Association to contribute appropriate time and resources to the management and operation of the Association, in accordance with the provisions of this Constitution, including, without being limited to, making available a principal representative and making appropriate representatives available for appointment to SAMED Committees.
- 6.2 Each member also undertakes to ensure that its representatives on structures of the Association are properly mandated and informed by member positions, and each member undertakes to put in place mechanisms to ensure that it is appraised on developments within the Association.
- 6.3 Each member shall pay its annual subscription fees and any other levy that may be imposed in terms of this Constitution.
- 6.4 Each member undertakes to promote and adhere to both the purpose of the Association referred to in article 3 and the objectives of the Association referred to in article 4.

- 6.5 Each member shall comply with all decisions of the Board, AGM or other General Meeting and with the provisions of this Constitution, as well as policies and by-laws as set from time to time.
- 6.6 Membership does not detract from the rights of companies to retain their individual views on matters of extreme importance to them, and exercising this right may, in exceptional circumstances, entail the inclusion of a caveat on Association presentations or submissions, provided that if such a person represents the association it is their responsibility to present the mandate of the association.
- 6.7 Honorary members and associate members shall have the right to –
  - 6.7.1 receive any information which may be competently provided by officers of the Association;
  - 6.7.2 receive, at the discretion of the Association, such assistance in any matter as may be rendered in terms of these provisions; and
  - 6.7.3 take part in any discussion on any matter at any annual, general or special meeting of the Association, but not entitled to vote at any SAMED meeting.

## **7. FEES AND SUBSCRIPTIONS**

- 7.1 The annual membership fees for membership of SAMED subscriptions and/or other fees in the various membership categories as set out in article 5, shall be determined by the Board at the second last Board meeting of the year, and shall be communicated to the members by way of invoice, effective January of the following year.
- 7.2 Any categorisation of members in bands for purposes of fees and voting for the Board shall not influence any other rights or entitlements awarded to members or categories of members in terms of this Constitution.
- 7.3 Annual fees and/or subscriptions shall –
  - 7.3.1 be payable by 31st March, each year for existing members; and
  - 7.3.2 be invoiced on acceptance of new membership and be payable pro rata, when such membership is accepted anytime during the course of a year.
- 7.4 Honorary members shall be exempt from the payment of membership fees and annual subscriptions; however, this does not exempt an ordinary member who employs the honorary member, from fees or subscriptions.
- 7.5 Failure by a member to pay the whole or any part of its fees and/or subscriptions by 31<sup>st</sup> March in any year shall entitle the Board to –

- 7.5.1 suspend the benefits of membership of such member, including but not limited to, the right to vote and attend meetings, until such fees and/or subscriptions are paid in full; or
- 7.5.2 cancel the membership of such member, in accordance with clause 7.
- 7.6 Any disputes of members concerning the payment of fees and/or subscriptions shall be referred to a Board committee set up for this purpose, whose decision in this regard shall be final.
- 7.7 Any member intending to terminate its membership shall notify the Executive Officer in writing, a month prior to the last day of December in each year. Members who submit their resignation during the course of the year shall not be entitled to a refund.
- 7.8 Notwithstanding anything else contained in this Constitution, the Board may recommend, in cases where the needs of SAMED so dictate, the approval of extraordinary fees to be payable, which fees shall be approved at a General or Special General Meeting of members, in order to defray costs to be incurred in order to fulfil the specific needs identified by the Board.

## **8. TERMINATION OF MEMBERSHIP**

- 8.1 Every member shall remain a member until its membership is terminated in accordance with the provisions of this Constitution.
- 8.2 A member shall immediately and automatically cease to be a member of SAMED –
  - 8.2.1 In the case of a natural person–
    - 8.2.1.1 on such member's death;
    - 8.2.1.2 if such member becomes mentally incapacitated or of unsound mind;
    - 8.2.1.3 if such member's estate is surrendered or sequestrated, whether voluntarily or compulsorily;
    - 8.2.1.4 if such member commits any act of insolvency;
    - 8.2.1.5 if such member is convicted of a criminal offence or commits a fraud;
    - 8.2.1.6 if such member resigns as a member of SAMED in accordance with clause 6.3
  - 8.2.2 In the case of a member which is not a natural person (i.e. ordinary members, associate and association members)–
    - 8.2.2.1 if such member is liquidated, wound-up or placed under judicial management, whether provisionally or finally and whether compulsorily or voluntarily;

8.2.2.2 if such member commits any act of insolvency;

8.2.2.3 If such member resigns as a member of SAMED in accordance with clause 7.7

8.3 The Board shall have the right to, in its discretion suspend for a period it deems appropriate or terminate the membership of any member which has –

8.3.1 not complied with the provisions of this Constitution or any by-law, policy or decision of the Association; and/or

8.3.2 acted in any manner that is inimical to the interests of SAMED; and/or

8.3.3 brought SAMED into disrepute; and/or

8.3.4 failed to pay its membership fees, subscription and/or any other amount due to SAMED within three months of the due date or within such further period as may be determined by the Board in its discretion, without such member having had made any arrangements to the satisfaction of the Board.

8.4 If any decision to suspend or terminate the membership of a member is made by the Board, such member shall be entitled, within thirty (30) days of such decision –

8.4.1 to dispute the correctness of such decision; and

8.4.2 to refer such dispute for determination by a practising senior counsel agreed upon in writing by the member concerned and the Board within ten (10) days of the member disputing such decision or, failing such agreement, appointed, at the instance of any member, by the President of the Johannesburg Bar Council (or his successor in title) which senior counsel shall act as an expert and not as an arbitrator and shall decide the matter in a summary manner, with a view to it being decided within twenty-one (21) days after such dispute is referred to him or her in writing. Such senior council's decision (including his or her decision as to who is liable for the costs of such determination) shall be final and binding on all the parties.

