

CONSTITUTION

of

THE SOUTH AFRICAN MEDICAL TECHNOLOGY INDUSTRY ASSOCIATION ("SAMED")

1. Date of constitution

This Constitution ("Constitution") was adopted by special resolution of the members of SAMED ("Members" and each a "Member") on the 19th November 2018 (the "Adoption Date") and entirely replaces the constitution of SAMED adopted on 13 February 2014.

2. Name

The name of SAMED is **THE SOUTH AFRICAN MEDICAL TECHNOLOGY INDUSTRY ASSOCIATION**.

3. Legal Status

SAMED is a voluntary association having a separate legal personality, constituting a corporate body with perpetual succession and is governed by this Constitution and any applicable laws.

4. National location of principal office

SAMED will have its principal office in South Africa.

5. Purpose

The purpose of SAMED is to:

- 5.1 safeguard and promote the common interests of the Members, including relating to the design, manufacture, importation, exportation, marketing, distribution and sale (retail and wholesale), application, use and/or other application of medical devices (as contemplated in the Medicines and Related Substances Act, 1965) and/or medical technology ("Medical Technology"), the regulation of any aspect of the foregoing and/or in relation to the industry (the "Medical Technology Industry") in which the Members operate;
- 5.2 encourage the adoption and implementation by the Members of ethical principles and practices in the conduct of their businesses and affairs;
- 5.3 promote innovation and better patient outcomes;
- 5.4 effectively represent the interests of the Members with all relevant authorities, whether public or private;
- 5.5 advance the harmonisation of the standards and regulatory requirements applicable to Medical Technology and the Medical Technology Industry.

6. Objects

In pursuing its purpose, the objects of SAMED are, from time to time, to:

- 6.1 lawfully and reasonably pursue the best interests of the Members without unreasonably detracting from the needs and rights of patients;
- 6.2 provide a forum for discussion on matters affecting the Members and the Medical Technology Industry;

- 6.3 formulate and enforce codes of good practice (the “**Codes of Practice**”);
- 6.4 communicate and represent the Members’ positions and views in relation to Medical Technology Industry matters;
- 6.5 co-operate with governments and regulatory authorities in respect of the regulation of the Medical Technology Industry; and
- 6.6 promote a spirit of co-operation and shared responsibility among role-players in the public and private health care sectors, to achieve effective, efficient and transparent health care delivery.

7. Voluntary compliance with the restrictions in the Companies Act

SAMED will adhere to any restrictions (“**NPC Restrictions**”) imposed by the Companies Act, 2008 (the “**Companies Act**”) on or relating to non-profit companies (“**NPC’s**”) (notwithstanding that SAMED is a not an NPC) that are determined by SAMED to have application to its purpose, objects, affairs and/or the application of its property. Nothing in this Constitution will authorise any conduct, act, omissions or the application of the property of SAMED for the purposes that could contravene such NPC restrictions, as so determined by SAMED to be of application.

8. Voluntary compliance with the King Report and Code

SAMED will adhere to the principles of, and any restrictions imposed under, the King Report on Governance for South Africa and the King Report and Code of Governance Principles (the “**King Report**”) that are determined by SAMED to have application to its purpose, objects, affairs and/or the application of its property. Nothing in this Constitution will authorise any conduct, act, omissions or the application of the property of SAMED for the purposes that could contravene such principles of, or restrictions under, the King Report, as so determined by SAMED to be of application.

9. Membership of SAMED

9.1 Founding Members

The founding members of the predecessor bodies to SAMED as now constituted under this Constitution are:

- (a) Brittan Healthcare Group;
- (b) Browning Medical CC;
- (c) Marcus Medical Proprietary Limited;
- (d) Orthomedics Proprietary Limited;
- (e) Safmed Proprietary Limited;
- (f) Smith & Nephew Proprietary Limited; and
- (g) Southern Implants Proprietary Limited.

9.2 Admission of new Members

(a) Categories of Membership

The Board Members may create associate or other classes of non-voting Membership, and may determine the rights and obligations of any such Members (including as to the payment of Membership fees), and the conditions for admission to, and termination of Membership of any such class of Members.

(b) Eligibility

- (i) A Member may be an individual, a corporate body, or an organisation which is not incorporated.

- (ii) Membership of SAMED is open to any member of the Medical Technology Industry who is interested in furthering its purposes, who, by applying for Membership, has indicated his, her or its agreement to become a Member and acceptance of the duty of Members set out in clause 9.4 and who complies with the Board's published minimum criteria for membership, and will be entitled to amend same from time to time.

(c) **Categories of Membership at the Date of Adoption**

The categories of Membership as at the Date of Adoption are:

- (i) ordinary Members, being voting Members whose primary business is the design, manufacture, importation, exportation, marketing, sale, application, use, wholesaler and/or other application of Medical Technology;
- (ii) associate Members, being non-voting Members who do not qualify as ordinary Members but trade with and/or provide services to the Medical Technology Industry;
- (iii) association Members: being voting Members who do not qualify as ordinary Members or associate members but have some overlapping objectives and interests to those of SAMED within the Medical Technology Industry or relating to Medical Technology; and
- (iv) honorary members, being non-voting, non-Board Members who are natural persons who, in the opinion of the board of SAMED (the "**Board**" and each member of the Board being a "**Board Member**"), have rendered exceptionally valuable or exemplary services to SAMED or the Medical Technology Industry and have been granted honorary membership by the Board and who may attend meetings of Members, but not be entitled to vote thereat, may receive general communications and may be invited to SAMED activities and functions.

(d) **Admission procedure**

The Board or its executive committee (the "**ExCo**"):

- (i) may require applications for Membership to be made in any reasonable way that it determines from time to time;
- (ii) will, if it approves an application for Membership, notify the applicant of its decision within a reasonable time period;
- (iii) may refuse an application for Membership if the Board deems that it is in the best interests of SAMED for it to do so;
- (iv) will, if it decides to refuse an application for Membership, give the applicant its reasons for doing so, within a reasonable time period of the decision being taken,
- (v) upon acceptance of Membership, issue a letter of Membership to the Member confirm its Membership and enter such Member's name into SAMED's Membership register.

(e) **Representatives**

Each Member will from time to time nominate, and will be entitled to replace, on notice to SAMED's executive officer ("**EO**") a principal representative ("**Representative**") who will be the authorised representative of the Member to attend and vote at all meetings of SAMED.

9.3 **Transfer of Membership**

Membership of SAMED may not be transferred other than with the permission of SAMED, which will not be unreasonably withheld if the transfer arises from a Corporate Transaction (being (i) a disposal by a Member of the whole or substantially the whole of its business or undertaking; (ii) a disposal by a Member of all or the greater

parts of its assets: (iii) a merger or amalgamation by a Member with any other person: (iv) the occurrence of a Fundamental Transaction (as defined in the Companies Act, or (vi) any analogous event).

