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## CONSTITUTION

### FOR A NON-PROFIT ASSOCIATION WITH MEMBERS

### INFORMATION TECHNOLOGY ASSOCIATION OF SOUTH AFRICA (ITA)

Which is referred to in the rest of this Constitution as “the  
Association” **Registration Number: 2000/029166/08**

**This Constitution was adopted by a Special Resolution  
passed at a Special General Meeting held on  
15 November 2019**

## 1. INTERPRETATION

1.1. In this document, capitalised words shall bear the same meanings as in the Companies Act and the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

- 1.1.1. “AGM” means the Annual General Meeting to be held every calendar year within or not more than 6 months after the end of the financial year, but no more than 15 months after the date of the previous annual general meeting;
- 1.1.2. “Associate Member” means any company, person or firm within the value chain and not qualifying for full membership of the Association.
- 1.1.3. “Board” means the board of Directors of the Association;
- 1.1.4. “Business Day” means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.1.5. “CEO” – means the Chief Executive Officer of The Association, from time to time;
- 1.1.6. “Chairman” means the Chairman of the Board of the Association;
- 1.1.7. “Code of Practice” means the Code of the Association approved by the Members, from time to time;
- 1.1.8. “Commission” means the Companies and Intellectual Property Commission established in terms of Section 185 of the Companies Act;
- 1.1.9. “Competition Act” means the Competition Act No. 89 of 1998;
- 1.1.10. “Constitution” means the Constitution of the Association approved by the Members, from time to time;
- 1.1.11. “Constituent Member” means any person/s belonging to a member;
- 1.1.12. “Director” means a Director of the Association; and where the context so provides, an alternative director appointed in respect of such director;
- 1.1.13. “Effective Date” means the date on which the Association’s MOI is filed with the Commission;
- 1.1.14. “Ex officio director” means a person who holds office as a director of a particular company, solely as a consequence of that person holding some other office, title, designation or similar status specified in this document;
- 1.1.15. “File” when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
- 1.1.16. “Full Member” means any person, company, close corporation, partnership, trust or

other business enterprise, whether such organisation is a legal person or not, engaged in the information technology industry within Southern Africa.

- 1.1.17. "Income Tax Act" means the Income Tax Act No. 58 of 1962, as amended from time to time;
- 1.1.18. "Individual" means a natural person;
- 1.1.19. "Information Technology Industry" shall without in any way limiting the ordinary meaning of the terms, mean the sector in which employers and employees are associated for the carrying on of any one or more of the following activities: marketing, manufacturing, assembling, servicing, installation, maintenance and/or repair of systems, software, equipment, machines, devices and apparatus, whether utilising manual, photographic, optical, mechanical, electrical, electrostatic or electronic principles or any combination of such principles, that are primarily intended for the recording and/or processing and/or monitoring and/or transmission of voice and/or data and/or image and/or text or any combination thereof  
or for use in any one or more of the following activities:  
accounting, calculating, data processing, data transmission, duplicating, text processing, document reproduction, document transmission, record keeping and record retrieval and/or;  
the provision of services relating to the above.
- 1.1.20. "Member" means a member of the Association
- 1.1.21. "Membership Register" means the register of members established or maintained by the Association in terms of the Act;
- 1.1.22. "MOI" means the Memorandum of Incorporation of the Association, which shall become binding on the Association with effect from the date upon which it is filed with the Commission;
- 1.1.23. "Ordinary Resolution" means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution;
- 1.1.24. "Record Date" means the date upon which the Association determines the identity of its members;
- 1.1.25. "Republic" means the Republic of South Africa;
- 1.1.26. "Rules" means "rules" and "rules of an Association" as defined in the Companies Act;
- 1.1.27. "SARS Commissioner" means the Commissioner of the South African Revenue Services;
- 1.1.28. "Special Member" means any company, person or firm, which, in the opinion of the Board is sufficiently representative of a particular industry or interest and may be invited by the Board to become Special Members of the Association.

- 1.1.29. “Special Resolution” means a resolution adopted with the support of more than 75% of the voting rights exercised on the resolution;
  - 1.1.30. “Temporary Member” means all new entrants and smme’s within the value chain who bill under an agreed financial threshold as agreed by the Board from time to time.
  - 1.1.31. “the Act” means the Companies Act No. 71 of 2008, as amended from time to time;
  - 1.1.32. “the Association” – means Information Technology Association of South Africa (NPC), a non-profit Association incorporated and existing under the laws of the Republic; and
  - 1.1.33. “the Office” - means the registered office for the time being of the Association.
- 1.2. In this document:
- 1.2.1. a reference to a “Section” by number refers to the corresponding Section of the Companies Act;
  - 1.2.2. a reference to a “paragraph” by number refers to the corresponding paragraph in this document;
  - 1.2.3. a reference to a “Regulation” by number refers to the corresponding regulation in the Companies Regulations;
  - 1.2.4. any reference to a “person” includes any natural, juristic or quasi-juristic person, including without limitation any sole proprietorship, firm, partnership, trust, close corporation, company, undertaking, joint venture, authority or other incorporated or unincorporated entity or association;
  - 1.2.5. any reference to a “day” shall be to any calendar day. Where any number of days or Business Days are prescribed in this document, those days shall be reckoned exclusively of the first and inclusively of the last day or Business Day (as the case may be), unless (in the case of days) the last day falls on a day not being a Business Day, in which event the last day shall be the next succeeding Business Day;
  - 1.2.6. words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include juristic persons, other corporate entities, unincorporated associations of persons and state entities, and vice versa;
  - 1.2.7. any reference to an enactment includes any subordinate legislation made from time to time under that enactment, as may be amended from time to time;
  - 1.2.8. words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Companies Act shall when used in this document in a similar context bear the same meaning unless excluded by the subject



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or the context, or unless this document provides otherwise;



- 1.2.9. the provisions of this document shall be interpreted in the same way as the provisions of the Companies Act (which forms part of the Constitution of the Association in terms of Section 19(1)(c)) are interpreted; and
- 1.2.10. each provision and each sentence and each part of a sentence in this document is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the Companies Act, or void, such may to that extent only be modified or severed from this document, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void.
- 1.2.11. The long standard form of MOI for a Non-Profit Association with members contained in the regulations published in terms of the Companies Act, as amended from time to time, shall not apply to the Association.

## 2. NAME

- 2.1. The name of the Association shall be **Information Technology Association of South Africa (NPC)** (the “Association”).
- 2.2. The shortened name of the Association shall be ITA.

## 3. LEGAL STATUS

- 3.1. The Association is a juristic person incorporated under the Companies’ Act, 71 of 2008 (the “Act”) and is therefore a legal entity and shall continue to be a distinct and separate legal entity and body corporate with the power to acquire, hold and alienate property of every description whatsoever, and with the capacity to acquire rights and obligations.
- 3.2. All actions or suits, proceedings at law or any arbitration shall be brought by or against the Association in the name of the Association and the board may authorise any person or persons to act on behalf of the Association and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.
- 3.3. The Association will continue to exist regardless of any change in the composition of its board or of its membership unless, and until such time as the provisions of paragraph 51 hereof are invoked.

## 4. INCOME AND PROPERTY

- 4.1. The Association will keep a record of everything it owns.
- 4.2. Notwithstanding anything to the contrary herein contained:
  - 4.2.1. The Association is not formed and does not exist for the purpose of carrying on any business that has for its object the acquisition of gain by the Association or its individual members.



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- 4.2.2. Members and office-bearers have no rights in the property or other assets of the Association solely by virtue of their being members or office-bearers.
- 4.2.3. The income and property of the Association whenever and howsoever derived shall be applied towards the payment of expenses, the acquisition of property and the promotion of its objects and purposes as set out in paragraph 11 and as per Schedule 1(1)(2)(a) of the Act, and such other lawful purposes as may be decided upon by the Board, or if the latter so desires, by a general meeting for the attainment of the objects and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the Members of the Association or its controlling or controlled Association or office-bearers provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Association or to any Member thereof except as reasonable compensation for any services actually rendered to the Association.
- 4.2.4. The Association shall not be entitled to carry on any trading or other profit-making activities or participate in any business, profession or occupation carried on by any of its Members or provide to any of its Members financial assistance or any premises or continuous services or facilities for the purpose of carrying on any business, profession or occupation, provided that the Association may trade and engage in profit making activities solely for the purpose of and in pursuance of achieving its aims and objectives.

## 5. INCORPORATION AND NATURE OF THE ASSOCIATION

- 5.1. The Association is incorporated as a Non-Profit Company, with members, as defined in the Act.
- 5.2. The Association is, in terms of Section 19(1)(c) read with Section 15(2) of the Act, incorporated in accordance with, and governed by:
  - 5.2.1. the unalterable provisions of the Act, that are applicable to Non-Profit Companies;
  - 5.2.2. the alterable provisions of the Act, that are applicable to Non-Profit Companies, subject to the limitations, extensions, variations or substitutions set out in the Association's MOI; and
  - 5.2.3. the provisions of the Association's MOI.
- 5.3. The Association's MOI does not necessarily refer to or address all the provisions of the Constitution of the Association as contemplated in paragraph 5.1 and 5.2.
- 5.4. The Association's MOI and any rules of the Association in terms of Section 15(6) of the Act, are binding between:
  - 5.4.1. the Association and each Member of the Association
  - 5.4.2. amongst the Members of the Association



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- 5.4.3. the Association and each Director or prescribed Officer of the Association or any member of a Board Committee.
  - 5.5. All parties referred to in 5.4 are required to familiarise themselves with the relevant provisions of the Act, including those contemplated by paragraph 5.2 and the provisions of this Association's MOI, as the MOI read together with the provisions of the Act contemplated by paragraph 5.2 forms the Constitution of the Association.
6. NON-PROFIT COMPANY
- 6.1. The Association is a Non-profit Company with members and aims to represent and promote the interests of its members, which shall be companies active in the information technology sector in the Republic.
  - 6.2 The Association aims to uplift the industry through skills development and encouraging fair and free competition in the information technology industry.
  - 6.3 The Association is committed to recruit start-up companies to its membership supporting the whole value chain and to effect meaningful transformation through the value chain.
  - 6.4 The Association is committed to assist and mentor not only start-up companies and new entrants in the industry, but also smme's, to ensure that knowledge is imparted to these new and existing companies to enable them to succeed in what is a highly competitive and regulated environment.
7. COMPLIANCE WITH SECTION 30 OF THE INCOME TAX ACT AND COMPETITION ACT
- 7.1. The Association and Members are cognisant of the advantage of competition to economies and endeavor not to act in a way that will lessen competition in any territory nor divide any markets nor act in any way that could result in any contravention of the Competition Act.
  - 7.2. The Association shall have at least three persons, who are not connected in relation to each other, to accept the fiduciary responsibility of the Association, and no single person shall directly or indirectly control the decision-making powers relating to the Association.
  - 7.3. The Association is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking its objects) and is required to utilise its funds solely for the objects for which it has been established.
  - 7.4. The Association's activities shall be carried on in a non-profit manner.
  - 7.5. The Association is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of paragraphs 10 and 11.
  - 7.6. The Association may not pay any remuneration to any person which is excessive having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as percentage of any amounts received or accrued to the Association.
  - 7.7. The Association undertakes to submit to the Commission of the South African Revenue Service, when and if applicable, a copy of any amendment to the Association's MOI or other written



instrument under which it is established.

