

KWAZULU NATAL MASTER BUILDERS & ALLIED INDUSTRIES ASSOCIATION
CONSTITUTION

2009 AMENDMENTS – Revision 3

DEFINITIONS AND INTERPRETATION

[REPLACE.....

- (1) “Association” – the KwaZulu Natal Master Builders & Allied Industries Association.
- (2) “Building Industry” in the Province of KwaZulu Natal means, without in any way limiting the ordinary meaning of the expression, the Industry in which employers and employees are associated for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings and structures and/or the making of articles for use in the erection, completion or alteration of buildings and structures, whether the work is performed, the material is prepared, or the necessary articles are made on the sites of the buildings or structures or elsewhere and shall include all work executed or carried out by persons therein.
- (3) “month” – Calendar month.
- (4) “Constitution” – The Articles of Association and amended Articles for the time being in force.
- (5) “Representative” means:

In relation to a Company – any Director or Senior Executive of that Company.

In relation to a Partnership – any Partner or Senior Executive of that Partnership.

In relation to a Sole Proprietor – the Proprietor or his/her Nominee.
- (6) “Working Day” shall mean any day other than Saturday, Sunday, any Public Holiday provided for by the Public Holidays Act, and the days falling within any customary holiday period observed by the Building Industry in KwaZulu Natal.

- (7) "Person" means a natural person, any company incorporated or registered as such under any Law, any Partnership and any Trust.
- (8) "Qualified person" means an employed who is engaged in the Building Industry in KwaZulu Natal.
- (9) "Associated person" means an employer who is engaged in the Building Industry in KwaZulu Natal.
- (10) "Employer" means any person who employs or provides work for any person who receives or is entitled to receive any remuneration.]

WITH

- 1.1 "Association" – The KwaZulu Natal Master Builders Association.
- 1.2 "Constitution" – The Constitution of the Association as certified in terms of Section 101(3) of the Labour Relations Act.
- 1.3 "Industry" means the industry in which persons and enterprises are involved in undertaking the erecting, completing, renovating, repairing, maintaining or altering buildings and structures and/or the making of articles for use in erection, completion or alteration of buildings and structures, whether the work is performed, the material is prepared, or the necessary articles are made on the sites of the buildings or structures or elsewhere and shall include all work executed or carried out by persons therein.
- 1.4 "Employer" means any person who employs or provides work for any person who receives or is entitled to receive any remuneration.
- 1.5 "Month" – calendar month.
- 1.6 "Representative" means:
 - 1.6.1 In relation to a Company – any Director or Senior Executive of that Company.
 - 1.6.2 In relation to a Partnership – any Partner or Senior Executive of that Partnership.
 - 1.6.3 In relation to a Sole Proprietor – the Proprietor or his/her Nominee.

1.6.4 In relation to a Close Corporation – any Member or Senior Executive of that Close Corporation.

1.7 “Working Day” shall mean any day other than Saturday, Sunday, any Public Holiday provided for by the Public Holidays Act, and the days falling within any customary annual holiday period observed by the Industry in KwaZulu-Natal.

OBJECTIVES OF THE ASSOCIATION

3. [REPLACE The objects of the Association are:-

- (1) To regulate relations between members and employees or Trade Unions.
- (2) To promote and protect the interests of members in every sector of the Building Industry.
- (3) To plan and organise the administration and lawful activities of the Association.
- (4) To promote excellence in work and fair practice in the conduct of business between members.
- (5) To initiate reforms and improvements in the Building Industry within the context of a free enterprise market related business environment.
- (6) To foster and encourage the education and training of persons engaged in the Building Industry.
- (7) To represent members in negotiations with Government and other Organisations.
- (8) [To encourage the promotion and regulation of registered Project and Construction Management Professions in terms of the Project and Construction Management Professions Act of 2000 and to support the furtherance of the aims and objects of those Professions.]

