

# Application for membership of SAPHE

SAPHE is a voluntary association of private higher education providers working together to enhance the reputation of private higher education through the conduct of members and our engagement with stakeholders including the regulators. As a result, members hold each other to high standards and requirements in relation to conduct and expect high levels of professional conduct, including confidentiality on matters discussed at meetings, so as to allow robust engagement on all matters leading to the consensus positions on the way forward. Our success is built on our ability to trust each other and our shared vision of what it means to be a high quality private provider in SA and we thus invite applications from members who are comfortable with the position of engagement and regulatory compliance we take and whose activities resonate with the inclusive and democratic values we espouse.

We have introduced a system of sponsorship where an existing member will mentor you and support your application so that you are able to engage openly with that member to understand how we work and what we believe in. You will thus need to identify a member willing to sponsor your application for membership if you decide, after attending a few meetings as a guest, that you would like to apply to be a formal member.

If you are considering applying for membership to SAPHE please proceed as follows

- Contact Karin Boshoff on [info@saphe.ac.za](mailto:info@saphe.ac.za) and ask if you can attend as an observer at the next two meetings – she will send you the dates and the times that the open session starts. She will also send you a meeting protocol document to sign. Send the signed document back to her before the first meeting or hand it in at the first meeting. You are then welcome to attend two meetings as an observer.
- After attending at least two meetings if you wish to apply to be a member please approach an existing member to act as a sponsor for you and then submit the following information to Karin via that other member.
  1. Name of institution and registration number as a private higher education provider with the DHET.
  2. Copy of your latest certificate.
  3. A short introductory institutional profile in any format of your choice to introduce you to the other members.
  4. A short statement as to why you wish to become a member and the category against which you wish to be considered (see the Constitution appended).
  5. Contact details of the person that will normally represent you at meetings and to contact details of person to whom correspondence should be addressed.
  6. A copy of the code of conduct signed by the most senior person in your organisation and co-signed by your proposed representative. Please ensure that all pages are initialled.
  7. A copy of the constitution signed by the most senior person in your organisation and co-signed by your proposed representative. Please ensure that all pages are initialled.
  8. A letter of introduction from your sponsoring member.

## Meeting protocol for visitors

I have accepted an invitation to attend a SAPHE meeting on \_\_\_\_\_ and will be representing \_\_\_\_\_ (name of provider) at the meeting.

I understand that I am attending as a guest but may participate in discussions at any stage in the meeting but may not vote if the meeting goes to vote on a matter.

I understand that what is discussed at the meeting is confidential to the meeting and that while I may discuss the items on the agenda with my organisation in order to inform a decision about an application for membership I may not share details provided by any member or guest with anyone else and may not share details of “who said what about what” even with other members of my organisation.

I understand that if I share the specifics of the contributions of anyone present at the meeting I may do them harm as I will not be able to provide sufficient context and members will express points of view in meetings because of the open and robust nature of meetings that may not reflect the opinion of their organisation and may in fact change as a result of debate and that my sharing of any such discussion may place an individual or organisation in an unfair negative light with others.

I thus agree to conduct myself with discretion and to retain the overall confidentiality of the meeting and any documents I gain access to in relation to the meeting or SAPHE.

I understand that any later application for membership is considered in the light of shared values. These include respect for and protection of the privacy and reputation of others present.

Name

Organisation



## CODE OF CONDUCT

As a member of *South African Private Higher Education* (SAPHE), we commit ourselves to the following code of conduct, as per the Constitution of SAPHE (section 1.6.3).

The Association and its Members (and Members' employees) must, at all times, comply with the Constitution of the Association as well as all applicable laws and regulations as set out in the Constitution of the Republic of South Africa. Members' dealings with all of its stakeholders must stand the closest possible public scrutiny and therefore all institutional conduct should be above the minimum standards required by law or required by sectoral bodies and the broadest cross-section of higher education stakeholders.

Accordingly, Members must ensure that their actions cannot be interpreted as being, in any way, in contravention of the Association's objectives, values and operations as recorded in the Constitution of the Association and in this code of conduct nor of the laws and regulations as set out in the Constitution of the Republic of South Africa.

Members (or candidate members) uncertain about the application or interpretation of any ordinary, ethical or legal requirement of the Association should refer the matter to the Association's Board for advice and comment.