- 7.8. The Association is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of Income Tax Act; provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of Section 10 (1)(cA)(i) of the Income Tax Act, which has as its sole and principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 7.9. The Association has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

## 8. CONFLICTS WITH THE COMPANIES ACT

### 8.1. Notification of conflicts

Any person bound by the Association's MOI who has formed the view or forms the view or otherwise becomes aware that any provision of the Association's MOI or any agreement entered into by the Association contravenes or is or has become inconsistent with any provision of the Act (as it is amended from time to time), whether or not such provision is void or could be declared void by a court in terms of Section 218(1) of the Act or a person could incur personal liability in terms of Section 218(2) of the Act or otherwise, shall within 10 Business Days of forming that view or becoming aware of such contravention or inconsistency inform the Board in writing of the applicable contravention or inconsistency.

### 8.2. No obligation to act inconsistently with the Companies Act

8.2.1. Notwithstanding anything to the contrary contained elsewhere in the Association's MOI, no person bound by the Association's MOI shall be required, obliged or entitled in terms of the Association's MOI to do or omit to do something in terms of the Association's MOI to the extent that it is inconsistent with or contravenes any provision of the Act.

8.2.2. Any person bound by the Association's MOI who has complied with paragraph 8.1 and has done something or has failed to do something to the extent necessary so as not to be inconsistent with or contravene any provision of the Act or to avoid personal liability under Section 218(2) or otherwise in terms of the Act, but as a result thereof has contravened any provision of the Association's MOI which is void or is declared void by a court in terms of Section 218(1), shall not for that reason alone be liable or responsible therefor under or in terms of the Association's MOI with respect to any claim by any person bound by the Association's MOI and entitled under or in terms of the Association's MOI to do so, arising out of or in connection with any such act or omission.

### 8.3. Board must address inconsistencies

8.3.1. If any provision of the Act is amended, or the Board is aware or informed of any inconsistency with or contravention of the Act in terms of paragraph 8.1 or



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otherwise, then in addition to and without limiting the rights or remedies of any other person in terms of the Association's MOI or otherwise, the Board shall expeditiously:

- 8.3.1.1. assess that amendment to the Act and/or that inconsistency or contravention; and
- 8.3.1.2. obtain reasoned written external legal opinion if the Board deems it necessary with respect to any such alleged inconsistency or contravention; and
- 8.3.1.3. propose amendments to the agreement in question or propose the Special Resolutions required to appropriately amend the Association's MOI, as the case may be, as is necessary so as to remove or eliminate or address any applicable contraventions or inconsistencies.

## 9. MAIN BUSINESS OF THE ASSOCIATION

- 9.1. The Association is tasked with representing and promoting the interest of its members, which shall be companies active in the information technology industry, as provided for in the constitution.
- 9.2. The status of the ITA, as an association, shall be that of a body corporate established "not for gain", with perpetual succession, and capable of entering into contractual or other relationships, and of instituting or defending legal action in its own name.

## 10. OBJECTIVES OF THE ASSOCIATION

- 10.1. The objectives of the ITA shall be:
  - 10.1.1. to promote and to protect the interests of its members;
  - 10.1.2. to promote the upholding of the ITA Code of Ethics by members, who are required to be signatories;
  - 10.1.3. to encourage co-operation between members, and to deal with all such matters as may affect members' common interests;
  - 10.1.4. to promote, support or oppose as may be deemed appropriate any legislative or other measures affecting the interests of members;
  - 10.1.5. to confer with Government, Provincial Administration or Local Authorities and their departments and all other interested bodies of concern or likely to be of concern to members;
  - 10.1.6. to educate and guide members on relevant legislation impacting the Information Technology Sector, and compliance with such legislation;
  - 10.1.7. to be affiliated to any association or organisation as may be decided upon by the ITA from time to time;
  - 10.1.8. to collect and disseminate information likely to be of use to members;



- 10.1.9. to arrange and promote the adoption of equitable forms of contract and other undertakings of common use and application in the Information Technology Sector;
- 10.1.10. to promote a high standard of quality, design and workmanship in the Information Technology Sector;
- 10.1.11. to promote the Information Technology Sector, by means of advertisements, publicity campaigns, exhibitions, or otherwise;
- 10.1.12. to establish and maintain and/or assist in the establishment or maintenance of any fund or committee formed or which may be formed for the protection of the interests of members, or for the protection and benefit of employees, or for the benefit and protection of the joint interests of employers and employees in the Information Technology Sector; provided that no fund which is not subject to control under any law shall be established until the rules governing such fund have been approved by the Registrar.

## 11. POWERS OF THE ASSOCIATION

- 11.1. The objects of the Association are as set out in paragraph 10, and except to the extent necessarily implied by the stated objects, the Association has the powers and capacity of an Individual. Notwithstanding the omission from the Association's MOI of any provision to that effect, the Association is not subject to any special conditions and may do anything which the Act empowers an Association to do if so authorised by its MOI.
- 11.2. Subject to Schedule 1(1)(1)(2) of the Act, the Association may acquire and hold securities issued by a profit Association or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its objects.
- 11.3. As per Schedule 1(1)(3) of the Act, the Association must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether the income or asset was derived, to any person who is or was an incorporator of the Association, or who is a member or director, or person appointing a director, of the Association, except.
  - 11.3.1. as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Association;
  - 11.3.2. as reasonable payment of, or reimbursement for, expenses incurred to advance the object of the Association;
  - 11.3.3. as payment of an amount due and payable by the Association in terms of a *bona fide* agreement between the Association and that person or another;
  - 11.3.4. as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance the object of the Association; or
  - 11.3.5. in respect of any legal obligation binding on the Association.

11.4. In addition to observing the limitations set out in Schedule 1(1)(3) of the Act, the Association:

- 11.4.1. must carry out its activities in a non-profit manner and with an altruistic or philanthropic intent;
- 11.4.2. must refrain from carrying on any activity which is intended to directly or indirectly promote the economic self-interest of any director or employee other than by way of reasonable remuneration;
- 11.4.3. must utilise its funds solely for the object for which it has been established;
- 11.4.4. is prohibited from directly or indirectly distributing any of its funds to any person otherwise than in the course of undertaking any activity in furtherance of its object;
- 11.4.5. is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility of the donation in terms of Section 18A of the Income Tax Act 58 of 1962 ("Income Tax Act"); provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of Section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

11.5. The Association is Empowered:

- 11.5.1. to amalgamate with other companies having the same or similar objects to the Association;
- 11.5.2. to establish, promote or assist in establishing or promoting and to subscribe to or become a member of any association or society whose objects are similar or partly similar to the objects of the Association, or the establishment or promotion of which may be beneficial to the Association, provided that no subscription be paid to any such other association out of the funds of the Association except *bona fide* in furtherance of the interests of the Association;
- 11.5.3. to remunerate any person or persons in cash for services rendered in the formation or development of its business;
- 11.5.4. to make donations except to Members or Directors;
- 11.5.5. to make loans, exchanges, leases and any other forms of contract whatsoever including sales and purchase of property of any kind whatsoever;
- 11.5.6. to secure the fulfillment of any contracts or engagements entered into by the Association by the mortgage of all or any part of the property of the Association;

- 11.5.7. to pay remuneration, gratuities and pensions and establish pension schemes in respect of its *bona fide* employees and officers and Directors who are bona fide employees;
  - 11.5.8. to open bank accounts in the name of the Association and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques and other negotiable instruments connected with the business and affairs of the Association;
  - 11.5.9. to invest and deal with any monies of the Association not immediately required for the purposes of the Association;
  - 11.5.10. to acquire any movable or immovable property for the Association calculated to benefit the Association and to advance its objectives and to maintain, improve and alter any of the Association's property;
  - 11.5.11. to establish and maintain and/or assist in the establishment or maintenance of any fund or committee formed or which may be formed for the protection of the interests of the Association or its Members, or for the protection and benefit of employees, or for the benefit and protection of the joint interests of employers and employees in the out of home media industry;
  - 11.5.12. to provide legal assistance to members where deemed necessary and to institute, conduct, defend, compound or abandon any legal proceedings by, against or on behalf of the Association, or otherwise concerning the affairs of the Association; provided that if the legality of laws, regulations or other statutory instruments, by any national, provincial or local authority is to be challenged in court, the Association may, if authorised by majority vote at a General Meeting or special General Meeting, institute action for and on behalf of the Association and/or any Member or Members. In the event of the Association not instituting action, individual Members may institute action in their own name; and
  - 11.5.13. to do all such other lawful things as may appear to be in the interests of the Association and/or its Members and which are not inconsistent with the objects set out in this paragraph or any matter specifically provided for in this document.
- 11.6. The income and property of the Association whensoever and howsoever derived shall be applied solely towards the promotion of its objects and purposes as set out in paragraph 10, as per Schedule 1(1)(2)(a) of the Act, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the Members of the Association or to its controlling or controlled Association, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Association or to any Member thereof in return for any services actually rendered to the Association.
- 11.7. The Association shall not be permitted to distribute any of its surplus, gains or assets to any person other than an association whose objects are in the furtherance of the objects for which the Association is established.

- 11.8. Upon its winding up, deregistration or dissolution, the assets of the Association remaining after the satisfaction of all its liabilities shall, as set out in Schedule 1(1)(4) of the Act, be given or transferred to a company or institution or companies or institutions having objects similar to its main objects to be determined by the members of the Association at or before the time of its dissolution or, failing such determination, by the court.
- 11.9. The objects set forth in this document shall not be restrictively construed, but the widest interpretation shall be given thereto and they shall not, except when the context expressly so requires, be in any way limited or restricted by reference to or inference from any other object or objects set forth in such paragraph, or from the terms of any other paragraph, or by the name of the Association. None of such paragraph or the object or objects therein specified or the powers thereby conferred, shall be deemed subsidiary or ancillary to the objects or the powers mentioned in any other paragraph, but the Association shall have full powers to exercise all or any of the objects conferred by and provided in any other or more of the said paragraphs.

## 12. AMENDMENT (NPC REQUIRMENT)

12.1. This Constitution may be altered or amended as follows:

- 12.1.1. in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by publishing a notice of the alteration in any manner required or permitted by this Constitution or the Rules of the Association and filing a notice of the alteration, or
- 12.1.2. in compliance with a court order effected by a resolution of the Board;
- 12.1.3. in making application to the South African Revenue Services (SARS) to register as a Public Benefit Organisation; or
- 12.1.4. at any other time if a Special Resolution to amend the Constitution is proposed and adopted by the Full Members.

12.2. Any of the provisions of this Constitution, save for an amendment contemplated in paragraph 12.1, may be repealed, amended or added to in any manner only by a Special Resolution supported by 75% of the Full Members present at the meeting in person or proxy and entitled to vote provided that there are no less than 3 (three) present in person.

12.3. A written notice of alteration of the provisions of the Constitution shall be sent to each Member via electronic mail at least 21 (twenty-one) days before the General Meeting to consider the proposed amendments.

12.4. If applicable, a copy of all amendments to this Constitution must be submitted to the SARS Commissioner within 30 days of its amendment.

