

**CONSTITUTION
OF
THE SOUTH AFRICAN NURSERY ASSOCIATION**



15 May 2014

CONSTITUTION OF THE SOUTH AFRICAN NURSERY ASSOCIATION

1. PREAMBLE

The South African Nursery Association is a public, non-profit organisation that represents and promotes the interests of the South African Nursery Industry in accordance with provisions of this Constitution.

2. NAME

The name of the association is the **South African Nursery Association**.

3. DEFINITIONS

In this Constitution, unless the context indicates otherwise:

- 3.1 “**Business Days**” means any day other than a Saturday, Sunday or statutory holiday in South Africa;
- 3.2 “**body corporate**” means any legal entity identified by a particular name comprising a collection or succession of persons who have rights and duties distinct from their rights and obligations as persons, including, without limitation, any association or firm;
- 3.3 “**Chairperson**” means the chairperson of a meeting of the Executive Council (in the context of clause 9 below) or the chairperson of a General Meeting (in the context of clause 10 below);
- 3.4 “**this Constitution**” means this Constitution together with the preamble and any annexures hereto;
- 3.5 “**Convention**” means any event organised by the Executive Council and/or its authorised sub-committee at which any Member, Honorary Member and/or Student may attend for the purposes of *inter alia* reading and discussing research papers, distributing industry awards and networking;
- 3.6 “**donation**” means any gratuitous disposal of property (including, without limitation, any gratuitous waiver or renunciation of a right), as defined in the Income Tax Act from time to time;
- 3.7 “**Employee**” means any permanent or part-time employee of SANA appointed as such by the Executive Council in terms of clause 9.1.1.5 below (including, without limitation, the Secretary), and “**Employees**” shall have a corresponding meaning;
- 3.8 “**Executive Council**” means the Executive Council of SANA, being the body responsible for the management of SANA’s affairs;
- 3.9 “**General Meeting**” means any General Meeting of Members arranged and hosted by SANA, including, without limitation, any Annual General Meeting;
- 3.10 “**Honorary Member(s)**” means any person recognised by the Executive Council or the Members for his/her/its outstanding service to SANA in terms of clause 10.1.4
- 3.11 “**Income Tax Act**” means the Income Tax Act, No. 58 of 1962, as amended from time to time;
- 3.12 “**Member**” means any National Association or Organisation admitted by the Executive Council as a member of SANA from time to time in terms of clause 8 below, provided that, where any Organisation to be admitted as such is a member of an existing Member, the existing Member together with that Organisation and any branch(es) of

such Organisation shall be deemed to be part of and shall act through the existing Member for the purposes of this Constitution;

- 3.13 “**National Association**” means any association of Organisations that is active within and represents the interests of the Nursery Industry in more than 1 (one) province in South Africa;
- 3.14 “**Nursery Industry**” means the South African industry for the production, marketing, sale and distribution of plants and related products;
- 3.15 “**Organisation**” means any juristic person – whether incorporated or unincorporated – that operates within the Nursery Industry, including, without limitation, any supplier, manufacturer, wholesaler, distributor and/or retailer;
- 3.16 “**Regional Association**” means any association of Organisations that is active within and represents the interests of an industry similar to the Nursery Industry in Namibia, Botswana, Zimbabwe, Mozambique, Lesotho and/or Swaziland;
- 3.17 “**SANA**” means the South African Nursery Association, being a non-profit, public benefit organisation registered as such in terms of the Income Tax Act and using as its corporate signature a mark consisting of a stylish leaf sable with the letters “SAKV-SANA” thereon (which mark appears on the cover of this Constitution);
- 3.18 “**SARS**” means the South African Revenue Services, being the body established in terms of the South African Revenue Services Act, No. 34 of 1997;
- 3.19 “**Secretary**” means the person appointed as the secretary of the Executive Council of SANA in terms of clause 9.1.1.8 below;
- 3.20 “**South Africa**” means the Republic of South Africa; and
- 3.21 “**Student**” means any natural person who is recognised in terms of clause 9.1.1.6 below as being entitled to attend any General Meeting and/or any event, function, activity or the like held by SANA from time to time, which attendance shall be for educational purposes only.
- 3.22 “**HDI**” means any natural person who is recognised as being an Historically Disadvantaged Individual. The concept “HDI” is defined as a person whose rights were uncertain as a result of legislation or practices of the past which discriminated on the basis of race, sex, religion or any other cause.

