

MEMORANDUM OF INCORPORATION

of

INTERNATIONAL FEDERATION OF WORKERS' EDUCATION ASSOCIATION (2009) NPC

Registration number 2009/024657/08

**As adopted at the 22nd General Conference of IFWEA
6 December 2015
Hotel Jose Antonio, Lima, Peru**

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SCHEDULE ONE : DEFINITIONS OF WORDS AND PHRASES

SCHEDULE TWO : COMPLIANCE PROVISIONS

1. NAME OF THE COMPANY

The name of the Company is :

**INTERNATIONAL FEDERATION OF WORKERS' EDUCATION
ASSOCIATION (2009) NPC**

2. NON-PROFIT COMPANY

2.1 The Company was originally incorporated as an association not for gain in terms of section 21 of the now-repealed Companies Act of 1973.

2.2 By virtue of items 2 and 4 of Schedule 5 to the Companies Act of 2008 ("the 2008 Act"), the Company is now deemed to be a non-profit company as contemplated in section 1 of the Companies Act, 2008 ("the 2008 Act").

2.3 The Company is governed by :

2.3.1 The unalterable provisions of the 2008 Act which apply to non-profit companies.

2.3.2 The provisions of this Memorandum of Incorporation.

3. COMPANY TO HAVE MEMBERS

As is permitted by item 4(1) of Schedule 1 to the 2008 Act, and as appears in more detail below, the Company has Members.

4. OBJECT OF THE COMPANY

- 4.1 The Object of the Company is to promote and advance the education of the public with respect to the democratic labour movement; and to promote the carrying out of free and voluntary educational work, according to the principles of solidarity and cooperation, justice and equality, and democracy and freedom.
- 4.2 In implementing its Object, and in implementing its mandate on behalf of its Members, the Company will :
- 4.2.1 Create conditions for the strengthening of co-operation between Members.
 - 4.2.2 Promote the establishment and development of Member organisations and institutions; in particular in those countries where such educational institutions do not exist.
 - 4.2.3 Represent the interests of its Member organisations and institutions, in relation to international and supranational bodies.
 - 4.2.4 Ensure that it operates independently of governments, state institutions, political parties, and employer organisations.
 - 4.2.5 Recognise the full autonomy of Member organisations and institutions, and advance the principle of regional sovereignty.
 - 4.2.6 Promote collaborative relationships between its Member organisations and institutions, and between regional bodies.

- 4.2.7 Observe and promote – and seek to ensure that all Member organisations and institutions likewise observe and promote - good governance, transparency, integrity, and the highest standards of ethics.
- 4.2.8 Seek to facilitate the resolution of differences, or disputes between Member organisations and institutions, or within such bodies, and promote an institutional culture which involves acting at all times :
- 4.2.8.1 In absolute good faith;
 - 4.2.8.2 In the best interests of the interested and affected parties; and
 - 4.2.8.3 With integrity, and in support of best practice and good governance.

4.3 Restriction on Distribution

The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was a Director or officer or incorporator of the Company, or to any person related to any such Director, officer or incorporator, or to any person who appointed any such Director or officer, except :

- 4.3.1 As reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company;
- 4.3.2 As reasonable payment of, or reimbursement for, expenses incurred to advance the Object of the Company;

- 4.3.3 As payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another person;
- 4.3.4 As a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance the Object of the Company; or
- 4.3.5 In respect of any legal obligation binding on the Company.

5. POWERS OF THE COMPANY

- 5.1 The Company has all of the legal powers and capacity of an individual, except to the extent that :
 - 5.1.1 A juristic person is incapable of exercising any such power, or having any such capacity; or
 - 5.1.2 Any such power or capacity is restricted, limited or qualified by :
 - 5.1.2.1 Any unalterable provision of the 2008 Act which applies to non-profit companies; or
 - 5.1.2.2 Any express provision of this Memorandum of Incorporation.
- 5.2 The Company is not subject to :
 - 5.2.1 Any restrictive conditions contemplated in section 15(2)(b) of the 2008 Act.

- 5.2.2 Any provision which prohibits the amendment of any article of this Memorandum of Incorporation, as contemplated in section 15(2)(c) of the 2008 Act.
- 5.3 The Executive Committee may make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters which are not addressed in the 2008 Act or this Memorandum of Incorporation, on condition that any such rules or amended rules must be :
 - 5.3.1 Notified to the Members of the Company in the manner stipulated in this Memorandum of Incorporation; and
 - 5.3.2 Filed with the Companies and Intellectual Property Commission.

6. COMPLIANCE PROVISIONS

If and for as long as the Company is approved by the Commissioner for the South African Revenue Service ("the Commissioner") as a public benefit organisation ("PBO") :

- 6.1 The Company must comply with all the provisions of the Income Tax Act which apply to PBOs from time to time, whether set out in section 30 or elsewhere in that Act.
 - 6.1.1 Those provisions will be referred to in this Memorandum of Incorporation as the "Compliance Provisions".
 - 6.1.2 The Compliance Provisions which apply as at the date of adoption of this Memorandum of Incorporation are set out in Schedule Two.

6.1.3 If the Income Tax Act is amended so as to change the Compliance Provisions, Schedule Two must be amended accordingly.

6.2 All the powers of the Company, and the powers and discretions of the Executive Committee of the Company will be limited to the extent set out in the Compliance Provisions.

6.3 The Compliance Provisions will override any contradictory or conflicting provision of this Memorandum of Incorporation.

7. DISTRIBUTION OF NET ASSETS ON DISSOLUTION

Despite any provision in any law or agreement to the contrary, if the Company is wound up or dissolved :

7.1 No past or present Director of the Company, or person who appointed a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

7.2 The entire net value of the Company must be distributed to one or more non-profit companies, voluntary associations or non-profit trusts :

7.2.1 Having objects similar to the Object of the Company; and

7.2.2 Which are themselves approved as PBOs (if the Company, at the time of its dissolution or winding-up, is also approved as a PBO); and

7.2.3 As determined :

7.2.3.1 By the Executive Committee of the Company, at or immediately before the time of its winding-up or dissolution; or

7.2.3.2 By the High Court, if the Executive Committee fails to make such a determination.

8. FINANCIAL YEAR OF THE COMPANY

Unless and until the Executive Committee decides otherwise, the financial year of the Company ends on 31 December.

9. OPTIONAL PROVISIONS OF CHAPTER 3 OF THE 2008 ACT

The Company will not be required to comply with the provisions of Chapter 3 of the 2008 Act (which relate to transparency, accountability and integrity) except to the extent that :

9.1 This Memorandum of Incorporation requires otherwise; or

9.2 The Company is required, in terms of article 31, to have its annual financial statements audited by a registered auditor.

10. MEMBERSHIP CATEGORIES

10.1 Membership of the Company is restricted to organisations and institutions which constitute part of the democratic labour movement; but Membership may also include, within the category of Individual Members, individual people nominated to represent their respective constituent organisations and regions.

10.2 There are accordingly three (3) categories of membership :

- Full Membership;
- Associate Membership; and
- Individual Membership.

10.2.1 **Full Members**

Full Members are those organisations and institutions which are admitted to Full Membership by the Executive Committee, acting with the concurrence of the General Conference.

10.2.2 **Associate Members**

Associate Members are those organisations and institutions which are from time to time admitted to Associate Membership by the Executive Committee, in its sole and absolute discretion.

10.2.3 **Individual Membership**

Individual Members are those individual people who are from time to time admitted to Individual Membership by the Executive Committee, acting with the concurrence of the General Conference.

- 10.3 The General Conference will be entitled from time to time to review and determine and amend the qualifications or admission requirements for eligibility for Membership in each category; which may include the requirement of a written undertaking to submit to a code of conduct, and to the terms of this Memorandum of Incorporation, including the provisions contained in article 14 concerning the financial obligations of Members.