### **The Association, its Board of Directors and Members agree to:**

1. Promote the standing of private higher education in South Africa through facilitating collaboration amongst higher education institutions;
2. Carry out advocacy tasks in order to promote the standing of private higher education in South Africa;
3. Collaborate on issues of regulation and quality assurance;
4. Provide value added services such as capacity building to its Members in order to promote the standing of private higher education in South Africa;
5. Facilitate effective dialogue amongst and between institutions, regulators and civil society on issues affecting higher education in South Africa;
6. Influence and contribute to policy positions and discussions in order to promote the standing of higher education in South Africa and uphold standards of quality and integrity in the provision of higher education in South Africa;
7. Commission research as may be appropriate from time to time to support the objectives of the Association and the promotion of values, principles, ethics and practices commensurate with the delivery of quality higher education in South Africa.

8. Uphold the following principles of the Association in order to realise the objectives of the institution:

8.1 Members must offer education that explicitly and demonstrably supports the values (human dignity, achievement of equality, advancement of human rights and freedoms, non-racialism and non-sexism) of the SA Constitution including the specific requirements of Section 29 of the Constitution.

8.2 Members must recognise the supremacy of the South African Constitution and the rule of law.

8.3 Members should not act in a manner that can be seen to be divisive or discriminatory and should thus adhere to policies that are inclusive and ethical in all of their dealings with fellow members of the association, employees, students and stakeholders.

8.4 Members should not be aligned to any civic, religious or political organisation practising or espousing discriminatory positions or conduct.

8.5 Members must be committed to ethical conduct in education and business matters and should conduct themselves in a manner synonymous with integrity and respect, including but not limited to Section 29 of the Constitution of South Africa, which includes that:

I. Everyone has the right -

(a) to a basic education, including adult basic education; and

(b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

II. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account -

(a) equity;

(b) practicability; and

(c) the need to redress the results of past racially discriminatory laws and practices.

III. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that -

(a) do not discriminate on the basis of race;

(b) are registered with the state; and

(c) maintain standards that are not inferior to standards at comparable public educational institutions.

9. Be subject to the principle that Membership will/may be terminated under the following conditions:
  - 9.1 A member fails to act in the best interest of the Association;
  - 9.2 A Member fails to comply with the Constitution of the Association or that of the Republic of South Africa;
  - 9.3 A member Fails to comply with any rules and regulations of the Association;
  - 9.4 A Member fails to comply with any resolutions adopted and rulings made by the Association or its Board;
  - 9.5 A Member acts contrary to the objectives of the Association; or
  - 9.6 A member acts in a manner detrimental to the best interests of the Association.
10. Promote the positive general conduct of its Members (and their employees) including that Members and Officers of the Association perform their duties conscientiously, honestly, and in accordance with the best interests of the Association.
11. Ensure that Members and Officers of the Association not use their positions or the knowledge gained as a result of their positions for private or personal advantage.
12. Ensure that Members and Officers of the Association share a serious responsibility for the Association's good public relations and that this includes but is not limited to ensuring that the reputation of the Association is not negatively impacted by their conduct.
13. Ensure that Members and Officers of the Association avoid investing in or acquiring a financial interest for their own accounts in any business organization that has a contractual relationship with the Association, or that provides goods or services, or both, to the Association if such investment or interest could influence or create the impression of influencing their decisions in the performance of their duties on behalf of the Association.
14. Ensure that Members and Officers of the Association not accept entertainment, gifts, or personal favours that could, in any way, influence, or appear to influence, decisions in favour of any person or organization with whom or with which the Association has, or is likely to have, business dealings.
15. Ensure that Members and Officers of the Association not accept any other preferential treatment under any circumstances because their positions with the Association might be inclined to, or be perceived to, place them under obligation to return the preferential treatment.
16. Ensure that Members and Officers of the Association not receive payment or compensation of any kind, except as authorized under the Association's policies. In particular, the Association strictly prohibits the acceptance of kickbacks and secret commissions of any nature. Any breach of this rule will result in immediate termination.
17. Ensure that Members and Officers of the Association who have access to Association's funds in any form follow the prescribed procedures for recording, handling, and protecting money as detailed in the Association's policies and procedures or other explanatory materials, or both.