8.5 No resignation shall be accepted from any member while there are proceedings pending against it under the provisions of this Constitution and/or Codes and/or By-laws.

8.5.1 On resignation or termination of membership a Member shall immediately return to SAMED any certificate of membership or plaque and any SAMED property and shall cease to incorporate in its commercial documentation, advertising material, letterheads and any other documentation or communications media to which members of the public may have access, any reference to his or her membership of SAMED and she or he shall under no circumstances have any claim on SAMED or its officers, its property or its funds.

## **9. RE-ADMISSION TO MEMBERSHIP OF ASSOCIATION**

No person who shall have been a member of SAMED and shall have ceased to be a member shall be eligible for re-admission until s/he shall have paid all arrears of subscriptions and/or levies (if any) due by him to the Association as at the date when his former membership ceased, and no person whose former membership shall have been terminated by reason of his expulsion, as hereinafter provided, shall be re-admitted into membership without the prior approval of the Board.

## **10. GENERAL MEETINGS**

10.1 SAMED shall hold its first Annual General Meeting as a voluntary Association within 18 (eighteen) months after the date of this Constitution being adopted by the Members and shall thereafter in each year hold an Annual General Meeting:

10.1.1 Provided that not more than 15 (fifteen) months shall elapse between the date of one Annual General Meeting and that of the next; and

10.1.2 The Annual General Meeting of SAMED shall be held not later than the last day of the month of May in each year.

10.2 Other General Meetings of SAMED may be held at any time.

10.3 Annual General Meetings and other General Meetings shall be held at such time and place as the Board shall determine.

10.4 Notice of every General Meeting shall be given to every paid up member of the Association and, in the case of honorary members at the discretion of the Board. No other persons shall be entitled to receive notice of General Meetings.

10.5 An Annual General Meeting and a General Meeting convened for the passing of a special resolution shall be convened on not less than twenty-one (21) days' notice in writing and any other General Meeting shall be convened on not less than fourteen (14) days' notice in writing.

10.6 The notice shall specify the place, the day and the hour of the meeting and, in case of special business, the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Board, to such persons as are, under this Constitution, entitled to receive such notices from SAMED.

## **11. PROCEEDINGS AT GENERAL MEETINGS**

11.1 Save as otherwise provided in this Constitution, the quorum at a meeting of members shall be twenty-five members entitled to vote, personally present or if a member is a juristic person, by authorised representative, or by proxy. Business may be transacted at any meeting of members only while a quorum is present.

- 11.2 If within fifteen (15) minutes from the time appointed for a general meeting or a special general meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any case it shall stand adjourned to the same day in the next week, at the same time and place, or, if that day be a public holiday, to the next succeeding business day other than a public holiday. If at such adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for such adjourned meeting then, subject to the Act, the members present shall be a quorum.
- 11.3 The chairperson or, failing him or her, the vice-chairperson, if any, of the Board shall preside as chairperson at every meeting of members of the Association. If there is no such chairperson, or if at any meeting neither the chairperson nor the vice-chairperson is present within fifteen (15) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present shall choose some member of the Board, or if no Board member be present, or if all the Board members present decline to take the chair, they shall elect a member present to be chairperson of the meeting.
- 11.4 All matters of procedure on which this Constitution are silent shall be decided on motion by a majority vote of members present at a general meeting and entitled to vote at such meeting.
- 11.5 All business that is transacted at a general meeting, and all business that is transacted at the annual general meeting, with the exception of –
- 11.5.1 The consideration of the audited financial statements and the election of auditors;
- 11.5.2 To confirm the minutes of the previous Annual General Meeting and any Special General Meetings which may have been held during the year under review;
- 11.5.3 To receive the report of the chairperson on behalf of the Board covering the activities of SAMED during their period of office, including that of sub-committees established by the Board.
- 11.5.4 To elect Board members as provided for in this Constitution; and
- 11.5.5 To, notwithstanding other provisions in this Constitution, approve, when at an Annual General Meeting, by at least a 75% majority vote of members attending in person or by proxy, amendments to this Constitution;
- shall be deemed to be special business.
- 11.6 If the chairperson so decides, all motions at the general meetings shall be reduced to writing and shall be delivered to the presiding officers to read to the meeting. No motion shall be considered unless seconded.

- 11.7 All matters forming the subject of motions shall, unless otherwise provided herein, be voted upon by show of hands and shall, unless otherwise provided herein, be decided by the votes of a majority of those present and entitled to vote except in the case of elections, when the candidates up to the required number receiving the highest number of votes, shall be declared elected. In the case of election of the Board, the processes and voting mechanism, as set out in this Constitution are to be followed.
- 11.8 The chairperson may, with the consent of the members of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 11.9 At any meeting of members a resolution put to the vote of the meeting shall be decided by majority of members entitled to vote on a show of hands unless a poll is demanded (on or before the declaration of the result of a show of hands) –
- 11.9.1 by the chairperson of the meeting, or
- 11.9.2 by not less than one member having the right to vote at such a meeting.
- 11.10 On request of any member entitled to vote and present, a vote by secret ballot will be allowed without any discussion of the reasons for the request. A declaration by the chairperson as to the result of the voting on any particular resolution and an entry to that effect in the minutes shall be conclusive proof of that result, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 11.11 No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to be or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
- 11.12 If a poll is demanded at a general meeting –
- 11.12.1 on the election of a chairperson or on an adjournment, the poll shall be taken immediately and in such manner as the general meeting determines, and a poll on any other question shall be taken at such time and in such manner as the chairperson of the general meeting directs;
- 11.12.2 the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded;
- 11.12.3 the demand shall not preclude the general meeting from considering any question other than that on which the poll has been demanded unless the general meeting decides otherwise;



