Daniels Mediation Association

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Proposed Constitution

1. ARTICLE I - DEFINED TERMS
   1. The interpretation of this Constitution is governed by the provisions set out in the schedule.
2. ARTICLE II – NAME
   1. The name of the Company shall be ‘DANIELS MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION LLC. hereinafter referred to as ‘Daniels Mediation Association’.
   2. ARTICLE III - MAIN OBJECTIVES

2.3. To promote the resolution of conflicts and disputes in Kenya by encouraging the use of mediation and related dispute resolution techniques and to encourage the professional practice of mediation by trained mediators.

ARTICLE IV - SPECIFIC OBJECTIVES

* 1. The objects of The Association are:-
     1. To promote the technique and benefits of mediation, and related dispute resolution techniques, to all persons in Kenya.
     2. To promote and make easily available to the public, the services of trained mediators, who act with high levels of professionalism and integrity, for the resolution of all types of conflicts and disputes.
     3. To protect, and promote the protection of, the public’s interest in the professional practice of mediation.
     4. To advocate on behalf of the mediation profession for the optimal business and regulatory environment in which mediators offer and provide services.
     5. To advocate on behalf of the mediation profession and its users, to ensure and maintain the confidentiality of the mediation process and the protection of mediators from being called to give evidence in court, with regard to mediations conducted.
     6. To establish and encourage the innovation of standards and procedures of conducting a mediation that are reflective of the fluidity and creativity of the process.
     7. To offer for the benefit of mediators and their clients, a voluntary accreditation scheme, certifying the training, competence and credibility of accredited mediators, against published minimum standards; and maintaining a publicly accessible register of such accredited mediators; and the issuance of certification documentation to evidence such accreditation.
     8. To establish and promote an ethical code of conduct for the practice of mediation for Member mediators.
     9. To set, for the professional education and training of mediators, minimum standards and training syllabuses, in consultation with other mediation training institutions.
     10. To instigate and manage a formally structured scheme by which all users of mediation may register complaints against the service offered by any mediator.
     11. To act as a self-regulating membership organisation and develop disciplinary standards and procedures with penalties for malpractice, and censure to include, in appropriate cases, expulsion from The Association, in order to maintain the professionalism and dignity of the practice of mediation.
     12. To act as a representative voice of mediators in interactions with other actors in the justice and legal sector.
     13. To ensure understanding in the country of the significant differences between formal mediation and other ad-hoc processes of dispute resolution.
     14. To develop and offer products and services to Members that enhance their practice of mediation.
     15. To organise networking events for mediators to encourage the spreading of best practices and to improve mediators’ skills.
     16. To create and maintain and encourage the creation and maintenance of dedicated spaces and venues for the practice of mediation.
     17. To create Chapters (branch offices) of The Association as appropriate, in any region of the Republic of Kenya and to contribute and assist in the creation of similar institutions outside of Kenya.
     18. To organise, or assist in the organisation of, conferences, conventions, exhibitions, lectures, debates and other educational events for the benefit of mediators and/or lawyers and/or users of mediation.
     19. To publish a website or websites that promote The Association and its objectives.
     20. To instigate, hold and manage such social media accounts as The Association may use to further its objectives and as a means of communication to and between its Members.
     21. To publish and/or distribute books, pamphlets, reports, leaflets, journals, films, tapes and instructional materials on any medium.
     22. To promote, encourage, carry out or commission research surveys, studies or other work relating to the practice of mediation and to publish the useful results thereof.
  2. The Association is non-political and any political views expressed by its Members, Officers, Officials, directors, management, staff or agents, shall be deemed to be the personal views of the individual making such pronouncement and NOT the view of The Association.

ARTICLE V - POWERS OF THE ASSOCIATION

* 1. In furtherance of the above objects but not otherwise, and in compliance with the processes and procedures defined in this Constitution, the Members shall have the following powers:-
     1. To create, publish, and amend, rules and regulations, compliant with this Constitution, applicable to Members with regard to their continued membership of DanielsMediation and the functioning of The Company.
     2. Collaborating with any and all associations with identical or similar objectives to The Association within Kenya or internationally.
     3. To acquire any moveable or immovable property and any buildings or things whatsoever and sell, dispose of, mortgage, lease or otherwise deal with all or any part of the property or rights of The Association.
     4. To enter into any arrangement with any governments or authorities that may seem conducive to The Association’s objects, or any of them, and to obtain from such government or authority any rights, privileges and concessions which The Association may think desirable to obtain.
     5. To take such step by personal or written appeals, public meetings, or otherwise, as may from time to time be deemed expedient for the purpose of procuring contribution to the funds of The Association in the form of donation, annual subscription or otherwise.
     6. To apply to any governments or authority, public bodies, corporations, companies, non-governmental organisations or persons, for and to accept grants or gifts of money and any movable or immovable property, donation, gifts, subscriptions and any other assistance with a view to promoting the objects of The Association and in taking of any gift or property, to take the same subject to any specific association which may be prescribed by the donor thereof.
     7. To establish an endowment fund to receive grants, donations, gifts and other assistance in any form whatsoever from within Kenya or from any other source, for any one or more of the objects of The Association and to establish non-profit-making foundations in any country or countries for the purpose of receiving donations, from private and corporate persons and for channelling the same to The Association’s development operations.
     8. To promote or assist in the promotion of any company or other body having objects similar to those of The Association.
     9. To draw execute or otherwise deal with negotiable or transferable instruments.
     10. To lend and advance money or give credit to employees of The Association upon such security as may be thought proper, or without taking any security thereof, upon such terms as the Executive Committee and/or Management Team of The Association may think fit, and guarantee the performance of any contract or obligation and the payment of money by any employee of The Association and generally to give guarantees and indemnities for the employees of The Association.
     11. To do all such things as are incidental or conducive to the attainment of any of the above objects of The Association.
     12. To invest money of The Association, not immediately required, by any one or more of the modes of investment of The Association’s money, or in such other manner as the Executive Committee and/or Management Team of The Association may from time to time determine.
  2. The above Powers of The Association will be executed through the Executive Committee and/or the Management Team, in compliance with the stipulations at Articles Error! Reference source not found.I to XIV below.



