

# MEMORANDUM OF INCORPORATION

REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 2008

## PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC)

(hereinafter referred to as "the Company")

NON-PROFIT COMPANY

INCORPORATED FOR A COMMUNAL OR GROUP INTEREST BENEFIT OR A PUBLIC BENEFIT

SECTION 10 - SCHEDULE 1 COMPANY

DIRECTORS AND MEMBERS WITH VOTING RIGHTS

## INTERPRETATION

In this Memorandum, unless the context requires otherwise:

- section or sections refers to a section or sections of the Companies Act, Act 71 of 2008, as amended;
- Regulation or Regulations refers to a Regulation or Regulations of the Companies Regulations, 2011 in terms of section 223 and Item 14 of Schedule 5 of the Companies Act, Act 71 of 2008, as amended;
- words importing any one gender shall include the other two genders;
- the singular shall include the plural and vice versa;
- any word which is defined in the Act shall bear that defined meaning in this Memorandum;
- the headings have been inserted for convenience only and shall not be used for or assist or affect their interpretation; and
- each of the following words and expressions shall have the meaning stated opposite it and cognate expressions shall have a corresponding meaning, namely:

**“Accreditation”** – the certification, usually for a particular period of time, of a person, a body or an institution as having the capacity to fulfil a particular function within the quality assurance system set up by SAQA;

**“Achievement”** – recognition granted to a learner when all required learning outcomes have been successfully demonstrated;

**“Act” or “the Act”** – means the Companies Act, Act 71 of 2008, as amended or re-enacted from time to time, and includes all Schedules to the Act (Companies Regulation Item 2(h) 2011);

**“AGM”** – Annual General Meeting;

**“Alternate Director”** – a person elected or appointed to serve, as the occasion requires, as a member of the Board of the Company in substitution for a particular elected or appointed Director of that Company (section 1 of Act 71/2008);

**“Applied Competence”** – the ability to put into practice in the relevant context the learning outcomes acquired in obtaining a qualification;

**“Assessment”** – The process of collecting evidence of learners’ work to measure and make judgments about the achievement or non-achievement of specified National Qualifications Framework standards or qualifications (two types – Formative and Summative);

**“Assessor”** – a person who is registered by the relevant ETQA body to measure the achievement of specified National Qualifications Framework standards or qualifications;

**“Audit”** – the process undertaken to measure the quality of products or services that have already been made or delivered;

**“Board”** – means the Board of Directors of the Company from time to time;

**“Board Resolution”** – means a Resolution by the Board of Members where each Member has 1 (one) vote on a matter before the Board and a majority of the votes cast on the Resolution is sufficient to approve it;

**“Candidate”** – a person whose performance is being assessed by the assessor;

**“CEP”** – Community of Expert Practitioners;

**“Conditional Registration”** – the registration of a private higher education institution as specified in the Higher Education Act (No 101 of 1997)

**“Constituent”** – belonging to the defined or delegated constituency of an organization or body referred to in the NSB and ETQA regulations;

**“Core Learning”** – the compulsory learning required in situations contextually relevant to the particular qualifications;

**“CPD”** – Continuing Professional Development;

**“Credit”** – the value assigned by the Authority to ten (10) notional hours of learning;

**“Critical Cross-Field Outcomes”** – refer to those generic outcomes that inform all teaching and learning. For example CCFO’s may include working effectively with others as a member of a team, and/or collecting, analysing, organising and critically evaluating information;

**“Director”** – means a member of the Board as contemplated in section 66 or an alternate Director, and includes any person occupying the position of a Director or alternate Director, by whatever name designated. Director includes a Prescribed Officer or a person who is a Member

of a Committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company's Board (section 1 of Act 71/2008);

**"Education and Training Quality Assurance Body"** – body accredited in terms of section 5(1)(a)(ii) of the SAQA Act, responsible for monitoring and auditing achievements in terms of national standards or qualifications and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)(b)(i) of the SAQA Act;

**"Elective Unit Standard"** – A selection of additional credits (at the level of the National Qualifications Framework specified), from which a choice may be made to ensure that the purpose of the qualification is achieved;

**"ETD"** – Education Training Development

**"Exit Level Outcomes"** – the outcomes to be achieved by a qualifying learner at the point at which he or she leaves the programme leading to a qualification and achievement of which entitles the learner to a qualification;

**"External Company"** – a foreign Company that is carrying on business, or non-profit activities, as the case may be, within the Republic of South Africa, subject to section 23(2) (section 1 of Act 71/2008);

**"External Customer"** – an external person, body or structure that is a beneficiary of the services or product of a particular organisation;

**"Facilitator of Learning and Assessment or Formative Assessment"** – an individual who facilitates learning processes and activities and manages and administers assessment: educator, teacher, trainer, mentor etc.

**"Field of Learning"** – a particular area of learning used as an organising mechanism for the NQF;

**"Financial Audit"** – has the meaning set out in the Auditing Profession Act, 2005 (Act 26 of 2005) but does not include an "independent review" of Annual Financial Statements, as contemplated in section 30(2)(b)(ii)(bb) (section 1 of Act 71/2008);

**"Financial Reporting Standards"** – with respect to any particular Company's Financial Statements, means the standards applicable to that Company, as prescribed in terms of section 29(4) and (5) (section 1 of Act 71/2008);

**"Financial Statements"** – includes: Annual Financial Statements and provisional Annual Financial Statements; interim or preliminary reports; group and consolidated financial statements in the case of a group of Companies; and financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the Company's Securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on (section 1 of Act 71/2008);

**"Financial year end"** – means the end of the accounting period covering 12 (twelve) consecutive months over which the Company determines earnings and profits. The financial year serves as a period of reference for the Company and does not necessarily correspond to the calendar year;

**"Formative Assessment"** – refers to assessment that takes place during the process of learning and teaching;

**"Fundamental Learning"** – that learning which forms the grounding or basis needed to undertake the education, training or further learning required in the obtaining of a qualification and 'fundamental' has a corresponding meaning;

**"Grade 12"** – the highest grade in which education is provided by a school as defined in the South African Schools Act, 1996;

**"Higher Education and Training"** – all learning programmes leading to qualifications higher than grade 12 or its equivalent in terms of the NQF, including tertiary education;

**"Income Tax Act"** – means the Income Tax Act, Act 58 of 1962, as amended;

**"Independently compiled and reported"** – means that the Annual Financial Statements are prepared:

- (a) by an independent accounting professional;
- (b) on the basis of financial records provided by the Company; and
- (c) in accordance with any relevant financial reporting standards (Companies Regulation 26(1)(e)(i) to (iii) 2011);

**"Independent reviewer"** – means a person referred to in Companies Regulation 29(4) and who has been appointed to perform an independent review under this Regulation (Companies Regulation 29(1)(a) 2011);

**"Internal Customer"** – an internal person, bod or structure that is a beneficiary of the service and/or products of a particular organisation;

**"Integrated Assessment"** – that form of assessment which permits the learner to demonstrate applied competence and which uses a range of formative and summative assessment methods;

**"Learner"** – any person receiving education and training (in terms of the ABET Act of 2000);

**“Learnership”** – refers to a learning programme where the learner spends some time learning theory and some time learning practical skills in a workplace. It leads to a qualification registered on the NQF;

**“Learning Programme”** – a structured set of learning offerings and related assessment and attainment requirements;

**“Level Descriptor”** – that statement describing a particular level of the eight levels of the National Qualifications Framework;

**“Member”** – when used in reference to a Non-Profit Company, means a person who holds membership in and specified rights in respect of that Non-Profit Company as contemplated in Schedule 1 of the Act;

**“Members’ Board”** – the Executive Committee of the Professional Body made up out of the registered members;

**“Moderating Body”** – a body specifically appointed by the Authority for the purpose of moderation;

**“Moderation”** – the process which ensures that assessment of the outcomes described in the NQF standards and qualifications is fair, reliable and valid;

**“National Learners’ Records Database (NLRD)”** – an electronic information system that assists the South African Qualifications Authority (SAQA) to manage the National Qualifications Framework;

**“National Standards Body (NSB)”** – a body registered in terms of the SAQA Act, responsible for establishing education and training standards and qualifications and to which specific functions relating to the registration of national standards and qualifications have been assigned;

**“National Qualifications Framework Level”** – See Level Descriptor;

**“NCCA”** –

**“Non-Profit Company”** – means a Company –

- (a) incorporated for a public benefit or other object as required by Item 1(1) of Schedule 1; and
- (b) the income and property of which are not distributable to its Incorporators, Directors, Members, Prescribed Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1;

**“Notional Hours of Learning”** – means the learning time that it is conceived it would take an average learner to meet the outcomes defined and includes concepts such as contact time, time spent in structured learning in the workplace and individual learning;

**“NQF”** – National Qualifications Framework;

**“OFO”** – Organizing Framework for Occupations;

**“Ordinary Resolution”** – means a Resolution adopted with the support of more than 50% (fifty percent) of the Voting rights exercised on the Resolution, or a higher percentage as contemplated in section 65(8):

- (a) at a Members’ Meeting; or
- (b) by Members acting other than at a Meeting, as contemplated in section 60 (section 1 of Act 71/2008 as amended by section 1(1)(u) of Act 3/2011);

**“Outcome”** – contextually demonstrated end product of the learning process;

**“Prescribed Officer”** – means a person who, within the Company, performs any function that has been designated by the Minister in terms of section 66(10) despite not being a Director of a particular Company. A person is a “Prescribed Officer” of the Company for all purposes of the Act if that person exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the Company; or regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the Company (section 1 of Act 71/2008 as amended by section 1(1)(x) of Act 3/2011);

**“Primary focus”** – the activity or objective within the sector upon which an organisation or body concentrates its efforts;

**“Professional Body”** – a statutory body registered as such in terms of the legislation applicable to such bodies, or voluntary body performing the functions contemplated in the legislation for such bodies but not registered as such;

**“Provider”** – an education and training body (institution/organization, company, centre, collaborative partnership or consultancy) which delivers learning programmes that culminate in specified NQF standards or qualifications and manages the assessment thereof;

**“Public Benefit Activity”** – means a public benefit activity listed in Part I of the Ninth Schedule of the Income Tax Act;

**“Public Benefit Organisation”** – means a Public Benefit Organisation as defined in section 30(1) of the Income Tax Act;

**“QC”** – Quality Council;

**“QCTO”** – Quality Council for Trades and Occupations;

**“Qualification”** – the formal recognition of the achievement of the required number and range of credits and other requirements at specific levels of the NQF determined by the relevant bodies registered by SAQA;

**“Quality Assurance”** – the process of ensuring that the degree of excellence specified is achieved;

**“Quality Audit”** – the process of examining the indicators which show the degree of excellence achieved;

**“Quality Management Systems”** – means the combination of processes used to ensure that the degree of excellence specified is achieved;

**“Quorum”** – is not defined in the Act but means the minimum number of Directors of the Company, who are entitled to vote, that must be present to make a Board Meeting valid;

**“Recognition of Prior Learning (RPL)”** – the comparison of the previous learning and experience of a learner, howsoever obtained, against the learning outcomes required for a specified qualification and the acceptance for purposes of qualification of that which meets the requirements;

**“Republic”** – means the Republic of South Africa;

**“SAQA”** – South African Qualifications Authority;

**“Solvency and Liquidity Test”** – has the meaning attributed thereto in section 4; being the test the Company satisfies if at a particular time, considering all reasonably foreseeable circumstances at that time:

- (a) the Company’s assets, as fairly valued, equal or exceed its liabilities, as fairly valued and
- (b) it appears that the Company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 (twelve) months after the date on which the test is considered or 12 (twelve) months following the distribution. (section 1 of Act 71/2008);

**“Special Resolution”** – means:

- (a) in the case of the Company, a Resolution adopted with the support of at least 75% (seventy five percent) of the Voting rights exercised on the Resolution in terms of section 65(8) or a different percentage as contemplated in section 65(10):
  - (i) at a Members’ Meeting or
  - (ii) by Members acting other than at a Meeting, as contemplated in Section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated (section 1 of Act 71/2008 as amended by section 1(1)(cc) of Act 3/2011);

**“Summative Assessment”** – refers to an assessment for making a judgement about achievement. This is carried out when a learner is ready to be assessed at the end of a programme of learning;

**“Voting rights”** – with respect to any matter to be decided by the Company, means the rights of any Member of the Non-Profit Company to vote in connection with that matter (section 1 of Act 71/2008).

## NORMATIVE REFERENCES

1. NQF Act, Act No. 67 of 2008
2. Occupational Health and Safety Act, Act No. 83 of 1993
3. Skills Development Act
4. Skills Development Levies Act
5. Learnership Regulations
6. Sectorial and/or Bargaining Council Wage Determination Agreement
7. Companies Act
8. Labour Relations Act
9. Basic Conditions of Employment Act

## CONTENTS:

|  |    |
|--|----|
| ARTICLE 1 - INCORPORATION AND NATURE OF THE COMPANY .....  | 10 |
| 1.1 Incorporation.....   | 10 |
| 1.2 Powers of the Company.....   | 11 |
| 1.3 Memorandum of Incorporation and Company Rules.....   | 11 |
| 1.4 Solvency and Liquidity Test.....   | 11 |
| 1.5 Interpretation of the Memorandum of Incorporation, Anti-avoidance, Exemptions and Substantial Compliance ..... | 12 |
| 1.6 Members' Agreement and Company Rules.....  | 12 |
| 1.7 Amending the Memorandum of Incorporation.....  | 13 |
| 1.8 Legal Status of the Company.....   | 13 |
| 1.9 Validity of the Company's Actions.....   | 13 |
| 1.10 Prohibition from Distribution.....  | 14 |
| 1.11 Investments.....  | 14 |
| 1.12 Non-Revocable Documents .....   | 14 |
| ARTICLE 2 - MEMBERS' RIGHTS AND MEETINGS.....  | 15 |
| 2.1 Interpretation and Application of the Memorandum of Incorporation.....   | 15 |
| 2.2 Membership Categories .....  | 15 |
| 2.3 Eligibility for Membership.....  | 15 |
| 2.4 Duties of Members.....   | 15 |
| 2.5 Rights of Members.....   | 15 |
| 2.6 Composition of the Board of Members .....  | 15 |
| 2.7 Election of the Chairperson, Vice-Chairperson and Board Members.....   | 15 |
| 2.8 Functions and Powers of the Members Board.....   | 15 |
| 2.9 Members' Right to be represented by Proxy .....  | 19 |
| 2.10 Record date for determining Members' Rights.....  | 20 |
| 2.11 Members acting other than at a Meeting .....  | 21 |
| 2.12 Members' Meetings.....  | 21 |
| 2.13 Notices.....  | 23 |
| 2.14 Notice of Members' Meetings.....  | 23 |
| 2.15 Conduct of Meetings .....   | 24 |
| 2.16 Meeting Quorum and Postponement.....  | 26 |
| 2.17 Adjournment of Members' Meetings .....  | 27 |
| 2.18 Votes of Members .....  | 27 |
| 2.19 General Meetings.....   | 30 |
| 2.20 Termination of Membership.....  | 31 |
| ARTICLE 3 - BOARD, DIRECTORS AND PRESCRIBED OFFICERS .....   | 33 |
| 3.1 First Director or Directors.....   | 33 |
| 3.2 Election of Directors .....  | 33 |
| 3.3 Governance of the Board.....   | 34 |
| 3.4 Vacancies on the Board .....   | 35 |
| 3.5 Removal of Directors.....  | 36 |
| 3.6 Board Committees .....   | 37 |
| 3.7 Board Meetings .....   | 38 |
| 3.8 Board Quorum .....   | 40 |
| 3.9 Board Resolutions.....   | 40 |
| 3.10 Directors acting other than at Meeting.....   | 41 |
| 3.11 Register of Directors .....   | 42 |
| 3.12 Directors' Remuneration.....  | 42 |

|      |  |  |
|------|--|--|
| 3.13 | Financial Assistance.....  | 43                                     |
| 3.14 | Directors’ Personal Financial Interests .....                              | 43                                     |
| 3.15 | Standards of Directors’ Conduct.....                                       | 43                                     |
| 3.16 | Indemnification and Directors’ Insurance .....                             | 44                                     |
|      | ARTICLE 4 - TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY OF THE COMPANY..... | 46                                     |
| 4.1  | Finances of the Professional Body .....                                    | 46                                     |
| 4.2  | Access to the Company’s Records and Financial Statements.....              | <b>Error! Bookmark not defined.</b> 46 |
| 4.3  | Financial Year End of the Company.....                                     | 46                                     |
| 4.4  | Accounting Records of the Company.....                                     | 47                                     |
| 4.5  | Financial Statements and Financial Year.....                               | 47                                     |
| 4.6  | Annual Return.....   | 48                                     |
|      | ARTICLE 5 - FUNDAMENTAL TRANSACTIONS.....                                  | 50                                     |
| 5.1  | Disposals, Mergers and Amalgamations .....                                 | 50                                     |
|      | ARTICLE 6 - DISSOLUTION AND DISTRIBUTION OF NET VALUE OF COMPANY .....     | 52                                     |
| 6.1  | Winding-Up or Dissolution .....  | 52                                     |
|      | ARTICLE 7 - COMPANY SIGNATURE.....   | 53                                     |
| 7.1  | Company Signature.....   | 53                                     |
|      | SCHEDULE 1 - NUMBER OF DIRECTORS .....                                     | 54                                     |