4. **INTERPRETATION**

For the purposes of this Constitution, the following rules of interpretation shall apply, unless the context requires otherwise:

- 4.1 this Constitution shall in all respects be governed by and construed under the laws of South Africa;
- 4.2 a reference to any 1 (one) gender, whether masculine, feminine or neuter, includes the other 2 (two);
- 4.3 any reference to a person includes, without being limited to, any individual, body corporate, trust, personas, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
- 4.4 any word or expression defined in, and for the purposes of, this Constitution shall if expressed in the singular include the plural and *vice versa*, and a cognate word or expression shall have a corresponding meaning;

- 4.5 references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Constitution;
- 4.6 references in this Constitution to “clauses” and the “Annexures”, are to clauses of, and the annexures to, this Constitution;
- 4.7 any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout this Constitution;
- 4.8 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day; and
- 4.9 all the headings and sub-headings in this Constitution are for convenience only and are not to be taken into account for the purposes of interpreting it.

5. APPLICATION AND VALIDITY OF THIS CONSTITUTION

- 5.1 The provisions of this Constitution shall take effect from the date and time of its adoption at a General Meeting of the Members.
- 5.2 The provisions of any Constitution of SANA hitherto in force are hereby repealed, and this Constitution, as amended from time to time, shall be the sole Constitution of SANA, provided that this provision shall not affect the validity of any decision or action taken in accordance with the provisions of any previous Constitution.
- 5.3 The English text of this Constitution shall be the text adopted in terms of clause 5.1, provided that, in the event of a conflict between the English text of the Constitution and any translation thereof, the English text shall prevail.

6. OBJECTIVES OF SANA

Subject to budgetary constraints and any other constraints as may be reasonably determined by the Executive Council from time to time, SANA seeks to represent and promote the interests of the Nursery Industry by *inter alia*:

- 6.1 providing practical business guidance and support to Members relevant to the Nursery Industry;
- 6.2 facilitating discussion forums on topics relevant to Members;
- 6.3 making available a comprehensive marketing service to Members within budgetary guidelines determined by the Executive Council from time to time;
- 6.4 conducting any investigations into any matters affecting the Nursery Industry;
- 6.5 facilitating the drafting and implementation of a code of conduct for Members, which shall promote sound and sustainable nursery and business practices;
- 6.6 promoting and encouraging consumer participation in all activities relevant to the Nursery Industry through effective instruction, educational programmes, and advertising campaigns;
- 6.7 taking such lawful action as may be expedient and appropriate for the protection and promotion of the rights and interests of Members;

- 6.8 promoting and facilitating regular interactions between Members and interested persons on matters relevant to the development and advancement of the Nursery Industry;
- 6.9 arranging and holding Annual General Meetings and other General Meetings of the Members at which various issues relevant to the Nursery Industry may be considered and appropriate action taken, if necessary;
- 6.10 arranging and holding a Convention on an annual basis;
- 6.11 encouraging regional representation of SANA;
- 6.12 organising or participating in international meetings of organisations having objectives similar to those of SANA to facilitate the exchange of information which may be relevant to the development and advancement of the Nursery Industry;
- 6.13 actively promoting the training and education of staff employed by Members of SANA;
- 6.14 promoting and protecting the collective industrial relations and related interests affecting Members;
- 6.15 encouraging persons (including, without limitation, Organisations) operating or having an interest in the Nursery Industry to become Members of SANA; and
- 6.16 taking such other actions that are wholly or partially connected to or beneficial to the realisation of the objectives set out in this clause 6.

7. LEGAL STATUS OF SANA

SANA is a body corporate with its own legal identity which is separate from its individual Members. SANA shall continue to exist even if the Members change. SANA is capable of entering into contractual and other relations and of suing and being sued in its own name.

8. STRUCTURE OF SANA

SANA acts through the Executive Council and the Members.

9. THE EXECUTIVE COUNCIL

9.1 Powers of the Executive Council

- 9.1.1 Subject to the provisions of this Constitution and all resolutions passed by the Members at a General Meeting from time to time, the Executive Council shall have and may exercise all powers necessary to promote and fulfill the SANA objectives set out in clause 6 above, including, without limitation, the following powers:
 - 9.1.1.1 the power to enter into any contract on behalf of SANA and to institute, conduct, defend, determine, settle or abandon any legal proceedings by or against SANA;
 - 9.1.1.2 subject to clause 9.2.2.4 below, the power to authorise the signature of any document on behalf of SANA;
 - 9.1.1.3 the power to appoint *ad hoc* committees of members of the Executive Council and to determine their objectives and powers;

