

## 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 18<sup>th</sup> May 2023 and, with effect from the Adoption Date (the "**Adoption Date**") entirely replaces and supersedes the constitution of SAMED adopted on the 19<sup>th</sup> November 2018.

#### 2. Name

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

#### 3. Legal Status

SAMED is a not for gain 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 in relation to the industry in which the Members operate (the "Medical Technology Industry") by promoting a predictable, transparent and effective regulatory framework for the design, manufacture, importation, exportation, marketing, distribution and sale (retail and wholesale), use and/or other application of medical devices and in vitro diagnostics (as contemplated in the Medicines and Related Substances Act, 1965) and collectively termed medical technology ("**Medical Technology**");
- 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 and convergence 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 applicable 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 King Report and Code**

SAMED will take into consideration the principles of 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.

## **8. Membership of SAMED**

### **8.1 Admission of new Members**

#### **(a) Categories of Membership**

The Board Members may create voting and non-voting Categories of 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 Category 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 SAMED's purposes, and who, by applying for Membership, has indicated his, her or its agreement to become a Member and acceptance of the duties of Members set out in clause 80 of this Constitution and who complies with the Board’s published minimum criteria for membership, and the Board 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 manufacture, distribution and wholesale 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; i.e. a registered South African entity or individual **not** involved primarily in the business of manufacturing, distributing and wholesale of medical devices as its primary business. A collective of associate members may not become associate members of SAMED. The Board reserves the right to review the membership of an associate member on an annual basis, as it relates to such an associate member's continued provision of services to the Medical Technology Industry and the value added to SAMED and the Members.
- (iii) 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**”) of SAMED:

- (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 ordinary Member shall from time to time appoint, 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 general meetings of SAMED. The SAMED office shall keep an updated register of all Representatives. Members are entitled to appoint an alternate if the principal representative is not available.

## 8.2 **Transfer of Membership**

Membership of SAMED may not be transferred other than with the permission of the ExCo, 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, 2008), or (vi) any event analogous to the events referred to in this clause.

## 8.3 **Duty of Members**

It is the duty of each Member, irrespective of the category of membership as contemplated in this Constitution, to:

- (a) exercise its powers as a Member in good faith and in furtherance of the purpose and objects of SAMED and in a manner that supports and abides by this Constitution;
- (b) ensure that its Representatives are properly mandated and informed on its positions relevant to SAMED;
- (c) implement mechanisms to ensure that it is apprised on developments within SAMED;
- (d) 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;
- (e) comply with all decisions of SAMED (whether of its Board, ExCo or Members), this Constitution, the Codes of Practice, standard operating procedures, guidelines or any other codes 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.

## 8.4 **Termination or suspension of Membership**

- (a) A Member shall immediately and automatically cease to be a member of SAMED, irrespective of the category of membership for purposes of this Constitution, if:
  - (i) the Member breaches this Constitution, the Codes of Practice, standard operating procedures, guidelines or any other codes, published by the Board from time to time or 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, that person has become physically or mentally incapable of fulfilling his or her role as a Member;
  - (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 similar supervision or is liquidated, wound-up or placed under judicial management, whether

provisionally or finally and whether or not compulsory or voluntarily;

- (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 member no longer carries on business in the Medical Technology industry.
- (b) Members who submit their resignation during the course of the year shall not be entitled to a refund.
  - (c) On termination of membership any outstanding fees or amounts due to SAMED shall become immediately payable by that Member as at the effective date of the termination of the Member's membership of SAMED, unless otherwise determined by the Board.
  - (d) The Board shall have the right to, in its discretion to suspend for a period it deems appropriate or terminate the membership of any member which has:
    - (i) acted in any manner that is inimical to the interests of SAMED;
    - (ii) brought SAMED into disrepute; and/or
    - (iii) failed to pay its membership fees and/ or any other amount due to SAMED within the due date or within such further period as may be determined by the Board or a committee of the Board, in its discretion.
  - (e) If a 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 being informed of such decision, to make representations to the board either electronically or in person, as to why he, she or its membership should not be suspended or terminated.
  - (f) On termination of Membership the Member will immediately cease to incorporate in its commercial documentation, marketing, advertising material, letterhead(s) and any other documentation or communication(s) to which members of the public may have access, any reference to its Membership of SAMED and will under no circumstances have any claim of whatsoever nature on SAMED or its officers, its property or its funds.