**MEMORANDUM OF INCORPORATION OF ANON-PROFIT COMPANY (NPC)**  
**REPUBLIC OF SOUTH AFRICA**  
**COMPANIES ACT, ACT NO 71 OF 2008**

PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE(NPC) which is a Non-Profit Company and which is hereinafter referred to as “the Company” in the rest of this Memorandum of Incorporation, has the prescribed minimum number of at least 3 (three) Directors in terms of section 66(2)(b) and where the Incorporators may be its first Directors, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company and no single person shall have the ability or authority, either directly or indirectly, to control the decision-making powers relating to the Company. Spouses and anyone related to the person or the persons’ spouse within the third degree of consanguinity shall be regarded as connected persons. *Item 3 of Schedule 1 of the Act, and Section 30(3)(a)(i) of the Income Tax Act*

**The Number of Directors is reflected in Schedule One at the end of this Memorandum of Incorporation.**

**Adoption of the Memorandum of Incorporation**

This Memorandum of Incorporation was adopted on 26 March 2015 by the Incorporators and/or first Directors of the Company, in accordance with section 13(1) of the Act, as evidenced by the following signatures made by each of them or on their behalf, and the Board shall submit to the Commissioner of the South African Revenue Services, a copy of this Memorandum of Incorporation under which the Company has been established, and the Company shall comply with such reporting requirements as may be determined by the said Commissioner from time to time.

**Default Memorandum of Incorporation not to apply**

The standard form Memorandum of Incorporation for a Non-Profit Company referred to in Regulation 15(1)(a) shall not apply to the Company. This Memorandum of Incorporation is in a form unique to the Company as contemplated in section 13(1)(a)(ii).

**Registered Office for which the Company is established**

The Registered Office of the Company shall be situated at:

1ST FLOOR

HELVETIA HOUSE

60 GREENVALE ROAD

GERMISTON

**Objects of the Company**

This Memorandum of Incorporation of the Company sets out at least 1 (one) object of the Company and each object is either a public benefit object or an object relating to 1 (one) or more cultural or social activities, or communal or group interests, including any sector thereof, in terms of Item 1(1)(a) of Schedule 1 of the Act.

All such activities are carried on in a non-profit manner and with an altruistic or philanthropic interest and no such activity shall be intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC), otherwise than by way of reasonable remuneration payable to that fiduciary or employee in terms of Article: Incorporation and Nature of the Company and Article: Board, Directors and Prescribed Officers of this Memorandum of Incorporation. *Section 30(3)(b)(i)(ii) of the Income Tax Act*

**The primary object (vision) of the Company on its incorporation is:**

TO RECOGNISE AND ADVANCE SKILLED PROFESSIONAL PERSONNEL WITHIN THE SOUTH AFRICAN CLEANING INDUSTRY.



**The Mission of the Company on its incorporation is:**

The Professional Body aims to provide recognition of competence to professionals in the Cleaning Industry by:

- Co-ordinating skills development in the industry.
- Increasing interest in career growth for all personnel.
- Encouraging recognised training and assessment, which meets national and international standard requirements and complies with registered qualifications and the NQF Act.
- Maintaining professional designations by promoting CPD for all practitioners.

**The Objectives of the Company on its incorporation are:**

The objectives of the Professional Body are:

- Promote the status of professionals in the Cleaning Industry by professional registration to enhance the pride of all those involved in the Cleaning Industry by:
  - Developing and implementing professional industry designations.
  - Managing and maintaining its professional designations in terms of national legislation, international codes and standards and established quality management system.
  - Setting criteria for, promoting and monitoring continued professional development (CPD) for its members, to maintain their relevant professional designation.
  - Managing the revocation of designations, as well as disciplinary matters, appeals and complaints in a transparent manner and in terms of national legislation, international codes and standards and established quality management system.
- Protect the interests and professional status of its members.
- Encourage social responsibility and accountability within the Cleaning Industry profession through a Code of Conduct.
- Encourage international best practices.
- Be a legally constituted entity with the necessary human and financial resources to undertake its functions and to be compliant with and adhere to good corporate governance practices. Implement and maintain a fully functional information management system compatible with the National Learners' Records Database.
- Co-operate with the relevant QC's or relevant body in respect of qualifications and quality assurance in its occupational field.



## ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY

### 1.1 Incorporation

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is incorporated as a Non-Profit Company, in terms of Schedule 1 and section 10 of the Companies Act, Act 71 of 2008 and section 122 of the Companies Amendment Act, Act 3 of 2011 with perpetual succession capable of suing and being sued in its own name and performing such acts as are necessary for or incidental to the achievements of its objectives and the exercise of its powers or the performance of its functions and duties under this MOI or under any statute of the Republic of South Africa.
- (2) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is a separate body which is associated with the Employer and Union representation within the Industry.
- (3) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is incorporated in accordance with and governed by the unalterable provisions of the Companies Act, 2008, meaning a provision of the Companies Act that does not expressly contemplate that its effect on any particular Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Company's Memorandum of Incorporation or Rules and the alterable provisions of the Companies Act, meaning a provision of the Companies Act in which it is expressly contemplated that its effect on a particular Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Company's Memorandum of Incorporation, subject to the limitation, extensions, variations or substitutions set out in this Company's Memorandum of Incorporation, and the provisions of this Company's Memorandum of Incorporation, which forms the Constitution of the Company. *Section 1*
- (4) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall apply all of its assets and income, however derived, to advance its stated objects, as set out above in this Memorandum of Incorporation. The income and property of the Company shall not be distributable to its Incorporators, Members, Directors, Prescribed Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1. *Item 1(2)(a) of Schedule 1 and Item 1(3) of Schedule 1*
- (5) This Memorandum of Incorporation does not limit or restrict the Company to acquire and hold securities issued by a profit Company or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects. The Non-Profit Company may conduct any business, including a commercial venture, as long as the funds generated are applied to advance the Company's primary object. *Item 1(2)(b)(i)(ii) of Schedule 1*
- (6) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall 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 an Incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:
  - (6.1) as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company, or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
  - (6.2) as a 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;
  - (6.3) 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 a stated object of the Company; or
  - (6.4) in respect of any legal obligation binding on the Company. *Item 1(3)(a)(i)(ii) and Item 1(3)(b)(c)(d) of Schedule 1 of the Act and section 122(b) of Act 3 of 2011*
- (7) Section 10 of the Income Tax Act, 1962 (Act 58 of 1962) grants exemptions from income tax to Public Benefit Organisations (PBOs) and in terms of section 30(3)(b) of the Income Tax Act, the Company meets stringent requirements for approval as a Public Benefit Organisation, necessitating the amendment of the Company's Memorandum of Incorporation. *Item 1(6) of Schedule 1*

- (8) Under section 18A(2A) of the Income Tax Act, PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) carries on none of the activities covered by both Parts I and II of the Ninth Schedule of the Income Tax Act.
- (9) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is prohibited in terms of this Memorandum of Incorporation from directly or indirectly distributing any of its funds or assets to any person other than in the course of furthering its objects as set out in this Memorandum of Incorporation.
- (10) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established.
- (11) Substantially the whole of the activities of PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual Director or minority group.
- (12) Substantially, the whole of the Company's funding shall be derived from its Board of Directors and/or its annual or other long-term Members or from an appropriation by the Government of the Republic of South Africa in the national, provincial or local sphere.
- (13) In the event that PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) applies for approval as a Public Benefit Organisation, this Memorandum of Incorporation shall be submitted to the Tax Exemption Unit (TEU) at the South African Reserve Services (SARS) and a copy of any future amendments to this Memorandum of Incorporation shall be submitted to the Tax Exemption Unit. *Section 30(3)(xi) of the Income Tax Act*

## 1.2 Powers of the Company

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is not subject to any prohibitions regarding the amendment of this Memorandum of Incorporation, other than those contained in the Companies Act or the Income Tax Act.

## 1.3 Memorandum of Incorporation and Company Rules

- (1) In terms of this Memorandum of Incorporation the Company is not limited from making, amending or appealing any Company Rules as contemplated in section 15(3) of the Act, and the Board's capacity to make such Rules is not hereby limited or restricted. *Section 15(3)*
- (2) The Board shall publish these Company Rules in terms of section 15(3), (4) and (5) by delivering a copy of the Rules to each Director and Member, by publishing a copy of those Rules in any manner required or permitted by the Company's Memorandum of Incorporation, or the Rules of the Company, and filing a copy of those Rules. *Section 15(3)(a)(b)*
- (3) Any Rules proposed by the Board will take effect 10 (ten) business days after the filing of that Rule, or on the later date specified in the Rule. Any Rules proposed by the Board may not be filed if written objection by Members of 25% (twenty five percent) or more of the Voting rights are received by the Board within 20 (twenty) business days after publication.

This provision shall have the effect of limiting the authority of the Board and may be omitted or adjusted. Any Rule that takes effect as contemplated in this sub-article shall remain binding on an interim basis until put to a vote at the next General Meeting of the Company and shall become permanently binding if ratified by a Members' Resolution. In the event that a Rule may not be filed, the Board shall promptly inform each Director and Member of this result by ordinary mail.

## 1.4 Solvency and Liquidity Test

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall satisfy the Solvency and Liquidity Test at a particular time if, considering all reasonably foreseeable financial circumstances of the Company at that time, the assets of the Company, as fairly valued, equal or exceed the liabilities of the Company, as fairly valued, and it appears that the Company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 (twelve)

months after the date on which the test is considered, or in the case of a distribution, 12 (twelve) months following that distribution. *Section 4(1)(a)(b) of the Act and section 2(a) of Act 3 of 2011*

- (2) The Board or any other person applying the Solvency and Liquidity Test to the Company shall consider a fair valuation of the Company's assets and liabilities, including a reasonably foreseeable contingent assets and liabilities, or may consider any other valuation of the Company's assets and liabilities that is reasonable in the circumstances. *Section 4(2)(b)(i)(ii)*

#### **1.5 Interpretation of the Memorandum of Incorporation, Anti-avoidance, Exemptions and Substantial Compliance**

- (1) When, in this Memorandum of Incorporation, a particular number of 'business days' is provided for between the happening of one event and another, the number of days shall be calculated by excluding the day on which the first such event occurs, including the day on or by which the second event is to occur, and excluding any public holiday, Saturday or Sunday that falls on or between the days. *Section 5(3)(a)(b)(c)*
- (2) If a provision of this Memorandum of Incorporation requires a document to be signed or initialled by or on behalf of a person, that signing or initialling may be effected in any manner provided for in the Electronic Communications and Transactions Act, or by 2 (two) or more persons, it shall be sufficient if all of those persons sign a single original of the document, in person or in the manner provided for in the Electronic Communications and Transactions Act, or each of those persons signs a separate duplicate original of the document, in person or in the Electronic Communications and Transactions Act, and in such case, the several signed duplicate originals, when combined, constitute the entire document. *Section 6(12)(a) and section 6(12)(b)(i)(ii)*

#### **1.6 Members' Agreement and Company Rules**

- (1) Subject to the Board having the authority to make Company Rules, a Rule in terms of clause 1 of this sub-article shall be consistent with the Act and the Company Memorandum of Incorporation, and any such Rule that is inconsistent with the Act or the Company's Memorandum of Incorporation shall be void to the extent of the inconsistency, shall take effect on a date that is the later of 10 (ten) business days after the Rule is filed in terms of this clause, or the date, if any, specified in the Rule, and shall be binding on an interim basis from the time it takes effect until it is put to a vote at the next General Members' Meeting of the Company, and on a permanent basis only if it has been ratified by an Ordinary Resolution of Members at the said Meeting. Within 10 (ten) business days after any Rules of the Company have been put to a ratification, the Company shall file a Notice in Form CoR 16.2 indicating whether the Rules have been ratified or rejected. *Section 15(4)(a), section 15(4)(b)(i)(ii), section 15(4)(c)(i)(ii) and Regulation 16(2)*
- (2) If a Rule that has been filed in terms of clause 1 of this sub-article is subsequently ratified in terms of this sub-article, the Company shall file a notice of ratification within 5 (five) business days in the prescribed manner and form, or if not ratified when put to a vote, the Company shall file a notice of non-ratification within 5 (five) business days after the vote, in the prescribed manner and form, and the Company's Board is prohibited by this Memorandum of Incorporation from making a substantially similar Rule within the ensuing 12 (twelve) months, unless it has been approved in advance by Ordinary Resolution of the Members. Any failure to ratify the Rules of the Company shall not affect the validity of anything done in terms of those Rules during the period that they had an interim effect as provided in clause 2 of this sub-article. *Section 15(5)(a), section 15(5)(b)(i)(ii) and section 15(5A)*
- (3) Within 10 (ten) business days after any Rules of the Company have been amended, altered or repealed the Company shall file a Notice in Form CoR 16.1 indicating the extent and effect of the change. *Regulation 16(3)*
- (4) The Company's Memorandum of Incorporation, and any Rules of the Company, are binding between the Company and each Member, between or among the Members of the Company, and between the Company and each Director of the Company, or any other person serving the Company as a Member of a Committee of the Board, in the exercise of their respective functions within the Company. *Section 15(6)(a)(b) and section 15(6)(c)(i)(ii)*

- (5) This Memorandum of Incorporation does not limit or restrict the Members of the Company entering into any agreement with one another concerning any matter relating to the Company, but any such agreement shall be consistent with the Act and the Company's Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with the Act or the Company's Memorandum of Incorporation shall be void to the extent of the inconsistency. *Section 15(7)*

#### 1.7 Amending the Memorandum of Incorporation

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC)'s Memorandum of Incorporation may be amended subject to Article Incorporation – Powers of the Company:
- (1.1) in compliance with a Court Order in the following manner: an amendment to a Company's Memorandum of Incorporation required by any Court Order must be effected by a Resolution of the Company's Board and does not require a Special Resolution as set out in this clause; or
- (1.2) at any other time if a Special Resolution to amend it:
- (1.2.1) is proposed by the Board of the Company or Members entitled to exercise at least 10% (ten percent) of the Voting rights that may be exercised on such a Resolution; and
- (1.2.2) is adopted at a Members' Meeting or in accordance with section 60.
- (2) Within 10 (ten) business days after an amendment to the Company's Memorandum of Incorporation has been effected in any manner contemplated in this sub-article, the Company shall submit a copy of any amendment to this Memorandum of Incorporation to the Tax Exemption Unit, enabling the Tax Exemption Unit to ensure that any amendment shall not be contradictory to the conditions and requirements for either the continued or new approval of PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) as a Public Benefit Organisation. *Section 30(3)(b)(vi) of the Income Tax Act*

#### 1.8 Legal Status of the Company

- (1) From the date and time that the incorporation of PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is registered, as stated in its registration certificate, the Company is a juristic person, which exists continuously until its name is removed from the Company's register in accordance with this Act, 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, or the Company's Memorandum of Incorporation provides otherwise, is constituted in accordance with the unalterable provisions of this Act, the alterable provisions of the Act, subject to any negation, restriction, limitation, qualification, extension or other alteration that is contemplated in an alterable provision, and has been noted in the Company's Memorandum of Incorporation, and any further provisions of the Company as set out in the Company's Memorandum of Incorporation. *Section 1(a), section 19(1)(b)(i) and section 19(1)(c)(i)(ii)(iii)*
- (2) No persons shall solely by reason of being an Incorporator, Member or Director of the Company, be liable for any liabilities and obligations of the Company. *Section 19(2)*

#### 1.9 Validity of the Company's Actions

- (1) The Company's Memorandum of Incorporation limits, restricts, qualifies the purposes, powers or activities of the Company, or limits the authority of the Directors to perform an act on behalf of the Company. The Members' Resolution may ratify any action by the Company or the Directors that are inconsistent with any such limit, restriction or qualification, but such an action may not be ratified if it is in contravention of this Memorandum of Incorporation.