ARTICLE VI – MEMBERSHIP

* 1. "Member" shall mean any person, legal personality, institution or organisation as hereinafter defined and “membership” shall refer to the state of being a Member.
  2. A Member shall include all persons falling within the definition of “Member” and shall be eligible to become a Member of The Association, provided that the Executive Committee shall have an overriding discretion to determine, without assigning any reasons therefore, who may or may not become a Member of The Association.

Classes of Membership

* 1. There shall be six (6) classes of membership:-
     1. Individual Membership, made up of the following three (3) sub-classes, for eligible persons who reside and practice within the Republic of Kenya; and who will be entitled to one (1) vote per Member:-
        1. *Ordinary Member*, a Member who’s training qualifications in mediation; number of mediations observed; and fully and properly completed application form satisfies the minimum basic requirements of membership as set out in the Rules and Regulations of The Association;
        2. *Senior Member*, a Member who has completed three (3) year’s continuous, membership of The Association, without any period or periods of suspension of membership and who’s practicing history; mentoring and/or teaching of mediation experience satisfies the minimum requirements of senior membership as set out in the Rules and Regulations of The Association;
        3. *Distinguished Member*, a Member who has practised as an accredited Member of The Association for a period in excess of ten (10) years and has made, at the absolute discretion of the Executive Committee, a significant contribution to the field of mediation.
     2. *Corporate Membership* comprising any institution or other corporate body, including such institutions of bodies that conduct the training of mediators, who will be entitled to one (1) vote per Member; and;
     3. *Student Membership* comprising Members who’s current studies include such training in mediation that satisfies the minimum requirements for Student membership as set out in the Rules and Regulations of The Association, but who will NOT be entitled to vote but may attend and participate in any General Meetings and other events of The Association; and;
     4. *Foreign Membership* comprising mediators not ordinarily resident in Kenya but who’s practice, training and experience in mediation satisfies the minimum requirements for Foreign membership as set out in the Rules and Regulations of The Association and who seek accreditation to assist with their practice in the Republic of Kenya, who will be entitled to one (1) vote per Member; and
     5. *Honorary Membership* comprising persons or corporate bodies whom by virtue of their contribution to the mediation sector and whom the Executive Committee deem appropriate to invite to be honorary Members, who will be entitled to one (1) vote per Member.
     6. *Founder Membership* comprising any of the preceding five (5) classes of Member who becomes a fully paid up Member of The Association on or before the 31st March 2020 and who will be entitled to one (1) vote per member.
  2. Subject to compliance with this Constitution, and the Rules and Regulations of The Association, a Member shall not cease to be a Member whilst they remain accredited and fall within the definition of a Member, by virtue of their not having a current mediation practice.

Application and Membership Fees

* 1. Subject to the provisions of this Constitution and as a condition precedent to becoming a Member of The Association, all Members shall contribute a non-refundable application fee, together with their application for membership, as set out in the following table or such sum as is subsequently defined in the Rules and Regulations of The Association.

|  |  |  |  |
| --- | --- | --- | --- |
| Individual Member | KES 3,000 |  |  |
| Corporate Member | KES 50,000 |  |  |
| Student Member | KES 5000 |  |  |
| Foreign Member | KES 2,500 |  |  |
| Distinguish Member | NO APPLICATION FEE |  |  |
| Founder Member | An additional KES 10,000 |  |  |

* 1. Membership will be available upon application to the Secretary, or in the case of the absence or unavailability of the Secretary, to the Assistant Secretary.
  2. Upon successful confirmation of membership all Members will pay, at the commencement of each calendar year, a Membership Fee, as set out in the following table or such sum as is subsequently defined in the Rules and Regulations of The Association.

|  |  |  |  |
| --- | --- | --- | --- |
| Individual Member | KES 7,000 |  |  |
| Corporate Member | KES 100,000 |  |  |
| Student Member | KES 2,000 |  |  |
| Foreign Member | KES 50,000 |  |  |
| Honorary Member | KES 10,000 |  |  |
| Founder Member | As per underlying membership class |  |  |

* 1. Members whose confirmation of membership is communicated to that Member other than during the month of January, shall pay a pro-rata Membership Fee, for that first year of membership, based on the number of complete calendar months remaining in the year at the time that the confirmation of membership is communicated.
  2. A Member who resigns their membership during the course of a calendar year, or who otherwise ceases to be a Member, shall not be entitled to any refund of annual Membership Fee.
  3. Any Member who fails to renew their membership, by payment of the appropriate Membership Fee, within three (3) months from the commencement of the calendar year, shall be deemed have allowed their membership to lapse. Any renewal may be made upon such terms and conditions as the Executive Committee or Management Team may determine.

Suspension of Membership

* 1. A Member’s membership of The Association may be suspended for a stipulated period or until termination or other cessation of membership as defined in Article 6.13 below, as a result of one or any of the following reasons or acts by the Member:-
     1. conviction of a criminal offence for which a penalty of in excess of Kenya Shillings fifty thousand (KES 50,000) or a term of imprisonment of more than six (6) months applies;
     2. the Executive Committee reasonably believe that the Member has become physically or mentally incapable of managing his or her own affairs and they resolve that his or her membership should be terminated;
     3. refusal to abide by the Constitution and Rules and Regulations of The Association, including but not limited to the Code of Conduct or Mediators and the Standard Operating Procedures as defined by The Association;
     4. the Member’s conduct has adversely affected the reputation or dignity of the practice of mediation;
     5. any act that brings, or tends to bring The Association into disrepute;
  2. During any period of suspension of a Member or pending hearing by the Executive Committee of any appeal of a suspension decision, the Member shall not be permitted to claim current, unqualified membership of The Association and all rights and responsibilities of membership, including membership of any Committee of The Association, shall also be suspended.
  3. Within thirty (30) days of any suspension of a Member’s membership, the Member shall be permitted to appeal the suspension decision to the Executive Committee, whereupon the Executive Committee shall inform the Member of the reasons for the suspension and permit the Member to submit a written appeal (within sixty (60) days) and attend and have right of audience at the Executive Committee meeting where the Member’s appeal shall be heard and determined. Such appeal to be heard and determined within six (6) months of receipt of any written appeal, except where matters pertinent to the appeal are to be heard by any Court or Tribunal, in which case the appeal to be heard and determined within three (3) months of the final determination of those matters by Court, Tribunal or Appeal Court.

