

**Adopted at a General Meeting of
the Members on 5 November 2020**

CONSTITUTION

of the

MARIST WAR MEMORIAL CLUB

TABLE OF CONTENTS

1	PREAMBLE.....	1
2	DEFINITIONS.....	1
3	INTERPRETATION	2
4	NAME	3
5	STATUS AND CONSTITUTION.....	4
6	OBJECTS.....	4
7	RESTRICTIONS	4
8	NON-DISCRIMINATION.....	5
9	CLUB COLOURS	5
10	PRIVILEGES OF MEMBERS	5
11	MEMBERSHIP	6
12	ADMISSION OF NEW MEMBERS	9
13	REPRIMAND, SUSPENSION AND EXPULSION OF MEMBERS	11
14	TERMINATION OF MEMBERSHIP.....	12
15	SPORT SECTIONS	12
16	SUBSCRIPTIONS	12
17	PENALTIES FOR NON-PAYMENT	14
18	MEETINGS OF MEMBERS.....	15
19	EXCO	17
20	CLUB MANAGER	22
21	FINANCIAL STATEMENTS, AUDITORS AND REVIEWERS	22
22	REGULATIONS.....	23
23	SALE OR MORTGAGE OF CLUB IMMOVABLE PROPERTY	23
24	DAMAGE TO CLUB PROPERTIES.....	23
25	DAMAGE TO PERSON OR PROPERTY.....	24
26	PRIVILEGES OF MEMBERSHIP FOR VISITING PLAYERS	24
27	GUESTS	24
28	COMPLAINTS AND SUGGESTIONS	25
29	BUSINESS OPERATIONS AND ADVERTISEMENTS	25
30	AFFILIATED CLUBS AND RECIPROCITY	25
31	ADDRESSES AND NOTICES TO MEMBERS.....	25
32	CONSTITUTION.....	26
33	DISSOLUTION OF CLUB	27
34	SPECIAL PROVISIONS RELATING TO TAX EXEMPTION	27
35	SEVERABILITY.....	28
36	NO INDULGENCES	28
37	NO TRANSFER.....	29
38	MEDIATION.....	29
39	DISPUTE RESOLUTION.....	29
ANNEXURES		
ANNEXURE A	DEPICTION OF BADGE	

1 PREAMBLE

- 1.1 The Marist War Memorial Club was established with the principal object of providing a living memorial to the Marist past pupils who gave their lives in war through the fellowship of its Members in sports and recreation.
- 1.2 This is the Constitution of the Club.
- 1.3 The Constitution will at all times be interpreted and applied in letter and in spirit in a manner that will ensure that the principal object is attained.

2 DEFINITIONS

In this Constitution, unless the context indicates otherwise —

- 2.1 "**AGM**" means an annual general meeting of the Members;
- 2.2 "**Annual Subscription**" bears the meaning ascribed to that term in clause 16.1;
- 2.3 "**Chairperson**" bears the meaning ascribed to that term in clause 19.6;
- 2.4 "**Club**" means the Marist War Memorial Club constituted by this Constitution;
- 2.5 "**Club Facilities**" mean all facilities associated with the Club and situated on the immovable property of the Club, including any bowling green, any cricket oval, any Club houses, any parking areas, and any ancillary facilities;
- 2.6 "**Club Manager**" bears the meaning ascribed to that term in clause 20;
- 2.7 "**Club Property**" means all property, movable and immovable, and funds owned by the Club;
- 2.8 "**Club Year**" means the period starting on 1 July of each year and ending on 30 June of the following year;
- 2.9 "**Corporate Members**" bears the meaning ascribed to that term in clause 11.1.7.1;
- 2.10 "**Data Message**" means email, SMS, WhatsApp or any other like electronic data message;
- 2.11 "**Entrance Fee**" bears the meaning ascribed to that term in clause 16.3.1;
- 2.12 "**Estate**" means the Rondebosch Oval housing estate situated at 54 Park Road, Rondebosch;
- 2.13 "**Estate HOA**" means the homeowners association of the Estate;
- 2.14 "**Estate HOA Constitution**" means the constitution of the Estate HOA;

- 2.15 **"Estate Owner"** means an owner of immovable property in the Estate other than the owner of the immovable property of the Club;
- 2.16 **"ExCo"** means the executive committee elected from amongst the Members as contemplated in clause 19;
- 2.17 **"General Meeting"** means an AGM and a SGM;
- 2.18 **"Honorary Members"** bears the meaning ascribed to that term in clause 11.1.4.1;
- 2.19 **"Junior Members"** bears the meaning ascribed to that term in clause 11.1.5.1;
- 2.20 **"Life Members"** bears the meaning ascribed to that term in clause 11.1.1.1;
- 2.21 **"Member"** means a person who is duly admitted as a member of the Club, of whatever class;
- 2.22 **"Regulations"** bears the meaning ascribed to that term in clause 22.1;
- 2.23 **"SGM"** means a special general meeting of the Club;
- 2.24 **"Social Members"** bears the meaning ascribed to that term in clause 11.1.3.1;
- 2.25 **"Sport Members"** bears the meaning ascribed to that term in clause 11.1.2.1;
- 2.26 **"Sport Section"** means any sporting code that has been duly admitted as a sport section within the Club, it being recorded that, at the date of adoption of this Constitution, 2 sporting codes have been admitted as Sport Sections, namely, cricket and bowls;
- 2.27 **"Sport Section Annual Subscription"** bears the meaning ascribed to that term in clause 16.2.2;
- 2.28 **"Sport Section Committee"** bears the meaning ascribed to that term in clause 15.2;
- 2.29 **"Subscriptions"** means the Annual Subscription and a Sport Section Annual Subscription;
- 2.30 **"Vice-Chairperson"** bears the meaning ascribed to that term in clause 19.6; and
- 2.31 different grammatical forms of a word have a like meaning.

3 INTERPRETATION

3.1 In this Constitution —

- 3.1.1 clause headings and the heading of the Constitution are for convenience only and are not to be used in its interpretation;

- 3.1.2 an expression which denotes —
- 3.1.2.1 any gender includes the other genders;
- 3.1.2.2 a natural person includes a juristic person and *vice versa*; and
- 3.1.2.3 the singular includes the plural and *vice versa*.
- 3.2 Any reference in this Constitution to —
- 3.2.1 "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "**law**" will have a similar meaning; and
- 3.2.2 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 3.3 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.
- 3.4 Any substantive provision, conferring rights or imposing obligations on any person and appearing in any of the definitions in clause 2 or elsewhere in this Constitution, will be given effect to as if it were a substantive provision in the body of the Constitution.
- 3.5 Words and expressions defined in any clause will, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Constitution.
- 3.6 A reference to any statutory enactment will be construed as a reference to that enactment as at the date of the last signature to this Constitution and as amended or substituted from time to time.
- 4 **NAME**
- 4.1 The name of the Club is the "**Marist War Memorial Club**".
- 4.2 The name of the Club may not be changed.
- 4.3 The Club may trade under a different name that is in keeping with the principal object of the Club. At the date of the adoption of this constitution the Club trades as the Rondebosch Sports Club.