12.5. No amendments shall be made which will:

- 12.5.1. allow any income or other funds of the Association to be applied for a purpose which does not promote the achievement of the objects of the Association;



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12.5.2. amend this paragraph in any manner which would give any proprietary or similar interest in the Association's account to any natural person or any other entity which is not a public benefit organization or non-profit organisation;

12.5.3. have the effect of making the Association cease to exist.

## 13. RULES

13.1. The Association will ensure that it generally complies with such requirements set out by the SARS Commissioner, as may be necessary to obtain approval that the Association is recognised for tax and other purposes as an association in terms of the provisions of Section 30B of the Income Tax Act.

13.2. The Board shall have the authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Association in respect of matters that are not addressed in the Act or the Association's MOI as contemplated in Section 15(3) to 15(5) of the Act by publishing a copy of these rules in any manner required or permitted by the Association's MOI or rules of the Association, and by filing a copy of those rules.

13.3. The procedure to be followed regarding 14.2 above is as follows:

13.3.1. a notice of a Board Meeting is to be sent out in the prescribed manner and form, together with a brief outline of the proposed rule/amendment/ appeal, etc.;

13.3.2. the rule or amendment thereof is to be adopted by a special resolution of the Board, where after it is to be sent to all Members and filed at the Registrar of Companies.

13.4. A rule contemplated in paragraph 13.2 must be consistent with the Act and the Association's MOI, and any such Rule that is inconsistent with the Act or the Association's MOI is void to the extent of the inconsistency, and takes effect on a date that is the later of 20 Business Days after the rule is published or the date, if any, specified in the rule.

13.5. The rule will be binding on an interim basis from the time it takes effect until it is put to a vote at the next Members meeting of the Association, and on a permanent basis only if it has been ratified by an ordinary resolution at the meeting as contemplated.

13.6. The Board must publish any rules made, amended or repealed by delivering a copy of those rules to each Member and Director by email, ordinary mail or fax.

## 14. PROVISIONS OF CHAPTER 3 OF COMPANIES ACT

14.1. The Association is obliged to appoint an auditor and have their financials audited, even in the event of their Public Interest Score (PIS) score being below the required number. See paragraph 39 for the requirements for appointment of auditor. (*Chapter 3, part a – Section 84(1)(c) of the Act*)

14.2. The Association does not elect, in terms of Section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act.



14.3. The Board of the Association has the discretion to appoint an Executive Committee, a Finance Committee, an Audit and Risk Committee; as well as discretionary ad-hoc committees such as a Transformation Committee, a Skills and Jobs Committee, a Future Tech Committee and a Policy Committee as and when deemed necessary from time to time.

## 15. AREA AND SCOPE OF OPERATION

15.1. The area in which the Association will conduct business and from which contributions shall be sought in and outside of the Republic.

15.2. If the Association deems it in the interests of its members to conduct business in other countries, such a decision can be taken by the Members by way of a special resolution.

15.3. The Association will work with similar companies and organisations in the rest of Africa to further the interests of its Members by assisting other African countries to develop and establish out of home media associations wherever required.

## 16. MEMBERSHIP AND MEMBERSHIP FEES

### 16.1. General Provisions

16.1.1. As contemplated in Schedule 1(4)(1) and Section 4(2)(d) of the Act, the Association shall have no more than two classes of Members, being Voting Members, each of whom has an equal vote in any matter to be decided by the Members of the Association, and Non-voting Members, which shall have no vote in any matter to be decided by the Members of the Association other than as expressly provided for in this document.

16.1.2. The Association shall have 1 (one) category of membership, namely:

16.1.2.1. Voting Members:

16.1.2.1.1. Full

16.1.3. The Members of the Association shall be such persons as from time to time are admitted to membership, as hereinafter provided.

16.1.4. No Member may directly or indirectly have any personal or private interest in the Association.

16.1.5. The Association shall give regard to each of the Members' rights not to be discriminated against unfairly as provided in Section 9 of the Constitution of the Republic.

16.1.6. Membership shall be personal to the Member concerned and may not be assigned or transferred by them to any other person, Association or concern.

16.1.7. Members may be any person including companies (including profit companies), other bodies corporate, statutory bodies, partnerships or associations of persons. Distinction is made between Voting Members and Non-voting Members.

### 16.2. Full Membership





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- 16.2.1. Full Membership is open to any company, close corporation, partnership, trust or other business enterprise engaged in the information technology industry within Southern Africa.
  - 16.2.2. Full Members pay an annual membership fee as determined and reviewed by the Board from time to time in writing. Such fees will be reflected in the schedule of membership fees. Payment shall be made via eft into the Association's bank account.
  - 16.2.3. Each Full Member has 1 (one) vote.
  - 16.2.4. A Full Member may be elected to the Board of the Association.
  - 16.2.5. Full Members shall be entitled to attend Members' meetings of the Association and to receive the minutes of those meetings.
- 16.3. Applications for admission
- 16.3.1. Applications for admission as a Member must be addressed in writing to the Chairman/CEO. Such applications must contain a commitment to abide by the MOI, Constitution and the Code of Conduct of the Association (along with any other relevant governance documents) and a commitment to meet the financial obligations of membership for the entire duration of membership.
  - 16.3.2. The Board shall determine procedures for the admission of Members.
  - 16.3.3. Subject to the provisions of this MOI, all persons, companies, corporations and associations from the value chain will be eligible for membership of the Association by approval of the sitting Board.
  - 16.3.4. Candidates for membership and accepted members shall disclose such information as reasonably and equitably requested by the Board from time to time and under appropriate and clearly defined conditions of confidentiality.
  - 16.3.5. Subject to the further provisions of these paragraphs, the Board may fix the contributions payable to the Association by the Members and, in fixing such contributions, may differentiate among Members belonging to different categories determined by it for the purpose thereof from time to time.
  - 16.3.6. Applications for membership shall be considered by the Board at its first meeting after the date of receipt thereof by the Chairman/CEO, and the applicant concerned shall be notified in writing by the Chairman/CEO of the decision of the Board within 7 days of the date of such decision.
  - 16.3.7. The Board shall scrutinise the admissibility of the candidate for membership on the basis of the application for admission and the conditions as set out in paragraphs 17.1 to 17.6. The decision to admit an applicant for membership or to reject the application shall be at the sole and absolute discretion of the Board who shall not be required to give reasons for their decision, and there shall be no appeal by any



applicant to the Members or the Board.

- 16.3.8. Every Member of the Association shall, on becoming a Member, sign a written consent to become a Member and such signature shall bind the Association and the Members *inter se* to the terms of the MOI, Constitution, Code of Practice and the Companies Act No. 71 of 2008 to the same extent as if they had signed it and such member will ensure that, his heirs, executors and administrators or successors in title, will observe all the provisions of the MOI, Constitution, Code of Practice and the Companies Act No. 71 of 2008.

## 17. RIGHTS OF MEMBERS

- 17.1. Membership of the Association in any of the categories of membership does not and shall not give any member of any class a right to any of the monies, property or assets of the Association but only confers upon such members the privilege of membership subject to the fees and reasonable restrictions as the Board may impose from time to time, and subject to legislation.
- 17.2. No past or present Member shall be entitled to any part of the Association's income or have the Association's assets transferred to him directly or indirectly. A member may however receive reasonable compensation or reimbursements for the following:
- 17.2.1. remuneration for goods delivered or services rendered to or at the direction of the Association; or
  - 17.2.2. payment of, or reimbursement for expenses incurred to advance a stated object of the Association; or
  - 17.2.3. payment of an amount due and payable by the Association in terms of a bona fide agreement between the Association and the Member; or
  - 17.2.4. payment in respect of any rights of that Member to the extent that such rights are administered by the Association in order to advance a stated object of the Association.

## 18. DUTIES AND LIABILITIES OF MEMBERS

- 18.1. The financial liability of Members of any class for or on behalf of the Association towards any third party and the Association is limited to the amount of undisputed and unpaid membership fees or other monies owing by them to the Association.
- 18.2. All Members shall comply with the Association MOI, Constitution, the Code of Practice and Standards, the Companies Act No. 71 of 2008 and with all applicable national and other regulations having force of law and by-laws applicable in the provinces, cities, towns and suburbs in which they operate within South Africa.

## 19. SUSPENSION AND TERMINATION OF MEMBERSHIP

- 19.1. Unless an alternative arrangement has been agreed to in writing between a Member and the Association, a member may be suspended or expelled and shall be deemed to be out of good

standing:

- 19.1.1. if the subscriptions or other charges due by him to the Association are more than 3 (three) months in arrears; or
- 19.2. in gross misconduct of the MOI, Constitution, Code of Practice and the Companies Act No. 71 of 2008.
- 19.3. Any Member who has been suspended shall, for the period of such suspension, remain liable for membership fees and any other payments due to the Association but will not be entitled to:
  - 19.3.1. vote at or attend any meeting
  - 19.3.2. receive notices, minutes or circulars relating to the Association's activities
  - 19.3.3. any other benefits of membership.
- 19.4. The Board shall have the power to suspend or terminate a Member's membership of the Association:
  - 19.4.1. if, in the sole discretion of the Board, it is guilty of conduct inimical to the interests and/or objects of the Association;
  - 19.4.2. upon the death of any Member, or upon any Member being declared by a court to be insane or incapable of managing its own affairs;
  - 19.4.3. in the event of non-compliance by a Member with any such obligations as may attach to its Membership, including without limitation the payment of any entrance fee, membership fee, levy or other contribution (if any) as contemplated in the Association's MOI and Constitution, upon the expiration of a period of 1 month reckoned from the date of written notice by the Association to the Member concerned requiring the remedying of such default in circumstances where such default is not remedied within that period; save that the Board shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate and save that the Board shall have the power to reinstate such Member on such terms as the Board may think fit; or if, in the sole discretion of the Directors, it is inimical to the best interests of the Association that it should continue as a Member of the Association.
- 19.5. The Board shall furnish their reasons for suspending or terminating a Member's membership in terms of paragraph 19.1 to that Member in writing and that Member shall have the right, exercisable by notice in writing to the Chairman/CEO within 14 days of receipt of those reasons, to be heard by the Board within a period of 14 days after receipt by the Chairman/CEO of such notice. Within 14 days of the hearing, the Board may, upon such terms if any, as it may deem appropriate, rescind or confirm the suspension or expulsion, or amend it, and until such rescission or confirmation or amendment is made no public announcement within or outside the Association of such suspension or expulsion shall be made.
- 19.6. A Member will automatically cease to be a Member of the Association if such Member is



dissolved, liquidated/sequestered whether provisionally or finally, or placed under judicial management, whether provisionally or finally is placed under curatorship, or is de-registered or a comparable action occurs under the insolvency laws of the Members jurisdiction of organisation.

- 19.7. No Member whose membership has been terminated whether as a result of automatic termination, resignation, expulsion or otherwise, will have any claim against the assets of the Association or for refund of any monies paid by it to the Association or of any nature whatsoever but shall remain fully liable to the Association for all amounts, contributions and membership fees due and payable by such Member at the date of termination of such Member's membership. This includes the honouring of long-term commitments undertaken by the Member up to the predetermined end of such commitment as was previously agreed to by the Member.
- 19.8. Upon expulsion of a member, all monies due to the Association by such member shall become payable. If payment thereof is not made within 30 (thirty) days, the Board may take such steps as it deems necessary to secure payment.
- 19.9. An extract from the books and records of the Association made by the Chairman/CEO will be sufficient prima facie proof of the amounts in arrears and the period for those amounts or any part thereof is in arrears. If the amounts in arrears and/or the period for payment of those amounts, or any part thereof, are contested, verification by the auditor of the Association will be made, and the decision of the auditor will be final.
- 19.10. A Member who has resigned or whose membership has been terminated as contemplated above, may be re-admitted to membership on such conditions and after such period as the Board may, in its sole discretion, determine.