Cessation of Membership

* 1. The founders to this Constitution and such other legal persons or associations as the Executive Committee or Management Team of The Association may from time to time admit to membership, shall be Members of The Association provided that a Member shall cease to be a Member if:
     1. The Member gives one month’s notice in writing to the Executive Committee of their intention to resign their membership. Upon expiry of such notice they shall cease to be a Member but their liability to contribute to the funds of The Association in the event of its being wound up or dissolved shall continue for one (1) year from the expiry of such notice.
     2. The Member’s membership is terminated with the approval of not less than two-thirds of the Members of The Association at an Annual General Meeting (AGM) of The Association or specially convened Extraordinary General Meeting (EGM) of The Association, at which the Member has been given a reasonable opportunity of attending and being heard.
     3. The Member dies or otherwise ceases to legally exist.



ARTICLE VII - MANAGEMENT STRUTURE OF THE ASSOCIATION

* 1. The Members of The Association shall have ultimate responsibility for the Constitution of The Association, and, by democratic process, the appointment of the Executive Committee, PROVIDED THAT this responsibility shall not extend to the appointment of the founding Executive Committee.
  2. The Executive Committee shall be the senior management body of The Association, responsible for overseeing the management and setting the strategic direction of The Association in keeping with the objectives set in this Constitution.
  3. The four (4) person Management Team shall be responsible for the management of the day-to-day affairs of The Association, to the extent that that responsibility has not in whole or in part been delegated to an officer or officers of The Association.

The Executive Committee

* 1. Until otherwise varied by a Special Resolution passed at any General Meeting of The Association, the Executive Committee shall consist of the post of Chairman (“The Chair), Vice-Chairman (“Vice-Chair”), Secretary, Assistant Secretary, Treasurer, Assistant Treasurer and a minimum of an additional four (4), five (5) or six (6) Members (totalling Ten to Twelve (10-12) Executive Committee members in all), PROVIDED THAT any Chief Executive Officer of The Association may be a Member of the Executive Committee ex-officio (which shall not entitle the officer to voting rights at any meeting).
  2. The Executive Committee may co-opt any person or persons to advise the Executive Committee in any capacity that the Executive Committee shall think fit.
  3. The Executive Committee’s responsibilities include:-
     1. Making major decisions;
     2. Approving major policies;
     3. Consideration of higher-level, future oriented issues;
     4. Overseeing the Management Team in carrying out its Constitutional obligations to Members of The Association;
     5. Taking and/or approving management decisions which may have a negative impact on The Association or involve major financial risks;
     6. Long term planning for The Association;
     7. Approval of major financial expenditures;
     8. Appointment of The Association’s Chief Executive Officer if any;
     9. Ensuring that decisions of The Association, which, under this Constitution, require the approval of Members, are brought promptly to the Members at a General Meeting;
     10. Creating, publishing and amending where necessary, rules and regulations of The Association, governing its Members and the functioning of The Association.
  4. The Executive Committee may exercise such powers of The Association, in order to achieve the objectives of The Association, as are not required by this Constitution to be exercised by a General Meeting of the Members PROVIDED THAT responsibility for the management of the day-to-day affairs of The Association shall lie with the Management Team.

The Management Team

* 1. The Management Team shall be constituted of The Chair, the Vice-Chair, the Secretary, and the Treasurer. If the Secretary and/or the Treasurer are unavailable, and any matter for their consideration cannot reasonably be held over until they become available, their responsibilities and powers shall fall to their Assistants.
  2. The Management Team shall regulate its own proceedings as it sees fit provided that in the exercise of its functions, it shall conform to any relevant Rules and Regulations prescribed by the Executive Committee. It is hoped that all decisions taken by the Management Team will be by consensus. However, where consensus is lacking, the view of the Chair will prevail, providing that that view is supported by at least one (1) other member of the Management Team. Where no decision on a matter can be made, the matter shall be referred to the next Meeting of the Executive Committee for consideration.
  3. The Management Team’s responsibilities include:-
     1. Developing and making operational policy;
     2. Developing Associational policy;
     3. Making operational decisions;
     4. Keeping the Executive Committee informed and advised about all matters of significance affecting The Association, typically on a monthly basis;
     5. Bringing well documented recommendations to the Executive Committee and advising on major decisions;
     6. Appointment of all staff and suppliers to The Association, with the exception of the Chief Executive Officer, PROVIDED THAT this responsibility shall NOT apply to the appointment of The Association’s auditor or auditors.
  4. The Management Team may exercise such powers of The Association, in order to achieve the objectives of The Association, as are not required by this Constitution to be exercised by the Executive Committee or by a General Meeting of the Members.
  5. No regulations made by The Association in a General Meeting shall invalidate any prior act of the Executive Committee and/or Management Team, which would have been valid if such regulations had not been made.
  6. The Management Team’s responsibility for management of The Association, may, in full or in part, at the discretion of the Executive Committee, be delegated to an Officer or Officers of The Association, such Officer or Officers, who need not be Members of The Association, may be paid for their services out of the funds of The Association.