WITH

3. The objectives of the Association are:-

- 3.1 To contribute towards the economic well being of Members by providing a high standard of services in an efficient manner.
- 3.2 To promote and protect the interests of Members.
- 3.3 To promote excellence in work and best practice in the conduct of business between Members and between Members and their clients.
- 3.3 To initiate reforms and improvements in the Industry within the context of a free enterprise market related business environment.
- 3.4 To foster and encourage the training of persons engaged in the industry, and participate broadly in maintaining and improving the standards of education and training of persons in the Industry.
- 3.5 To monitor, advise and, where mandated by members, act on all matters affecting employment practices in the Industry.
- 3.6 To promote the adoption of standard forms of contract, subcontract and other documents used in the Industry.
- 3.9 To distribute to Members information on matters affecting employers and business in the Industry.
- 3.10 To provide facilities for social intercourse between the Members of the Association and others.
- 3.11 To encourage enterprises eligible for Membership of the Association to become Members.
- 3.12 To advise Members as to their rights and obligations.
- 3.13 To encourage and facilitate the settlement of disputes.
- 3.14 To represent Members in negotiations with all levels of Government and other organisations.
- 3.15 To plan and execute the administration and activities of the Association
- 3.16 To engage in appropriate commercial activities to increase the revenue of the Association for the achievement of its objectives

POWERS OF THE ASSOCIATION

4. The Association may for the purpose of achieving its objects:
- (1) Acquire either by purchase, lease or otherwise, any movable or immovable property and sell, let, mortgage or otherwise deal in, or dispose of, movable or immovable property.
 - (2) Borrow, invest, lend, or donate money or property.
 - (3) Operate banking and savings accounts.
 - (4) Establish, promote, administer and assist in the establishment and promotion and administration of:
 - 12 Insurance schemes.
 - 13 Medical aid schemes or medical benefit schemes.
 - 14 Pension funds, provident funds, pension schemes and benevolent schemes.
 - 15 Holiday pay funds and other fringe benefits for the employees of members.
 - 16 Educational and training schemes.
 - 17 Defects Warranty\Guarantee and\or Construction Bond schemes.
 - vii) Occupational Health and Safety Audits, Technical, Building Excellence and Best Practice Inspections and Audits.
 - (5) Encourage and facilitate the settlement of disputes.
 - (6) Regulate relations between members and their employees and protect and further the interests of members.
 - (7) Regulate, monitor and advise upon working conditions and other questions affecting skilled and unskilled workers in the Building Industry.
 - (8) Initiate, support or oppose legislative or other measures affecting the interests of the Building Industry.
 - (9) Promote the adoption of standard forms of contract and standard forms of other documents used in the Building Industry.

- (10) Collect and distribute amongst members, information on matters affecting the Building Industry.
- (11) Affiliate with or join any Federation of registered Employers' Organisations or otherwise co-operate with any other similar Business Association or Federation.
- (12) Provide facilities for social intercourse between the members of the Association.
- (13) Encourage all employers who are eligible for membership of the Association to become members.
- (14) Sponsor a permanent Building Industry exhibition containing building materials, services a library, models and historical building objects.
- (15) Advise members as to their rights and obligations.
- (16) Generally, do anything that is necessary for or conducive to the attainment of the Objectives of the Association.
- (17) Establish and manage companies, trusts and other legal entities which may be necessary to carry out the Objectives of the Association
- (18) Contract with any party for the purposes of the attainment of the Objectives of the Association.
- (19) If necessary and deemed appropriate, litigate for the purposes of the attainment or protection of the Objectives of the Association.
- (20) Promote the use of such categories of members as is deemed appropriate by the Executive Council, on the basis of consumer protection and the promotion of best practice.
- (21) Formulate, develop, offer and deliver such benefits and services to members as are conducive to the attainment of the Objectives of the Association.

CATEGORIES AND CONTROL OF MEMBERS

5. (1) [REPLACE Membership of the Association shall be limited to qualified persons.

- (2) The membership shall consist of Full, Associated, Project and Construction Management Professionals, Emerging Enterprise, Retired, Honory and Life Members as categorised hereunder:
- (i) Full members shall mean employers in the Building Industry who observe standard conditions of employment or who participate in a Holiday Pay Scheme administered by the Association or who pay levies to the Sectoral Education and Training Authority with jurisdiction for the Construction Sector.
 - (ii) Associate members shall mean manufacturers, merchants, suppliers and or/suppliers of services used by Full and Emerging Enterprise members of the Association.
 - (iii) Project and Construction Management members shall mean persons registered in terms of the Project and Construction Management Professions Act of 2000.
 - (iv) Emerging Enterprise members shall mean enterprises operating in the Building Industry owned, managed and controlled by previously disadvantaged persons and in its first five years of existence.]

