

CONSTITUTION

OF

THE SOUTH AFRICAN

ORACLE USER GROUP

Table of Contents

Glossary	4
Interpretation	4
Definitions and Acronyms	4
1. Preamble	7
1.1. Name	7
1.2. Legal Status	7
2. Aims and Objectives	8
3. Transformation	9
4. Non – Profit Distributing and Utilisation of Funds	9
5. Application of Income	10
6. Exemption from Taxes and Duties	11
7. Membership	14
8. Liabilities, Rights, Duties and Privileges of Members	15
9. Executive Management Committee	17
10. Liabilities, Rights, Duties and Privileges of the Executive Management Committee	19
11. Management and Control	26
12. Resignation/Removal/Death of a Member of the Executive Management Committee	26
13. Assuming Members of the Executive Committee	27
14. Notices for Executive Committee Meetings	27
15. Proceedings of Executive Committee Meetings	28
16. Declaration of Interest	30
17. Actions by the Executive Management Committee	30
18. Delegation of Authority	30
19. Exemption from Furnishing Security	30
20. Bank Accounts	31
21. Signatures	31
22. Financial Year-End	31
23. Books of Account and Annual Financial Statement	31
24. Annual Financial and Narrative Reports	32

25. Subcommittees 32

26. Interpretation of the Constitution and Resolution of Dispute..... 33

27. Indemnity..... 34

28. Prohibition Against Improper Transfer of the Association’s Property 34

29. Augmentation of Association’s Funds 34

30. Variations..... 35

31. Dissolution of the Association 35

32. Miscellaneous 36

33. Adoption of the Constitution 37

Glossary

Interpretation

In this Constitution, except in a context indicating that some other meaning is intended, any other word which is not specifically defined herein shall be allocated the definition afforded to it in the Act and/or Regulations thereto, should same be defined therein.

Definitions and Acronyms

Act	means the Income Tax Act 58 of 1962;
Applications	refers to the internationally recognised Oracle Applications and Technologies;
Association	means the South African Oracle User Group;
Constitution	means the constitution of the Republic of South Africa 1996;
Content	shall refer to ideas, information and support provided by the EMC
EMC	means the Executive Management Committee made up of the founding

members of the Association, and additional
duly elected members;

Financial Year End

means the last day of February of every year;

Member

means a member/s of the Association duly
accepted by the EMC as members and who
have fulfilled all the obligations applicable to
a member;

Oracle Corporation

Means the Oracle Corporation (Pty) Ltd in
South Africa (Registration Number:
_____) and the Oracle Corporation
LLC in the United States of America
(Registration Number: _____);

Public Benefit Activity / PBA

means the activities listed in Part 1 in the
Ninth Schedule of the Act read with Section
30 of the Act;

Public Benefit Organisation

shall have the same meaning corresponding with the definition contained in section 30 of the Act;

Region

means the international territorial borders of the following countries:

South Africa

SAOUG

Means the South African Oracle User Group,

User/s

Means any person subscribed to the South African Oracle User Group

Vendor

Means the Oracle Corporation

1. Preamble

The Association is created for the purpose of facilitating the exchange of information, ideas and support between Oracle users, partners, vendors and the Oracle Corporation. The association commits to pursue this purpose with the principles of transformation at the fore of all SAOUG activities. The association further commits to manage the affairs of the SAOUG in an anti-discriminatory manner and aims to promote the interests of previously disadvantaged and vulnerable groups.

1.1. Name

The Association shall be known as the South African Oracle User Group (hereinafter referred to as "the Association") and shall be a body of perpetual succession.

1.2. Legal Status

1.2.1. The Association shall be a voluntary Association, and the EMC has the discretion to convert it into or incorporate it into a non-profit organisation.

1.2.2. The Association is and shall continue to be a distinct and separate legal entity with the power to acquire, to hold and to alienate property of every description whatsoever and with the capacity to acquire rights and obligations and having perpetual succession.

1.2.3. The Association is and shall be a juristic person and can act and be acted against in its own name.

1.2.4. The property and funds of the Association vests in it as a juristic person and no Member of the Association shall be liable for the debts of the Association.