ARTICLE VIII - FIRST APPOINTMENT TO THE FOUNDING EXECUTIVE COMMITTEE

* 1. The founders to this Constitution shall form the initial Executive Committee and shall, amongst themselves, agree who shall act respectively as the Chairman, Vice-Chairman, Secretary, Assistant Secretary, Treasurer and Assistant Treasurer of The Association.



ARTICLE VIX – OTHER APPOINTMENT TO THE EXECUTIVE COMMITTEE

* 1. The Executive Committee may from time to time, and at any time, appoint any Member of The Association to the Executive Committee, to fill a vacancy or otherwise, provided that the prescribed maximum is not thereby exceeded and provided also that the proposal to appoint any new member of the Executive Committee under this section shall be set out in a formal Resolution forming part of the notice convening the Executive Committee Meeting at which the appointment is made.
  2. Such a member of the Executive Committee appointed by the Executive Committee shall hold office until the next Annual General Meeting at which the member will be deeded to have resigned and be immediately eligible for re-election.



ARTICLE X – ALTERNATES

* 1. Any member of the Executive Committee may appoint another member of the Executive Committee to be his or her alternate to act in their place at any meeting of the Executive Committee at which they are unable to be present. Such appointee shall be entitled to exercise all the rights and powers of a member of the Executive Committee and shall have a separate vote on behalf of their appointer in addition to their own vote. A member of the Executive Committee may at any time revoke the appointment of an alternate appointed by them. The appointment of an alternate shall be revoked automatically if his or her appointer ceases to be a member of the Executive Committee. Every appointment and revocation under this sub-Article shall be effected by notice in writing under the hand of the appointer, served on Secretary of The Association, or in his or her absence or unavailability the Assistant Secretary, and on such alternate.



ARTICLE XI – MEMBERS OF THE EXECUTIVE COMMITTEE & OFFICE BEARERS

* 1. Members of the Executive Committee shall normally hold office for a period of three (3) years from the date of their election and shall be deemed to have retired from office at the third Annual General Meeting following their election. All members of the Executive Committee shall, following retirement be eligible for re-election to the Executive Committee.
  2. At the initial formation of the Executive Committee, the Chair’s, and Assistant Treasurer’s terms of office shall be three (3) years; the Vice-Chair’s and the Secretary’s terms of office shall be two (2) years; the Treasurer’s and Assistant Secretary’s terms of office shall be one (1) year; the first and fourth appointed non-official Members’ terms of office shall be three (3) years; the second and fifth (if any) appointed non-official Members’ terms of office shall be two (2) years; and the third and sixth (if any) appointed non-official Members’ terms of office shall be one (1) year. Initial members of the Executive Committee who shall hold office for three (3) or two (2) years, or one (1) year, shall be deemed to have retired from office at the third, second or first Annual General Meeting of The Association respectively and shall be immediately eligible for re-election to the Executive Committee.
  3. If the Chair, during their term of office should cease to be a Member of The Association, resign from the office or die, the Executive Committee shall elect an interim Chair, from one of their number to hold office, in parallel to any existing Official role, until the next Annual General Meeting when a new Chair shall be elected. The same procedure applies to the Secretary and the Treasurer.
  4. If any of the Vice-Chair, Assistant Secretary or Assistant Treasurer, during their terms of office should cease to be a Member of The Association, resign from their office or die, the posts shall be filled by vote of the Members at the next Annual General Meeting, or, at the discretion of the Executive Committee, at an Extraordinary General Meeting.



ARTICLE XII – DUTIES OF OFFICE BEARERS

* 1. The Chair shall chair all the meetings of the Executive Committee and all General Meetings. The Chair shall provide general policy guidelines relating to the affairs of The Association as expressly provided in the Constitution. In the absence of the Chair & Vice-Chair, at Executive Committee meeting, the Executive Committee shall elect one of their number to chair the meetings.

The Chairman

* 1. The Chair shall be responsible for General Meetings and for the proceedings of the Executive Committee and shall:
     1. represent and act on behalf of The Association generally;
     2. be responsible for keeping a full complete and up-to-date record of The Association’s affairs;
     3. do all such acts as are necessary for the efficient and effective running of The Association’s affairs.

The Vice-Chairman

* 1. The Vice-Chair shall assist and where necessary deputize for the Chair and shall stand ready and informed about The Association and its business to be able to publicly represent The Association at short notice.

The Treasurer

* 1. The Treasurer shall in general ensure that the proper accounting procedures are adhered to and shall:
     1. Keep, on a proper accounting basis, all the financial records of The Association;
     2. open a bank account on the advice of the Management Team or Executive Committee and ensure that all drawings from the account are correctly signed and countersigned as stipulated by the Executive Committee;
     3. provide reports on the financial status of The Association and audited accounts to Annual General Meetings.

The Secretary

* 1. The Secretary shall ensure that The Association is run in accordance with the Rules & Regulations and this Constitution and shall:-
     1. keep a full complete and up-to-date record of minutes of The Association’s meetings of the Executive Committee and of any General Meetings;
     2. arrange for meetings of The Association on instructions of the Executive Committee, the Management Team, or in special circumstances on instructions of any General Meeting or the Membership;
     3. advise the Executive Committee, Chair and Management Team, in the running of The Association, of the stipulations in this Constitution and of any applicable Rules and Regulations and of any applicable law.



ARTICLE XIII – PROCEEDINGS OF THE EXECUTIVE COMMITTEE

* 1. The Executive Committee may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. The quorum necessary for the transaction of business shall be not less than one-third the number of members of the Executive Committee for the time being. If one-third of members of the Committee is not a whole number, the quorum shall be the next whole number above that figure.
  2. Matters arising at any meeting on which there is not unanimous agreement shall be decided by a majority of votes. In case of any equality of votes the chair of the Meeting shall have a casting or second vote.
  3. The Executive Committee shall meet at such times and places as it shall resolve but shall meet not less than once in each calendar quarter year.



ARTICLE XIV – CALLING OF MEETINGS

* 1. Normal Meetings.