5 STATUS AND CONSTITUTION

The Club is a voluntary association —

- 5.1 which is governed by this Constitution;
- 5.2 with legal personality and perpetual succession;
- 5.3 being capable of suing and being sued in its own name;
- 5.4 with the power to acquire, hold and alienate any asset; and
- 5.5 none of whose Members, past or present, will —
 - 5.5.1 be liable for the debts or obligations of the Club; or
 - 5.5.2 have any rights to the Club Property.

6 OBJECTS

- 6.1 The principal object of the Club is that set out in clause 1.1.
- 6.2 The ancillary objects of the Club are —
 - 6.2.1 to provide outstanding sporting, recreational and social facilities for the use by its Members, guests of Members, and visiting players;
 - 6.2.2 to provide sports grounds for use by the Sport Sections;
 - 6.2.3 to provide and maintain a Club house;
 - 6.2.4 to provide meals and beverages (including alcoholic beverages) for the enjoyment of its Members, guests of Members, and visiting players;
 - 6.2.5 to liaise and cooperate with the Estate HOA in matters relating to the Club's membership of the Estate HOA and inclusion in the Estate;
 - 6.2.6 to establish Sport Sections; and
 - 6.2.7 to do any such things as may be necessary or conducive to achieving its objects.

7 RESTRICTIONS

Despite anything to the contrary in this Constitution —

- 7.1 the Club is not formed and does not exist for the purpose of carrying on any business that has for its object the acquisition of gain by the Club or its individual Members;
- 7.2 the income and Club Property will be applied solely for the promotion of the Club's objects and investment;

- 7.3 no part of the income or Club Property will be paid, directly or indirectly, by way of dividend, donation or otherwise, to any person save in respect of —
- 7.3.1 reasonable remuneration for professional or business services actually rendered to or on behalf of the Club with the prior approval of ExCo;
- 7.3.2 reasonable actual costs, expenses and other commitments incurred on behalf of the Club with the prior approval of ExCo; and
- 7.3.3 any fees payable to ExCo members as decided from time to time by the Members in a General Meeting.

8 **NON-DISCRIMINATION**

The Club may not unfairly discriminate against any person on the grounds of race, gender, religion, culture, or sexual orientation.

9 **CLUB COLOURS**

9.1 **Colours**

The colours of the Club are blue and old gold.

9.2 **Badge**

The badge of the Club is the badge as depicted in **Annexure A**.

9.3 **Apparel**

The Club blazer and other apparel consist of plain dark blue cloth with the badge on the breast pocket.

9.4 **Right to purchase**

All Members of the Club in good standing have the right to purchase and wear the Club blazer, apparel and badge.

10 **PRIVILEGES OF MEMBERS**

- 10.1 Every Member in good standing is entitled to such rights and privileges in respect of the use of the Club's Facilities and activities as prescribed in this Constitution and Regulations.
- 10.2 On cessation of Membership, for any reason, no rights or privileges whatsoever will remain vested in any ex-Member.

11 MEMBERSHIP

11.1 Classes

The Club has the following classes of Members:

11.1.1 Life Members

11.1.1.1 Life members ("**Life Members**") are persons —

11.1.1.1.1 who have been admitted as such by ExCo on the date of the adoption of this Constitution; or

11.1.1.1.2 who are, on or after the date of the adoption of this Constitution, admitted as such by ExCo, in its discretion, on the basis of their having given exceptional service to the Club.

11.1.1.2 A Life Member (i) has one vote at a General Meeting, and (ii) pays no Annual Subscription.

11.1.2 Sport Members

11.1.2.1 Sport members ("**Sport Members**") are persons —

11.1.2.1.1 who have been admitted as such by ExCo on the date of the adoption of this Constitution; or

11.1.2.1.2 who are, on or after the date of the adoption of this Constitution, admitted as such by ExCo and who (i) continuously and regularly play a sport at a Sport Section, or (ii) who no longer play any such sport, but for a period of at least 2 years continuously and regularly played such a sport at a Sport Section.

11.1.2.2 A Sport Member has 10 (ten) votes at a General Meeting. (It is recorded that Sport Members have more votes than other Members to ensure that the principal object of the Club set out in clause 1.1 is at all times upheld.)

11.1.2.3 A Sport Member pays one Annual Subscription and one Sport Section Annual Subscription.

11.1.3 Social Members

11.1.3.1 Social members ("**Social Members**") are persons —

11.1.3.1.1 who have been admitted as such by ExCo on the date of the adoption of this Constitution; or

11.1.3.1.2 who are, on or after the date of the adoption of this Constitution, admitted as such by ExCo and who do not necessarily play, or who have not necessarily played, sport, but who wish to use and enjoy the Club Facilities on a social basis.

11.1.3.2 A Social Member (i) has one vote at a General Meeting, and (ii) pays one Annual Subscription.

11.1.4 Honorary Members

11.1.4.1 Honorary members ("**Honorary Members**") are persons —

11.1.4.1.1 who have been admitted as such by ExCo on the date of the adoption of this Constitution; or

11.1.4.1.2 who are, on or after the date of the adoption of this Constitution, admitted as such by ExCo, in its discretion, for a period determined by ExCo on or after the date of adoption of this Constitution and who, in the discretion of ExCo, (i) have conferred, or are likely to confer, some special benefit on the Club whether in sport or otherwise, or (ii) who hold or held a public office and deserve to be accorded such honour.

11.1.4.2 An Honorary Member (i) has no vote, and (ii) pays no Annual Subscription.

11.1.5 Junior Members

11.1.5.1 Junior members ("**Junior Members**") are persons who have not yet reached the age of 19 and —

11.1.5.1.1 who have been admitted as such by ExCo on the date of the adoption of this Constitution; or

11.1.5.1.2 who are, on or after the date of the adoption of this Constitution, admitted as such by ExCo.

11.1.5.2 A Junior Member (i) has no vote, and (ii) pays one third of an Annual Subscription.

11.1.6 Student Members

11.1.6.1 Student members ("**Student Members**") are persons who are between the ages of 19 and 23 and who are *bona fide* students at a tertiary educational institution and —

11.1.6.1.1 who have been admitted as such by ExCo on the date of the adoption of this Constitution; or

11.1.6.1.2 who are, on or after the date of the adoption of this Constitution, admitted as such by ExCo.