- 10.4 Further categories of Membership may be established at any time by the General Conference. Any such further category of Membership will confer on its constituent Members those rights and impose those duties which are stipulated by the General Conference from time to time.
- 10.5 For the avoidance of doubt, it is recorded that the Company will be entitled to decline to admit a particular applicant for Membership, notwithstanding the applicant's ability and willingness to fulfil the usual qualifications and requirements defining eligibility for the Membership category concerned. The Company will have a complete and unfettered discretion with respect to the admission of Members, and will be under no obligation to furnish reasons for, or to otherwise motivate, its decisions concerning admission to or refusal of Membership.

11. MINIMUM MEMBERSHIP

- 11.1 The 2008 Act does not stipulate that the Company is required to have any minimum number of Full Members.
- 11.2 The Company has determined, nonetheless, that it must at all times have no less than seven (7) Full Members.
- 11.3 If the number of Full Members falls below that stipulated minimum at any time, for any reason, the Executive Committee must, within sixty (60) days after the vacancies occur, and by way of a special resolution, appoint sufficient organisations of its choice as Full Members, to fill the relevant vacancies.

12. SUSPENSION AND CESSATION OF MEMBERSHIP

12.1 Despite anything to the contrary contained in this Memorandum of Incorporation, Membership of the Company may be suspended or terminated at any time by way of a resolution adopted by at least seventy-five (75) percent of the Executive Committee, in any of the following circumstances :

12.1.1 If a Member ceases to conduct the activities which made the Member eligible to become a Member, or fails or refuses, on written request, to provide proof to the satisfaction of the Executive Committee that the Member is continuing to comply with the other eligibility criteria applicable to its Membership.

12.1.2 If a Member is considered guilty of conduct which in the opinion of the Executive Committee might reflect adversely on the Company.

12.1.3 If a Member fails or refuses to make payment of the membership levy or contribution for which the Member is liable, within the time and in the manner contemplated by article 14.

12.1.4 If the Executive Committee considers, in its sole discretion, that suspension or termination of Membership is, for any other reason, in the best interests of the Company and its Members.

12.2 Before adopting any resolution to suspend or terminate Membership, the Executive Committee may at its discretion afford the Member concerned an opportunity to make representations – either verbally or in writing, as the Executive Committee deems appropriate - concerning the proposed suspension or termination.

- 12.3 The Executive Committee will be under no obligation, express or implied, to furnish reasons for, or to motivate its decisions concerning the granting, suspension or termination of Membership.
- 12.4 Membership of the Company will be terminated also in the following circumstances :
- 12.4.1 On the closure, dissolution, deregistration or liquidation of any Member which is a company or other juristic person.
- 12.4.2 On the death of an Individual Member.
- 12.4.3 On receipt by the Company of the written resignation of a Member, which resignation will take effect at the end of the month following the month in which the written notice of resignation is received by the Company.
- 12.5 Unless the matters in issue have been otherwise finally disposed of in accordance with the procedures prescribed by the Company's code of conduct, the Executive Committee may in its sole and absolute discretion permit a Member whose Membership has been suspended or terminated, to appeal the decision; in which event the appeal will be considered and finally determined by the General Conference. The procedure to be adopted in any appeal will be at the discretion of the General Conference, whose findings and decisions - both substantively and procedurally - will be final and binding.
- 12.6 It is stipulated, for the avoidance of doubt, that nothing contained or implied in this Memorandum of Incorporation will preclude the Executive Committee, in its discretion, from extending any period of grace to allow for the mitigation or rectification of the matters constituting the grounds for any suspension or termination of Membership, for any reasons, and upon any conditions, which the Executive Committee, in its sole discretion, deems appropriate.

13. RIGHTS OF MEMBERSHIP

13.1 All Members are entitled, in addition to any further rights conferred by this Memorandum of Incorporation or the 2008 Act, to the following rights :

13.1.1 The right to inspect, and to receive copies of, the annual financial statements of the Company, and its annual report.

13.1.2 The right to receive notice of and to attend all General Meetings of the Company.

13.2 In addition to the rights described in article 13.1 above, Full Members (and only Full Members) will be entitled as of right to speak and vote at General Meetings. Other Members may speak and vote at General Meetings only if invited to do so by a majority of the Full Members present at those Meetings.

14. LEVIES AND CONTRIBUTIONS

14.1 The Executive Committee will be entitled, in its sole and absolute discretion, to determine that the Members, or any particular category of Members, must pay to the Company an annual or other periodic levy or contribution, to meet or make provision for the actual, anticipated or budgeted costs of the Company.

14.2 In determining those levies or contributions, the Executive Committee will be entitled to differentiate between different categories of Members, and/or between Members in the same category, either on the basis of size, or available funding, or any other basis the Executive Committee may decide.

- 14.3 The Executive Committee will be entitled to impose penalty interest [not exceeding two (2) percent above the applicable prime rate] on the amount of any overdue levy or contribution, throughout the period of default.
- 14.4 If any Member fails or refuses to pay any part of any levy or contribution determined by the Executive Committee, and if the Member remains in default for a period of sixty (60) days after receiving written notice to make the required payment, the Executive Committee will be entitled to suspend or terminate the Membership of that defaulting Member; on condition that the Executive Committee will also be entitled in its discretion to condone or compromise any default, and to reinstate the Membership of any defaulting Member.
- 14.5 The termination or suspension of Membership, whatever the reason for termination or suspension, will not release a Member from liability for payment of any levies or contributions which were owed at or prior to the date of termination or suspension; on condition that, if a Member delivers notice of its resignation as a Member to the Office not more than sixty (60) days after a levy or contribution becomes due, the Member will not be liable for the payment of that levy or contribution.

15. NON-TRANSFERABILITY OF MEMBERSHIP

Membership may not be assigned or transferred, except with the prior written consent of the Executive Committee.

16. REGISTER OF MEMBERS

16.1 The Company must establish and maintain a register of Members, which register must contain at least the following information concerning every Member :

16.1.1 The full name of the Member.

16.1.2 The physical, postal and email addresses of the Member, and the Member's telephone number or cellphone number.

16.1.3 The date on which the Member was admitted.

16.1.4 If applicable, the date on which the Membership of the Member terminated or was suspended.

16.2 The register of Members must be kept in electronic form.

16.3 The register of Members must be accessible to any Member, or any Director or officer of the Company, during ordinary business hours of the Company.

17. MEMBERS' RIGHT TO INFORMATION

Every Member has a right to inspect and copy, without any charge for any inspection, or on the payment of no more than the prescribed maximum charge for any copy, the information contained in the following records of the Company :

17.1 The Company's Memorandum of Incorporation, and any amendments to it.

17.2 The records of the Directors of the Company.

17.3 Any report presented at any meeting of the Members.

17.4 The annual financial statements of the Company.

17.5 The notices and minutes of all meetings of Members.

17.6 All communications sent during the preceding seven (7) years by the Company to the Members.

17.7 The Members' register.

18. OBLIGATIONS OF MEMBERS ON TERMINATION

Despite anything to the contrary contained or implied in this Memorandum of Incorporation (but subject to the provisions of article 14.5), the termination of a person's Membership will in no way release that Member from any obligation undertaken by that Member prior to that termination as a result of either :

18.1 Any provision of this Memorandum of Incorporation; or

18.2 Any further or ancillary guarantee, commitment or obligation which that Member may have undertaken, either as a condition attaching to its status as a Member, or for any other reason.

19. AMENDMENT OF THIS MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation may be amended by a special resolution of Members, namely :

19.1 A resolution adopted at a General Meeting with the support of at least seventy-five (75) percent of the voting rights exercised on the resolution at that Meeting; or

19.2 A Signed Member Resolution assented to (in the manner contemplated in article 20.4) by at least seventy-five (75) percent of the Full Members.

