

MEMORANDUM OF INCORPORATION

SOUTH AFRICAN MEDICO-LEGAL ASSOCIATION (SAML A)

Non-Profit Company

Registration Number: 2005/013822/08

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1. DEFINITIONS

- 1.1. In this Memorandum of Incorporation, unless the context indicates otherwise:
- 1.2. "Act" - shall mean the Companies Act 71 of 2008, as amended;
- 1.3. "Board Sub-Committee" - shall mean a body or bodies created in terms of section 9.1 of this Memorandum of Incorporation;
- 1.4. "Board of Directors" - shall mean the Board of Directors of the Company and "Board" shall have a similar meaning;
- 1.5. "Business Day" - shall mean any day, but excluding Saturdays, Sundays and proclaimed public holidays in the Republic of South Africa, and "day" or "days" shall have a similar meaning;
- 1.6. "Chairperson" - shall mean the Chairperson of the Company as appointed to that position in terms of clause 3.2.1.2.4;
- 1.7. "Commission" - shall mean the Companies and Intellectual Property Commission;
- 1.8. "Company" - shall mean the South African Medico-Legal Association, with its shortened name as SAMLA, a Non-Profit Company incorporated in terms of the Companies Act 71 of 2008, as amended;
- 1.9. "Director" - shall mean a Member of the Board of Directors of the Company, elected in accordance with this Memorandum of Incorporation or subordinate regulations;

- 1.10. "National Executive Committee" - as referred to in clause 3.2.2;
- 1.11. "Financial year" - shall mean the twelve month period beginning on 1 August of any one year and ending on 31 July, or such other twelve month period in a calendar year as the Board may decide;
- 1.12. "Fundamental transactions" - shall mean dispose of all or the greater part of its assets or undertaking; or amalgamating or merging with another non-profit Company;
- 1.13. "Good standing" - shall mean that, at that particular moment in time, the Member in question must not owe the Company any money, nor have been found guilty of any misconduct by a Disciplinary Tribunal of his or her professional body, which misconduct led to suspension or termination of his or her membership of the Company as determined by the Board of Directors, and must have satisfied all the requirements for recertification in a timeous manner;
- 1.14. "Industry" - shall mean the industries of Medicine and Law, as they are practised by their Members, and as prescribed and regulated by the different professional bodies;
- 1.15. "Member" - shall mean a person who has satisfied the requirements for membership;
- 1.16. "Memorandum of Incorporation" - shall mean this Memorandum of Incorporation of the Company and "Memorandum" shall have a similar meaning;

1.17. “Special Resolution” - shall mean a decision supported by at least 75% (seventy-five-percent) of the voting members present and members represented by proxy at a meeting;

1.18. “Transformation” - shall mean the Company’s pursuit of surpassing excellence in its purpose and business which must include the promotion of : ethical and competent practice; zero clinical negligence; the rule of law; constitutional supremacy; dignity; equality and the achievement of freedoms in medico-legal practice for the benefit of public interest as contemplated in the founding values and Bill of Rights as specified in the Constitution of the Republic of South Africa, Act 108 of 1996; and

1.19. “Voting Rights” - shall mean the right to exercise a vote at all or some of the meetings of the Company, and/or during a ballot amongst members of the Company in accordance with the provisions of the Memorandum.

2. INTERPRETATION OF THIS MEMORANDUM OF INCORPORATION

2.1. Words in this Memorandum denoting the singular shall include the plural and vice versa and words denoting the masculine shall include the feminine gender. Words denoting natural persons shall include legal persons;

2.2. Where appropriate, meanings ascribed in defined words and expressions in the definition clause, shall impose substantive obligations on the parties as provided for in the definition concerned;

2.3. The section headings in this Memorandum have been inserted for

convenience only and shall not be taken into account in its interpretation;

2.4. Words and expressions defined in any section or subsection(s), for the purposes of the section / subsection of which that subsection forms part, bear the meaning assigned to such words and expressions in that section or subsection;

2.5. Unless otherwise indicated, any expression to which a meaning is ascribed in the text of this Memorandum shall bear that meaning whenever such expression appears thereafter;

2.6. If any provision in a definition in this Memorandum is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of this Memorandum, notwithstanding that it is only in the definition section;

2.7. In this Memorandum, unless the contrary intention appears:

2.7.1. a reference to a recital, section, schedule or annex is a reference to a section or recital, schedule or annex to this Memorandum and references to this Memorandum include any recital, schedule or annex;

2.7.2. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactment or replacements of any of them;

2.7.3. a reference to a day is to be interpreted to the period of time commencing at midnight and ending 24 (twenty four) hours later;

- 2.8. If an event must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- 2.9. A reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to any one or more of them;
- 2.10. A reference to a day, a month or a year shall be construed as a calendar day, month or year, as the case may be;
- 2.11. When any number of days is described in this Memorandum, same shall be reckoned exclusively of the first day and inclusively of the last day unless the last day is not a Business Day in which case the last day shall be the next succeeding Business Day;
- 2.12. Any issue not specifically addressed in this Memorandum, shall be governed by the provisions of the Act;
- 2.13. Unless the context clearly indicates otherwise, a person elected and/or appointed to a position in accordance with this Memorandum shall remain in that position until he or she resigns after reasonable notice and such notice period expires, is disqualified and/or replaced by his or her successor in accordance with this Memorandum.

3. INCORPORATION, MANAGEMENT AND NATURE OF THE COMPANY

3.1. Incorporation of the Company

3.1.1. The Company is incorporated as a Non-Profit Company with non-shareholding members.

3.1.2. The Company is incorporated in accordance with, and governed by:-

3.1.2.1. provisions of the Act, subject to any limitation, extension, variation or substitution set out in this Memorandum; and

3.1.2.2. the provisions of this Memorandum.