11.1.6.2 A Student Member (i) has one vote, and (ii) pays one half of an Annual Subscription.

11.1.7 Corporate Members

11.1.7.1 Corporate members ("**Corporate Members**") are persons who are a person or group of persons, be they natural or juristic persons and —

11.1.7.1.1 who have been admitted as such by ExCo on the date of the adoption of this Constitution; or

11.1.7.1.2 who are, on or after the date of the adoption of this Constitution, admitted as such by ExCo.

11.1.7.2 Corporate Membership endures for a period of 12 months and is renewable annually, provided the relevant person is again admitted by ExCo.

11.1.7.3 A Corporate Member (i) has one vote at a General Meeting, and (ii) pays one Annual Subscription.

11.1.8 Estate Members

11.1.8.1 It is recorded that, in terms of the Estate HOA's constitution, each Estate Owner —

11.1.8.1.1 upon acquisition of a property in the Estate, automatically becomes a non-voting member ("**Estate Member**") of the Club in accordance with this Constitution; and

11.1.8.1.2 must pay a Subscription to the Club applicable to non-voting members of the Club in accordance with this Constitution.

11.1.8.2 For the avoidance of doubt, the Club will admit as members of the Club the Estate Members.

11.1.8.3 The Estate Members (i) have no vote, and (ii) pay one half of an Annual Subscription.

11.2 **Application for different class of Membership**

A Member of one class may apply to be admitted as a Member of another class of Membership provided the person meets the requirements of that other class.

11.3 **Membership of one class only**

A person can only be a Member of one class at any time.

12 **ADMISSION OF NEW MEMBERS**

12.1 **Application for admission**

- 12.1.1 Save as provided in clause 12.1.2 no person may be admitted as a member unless —
- 12.1.1.1 a Membership application form, signed by the candidate and by a proposing and seconding Member and containing such particulars relating to the candidate as ExCo may from time to time prescribe, has been completed and submitted to the Club Manager; and
- 12.1.1.2 the name of the candidate, his or her occupation, the names of his or her proposer and seconder and the class of Membership which is applied for has been display on the Club notice board for at least 14 days.
- 12.1.2 The provisions of this clause will not apply —
- 12.1.2.1 to persons admitted as Honorary Members;
- 12.1.2.2 to Estate Owners; or
- 12.1.2.3 to the admission of Junior Members or Student Members to some other class of Membership.
- 12.1.3 The date of signature of the Membership application form will be deemed to be the date of the application for Membership.

12.2 **Qualifications of proposers and seconders**

- 12.2.1 No Member may propose or second a candidate for Membership unless, at the date of application, such Member (i) knows the candidate personally, and (ii) has been a Member entitled to vote at a General Meeting for at 3 three consecutive years before the date of application.
- 12.2.2 In any one Club Year, no Member may propose or second more than such number of candidates as may be determined by ExCo, from time to time. This limitation will not apply to candidates for Junior Membership or Student Membership.
- 12.2.3 If, at the date of application for Membership or at any time thereafter, any proposer or seconder is not in good standing with the Club in that he or she —
- 12.2.3.1 is or will be in default in the payment of his or her Subscriptions or any other monies due to the Club;
- 12.2.3.2 has been suspended for any reason permitted by this Constitution; or

12.2.3.3 will, after the date of application, have ceased to be a member of the Club for any reason whatsoever,

then the application for Membership will be deferred until the proposer or seconder concerned will once again be in good standing with the Club or some other person duly qualified be substituted in his place and stead.

12.2.4 Despite clause 12.2.3, ExCo and a Sport Section Committee may, through their chairpersons, be entitled to propose and second candidates for Membership.

12.3 **Admission of new Members**

12.3.1 ExCo may admit to Membership any candidate in respect of whom the provisions of clause 12.1 have been complied with, save that no person will be regarded as admitted to Membership of the Club or for transfer from one class of Membership to another, if majority of votes by members of ExCo are recorded against him in a quorate ExCo meeting.

12.3.2 A candidate so admitted will not become a Member until he has paid the Entrance Fee (if applicable) and the first Annual Subscription payable.

12.3.3 ExCo may, at its discretion and upon such terms and conditions as it may deem fit to impose, reinstate any former member as a Member of the Club in which event the provisions of clause 12.1 will not apply to such reinstatement.

12.4 **Waiting list of candidates**

ExCo may at any time suspend the admission of new Members either wholly or in part and may place all or any candidates for Membership on a waiting list for future consideration.

12.5 **Unsuccessful candidates for admission**

If any candidate has failed to secure admission by ExCo, he or she will not be again proposed for admission until at least 12 months have elapsed since the date of ExCo's decision not to admit him or her. In the event of a candidate twice failing to secure admission by ExCo, he or she will forever be barred from becoming a Member.

12.6 **Effect of admission**

By applying for admission as, and by being, a Member, a person agrees that, upon being admitted as a Member and for as long as he or she is a Member, he or she will be bound by and adhere to the Constitution and Regulations.

13 REPRIMAND, SUSPENSION AND EXPULSION OF MEMBERS

- 13.1 If, in the opinion of ExCo, any Member is guilty of conduct deemed by it to be —
- 13.1.1 a breach of this Constitution;
 - 13.1.2 a breach of the Regulations;
 - 13.1.3 unworthy of a Member of the Club;
 - 13.1.4 prejudicial to the interest or reputation of the Club;
 - 13.1.5 objectionable to Members; or
 - 13.1.6 conduct unbecoming a Member of the Club whether within the Club Facilities or outside them,
- ExCo will have the power to —
- (i) reprimand such Member;
 - (ii) suspend such Member, for such period as ExCo in its discretion seems fit, from (a) using the Club Facilities, and (b) exercising his or her rights and privileges of Membership, including the right to vote; or
 - (iii) terminate such Member's Membership of the Club.
- 13.2 On receipt of a complaint by ExCo regarding the conduct of a member, ExCo will convene a meeting of a disciplinary committee for the purpose of affording such Member a hearing to enable such Member, with or without legal representation, a reasonable opportunity of explaining, justifying or defending his or her conduct, at which hearing evidence may be led. The hearing will be convened within 14 days of receipt of the complaint and the affected Member will be afforded at least 7 days' notice of the date of hearing.
- 13.3 The powers of the disciplinary committee will, subject to the provisions of this clause, be limited to a recommendation to ExCo. ExCo will determine the sanction, if any, to be imposed. ExCo will promptly advise the affected Member of its decision. ExCo may order that the name of any member sanctioned in terms of this clause 13 be posted on the notice board of the Club.
- 13.4 A Member suspended in terms of this clause will not be relieved from liability to pay his or her Subscriptions for the period of suspension, or any other amounts due to the Club.
- 13.5 A Member may not play sports in which the Club participates for another club without the consent of the relevant Sport Committee provided that such consent will not be required by a scholar or Member who plays sport for the school or institution of which he is a full-time registered student.