20. MEETINGS AND DECISIONS OF MEMBERS

20.1 The Members may take decisions :

20.1.1 At General Meetings of Members.

20.1.2 By way of Signed Member Resolutions.

20.2 **General Meetings**

20.2.1 There are two (2) types of General Meeting, namely :

20.2.1.1 A special General Meeting, styled "the General Conference", which must be held at intervals of no more than four (4) years for the purposes described in article 23.

20.2.1.2 Any other General Meeting of the Members of the Company (an "Extra-ordinary General Meeting").

20.2.2 All General Meetings are convened by the general secretary of the Company.

20.2.3 An Extra-ordinary General Meeting must be convened :

20.2.3.1 At the written request of :

- The Executive Committee; or

- Any three (3) Full Members [for as long as the Company has seven (7) Full Members], or any four (4) Full Members [for as long as the Company has more than seven (7) Full Members].

20.2.3.2 If any matter arises for decision, and that matter is required, by the 2008 Act or this Memorandum of Incorporation, to be decided by the Members; unless that matter will be or has already been decided by way of a Signed Member Resolution.

20.2.4 At any time before the start of an Extra-ordinary General Meeting the people requesting that Meeting may withdraw the request; in which event the Meeting must be cancelled.

20.2.5 Each General Meeting will be held at a location determined by the Executive Committee.

20.2.6 If the general secretary of the Company fails to act on a written request to convene an Extra-ordinary General Meeting within six (6) months after receiving that request, the people requesting that Meeting may themselves convene it.

20.2.7 The Company must deliver a notice of each Extra-ordinary General Meeting to all the Members at least one (1) month before the date of the Meeting. Notice of a General Conference must be delivered within the period stipulated in article 23.

20.2.8 An Extra-ordinary General Meeting may be called with less notice than required by article 20.2.7, but that Meeting may proceed only if every Full Member :

20.2.8.1 Is present at the Meeting; and

20.2.8.2 Votes to waive the required minimum notice of the Meeting.

A General Conference may not be called on shorter notice than that required by article 23.

20.2.9 Subject to any additional information or documents required in terms of article 23 for the notice of a General Conference, a notice of a General Meeting must be in writing and must include :

20.2.9.1 The date, time and place of the Meeting.

20.2.9.2 The purpose of the Meeting.

20.2.9.3 A copy of any proposed resolution of which the Company has received notice, and which will be considered at the Meeting, and the percentage of voting rights that will be required for that resolution to be adopted.

20.2.9.4 A reasonably prominent statement that :

- A Member is entitled to appoint a proxy to attend and (if applicable), participate in and vote at the Meeting in place of the Member.
- A proxy need not also be a Member.
- Section 63(1) of the 2008 Act requires that participants at the Meeting provide satisfactory identification.

- 20.2.10 If there was a material defect in the giving of the notice of a General Meeting, the Meeting may proceed only if every Full Member is present at the Meeting and votes to approve the ratification of the defective notice.
- 20.2.11 An immaterial defect in the form or manner of giving notice of a General Meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member, does not invalidate any action taken at the Meeting.
- 20.2.12 Before any person may attend or participate in a General Meeting :
- That person must present reasonably satisfactory identification; and
 - The chairperson of the Meeting must be reasonably satisfied that the right of that person to attend and (if applicable) to participate and vote, either as a Member or as a proxy for or representative of a Member, has been reasonably verified.
- 20.2.13 At a General Meeting a resolution put to the vote must be decided on a show of hands, unless a poll is demanded before or on the declaration of the result of the show of hands.
- 20.2.13.1 If no poll is demanded, a declaration by the chairperson that the resolution has been carried on a show of hands, and an entry to that effect in the minutes of the Meeting, will be conclusive evidence of that fact.

20.2.13.2 A poll may be demanded at an Extra-ordinary General Meeting by :

- The chairperson of the General Meeting; or
- Any three (3) Full Members present at the Meeting.

20.2.13.3 A poll may be demanded at a General Conference by at least ten (10) percent of the Full Members present at the General Conference; on condition that the Full Members demanding a poll must be from at least two (2) different countries.

20.2.13.4 If a poll is demanded at a General Meeting, it must be taken in such manner as the chairperson decides.

20.2.13.5 The demand for a poll at a General Meeting may be withdrawn.

20.2.13.6 A poll demanded on the election of a person to chair a General Meeting, or on a question of adjournment, must be taken immediately.

20.2.13.7 A poll demanded on any other question will be taken at the time decided by the chairperson of the Meeting.

20.2.13.8 The demand for a poll will not prevent the continuation of the Meeting for any other business apart from the question on which the poll has been demanded.

20.2.14 If the chairperson of the Executive Committee is available, he/she must chair a General Meeting. If the chairperson of the Executive Committee is not available within twenty (20) minutes after the time set for the start of a General Meeting, the Full Members present must elect one of the vice-presidents to chair the meeting.

20.2.15 The quorum for an Extra-ordinary General Meeting is five (5) Full Members. Unless and until otherwise decided by any General Conference, the quorum for a General Conference is twenty five percent (25%) of the Full Members.

20.2.15.1 If a quorum is not present within one (1) hour after the time appointed for a General Meeting to begin, the Meeting must (subject to article 20.2.15.2) be postponed for seven (7) days to the same location, and for the same starting time.

20.2.15.2 The person who was due to chair a General Meeting at which a quorum is not present, may extend the one (1) hour limit referred to above for a reasonable period on the grounds that :

- Exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Full Members to be present at the Meeting; or
- One or more particular Full Members, having been delayed, have communicated an intention to attend the Meeting, and those Full Members, together with the

others already in attendance, would satisfy the requirements for a quorum.

20.2.15.3 If a General Meeting is postponed, the Company need not give notice of the postponement.

20.2.15.4 At a postponed General Meeting, the Full Members present will constitute a quorum, even if only one Full Member is present.

20.2.15.5 A Member will be deemed to be present at a General Meeting if that Member, or an authorised representative of that Member (where the Member is a juristic person or other body), or that Member's proxy :

- Is present in person; or
- Participates in the Meeting by electronic communication.

20.2.16 A General Meeting may be adjourned from time to time without further notice, to a date, time and location decided at the Meeting, if the adjournment is supported by the people entitled to exercise, in aggregate, a majority of the voting rights held by all the people present at the Meeting; on condition that the date of the adjourned Meeting must not be more than forty-five (45) business days after the date on which the adjournment occurred.

20.2.17 Whether on a poll or a show of hands, each Full Member at a General Meeting will have one (1) vote.

20.2.17.1 Unless a majority of the Full Members present invite them to do so, Individual and Associate

Members will not be entitled to vote.

20.2.17.2 In the event of an equality of votes, the chairperson **WILL** have a second or casting vote.

20.2.18 The Company must ensure that :

20.2.18.1 Minutes are kept of all General Meetings.

20.2.18.2 The minutes record all resolutions adopted by the Members.

20.2.18.3 A copy is kept, attached to the minutes, of every document which was made available by the Company to the Members, in relation to each such resolution.

20.3 **Electronic Attendance at General Meetings**

20.3.1 Any Member (or any Member's representative or proxy) will be entitled to attend and (if applicable) participate in General Meetings by electronic communication, if an electronic communication facility is available to the Company.

20.3.2 Any electronic communication facility employed for electronic participation in a General Meeting must enable all people who are participating in that Meeting electronically :

- To communicate concurrently with each other and with all other participants without an intermediary; and
- To participate reasonably effectively in the

Meeting.

- 20.3.3 The notice of a General Meeting must provide all information necessary to enable Members or their proxies or representatives to access any electronic communication facility which will be used for that Meeting.
- 20.3.4 Access to an electronic communication facility used for a General Meeting is at the expense of the Member who uses it.
- 20.3.5 In order for a General Meeting to be held, using an electronic communication facility, that electronic communication must be reasonably accessible by all Members (or their proxies or representatives) who wish to attend or participate electronically.