2. Aims and Objectives

- 2.1 The activities of the Association and its constituents shall be to promote the interests of the users of Oracle products and services within the Republic of South Africa and Africa as a whole.
- 2.2 In amplification of the above the following objectives inter alia also apply:
 - 2.2.1 To promote the common interest of Oracle product users;
 - 2.2.2 To encourage and promote professional co-operation among users to improve their utilization of Oracle content and related products and services;
 - 2.2.3 To improve the overall productivity of the user's business operations;
 - 2.2.4 To foster the education and professional growth of SAOUG members and other interested parties;
 - 2.2.5 To advocate such users' needs, interests and desires to the manufacturers, vendors and providers of such services;
 - 2.2.6 To carry on any activity whatsoever which the SAOUG may deem proper and convenient in connection with any other lawful activity;
 - 2.2.7 to co-operate and liaise with other bodies/organisations having similar Aims and Objectives;
 - 2.2.8 to carry on one or more Public Benefit Activities as defined in Part I and Part II of the Ninth Schedule of the Income Tax Act. 1962 ("the Act"), as amended, in a

non-profit manner in the Republic of South Africa and/or to provide funds to any approved Public Benefit Organisations within the Republic as defined in Section 30 (1) of the Act, as amended, which are themselves exempt from the payment of income tax in terms of the provisions of Section 10 (1) (c) of the Act, or to any Association of Persons carrying on one or more such Public Benefit Activities in the Republic;

- 2.2.9 To adopt a transformation agenda that aligns to the spirit and ideals of the South African Constitution, legislation, regulation, and nation-building efforts.
- 2.2.10 To ensure that the SAOUG leadership reflects the demographics of South Africa. This includes alignment to the principles of Black Economic Empowerment (BEE) as well as other initiatives aimed at addressing racial and other forms of inequality and/or discrimination.

3. Transformation

- 3.1 The association shall keep at its fore the foundational values of dignity, freedom and equality as encapsulated in the Bill of Rights.
- 3.2. The association undertakes to pursue transformation in terms of the Companies Act 71 of 2008, as amended; as well as the guidelines set out in the King Report on Corporate Governance, as amended.
- 3.3 In accordance with its objective to achieve transformation, the association shall maintain a minimum of 60% black majority on the board whilst being compliant with application legislation.

4. Non – Profit Distributing and Utilisation of Funds

- 4.1. The income and property of the Association shall:

- 4.1.2. be used solely for the fulfilment of its Aims and Objectives;
 - 4.1.3. not be paid or distributed directly or indirectly, other than in the ordinary course of undertaking or any public benefit activity;
 - 4.1.4. not be paid or distributed to any member or user of the Association;
 - 4.1.5. payment shall be made in good faith to any individual, organisation, institute or otherwise as reasonable compensation for services rendered to the Association and/or as reimbursement of cost or expenses reasonably incurred on behalf of the Association.
- 4.2. The Association may own property and enter into contracts in its own name, and the Members shall not have any claim to these assets.
- 4.3. The Association intends to register as a non-profit organisation in terms of the Non-profit Organisations Act 71 of 1997 as amended. Upon such registration, the Association shall be appoint a Board of Directors.

5. Application of Income

- 5.1. The net income of the Association shall be applied to the furtherance of its Aims and Objectives as set out in Clause 3 hereinabove.
- 5.2. No portion of the net income and property of the Association, wherever so derived, shall be paid or transferred directly or indirectly by way of dividend, bonus

or otherwise, to the Members of the Association or its employees, provided that nothing herein contained shall prevent the payment in good faith as reasonable remuneration to any officer or servant or employee of the Association or in return for services rendered to it.

- 5.3. All taxes which may be lawfully levied by any Government institution or other competent authority shall not, in turn, be levied on Members of the Association in their personal capacities or the assets of the Association and shall be paid out from the accruing income of the Association.
- 5.4. If there is a conflict of interest that arises, as determined by the EMC or a Member, then such Member should recuse him/herself from the discussion and decision-making about the matter in issue.
- 5.5. Loans may only be made to beneficiaries of such public benefit organisations as contemplated in section 30 of the Act, which provides benefits per the Aims and Objectives of the Association.