14 TERMINATION OF MEMBERSHIP

- 14.1 The Membership of an Honorary Member will terminate by effluxion of the period for which he was admitted or upon his ceasing to be qualified in terms of clause 11.1.4 for such Membership.
- 14.2 Save as is provided in clause 14.1 and in clauses 13 and 17, Membership will terminate only on death or resignation. The resignation of a Member will be effective only upon its being communicated in writing to the Club Manager, and will not relieve the Member concerned of liability for any Subscription or other amount which has become due to the Club prior to such communication.

15 SPORT SECTIONS

- 15.1 Any Member may apply to ExCo for the admission of any kind of sporting code to be admitted as a Sport Section of the Club.
- 15.2 If ExCo, in its discretion, admits that sporting code to be a Sport Section, then ExCo will constitute a committee ("**Sport Section Committee**") for that Sport Section to prepare management and conduct regulations for that Sport Section. The regulations may not conflict with any provisions of this Constitution or any resolutions passed by the Club in a General Meeting.
- 15.3 The conduct rules of a Sport Section may contain provisions which enable that Sport Section to charge Sport Section Annual Subscriptions, in addition to Annual Subscriptions, to raise funds for its activities, and to manage the Club Facilities pertaining to that Sport Section.
- 15.4 Clause 13 applies, with changes required by the context, to any Sport Section as if the Sport Section were a Member.

16 SUBSCRIPTIONS

16.1 Annual Subscriptions

- 16.1.1 All Members, other than Life Members and Honorary Members, must pay an annual subscription ("**Annual Subscription**") to the Club.
- 16.1.2 ExCo determines the amount of Annual Subscription, subject only to clause 16.1.6.
- 16.1.3 Any newly admitted Member, other than a person who has been admitted as an Honorary Member, must pay a proportionate amount of the Annual Subscription calculated from the first day of the calendar month immediately following his or her admission, to the last day of the Club Year during which the person has been admitted as a Member.

- 16.1.4 Any Member who —
- 16.1.4.1 has attained the age of 60 years; and
- 16.1.4.2 has been a Member in good standing of the Club for a period of not less than 15 consecutive years,
- on notifying the Club Manager, pays an Annual Subscription as may be determined by ExCo that is lower than the Annual Subscription that he or she would otherwise have paid.
- 16.1.5 ExCo may, without having to obtain the consent of Members at a General Meeting, increase or decrease the Annual Subscription by an amount not exceeding 50% of the then current Annual Subscription excluding value-added tax, provided that it communicates notice of its intention to do so to all Members by not later than 1 month preceding the effective date of the increase or decrease. Notification can be done through Data Message or posting on the notice board of the Club.
- 16.1.6 If a Member suffers from a disability, and ExCo is satisfied in its discretion that, due to such disability, the person concerned is unable to afford the Annual Subscription, ExCo may determine that such Member will pay such nominal Subscription as it may determine in its discretion. ExCo will at any time thereafter have the right to withdraw this concession and require the Member concerned to pay the full Annual Subscription for which he or she would otherwise be liable.
- 16.1.7 If any Member changes his or her Membership class during the course of a Club Year, he or she will not, in respect of the Club Year during which the change occurs, be liable to pay a pro rata increase in Subscription or be entitled to receive a pro rata refund of the Annual Subscription if the Annual Subscription for his or new class is higher or lower than that already due and paid by him or her for that Club Year.
- 16.2 **Sport Section Subscriptions**
- 16.2.1 A Member may not play for, or represent the Club, in any sport or participate in any sport organised by a Sport Section unless he or she has been registered as a member of the Sport Section concerned and has paid the Sport Section Annual Subscription.
- 16.2.2 All Members who are, or who apply to be, registered as a member of one or more Sport Sections must, in addition to the Annual Subscription, pay a Sport Section annual subscription ("**Sport Section Annual Subscription**") in respect of each Sport Section in which he or she is, or applies to be, registered.
- 16.2.3 The amount of any Sport Section Annual Subscription and the date upon which such will become payable will from time to time be as determined by the relevant Sport Section Committee.

16.3 **Entrance Fees**

16.3.1 Members who are admitted or re-admitted and who are liable to pay Annual Subscriptions must pay an entrance fee ("**Entrance Fee**") on admission or re-admission.

16.3.2 ExCo determines the amount of the Entrance Fee, if any, and clause 16.1.6 applies with changes required by the context.

16.3.3 ExCo may in its discretion waive any Entrance Fee, wholly or in part, on reasonable grounds.

16.4 **Date of liability for Subscriptions**

16.4.1 Annual Subscriptions

Annual Subscriptions are due —

16.4.1.1 every year on the first day of the Club Year; or

16.4.1.2 in the case of a newly admitted Member, on admission as Member.

16.4.2 Sport Section Annual Subscriptions

Sport Section Annual Subscriptions are due on such date as the relevant Sport Section Committee may determine.

17 **PENALTIES FOR NON-PAYMENT**

17.1 If any Member fails to pay a Subscription or any other amount due to the Club or Sport Section on the due date for payment and continues to be in default despite a notice from the Club or Sport Section Committee demanding that he or she pay the amount within 10 days of the notice, he or she will automatically, while continuing in default, lose the right to enter upon the Club Facilities and to exercise any rights or privileges of Membership.

17.2 If the Member continues to be in default for a period of 30 days reckoned from the due date for payment as contemplated in clause 17.1 —

17.2.1 ExCo may terminate his or her Membership and remove his or her name from the Membership roll; and

17.2.2 he or she will remain liable to pay the amount due.

17.3 ExCo may, in its discretion and on good cause shown, re-admit any such Member on such terms and conditions as it may deem fit to impose.

17.4 The rights of the Club above are in addition to any other rights it may have at law.

18 MEETINGS OF MEMBERS

18.1 **AGM**

An AGM of all Members qualified to vote will be convened by ExCo during the month of August each year. The business of such meeting will be to —

- 18.1.1 receive and consider ExCo's report on the general business of the Club, the annual financial statements and auditors' or reviewers' report for the preceding year ended 30 June;
- 18.1.2 consider any notice of motion of which due notice has been lodged with the Club Manager not less than 14 days before such meeting;
- 18.1.3 elect 5 Members of ExCo; and
- 18.1.4 transact such other business as may be competent of such meeting, provided that any resolution passed in terms of any motion other than a motion proposed in terms of clause 18.1.2 hereof will act as a recommendation to ExCo and will not be binding upon them.

18.2 **SGMs**

ExCo may, at any time, and will on receipt of a requisition signed by Members holding not less than 25% of all the votes of all Members, convene an SGM to consider such proposals as it or they intend submitting to such meeting or as are clearly set forth in such requisition.