3.2. Management of the Company

3.2.1. The Board

3.2.1.1. The national business and affairs of the Company shall be managed by or under the direction of the Board of Directors, comprising of executive and non-executive directors, who may exercise all the powers and perform any of the functions of the Company permitted by law, except to the extent that the Act or this Memorandum provides otherwise, which are not by the Act or by this Memorandum reserved to be exercised by the Company at an Annual General Meeting or Special General Meeting.

3.2.1.2. The Board assumes the following national roles, but its duties are not limited to:

3.2.1.2.1. ensuring that the Company is and is seen to be a responsible corporate citizen pursuing activities in public interest in line with its purpose imbued in constitutional values expressed in section 1 (a) to (c) of the Constitution of the Republic, 1996 ;

3.2.1.2.2. determining strategies, assessing risks and performance as well as ensuring sustainability of the Company;

3.2.1.2.3. accepting responsibility for strategic direction, on-going monitoring and evaluation and overall governance of the Company;

3.2.1.2.4. appointing the national Chairperson and measuring the performance of the national and provincial Chairpersons, as well as all office bearers;

3.2.1.2.5. ensuring that the Board, provincial branches and its national committees or sub-committees are evaluated annually;

3.2.1.2.6. ensuring that all powers contemplated in section 3.2.7 of this Memorandum are implemented.

3.2.2. The National Executive Committee

3.2.2.1. In order to give effect to the management of the Company in an efficient manner, the Board of Directors

shall appoint a national executive committee that will be responsible for the day-to-day administration, planning and management of the affairs of the Company, including the coordination of activities of board committees or sub-committees, and to give direction and strategic leadership to such committees from time to time;

3.2.2.2. the national chairperson, national deputy chairpersons, branch-chairpersons, national administrative- and communications director and national treasurer will be ex officio members of the national executive committee;

3.2.2.3. the national executive committee shall also comprise over and above 3.2.2.2, of any additional acting director or directors deemed necessary by the Board from time to time;

3.2.2.4. the members of the Board serving on the national executive committee will be regarded as executive directors;

3.2.2.5. the Board of Directors may give directions to the national executive committee from time to time in the performance of its functions; and

3.2.2.6. the executive committee must account to the Board annually in terms of its performance and failings in meeting the purpose, business and objectives of the Company.

3.2.3. The Chairperson and Deputy Chairpersons

3.2.3.1. The duties of the national chairperson and deputy chairpersons include the following:

3.2.3.1.1. ensuring that the Company's performance and interaction with its stakeholders is guided by the Constitution and the Bill of Rights;

3.2.3.1.2. appreciating that strategy, risk, performance and sustainability are inseparable;

3.2.3.1.3. identifying prescribed officers of the Company and ensuring that these prescribed officers understand their duties and liabilities;

3.2.3.1.4. ensuring that the Company complies with applicable laws and considers adherence to nonbinding rules, codes and standards;

3.2.3.1.5. providing the Company and the Board with leadership.

3.2.4. Name of the Company

3.2.4.1. The name of the Company is South African Medico-Legal Association, with its shortened name as SAMLA.

3.2.5. Official Address of the Company

3.2.5.1. Business Address: 85 St Patrick Road,
Houghton,
Johannesburg
2198

3.2.5.2. Registered Address: Same as business address.

3.2.5.3. Postal address: P O Box 1158
Houghton
2041

3.2.6. The Board of Directors may change the addresses above as the need arises.

3.2.7. Business, Purpose and Powers

3.2.7.1. From date of registration of this Memorandum with the Companies and Intellectual Property Commission, the Company:

3.2.7.1.1. is a juristic person, which exists continuously until its name is removed from the Companies Register in accordance with this Act;

3.2.7.1.2. has all the legal powers and capacity of an individual except to the extent that this Memorandum provides otherwise;

3.2.7.1.3. is constituted in accordance with the provisions of the Act and any further provisions of this Memorandum;

- 3.2.7.2. this Memorandum is subject to the provisions contemplated in section 15(3) of the Act and as set out in this Memorandum;
- 3.2.7.3. upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with the provisions as set out in section 10.2 of this Memorandum.
- 3.2.7.4. The purpose and business of the Company shall be to advance and promote public interest by way of:
- 3.2.7.4.1. educational and other similar activities which enhance and complement the interaction between medicine and law within the health professions and legal professions in order not only to actualize the right to education as envisaged by section 29(1) of the Constitution of the Republic of South Africa, 1996 but also to promote excellence in its activities;
 - 3.2.7.4.2. educational and similar other activities that enrich and foster the inter-relationship between medicine and law in the medico-legal field of study and practice of health professionals, legal professionals, academics and students, enhancing freedom of association as contemplated in section 18 of the Constitution of the Republic of South Africa, 1996; and
 - 3.2.7.4.3. educational and other similar activities that promote the rights to dignity, life, equality, freedom of expression and the advancement of human

freedoms including, but not limited to, facilitating medico-legal mediation and arbitration where apposite.

3.2.7.5. The Company shall, in the achievement of its purpose:

3.2.7.5.1. promote freedom of expression, particularly section 16(1)(b),(c) and (d) of the Constitution of the Republic of South Africa;

3.2.7.5.2. strive to actualise the rights to dignity, life, bodily- and psychological integrity and healthcare as entrenched in sections 10, 11, 12(2), 27(1)(a), 27(3), 28 (1) (c) (d) and 28 (2) of the Constitution of the Republic of South Africa; and

3.2.7.5.3. promote constitutional values of human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism, non-sexism, the supremacy of the Constitution of the Republic of South Africa and the rule of law.