- 9.1.1.4 the power to regulate its meetings as well as those of its *ad hoc* committees (if any);
- 9.1.1.5 the power to elect the President and Vice-Presidents of SANA in terms of clause 9.4 below;
- 9.1.1.6 the power to recognise in its sole discretion any natural person as a Student who is registered as such at an educational institution and who can provide proof thereof;
- 9.1.1.7 the power to recognise persons as Honorary Members;
- 9.1.1.8 the power to appoint and dismiss Employees (including, without limitation, the Secretary) and to determine *inter alia* their duties, conditions of employment and remuneration;
- 9.1.1.9 the power to determine and impose appropriate penalties for Members found guilty of conduct referred to in clause 10.5.2 below;
- 9.1.1.10 the power to institute, conduct or deal with disciplinary proceedings against any Member or Employee;
- 9.1.1.11 the power to interpret the provisions of the Constitution and to give rulings not inconsistent with the Constitution, which interpretations and rulings shall be binding upon all Members; and
- 9.1.1.12 the power to distribute at least 75% (seventy-five percent) of all donations received by SANA within 12 (twelve) months from the financial year end during which such donations were received, which distribution shall be effected by way of donations which qualify for a tax deduction in terms of section 18A of the Income Tax Act;

Provided that:

- 9.1.1.13 the income and resources of SANA howsoever derived shall be applied solely towards the promotion and fulfilment of the SANA objectives, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to Members, Employees or any office bearers of SANA, provided that nothing in this Constitution shall prevent the payment in good faith of reasonable remuneration to any Member, Employee or office bearer of SANA in return for any services actually rendered to SANA or any reasonable expenses actually incurred on behalf of SANA by such Member, Employee or office bearer, where such payment is made in a manner that is consistent with the SANA objectives;
- 9.1.1.14 the Executive Council shall ensure that SANA shall not accept a donation which has reciprocal obligations and is revocable at the instance of the donor for reasons other than a material failure by SANA to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act or which imposes conditions which could enable the donor (not being an approved public benefit organisation as defined in terms of the Income Tax Act or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act which has as its sole or principal object the carrying on of any public benefit activity) or any connected person in relation to such donor to derive some direct or indirect benefit from the application of the donation; and
- 9.1.1.15 SANA shall not carry on any business undertaking or trading activity unless specifically permitted in terms of section 30 of the Income Tax Act.

9.2 **Obligations of the Executive Council**

9.2.1 The Executive Council shall manage the affairs of SANA in accordance with the provisions of this Constitution and take such actions as are necessary and appropriate to achieve the objectives of SANA.

9.2.2 Without limiting the generality of clause 9.2.1 above, the Executive Council shall:

9.2.2.1 arrange and hold a Convention on an annual basis unless there are exceptional circumstances preventing the Executive Council from arranging and/or holding the Convention;

9.2.2.2 distribute at least 75% (seventy-five percent) of all donations received by SANA within 12 (twelve) months from the financial year end during which such donations were received, which distribution shall be effected by way of donations which qualify for a tax deduction in terms of section 18A of the Income Tax Act;

9.2.2.3 conduct SANA's financial transactions by means of the banking account held by Nedbank (Midrand branch, branch code 168642) under account number 1686080190 or such other banking account as the Executive Council may designate for such purpose from time to time. The Executive Council shall ensure that all monies received by SANA are deposited in SANA's banking account as soon as possible after receipt;

9.2.2.4 ensure that all cheques, promissory notes, electronic funds transfer forms and other documents requiring signature on behalf of SANA are approved by the Executive Council and then signed by 2 (two) members of the Executive Council;

9.2.2.5 ensure at all times that SANA keeps proper records and audited books of account which fairly reflect the financial affairs of SANA;

9.2.2.6 ensure that, within 3 (three) months after each financial year end of SANA, an annual report describing SANA's activities and an annual financial statement for the preceding financial year are prepared. The annual financial statement shall conform to generally accepted accounting principles and shall include a statement of income and expenditure and a balance of assets and liabilities;

9.2.2.7 ensure that, within 1 (one) month after the preparation of the annual financial statement, the books of account and the annual financial statement are audited and certified in the customary manner by an independent practicing chartered accountant; and

9.2.2.8 ensure that a copy of the annual report and annual financial statement referred to in clause 9.2.2.6 above are made available to all Members as soon as possible after the relevant financial year end.