18.3 **Notice of AGM**

- 18.3.1 Not less than 21 days' written notice of the time, day and place for the holding of the AGM will be sent by Data Message to the last known cell phone number or email address of each Member entitled to vote. Such period of 21 days will be reckoned from and include the date of the data message.
- 18.3.2 Such notice will set out the agenda of the meeting and state the names of all members of ExCo who are due to retire at the meeting, specifying the capacity in which they are serving and who, if any, will under clause 19.9 be ineligible for Membership of ExCo for the following year.
- 18.3.3 The notice will further state explicitly the requirements for nomination of candidates for election to ExCo under this Constitution and will specify the date by which such nominations must be lodged with the Club Manager.

18.4 Notice of SGMs

18.4.1 For all SGMs not less than 10 days' written notice of the time, day and place fixed for the holding of the meeting will be sent to the last known cell phone number or email address of each Member entitled to vote. Such period of notice will be reckoned from and include the date of dispatch of the notice.

18.4.2 Any notice posted in terms of clause 18.4.1 will clearly set out the proposals to be dealt with by the meeting.

18.5 Quorum at General Meetings

18.5.1 Members in good standing holding at least 25% of all the votes held by all Members will constitute a quorum at any General Meeting.

18.5.2 If such quorum is not present within 30 minutes of the time fixed for the holding of the General Meeting, it will be adjourned to the same day and time of the following week, or if such day be a public holiday, to the next succeeding day. No fresh notice of such adjourned meeting need be given. At any such adjourned meeting the Members present will, irrespective of number, constitute a quorum.

18.6 Chairperson of meetings

At all General meetings and at all ExCo meetings, the Chairperson and, in his or her absence, the Vice-Chairperson, will preside. If neither is present, the meeting will elect a chairperson to preside at the meeting. At any meeting, the person chairing the meeting will have a casting and a deliberative vote.

18.7 Voting at meetings

18.7.1 Save as otherwise provided in this Constitution, voting at all General Meetings will take place by show of hands, unless by a majority vote the meeting decides that the voting will be by ballot.

18.7.2 Save as otherwise provided in this Constitution, all matters will be decided on by a resolution passed at a quorate General Meeting by Member's present in person or by proxy holding a majority of all the votes of all the Members present in person or by proxy at the meeting.

18.7.3 The person chairing the meeting will announce whether or not any proposed resolution is carried.

18.7.4 On such announcement, any Members holding at least 10% of all the votes held by all Members may immediately demand that the resolution be submitted for decision to all Members of the Club entitled to vote.

18.7.5 On such demand being made, the Chairperson will cause the proposed resolution to be submitted for decision to all Members of the Club entitled to vote in such manner as he or she will decide and will thereafter, by notice on the notice board of the Club House notify the result of such submission. Where such submission is the result of a resolution originally proposed in terms of clause 18.1.4 then such submission will notwithstanding the proviso in clause 18.1.4 be binding upon ExCo. The aforementioned right to demand that a resolution be submitted to all Members of the Club entitled to vote, will not apply to any resolution arising from any notice of motion which has been contained in the notice calling the meeting or which has been proposed in terms of clause 18.1.2.

18.7.6 Despite clause 18.7.1 above, in the event of an election being held for members of ExCo or other offices of the Club in terms of the Constitution, such election will be by ballot and the full results as to the number of votes cast per candidate be declared at that meeting when announcing the results.

18.8 **Proxies and representatives**

18.8.1 Any Member may at any time appoint any natural person who is a Member as a proxy to participate in, and speak and vote at, a general meeting on behalf of that Member.

18.8.2 A proxy appointment —

18.8.2.1 must be in writing in such form as ExCo may determine, dated and signed by the Member; and

18.8.2.2 remains valid for the relevant General Meeting and any adjournment or postponement thereof.

18.8.3 A Member or his or her proxy must deliver to the Club Manager a copy of the instrument appointing such proxy before the commencement of the meeting at which the proxy intends to exercise that Member's rights.

18.8.4 Unless the instrument appointing a proxy provides otherwise, a Member's proxy may decide, without direction from the Member, whether to exercise or abstain from exercising any voting right of the Member and none of such rights or powers are limited, restricted or varied by this Constitution.

19 **EXCO**

19.1 **Control and management**

The full control and management of all the activities, business and operations of the Club is ultimately vested in ExCo.

19.2 Powers of ExCo

ExCo is responsible for, and has the following powers conferred upon it by this Constitution, or as vested in it by operation of law, including the power —

- 19.2.1 to appoint committees for any purpose it may deem necessary;
- 19.2.2 to institute, conduct, defend, settle or abandon any legal proceedings either by or against the Club or its officers or otherwise concerning the affairs of the Club;
- 19.2.3 to settle and allow time for payment in satisfaction of any debts due, and of any claims or demands by or against the Club;
- 19.2.4 to appoint auditors or reviewers of the Club and fix their remuneration;
- 19.2.5 to provide for the maintenance of financial records and the keeping of proper books of account of the Club;
- 19.2.6 to grant consents to persons, not being Members of the Club, to use the Club's facilities upon such terms as ExCo may deem fit, or refuse such consent, and to arrange terms of reciprocity with any other club;
- 19.2.7 to maintain, clean, repair, replace, repair or restore all of the improvements on the Club Facilities;
- 19.2.8 to levy and collect Subscriptions and Entrance Fees from Members as contemplated in this Constitution;
- 19.2.9 to pay any taxes and assessments, if any, levied by a governmental authority on the Club;
- 19.2.10 to enforce the provisions of this Constitution and the Regulations and any resolutions adopted by ExCo from time to time;
- 19.2.11 to grant use privileges of the Club Facilities gratuitously, from time to time, as ExCo may determine is in the best interests of the Club;
- 19.2.12 to formulate, adopt or amend Regulations of the Club;
- 19.2.13 to raise or borrow money for the Club and to invest and deal with any money of the Club not immediately required for the purposes of the Club and to vary or realise such investments from time to time;
- 19.2.14 to appoint or remove or discharge any employee and to fix the remuneration and terms of employment of all employees;