3.2.7.6. The Company acknowledges that transformation is innate to its purpose and business.

4. MEMORANDUM OF INCORPORATION

4.1. This Memorandum may be altered or amended as contemplated in section 10.1 of this Memorandum.

4.2. The Board of Directors is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this Memorandum.

4.3. The Company must publish a notice of any alteration of this Memorandum by delivering a copy of those alterations to each Member and Director by electronic medium.

4.4. The Company elects to not voluntarily comply with the provisions of Chapter 3 of the Act, except to the extent as required by this Memorandum stipulated in section 5.

5. ACCOUNTABILITY AND TRANSPARENCY

5.1. Accounting Records

5.1.1. The financial year of the Company shall be in accordance with the period defined in the definitions above.

5.1.2. The Company shall keep such Accounting Records as are necessary to represent the state of affairs and business of the Company, and to explain the transactions and financial position of the Company including:

5.1.2.1. records showing the assets and liabilities of the Company;

5.1.2.2. a register of fixed assets showing the respective dates of acquisition and the cost thereof, depreciation, if any, the respective dates of any disposals and the consideration received in respect thereof; and

5.1.2.3. records, containing entries from day to day in sufficient detail of all cash received and paid out of the matters in respect of which receipts and payments take place.

5.1.3. The books of account shall be kept at the address of the treasurer or at such other place or places as the Board deem fit, and shall always be open to inspection by the Directors.

5.1.4. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members, not being Directors, and no Member (not being a Director) shall have the right of inspecting any account or document of the Company except as conferred by statute or authorised by the Board or by the Company in a General Meeting, or as contemplated in section 6.3 of this Memorandum.

5.1.5. The Board shall in respect of every financial year of the Company cause to be made Annual Financial Statements in accordance with the Act and shall lay them before the Annual General Meeting of the Company in respect of that year.

5.1.6. A copy of the Annual Financial Statements which are to be laid before the Company in an Annual General Meeting, shall lie for inspection at the address of the secretary or treasurer not less than 15 (fifteen) business days before the date of the meeting, provided further that such copy may be sent in any electronic format to any Member able to receive such a copy in electronic format and at the request of such Member.

5.2. Optional Provisions of the Act

5.2.1. The Company elects not to voluntarily comply with the complete provisions of Chapter 3 of the Act, except in the following regard:

5.2.2. The Annual Financial Statements of the Company are to be audited and shall:

5.2.2.1. include an Auditor's report;

5.2.2.2. include a report by the Directors with respect to the state of affairs, the business and profit or loss of the Company, or of the group of Companies, if the Company is part of a group, including any matter material for the members to appreciate the Company's state of affairs;

5.2.2.3. include any other prescribed information;

5.2.2.4. be approved by the Board and signed by an authorised Director; and

5.2.2.5. be presented to the first Member's meeting after the statements have been approved by the Board;

5.2.2.6. include the remuneration and benefits received by each Director, or individual holding any prescribed office in the Company.

5.2.3. The Company must appoint a registered Auditor as prescribed by sections 84 and 85 of the Act.

6. MEMBERSHIP

6.1. Terms and Conditions of Membership

6.1.1. Additional terms and conditions of membership of the Company may be determined by the Board of Directors from time to time.

6.1.2. The Company shall have non-shareholding members who are voting members, subject to the provisions of section 6.2 below.

6.1.2.1. The Company shall establish and maintain a membership register.

6.1.2.2. Membership of the Company shall be personal or juristic and non-transferable and shall be subject to *inter alia*:

6.1.2.3. Membership is limited to persons applying for membership and who are accepted as such by the Board of Directors;

6.1.2.4. The acceptance of any person as a Member of the

Company by the Board of Directors shall be in the lawful discretion of the Board, which shall provide reasons if an application for membership has not been accepted, and reasons are requested within fourteen days from the decision;

6.1.2.5. The decision of the Board of Directors on acceptance or not of a person as a Member of the Company shall be final and binding save for mediation, arbitration or judicial review;

6.1.2.6. In order to become a Member of the Company, the prospective Member shall be bound to pay a single amount annually to the Company as membership fee;

6.1.2.7. The single amount which shall be payable from time to time by any prospective Member, shall be determined annually by the Company at its Annual General Meeting;

6.1.2.8. Honorary membership may be conferred by the majority vote of the Board of Directors.

6.1.2.9. No membership fee shall be payable by any Honorary Member;

6.1.2.10. Honorary membership may be terminated in the same manner as ordinary membership;

6.1.2.11. Honorary members will be entitled to participate in the deliberations and decision-making process of the Company at Member's meetings and at meetings of the Board of Directors upon invitation, but shall have no voting

rights at meetings of the Board of Directors; and

6.1.2.12. Any such further regulations and policies as determined by the Board of Directors from time to time.

6.1.3. The Company may not give financial aid, either directly or indirectly, by means of a loan, guarantee, the issuing of securities, or in any other manner to any person for the purpose of obtaining membership.

6.1.4. Membership is not transferable upon death or resignation or vacating of the office of the Member. Such membership shall then become null and void.

6.1.5. Members shall subscribe to the Company's values and ethos as contained in this Memorandum.

6.2. Voting Rights of Members

6.2.1. Voting Members shall all be registered members of the Company whose membership has been approved by the Board of Directors. The Voting members must be in good standing, upon which full voting rights are conferred in all matters relating to the governance of the Company and subject to their annual membership fees being fully paid-up.