## 20. RESIGNATION OF MEMBERS

- 20.1. A member may resign by giving 6 (six) calendar month's written notice to this effect to the Association; provided that such notice shall be given 6 (six) months prior to the Associations' financial year-end and that such resignation shall not absolve a member from the duty of paying any money due or owing by him to the Association at the time of his resignation and provided further that all monies owed to the Association shall immediately become due and payable.
- 20.2. Based on the premise that membership to the Association is an annual subscription and that membership fees are calculated and budgeted for as such, a Member who resigns shall not be entitled to any refund and shall be liable for its financial responsibilities to the Association, including its financial obligations as given in the budget for the 6 (six) month notice period, as well as any arrears which are due up to the date of expiry of his/her period of notice.

## 21. MEMBERSHIP REGISTER

The Association shall maintain at the Office or at such other place as may from time to time be determined and authorised, a register of Members as provided in Section 24 (4) and Schedule 1(1) (9) of the Act.

## 22. MEMBERS RIGHT TO INFORMATION



22.1. The Members of the Association shall have the right to inspect and copy information contained in the records of the Association as set out in Section 26 of the Act.

## 23. RECORD DATE FOR EXERCISE OF MEMBER RIGHTS

If, at any time, the Board fails to determine a Record Date, the Record Date for participating in and voting at a General Meeting is the latest date by which the Association is required to give Members notice of that meeting.

## LIMITATION OF LIABILITY

No Member or any other person who is a Member or officer of such Member shall have any claim against any person whomsoever or whatsoever arising from any *bona fide* act or decision of the Association, the Directors or any advisory board, council or committee or employee of the Association except where such person or persons has acted with negligence or willful act of misconduct..

## 24. MEMBERS MEETINGS

24.1. A General Meeting of Members of the Association shall be held at least 2 times per annum on a date fixed by the Chairperson.

24.2. The Board may call a Members' meeting at any time.

24.3. The Chairman of the Board, or in his absence a Vice Chairman, shall be entitled to take the chair at every General Meeting. If there is no Chairman or Vice Chairman present within 10 (ten) minutes after the time appointed for holding the meeting, or is unwilling to act, the Directors may choose a Chairman, and in default of their doing so the Members present shall choose 1 (one) of them to be Chairman.

24.4. If the Association is unable to convene a meeting because it has no Directors or because all of its Directors are incapacitated, then the Association authorises any Member to convene a meeting in these circumstances.

24.5. Requirement to hold meetings

24.5.1. The Association is required to hold Members meetings in the following circumstances:

24.5.1.1. when adopting any Ordinary Resolution or Special Resolution;

24.5.1.2. whenever required in terms of Section 70(3) to fill a vacancy on the Board; and

24.5.1.3. when one or more written and signed demands for such a meeting are delivered to the Association, and each such demand describes the specific purpose for which the meeting is proposed, and in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

- 24.5.2. Special General Meetings shall be called whenever desired by a majority of the Board or upon a requisition signed by not less than 10% of the members of the Association in good standing and entitled to vote. Such special General Meetings shall be called within 21 (twenty-one) days from the date of decision of the majority of the Board or from the date of receipt of the requisition by the Chairman.
- 24.5.3. Notwithstanding paragraph 25.5.1, the Association, or any Member, may apply to a court for an order setting aside such a demand on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members or is otherwise vexatious.
- 24.5.4. At any time before the start of a Members meeting contemplated herein, a Member who submitted a demand for that meeting may withdraw that demand, and the Association must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting.
- 24.6. Annual General Meeting
- 24.6.1. Notwithstanding anything to the contrary in this document, the Association shall in each year hold an AGM of the Members within or not more than 6 (six) months after the end of every financial year of the Association; provided that not more than 15 months shall be permitted to elapse between the date of one AGM and that of the next.
- 24.6.2. Notice of an AGM must be given to members in writing by the Chairman/CEO not less than 15 (fifteen) business days before the date of such meeting.
- 24.6.3. The AGM shall deal with and dispose of all matters prescribed by the Act. All business laid before any other general meeting shall be considered special business.
- 24.6.4. If any business that would ordinarily be concluded at the AGM cannot be concluded for whatever reason, a General Meeting can be called to transact such business.
- 24.6.5. At each AGM the agenda must provide for the following:
- 24.6.5.1. attendance & apologies
  - 24.6.5.2. confirmation of the agenda
  - 24.6.5.3. confirmation of the minutes of the previous AGM
  - 24.6.5.4. the Chairman's report
  - 24.6.5.5. the Director's report, which shall comply with Section 30(3)(b) of the Act
  - 24.6.5.6. the auditor's report
  - 24.6.5.7. audited financial statements for the immediately preceding financial year
  - 24.6.5.8. an audit committee report (if applicable)



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- 24.6.5.9. the election of Directors, to the extent required by the Act or the Association's MOI.
- 24.6.5.10. the appointment of an auditor for the ensuing financial year; and an audit committee (if applicable)
- 24.6.5.11. changes to the Association MOI, Constitution or Code of Practice.
- 24.6.5.12. any general matters raised by Members, with or without advance notice to the Association.
- 24.6.5.13. closing of the meeting.

#### 24.7. Members acting other than at a meeting

- 24.7.1. Notwithstanding paragraph 25.5, an ordinary resolution or special resolution that could be voted on at a Members meeting may instead be voted on in writing, via a round-robin resolution if:
  - 24.7.1.1. the resolution is submitted to Members entitled to exercise voting rights in relation to the resolution; and
  - 24.7.1.2. is thereafter voted on in writing by the Members within 20 business days after the resolution was submitted to them.
- 24.7.2. A resolution contemplated in paragraph 25.7.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted, as an ordinary resolution or Special Resolution, as the case may be, at a properly constituted Members meeting and if adopted, has the same effect as if it had been approved by voting at a Members meeting.
- 24.7.3. Within 10 business days after adopting a resolution, or conducting an election of directors, the Association must deliver a statement describing the results of the vote, consent process or election to every Member who was entitled to vote on or consent to the resolution, or vote in the election of the director, as the case may be.
- 24.7.4. The written resolution, as set out in paragraph 25.7, shall be deemed (unless a statement to the contrary is made in that resolution) to have been passed on the last day on which that resolution is signed by any one or more of the Members who are entitled to exercise voting rights in relation to that resolution. The written resolution may consist of two or more documents in the same form, each of which is signed by one or more such Members, as the case may be.

#### 24.8. Location of Members' meetings

The Board may determine the location of Members' meetings.

### 25. NOTICES OF MEETINGS

- 25.1. Notice of a Members meeting must be given to members in writing by the Chairman/CEO not less than 15 (fifteen) business days before the date of such meeting, provided that in the case of Special General Meetings such shorter notice being not less than 48 (forty eight) hours, as

may be decided by the Chairman, may be given, and must include:

- 25.1.1. the date, time and place for the meeting;
- 25.1.2. the general purpose of the meeting;
- 25.1.3. a reasonably prominent statement that:
  - 25.1.3.1. a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member;
  - 25.1.3.2. a proxy need not also be a Member of the Association.
- 25.2. Notices may be sent in electronic format and for purposes of this document a notice sent in electronic format will be deemed to be delivered to the representative of the member if it is sent to the address supplied by the member in writing or electronically and is not returned as undelivered within 24 (twenty four) hours from the time that it is sent. All members present in person at any meeting shall be deemed to have received notice of such meeting.
- 25.3. The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting. In the event of a dispute as to whether the omission was accidental or not, the decision of the Board shall be final and binding on the Members. Further, if the Association fails to give the required notice of a Members meeting, or if there was a material defect in the giving of the notice, the meeting may proceed if 75% of Members entitled to exercise voting rights in respect of each item on the agenda of the meeting:
  - 25.3.1. acknowledges actual receipt of the notice;
  - 25.3.2. is present at the meeting; and
  - 25.3.3. waives notice of the meeting, or in the case of a material defect in the manner and form of giving notice, ratifies the defective notice.
- 25.4. Proxies
  - 25.4.1. A person entitled to attend and vote at a members meeting may appoint a proxy. The proxy shall be given in a form as approved by the Chairman. The instrument appointing a proxy shall be under the hand of the appointer or of his agent duly authorised, in writing, dated and signed. A proxy need not be a Member. The holder of a General or Special Power of Attorney incorporating the necessary powers contemplated hereunder, shall be entitled to attend and vote at any meetings on behalf of the Member granting such power.
  - 25.4.2. The Association shall be obliged to give effect to the appointment of a proxy, provided the instrument appointing such proxy, including the Power of Attorney or other authority, if any, under which it is signed or a duly certified copy thereof, shall have been delivered to the Association or to any other person acting on behalf of the Association provided that such instrument of proxy is delivered





before the time for holding such meeting or any adjournment thereof.

25.4.3. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

I, \_\_\_\_\_ of \_\_\_\_\_ being a Full Member of INFORMATION TECHNOLOGY ASSOCIATION OF SOUTH AFRICA NPC, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ failing \_\_\_\_\_ of \_\_\_\_\_ as my proxy to vote for me and on my behalf at the Annual General Meeting or General Meetings (as the case may be) of The Association to be held on the \_\_\_ day of \_\_\_ 20\_\_\_ and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution to .....			
Resolution to .....			
Resolution to .....			

(Indicate instruction to proxy by way of a cross in the space provided above.)

Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed at \_\_\_\_\_ on this \_\_\_ day of \_\_\_\_\_ 20\_\_\_

\_\_\_\_\_  
Signature

(Note: A Full Member entitled to attend, and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy does not have to be a Member of the Association.)

25.5. Electronic participation in Members' meetings

25.5.1. A Members meeting may be conducted entirely by electronic communication or one or more members to participate by electronic communication in all or part of a members meeting that is being held in person, provided that the electronic communication employed ordinarily enables participants in the meeting to communicate concurrently with each other without an intermediary and to participate effectively.

25.5.2. A resolution signed by the requisite majority or percentage of Members who were

connected electronically shall be deemed to have been passed on the date on which the resolution was signed by the Member last to sign it (unless a statement to the contrary is made in that resolution) and such resolution may consist of several documents, each of which may be signed by one or more Members who participated in the electronic meeting where:

- 25.5.2.1. all such Members remained connected for the duration of the electronic meeting;
  - 25.5.2.2. the subject matter of the resolution has been discussed; and
  - 25.5.2.3. the Chairman of the meeting or any other Member certifies in writing that the aforementioned requirements have been met,
- 25.5.3. In the event that a meeting is conducted as above, the Association must comply with the following:
- 25.5.3.1. the notice of such meeting must inform Members of the availability of that form or participation, and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication; and
  - 25.5.3.2. members must be informed that access to the medium or means of electronic communication is at the expense of the Member or proxy, except to the extent that the Association determines otherwise.