No action of the Company is void by reason only that, the action was prohibited by that limitation, restriction or qualification, or as a consequence of that limitation, restriction or qualification, the Directors had no authority to authorise the action by the Company, and in any legal proceeding, other than proceedings between the Company and its Members and its Directors or its Members and Directors of the Company, no person may rely on such limitation, restriction or

qualification to assert that an action contemplated in this clause is void. *Section 20(1)(a)(i)(ii), section 20(1)(b)(i)(ii) and section 20(2)(3)*

#### **1.10 Prohibition from Distribution**

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is prohibited from directly or indirectly distributing any of its funds to any person, other than in the course of undertaking any public benefit activity, and is requested to utilise its funds solely for the said object for which it has been established as stated in this Memorandum of Incorporation under the heading of Objects of the Company. *Section 30(3)(b)(ii) of the Income Tax Act*

#### **1.11 Investments**

- (1) In the event that PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) does not utilise its funds solely for the object for which it has been established, the Company shall invest such funds with a Financial Institution as defined in section 1 of the Financial Services Board Act, Act 97 of 1990, or in any Listed Financial Instrument of the said Financial Institutions, or such other prudent investments in Financial Instruments and Assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations, provided that this clause of this Memorandum of Incorporation shall not prohibit the Company from retaining any investment, other than any instrument in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity in the form that it was acquired by way of donation, bequest or inheritance. *Section 30(3)(b)(aa)(bb) of the Income Tax Act*

#### **1.12 Non-Revocable Documents**

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act, provided that a donor, other than a donor which is an approved Public Benefit Organisation or an Institution Board or Body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has either as its sole or its principal object, the carrying on of any public benefit activity, is prohibited in terms of this Memorandum of Incorporation to impose conditions which could enable such donor or any connected person in relation to such donor, to derive some direct or indirect benefit from the application of such donation.

This prohibition shall not, however, apply when the donor is an approved Public Benefit Organisation or an entity established by or under law which is exempt from income tax under section 10(1)(cA)(i) of the Income Tax Act that has as its sole or principal object the carrying on of a Public Benefit Organisation.

- (2) It shall be acceptable for the donation to be revocable if a Public Benefit Organisation misrepresents the tax deductibility of the donation under section 18A of the Income Tax Act and such tax deductibility was a condition of the donation. *Section 30(3)(v) of the Income Tax Act*

## ARTICLE 2 – MEMBERS’ RIGHTS AND MEETINGS

### 2.1 Interpretation and Application of the Memorandum of Incorporation

- (1) A Member of the Non-Profit Company is a person who holds Membership in, and specified rights in respect of the Non-Profit Company, in terms of Schedule 1 of the Act. A Member of the Non-Profit Company is a Voting Member of the Company, and who is entered as such in the Membership register of the Company in terms of Item 1(9) of Schedule 1 of the Act and who is entitled to exercise any Voting rights in relation to the Company.
- (2) As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has Members who are all in a single class, being Voting Members.
- (3) Each Voting Member of the Non-Profit Company has at least 1 (one) vote. *Item 1(7) of Schedule 1*
- (4) This Memorandum of Incorporation does not limit or restrict the Company to allow for Membership to be held by juristic persons, including any profit Companies. *Item 4(c) of Schedule 1*
- (5) This Memorandum of Incorporation does not restrict or regulate, or provide for any restriction or regulation of, that Membership in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution. *Item 4(2) of Schedule 1*
- (6) This Memorandum of Incorporation does not presume the Membership of any person, regard a person to be a Member, or provide for the automatic or *ex officio* Membership of any person, on any basis other than life-time Membership awarded to a person for service to the Company or to the public benefit objects set out in the Company’s Memorandum of Incorporation; and with that person’s consent. *Item 4(2)(b)(i)(ii) of Schedule 1*
- (7) In relation to the Company, and for purposes of this Memorandum of Incorporation, no person other than a Member or its authorised representatives or proxies in terms of Article: Members’ Rights and Meetings - Members’ Right to be represented by Proxy, shall be entitled to attend, speak and vote at a Meeting of that class of Members. *Section 1 and section 57(1)*
- (8) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall maintain a Member’s register.

### 2.2 Membership Categories

The membership of the Professional Body will comprise of the following categories:

- (1) Affiliate Member  
A non-designated person who has an interest in the South African Cleaning Industry or is engaged in all types of cleaning activities, possesses knowledge and/or practical experience which qualifies the candidate to co-operate with skills development providers, in the advancement of their knowledge and practical experience, allowing him/her through a progression pathway to achieve Professional Member status.
- (2) Professional Member  
A professionally designated person in terms of the NQF Act (Act 67 of 2008).  
Designations:
  - o Hygiene Operation Cleaner
  - o Hygiene Controller Team Leader
  - o Hygiene Practitioner Supervisor
  - o Hygiene Specialist Contracts Manager
  - o Hygiene Expert Area Manager



- (3) Corporate Member  
Entities operating and providing services within or affiliated to the Cleaning Industry meeting the set criteria.
- (4) Service Provider Member  
Companies and Organisations authorised/recognised by the Professional Body to provide training and assessment.
- (5) Honorary Member  
Individual, organisations or groups who have made a significant contribution to the Cleaning Industry within South Africa over an extended period of time.
- (6) ETD Practitioner Member (Cleaning Industry)  
Register as a Facilitator, Assessor and/or Moderator

### 2.3 Eligibility for Membership

- (1) Membership to the Professional Body is voluntary.
- (2) Prospective members shall be required to apply for membership by completing the appropriate membership application form and paying the required fee.
- (3) Administrators would be required to present the prospective member to the Membership Committee.
- (4) Confirmation of membership shall be communicated once the member has been approved by the Membership Committee.
- (5) An applicant shall be expected to subscribe to the Professional Body Constitution and to its Code of Conduct, upon acceptance of membership.

### 2.4 Duties of Members

- (1) Compliance with Occupational Health and Safety requirements shall be mandatory.
- (2) Members shall comply with the Code of Conduct and shall be expected to conform to the Constitution of the Professional Body.
- (3) Members are committed to the payment of a membership fee.
- (4) It is envisaged that the members shall uphold the vision and mission of the Professional Body as stipulated in this document.
- (5) It is expected from members to treat one another with respect, to act ethical and to be professional in whatever cleaning action is performed.

### 2.5 Rights of Members

Paid up members have the right to:

- (1) Participate in general meetings;
- (2) Vote on matters where member's input is required, as proposed by the Board;
- (3) Propose system modifications and to contribute positively to the improvement of the professional designation schemes;

- (4) Report the following without the fear of retribution:
  - (4.1) Unsafe operating practices
  - (4.2) Raise complaints against system and/ service providers
  - (4.3) Appeal against decisions made
  - (4.4) Address concerns or short comings of the system

## 2.6 Composition of the Board of Members

Composition of the Professional Body Members Board will be as follows:

- (1) the Chairperson of the Members Board;
- (2) the Vice Chairperson;
- (3) the Treasurer;
- (4) the General Secretary;
- (5) the Professional Body Manager;
- (6) Regional representation from:
  - (6.1) Johannesburg
  - (6.2) Cape Town
  - (6.3) Durban
  - (6.4) Port Elizabeth
  - (6.5) Polokwane
  - (6.6) And alternative regions as designated and assigned by the board
- (7) the Members Board has the powers to co-opt additional members as and when necessary

## 2.7 Election of the Chairperson, Vice-Chairperson and Board Members

- (1) At its first meeting after taking office every year, the Members Board shall elect from amongst its members a Chairperson and a Vice-Chairperson of the Professional Body, to hold office until the election of their successors. The Chairperson, so elected, shall stand for an initial period of two years and thereafter subject to annual election by the Members Board and shall be allowed to serve an additional year, after his term, as a Past-Chairperson, subject to the term limitations applicable to Board Members.
- (2) The Members Board, upon election will appoint a Secretary and a Treasurer of the Professional Body and such Assistants or other Officers as they consider necessary, for the management and conduct of the affairs of the Professional Body. If such Officers are not themselves members of the Members Board, they shall be considered as ex officio members for the purpose of attending Members Board meetings where required to do so, but shall not be eligible to vote in the meetings with the exception of the General Secretary and Treasurer who may be so authorised by the Members Board.

- (3) All paid up members of the Professional Body shall be eligible for election to the Members Board.
- (4) Candidates for each position on the Members Board must be proposed and seconded, in writing, by members of the Professional Body 2 (two) days prior to the AGM.
- (5) The election of members of the Members Board shall take place by secret ballot or show of hands at the AGM. Where the votes obtained by any candidate exceed the votes obtained by any other candidate for that position, he/she shall be deemed elected to that position. The Chairman has the casting vote.
- (6) Vacancies occurring on the Members Board shall be filled by vote of the Members Board, for any unexpired portion of the calendar year. The Members Board shall continue to fill any such vacancy until a successor can be chosen by regular nomination and election.
- (7) The General Secretary, by written notice and at least 21 (twenty one) working days before the AGM, invite the members of the Professional Body to nominate candidates for the Members Board.
- (8) Each nomination must be supported and accepted by the nominee and by at least 1 (one) member of the Professional Body. The nominee shall denote his or her acceptance of the nomination by countersigning the nomination.
- (9) If not more than 1 (one) person is nominated for 1 (one) of the offices, the General Secretary shall declare such person to be duly elected. If more than 1 (one) person is nominated for 1 (one) of the offices, voting is by secret ballot or by show of hands.
- (10) A person may only be elected to the office by a simple majority of the members present.
- (11) If no person receives a majority of votes, successive rounds of voting are held.
- (12) In each successive round of voting the person receiving the fewest votes in the previous round of voting is eliminated.
- (13) The officers are eligible for re-election.
- (14) A member of the Members Board can be expelled by the Members Board if a member is absent from 3 (three) consecutive ordinary meetings of the Members Board, without prior apology for absence having been made to the General Secretary.

## 2.8 Functions and Powers of the Members Board

- (1) The Members Board shall ensure the effective management of the Professional Body, guided by the mission and upholding the objectives of the Professional Body.
- (2) Specific duties and functions are allocated to the following office bearers:
  - (2.1) General Secretary
    - Keeps the non-financial records of the Professional Body, including the official membership list, managing the correspondence of the Professional Body and submitting the end of year report.
    - Acts as an electoral officer at meetings of the Board.
    - Attends all meetings and keeps all relevant documents of the Board and Professional Body.
    - Maintains all records and information related to the work of all appointed Committees.
  - (2.2) Treasurer
    - Manages the financial affairs and maintain the financial records of the Professional Body.
    - Prepares and presents the end of year audited financial report to the Members Board and at the AGM.

(2.3) Professional Body Manager / Registrar

- Is responsible for the overall maintenance of records and data as required by SAQA and the QCTO, and shall also maintain all records and information related to the work of all appointed Committees.
- Is responsible for establishing, maintaining and reviewing the quality management system of the Professional Body.
- Keeps abreast of changes in national legislation pertaining to the NQF Act and related skills development and informs the Members Board regarding the impact that it might have on its operation.
- Shall be familiar with needs of Cleaning Industry and international codes / standard requirements and shall ensure that compliance is upheld.

(2.4) Membership Committee

Is appointed by the Professional Body board and has the power to:

- approve membership appointments
- approve all designations awarded to practitioners
- conduct investigations of improper conduct by the members and institute disciplinary measures.

## 2.9 Members' Right to be represented by Proxy

- (3) At any time, a Member may appoint any individual, including an individual who is not a Member of the Company, as a proxy to participate in, and speak and vote at, a Meeting of that class of Member, on behalf of the Member or give or withhold written consent on behalf of the Member to a decision to be taken by that class or by Round-Robin Resolution, provided that the Member may not appoint more than 1 (one) proxy to exercise Voting rights on behalf of that Member.

This Memorandum of Incorporation hereby limits and restricts the appointment of proxies to the appointment of 1 (one) proxy per Voting Member in terms of section 58(3)(a).

The Member of an instrument of proxy or general Power of Attorney, given by a Member, shall be entitled to vote if duly authorised under that instrument or power to attend and take part in any Meeting or proceeding of the Company, whether or not he is himself a Member in the Company.

Any Member may at any time appoint any natural person, including a natural person who is not a Member, as a proxy to participate in, and speak and vote at a Members' Meeting on behalf of that Member, or give or withhold written consent on behalf of that Member to a decision in terms of section 60 of the Act. *Section 58(1)(a) and (b), section 58(3)(a), section 58 and section 60*

- (4) A proxy appointment shall be in writing, dated and signed by the Member and remains valid for 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration unless it is revoked or expires earlier as contemplated in the Act.

The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked 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. The appointment is suspended at any time and to the extent that the holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote. *Section 58(2)(a)(b)(i)(ii)*

- (5) The authority of a Member's proxy to delegate the proxy's powers to another person, and to decide without direction from the Member whether to exercise or abstain from exercising any Voting rights of the Member, is not limited or restricted by this Memorandum of Incorporation, subject only to any restriction set out in the instrument appointing the proxy. *Section 58(3)(b)*

- (6) In terms of the Act and this Memorandum of Incorporation if a proxy is received duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may vote or abstain from Voting as he sees fit unless the proxy indicates otherwise.