6. Exemption from Taxes and Duties

To qualify for exemption from taxes and duties, the Association shall:

- 6.1. carry on a public benefit activity whether in the Region or outside thereof, unless and until the Minister of Finance having regard to the circumstances of a particular set of circumstances directs otherwise;
- 6.2. carry on its public benefit activities based on it being a non-profit Association;

- 6.3. comply with such conditions, if any, as the Minister may prescribe by way of regulation or a directive, to ensure that the activities and resources of the Association are conducted in the furtherance of its activities and objectives;
- 6.4. become registered in terms of section 13(5) of the Non-Profit Organisations Act of 71 of 1997, as amended, within such period as the Commissioner may determine, and comply with any other requirements imposed in terms of that Act;
- 6.5. submit a copy of this Constitution and any amendments hereto to the Commissioner;
- 6.6. be required to have at least three persons, who are not connected in any way whatsoever to each other, to accept the fiduciary responsibilities of the Association;
- 6.7. be prohibited from carrying on any business undertaking or trading activity, other than to the extent that is permitted in terms of Section 10(1) (CN) of the Act, as amended, but nothing herein contained shall prevent the Association from receiving remuneration for the rendering of its services to users thereof;
- 6.8. be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to perform the designated purposes and conditions of such donation, including any misrepresentation concerning the tax deductibility thereof in terms of section 18A; and provided that a donor shall not impose conditions which could enable such donor or any individual, organisation, institution or otherwise connected to such a donor to derive a benefit whether direct or indirect from the application of such donation;

- 6.9. ensure that it is, whether knowingly or not, a party to any action which exposes itself to the possibility of being sued as a party to any transaction, operation or scheme which has as its intention, the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have to be or been payable by the Association under the Income Tax Act 58 of 1962, an amended, or any other Act administered by the Commissioner;
- 6.10. not pay any remuneration to any employee, office bearer, trustee, individual, organization, institution, beneficiary or otherwise, which is excessive, having regard to what is generally considered reasonable in the sector and related to the service rendered;
- 6.11. Comply with such reporting requirements as may be determined by the Commissioner.
- 6.12. ensure that any books of account, records or other documents relating to its affairs are:
- 6.12.2. where kept in book form, retained and carefully preserved by any person or organisation in control of this function of the Association, for four years after the date of the last entry in any such book or
 - 6.12.3. where not kept in book form, are retained and carefully preserved by any person or organisation in control of this function of the Association, for four years after the completion of the transaction, act or operation to which they relate.

- 6.13. The Association shall not permit the use of its property or funds to support, advance or oppose any political party, whether directly or indirectly.

7. Membership

- 7.1. Membership of the Association shall be open to natural and juristic persons whom are users of Oracle Products and Services.
- 7.2. Applicants for Membership shall be obliged to agree to be bound by this Constitution and the rules and regulations made in terms hereto, as well as all applicable statutory, regulatory or otherwise application provisions.
- 7.3. A register of names of such applicants shall be retained in the records of the Association.
- 7.4. If a Member of the EMC so wishes, he/she can object to any Membership application and, to then submit his/her objections, together with the reasons for such objections, in writing to the body of the EMC by no later than 10 (ten) days after receipt of the written notice to do so.
- 7.5. Acceptance of any applicant to be a Member of the Association shall be at the sole and absolute discretion of the majority decision of the EMC.
- 7.6. Membership shall, in addition, be subject to the payment of the requisite and determined annual membership fee;
- 7.7. If a Membership application is not accepted by the EMC, the EMC may advise such applicant thereof in writing but shall not be obligated to provide such applicant with written reasons for its decision to reject the Membership application to the Association.
- 7.8. In the circumstance where a membership application is rejected the Association shall without delay refund the applicant,

- 7.9. A candidate may withdraw or amend his/her/its application at any time before the meeting of the EMC to consider same.
- 7.10. Membership shall terminate under any of the following conditions:
- 7.11. In the event of the member failing to pay the membership fee due, or any additional fees due by the due date;
- 7.12. if an individual dies;
- 7.13. in the event of a juristic person, if it is declared insolvent or ceases its operations.
- 7.14. Once an application for Membership has been accepted, Members shall be invited by way of a written notice communicated to the Members in the EMCs nominated preference of communication, as is stipulated in the Members' application form.

8. Liabilities, Rights, Duties and Privileges of Members

- 8.1 A Member who has discharged all of his/her/its duties in terms of this Constitution shall be:
 - 8.1.1 entitled to speak and vote at a General Meeting of the Association;
 - 8.1.2 if a juristic person, be entitled to nominate 8 natural persons as members,
 - 8.1.3 eligible to be elected as a Member of the EMC and
 - 8.1.4 entitled to all the rights and privileges derived from his/her/its Membership of the Association.