20.4 **Signed Member Resolutions**

- 20.4.1 A resolution that could be voted on at a General Meeting may instead be :
 - 20.4.1.1 Submitted for consideration to the Full Members; and
 - 20.4.1.2 Voted on in writing by the Full Members within twenty (20) business days after the resolution was submitted to them.
- 20.4.2 A resolution contemplated in article 20.4.1 will be referred to in this Memorandum of Incorporation as a "Signed Member Resolution".
- 20.4.3 A Signed Member Resolution may be submitted to Full Members for their consideration by electronic communication or in printed form (by hand delivery or by

post).

20.4.4 A Full Member may vote for a Signed Member Resolution by :

20.4.4.1 Signing the printed resolution in hand, and delivering that signed document to the Company (by electronic communication, by hand or by post) within the ten (10) -day period referred to above.

20.4.4.2 Affixing the Full Member's electronic signature to the resolution, and submitting that signed resolution to the Company by electronic communication within the ten (10) -day period referred to above.

20.4.4.3 Notifying the Company in writing, by post, by hand delivery or by electronic communication, that the Full Member supports the resolution, within the ten (10) -day period referred to above.

20.4.5 A Signed Member Resolution which is an ordinary resolution of the Members, will be adopted if it is signed or assented to by at least fifty-one (51) percent of the Full Members.

20.4.6 A Signed Member Resolution which is a special resolution of the Members, will be adopted if it is signed or assented to by at least seventy-five (75) percent of the Full Members.

20.4.7 If adopted, a Signed Member Resolution has the same effect as if it had been approved by voting at a General Meeting.

20.4.8 Within ten (10) business days after a Signed Member Resolution has been adopted, the Company must deliver a statement (by electronic communication, by hand delivery or by post) to every Member, describing the results of the vote.

20.5 **Annual General Meeting**

Because the Company is not a public company as defined in the 2008 Act, the Company is not obliged by statute to hold an annual general meeting.

20.6 **Member's Right to be Represented by Proxy**

20.6.1 At any time a Member may appoint any individual, including an individual who is not a Member, as a proxy to :

20.6.1.1 Attend and, if applicable, participate in and speak and vote at, a General Meeting on behalf of the Member; or

20.6.1.2 Give or withhold written consent (where applicable) on behalf of the Member to a Signed Member Resolution.

20.6.2 A proxy appointment :

20.6.2.1 Must be in writing, dated and signed (in hand, or electronically) by the Member; and

20.6.2.2 Will remain valid for :

- One (1) year after the date on which it was

signed; or

- Any longer or shorter period expressly set out in the appointment, unless it is revoked or expires earlier, as contemplated in the remaining provisions of this article 20.6.

20.6.3 Irrespective of the form of instrument used to appoint a proxy :

20.6.3.1 The appointment is suspended at any time and to the extent that the Member chooses to act directly and in person in the exercise of any rights as a Member.

20.6.3.2 The appointment is revocable unless the proxy appointment expressly states otherwise.

20.6.3.3 If the appointment is revocable, the Member may revoke the proxy appointment by :

- Cancelling it in writing, or making a later inconsistent appointment of a proxy; and
- Delivering a copy of the revocation instrument to the proxy, and to the Company.

20.6.4 If the instrument appointing a proxy has been delivered to the Company, as long as that appointment remains in effect, any notice that is required by the 2008 Act or this Memorandum of Incorporation to be delivered by the Company to the Member, must be delivered to the proxy (instead of the Member) if the Member has :

20.6.4.1 Directed the Company to do so, in writing; and

20.6.4.2 Paid any reasonable fee charged by the Company for doing so.

20.6.5 A proxy is entitled to exercise, or abstain from exercising, any voting right of the Member without direction, except to the extent that the instrument appointing the proxy provides otherwise.

20.6.6 The Company will not be required to supply a form of instrument for the appointing of proxies. If the Company does supply such a form of instrument, it must comply with the provisions of section 58(8) of the 2008 Act.

20.6.7 A proxy is not entitled to delegate his/her authority as such to any other person.

20.6.8 Members will not be entitled to appoint concurrent proxies.

20.7 **Member Resolutions**

20.7.1 Every resolution of the Members is either an ordinary resolution or a special resolution.

20.7.1.1 A special resolution of the Members is :

- A resolution adopted with the support of at least seventy-five (75) percent of the voting rights exercised on the resolution at a General Meeting; or
- A Signed Member Resolution assented to (in the manner contemplated in article 20.4) by at least seventy-five (75) percent of the Full Members.

20.7.1.2 An ordinary resolution of the Members is :

- A resolution adopted with the support of at least fifty-one (51) percent of the voting rights exercised on the resolution at a General Meeting; or
- A Signed Member Resolution signed or assented to (in the manner contemplated in article 20.4) by at least fifty-one (51) percent of the Full Members.

20.7.2 The Executive Committee may propose any resolution to be considered by Members, and may determine whether that resolution will be considered :

20.7.2.1 At an Extra-ordinary General Meeting, or at a General Conference; or

20.7.2.2 By way of a Signed Member Resolution.

20.7.3 Any Full Member may propose a resolution (to be considered at an Extra-ordinary General Meeting, at a General Conference, or by way of a Signed Member Resolution) concerning any matter in respect of which Full Members are entitled to exercise voting rights.

20.7.4 A proposed resolution of the Full Members must be :

20.7.4.1 Expressed with sufficient clarity and specificity;
and

20.7.4.2 Accompanied by sufficient information or explanatory material,

to enable a Full Member who is entitled to vote on the resolution to determine whether to participate in the relevant Meeting (or in the consideration of the Signed Member Resolution), and to seek to influence the outcome of the vote on the resolution.

20.7.5 Once a resolution has been approved, it may not be challenge or impugned by any person in any forum on the grounds that it did not satisfy the requirements stipulated in article 20.7.4.

20.7.6 Various articles of this Memorandum of Incorporation require the approval of special resolutions of the Members in relation to particulars matters. Among the matters which require the approval of a special resolution of the Members are the following :

20.7.6.1 A decision to amend or alter this Memorandum of Incorporation.

20.7.6.2 A decision to deregister or wind-up the Company.

20.7.6.3 A decision made pursuant to the compulsory stipulations of a statute.

Unless this Memorandum of Incorporation or the 2008 Act requires that a decision be supported by a special resolution of the Members, that decision may be adopted by an ordinary resolution of the Members.

20.7.7 It is recorded that special resolutions of the Members are required for all the applicable matters referred to in section 65(11) of the 2008 Act.

20.8 The Members will be entitled, by way of a resolution adopted at an Extra-ordinary General Meeting, or by way of a Signed Member Resolution, to deal with or decide any matter which would otherwise be dealt with at a General Conference (as contemplated in article 23).

21. APPOINTMENT OF DIRECTORS TO THE EXECUTIVE COMMITTEE

21.1 The Directors of the Company, acting together, will be known as the Executive Committee.

21.2 There must at all times be no less than three (3) and no more than fifteen (15) Directors on the Executive Committee.

21.3 Subject to article 21.6, the Directors making up the Executive Committee are elected by the Members at each General Conference.

21.4 Each Executive Committee will hold office until the following General Conference [namely for a term of approximately four (4) years], when all the Directors on the Executive Committee will be deemed to have retired. Retiring Directors will remain eligible for re-election.

21.5 If the number of Directors on the Executive Committee falls below the minimum stipulated in article 21.2 for any reason, the remaining Directors will be entitled to continue to act as the Executive Committee, on condition that :

21.5.1 Those remaining Directors must, as soon as practical, convene a General Meeting for the purpose of electing sufficient replacement Directors.