## 26. GENERAL MEETINGS – QUORUM AND ADJOURNMENT

- 26.1. No business shall be transacted at any General Meeting unless a quorum of Members is present. The quorum shall be more than 25% (twenty five percent) of the Members entitled to vote, provided that there are no less than 3 (three) Members present in person and entitled to vote at such meeting.
- 26.2. If within 30 (thirty) minutes after the time appointed for a meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the following week or if that is a public holiday, to the next succeeding business day at the same time and place and if there is no quorum at such adjourned meeting the Members present will be deemed to constitute a quorum.
- 26.3. The 30 minutes limit specified in paragraph 27.2 may be extended by the Chairman presiding at the Members' meeting as contemplated in Section 64(5) of the Act for a reasonable period on grounds that:
  - 26.3.1. exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or
  - 26.3.2. one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in

attendance, would satisfy the requirements of paragraph 27.1

- 26.4. If a quorum is not present when a matter is called on the agenda, consideration of that matter may be postponed to a later time in the meeting, without motion or vote, if there is other business on the agenda. However, if there is no further business on the agenda, the meeting is automatically, without motion or vote, unless the location of the meeting is different, adjourned to a date determined by the Chairman on written notice to the Members but which shall be no earlier than one week and no later than 21 days from the date of the meeting (or if that is not a Business Day, to the next succeeding Business Day) to be continued at the same time and place, or to such other time and place as the Chairman of the meeting may appoint.
- 26.5. Where a meeting has been adjourned the Association shall set a new time and place or adjourn until further notice. If the meeting is adjourned until further notice, a new notice is required.
- 26.6. The Chairman of a General Meeting may, with the consent of the meeting, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 26.7. A Members' meeting (or consideration of a particular matter on the agenda) may be adjourned without further notice to a fixed time and place (but will require a notice if it is adjourned "until further notice") by a vote in favour thereof by holders of a majority of those voting rights present or represented at the meeting and entitled to be exercised on at least one matter remaining on the agenda of the meeting or, where the adjournment is in respect of a particular matter, by a vote in favour thereof by holders of a majority of those voting rights present or represented by proxy and entitled to be exercised in respect of the matter in question.
- 26.8. Pursuant to Section 64(8) of the Act, if within 30 minutes of the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, those Members who are entitled to exercise Voting Rights at the meeting, present or represented at the meeting will be deemed to constitute a quorum.

## 27. PROCEEDINGS AT MEETINGS

- 27.1. The Chairman and in his absence the Vice Chairman shall chair all meetings.
- 27.2. General meetings of the Association may be conducted face-to-face or electronically, which would allow members to be present and participate through electronic means.
- 27.3. If the Chairman or Vice Chairman is not present within (ten) minutes after the time appointed for holding the meeting, or is unwilling to act, the Directors may choose a Chairman, and in default of their doing so the Members present shall elect a Chairman for that meeting.
- 27.4. At every General Meeting the Minutes of the last preceding General Meeting shall be read and signed by the presiding officer after confirmation.
- 27.5. It shall be competent for a meeting to authorise the presiding officer to sign and confirm



Minutes as correct if after perusal thereof he is of the opinion that the Minutes reflect a true record of the proceedings.

27.6. The proceedings of any meeting shall not be invalidated by reason of the non-receipt by any member of the notice of the meeting.

## 28. VOTING AT MEMBERS MEETING

28.1. Save as is otherwise expressly provided by the Act or in this document, all resolutions to be considered at any Members' meeting shall be decided by a majority of votes cast by those present in person or by proxy and entitled to vote at the meeting.

28.2. Every Full Member will have one vote at a meeting of the Association; provided that if a member is a subsidiary of a holding Association or any person that is controlled by a member, that subsidiary or controlled person shall not have a vote as long as the holding/subsidiary situation or the controlled/controlling relationship exists. "Control" shall mean the right to control, manage and regulate the affairs of such other person and the Board shall have the complete discretion to decide whether in any particular case control exists and such decision shall be final.

28.3. At a meeting of Members, voting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded by the Chairman of the meeting or no less than five Members. Subject to the provisions of the Act, unless a poll is demanded, a declaration by the Chairman that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, shall be final and an entry to that effect in the minute book of the Association shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

28.4. If a poll is demanded as aforesaid, it shall be taken in such manner and at such place and time as the Chairman of the meeting directs and either immediately or after an interval or adjournment which shall not exceed seven days, the demand for a poll may be withdrawn. Scrutineers shall be appointed by the Chairman to count the votes and to declare the result of the poll, and their declaration, which shall be announced by the Chairman of the meeting, shall be deemed to be the resolution of the meeting at which the poll was demanded. In case of any dispute as to the admission or rejection of a vote, the Chairman of the meeting shall determine the dispute and the determination of the Chairman made in good faith shall be final and conclusive.

28.5. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

28.6. In the case of an equality of votes, the Chairman will have a casting vote.

28.7. All members must abide by the majority decision.

28.8. Any Member who has not paid any entrance fee, membership fee, levy or other contribution (if any) which has become due and payable to the Association in respect of his membership in accordance with this document shall not be entitled to vote at any meeting.



28.9. Any Member who has been suspended shall not be entitled to vote at any meeting or to any other benefits of membership, for the period of such suspension.

## 29. MEMBERS RESOLUTION

29.1. A resolution must be in writing and include the reason for the resolution and the effect of the resolution and will be in effect for a period of 3 months from the date of adoption. If the process is not complete within the specified 3 months, a new resolution will have to be adopted on the process.

29.2. For an ordinary resolution to be adopted at a Meeting, it must be supported by more than 50% (fifty percent) of the Members who voted on the resolution, as provided for in Section 65(7) of the Act.

29.3. For a special resolution to be adopted at a Meeting, it must be supported by at least 75% (seventy five percent) of all Members, as provided for in Section 65(9) of the Act.

29.4. A special resolution adopted at a General Meeting is not required for a matter to be determined by the Association, however a special resolution at a General Meeting will be required to:

29.4.1. amend the Association's MOI, Constitution and Code of Practice

29.4.2. approve the voluntary winding up of the Association; and

29.4.3. approve the implementation of fundamental transactions provided for in Part A, Chapter 5 of the Act.

29.5. A resolution in writing, signed by the Board on behalf of the Members entitled to vote or their duly appointed agents, shall (except in cases where a meeting is prescribed by the Act) be as valid and effectual as if it has been passed at a meeting of the Association duly convened and held, provided that such resolution is duly inserted in the minute book of meetings of the Association.

## 30. RECORDS OF MEETINGS

30.1. Proper minutes and attendance records must be kept for all meetings of the Association.

30.2. The minutes shall be confirmed as a true record of proceedings by the next meeting of the general members and shall thereafter be signed by the Chairman.

30.3. Minutes shall be kept safely.

## 31. NON-MEMBERS OF THE ASSOCIATION

31.1. From time to time, the Association will have to deal with persons that are not members or constituent members of ITA and do not want to become members either. The Board is hereby specifically empowered to deal with such and other similar situations in the best interests of the Association and to make such agreements or arrangements and reach such

accommodations with such persons as it deems necessary.

31.2. In order to do this without undermining the interests of the Members of the Association, the following procedure must be followed in all cases:

31.2.1. before any agreement, arrangement or accommodation as contemplated in 32.1 is reached with a person or persons operating outside of the Association membership structures, it must be approved by special resolution of the Board at a meeting with the support of at least 75% (seventy five percent) of all Board members;

31.2.2. arrangements such as these must be regarded as temporary and must therefore be reviewed by the Board on a regular basis but not less than once a year and management must report back on the arrangements at each Board Meeting or at such frequency as required by the Board; and

31.2.3. any agreement, arrangement or accommodation such as contemplated in 32 must allow for cancellation, whether immediate or after a cancellation period, if the Association feels that it has served its purpose or that continuing with the arrangement is not in the best interests of the Association or its members.

## 32. DIRECTORS

32.1. In this section, director includes an alternate director, prescribed officer and a committee member, irrespective of whether or not the person is also a member of the Association's board.

### 32.2. Powers of Directors

32.2.1. The business of the Association shall be managed and supervised by the Board in accordance with the stated objects of The Association and as envisioned in terms of Section 66(1) of the Act. The Board may exercise all powers of the Association which are not excluded by a statute or this document.

32.2.2. The Board will be the official spokesperson for the Association and no statements in respect of the Association may be made without the prior permission of the Board. Board may delegate its rights and duties in this respect to a committee of members constituted out of the Board.

### 32.3. Appointment

32.3.1. Subject to paragraph 33.3.10 and as per Section 66.2 of the Act, the Association shall have a minimum of 3 (three) Directors and a maximum of 9 (nine) Directors. No Director may be a 'connected person' (as defined in the Income Tax Act) in relation to any other Director. No single Director shall directly or indirectly control the decision-making powers relating to the Association.

32.3.2. Subject to the proportions in paragraph 33.3.1, vacancies occurring on the Board shall be filled at the first ensuing General Meeting. Each Member of the Association shall be entitled but not obliged to nominate one Director to fill such vacancy. Once the nominations have been made by the Members, the Full voting Members shall be

entitled but not obliged to vote on the nominations by show of hands or by ballot. Where a vacancy occurs subsequent to the date on which the notice of that meeting was issued it shall be filled at the next ensuing General Meeting. Nominations for the vacancy may be submitted to the Chairman/CEO in writing at any time before the meeting or may be made verbally or in writing during the meeting. A member appointed to fill a vacancy shall hold office for the unexpired portion of the period of office of his predecessor.

- 32.3.3. Each Member will be entitled to remove and replace any Director nominated by such Member at any time provided that such Member immediately notifies the Chairman, CEO or public officer of the Association of such removal and the name and details of the person nominated in such Director's place.
- 32.3.4. Every Director must satisfy the qualification and eligibility requirements set out in Section 69 of the Act to become or remain a Director.
- 32.3.5. The election or appointment of a Director is a nullity if, at the time of the election or appointment, that person is ineligible or disqualified in terms of Section 69 of the Act.
- 32.3.6. On appointment a director has to deliver to the Association a written consent to act as director.
- 32.3.7. The Board will be appointed by the general membership at the AGM of the Association on nomination, duly seconded and voted upon by the members entitled to vote and present in person or represented by proxy by a show of hands, of one representative per member, or by ballot.
- 32.3.8. The Chairman and Vice Chairman shall be elected by the Board, from the representatives elected to the Board in terms of the process outlined in 33.3.7 above, on nomination by a Board Member.
- 32.3.9. The Chairman and Vice Chairman of the Board shall ipso facto be Chairman and Vice Chairman of the Association. The remaining members of the Board shall each be the CEO or an experienced senior professional serving as a director of that member, or member in the case of a close corporation, provided that "director" shall also include an alternate director, and shall be appointed as follows:
  - 32.3.9.1. Independent Chairman, elected by the Board
  - 32.3.9.2. CEO appointed by the Board
  - 32.3.9.3. Board Members will be constituent members and nominated and elected by the general membership and not to exceed 7 (seven), as follows:
    - 32.3.9.3.1. 6 x full members
    - 32.3.9.3.2. 1 x approved representative from the temporary membership category.
- 32.3.10. The Directors may from time to time appoint one or more candidates to the office of



CEO on such terms and conditions as may be determined from time to time and may revoke such appointment. Such appointed CEO shall be appointed to the Board.