Unless the instrument appointing a proxy provides otherwise, a Member's proxy may decide, without direction from the Member, whether to exercise or abstain from exercising any Voting right of the Member, as set out in section 58(7) of the Act, and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation. *Section 58(7)*

- (7) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall not require that the proxy appointment be made irrevocable. *Section 58(8)(c)*
- (8) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall be entitled to disregard a proxy form or instrument appointing a proxy, and to disregard the vote of any proxy or purported proxy, if:
  - (9.1) the proxy form or instrument of proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed in section 58 of the Act or is inconsistent with or contravenes this Memorandum of Incorporation; or
  - (9.2) the authority of the proxy has been revoked by the Member (if applicable, through its authorised representative or through its legal representative terms of section 58(4)(b) and (c). *Section 58(4)(a)(b)(c) and section 58(7)*
- (9) Any person who is a proxy or purported proxy specified in a proxy form or instrument appointing a proxy which may be disregarded, or the Voting of whom may be disregarded, shall not be entitled to attend, participate in, or speak or vote at the Meeting of Members in question or by way of Round-Robin Resolution in terms of section 60 of the Act, and shall forthwith remove himself from the Meeting in question at the request of the Chairman of the Meeting. *Section 60*

#### **2.10 Record date for determining Members' Rights**

- (1) The Board of the Company shall set a record date for the purpose of determining which Members are entitled to receive notice of a Members' Meeting, participate in and vote at a Members' Meeting, decide any matter by written consent or electronic communication, exercise pre-emptive rights, or be allotted or exercise other rights. *Section 59(1)(a)-(f)*
- (2) A record date determined by the Board may in terms of section 59(1) set the applicable record dates for the purposes of determining Member rights, in accordance with and as contemplated by section 59, including for purposes of determining that Members who are registered on a particular record date shall be entitled to:
  - (2.1) receive the notice of Members' Meeting (section 59(1)(a)); or
  - (2.2) participate in and vote at a Members' Meeting (section 59(1)(b)); or
  - (2.3) decide any matter by Round-Robin Resolution (section 59(1)(c)).

Each applicable record date determined by the Board:

- (2.4) shall not be earlier than the date on which the record date is determined by the Board, i.e. shall not be a "retrospective" record date (section 59(2)(a)(i));
  - (2.5) shall not be more than 10 (ten) business days before the date on which the event or action for which the date is being set, is scheduled to occur (section 59(2)(a)(ii));
  - (2.6) must be published to every Member in terms of section 59(2)(b). *Section 59(1), section 59(1)(a)(b)(c), section 59(2)(a)(i)(ii) and section 59(2)(b)*
- (3) For the sake of clarity, in relation to each Members' Meeting, and having regard to the possible sequence of events or actions, separate record dates shall be determined, and published by the Board, to determine which Members shall be entitled to:

- (3.1) receive the notice of Members' Meeting;
  - (3.2) attend and vote at that Members' Meeting, as it may be adjourned or postponed, receive notice of any adjourned or postponed Members' Meeting, if notice is required or given; and
  - (3.3) attend and vote at the resumption of the adjourned Meeting or the commencement of the postponed Meeting.
- Section 59*

## **2.11 Members acting other than at a Meeting**

- (1) A Resolution that could be voted on at a Members' Meeting, other than in respect of the election of Directors, may instead be submitted by the Board for consideration to the Members entitled to exercise Voting rights in relation to the Resolution and voted on in writing by Members entitled to exercise Voting rights in relation to the Resolution within 20 (twenty) business days after the Resolution was submitted to them. *Section 60(1)(a)(b)*
- (2) A Resolution 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 at a properly constituted Members' Meeting and if adopted, shall have the same effect as if it had been approved by Voting at a Meeting. *Section 60(2)(a)(b)*
- (3) An election of a Director that could be conducted at a Members' Meeting may instead be conducted by written polling of all of the Members entitled to exercise Voting rights in relation to the election of that Director. *Section 60(3)*
- (4) In addition to a Resolution passed in terms of this clause, a Resolution in writing signed by all the Members entitled to vote thereon shall be as valid and effectual as if adopted at a duly convened Members' Meeting.

Within 10 (ten) business days after adopting a Resolution, or conducting an election of Directors in terms of the provisions of this clause, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the Resolution, or vote on the election of a Director, as the case may be. *Section 60(1)(a)(b) and section 60(4)*

## **2.12 Members' Meetings**

- (1) The number of meetings and the notice of the dates and venues of meetings of the Professional Body for a particular year are approved by the Board at the last scheduled meeting of the preceding year; provided that at least one (1) ordinary meeting of the Board is held during a calendar year.
- (2) In terms of this Memorandum of Incorporation, the Members Board of the Company or any Member may call a Member's Meeting at any time.
- (3) The Chairperson may at his or her own instance at any time convene a special meeting of the Board, and must convene such meeting at the written request of at least three (3) members, stating the purpose of the meeting in the request, provided that members are given not less than two (2) weeks' notice of such meeting, provided further that notice may be given in any manner convenient under the circumstances.
- (4) No matters other than those for which a special meeting was called, may be transacted at such meeting, except with the consent of the meeting.
- (5) The General Secretary to the Members Board must, at least four weeks before any meeting, give notice in writing to each member of the Board, setting forth the business to be dealt with as well as the time and place of such a meeting.
- (6) Notice of Members' Meetings shall be sent to each Member entitled to vote at such Meeting and who has elected to receive such notice.

- (7) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall hold a Members' Meeting or put the proposed Resolution to Members entitled to vote:
- (7.1) at any time that the Board or Members Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members entitled to vote for decision;
- (7.2) whenever the number of Directors fall below the minimum number prescribed in the Act and the Company is required to fill a vacancy on the Board.
- Except at any time when there is only 1 (one) Member or when a Resolution may be passed otherwise than at a Meeting of Members, the Company shall hold a Members' Meeting:
- (7.3) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
- (7.4) whenever required in terms of the Act to fill a vacancy on the Board;
- (7.5) when demanded by Members;
- (7.6) when required by any other provision of this Memorandum of Incorporation. *Section 61(2)(a)(b)*
- (8) A 21 (twenty one) days' notice will be given to the members by electronic correspondence.
- (9) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall, as determined by the Board either hold a Members' Meeting in order to consider 1 (one) or more Resolutions, or as regards such Resolution(s) that could be voted on at a Members' Meeting, other than an Annual General Meeting, instead require them to be dealt with by Round-Robin Resolution of Members entitled to vote. Within 10 (ten) business days after the Members entitled to vote by Round-Robin Resolution, the Company must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the Round-Robin Resolution. *Section 61*
- (10) The Board or any Director of the Company authorised by the Board to do so may call a Meeting of Members at any time and must do so if and when required by the Companies Act or this Memorandum of Incorporation to do so. The Board must call a Meeting of Members demanded by Members in terms of section 61(3). If there are no Directors or all of the Directors of the Company are incapacitated, the Company hereby authorises any Member of the Company to call a Members' Meeting for purposes of and in the circumstances contemplated in section 61(11). *Section 61(1)(2)(3) and section 61(11)*
- (11) The Board of the Company or any Member or any other person specified in the Company's Memorandum of Incorporation or Company Rules, shall call a Members' meeting if 1 (one) or more written and signed demands for such a Meeting are delivered to the Company and each such demand describes the specific purpose for which the Meeting is proposed and in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the Voting rights entitled to be exercised in relation to the matter proposed to be considered at the Meeting, in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, and the right of Members to requisition a Meeting as set out in section 61(3) may be exercised by the Members of a lower percentage of the Voting rights entitled to be exercised in relation to the matter to be considered at the Meeting, despite the provision of section 61(3). *Section 61(3)(a)(b) and section 61(4)*
- (12) At any time before the start of a Members' Meeting a Member who submitted a demand for that Meeting may withdraw that demand and the Company shall cancel the Meeting if, as a result of 1 (one) or more demands being withdrawn, the Voting rights of any remaining Members continue to demand the meeting, in aggregate, fall below the minimum percentage of Voting rights required to call a Meeting. *Section 61(6)(a)-(b)*

- (13) The authority of either the Board or Members to determine the location of any Members' Meeting, and to hold any such Meeting in the Republic of South Africa, or in any foreign country, is not limited or restricted by this Memorandum of Incorporation. *Section 61(9)(a)(b)*
- (14) With respect to the location(s) and venue(s) of a Members' Meeting, the Board may determine that a Meeting will take place at several locations and venues and may determine such arrangements as it in its sole discretion appropriate and practical in any circumstances to address the location and venue where the Chairman of the Meeting will preside ("the main Meeting place") the numbers of persons attending at any particular location or venue, the safety of persons attending at any particular location or venue, the facilitators of attendance of persons at any particular location or venue, the entitlement of persons to attend at any particular location or venue, and the electronic participation of persons in the Meeting, and may from time to time vary any such arrangements. A Member who in person or as represented attends a Members' Meeting physically at any of the various locations and venues for a Meeting shall be deemed to be present at the Meeting in question, and counted towards the quorum, while so attending. *Section 62(9)*
- (15) In regards to Members' Meetings the Board may convene a Members' Meeting whenever it thinks fit. If, at any time, there are insufficient Members within the Republic of South Africa capable of acting to form a quorum, any Director or any Member of the Company may convene a Members' Meeting in the same manner as nearly as possible as that in which Meetings may be convened by the Board. *Section 61(11)(a)*
- (16) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is not required to hold any Members' Meetings other than those specifically required by the Act.
- (17) Notwithstanding anything to the contrary contained in the Act or this Memorandum of Incorporation, all Members' Meetings that are called for may be held in person.
- (18) Any failure to hold a Meeting does not affect the existence of the Company, or the validity of any action by the Company. *Section 61(14)*
- (19) Each Director of the Company shall be present for the entire duration of each Members' Meeting, unless a Member or his representative or proxy requests 1 (one) or more or all the Directors to withdraw and leave the Meeting or any part of the Meeting in which event, such Director(s) as have been requested to leave, shall leave the Meeting for the period as requested.

## **2.13 Notices**

- (1) Each Member (or the agent) shall notify the Company in writing of an electronic mail address, a fax number, and a physical or postal address, each of which shall be deemed to be the Members' registered address within the meaning of this Memorandum of Incorporation, and if the Member has not notified the Company of at least 1 (one) of the above, the Member shall be deemed to have waived his right to be served from any notice of the Company.

## **2.14 Notice of Members' Meetings**

- (1) A notice of a Meeting of any class of Members must be delivered contemporaneously to each Member registered as such as of the applicable record date for delivery of that notice, determined in terms of the record date, read with section 59(1)(a) of the Act, of the class of Member entitled to vote on any of the Resolutions to be considered at the Meeting, and to the Auditors for the time being of the Company in terms of section 93(1)(c)(ii) of the Act; and if expressly required in terms of an instrument appointing a proxy which has been delivered to the Company, to the proxy or proxies of a Member (section 58(6) of the Act), in form and content as prescribed in section 62(3), at least 21 (twenty one) business days before the date on which the Meeting is to begin. Any failure to comply with this clause shall not affect the validity of the General Meeting. *Section 58(6), section 59(1)(a), section 62(1)(a)(b) and section 93(1)(c)*
- (2) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) may call a Meeting with less notice than required by this Memorandum of Incorporation, but such a Meeting may proceed only if every person who is entitled to exercise Voting



rights in respect of any item on the Meeting agenda is present at the Meeting and votes to waive the required minimum notice of the Meeting. *Section 62(2A)*

- (3) A notice of a Members' Meeting shall be in writing in plain language and shall include:
  - (3.1) the date, time and place for the Meeting, and the record date for the Meeting;
  - (3.2) the general purpose of the Meeting, and any specific purpose if applicable:
    - (3.2.1) a summarised form of the Financial Statements to be presented and directions for obtaining a copy of the complete Financial Statements for the preceding financial year;
    - (3.2.2) a copy of any proposed Resolution of which the Company 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;
  - (3.3) a reasonably prominent statement that:
    - (3.3.1) a Member entitled to attend and vote at the Members' Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by Round-Robin Resolution of the relevant holders entitled to vote;
    - (3.3.2) a proxy need not be a Member entitled to vote; and
    - (3.3.3) participants in a Members' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Members' Meeting. *Section 62(3)(a)-(e)*
- (4) The notice of a Meeting or of an adjourned Meeting:
  - (4.1) must inform Members of the availability of participation in the Meeting and of participation in any postponement or adjournment of the Meeting, by electronic communication and must provide the necessary information to enable Members or their proxy or proxies to access the available medium or means of electronic communication for the Meeting and for any postponement or adjournment thereof in terms of section 63(3)(a) of the Act;
  - (4.2) should, for the sake of clarity, specify the record date determining which Members are entitled to receive the notice of the Meeting (section 59(1)(a) and 59(2)(b) of the Act);
  - (4.3) must comply with the requirements set out in section 62(3) as to formalities and content, including specifying the record date for determining which Members are entitled to attend, participate in and vote at the Meeting (section 59(1)(b) and 59(3)(b) of the Act);
  - (4.4) must specify whether any proposed Resolution is to be voted on by polling; and
  - (4.5) should, for the sake of clarity, specify the applicable record dates which would be applicable in terms of section 59(1)(a) and (b) of the Act should the Meeting be postponed or adjourned.

## 2.15 Conduct of Meetings

- (1) The first act of an ordinary meeting, after being constituted, is to read and confirm by the signature of the chairperson the minutes of the last preceding ordinary meeting and of any special meeting subsequently held, provided that the meeting

may consider the minutes as read if a copy thereof was previously sent to every member of the Board, provided further that objections to the minutes of a meeting are raised and decided before confirmation of the minutes.

- (2) Except where otherwise provided in this constitution, all acts or matters authorised or required to be done or decided by the Board and all questions that may come before it are done or decided by the majority of the members present at any meeting, on the understanding that one half plus one of the members present constitutes the required majority.
- (3) The Chairperson, has on any matter, a deliberative vote and, in the event of an equality of votes, also a casting vote
- (4) In the absence of the Chairperson from any meeting of the Members Board, the Vice-Chairperson of the Members Board officiates as acting chairperson at such meeting.
- (5) In the absence of the Chairperson as well as the Vice-Chairperson from any meeting of the Members Board, the members present elect one of their members to preside at such a meeting.
- (6) Leave of absence from meetings of the Members Board must be tendered in advance to the General Secretary.
- (7) A person wishing to attend or speak at or participate in or vote at a Members' Meeting as a Member personally or as an authorised representative or as a proxy for a Member, or as the legal representative of a Member, or as the Auditors or representative of the Auditors, must for purposes of identification, present reasonably satisfactory identification and evidence of their authority or entitlement to represent the Member in question or to attend the Meeting, to the Chairman of the Meeting 30 (thirty) minutes before the appointed time for that Meeting to begin or, if the Meeting is adjourned, 30 (thirty) minutes before the appointed time for that adjourned Meeting to resume, as the case may be, stipulated in the notice of the Meeting or adjourned Meeting in question.

If applicable, the auditors for the time being of the Company shall be entitled to attend any Members' Meeting and be heard on any part of the business of the Meeting that concerns the Auditor's duties or functions. *Section 63(1)(a) and section 93(1)(c)(i)(iii)*

- (8) The Board members should participate in the deliberations of the Board in the best interest of the Professional Body.
- (9) The views of a member of the Board who is unable to attend a meeting may be submitted to the meeting in writing but may not count as a vote of such member
- (10) In terms of the Act and this Memorandum of Incorporation the Company has the authority to conduct a Members' Meeting entirely by electronic communication or to provide for participation in a Meeting by electronic communication, is not limited or restricted by this Memorandum of Incorporation.

PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) entitles a Members' Meeting to be conducted entirely by electronic communication, or 1 (one) or more Members, or proxies for Members, to 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.

Every Meeting of Members must be reasonably accessible within or outside the Republic of South Africa for electronic participation by Members, irrespective of the physical location of the Meeting.

Members (or if applicable their representatives or proxies) may participate in all or part of a Meeting (including the Meeting as adjourned) which they are entitled to attend, by electronic communication, at their own expense.

The electronic communication employed by the Company must ordinarily enable all participants in the Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Meeting.

A Resolution adopted by Members, some or all of whom were connected electronically, where:

- (2.1) Members connected electronically remained connected for the duration of that part of the Meeting during which the Resolution was discussed; and
- (2.2) the subject matter of the Resolution has been discussed; and
- (2.3) the Chairman of the Meeting or any other person present in person or electronically at the Meeting certifies in writing that the aforementioned requirements have been met;

shall be deemed to have been passed on the date on which the Resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a Resolution at a Meeting or where some or all of the Members were connected and participated electronically, the Company shall:

- (2.4) deliver to each Member a copy of the Resolution proposed, accompanied by a statement describing the results of the vote, consent process or election, as the case may be; and
- (2.5) insert a copy of the said Resolution and statement in the minute book of the Company.

A Member who in person or as represented participates in a Meeting at any time electronically in terms of this article shall be deemed to be present at the Meeting in question, and counted towards a quorum, while so participating. *Section 60(4), section 61(10), section 63(2)(a)(b) and section 63(2)(b)*

- (11) In the event that the Company provides for participation in a Meeting by electronic communication, as set out in clause 2 of this sub-article, the notice of that Meeting shall inform Members of the availability of that form of participation and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication, and access to the medium or means of electronic communication is at the expense of the Members or proxy. *Section 63(3)(a) and section 63(3)(b)*

## 2.16 Meeting Quorum and Postponement

- (1) In terms of the Act, this Memorandum of Incorporation specifies that one half of the Members Board plus one of the Office bearing members, who is in office on the date of the meeting, constitutes a quorum in respect of:
  - (1.1) at least 1 (one) matter to be decided at any Members' Meeting must be present for that meeting to begin; and
  - (1.2) a matter to be decided at any Members' Meeting for that matter to begin to be considered at that Meeting, provided that 3 (three) Members entitled to attend and vote are present at the time of the Meeting.

After a quorum has been established for a Members' Meeting, or for a matter to be considered at a Members' Meeting, the Members' Meeting may continue, or the matter may be considered, so long as all the Members for such quorum are present at the Members' Meeting.

The quorum shall be sufficient persons present at the Members' Meeting to equal at least one half of the Members Board plus one of the Office bearing members, who is in office on the date of the meeting, of all of the Voting rights that are entitled to be exercised in respect of at least 1 (one) matter to be decided at the Members' Meeting.

## 2.17 Adjournment of Members' Meetings

- (1) In terms of the Act and this Memorandum of Incorporation an adjournment of a Meeting, or of consideration of a matter being debated at the Meeting shall be either to a fixed time and place, or until further notice, as agreed at the Meeting and requires that a further notice be given to Members only if the Meeting determined that the adjournment was until further notice.

PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall not be required to give further notice of a Meeting that is postponed or adjourned unless:

- (1.1) the location for the Meeting is different from:
  - (1.1.1) the location of the postponed or adjourned Meeting (section 64(7)(a) of the Act); or
  - (1.1.2) the location announced at the time of adjournment, in the case of an adjourned Meeting (section 64(7)(b) of the Act); or
- (1.2) it is necessary to inform registered Members of the availability of participation in the postponed or adjourned Meeting by electronic means; or
- (1.3) the Meeting has been adjourned "until further notice" in terms of this Article of this Memorandum of Incorporation. *Section 64(7)(a)(b) and section 64(11)*

If the location of the Meeting is different from the location of the adjourned Meeting, the Company shall publish a notice in the newspaper circulating in the province, where the head office of the Company is situated stating the date, time and place to which the set Meeting has been adjourned.

- (2) In terms of the Act and this Memorandum of Incorporation subject to any requirements of this Memorandum of Incorporation, the quorum at any adjourned Meeting shall be the Members present thereat personally or by proxy, who may transact the business for which the Meeting was called.

If at any adjourned Meeting a quorum is not present within 30 (thirty) minutes from the appointed time for such Meeting to commence, the Members who are present or represented by proxy and entitled to vote shall constitute a quorum and may proceed to transact the business of the Meeting.

- (3) No business shall be transacted at any adjourned Members' Meeting of the Company other than business left unfinished at the Meeting from which the adjournment took place.
- (4) After a quorum has been established for a Meeting or for a matter to be considered at a Meeting, the Meeting may continue or the matter may be considered, so long as at least 1 (one) registered Member with Voting rights entitled to be exercised at the Meeting, or on that matter, is present or presented at the Meeting. *Section 64(9)*

## 2.18 Votes of Members

- (1) In terms of the Act and this Memorandum of Incorporation subject to any special rights or restrictions as to Voting by or in accordance with this Memorandum of Incorporation, at a Meeting of the Company:
  - (1.1) every person present, either personally or by proxy, and entitled to exercise Voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of Voting rights that person would otherwise be entitled to exercise;
  - (1.2) on a poll any person who is present at the Meeting, whether as a Member or as a proxy for a Member, has the number of votes determined in accordance with Voting rights held by that Member; and

- (1.3) Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a Meeting of Members if a demand is made for such a vote by:
- (1.3.1) at least 5 (five) persons having the right vote on that matter, either as Members or as proxies representing Members; or
  - (1.3.2) a Member who is, or Members who together are, entitled, as Members or proxies representing Members, exercise at least 10% (ten percent) of the Voting rights entitled to be voted on that matter; or
  - (1.3.3) the Chairman of the Meeting.

At any Meeting of the Company a Resolution put to the vote of the Meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of this clause, and unless a poll is so demanded, a declaration by the Chairman that a Resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such Resolution. The demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the Resolution of the Meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Member is entitled.

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the Meeting at which the show of hands takes place, or at which the poll is demanded, has on any matter, a deliberative vote as well as a casting vote.

A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the Meeting directs. The demand for a poll shall not prevent the continuation of a Meeting for the transaction of any business other than the question upon which the poll has been demanded.

- (2) Every Resolution of Members is either:
- (2.1) an Ordinary Resolution in terms of the Companies Act (section 65(1)); or
  - (2.2) a Special Resolution in terms of the Companies Act, as required in terms of the Companies Act or as required in terms of this Memorandum of Incorporation (section 65(1) read with section 65(9), (11) and (12)); or
  - (2.3) the Board may propose any Resolution to be considered by Members and may determine whether that Resolution will be considered and voted on at a Meeting of Members or by Round-Robin Resolution (section 65(2)).
- (3) The passing of an Ordinary Resolution is to be subject to the approval of at least 51% (fifty one percent) of the votes cast by all Members present in person or represented by proxy, at the General Meeting convened to approve such Resolution and shall be subject to a minimum notice period of 10 (ten) business days.
- (4) The passing of a Special Resolution is to be subject to the approval of at least 61% (sixty one percent) of the votes cast by all Members present in person, or represented by proxy, at the General Meeting or the Annual General Meeting convened to approve such Resolution and shall be subject to a minimum notice period of 10 (ten) business days.

- (5) A Special Resolution shall be required to:
- (5.1) ratify a consolidated revision of a Company's Memorandum of Incorporation as contemplated in section 18(1)(b) of the Act;
  - (5.2) ratify actions by the Company or Directors in excess of their authority in terms of Article: Incorporation and Nature of the Company – Validity of Company's Actions and Article: Members' Rights and Meetings – General Meetings of this Memorandum of Incorporation (section 20(2) of the Act);
  - (5.3) approve the voluntary winding-up of the Company in terms of Article: Dissolution and Distribution of Net Value of Company – Winding-up or Dissolution of this Memorandum of Incorporation (section 80(1) of the Act);
  - (5.4) approve the winding-up of a Company in terms of Article: Dissolution and Distribution of Net Value of Company – Winding-up or Dissolution of this Memorandum of Incorporation (section 81(1) of the Act);
  - (5.5) approve an application to transfer the registration of the Company to a foreign jurisdiction (section 82(5) of the Act);
  - (5.6) approve any proposed fundamental transaction to the extent required by Part A of Chapter 5 or 30;
  - (5.7) revoke a Resolution (section 164(9)(c) of the Act);
  - (5.8) a Special Resolution adopted at a Members' Meeting is required in terms of this Memorandum of Incorporation, in addition to the matters set out above in terms of section 65(11), for:
    - (5.8.1) dis-applying pre-emptive rights that would otherwise apply. *Section 65(11)(a)-(m)*
- (6) A Special Resolution adopted at a Members' Meeting is not required for a matter to be determined by the Company, except those matters set out in section 65(11), or elsewhere in either the Act or this Memorandum of Incorporation. *Section 65(11) and section 65(12)*
- (7) In terms of this Act and this Memorandum of Incorporation, Round-Robin Resolution of Members entitled to vote, will be passed if signed by Members 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.

If a Member entitled to vote is a Body Corporate, represented, at any Members' Meeting shall have only 1 (one) vote, a proxy shall only have 1 (one) vote on a show of hands.

Within 10 (ten) business days after the adoption or failing of a Round-Robin Resolution, the Company shall:

- (7.1) deliver to each Member a copy of the Resolution proposed, accompanied, by a statement describing the results of the vote, consent process or election, as the case may be (section 60(4)); and
  - (7.2) insert a copy of the Resolution and statement referred to in the minute book of the Company.
- (8) Any 2 (two) or more Members may by notice to the Board require the Board to propose a Resolution concerning a matter in respect of which such Members are each entitled to exercise Voting rights, and when proposing the Resolution may require to Board to determine that the Resolution be submitted to Members for consideration at a Meeting of Members called, or at the next scheduled Members' Meeting, or by Round-Robin Resolution. *Section 65(3)*
- (9) Any Resolution proposed must comply with the requirements as to form and content, and supporting information or explanatory material, specified in section 65(4).

- (10) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is not obliged to file with the Commission any Members' Resolution (including any Special Resolution), except if required to do so in terms of the Companies Act or this Memorandum of Incorporation and the Board may decide whether the Company is obliged to file with the Commission any Members' Resolution. *Section 65(11), section 59(1)(c), section 60(1)(a), section 60(1)(b), section 60(2), section 60(3), section 60(4), section 60(5), section 65(1), section 65(2), section 65(3), section 65(4), section 65(9), section 65(11) and section 65(12)*

## 2.19 General Meetings

- (1) Except at any time when there is only 1 (one) Member or when a Resolution may be passed, otherwise, than at a Meeting of Members, the Company shall hold a Members' Meeting:
- (1.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
  - (1.2) whenever required in terms of the Act to fill a vacancy on the Board;
  - (1.3) when demanded by Members; or
  - (1.4) when required by any other provision of this Memorandum of Incorporation *Section 61(2)(a)(b)*
- (2) In the event that the Company elects to hold a Members' Meeting, the business of the Members' Meeting shall be to receive and consider the following:
- (2.1) the approval of the minutes of the previous AGM;
  - (2.2) the approval of the annual report of the Members Board;
  - (2.3) the approval of the annual report of the Chairperson of the Professional Body;
  - (2.4) the presentation of the Directors' report;
  - (2.5) the presentation of a summarised form of Audited Annual Financial Statements, for the immediate preceding financial year of the Company and directions for obtaining a copy of the complete Financial Statements for the preceding financial year of the Company, if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
  - (2.6) the election of Directors to the extent required by section 66(4)(b) of the Act or this Memorandum of Incorporation;
  - (2.7) the election of Members of the Board;
  - (2.8) the appointment of an Auditor for the ensuing financial year if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
  - (2.9) the presentation of the Audit Committee report if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
  - (2.10) the appointment of an Audit Committee for the ensuing financial year if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
  - (2.11) the presentation of the Social and Ethics Committee report, if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;

- (2.12) the appointment of a Social and Ethics Committee for the ensuing financial year if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
- (2.13) the determination of the amount of the yearly membership fee upon the proposal by the Members Board;
- (2.14) the modification of the MOI - which require 2 (two) thirds of the majority of the Members present at the meeting;
- (2.15) the decision about the exclusion of members;
- (2.16) the election of other Prescribed Officers of the Company in the place of those retiring by rotation or otherwise;
- (2.17) any other matter or business determined by the Board;
- (2.18) any matters raised by the Members, with or without advance notice to the Company;
- (2.19) any other business which ought to be transacted at an Annual General Meeting, and any business which is brought under consideration by the reports of the Board laid before such Meeting;
- (2.20) all other business transacted at the Annual General Meeting and all business transacted at any other Members' Meeting shall be deemed special; and/or
- (2.21) a copy of any proposed Resolution of which the Company has received notice, and which is to be considered at the Meeting;
- (2.22) a notice of the percentage of Voting rights that will be required for that Resolution to be adopted;
- (2.23) a reasonably prominent statement that:
  - (2.16.1) a Member entitled to attend and vote at the Members' Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by Round-Robin Resolution of the relevant Members entitled to vote;
  - (2.16.2) a proxy need not be a Member entitled to vote; and
  - (2.16.3) participants in a Members' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Act in order to reasonably satisfy the person presiding at the Members' Meeting.
- (3) At least 10 (ten) business days before the date of the Members' Meeting, a copy of the Annual Financial Statements of the Company shall be delivered to all Members, save for any Member who waives his right to receive such Statements.
- (4) A quorum at the AGM shall be the number of members of the Members Board present sufficient to constitute a quorum for Members Board meetings plus a minimum of 5 paid up members.

## 2.20 Termination of Membership

- (1) The Membership of a Member shall terminate if:
  - (1.1) the Member resigns of own free will by giving written notice to the Company, one month before the cycle of the current year;
  - (1.2) the Member, being a natural person, dies or his estate is surrendered or sequestrated in terms of the Insolvency Act 1936 as amended;



- (1.3) in case of a Member being a Company or Close Corporation, it is finally wound up or deregistered in terms of the Companies, or Close Corporations legislation in place from time to time.
- (2) The Professional Body, through the Membership Committee, may suspend, take disciplinary action or terminate a member's membership. The termination of membership occurs when:
  - (2.1) a member's actions are found, through an impartial disciplinary process, to be in violation of the Code of Conduct on contravening the Constitution of the Professional Body;
  - (2.2) a member fails to pay the Membership subscription fee on or before the date on which it is due, provided that the Membership Committee may in its discretion reinstate any Member who makes payment of arrear Membership subscription fee within a period of 3 (three) months after the date on which it is due;
  - (2.3) a member is removed from an office of trust by a court of law or is convicted of an offense for which the sentence is imprisonment without the option of a fine.

