

**Companies and Intellectual Property Commission**

**Republic of South Africa**

**Memorandum of**

**Incorporation of**

**SOUTH AFRICAN ACADEMY OF FORENSIC SCIENCES NPC**

**Registration Number: 2018/XXXXXX/XX**

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Which is referred to in the rest of this Memorandum of Incorporation as “the Academy”.

The Academy is a Non-Profit company with members, with the following objectives:

1. To promote and protect the interests of the South African Academy of Forensic Sciences and its members, to encourage the development and maintenance of forensic scientific and ethical standards, to encourage research in the forensic sciences, to encourage co-operation and to deal with all such matters as may affect their common interests in respect of forensic sciences.
  - 1.1. For the purposes of the Academy, forensic sciences include the following disciplines as recognised by the Organisation of Scientific Area Committees for South Africa<sup>1</sup>:
    - 1.1.1. Biology/DNA
    - 1.1.2. Chemistry/Instrumental Analysis
    - 1.1.3. Physics/Pattern Interpretation
    - 1.1.4. Crime Scene/Death Investigation
    - 1.1.5. Digital/Multimedia
2. To promote, support or oppose as may be deemed expedient, any legislative or other measures affecting the interests of the Academy or its members.

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<sup>1</sup> <https://www.nist.gov/topics/forensic-science/osac-organizational-structure>

3. To confer with the Government, Provincial Administration or local authorities and their departments and all other interested bodies of concern to, or likely to be of concern to the Academy.
4. To be affiliated to any Association or organisation as may be decided upon by the Academy from time to time.
5. To collect and disseminate information likely to be of use to the Academy's members.
6. To promote a high standard of quality and assurance in the forensic science professions, including certification of forensic scientists.
7. To promote the forensic science profession, by advertisement, publicity campaigns, exhibitions, or other appropriate means.
8. To acquire, either by purchase, lease or otherwise, and to sell, let, mortgage or otherwise deal with or dispose of any movable or immovable property.
9. To establish, maintain or assist in the establishment or maintenance of any fund or committee formed or which may be formed for the protection of the interests of the Academy or its members, or for the protection and benefit of employees, or for the benefit and protection of the joint interests of employers and employees in the forensic science profession, provided that no fund which is not subject to control under any law shall be established until the rules governing such fund have been approved by the Registrar of Companies.
10. To do all other lawful things as may appear to be in the interests of the Academy and its members.

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## **Article 1 – Incorporation and Nature of the Company**

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### **1.1 Incorporation**

1.1.1 The Company is incorporated as a Non-Profit company, as defined in the Companies Act, 2008, and subsequent amendments.

1.1.2 The Company is incorporated in accordance with, and governed by:

- a) the unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit companies;
- b) the alterable provisions of the Companies Act, 2008 that are applicable to Non-Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
- c) the provisions of this Memorandum of Incorporation.

### **1.2 Objects and Powers of the Company**

1.2.1 The Objects of the Company are as set out on the cover sheet. Except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are subject to any restriction, limitation or qualification, contemplated in section 19 (1) (b) (ii) of the Act, as set out in Part A of Schedule 1.

1.2.2 The Company is subject to the provision contemplated in section 15 (2) (b) or (c) of the Act, as set out in Part B of Schedule 1.

1.2.3 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with the provisions set out in Part C of Schedule 1 of this Memorandum.

### **1.3 Memorandum of Incorporation and Company Rules**

1.3.1 This Memorandum of Incorporation 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.

1.3.2 The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) of the Act is not limited or restricted in any manner by this Memorandum of Incorporation.

1.3.3 The Board must publish any rules made in terms of section 15 (3) to (5) of the Act by delivering a copy of those rules to each member by email or by notice on its website.

1.3.4 The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) of the Act by delivering a copy of those rules to each director and member by email or by notice on its website.

**1.4 Optional Provisions of Companies Act, 2008 Do Not Apply**

1.4.1 The Company does not elect, in terms of section 34 (2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008.

**1.5 Members of the Company**

1.5.1 As contemplated in Item 4 (1) of Schedule 1 of the Act, the Company has members, who are in either of two classes, being voting and non-voting members, respectively.