- 32.3.11. The Board shall have the power from time to time to appoint any other person as a Director (in addition to the Directors appointed in terms of paragraph 33.3.1) as an addition to the Board, provided that no more than three Directors so appointed shall be members of the Board at any one time. Any Director so appointed shall have no voting power at meetings of the Board or be taken into consideration for the purpose of constituting a quorum at meetings of the Board, provided further that such persons shall only serve on the Board for as long as determined by the Board or a General Meeting.
  - 32.3.12. It shall not be necessary for the Directors of the Association to retire by rotation in any year, and a Director once appointed shall remain in office until he either resigns, is disqualified or is removed in terms of paragraph 33.5 and 33.6, provided that at least one third of the elected Directors shall be available for re-election at the end of the term.
  - 32.3.13. The Director appointed by a Member who is under suspension or whose financial responsibilities to the Association are in arrears for more than 90 (ninety) days shall not be entitled to attend or vote at any meeting of the Board.
  - 32.3.14. If any Director is not entitled to attend or vote at any meeting of the Board then his alternate shall likewise not be entitled to attend or vote thereat.
  - 32.3.15. The Board may appoint regional representatives in regions where Association representation may become necessary. The regional representatives would be responsible for furthering the aims of the Association in those areas and would be required to hold at least 2 (two) meetings per annum with local members. Minutes must be taken at meetings and forwarded to the Chairman/CEO for distribution to the Board.
  - 32.3.16. The Board may, at the first or any subsequent meeting following the annual election, appoint a Treasurer from amongst its members.
  - 32.3.17. The Treasurer, if appointed, shall be responsible for managing the funds of the Association, to the extent consented to by the Board of the Association.
  - 32.3.18. The Board shall have the power to vary or alter the powers and duties of the Treasurer and to allocate to other office bearers or officials such of the Treasurer's duties as the Board may in its discretion direct.
- 32.4. Alternate Directors
- 32.4.1. Each Association who has a member represented on the Board will have the power to appoint a person that is a Constituent member to act as Alternate Director for each Director, and at its discretion to remove such alternate and appoint another in his place.
  - 32.4.2. On such appointment being made and approved, the Alternate Director shall in all





respects be subject to the terms and conditions existing with reference to the other Directors of the Association but shall not be entitled to receive any remuneration from The Association.

- 32.4.3. An Alternate Director, whilst acting in the place of the Director appointing him, shall exercise and discharge all the duties and functions of the Director he represents.
  - 32.4.4. The appointment of an Alternate Director shall be cancelled and the Alternate Director shall cease to hold office whenever the Member who appointed him gives notice in writing to the Chairman, CEO or public officer of the Association that the alternate Director representing him have ceased to do so.
  - 32.4.5. Notwithstanding the foregoing, neither the Chairman nor the CEO shall be entitled to appoint an alternate Director.
  - 32.4.6. Each member of the Board will be entitled to appoint an alternate to represent him at the Board, should he be unable to attend. Such alternate however, will have to be approved in advance unanimously by all members of the Board and shall also be the Chief Executive Officer or an experienced senior professional serving as a director of that member, and provided further that “director” shall also include an alternate director. In the event of both the member of the Board and the alternate being unable to attend a meeting, the member of the Board will be entitled to appoint a proxy from the other members of the Board.
- 32.5. Vacation of office
- 32.5.1. The office of the Director shall *ipso facto* be vacated if such Director:
    - 32.5.1.1. is a representative of a Member and the Member who appointed him, ceases to be a Member of the Association;
    - 32.5.1.2. dies;
    - 32.5.1.3. resigns, by giving 1 (one) calendar months’ notice to the Association;
    - 32.5.1.4. becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time;
    - 32.5.1.5. ceases to be a representative of the Member which appointed him;
    - 32.5.1.6. is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Association;
    - 32.5.1.7. holds any other office of profit under the Association, without the consent of the Association, except that of CEO;
    - 32.5.1.8. is absent from a board meeting for more than 3 (three) consecutive meetings without permission of the Board; and is not represented at

any such meeting by an alternate Director or proxy, and the Board resolves that his office be vacated;

32.5.1.9. is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare his interest and the nature thereof;

32.5.1.10. becomes ineligible or disqualified in terms of Section 69 of the Act; or is removed.

### 32.6. Removal from office

32.6.1. The Association may in accordance with Section 71 of the Act remove any Director before expiration of this period of office and may by Ordinary Resolution appoint another Member in his stead.

32.6.2. A Director may further be removed from office by order of the court as contemplated in Section 71(5) or (6) of the Act.

### 32.7. Vacancies

32.7.1. The Directors may act notwithstanding any vacancy on the Board, provided that for so long as their number is reduced below the number fixed in paragraph 33.3.1 as the minimum number of Directors, then the remaining Directors may act for the purpose of increasing the number of Directors to that number, but for no other purpose.

### 32.8. Conduct of Directors

32.8.1. The conduct of Directors will be as prescribed by Section 76 of the Act.

### 32.9. Meetings

32.9.1. The Directors will endeavor to meet at least once a quarter for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit.

32.9.2. Special meetings of the Board shall be called by the Chairman whenever he deems it advisable or upon the request of 2 Board members (DSD), in which event the meeting shall be called within 21 (twenty one) days of receipt of the requisition by the Chairman, and 30 (thirty) days if one of the matters to be discussed is to appoint a new Board member. A notice of such special meeting must include the matters to be discussed at the Board meeting.

32.9.3. A quorum at Board Meetings will consist of more than 50% (fifty percent) of the directors, provided that there will be no quorum unless at least 4 (four) Directors (or their duly appointed alternates) are present in person.

32.9.4. If within 15 (fifteen) minutes after the appointed time for a meeting to begin, a quorum has not been reached, the Board meeting shall stand adjourned to a day not less than 7 (seven) days and not more than 14 (fourteen) days from the date of

the meeting at a time and place determined by the Chairman. At such an adjourned meeting of which written notice shall be given, the members present shall form a quorum.

- 32.9.5. The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) of the Act is not limited or restricted by this document.
- 32.9.6. Due and proper notice of a Board Meeting as per section 73 (4)(b) of the Act shall be given to all the Directors and such notice shall be given seven (7) Business days before the meeting and include the agenda and, if possible, any resolution to be proposed at the meeting.
- 32.9.7. Notices may be sent in electronic format and for purposes of this document a notice sent in electronic format will be deemed to be delivered to the Director if it is sent to the address supplied by the member in writing or electronically and is not returned as undelivered within 24 (twenty four) hours from the time that it is sent. All Directors present in person at any meeting shall be deemed to have received notice of such meeting.
- 32.9.8. The conduct of meetings shall generally be governed in terms of Section 73 of the Act. Notwithstanding the aforementioned, the Board may regulate their meeting as they think fit.
- 32.9.9. Where the Chairman has failed to give the required notice of the Board meeting, or there was a defect in the giving of the notice, such meeting may proceed, provided that all of the Director acknowledge actual receipt of the notice, or are present at the meeting or waive notice of the meeting.
- 32.9.10. A Board meeting may be conducted by electronic communication, or one or more Directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 32.9.11. Board meetings may be conducted face-to-face or electronically, which would allow members to be present and participate through electronic means.
- 32.9.12. The Chairman and in his absence the Vice Chairman shall chair all meetings.
- 32.9.13. If the Chairman or Vice Chairman is not present within (ten) minutes after the time appointed for holding the meeting, or is unwilling to act, the Directors may choose a Chairman.
- 32.9.14. At every Board Meeting the Minutes of the last preceding Board Meeting shall be read and signed by the presiding officer after confirmation.
- 32.9.15. It shall be competent for a meeting to authorise the presiding officer to sign and confirm Minutes as correct if after perusal thereof he is of the opinion that the



Minutes reflect a true record of the proceedings.

- 32.9.16. The proceedings of any meeting shall not be invalidated by reason of the non-receipt by any member of the notice of the meeting.
- 32.9.17. The CEO of the Association shall attend all Members' meetings and Board meetings and shall not in his capacity as CEO have a casting vote in addition to any vote, he may have by virtue of being a Director of the Association.
- 32.9.18. A decision that could be voted on at a Board meeting may instead be adopted by written consent of the required number of Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.
- 32.9.19. All matters for consideration by the Board shall be decided on motion duly seconded and voted upon by show of hands or by ballot, and shall unless otherwise provided herein, be decided by the votes of a majority of the members of the Board present in person or represented by proxy.
- 32.9.20. Each Director shall be entitled to one vote in regard to all business brought before the Board.
- 32.9.21. The Chairman of the Board meeting shall have a casting vote in the event of a tie.
- 32.9.22. All Board Members must abide by the majority decision.
- 32.9.23. For a special resolution to be adopted at a Board Meeting, it must be supported by at least 75% (seventy five percent) of all the Directors.
- 32.9.24. For an ordinary resolution to be adopted at a Board meeting, it must be supported by more than 50% (fifty percent) of the Directors who voted on the resolution and in the case of a tied vote, the Chairman may cast a deciding vote.
- 32.9.25. Resolutions adopted by the Board must be dated and sequentially numbered; and are effective as of the date of the resolution, unless the resolution states otherwise.
- 32.9.26. Proper minutes and attendance records must be kept for all Board meetings and any of its committees, of the Association, and include in the minutes any declaration of personal financial interest given by notice or made by a Director as required by Section 75; and every resolution adopted by the Board.
- 32.9.27. The minutes shall be confirmed as a true record of proceedings by the next meeting of the general members and shall thereafter be signed by the Chairman.
- 32.9.28. Minutes shall be kept safely.
- 32.9.29. Any minutes of a Board meeting, or a resolution, signed by the Chairman of the meeting, or by the Chairman of the next Board meeting, is evidence of the



proceedings of that meeting, or adoption of that resolution, as the case may be.

32.9.30. The Directors may delegate any of their powers to committees, sub-committees, divisions or working groups consisting of such Member or Members of their body or such other persons nominated by the Directors as they think fit and may from time to time revoke such delegation.

32.9.31. Any committee so formed shall, in the exercise of the powers so delegated, conform to any conditions that may from time to time be imposed upon it by the Directors. The meetings and proceedings of any such committee, sub-committee, division or working group consisting of 3 or more Members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors, so far as the same are applicable thereto, and are not superseded by any rule made by the Directors under this paragraph.

32.9.32. All acts done at any meeting of the Board or of a committee, sub-committee, task team, division or working group of Directors, or by any person acting as a Director and/or nominated representative shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

#### 32.10. Directors acting other than at meeting

32.10.1. The Board may pass resolutions in writing or by any electronic communication without there being a meeting, provided that each Director receives a notice of the matter to be decided on. A decision made in the manner contemplated in this paragraph is of the same effect as if it had been approved by voting at a meeting.

#### 32.11. Personal Financial Interests

32.11.1. If a Director has a personal financial interest, (or knows that a related person has such an interest) he must disclose in advance, in writing, to the Board the nature and extent of that interest. This disclosure must comply with the requirements of the Act. If the personal financial interest (including that of a related person), arises after the matter has been approved by the Board then the Director or prescribed officer concerned must promptly, after the interest arises, disclose same to the Board in accordance with Section 75 of the Act.