All normal meetings of the Executive Committee shall be summoned by the Secretary acting in consultation with the Chair by giving at least fifteen (15) days’ notice in writing accompanied by the proposed agenda. Such notice may be given by electronic means of communication.

* 1. Requisitioned Meetings.

Where the Secretary, or in the absence or unavailability of the Secretary, the Assistant Secretary, receives requests from at least four (4) members of the Executive Committee, a Meeting of the Committee shall be summoned by the giving of at least twenty one (21) days’ notice in writing accompanied by the proposed agenda. Such notice may be given by electronic means of communication.



ARTICLE XV – FORMATION OF COMMITTEES AND CHAPTERS/BRANCHES

* 1. The Executive Committee may form sub-committees consisting of such members of the Executive Committee as they think fit and may delegate any of its powers to such a sub-committee so formed which shall in the exercise of the power so delegated conform to any relevant Rules and Regulations prescribed by the Executive Committee. The meetings and proceedings of any such sub-committee shall be governed by the provisions of this Constitution, and any Rules & Regulations for the time being regulating the meetings and the proceedings of The Association’s committees so far as applicable, and so far as the same shall not be superseded by any rules made by and applicable to the Executive Committee.
  2. All acts done in good faith by any meeting of the Executive Committee or by any sub-committee of the Executive Committee or by the Management Team or by any person acting as a member of the Executive Committee, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any such member or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a member of the Executive Committee.
  3. The Association may, by Resolution of the Executive Committee, authorise any Executive Committee member or other Member to register and operate a branch office or Chapter of The Association in or outside of Kenya, upon such guidelines as may be determined by the Executive Committee.
  4. Each branch office or Chapter of The Association duly created in accordance with Articles 4.1.q) and 15.3 above, may select a single representative to attend the Executive Committee’s regular meetings, in the capacity of a deliberating ex-officio member of the Executive Committee (which shall not entitle the representative to voting rights at any meeting).



ARTICLE XVI – REMOVAL AND DISQUALIFICATION OF EXECUTIVE COMMITTEE MEMBERS

Discretionary Removal

* 1. The Executive Committee may by Resolution remove any member of their body from office, providing that such removal is documented with full written reasons for the removal, such written reasons to be made immediately available to the removed member.
  2. If such a removed member should be aggrieved at their removal, they may, within thirty (30) days of the date of the decision to remove them, serve on the Secretary, in writing, an appeal against that removal. The Secretary shall then call, within sixty (60) days, subject to Article 16.3 below, an Extraordinary General Meeting (or, if any other General Meeting is already scheduled within that period, but not less than twenty one (21) days away, add the appeal to the agenda of that Meeting) for the purpose of hearing the appeal by the Membership of The Association.
  3. Where matters pertinent to the appeal are to be heard by any Court or Tribunal, the calling of an Extraordinary General Meeting to hear the appeal may be deferred until not more than sixty (60) days following the final determination of those matters by Court, Tribunal or Appeal Court, or the appeal may be added to the agenda of any other scheduled General Meeting that is not less then twenty one (21) days away from the date off that final determination by a Court, Tribunal or Appeal Court.
  4. After such removal but prior to any appeal being determined, the removed member shall cease to act as a member of the Executive Committee or hold any other office or official role within The Association.
  5. In the circumstances that the number of members of the Executive Committee shall fall below the minimum number prescribed by this Constitution, the Committee may still meet and act for the purpose of filling any vacancies and/or calling a General Meeting of The Association.
  6. At any General Meeting considering an appeal against removal of a member of the Executive Committee by the Executive Committee, the removed member shall have the right to attend and have right of audience and the appeal shall be determined by majority vote of the membership.
  7. If the removed member’s appeal is successful, and with the concurrence of the removed member, he or she shall immediately be re-instated to the Executive Committee and to his or her prior official role, and any Member who has been appointed to the Executive Committee in his or her place, shall immediately stand down.

Mandatory Removal

* 1. A member of the Executive Committee shall vacate their office or shall be considered as removed from office of The Executive Committee if:-
     1. a receiving order is made against him or her or he or she makes an arrangement or composition with his or her creditors;
     2. the Executive Committee reasonably believe that the Member has become physically or mentally incapable of managing his or her own affairs;
     3. he or she fails to attend the meetings of the Executive Committee for a period of nine (9) months, unless such absence is by prior special leave of the Executive Committee;
     4. they send a notice in writing to The Association stating that they resign their office or membership;
     5. they are removed from office by a Resolution at a General Meeting of The Association duly passed under this Constitution; or
     6. they are removed from membership of The Association pursuant to Article 6.14.b) above.



ARTICLE XVII – GENERAL MEETINGS

* 1. The Association shall once every year hold a General Meeting known as the Annual General Meeting in addition to any other meeting or meetings in the interim and shall specify the Meeting as such in the notice calling it. Not more than fourteen (14) months shall elapse between the date of one Annual General Meeting of The Association and that of the next. The Annual General Meeting shall be held at a time and place as the Executive Committee shall appoint.
  2. Any General Meetings of The Association, which are not Annual General Meetings shall be Extraordinary General Meetings.
  3. The Secretary shall maintain a register of all paid up Members. Any Member not registered on a date thirty (30) days before a General Meeting of The Association, shall not be eligible to attend, nor vote at that Meeting.



ARTICLE XVIII – MANNER OF CONVENING EXTRAORDINARY GENERAL MEETINGS

* 1. The Executive Committee may, whenever it thinks fit, convene an Extraordinary General Meeting.
  2. The Executive Committee shall also, on the requisition of not less than one-third of the Members of The Association, proceed to convene an Extraordinary General Meeting provided that each requisition must state the objects of the meeting and must be signed by the requisitionist and deposited at the office of the Secretary. Such signed requisitions may be deposited via electronic forms of communication, providing that such a requisition contains a clearly reproduced, visible and full-size signature of the requisitioner.