- 8.2. Membership of the Association shall not entitle any Member to any privileged class, any right, title, interest, claim, demand in or to any of the monies, properties or assets of the Association.
- 8.3. Any Member who has been accepted as a Member of the Association shall be bound by the Constitution, regulations and rules of the Association, as well as the applicable provisions of the Act, statutes, regulations and whatever is otherwise relevant and applicable.
- 8.4. The duties of Members shall include:
 - 8.4.1. to act in good faith and to exercise the necessary care, skill and diligence in all matters relating to the Association and its Members.
 - 8.4.2. to act in the best interests of the Association and to always uphold its good name and reputation.
 - 8.4.3. to comply with and further the Aims and Objectives of the Association.
 - 8.4.4. to act in good faith towards the Association and its Members, and to know that he/she is a representative of the Association and that his/her conduct must be exemplary at all times to uphold the image of the Association.
 - 8.4.5. To promote and support any SAOUG initiatives aimed at promoting transformation within the association and/or the broader South African society.
- 8.5. If a Member is disqualified from holding office as a Member of the EMC and who, nonetheless continues to fraudulently misrepresent

him/herself as an EMC Member, directly or indirectly and where such misrepresentation, whether at the EMC or in the affairs of the Association is brought to the attention of the EMC, the EMC may at its discretion, decide to avail itself of all courses of action, legal or otherwise, that is permissible.

9. Executive Management Committee

- 9.2. The EMC shall initially, for a period of 2 (two) years from date of the adoption of this constitution, comprise of at least five (5) Founding Members.
- 9.3. After the initial 2-year period per 8.1 above the EMC may comprise of founding members and other duly elected members.
- 9.4. The EMC shall at its first meeting, and after every third Annual General Meeting, elect the following:
- A Chairperson,
 - A Financial Director,
 - A Conference Director,
 - A Membership Director,
 - A Communications Director,
 - A Special Interest Group Representative,
 - Secretary-General,

- 9.5. The maximum number of members to serve on the EMC shall be 9 (nine) members.
- 9.6. An elected chairperson may not serve for longer than two consecutive terms.
- 9.7. In the event, for whatever reason, an EMC Member vacates his/her position, the EMC may co-opt another Member to assume the vacant position.
- 9.8. The day-to-day running of the Association will be the responsibility of the EMC.
- 9.9. In addition to the day-to-day operations of the association the EMC shall endeavour to fulfil the following responsibilities, *inter alias*:
 - 9.9.1. Communications between the Association, Oracle Corporate, Vendors and Users,
 - 9.9.2. Vetting and approval of new memberships,
 - 9.9.3. Publications of newsletters and information distribution,
 - 9.9.4. Arranging and convening of National meetings,
 - 9.9.5. Arranging and convening of the Annual SAOUG Conference, and
 - 9.9.6. Keeping of all records
- 9.10. Members of the EMC shall:
 - 9.10.1. be entitled to payment of all travelling and other expenses properly and necessarily expended by them in and about the business of the Board, and

- 9.10.2. if any Member of the EMC is required to perform extra services or duties in the course and scope of carrying out the Associations business, he/she shall be entitled to reimbursed at market-related rates to be fixed by the EMC;
- 9.10.3. be able to be elected from the workforce of full-time employees of the Association;
- 9.10.4. wherever the need arises, appoint sub-committees and co-ordinate and supervise activities thereof;
- 9.10.5. manage the finances of any activities of sub-committees and in accordance with the necessary procedures to authorise payment for such activities.

10. Liabilities, Rights, Duties and Privileges of the Executive Management Committee

Subject to any restrictions provided to in Clause 4 and 5 of this Constitution as well as section 30 of the Income Tax Act (as amended), the EMC in their discretion shall invest and deal with the assets of the Association, provided that it is solely for the activities and furtherance of Aims and Objectives of the Association. In execution thereof, the EMC shall have the following collective rights and powers:

- 10.1. to manage the business of the Association and to exercise all such powers entrusted to it, subject to such regulations as may be prescribed by the Members in general meeting from time to time.
- 10.2. to provide for the payment of all expenses relating to repairs, improvements, maintenance, and renovation of the assets of the Association;