9.3 **Composition of the Executive Council**

9.3.1 The membership of the Executive Council shall comprise:

9.3.1.1 the chairperson of each National Association that is a Member;

9.3.1.2 a maximum of 4 (four) Members which are elected in terms of clause 9.4 below, one of whom must be a HDI/Transformation representative; and

- 9.3.1.3 any office bearer co-opted and as such, authorised by the Executive Council from time to time to implement decisions of the Executive Council.
- 9.3.2 The Executive Council shall include the following portfolios:
- 9.3.2.1 the President; and
- 9.3.2.2 not less than 2 (two) but not more than 3 (three) Vice-Presidents, including one responsible for all matters related to Members, one responsible for all matters related to the marketing of SANA and the other responsible for any matters for which he/she is specifically elected.
- 9.3.3 No member of the Executive Council shall hold more than 1 (one) of the portfolios set out in clause 9.3.2 above at any one time.
- 9.3.4 The President and the Vice-Presidents shall be responsible for ensuring that SANA is registered and continues to be registered as a public benefit organisation for the purposes of sections 18A and 30 of the Income Tax Act at all times during their term of office. The Secretary shall ensure that SARS is notified of the identity of the President and the Vice-Presidents at all times.

9.4 **Election of the Executive Council**

- 9.4.1 The first elected members of the Executive Council referred to in clause 9.3.1.2 above all shall be elected at the General Meeting at which this Constitution is adopted, and shall hold office until the second Annual General Meeting held after their election. At such second Annual General Meeting and at every second Annual General Meeting held thereafter, all Executive Council members referred to in clause 9.3.1.2 shall retire and new members shall be elected by the majority of Members present or represented and entitled to vote at the relevant Annual General Meeting.
- 9.4.2 Subject to clause 9.4.3 below, all individuals eligible for election in terms of clause 9.4.1 above shall be those individuals who have received and accepted in writing a minimum of 2 (two) written nominations, which nominations and acceptances shall be submitted by any Members to the Secretary not less than 30 (thirty) Business Days prior to the Annual General Meeting at which the said election shall be held.
- 9.4.3 No individual shall be eligible for election in terms of clause 9.4.1 above where that individual is related to any incumbent member of the Executive Council or is concerned, engaged or interested, whether financially or otherwise and whether directly or indirectly and in whatever capacity, in the same business as any incumbent member of the Executive Council.
- 9.4.4 All office bearers which are co-opted in terms of clause 9.3.1.3 above shall hold office for a maximum of 2 (two) years from the date of their co-option. At the first meeting of the Executive Council after the expiry of such 2 (two) year period, all Executive Council Members referred to in clause 9.3.1.3 above shall retire and new office bearers may be co-opted should this be considered necessary by the majority of the members of the Executive Council present or represented at such meeting.
- 9.4.5 The first President and Vice-Presidents elected by the Executive Council shall take office at the General Meeting at which this Constitution is adopted, and shall hold office until the second Annual General Meeting held after their election. At the last meeting of the Executive Council preceding the second Annual General Meeting and at every second Annual General Meeting thereafter, the Executive Council shall elect a President and Vice-Presidents. At the second Annual General Meeting and at every second Annual General Meeting held thereafter,

the President and Vice-Presidents shall retire and the new President and Vice-Presidents shall take office.

9.4.6 Resigning Executive Council members shall be eligible for re-election or co-option, provided that no Executive Council member be entitled to hold office as a member of the Executive Council for more than 2 (two) consecutive terms.

9.4.7 Notwithstanding the provisions of this clause 9.4, the President may not hold office for more than 2 (two) consecutive years, however he/she shall be eligible for re-election as President of the Executive Council after an interruption of his/her term of office.

9.5 **Executive Council member vacating office**

9.5.1 The office of an Executive Council member shall be vacated if such member:

9.5.1.1 resigns;

9.5.1.2 becomes unfit or incapable of acting as such;

9.5.1.3 would be disqualified in terms of the Companies Act, No. 61 of 1973, or equivalent legislation in force from time to time, from acting as a director of a company;

9.5.1.4 is removed by the Executive Council, by resolution adopted by at least 75% (seventy-five percent) of the Executive Council members in office from time to time, being not less than the quorum referred to in clause 9.6.1.3 below. The Executive Council shall not be obliged to furnish reasons for its decision(s) regarding the removal of an Executive Council member except to the member removed and to the Members of SANA in a General Meeting; or

9.5.1.5 is removed by way of a resolution adopted by at least 75% (seventy-five percent) of the Members present and voting at a General Meeting, which resolution shall be adopted in accordance with the provisions set out in clause 10.4 below..

9.5.2 Should a position on the Executive Council fall vacant, the Executive Council, by resolution adopted by at least two thirds of its members entitled to vote, may co-opt a suitably qualified or experienced member to fill the vacancy. The office of any person so co-opted as a member of the Executive Council shall lapse unless confirmed by resolution of the Members at the next General Meeting.

9.5.3 Notwithstanding clause 9.5.2 above, any vacancy in the office of the President shall be filled by the Executive Council from its own members.