9.4 **Duty of Members**

It is the duty of each Member to:

- (a) exercise his, her or its powers as a Member in good faith and in furtherance of the purpose and objects of SAMED and in all events in a manner that supports and abides by this Constitution;
- (b) contribute reasonable time and resources to the management and operation of SAMED, including by making its personnel available for appointment to SAMED Committees;
- (c) ensure that its Representatives are properly mandated and informed on its positions relevant to SAMED;
- (d) implement mechanisms to ensure that it is appraised on developments within SAMED;
- (e) pay, on time, in full and without deduction or set-off, its annual subscription fees and any other levy that may be imposed under this Constitution;
- (f) comply with all decisions of SAMED (whether of its Board or Members), this Constitution, the Codes of Practice, the SAMED Competition Law Compliance Guidelines, any other codes, or guidelines published by the Board from time to time and any applicable by-laws;

provided that the foregoing duties will not detract from the rights of Members to formulate and maintain views on matters of importance to them, and, in exceptional circumstances, request that the Board, in its discretion, include caveats on SAMED presentations or submissions to such effect.

9.5 **Termination or Suspension of Membership**

- (a) The Board may terminate or suspend any Member if:
 - (i) the Member breaches this Constitution, the Codes of Practice, any other codes published by the Board from time to time and any applicable by-law and fails to remedy such breach, where it is capable of remedy, within such period as the Board stipulates;
 - (ii) the Member is a natural person, is convicted of a criminal offence involving dishonesty, commits a fraud, dies or, in the written opinion, given to the Board, of a registered medical practitioner treating that person, a Member has become physically or mentally incapable of and may remain so for more than 3 months
 - (iii) the Member is an organisation (or the representative of an organisation) and that organisation ceases to exist or is placed under business rescue or supervision or is liquidated, wound-up or placed under judicial management, whether provisionally or finally and whether compulsorily or voluntarily; or
 - (iv) the Member sends a notice of resignation to the Board (provided that, as at the date of such notice of resignation, there are no unresolved proceedings pending against such Member under or in relation to its Membership, this Constitution, the Codes of Practice, any other codes published by the Board from time to time and/or any applicable by-law); or
 - (v) the Board decides that it is in the best interests of SAMED that the Member in question should be removed from Membership, and the Board passes a resolution to that effect.
- (b) Before the Board takes any decision to remove a Member, the Board will:
 - (i) inform the Member of the reasons why it is proposed to remove him, her or it from Membership;
 - (ii) give the Member at least 21 days' notice in which to make representations to the Board

- Members as to why he, she or it should not be removed from Membership;
- (iii) at a duly constituted meeting of the Board Members, consider whether or not the Member should be removed from Membership;
 - (iv) consider at that meeting any representations which the Member makes as to why the Member should not be removed; and
 - (v) allow the Member, or the Member's representative, to make those representations in person at that meeting, if the Member so chooses.
- (c) On termination of Membership the Member will immediately return to SAMED any certificate of Membership or plaque and any SAMED property and will 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, her or its Membership of SAMED and will under no circumstances have any claim on SAMED or its officers, its property or its funds.
- (d) Members are liable for fees unless notice of resignation is given in writing to the Executive Officer on or before 1 December. Members are liable for fees for the year during which resignation is given.

9.6

Membership fees

- (a) The Board may require Members to pay reasonable Membership fees, levies and other charges to SAMED in such amounts and at such intervals as the Board may determine. Unless otherwise determined by the Board, annual fees and/or subscriptions will be payable by 31st March and will be invoiced to new Members joining during the year, on a pro rata basis
- (b) Honorary Members will be exempt from the payment of Membership fees and annual subscriptions, however, this does not exempt any other Member who employs the honorary Member, from fees or subscriptions.
- (c) Any disputes of Members concerning the payment of fees and/or subscriptions will be referred to a Board committee set up for this purpose, whose decision in this regard will be final.
- (d) No previous Member will be eligible for re-admission to Membership for so long as any amounts remain outstanding to SAMED.

10. Members' decisions

10.1 General provisions

Except for those decisions that will be taken in a particular way as indicated in clause 10.4, decisions of the Members may be taken either by vote at a general meeting as provided in clause 10.2 or by written resolution as provided in clause 10.3.

10.2 Taking ordinary decisions by vote

Subject to clause 10.4, any decision of the Members may be taken by means of a resolution at a general meeting. Such a resolution may be passed by a simple majority of votes cast at the meeting (including votes cast by email ballot, and proxy votes).

10.3 Taking ordinary decisions by written resolution without a general meeting

- (a) Subject to clause 10.4, a resolution in writing agreed by a simple majority of all the Members who would

have been entitled to vote upon it had it been proposed at a general meeting will be effective, provided that:

- (i) a copy of the proposed resolution has been sent to all the Members eligible to vote; and
 - (ii) a simple majority of Members has signified its agreement to the resolution in a document or documents which are received at SAMED's principal office within the period of 28 days beginning with their circulation date. The document signifying a Member's agreement will be authenticated by their signature (or in the case of an organisation which is a Member, by execution according to its usual procedure), by a statement of their identity accompanying the document, or in such other manner as SAMED has specified.
- (b) The resolution in writing may comprise several copies to which one or more Members has signified their agreement.
 - (c) Eligibility to vote on the resolution is limited to Members who are Members on the date when the proposal is first circulated in accordance with clause 10.3(a).
 - (d) Not less than 10% of the Members may request the Board Members to make a proposal for decision by the Members.
 - (e) The Board Members will within 21 days of receiving such a request comply with it if:
 - (i) the proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;
 - (ii) the proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the Members; and
 - (iii) effect can lawfully be given to the proposal if it is so agreed.

10.4 **Reserved Matters**

- (a) Decisions in relation to the Reserved Matters may only be taken:
 - (i) by resolution agreed in writing by all Members; or
 - (ii) by a resolution passed by a 75% majority of votes cast at a general meeting of the Members.
- (b) The Reserved Matters are:
 - (i) amendment of this Constitution;
 - (ii) any decision to wind up or dissolve SAMED under clause 36 of this Constitution (Voluntary winding up or dissolution).
 - (iii) any merger or amalgamation by SAMED with any other person;
 - (iv) the creation or amendment of any encumbrances, mortgages, liens or other charges on the assets of SAMED;
 - (v) the giving of guarantees by SAMED in respect of the obligations of any third-party
 - (vi) the institution, defence or settlement of legal proceedings, including arbitration proceedings, against or in relation to a non-Member;

11. **General meetings of Members**

11.1 **Types of general meeting**

- (a) There will be an annual general meeting (“**AGM**”) of the Members.
- (b) AGMs will be held not later than the last day of the month of May in each year. The AGM will receive the

annual statement of accounts (duly audited or examined where applicable) and the Board's annual report, and will elect Board Members as required under clause 13.

