



## **CONSTITUTION OF THE KWAZULU-NATAL SOCIETY OF MEDIATORS**

### **1. NAME**

The name of the association is the KWAZULU-NATAL SOCIETY OF MEDIATORS, referred to in this constitution as “the Society”.

### **2. LEGAL PERSONA**

The Society is a body with perpetual succession, which may sue or be sued in its own name. It is not an association for gain. This voluntary Society emerges from the need for a provincial accrediting body which will promote mediation and the ethical standards and integrity of practising mediators in KwaZulu-Natal (KZN).

### **3. OBJECTS**

3.1 The main objects of the Society are to:

- 3.1.1 create a centralised platform for and of mediators in KZN;
- 3.1.2 advance and promote mediation;
- 3.1.3 promote ethical standards and integrity in the mediation industry in KZN;
- 3.1.4 represent, and act as a voice for its members in engagements with third parties;
- 3.1.5 promote the exchange of ideas and transparency of information concerning members' interests;
- 3.1.6 promote collaboration between mediators;
- 3.1.7 facilitate engagement and communication amongst the members themselves and with third parties; and
- 3.1.8 arrange additional training, workshops and seminars for members as well as opportunities for co-mediation for trainee mediators.

3.2 The Society is entitled in furthering its objects to:

- 3.2.1 initiate, conduct and support communication with third parties concerning issues related to members;
- 3.2.2 cooperate with bodies whose purpose is consistent with the objects of the Society;
- 3.2.3 make representations to appropriate parties and authorities concerning issues affecting its members; and
- 3.2.4 take any other action that may be necessary or expedient in support of its objects.

### **4. MEMBERSHIP**



- 4.1 Membership of the Society is open to all mediators who operate in KZN, who subscribe to accreditation standards set on a national level as well the unique requirements for accreditation in the different fields of mediation set by the Society, who subscribe to the Society's objects and Code of Professional Conduct for mediators, and who have paid their membership fee in full.
- 4.2 There shall be 2 categories of membership:
  - 4.2.1 Mediator members – Mediators with recognised and accredited training and experience in having conducted not less than five mediations;
  - 4.2.2 Associate members – Individuals who are in the process of completing the requisite accredited training and obtaining practical mediation experience.
- 4.3 Any person who wishes to become a member of the Society may apply in writing to the Administrator of the Society and, at the discretion of the Committee, be enrolled as a member.
- 4.4 The application shall set out:
  - 4.4.1 the full name, address and contact number of the applicant; and
  - 4.4.2 any other information reasonably required by the Committee.
- 4.5 Applications for membership will be tabled at the next meeting of the Committee for consideration. Prospective members will be notified in writing as to the success or otherwise of their application, the said notification herein to be within seven days of the said meeting of the Committee.
- 4.6 Once enrolled, a member is bound by this Constitution and the Code of Professional Conduct for mediators.
- 4.7 Every member shall be entitled to:
  - 4.7.1 be entered onto the database of members;
  - 4.7.2 receive all notices, circulars, balance sheets, agendas of general meetings and other documents issued to members;
  - 4.7.3 take part in any discussion on any matter at any general meeting of members;
  - 4.7.4 attend and participate in all conferences, workshops, courses or other activities organised or sponsored by the Society, subject to such limitations and of such terms and on payment of such fees as the Society shall determine;
  - 4.7.5 vote on any resolution at any general meeting of members and to vote for candidates for election to the Committee; and



4.7.6 nominate a representative/s to stand for election to the Committee or hold any office in the Society.

4.8 Membership of the Society is terminated by:

4.8.1 the death of the member;

4.8.2 written notice of termination addressed by the member to the Administrator;

4.8.3 a resolution of the Committee arising from improper conduct of a member after a disciplinary hearing;

4.8.4 member's membership fees being in arrears in excess of three months, without due reason;

4.8.5 the member not meeting the annual Continuing Professional Development (CPD) requirement for a specific mediation discipline; or

4.8.6 the Committee resolving that such membership be terminated.

The process for termination of membership shall be in accordance with generally accepted principles of administrative justice.

4.9 No member is personally liable for any debts, obligations or liabilities incurred by the Society and vice versa.

## 5. POWERS

To carry out the objectives in this Constitution, the Society has the power to:

5.1 accept donations;

5.2 organise meetings, presentations and allied undertakings;

5.3 collect funds and raise revenues for the purposes of the Society through membership fees, donations, collections, grants and all other lawful means;

5.4 open, maintain and operate accounts in banks, building societies or other financial institutions or in any other such manner that may be determined;

5.5 draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, or other negotiable or transferable instruments for the purposes of the Society;

5.6 generally to carry on, do or transact any business, act, scheme or enterprise deemed necessary by the Society for furtherance of any of its objects and which may advantageously be employed in the interest of the Society;



- 5.7 do all or any of the above things as principal, agents, contractors, trustees or otherwise, or by and through trustees, agents or otherwise and either alone or in conjunction with others;
- 5.8 admit duly qualified persons to be members of the Society. The Committee reserves the right to refuse an application by any individual and to set and amend minimum requirements for different disciplines for inclusion as a member; and
- 5.9 make ethical rules and to discipline members who are proved to have breached such ethical rules.