18. Ensure that Members and Officers of the Association impose strict standards to prevent fraud and dishonesty in relation to the conduct of the affairs of the Association.
19. Ensure that Members and Officers of the Association maintain accurate and reliable records of many kinds as are necessary to meet the Association's legal and financial obligations (as may be relevant) and to manage the affairs of the Association. The Association's books and records must reflect in an accurate and timely manner all business transactions. The Officers of the Association responsible for accounting and recordkeeping must fully disclose and record all assets, liabilities, or both, and must exercise diligence in enforcing these requirements.
20. Ensure that Members and Officers of the Association take care to separate their personal or ordinary professional roles from their Association positions including ordinary membership when communicating on matters involving or not involving Association business.
21. Ensure that Members and Officers of the Association communicating publicly on matters that involve Association business, do not presume to speak for the Association on any topic, unless they are certain that the views they express are those of the Association, and it is the Association's desire that such views be publicly disseminated.
22. Ensure that Members and Officers of the Association dealing with anyone outside the Association, including public officials, take care not to compromise the integrity or damage the reputation of either the Association, or any outside individual, business, or government body. This includes but is not limited to violating the privacy and confidentiality of discussions between members.
23. Ensure that Members and Officers of the Association promote prompt communications in all matters relevant to customers, suppliers, government authorities, the public and others in the Association and further make every effort to achieve complete, accurate, and timely communications - responding promptly and courteously to all proper requests for information and to all complaints.
24. Ensure that Members and Officers of the Association uphold the principles of privacy and confidentiality when handling all information including but not limited to financial, professional, organisational or personal information about Members or others with whom the Association has dealings, observing at all times the following principles:
  - 24.1 Collect, use, and retain only the information necessary for the Association's business. Whenever possible, obtain any relevant information directly from the person concerned. Use only reputable and reliable sources to supplement this information.
  - 24.2 Retain information only for as long as necessary or as required by law and protect the physical security of this information.
  - 24.3 Limit internal access to information to those with a legitimate reason for seeking that information. Use only information for the purposes for which it was originally obtained. Obtain the consent of the person or organisation concerned before externally disclosing any personal or organisational information, unless legal process or contractual obligation provides otherwise.

25. Respect the confidentiality of all discussions between members and not share that information inappropriately or in a manner that can identify an individual member or bring a member or his or her institution in to conflict or disrepute with any other party.

**In addition candidate members and applicants are required to confirm that:**

1. They are registered, or provisionally registered, with the Department of Higher Education and Training as a private higher education provider and that they have been registered as such for at least two calendar years prior to applying to be a Full Member;
2. The institution satisfies the eligibility criteria set out in the Constitution of the Association;
3. They are compliant with the regulatory requirements for accreditation and registration including any conditions that may have been set as part of these processes;
4. They accept that these are minimum requirements and therefore membership is contingent on shared values which are determined from time to time by the membership. As this is a voluntary association of members the membership takes on itself full authority to determine the values that must inform the practise of all its members.
5. They accept that the termination of membership may be a more complex issue and has high potential for conflict and discord and thus the Members and the Board of the Association have agreed, and will, exercise their minds carefully before accepting candidate Members and may decline membership to any institution that could place the objectives of the Association at risk either directly or as a result of reputational association.

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March 2017

**Declaration by applicant institution**

The undersigned confirm, and are duly authorised to do so, that should their application for membership of SAPHE be approved by the members that the representatives of the institution will uphold the following code of conduct and accept that failure to do so may result in the institution's membership of SAPHE being terminated.

Signed at \_\_\_\_\_ on \_\_\_\_\_

Authorised executive:

Name and signature: \_\_\_\_\_

Nominated representative:

Name and signature: \_\_\_\_\_

Witness 1: Name and signature: _____
Witness 2: Name and signature: _____
Name of institution: _____
DHET Registration number: _____



**CONSTITUTION**

**OF**

**SOUTH AFRICAN PRIVATE HIGHER EDUCATION**

*(Hereinafter referred to as the “Association”)*

## ADOPTION OF THE CONSTITUTION

This **Constitution** was adopted by the founding members on 18 February 2017. The details of the founding members at that time are as referenced below.

Milpark Education

Da Vinci

Monash South Africa

Southern Business School

AFDA

AROS

Boston Group comprising Boston City Campus & Business College; and Boston Media House

St Augustine

The Independent Institute of Education

Inscape Education Group

International Hotel School

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**SCHEDULES**

**SCHEDULE 1 - INTERPRETATION**

# **1 ARTICLE 1 - ESTABLISHMENT AND NATURE OF THE ASSOCIATION**

## **1.1 Incorporation**

The name of the **Association** is South African Private Higher Education.