- (c) Other general meetings of the Members may be held at any time.
- (d) All general meetings will be held in accordance with the following provisions of this clause.

11.2 **Calling general meetings**

- (a) The Board Members:
 - (i) will call the AGM of the Members in accordance with clause 11.1, and identify it as such in the notice of the meeting; and
 - (ii) may call any other general meeting of the Members at any time.
- (b) The Board Members will, within 21 days, call a general meeting of the Members if:
 - (i) they receive a request to do so from at least 10% of the Members; and
 - (ii) the request states the general nature of the business to be dealt with at the meeting, and is authenticated by the Member(s) making the request.
- (c) Any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the meeting.
- (d) A resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious.
- (e) Any general meeting called by the Board Members at the request of the Members will be held within 28 days from the date on which it is called.
- (f) If the Board Members fail to comply with this obligation to call a general meeting at the request of its Members, then the Members who requested the meeting may themselves call a general meeting.
- (g) A general meeting called in this way will be held not more than 3 months after the date when the Members first requested the meeting.
- (h) SAMED will reimburse any reasonable expenses incurred by the Members calling a general meeting by reason of the failure of the Board Members to duly call the meeting, but SAMED will be entitled to be indemnified by the Board Members who were responsible for such failure.

11.3 **Notice of general meetings**

- (a) The Board Members, or, as the case may be, the relevant Members, will give at least 21 days notice of any general meeting to all of the Members, and to any Board Member of SAMED who is not a Member.
- (b) If it is agreed by not less than 90% of all Members, any resolution may be proposed and passed at the meeting even though the requirements of the above sub-clause have not been met.
- (c) The notice of any general meeting will:
 - (i) state the time and date of the meeting;
 - (ii) give the address at which the meeting is to take place;
 - (iii) give particulars of any resolution which is to be moved at the meeting, and of the general nature of any other business to be dealt with at the meeting; and
 - (iv) if a proposal to alter the constitution of SAMED is to be considered at the meeting, including the text of the proposed alteration;
 - (v) include, with the notice for the AGM, the annual statement of accounts and Board Members' annual report, details of persons standing for election or re-election as Board Member, or

where allowed under clause 27 (Use of electronic communication), details of where the information may be found on SAMED's website.

- (d) Proof that an electronic form of notice was properly addressed and sent, will be conclusive evidence that the notice was given. Notice will be deemed to be given 48 hours after it was sent.
- (e) The proceedings of a general meeting will not be invalidated because a Member who was entitled to receive notice of the meeting did not receive it because of accidental omission by SAMED.

11.4 Chairing of general meetings

The person nominated as chair or vice chair by the Board Members under clause 14(a) (Chairing of meetings), will, if present at the general meeting and willing to act, preside as chair of the meeting. Subject to that, the Members who are present at a general meeting will elect a chair to preside at the meeting.

11.5 Quorum at general meetings

- (a) No business may be transacted at any general meeting of the Members unless a quorum is present when the meeting starts.
- (b) Subject to the following provisions, the quorum for general meetings will be 25 Members. An organisation represented by a person present at the meeting in accordance with clause 11.9, is counted as being present in person.
- (c) If the meeting has been called by or at the request of the Members and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the meeting is closed.
- (d) If the meeting has been called in any other way and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the chair will adjourn the meeting. The date, time and place at which the meeting will resume will either be announced by the chair or be notified to SAMED's Members at least seven days before the date on which it will resume.
- (e) If a quorum is not present within 15 minutes of the start time of the adjourned meeting, the Member or Members present at the meeting constitute a quorum.
- (f) If at any time during the meeting a quorum ceases to be present, the meeting may discuss issues and make recommendations to the Board Members but may not make any decisions. If decisions are required which will be made by a meeting of the Members, the meeting will be adjourned.

11.6 Voting at general meetings

- (a) Any decision other than one falling within clause 10.4 (decisions that will be taken in a particular way) will be taken by a simple majority of votes cast at the meeting (including proxy and postal votes). Every Member has one vote unless otherwise provided in the rights of a particular class of Membership under this Constitution.
- (b) A resolution put to the vote of a meeting will be decided on a show of hands, unless (before or on the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chair or by at least 10% of the Members present in person or by proxy at the meeting.
- (c) A poll demanded on the election of a person to chair the meeting or on a question of adjournment will be taken immediately. A poll on any other matter will be taken, and the result of the poll will be announced, in such manner as the chair of the meeting will decide, provided that the poll will be taken, and the result of the poll announced, within 30 days of the demand for the poll.
- (d) A poll may be taken:
 - (i) at the meeting at which it was demanded; or
 - (ii) at some other time and place specified by the chair; or

- (iii) through the use of postal or electronic communications.
- (e) In the event of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting will have a second, or casting vote.
- (f) Any objection to the qualification of any voter will be raised at the meeting at which the vote is cast and the decision of the chair of the meeting will be final.

11.7 **Proxy voting**

- (a) Any Member may appoint another Member as a proxy to exercise all or any of that Member's rights to attend, speak and vote at a general meeting of SAMED. A Member appointed as a proxy may hold a maximum of 5 proxies. Proxies will be appointed by a notice in writing (a "proxy notice") which:
 - (i) States the name and address of the Member appointing the proxy.
 - (ii) Identifies the person appointed to be that Member's proxy and the general meeting in relation to which that person is appointed.
 - (iii) Is signed by or on behalf of the Member appointing the proxy, or is authenticated in such manner as SAMED may determine.
 - (iv) Is delivered to SAMED in accordance with the constitution and any instructions contained in the notice of the general meeting to which they relate.
- (b) SAMED may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (c) Proxy notices may (but do not have to) specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (d) Unless a proxy notice indicates otherwise, it will be treated as:
 - (i) Allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting.
 - (ii) Appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.
- (e) A Member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to SAMED by or on behalf of that Member.
- (f) An appointment under a proxy notice may be revoked by delivering to SAMED a notice in writing given by or on behalf of the Member by whom or on whose behalf the proxy notice was given.
- (g) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (h) If a proxy notice is not signed or authenticated by the Member appointing the proxy, it will be accompanied by written evidence that the person who signed or authenticated it on that Member's behalf had authority to do so.
- (i) A proxy vote may be lodged with the EO prior to a meeting where such vote is to take place

11.8 **Postal and Email Voting**

- (a) SAMED may, if the Board Members so decide, allow the Members to vote by post or electronic mail ("**email**") to elect Board Members or to make a decision on any matter that is being decided at a general meeting of the Members.