1.5.2 The terms and conditions of membership in the Company are as set out in Part D of Schedule 1 to this Memorandum.

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## **Article 2 – Rights of Members**

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### **2.1 Members' Authority to Act**

2.1.1 If, at any time, a member of the Company is also a director of the Company, as contemplated in section 57 (4) of the Act, the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

### **2.2 Members' right to information**

2.2.1 In addition to the rights to access information set out in section 26 (1) of the Act, a member of the Company has the further rights to information, if any, set out in Part A of Schedule 2 of this Memorandum of Incorporation.

### **2.3 Representation by concurrent proxies**

2.3.1 The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58 (3)(a) of the Act is limited, restricted or varied to the extent set out in Part B of Schedule 2.

### **2.4 Authority of proxy to delegate**

2.4.1 The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58 (3)(b) of the Act is limited or restricted to the extent set out in Part B of Schedule 2.

### **2.5 Requirement to deliver proxy instrument to the Company**

2.5.1 The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's right at a members meeting, as set out in section 58 (3)(c) of the Act is varied to the extent set out in Part B of Schedule 2.

**2.6**            **Deliberative authority of proxy**

2.6.1            The authority of a member's proxy to 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 is limited or restricted to the extent set out in Part B of Schedule 2.

**2.7**            **Record date for exercise of members' rights**

2.7.1            If, at any time the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59 (3) of the Act.

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## Article 3 – Members Meetings

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

3.1.1        The Company is not required to hold any members meetings other than those specifically required by the Companies Act, 2008.

### **3.2**        **Members' right to requisition a meeting**

3.2.1        The right of members to requisition a meeting, as set out in section 61 (3) of the Act, may be exercised by at least 25% of the voting members, as provided for in that section.

### **3.3**        **Location of members meetings**

3.3.1        The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9) of the Act is not limited or restricted by this Memorandum of Incorporation.

### **3.4**        **Notice of members meetings**

3.4.1        The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by section 62 is as approved in section 62(1) of the Act.

### **3.5**        **Electronic participation in members meetings**

3.5.1        The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act is not limited or restricted by this Memorandum of Incorporation.

### **3.6**        **Quorum for members meetings**

3.6.1        The quorum requirement for members meeting to begin, or for a matter to be considered are as set out in section 64 (1) of the Act subject to minimum of 10% in substitution for the 25% required by that section or 30 people whichever is the lowest, provided that there shall never be less than 20 members who hold the Full Member membership grade present in person.

3.6.2 The time period allowed in section 64 (4) and (5) of the Act apply to the Company without variation.

3.6.3 The authority of a meeting to continue to consider a matter, as set out in section 64 (9) of the Act is not limited or restricted by this Memorandum of Incorporation.

**3.7 Adjournment of members meetings**

3.7.1 The maximum period allowable for an adjournment of a members meeting is as set out in section 64 (13) of the Act, without variation.

**3.8 Members resolutions**

3.8.1 For an ordinary resolution to be adopted at a members meeting, it must be supported by more than 50% of the members who voted on the resolution, as provided in section 65 (10) of the Act.

3.8.2 For a special resolution to be adopted at a members meeting, it must be supported by more than 60% of the members who voted on the resolution

3.8.3 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) of the Act.



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## Article 4 – Directors and Officers

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

4.1.1        The Board of Directors of the Company will comprise at least 5 (five) directors, no more than 9 (nine) directors, and no alternate directors each of whom is to be elected -

- a)        in the manner set out in Part A of Schedule 3; and
- b)        serves for a term as set out in Article 4.1.4 and 4.1.5 below.

4.1.2        In addition to the appointed directors there are no *ex officio* directors of the Company, as contemplated in section 66 (4) of the Act.

4.1.3        In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a director of the Company, a person must satisfy the additional requirements and qualifications set out in Part B of Schedule 3.

4.1.4        Each appointed director of the company will serve for a 3-year term, where after they will qualify to be re-elected at a members meeting (except for the President of the Company who will serve for a 4-year term as president and consecutively thereafter 2 years as Past President being a non- executive director).

### **4.2        Authority of the Board of Directors**

4.2.1        The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company as set out in section 66 (1) of the Act is not limited or restricted by this Memorandum of Incorporation.

### **4.3        Board of Directors meetings**

4.3.1        The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 of the Act is not limited or restricted by this Memorandum of Incorporation.

4.3.2        The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73 (1) of the Act, may be exercised by at least 25% of the directors, as provided in that section.