## **6. GOVERNANCE AND STRUCTURES**

### **6.1 Meetings of the Society**

- 6.1.1 A General Meeting of members of the Society must be held at least once a year, at a date and place to be determined by the Committee, no later than three (3) months after the financial year has been concluded.
- 6.1.2 Members must be given fourteen (14) days' written notice of the holding of the General Meeting of the Society. The notice must specify the place, the day and hour of the meeting and, in the case of special business, the nature of that business.
- 6.1.3 The business of the General Meeting of the Society includes:
  - 6.1.3.1 receiving the annual report of the Society's affairs and the financial balance sheet and accounts of the Society;
  - 6.1.3.2 the election of a Chairperson and a Vice-Chairperson of the Society;
  - 6.1.3.3 the election of a further five (5) Committee members;
  - 6.1.3.4 the determination of membership fees; and
  - 6.1.3.5 transaction of any other business which the Committee may deem necessary.
- 6.1.4 The Committee may at any time, but on not less than seven (7) days' written notice to each member, call a Special Meeting of the Society.
- 6.1.5 For any General or Special Meeting of the Society, of the full number of paid-up members, a minimum of 35% of the members present in person, by proxy or by way of online attendance, constitutes a quorum. If there is no quorum present, twenty (20) minutes after the time for which the meeting was called, the meeting must be postponed to a future date.



- 6.1.6 If no quorum is obtained at the reconvened meeting, the members then present constitute a quorum and may proceed to transact the business on the agenda.
- 6.1.7 Each member present at the meeting of the Society has one vote and voting is by simple majority, except for changes to the Constitution as per Clause 10.
- 6.1.8 A member of the Society may appoint a proxy to attend any meeting of the Society and to vote. The proxy must be authorised, in writing by the member concerned. Members present by proxy must be included as members present for the purposes of obtaining any quorum required by this Constitution.
- 6.1.9 The Chairperson must chair all General and Special Meetings of the Society. If the Chairperson is unable to chair a meeting, the Vice-Chairperson or other member present elected for that purpose, may do so.

## 6.2 **Office Bearers**

- 6.2.1 The General Meeting of members convened in terms of clause 6.1 must elect a Chairperson, who holds office for a minimum period of twelve (12) months.
- 6.2.2 After the election of the Chairperson, the General Meeting must elect a Vice-Chairperson, who holds office for a minimum period of twelve (12) months.
- 6.2.3 Any office bearer elected in accordance with this sub-clause is eligible for re-election on expiry of his or her term of office, except that no office bearer may hold office for more than two consecutive years. However, an office bearer may hold office for more than one such two-year period, provided that at least one year has elapsed between the end of the previous period of office and the beginning of the next.

## 6.3 **Committee**

- 6.3.1 The management and control of the affairs of the Society vest in a Committee consisting of the Chairperson and Vice-Chairperson of the Society and the Committee members nominated and elected in terms of clause 6.3.2.
- 6.3.2 Five (5) committee members must be elected by the General Meeting convened in terms of clause 6.1. Only the Chairperson, Vice-Chairperson, elected committee members and a member appointed

by the Committee to fill a casual vacancy in terms of clause 6.3.4 may vote at meetings of the Committee.

- 6.3.3 Committee members hold office for a period of one year, from the date of their election or appointment, unless they resign or are removed from office before the expiry of that period. A Committee member who has not been removed from office is always eligible for re-election upon the expiry of his or her term of office.
- 6.3.4 A casual vacancy caused by an office bearer or elected member of the Committee ceasing to hold office for any reason may be filled by the Committee for the unexpired portion of the period of office of the office bearer or member concerned. If a vacancy is caused by a member appointed to the Committee ceasing to hold office, the Committee has the right to fill the vacancy for the unexpired portion of the period of office of the member concerned.
- 6.3.5 The first and foremost responsibility of a committee member is to prioritise attending all Committee meetings.
- 6.3.6 The Committee has the power and duty to execute and realise all the powers of the Society as set out in this constitution.
- 6.3.7 The Committee has the power, for any specified purpose, to delegate its powers to any sub-committee of members of the Society in writing, provided that such sub-committee is to report back to the committee on what it has done. In furtherance whereof, the Committee may:
- 6.3.7.1 delegate to these sub-committees such responsibilities and powers as are necessary for them to achieve the aforesaid objectives;
  - 6.3.7.2 determine the frequency of the sub-committee meetings;
  - 6.3.7.3 overrule any decision of a sub-committee;
  - 6.3.7.4 terminate or dissolve, in accordance with accepted principles of justice, any sub-committee created in terms of the Constitution:
    - i. on completion of its mandate; or
    - ii. in cases where the sub-committee no longer abides by the spirit, purport and objects of the Constitution.
- 6.3.8 The Committee has the following powers and duties:
- 6.3.8.1 The determination of the general policy, the direction and control of the operations of the Society;
  - 6.3.8.2 By a resolution passed by a majority of two thirds of their number present at a meeting called for that purpose, the