- (b) The Board Members will appoint at least two persons independent of SAMED to serve as scrutineers to supervise the conduct of the email ballot and the counting of votes.
- (c) If postal and/or email voting is to be allowed on a matter, SAMED will send to Members not less than 21 days before the deadline for receipt of votes cast in this way:
 - (i) a notice by email, if the Member has agreed to receive notices in this way under clause 27 (Use of electronic communications), including an explanation of the purpose of the vote and the voting procedure to be followed by the Member, and a voting form capable of being returned by email or post to SAMED, containing details of the resolution being put to a vote, or of the candidates for election, as applicable;
 - (ii) a notice by post to all other Members, including a written explanation of the purpose of the postal vote and the voting procedure to be followed by the Member; and a postal voting form containing details of the resolution being put to a vote, or of the candidates for election, as applicable.
- (d) The voting procedure will require all forms returned by post to be in an envelope with the Member's name and signature, and nothing else, on the outside, inside another envelope addressed to 'The Scrutineers for SAMED', at SAMED's principal office or such other postal address as is specified in the voting procedure.
- (e) The voting procedure for votes cast by email will require the Member's name to be at the top of the email, and the email will be authenticated in the manner specified in the voting procedure.
- (f) Email votes will be returned to an email address used only for this purpose and will be accessed only by a scrutineer.
- (g) The voting procedure will specify the closing date and time for receipt of votes, and will state that any votes received after the closing date or not complying with the voting procedure will be invalid and not be counted.
- (h) The scrutineers will make a list of names of Members casting valid votes, and a separate list of Members casting votes which were invalid. These lists will be provided to a Board Member or other person overseeing admission to, and voting at, the general meeting. A Member who has cast a valid email vote will not vote at the meeting, and will not be counted in the quorum for any part of the meeting on which he, she or it has already cast a valid vote. A Member who has cast an invalid vote by email is allowed to vote at the meeting and counts towards the quorum.
- (i) Votes cast by email will be counted by all the scrutineers before the meeting at which the vote is to be taken. The scrutineers will provide to the person chairing the meeting written confirmation of the number of valid votes received by post and email and the number of votes received which were invalid.
- (j) The scrutineers will not disclose the result of the email ballot until after votes taken by hand or by poll at the meeting, or by poll after the meeting, have been counted. Only at this point will the scrutineers declare the result of the valid votes received, and these votes will be included in the declaration of the result of the vote.
- (k) Following the final declaration of the result of the vote, the scrutineers will provide to a Board Member or other authorised person bundles containing the evidence of Members submitting valid postal votes; evidence of Members submitting valid email votes; evidence of invalid votes; the valid votes; and the invalid votes.
- (l) Any dispute about the conduct of an email ballot will be referred initially to a panel set up by the Board Members, to consist of two Board Members and two persons independent of SAMED. If the dispute cannot be satisfactorily resolved by the panel, it will be resolved under clause 35.

11.9 Representation of organisations and corporate Members

- (a) An organisation or corporate body that is a Member may, in accordance with its usual decision-making process, authorise a person to act as its representative at any general meeting of SAMED.
- (b) The representative is entitled to exercise the same powers on behalf of the organisation or corporate body as the organisation or corporate body could exercise as an individual Member.

11.10 Adjournment of meetings

The chair may, with the consent of a meeting at which a quorum is present (and will if so directed by the meeting), adjourn the meeting to another time and/or place. No business may be transacted at an adjourned meeting except business which could properly have been transacted at the original meeting.

12. Board Members

12.1 Functions and duties of Board Members

The Board Members will manage the affairs of SAMED and may for that purpose exercise all the powers of SAMED. It is the duty of each Board Member:

- (a) To exercise his or her powers and to perform his or her functions as a Board Member of SAMED in the way he or she decides in good faith would be most likely to further the purpose and objects of SAMED.
- (b) To exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:
 - (i) any special knowledge or experience that he or she has or holds himself or herself out as having; and
 - (ii) if he or she acts as a Board Member of SAMED in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

12.2 Eligibility for Board Membership

- (a) Every Board Member will be a natural person in full time employment of an ordinary member or an ex officio Board Member
- (b) No one may be appointed as a Board Member:
 - (i) if he or she is under the age of 21 years; or
 - (ii) if he or she would automatically cease to hold office under the provisions outlined in clause 16.
- (c) No one is entitled to act as a Board Member whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the Board Members decide, his or her acceptance of the office of Board Member.

12.3 Number of Board Members

- (a) There will be at least 3 Board Members. If the number falls below this minimum, the remaining Board Member or Board Members may act only to call a meeting of the Board Members, or appoint a new Board Member.
- (b) The maximum number of Board Members is 16. The Board Members may not appoint any Board Member if as a result the number of Board Members would exceed the maximum.

13. Appointment of Board Members

13.1 Categories of Board Members

- (a) The Board will be constituted of:
 - (i) Twelve Board Members elected by the ordinary Members (the “**Elected Board Members**”) from persons in full time employment of such Members;
 - (ii) A Board Member that is a Board Member by virtue of (a) the office he or she holds and (b) a Board Member nominated by an Association member (the “**Ex Officio Board Member**”), which shall not exceed four in number as determined by the Board; and
 - (iii) Board Members that are nominated by the Board (the “**Nominated Board Members**”). Subject that the total number of Board Members shall not exceed 16
- (b) The Board Members of SAMED as at the Date of Adoption will continue. They are:
 - (i) Terence Moodley who is an Elected Board Member;
 - (ii) Ruwaida Shaikh who is an Elected Board Member;
 - (iii) Avanthi Govender Bester who is an Elected Board Member;
 - (iv) Clive Michael Potter who is an Elected Board Member;
 - (v) Tebatso Tenyeko Tebeila who is an Elected Board Member;
 - (vi) Jeffrey Mitchell Hampton who is an Elected Board Member;
 - (vii) Madeleine Anne Pearce who is an Elected Board Member;
 - (viii) Marlon George Burgess who is an Elected Board Member;
 - (ix) Robert John Millar who is an Elected Board Member;
 - (x) Stacy Anne Meyer who is an Elected Board Member;
 - (xi) Tanya Watson who is an Elected Board Member;
 - (xii) Timothy James Bourne who is an Elected Board Member;
 - (xiii) Reiner Leonhard Gabler who is an Ex Officio Board Member;
 - (xiv) Sabine Hellyer who is an Ex Officio Board Member; and
 - (xv) William George Hodson who is an Ex Officio Board member.