6.3. Other Rights of Members

6.3.1. Members' right to information

6.3.1.1. In addition to the rights to access to information set out in section 26 (1) of the Act, a Member of the Company

shall have a right to information as set out in this Memorandum or as determined by the Promotion of Access to Information Act 2 of 2000, as amended.

6.3.2. Representation by concurrent proxies

6.3.2.1. Members are restricted to appointing fellow voting members as proxies for a specified meeting.

6.3.3. Authority of proxy to delegate

6.3.3.1. The authority of a Member's proxy to delegate the proxy's powers to another person is limited by this Memorandum.

6.3.4. Requirement to deliver proxy instrument to the Company

6.3.4.1. A copy of the instrument appointing the proxy may be signed and delivered electronically or in hard copy to the Company, or alternatively may be submitted electronically by email or text message from the registered email address or mobile number of the Member, before the proxy exercises any rights of the Member at a Members' meeting.

6.3.5. Deliberative authority of proxy

6.3.5.1. 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, is not limited or restricted by this Memorandum, save to the extent to which the proxy instrument provides otherwise.

6.3.6. Record Date for exercise of Member's Rights

6.3.6.1. The record date for a Member to exercise his or her rights will be as follows:

6.3.6.1.1. in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or

6.3.6.1.2. the date of the action or event, in any other case.

6.4. Termination of Membership

6.4.1. The Board of Directors of the Company may, in their discretion, terminate any membership if, in the opinion of the Board, and after considering the recommendations of a disciplinary committee, consisting of the Chair and at least two other directors who must investigate and report to the Board its findings after a hearing upon reasonable notice, such Member has contravened this Memorandum, or has failed to carry out his obligations as a Member of the Company or if such Member's conduct is regarded detrimental to the interest or the purpose or the main object and business of the Company. The decision of two thirds of the Board of Directors of the Company will be final.

6.4.2. Any Member of the Company who wishes to terminate his or her membership shall tender resignation in writing to the Chairperson or Administrative Director. Memberships terminate upon receipt of such resignation by the Chairperson or Administrative Director.

- 6.4.3. Any Member of the Company who fails to pay his or her annual membership fee by the due date will be subject to automatic suspension of membership until such time as the annual membership fee has been paid in full. If such breach persists for more than 3 months, despite at least 3 reminders to pay, his or her membership will automatically be terminated.
- 6.4.4. A Member whose membership has been terminated in the manner above and who is a Director of the Company shall also cease to act as a Director.
- 6.4.5. A Member whose membership has been terminated in the manner described above shall forfeit all contributions and membership fees already paid by him.
- 6.4.6. A Member whose membership has been terminated, in the manner described above, shall nevertheless remain liable for a period of one year from the date of termination, for the contribution of the amount of the guarantee as stated in the MOI, in the event of the Company being liquidated.
- 6.4.7. Upon termination of his or her membership, such a Member shall be notified by the Company of the decision and the fact of the termination shall be duly noted, together with the date thereof.
- 6.4.8. Upon termination of membership the Board of Directors will file, in a proper manner in its minutes, a notice to the Member stating the same, and from which date the membership is terminated, and which notice shall be adequate proof of the facts mentioned herein, should there be a later claim to the membership under question.

7. DIRECTORS AND OFFICERS

7.1. Authority of the Board of Directors

- 7.1.1. The Board of Directors is authorised to manage and direct the business and affairs of the Company as set out in this Memorandum.
- 7.1.2. The Board of Directors and any other Company official shall not endorse medico-legal practitioners, but may inform the public that the practitioner is a member of the Company, inclusive of that member's participation in the activities of the Company and to what extent, without opining on the member's expertise in a court of law. Such expertise is determinable only by the Court. The Board may refer the public to judgments that comment or rule on the member's expertise.
- 7.1.3. The Board of Directors may also, with a majority of 75% of the members of the Board of Directors, award a bursary to a meritorious student studying in the field of Forensic Sciences or Medical Law.
- 7.1.4. The Board of Directors shall not cause the Company to participate in litigious proceedings in courts of law unless an extraordinary general meeting resolves to do this by a resolution which is passed by 90% of those members present in person after members receive at least three months' notice of the meeting or what constitutes reasonable notice in legal proceedings that the Board deems urgent in compliance with 'urgency' as set out in the Uniform Rules of Court.

7.2. Composition and Election of the Board of Directors

7.2.1. The Board of Directors of the Company comprises of a minimum of twelve Directors, to be elected in every odd year to serve a term of two years, as follows;

7.2.1.1. the Chairperson and Treasurer of each Branch of the Company will be appointed ex officio to the Board of Directors, thereby producing two Directors representing each branch of the Company (see below);

7.2.1.2. a further twelve Directors shall be elected nationally by majority vote of the voting Members of the Company at the applicable Annual General Meeting (see below); and

7.2.1.3. at least one third of the twelve nationally elected directors should be healthcare practitioners, and at least one third should be legal practitioners;

7.2.2. No candidate may be elected without his or her consent. At the time of accepting nomination for election to the Board of Directors, each candidate will sign the duly completed nomination form, and attach thereto a recently (one month) certified copy of his or her ID document (both sides in case if ID cards), a recent head and shoulders photograph, confirmation of residential address for FICA purposes (e.g. by way of recent utility bill), and furnish details of postal address, email address and mobile- and landline telephone numbers.

7.2.3. 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 this section 7.2 of this Memorandum.

7.2.4. The affairs of the Company shall be exclusively managed by a Board of Directors, subject to clause 3.2.1 who shall hold office until the assumption of office of their duly elected successors, provided that:

7.2.4.1. the Board of Directors may appoint the Chairperson every two years as soon as possible after the applicable annual general meeting;

7.2.4.2. in the event that a Director resigns, is removed or passes away during his or her term of office, a successor shall be elected in accordance with the provisions of section 7.2 and serve for the remainder of the term of the Director whose position has become vacant; and

7.2.4.3. if the position of the Chairperson is vacant, the Board shall appoint a new Chairperson from its ranks for the remainder of the term.