- 21.5.2 If there are no remaining Directors, any Full Member will be entitled to convene a General Meeting for this purpose.
- 21.6 The general secretary of the Company will be an *ex officio* Director of the Company.
- 21.7 To become and remain a Director of the Company, a person must hold a senior executive position (as defined by the Executive Committee from time to time) in an organisation which is a Full Member of the Company.
- 21.8 The chairperson of the Executive Committee (see article 27.2.2) will be responsible for :
- 21.8.1 Chairing meetings of the Executive Committee.
- 21.8.2 Representing the Company both internally and externally.
- 21.8.3 Ensuring that the Company and its activities and assets are managed and administered effectively and efficiently, and in compliance with the provisions of this Memorandum of Incorporation and any applicable legislation, including the 2008 Act.
- 21.9 The Members will be entitled, by way of an ordinary resolution of the Members adopted at a General Meeting, to remove any Director from the Executive Committee, on condition that :
- 21.9.1 The Director concerned must be given notice of the Meeting and the resolution, at least equivalent to that which a Member is entitled to receive, irrespective of whether or not the Director is a Member; and
- 21.9.2 The Director must be afforded a reasonable opportunity to make a presentation, in person or through a

representative, to the Meeting, before the resolution is put to a vote.

21.10 If a Member or Director has alleged that a Director :

21.10.1 Has become :

- Ineligible or disqualified in terms of section 69 of the 2008 Act; or
- Incapacitated to the extent that the Director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

21.10.2 Has neglected, or been derelict in the performance of, the functions of director,

the Executive Committee, other than the Director concerned, may, by way of a unanimous resolution adopted at an Executive Committee meeting, remove the Director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.

21.11 Before the Executive Committee may consider a resolution contemplated in article 21.10, the Director concerned must be given :

21.11.1 Notice of the Executive Committee meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the Director to prepare and present a response; and

21.11.2 A reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.

22. DISQUALIFICATION AND REMOVAL OF DIRECTORS FROM THE EXECUTIVE COMMITTEE

A Director will immediately lose his/her position on the Executive Committee if he/she :

22.1 Becomes prohibited, or disqualified, by virtue of any provision of any law, from holding office as a trustee or a director.

22.2 Dies, or resigns by notice in writing to the Company.

22.3 Has or acquires a direct or indirect personal financial interest in any contract or proposed contract with the Company, and fails to declare that interest and its nature in the manner required by the 2008 Act.

22.4 Is removed from office, or retires without being re-elected, in terms of article 21.

22.5 Is provisionally or finally sequestered, or placed under an administration order.

22.6 Is convicted of any criminal offence involving violence or dishonesty.

22.7 Fails to attend three (3) consecutive Executive Committee meetings without leave of absence.

23. GENERAL CONFERENCE

23.1 At intervals not exceeding every four (4) years, a General Meeting

must be held, to be known as the General Conference.

23.2 The functions of the General Conference will include the following :

- 23.2.1 To elect the Directors (and their deputies) to serve on the Executive Committee for the ensuing four (4) year period.
- 23.2.2 To decide on other constitutional arrangements.
- 23.2.3 To decide on the Company's policies.
- 23.2.4 To decide the working programme of the Executive Committee and the secretariat of the Company.
- 23.2.5 To determine the General Conference rules of procedure, as submitted by the Executive Committee on the proposal of the general secretary.
- 23.2.6 To elect a credentials committee to determine voting rights and examine the credentials of nominees to the Executive Committee and other sub-committees.
- 23.2.7 To elect a resolutions committee to prepare resolutions and policy statements for decision by the General Conference.
- 23.2.8 To decide on matters related to:
 - The annual report.
 - The auditors' report (if the annual financial statements are audited by a registered auditor).
 - The programme of activity.

- The Membership fees.
- The number of vice-presidents.
- The number of Members (including their representatives and deputies).
- The election of a president.
- The election of the vice-presidents and their deputies.
- The election of the general secretary.
- The appointment of persons authorised to sign for the Company.
- The election of two internal auditors, and their deputies.

23.3 The General Conference must be convened by the Executive Committee at least six (6) months in advance, with a proposal for its agenda. The general secretary must ensure that all General Conference documents are sent to every Full Member, and any other organisations and people entitled to receive notice of a General Conference, at the latest two (2) months before the opening of the General Conference.

23.4 Full Members, the Executive Committee and the general secretary may submit motions and nominations to the General Conference. These must be made in writing and reach the general secretary at least four (4) months before the opening of the General Conference, and the General Secretary must circulate these to the Full Members at least three (3) months before the opening of the General Conference.

23.5 Emergency motions addressing situations developing within the four (4) months preceding the opening of the General Conference may be submitted by the secretariat until midday on the second day of the General Conference. They may not exceed one hundred (100) words.

Composition of the General Conference

23.6 The General Conference may be attended by:

23.6.1 Full Members : up to two (2) representatives from each Full Member organisation. The Member must endeavour to be represented on an equal gender basis. A Full Member may attend through a single proxy, instead of through representatives.

23.6.2 Associate Members : the number of representatives from the Associate Member category will be decided by the Executive Committee on the proposal of the general secretary. Associate Members may attend through a single proxy instead of through a representative.

23.6.3 Individual Members : They will be entitled to attend personally or by proxy.

23.6.4 Observers : the Executive Committee may invite those with observer status, on the proposal of the general secretary.

23.6.5 Guests : The Executive Committee may invite guests, on the proposal of the general secretary.

24. DIRECTORS' REMUNERATION AND REIMBURSEMENT

24.1 The Directors will be entitled to reimbursement of all reasonable travelling, subsistence, and other expenses properly incurred by them in the execution of their duties on behalf of the Company and which are authorised or approved from time to time by the Executive Committee.

24.2 Subject to article 24.1 above, the Directors will receive no remuneration for their services as members of the Executive Committee.

25. DIRECTOR CONTRACTING WITH THE COMPANY

A Director will be entitled to contract directly or indirectly with the Company, or benefit from any contract which the Company may conclude, on condition that :

25.1 The Director declares his/her interest in the relevant contract in the manner stipulated in the 2008 Act; and

25.2 The Director does not participate in any proceedings of the Executive Committee during which the relevant contract is discussed or voted on; and

25.3 The conclusion of that contract is subject to the same procedures and criteria as any other similar contract concluded by the Company.

26. POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE

26.1 **Powers**

The business and affairs of the Company must be managed by or under the direction of the Executive Committee, which has the authority to exercise all of the powers and perform any of the functions of the Company. Without in any way limiting the general nature of this article 26.1, the Executive Committee will be entitled to exercise the following powers :

26.1.1 Co-option of Assistance

The Executive Committee will be entitled to co-opt any person of its choice to assist the Executive Committee or any sub-committee or sub-structure of the Executive Committee in relation to any matter concerning the management or administration of the Company, or the conduct of any aspect of its activities.

26.1.2 Divisions

The Executive Committee will be entitled to establish separate divisions of the Company, to perform any discrete or specialised functions of the Company. The Executive Committee must, from time to time, determine rules and procedures for the management and administration of any division, and must take all reasonable steps to ensure that such rules and procedures are complied with. The Executive Committee may, if deemed appropriate for administrative, fiscal or other reasons, keep separate

books and account separately for each division.

26.1.3 Executive Committee's Powers of Delegation

The Executive Committee may delegate any of its powers or assign any of its duties to any sub-committees, working groups or other sub-structures it chooses; on terms and conditions it deems appropriate in each instance; on condition that :

- The Executive Committee will determine the membership of each such sub-committee or sub-structure, and may review its own decisions in that regard. The members of sub-committees and sub-structures may be Directors serving on the Executive Committee, and may also include people who are not Directors; on condition that, unless the Executive Committee decides otherwise, the chairperson of any sub-committee or sub-structure must be a Director serving on the Executive Committee.
- Each sub-committee and sub-structure will remain accountable to the Executive Committee at all times for the performance of its delegated functions; and the Executive Committee will not be divested of its powers or duties by reason of any delegation or assignment.
- Unless the Executive Committee decides otherwise, either generally or in relation to a particular sub-committee or sub-structure, a sub-structure or sub-committee will be entitled to further delegate any

task or portion of its mandated responsibilities to special working groups, on terms and conditions it deems appropriate, in consultation with the Executive Committee.