9.6 **Meetings of the Executive Council**

9.6.1 The Executive Council shall conduct its meetings and regulate its proceedings as it finds convenient and necessary, provided that:

9.6.1.1 the President shall chair all meetings of the Executive Council which he/she attends, or in his/her absence, 1 (one) of the Vice Presidents who shall be elected by the members of the Executive Council in attendance. In the absence of the President and the Vice-Presidents, the Executive Council shall elect 1 (one) of its members in attendance to chair the meeting;

9.6.1.2 the Chairperson shall convene a meeting of the Executive Council at any time not less than twice in each financial year of SANA and at the written request of any 2 (two) members of the Executive Council;

- 9.6.1.3 the quorum necessary for the transaction of any business by the Executive Council shall be 6 (six) members of the Executive Council serving at any given time;
- 9.6.1.4 at meetings of the Executive Council, each member shall have 1 (one) vote, save for any member who is co-opted by the Executive Council pursuant to clauses 9.3.1.3 and 9.5.2 above which member shall not have any voting rights;
- 9.6.1.5 each decision of the Executive Council shall be taken by a majority vote of the members of the Executive Council present and entitled to vote. In the case of equality of votes, the Chairperson shall have a casting or second vote;
- 9.6.1.6 proper minutes shall be kept by the Secretary of the proceedings of the Executive Council, and a record of the persons present at each meeting of the Executive Council. The minutes shall be signed by the member who chairs the meeting and shall be available at all times for inspection or copying by any member of the Executive Council and on 2 (two) Business Days' notice to the Secretary by any Member of SANA;
- 9.6.1.7 subject to clause 9.6.1.4 above, each member of the Executive Council shall be entitled to appoint an authorised representative to vote on his/her/its behalf at any meeting of the Executive Council, provided that such authorised representative shall not be entitled to vote on behalf of more than 1 (one) member of the Executive Council; and
- 9.6.1.8 a resolution signed by all members of the Executive Council shall be valid as if passed at a duly convened meeting of the Executive Council.
- 9.6.2 The Executive Council may delegate any of its powers to any of its members or to an *ad hoc* committee established by it in terms of clause 9.1.1.3 above. The member or committee to whom such delegation is made shall conform to any regulations and procedures that may be stipulated by the Executive Council from time to time.

10. MEMBERS

10.1 Membership

- 10.1.1 The Executive Council may in its sole discretion upon written application admit further Members from time to time.
- 10.1.2 Any Organisation in South Africa with a legitimate interest or involvement in the Nursery Industry and operating in more than 1 (one) province of South Africa shall be eligible and may apply in writing to the Secretary to be admitted as a Member.
- 10.1.3 An application to be admitted as a Member shall be made in the form prescribed by the Executive Council from time to time and shall be considered by the Executive Council not later than 6 (six) weeks from the date upon which the application is received by the Executive Council for consideration. The Executive Council shall inform the applicant in writing of its decision to grant or refuse the application immediately upon such decision being taken. The Executive Council shall not be required to give reasons for its decision in this regard.
- 10.1.4 The Executive Council may in its sole discretion recognise any person as an Honorary Member, provided that such person is nominated by any one or more Members and/or members of the Executive Council.

10.2 **Rights of Members**

- 10.2.1 Each Member shall be entitled to attend, participate in and vote at all General Meetings of Members in accordance with the provisions of clause 10.4 below, provided that such Member has paid in full all fees and levies due by him/her/it in terms of this Constitution.
- 10.2.2 The Members may by resolution passed at a General Meeting review, approve or amend any decision taken by the Executive Council, provided that no such resolution shall invalidate any prior action taken by the Executive Council in accordance with the provisions of this Constitution.
- 10.2.3 The Members shall be entitled to make use of the corporate signature referred to in clause 3.17 above in the manner prescribed by the code of conduct of SANA and/or in any other manner determined and communicated to all Members by the Executive Council from time to time.

10.3 **Obligations of Members**

- 10.3.1 Members shall pay membership fees and levies pertaining to SANA as may be determined by the Executive Council from time to time. Such fees and levies shall be paid into the bank account of SANA on or before the first Business Day of the calendar month following the date upon which the said fees and levies become due. Honorary Members and Students shall be exempted from all membership fees and/or levies payable by Members.
- 10.3.2 Upon admission as a Member or Honorary Member in terms of clause 10.1 above, each Member or Honorary Member shall procure that its members abide by and promote the provisions of this Constitution and any code of conduct adopted by SANA from time to time.