13.2 **Elected Board Members**

- (a) The Elected Board Members will constitute not more than 12 and not less than 3 of the Board Members.
- (b) At every AGM, those Elected Board Members who have completed a tenure of 2 years will retire from office.
- (c) The Elected Board Members to retire by rotation will be those who have been longest in office since their last appointment or reappointment. If any Board Members were last appointed or reappointed on the same day those to retire will (unless they otherwise agree among themselves) be determined by lot.
- (d) The vacancies so arising may be filled by the decision of the Members at the AGM.
- (e) The Board Members may at any time decide to appoint a new Board Member, whether in place of a Board Member who has retired or been removed in accordance with clause 16 (Retirement and removal of Board Members), or as an additional Board Member, provided that the limit specified in clause 12.3 on the number of Board Members would not as a result be exceeded.
- (f) A person so appointed by the Board Members will retire in accordance with the provisions of clause

13.2(a) and clause 13.2(c).

- (g) No ordinary Member may have more than two persons employed by it serve as a Board Member at any given time.
- (h) All Elected Board Members will be eligible for re-election on termination of their period of office.
- (i) Members will nominate potential Elected Board Members using such procedures as may be stipulated for that purpose from time to time by the Board, provided that such nominations must be made by not later than 14 days prior to the date of the AGM proposed by the Board.
- (j) No nominations for the Board will be made at any AGM.
- (k) Any person nominated to serve as an Elected Board Member will in writing indicate and lodge with the EO his or her willingness to accept such nomination not less than ten (10) days before each AGM, failing which he or she will be deemed to be unwilling to act as such.
- (l) Each Member entitled to vote will have one vote per proposed resolution of the Members.
- (m) Votes for the election of nominees to the Board will be allocated equally as to the number of candidates eligible to be elected to the Board.
- (n) 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.
- (o) Election as an Elected Board Member will be on the basis of nominees receiving the highest number of votes.
- (p) Board Members, whether elected, ex officio, or nominated, shall not be entitled to appoint alternate Board Members and in the event of such Board Member resigning or being removed there shall be no automatic right to nominate a Board Member in his stead.

13.3 Nominated Board Members

- (a) The Board may nominate, appoint and remove Nominated Board Members at any meeting of the Board.
- (b) Each appointment will be for a term as determined by the Board.
- (c) The person appointed need not be a Member or representative of a Member.
- (d) Subject to being elected to the Board, each nominee will sign a confidentiality agreement between SAMED and such nominee; provided that if such nominee has previously signed such a confidentiality agreement with SAMED such nominee will not be required to sign a new agreement.

14. Other Formalities

- (a) The Board will, at its first meeting after the AGM, elect, from within its number, a chairperson, vice-chairperson and treasurer.
- (b) The chairperson and vice-chairperson will serve in that capacity for a term of one year; provided that no Board Member will be elected chairperson or vice-chairperson, respectively, for more than four consecutive years.

15. Information for new Board Members

The Board Members will make available to each new Board Member, on or before his or her first appointment:

- (a) a copy of this Constitution, the Codes of Practice, any other codes published by the Board from time to time and any applicable by-laws;
- (b) a copy of SAMED's latest annual report and statement of accounts; and
- (c) a copy of SAMED's Board Member roles and responsibilities and confidentiality agreement which each

new Board Member will be required to sign

16. Retirement and removal of Board Members

16.1 A Board Member ceases to hold office if he or she:

- (a) retires by notifying SAMED in writing (but only if enough Board Members will remain in office when the notice of resignation takes effect to form a quorum for meetings);
- (b) dies;
- (c) in the written opinion, given to the Board, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a Board Member and may remain so for more than 3 months; and the Board Members resolve that his or her office be vacated
- (d) is removed by the Members in accordance with clause 16.1(e);
- (e) is sequestrated, is the subject of an application for the surrender of his or her estate or for an administration order and the Board Members resolve that his or her office be vacated;
- (f) commits an act of insolvency or makes any arrangement or composition with his or her creditors generally and the Board Members resolve that his or her office be vacated;
- (g) is an Elected Board Member and ceases to be a fulltime employee of a Member or that Member ceases to be a Member or that Member is in any breach of any material obligation imposed on it under this Constitution;
- (h) in the view of the Board (in its discretion), is guilty of conduct adverse and prejudicial to the interests, objectives or objects of SAMED and the Board Members resolve that his or her office be vacated;
- (i) in the view of the Board (in its discretion), continuing as a Board Member is adverse or prejudicial to the interests of SAMED and the Board Members resolve that his or her office be vacated;
- (j) in the view of the Board (in its discretion), such a Board Member has contravened any Code of Practice and has failed to remedy such contravention despite having been requested in writing to remedy such contravention;
- (k) absents him or herself from three consecutive Board meetings or meetings of the Members without tendering an apology for his or her absence and the Board Members resolve that his or her office be vacated; or
- (l) fails to attend at least 50% of the Board meetings, even if having tendered apologies, in any financial year and the Board Members resolve that his or her office be vacated; and/or
- (m) is removed by the Members pursuant to clause 10.4.

16.2 A Board Member will be removed from office if a resolution to remove that Board Member is proposed at a general meeting of the Members called for that purpose and properly convened in accordance with clause 10.4, and the resolution is passed by:

- (a) a resolution passed by a 75% majority of those voting; or
- (b) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting.

16.3 A resolution to remove a Board Member in accordance with clause 16.1(c), clause 16.1(e), clause 16.1(f), clause 16.1(h), clause 16.1(i), clause 16.1(j), clause 16.1(j) or clause 16.1(l) will not take effect unless the Board Member concerned has been given at least 14 days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been given a reasonable opportunity of making oral and/or written representations to the Members.

17. Reappointment of Board Members

Any person who retires as a Nominated Board Member by rotation or by giving notice to SAMED is eligible for reappointment.

18. Taking of decisions by Board Members

Any decision may be taken either:

- (a) at a meeting of the Board Members;
- (b) by resolution in writing or electronic form agreed by a majority of all of the Board Members, which may comprise either a single document or several documents containing the text of the resolution in like form to which the majority of all of the Board Members has signified their agreement. Such a resolution will be effective provided that:
 - (i) a copy of the proposed resolution has been sent, at or as near as reasonably practicable to the same time, to all of the Board Members; and
 - (ii) the majority of all of the Board Members has signified agreement to the resolution in a document or documents which has or have been authenticated by their signature, by a statement of their identity accompanying the document or documents, or in such other manner as the Board Members have previously resolved, and delivered to SAMED at its principal office or such other place as the Board Members may resolve within 14 days of the circulation date.