- 4.3.3 The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3) of the Act is not limited or restricted by this Memorandum of Incorporation
- 4.3.4 The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 4.3.5 The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 4.3.6 The quorum requirement for a directors meeting to begin, the voting rights at such a meeting and the requirements for approval of a resolution at such a meeting, are as set out in section 73 (5) of the Act.

#### **4.4 Indemnification of Directors**

- 4.4.1 The authority of the Company's Board of Directors to advance expenses to a director, or indemnify a director, in respect of defence of legal proceedings, as set out in section 78 (3) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 4.4.2 The authority of the Company's Board of Directors to indemnify a director in respect of liability, as set out in section 78 (5) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 4.4.3 The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a director, as set out in section 78 (6) of the Act is not limited or restricted by this Memorandum of Incorporation.

#### **4.5 Officers and Committees**

- 4.5.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- 4.5.2 The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board as set out in section 72 (1) of the Act, or to include in any such committee persons who are not directors, as set out in section 72 (2) (a), (b), and (c) of the Act is not limited or restricted

by this Memorandum of Incorporation.

- 4.5.3 The authority of a committee appointed by the Company's Board, as set out in section 72 (2)(b) and (c) of the Act is not limited or restricted by this Memorandum of Incorporation.

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## Schedule 1 – Incorporation and Nature of the Company

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### Part A

1. Included in the powers of the company, and subject to the Companies Act, 2008 and this Memorandum of Incorporation and the special conditions as set out in paragraph 2 below, are the following powers:
  - a) To form and to have an interest in any companies, with objects similar to those of the company or to acquire all or any of the assets or liabilities of such company or companies, and to transfer to any company or companies all or any assets or liabilities of this company; provided that the said company or companies is/are within the Republic of South Africa and themselves must be approved by SARS in terms of section 30B of the Income Tax Act for the purposes of section 10(1)(d)(iv) of such Act.
  - b) To amalgamate with other companies having objects similar to those of this company; providing that the said company or companies is/are within the Republic of South Africa and themselves is approved by SARS in terms of section 30B of the Income Tax Act for the purposes of section 10(1)(d)(iv) of such Act.
  - c) To take part in management, supervision and control of business or operations of any other company or business having objects similar to those of this company and themselves is approved by SARS in terms of section 30B of the Income Tax Act for the purposes of section 10(1)(d)(iv) of such Act.
  - d) To remunerate any person or persons in cash for services in its formation or in the development of the business;
  - e) To make donations to any other company or institution having the same or similar objectives provided that such company or institution is exempt from income tax in terms of section 10(1)(d)(iv) or 10(1)(cN) or section 10(1)(cA)(i) of the Income Tax Act;
  - f) To act as principal, agent, contractors or trustees in accordance with the main objects of the Company;

g) The Company shall not be entitled to distribute in specie or in kind any assets among its members.

2. To the extent that the company has been approved in terms of section 30B of the Income Tax Act, for the purposes of section 10(1)(d)(iv) of the Income Tax Act, the following special conditions will apply:

- a) None of the directors will be related to each other;
- b) No single person will have directly or indirectly control of the decision-making powers relating to the company;
- c) The company will not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
- d) The company will utilise substantially the whole of its funds for the sole or principal object for which it has been established;
- e) No member may directly or indirectly have any personal or private interest in the company;
- f) Substantially the whole of the activities of the company will be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
- g) The company will not have a share or other interest in any business, profession or occupation which is carried on by the members;
- h) The company will not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- i) Substantially the whole of the company's funding will be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere, or donations from national or international donors;
- j) The company will on dissolution transfer its assets to—

- (aa) another entity approved by the Commissioner in terms of this section;
  - (bb) a public benefit organisation approved in terms of section 30;
  - (cc) an institution, board or body which is exempt from tax under section 10 (1) (cA)(i); or
  - (dd) the government of the Republic in the national, provincial or local sphere;
- k) The directors must submit any amendment of the Memorandum of Incorporation to the Commissioner within 30 days of its amendment;
  - l) The directors will ensure that the company complies with such reporting requirements as may be determined by the Commissioner for SARS from time to time; and
  - m) The company will not knowingly become a party to and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103 (5) of the Income Tax Act.