10.4 **Members' Meetings**

- 10.4.1 Annual General Meetings:
- 10.4.1.1 An Annual General Meeting shall be held annually at a venue to be determined by the Executive Council.
- 10.4.1.2 An Annual General Meeting shall be convened by the President of the Executive Council on not less than 40 (forty) Business Days' prior written notice to all Members and Honorary Members entitled to attend Annual General Meetings. Such notice shall state the date, time and venue of the Annual General Meeting and in broad terms the business to be transacted at such meeting (which details shall be determined by the Executive Council).
- 10.4.1.3 The Executive Council may invite visitors (including, without limitation, Students) to attend an Annual General Meeting.
- 10.4.1.4 The business of an Annual General Meeting (as it shall appear from the agenda to be prepared by the Executive Council) shall include:
- 10.4.1.4.1 the consideration and approval of the Annual Financial Statements for the preceding financial year;
- 10.4.1.4.2 the appointment of an auditor to SANA; and

- 10.4.1.4.3 any other matters affecting SANA as may be considered appropriate, except such matters as are specifically delegated by the Constitution to be considered by the Executive Council.
- 10.4.1.5 Any Member may place a matter on the agenda for consideration at an Annual General Meeting, provided that every matter to be placed on the agenda shall:
- 10.4.1.5.1 be consistent with SANA's objectives;
- 10.4.1.5.2 be submitted to the Secretary in writing not less than 30 (thirty) Business Days before the date of the Annual General Meeting at which it is to be considered;
- 10.4.1.5.3 be approved by the Executive Council prior to being placed on the agenda; and
- 10.4.1.5.4 if rejected by the Executive Council, shall be rejected with reasons provided therefor.
- 10.4.1.6 Any matter which is presented at an Annual General Meeting which has not received the prior approval of the Executive Council in terms of clause 10.4.1.5 shall be considered at that Annual General Meeting where the consideration thereof is unopposed.
- 10.4.1.7 All matters which have been approved by the Executive Council in terms of clause 10.4.1.5 or which are unopposed in terms of clause 10.4.1.6 shall be considered at the relevant Annual General Meeting in accordance with the provisions of this Constitution.
- 10.4.2 Other General Meetings:
- 10.4.2.1 Other General Meetings of SANA shall be convened at any time by the President or at the written request of the Executive Council or at least one quarter of the Members of SANA.
- 10.4.2.2 Any General Meeting other than the Annual General Meeting shall be convened on not less than 10 (ten) Business Days' written notice to all Members and Honorary Members. Such notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting, provided that should the President, having been requested to give such notice, fail to give such notice within 5 (five) Business Days of the request, the persons requesting the General Meeting shall be entitled themselves to give notice of and to convene the said meeting.
- 10.4.3 Quorum:
- 10.4.3.1 A quorum constituting a General Meeting of SANA shall be an aggregate of 30 (thirty) Members entitled to vote (or their authorised representatives, as the case may be).
- 10.4.3.2 Should any General Meeting have been properly convened but no quorum is present within 15 (fifteen) minutes after the time for which the General Meeting was convened, the General Meeting shall stand adjourned for 1 (one) hour. If there is no quorum present upon the expiry of the 1 (one) hour period, the General Meeting shall proceed and the Members present or represented shall be deemed to constitute a quorum.

- 10.4.4 Resolutions and Voting:
- 10.4.4.1 The President shall chair all General Meetings which he/she attends, or in his/her absence, 1 (one) of the Vice Presidents who shall be elected by the Members in attendance. In the absence of the President and the Vice-Presidents, the Members present or represented shall elect 1 (one) of the Members present or represented to chair the General Meeting;
- 10.4.4.2 At all General Meetings, each decision shall be taken by a majority vote of those Members present or represented and entitled to vote.
- 10.4.4.3 Each Member present or represented at a General Meeting shall be entitled to 1 (one) vote.
- 10.4.4.4 Each Member shall be entitled to appoint an authorised representative to vote on his/her/its behalf at such meeting, provided that such authorised representative shall not be entitled to vote on behalf of more than 1 (one) Member at a General Meeting.
- 10.4.4.5 All matters (except the election of members of the Executive Council and amendments to this Constitution, which shall be by ballot) shall be voted upon the show of hands, unless any 6 (six) Members request that voting take place by ballot.
- 10.4.4.6 Should there be an equality of votes, the Chairperson shall have a casting or second vote.
- 10.4.4.7 The decision of the Chairperson on any point of order or question of procedure which may arise during or in respect of a General Meeting from time to time shall be final.
- 10.4.5 Minutes:
- Proper minutes shall be kept of the proceedings of all General Meetings, and a record of the persons present at each meeting. The minutes shall be signed by the Chairperson of the meeting and shall be available for inspection or copying by Member on 2 (two) Business Days' notice to the Secretary.
- 10.4.6 Powers:
- Subject to the provisions of clause 10.2.2 above, a duly convened General Meeting, at which a quorum is present, shall be competent to carry out all the objectives and to exercise all powers set out in this Constitution.
- 10.4.7 Notices:
- 10.4.7.1 Notice of all General Meetings shall be sent by email to the last email address notified by each person concerned to the Secretary or in any other manner as the Executive Council may decide from time to time.
- 10.4.7.2 The accidental omission to address notices to any person shall not invalidate the proceedings of the General Meeting concerned.
- 10.4.7.3 Notices shall be deemed to have been received on the day upon which they were transmitted.