7.2.5. The incumbent Chairperson shall call for a meeting of the Board of Directors within 60 (sixty) days of the conclusion of the Annual General Meeting.

7.2.6. At its first meeting or whenever thereafter necessary, the newly elected Board of Directors shall elect from amongst its members a Chairperson in accordance with the provisions below.

7.2.7. Any Member of either the Board of Directors or Board Sub-Committees or Branch Executive Committee shall cease to hold office if he or she:

7.2.7.1. resigns his or her office in writing which is effective after a reasonable notice period;

7.2.7.2. becomes insolvent, or if he or she surrenders his or her estate for the benefit of his or her creditors, or makes an offer of compromise to his or her creditors in circumstances where his or her liabilities exceeds his or her assets;

7.2.7.3. becomes unsound of mind;

7.2.7.4. directly or indirectly, has any financial interest in any contract with the Company and fails to declare the nature and details of his or her interest in writing to the Board at the first reasonable opportunity, or having declared such nature and details to the Board, having failed to obtain written permission from the Board to continue with such contract;

7.2.7.5. ceases to be a Member of the Company;

7.2.7.6. is absent without consent, or if his or her apology is not accepted, for, two consecutive meetings of the Board of Directors or Board Sub-Committee (as the case may be);

7.2.7.7. is found guilty, by a disciplinary process of the controlling body of the relevant profession, of

contravening the Code of Ethics and Professional Responsibility of such profession, and sentenced to:

7.2.7.7.1. removal from the roll and a period of 10 (ten) years since such finding by the disciplinary tribunal has not elapsed; or

7.2.7.7.2. a suspension from practice until the period of suspension has lapsed.

7.2.7.8. in terms of the Act or in terms of common law, becomes unfit or disqualified to serve as a Director; or

7.2.7.9. If his or her actions are, in the opinion of the majority of the Board of Directors, detrimental to the Company or its members.

7.3. The Provincial Branches

7.3.1. A province in South Africa may have a branch of the Company, but shall not have more than one branch without a special resolution passed by the Board by at least 75%;

7.3.2. Every two years, in every odd year, and at least 30 days before the Annual General meeting of the Company, the Members of each branch who are in good standing at the time will elect a branch committee of between three and six Office Bearers;

7.3.3. At least one third of the Office Bearers should be healthcare practitioners and at least one third should be legal practitioners;

- 7.3.4. Following such elections, the newly elected branch committee will appoint from its members a Chairperson and Treasurer, as well as any additional Office Bearers as may be required to attend to the pursuit of the Company's mission, which must include transformation, membership, administration, communication and educational objectives;
- 7.3.5. Any elected Branch Committee Office Bearer who is able and willing to take responsibility for more than one function, may do so.
- 7.3.6. Provincial executive committees are elected for a period of two years;
- 7.3.7. The provincial Chairperson of each branch must evaluate and report annually to the Board on the performance of the provincial branch and its achievement and failings in terms of the mission of the Company;
- 7.3.8. The provincial Chairperson may appoint acting appointments to the provincial executive committee if this need so arises;
- 7.3.9. Provincial branches are responsible for collecting the fees raised from educational and other similar activities for the benefit of its functions and in this respect the Chairperson and Treasurer shall open a bank account for the SAMLA provincial branch;
- 7.3.10. Branches must at all times subscribe to the purpose, business and ethos of the Company as set out in this Memorandum and shall not deviate therefrom;

7.3.11. In the event that there is an irreconcilable conflict within the provincial branch executive committee, or any provincial sub-committee that cannot be resolved expeditiously by the provincial committee, the Board may by majority vote pass a resolution to take steps to resolve the deadlock and impose any interim measure until such conflict is resolved.

7.4. Vacancies on the Board

7.4.1. The Board of Directors are authorised to fill any vacancy on the Board, provided the Members are notified of such appointment and such appointments are confirmed at the next Annual General Meeting.

7.5. Removal of a Director

7.5.1. Having applied the rules of natural justice, the Board of Directors, may, subject to sections 71 and/or section 162 and/or section 76 of the Act, remove any Director from his or her Directorship before the expiration of his or her period of office on the grounds detailed above or in the Act. Such Director may be suspended during the time of such investigation during which period he or she shall not be entitled to any of his or her rights or obligations as a Director of the Company.

7.5.2. Upon termination of Directorship, the outgoing Director shall hand over all necessary information and documentation to the incoming Director to ensure a smooth continuation of responsibilities and functions.

7.5.3. These provisions shall apply *mutatis mutandis* to any Member serving on the National Executive Committee, Branch Executive Committee or any other Board Committee.

7.6. Election of Chairperson and Deputy Chairperson

7.6.1. At its first meeting or whenever thereafter necessary, the newly elected Board of Directors shall elect from amongst the Directors a Chairperson of the Board of Directors, provided that any candidate for Chairperson shall:

7.6.1.1. be an elected Director;

7.6.1.2. be a Member in good standing; and

7.6.1.3. preferably be a retired Justice of any of the Courts in South Africa who is willing to accept the nomination.

7.6.2. No candidate may be elected without his or her consent.

7.6.3. The candidate receiving a simple majority of votes shall be declared Chairperson and all Members of the Company shall be informed accordingly as soon afterwards as is practical. If there are more than two candidates and no candidate receives a simple majority of the votes, the candidate receiving the least number of votes shall automatically fail to continue and further rounds of voting shall be held with the remaining candidates until a candidate receives a simple majority of votes.