- The Executive Committee must take reasonable steps to ensure that any sub-structure or sub-committee, in exercising the relevant powers or carrying out the relevant duties, conforms to any rules, restrictions or procedures which may be imposed by the Executive Committee from time to time.
- The Executive Committee will be entitled, in its absolute discretion, to vary or set aside any decision made under any delegation or in terms of any assignment contemplated in this article 26.1.3; or to revoke or amend the terms of any delegation or assignment; or to disestablish any sub-committee or sub-structure at any time, without being required to give prior notice, or to give reasons for its decision.

26.1.4 Borrowing Powers

The Executive Committee's borrowing powers will be unlimited, and the Executive Committee will be entitled to mortgage or otherwise encumber any or all of the assets of the Company as security for any debt, liability or obligation of the Company.

26.2 **Duties**

The Executive Committee must carry out all duties required of it by this Memorandum of Incorporation, or by the 2008 Act, or any other provision of law. Certain of those duties are set out below.

26.3 **Finances**

In managing the finances of the Company, the Executive Committee must ensure that the provisions of articles 28 to 31 are complied with.

26.4 **Expertise**

The Executive Committee will be entitled to employ independent contractors, or other appropriate people, to provide the Company with such skills and expertise as it may require in order to achieve its Object.

26.5 **Company Records**

The Executive Committee must ensure that the Company maintains the following records [and retains them for a period of at least seven (7) years] :

26.5.1 A copy of this Memorandum of Incorporation, and any amendments or alterations to it.

26.5.2 A record of the Directors of the Company, including :

- All the information required in terms of section 24(5) of the 2008 Act in respect of each current Director at any particular time; and
- That same information with respect to each past Director.

26.5.3 Copies of all :

- Annual financial statements of the Company.
- Accounting records of the Company.

26.5.4 Minutes of all meetings and resolutions of the Executive Committee, and sub-committees and sub-structures of the Executive Committee.

26.5.5 A record of its company secretaries and registered auditors (if any), including, in respect of each person appointed as secretary or registered auditor of the Company :

- The name of each such individual (or, if a firm or juristic person is appointed, the name, registration number and registered office address of that firm or juristic person); and
- The date of every such appointment; and
- Any change in the above information, as and when it occurs, with the date and nature of the change.

26.5.6 Minutes of all General Meetings and resolutions of the Members.

26.5.7 The Member's register.

26.6 Location of Company Records

The records of the Company must be accessible at or from the Office.

26.7 Access to Company Records

All the Directors will be entitled, at any reasonable time, and from time to time, to inspect and make copies of any of the Company records.

26.8 **Standard of Conduct of Directors**

26.8.1 A Director of the Company must not use his/her position as such, or any information obtained whilst acting in the capacity of Director :

20.8.1.1 To gain an advantage for himself/herself, or for another person other than the Company; or

20.8.1.2 To knowingly cause harm to the Company.

26.8.2 A Director must communicate to the Executive Committee, at the earliest practical opportunity, any information which comes to the Director's attention, unless the Director :

26.8.2.1 Reasonably believes that the information is immaterial to the Company, or is generally available to the public, or is known to the other Directors; or

26.8.2.2 Is bound not to disclose that information by a legal or ethical obligation of confidentiality.

26.8.3 A Director must, when acting in that capacity, exercise the powers and perform the functions of Director :

26.8.3.1 In good faith and for a proper purpose; or

26.8.3.2 In the best interests of the Company; and

26.8.3.3 With the degree of care, skill and diligence that may reasonably be expected of a person :

- Carrying out the same functions in relation to the Company as those carried out by that Director; and
- Having the general knowledge, skill and experience of that Director.

26.8.4 Every Director must familiarise himself or herself with the provisions of section 76 of the 2008 Act, and must ensure that he/she is not guilty of any act or omission prohibited by that section.

27. DECISIONS OF THE EXECUTIVE COMMITTEE

27.1 The Directors may take decisions :

27.1.1 At an Executive Committee meeting; or

27.1.2 By way of a signed resolution.

27.2 **Executive Committee Meetings**

27.2.1 Meetings of the Executive Committee are convened by the general secretary of the Company.

27.2.2 The president of the Company or, in his/her absence, a vice-president of the Company, must serve as chairperson of the Executive Committee; on condition that, if neither of them is present or willing to act within

fifteen (15) minutes of the time set for the start of an Executive Committee meeting, the Directors serving on the Executive Committee must choose one of their number as chairperson of that meeting.

27.2.3 The general secretary of the Company may convene an Executive Committee meeting at any time, on at least seven (7) business days' notice to all the Directors. That period of notice may be waived by the Executive Committee if :

27.2.3.1 All the Directors attend the meeting; and

27.2.3.2 All the Directors agree to that waiver.

27.2.4 The general secretary must convene an Executive Committee meeting if requested to do so in writing by :

27.2.4.1 Any three (3) Directors, if the Company has twelve (12) or more Directors; or

27.2.4.2 Any two (2) Directors, if there are less than twelve (12) Directors on the Executive Committee.

27.2.5 If the general secretary fails to act on a written request to convene an Executive Committee meeting within seven (7) business days after receiving that request, the Directors requesting that meeting may themselves convene it.

27.2.6 The quorum necessary for the transaction of any business at an Executive Committee meeting is half the Directors.

27.2.7 A Director will be deemed to be present at an Executive Committee meeting if the Director or his/her proxy is

present in person or by way of an electronic communication facility contemplated in article 27.3.

- 27.2.8 Each Director present at an Executive Committee meeting will be entitled to exercise one (1) vote on any matter put to the vote.
- 27.2.9 A Director may appoint any other Director as his/her proxy at an Executive Committee meeting, subject to compliance with any procedures and formalities which may be stipulated by the Executive Committee from time to time.
- 27.2.10 The Directors must make every reasonable effort to reach consensus on all matters arising at any Executive Committee meeting. If consensus cannot be reached on any matter, a resolution will be deemed to have been passed if supported :
- 27.2.10.1 By a simple majority of the Directors present at the meeting (in the case of an ordinary Executive Committee resolution); or
- 27.2.10.2 By seventy-five (75) percent of the Directors present at the meeting (in the case of a special Executive Committee resolution).
- 27.2.11 In the case of a tied vote at an Executive Committee meeting the chairperson **WILL** have a casting or deciding vote.
- 27.2.12 A resolution put to a vote at an Executive Committee meeting may be voted on by a show of hands or a poll, as decided by the chairperson in his/her absolute discretion.

27.3 **Electronic Participation at Executive Committee Meetings**

27.3.1 A Director or his/her proxy will be entitled to attend and participate in Executive Committee meetings by electronic communication.

27.3.2 The electronic communication facility employed for an Executive Committee meeting must enable each Director using that facility :

- To communicate concurrently with all the other participants without an intermediary; and
- To participate reasonably effectively in the meeting.

27.4 **Signed Executive Committee Resolutions**

27.4.1 A resolution signed or assented to by at least seventy-five (75) percent of the Directors in the manner referred to below will be as valid and effectual as if it had been passed at a duly convened and quorate Executive Committee meeting.

27.4.2 The resolution must be :

27.4.2.1 In writing;

27.4.2.2 Circulated to all the Directors, either in printed or electronic form; and

27.4.2.3 Signed or assented to by the requisite number of the Directors in any of the following ways :

- By signing in hand on the original printed resolution;
- By signing in hand on a copy of the original printed resolution;
- By signing in hand on a copy of the original printed resolution which is then transmitted by electronic communication;
- By affixing an electronic signature; or
- By electronic transmission of a written assent to the resolution.

27.4.3 Kept with the minutes of meetings of the Executive Committee.

27.5 Minutes

27.5.1 The Company must keep minutes of the meetings of the Executive Committee, and all of its subcommittees and sub-structures, and must include in the minutes :

- Any declaration given by notice or made by a Director as required by section 75 of the 2008 Act; and
- Every resolution adopted by the Executive Committee, or by the relevant sub-committee or sub-structure.