- 19.2.15 to appoint, and to determine the functions, scope and authority delegated to the Club Manager;
- 19.2.16 to exercise the powers afforded to elsewhere in this Constitution;
- 19.2.17 to admit Members;
- 19.2.18 to appoint sub-committees, Sport Section Committees and disciplinary committees consisting of such Members of the Club as ExCo thinks fit, for such purposes and with such powers and upon such terms as may be deemed necessary;
- 19.2.19 to lease the movable and immovable property of the Club and to hire additional property for the Club's needs upon such terms and conditions as ExCo may deem fit;
- 19.2.20 to control the Club's finances and to purchase or acquire and to invest Club Property as may be deemed advisable from time to time;
- 19.2.21 to appoint a Club Manager; and
- 19.2.22 subject to clause 19.3 below, to do all such other things as may be necessary for the proper carrying out of the objects of the Club.
- 19.3 In framing, amending, and/or repealing Regulations, ExCo will ensure that such Regulations —
- 19.3.1 do not conflict with any provisions of this Constitution or any resolutions passed by the Club in a General Meeting; and
- 19.3.2 apply to all Members of a particular class of Members equally.
- 19.4 The day-to-day management of the Club will be —
- 19.4.1 subject to this Constitution, the Regulations, and any policy or rule determined from time to time by ExCo; and
- 19.4.2 the responsibility of the Club Manager who will be appointed by ExCo and who will be subject to the supervision and direction of ExCo.
- 19.5 **Election of ExCo**
- 19.5.1 Only Members in good standing may be elected or appointed as members of ExCo.
- 19.5.2 ExCo will be elected annually at each AGM.
- 19.5.3 No Member, other than a retiring member of ExCo, will be eligible for election as a member of ExCo, unless at least 5 Members in good standing have lodged with the Club Manager not less than 7 days prior to the AGM, a proposal that such Member be

so elected, together with the written consent of such Member thereto, provided that the retiring ExCo may waive all or any of these requirements.

- 19.5.4 A retiring member of ExCo who is not disqualified in terms of clause 19.9 hereof, will be eligible for re-election provided that he has lodged with the Club Manager or Secretary not less than seven days prior to the AGM, written notice of his intention to seek re-election.
- 19.5.5 If more than 5 nominations are received, the election of Members of ExCo will be by ballot.
- 19.5.6 If no Members or if fewer than the 5 Members referred to in clause 19.5.1 are elected, those elected will have the power to nominate the required number of members to ExCo to bring the total number to five. Where no Members are elected, the retiring ExCo will have the power to nominate the requisite number of Members.
- 19.5.7 ExCo may co-opt a Member to fill any vacancy on ExCo caused by the resignation, death or cessation of Membership of an ExCo member. Such co-opted member will retire at the next AGM but will be eligible for re-election as a retiring member.
- 19.5.8 A member of ExCo who absents himself or herself from four consecutive meetings of ExCo without having obtained the consent of ExCo to do so, will, if ExCo so decides, cease to be a member thereof.
- 19.5.9 A member of ExCo may be granted leave of absence and ExCo may at its option co-opt a member to act in the place of and during the absence of such member.

19.6 **Chairperson and Vice-Chairperson**

- 19.6.1 ExCo will, at its first meeting after each AGM, or as otherwise required elect 1 of its number as a chairperson ("**Chairperson**") and 1 of its number as vice-chairperson ("**Vice-Chairperson**") of ExCo and of the Club.
- 19.6.2 Should the Chairperson or Vice-Chairperson not be present at any meeting of ExCo, ExCo members present will elect from their number an *ad hoc* chairperson for that meeting.

19.7 **Sport Section Committees**

- 19.7.1 The control and management of a Sport Section Committee will be vested in the relevant Sport Section Committee consisting of Members, who will, subject to the directions of ExCo, run the day to day activities of the Sport Section, and will have the power to make recommendations to ExCo regarding the sporting activities and sporting operations of the Sport Section.

19.7.2 The Sport Section Committees will be reconstituted annually by ExCo, and will comprise —

19.7.2.1 2 members of ExCo;

19.7.2.2 the chairperson of the relevant Sport Section; and

19.7.2.3 the Club Manager, *ex officio*.

19.8 **Meetings of ExCo and Sports Committee**

19.8.1 ExCo and each Sport Section Committee will meet separately, at least once per calendar month, and will keep proper minutes of all its decisions.

19.8.2 ExCo will ensure that a proper register of Members and proper books of account are kept.

19.8.3 At least 3 members of ExCo or the relevant Sport Section Committee will constitute a quorum at any meeting.

19.8.4 If such quorum is not present within 30 minutes of the time fixed for the holding of the meeting, it will be adjourned to the same day and time of the following week, or if such day be a public holiday, to the next succeeding day. No fresh notice of such adjourned meeting need be given. At any such adjourned meeting the members present will, irrespective of number, constitute a quorum.

19.8.5 All matters arising at any meeting of ExCo or the Sport Section Committee will be decided by majority of the members present. The Chairperson or the chairperson of the relevant Sport Section Committee, as the case may be, or, in his or her absence, the person appointed as chairperson for the meeting, will have both a deliberative and a casting vote.

19.8.6 The proceedings at any meeting will be valid, notwithstanding there being any vacancy in ExCo or the Sport Section Committee and notwithstanding any defect in the appointment or qualification of a member of ExCo or such Sport Section Committee, the acts of the respective Committees will be as valid as if such defect had not existed.

19.9 **Maximum period of service on ExCo**

19.9.1 No member will serve as Chairperson for more than 7 consecutive years.

19.9.2 Despite anything to the contrary in this Constitution, a year will, for the purposes of this clause, be deemed to run from the date of election to the office of the Chairperson until the following AGM. For the purposes of this clause, a portion of a year will be deemed to be a full year.

19.10 **Illustration of a Sport Section Committee's duties**

A Sport Section Committee will be responsible for —

- 19.10.1 the administration and co-ordination of the running of the relevant Sport Section;
- 19.10.2 the making of all playing and other arrangements in connection with the activity of the relevant Sport Section;
- 19.10.3 the making of recommendations to ExCo in relation to all sporting activities and sporting operations of the relevant Sport Section, including recommendations to ExCo in relation to the imposition of Sport Section Annual Subscriptions from time to time, provided that the Sport Committee will at all times be answerable to ExCo in relation to all sporting activities and sporting operations of the Club; and
- 19.10.4 the control of the finances of the relevant Sport Section, including the preparation of annual budgets for each sports section.

19.11 **Round robin**

A resolution signed by all the members of ExCo or a Sport Section Committee will be binding as if it were a resolution adopted at a quorate meeting, despite the fact that the resolution may be contained in different documents.

19.12 **Indemnity**

Every member of ExCo or a committee of the Club will be indemnified by the Club against all costs, losses and expenses which he or she may incur or for which he or she may become liable by reason of any act or thing done by him or her in the discharge of his or her duties, unless the loss in question is caused by the relevant member's dishonesty.

20 **CLUB MANAGER**

ExCo may appoint a person to be the club manager ("**Club Manager**") on such terms and conditions, and for such period, as it may determine in its discretion.