## **Part B**

1. The company shall collect contributions in the Republic of South Africa as well as outside the borders of the Republic of South Africa.
2. The company shall render its services in the Republic of South Africa, or elsewhere.
3. Amendments to the Memorandum and Articles of Association shall be made according to the procedure and in accordance with the provisions of the Companies Act, 1973.
4. No members and/or director shall use the company to gain personal benefit in any contract concluded with third parties.
5. The income and property of the company shall be applied solely towards the promotion of its main objects and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to the members of the company or to its holding company or subsidiary: Provide that nothing herein contained shall prevent the company in good faith of reasonable remuneration to any officer or servant of the company or to any member thereof in return of any service actually rendered to the company.

## Part C

1. Upon its winding-up, deregistration or dissolution, the assets of the company remaining after the satisfaction of its liabilities, shall be given or transferred to some other educational association or institution having objectives similar to its main objectives, to be determined by the members of the Company at or before the time of dissolution or, failing such determination by the Court; provided that such other association or institution are within the Republic of South Africa and themselves exempt in terms of section 10(1)(d)(iv), or has been approved by SARS as a public benefit organisation as contemplated in section 30 of the Income Tax Act, or is exempt from income tax in terms of section 10(1)(cA)(i) of the Income Tax Act

## Part D

1. Any person who is employed as or practices as a forensic scientist or has an interest in the forensic sciences and makes a written application to become a member of the company and who subscribes to the objects of the company, meets the minimum requirements for membership of the membership category and section that they seek registration in, and complies with the code of conduct and ethics, and processes of the Academy as may be developed in the future, can be a member of the company.
2. All applicants are subject to the approval by the Corporation and the Company's Board of Directors. An applicant may not be admitted if he or she has a criminal conviction. All applicants must complete and submit a written application, pay applicable membership fees and agree to those Articles and the operational guidelines established by the corporation.
3. A member shall *ipso facto* cease to be a member of the company:
  - 3.1 If he or she is convicted of a criminal offence;
  - 3.2 If his or her estate is finally sequestrated;
  - 3.3 If he or her is placed under curatorship;
  - 3.4 If he or she is removed as a director by majority of the members;
  - 3.5 if he or she is removed as a member by the Directors.

4. If by notice in writing to the company he or she resigns as a member but such resignation shall not become effective until accepted by the company, and shall not relieve the resigning individual from the payment of dues for the expired portion of the current fiscal year, or give any right to rebate for dues paid, or any right to prorated share or any other of the assets of the Academy. All resignations shall be in writing.
5. He or she dies.
6. The membership of the company shall consist of:

6.1. **Full Member**

To qualify as a full member, a person must meet the following minimum criteria:

- Have a minimum of five years' experience in one of the forensic science disciplines in the table below.
- Be in possession of a degree relevant to the forensic science discipline / sub-discipline that you have experience in, as indicated in the table below.

	Forensic Science Discipline	Minimum Degree Requirement
1	Biology/DNA	NQF level 8 degree in biology, biochemistry, molecular biology
2	Digital/Multimedia	NQF level 8 degree in information technology, computer science, mathematics, electrical/electronic engineering
3	Chemistry/Instrumental Analysis	NQF level 8 degree in chemistry, physics
4	Physics/Pattern Interpretation	NQF level 8 degree in chemistry, physics
5	Crime Scene/Death Investigation	NQF level 8 degree in biology, chemistry, physics

Or

- Have a minimum of 10 years' experience in one of the forensic science disciplines in the table below.
- Submit a portfolio of evidence for this discipline which clearly demonstrates competency in the skill and knowledge necessary for that discipline. This portfolio if evidence will be assessed by a recognition of prior learning panel from the Academy, against the United Nations Office on Drugs and Crime Staff



## Skill Requirements for Forensic Science Laboratories<sup>2</sup>.

The person must also agree to be bound by the code of ethics and conduct of the Academy; to be bound by the terms of the Memorandum and Articles of Association of the company; and having been admitted to membership pay an annual contribution of such an amount that the board of directors will determine.

### 6.2. **Student Member**

Persons who are studying one or more of the forensic science disciplines at a University as part of a program or course recognised by the Academy, as set out in section 1.1 of the Objectives of the company; who agrees to be bound by the code of ethics and conduct of the Academy; who agrees to be bound by the terms of the Memorandum and Articles of Association of the company, and having been admitted to membership pay an annual contribution of such an amount that the board of directors will determine.