27.5.2 The minutes of a meeting of the Executive Committee or any sub-committee or sub-structure, or a record of a resolution adopted at any such meeting, signed by the person who chairs that meeting, or by the person who chairs the next meeting, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

27.6 **Executive Committee Resolutions**

27.6.1 Resolutions adopted by the Executive Committee :

27.6.1.1 Must be dated and sequentially numbered; and

27.6.1.2 Are effective as of the date of the resolution, unless the resolution states otherwise.

27.6.2 Except in cases where the 2008 Act or this Memorandum of Incorporation requires a resolution of the Executive Committee to be adopted by way of a special Executive Committee resolution, all decisions of the Executive committee will be adopted by way of ordinary Executive Committee resolutions.

27.7 **Directors Disqualified**

Despite anything to the contrary contained in this Memorandum of Incorporation, all acts done by the Executive Committee or a sub-committee or sub-structure of the Executive Committee, or by any person acting as a Director, will, even if it is discovered afterwards that there was some defect in their appointment, or that they were disqualified, be as valid as if they were duly appointed and qualified.

27.8 **Inadvertent Failure to Give Notice**

If a mistake is made, and a Director is inadvertently not given notice of an Executive Committee meeting, or if a signed resolution is not circulated to a Director in the prescribed way, this will not affect the validity of any decision taken by the Executive Committee at any such meeting or by way of any such resolution.

28. FINANCES

28.1 **Reserves**

The Executive Committee may set aside and carry to a reserve fund all or any of the surplus funds of the Company, which may at its discretion be applied for any purpose for which such funds may properly be applied, in any manner the Executive Committee chooses.

28.2 **Banking and Investment of Funds**

28.2.1 The Executive Committee must ensure that all money received by the Company is deposited in one or more bank accounts in the name of the Company with a bank established under the Banks Act, No. 94 of 1990.

28.2.2 The Executive Committee must, from time to time, determine, by way of resolution :

- Who will have authority to operate the bank accounts of the Company, sign cheques and other financial instruments and contracts on behalf of the Company, and otherwise disburse Company funds and incur commitments on behalf of the Company; and
- The procedures to be followed in this regard.

29. ACCOUNTING RECORDS

- 29.1 The Company must keep accurate and complete accounting records, in one of the official languages of the Republic, as necessary to enable the Company to satisfy its obligations in terms of the 2008 Act, or any other law, with respect to the preparation of financial statements.
- 29.2 The Company must prepare and keep any further accounting records which may be prescribed by or in terms of the 2008 Act.
- 29.3 The accounting records of the Company must be kept at the Office, or at any other place the Executive Committee may decide, and must always be open to inspection by Directors serving on the Executive Committee.
- 29.4 The Executive Committee will, from time to time, decide whether and, if so, to what extent and at what times and places, and under what conditions or regulations, the accounting records of the Company will be open to inspection by people other than Directors serving on the Executive Committee.
- 29.5 Unless a Member is also a Director serving on the Executive Committee, no Member will have the right to inspect or copy any of the accounting records of the Company, except to the extent that this is authorised by the 2008 Act, the Executive Committee or an ordinary resolution of the Members.

30. FINANCIAL STATEMENTS

30.1 Any financial statements prepared by the Company (including any annual financial statements) must :

30.1.1 Satisfy any reporting standards as to form and content which are prescribed from time to time in terms of the 2008 Act.

30.1.2 Present fairly the state of affairs and business of the Company, and explain the transactions and financial position of the business of the Company.

30.1.3 Show the Company's assets and liabilities, as well as its income and expenses, and any other information prescribed in terms of the 2008 Act.

30.1.4 Set out the date on which the statements were published, and the accounting period to which the statements apply.

30.1.5 Bear, on the first page of the statements, a prominent notice indicating :

30.1.5.1 Whether the statements :

- Have been audited in compliance with any applicable requirement of the 2008 Act;
- If not audited, have been independently reviewed in compliance with any applicable requirement of the 2008 Act; or
- Have not been audited or independently reviewed.

- 30.1.5.2 The name, and professional designation, if any, of the individual or firm who prepared, or supervised the preparation of, the statements.
 - 30.1.6 Not be false or misleading in any material respect.
 - 30.1.7 Not be incomplete in any material particular, except if they constitute a summary contemplated in section 29(3) of the 2008 Act.
 - 30.2 The annual financial statements of the Company must be laid before the first Extra-ordinary General Meeting or General Conference which is convened after the finalisation of those statements.
 - 30.3 As soon as may be practical as they have been finalised, copies of the annual financial statements must be sent to every Director and Full Member of the Company.
- 31. ANNUAL FINANCIAL STATEMENTS : PREPARATION, AUDIT AND REVIEW
 - 31.1 The Company must prepare annual financial statements within six (6) months after the end of its financial year.
 - 31.2 The Company's annual financial statements must be audited by a registered auditor (selected and appointed by the Shareholders at an AGM) but only if this is required by any regulations made in terms of section 30(7) of the 2008 Act.
 - 31.3 Even if the annual financial statements are not required to be audited by a registered auditor in terms of article 31.2, the Executive Committee or a General Meeting may resolve from time to time that any annual financial statements of the Company be so audited.
 - 31.4 If any annual financial statements of the Company are not audited by a registered auditor, they must be independently reviewed :

- 31.4.1 In the manner required by any regulations promulgated from time to time in terms of section 30(7) of the 2008 Act, but only if such regulations are promulgated, and only if they require such an independent review.
- 31.4.2 By a Member (selected by the Executive Committee in its absolute discretion) of a profession stipulated in any such regulation.

31.5 The annual financial statements of the Company must :

- 31.5.1 Include an auditor's report, if the statements are audited by a registered auditor.
- 31.5.2 Include a report by the Executive Committee with respect to the state of affairs, the business and profit or loss of the Company.
- 31.5.3 Be approved by the Executive Committee and signed by an authorised Director on behalf of the Executive Committee.

32. NOTICES AND DOCUMENTS

- 32.1 Any notice or document which is required to be given or delivered in terms of this Memorandum of Incorporation by the Company or any other person to any Director or Member may be given or delivered :
 - 32.1.1 By giving it to the Director or Member personally;
 - 32.1.2 By sending it by prepaid registered post to the Director or Member at his/her postal address as recorded in the Company's records; or

32.1.3 By sending it by electronic communication to any electronic address or fax number supplied by the Director or Member for this purpose.

32.2 Any notice or document :

32.2.1 Sent by prepaid registered post will be deemed to have been received ten (10) days after the proven date of posting.

32.2.2 Sent by electronic communication will be deemed to have been received on the second business day after the proven date of despatch.

33. INDEMNITIES

33.1 Subject to any contrary provision in the 2008 Act, every Director and other officer of the Company will be indemnified out of the funds of the Company against :

33.1.1 All costs, expenses and liabilities properly incurred by her/him with the authority of the Company, and in the course of the Company's business; and

33.1.2 Any and all liability contemplated in article 33.2, but subject to the provisions of article 33.3.

33.2 No Director, officer or employee of the Company will be liable for the acts, receipts, omissions or defaults of any other Director, officer or employee; or for joining in any receipt or other act for conformity; or for

- 33.2.1 Any loss or expense incurred by the Company as a result of the insufficiency or deficiency of any security on which any of the funds of the Company are invested;
 - 33.2.2 Any loss or damage arising from the liquidation, sequestration, insolvency or delictual act of any person with whom any funds or securities are deposited;
 - 33.2.3 Any loss or damage caused by any error of judgment or oversight on his/her part; or
 - 33.2.4 Any other loss, damage or misfortune which happens in the exercise of his/her functions as Director.
- 33.3 Nothing contained in this article 33 serves to indemnify a Director in respect of :
- 33.3.1 Any liability arising in terms of sections 77(3)(a), (b) or (c) of the 2008 Act.
 - 33.3.2 Any liability arising from wilful misconduct or wilful breach of trust on the part of the Director.
 - 33.3.3 Any fine imposed on a Director as a consequence of the Director having been convicted of an offence, unless the conviction was based on strict liability.