#### 32.12. Remuneration

32.12.1. The Directors of the Association shall not be entitled to any remuneration or reimbursement of expenses in consideration for or respect of their services as directors (except as contemplated in this document).

32.12.2. Where a Director renders additional services to the Association, other than his services as a Director, such Director may be remunerated by the Association for such services, provided that such remuneration is fair and reasonable, and has been approved by Board resolution following the procedure set out in Section 75(5) and



Section 1(1)(5)(4)(a) of the Act and supported by no less than 75% of the disinterested Directors of the Association.

### 32.13. Reimbursements

32.13.1. A Director of the Association may be reimbursed by the Association for reasonable and necessary expenses incurred in the *bona fide* performance of his/her duties to the Association, provided that any reimbursement of any expense not of a category of expenses expressly budgeted for in the annual budget of the Association approved by the Board or of an amount exceeding any limit with respect to any category of expenses specified in the annual budget of the Association approved by the Board shall be subject to the prior approval of a disinterested majority of the Directors of the Association by resolution.

### 32.14. Loans

32.14.1. As per Section 1(5)(3) of the Act, the Association may not provide any loan to secure any debt or obligation of any nature whatsoever; or otherwise provide any direct or indirect financial assistance to a Director of the Association or of a related or inter-related Association or to a person related to any such Member or Director.

## 33. INDEMNIFICATION AND DIRECTORS INSURANCE

- 33.1. In this section, director includes a former director, an alternate director, prescribed officer and a committee member, irrespective of whether or not the person is also a member of the Association's board.
- 33.2. The Association may not directly or indirectly pay any fines or penalties that may be imposed on a Director who has been convicted of an offence in terms of any national legislation.
- 33.3. Subject to a resolution of the Directors, the Board may:
- 33.3.1. advance expenses to a Director to defend litigation in any proceedings arising out of that Director's service to the Association; and
  - 33.3.2. may directly or indirectly indemnify a Director for expenses contemplated in paragraph 34.3, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Director, or arise in respect of any liability for which the Association may indemnify the Director as provided in terms of Sections 78(5) and (6) of the Act.
- 33.4. Subject to the limitations imposed by Section 78(6) of the Act, the Association may indemnify a Director, committee member or officer of the Association and every person (whether an officer of the Association or not) employed by the Association out of the funds of the Association against all liability incurred by him as such Board member, manager, or officer when acting as a result of, or implementing a decision taken by the Board, or a general meeting of the Association provided that such actions are not illegal nor in contravention of the King 3 guidelines on corporate governance.



33.5. The Association may purchase insurance to protect:

33.5.1. a Director against any liability or expenses for which the Association is permitted to indemnify a Director; or

33.5.2. The Association against any contingency including, but not limited to:

33.5.2.1. any expenses that the Association is permitted to advance in accordance with paragraph 34.3; or

33.5.2.2. any liability for which the Association is permitted to indemnify a Director in accordance with paragraph 34.3.2.

33.6. The Association is entitled to claim restitution from a director of the Association for any money paid directly or indirectly by the Association to or on behalf of that director in any manner inconsistent with this section.

34. OFFICE BEARERS AND OFFICIALS

34.1. The Chairman and Vice Chairman

34.1.1. The Board shall from time to time appoint a Chairman of the Board. Such appointment of the Chairman shall be upon such terms and conditions and for such periods as the Board may decide. The Board may elect a Vice Chairman from any of its nominated Board Members upon such terms and conditions and for such period as the Board may decide.

34.1.2. Subject to the provisions of any contract between himself and the Association, a Chairman shall be subject to the same provisions as to disqualification and removal as the other Directors of the Association.

34.1.3. The position of Chairman of the Association is a non-remunerated position.

34.1.4. The Chairman shall be elected by the Board and can either be a representative of a Member's Association or an independent third party, provided that such a person must in the opinion of the Board:

34.1.4.1. be available for all meetings of the Association;

34.1.4.2. have extensive experience in the out of home industry;

34.1.4.3. have extensive knowledge of issues pertaining to the out of home industry; and

34.1.4.4. benefit the Association and the out of home industry.

34.1.5. The Chairman of the Board shall *de facto* be Chairman of the Association and is independent and as such will not be entitled to represent his Association on the Board, if he is a representative of a Full Member. The Chairman's Association may

however be entitled to nominate a senior executive other than the Chairman as its representative on the Board. This applies to the Vice Chairman as well to the extent that the Vice Chairman is acting as the Chairman.

- 34.1.6. Where the Board wishes to appoint a Board member as Chairman of the Board, such Board member shall, provided that he wishes to accept such appointment, not be entitled to represent his Association. The Member who appointed such Director shall thereafter be entitled to replace such Board member provided that such Member immediately notifies the Chairman, CEO or public officer of the Association of the name and details of the person nominated in such Director's place.
- 34.1.7. The Directors may from time to time entrust to and confer upon a Chairman for the time being such of the powers exercisable hereunder by the directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient. They may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that regard, and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- 34.1.8. The Chairman or a Vice Chairman may be suspended or removed by a majority vote of not less than 75% (seventy five percent) of the number of votes of the members of the Board. Notwithstanding the foregoing, the Chairman or a Vice Chairman may be suspended or removed by a resolution of the simple majority of the Board if such person, in the opinion of the Board, has:
  - 34.1.8.1. infringed or threatened to infringe any term of this document; or
  - 34.1.8.2. acted or threatened to act in a manner detrimental to the interests of the Association; or
  - 34.1.8.3. been guilty of conduct, which, in the discretion of the Board, has brought the Association into disrepute.
- 34.2. Acting Chairman
  - 34.2.1. In the event of both the Chairman and the Vice Chairman being temporarily unable to perform their duties, the Board shall appoint a member of the Committee to act as Chairman until the Chairman or Vice Chairman is able to resume his or her duties, or, in the event of the Chairman and Vice Chairman being permanently unable to perform their duties, until the next ensuing General Meeting when a new Chairman and Vice Chairman shall be elected in accordance with the provisions of paragraph 35.1.1.
- 34.3. Responsibilities of the Chairman and Vice Chairman
  - 34.3.1. The Chairman and the Vice Chairman shall exercise the powers and perform the duties as set out in this document.



- 34.3.2. The Chairman shall preside at all meetings of the Board and at all General Meetings of the Association in his capacity as Chairman of the Association. The Chairman shall perform such duties as by usage and custom pertain to this office.
- 34.3.3. The Chairman shall preside at all meetings at which he is present to enforce observance of this document, sign Minutes of meetings after confirmation or on authority to confirm in terms of paragraph 10.8 and 10.9, sign cheques of the Association, generally exercise supervision over the affairs of the Association and perform such other duties as by usage and custom pertain to the office. He or she shall have a deliberative vote and in the event of equality of voting, a casting vote.
- 34.3.4. The Vice Chairman shall exercise the powers and perform the duties of the Chairman in the absence of the Chairman for whatsoever reason or when called upon to do so by the Chairman. The provisions of this document, in so far as they apply to the Chairman, shall apply to the Vice Chairman/s.
- 34.3.5. Notwithstanding anything elsewhere provided in this document, the Chairman and all Vice Chairmen shall be entitled to attend and speak at all Board and General Meetings and shall be entitled to a vote as a Director or to form part of the quorum of Directors at Board meetings.
- 34.3.6. The Chairman shall have a second vote or a casting vote at meetings of the Board and the General Meetings of the Association. The Vice Chairman and any other Director who acts as Chairman shall only have a deliberative vote in their capacity as Director.
- 34.4. Chief Executive Officer (CEO)
- 34.4.1. The Board shall from time to time appoint a CEO. Such appointment of the CEO shall be upon such terms and conditions and for such periods as the Board may decide.
- 34.4.2. Notwithstanding anything elsewhere provided in this document, the CEO shall be entitled to attend and speak at all Board and General Meetings and shall be entitled to a vote as a Director or to form part of the quorum of Directors at Board meetings.
- 34.4.3. Subject to the direction of the Board, the CEO shall be vested with all the powers and authorities expressly conferred by the Board on him and may exercise all such powers and do all such acts and things as may be exercised or done by the Board, and are not hereby directed or required to be exercised or done by the Association in General Meetings. The CEO shall report directly to the Chairman.
- 34.4.4. The Directors may from time to time entrust to and confer upon the CEO for the time being such of the powers exercisable hereunder by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and condition, and with such restrictions, as they think expedient. They may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the



powers of the Directors in that regard, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

34.4.5. Without limiting the generality of the foregoing, the CEO shall, in particular:

34.4.5.1. be responsible for the budgeting and administering of the Association's affairs, with the aim of achieving the Association's annually approved objectives and budgets;

34.4.5.2. use such personnel, councils, committees, task teams and/or external contractors, within an approved budget, as he deems necessary to achieve the main object and objectives of the Association and the Board.

34.4.5.3. Subject to the provisions of any contract between himself and the Association, the CEO shall be subject to the same provisions as to disqualification and removal as the other Directors of the Association.

34.4.6. The CEO may resign by giving 2 (two) months' notice to the Board.

## 35. FUNDING OF OPERATIONS

35.1. The Board shall have the power, from time to time, to determine the manner in which the operations of the Association shall be funded. Without limiting the generality thereof, the Board shall be entitled to fund its operations by determining, imposing and recovering contributions, soliciting donations, and/or subscriptions or by engaging in any other income producing activity and to determine the terms and conditions upon which these activities will be conducted.

## 36. FINANCE

36.1. The Directors shall cause true accounts as required by the Act to be kept of the sums of money received and expended by the Association, and the matters in respect of which such receipts and expenditure take place, and of the assets, credits and liabilities of the Association. The accounting records of the Association shall be kept at the Office of the Association, or at such place or places as the Directors think fit.

36.2. As per this document, the Association must apply all of its assets and income, however derived, to advance the objects of the Association.

36.3. The Funds of the Association shall be applied to the payment of expenses, the acquisition of property, the objects of the Association and such other lawful purposes as may be decided upon by the Board, or if the latter so desires, by a general meeting for the attainment of the objects specified in paragraph 4 of this document but shall not be distributed to members or office bearers except as reasonable compensation for services rendered.

36.4. All amounts due or collected on behalf of the Association, where not paid by electronic funds transfer shall be paid to the Association's bank account; provided that any surplus funds not for the time being required for the purposes specified in paragraph 37.3 may be invested upon such security and on such terms and conditions as the Board may approve.

- 36.5. Payments made by the Association shall require the approval of the Chairman/CEO and shall be made by cheque or electronic transfer, except where the amount in question is less than the amount agreed upon by the Board, when payment may be made from petty cash.
- 36.6. All cheques and formal documents shall be signed by no less than 2 of the 3 account signatories as appointed by the Board for the purpose.
- 36.7. A general meeting may at any time with a view to securing funds for any particular purpose, impose a special levy, the amount and method of payment of which will be determined by a majority vote of members present at the meeting, provided that:
- 36.7.1. notice of the proposed levy appeared in the Agenda for the meeting;
  - 36.7.2. a levy may only be imposed by a resolution passed by a two-thirds majority of the members in good standing represented in person or by proxy at such meeting; and
  - 36.7.3. the amounts of levy imposed on members may be varied at that or any subsequent meeting and that any member may be exempted in whole or in part for any period from the obligation to pay such levy.
  - 36.7.4. The Association may make payments contemplated in paragraphs 33.12 and 33.13 if such payment:
    - 36.7.4.1. is in the ordinary course of the Association's business and for fair value;  
or
    - 36.7.4.2. constitutes an accountable advance to meet:
    - 36.7.4.3. legal expenses in relation to a matter concerning the Association; or
    - 36.7.4.4. anticipated expenses to be incurred by the Member or Director on behalf of the Association.
- 36.8. The Association's financial year end shall be the last day of June.