- 11.12.4 the demand may be withdrawn at any time.
- 11.13 The chairperson at the general meeting shall have a casting vote, i.e. a second vote in the event of an equality of votes.
- 11.14 The proceedings of annual general meetings or special general meetings shall not be invalidated by reason of the non-receipt by any member of the notice of the meeting.
- 11.15 At every annual general meeting the minutes of the preceding annual general meeting shall be circulated to all members by the secretary not later than with the notice of the particular annual general meeting, and shall be considered read by the members present at the meeting. After approval of the minutes by the members present, it shall be signed by the chairperson of the annual general meeting.
- 11.16 In the event that a face-to-face general meeting could not be held, and subject to provisions in this Constitution elsewhere on matters on which voting may take place, a resolution in writing signed by a majority of the persons for the time being entitled to receive notice of and to attend and vote at meetings of members or by duly authorised representatives on their behalf shall be as valid and effectual as if it has been passed at a meeting of the Association duly convened and held.

## **12. VOTES OF MEMBERS**

- 12.1 Save for the election of members of the Board –
- 12.1.1 each ordinary member and each association member present in person or by proxy, if a member is a juristic person, duly represented at any meeting of the Association, shall have one vote;
- 12.1.2 no associate member or honorary member present in person or by proxy, duly represented at any meeting of the Association, shall be entitled to a vote.
- 12.2 Every member who is entitled to vote shall be entitled to appoint another person, who shall, subject to the requirements in this Constitution on proxies, be a member of SAMED as its proxy to attend, speak and vote in its stead at any general meeting of the Association. Where any member also represents another member, he or she shall be entitled to exercise the votes of all members for whom he or she is present at the general meeting.
- 12.3 The form appointing a proxy shall be in writing under the hand of the appointee or his agent duly authorised in writing or, if the appointee is a corporate body, under the hand of an officer or agent authorised by that body. The Board may, from time to time, prescribe proxy forms and procedures to be used in terms of this Constitution.
- 12.4 The holder of a proxy given by a member shall be entitled to vote, if duly entitled and authorised under the proxy to attend and take part in the meeting and proceedings of

the Association. Proxies may only be provided to an employee representative of another ordinary member of SAMED, and no third party may hold proxies on behalf of a SAMED member.

### **13. COMPOSITION OF SAMED BOARD**

13.1 Until the first Annual General meeting after the adoption of this Constitution, the Board members that were duly elected by the members of The South African Medical Devices Industry Association, as it was incorporated under section 21 of the 1973 Companies Act, shall serve as the Board members of the Association.

13.2 Unless otherwise determined by a meeting of members, the number of Board members shall not be less than two and no more than sixteen persons and which sixteen Board members shall include –

13.2.1 twelve ordinary members, from whom the chairperson and vice-chairperson shall be elected;

13.2.2 up to three Association representatives may be appointed to the Board in accordance with this Constitution, if so determined by the Board members. Such Association representatives shall be nominated to represent their Association on an annual basis, in which the SAMED Board reserves the right to rotate the Associations represented on the Board at their discretion;

13.3 SAMED may from time to time at any meeting of members increase or reduce the number of Board members, by a majority vote of members entitled to vote at such meeting.

13.4 Notwithstanding the above the Board shall be entitled to co-opt additional Board members for a time period as decided by the Board and who will be entitled to vote, provided that the number of persons on the Board may never exceed 16 (sixteen) persons, unless this is altered in terms of this Constitution.

13.5 The members, at a general meeting of members shall have power to, at any time, elect any person as a Board member according to this Constitution; provided that the total number of Board members shall not at any time exceed the maximum number fixed by or in terms of this Constitution.

### **14. ELECTION OF BOARD MEMBERS**

14.1 Board members shall be elected to the Board in accordance with the following procedures and principles –

14.1.1 At every annual general meeting, a maximum of six Board members appointed from the representatives of ordinary members shall step down and as many Board members as are required to meet article 13.2.1 from amongst ordinary members shall be elected to the Board by secret ballot for a period of 24 months.