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- 5.1 Membership of the Association shall be limited to enterprises engaged in the Industry or in providing materials, goods and/or services to the Industry.
- 5.2 The membership shall consist of Master Contractor, Full, Ordinary, Associate, Retired, Honorary and Life Members as categorised hereunder:
- 5.2.1 Master Contractor Member shall mean an enterprise operating in the Industry undertaking to execute and complete construction works as a combination of goods and services for the development, erection, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset, and observing at all times the Qualifying Criteria for Master Contractor Members as provided for in Annexure A of this constitution.
 - 5.2.2 Full Member shall mean an enterprise operating in the Industry undertaking to execute and complete construction works as a combination of goods and services for the development, erection, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset, and observing at all times the Qualifying Criteria for Full Members as provided for in Annexure A of this constitution.
 - 5.2.3 Ordinary member shall mean an enterprise operating in the Industry undertaking to execute and complete construction works as a combination of goods and services for the development, erection, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset.

- 5.2.4 Associate Member shall mean a manufacturer, merchant, supplier and or/supplier of services used by Master Contractor, Full and Ordinary Members of the Association; and enterprises, institutions and organised bodies with a direct interest in the Industry; and persons and organisations which perform work incidental to the work of Master Contractor, Full and Ordinary Members of the Association, and observing at all times the Qualifying Criteria for Associate Members as provided for in Annexure A of this constitution.
- 5.2.5 The Executive Council, by unanimous resolution may elect as an Honorary Member of the Association, any person who has rendered meritorious service directed towards the fulfilment of the objects of the Association as a token of appreciation of such service. An Honorary Member shall be entitled to all the benefits of Associate membership without the payment of any fee, subscriptions or levies as prescribed in Articles 24 and 25.
- 5.2.6 The Executive Council by unanimous resolution, may as a token of appreciation for long and outstanding services rendered in the advancement of the objects of the Association, elect as a Life Member any person who is or was a Member or a Partner in a firm or a Director of a Company which is or was a member of the Association. A Life Member shall be regarded as a member in his\her own right and be entitled to all the benefits of ordinary membership without paying any fee, subscriptions or levies for such Life Membership, as provided in Articles 24 and 25.
- 5.2.7 The Executive Committee, by a majority of Members present and voting at a regular meeting of the Executive Committee, may upon application elect as a Retired Member any person who has retired from active business in the Industry and who was a Member or a Partner in a firm or a Director of a Company which is or was a Member of the Association. Such Retired Member shall pay an annual subscription of 15% (fifteen percent) of the subscription payable by Members. A Retired Member shall be entitled to all the benefits of ordinary Membership subject to Article 6-9.
- 5.3 The Association shall be entitled to perform all such investigations as may be necessary to ascertain if any Member is capacitated to adhere to, and is in fact adhering to, the Qualifying Criteria applicable to the category in which such Member is classified.

- 5.4 In recognition of the fact that this Constitution introduces a revised system of categories of Membership, the following provisions shall be observed in the transitional period:
- 5.4.1 All existing Full Members and so-called Emerging Members shall be deemed to be Full Members when this Constitution comes into effect, unless such Member does not observe all aspects of the Qualifying Criteria for Full Member, in which case it shall become an Ordinary Member; provided that there will be a 12 (twelve) months period of amnesty during which such member shall endeavour to become fully capacitated to be able to observe the Qualifying Criteria for Full Members.
- 5.4.2 All Full Members who are Full Members by virtue of the deeming provision in Clause 5.3.1 shall be required to satisfy the Association that they do adhere to the Qualifying Criteria for Full Members, and shall co-operate fully with the Association's requirements in this regard.
- 5.5 A Partnership shall be admitted to membership as a single member irrespective of the number of Partners.
- 5.6 It shall be the duty of every member to notify the Executive Director in writing of any change in the effective control of such member within 30 (thirty) days of such change becoming effective.
- 5.6.1 A change in the effective control of a Company shall be deemed to have taken place if there is a change in the ownership of shares of that Company carrying more than 50% (fifty percent) of the total voting rights attaching to all of the issued shares of that Company or if the persons who were Directors of the Company at the time when the Company became a member of the Association ceased to constitute a majority of the Directors of the Company.
- 5.6.2 A change in the effective control of a Partnership shall be deemed to have taken place when the identity of the Partners comprising the Partnership changes or the Partnership is otherwise reconstituted.
- 5.6.3 A change in the control of the business of a Sole Proprietor shall be deemed to have taken place whenever there is any change in the identity of the Proprietor.
- 5.6.4 If the Executive Council decides that the control of any member has so changed as to warrant a new application for membership being made, the Executive Council shall have the right to terminate the membership of such member by giving to the member 14 (fourteen) days' notice in writing. A member whose

membership has been terminated in terms of this Article shall be eligible to re-apply for membership in terms of Article 7.