10.5 **Termination of Membership**

- 10.5.1 A Member may resign upon 3 (three) calendar months' written notice to the Secretary, which resignation shall become effective on the date upon which the said 3 (three) month period expires.
- 10.5.2 The Executive Council may in its sole discretion suspend or expel a Member for being in arrears with fees and/or levies payable to SANA in terms of clause 10.3.1 above for more than 130 (one hundred and thirty) Business Days or for any action detrimental to the fulfillment of the SANA objectives and/or the interests of SANA and its Members (including, without limitation, any failure to abide by the provisions of this Constitution and/or any code of conduct adopted by SANA from time to time). The Secretary shall, under the guidance of the Executive Council, be responsible for informing such a Member of his/her/its suspension or expulsion (as the case may be). When exercising its discretion in terms of this clause, the Executive Council shall adhere to the provisions of any policy document that is adopted by the Members at a General Meeting from time to time.
- 10.5.3 Any person who ceases to be a Member may apply to the Executive Council to be re-admitted as a Member. Re-admission of a Member shall be effected at the sole discretion of the Executive Council. If an applicant for re-admission considers the decision of the Executive to be unreasonable in this regard, he/she/it may lodge a written notice of objection (together with written representations setting out the grounds for such objection) with the Secretary not less than 15 (fifteen) Business Days prior to the Annual General Meeting at which such objection shall be considered. The Secretary shall take such steps as may be necessary to provide all Members attending the said Annual General Meeting with a copy of the notice of objection and written representations at least 5 (five) Business Days prior to the Annual General Meeting. The objection shall then be considered by all Members present at the said Annual General Meeting after which such Members shall decide whether to confirm, vary or rescind the decision of the Executive Council which forms the subject matter of the said objection.

10.6 **Proprietary rights, indemnification, and limitation of liability of Members**

- 10.6.1 No Member shall, by virtue of his/her/its membership, have any proprietary right, title, claim or interest in or to any assets of SANA.
- 10.6.2 The liability of any Member for the performance of any obligation of SANA shall be limited to the membership fees and levies payable by him/her/it in a single financial year.
- 10.6.3 Subject to the provisions of any relevant legislation, all office bearers of SANA (including, without limitation, the President, the Vice-Presidents, the Secretary, and all Employees) shall be indemnified by SANA for all acts done by them in good faith on behalf of SANA. It shall be the duty of SANA to pay all reasonable costs and expenses which any such person incurs or becomes liable for as a result of any act performed by such person in his/her capacity in the discharge, in good faith, of his/her duties on behalf of SANA.
- 10.6.4 Subject to the provisions of any relevant legislation, no office bearer of SANA (including, without limitation, the President, the Vice-Presidents, the Secretary, and all Employees) shall not be liable for any act, omission or

default of any other office bearer of SANA or for any loss, damage or expense suffered by SANA which occurs in the execution of the duties of such other office bearer, unless such liability arises as a result of his/her dishonesty or failure to exercise the degree of care, diligence and skill required by law.

11. FINANCIAL YEAR END

The financial year end of SANA shall be the end of February, unless determined otherwise by the Executive Council and notified in writing to Members from time to time.