#### 8.5 **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 within 30 days from date of invoice and will be invoiced to new Members joining during the year, on a pro rata basis
- (b) Members are liable for the following year's membership fees unless notice of resignation is given in writing to the Executive Officer on or before 1 December.
- (c) Should a member resign, members remain liable for all fees for the year during which notice of resignation is given and members who submit their resignation during the course of the year

shall not be entitled to a refund, unless otherwise determined by the Exco.

- (d) Members whose fees are in arrears by the time of the AGM will not be entitled to nominate or accept nominations for election to the board, vote, act as a proxy or attend the AGM.
- (e) Honorary Members will be exempt from the payment of Membership fees and annual subscriptions, however, this does not exempt any other Member who may employ an Honorary Member, from the payment of fees or subscriptions.
- (f) Any disputes by a Member concerning the payment of a fee and/or subscription will be referred to the ExCo, whose decision in this regard will be final.
- (g) No person who was previously a Member will be eligible for re-admission to Membership for so long as any amount(s) remain outstanding and due to SAMED.

## **9. Members' decisions**

### **General provisions**

Except for those decisions that will be taken in terms of clause 0, decisions of the Members may be taken either in person or by electronic vote at and/or prior to a general meeting as provided in clause 9.2 or by written resolution as provided in clause 9.3.

### **9.2 Taking ordinary decisions by vote**

Subject to clause 9.4 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 either at and/or prior to the meeting (including votes cast electronically and proxy votes).

### **9.3 Taking ordinary decisions by written resolution without a general meeting**

- (a) Subject to clause 9.4, a resolution in writing, signed and agreed to by 30% of all the voting Members will be effective, provided that:
  - (i) the resolution is delivered or received electronically by e-mail at/to SAMED's principal office within the period of 28 days from date of the resolution.
  - (ii) a copy of the proposed resolution is sent by the SAMED office to all the Members eligible to vote
- (b) Eligibility to vote on the resolution is limited to voting Members who are Members on the date of the resolution
- (c) The Board Members will within 21 days of receiving such a request comply with it if:
  - (i) the resolution is not frivolous or vexatious, and does not involve the publication of defamatory material;
  - (ii) the resolution is stated with sufficient clarity to enable effect to be given to it if it is agreed to by the Members
  - (iii) the resolution is consistent with the purpose and objects of SAMED; and
  - (iv) effect can lawfully be given to the resolution if it is so agreed.

#### 9.4 **Reserved Matters**

- (a) Decisions in relation to the Reserved Matters may only be taken at a general meeting and by a resolution passed by a 75% majority of votes cast, including votes cast electronically and proxy votes, either at and/or prior to a general meeting of the Members.
- (b) The Reserved Matters are:
  - (i) any amendment to this Constitution;
  - (ii) any decision to wind up or dissolve SAMED under clause 34 of this Constitution (Voluntary winding up or dissolution).
  - (iii) any merger or amalgamation by SAMED with any other entity or juristic 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.

### 10. **General meetings of Members**

#### 10.1 **Types of general meetings**

- (a) There will be an annual general meeting (“**AGM**”) of the Members.
- (b) The AGM will be held not later than the last day of the month of May. 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 12.
- (c) Other general meetings of the Members may be held at any time.

#### 10.2 **Calling general meetings**

- (a) The Board Members:
  - (i) will call the AGM of the Members in accordance with clause 10.1, and identify it as an AGM 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 30% of the Members; and
  - (ii) the request states the general nature of the business to be dealt with at the general meeting and is confirmed in writing by the Member(s) making the request.
  - (iii) any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the general meeting.
  - (iv) a resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious and is determined by the Board Members to be valid and consistent with the purpose and objects of SAMED.
- (c) 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.



- (d) 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.
- (e) A general meeting called in terms of clause 9.2(d) will be held not more than 3 months after the date when the Members first requested the general meeting.

### 10.3 **Notice of general meetings**

- (a) The Board Members, or, as the case may be, the relevant Members, will give at least 14 (fourteen) days notice of any general meeting (including the AGM) to all of the Members, and to any Board Member of SAMED who is not a Member.
- (b) 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/s which is/are to be moved at the meeting, and of the general nature of any other business to be dealt with at the meeting;
  - (iv) if a proposal to alter or amend the constitution of SAMED is to be considered at the meeting, include the text of the proposed alteration/s or amendment/s;
  - (v) include, with the notice for the AGM, the annual statement of accounts and Board Members' annual report, details of the person(s) standing for election or re-election as Elected Board Member, or where allowed under clause 25 (Use of electronic communication), details of where the aforementioned information may be found on SAMED's website.
- (c) Proof, to the satisfaction of SAMED, that an electronic form of notice was properly addressed and sent to a Member will be conclusive evidence that the notice was given. Notice will be deemed to be given 48 hours after it was sent electronically.
- (d) 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 any accidental omission by SAMED.