ARTICLE XIX – NOTICE OF GENERAL MEETINGS

* 1. At least twenty-one (21) days’ notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given) shall be given of any General Meeting of The Association.
  2. A notice of a General Meeting shall specify the place, the day and the time of the Meeting and shall be sent, in writing to all Members eligible to attend the Meeting. Such notice may be given by electronic forms of communication.
  3. Notice of a General Meeting shall be deemed to be validly given, notwithstanding that is has been called at shorter notice than that specified in this Constitution, if it is so agreed by all the Members entitled to attend and vote at the Meeting.
  4. Accidental failure to give notice to, or the non-receipt of notice of a Meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that Meeting.



ARTICLE XX – PROCEEDINGS AT GENERAL MEETINGS

* 1. All business shall be deemed special that is transacted at a General Meeting with the exception of the consideration of the accounts and balance sheets, the report of the Executive Committee and auditors, the election of the Executive Committee, the appointment of the auditors and the fixing of the remuneration of the auditors.
  2. A quorum at a General Meeting of The Association shall be constituted by all the Members of The Association present in person or by proxy. This provision is without prejudice to the provision at Article 34.1 on a quorum at a Meeting at which a vote on dissolution of The Association is taken.
  3. The Chair shall preside at every General Meeting. If the Chair is absent or if at any Meeting the Chair is not present within fifteen (15) minutes after the time appointed for holding the Meeting, the Vice-Chair shall preside and if the Vice-Chair is absent, the Members present shall designate one of the Members to be chair of the Meeting.
  4. The chair of any Meeting at which a quorum is present, may with the majority consent of 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 business left unfinished. When such adjournment extends to more than thirty (30) days since the original scheduled date of the Meeting notice of the adjourned Meeting shall be given as in the case of an original Meeting.



ARTICLE XXI – VOTING AT GENERAL MEETINGS

* 1. Every Member shall have one vote, provided that when any matter affecting a Member personally, and not affecting all Members, comes before the Meeting, although that Member may be present at it, he or she shall not be entitled to vote on the question and the chair may require the Member to withdraw during the discussion and/or voting and they shall in that case withdraw accordingly.
  2. Voting shall be by a show of hands of Members present but upon request by any Member, the Chair shall conduct a poll. Before any vote, the chair of the Meeting shall advise the Meeting as to how many valid proxy votes have been nominated in advance of the Meeting.
  3. With the exception of a vote on a Special Resolution, or where this Constitution provides otherwise, Resolutions shall be passed on the basis of a majority of voters who cast a vote in any show of hands or poll.
  4. On a vote on a Resolution at a Meeting on a show of hands, unless a poll is duly demanded and carried out, a declaration by the chair of the Meeting that the Resolution
     1. has or has not been passed; or
     2. passed with a particular majority;

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the Resolution. An entry in respect of such a declaration in minutes of the Meeting is also conclusive evidence of that fact without such proof.

* 1. On a poll, votes may be given personally or by proxy, provided that the instrument appointing a proxy shall be in writing under the hand of the appointer or of his or her attorney duly authorised in writing, or if the appointer is a corporation either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Member of The Association provided that no person, other than the Chairman, shall be entitled to be appointed a proxy of more than two absent Members AND no proxy shall be a Member whose membership of The Association has been terminated.
  2. The instrument appointing a proxy, a power of attorney or other authority if any, or notarially certified copy of that power or authority, shall be deposited at the principal office of The Association, or at such other place determined and notified to Members by The Association, not less that forty eight (48) hours before the time appointed for the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote or in the case of a poll carried out after the Meeting, not less than twenty four (24) hours before the time appointed for taking the poll. The instrument appointing the proxy shall not be treated as valid after the expiration of twelve (12) months from the date of its execution.
  3. Saturday, Sundays and Public Holidays are not counted when calculating the forty eight (48) and twenty four (24) hour periods referred to in Article 21.5.
  4. A poll demanded on the election of the chair of the Meeting or on the question of adjournment shall be taken immediately at the Meeting. A poll demanded on any other question shall be taken at such time as the chair of the meeting directs but not more than twenty eight (28) days following the Meeting, and any business other than upon which a poll has been demanded may be proceeded with pending the taking of the poll.
  5. In case of an equality of votes, on a matter other than a Special Resolution, on a show of hands or a poll conducted at the Meeting, the chair of the Meeting, shall be entitled to a second or casting vote. In the case of an equality of votes on a poll conducted after the meeting, the Chair shall be entitled to a second or casting vote.
  6. In the case of Special Resolutions only, a Resolution will be carried providing that it is voted for by not less than two thirds of Members entitled to vote at the time of the vote.



ARTICLE XXII – CORPORATIONS OR ASSOCIATIONS ACTING BY REPRESENTATIVES AT MEETINGS

* 1. Any corporation or association which is a Member of The Association, may by resolution of its directors or other governing body, or by notification in writing under the hand of some officer of such corporation as may be duly authorised, authorise a person who is a member of or employed by that corporation or association, or its attorney, to act as its representative at any meeting of The Association and the person so authorised shall be entitled to exercise the same power on behalf of the corporation or association which he or she represents as that corporation could exercise if it were an individual Member of The Association.



ARTICLE XXIII – TRUSTEES

* 1. All land, buildings and other immovable property and all investments and securities which shall be acquired by The Association shall be vested in the names of not less than five (5) and not more than seven (7) trustees, who shall be Members of The Association and shall be appointed at an Annual General Meeting for a period of three years. On retirement such trustees shall be eligible for re-election. A General Meeting shall have the power to remove any of the trustees and all vacancies occurring by removal, resignation or death, shall be filled at the same or next General Meeting.
  2. The trustees shall pay all income received from property of The Association vested in the trustees, to The Association by way of the Treasurer. Any expenditure in respect of such property which in the opinion of the trustees is necessary or desirable, shall be reported by the trustees to the Management Team which shall authorize expenditure of such moneys as it thinks is fit.