19. Delegation by Board Members

19.1 The Board Members may delegate any of their powers or functions to a committee or committees, and, if they do, they will determine the terms and conditions on which the delegation is made. The Board Members may at any time alter those terms and conditions, or revoke the delegation.

19.2 This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the Board Members, but is subject to the following requirements:

- (a) a committee may consist of two or more persons, but at least one Member of each committee will be a Board Member;
- (b) the acts and proceedings of any committee will be brought to the attention of the Board Members as a whole as soon as is reasonably practicable; and
- (c) the Board Members will from time to time review the arrangements which they have made for the delegation of their powers.

20. Meetings and proceedings of Board Members

20.1 Calling meetings

- (a) Any Board Member may call a meeting of the Board Members.
- (b) Subject to the above, the Board Members will decide how their meetings are to be called, and what notice is required.

20.2 Procedure at meetings

- (a) No decision will be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is a majority in number of the Board Members. A Board Member will not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote. If within 10 minutes of the fixed time for any Board meeting a quorum is not present, the meeting will

stand adjourned to such date and place as the chairperson of the meeting will decide and written notice of the adjourned meeting will not be required to be given to Board Members. At such an adjourned meeting of the Board the Board Members present will be deemed to be a quorum.

- (b) Questions arising at a meeting will be decided by a majority of those eligible to vote.
- (c) In the case of an equality of votes, the chair will have a second or casting vote.

20.3 **Participation in meetings by electronic means**

- (a) A meeting may be held by suitable electronic means agreed by the Board Members in which each participant may communicate with all the other participants.
- (b) Any Board Member participating at a meeting by suitable electronic means agreed by the Board Members in which a participant or participants may communicate with all the other participants will qualify as being present at the meeting.
- (c) Meetings held by electronic means will comply with rules for meetings, including chairing and the taking of minutes.

21. **Saving provisions**

21.1 Subject to clause 21.3, all decisions of the Board Members, or of a committee of Board Members, will be valid notwithstanding the participation in any vote of a Board Member:

- (a) who was disqualified from holding office;
- (b) who had previously retired or who had been obliged by the constitution to vacate office; or
- (c) who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise.

21.2 If, without the vote of that Board Member and that Board Member being counted in the quorum, the decision has been made by a majority of the Board Members at a quorate meeting.

21.3 Clause 21.1 does not permit a Board Member to keep any benefit that may be conferred upon him or her by a resolution of the Board Members or of a committee of Board Members if, but for clause 21.1, the resolution would have been void, or if the Board Member has not complied with clause 29 (Conflicts of interest).

22. **ExCo of the Board**

22.1 ExCo will manage the day-to-day affairs of SAMED in-between Board meetings and, without detracting from the generality of this power but in all events subject to those matters that are Reserved Matters:

- (a) make decisions within the scope of matters delegated to it by the Board;
- (b) oversee the appointment of all full or part time salaried officials and/or employees who may be a corporate body, who will hold office for such periods and perform such duties and receive such remuneration upon such terms as the ExCo may from time to time determine, so as to give effect to the objects and strategic plans of SAMED;
- (c) decide on the principal place of business of SAMED; and
- (d) open bank accounts and to administer any funds established by SAMED;
- (e) invest, retain, realise or reinvest any monies not required for the immediate business of SAMED on fixed deposits or in government or in other recognised public securities, or in any other way that the ExCo may from time to time decide;
- (f) appoint or nominate or authorise any person to act on behalf of SAMED for the purpose of entering into any contract and/or to delegate any of its powers hereunder to any office bearer or staff member of SAMED;

- (g) to oversee the implementation of resolutions of SAMED; and
 - (h) to approve and oversee any operational plan set by the EO, in line with the objects and strategic plans of SAMED.
- 22.2 The ExCo will meet as often as it deems necessary to ensure the efficient day-to-day management of SAMED between Board meetings.
- 22.3 The ExCo, who will serve a term concurrent with that of the Board, will 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 will include,
- (a) the chairperson of SAMED, ex officio;
 - (b) the vice-chairperson of SAMED, ex officio;
 - (c) the Treasurer of SAMED and
 - (d) the immediate past chairperson of SAMED, if he or she is available and agrees to act in that capacity.;
- 22.4 The EO will act as the secretary of the ExCo of the Board
- 22.5 In the event of a vacancy on the ExCo, the Board will elect from amongst its Members a Board Member to fill that vacancy for the remainder of the term of the ExCo.
- 22.6 The quorum necessary for the transaction of business at a meeting of the ExCo will be the majority in number of the ExCo Members.
- 23. Duties of the chairperson, vice chairperson and Treasurer**
- 23.1 The duties of the chairperson of the Board will be:
- (a) to set, with the EO, the agendas of the meetings over which he or she presides;
 - (b) to convene and preside at all Board Meetings, ExCo Meetings, AGMs, and all General Meetings of the Membership of SAMED;
 - (c) to sign the minutes of the meetings over which he or she presides, after adoption;
 - (d) unless otherwise determined in terms of this Constitution, to make public statements on behalf of SAMED or to mandate another Board or Board ExCo Member or the EO or another staff Member of SAMED to do so, which statements have to be mandated by the ExCo;
 - (e) to represent SAMED at all public functions;
 - (f) to make on behalf of SAMED any public announcement which he or she 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; and
 - (g) to be ex officio a Member of all committees and subcommittees of SAMED or designate a Board Member to act in such capacity for one or more of the subcommittees
- 23.2 The chairperson will have a casting vote in addition to his or her deliberative vote at all meetings where he or she presides.
- 23.3 In the absence of the chairperson, the vice-chairperson will fulfil the functions of the chairperson.
- 23.4 The treasurer will:
- (a) co-sign all cheques and all transactions drawn on the funds of SAMED with the EO or alternatively the chairperson;
 - (b) review the SAMED management accounts reports;

- (c) report on the management accounts to the Board at Board meetings; and
- (d) authorise all of the financial transactions of SAMED;
- (e) prepare an annual budget for SAMED for approval by the Board; and
- (f) oversee the preparation of financial reports, including, but not limited to the Audited Financial Statements, to be made to the AGM.

24. Committees and Subcommittees

- 24.1 The Board may establish and delegate, or allocate any of its powers to committees consisting of such Member or Members of SAMED as it thinks fit for any period that it deems fit.
- 24.2 Any committee so formed will, 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 will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board.
- 24.3 Committees and subcommittees will:
- (a) establish an annual programme of action in line with the strategic direction set by the Board, which annual programme of each committee will be approved by the Board;
 - (b) act only in an advisory capacity to the Board;
 - (c) always remain accountable to the Board;
 - (d) 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; and
 - (e) not be entitled to take action on any matter or recommendation until approval has been granted therefore in writing by the Board.
- 24.4 The Board will, from time to time, set standard operating procedures for all SAMED committees and sub committees, which will include rules as to the operations, constitution, mandates, disbursements, etc. of all such committees and sub-committees.