## ARTICLE 3 - BOARD, DIRECTORS AND PRESCRIBED OFFICERS

### 3.1 First Director or Directors

- (1) Each Incorporator of the Company is a first Director of the Company and serves until sufficient other Directors have first been elected to satisfy the minimum requirements of this Memorandum of Incorporation. *Section 67(1)(a)(b)*
- (3) In the event of the number of Incorporators of the Company together with any *ex officio* Directors, or Directors to be elected in terms of clause 1 of this sub-article is fewer than the minimum number of Directors required for the Company in terms of the Act, or the Company's Memorandum of Incorporation, the Board shall call a Members' Meeting within 40 (forty) business days after incorporation of the Company for the purpose of electing sufficient Directors to fill all vacancies on the Board at the time of the election. *Section 67(2)*
- (4) The Board must comprise in the case of this Non-Profit Company at least 3 (three) Directors in terms of section 66(2)(a).
- (5) This Memorandum of Incorporation provides for the Company to have Directors and Voting Members and since the Directors are to be elected by the Voting Members, this Memorandum of Incorporation provides for the election of at least one-third of those elected Directors each year. *Item 5(1)(b) of Schedule 1*

### 3.2 Election of Directors

- (1) This Memorandum of Incorporation provides for:
  - (1.1) the election of executive and non-executive Directors by the Board or the election each year of at least one-third of those elected Directors by Voting Members;
  - (1.2) a person to be an *ex officio* Director of the Company as a consequence of that person holding some other office title, designation or similar status;
  - (1.3) the election of 1 (one) or more persons as alternate Directors of the Company. *Section 66(4)(a)(i)-(iii) and Item 5 of Schedule 1*
- (2) A person becomes entitled to serve as a Director of this Company when that person:
  - (2.1) has been elected in accordance with Item 5 of Schedule 1, or holds and office, title, designation or similar status, entitling that person to be an *ex officio* Director of the Company; and
  - (2.2) has delivered to the Company a written consent to serve as its Director. *Section 66(7)(a)(b) of the Act and section 44(b) of Act 3 of 2011*
- (3) Any particular Director may be elected to more than 1 (one) Committee of the Company and when calculating the minimum number of Directors required for this Company, being not less than 3 (three) Directors, a Director who has been elected to more than 1 (one) Committee must be counted only once. *Section 66(12)*
- (4) A person contemplated in clause 1 of this sub-article who holds office or acts in the capacity of an *ex officio* Director of a company has all the:
  - (4.1) powers and functions of any other Director of the Company, except to the extent that the Company's Memorandum of Incorporation restricts the powers and functions or duties of an *ex officio* Director; and
  - (4.2) duties, and is subject to all of the liabilities, of any other Director of the Company. *Section 66(5)(b)(i)(ii)*

- (5) In any election of Directors the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and in each vote to fill a vacancy where each Voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the Voting rights exercised support the candidate. *Section 66(2)(a)(b)(i)(ii)*
- (6) The Board may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the vacancy has been filled by election in terms of this Memorandum of Incorporation. During that period, any person so appointed has all the powers, functions and duties and is subject to all of the liabilities of any other Director of the Company. *Section 68(3)*
- (7) A person elected or appointed as an alternate for a Director acts for all intents and purposes in the place of, and not for or as a representative of, the Director for whom he is an alternate, and shall be treated as a Director of the Company while he acts in the place of the Director for whom he is an alternate.

While acting in the place of the Director for whom he is an alternate, the alternate Director may generally exercise all the rights of that Director and shall, in all aspects, be subject to the terms and conditions existing with reference to the appointment, rights and duties as Director and the holding of office of that Director, and shall not have any claim of any nature whatsoever against the Company for any remuneration with respect to his services as a Director or his appointment as an alternate.

A person may be elected or appointed as an alternate for 1 (one) or more Directors. *Section 66(4)(b)*

- (8) An alternate shall only be entitled to vote at any Meeting if the Director for whom he is an alternate is not present at that Meeting, provided that the alternate may also attend a Meeting at which the Director for whom he is an alternate is present if the other Directors present at the Meeting, resolve that he may attend, provided further, that in the circumstances when the Director for whom he is an alternate, is present, then the alternate shall not be counted towards a quorum and shall recuse himself from the Meeting if requested by any Director to do so.

Any person attending a Meeting of Directors as an alternate for 1 (one) or more Directors in the absence of such Director(s) shall only have 1 (one) vote and shall not be entitled to more than 1 (one) vote at any such Meeting.

An alternate shall only be entitled to sign a Round-Robin Resolution if the Director for whom he is an alternate is then absent from the Republic of South Africa or is out of reach of communication or is incapacitated.

The appointment of an alternate shall cease, and he shall vacate his office as an alternate, if:

- (8.1) the alternate was appointed by the Board and the Board gives notice to that alternate terminating his appointment;
- (8.2) the person, for whom another person has been elected or appointed as an alternate, ceases to be a Director of the Company or ceases to be entitled to serve as a Director, for any reason; or
- (8.3) an event occurs or circumstances arise, in relation to an alternate, which if he were a full Director would cause him to cease to be entitled to serve as a Director in terms of the Companies Act or this Memorandum of Incorporation. *Section 66(4)(b)*

### 3.3 Governance of the Board

- (1) In terms of the Act and this Memorandum of Incorporation the business and affairs of the Company shall be managed by or under the direction of its Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1), is limited, restricted and qualified by this Memorandum of Incorporation except to the extent that the Act and this Memorandum of Incorporation provides otherwise in terms of section 66(1) and to the

extent set out in Item 11(1) of Schedule 5 of the Act. The Directors may from time to time, at their discretion, raise or borrow or secure the payment of any sum or sums of money for the purposes of the Company. *Section 66(1)*

- (2) The Directors may, at any time and from time to time, by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation including the right of sub-delegation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any Company, the Members, Directors, Nominees or Managers of any Company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such Power of Attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.

### 3.4 Vacancies on the Board

- (1) In terms of this Memorandum of Incorporation, a person shall cease to be a Director and a vacancy arises on the Board of the Company:

(1.1) when the person's term of office as Director expires, or

(1.2) in any case, if the person:

(1.2.1) resigns or dies;

(1.2.2) in the case of an *ex officio* Director, ceases to hold the office, title, designation or similar status that entitled the person to be an *ex officio* Director;

(1.2.3) becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time subject to section 71(3);

(1.2.4) is declared delinquent by a court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company in terms of section 162;

(1.2.5) becomes ineligible or disqualified in terms of section 69 subject to section 71(3); or

(1.2.6) is removed:

(1.2.6.1) by Resolution of the Members in terms of section 71(1);

(1.2.6.2) by Resolution of the Board in terms of section 71(3); or

(1.2.6.3) by order of the court in terms of section 71(5) or (6). *Section 70(1)(a)(b)(i)-(vi)*

- (2) If a vacancy arises on the Board, the Board may in terms of section 68(3) elect a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the earlier of the vacancy being filled by election by the Members in terms of section 68(2) or the conclusion of the next General Meeting of the Company after the temporary filling.

If a vacancy arises on the Board, and as a result thereof, the Company does not have the minimum number of Directors required by the Act or this Memorandum of Incorporation, the Board shall within the period of 3 (three) months from the date such a vacancy arose, continue to function in terms of section 66(11) and shall fill the vacancy on a temporary basis as provided for above or convene a General Meeting or propose a Round-Robin Resolution for the purposes of the Members conducting an election to fill such vacancy in terms of section 68(2).

After the expiry of the 3 (three) month period, the remaining Directors on the Board shall only be permitted to act for the purposes of filling the vacancy or calling a General Meeting of Members or proposing a Round-Robin Resolution for purposes of an election in terms of section 68(2).

If at any time the number of Directors falls below the number required as a quorum the continuing Directors may act for the purpose of appointing sufficient Directors to constitute a quorum or for convening a General Meeting but for no other purpose.

(3) If a person has ceased to be a Director of the Company and a vacancy on the Board has arisen, such vacancy must be filled as provided for in section 70(3), subject to section 70(4) as follows:

(3.1) if the Company is not required to hold a General Meeting, the vacancy must be filled within six (6) months after the vacancy arose:

(3.1.1) at a Members' Meeting called for the purpose of electing the Director; or

(3.1.2) by a poll of the persons entitled to exercise Voting rights in an election of the Director in terms of section 60(3). *Section 70(3)(a)(b)(i)(ii)*

### 3.5 Removal of Directors

(1) In terms of section 71(1) a Director elected by Members may be removed by an Ordinary Resolution adopted at a Members' Meeting entitled to exercise Voting rights in the election of that Director, despite anything to the contrary in this Memorandum of Incorporation, or any agreement between the Company and that Director, or between any Members and that Director as follows:

(1.1) before the Members of a Company consider the above Resolution:

(1.1.1) the Director concerned must be given notice of the Meeting and the Resolution. The notice must be equivalent to that which a Member is entitled to receive, irrespective of whether or not the Director is a Member of the Company; and

(1.1.2) the Director must be afforded a reasonable opportunity to make a presentation to the Meeting either in person or through a representative before the Resolution is put to a vote. *Section 71(1) and section 71(1)(2)(a)(b)*

(2) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) has at least 3 (three) Directors, and if a Member or a Director contends that a person should be removed as a Director of the Company by the Board on any of the following grounds set out in section 71(3):

(2.1) has become:

(2.1.1) ineligible or disqualified in terms of section 69; or

(2.1.2) 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;

(2.2) or has neglected or been derelict in the performance of the functions of a Director;

that Member or Director shall first submit to the Board each of its contentions and the specific grounds of each such allegation and shall submit to the Board all evidence available on which the Member or Director relies on for making the contention and allegation. On receipt thereof the Board must study such submission, investigate the allegation and determine the matter by Resolution in accordance with and subject to the procedures and its power to do so as set out in section 71(3) to (10).

- (3) This Memorandum of Incorporation prohibits the removal of a Director by Round-Robin Resolution of Members in terms of section 60 or Directors acting other than at a Meeting in terms of section 74 where a decision may be adopted by written consent of the majority of Directors, given either in person or by electronic communication, since the Director concerned must be afforded a reasonable opportunity to make a presentation at a Board Meeting, in person or through a representative, before the Resolution to remove him is put to a vote. *Section 71*
- (4) A Director shall be entitled to resign as Director on 30 (thirty) days' written notice to the Company or on such shorter notice as the Board may determine.

### 3.6 Board Committees

- (1) This Memorandum of Incorporation does not limit, restrict or qualify the authority of the Board to appoint any number of Committees of Directors, or to delegate to any such Committee any of the authority of the Board.

Except to the extent that the Board or a Members' Resolution establishing a Committee provides otherwise, the Members of the Board Committee:

- (1.1) may include persons who are not Directors of the Company but any such persons must not be ineligible or disqualified to be a Director in terms of section 69 of the Act;
- (1.2) may consult with or receive advice from any person;
- (1.3) may be remunerated for their services as such; and
- (1.4) provided that the Committee is duly constituted, have the full authority of the Board in respect of any matter referred to it. *Section 72(1)(a)(b) and section 72(2)(a)(b)*
- (2) The Members of each Board Committee shall hold and conduct their Meetings in accordance with the provisions of the Board and Board Committees Charter and the Rules of the Company governing the holding and conduct of such Meeting, which provisions are binding on each Board Committee Member in terms of section 15(6)(c)(ii). Any Board Committee formed shall conform to any regulations that may from time to time be imposed upon it by the Board, provided that the Meetings and proceedings of any Board Committee consisting of 2 (two) or more Members shall be governed by the provisions contained in this Memorandum of Incorporation regulating the Meetings and proceedings of the Board, so far as the same are applicable thereto, and are not superseded by any regulation made by the Board.
- (3) If the Company has in any 2 (two) of the previous 5 (five) years, scored above 500 (five hundred) points in terms of its Public Interest Score, the Company shall appoint a Social and Ethics Committee, unless it is a subsidiary of another Company that has a Social and Ethics Committee and the Social and Ethics Committee of that other Company which will perform the functions required by this regulation on behalf of that subsidiary Company; or it has been exempted by the Tribunal. *Regulation 43(2)(a)(b)*

- (4) If and for as long as it is required to do so in terms of the Act or the Regulations and unless the Company is exempted from doing so by the Tribunal, in terms of section 72(5) of the Act, the Board may appoint a Social and Ethics Committee having the powers and functions prescribed in terms of section 72(4) of the Act and Regulation 43(2), which Committee shall comprise not less than 3 (three) Directors or Prescribed Officers of the Company, at least 1 (one) of whom must be a Director who is not involved in the day to day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years. (Regulations 43(2) and (4)). The Social and Ethics Committee is governed by, and is subject to, the terms and conditions of the Board and Board Committees Charter read with the Act and the Regulations. *Section 15(6)(c)(ii), section 72(1), section 72(2)(a)(i)(ii), section 72(2)(b)(c), section 72(4), Regulation 43(2) and Regulation 43(4)*
- (5) If a Company exists on the effective date and is required to have a Social and Ethics Committee, it shall appoint the first Members of the Committee within 12 (twelve) months after the effective date, or the determination by the Tribunal of the Company's application. *Regulation 43(3)(i)(ii)*
- (6) In the event the Company has a Social and Ethics Committee, the said Committee is entitled to:
- (6.1) require from any Director or Prescribed Officer of the Company any information or explanation necessary for the performance of the Committee's functions;
  - (6.2) request from any employee of the Company any information or explanation necessary for the performance of the Committee's functions;
  - (6.3) attend any Members' Meeting;
  - (6.4) receive all notices of and other communications relating to any Members' Meeting; and
  - (6.5) be heard at any Members' Meeting on any part of the business of the Meeting that concerns the Committee's functions. *Section 72(8)(a-e)*

PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall pay all the expenses reasonably incurred by its Social and Ethics Committee including, if the Social and Ethics Committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the Social and Ethics Committee in the performance of its functions. *Section 72(9)*

- (7) The Board shall have the power to appoint, and at its discretion to remove or suspend, a local Board Committee or Board Committees in any foreign country whatsoever and to fix and vary their remuneration; to establish and keep registered offices and branch registers in any foreign country whatsoever and to close same at its discretion; and to appoint and remove agents who represent the Company for such purposes as the Board may determine. The Board shall have the power to, at any time and from time to time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes of this item with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board in terms of the Act and this Memorandum of Incorporation) for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment, may if the Board thinks fit, be made in favour of the Members of any foreign Committee established as aforesaid, or in favour of any company, or of the Members, Directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board. Any such Power of Attorney may contain provisions for the protection or convenience of persons dealing with such attorneys as the Board thinks fit. Any such delegates as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it. *Section 72(1)(a)*

### 3.7 Board Meetings

- (1) A Director authorised by the Board of the Company may call a Meeting of the Board at any time, and shall call such a Meeting if required to do so by at least 25% (twenty five percent) of the Directors where the Board has 12 (twelve) Members or more, or more than 2 (two) Directors in any other case. *Section 73(1)(a)(b)*

- (2) The Directors of the Company convening a Board Meeting may determine the location of the Meeting, including the location of a Meeting which has been adjourned, provided that the location shall be the Registered Office of the Company or a suitable venue in the Republic of South Africa which is reasonably accessible to each Director.
- (3) In terms of the Act and this Memorandum of Incorporation, the authority of the Board to conduct a Meeting entirely by electronic communication, or to provide for participation in a Meeting by electronic communication, is not limited or restricted by this Memorandum of Incorporation.

The electronic communication facility employed by the Company must ordinarily enable all persons participating in that Meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the Meeting. *Section 73(3)*

A Resolution adopted by Directors, some or all of whom were connected electronically, where:

- (3.1) Directors connected electronically remained connected for the duration of that part of the Meeting when the Resolution was discussed;
- (3.2) the subject matter of the Resolution has been discussed; and
- (3.3) the Chairman of the Meeting or any other Director present in person or electronically certifies in writing that the aforementioned requirements have been met;

shall be deemed to have been passed on the date on which the Resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a Resolution at a Meeting or where some or all of the Directors were connected and participated electronically in terms of this clause the Company shall:

- (3.4) deliver to each Director of the Company a copy of the Resolution proposed, accompanied by a statement describing the results of the vote; and
- (3.5) insert a copy of the Resolution proposed and statement in the minute book of the Company.