## **1.2 Objectives of the Association**

1.2.1 The **Objectives** of the **Association** is to:

1.2.1.1 promote the standing of private higher education in South Africa through facilitating collaboration amongst higher education institutions;

1.2.1.2 carry out advocacy tasks and speak on behalf of the members in order to achieve the above;

1.2.1.3 collaborate on issues of regulation and quality assurance;

1.2.1.4 provide value added services such as capacity building;

1.2.1.5 facilitate effective dialogue amongst and between institutions, regulators and civil society on issues affecting higher education;

1.2.1.6 influence and contribute to policy positions and discussions; and

1.2.1.7 commission research as may be appropriate from time to time to support the above **Objectives**.

## **1.3 Legal Status**

1.3.1 Except to the extent necessarily implied by the **Objectives**, the **Association** has all of the legal powers and capacity of an individual, except to the extent that a **Juristic Person** is incapable of exercising any such power or having any such capacity.

1.3.2 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.

## **1.4 Amendments to the Constitution and Dissolution**

1.4.1 This **Constitution** may only be amended by the **Members**, approved by a special resolution of the **Members**.

1.4.2 The **Association** may wind-up or dissolve upon a special resolution of the **Members**.

1.4.3 Upon the winding-up or dissolution of the **Association**, its entire net value must be distributed pro rata to **Members** in good standing.

## **1.5 Finance and Administration**

1.5.1 The **Association** will open a bank account in the name of the **Association**.

1.5.2 The financial year end of the **Association** is 31 December.

1.5.3 Cheques and other documents requiring signature on behalf of the **Association** shall be signed by at least 2 (two) persons authorised by the **Board**.

1.5.4 The financial statements of the **Association** shall be independently reviewed, but the **Board** may resolve that the statements be audited.

## 1.6 **Membership Application and Approval**

1.6.1 All **Full Members** should:

1.6.1.1 be registered, or provisionally registered, with the Department of Higher Education and Training as a private higher education provider for at least 3 (three) full calendar months prior to applying to be a **Full Member**;

1.6.1.2 be predominantly a higher education provider in terms of both student numbers and number of qualifications offered;

1.6.1.3 currently deliver at least one qualification registered on the HEQSF of the NQF; and

1.6.1.4 be compliant with the regulatory requirements for accreditation and registration.

1.6.2 Applicants for membership in the **Association** shall apply in writing to the **Board** giving such details as the **Board** may require from time to time.

1.6.3 Membership shall not be conferred automatically upon application, but evaluated by the **Members**, based on the following criteria:

1.6.3.1 the applicant's full agreement to and with the principles, **Objectives** and activities of the **Association**;

1.6.3.2 the applicant's full agreement to and with the content of this **Constitution**; and

1.6.3.3 payment of the fees as may be determined by the **Board** from time to time.

1.6.4 No person shall be admitted as a **Member** without the approval of the **Members** by ordinary resolution.

## 1.7 **Affiliate membership**

1.7.1 In order to be an **Affiliate Member** an educational institution should:

1.7.1.1 be newly registered, or provisionally registered, with the Department of Higher Education and Training as a private higher education provider;

1.7.1.2 deliver at least one qualification registered on the HEQSF of the NQF;

1.7.1.3 have the intention to become predominantly a higher education provider within five years of being newly registered or provisionally registered; and

1.7.1.4 be compliant with the regulatory requirements for accreditation and registration.

1.7.2 Applicants for affiliate membership in the **Association** shall apply in writing to the **Board** giving such details as the **Members** may require from time to time.