25. Office Staff

- 25.1 The Board may, upon recommendation of the ExCo appoint the EO or any similar person in terms of SAMED'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.
- 25.2 The duties of the EO will be as defined by the Board and in accordance with the job description approved by the Board.
- 25.3 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.

26. Execution of documents

- 26.1 SAMED will execute documents either by signature or by affixing its seal (if it has one).
- 26.2 A document is validly executed by signature if it is signed by at least two of the Board Members.
- 26.3 If SAMED has a seal:
- (a) It will comply with the provisions of the General Regulations;

- (b) It will only be used by the authority of the Board Members or of a committee of Board Members duly authorised by the Board Members. The Board Members may determine who will sign any document to which the seal is affixed and unless otherwise determined it will be signed by two Board Members.

27. Application of income and property

- 27.1 The income and property of SAMED will be applied solely towards the promotion of its purpose and objects.
- (a) a Board Member is entitled to be reimbursed from the property of SAMED or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of SAMED;
 - (b) a Board Member may benefit from Board Member indemnity insurance cover purchased at SAMED's expense.
- 27.2 None of the income or property of SAMED may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Member. This does not prevent a Member who is not also a Board Member receiving:
- (a) a benefit from SAMED as a beneficiary of SAMED;
 - (b) reasonable and proper remuneration for any goods or services supplied to SAMED.
- 27.3 Nothing in this clause will prevent a Board Member or connected person receiving any benefit or payment which is authorised by clause 28.

28. Benefits and payments to Board Members and connected persons

28.1 General provisions

No Board Member or connected person may:

- (a) receive any fee or remuneration for acting as a Board Member;
- (b) buy or receive any goods or services from SAMED on terms preferential to those applicable to members of the public;
- (c) sell goods, services, or any interest in land to SAMED;
- (d) be employed by, or receive any remuneration from, SAMED;
- (e) receive any other financial benefit from SAMED,

unless the payment or benefit is permitted by clause 28.2 has been obtained. In this clause, a “**financial benefit**” means a benefit, direct or indirect, which is either money or has a monetary value.

28.2 Scope and powers permitting Board Members' or connected persons' benefits

- (a) A Board Member or connected person may receive a benefit from SAMED as a beneficiary of SAMED provided that a majority of the Board Members do not benefit in this way.
- (b) A Board Member or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services.
- (c) Subject to clause 28.3 a Board Member or connected person may provide SAMED with goods that are not supplied in connection with services provided to SAMED by the Board Member or connected person.
- (d) A Board Member or connected person may receive interest on money lent to SAMED at a reasonable and proper rate which will be not more than the South African Reserve Bank rate (also known as the base rate).
- (e) A Board Member or connected person may receive rent for premises let by the Board Member or connected person to SAMED. The amount of the rent and the other terms of the lease will be reasonable

and proper. The Board Member concerned will withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.

- (f) A Board Member or connected person may take part in the normal trading and fundraising activities of SAMED on the same terms as members of the public.

28.3 **Payment for supply of goods only – controls**

SAMED and its Board Members may only rely upon the authority provided by clause 28.2(c) if each of the following conditions is satisfied:

- (a) the amount or maximum amount of the payment for the goods is set out in a written agreement between SAMED and the Board Member or connected person supplying the goods (the “**supplier**”);
- (b) the amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question;
- (c) the other Board Members are satisfied that it is in the best interests of SAMED to contract with the supplier rather than with someone who is not a Board Member or connected person. In reaching that decision the Board Members will balance the advantage of contracting with a Board Member or connected person against the disadvantages of doing so;
- (d) the supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to SAMED;
- (e) the supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of Board Members is present at the meeting;
- (f) the reason for their decision is recorded by the Board Members in the minute book; and
- (g) a majority of the Board Members then in office are not in receipt of remuneration or payments authorised by clause 28.

28.4 In clause 28.2 and clause 28.3:

- (a) “**SAMED**” includes any company in which SAMED:
 - (i) holds more than 50% of the shares; or
 - (ii) controls more than 50% of the voting rights attached to the shares; or
 - (iii) has the right to appoint one or more Board Members to the Board.
- (b) “**Connected person**” includes any person within the definition set out in clause 37 (Interpretation).

29. **Conflicts of interest and conflicts of loyalty**

29.1 A Board Member will:

- (a) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with SAMED or in any transaction or arrangement entered into by SAMED which has not previously been declared; and
- (b) absent himself or herself from any discussions of the Board Members in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of SAMED and any personal interest (including but not limited to any financial interest).

29.2 Any Board Member absenting himself or herself from any discussions in accordance with clause 29.1 will not vote or be counted as part of the quorum in any decision of the Board Members on the matter.

30. **Liability of Members to contribute to the assets of SAMED if it is wound up**

If SAMED is wound up, the Members have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

31. Use of electronic communications

31.1 General

SAMED will comply with the requirements of the Communications Provisions in the General Regulations and in particular:

- (a) The requirement to provide within 21 days to any Member on request a hard copy of any document or information sent to the Member otherwise than in hard copy form.
- (b) Any requirements to provide information to the Commission in a particular form or manner.

31.2 Use of electronic communications

(a) To SAMED

Any Member or Board Member of SAMED may communicate electronically with SAMED to an address specified by SAMED for the purpose, so long as the communication is authenticated in a manner which is satisfactory to SAMED.

(b) By SAMED

- (i) Any Member or Board Member of SAMED, by providing SAMED with his or her email address or similar, is taken to have agreed to receive communications from SAMED in electronic form at that address, unless the Member has indicated to SAMED his or her unwillingness to receive such communications in that form.
- (ii) The Board Members may, subject to compliance with any legal requirements, by means of publication on its website:
 - (A) provide the Members with the notice referred to in clause 11.3 (Notice of general meetings);
 - (B) give Board Members notice of their meetings in accordance with clause 20.1 (Calling meetings); and
 - (C) Submit any proposal to the Members or Board Members for decision by written resolution or postal vote in accordance with SAMED's powers under clause 10 (Members' decisions), clause 10.3 (Decisions taken by resolution in writing), or clause 11.8 (Postal voting).]

(c) The Board Members will:

- (i) take reasonable steps to ensure that Members and Board Members are promptly notified of the publication of any such notice or proposal; and
- (ii) send any such notice or proposal in hard copy form to any Member or Board Member who has not consented to receive communications in electronic form.