### 10.4 **Chairing of general meetings**

The person nominated as chairperson or vice-chairperson by the Board Members under clause 13(a), will, if present at the general meeting and willing to act, preside as chairperson of the meeting. Subject to that, the Members who are present at a general meeting will elect a chairperson to preside at the meeting, which election shall be decided by a simple majority of the Members present at a general meeting.

### 10.5 **Quorum at general meetings**

- (a) The quorum for general meetings will be 30% of Members, eligible to vote, present in person or virtually at the meeting.
- (b) No business may be transacted at any general meeting of the Members unless a quorum is present within 15 minutes of the starting time specified in the notice of the meeting. The Chairperson of the meeting may extend this by an additional 30 minutes on good cause.



- (c) If a quorum is not present, the meeting shall be closed and 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 be required to be given to Members.
- (d) If at any time during a general 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.

#### 10.6 **Voting at general meetings**

- (a) Every Ordinary Member eligible to vote has one vote.
- (b) Any decision other than one falling within clause 0 (reserved matters) will be taken by a simple majority of votes (including votes cast electronically and proxy votes) at and/or prior to the meeting.
- (c) A resolution put to the vote of a general meeting will be decided on by 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 chairperson or by at least 10% of the Members present in person or by proxy at the general meeting.
- (d) 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.
- (e) 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 electronic communications.
- (f) In the event of an equality of votes (with the exception of voting for elected board members), whether on a show of hands or on a poll, the chair of the meeting will have a casting vote.
- (g) 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.
- (h) Any dispute about the conduct of a vote will be referred initially to a panel appointed by the Board Members, which panel shall consist of two Board Members. If the dispute cannot be satisfactorily resolved by the panel, it will be resolved under clause 33.

#### 10.7 **Proxy voting**

- (a) Any voting Member may appoint another voting 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 the Exco may determine; and
  - (iv) is delivered to SAMED in accordance with any instructions contained in the notice of the general meeting to which the proxy relates.
- (b) SAMED may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes in any notice to the Members.
- (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 the discretion as to how to vote on any resolution(s) 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: provided that where a Member who has provided a proxy then attends a general meeting, the proxy will be deemed to have been withdrawn by 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 the authority to do so.

#### 10.8 **Electronic Voting**

- (a) SAMED may, if the Board Members so decide, allow the Members to vote by electronic mail ("**email**" or other) to elect Board Members or to make a decision on any matter that is being decided at a general meeting of the Members.
- (b) If electronic voting is to be allowed on a matter, SAMED will send to Members not less than 14 days before the deadline for receipt of votes to be cast in this way:
  - (i) a notice by email, if the Member has agreed to receive notices in this way under clause 29 (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 electronically to SAMED, containing details of the resolution being put to a vote, or of the candidates for election, as applicable
- (c) The voting procedure for votes cast electronically must authenticate the Member's name.

- (d) The voting procedure will specify the closing date and time for receipt of votes.
- (e) Any votes received after the closing date or not complying with the voting procedure will be invalid and not be counted.
- (f) SAMED will keep a record of both valid and invalid votes.
- (g) Any dispute about the conduct of an electronic ballot will be referred initially to a panel appointed by the Board Members, which panel shall consist of two Board Members. If the dispute cannot be satisfactorily resolved by the panel, it will be resolved under clause 33 (Disputes).

## **11. Board Members**

### **11.1 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 subject to this Constitution. 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 accordance with the roles and responsibilities as determined by the Board and amended from time to time;
- (b) 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 and in a manner that would be most likely to further the purpose and objects of SAMED; and
- (c) 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.

### **11.2 Eligibility for Board Membership**

- (a) 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 15.
- (b) 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 a Board Member.

### **11.3 Number of Board Members**

- (a) There will be at least 3 (three) Elected 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 Members to appoint new Board Members in order to meet the required minimum number.

- (b) The maximum number of Board Members is 16 (sixteen). The Board Members may not appoint any Board Member if, as a result, the number of Board Members would exceed the maximum number.