- 10.3. to pay and expend such portion of the Association's funds or the income thereof as may be necessary for the preservation, maintenance and upkeep of any properties held by the Association;
- 10.4. to sign and execute all transfers of any immovable or other property rights, securities or leases, servitudes or other deeds relating thereto and generally all documents in connection with the acquisition or the realisation of the Aims and Objectives of the Association and/or for carrying out the terms and duties conferred on the EMC by this Constitution;
- 10.5. to be permitted to allow a reasonable period of grace to a beneficiary for the payment of any debt due to the Association as they may deem fit and to compromise, compound or submit to alternate dispute resolution all claims, debts or conflicts whatsoever which may arise from time to time;
- 10.6. to collect and canvass for and accept donations, bequests, endowments and other benefits for the Association irrevocably from any permissible source;
- 10.7. to seek, obtain and receive grants-in-aid and other assistance for the Aims and Objectives of the Association from any permissible source;
- 10.8. The EMC shall have the power to make, amend and repeal rules or regulations of the Association in furtherance of the Aims and Objectives of the Association as and when the need arises;
- 10.9. to purchase, lease, hire or otherwise acquire movable and immovable property and to provide and equip buildings thereon and to sell, transfer, lease, donate or otherwise dispose of

- movable and immovable property; in pursuance of the Aims and Objectives of the Association;
- 10.10. to raise or borrow money for the Association on an interest-free basis and to post such security as may be determined;
 - 10.11. to enter into any contract of any nature whatsoever which is beneficial to the Association or its beneficiaries;
 - 10.12. to determine whether any surplus on the sale of any assets of whatever description as well as the receipt of any bonus shares due to the Association be regarded as income or capital of the Association.
 - 10.13. to deposit all securities and other assets at any time held or owned by the Association with banks or Trust companies or other depositories which may be registered in the name of nominees whether in South Africa or elsewhere as the EMC may think fit;
 - 10.14. to be entitled to employ accountants, attorneys, agents, brokers, administrators, consultants or managers or other professional advisors, to transact all or any activity or business of whatever nature required to be undertaken and shall be entitled to pay all such charges and expenses so incurred as a first charge, provided that all such remuneration shall be commensurate with the services rendered, and shall not be responsible for the default of any such persons or any loss occasioned by such employment;
 - 10.15. The EMC shall specifically not be entitled to guarantee the obligations of any person whatsoever and bind the Association as surety for and co-principal debtor, in solidum, with any person;

- 10.16. The EMC shall forge international, national and regional bilateral relations with individuals, organisations, institutions and otherwise. Such relations shall be governed through an MOU and other relevant documentation.
- 10.17. A decision can be reviewed by the EMC on the appropriate grounds and considerations.
- 10.18. The members of the EMC shall be obligated to execute the following specific duties:

Chairperson

- 10.18.1. Ensuring that the SAOUG membership strength is maintained and shows strong growth,
- 10.18.2. Establish and maintain company procedures in conjunction with other National Committee members,
- 10.18.3. Co-Ordination and joint control in execution of the annual conference of the SAOUG,
- 10.18.4. Ensuring that the SAOUG National Board is vigorous and serves SAOUG members to a high standard,
- 10.18.5. Ensuring effective and cordial relationships between SAOUG members and all other organizations,
- 10.18.6. Providing stimulating leadership to the National Committee and the SAOUG as a whole;

Financial Director

- 10.18.7. The Treasurer shall be the Chief Financial Officer of the SAOUG and shall be responsible for collecting, safeguarding and keeping account of all the monies due, received and expended for the sole use of the SAOUG,
- 10.18.8. Ultimately responsible for proper recording of all cash inflows and outflows in an appropriate accounting system, as determined and established and supervised by the Treasurer
- 10.18.9. Preparation of annual budget as well as recording of actual expenditure against this budget,
- 10.18.10. Joint responsibility for the preparation of accurate monthly income statements on a timely basis for approval by the SAOUG Committee
- 10.18.11. The Financial Director shall deposit sums received by the SAOUG in such depositories as shall be approved by the SAOUG Committee, and shall, in general, perform the entire duties incident to the office of Treasurer,
- 10.18.12. Establish and maintain company procedures, registrations and audits, in conjunction with other Board members, and in compliance with prevailing legislation in South Africa,

Conference Director

- 10.18.13. Ensure that an events company is approved by the Board to manage the conference and that the appropriate contracts are signed,
- 10.18.14. Liaise with the appointed events company in terms of the following:
 - 10.18.14.1. securing the venue and accommodation
 - 10.18.14.2. marketing the conference
 - 10.18.14.3. negotiating for sponsors
 - 10.18.14.4. finding suitable speakers and presenters for special events
 - 10.18.14.5. vetting all submissions for papers and presenting these to the Board for verification before building the final agenda.
- 10.18.15 Together with the Finance Director ensure that the conference budget is developed and presented to the Board for approval. Thereafter ensure that the events company adheres to this budget and that all significant deviations are presented to the Board for approval.
- 10.18.16 Ensure that the final accounts are concluded timeously after the conference.