7.6.4. In the event of a tie between two or more candidates, a Board Member designated by the Board shall draw lots in the

presence of all the Directors at the meeting to determine the results.

7.6.5. The elected Chairperson shall assume office when the newly elected Board is constituted, which shall always be within 60 (sixty) days from the conclusion of the Annual General Meeting. Such Chairperson shall, subject to him or her not being in conflict with the provisions above:

7.6.5.1. remain in office until the following Chairperson is elected in terms of this Memorandum;

7.6.5.2. remain a Director until the end of the meeting at which the following Board of Directors is constituted.

7.6.6. In the event of the death, resignation or removal from office of the Chairperson, the Deputy Chairperson who bears the most experience as a director of the Company shall *ex officio* assume the office of the Chairperson until such time as the Board elects a new Chairperson.

7.6.7. The Chairperson of the Board of Directors is elected for a term of 2 (two) years;

7.6.8. Once a Chairperson has been elected, two Deputy Chairpersons shall *mutatis mutandis* be elected from the same ranks and in accordance with the same procedures, qualifications and consequences as those prescribed for a Chairperson except that at least one of the Deputy Chairpersons shall be a healthcare practitioner and the other shall be a legal practitioner, both having extensive experience in medico-legal practice.

7.7. Meetings of the Board of Directors

- 7.7.1. The Board of Directors are authorised to consider a matter other than at a formal meeting. A decision may be adopted by “Round Robin” resolution with the approval of the majority of Directors given in person or by electronic communication, provided each Director has received notice of the matter.
- 7.7.2. The new Board of Directors shall be constituted in each odd year within 60 (sixty) days after the conclusion of the Annual General Meeting.
- 7.7.3. The Board of Directors shall convene as frequently as it decides, but at least 3 (three) times each year. A special meeting of the Board of Directors may be called either:
- 7.7.3.1. by resolution of the Board; or
 - 7.7.3.2. by the Chairperson whenever he deems it expedient to do so; or
 - 7.7.3.3. by any director of the Board.
- 7.7.4. The Board of Directors may decide, by simple majority, to facilitate any meeting by using electronic conferencing technology or any other medium through which Directors who are not physically in the same location can participate by way of video and/or audio facilities instead of convening in person at a specific venue. Directors present in person at such other locations and connected by using the said conferencing

technology shall be deemed to be present in person for all purposes envisaged in this Memorandum.

7.7.5. The Chairperson shall convene such a meeting by giving at least 7 (seven) days written notice of such meeting provided that, in the event of business which is extremely urgent in the opinion of the Chairperson, only 2 (two) days.

7.7.6. The Board of Directors may proceed with a meeting despite a failure or defect in giving notice of the meeting, as set in 7.6.5 above and may condone any short notice of a meeting.

7.7.7. In the event of neither the Chairperson nor the Deputy Chairperson being present, an acting Chairperson shall be elected from the Directors to preside at the meeting.

7.7.8. All decisions shall be taken by a majority of Directors present. The Chairperson, or whoever is presiding, shall have a casting vote, to be used if necessary in case of deadlock, in addition to his or her ordinary vote.

7.7.9. All votes shall be taken by a show of hands or verbal confirmation, unless the meeting adopts a motion that a vote is taken by ballot.

7.7.10. The Board of Directors may regulate and adjourn its meeting as it deems fit.

7.7.11. Any Member of the Board of Directors may be reimbursed at the discretion of the Board for reasonable authorised expenses actually incurred in attending any meetings attended at the request of the Board of Directors or any other business of the

Company. Such expenses to be authorised by at least the Administration Director and the Treasurer.

7.7.12. A quorum of the Board of Directors shall consist of at least a simple majority of Directors eligible to vote. Any decision taken without the quorum being present shall be null and void.

7.7.13. If, within 30 (thirty) minutes after the time appointed for a Board Meeting a quorum is not present, such meeting shall stand adjourned to the same time and place on a day 5 (five) Business Days after the date of the meeting and with written notice by e-mail to all Directors.

7.7.14. The Directors present at such an adjourned meeting shall be a quorum, irrespective of the number of Directors present.

7.7.15. The votes at a Board Meeting shall be weighted as 1(one) vote for each Director.

7.7.16. A resolution in writing signed by a majority of the Directors for the time being shall be valid and effectual as if it has been passed at a meeting of the Board, duly convened and held, and may consist of several documents, each signed by a majority of the Directors. Unless otherwise stated in the resolution concerned, it shall be deemed to have been passed upon the date upon which it was signed by the last signatory, and a resolution shall be deemed to have been signed if consent thereto has been given and the message transmitted by e-mail and purporting to emanate from the person whose signature to such resolution is required.

7.8. Financial assistance to Directors or prescribed officers

7.8.1. The Company is not authorised to provide financial assistance to a Director or officer other than in the normal course of employment.

7.9. Declaration of Interest

7.9.1. Subject to the provisions of section 75 of the Act, a Director shall not vote in respect of any contract with the Company in which he is interested in, or any matter arising therefrom.

7.9.2. If a Director of the Company has a personal financial interest in respect of a matter to be considered at a meeting of the Board, or knows that a related person has a personal financial or other interest in the matter, the Director:

7.9.2.1. must disclose the interest and its general nature before the matter is considered at the meeting;

7.9.2.2. must disclose to the meeting any material information relating to the matter, and known to the Director;

7.9.2.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

7.9.2.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in above;

7.9.2.5. must not take part in the consideration of the matter, except to the extent contemplated above;

7.9.2.6. while absent from the meeting in terms of this subsection:

7.9.2.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting; and

7.9.2.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted;

7.9.2.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

7.9.3. Directors are required to declare personal interests at every Board meeting to the Chairperson of the Board or any conflict of interest that may arise in respect of any decision of the Board.