ARTICLE XXIV – APPLICATION OF FUNDS AND ASSETS

* 1. The funds and assets of The Association shall be applied solely towards promotion of the objects of The Association as set forth in this Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, gift, bonus or otherwise by way of profit to the Members of The Association, PROVIDED that nothing herein shall prevent the payment in good faith of reasonable and proper remuneration to any officer, servant or Member of The Association in return for any service actually rendered to The Association, or prevent the payment of interest at a rate not exceeding the then current bank rate on monies lent to The Association, or reasonable and proper rent for premises demised or let by any person to The Association PROVIDED ALSO THAT no member of the Executive Committee of The Association shall be appointed to any salaried office of The Association or any office of The Association paid by fees, and that no remuneration or other benefit in money or money’s worth shall be given by The Association to any such Executive Committee member except repayment of out of pocket expenses and interest at the rate aforesaid on monies lent, or reasonable and proper rent for premises demised or let by any member of the Executive Committee to The Association.
  2. All costs and expenses properly incurred in the setting up and registering of The Association, may, at the absolute discretion of the Executive Committee, be reimbursed to the person or persons who paid such costs and expense, from the funds of The Association.



ARTICLE XXV – DISCLOSURE OF INTEREST IN CONTRACTS

* 1. A member of the Executive Committee, Management Team, or official of The Association, who is in any way, whether directly or indirectly, interested in a contract or a proposed contract with The Association shall disclose the nature of that interest at the first meeting of the Executive Committee or Management Team as appropriate, at which the question of entering into the contract or considering entering into contracts is taken into consideration or at the first meeting where the member of the Executive Committee, Management Team or official Member, becomes aware of such interest. A member of the Executive Committee or Management Team shall not vote in respect of any contract or arrangement in which they are interested, and if they shall do so their vote shall not be counted AND such member shall be asked by the Chair to excuse themselves from any deliberations regarding the same matter.



ARTICLE XXVI – INDEMNITY OF EXECUTIVE COMMITTEE MEMBERS, MEMBERS AND SERVANTS

* 1. Every Executive Committee member and any other Member or servant of The Association shall be indemnified against (and it shall be the duty of the Executive Committee out of funds of The Association to pay) all costs, losses and expenses any such persons may incur or become liable for by reason of any contract entered into or any act or thing done by him or her in good faith in the capacity aforesaid, in any discharge of his or her duties, including travelling expenses, and the Executive Committee or Management Team, may give to any officer or servant of The Association who has incurred or may be about to incur any liability at request of or for the benefit of The Association, such security by way of indemnity as it may think proper.



ARTICLE XXVII – DISPOSAL OF RESIDUAL ASSETS ON WINDING UP OR DISSOLUTION

* 1. If upon winding up or dissolution of The Association there remains, after the satisfaction of all its debts and liabilities, any property or assets, whatsoever, the same shall not be paid or distributed among the Members of The Association but shall be given or transferred to some other non-profit association or associations having objects similar to the objects of The Association and which shall have a similar proviso regarding distribution of the assets amongst its or their members as this Constitution, PROVIDED THAT such association or associations is or are able to be determined by Members of The Association before the time of dissolution and in default thereof determined by a sitting judge of the High Court of Kenya and if and so far as effect cannot be given the aforesaid provision, then to any other charitable association.



ARTICLE XXVIII – MEMBERS’ CONTRIBUTION TO ASSETS ON WINDING UP

* 1. Every Member of The Association undertakes to contribute to the assets of The Association in the event of its being wound up or dissolved while he or she is a Member, or within one (1) year of his or her ceasing to be a Member, for payment of debts and liabilities of The Association contracted before he or she ceases to be a Member, and the costs, charges and expenses of dissolution or winding up and for the adjustment of the rights of the contributors amongst themselves, such sum as may be required not exceeding the sum of Kenya Shillings five thousand (KES. 5,000), PROVIDED THAT The Association is otherwise unable to meet such debts, liabilities, costs, charges and expenses from its pre-existing assets.



ARTICLE XXIX – ACCOUNTS

* 1. It shall be the work of the Treasurer to cause the accounts to be kept and in particular as regards:
     1. The sums of money received and expended by The Association and the matters in respect of which such receipts and expenditures take place;
     2. The assets and liabilities of The Association.
  2. The books of accounts shall be kept at the principal office of The Association or at such other place or places as the Executive Committee thinks fit and shall always be kept open to the inspection of members of the Executive Committee during normal business hours.
  3. At the Annual General Meeting the Executive Committee shall lay before the Members present a proper income and expenditure account for the accounting period ending more than six (6) months prior to such Meeting.
  4. At the first Annual General Meeting of The Association, the Executive Committee shall lay before the Members present partial accounts covering the period from the creation of The Association to the end of The Association’s accounting year.
  5. A proper balance sheet as at the date on which the income and expenditure account is made up, shall be prepared every year and laid before the Members present at the next Annual General Meeting. Every such balance sheet shall be accompanied by a proper report of the Executive Committee and Auditors.
  6. Copies of the income and expenditure account balance sheet and report, all of which shall be framed in accordance with any statutory requirements for the time being in force, and of any other document required by law to be annexed or attached thereto or to accompany the same, shall not less than twenty one (21) days before the date of the next Annual General Meeting be sent to the auditors and to all other persons entitled to receive notices of such meetings in the prescribed manner.



ARTICLE XXX – AUDITORS

* 1. The Association shall at each Annual General Meeting appoint an auditor or auditors to hold office until the next Annual General Meeting PROVIDED THAT a member of the Executive Committee or other officer of The Association shall not qualify to be appointed as an auditor of The Association.
  2. The Executive Committee may fill any casual vacancy in the office of the auditor but while any such vacancy continues, the surviving or continuing auditor or auditors if any, may act.
  3. The remuneration of the auditors of The Association shall be fixed at the Annual General Meeting except that the remuneration of any auditor appointed to fill any casual vacancy may be fixed, for the minimum possible period, by the Executive Committee.
  4. Every auditor of The Association shall have a right to see all relevant vouchers and shall be entitled to access at all times the books of accounts they require from the Executive Committee and/or Management Team.
  5. The auditors of The Association shall make a report to the Members, of the accounts examined by them and on every balance sheet laid before The Association at the General Meeting during their tenure of office and the report shall state:
     1. Whether or not they have obtained all the information and explanations they have required; and
     2. Whether in their opinion the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of The Association’s affairs.