- 14.1.2 No ordinary member of SAMED may have more than two natural persons who serve as a Board member at any given time.
- 14.1.3 All Board members of the Board shall be eligible for re-election on termination of their period of office.
- 14.2 All candidate Board members, whether they had been Board members of SAMED previously or not, have to be nominated prior to election to the Board.
- 14.3 The nomination process shall be conducted by means of forms calling for the nomination of the six Board members referred to in this clause shall be circulated to members not less than twenty-one (21) days before each annual general meeting; provided that only those natural persons nominated as principal representatives to SAMED and full time employees of a member shall be eligible for nomination to serve on the Board; and completed nomination forms shall be lodged with the secretary not less than fourteen (14) days before each annual general meeting.
- 14.4 No nominations for the Board shall be made at any Annual General Meeting.
- 14.5 Any person nominated to serve on the Board shall in writing indicate and lodge with the EO his/her willingness to accept such nomination not less than ten (10) days before each annual general meeting. Any failure by any nominee to lodge such acceptance within the stipulated time period shall automatically invalidate the nomination of such nominee and the name of such nominee shall not appear on the ballot form in respect of such election.
- 14.6 Each member shall have the number of votes per candidate corresponding with the membership band as published by the Board of Directors from time to time.
- 14.7 Votes for the election of nominees to the Board of Directors shall be allocated as follows:
- 14.7.1 The total number of votes that each member has been allocated shall be divided equally as to the number of candidates eligible to be elected to the Board.
- 14.7.2 In the event that a member elects not to vote for the full quota of candidates, those votes will be forfeited, and may not be allocated to the other candidates.
- 14.8 Election to the Board of Directors shall be on the basis of nominees receiving the highest number of votes.
- 14.9 Subject to being elected to the Board, each nominee shall sign a confidentiality agreement between the Association and such nominee; provided that if such nominee has previously signed such a confidentiality agreement with SAMED such nominee shall not be required to sign a new agreement.

- 14.10 The standing and elected Board members of the Board shall, at the meeting of the Board immediately following every Annual General Meeting, elect a chairperson, vice-chairperson and treasurer from amongst themselves.
- 14.11 The chairperson and vice-chairperson shall serve for a term of one year; provided that no person shall be elected chairperson or vice-chairperson, respectively, for more than four consecutive years.
- 14.12 The SAMED Board may in its sole discretion reserve up to three of its seats for Association members to have representation on the Board as Board members as is provided for in Article 13.2.2. Such Board members shall either be employees of a member of an Association member, and/or an employee of the Association member. Notwithstanding anything to the contrary in this Constitution, Association Board members shall be elected and/or removed by majority vote of the Association members only.

## **15. DISQUALIFICATION AND TERMINATION OF BOARD MEMBERSHIP**

- 15.1 A Board member shall cease to hold office as such if –
- 15.1.1 his or her estate is sequestrated or he or she files an application for the surrender of his or her estate or an application for an administration order, or if he or she commits an act of insolvency, or if he or she makes any arrangement or composition with his or her creditors generally;
- 15.1.2 he or she abandons or discontinues to be an employee and/or principal representative of an ordinary SAMED member or an employee (of a member of) an association member or if s/he, in the case of associate members abandons or discontinues the business or interests which entitled him or her to membership of SAMED, unless the Board decides that the person may, in the interest of SAMED, remain on the Board for a period at the Board's discretion, but no later than the next Board election.
- 15.1.3 the member to which he or she belongs as an employee or representative, is removed or resigns as a member of SAMED;
- 15.1.4 at the sole discretion of the Board, the annual subscription or any other sum due by the member to which he or she belongs, or represents, to the Association is 3 months in arrears;
- 15.1.5 at the sole discretion of the Board, he or she is guilty of conduct adverse and prejudicial to the interests, objectives or objects of the Association;
- 15.1.6 at the sole discretion of the Board, it is adverse or prejudicial to the interests of the Association that he or she should continue as a member of the Board of the Association;

- 15.1.7 at the sole discretion of the Board, such a Board member has contravened any Code of Practice applicable to SAMED members or the Board Code of Conduct as adopted by the Board and fails to remedy such contravention despite having been requested in writing to remedy such contravention;
- 15.1.8 he or she is found to be mentally incapacitated or becomes of unsound mind;
- 15.1.9 he or she resigns from his or her office, which resignation shall take effect on the date at which such resignation is made to the EO;
- 15.1.10a notice removing him or her from his or her office is given to him or her by members having a right to attend and vote at a general meeting of members who hold not less than seventy five per cent (75%) of the total voting rights as per the band categories of such members and who are at that time entitled so to attend and vote;
- 15.1.11 he or she –
- 15.1.11.1 absents him or herself from three consecutive Board meetings without tendering an apology for his or her absence; and/or
- 15.1.11.2 fails to attend at least 50% of the Board meetings, even if having tendered apologies, in any financial year and the Board resolves that his or her office shall be vacated.
- 15.1.12 The Board shall furnish its reasons for terminating a Board member's membership to the Board in terms of above to that Board member in writing and that Board member shall have the right, exercisable by notice in writing to the chairperson of the Association within seven (7) days of receipt of those reasons, to be heard by the Board within a period of thirty (30) days of receipt by the chairperson of the Association of such notice. Within seven (7) days of hearing the Board may, upon such terms if any, as it may deem appropriate and without any obligation to give reasons, rescind or confirm the suspension or expulsion, or amend it, and until such rescission or confirmation or amendment is made, no public announcement within or outside the Association of such suspension or expulsion, shall be made.
- 15.1.13 A Board member, whose membership of the Board has been terminated or expired, shall immediately cease to make any reference to his or her membership of the Board of SAMED and she or he shall under no circumstances have any claim on SAMED or its officers, its property or its funds.
- 15.2 A SAMED member that has or had an employee serve as a SAMED Board member, has no right to that being designated as a seat that accrues to that SAMED member and has no right to change or substitute such Board member with another of its employees.