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**SCHEDULE ONE
TO THE
MEMORANDUM OF INCORPORATION
OF
INTERNATIONAL FEDERATION OF WORKERS'
EDUCATION ASSOCIATION (2009) NPC
DEFINITIONS OF WORDS AND PHRASES**

In this Memorandum of Incorporation, unless the context clearly indicates otherwise :

1. "Associate Members" means those organisations and institutions which are admitted to Associate Membership by the Executive Committee.

2. "audit" means the examination, in accordance with prescribed or applicable auditing standard, of :
 - Financial statements, with the object of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements; or

 - Financial or other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on that information.

3. "business day" means any day except a Saturday, Sunday or South African public holiday.
4. "the Commissioner" means the Commissioner for the South African Revenue Service.
5. "the Company" means the non-profit company referred to in article 1.
6. "Compliance Provisions" means the provisions referred to in article 6, and recorded in Schedule Two.
7. "Director" means a director of the Company who has been appointed as such in terms of this Memorandum of Incorporation.
8. "electronic communication" bears the same meaning as defined in section 1 of the Electronic Communications and Transactions Act, no. 25 of 2002.
9. "Executive Committee" means the Executive Committee of Directors constituted in terms of article 21.
10. "Extra-ordinary General Meeting" means a General Meeting described in clause 20.2.1.2.

11. "Full Members" means those organisations and institutions which are admitted to Full Membership by the Executive Committee, acting with the concurrence of the General Conference.
12. "General Conference" means a special General Meeting described in article 20.2.1.1.
13. "General Meeting" includes a General Conference and an Extra-ordinary General Meeting.
14. "the Income Tax Act" means the Income Tax Act, no. 58 of 1962.
15. "Individual Members" means those individual people who are admitted to Individual Membership by the Executive Committee, acting with the concurrence of the General Conference.
16. "Members" means all Full Members, all Associate Members and all Individual Members.
17. "month" means a calendar month.
18. "the Ninth Schedule" means the Ninth Schedule to the Income Tax Act.

19. "Object" means the Object of the Company recorded in article 4.
20. "the Office" means the registered office of the Company.
21. "ordinary Executive Committee resolution" means a resolution of the Executive Committee referred to in article 27.2.10.1.
22. "ordinary resolution of the Members" means a resolution referred to in article 20.7.1.2.
23. "PBO" means a public benefit organisation approved by the Commissioner in terms of section 30 of the Income Tax Act.
24. "prime rate" means the prime rate of interest charged by the Company's bank on unsecured overdrafts.
25. "Public Benefit Activities" means the following activities :
- public benefit activities as defined in section 30(1) of the Income Tax Act, which activities include those listed in Part I of the Ninth Schedule.
 - 18A Activities.

26. "registered auditor" means an individual or firm who/which has been registered as an auditor in terms of section 37 or 38 of the Auditing Profession Act, no. 26 of 2005.
27. "the Republic" means the Republic of South Africa.
28. "secretary" means any person appointed from time to time by the Executive Committee to perform the duties of secretary of the Company.
29. "Signed Member Resolution" means a resolution contemplated in article 20.4.
30. "special Executive Committee resolution" means a resolution of the Executive Committee referred to in article 27.2.10.2.
31. "special resolution of Members" means a resolution contemplated in article 20.7.1.1.
32. "18A Activities" means those Public Benefit Activities which are listed from time to time in Part II of the Ninth Schedule.
33. "the 2008 Act" means the Companies Act, 2008.

34. References to people include references to corporate bodies, and *vice versa*.
35. The singular includes the plural, and *vice versa*, and reference to any gender includes a reference to the other genders.
36. Any reference to a statutory provision includes a reference to that provision as modified, amended, replaced or re-enacted from time to time.

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**SCHEDULE TWO
TO THE
MEMORANDUM OF INCORPORATION
OF
INTERNATIONAL FEDERATION OF
WORKERS' EDUCATION ASSOCIATION
(2009) NPC COMPLIANCE PROVISIONS**

1. PROVISIONS IMPOSED BY SECTION 30 OF THE INCOME TAX ACT

For as long as the Company is approved as a PBO, the Company must comply with the following requirements, conditions and restrictions, which will override any inconsistent or contradictory provision of this Memorandum of Incorporation :

1.1 The sole or principal object of the Company must be and remain to carry on one or more Public Benefit Activities, on condition that :

1.1.1 All such activities must be carried on in a non-profit manner and with an altruistic or philanthropic intent.

1.1.2 No such activity may be intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.

1.1.3 Each such activity carried on by the Company must be for the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).

1.2 The Company must have at least three (3) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility for the Company, and no single person may directly or indirectly control the decision-making powers relating to the Company.

- 1.3 The Company may not distribute any of its funds directly or indirectly to any person (otherwise than in the course of undertaking any Public Benefit Activity) and must utilise its funds solely for the Object for which the Company has been established.
- 1.4 If and when the Company is wound-up or dissolved in any manner provided for in this Memorandum of Incorporation, or as required by law, the net remaining assets of the Company, after all the obligations and commitments of the Company have been met, must be transferred to :
 - 1.4.1 Any PBO; or
 - 1.4.2 Any institution, Executive Committee or body which is exempt from tax under the provisions 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; or
 - 1.4.3 The government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of the Income Tax Act,

which is required to use those assets solely for purposes of carrying on one or more Public Benefit Activities.
- 1.5 The Directors will be 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 the Income Tax Act: Provided that a donor [other than a donor which is an approved PBO or an institution, Executive Committee or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, and which has as its sole or principal object the carrying on of any Public Benefit Activity] may not impose conditions which could enable that

donor or any connected person in relation to that donor to derive some direct or indirect benefit from the application of the donation.

- 1.6 The Directors must submit to the Commissioner a copy of any amendment to this Memorandum of Incorporation, and must ensure that the Company submits the required income tax returns together with the relevant supporting documents.
- 1.7 The Directors must comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in the furtherance of its Object.
- 1.8 The Directors must make sure that the Company does not knowingly become a party to, or does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.
- 1.9 The Company must not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, Director or other person which is excessive, having regard to what is generally considered reasonable in the sector in which the Company operates, and in relation to the service rendered, and must not economically benefit any person in a manner which is not consistent with its Object.
- 1.10 The Directors must comply with such reporting requirements as may be determined by the Commissioner.

1.11 The Directors must ensure that any books of account, records or other documents relating to the Company :

1.11.1 Where kept in book form, are retained and carefully preserved for a period of four (4) years after the date of the last entry in any such book; or

1.11.2 Where not kept in book form, are retained and carefully preserved for a period of four (4) years after completion of the transactions, acts or operations to which they relate.

1.12 The Company must not use its resources directly or indirectly to support, advance or oppose any political party.

2. PROVISIONS IMPOSED BY SECTION 18A OF THE INCOME TAX ACT

2.1 When the Company issues receipts to donors in terms of section 18A(2) of the Income Tax Act, the Company must ensure that the donations from those donors are used solely to carry on the Company's own 18A Activities, namely those activities of the Company which are contemplated in Part II of the Ninth Schedule.

2.2 Where the Company, in any year of assessment, issues receipts to donors in terms of section 18A(2) of the Income Tax Act, the Company must obtain and retain an audit certificate confirming that all the donations received or accrued in that year in respect of those receipts, were used by the Company in the manner contemplated in paragraph 2.1 above.

2.3 The Company must not issue a receipt in terms of section 18A(2) of the Income Tax Act in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar rights, or which constitutes an intangible asset or financial instrument, unless that financial instrument is :

- 2.3.1 A share in a listed company; or
- 2.3.2 Issued by a financial institution as defined in section 1 of the Financial Services Executive Committee Act, No. 97 of 1990.

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