A Director who participated in a Meeting at any time electronically in terms of this article shall be deemed to be present at the Meeting in question, and counted towards a quorum, while so participating.

The Board determines the manner, form and time of providing notice of its Meetings as set out in section 73(4) and is not limited or restricted by this Memorandum of Incorporation. The Directors may meet together for the dispatch of business, adjourn or otherwise regulate their Meetings as they see fit, subject to the provisions of the Act and this Memorandum of Incorporation.

In terms of item 11(2) of Schedule 5, a notice given by any person to another person in terms of any provision of the previous Act, shall be considered as notice given in terms of any comparable provision of the Act, as from the date that the notice was given under the previous Act. *Section 73(4)(a)(b)*

- (4) If all of the Directors of the Company acknowledge actual receipt of the notice, are present at a Meeting, or waive notice of the Meeting, the Meeting may proceed even if the Company failed to give the required notice of that Meeting, or there was a defect in the giving of the notice. *Section 73(5)(b)(c)(d)(e)*
- (5) In terms of the Act and this Memorandum of Incorporation, minutes of Board and Board Committee Meetings must include all Resolutions adopted by the Board or Board Committees, as the case may be, and must include all declarations of personal financial interests given by notice or made by a Director in terms of section 75. *Section 73(6)*



- (6) Each Resolution adopted by the Board must be dated and sequentially numbered and are effective as of the date of the Resolution, unless the Resolution states otherwise. *Section 73(7)(a)*
- (7) Signature of the minutes or of a Resolution by the Chair of the Meeting (or by the Chair of the next Meeting) is evidence of the proceedings of that Meeting, or adoption of the Resolution, as the case may be.

An extract from such minutes or extract from any Resolution in writing, if signed by any Director or the Company Secretary, shall be evidence of the matters stated in such minutes or extract. *Section 73(8)*

### 3.8 Board Quorum

- (1) A Board Meeting may not begin unless the majority of the Directors are present in terms of section 73(5)(b).

A matter to be decided at the Board Meeting may not begin to be considered unless the majority of the Directors are present.

For purposes of counting a quorum at any time, a Director or his alternate who is personally present at the Meeting, or who participates in person electronically in terms of Article: Board, Directors and Prescribed Officers – Board Meetings at that time, shall be counted towards a quorum at that time.

A person whose election as Director including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not be counted towards any quorum of Directors.

### 3.9 Board Resolutions

- (1) The Board may propose any Resolution to be considered by Members and may determine whether that Resolution will be considered and voted on at a Meeting of Members or by Round-Robin Resolution. *Section 65(2)*
- (2) Each Director has 1 (one) vote on a matter before the Board in terms of section 73(5)(c) except that:
  - (2.1) a Director whose ineligibility to serve as a Director has been determined in terms of this Memorandum of Incorporation, shall not have a vote in respect of that matter in terms of section 71(3);
  - (2.2) a Director who has been suspended in terms of section 70(2) shall not have a vote on any matter before the Board;
  - (2.3) a Director who has a personal financial interest in respect of a matter to be considered by the Board or who knows that a related person has a personal financial interest in the matter in terms of section 75(4) or 75(5), shall not have a vote in respect of that matter in terms of section 75(5)(f)(ii).

A majority of the votes of the Directors present and entitled to exercise and exercising their vote on a matter is sufficient to approve a Board Resolution, provided that there is at least a quorum of Directors present and so exercising their votes on a matter.

An abstention from Voting shall not be counted as an exercise of a vote, and shall in terms of section 73(5)(d) be disregarded for purposes of calculating whether or not a majority has been obtained.

If a Resolution of the Directors has failed because of a tie contemplated in this clause, the Board or any Director of the Company or any registered Member may refer the matter to the Members for the Members to resolve and facilitate the breaking of any deadlock at Director level, failure of which by the Members and/or Directors shall not constitute grounds for the winding-up of the Company except in terms of section 81(1)(d), subject to section 81(2).

The vote of any person whose election as a Director, including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not with effect from the time that vote is cast be counted towards any vote of Directors.

A Director unable to attend a Board or Board Committee Meeting may, notwithstanding that this Director has an alternate, authorise any other Director to vote for him at that Meeting, and in the event that the Director so authorised shall have a vote for each Director by whom he is so authorised in addition to his own vote. If both the Directors so authorised and an alternate of the Director who granted the authority, are present at the Meeting, the alternate shall not be entitled to vote in the place of the absent Director. Authority in terms of this clause must be in writing and must be handed to the person presiding at the Meeting at which it is to be used.

(3) A Resolution that could be voted on at a Board Meeting other than a Board Resolution that the Company voluntarily begin Business Rescue Proceedings and place the Company under supervision in terms of section 129(1), may instead of being voted on at a Meeting be:

(3.1) submitted by the Directors proposing the Resolution for consideration to each Director in terms of section 74(1); and

(3.2) voted on in writing by Directors entitled to exercise Voting rights on that matter within 10 (ten) business days after the Resolution was submitted to them.

A Resolution will have been adopted as a Board Resolution if it has been supported in writing by the requisite majority of the Directors in person or their alternates who are entitled to exercise Voting rights on the Resolution proposed, and, if so adopted, such a Resolution will have the same effect as if it had been adopted at a quorate Board Meeting. *Section 74(1)(2)*

A Round-Robin Resolution of Directors shall be deemed to have been passed on the date specified in the Resolution as the effective date of the Resolution provided that the effective date is not a date earlier than the date the Resolution was submitted to Directors for their consideration and, if deemed fit, adoption or, failing any such effective date being specified in the Resolution, shall be deemed to have been passed on the date on which the Resolution was approved in writing by the last of the Directors or their alternates entitled to do so.

Within 10 (ten) business days after the adoption or failing of a Round-Robin Resolution, the Company shall:

(3.3) deliver to each Director a copy of the Resolution proposed, accompanied by a statement describing the results of the vote; and

(3.4) insert a copy of the Resolution and statement in the minute book of the Company.

### 3.10 Directors acting other than at Meeting

(1) A decision that could be voted on at a Meeting of the Board of the Company may instead be adopted by written consent of a majority of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided. *Section 74(1)*

(2) A decision made in the manner in terms of this Article is of the same effect as if it had been approved by Voting at a Meeting. *Section 74(2)*

### 3.11 Register of Directors

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) must establish and maintain a record of its Directors, including all the details about each Director (including that Director's email address) required in terms of and for the period stipulated in the Act and the Companies Regulations in a register of Directors in terms of section 24(3)(b), section 24(5) and regulation 23.
- (2) For purposes of the Act and in relation to the register of Directors required to be kept by the Company in terms of section 24(3)(b), a Director is defined in section 1 to mean:
  - (2.1) a Member of the Board, being a person previously appointed in terms of the Companies Act 1973 or elected as a Director of the Company in terms of the Act;
  - (2.2) an alternate Director for a Member of the Board;
  - (2.3) any person, if any, occupying the position of Director or alternate Director but by whatever name designated;

and accordingly, the prescribed details of each such person is required to be included by the Company in the register if Directors of the Company.

### 3.12 Directors' Remuneration

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall 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 an incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:
  - (1.1) as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company, and to enable it to achieve its objectives;
  - (1.2) as a 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;
  - (1.3) 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 a stated object of the Company; or
  - (1.4) in respect of any legal obligation binding on the Company. *Item 1(3) of Schedule 1 of the Act and section 122(b) of Act 3 of 2011*
- (2) In the event that PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) qualifies as Public Benefit Organisation, the Commissioner may, for the purposes of the Income Tax Act, approve the Company as a Public Benefit Organisation subject to the Commissioner been satisfied that:
  - (2.1) the Commissioner was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was 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 this Act or any other Act administered by the Commissioner (*section 30(3)(c) of the Income Tax Act*);
  - (2.2) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) has not and will not pay any remuneration, as defined in the Fourth Schedule of the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the

service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects (*section 30(3)(d) of the Income Tax Act*);

- (2.3) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) complies with such reporting requirements as may be determined by the Commissioner (*section 30(3)(e) of the Income Tax Act*);
- (2.4) the Commissioner is satisfied that, in the case of any Public Benefit Organisation which provides funds to any association of persons contemplated in paragraph 10(iii) of Part I of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided;
- (2.5) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) does not participate in any tax-avoidance schemes, and is not party to or permit itself to be used for any transaction, operation or scheme, the sole or main purpose of which is or was to reduce, postpone or avoid any tax, duty or levy which would otherwise have been or would have become payable by any person under the Act or under any other Act administered by the Commissioner. These taxes, duties or levies include, for example, income tax (including capital gains tax), value-added tax, transfer duty, skills development levies and employees' tax (*section 30(3)(f) of the Income Tax Act*);
- (2.6) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) has, within such period as the Commissioner may determine, been registered in terms of section 13(5) of the Non-profit Organisations Act, Act 71 of 1997, and complied with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director of Non-profit Organisation designated in terms of section 8 of the Non-profit Organisations Act, 1997, on good cause shown, otherwise directs (*section 30(3)(g) of the Income Tax Act*); and
- (2.7) has not and will not use its resources directly or indirectly to support, advance or oppose any political party (*section 30(3)(h) of the Income Tax Act*)

### 3.13 Financial Assistance

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is prohibited from providing a loan to, securing a debt or obligation of, or otherwise provides direct or indirect financial assistance to, a Director of the Company or of a related or inter-related company, or to a person related to any such Director. *Item 5(3) of Schedule 1*
- (2) This Memorandum of Incorporation does not limit, restrict or qualify the said financial assistance, loan or securing a debt or obligation if it is in the ordinary course of the Company's business and for fair value; constitutes an accountable advance to meet legal expenses in relation to a matter concerning the Company or anticipated expenses to be incurred by the person on behalf of the Company, is to defray the person's expenses for removal at the Company's request; or is in terms of an employee benefit scheme generally available to all employees or a specific class of employees. *Item 5(4) of Schedule 1 of the Act and section 122(a) of Act 3 of 2011*

### 3.14 Directors' Personal Financial Interests

- (1) No Director or Member may directly or indirectly have any personal or private interest in the Company and the Company is prohibited in terms of this Memorandum of Incorporation from having a share or other interest in any business, profession or occupation which is carried on by its Directors or Members.

### 3.15 Standards of Directors' Conduct

- (1) In this clause, Director includes alternate Director and a Prescribed Officer or a person who is a Member of a Committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company. *Section 76(1)(a)(b)*
- (2) A Director of the Company shall not use the position of Director, or any information obtained while acting in the capacity of a Director to gain an advantage for the Director or for another person other than the Company or a wholly-owned

subsidiary of the Company or to knowingly cause harm to the Company or a subsidiary of the Company and communicate to the Board at the earliest practicable opportunity any information that comes to the Director's attention, unless the Director reasonably believes that the information is immaterial to the Company or generally available to the public, or known to the other Directors; or is bound not to disclose that information by a legal or ethical obligation of confidentiality.

*Section 76(2)(a)(i)(ii) and section 76(2)(b)(i)(ii)*

(3) A Director of the Company shall exercise the powers and perform the functions of Director in good faith and for a proper purpose, in the best interests of the Company and 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. *Section 76(3)(a)(b) and section 76(3)(c)(i)(ii)*

(4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of Director in terms of in the best interest of the Company and with the necessary degree of care, skill and diligence of that Director:

(4.1) the Director shall take reasonably diligent steps to become informed about the matter;

(4.2) the Director has no material personal financial interest in the subject matter of the decision, and has no reasonable basis to know that any related person has a personal financial interest in the matter; or

(4.3) the Director shall disclose any personal financial interest in advance to either the Board, with regard to that matter, and the Director has a rational basis for believing and shall believe, that the decision was in the best interests of the Company and is entitled to rely on:

(4.3.1) the performance by 1 (one) or more employees of the Company whom the Director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(4.3.2) legal counsel, accountants or other professional persons retained by the Company, the Board or a Committee as to matters involving skills or expertise that the Director reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence. *Section 76(4)(a)(i)-(iii), section 76(4)(b)(i)(ii), section 76(5)(a), section 76(5)(b)(i)(ii) and section 76(5)(c)*

### **3.16 Indemnification and Directors' Insurance**

(1) In terms of the Act and this Memorandum of Incorporation the authority of the Company to purchase market related insurance to protect the Company or a Director, as contemplated in section 78(7) in the Act, is not limited, restricted or extended by this Memorandum of Incorporation, giving authority to the Company to purchase insurance to protect a Director against any liability or expenses for which the Company is permitted to indemnify a Director or the Company against any contingency including, but not limited, to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a Director.

PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) may purchase insurance to protect the Company or a Director as set out in section 78(7) of the Act, and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.

(2) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall be entitled to claim restitution from a Director of the Company or of a related Company for any money paid directly or indirectly by the Company to or on behalf of that Director, in any manner inconsistent with this clause of this Memorandum of Incorporation. *Section 78(8)*

- (3) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is prohibited from indemnifying a Director, a Prescribed Officer, a person who is a member of a Board Committee or of the Audit Committee (if applicable) of the Company, irrespective of whether or not the person is also a member of the Company's Board in respect of:
- (3.1) any fine that may be imposed on a Director of the Company or on a Director of a related company, as a consequence of that Director having been convicted of an offence unless a single individual is the sole Member and sole Director of the Company, or if 2 (two) or more related individuals are the only Members of the Company and there are no Directors of the Company other than 1 (one) or more of those individuals;
  - (3.2) a duty contemplated in section 75 relating to the disclosure requirements in terms of the Director's personal financial interests;
  - (3.3) a duty contemplated in section 76 relating to the standards of the Director's conduct;
  - (3.4) any legal consequence arising from an act or omission which constitutes wilful misconduct or wilful breach of trust on the part of the Director;
  - (3.5) liability of Directors and Prescribed Officers is contemplated in section 77(3) relating to the following:
    - (3.5.1) acted in the name of the Company, signed anything on behalf of the Company or purported to bind the Company or authorise a taking of any action by or on behalf of the Company, despite knowing that the Director lacked the authority to do so;
    - (3.5.2) consented to the carrying on of the Company's business despite knowing that it was being conducted in a manner prohibited by section 22(1), in terms of reckless trading;
    - (3.5.3) been a party to an act or omission by the Company despite knowing that the act or omission was calculated to defraud a creditor, employee or Member of the Company, or had another fraudulent purpose. *Section 78(2)(a)(b), section 78(6) and section 77(3)(a)(b)(c)*

## ARTICLE 4 - TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY OF THE COMPANY

### 4.1 Finances of the Professional Body

- (1) The Professional Body for Environmental Hygiene is registered with SARS as a PBO (Public Benefit Organization).
- (2) The Professional Body for Environmental Hygiene will be registered with SARS as "VAT Exempt".
- (3) As the Professional Body is a body of expert practitioners encouraging the development and implementation of continuous professional development and recognition of practitioner designations, all funds received will be applied for these purposes. Should a profit be made at the end of any financial year, the retained income will be applied for the growth of the Professional Body exclusively.
- (4) The membership fee is approved by the AGM on proposal by the Members Board.
- (5) No member of the Professional Body shall receive remuneration from the Professional Body, or use their office for personal financial gain.
- (6) The Members Board can decide to approve reimbursement of expenses and honoraria.
- (7) The income of the Professional Body will be derived from:
  - (7.1) Membership Fees;
  - (7.2) Events; and
  - (7.3) Private and Public grants, donations and sponsorships.
- (8) New members joining as from 1 September shall pay half of the yearly fee.
- (9) The treasury function will be administered by an appointed administrator.