Committee may remove any Committee member(s) from office on good cause shown;

- 6.3.8.3 The appointment of an Administrator, who need not be a member of the Society, and who shall perform the functions of secretary and treasurer of the Society. The Committee shall determine the remuneration and duties of such Administrator.
- 6.3.8.4 To pay, at its discretion, all costs and charges incidental to the promotion, formation and establishment of the Society, and to pay or refund all costs and expenditure incurred for the benefit of the Society prior to the coming into force of this Constitution;
- 6.3.8.5 To carry out and further all or any of the objects of the Society set out in this Constitution;
- 6.3.8.6 to borrow and raise money, subject to the provisions of this Constitution and to execute in the name of the Society any mortgage, deed of sale, lease and other contracts and also to make, draw, accept and endorse bills, notes and other instruments; and
- 6.3.8.7 To institute and also to defend action for the Society and to submit matters to arbitration and enter into any composition, and to delegate authority to represent the Society in such proceedings.

6.3.9 The Committee must determine the rules governing:

- a) membership of the Society;
- b) the convening of meetings of the Committee and of the Society;
- c) proceedings at meetings;
- d) voting at meetings and the manner in which votes may be exercised;
- e) subscriptions or fees payable by members.

#### 6.4 Administration

- 6.4.1 The day-to-day administrative functions of the Society are under the control of the Committee.
- 6.4.2 The Committee must act and manage the affairs of the Society in accordance with the objects set out in this Constitution.
- 6.4.3 The Committee must maintain minutes of its meetings and the resolutions taken at those meetings as well as records of:
  - 6.4.3.1 all appointments of members of the Committee and officers of the Society; and



6.4.3.2 the names of elected Committee members.

## **7. REGISTER OF MEDIATORS**

- 7.1 The Society shall collate and at all times maintain and make available a register of associate mediators as well as mediators accredited in accordance with criteria established and adopted by the Society and amended from time to time.
- 7.2 The register of mediators shall reflect the name of the mediator, their area of specialty, their place of practice, their professional background and years of experience.

## **8. DOMICILIUM**

The offices of the Society will be located at a place determined by the Committee.

## **9. FINANCIAL**

- 9.1 The financial year of the Society shall be from 1 September to 31 August each year.
- 9.2 Proper books of account of the Society's affairs must be kept by the Administrator (if appointed), alternatively another officer appointed by the Committee to perform such function.
- 9.3 The funds of the Society must be used solely in the service of the objects of the Society. Surplus profits or gains may not be distributed to members, employees or any other person.
- 9.4 The Committee shall cause to be kept a complete record of all financial transactions for each financial year in respect of the Society. The correctness of the statement of income and expenditure and balance sheet may be ascertained by duly qualified professionals, including but not limited to a registered accounting officer or chartered accountant in so far as such services are deemed to be necessary or desirable.
- 9.5 The Society's financial statements shall be presented to the members at the Society's Annual General Meeting or, in the case where they are not available at such Annual General Meeting, at a Special General Meeting convened for that purpose.

## **10. BANK ACCOUNTS**

- 10.1 The Committee may open and conduct a bank account in the name of the Society, which bank account shall reflect that it has been opened in the name of the Society.





- 10.2 The Committee when opening a bank account shall nominate the person authorised to transact on the Society's bank account and, in the case of payments exceeding five hundred rand (R500.00), shall stipulate that the written authority of two (2) designated signatories shall be required.

## **11. AMENDMENTS**

This Constitution may be amended by a resolution passed by not less than two-thirds of members of the Society present at the General Meeting or at a special meeting called for the purpose, by written notice, specifying the amendment proposed to be effected or the resolution to be taken.

## **12. DISSOLUTION**

- 12.1 The Society may be wound up or liquidated by a resolution passed by not less than two-thirds of the members of the Society present at a special meeting called for that purpose, by written notice, specifying the resolution proposed to be taken at the meeting.
- 12.2 If upon winding up or dissolution of the Society there remains, after the satisfaction of its debts and liabilities, any property or assets, they must not be paid to or distributed among the members of the Society. Any remaining amount may be given or transferred to any other institution having objects similar to those of the Society as may be determined by the Association at or before the time of dissolution, provided that the institution qualifies or raises funds in terms of the Fundraising Act (No. 107 of 1978).
- 12.3 Any Committee Member and any member of the Society who has duties imposed on them in terms of this Constitution, or as a result of a delegation of powers to them by the Committee or its agent and who perform those duties in good faith, will be indemnified from any and all losses, damages and costs incurred in the performance of such duties.

## **13. DISPUTE RESOLUTION**

If any dispute arises out of or in connection with the interpretation of this Constitution, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of arbitration.

Adopted at the Society's Exco meeting on 07 July 2021.

Chairperson: Ishara Bodasing