## **16. VACANCIES ON THE BOARD**

- 16.1 In the event of vacancies occurring before the expiry of a term of office of a Board member, and if deemed necessary by the Board, the Board may –
  - 16.1.1 Exercise its powers to request a Board member whose membership may terminate in terms of article 15.1.2 (e.g. termination of employment of Board member at SAMED member), to stay on as a Board member for a period at the Board's discretion, but no later than the next Board election.
  - 16.1.2 Decide not to fill a vacancy;
  - 16.1.3 Decide to co-opt an individual to fill the vacancy.
- 16.2 Vacancies occurring on the Board, other than vacancies occurring as a result of the expiry of a term of office shall be filled by the Board at the first ensuing meeting of the Board on nomination duly seconded and by a majority of votes, provided that –
  - 16.2.1 Where a vacancy occurs subsequent to the date on which the notice of that meeting was issued, it shall be filled at the next ensuing Board meeting;
  - 16.2.2 Nominations for the vacancy shall be submitted to the EO in writing at any time before the meeting.
  - 16.2.3 A Board member appointed to fill a vacancy shall only hold office for the unexpired portion of the period of office of his or her predecessor.
- 16.3 A vacancy of an Association Board member shall be filled by appointment by such Association member and on approval by the SAMED Board.
- 16.4 In cases of dispute relating to the filling of vacancies, the Board will consider the matter, attempt to reach consensus and if consensus cannot be reached, the provisions of clause 8.4.2 shall apply mutatis mutandis to resolve the dispute.

## **17. REMUNERATION OF BOARD- AND COMMITTEE MEMBERS**

- 17.1 No Board member, committee or sub-committee member or any other person serving on any structure of the Association shall –
  - 17.1.1 be paid any remuneration for his or her services rendered to the Association;
  - 17.1.2 be reimbursed by the Association for any travelling, subsistence and other costs and/or expenses incurred by them in the execution of any duties or rendering any services in or about the business of SAMED, unless otherwise decided by the Board in terms of the Association's policies as set from time to time by the Board.

## **18. BORROWING POWERS OF THE BOARD**

- 18.1 The Board may from time to time in their discretion raise or borrow from the members or other persons any sum or sums of money for the purposes of the Association.
- 18.2 The Board may raise or secure the repayment of such monies in such manner and upon such terms and conditions in all respects as they deem fit.
- 18.3 All decisions of the Board in terms of this article shall require a 75% consent of all the Board members.

## **19. GENERAL POWER AND DUTIES OF THE BOARD**

- 19.1 The business of the Association shall be managed by the Board who may exercise all such powers explicitly and implicitly awarded to it by the Association under this Constitution or powers required to be exercised by the Association at any meeting of members.
- 19.2 The Board shall be responsible -
  - 19.2.1 for all matters consistent with carrying out the objects and purposes for which the Association has been formed and to make codes and/or by-laws for the better and more efficient achievement of such objectives and purpose;
  - 19.2.2 to act on behalf of the Association and to pass resolutions which shall be binding upon the Association and its members;
  - 19.2.3 to use the funds of the Association for any of the purposes and objectives provided for in this Constitution and according to the budget as approved by the Board;
  - 19.2.4 for managing the affairs of the Association; including but not limited to –
    - 19.2.4.1 the setting of strategic direction for the Association on an annual basis;
    - 19.2.4.2 the allocation of resources and the setting and approval of budgets;
    - 19.2.4.3 the creation of sub-committees and ad hoc teams or committees
    - 19.2.4.4 delegating responsibilities for any activities it may choose, to subcommittee(s) or committee(s) which it will appoint in terms of this Constitution;
  - 19.2.5 making a final decision on any dispute concerning the interpretation of this Constitution;
  - 19.2.6 establishing Board- and sub-committees as may be required by good corporate governance principles from time to time;

- 19.2.7 formulating policies and guidelines to give effect to good corporate governance principles for both Board- and sub committees;
- 19.2.8 setting and/or subscribing to any Code or Codes of Practices on behalf of the Association and its members;
- 19.2.9 for all membership affairs, including –
  - 19.2.9.1 the raising of funds by way of membership fees and/or levies;
  - 19.2.9.2 the categorization of members into membership bands and the awarding of a number of votes associated with such band, which votes will only pertain to the member's right to vote in relation to election to the Board in terms of this Constitution;
  - 19.2.9.3 setting policies and procedures for the handling of membership queries and member interests; and
  - 19.2.9.4 providing feedback to members from time to time on the achievement of the objectives of SAMED, including any special projects or programmes;
- 19.2.10 communicating resolutions, opinions or guidance to the membership of SAMED and/or to outside bodies;
- 19.2.11 to, at its discretion institute, defend, bring, carry or discontinue, or refer to arbitration any proceedings, actions, suits, claims and demands for or against the Association or in regard to any matter affecting the interests of the Association;
- 19.2.12 to, at its discretion, authorise and/or assist any member to institute or defend any legal proceedings if it is of opinion that the interests of the Association justify such cause of action;
- 19.2.13 to, at its discretion, defend legal proceedings instituted against any member in relation to any matter or thing done or performed by such member in his/her capacity as a representative of the Association and to indemnify him/her against all costs in any such legal proceedings;
- 19.2.14 to invite any person to attend any meeting of the Board or the Association, or any part thereof.
- 19.3 The Board shall have the power from time to time to delegate, or to allocate, to any one of their members or to any other person, Committee or structure created for such purpose, whether in the Republic or not, such of the powers as are vested in the Board under this Constitution, as they may deem fit.
- 19.4 Without detracting from the provisions contained in any Code or Codes of Conduct applicable to SAMED members, Board members, Committee or Subcommittee members, representatives and office-bearers of the Association shall –