- 1.7.3 Affiliate Membership shall not be conferred automatically upon application, but evaluated by the **Members**, who shall be given copies of the application at least 15 (fifteen) **Business Days** before an ordinary meeting of **Members**, based on the following criteria:
- 1.7.3.1 the applicant's full agreement to and with the principles, **Objectives** and activities of the **Association**;
- 1.7.3.2 the applicant's full agreement to and with the content of this **Constitution**; and
- 1.7.3.3 payment of the prescribed fees as may be relevant at the time.
- 1.7.4 No person shall be admitted as an **Affiliate Member** without the approval of the **Members** by ordinary resolution.
- 1.7.5 An **Affiliate Member** will not be entitled to vote in any formal resolutions of the **Association** but shall be permitted to participate in all deliberations and meetings and to contribute to all activities as may occur during the period of affiliate membership.
- 1.7.6 An **Affiliate Member** may apply in writing to become a **Full Member** after 2 (two) full years of affiliate membership as long as the **Member** is in good standing and complies with the all the requirements for membership.
- 1.8 **Termination or Suspension of Membership**
- 1.8.1 Membership in the **Association** shall be suspended:
- 1.8.1.1 in the event of non-compliance by a **Member** with such obligations as may attach to such **Member's** membership, on receipt of written notice by the Board to the **Member** concerned requiring the remedying of such default, for a period of three months during which the Member may remedy the default.
- 1.8.1.2 upon the passing of a special resolution of the **Members**.
- 1.8.2 Membership in the **Association** shall terminate:
- 1.8.2.1 the **Member** does not satisfy the qualification criteria for membership;
- 1.8.2.2 upon the deregistration, sequestration or liquidation of a **Member**;
- 1.8.2.3 in the event of non-compliance by a **Member** with such obligations as may attach to such **Member's** membership, upon the expiration of a period of 3 (three) months reckoned from the day of written notice by the **Board** to the **Member** concerned requiring the remedying of such default, save that the **Board** shall be entitled to extend the period of grace allowed to a particular **Member** after consultation with the **Members** for no longer than 1 (one) additional 3 (three) month period to such extent and for such reasons as the **Association** may in its sole and absolute discretion deem appropriate; and
- 1.8.2.4 upon the passing of a special resolution of the **Members**.
- 1.8.3 The **Board** shall have the power and authority to take such steps and actions, including suspension or termination, or suspension as it deems appropriate and as agreed by the **Members** by special resolution, against a **Member** which:

- 1.8.3.1 fails to act in the best interest of the **Association**;
  - 1.8.3.2 fails to comply with the **Constitution**;
  - 1.8.3.3 fails to comply with any rules and regulations of the **Association**;
  - 1.8.3.4 fails to comply with any resolutions adopted and rulings made by the **Association** or its **Board**;
  - 1.8.3.5 acts contrary to the **Objectives**; or
  - 1.8.3.6 acts in a manner detrimental to the best interests of the **Association**.
- 1.8.4 Termination of membership shall in no way release a **Member** from any obligation undertaken by such **Member** prior to the termination of membership as a result of any guarantee or ancillary guarantee, commitment or obligation which such **Member** may have undertaken.
- 1.9 **Membership Fees**
- 1.9.1 The membership fees shall be determined annually by ordinary resolution of the **Members** at the **Annual General Meeting**.
  - 1.9.2 **Members** joining during a financial year shall be liable for a pro-rata portion of the membership fees applicable during that year.

## **2**      **ARTICLE 2 - RIGHTS OF MEMBERS**

### **2.1**      **Members' right to information**

2.1.1      A **Member** has the right to inspect and copy, without any charge for any such inspection, the information contained in the following records of the **Association**:

2.1.1.1          minutes of **Board** meetings;

2.1.1.2          this **Constitution** and any amendments to it;

2.1.1.3          the records in respect of the **Association's Board Members** (name, contact details, etc.);

2.1.1.4          the reports to annual meetings and annual financial statements;

2.1.1.5          the notices and minutes of meetings and all communications related to meetings of **Members**; and

2.1.1.6          the **Members' Register**.

### **2.2**      **Juristic Persons as Members**

2.2.1      Any **Juristic Person** that is a **Member** may authorise 1 (one) key individual to act as its representative at any **Members' meeting**, and 1 (one) additional individual to act on its behalf in the absence of the key individual.

2.2.2      A properly appointed representative shall be entitled to exercise the same powers as what such **Juristic Person** could exercise if it were an individual **Member**.

2.2.3      The **Board** may require proof to their satisfaction of the authority of any representative so appointed.

### **2.3**      **Proxy Instrument**

2.3.1      A copy of the instrument appointing a proxy must be delivered to the **Association**, or to any other person on behalf of the **Association**, before the proxy exercises any rights of the **Member** at a **Members' meeting**.

2.3.2      The instrument that appoints a proxy must:

2.3.2.1          be in writing, dated and signed by the **Member**;

2.3.2.2          be given by the person appointing such proxy or his attorney duly authorised in writing or, if the appointer be a **Juristic Person**, given by an officer or attorney so authorised.

2.3.3      The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or the making of a later inconsistent appointment of another proxy, and delivering a copy of the revocation instrument to the proxy, and to the **Association**.

2.3.4 The appointment of a proxy 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**.

2.3.5 A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy will be valid notwithstanding the previous legal incapacity of the **Member** or revocation of the instrument or power of attorney, unless notice in writing of such legal incapacity or revocation will have been received by or on behalf of the **Association** not less than 48 (forty eight) hours (or such lesser period as the **Board** may determine in relation to any particular meeting) before the time appointed for holding the meeting.