8. GENERAL MEETINGS

8.1. Annual General Meeting

8.1.1. An Annual General Meeting (“the AGM”) of the Company shall be held every year, on such a day and at such a time and venue as the Board of Directors may determine, but not later than 6 (six) months from the end of the financial year-end. A notice of the meeting, together with an agenda, shall be forwarded not less than 15 (fifteen) business days in advance to each Member in accordance with the provisions of section 8.4 hereof.

8.1.2. The AGM may be held in more than one physical location simultaneously if so decided by the Board of Directors, provided that all the locations are linked by using video conferencing technology or any other medium through which Members who are not physically in the same location as the Chairperson can participate fully, with full video and audio facilities. Members present in person at such other location(s) shall be deemed to be present in person for all purposes envisaged in this Memorandum.

8.1.3. The AGM shall deal and dispose of all matters prescribed by the Act, including:

8.1.3.1. the receiving and consideration of the Annual Financial Statements;

8.1.3.2. the consideration and approval of the Reports of the Chairperson and other Office Bearers;

8.1.3.3. appointment of the auditor for the ensuing financial year;

8.1.3.4. appointment of the Board of Directors; and

8.1.3.5. the consideration of any and all other matters of which due notice has been given.

8.1.4. Any Member may propose resolutions, provided preceding notice of such resolution, in writing and signed by himself and one other Member, has been received by the Chairperson, at least 21 (twenty one) days prior to such meeting. Upon receipt of such notice, the Chairperson shall, in any case where the notice is received before the notice of the meeting is issued, include it in the notice of meeting, and shall in any other case, give notice to the Members as quickly as possible that such resolution will be proposed. Such resolutions, if adopted, shall be binding on the Board of Directors.

8.1.5. The Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so dictated by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned, the provisions of section 64 of the Act shall apply *mutatis mutandis* to such adjournment.

8.1.5.1. The Board shall determine the venue for the AGM.

8.1.5.2. 10 (Ten) Members who are present in person shall form a quorum.

8.2. Special General Meeting

8.2.1. A Special General Meeting shall be called either:

8.2.1.1. by resolution of the Annual General Meeting; or

8.2.1.2. by resolution of the Board of Directors; or

8.2.1.3. at the request in writing of not less than 20 (twenty) Members of the Company setting out forth the terms of the motion to be proposed or item on the agenda for discussion and decision.

8.2.2. A written notice of a Special General Meeting, including the nature of the business to be transacted, the date, time and venue, shall be given to all Members of the Company at least 15 business days prior to such meeting.

8.2.3. The provisions of section 8.1.5 shall *mutatis mutandis* be applicable to a Special General Meeting.

8.2.4. Resolutions passed at a Special General Meeting shall be referred to the Board of Directors for such actions as may be necessary.

8.3. Procedure at Meetings of the Company:

8.3.1. The Chairperson, or in his or her absence the Deputy Chairperson, shall take the chair. Where both are absent, the meeting shall elect a Chairperson from the members of the Board of Directors.

- 8.3.2. At all general meetings all votes shall be taken by a show of hands or verbal confirmation of Members unless the Chairperson or any 5 (five) Members present demand a poll.
- 8.3.3. If a poll is duly demanded it shall be taken in such a manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 8.3.4. A poll demanded on the election of a Chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll is demanded.
- 8.3.5. In the case of a tie, the Chairperson shall be entitled to exercise a casting vote.
- 8.3.6. Subject to any rule of by-law and/or regulation to the contrary, every voting Member shall have 1 (one) vote subject to the conditions contemplated in section 6.2 of this Memorandum.
- 8.3.7. No Member shall under any circumstances be entitled to be present or vote (either as a proxy or in his or her personal capacity) at any meeting of the Company unless such a Member has duly and timeously complied with all prescribed membership requirements, including that his or her annual membership fees are fully paid-up.

8.3.8. Votes may be cast either personally or by written proxy.

8.3.9. The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting, provided that where no notice has been dispatched to more than 5 (five) per centum of the total membership for whom the Company is in possession of an address, distributed pro rata over the Regions, it shall be deemed that proper notice of the meeting has not been given to Members.

8.3.10. No business shall be transacted at any meeting unless a quorum of Members is present at the time when the meeting precedes to business.

8.4. Notices of General Meetings

8.4.1. A notice via letter or e-mail may be given by the Company to any Member personally, or by sending it by post to him or her at his or her registered address, or (if he or she has no registered address within the area within which the Company operates) to the address, including an e-mail address, if any, within such area supplied by him or her to the Company for the giving of notices to him or her.

8.4.2. A notice shall be deemed to have been served:

8.4.2.1. within 1 (one) business day after the communication containing the notice was e-mailed to the address for such Member on record with the Company; or

8.4.2.2. within 7 (seven) business days from the time the communication containing the notice was posted by prepaid registered mail to the postal address, which the Company has on record for the Member.

8.5. Minutes and Resolutions

8.5.1. Minutes shall be kept of all resolutions and proceedings of General Meetings, meetings of the Board of Directors, round robin resolutions taken by the Board of Directors and Board Sub-Committees.

8.5.2. All minutes and resolutions must be dated and sequentially numbered and pasted into a minute book or retained in hard copy format in a suitable file marked for such purpose and in electronic format on computer.

8.5.3. For an ordinary resolution to be adopted at a Members' meeting, it must be supported by at least 50% (fifty percent) of the Members present who voted on the resolution either personally or by written proxy.