- 19.4.1 Always act in the best interest of SAMED and in good faith;
- 19.4.2 Declare any conflict of interest at the beginning of each meeting, and recuse him/herself when such matter is discussed;
- 19.4.3 Refrain from using SAMED as a mechanism to ensure commercial gain or advantage for the member s/he belongs to and refrain from using SAMED to address matters competing entities should address individually;
- 19.4.4 Declare the nature and value of any gifts or consideration received whilst acting on behalf of SAMED; and
- 19.4.5 Make no public announcements relating to SAMED or its affairs, unless properly and in writing mandated by the Board to do so.
- 19.5 Board members in particular shall, in addition to the behavioural duties outlined elsewhere in this Constitution –
  - 19.5.1 Discuss matters inside Board meetings and in the presence of other Board member in attendance at such meetings, thus refraining from off-line and one-on-one discussions pertaining to matters before the Board;
  - 19.5.2 Resolve disputes and conflicts in a constructive manner within the Board –
    - 19.5.2.1 under the leadership of the chairperson, or if the chairperson is involved in the conflict or dispute, the vice chairperson; and
    - 19.5.2.2 the chairperson or vice chairperson, as the case may be, may seek expert assistance if required, in order to assist in the resolution of the matter; and
    - 19.5.2.3 failing which, the provisions of article 8.4.2 shall be invoked.

## **20. MEETINGS OF THE SAMED BOARD**

- 20.1 The Board shall ordinarily meet at least once every two months on a date to be fixed by the chairperson in conjunction with the EO.
- 20.2 Special meetings of the Board shall be called by the chairperson upon the request of not less than one-third of the members of the Board, in which event the meetings shall be called within fourteen (14) days of receipt of the requisition by the EO.
- 20.3 Members of the Board shall be notified in writing of the time and place of meetings of the Board by the secretary at least fourteen (14) days before the dates of such meetings; provided that such shorter notice being not less than twenty-four (24) hours, as may be decided by the chairperson, and supported in writing by at least four Board members may be given in respect of special meetings. An agenda or statement relating to the business at hand shall be attached to every notice of a meeting.

- 20.4 The Board may determine what period of notice shall be given of its meetings and may determine the means of giving such notice, which may include telephone, telegrams, telex, telefax or e-mail. It shall not be necessary to give notice of a Board meeting to any Board member for the time being absent from the Republic.
- 20.5 All matters where agreement is not reached by the Board shall be decided on a majority by a motion duly seconded and voted upon by show of hands.
- 20.6 Each Board member entitled to vote shall have one vote. The chairperson shall have a second or casting vote, in the event of equality of votes.
- 20.7 The quorum necessary for the transaction of business at a meeting of the Board shall be half the number of Board members plus one.
- 20.8 If within five (5) minutes of the fixed time for any Board meeting a quorum is not present, the meeting shall stand adjourned to such date and place as the chairperson of the meeting shall decide and written notice of the adjourned meeting shall not be required to be given to Board members. At such an adjourned meeting of the Board the Board members present shall be deemed to be a quorum.
- 20.9 At every Board meeting the minutes of the preceding Board meeting which shall have been circulated to the Board members not later than fourteen (14) days before the meeting, shall be considered as read and shall be signed by the chairperson after approval by the Board members.
- 20.10 The proceedings of a Board meeting shall not be invalidated by reason of non-receipt by any Board member of the notice of the meeting.
- 20.11 A resolution in writing signed by all the Board members for the time being present in the Republic and being not less than are sufficient to form a quorum, shall be as valid and effectual as if it was passed at a Board meeting duly called and constituted. The resolution may consist of several documents, each signed by one or more Board members in terms of this Constitution.
- 20.12 In the case of matters requiring urgent resolution or, if for any reason it is impracticable to meet or pass a resolution, the meeting may be conducted and a resolution may be passed utilising conference telephone facilities and/or email, provided that the required quorum is met.
- 20.13 A Board member unable to attend a Board meeting may authorize any other Board member to vote for him or her at that meeting. In that event the Board member shall have a vote for each Board member by whom he or she is so authorized, in addition to his or her own vote.

- 20.14 Under no circumstances may a Board member nominate a representative to attend any Board meeting in his/her absence. In the event that a Board member is unable to attend a Board meeting such Board member must nominate another Board member who will be in attendance to act as his/her proxy for that particular meeting.
- 20.15 If at any meeting the chairperson is not present, the vice-chairperson shall preside over the meeting, failing which the Board members present may choose one of their members to be chairperson of the meeting.

## **21. EXECUTIVE COMMITTEE OF THE BOARD**

- 21.1 There shall be an Executive Committee of the Board to manage the day-to-day affairs of the Association in-between Board meetings and, without detracting from the generality of this power, to –
- 21.1.1 make decisions within the scope of matters delegated to it by the Board;
- 21.1.2 oversee the appointment of all full or part time salaried officials and/or employees who may be a corporate body, who shall hold office for such periods and perform such duties and receive such remuneration upon such terms as the Executive Committee may from time to time determine, so as to give effect to the objects and strategic plans of the Association;
- 21.1.3 decide on the principal place of business of the Association;
- 21.1.4 to open bank accounts and to administer any funds established by the Association;
- 21.1.5 to invest, retain, realise or reinvest any monies not required for the immediate business of the Association on fixed deposits or in government or in other recognised public securities, or in any other way that the Executive Committee may from time to time decide;
- 21.1.6 to appoint or nominate or authorise any person to act on behalf of the Association for the purpose of entering into any contract and/or to delegate any of its powers in terms of this Article to any office bearer or staff member of the Association;
- 21.1.7 to oversee the implementation of resolutions of the Association;
- 21.1.8 to approve and oversee any operational plan set by the EO, in line with the objects and strategic plans of the Association.
- 21.2 The Executive Committee shall meet as often as it deems necessary to ensure the efficient day-to-day management of the Association between Board meetings.
- 21.3 The Executive Committee, who shall serve a term concurrent with that of the Board, shall comprise of at least three but no more than seven Board members who are elected by the Board at its first meeting following a Board election and shall include,