### 4.2 Access to the Company's Records and Financial Statements

- (1) In terms of the Act and this Memorandum of Incorporation, no person, other than a Director and every holder of a beneficial interest in this Company, shall have any right to inspect any accounting records or document of the Company, except the right to do so as conferred by the Companies Act or as authorised by the Board or as authorised by an Ordinary Resolution of the Members or as permitted in terms of this clause of this Memorandum of Incorporation.

The accounting records shall be kept at or be accessible from its Registered Office. The accounting records shall be open to inspection by any of the Directors at any time. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions, the accounting records of the Company or any of them shall be open to inspection by holders, not being Directors, and subject to the rights granted to holders in terms of the Companies Act.

The Board may from time to time in its discretion, grant any Member, on such terms and subject to such conditions and for such period(s) as the Board may from time to time determine in writing, the right to access (inspect and/or copy) any information pertaining to the Company, but no such right if conferred may negate or diminish any mandatory protection of any record, as set out in Part 3 of the Promotion of Access to Information Act, No.2 of 2000, as amended, provided further that the confidential information of the Company is adequately safeguarded and protected.

*Section 24(5), section 26(1)(2)(3), section 50(3)(b) and Regulation 23*

### 4.3 Financial Year End of the Company

- (1) The Company's financial year which is its annual accounting period, ends on a date set out in the Company's Notice of Incorporation, subject to any change made in terms of this sub-article.

The first financial year of the Company begins on the date that the incorporation of the Company is registered, as stated in its registration certificate, and ends on the date set out in the Notice of Incorporation, which may not be more than 15 (fifteen) months after the date that the Incorporation of the Company is registered.

The second and each subsequent financial year of the Company begins when the preceding financial year ends; and ends on the first anniversary of the date that the incorporation of the Company is registered, unless the financial year end has been changed in terms of this sub-article. *Section 27(1), section 27(2)(a)(b), section 27(3)(a)(b) and section 27(6)*

- (2) The financial year end of the Company, or any changes to the financial year end, shall be such period or adjusted period as the Members by Ordinary Resolution from time to time approve. The Board, may, with the prior approval of Member by Ordinary Resolution, change the financial year of the Company in terms of section 27(4). *Section 27(4)*
- (3) The Board of the Company may change its financial year end at any time, by filing a notice of that change by filing Form CoR 25, but the Company is prohibited in terms of this Memorandum of Incorporation to do so more than once during any financial year, the newly established financial year end shall be later than the date on which the notice is filed, and the date as changed shall not result in a financial year ending more than 15 (fifteen) months after the end of the preceding financial year. *Section 27(4)(a)(b)*

#### 4.4 Accounting Records of the Company

- (1) In terms of the Act and this Memorandum of Incorporation the Company shall keep accurate and complete accounting records in one of the official languages of the Republic, as necessary to provide an adequate information base sufficient to enable the Company to satisfy all reporting requirements applicable to it, as set out in this sub-article, and to provide for the compilation of Financial Statements.

PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall maintain the necessary Accounting Records in accordance with section 28 of the Companies Act. *Section 28, section 28(1)(a) and Regulation 25(2)(a)(b)*

- (2) The accounting records shall include a record of any property held by the Company in a fiduciary capacity, or in any capacity or manner contemplated in section 65(2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) *Regulation 25(3)(b)(i)(ii)*

#### 4.5 Financial Statements and Financial Year

- (1) The Company's Financial Statements, including any Annual Financial Statements, shall satisfy the financial reporting standards as to form and content, present fairly the state of affairs and business of the Company, show the Company's assets, liabilities and equity, as well as its income and expenses, set out the date on which the statements were published, and the accounting period to which the statements apply, and bear, on the first page of the statements, a prominent notice indicating whether the statements have been audited in compliance with any applicable requirements of this Act, if not audited, have been independently reviewed in compliance with any applicable requirements of this Act, or have not been audited or independently reviewed, and the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, those statements. *Section 29(1)(a)–(d), section 29(1)(e)(i)(aa)(bb)(cc) and section 29(i)(e)(ii)*
- (2) Any Financial Statements prepared by the Company, including any Annual Financial Statements of the Company in terms of Article: Transparency, Accountability and Integrity of the Company – Annual Financial Statements of this Memorandum of Incorporation, shall not be false or misleading in any material respect, or incomplete in any material particular, subject only to clause 3 of this sub-article. *Section 29(2)(a)(b)*
- (3) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is not limited or restricted by this Memorandum of Incorporation to provide any person with a summary of any particular Financial Statements, but any such summary shall comply with any prescribed requirements, and the first page of the summary shall bear a prominent notice stating that it is a summary of particular Financial Statements prepared by the Company, and setting out the date of those statements, stating whether the Financial Statements that it summarises have been audited, independently reviewed, or are unaudited,



in terms of clause 1 of this sub-article, stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the Financial Statements that it summarises, and setting out the steps required to obtain a copy of the Financial Statements that it summarises. *Section 29(3)(a) and section 29(3)(b)(i)-(iv)*

- (4) This Memorandum of Incorporation permits the Company the flexibility to have its Financial Statements internally or independently compiled and reported. In the event that the statements are independently compiled and reported, it should be prepared by an independent accounting professional, on the basis of financial records provided by the Company, and in accordance with any relevant financial reporting standards. *Regulation 26(1)(e)(i)(ii)(iii) and Regulation 27(1)*
- (5) In terms of this Memorandum of Incorporation, any Financial Statements in terms of this sub-article and Article: Transparency, Accountability and Integrity of the Company – Accounting Records of the Company, of this Memorandum of Incorporation shall comply with the applicable standards for the category of the Company as follows:
  - (5.1) where the Company’s Public Interest Score for a particular financial year is at least 350 (three hundred and fifty) one of IFRS or IFRS for SMEs provided that the Company meets the scoping requirements outlined in the IFRS for SMEs;
  - (5.2) where the Company’s Public Interest Score for a particular financial year is at least 100 (one hundred) but less than 350 (three hundred and fifty) one of IFRS or IFRS for SMEs provided that the Company meets the scoping requirements outlined in the IFRS for SMEs;
  - (5.3) where the Company’s Public Interest Score for a particular financial year is less than 100 (one hundred) and whose statements are internally compiled, the Financial Reporting Standards as determined by the Company for as long as no Financial Reporting Standards is prescribed.

“IFRS” means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body, and

“IFRS for SMEs” means the International Financial Reporting Standards for Small and Medium Enterprises, as issued from time to time by the International Accounting Standards Board or its successor body. *Regulation 27(4)(5)*

- (6) The Directors shall, in accordance with sections 30 and 31 of the Companies Act, cause to be prepared and laid before the Company at its Annual General Meeting its audited or independently reviewed Financial Statements, subject to the Article: Transparency, Accountability and Integrity of the Company – Annual Financial Statements, not less than 10 (ten) business days before the date of any Annual General Meeting, a summarised form of the Financial Statements to be presented at such Meeting and directions for obtaining a copy of the complete Financial Statements for the preceding financial year shall be sent to every Member, subject and in accordance with the provisions of the Companies Act and this Memorandum of Incorporation. Nothing contained in this clause, shall impose a duty on the Directors to send copies of such documents to any person whose address is not known to the Company.

If a Member requests a copy of the Annual Financial Statements, the Company shall make same available to such Member free of charge.

#### 4.6 Annual Return

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) shall file its annual return in Form CoR 30.1 together with the prescribed fee set out in Table CR 2B, unless exempt from such payment in terms of Regulation 30(8), within 30 (thirty) business days after each anniversary of its date of incorporation, in the case of a Company that was incorporated in the Republic, in compliance with section 33(1) of the Act read with Regulation 30, or the date that its registration was transferred to the Republic, in the case of a domesticated Company, including in that return a copy of its Annual Financial

Statements, if it is required to have such statements audited in terms of Article: Transparency, Accountability and Integrity of the Company - Annual Financial Statements Memorandum of Incorporation (section 30(2) and (7) or the Regulations of the Act). *Section 33(1)(a)(b) and Regulation 30(1)(a)*

- (2) In the event that PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is required in terms of this Memorandum of Incorporation and Regulation 28 to have its Annual Financial Statements audited, it must file a copy of the latest approved audited Financial Statements on the date that it files its annual return. *Regulation 30(2)*
- (3) In the event that the Company is not required in terms of this Memorandum of Incorporation or Regulation 28 to have its Annual Financial Statements audited, it may file a copy of its reviewed Financial Statements on the date that it files its annual return. *Regulation 30(3)*
- (4) In the event that PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) has been inactive during the financial year preceding the date on which its annual return becomes due in terms of clause 1 of this sub-article of this Memorandum of Incorporation, the Company may apply to the Commission for exemption from payment of the prescribed fee in terms of clause 1 of this sub-article of this Memorandum of Incorporation, provided that the application is supported by the Financial Statements indicating that the Company had in fact no turnover during that financial year. *Regulation 30(8)*

## ARTICLE 5 - FUNDAMENTAL TRANSACTIONS

### 5.1 Disposals, Mergers and Amalgamations

- (1) PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) is prohibited from amalgamating or merging with, or converting to a Profit Company; or disposing any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company. *Item 2(1)(a)(b) of Schedule 1*
- (2) Any proposal to dispose of all or the greater part of its assets or undertaking or amalgamate or merge with another Non-Profit Company shall be submitted to the Voting Members for approval. *Item 2(2)(a)(b) of Schedule 1*
- (3) A notice of a Members' Meeting to consider a Resolution to approve a disposal shall be delivered at least 10 (ten) business days before the date on which the Meeting is to begin and in the prescribed manner, to each Member of the Company and include a written summary of the terms of the transaction to be considered at the Meeting. *Section 112(3)(a)(b)*
- (4) The Resolution shall be effective only to the extent that it authorises a specific transaction. *Section 112(5) of the Act and section 69(b) of Act 3 of 2011*
- (5) A proposed transaction shall be approved by a Special Resolution adopted by persons entitled to exercise Voting rights on such a matter, at a Meeting called for that purpose and at which sufficient persons are present to exercise, in aggregate, at least 25% (twenty five percent) of all of the Voting rights that are entitled to be exercised on that matter as required by the Company's Memorandum of Incorporation and by a Special Resolution by the Members of the Company's holding Company if the holding Company is a Company or an external Company; the proposed transaction concerns a disposal of all or the greater part of the assets or undertaking of the subsidiary; and having regard to the consolidated Financial Statements of the holding Company, the disposal by the subsidiary constitutes a disposal of all or the greater part of the assets or undertaking of the holding Company. *Section 115(2)(a)(b) and section 71(b)(c) of Act 3 of 2011*
- (6) Any part of the undertaking or assets of the Company to be disposed of shall be fairly valued at the date of the proposal. *Section 112(4)*
- (7) After a Resolution approving an amalgamation or merger has been adopted by each Company that is a party to the agreement, each of the amalgamating or merging companies shall cause a notice of the amalgamation or merger to be given in the prescribed manner and form to every known creditor of that Company but does not apply to a Company engaged in Business Rescue Proceedings, in respect of any transaction pursuant to or contemplated in the Company's Business Rescue Plan. *Section 116(1)(a) and section 116(2)*
- (8) A notice of amalgamation or merger shall be filed with the Commission and shall include confirmation that the amalgamation or merger - has satisfied the requirements of the Companies Act; has been approved in terms of the Companies Act, if so required by that Act; has been granted the consent of the Minister of Finance in terms of section 54 of the Banks Act, if so required by that Act and is not subject to further approval by any regulatory authority; or any unfilled conditions imposed by or in terms of any law administered by a regulatory authority; and the Memorandum of Incorporation of any Company newly incorporated in terms of the agreement. *Section 116(4)(a)(b)*
- (9) An amalgamation or merger takes effect in accordance with, and subject to any conditions set out in the amalgamation or merger agreement; does not affect any existing liability of a party to the agreement, or of a Director of any of the amalgamating or merging companies, to be prosecuted in terms of any applicable law; civil, criminal or administrative action or proceeding pending by or against an amalgamating or merging Company, and any such proceeding may continue to be prosecuted by or against any amalgamated or merged Company; or conviction against, or ruling, order or judgment in favour of or against, an amalgamating or merging Company, and any such ruling, order or judgment may be enforced by or against any amalgamated or merged Company. *Section 116(6)(a)(b) of the Act and section 72(c) of Act 3 of 2011*
- (10) When an amalgamation or merger agreement has been implemented the property of each amalgamating and merging Company becomes the property of the newly amalgamated or surviving merged Company or Companies; and each newly

amalgamated, or surviving merged Company is liable for all the obligations of every amalgamating or merging Company, in accordance with the provisions of the amalgamation or merger agreement, or any other relevant agreement, but subject to section 116(7)(a) and (b) substituted by section 72(d) of Act 3 of 2011.

- (11) If, as a consequence of an amalgamation or merger, any property that is registered in terms of any public regulation is to be transferred from an amalgamating or merging Company to an amalgamated or merged Company, a copy of the amalgamation or merger agreement, together with a copy of the filed notice of amalgamation or merger, constitutes sufficient evidence for the keeper of the relevant property registry to effect a transfer of the registration of that property.

*Section 116(8)*

- (12) If, with respect to a transaction involving a Company that is regulated in terms of the Banks Act, there is a conflict between this sub-article and a provision of section 54 of that Act, the provisions of that Act prevail. *Section 116(9)*

## ARTICLE 6 - DISSOLUTION AND DISTRIBUTION OF NET VALUE OF COMPANY

### 6.1 Winding-Up or Dissolution

- (1) Subject to the requirements of the NQF Act 67 of 2008 (as amended), the Professional Body may be dissolved by a two-thirds majority vote of its members.
- (2) The Professional Body shall fall into abeyance should it fail to elect a Board for two (2) years.
- (3) Deregistration of the Professional Body by SAQA.
- (4) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, no past or present Member or Director of the Company or person appointing 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 the entire net value of the Company shall be distributed to 1 (one) or more Non-Profit Companies, registered external Non-Profit Companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object; and as determined in terms of the Company's Memorandum of Incorporation or by its Members or its Directors at or immediately before the time of its dissolution or by the court, if this Memorandum of Incorporation by its Members or its Directors, at or immediately before the time of its dissolution, failing such determination, in terms of the provisions of the Companies Act 2008 or by order of Court. *Item 1(4)(a)(b) of Schedule 1*
- (5) Any Resolution for the winding-up or deregistration of the Company shall be approved by the Commissioner of the South African Revenue Service.
- (6) On dissolution or liquidation the excess funds and remaining assets of the Company shall be transferred to the Founding Funders (National Contract Cleaners Association and BEECA Cleaning Association), in proportion to the contributions made by the Founding Funders.

## ARTICLE 7 - COMPANY SIGNATURE

### 7.1 Company Signature

- (1) All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, shall be made, signed, drawn, accepted and endorsed, or otherwise executed by a person or persons from time to time authorised by a Resolution of the Board of Directors.
  
- (2) The signature to any notice given by the Company may be:
  - (2.1) written or printed, or partly written and partly printed (section 6(12) of the Act);
  
  - (2.2) effected in any manner provided for in the Electronic Communications and Transactions Act (ECTA). *Section 6(12)(a) of the Act and section 13 of the ECTA*

## SCHEDULE 1 - NUMBER OF DIRECTORS

PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) has the prescribed minimum number of Directors, being 3 (three) at all times.

PROFESSIONAL BODY FOR ENVIRONMENTAL HYGIENE (NPC) has 3 (three) Director(s) at the date of adoption of this Memorandum of Incorporation.