Membership Director

- 10.18.17 Maintain the membership for the association,
- 10.18.18 Distribute annual membership invoices to existing members,

- 10.18.19 Market SAOUG membership through campaigns at associated events and conferences,
- 10.18.20 Make membership lists available for rapid and regular communication to members,
- 10.18.21 Maintain a database of all possible interested parties based on SIG memberships, attendance at conferences, partner contacts and any other source that might add to the community of Oracle users in South Africa.

Communications Director

- 10.18.22 Ensure that regular communication is maintained with members of the association and the broader community of Oracle users.
- 10.18.23 Maintain the association's website in a professional state as befits a professional organization.
- 10.18.24 Deal with ad hoc queries which do not necessarily fall into one of the other portfolios,

Special Interest Group Representative

- 10.18.25 Represent the interests of the SIGs at Board level.
- 10.18.26 Encourage the development of new SIG and the sustainability of existing ones through regular contact with SIG chairs.
- 10.18.27 Provide Board support and administrative assistance where required to SIG chairs.
- 10.18.28 Ensure that SIG attendance is managed and reported to the Board for inclusion in marketing initiatives for membership, conferences and other SIG events.

11. Management and Control

All the business and affairs of the Association shall be managed and controlled by the EMC which shall have full power to carry out the Aims and Objectives of the Association as hereinbefore provided and who shall if required hold funds in Trust for the application and the furtherance of its income and/or capital for the promotion of such Aims and Objectives.

12. Resignation/Removal/Death of a Member of the Executive Management Committee

A Member of the EMC shall vacate his/her position if:

- 12.1. he/she gives notice in writing of his/her resignation to the Chairperson or Secretary-General of the Association; or
- 12.2. he/she is found guilty by a Court of Law of any criminal offence and is sentenced therefore to imprisonment without the option of a fine; or
- 12.3. he/she becomes insane or incapacitated; or
- 12.4. his/her estate is sequestrated under the Insolvency Act of 1986, as amended, or if he/she voluntarily surrenders his/her estate as insolvent; or
- 12.5. he/she is absent from more than 3 consecutive meetings of the EMC without having been excused from attendance by the remaining Members of the EMC; or
- 12.6. he/she is directly or indirectly, has an interest in any contract or proposed contract with the Board and fails to declare his / her interest therein and the nature thereof to the Board; or

12.7. he/she is removed from office by a unanimous resolution of all of the Members of the EMC provided that, before the adoption of any such resolution, the EMC Member(s) facing such possible termination of office shall be afforded an opportunity to address the EMC orally or in writing whether in person or via a representative, stating the reasons why the proposed termination is fair or not.

13. Assuming Members of the Executive Committee

13.1. On the death, resignation or removal from office of any Member of the EMC, the remaining Members of the EMC shall:

13.1.1. as soon as conveniently possible, elect another Member of the EMC in the place and stead of such Member;

13.1.2. until such an assumption, the remaining EMC Members shall be entitled and empowered to act alone as the EMC as long as they are not less than three (3) Members in the EMC.

13.2. Any assumed EMC Member shall:

13.2.1. have the same rights, duties and privileges as are herein conferred upon all members as in Clause 5 hereinabove and

13.2.2. be elected on merit and commitment to the Aims and Objectives of the Association.

14. Notices for Executive Committee Meetings

14.1. Notice of all EMC meetings provided for in this Constitution shall be delivered by email to the last address notified by each

Member of the EMC at least 14 days prior to such meeting, or in any other reasonable manner as the EMC may decide from time to time.

- 14.2. The accidental omission to address notice/s to any Member shall not invalidate the proceedings of any meeting.

15. Proceedings of Executive Committee Meetings

- 15.1. The EMC shall:

- 15.1.1. keep a minute book wherein shall be recorded all decisions reached in or any matter affecting the Association's Funds;
- 15.1.2. appoint a Chairperson from their number to preside at their meetings and shall determine his/her period of office in such capacity;
- 15.1.3. convene meetings at any time at the instance of the Chairperson or any EMC Member;
- 15.1.4. in the event of the Chairperson being absent from a duly convened meeting, the EMC Members present, provided they constitute a quorum, appoint one of their number to assume the acting position of acting Chairperson;
- 15.1.5. in the event of an EMC Member deeming it necessary, such member may request the Chairman of the Association to summon a meeting at any time;