## **12. Appointment of Board Members**

### **12.1 Categories of Board Members**

- (a) The Board will be constituted of:
  - (i) 12 (twelve) Board Members nominated and elected by the ordinary Members (the **“Elected Board Members”**) from persons in full time employment of such Members;
  - (ii) 4 (four) Board Members, nominated and appointed by the Elected Board Members, in their discretion (the **“Nominated Board members”**) for a period as determined by the Elected Board Members. Such a person(s) need not be a Member or representative of a Member.
  - (iii) Subject to being elected, nominated or appointed to the Board, each nominee will sign a board member roles and responsibilities and confidentiality agreement between SAMED and such nominee.

### **12.2 Elected Board Members**

- (a) The Elected Board Members will constitute not more than 12 and not less than 3.
- (b) At every AGM, those Elected Board Members who have completed a tenure of 2 years will automatically 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.
- (d) The vacancies so arising may be filled by the decision of the ordinary Members at the AGM.
- (e) No ordinary Member may have more than two persons employed by it serve as a Board Member at any given time.
- (f) All Elected Board Members will be eligible for re-election on termination of their period of office.
- (g) Ordinary Members will nominate potential Elected Board Members using such criteria (including but not limited to the principles of diversity, equity and inclusion and consideration for inclusion of small to medium member company representation), procedures and timelines as may be stipulated for that purpose from time to time by the Board.
- (h) The ExCo and/ or a committee appointed by the Board will review and decide upon nominations using such criteria (including but not limited to the principles of diversity, equity and inclusion and consideration for inclusion of small to medium member company representation), procedures and timelines as may be stipulated from time to time by the Board. The ExCo has the right to decline a nomination and must provide reasons thereto.
- (i) Members whose fees are in arrears by the time of the AGM will not be entitled to nominate representatives, nor have representatives accept nomination pertaining to the election of elected board members of SAMED.
- (j) No nominations for an Elected Board Member 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 five (5) days prior to the delivery of the notice of the AGM, failing which he or she will be deemed to be unwilling to act as such.
- (l) Each Ordinary Member, provided their annual membership is not in arrears will be entitled to one vote per nominee.
- (m) In the event that an Ordinary Member elects not to vote for the full quota of nominees, those votes will be forfeited,
- (n) Election as an Elected Board Member will be on the basis of nominee(s) receiving the highest number of votes.
- (o) In the event of an equality of votes (tied vote), a second round of voting will be conducted electronically for all the nominees.
- (p) Should there still be a tied vote after this subsequent round of voting, the tied parties will not be considered to serve on the Board.
- (q) Should this however result in having less than three (3) people on the Board, the tied vote process will be conducted again.
- (r) Board Members, whether elected, nominated or appointed, 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 for the member company to nominate a Board Member in his or her stead.

### **13. Other Formalities**

- (a) The Elected Board members will, at the first Board meeting after the AGM, elect, from within its number, a chairperson and vice-chairperson in accordance with a procedure agreed by the Elected Board members.
- (b) The chairperson and vice-chairperson will serve in that capacity for a term of two years; provided that no elected Board Member will be elected chairperson or vice-chairperson, respectively, for more than four consecutive years.
- (c) The Elected Board members will elect a treasurer from within the board (including nominated and appointed board members). The treasurer will serve in that capacity for a term as determined by the board, which term must not exceed the individual's term of office should they be an Elected Board member.

### **14. Information for new Board Members**

The SAMED Office will make available to each new Board Member:

- (a) a copy of this Constitution, and any 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 that each new Board Member will be required to sign.

## **15. Resignation and removal of Board Members**

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

- (a) resigns by notifying SAMED in writing;
- (b) dies;
- (c) in the written opinion, given to the Board, of a registered medical practitioner treating that person, he or she has become physically or mentally incapable of acting as a Board Member and the Board Members resolve that his or her office be vacated;
- (d) is an Elected Board Member and ceases to be a full-time employee of an Ordinary Member or that Member ceases to be a Member of SAMED;
- (e) they or the Member they are employed by is in breach of any material obligation imposed on it under this Constitution;
- (f) in the view of the Board (in its discretion, but subject to a disciplinary process undertaken by a subcommittee of the Board), is guilty of conduct adverse and prejudicial to the interests, purpose or objects of SAMED and the Board Members resolve that his or her office be vacated;
- (g) in the view of the Board (in its discretion), such a Board Member or the Member they employed by has contravened any Code(s) of Practice and has failed to remedy such contravention despite having been requested in writing to remedy such contravention;
- (h) absents him or herself from three consecutive Board meetings without tendering an apology for his or her absence and the Board Members resolve that his or her office be vacated; or
- (i) 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.