- 21.3.1 The chairperson of the Association, ex officio;
- 21.3.2 The vice-chairperson of the Association, ex officio;
- 21.3.3 The Treasurer of the Association and
- 21.3.4 Immediate past chairperson of the Association, if s/he is available;
- 21.4 The EO shall act as the secretary of the Executive Committee of the Board
- 21.5 In the event of a vacancy on the Executive Committee, the Board shall by majority vote of Board members present, elect from amongst its members a Board member to fill that vacancy for the remainder of the term of the Executive Committee.
- 21.6 The quorum necessary for the transaction of business at a meeting of the Executive Committee shall be half the number of Executive Committee members plus one.

## **22. DUTIES OF THE CHAIRPERSON, VICE-CHAIRPERSON AND TREASURER**

- 22.1 The duties of the Chairperson of the Board shall be:
  - 22.1.1 to set, with the EO, the agendas of the meetings over which s/he presides;
  - 22.1.2 to convene and preside at all Board Meetings, Executive Committee Meetings, Annual General Meetings, and all General Meetings of the membership of the Association;
  - 22.1.3 to sign the minutes of the meetings over which s/he presides, after adoption;
  - 22.1.4 unless otherwise determined in terms of this Constitution, to make public statements on behalf of the Association or to mandate another Board or Board Executive Committee member or the EO or another staff member of the Association to do so, which statements have to be mandated by the Executive Committee;
  - 22.1.5 to represent the Association at all public functions;
  - 22.1.6 to make on behalf of SAMED any public announcement which s/he or the Board deem it necessary to make, unless a Board decision varies thus in any particular case, bearing in mind the subject-matter and context of such public function;
  - 22.1.7 to be ex officio a member of all committees and subcommittees of the Association or designate a Board member to act in such capacity for one or more of the subcommittees
- 22.2 The Chairperson shall have a casting vote in addition to his/her deliberative vote at all meetings where s/he presides.
- 22.3 In the absence of the Chairperson, the Vice-Chairperson shall fulfil the functions of the Chairperson.

22.4 The treasurer shall –

22.4.1 co-sign all cheques and all transactions drawn on the funds of SAMED with the EO or alternatively the Chairperson;

22.4.2 review the SAMED management accounts reports;

22.4.3 report on the management accounts to the Board at Board meetings; and

22.4.4 authorise all of the financial transactions of SAMED;

22.4.5 prepare an annual budget for SAMED for approval by the Board;

and

22.4.6 oversee the preparation of financial reports to be made to the Annual General Meeting.

### **23. COMMITTEES AND SUBCOMMITTEES**

23.1 The Board may establish and delegate or allocate any of its powers to committees consisting of such member or members of the Association as it thinks fit for any period that it deems fit.

23.2 Any committee so formed shall, in the exercise of the powers so delegated, conform to any resolutions and/or mandates and scopes of work that may be imposed on it by the Board. Save as aforesaid, the meetings and proceedings of a committee consisting of more than one member shall be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board.

23.3 Committees and subcommittees shall –

23.3.1 Establish an annual programme of action in line with the strategic direction set by the Board, which annual programme of each committee shall be approved by the Board;

23.3.2 Act only in an advisory capacity to the Board;

23.3.3 Always remain accountable to the Board;

23.3.4 Meet at least quarterly, but more frequently should the subject-matter of the mandate of the committee so dictate or as is deemed appropriate should the committee be established for a particular purpose to fulfil that purpose;

23.3.5 Not be entitled to take action on any matter or recommendation until approval has been granted therefore in writing by the Board; and

23.3.6 Authority in terms of this article must be in writing, which may take the form of a telegram, cable, telefax, telex or e-mail and must be handed to the person presiding at the meeting at which it is to be used.

23.4 The Board shall, from time to time, set Standard Operating Procedures for all SAMED committees and sub committees, which shall include, but not be limited to rules as to the operations, Constitution, mandates, disbursements, etc. of all such committees and sub-committees.

#### **24. OFFICE STAFF OF THE ASSOCIATION**

24.1 The Board may, upon recommendation of the Executive Committee appoint an Executive Officer ("EO") or any similar person in terms of the Association's organogram as set by the Board on such terms, as to remuneration or otherwise, as they think fit, to fulfil the duties set out in this Constitution and in particular this article.

24.2 The duties of the EO will be as defined by the Board and in accordance with the job description approved by the Board.

24.3 The EO has no vote at any meetings. Apart from the powers explicitly awarded to the EO or any other staff member in terms of this Constitution any other or further powers can only be conferred upon the EO or any other staff member with and within the explicit mandate of the Board.

#### **25. NOTICES**

25.1 A notice by the Association to any Member and entitled person shall be regarded as validly given if it:

25.1.1 is delivered personally to the Member; or

25.1.2 is sent by prepaid or normal post to his registered address or, if he has no registered address in the Republic, to the address in the Republic supplied by him to the Institute for the giving of notices to him; or

25.1.3 is sent by telefax, e-mail or other electronic method by which notice can be given to a telefax, email or other electronic address provided to SAMED in writing by the Member or on behalf of the member.