- 15.1.6. in the event of a meeting being convened, give at least 14 clear days' notice of a meeting; except in the instance of the Annual General Meeting where 21 days notice must be given;
- 15.1.7. If the Chairman considers it necessary to hold an urgent meeting, then lesser notice may be given.
- 15.2. The quorum necessary for the transaction of the business of the EMC shall be 5 Members of the EMC who are present in person, whether at a virtual or a contact meeting.
- 15.3. A resolution in writing signed by the EMC is sufficient to form a quorum and shall be as valid as if passed at an EMC meeting, provided all EMC Members have been duly notified and granted an opportunity to vote.
- 15.4. Any such resolution may consist of several identical documents, each signed by one or more Members of the EMC and unless the contrary is stated therein.
- 15.5. Such resolution shall be deemed to have been passed on the date on which it was signed by the EMC sitting at the time of the signing of the resolution.
- 15.6. Any electronic mode of communication of a signed resolution of the EMC shall be accepted as evidence that such resolution has been signed by the EMC whose signature appears on the resolution.
- 15.7. The EMC shall convene at least 4 ordinary meetings per year.

16. Declaration of Interest

Any Member of the EMC who is in any way, whether directly or indirectly, has a material interest in a contract or proposed contract which has been or is to be entered into by the Association or who so becomes interested in the course of such contract or after it has been entered into, shall declare his/her interest and full particulars thereof, regardless of such material interest being a conflict or not, but more particularly if such material interest does constitute a conflict.

17. Actions by the Executive Management Committee

The EMC shall be entitled to sue in any Court, Tribunal or other authoritative Body, having competent jurisdiction in respect of any matter arising out of the Association, and all costs incurred by the EMC as well as any other charges, expenses and disbursements incurred in the course of the matter shall be a first charge on the Association's Fund.

18. Delegation of Authority

Any EMC Member shall be entitled under the delegation of authority policy of the Association to delegate his/her powers.

19. Exemption from Furnishing Security

Members of the EMC whether original or assumed, shall not be required to file any security for the performance of their duties under any statute, regulation or otherwise, including the Trust Property Control Act, 1988.

20. Bank Accounts

The EMC shall open a bank account in the name of the Association with a registered Bank. The EMC shall ensure that all monies received by the Association and not invested are deposited in the above-mentioned bank account as soon as possible after receipt.

21. Signatures

All documents requiring signatures on behalf of the Association shall be signed in such manner as the EMC resolves from time to time provided that there must be two (2) signatories authorised by the EMC at any given time.

22. Financial Year-End

The Association's financial year-end shall be the last day of February of each year.

23. Books of Account and Annual Financial Statement

The EMC shall:

- 23.1 maintain and keep proper books of account of the Association,
- 23.2 be entitled, but not obliged to have the books of the Association audited with the power to vary such records. The accountant or auditor shall at all times have access to the books, accounts, securities and investments of the Association fund and be entitled to such information and explanations from the EMC or their agents or employees of the Association's Fund as is required.

23.3 cause a statement to be prepared for each financial year ending on the last day of February of each year in compliance with International Financial Reporting Standards.

24. Annual Financial and Narrative Reports

If the Association is registered as a non-profit organisation in terms of the Non-Profit Organisation Act 71 of 1997 (NPO Act) as amended, the EMC shall ensure that it prepares an Annual Narrative Report **(ANR)**.

24.1 The ANR shall:

24.1.1 describe the Association's activities; and

24.1.2 a set of Annual Financial Statements shall be attached thereto.

24.1.3 Each financial year shall conform with the reporting requirements of the NPO Act (as amended) from time to time.

25. Subcommittees

25.1. The EMC may from time to time appoint sub-committees consisting of one or more Members of their body, or any other person or persons, as they may deem fit for any particular purpose which requires a particular skill, task or project and may delegate any of their powers to such sub-committee;

25.2. Any sub-committee so formed shall in the exercise of the powers delegated to it perform its mandate within the context of all relevant statutes, regulations and all otherwise related documentation to which the EMC is bound and at all times act in the best interests of the Association at all times.

25.3. At the discretion of the EMC, such subcommittees may be revoked, dissolved or reconstituted, wholly or in part, as and when such is required.