## **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 at any time:
  - (a) exercise its powers to request a Board member whose membership may terminate in terms of clause 15(d), to stay on as a Board member for a period at the Board's discretion, but no later than the next Board election;
  - (b) decide not to fill a vacancy;
  - (c) appoint a new Board Member, whether in place of a Board Member who has retired or been removed in accordance with clause 15 (Retirement and removal of Board Members), or as an additional Board Member, provided that the limit specified in clause 11.3 on the number of Board Members would not as a result be exceeded;

- 16.2 should the vacancy pertain to that of an elected board member, the Board may only appoint a full-time employee of an ordinary member to fill the vacancy until the next Board election. Such board member will be considered an ‘appointed board member’.
- 16.3 nominations to fill a vacancy must be duly seconded and together with a motivation to fill such a vacancy, may be submitted to the Executive Officer in writing at any time, however a decision on filling a vacancy must be made at a duly constituted board meeting.

## **17. Taking of decisions by Board Members**

Any decision may be taken either:

- (a) at or between a meeting of the Board Members by resolution in writing or electronic form agreed to by a simple majority of the Board Members;
- (b) by poll subject to consent by the chairperson

## **18. Delegation by Board Members**

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. Meetings and proceedings of Board Members**

### **19.1 Calling meetings**

The Board Members will decide how their and ExCo meetings, including emergency meetings are to be called, and what notice is required.

### **19.2 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 (half the number of board members plus one) 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.
- (b) 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.
- (c) 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.
- (d) 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.

- (e) Under no circumstances may a Board member nominate a representative to attend any Board meeting in his/her absence.
- (f) 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.

#### 19.3 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.

## 20. **ExCo of the Board**

- 20.1 ExCo will manage the day-to-day affairs of SAMED in-between Board meetings and, without detracting from the generality of the foregoing 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 and pursuant to a budget and delegation of authority framework approved by the board;
  - (b) oversee the appointment of all full- or part-time salaried officials and/or employees 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 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 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 employee of SAMED;
  - (g) to oversee the implementation of the resolutions of the Board; and
  - (h) to approve and oversee any operational plan set by the EO, in line with the objects and strategic plans of SAMED.
- 20.2 The ExCo will meet as often as it deems necessary to ensure the efficient day-to-day management of SAMED between Board meetings.

- 20.3 The ExCo, who will serve a term concurrent with that of the Board (with the addition of the time between the AGM and the first Board meeting following the AGM), will comprise of at least three but no more than seven Board Members who are elected by the Board and will include,
- (a) the chairperson of SAMED,
  - (b) the vice-chairperson of SAMED,
  - (c) the treasurer of SAMED,
  - (d) the immediate past chairperson of SAMED, if he or she is available and agrees to act in that capacity. Alternatively, the Board may nominate one of its members to fill the position
- 20.4 The EO will act as the secretary of the ExCo of the Board.
- 20.5 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.
- 20.6 The quorum necessary for the transaction of business at a meeting of the ExCo will be the majority in number of the ExCo Members.

## **21. Duties of the Chairperson, Vice-chairperson and Treasurer**

- 21.1 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 ExCo Member or the EO or another employee 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 a 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.
- 21.2 The chairperson will have a casting vote in addition to his or her deliberative vote at all meetings where he or she presides, except in respect of voting for elected board members.
- 21.3 In the absence of the chairperson, the vice-chairperson will fulfil the functions of the chairperson.
- 21.4 The treasurer will:
- (a) co-approve all transactions drawn on the funds of SAMED with the EO or alternatively the chairperson or vice chairperson;
  - (b) review the SAMED management accounts reports;

- (c) report on the management accounts to the ExCo and Board;
- (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 Board approved Audited Financial Statements, to be made available at the AGM.

## **22. Committees and Subcommittees**

- 22.1 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. Any committee so formed will, in the exercise of the powers so delegated, conform to any resolutions and/or mandates, standard operating procedures and scopes of work that may be imposed on it by the Board.
- 22.2 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, unless otherwise determined by 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
- 22.3 The Board will, from time to time, set standard operating procedures for all SAMED committees and subcommittees, which will include rules as to the operations, constitution, mandates and disbursements of all such committees and sub-committees, which committee members will be required to sign.

## **23. Office Staff**

- 23.1 The Board may, upon recommendation of the ExCo appoint the EO or any similar person as determined 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.
- 23.2 The duties of the EO will be as defined by the Board and in accordance with the job description approved by the Board.
- 23.3 The employees of SAMED have no vote at any SAMED meetings.