8.5.4. For a special resolution to be adopted at a Members' meeting, it must be supported by at least 75% (seventy-five percent) of the Members who voted on the resolution.

8.5.5. A special resolution is required to:

8.5.5.1. ratify a considered revision of a Company's Memorandum of Incorporation, as contemplated in section 18(1)(b) of the Act;

8.5.5.2. ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20(2) of the Act;

8.5.5.3. approve any proposed fundamental transaction.

9. COMMITTEES

9.1. Board Sub-Committees

9.1.1. The Board of Directors may constitute Board Sub-Committees as it deems fit from time to time in order to assist the Board with its functions.

9.1.1.1. Such Board Sub-Committees shall act under supervision of the Board of Directors. The Chairperson of such sub-committees shall table a report on behalf of each Board Sub-Committee and its activities to the Board as and when so requested by the Board.

9.1.1.2. The authority and terms of reference for each Board Sub-Committee appointed by the Board shall be stipulated in each Committee's directives compiled by the Board of Directors.

10. GENERAL PROVISIONS

10.1. Amendments to the Memorandum of Incorporation

10.1.1. Subject to the provisions of section 8.5.4 and 8.5.5 the Board of Directors may consider proposed amendments to the Memorandum. The proposed amendments shall be put to the voting members by way of a motion to be decided upon by:

10.1.1.1. a General Meeting of Members;

10.1.1.2. or by ballot through an appropriate electronic medium, provided that such electronic medium is capable of providing proof of the sending and receiving, as well as the content of the ballot.

10.1.2. The motion shall be carried if a special resolution is achieved.

10.1.3. An amendment of its Memorandum must be effected by a special resolution filed with the Commission.

10.1.4. An amendment may take the form of a new Memorandum that substitutes the existing Memorandum or contain some or more alterations to the existing Memorandum by:

10.1.4.1. changing the name of the Company;

10.1.4.2. deleting, altering or replacing any of its provisions;

10.1.4.3. inserting any new provisions into the Memorandum; or

10.1.4.4. making any combinations of alterations.

10.2. Dissolution and Winding-Up

10.2.1. If the Company shall be wound up, deregistered or dissolved, the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution or associations or institutions having objects similar to its main object, alternatively to a Faculty of Health Sciences or Law at a university determined by the members to be utilised for the furtherance of studying Medical Law or Forensic Science or it should be given to the benefit of a charitable organisation determined by the members, failing such determination, by a Court of law.

10.3. Dispute Resolution

10.3.1. Any dispute arising out of or in connection with the interpretation, effect, implementation, rights and obligations under, or a breach of the provision of this Memorandum, and any matter arising out of or in connection with, as well as the rectification thereof, shall be referred for resolution firstly by way of mediation, and in the event of mediation failing, then by way of arbitration. Attempted resolution by mediation is a precondition to the parties having the dispute resolved by arbitration.

10.3.2. Within 10 (ten) business days, following written notification of a dispute, such dispute shall be referred for resolution by way of mediation in accordance with the then current Protocol and Guidelines approved by the Company. In the event of the

mediation envisaged herein failing, the matter must, within 15 (fifteen) business days thereafter, be referred to arbitration as envisaged in clause 10.3.3 below. The periods for mediation may be lengthened by written agreement between the parties.

10.3.3. Arbitration will be held as an expedited arbitration at a suitable venue, in accordance with the then current rules for expedited arbitration of AFSA (Arbitration Foundation of Southern Africa) by 1(one) arbitrator appointed by agreement between the disputing parties. If the parties cannot agree on the arbitrator within a period of 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA, who shall administer and manage the arbitration proceedings.

10.3.4. The parties irrevocably agree that any decision in such arbitration proceedings shall be binding on them and shall be carried into effect. Such decision may, at the discretion of any of the parties, be made an order of any court of competent jurisdiction, and shall include such order as to costs as the arbitrator deems appropriate.

10.3.5. The provisions of this clause 10.3 shall not preclude any party from access to an appropriate court of law for interim relief in the form of an interdict, *mandamus* or order for specific performance, pending the outcome of an arbitration in terms hereof, or in respect of such arbitration or any other form of relief on the basis of facts which are not disputed, provided that if a *bona fide* dispute arises in the course of the proceedings, they shall be stayed pending an arbitration of the dispute in terms thereof.

10.4. Amalgamation and Fundamental Transactions

10.4.1. Subject to the provision of section 2 of Schedule 1 (as amended) to the Act, with the approval of the Board of Directors, where only non-interested Directors have participated in the process, the matter must be laid before the Members and not less than 75% (seventy five percent) of voting Members who are present in person or by proxy at a General Meeting duly convened and constituted for that purpose, the Company may dispose all or any part of its assets, amalgamate or incorporate or join with other bodies in the Republic of South Africa or elsewhere in Southern Africa, provided these other bodies have objectives similar to those of the Company and are exempt from liability to pay income tax.

10.4.2. For this purpose the Company may take over and assume the assets and liabilities of the aforesaid bodies including books, records, documents and coats of arms, or make over part or all of the assets and liabilities of the Company.

11. TRANSITIONAL ARRANGEMENT

11.1. Until this amended Memorandum is adopted by the special general meeting and in force or until such adoption is refused:

11.1.1. current Board members who were appointed at the 2017 annual general meeting have their term extended by one year;

11.1.2. the provincial branch committees will be established as soon as possible;

11.1.3. the current Board directors serving on provincial councils are appointed as provincial committee members; and

11.1.4. the provincial Chairperson and at least one other director must be the signatories to any provincial bank account.