

MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY WITH VOTING MEMBERS

NAME OF COMPANY: South African Monitoring and Evaluation Association

REGISTRATION NUMBER: 2005/043931/08

South African Monitoring and Evaluation Association cultivates a vibrant community that supports, guides and strengthens the development of monitoring and evaluation in South Africa as an important discipline, profession and instrument for empowerment and accountability.

The Association was incorporated previously as a company in accordance with Section 21 of the Companies Act, 61 of 1973.

The Association has adopted this Memorandum of Incorporation by Special Resolution passed on Thursday, 10 November 2016 by the members of the Association at its Special Members' Meeting in substitution for the existing memorandum and articles of association of the company.

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INTRODUCTION

1. The name of the Company is the South African Monitoring and Evaluation Association, hereinafter referred to as “the Company.”
2. The Company is a non- profit company with voting members.
3. In this Memorandum of Incorporation-
 - (a) a reference to a section by the number refers to the to the corresponding section of the Companies Act, 2008;
 - (b) words that are defined in the Companies Act,2008 bear the same meaning in this Memorandum as in that Act; and
 - (c) the following words shall bear the following meaning;
 - (i) “**Act**” means the Companies Act 71 of 2008 as amended from time to time;
 - (ii) “**Annual General meeting**” the annual general meeting of the Company called and constituted or any adjustment thereof;
 - (iii) “**Board**” means the Board of Directors of the Company;
 - (iv) “**Business day(s)**” means any day, except a Saturday, Sunday and South African public holiday;
 - (v) “**Company**” means South African Monitoring and Evaluation Association, registration number 2005/043931/08;
 - (vi) “**Members**” are subscribers to the Company who have their annual fees and shall have a right to exercise a vote as a Member in accordance with the provisions of the Act, but subject to the limitations set out in this Memorandum;
 - (vii) “**Memorandum**” means this Memorandum of Incorporation;
 - (viii) “**Ordinary resolutions**” means resolutions passed by a majority of voting rights (50%) exercised; and
 - (ix) “**Special resolutions**” means resolutions passed by a margin of 70% or more of the voting rights concerned and relate to specified decisions articulated in the Act.

This Schedules attached to this Memorandum are part of the Memorandum.

Article 1 – Incorporation and Nature of the Company

1.1 Incorporation

- (a) The Company is incorporated as a non-profit company with voting members.
- (b) The Company is incorporated in accordance with and governed by-
 - i) the unalterable provisions of the Act that are applicable to non-profit companies;
 - ii) the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
 - iii) the provisions of this Memorandum.

1.2 Objects and Powers of the Company

- (a) The objects of the Company are to provide a platform for interaction and resources for information sharing among all those interested in monitoring and evaluation; to promote high quality intellectual ethical and professional standards in monitoring and evaluation; to increase the profile, understanding and use of monitoring and evaluation theory and practice; to promote the development and adoption of innovative monitoring and evaluation approaches and methods suitable to a South African development context; to increase the profile of South African monitoring and evaluation at national and international level, to promote post graduate education and continuing professional development in the field of monitoring and evaluation.
- (b) From the date and time that the incorporation of the company was registered, as stated in its registration certificate, the Company has all of the legal powers and capacity of an individual, except to the extent that this Memorandum provides otherwise.
- (c) The following ancillary powers are also granted to the Company:
 - i) To incorporate other companies with similar objectives and/or to hold assets of the Company, which other companies are in the opinion of the Board Beneficial to the Company.
 - ii) To amalgamate with other companies who have similar objectives;
 - iii) To partake in the management, supervision or activities of any other company or entity which conduct a business with similar objectives to that

of the Company and to conclude partnerships or joint ventures with such entities.

- iv) To compensate any third party for services rendered by a third party to, for and on behalf of the Company, excluding directors of the Company.
- v) To make donations to any third party save for the Directors of the Company.
- vi) The Board is authorised to take whatever steps may be necessary to acquire, improve and/or expand the immovable property to be owned by the Company or its subsidiaries on the understanding that any acquisition and/or improvement fall within the greater object and powers of the Company.

(d) The ancillary powers granted to the Company may be exercised by the Board when so authorised by the Members.

(e) The Company is subject to the provisions contemplated in section 15(2)(b) or (c) in that:

- i) This Memorandum contains restrictive conditions applicable to the Company and any requirement for the amendment of any such condition in addition to the requirements set out in section 16 of the Act, are included in this Memorandum.
- ii) This Memorandum may be amended in compliance with a court order.
- iii) The court order must be affected by a resolution of the Company's Board and does not require a special resolution.
- iv) In order for the Company to affect an amendment, the Company must file a Notice of Amendment together with the prescribed fee setting out the proposed changes.
- v) If an amendment to this Memorandum has the effect of substituting this Memorandum with a new memorandum, the changes required also apply to the filing of the Amendment.
- vi) If the amendment to this Memorandum has altered this Memorandum, the Company must submit a copy of the amendment to the Commission, who may require the Company to file a copy of its amended Memorandum within a reasonable time.
- vii) This Memorandum may be amended by way of Special Resolution if it is proposed by:

- The Board of the Company; or

- Members entitled to exercise at least 10% (ten percent) of the voting rights of members and it is adopted as a Special Resolution at a members' Meeting.
- (f) Upon dissolution of the Company, its nett assets must be distributed as follows:
- i) the entire nett value after costs of the Company (and its subsidiaries) must be distributed to one or more non-profit companies carrying on activities within the Republic, or voluntary associations, or non-profit trust:
 - ii) having objects similar to its main object; and as determined:
 - in terms of the Company's Memorandum;
 - by its Members, if any, or its Directors, at or immediately before the time of its dissolution; or
 - by the court, if the Memorandum or the Members or Directors fail to make such a determination.
 - iii) The Company must give notice in the Government Gazette of its intended dissolution.
 - iv) The Company must comply with the remaining provisions of the Act.

1.3 Memorandum of Incorporation and Company rules/policies

- (a) This Memorandum of the Company may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b) of the Act.
- (b) The Company's Board may make rules or policies, amend such rules or policies, or repeal any rule or policy relating to the governance of the Company in respect of matters that are not specifically addressed in this Memorandum. Such rules or policies shall be published:
- i) on the Company's website; and
 - ii) emailed to any then serving Director; and
 - iii) be available for inspection by any Member at the Company's principal place of business.

- (c) A rule or policy contemplated above must be consistent with the Act and this Memorandum, and shall take effect on the date specified in the rule, or within 10 (ten) days after publication thereof.
- (d) These rules or policies shall be binding until the next General Members' Meeting of the Company and permanently thereafter once it has been ratified by an Ordinary Resolution at a Members' Meeting, if required.
- (e) The provisions of section 15 of the Act shall apply to any proposed rules/policies.

1.4 Optional provisions: Section 34 of the Act

- (a) The Company elects to be audited unless otherwise directed by an Ordinary Resolution of Members. This election shall be valid until the next General Meeting of Members, whereafter the Members shall annually elect whether or not the Company should be audited for the next year.
- (b) The Company does not need to comply with the extended accountability requirements set out in Chapter 3 of the Act. It is not a requirement for the Company to be subject to an independent review of its Annual Financial Statements.
- (c) The Company may, by Ordinary Resolution by its Members, require to be voluntarily subjected to the provisions of Chapter 3 if so resolved at a General Members' Meeting. Such a resolution shall not be an amendment to this Memorandum of Incorporation.

1.5 Members of the Company

- (a) The Members of the Company are the persons who are defined as "Members" in this Memorandum.
- (b) Membership shall be through subscription and is open to all individuals committed to furthering the interests of the Association. Three categories of membership applies:
 - (i) Individual members who will be individuals interested in participating in or benefitting from the work of the Company, including, but not limited to practitioners. Users of monitoring and evaluation services and monitoring and evaluation educators.
 - (ii) Student members who are enrolled at recognized higher education institutions.

- (iii) Institutional members who are a group of up to fifteen (15) individuals of monitoring and evaluation practitioners in an institution.
- (c) The Members are all in a single class and are eligible to vote as follows:
- i) Each member shall attract one vote, to be exercised by a Member present or by proxy.
 - ii) A Member shall not have a vote if:
 - the Member is in arrears with payment of subscription fees for more than three months; or
 - Membership has been suspended/or terminated from the Company at the time when votes are cast.
 - iii) The Chairperson of the Board shall make a final determination as to which Member is entitled to cast a vote at a Members' meeting should a dispute arise between Members.

Article 2 - Rights of Members

2.1 Members' authority to act

If, at any time, a Member of the Company is also a Director of the Company as contemplated in section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that section is limited as follows:

- (a) The Member cannot bind the Company unless authorised to do so by the Board.
- (b) The Member shall at all times remain subject to the Board Charter applicable to Directors, in addition to the conditions imposed on the Directors in the Act.

2.2 Members' right to Information

Members have the right to inspect the following information in respect of the Company:

- i) the Company's Memorandum, amendments to it and Rules made by the Company;
- ii) Directors' resolutions;
- iii) the Company's financial statements;
- iv) Minutes of General Meetings;
- v) A list of the Company's Members and/or Directors;
- vi) Board Charter.

2.3 Representation by concurrent proxies

- (a) The right of a member of the Company to appoint persons concurrently as proxies is limited and restricted, as a proxy can only be given to another Member and for a particular meeting.
- (b) A proxy should be in writing and as close as possible to a format set out in Schedule 1 to this Memorandum. Such a written proxy must clearly indicate the resolution for which it is given and the manner in which the person holding the proxy should exercise his/her vote.

2.4 Authority of proxy to delegate

A Member's proxy may not delegate the powers to another person.

2.5 Requirement to deliver proxy instrument to the Association

A proxy must be emailed to the Association 24 (twenty four) hours prior to the time of the meeting, or delivered to the meeting.

2.6 Deliberative authority of proxy

- (a) The Member may authorise a proxy to decide in his/her discretion whether to exercise or abstain from voting.
- (b) In case of a Special Resolution, the Member may not delegate such rights in a proxy and should clearly indicate the manner in which the vote falls to be cast.

2.7 Date set to exercise Members' rights

- (a) The Board shall, on not less than 21 (twenty one) business days before the date of an intended meeting, notify Members of any such meeting.
- (b) Notification shall be given:
 - i) by way of notification to Member; or
 - ii) by way of electronic communication; or
 - iii) in a manner which the Board deems appropriate in the circumstances.
- (c) The Board may, in its discretion, increase the record date, but not decrease such a date.

Article 3 - Members' Meetings

3.1 Requirement to hold meetings

The Association is required to hold at least 1 (one) annual Members' meeting per calendar year. The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements,

the election of directors and the appointment of an auditor, and may deal with any other business laid before it.

3.2 Members' right to requisition of a meeting

- (a) Members who hold at least 20 members of the voting rights of the Association may, on requisition to the Board, demand a meeting.
- (b) The requisition should clearly identify the purpose for which the meeting is demanded and contain evidence of the request by 20 members of the voting rights of the Association.

3.3 Location of members' meetings

Members' meetings shall be held at a venue to be decided by the Board of Directors.

3.4 Notice of members' meetings

At least 21 (twenty one) business days' notice needs to be given in respect of any Members' meeting.

3.5 Electronic participation in members' meetings

The Board is authorised to conduct a meeting in any manner, including by electronic communication, as it may in its discretion determine.

3.6 Quorum for Members' meetings

- (a) The quorum requirement for a Members' meeting to begin shall be five members present who are not current board members.
 - a. The time periods provided for in section 64(4) and (5) of the Act are as follows:
 - i) if, within 30 (thirty) minutes after the appointed time for a meeting to begin, a minimum quorum is not present, the meeting shall be postponed without motion for 1 (one) week;
 - ii) the remainder of the provisions of section 64 of the Act apply.
- (b) The authority of a meeting to continue to consider a matter is not limited.

3.7 Adjournment of members' meetings

The maximum period allowable for an adjournment of a members' meeting is 21 (twenty one) business days.

3.8. Members' resolutions

- (a) For an ordinary resolution to be adopted at a Members' meeting, it must be supported by at least 50% of the Members present at the meeting.

- (b) For a special resolution to be adopted at a Members' meeting, it must be supported by at least 70% of the Members present at the meeting.
- (c) A special resolution adopted at a Members' meeting is required to:
 - i) amend the Association's Memorandum;
 - ii) approve the dissolution or voluntary winding up of the Association;
 - iii) approve a proposed amalgamation with another entity with similar objectives;
 - iv) approve the winding up of the Association;
 - v) approve any proposed fundamental transactions as defined in the Act;
 - vi) change the principal objects of the Association.

Article 4 – Directors and Officers

4.1 Composition of the Board of Directors, nomination, election and rotation

- (a) The Board of the Association shall comprise of a minimum of 5 (five) elected Directors but may not exceed 13 (thirteen) elected Directors.
- (b) Members of the Board may serve for a maximum term of three years, however the members of the board may be nominated for re-election after standing down for a period of at least one year after any three year term of office.
- (c) Members will be able to nominate candidates to the Board of Directors and vote for candidates by electronic communication.
- (d) No person shall be elected as a Director or co-opted as a Director if he is ineligible or disqualified in terms of the Companies Act and Regulations and any such appointment or election shall be a nullity. A person placed under probation by a court must not serve as a Director or co-opted as a Director unless the order of the court so permits.
- (e) The Chairperson of the Board of Directors shall be elected by the Board by simple majority.
- (f) The board of directors may elect a deputy chairperson and determine the period for which he is to hold office. The roles and responsibilities of the deputy chair shall be outlined in the Board Charter.
- (g) The Board may appoint a Secretary and Treasurer to assist the Board in fulfilling its duties as stipulated in the Board Charter.

4.2 Co-opted Directors

- (a) The Board may co-opt Directors as it deems appropriate, which Directors may be appointed for a specific purpose or to fulfil a specific task for a duration not exceeding two years. Co-opted Directors must be Members of the Association in good standing.

(b) Co-opted Directors shall not have voting rights on the Board.

(c) Directors co-opted may be removed by the Board on a majority vote if such a Director has not complied with the Board Charter of the Association or any provisions of the Act or any provision of this Memorandum.

4.3 Authority of the Board of Directors

The authority of the Association's Board of Directors to manage and direct the business and affairs of the Association is limited further by the Board Charter, as amended from time to time.

4.4 Board of Directors meetings

(a) The authority of the Association's Board is not otherwise limited.

(b) The right of the Association's Directors to requisition a meeting of the Board may be exercised by at least 30% of Directors.

(c) The authority of the Association's Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication is stipulated in the Board Charter.

(d) The authority of the Association's Board to determine the manner and form of providing notice of its meetings, is not limited or restricted by this Memorandum.

(e) The authority of the Association's Board to proceed with a meeting despite a failure or defect in giving notice of the meeting is limited to the extent that three Directors, being Members, are present there at.

(f) The quorum requirement for a Directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of resolution at such a meeting, are 5 (five) Directors.

(g) If any Director does not attend at least three (3) consecutive meetings scheduled during 12 (twelve) months, that Director will automatically be suspended and removed from his/her directorship.

4.5 Officers and Committees

(a) The Board may appoint any officers it considers necessary to better achieve the objects of the Association.

(b) The authority of the Association's Board to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, or to include in any such committee persons who are not Directors, is not limited or restricted by this Memorandum.

(c) The authority of a committee appointed by the Association's Board is not limited or restricted by this Memorandum.

Article 5 - General Provisions

5.1 Public Benefit Organisation

The Association is a Public Benefit Organisation as provided for in terms of section 10(1) (cN) with section 30 of the Income Tax Act at the time of the adoption of this Memorandum.

5.2 Notification

- (a) Each Member of the Association chooses as his/her *domicilium citandi et executandi* the postal address and email address:
- i) which he/she has nominated to receive monthly statements and communication from the Association in respect of her/his subscription.

5.3 Financial year end

The financial year end of the Association is end February.

5.3 Certified copy of Memorandum of Incorporation

- (a) A certified copy of this Memorandum shall be available at the Offices of the Association.

SAMEA Chair Person,

Mr Dugan Fraser.