32. Minutes

The Board will keep minutes of all:

- (a) appointments of officers made by the Board Members;
- (b) proceedings at general meetings of SAMED;
- (c) meetings of the Board Members and committees of Board Members including:
 - (i) the names of the Board Members present at the meeting;
 - (ii) the decisions made at the meetings; and

- (iii) where appropriate the reasons for the decisions; and
- (d) decisions made by the Board Members otherwise than in meetings.

33. Accounting records, accounts, annual reports and returns, register maintenance

- 33.1 The Board will cause true accounts to be kept of:
- (a) the sums of money received and expended by SAMED and the matters in respect of which such receipt and expenditure took place;
 - (b) all sales and purchases of goods or services by SAMED; and
 - (c) the assets and liabilities of SAMED.
- 33.2 The books and accounts will 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 will always be open for inspection by the Members of SAMED and Members of the Board.
- 33.3 A copy of the financial statements as applied, which are to be placed before the Membership at an AGM, and the Board and auditor's report will, 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 AGM.
- 33.4 All payments made by SAMED are to be authorised by the ExCo, according to the financial policy and procedure as adopted by the Board from time to time.
- 33.5 The financial year of SAMED will be from 1st January to the 31st December of the same year.
- 33.6 Any arrear subscriptions or any levies owing by Members to SAMED may be recovered by action in a court of competent jurisdiction.
- 33.7 Auditors will be appointed at every AGM and their duties regulated by the Board in accordance with the principles of Generally Accepted Accounting Principles.
- 33.8 SAMED will open and operate such bank accounts as may be necessary to conduct its business, save that such accounts will be opened only in its own name at a registered commercial bank.
- 33.9 The Board will, by resolution, appoint the requisite number and names of signatories from time to time, and will, from time to time determine any monetary values to be associated with the various banking activities by formal resolution.

34. Rules

The Board Members may from time to time make such reasonable and proper rules or by-laws as they may deem necessary or expedient for the proper conduct and management of SAMED, but such rules or by-laws will not be inconsistent with any provision of this Constitution. Copies of any such rules or by-laws currently in force will be made available to any Member on request.

35. Disputes

- 35.1 If a dispute (“**Dispute**”) arises about the validity or propriety of anything done or not done by any Member or SAMED and/or SAMED under or in relation to this constitution and/or relating to the interpretation or application of this constitution, such dispute will be referred to mediation and, if unsuccessful, then arbitration, each held in Sandton, South Africa and as administered by the Arbitration Foundation of Southern Africa (“**AFSA**”).
- 35.2 No Member will be entitled, without SAMED’s consent, to commence proceedings under clause 35.1 in respect of any Dispute more than 30 days after that Member became aware, or reasonably should have become aware, of the acts or omissions giving rise to the Dispute.
- 35.3 SAMED will appoint the mediator and/or arbitrator, as applicable, in respect of the Dispute, who will be an

attorney or advocate on AFSA's panel.

35.4 Nothing contained in this clause will prohibit SAMED from approaching any court of competent jurisdiction for urgent interim relief pending determination of the Dispute as aforesaid.

36. Voluntary winding up or dissolution

36.1 SAMED may be dissolved by resolution of its Members. Any decision by the Members to wind up or dissolve SAMED can only be made:

- (a) at a general meeting of the Members called in accordance with clause 10.4 (General meetings of Members), of which not less than 14 days' notice has been given to those eligible to attend and vote:
 - (i) by a resolution passed by a 75% majority of those voting, or
 - (ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or
- (b) by a resolution agreed in writing by all Members.

36.2 Subject to the payment of all SAMED's debts:

- (a) any resolution for the winding up of SAMED, or for the dissolution of SAMED without winding up, may contain a provision directing how any remaining assets of SAMED will be applied;
- (b) if the resolution does not contain such a provision, the Board Members will decide how any remaining assets of SAMED will be applied; and
- (c) in either case the remaining assets will be applied for charitable purposes or purposes the same as or similar to those of SAMED.

37. Indemnification of Board Members

37.1 For purposes of this clause, "**Board Member**" includes a former Board Member, a prescribed officer or a person who is a member of a committee of a Board, or of the audit committee of SAMED, irrespective of whether or not the person is also a member of the Board;

37.2 SAMED, by resolution of the Board, may advance expenses to a Board Member to defend litigation in any proceedings arising out of the Board Member's service to SAMED and to directly or indirectly indemnify a Board Member in respect of such expenses if those proceedings are abandoned or exculpate the Board Member or arise in respect of any liability for which SAMED may indemnify the Board Member.

37.3 The Board is authorised to purchase insurance to protect:

- (a) a Board Member against any expenses or liability relating to SAMED;
- (b) SAMED against any contingency.

37.4 SAMED will be entitled to claim restitution from a Board Member for any money paid directly or indirectly by SAMED to or on behalf of that Board Member in any manner inconsistent with this Constitution or the Act.

38. Interpretation

In this Constitution:

38.1 "**connected person**" means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the Board Member;
- (b) the spouse or civil partner of the Board Member or of any person falling within sub-clause (a) above;

- (c) a person carrying on business in partnership with the Board Member or with any person falling within sub-clause (a) or (b) above;
 - (d) an institution which is controlled:
 - (i) by the Board Member or any connected person falling within sub-clause (a), (b) or (c) above; or
 - (ii) by two or more persons falling within sub-clause (d)(i), when taken together;
 - (e) a body corporate in which:
 - (i) the Board Member or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
 - (ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest;
- 38.2 a “**poll**” means a counted vote or ballot, usually (but not necessarily) in writing;
- 38.3 clause headings are for the purposes of convenience and reference only and will not be used in the interpretation of, nor modify nor amplify, any of the provisions of this Constitution;
- 38.4 a reference to:
- (a) any particular gender will include the other two genders;
 - (b) the singular will include the plural and vice versa; and
 - (c) a natural person will include a juristic person (whether a corporate or unincorporated created entity) and vice versa;
- 38.5 where a period consisting of a number of days is prescribed, it will be determined by excluding the first and including the last day;
- 38.6 if figures are referred to in numerals and words, the words will prevail in the event of any conflict between the two;
- 38.7 words and/or expressions defined in any particular clause in the body of this Constitution will, unless the application of such word and/or expression is specifically limited to that clause, bear the meaning so assigned to it throughout this Constitution;
- 38.8 the contra proferentem rule will not apply and accordingly none of the provisions hereof will be construed against or interpreted to the disadvantage of SAMED;
- 38.9 the eiusdem generis rule will not apply and whenever a provision is followed by the word “including” and specific examples, such examples will not be construed so as to limit the ambit of the provision concerned; and
- 38.10 a reference to any statutory enactment, including the King Report, will be construed as a reference to that enactment as at the date of the adoption of this Constitution and as amended or re-enacted from time to time thereafter.