## **24. Execution of documents**

- 24.1 SAMED will execute documents by either original or electronic signature.
- 24.2 A contract or legal document is validly executed by signature if it is signed by at least the EO and the chair, vice chair or treasurer.
- 24.3 All other operational and ExCo and/or Board ratified documents are validly executed by signature if it

is signed by the EO

**25. Application of income and property**

- 25.1 The income and property of SAMED will be applied solely towards the promotion of its purpose and objects and no portion thereof may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Member.
- 25.2 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 purpose and objects of the Association.

**26. Remuneration of Board and Committee Members**

**26.1 General provisions**

- (a) A Board and Committee Member may benefit from professional indemnity insurance cover purchased at SAMED's expense.
- (b) No Board Member, committee or sub-committee member or any other person serving on any structure of the Association may:
  - (i) receive any fee or remuneration for acting as a Board or committee Member;
  - (ii) buy or receive any goods or services from SAMED on terms preferential to those applicable to other Members;
  - (iii) 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 the Association; unless otherwise decided by the Board.
- (c) This does not prevent reasonable and proper remuneration for any goods or services supplied to SAMED by a Member pursuant to a supplier authorization policy approved by the board.

**27. Conflicts of interest and duty of loyalty**

**27.1 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).
- 27.2 Any Board Member absenting himself or herself from any discussions in accordance with clause 27.1 will not vote or be counted as part of the quorum in any decision of the Board Members on the matter.

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

At no time, including if SAMED is wound up, will the Members have any liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

**29. 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 that purpose.

**(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 electronic circulation and /or publication on SAMED's website:
  - (a) provide the Members with the notice referred to in clause 10.3 (Notice of general meetings);
  - (b) give Board Members notice of their meetings in accordance with clause 19.1 (Calling meetings); and
  - (c) Submit any proposal to the Members or Board Members for decision by written resolution or email vote in accordance with SAMED's powers under clause 9 (Members' decisions), clause 9.3 (Decisions taken by resolution in writing), or clause 10.8 (Electronic voting).]

**30. Minutes**

The EO 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 and ExCo Members and committees of Board Members including:
  - (i) the names of those 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.

**31. Accounting records, accounts, annual reports and returns, register maintenance**

- 31.1 The EO 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.
- 31.2 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.
- 31.3 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 AGM, be made available to all Members entitled to vote at an AGM.
- 31.4 All payments made by SAMED are to be authorised according to the applicable financial policy and procedure as adopted by the Board from time to time.
- 31.5 The financial year of SAMED will be from the 1st of January to the 31st of December of the same year.
- 31.6 Any arrear subscriptions or any levies owing by Members to SAMED may be recovered by legal means. Auditors will be appointed at every AGM and their duties regulated by the ExCo in accordance with the principles of Generally Accepted Accounting Principles.
- 31.7 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.
- 31.8 The ExCo 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.

## **32. Rules**

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

## **33. Disputes**

- 33.1 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 a board approved internal dispute resolution committee and process and, if unsuccessful, then to arbitration, each held in Gauteng, South Africa and as administered by the Arbitration Foundation of Southern Africa ("**AFSA**").
- 33.2 The parties to the dispute will jointly appoint the mediator and/or arbitrator, as applicable, in respect of the Dispute, who will be an attorney or advocate on AFSA's panel, failing which agreement the mediator and/or arbitrator will be appointed by AFSA.

33.3 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.

### **34. Voluntary winding-up or dissolution**

34.1 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 0 (Reserved Matters) and clause 10. (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.

34.2 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.

### **35. Indemnification of Board Members**

35.1 For purposes of this clause, “**Board Member**” includes any former Board Member, a prescribed officer or a person who is a member of a committee of the Board irrespective of whether or not the person is also a member of the Board.

35.2 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.

35.3 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.

35.4 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.



## **36. Interpretation**

In this Constitution:

- 36.1 a “**poll**” means a secret counted vote , usually (but not necessarily) in writing;
- 36.2 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;
- 36.3 a reference to:
  - (a) any particular gender will include the other 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;
- 36.4 “day” means calendar day. Where a period consisting of a number of days is prescribed, it will be determined by excluding the first and including the last day;
- 36.5 if figures are referred to in numerals and words, the words will prevail in the event of any conflict between the two;
- 36.6 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;
- 36.7 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;
- 36.8 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
- 36.9 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.