21 **FINANCIAL STATEMENTS, AUDITORS AND REVIEWERS**

- 21.1 ExCo must procure that annual financial statements are prepared for the Club in relation to each Club Year, which annual financial statements must include, at least —
 - 21.1.1 a balance sheet;
 - 21.1.2 an income statement;
 - 21.1.3 a cash flow statement;

- 21.1.4 notes, where appropriate;
 - 21.1.5 a report of the Chairperson; and
 - 21.1.6 a report of the treasurer.
- 21.2 ExCo must appoint auditors or reviewers to audit or review the annual financial statements of the Club in each Club Year.

22 REGULATIONS

- 22.1 ExCo will have power to frame, amend or repeal all such regulations ("**Regulations**") as it deems necessary for regulating every or any function or activity of the Club.
- 22.2 The Regulations will be promulgated by being displayed on the notice board of the Club for a period of 14 days. Unless within such period, a requisition signed by Members holding at least 25% of all the votes of all Members is lodged with the Club Manager demanding their submission to a General Meeting they will, at the expiration of such period of 14 days, become binding upon all Members.
- 22.3 If, however, such requisition is lodged as aforesaid, such regulations will not become binding until approved by a General Meeting.
- 22.4 Notwithstanding anything to the contrary herein contained, no Regulation will be valid which is inconsistent with, contravenes or purports to vitiate any clause of this Constitution.

23 SALE OR MORTGAGE OF CLUB IMMOVABLE PROPERTY

Any immovable property of the Club will not be sold, mortgaged or in any way encumbered either by registration in a Deeds Office or otherwise unless approved by a resolution passed at an SGM called for that purpose, provided that —

- 23.1.1 not less than 20 days' notice is given of such meeting stating the nature of the transaction to be proposed; and
- 23.1.2 such resolution is passed by Members present in person or by proxy holding 75% of all the votes of all the Members present in person or by proxy at the meeting.

24 DAMAGE TO CLUB PROPERTIES

Where any Club Property has been damaged or destroyed by a Member or by the guest of a Member, howsoever caused, such Member or the Member who introduced the guest concerned will pay for the reparation, replacement or making good of the damaged or destroyed property in such a manner and upon such terms as may be determined by ExCo.

25 **DAMAGE TO PERSON OR PROPERTY**

Neither a Member nor a guest will have any right to be compensated by the Club for any injury or damage to his or her person or property sustained from whatsoever cause while on the Club's premises.

26 **PRIVILEGES OF MEMBERSHIP FOR VISITING PLAYERS**

ExCo may allow such rights and privileges of Membership as it may determine in its discretion, including the right to purchase food and beverages, to any persons while engaged in any match or competition on the Club Facilities.

27 **GUESTS**

27.1 **Ineligibility for introduction as guests**

27.1.1 The following persons will not be introduced into the Club Houses as guests, namely —

27.1.1.1 any person who by virtue of clause 12.5, is ineligible for candidacy for Membership;

27.1.1.2 any person who has been expelled or suspended from Membership in terms of clause 13; and

27.1.1.3 any person whose name has been posted and remains posted in terms of clause 17.

27.1.2 No person under the age of 18 years will be introduced or admitted to any portions of the Club Facilities from which they are under any law prohibited.

27.2 **Introduction of guests**

Subject to such additional conditions as ExCo may from time to time prescribe, a Member may introduce a guest to the Club Facilities, provided that —

27.2.1 a guest will not be introduced unless personally accompanied by the introducing Member, and will only use and enter the Club Facilities during such time as the introducing Member is also present;

27.2.2 no person will be introduced as a guest more than twice per calendar month; and the responsibility rests on the introducing Member to ensure that this clause 27.2.2 is not contravened;

27.2.3 the introducing Member will be responsible for the conduct of the guest while using the Club Facilities;

27.2.4 ExCo may prohibit any person other than a Member from using the Club Facilities; and

27.2.5 no Member may introduce on any occasion more than 50 guests (excluding members of the immediate family of the Member).

27.3 Special occasions in reference to guests

ExCo may, in its discretion —

- 27.3.1 fix certain days and occasions when clause 27.1 and clause 27.2 will not be operative;
- 27.3.2 prescribe certain days and occasions or certain hours on certain days and occasions when guests may not be introduced to Club Facilities or portions thereof; and
- 27.3.3 prescribe certain days and occasions or certain hours on certain days and occasions when guests may only be introduced to Club Facilities or portions thereof provided that the introducing Member pays a fee or purchases a guest ticket for such sum of money as ExCo may determine.

28 COMPLAINTS AND SUGGESTIONS

Any member having cause for complaint against any official or employee of the Club will present such complaint in writing to the Club Manager. Any complaint or suggestion will be placed before ExCo at its next ensuing meeting.

29 BUSINESS OPERATIONS AND ADVERTISEMENTS

- 29.1 Save with the specific consent of ExCo, the Club premises will not be used by any Member, Club official or member of staff for any private business matter or purpose whatsoever. Save as set out in this Constitution, no notices or advertisements will be displayed in the Club Houses except with the consent of the Club Manager pursuant to a direction from ExCo.
- 29.2 No profit from the sale of liquor by the Club will accrue to any individual.

30 AFFILIATED CLUBS AND RECIPROCITY

ExCo will have power to determine the conditions upon which other Clubs or the members thereof will become affiliated to the Club and may arrange, vary and cancel the terms of reciprocity with other clubs and the privileges to be accorded to members of such reciprocity clubs.

31 ADDRESSES AND NOTICES TO MEMBERS

- 31.1 Every Member will record his or her physical address, cell phone number and email address or any change thereto with the Club Manager.
- 31.2 Every Member accepts notice by Data Message only.
- 31.3 Any notice or communication of whatever kind to a Member will be deemed for all purposes to have been received by such Member within one week of it being sent to such Member.

- 31.4 Notwithstanding the above, any notice given and actually received by the Member to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 31.

32 CONSTITUTION

32.1 Repeal of prior constitutions

- 32.1.1 The provisions of this Constitution will be operative from the date of adoption thereof at an AGM.

- 32.1.2 From the date of adoption of this Constitution all prior constitutions of the Club will be deemed to be repealed.

- 32.1.3 Despite the above —

- 32.1.3.1 any existing regulations or rules not inconsistent with this Constitution will, until amended or repealed by ExCo, remain in force;

- 32.1.3.2 any member of ExCo and a Sport Section Committee will continue to remain in that position until removed from office in accordance with this Constitution; and

- 32.1.3.3 for certainty, any liability of a Member that arose prior to the adoption of this Constitution will endure.

32.2 Contraventions of Constitution

A contravention by a Member of any clause of this Constitution will be deemed per se conduct unworthy of a Member and prejudicial to the interest of the Club.