#### 2.4 **Public statements** <sup>1</sup>

2.4.1 No person shall speak on behalf of South African Private Higher Education, unless such a person is authorised by members to do so.

2.4.2 No person shall make a formal press release or statement or other public statement on behalf of South African Private Higher Education unless such a person does so after consultation with members.

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<sup>1</sup> Clause 2.4 Added after a round robin consultation with members in February 2017.

### **3 ARTICLE 3 - MEMBERS' MEETINGS**

#### **3.1 Requirement to hold meetings**

3.2 In addition to **Annual General Meetings** which will be held annually, **Members'** meetings will be held once every 2 (two) calendar months but may be convened more or less regularly as agreed by the **Members**.

3.3 Any 2 (two) **Members** and/or the chairman may call a meeting.

#### **3.4 Notice of Members' meetings**

3.4.1 The minimum number of days for the **Association** to deliver a notice of a **Members'** meeting to the **Members** is 15 (fifteen) **Business Days** before the date fixed for the holding of the meeting.

3.4.2 The **Association** may call a meeting of **Members** with less notice than required by 3.4.1 above, if supported by sufficient **Members** to pass a special resolution.

3.4.3 The notice of a meeting of **Members** must be in writing, and must include:

3.4.3.1 the date, time and place for the meeting;

3.4.3.2 the general purpose of the meeting;

3.4.3.3 the agenda; and

3.4.3.4 a copy of any proposed resolution of which the **Association** has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted.

#### **3.5 Administrative issues for Members' meetings**

3.5.1 The chairperson and vice chairperson of the **Board** shall preside as the chairperson of the **Member's** meeting, but if no such chairperson or vice chairperson is elected or if at any meeting neither of them is present within 15 (fifteen) minutes after the time appointed for holding the meeting, the **Members** shall choose one of their number to be chairperson of such meeting. If the chairman arrives at the meeting, the **Members** will determine if the chairperson should preside.

3.5.2 The chairman of a **Members'** meeting shall not have any casting or second vote in addition to his deliberative vote as **Member**.

3.5.3 The chairman shall ensure that a record is kept of all decisions taken at the **Members'** meeting and shall ensure that such record is inserted into a minute book kept for that purpose.

3.5.4 All other business transacted at an **Annual General Meeting** and all business transacted at a general meeting shall be deemed "special business". Unless due notice of this "special business" has been given, no special business shall be transacted at an **Annual General Meeting** and only such business of which due notice has been given shall be transacted at a general meeting.

#### **3.6 Quorum for Members' meetings**

3.6.1 A **Members'** meeting may begin at the scheduled time whether or not a quorum (50% of voting rights) is present. If a quorum is not present and a vote is required on an ordinary

resolution the Secretary may conduct an e-mail poll within 48 (forty-eight) hours of the meeting in order for a decision to be taken.

- 3.6.1.1 Where a matter requiring a special resolution is to be considered and the quorum is not present within 30 (thirty) minutes of the appointed time for the meeting start to vote on a special resolution the meeting, or the portion of the meeting the meeting is postponed without motion, vote or further notice, for one week.
- 3.6.2 The **Association** is not required to give further notice of a meeting that is postponed or adjourned as provided for above, unless the location for the meeting is different from:
  - 3.6.2.1 the location of the postponed or adjourned meeting; or
  - 3.6.2.2 a location announced at the time of adjournment, in the case of an adjourned meeting.
- 3.6.3 If, at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, a quorum is not present, the **Members**, present in person or by proxy will be deemed to constitute a quorum.
- 3.6.4 A **Members'** meeting to be conducted entirely by **Electronic Communication**; or one or more **Members**, or proxies for **Members**, may participate by **Electronic Communication** in all or part of a **Members'** meeting that is being held in person, as long as the **electronic communication** employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.
- 3.7 **Members acting other than in a meeting.**
  - 3.7.1 A resolution that could be voted on at a **Members'** meeting may instead be:
    - 3.7.1.1 submitted for consideration to the **Members** entitled to exercise voting rights in relation to the resolution;
    - 3.7.1.2 voted on in writing by the **Members** entitled to exercise voting rights in relation to the resolution within 10 (ten) **Business Days** after the resolution was submitted to them,  
  
provided that all **Members** entitled to exercise their voting rights in respect of that matter to be decided, received notice of the proposed resolution.
  - 3.7.2 A resolution in terms of 3.7.1-
    - 3.7.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted **Members'** meeting; and
    - 3.7.2.2 if adopted, has the same effect as if it had been approved by voting at a meeting.
  - 3.7.3 An election of a **Board Member** that could be conducted at a **Members'** meeting may instead be conducted by written polling of all the **Members** entitled to exercise voting rights in relation to the election of that **Board Member**.