26. Interpretation of the Constitution and Resolution of Dispute

- 26.1. Any matter relating to the interpretation of this Constitution or any difference of opinion that may prevail amongst the EMC relating to the administration or management of the Association, or any dispute that may directly or indirectly arise, may be resolved by utilising ALTERNATE DISPUTE RESOLUTION techniques in terms of the Arbitration Act (No. 42 of 1965) as amended.
- 26.2. If an amicable settlement cannot be reached by the parties in conflict, the matter can then be referred to Arbitration within 14 days of the outcome of the Mediation. An Arbitrator can be appointed by mutual agreement.
- 26.3. The Arbitration shall be conducted and completed within 30 days after it has commenced unless there are exceptional circumstances which warrant it being prolonged.
- 26.4. The Arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages, account of profits, a penalty or otherwise as he/she in his/her sole discretion may deem fit and appropriate, and to deal as he/she deems fit with the question of costs, including if applicable, costs on the attorney and client scale, or own client scale, and his/her own fees. He/she shall base his/her award not only upon the applicable law but also upon the principles of equity and fairness.

26.5. The decision of the Arbitrator shall be final and binding upon all parties and shall be capable of being made an Order of Court on application by any of the parties.

27. Indemnity

No EMC Member, official or employee of the Association shall be liable in any way for loss or damage that may be suffered by the Association either as the result of any investment of any of the funds of the Association or through any act or omission in the *bona fide* execution of his/her duties in terms of this deed or in the execution of his/her official duties or in the course and scope of his/her employment by the Association unless the same is the result of his/her fraud, dishonesty or other wilful or unlawful act.

28. Prohibition Against Improper Transfer of the Association's Property

All property or income of the Association shall be utilised solely in the furtherance of its aims and objectives and the EMC is accordingly prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever to profit any individual, organisation, institution or otherwise other than by way of legitimate payments in terms of this Constitution.

29. Augmentation of Association's Funds

Any individual, organisation, institution or otherwise shall be entitled from time to time to add to, increase or augment the capital of the Association by irrevocable donation or otherwise as such individual, organisation, institution or otherwise may deem fit and all terms and conditions of this Constitution shall *mutatis mutandis* apply and attach to such additional capital.

30. Variations

- 30.1 The provisions of this Constitution may be amended by the EMC at a meeting convened for that purpose by a resolution of 75% of the EMC as the circumstance may require. Provided that such variation does not constitute any revocation of the Association and does not benefit the EMC or Members or employees of the Association. A copy of such amendments or variations shall be submitted to the Commissioner of the South African Revenue Service and/or any other appropriate Corporation, Agency and Government Department requiring such update.
- 30.2 Unless the contrary is stated therein, any such resolution shall be deemed to have been passed on the date on which it was signed by the EMC sitting at the time of the signing of the resolution.
- 30.3 Electronic communication of an EMC signed resolution shall be acceptable evidence that such resolution has been signed by said EMC.

31. Dissolution of the Association

- 31.1 The Association shall be dissolved upon a resolution adopted by 75% of the EMC in office.
- 31.2 Not less than sixty (60) clear days' notice shall be given of such meeting, and the notice convening the meeting shall clearly state:
 - 31.2.1 the items of dissolution of the Association and
 - 31.2.2 the disposal of the assets of the Association.
- 31.3 If there is no quorum present at such meeting, the meeting shall be abandoned.

31.4 Upon the dissolution of the Association, the EMC shall, after making provision for the costs of dissolving the Association, transfer the whole of the remaining assets to one or more similar Islamic public benefit organisation or organisations within the Region which are approved in terms of Section 30 of the Income Tax Act, provided that none of the Association's assets shall be paid or distributed amongst the EMC or Members of the Association.

32. Miscellaneous

Notwithstanding any of the provisions of this Constitution:

- 32.1 No prospective beneficiary under this Constitution shall have any claim whatsoever against the Association in the event of any failure to exercise its discretion in favour of such beneficiary.
- 32.2 In distributing or retaining funds (whether by way of an income or a capital distribution or retention), the EMC shall be entitled to effect such distribution or retention either in cash or in specie or partly in cash and partly in specie.
- 32.3 The EMC's valuation of any asset distributed or retained in specie in terms hereof shall be final and binding on all interested parties.
- 32.4 The word "specie" shall be deemed to include any asset at that time forming a portion of the Association which is in a form other than cash.

33. Adoption of the Constitution

The Constitution was reviewed and accepted by the EMC of the Association at a Special meeting held on ...31 March 2021... At ...Online Teams Session.....

AHMED J. HASSAN

CHAIRPERSON