32.3 Interpretation of this Constitution

In the event of doubt or dispute as to the true meaning of any portion of this Constitution, ExCo will declare by notice in the Club House what it considers such true meaning to be, and such declaration will thereafter, unless set aside by a General Meeting, be deemed to be expressly incorporated in the Constitution.

32.4 Amendment of Constitution

The terms of Constitution may be amended by a resolution passed at an SGM called for that purpose, provided that —

- 32.4.1 not less than 20 days' notice is given of such meeting stating the nature of the amendments to be proposed;

- 32.4.2 such resolution is passed by Member's present in person or by proxy holding 75% of all the votes of all the Members present in person or by proxy at the meeting; and

32.4.3 the name of the Club and this clause 32.4.3 may not be amended.

33 **DISSOLUTION OF CLUB**

The Club may be dissolved by a resolution passed at a SGM called for that purpose, provided that —

33.1 not less than 20 days' notice is given of such meeting calling for dissolution;

33.2 such resolution is passed by Member's present in person or by proxy holding 75% of all the votes of all the Members present in person or by proxy at the meeting; and

33.3 in the event of a resolution for the dissolution of the Club being passed at any meeting contemplated in clause 33.2, that meeting will also have power to pass resolutions by way of majority vote for the appointment of a liquidator and the disposal of the surplus funds and assets of the Club after winding-up and after the payment of all the debts and obligations of the Club, provided that any surplus assets will be given or transferred to some other association or institution, with objects similar to those of the Club.

34 **SPECIAL PROVISIONS RELATING TO TAX EXEMPTION**

34.1 In this clause 34 —

34.1.1 "**Commissioner**" means the Commissioner for the South African Revenue Service; and

34.1.2 "**Income Tax Act**" means the Income Tax Act, No 58 of 1962.

34.2 It is envisaged that the Club will continue applying to the Commissioner for approval as a recreational club as contemplated in section 30A of the Income Tax Act and that the receipts and accruals of the Club will be exempt from normal tax to the extent set out in section 10(1)(cO) of the Income Tax Act. In order to qualify for such tax exemption the Club must at all times comply with the provisions of clauses 34.3 to 34.11.

34.3 The Club is required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Club and no single person directly or indirectly may control the decision making powers relating to the Club.

34.4 All the Club's activities must be carried on in a non-profit manner.

34.5 The Club is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of clause 34.6.2.

34.6 The Club is required on dissolution to transfer its assets and funds to —

34.6.1 any other recreational club which is approved by the Commissioner in terms of this section; or

- 34.6.2 a public benefit organisation contemplated in paragraph (a) (i) of the definition of a "public benefit organisation" in section 30(1) of the Income Tax Act which has been approved in terms of section 30(3) of the Income Tax Act.
- 34.7 The Club may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as a percentage of any amounts received or accrued to the Club.
- 34.8 All members of the Club must be entitled to annual or seasonal membership.
- 34.9 Members are not allowed to sell their membership rights or any entitlement.
- 34.10 The Club must submit to the Commissioner a copy of any amendment to this Constitution.
- 34.11 The Club may not knowingly be a party to, and may not knowingly permit, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.
- 34.12 If there is any conflict between a provision of this clause 34 and any other provision in this Constitution, then the former provision will prevail.

35 **SEVERABILITY**

All provisions and the various clauses of this Constitution are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Constitution which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever will, only to the extent that it is so unenforceable, be treated as not having been written and the remaining provisions and clauses of this Constitution will remain of full force and effect.

36 **NO INDULGENCES**

Any latitude, extension of time or other indulgence that the Club may allow to a Member for meeting an obligation under this Constitution, any delay or forbearance in enforcing a right under this Constitution, or single or partial exercise of a right the Club under this Constitution, is not an implied consent or election by the Club, is not a waiver or a novation of, and does not affect any of the Club's rights under this Constitution, and does not stop the Club from enforcing every term of this Constitution.

37 NO TRANSFER

A Member may not transfer any rights or obligations under this Constitution.

38 MEDIATION

38.1 If a dispute arises between a Member, on the one hand, and the Club, on the other hand, the parties to the dispute ("**Dispute Parties**") must, on written demand by a Dispute Party, submit that dispute for attempted resolution by mediation.

38.2 The mediation must be conducted by a mediator selected by agreement between the Dispute Parties, and failing such agreement within 7 days after a written request by any Dispute Party calling for such nomination, a person nominated by the then auditor or reviewer of the Club.

38.3 A Dispute Party may not be represented during the mediation except, in the case of a Dispute Party who is not a natural person, by a *bona fide* office bearer or employee.

38.4 In the mediation, the mediator must follow such informal proceedings as he or she sees fit.

38.5 Each Dispute Party must pay its own costs relating to the mediation. The Dispute Parties will pay the fees and disbursements of the mediator in equal shares.

38.6 If, and only if, the dispute has not been resolved after mediation, the Parties must, on written demand by a Dispute Party, submit that dispute for final arbitration under clause 39.

38.7 Mediation under this clause 38 must be held in secret (*in camera*). The Dispute Parties must keep confidential (i) the details of the dispute submitted to mediation, and (ii) the conduct and result of the mediation.

38.8 Despite this clause 38, a Dispute Party may apply to court for urgent relief, or for judgment for a liquidated claim.

39 DISPUTE RESOLUTION

39.1 "**AFSA**" means the Arbitration Foundation of Southern Africa.

39.2 An arbitration must be conducted in accordance with the rules of AFSA.

39.3 The arbitration must be held in Cape Town, in English.

39.4 AFSA must administer the arbitration.

39.5 If AFSA cannot or does not accept requests for arbitration, then the arbitration must be held under the AFSA rules for commercial arbitration as last applied by AFSA. That arbitration must be held before an arbitrator agreed between the Dispute Parties.

- 39.6 If the Dispute Parties cannot agree on an arbitrator within 7 days of the demand for arbitration, then a Dispute Party may ask the President of the Cape Bar Council to appoint an arbitrator. That arbitrator must be an advocate of not less than 10 years' standing.
- 39.7 If the Dispute Parties cannot agree on something relating to the administration of the arbitration, they must refer the matter to the arbitrator whose decision is final and binds the Dispute Parties.
- 39.8 An arbitration under this clause 39 must be held in secret (*in camera*). The Dispute Parties must keep confidential (i) the details of the dispute submitted to arbitration, and (ii) the conduct and result of the arbitration.
- 39.9 Despite this clause 39, a Party may apply to court for urgent relief, or for judgment for a liquidated claim.
- 39.10 This clause 39 binds the Parties even if this Constitution ends for any reason.
- 39.11 A written demand by a Party to submit a dispute to arbitration is deemed a legal process that interrupts extinctive prescription under the Prescription Act, No 68 of 1969.

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DEPICTION OF BADGE