- 3.7.4 Within 10 (ten) **Business Days** after adopting the resolution, or conducting an election of **Board Member**, the **Association** must deliver a statement describing the results of the vote, consent process, or election to every **Member** who was entitled to vote in the election of the **Board Member**, as the case may be.
- 3.8 **Members' resolutions**
- 3.8.1 Any **Member** who is present at the meeting, whether as a **Member** or as proxy for a **Member** and entitled to vote, has one vote.
- 3.8.2 For an ordinary resolution to be adopted at a **Members'** meeting, it must be supported by the holders of more than 50% (fifty percent) of the voting rights exercised on the resolution.
- 3.8.3 Unless the **Constitution** provides otherwise, for a special resolution to be adopted at a **Members** meeting, it must be supported by the holders of at least 80% (eighty percent) (eighty percent) of the voting rights exercised on the resolution.
- 3.8.4 A special resolution is required for the following matters:
- 3.8.4.1 amending the **Constitution**;
- 3.8.4.2 removing a **Member**;
- 3.8.4.3 the undertaking or participation in any legal or other action that could incur costs;  
and
- 3.8.4.4 the entering into any contractual obligations or commitments.
- 3.8.5 An attendance register shall be kept at each **Members'** meeting, and a list of **Members** present shall be included in the minutes of such a meeting.

## **4** ARTICLE 4 - DIRECTORS AND OFFICERS

### **4.1** Composition of the Board of Directors

4.1.1 The **Board** comprises of a minimum of 3 (three) **Board Members**.

4.1.2 **Board Members** shall be elected by the **Members** at a general or **Annual General Meeting** of the **Association**.

4.1.3 An election of a **Board** that could be conducted at a **Members'** meeting may instead be conducted by written polling of all the **Members** entitled to exercise voting rights in relation to the election of that **Board Member**.

4.1.4 The following persons will be ineligible or disqualified from serving as **Board Members**:

4.1.4.1 a **Juristic Person**;

4.1.4.2 an unemancipated minor;

4.1.4.3 an unrehabilitated insolvent;

4.1.4.4 a person removed from an office of trust, on the grounds of misconduct involving dishonesty;

4.1.5 A term of office is 3 (three) years. **Board Members** can serve a maximum of 2 (two) sequential terms of office and must then retire from office for at least one full calendar year before making themselves available for re-election.

4.1.6 The first **Board** will function for 2 (two) years without any retirements and from the third year onwards one-third of the **Board Members** shall retire each year at the **Annual General Meeting**. The **Board Members** to retire each year shall be those who have been longest in office since their last election, and in the event that all the **Board Members** have served for equal periods, the **Members** shall determine which **Board Member** will retire. The **Board Members** who form the **Board** at date of the **Annual General Meeting** at which election is to take place, shall automatically be eligible for re-election without nomination being required unless s/he is due for retirement by rotation.

4.1.7 Despite article 4.1.5, a **Board Member** shall cease to hold office as such:

4.1.7.1 if he/she becomes ineligible or disqualified in terms of this **Constitution**;

4.1.7.2 if the Member s/he represents has been terminated;

4.1.7.3 if he/she resigns;

4.1.7.4 if he/she is removed in terms of an ordinary resolution of the **Members**;

4.1.7.5 if he/she is removed in terms of a **Board** resolution;

4.1.7.6 if he/she is absent from meetings of the **Board** for 3 (three) consecutive meetings.

4.1.8 All acts done by any **Board** meeting or **Board Member** shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of such **Board**

**Member**, or that such **Board Member** were disqualified, be valid as every such **Board Member** had been duly appointed and was qualified to be a **Board Member**.

#### 4.2 Authority of the Board of Directors

4.2.1 The management and control of the affairs of the **Association** shall vest in the **Board** which shall have full power and authority to do or perform any act, function, matter or thing which could or might be done by the **Association**, except where such matters are in this **Constitution** specifically reserved to be dealt with by a general meeting of **Members**.