12. AMENDMENT OF THIS CONSTITUTION AND DISSOLUTION OF SANA

- 12.1 This Constitution may be amended, the name of SANA may be changed and SANA may be dissolved by a decision at a General Meeting adopted by a majority of two-thirds of the Members present or represented who are entitled to vote. Voting shall be by ballot.
- 12.2 The Executive Council may, of its own accord, propose and recommend an amendment to the Constitution or a change in the name of SANA.
- 12.3 Every proposal for an amendment of the Constitution or a change in the name of SANA shall be contained in the agenda for the Annual General Meeting concerned, together with a recommendation of the Executive Council.
- 12.4 A copy of all amendments to this Constitution shall be submitted by the Secretary to the Commissioner for SARS.
- 12.5 No proposal for the dissolution of SANA shall be considered unless all Members have been advised by the Executive Council thereof by way of written notice not less than three months prior to the General Meeting at which such proposal is to be considered.
- 12.6 Upon dissolution of SANA, the assets of SANA remaining after satisfaction of all the liabilities of SANA shall be transferred to 1 (one) or more other public benefit organisation(s) registered as such in terms of the Income Tax Act whose objectives in each case are to carry on public benefit activities similar to those contemplated by the SANA objectives stated in clause 6 above; or any institution, board or body which is exempt from the payment of income tax in terms of section 10(1)(cA)(i) of the Income Tax Act which has as its sole or principal object the carrying on of any public benefit activity similar to those contemplated by the SANA objectives stated in clause 6 above; or any department of state or administration in the national or local sphere of government of South Africa, contemplated in sections 10(1)(a) or (b) of the Income Tax Act.

13. DISPUTES

- 13.1 In the event of any dispute between any members of the Executive Council and/or the Members (the “**parties**”) arising out of or relating to the interpretation of this Constitution, then any party shall be entitled to give written notice to the other party/parties to the dispute to initiate the procedure set out below.
- 13.2 The parties shall first endeavour to settle the dispute by mediation.
- 13.3 The parties may agree on the mediation procedure and on the mediator and failing agreement within 5 (five) Business Days of the notice referred to in clause 13.1, the mediation shall take place in accordance with the United Nations Commission on International Trade Law (“**UNCITRAL**”) Model Conciliation Rules and the mediator shall be appointed by Tokiso Dispute Settlement (Proprietary) Limited (“**Tokiso**”).

- 13.4 If for any reason, including lack of co-operation by the parties, a dispute is not settled by mediation within 20 (twenty) Business Days of the notice referred to in clause 13.1 or such longer period of time as the parties may agree to in writing, the dispute shall be settled by arbitration.
- 13.5 The parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) Business Days of the exhaustion of the period referred to in clause 13.4, the arbitration shall take place in accordance with the UNCITRAL Arbitration Rules in force at the time of the dispute.
- 13.6 The appointing authority in terms of the UNCITRAL Arbitration Rules shall be SANA of Arbitrators (Southern Africa).
- 13.7 Unless agreed otherwise the mediation and the arbitration shall be administered by the parties.
- 13.8 The number of mediators shall be 1 (one) and the number of arbitrators shall be 1 (one).
- 13.9 The place of the mediation and the arbitration hearing shall be Cape Town, South Africa.
- 13.10 The governing law of this Constitution and of the mediation and the arbitration shall be the law of South Africa.
- 13.11 Nothing in this clause shall preclude any party from seeking urgent interim relief from any Court of competent jurisdiction.

14. SERVICE OF NOTICES AND LEGAL PROCESS

- 14.1 All notices and legal process to be served on SANA shall be delivered by hand or sent by prepaid registered post to the following physical address, which address shall be its *domicilium citandi et executandi* for all purposes under this Constitution:
- Physical address: PO Box 514, HALFWAY HOUSE, 1685
- 14.2 All legal process to be served on any Member shall be delivered by hand or sent by prepaid registered post to the physical address of such Member as provided to the Secretary upon his/her/its admission as Member, which address shall be such Member's *domicilium citandi et executandi* for all purposes under this Constitution.
- 14.3 Any notice or other communication to be given to SANA or any Member in terms of this Constitution shall be valid and effective only if it is given in writing.
- 14.4 A notice to SANA or any Member (as the case may be) which is sent by prepaid registered post in a correctly addressed envelope to the address as specified for it above shall be deemed to have been received (unless the contrary is proved) within 10 (ten) Business Days from the date it was posted, or which is delivered to SANA or any Member (as the case may be) by hand at that address shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 14.5 Notwithstanding anything to the contrary in this clause 14, a written notice or other communication actually received by SANA or any Member (as the case may be) and for which written receipt has been obtained shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 14.6 SANA (acting through the Executive Council) may by written notice to all Members

change its address for the purposes of this clause 14 to any physical other address in South Africa (other than a post office box number) provided that the change shall become effective on the 5th (fifth) Business Day after the receipt of the notice. Similarly, any Member may by written notice to the Secretary change its address for the purposes of this clause 14 to any other physical address in South Africa (other than a post office box number) provided that the change shall become effective on the 5th (fifth) Business Day after the receipt of the notice.

SIGNED AT

ON THIS

DAY OF

2014:

**PRESIDENT OF THE SOUTH AFRICAN
NURSERY ASSOCIATION**

WITNESS