### 6.3. **Associate Member**

To qualify as an associate member, a person must agree to be bound by the code of ethics and conduct of the Academy; to be bound by the terms of the Memorandum and Articles of Association of the company; and having been admitted to membership pay an annual contribution of such an amount that the board of directors will determine.

7. All membership subscriptions shall become due and payable no later than the 28<sup>th</sup> February of each year.
8. A member may be fined, suspended, or expelled from the Academy by the Directors for being in arrears with subscriptions for more than 90 days, failing to uphold the code of conduct or ethics or other operational procedures that may apply, acting against the interests of the company or its members or any other reason which in the opinion of the Directors may be reasonable under the circumstances.
9. A member fined by, suspended or expelled from the Academy shall, by written notice delivered to the Directors not more than 7 (seven) days after the date of fining, suspending or expelling be entitled to appeal to a General Meeting of members of the Company, which the Directors shall on receipt of the notice forthwith convene.

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<sup>2</sup> [https://www.unodc.org/documents/scientific/Ebook\\_STNAR\\_02Rev1\\_E.pdf](https://www.unodc.org/documents/scientific/Ebook_STNAR_02Rev1_E.pdf)

## **PART E**

1. Voting rights:
  - 1.1 Full members have voting rights and are entitled to 1 vote.
  - 1.2 Associate and Student members have no voting rights.

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## Schedule 2 - Rights of Members

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### Part A

Not applicable.

### Part B

1. A member of the company may only appoint one person as proxy, who must hold the same membership grade as the member granting the proxy.
2. A proxy may not delegate the proxy's authority to act on behalf of the member to another person.
3. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarial certified copy of such power or authority shall be deposited at the registered office of the company not less than twenty-four (24) hours (or such lesser period as the directors may unanimously determine in relation to any particular meeting) before the time for holding the meeting (including an adjourned meeting) at which the person named in the form proposes to vote, and in default the form of proxy shall not be treated as valid
4. A proxy is not entitled to exercise, or abstain from exercising, any voting right of the member without direction.
5. The proxy form submitted in terms of Part C of Schedule 2 (c) will be deemed to be the actual vote of the member.

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### Schedule 3 – Directors of the Academy

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#### Part A

1. The Academy may from time to time at any meeting of members increase or reduce the number of directors, however the minimum number of Directors can never be reduced to less than five, and the maximum can never exceed nine. No matter the number of Directors, the total number of Directors must be an odd number.
2. The number of initial Directors is five.
3. Unless otherwise decided by a meeting of members any casual vacancy occurring in the board of directors may be filled by the directors.
4. The Academy at a meeting of members or the directors shall have power at any time, and from time to time, to appoint any person as a director but so that the total number of directors shall not at any time exceed the maximum number of fixed by or in terms of these Articles.

#### Part B

1. Directors must be members of the Academy who meet the following requirements:
  - 1.1. They must be members holding the grade of Full Member.
2. A director shall cease to hold office as such if:
  - 2.1. He or she ceases to be a director by virtue of any of the provisions of the Statutes or become prohibited for being a director by reason of any order made under the Statutes; or
  - 2.2. His or her estate is sequestrated or he or she files an application for the surrender of his or her estate any application for an administration order, or if he or she commits an act of insolvency as defined in the insolvency law for the time being in force, or if he or she makes any arrangement or composition with his creditors generally; or
  - 2.3. He or she is found lunatic or becomes of unsound mind; or
  - 2.4. He or she is removed by a resolution of the company as provided in the Statutes; or

- 2.5. He or she resigns his or her office by notice in writing to the company; or
- 2.6. A notice removing him or her from office is signed by members having a right to attend a vote at a meeting of members who hold not less than seventy five percent (75%) of the total voting rights of all the members who are at that time entitled so to attend and vote and is delivered to the company or lodged at its registered office; or
- 2.7. He or she no longer holds the Full Member membership grade.
- 2.8. He or she is otherwise removed in accordance with any provisions of these Articles.
3. No director or intending director shall be disqualified by his or her own office from contracting with the company in any manner whatsoever.
- 3.1. Such director shall not be entitled to vote at any board meeting or otherwise in relation to such contract and shall be reckoned for the purpose of constituting a quorum of directors.