4.2.2 The **Board** shall steer operations, have oversight of the constitution, identify the agenda and activities for consideration by **Members**, coordinate the responses where necessary, speak on behalf of the **Members** as agreed, set up the agenda for the general **Members'** meeting and the **Annual General Meeting**.

4.2.3 The Board, and indeed any member, shall not incur any costs or expenses for which they wish to be reimbursed, in the carrying out of duties and functions of the Association without written approval in advance from the Chair of the Board.

4.2.4 Such approval shall not be given for costs or expenses for which Members will be liable without agreement of the Members in writing which can be gained electronically or agreed at a meeting of Members.

#### 4.3 Board meetings

4.3.1 Meetings of the **Board** shall be held as often as may be determined by the **Board** in consultation with the **Members** but at least once in advance of each general **Members'** meeting to set up the agenda and prepare reports as may be required.

4.3.2 A decision that could be voted on at a meeting of the **Board** may instead be adopted by written consent of a majority of the **Board Members**, provided that each **Board Member** has received notice of the matter to be decided. Such a written or round-robin resolution shall be deemed to have been passed on the date that the last **Board Member** affixes his signature thereto.

4.3.3 A **Board Member** may call a meeting of the **Board** at any time.

4.3.4 Board meetings can be held in person or via electronic communication.

4.3.5 No meeting of the **Board** may be convened without notice to all of the **Members** detailing the agenda of the meeting and explaining why a general **Members'** meeting is not being called.

4.3.6 If any **Member** objects within 24 (twenty-four) hours of receiving the notice of the **Board** meeting that excludes members, the meeting will be converted to an ordinary meeting of the **Members**.

4.3.7 The **Board**:

4.3.7.1 ordinarily give at least 5 (five) **Business Days'** notice of a meeting that is not to such a determination must comply with any requirements set out in this **Constitution**, or the rules; and

4.3.7.2 may waive notice of a meeting in an urgent situation when requested to do so by

any member of the **Association**.

- 4.3.8 The **Members** will elect a chairperson / vice chairperson when the **Board** itself is elected.
- 4.3.9 The first chairman and vice chairman will hold office for 2 (two) years, and thereafter the chairperson and vice chairperson will hold office for 4 (four) years.
- 4.3.10 If no such chairperson or vice chairperson is present within 15 (fifteen) minutes after the time appointed for holding the meeting, the elected **Board Members** shall choose one of their number to chair such meeting.
- 4.3.11 A majority, but not less than two, of the **Board Members** must be present at a meeting before a vote may be called at a meeting of the **Board**.
- 4.3.12 Each **Board Member** has 1 (one) vote on a matter before the **Board**.
- 4.3.13 A majority of the votes cast on a resolution is sufficient to approve that resolution.
- 4.3.14 In the case of a tied vote the chair shall not have a casting or second vote above his deliberative vote as a **Board Member**, and the matter shall be referred to the **Members** for deliberation.
- 4.3.15 The **Board** shall meet at regular intervals, from time to time as required. For this purpose, an annual program of dates and times of meetings shall be circulated to all the **Board Members** at the beginning of every calendar year.
- 4.3.16 The chair shall cause for minutes of **Board** meetings to be kept in the prescribed manner and format, and any such minutes or an extract therefrom, signed by the chairman, shall be prima facie evidence of the matters stated therein.
- 4.3.17 The minutes of the meeting will be circulated by to all **Board Members** and to all **Members** within a reasonable time after the meeting.
- 4.4 **Officers and Committees**
  - 4.4.1 The **Board** may, with the approval of the **Members** by ordinary resolution, appoint any officers it considers necessary to better achieve the **Objectives**.
  - 4.4.2 The **Board** is authorised to appoint committees, and to delegate to any such Committee any of the authority of the **Board**.

#### **Declaration by applicant institution**

The undersigned confirm, and are duly authorised to do so, that should their application for membership of SAPHE be approved by the members that the representatives of the institution will uphold the following Constitution and accept that failure to do so may result in the institution's membership of SAPHE being terminated.

Signed at \_\_\_\_\_ on \_\_\_\_\_

Authorised executive:

Name and signature: \_\_\_\_\_

Nominated representative:

Name and signature: \_\_\_\_\_

Witness 1:

Name and signature: \_\_\_\_\_

Witness 2:

Name and signature: \_\_\_\_\_

Name of institution: \_\_\_\_\_

DHET Registration number: \_\_\_\_\_