25.2 Every such notice shall be deemed, until the contrary is proved, to have been received-

25.2.1 if it is delivered, telefaxed, on the date on which it is so delivered or, in the case of email, the date on which it was sent;

25.2.2 if it is sent by post, on the date of posting.

#### **26. ACCOUNTING RECORDS, ANNUAL FINANCIAL STATEMENTS AND AUDITOR**

26.1 The Board shall cause true accounts to be kept of:

26.1.1 the sums of money received and expended by SAMED and the matters in respect of which such receipt and expenditure took place;

- 26.1.2 all sales and purchases of goods or services by SAMED; and
- 26.1.3 the assets and liabilities of SAMED.
- 26.2 The books and accounts shall be kept at the office of SAMED as established by the Board or at such other place or places as the Board may think fit and shall always be open for inspection by the members of the Association and members of the Board.
- 26.3 A copy of the financial statements as applied, which are to be placed before the membership at an Annual General Meeting, and the Board and auditor's report shall, not less than fourteen (14) days before the date of the meeting, be made available on request to all members entitled to vote at an annual general meeting.
- 26.4 All payments made by SAMED are to be authorised by the Executive Committee, according to the financial policy and procedure as adopted by the Board from time to time.
- 26.5 The financial year of the Association shall be from 1<sup>st</sup> January to the 31<sup>st</sup> December of the same year.
- 26.6 Any arrear subscriptions or any levies owing by members to SAMED may be recovered by action in a court of competent jurisdiction.
- 26.7 Auditors shall be appointed at every annual general meeting and their duties regulated by the Board in accordance with the principles of Generally Accepted Accounting Principles.

## **27. ACCOUNTS**

- 27.1 SAMED shall open and operate such bank accounts as may be necessary to conduct its business, save that such accounts shall be opened only in its own name at a registered commercial bank.
- 27.2 The Board shall, by resolution, appoint the requisite number and names of signatories from time to time, and shall, from time to time determine any monetary values to be associated with the various banking activities by formal resolution.

## **28. PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY**

- 28.1 The income and property of the Association, whensoever derived, shall be applied solely towards the promotion of its main object and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the members of the Association; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Association or to any member thereof in return for any services actually rendered to the Association.

28.2 For the purposes of article 27.1, the investment of surplus profits shall be permissible, provided that any profits occurring on such investments are applied solely towards the promotion of the main object of the Association.

## **29. DONATIONS**

The Association may only make donations to other companies, societies, or associations having a main purpose and similar objectives to the Association's main purpose and objectives but may, through special projects, participate in programmes that benefit causes or projects so approved by the Board.

## **30. SIGNATURE OF DOCUMENTS**

All powers of attorney, bonds, deeds and other instruments shall be signed and executed on behalf of SAMED by such member (s) of the Board or by such employee(s) or office bearer(s) of SAMED as the Board shall decide.

## **31. VALIDITY OF ACTS OF BOARD MEMBERS, COMMITTEES AND SUBCOMMITTEES**

As regards all persons dealing in good faith with SAMED, all acts done by any meeting of- or by the Board, its members, committees or subcommittee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of such bodies or persons acting as aforesaid or that they or any of them were disqualified or had ceased to hold office or were not entitled to vote, be as valid as if every such person had been duly appointed or was qualified or had continued to be a Board member or was entitled to vote, as the case may be.

## **32. LIMITATION OF LIABILITY OF REPRESENTATIVES**

32.1 Each current or past Board Member, Executive Committee member, manager, EO, other officer, servant or auditor of the Association and any person employed by the Association as its auditor, shall be indemnified by the Association against any liability incurred by him or her from time to time in that capacity in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or in which s/he is acquitted or in respect of any of those proceedings which are abandoned.

32.2 Every current or past Board Member, Executive Committee member, manager, EO and other officer or servant or auditor of the Association and any person employed by the Association as its auditor shall be indemnified by the Association against all costs, losses and expenses which any such person may incur or become liable to, by reason of any contract entered into or any act or deed done by him or her in the discharge of his duties for the Association.



Without prejudice to the generality of the above, the Association shall specifically indemnify every Board Member, Executive Committee member, manager, EO and other officer against all losses of whatsoever nature incurred arising out of any bona fides act, deed or letter done or written by him or her jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

- 32.3 No current or past Board Member, Executive Committee member, manager, EO and other officer or servant or auditor of the Association shall be liable for the acts, receipts, neglects or defaults of any other or servant or auditor, or for joining in any receipt or other act for conformity, or for a loss or expense happening to the Association through the insufficiency or deficiency of title to any properly acquired by order of the Board for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his or her office or in relation thereto, unless the same happen through lack of bona fides or breach of duty or breach of trust.
- 32.4 The Association shall ensure that sufficient professional- and other indemnity cover is in place to cover its members, committees, officials and staff from any liability that the Association may face as a result of its activities for and on behalf of the Association.

### **33. DISSOLUTION OR WINDING-UP**

Upon the dissolution or winding-up of the Association, the assets of the Association remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution or associations or institutions having objects similar to its main object, to be determined by the members of the Association at or before the time of its dissolution or winding down, or, failing such determination, by the Court.

Signed on behalf of SAMED Membership



Marlon G Burgess  
SAMED Chairperson



Jeff Hampton  
SAMED Vice Chairperson