### 37. BORROWING POWERS

- 37.1. The Board may from time to time and in such manner and on such terms as they deem fit, exercise all the power of the Association to borrow, raise or secure the payment of money, either with or without any specific security on the undertaking or property of the Association.
- 37.2. The Directors may raise or secure the repayment of such sum or sums in such manner and upon such terms and conditions in all respects as they think fit, and in particular by the issue of bonds, perpetual or redeemable debentures or debenture stock, or any mortgage, charge or other security on the undertaking or the whole or any part of the property of the Association (both present and future).

### 38. AUDITORS

- 38.1. Each year at the Annual General Meeting, the Members shall appoint an auditor.
- 38.2. A person or Association must be a registered auditor and may or may not be a constituent member of the Association.
- 38.3. In addition to the prohibition contemplated in section 84.5, no person shall be qualified for appointment of auditor of the Association if in terms of Section 90(b) of the Act if he is:
  - 38.3.1. a director or prescribed officer of the Association;
  - 38.3.2. an employee or consultant of the Association who was or has been engaged for more than one year in the maintenance of any of the Association's financial records or the preparation of any of its financial statements;
  - 38.3.3. a Director, officer or employee of a person appointed as Association secretary in terms of Part B of Section 3 of the Act;
  - 38.3.4. a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs secretarial work for the Association;
  - 38.3.5. a person who, at any time during the five financial years immediately preceding the date of appointment, was a person contemplated in any of sub-paragraphs 39.3.1 to 39.3.4; or
  - 38.3.6. a person related to a person contemplated in sub-paragraphs 39.3.1 to 39.3.5.
- 38.4. The appointment, powers, rights, remuneration and duties of the auditors shall be regulated by the provisions of the Act.
- 38.5. The resignation of an auditor is effective in terms of Section 91(1) to (5) of the Act when the notice is filed.

#### 39. ASSOCIATION RECORDS AND ACCOUNTING RECORDS

- 39.1. All Association records contemplated by Section 24 of the Act, and all accounting records contemplated by Section 28 and Section 25 of the Act, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Association, or in the case of all or any of the Association records at or from such other location or locations within the Republic of South Africa as the Board may from time to time determine.

#### 40. ANNUAL FINANCIAL STATEMENTS

- 40.1. Each year, the Association must prepare annual financial statements, as contemplated in Section 30 of the Act, within six months after the end of its financial year.
- 40.2. The Association elects, in terms of Section 30(2)(b)(ii) (aa) of the Act, that the annual financial statements of the Association be audited voluntarily.

40.3. The annual financial statements must:

- 40.3.1. include an auditor's report;
- 40.3.2. include a report by the Directors with respect to the state of affairs, the business and surplus or shortfall of the Association, including:
  - 40.3.2.1. any material matter relating to the Association's state of affairs; and
  - 40.3.2.2. any prescribed information;
  - 40.3.2.3. be approved by the Board and signed by an authorised Director; and
  - 40.3.2.4. be submitted to the Members in the first General Meeting, after such annual financial statements have been approved by the Board and signed by the authorised Director, within nine months of the end of the financial year.

41. ANNUAL RETURNS

- 41.1. Each year, the Association must file an annual return in the prescribed form with the prescribed fee, and within the prescribed period (currently being 30 days) after the end of the anniversary of the date of its incorporation, which return must:
  - 41.1.1. include a copy of the Association's annual financial statements;
  - 41.1.2. designate a Director, employee or other person who is responsible for the Association's compliance with the transparency, accountability and integrity requirements in terms of Part C of Chapter 2 of the Act, and the requirements of Chapter 3 of the Act, if these requirements apply to the Association; and
  - 41.1.3. any other prescribed information.

42. ENHANCED ACCOUNTABILITY AND TRANSPARENCY

- 42.1. The Association does not elect, in terms of Section 34(2) of the Act to comply voluntarily with the provisions of Chapter 3 of the Act.
- 42.2. The Association may, but is not obliged to, appoint a person to serve as Association secretary and/or appoint a person to serve as an auditor, and/or establish an audit committee, on such terms and subject to such conditions as the Board in its discretion may from time to time determine.
- 42.3. The Association elects to have its annual financial statements audited in terms of Sections 30(2)&(7) of the Act, read with Section 28 and Section 26(2) of the Act, and therefore the Association shall comply to the extent necessary with the provisions of Chapter 3 of the Act with which it is required to comply.

#### 43. RESERVES

- 43.1. The Directors shall set aside and carry to a reserve fund all the surplus funds of the Association, which may at their discretion be applied for any purpose for which such funds of the Association may properly be applied in such manner as the Directors deem fit.

#### 44. REGISTERED OFFICE

- 44.1. The registered office of the Association from time to time shall be at such location within the Republic of South Africa as the Board may from time to time determine.

#### 45. REGISTERS

- 45.1. The Association shall keep at the places prescribed by the Act and maintain in proper form and in the manner prescribed by the Act the under mentioned registers, namely:

- 45.1.1. register of Members
- 45.1.2. register of Directors and officers
- 45.1.3. register of declarations of interests of Directors and officers in contracts
- 45.1.4. attendance registers in respect of the Association, Directors' and Board meetings.
- 45.1.5. register of fixed assets.

#### 46. PUBLIC OFFICER

- 46.1. The Board shall appoint a person to the position of public officer of the Association.
- 46.2. The Board may appoint an assistant public officer who shall assist the public officer in the execution of his duties. The provisions of this paragraph shall *mutatis mutandis* apply to the assistant public officer.

#### 47. GENERAL

- 47.1. Any error in the appointment of any Director, committee, employee or agent of the Association will not invalidate any proceedings or decisions of the Association or the directors or advisory board, council or committee concerned or employee or agent of the Association, unless any person affected by such proceedings or decisions satisfies the Board that he has suffered substantial prejudice or that the error was not a bona fide error.
- 47.2. Any procedural irregularity or non-observance of this document will not invalidate any proceedings or decisions of the Association or the Directors or advisory board, council or committee concerned or employee or agent of the Association, unless any person affected by such proceedings or decision satisfies the Board that he has suffered substantial prejudice or that the irregularity or non-observance did not occur in good faith.

47.3. In the event that any provision contained in this document is in conflict with any statutory law or regulation, such provision will be *pro non scripto* and of no force and effect and will be deemed to be separate and severable from this document without in any way affecting the validity of the remaining provisions of this document. Each provision of this document is to create a right or obligation, as the case may be, independently of the existence of the other provisions.

#### 48. NOTICES

48.1. Each Member and each Director of the Association shall notify the Association of his registered address and if he has not named such an address he shall be deemed to have waived his right to be served with notices.

48.2. All notices intended or required to be given by the Association to any Member or Director shall be given either personally, by electronic mail or through the post in a prepaid letter, addressed to such Member at his registered address.

48.3. Any notice sent by post shall be deemed to have been given on the day on which the letter is posted, and in proving such service it shall be sufficient to prove that the notice was properly addressed and put in the post.

48.4. Any notice or document delivered, sent by electronic mail, sent by post to or left at the registered address of any Director in pursuance of this document shall, notwithstanding that such Director was then deceased, and whether or not the Association has notice of his death, be deemed to have been duly served.

48.5. Any notice, if delivered by electronic mail, will be deemed to have been duly given if it is delivered to the electronic mail address specified by a Member or Director from time to time in writing, which delivery shall be evidenced by the delivery confirmation mail received by sender following transmission.

48.6. For the purposes of notice by means of electronic mail, each Member and Director warrants to the other that they have enabled their electronic mail servers and procured the enabling of electronic mail services for their service providers to generate, send and receive automatic delivery confirmations. Failure to comply with this warranty shall invalidate any notice sent using electronic mail regardless of the identity of the addressor.

48.7. For the avoidance of doubt, notice shall be deemed to have been given upon receipt of such delivery confirmation whether or not such notice has actually been read.

48.8. Notices, requests, demands and determinations sent by facsimile and by electronic mail and received prior to 13:00 on a business day shall be deemed duly given on such business day. Notices, requests, demands and determinations sent by facsimile and electronic mail and received at other times shall be deemed duly given on the first business day following the date that such facsimile or electronic mail is received.

#### 49. DISPUTE RESOLUTION

49.1. Subject to the Association's MOI, all disputes arising out of the MOI that are not resolved



internally, shall be resolved externally in line with Appendix A of the Association MOI.

## 50. JURISDICTION, CHOICE OF LAW, CHOICE OF COURT

50.1. Any action or application arising out of the Association's MOI for the obligations of the members hereunder may be brought in any Magistrate's Court in terms of Section 45 of the Magistrates' Court Act, Act 32 of 1944 having jurisdiction in respect of the Association's MOI, notwithstanding that the amount in issue may exceed the jurisdiction of such Court. This paragraph to be read in conjunction with Addendum1.

## 51. DISSOLUTION OF THE ASSOCIATION

51.1. The Association may be wound up voluntarily by the Board by virtue of the general meeting, passing a resolution supported by at least 75% of the members present in person or by proxy and entitled to vote. Not less than 21 (twenty-one) clear days' notice shall be given of such meeting and the notice convening the meeting shall clearly state that the question of dissolution of the organisation and disposal of its assets will be considered. Any such voluntary winding up shall be affected in accordance with Section 80 of the Act.

51.2. If there is no quorum at such a General Meeting, the meeting shall stand adjourned for not less than 1 (one) week and the Members attending such adjourned meeting shall constitute a quorum.

51.3. Upon the dissolution of the Association, after all debts and commitments have been paid, and in the manner determined in accordance with Schedule 1(1)(4)(b) of the Act and Section 30B(8) of the Income Tax Act, its net assets must be distributed to another non-profit organisation that has similar objectives. This may be determined by the members of the Association at or before the time of its dissolution, or, failing such determination, by the court.

51.4. For the avoidance of doubt, in accordance with Schedule 1(1)(4)(a) of the Act, no past or present Member or Director of The Association, or person appointing a Director of The Association, is entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied.

51.5. The liability of members shall for the purposes of this paragraph be limited to the amount of subscriptions due by them to the Association in terms of this document as at the date of dissolution.

## 52. SIGNATURES

### 52.1. ASSOCIATION:

NAME:

ADDRESS:





**Information Technology Association of South Africa (ITA)**  
FutureSpace - 1<sup>st</sup> Floor – 61 Katherine Street, Sandton, 2196  
**Tel:** +27 10 300 6113 **Fax:** + 27 86 693 3783  
**E-mail:** [info@ita.org.za](mailto:info@ita.org.za) | **Website:** [www.ita.org.za](http://www.ita.org.za)

SIGNATURE:

DATE:

52.2. INFORMATION TECHNOLOGY ASSOCIATION OF SOUTH AFRICA NPC - REGISTRATION

NUMBER: 2000/029166/08 ADDRESS:

SIGNATURE OF CHAIRMAN/CEO:

DATE: