

**THE SOCIETIES ACT**

**(CAP 108)**

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**THE CONSTITUTION  
OF THE ASSOCIATION OF STARTUP AND  
SMALL AND MEDIUM ENTERPRISES ENABLERS OF KENYA**

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**Registered this ..... day of ..... 20**

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**DRAWN BY:**

O&M Law LLP

Advocates

5th Floor, The Promenade

General Mathenge Drive

Westlands

P.O. Box 49393-00100

**NAIROBI**

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**PRELIMINARY**

In this Constitution, unless the context otherwise requires, expressions defined in the Societies Act (CAP 108) or any statutory modification thereof in force at the date at which this Constitution become binding on the Association, shall have the meanings so defined and the words standing in the first column of the table next hereinafter contained shall bear the meanings set opposite to them respectively in the second column thereof, namely:

<b>Words</b>	<b>Meanings</b>
<b>Act</b>	The Societies Act (CAP 108) and the regulations therein as may be amended or replaced from time to time;
<b>Admission Criteria</b>	Means the criteria formulated to govern the admission of new members to the Association as may be amended or varied from time to time
<b>Annual Budget</b>	The annual budget of the Association for a particular financial year which shall include, without limitation, the anticipated amount of the working capital required to carry on the business of the Association in that financial year, operating and capital expenditure projections and proposed financing plans for the Association;
<b>Annual General Meeting</b>	The yearly meeting of the Members held in accordance with the provisions of this constitution.
<b>Association</b>	The Association of Startup and Small and Medium Enterprises Enablers of Kenya;
<b>Auditors</b>	The duly appointed auditors of the Association from time to time.
<b>Board</b>	means the board of directors of the Association as may be constituted from time to time.

<b>Business Day</b>	A day (other than a Saturday, Sunday or a gazetted public holiday in Kenya) on which banks are open for the conduct of business in Kenya
<b>Chief Executive Officer</b>	means the chief executive officer of the Association appointed pursuant to the provisions of clause 8.2.
<b>Constitution</b>	This Constitution as now framed or as from time to time altered by a resolution of the Members
<b>Management Team</b>	The management team of the Association as may be constituted from time to time
<b>Member</b>	A registered member of the Association.
<b>Membership Subcommittee</b>	a subcommittee established by the Board to deal with the admission of members and disciplinary processes and procedures with respect to the Members of the Association.
<b>The Register</b>	The register of Members of the Association.
<b>Special General Meeting</b>	A meeting of the Members, other than the Annual General Meeting, convened for a specific purpose.

## SECTION ONE

### PRELIMINARIES

#### **1 NAME**

- 1.1 The association will be known as the **Association of Startup and Small and Medium Enterprises Enablers of Kenya** hereinafter referred to as the **Association**.
- 1.2 The Association may amend its name by way of a resolution passed at a duly quorate meeting of the members of the Association with the affirmative vote of at least seventy five (75%) percent of the members present and entitled to vote and in accordance with the provisions of the Act.

#### **2 MISSION & OBJECTIVES**

##### **2.1 Mission**

To bring together and represent the interests of organisations supporting the development and growth of startups and SMEs for maximum impact of such activities.

##### **2.2 Objectives**

2.2.1 To drive policy and agenda for members of the Association with the government, development partners, investors and other key stakeholders.

2.2.2 To develop rigorous standards and guidelines applicable to the startup and SME enabler industry and ecosystem and stakeholders with interests and operations in relation to such industry (the Industry).

2.2.3 To facilitate capacity building, professional development, networking and partnerships, compliance and protection to its Members in their efforts to develop the Industry and support startups and SMEs.

2.2.4 To promote and position the Kenyan entrepreneurial ecosystem internationally, by creating visibility on key innovation and startup ecosystem indicators, enhancing public awareness of the Industry, and increasing the discoverability of startups for support and investment.

2.2.5 To ease the sharing of information, knowledge and best practices between the members, and forge close linkages between them and other stakeholders (including but not limited to universities, research and development institutions, corporations and business associations).

2.2.6 To actively scout for and where necessary facilitate member access to opportunities through collaborations and partnerships.

##### **2.3 Attaining Objectives**

2.3.1 The Association shall be empowered to do all things necessary which are incidental to and necessary for the attainment of the objectives of the Association.

2.3.2 The Association shall aim to deliver on its objectives without being in direct competition with its constituent members.

## SECTION TWO

## MEMBERSHIP

### **3 Membership Generally**

3.1 Members shall consist of:

3.1.1 original members who signed the application for registration; and

3.1.2 new members subsequently admitted in accordance with this Constitution.

3.2 Membership shall be open to any organization that operates as a startup enabler, SME enabler hub, accelerator, innovation house, makerspace or SME advisor, professional firm, consultant or manager; implementer of activities or programmes for entrepreneurs; professional association, co-working space provider, innovation centre or incubator or undertakes any other activities that are similar to the aforementioned activities and whose objectives are aligned to those of the Association.

### **4 Admission of Members**

4.1 An organization desirous of becoming a Member shall:

4.1.1 complete and submit an application to the Membership Subcommittee which application shall be in the form prescribed and approved by the Membership Subcommittee from time to time;

4.1.2 the application for membership shall be accompanied by the applicant's certificate of registration or incorporation and any other documents as may be requested by the Membership Subcommittee; and

4.1.3 pay such registration and subscription fees as agreed by Members and stipulated by the Membership Subcommittee.

4.2 All applications for membership shall be tabled before the Membership Subcommittee for review based on the membership Admission Criteria. The Membership Subcommittee may admit the applicant as a Member or reject the application without any reason provided that no applicant shall be admitted unless and until such applicant has paid such subscription fees as shall be prescribed from time to time.

4.3 On admission to the membership of the Association, the secretary shall cause each Member, including the Members who signed the application for registration, to sign the Register of Members which act shall constitute an acceptance by the Member to be a member of the Association and to be bound by the provisions of this Constitution, the Ecosystem Code of Conduct as may be amended or varied from time to time and any other rules or regulations in place from time to time.

4.4 In the event that a Member (being a body corporate) proposes to undertake any transaction that leads to a change of Control of such Member then:

4.4.1 the Member shall inform the Membership Subcommittee of the intended change of Control no later than fourteen (14) days prior to effecting the relevant change and shall include such details in respect of the change as may be reasonably requested by the Association in order to enable the Association to amend the Register of Members as may be required;

- 4.4.2 the Membership Subcommittee shall have the right to request such information from the member as may be reasonable in order to determine that following the change of Control the Member will be Controlled by persons of good repute and acceptable to the Association in line with the Admission Criteria and accordingly the membership may continue on the same terms despite occurrence of the change of Control event;
- 4.4.3 if the Member fails to provide such reasonable information as may be requested by the Board or if the Board does not approve of the change of Control then the Board may issue a notice terminating the Member's membership and requiring the Member to submit a fresh application for admission to the Association.
- 4.4.4 for the purposes of this clause 4.4 the term Control means the ability of a person to ensure that the activities and business of another person are conducted directly or indirectly in accordance with the wishes of that person and a person shall be deemed to have Control of a body corporate, partnership or other entity if that person possesses or is entitled to acquire:
- (a) the majority of the issued share capital in that body corporate;
  - (b) the majority of the voting rights in that body corporate, partnership or other entity;
  - (c) the right to receive the majority of the income of that body corporate, partnership or other entity on any distribution by it of all of its income or the majority of its assets on a winding up;
  - (d) the right to appoint or remove a majority of the directors (or equivalent officers) to or from the board (or equivalent body) of that body corporate, partnership or other entity; or
  - (e) the right as a general partner of a limited partnership to conduct ordinary matters connected with the business of that limited partnership,

and the expression **Controlled** shall be construed accordingly;

## **5 Rights and Duties of Members**

- 5.1 Each Member shall be entitled to appoint one (1) representative to the Association and shall have the right from time to time to remove such representative appointed by the Member as the Member may deem fit and to appoint a replacement (the **Member Representative**). The appointment and removal of the representative shall be undertaken through a formal letter duly signed by the appointing Member.
- 5.2 The Member Representative shall represent the appointing Member's interests in the Association, act on behalf of the appointing Member and by so doing be entitled to and deemed to exercise all the rights and privileges for and on behalf of the Member.
- 5.3 Every Member shall be entitled to one (1) vote which shall be exercised by the Member Representative at the Annual General Meeting or whenever called upon.
- 5.4 Each Member undertakes that it shall use its best endeavours to promote the objects of the Association and to procure that the Member Representative appointed by it shall attend meetings of the Association and vote in relation to the affairs of the Association as required.

- 5.5 Each Member admitted to the Association shall be:
- 5.5.1 bound by the Constitution, Ecosystem Code of Conduct and any other rules and regulations of the Association in place from time to time;
  - 5.5.2 liable for such fees and subscriptions as may be fixed by the Association; and
  - 5.5.3 entitled to all advantages and privileges of membership.
- 5.6 Membership subscription shall be levied as follows:
- 5.6.1 the Board shall from time to time and subject to the approval of the Members in an Annual General Meeting, determine the subscription fees which shall be paid by each Member annually in advance.
  - 5.6.2 the membership fees shall be payable annually in advance on such dates and in such manner as the Board may specify to the Member.
  - 5.6.3 a written demand shall be sent by email to the last known address of each Member whose annual membership fee has not been paid 30 days before the next annual general meeting.
  - 5.6.4 if such membership fee has not been paid before the expiration of thirty days from the date of demand, all the privileges of membership of the Member concerned shall be suspended until such membership fee has been paid.

## **6 Suspension and Expulsion of Members**

- 6.1 Subject to the decision of the general meeting, the Association may suspend a Member if the Member:
- 6.1.1 fails to fulfil its obligations and/or acts in contravention of the to the Association whether stated in this Constitution, Ecosystem Code of Conduct and any other rules and regulations of the Association in place from time to time, a resolution of the general meeting or in contravention of any other legal document, provided such a Member has been called upon to do so but has failed;
  - 6.1.2 is convicted in a court of law for a criminal offence involving dishonesty or fraud;
  - 6.1.3 acts in any manner prejudicial to the interests of the Association; and
  - 6.1.4 applies for insolvency or is declared insolvent.
- 6.2 The suspension of a Member shall be undertaken in the following manner:
- 6.2.1 Upon formal and written proof that a member has committed a violation punishable by expulsion or suspension, the Membership Subcommittee shall issue to the Member a thirty (30) day written notice stating the reason(s) for the proposed suspension and requiring them to show cause as to the reason such suspension should be lifted (the Show Cause Notice).
  - 6.2.2 Within fifteen (15) days following the expiration of the Show Cause Notice, the Membership Subcommittee shall initiate an administrative inquiry into any

misconduct on the part of the relevant Member and make a decision on its findings within (15) days of the expiration of the Show Cause Notice.

6.2.3 The Membership Subcommittee may:

- (a) suspend the member pending expulsion by the General Meeting; or
- (b) impose any other punishment as provided for in any applicable Association by-laws.

6.2.4 The suspended Member may appeal to the Board if not satisfied with the decision of the Membership Subcommittee.

6.2.5 The Membership Subcommittee shall present their findings to the next general meeting of the Members which may either lift the suspension or expel the Member.

6.2.6 During the period of suspension, a Member will:

- (a) not be entitled to vote in any of the meetings of the Association;
- (b) continue to participate in the Association activities and events that are open to Members;
- (c) not enjoy any privileges and advantages that are exclusive to Members; and
- (d) continue to be bound by the Constitution and by-laws of the Association.

6.2.7 No Member shall remain in suspension for a period of more than 3 months.

6.3 Membership may be terminated on occurrence of any of the following events:

6.3.1 any material breach by a Member of any of its obligations under this Constitution, Ecosystem Code of Conduct and any other rules and regulations of the Association in place from time to time, provided that, if such breach is capable of remedy, a notice in writing has first been served on that Member by the Association setting out the nature of the breach and such Member has failed within twenty (20) days to remedy such breach to the reasonable satisfaction of the party serving the notice;

6.3.2 if the Member undertakes a change of Control without notifying ASSEK of such change;

6.3.3 any meeting of creditors of the Member being held or any arrangement or composition with or for the benefit of its creditors being proposed or entered into by or in relation to such Member;

6.3.4 a supervisor, receiver, liquidator, trustee, conservator, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within fourteen (14) days) upon the whole or any substantial part of the assets of a Member;

6.3.5 a Member being or becoming unable to pay its debts;



- 6.3.6 voluntary withdrawal of membership by a Member;
- 6.3.7 if its discovered that the Member made false or inaccurate statements in the application for membership of the Association; and
- 6.3.8 If the Member ceases to hold the necessary qualifications required of a member of the Association.

## SECTION FOUR

### GOVERNANCE AND MANAGEMENT OF THE ASSOCIATION

#### **7 Constitution of the Board**

- 7.1 The management of the Association shall vest on the Board which shall be responsible for the overall supervision and overall strategic direction on the affairs, vision and objectives of the Association and the Board.
- 7.2 Unless and until otherwise from time to time determined by Members at the Annual General Meeting, the Board shall consist of eleven (11) members who shall be elected by the Members at the Annual General Meeting (with the exception of the secretary who shall be appointed by the Board in accordance with the provisions of clause 8.2) for a term of two (2) years provided that the Board shall only serve for a maximum of two terms.
- 7.3 The Board shall be comprised of the following:
  - 7.3.1 Chairperson;
  - 7.3.2 Vice Chairperson;
  - 7.3.3 Secretary/Chief Executive Officer appointed in accordance with the provisions of clause 8.2 ;
  - 7.3.4 Treasurer; and
  - 7.3.5 Seven (7) other members
- 7.4 If at any time the number of officials falls below the number fixed above or pursuant to a resolution duly passed at an Annual General Meeting, the remaining officials may act for the purpose of convening a meeting of the Members for the purpose of bringing the number of officials to such required number, and for no other purpose.
- 7.5 At the first Annual General Meeting of the Association all the officers shall retire from office, at the Annual General Meeting in every subsequent year all the officers with the exception of the Chairperson shall retire from office. The position of the Chairperson shall be declared vacant in the subsequent Annual General Meeting.
- 7.6 The Chairperson shall within fourteen (14) days of the change in the Association's officers procure the notification of the Registrar of such changes in accordance with the Act.
- 7.7 A retiring officer shall not be eligible for re-election for a different position other than the one held prior to the officer's retirement.

- 7.8 At the meeting at which an officer retires in the manner aforesaid, the Members may fill the vacated office by electing a person thereto unless at such meeting it is expressly resolved not to fill such vacated office.
- 7.9 The Association may from time to time by ordinary resolution increase or reduce the number of officers, and may also determine in what rotation the increased or reduced number shall retire from office.
- 7.10 The quorum for meetings of the Board shall be such a number of officials representing fifty percent (50%) of the officials entitled to vote at meetings of the Board.
- 7.11 Subject to the provisions of clause 7.11, all resolutions of the Board shall be decided by a majority vote of officials present and entitled to vote at a meeting held in accordance with the terms of this Constitution. Each official present and entitled to vote shall have one (1) vote.
- 7.12 A resolution in writing signed by all members of the Board shall be valid and binding.
- 7.13 The Chairperson at the Board meeting shall be entitled to deliberate and vote, and, in the event of a tied vote, the Chairperson shall exercise a casting vote.
- 7.14 Meetings of the Board may be called by any one (1) official. Unless otherwise agreed by the officials or except in the case of an emergency, there shall be given to each official not less than seven (7) Business Days' notice by e-mail of a meeting of the Board unless a shorter period is agreed to by all the officials. Notice of the meetings shall only be deemed to have been properly issued if delivered and received by the officials. Notice convening a Board meeting shall contain an agenda of the business intended to be conducted at such meeting. Any official may by not less than five (5) Business Days' notice, in writing to the other officials request that further matters be added to the agenda for discussion at the Board meeting.
- 7.15 If within thirty (30) minutes from the time appointed for the Board meeting the requisite quorum is not present, the meeting shall be postponed to the same venue and time on the day falling five (5) Business Days from the date of the first meeting and if such day is not a Business Day then on the immediately following Business Day.
- 7.16 If at such postponed meeting the requisite quorum is not present within thirty (30) minutes from the time appointed for the Board meeting, the meeting shall be postponed further to the same venue and time on the day falling five (5) Business Days from the date of such postponed meeting and if such day is not a Business Day then on the immediately following Business Day. At the further postponed meeting, any officials that shall be present or deemed present at the meeting shall be quorum for purposes of the meeting.
- 7.17 For the purposes of 7.10 above, an official shall be deemed present at any Board meeting if he/she is able to hear and understand all of the proceedings of the meeting and be heard by all present by way of video conference.
- 7.18 The Board shall be responsible for the management of the Association and for that purpose may give directions to the officials as to the manner in which they shall perform their duties which shall at all times be subject to this Constitution. The Board shall have the power to appoint such sub-committees as it may deem desirable to make reports to the Board and to make such resolutions and take such actions as the Board may deem appropriate and desirable.
- 7.19 The Board shall establish a secretariat to oversee the day-to-day running of the Association which shall be funded from such sources as the Board shall determine. The head of such a

secretariat, be it a Chief Executive Officer or Executive Director shall assume the role of Secretary in meetings with the Board.

- 7.20 In cases of urgent matters where the Board may not be immediately available for consultation, the Secretary shall consult the Chairperson or if he/she is not available, the Vice-Chairperson in order to resolve such matters and the Secretary, acting together with the Chairperson, shall be authorised to undertake such interim measures as may be reasonably necessary to protect the interests of the Association and the Members provided that any decisions or measures undertaken by the Chairperson and the Secretary shall be documented in writing and in sufficient details and submitted to the Board for ratification in accordance with clause 7.21.
- 7.21 Any decisions made or measures undertaken by the Secretary and the Chairperson pursuant to the provisions of clause 7.19 shall be subject to ratification by the Board at the next Board meeting.
- 7.22 No person shall hold more than one position on the Board at any one time. Subject to the provisions of clause 7.22, a person shall cease to be a member of the Board at the conclusion of the Annual General Meeting which coincides with the end of his/her term, and he or she will be eligible for re-election thereafter. A person shall not hold the position of a member of the Board for more than two (2) consecutive terms.
- 7.23 A Board official may lose his or her seat on the Board if:
- 7.23.1 without leave from the Chairperson or without advancing any good reason he/she absents himself/herself from three (3) consecutive meetings of the Board; or
  - 7.23.2 he/she resigns from office as such a member of the Board;
  - 7.23.3 if the organization that he/ she represents ceases to be a member;
  - 7.23.4 fails (after final warning in writing) in the opinion of the Association to discharge his/her services efficiently or diligently;
  - 7.23.5 commits any act of gross misconduct or repeats or continues (after written warning) any other serious breach of the official's obligations provided in the Constitution, by-laws code of conduct or any other regulations in place ;
  - 7.23.6 is guilty of any conduct which in the reasonable opinion of the Association brings the official and/or the Association into disrepute;
  - 7.23.7 is convicted of any criminal offence (excluding an offence under road traffic legislation for which the Consultant is not sentenced to any term of imprisonment whether immediate or suspended);
  - 7.23.8 commits any act of dishonesty relating to the Association or any of its members or otherwise;
  - 7.23.9 is in the reasonable opinion of the Association incompetent in the performance of his/her services;
  - 7.23.10 does not comply with any lawful order or direction given by the Association;
  - 7.23.11 becomes guilty or is found guilty of engaging in corrupt practices;

- 7.23.12 becomes of unsound mind; or
- 7.23.13 is declared bankrupt; or
- 7.23.14 the organization that he/ she represents has not fully paid up the annual membership fees.

## **8 Day to Day Management**

- 8.1 There shall be a Management Team that shall be responsible for the day to day operations and management of the Association subject to limits of authority to be prescribed by the Board from time to time and in accordance with the terms of the Service Agreements.
- 8.2 The Company shall have a chief executive officer who shall be appointed by the Board from time to time provided that it is hereby agreed that the Chief Executive Officer of the Company shall be the Secretary.
- 8.3 The Chief Executive Officer shall head the Management Team.

## SECTION FIVE

### **MEETINGS OF THE MEMBERS**

## **9 General Meetings**

- 9.1 The supreme authority of the Association shall vest in the general meeting of the Members which shall be held once annually or such other occasion as may be deemed necessary and in accordance with this Constitution.
- 9.2 The Association shall have two types of meetings of the members: Annual General Meeting and Special General Meetings.
- 9.3 A Special General Meeting may be called for any specific purpose by the Board or at the request of the Chairperson and Secretary or on the written request of one-third of the Members of the Association. The Secretary shall give at least fourteen (14) days' notice, in writing, of the date of the Special General Meeting to the Members. Notice of Special General Meetings shall set out clearly the business for which the meeting has been called. No other business shall be dealt with at that Special General Meeting.
- 9.4 The Annual General Meeting of the Association shall be held no later than the 15<sup>th</sup> day of March of every year.
- 9.5 The Secretary shall give at least twenty-one (21) days' notice of the date of the Annual General Meeting to Members in writing. The notice shall contain an agenda of the business intended to be conducted at such meeting and shall be accompanied by the annual statement of account. Any Member may by not less than three (3) Business Days' notice in writing to the other Members and to the Board request that further matters be added to the agenda for discussion at the said meeting.
- 9.6 All Members that have fully paid up the annual subscription fees may attend and vote at the Annual General Meeting.
- 9.7 The quorum for the Annual General Meeting shall be such a number of Members representing two thirds of the Members entitled to vote at meeting.

- 9.8 If within thirty (30) minutes from the time appointed for the Annual General Meeting the requisite quorum is not present, the meeting shall be postponed to the same venue and time on the day falling five (5) Business Days from the date of the first meeting and if such day is not a Business Day then on the immediately following Business Day.
- 9.9 For the purposes of 9.7, a Member shall be deemed to be present at the Annual General Meeting if he/she is able to hear and understand all of the proceedings of the meeting and be heard and understood by all present or deemed present by way of video conferencing or other suitable means of communication. The Board may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 9.10 The Chairperson of the Board (or in his absence the Vice Chairperson) shall preside at every Annual General Meeting or Special General Meeting of the Association.
- 9.11 If at an Annual General Meeting or Special General Meeting, the Chairperson and the Vice Chairperson are not present within fifteen (15) minutes after the time appointed for holding the meeting, the Board officials present shall elect one of their number to chair the meeting. If no official is willing to chair the meeting or no official is present within fifteen (15) minutes after the time appointed for holding the meeting, the Members present shall choose one of the Members to chair the meeting.
- 9.12 The agenda for an Annual General Meeting shall be:
- 9.12.1 opening statement by the Chairperson.
  - 9.12.2 confirmation that quorum is present.
  - 9.12.3 confirmation of the minutes of the previous Annual General Meeting and any Special General Meeting(s) held since the previous Annual General Meeting;
  - 9.12.4 presentation of annual report of the Association's activities (the Annual Report) by the Board and of the Association's accounts;
  - 9.12.5 presentation of the duly audit accounts of the Association for approval;
  - 9.12.6 presentation and approval of the Annual Budget of the Association;
  - 9.12.7 consideration of the account's adoption of Annual Report;
  - 9.12.8 presentation of Treasurer's statement;
  - 9.12.9 election of new Members of the Board and appointment of Auditor; (only at the end of office bearers' term)
  - 9.12.10 vote of thanks to outgoing Members of the Board; and
  - 9.12.11 any other business which the meeting may, by a two-thirds majority, resolve to allow.
- 9.13 All elections that the Association holds must allow for remote participation and therefore allow for electronic voting by a system available for audit during and after elections. For each election, the Board shall appoint an elections subcommittee to oversee the conduct of free, fair elections.

The election subcommittee, as with all other subcommittees should aim at achieving regional balance and gender inclusivity.

9.14 The Members shall have the following voting powers at the Annual General Meeting and Special General Meetings:

9.14.1 All Members represented in person, virtually or by duly authorized representative shall have one (1) vote each.

9.14.2 Members joining remotely will be provided with a meeting link and voting instructions.

9.14.3 A resolution put to the vote of the meeting shall be decided on a show of hands, live voting link or both in the event of hybrid meeting

9.15 The procedure at meetings shall be as follows:

9.15.1 a declaration by the presiding officer that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book of proceedings of the Association shall be conclusive evidence of the fact with proof of the number or proportion of the votes recorded in favour of or against that resolution.

9.15.2 all questions at any General Meeting of the Association shall be decided by a simple majority of the Members present in person, virtually or by duly authorized representative and who are entitled to vote.

9.15.3 the Chairperson shall be entitled to a deliberate vote and, in the event of a tied vote, the Committee Chair shall exercise a casting vote.

9.15.4 the Association shall within reasonable ability live stream, audio and/or video, of all meetings on a platform accessible by Members.

9.15.5 members streaming, participating and contributing in meetings remotely should be considered.

## **10 Dealings with Members**

10.1 Any negotiations in relation to any proposed agreements (whether for the provision of goods and/or services or otherwise) between any Member (or any of such Member's associated companies or any person Controlled by such Member) or any Member Representative (Related Party) on the one hand and the Association on the other hand (irrespective of whether or not there may be additional parties to such agreements over and above the Association and the Related Party) and all arrangements in relation to such agreements (Related Party Contracts) shall be conducted on an arm's length basis and as if between unconnected persons. It is hereby agreed that the Members and the Association shall procure that such agreements between a Related Party and the Association shall be in writing.

10.2 Each Member hereby undertakes and agrees that it shall, acting in good faith, disclose its interests in any other entities, business ventures or otherwise that may be undertaking activities similar to or in competition with the Association that the Association has invested in or wish to invest in.

- 10.3 A Member Representative who is appointed by the Member with an interest in the Related Party Contracts shall not be entitled to vote at meetings at which such contracts are being discussed and the quorum requirements at such meeting shall exclude such Member Representative for purposes of determining the quorum requirements for purposes of the meeting or decision making at the meeting.

## SECTION SIX

### REGISTERS AND RECORDS

#### **11 Register of Members**

- 11.1 The Secretary of the Board or such other officer or member of the staff of the Association as shall from time to time be directed so to do by the Board shall maintain a Register of Members in such form as may be required by law from time to time and shall enter therein all such particulars of Members as may be so required and keep such Register at all times up to date in every respect and make it open to scrutiny by any Member whenever the need arises subject to the prevailing data and privacy laws applicable within Kenya.
- 11.2 A Member may at any reasonable time inspect the records and documents of the Association.

#### **12 Accounts and Audit**

- 12.1 The Association shall keep proper accounts which shall:
- 12.1.1 be prepared in accordance with international accounting standards and conform with International Financial Reporting Standards;
  - 12.1.2 include the following records—
    - (a) a balance sheet;
    - (b) an income and expenditure account; and
    - (c) a cash flow statement;
  - 12.1.3 be approved by the Board;
  - 12.1.4 be authenticated by at least three (3) Board officers including the Chairperson;
  - 12.1.5 reflect the true and fair state of the Association's affairs; and
  - 12.1.6 explain the Association's transactions including all sums of money received and paid by the Association and the reasons thereto; all sales and purchases of goods and services by the Association; and all assets and liabilities of the Association.
- 12.2 The books of accounts shall be kept at the registered office of the Association or at such other place as may be determined by the Association and shall at all times be available for inspection by Members.
- 12.3 The Association shall cause its accounts to be audited at least once in every financial year by an auditor.

- 12.4 The financial year of the Association shall commence on 1<sup>st</sup> January and end on 31<sup>st</sup> December of each year.
- 12.5 The Auditor shall be appointed at the Annual General Meeting and the remuneration of the person so appointed shall be borne by the Association.
- 12.6 The Auditor shall examine and audit all the books and accounts of the Association annually, and have the power to call for and inspect all books, papers, accounts, records and documents of the Association at any time and report thereon to the Annual General Meeting.
- 12.7 The Auditor shall submit the audited accounts to a general meeting within four (4) months after the end of the financial year and shall include the Auditor's opinion as to whether or not the Association's business has been conducted:
- 12.7.1 in accordance with the provisions of the Act and, whether the books of accounts kept by the Association are in agreement therewith and give a true and fair view of the state of the affairs of the Association; and
- 12.7.2 in accordance with the Association's objectives, Constitution, by-laws and any other resolutions made by the Association at a general meeting.
- 12.8 A copy of the auditor's report on the accounts and statements together with such accounts and statements shall be furnished to all Members at the same time as the notice convening the Annual General Meeting is sent out.
- 12.9 No Auditor shall be an officer of the Association.

## SECTION SIX

### FUNDS AND RESOURCES UTILISATION

#### **13 APPLICATION OF FUNDS AND ASSETS**

- 13.1 The funds and assets of the Association shall be applied solely towards the promotion of the objects of the Association as set forth in this Constitution and no portion thereof shall be paid or transferred directly, or indirectly by way of dividend or otherwise by way of profit to the Members or the Board provided that nothing herein shall prevent the reasonable and proper remuneration to any officer or servant of the Association or any Member, in return for any services actually rendered to the Association, or prevent the payment of interest at a rate not exceeding current bank rates on money lent or reasonable and proper rent for premises demised or let by any member or gifts, bonuses and board allowances.

#### **14 Trustees**

- 14.1 All land, buildings and other immovable property and all investments and securities which shall be acquired by the Association shall be vested in the names of not less than five (5) trustees who shall be members of the Association and shall be appointed at an annual general meeting for a period of three years. On retirement such trustees shall be eligible for re-election. A general meeting shall have the power to remove any of the trustees and all vacancies occurring by removal, resignation or death, shall be filled at the same or next general meeting.
- 14.2 At least three (3) Trustees shall be sitting or past Members of the Board.
- 14.3 The trustees shall pay all income received from property vested in the trustees to the Treasurer. Any expenditure in respect of such property which in the opinion of the trustees is necessary



or desirable shall be reported by the trustees to the committee which shall authorise expenditure of such monies as it thinks fit.

- 14.4 The trustees shall ensure that all property acquired by the Association towards the promotion of the objects or purposes of the Association.
- 14.5 The powers of Trustees shall include:
- 14.6 to purchase, take on lease or on licence or in exchange, lease or hire (with or without the option of purchase) or acquire otherwise any lands (leasehold or freehold), buildings and offices and any estate or interest, easements, privileges and rights in and to any such land, buildings, and offices and apply for and acquire by purchase or otherwise and grant any concessions (reciprocal or otherwise), privileges and rights and purchase or acquire otherwise, furniture, fittings, stationery and movable property and goods of a kind necessary or convenient for the objectives of the Association as may be deemed convenient or desirable to the Association.
- 14.7 to open and operate bank accounts.
- 14.8 to invest in any security in which trust monies may be capitalized; or in any other manner authorised by the rules of the Association.
- 14.9 to borrow money upon such terms and conditions as the Association thinks fit.
- 14.10 to give such security for the discharge of liabilities incurred by the Association as the Association thinks fit.to appoint agents and employees to transact any business of the Association on its behalf for reward or otherwise.
- 14.11 To build, construct, erect, maintain, alter and repair any premises building or other structure of any kind and to furnish, equip and improve the same for use by the Association.to accept donations and gifts in accordance with the objects of the Association.
- 14.12 to provide gifts and prizes in accordance with the objects of the Association.
- 14.13 to enter into any other contract the Association considers necessary or desirable.
- 14.14 to receive, hold, disburse, expend, capitalize or otherwise dispose of money and other property which may be subscribed, bequeathed, or assigned to the Association in or towards the achievement of its objects or any of them, PROVIDED HOWEVER that no part of the monies of the Association may be distributed among the Members of the Association at any time even upon the dissolution of the Association.
- 14.15 to sell, improve, manage, develop, exchange, lease, mortgage, charge, dispose of, turn to account or otherwise deal with all or any part of the property of the Association.
- 14.16 to engage in such transactions or activities as the Board may from time to time approve.]

## **15 FINANCE**

- 15.1 All funds of the Association shall be deposited into the Association's accounts at such bank or recognized financial institution as the Board may determine.
- 15.2 The Board may utilize the funds of the Association to fund the costs and expenses necessary to conduct the business of the Association and further towards funding the operating and working capital requirements of the Association as approved in the Annual Budget

- 15.3 Any capital expenditure to be expended by the Board above or beyond the expenditure approved in the Annual Budget must be presented and approved by the Members.
- 15.4 All accounts due by the Association shall be paid by cheque, electronic funds transfer or any other electronic means available after having been approved for payment by the Board and when immediate payment is necessary, accounts shall be paid and the action endorsed at the next Board meeting.
- 15.5 The signatories to the Association's bank account(s) will be the Treasurer and either the Chairperson or the Secretary.
- 15.6 The Board shall have the power to suspend any official who it has reasonable cause to believe is not properly accounting for any of the funds or property of the Association and shall have power to appoint another person in his/her place. Such suspension shall be reported to a Special General Meeting to be convened on a date not later than two (2) months from the date of such suspension and the general meeting shall have full power to decide what further action should be taken in the matter.

## SECTION SEVEN

### GENERAL PROVISIONS

#### **16 AMENDING THE CONSTITUTION**

- 16.1 Subject to the Association having obtained the prior consent of the Registrar of Societies upon application to the office made in writing and signed by three Members of the Board, no alteration, repeal or addition shall be made to the Constitution unless it is approved by at least a two-thirds majority of Members at the Annual General Meeting, or a Special General Meeting called for that purpose and notice of all motions to alter, repeal or add to the Constitution shall have been given to Members prior to such general meeting.

#### **17 DISSOLUTION**

- 17.1 The Association shall not be dissolved except by a resolution passed by a vote of two-thirds of the members present and entitled to vote at a general meeting of the Members **provided that** no dissolution shall be effected without prior permission in writing of the Registrar, obtained upon application to him or her made in writing and signed by three of the office bearers or made otherwise in accordance with the provisions of the Act.
- 17.2 When the Registrar has approved the dissolution of the Association, no further action shall be taken by the Board in connection with the aims of the Association other than to protect the assets of the Association and liquidate for cash all the assets of the Association. Subject to the payment of all the debts of the Association, the balance thereof shall be distributed in such other manner as may be resolved by the meeting at which the resolution for dissolution is passed.

#### **18 GENERAL**

- 18.1 In this Constitution, unless the context otherwise requires, words importing the singular number only shall include the plural number and vice versa; words importing the masculine gender only shall include the feminine gender; words importing persons shall include corporations.

- 18.2 Reference herein to any provisions of the Act shall, where the context so admits, be construed as a reference to such provision as modified or re-enacted by any statute for the time being in force.
- 18.3 This Constitution shall be governed and construed in accordance with the laws of Kenya.