ARTICLE XXXI – INSPECTION OF BOOKS OF ACCOUNTS AND LIST OF MEMBERS

* 1. The books of accounts and all documents relating thereto hall be available to Members for inspection at the office of the Treasurer of The Association on giving not less than seven (7) days’ notice in writing to The Association.
  2. The list of Members of The Association shall be available to Members for inspection at the office of the Secretary of The Association on giving not less than seven (7) days’ notice in writing to The Association provided that the list of Members shall always be open for inspection by members of the Executive Committee during business hours.



ARTICLE XXXII – FINANCIAL YEAR

* 1. The Financial Year of The Association shall begin on the first day of September and end on the last day of August in each year or at such other time as the Executive Committee may from time to time determine.



ARTICLE XXXIII – AMENDMENTS

* 1. The Association may by Special Resolution, modify or repeal this Constitution, or adopt a new Constitution, or change the name of The Association, PROVIDED THAT no such alteration, amendment or modification shall be made which shall impair or prejudice the effectiveness of the prohibitions contained in this Constitution against distribution of income property and assets of The Association to the Members. They cannot, however, be implemented without the prior consent in writing of the Registrar of Societies, or such successor as is appointed by statute, obtained upon application to him or her made in writing and signed by three of the office bearers.



ARTICLE XXXIV – DISSOLUTION

* 1. The Association shall not be dissolved or wound up except by a Special Resolution passed at a General Meeting of the Members by votes of two thirds of the Members present. The quorum at the meeting shall be twenty-five (25%) percent of the registered paid up Members of The Association.
  2. If no quorum is present, the proposal to dissolve or wind up The Association shall be submitted to a further General Meeting which shall be held one (1) month later. Notice of this meeting shall be given to all Members of The Association at least fourteen (14) days before the date of the meeting. The quorum for this second meeting shall be the number of Members present, PROVIDED HOWEVER, that no dissolution shall be effected without prior permission in writing of the Registrar of Societies, or such successor as is appointed by statute, obtained upon application to him or her made in writing and signed by three of the office bearers.
  3. When dissolution of The Association has been approved by the Registrar of Societies, or such successor as is appointed by statute, no further action should be taken by the Executive Committee or any office bearer of The Association in connection with the aims of The Association, other than to get in and liquidate for cash all the assets of The Association.

SCHEDULE

INTERPERTATION

Defined Terms

1. In the Constitution, unless the context requires otherwise, the following terms shall have the following meanings:-

|  |  |  |  |
| --- | --- | --- | --- |
| * 1. “Accredited Mediator” | means a mediator who has demonstrated to The Association that they have successfully undertaken a defined, minimum level of training in mediation and are sufficiently competent and credible in mediation to be trusted as a mediator by the public. See Article 4.1.g). |  |  |
| * 1. “Executive Committee” | means the senior management body of The Association, usually comprising ten–twelve (10-12) elected members, which is responsible for the major decision making, planning and policy making of The Association and oversight of day to day management. See Articles 7.2, 7.4 and 7.6. |  |  |
| * 1. “Founders” | means the ten (10) individuals who formed and registered The Association and whom became the initial Executive Committee. See Article 8.1. |  |  |
| * 1. “General Meeting” | means a formal Meeting open to the entire Membership of the Association which is either an Annual General Meeting or an Extraordinary General Meeting. See Article XVII. |  |  |
| * 1. “Management Team” | means the team of four (4) Executive Committee members who currently hold the offices of Chairman, Vice-Chairman, Treasurer and Secretary and who are responsible for the day-to-day affairs of The Association. The responsibility may be delegated to Officers of the The Association. See Articles 7.3,7.8,7.10 and 7.13. |  |  |
| * 1. “Mediation” | means a process of dispute resolution in which a specially trained, neutral person or persons, assists the parties to the dispute to negotiate a mutually acceptable solution. |  |  |
| * 1. “Member” | As defined at Article VI and, for the various classes of Member, at 6.3. |  |  |
| * 1. “Office Bearers” | means the Management Team. See Article XII. |  |  |
| * 1. “Officer of The Association” | means a professional manager of The Association, who need not be a Member of The Association, who may be paid for his or her services an who may include any Chief Executive Officer. See Article 7.13. |  |  |
| * 1. “Ordinary Resolution” | means a Resolution of the Management Team, Executive Committee or at a General Meeting which requires a simple majority vote in order to be acted upon. See Article 21.3. |  |  |
| * 1. “Principal Office” | means the principal physical office of The Association as designated by the Executive Committee and notified to the Membership from time-to-time. |  |  |
| * 1. “Related dispute resolution techniques” | means facilitative dispute resolution processes involving a neutral or neutrals, but who is or are not acting as mediators. |  |  |
| * 1. “Rules and Regulations” | means the various rules and regulations of The Association which are from time-to-time published and updated by the Executive Committee, which govern the functioning and conduct of The Association and of the Membership in their conduct of the mediation and/or related dispute resolution practice, and the inter-relationship between The Association and the Membership. |  |  |
| * 1. “Special Resolution” | means a Resolution of the Management Team, Executive Committee or at a General Meeting which requires a two-thirds majority vote in order to be acted upon. See Article 21.10.21.3 |  |  |

Dated at \_\_\_\_\_\_\_\_\_\_\_\_\_ this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2022.

Signed By:-

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Chair Vice Chair

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary Treasurer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Secretary Assistant Secretary

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Executive Committee Executive Committee

Member Member

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Executive Committee Executive Committee

Member Member