- 5.6.5 Each member shall be obliged at all times to ensure that all persons who are associated in relation to that member apply for membership of the Association provided for in Article 7.
- 5.6.6 In the event of any member failing to comply with the provisions of Article 6(8) above, the Executive Council shall have the right by written notice to such member, to suspend such member from membership with immediate effect until such time as he/she remedies the failure. Refusal by any member to comply with the provisions of Article 6(8) above, shall constitute a ground for immediate termination of membership, and a member shall be deemed to have refused to comply with his/her obligations if he/she fails so to comply within a period of 1(one) month from the date on which written notice of the decision of the Executive Council to suspend his/her membership is posted by pre-paid registered post to the address of his/her main place of business or registered office.
- 5.6.7 The power of the Executive Council to suspend and/or terminate the membership of any member under this Article shall be in addition to the powers vested in the Executive Council in terms of Article 29, save that a member whose membership has been suspended or terminated in terms hereof shall be entitled to appeal against such suspension or termination in the manner provided in Articles 29(3) and 29(4).
- 5.6.8 In the event of the Executive Council suspending or terminating the membership of any member in terms of this Article, he/she shall have no claim against the Association, the Executive Council or any of its members in respect of such suspension or termination.

5.7

ADMISSION TO MEMBERSHIP

7. (1) A candidate applying for membership shall complete and sign the form of Application for Membership prescribed by the Executive Council, and shall at the same time deposit the amount of the entrance fee and subscription for the current year, or shall conclude a debit

order agreement, in favour of the Association, for a monthly pro rata portion of the subscriptions payable.

- (2) Such form of Application for Membership shall be brought before the Executive Council at its first meeting after the receipt thereof and the Executive Council shall by the votes of the majority present and voting elect or reject the candidate.
- (3)
 - (i) All elected candidates shall be accepted as probationary members for a period not exceeding 12 (twelve) months. A probationary member shall be subject to the same conditions as a member except that a probationary member shall have no vote at general meetings of the Association.
 - (ii) The Executive Council may require the applicant to be interviewed by a Committee appointed for this purpose before the application is considered.
 - (iii) A candidate whose application has been rejected under Articles 7(2) or 7(3) shall have the right to claim reconsideration of the application by the Executive Council. At the meeting of the Executive Council at which the application is to be reconsidered the applicant shall be entitled to attend and address the meeting and the previous decision shall be deemed to be rescinded and a further vote of the Executive Council shall be taken.
- (4) In the event of a candidate being rejected, no further application of such candidate shall be considered within 6 (six) months of the rejection of his\her application for membership or within 12 (twelve) months if a previous application has been rejected.
- (5) Lists containing the names of the members of the Association shall be made available to all members, and to such other persons, firms, public or other bodies as the Executive Council shall decide. The lists shall be issued annually, or at such shorter intervals as the Executive Council may decide.

[DELETE replaced by 5.2.5 HONORARY MEMBERS

8. The Executive Council, by unanimous resolution may elect as an Honorary Member of the Association, any person who has rendered meritorious service directed towards the fulfilment of the objects of the Association as a token of appreciation of such service. An Honorary Member shall be entitled to all the benefits of ordinary membership without the payment of any fee, subscriptions or levies as prescribed in Articles 24 and 25 but shall not be entitled to a vote in

his\her capacity as an Honorary Member or be eligible for election to the Executive Council or any Divisional Executive Committee nor be taken into consideration in determining the representativeness of the Association as an Employers' Organisation in terms of the provisions of the Labour Relations Act.]

[DELETE replaced by 5.2.6 LIFE MEMBERS

9. The Executive Council by unanimous resolution, may as a token of appreciation for long and outstanding services rendered in the advancement of the objects of the Association, elect as a Life Member any person who is or was a Member or a Partner in a firm or a Director of a Company which is or was a member of the Association.

A Life Member shall be regarded as a member in his\her own right and be entitled to all the benefits of ordinary membership without paying any fee, subscriptions or levies for such Life Membership, as provided in Articles 24 and 25, provided that he\she shall not be entitled to a vote in his\her capacity as a Life Member nor be eligible for election to the Executive Council or any Divisional Executive Committee nor shall his\her Life Membership be taken into consideration in determining the representativeness of the Association as an Employers' Organisation in terms of the provisions of the Labour Relations Act.]

[DELETE replaced by 5.2.6 RETIRED MEMBERS

10. The Executive Council, by a majority of members present and voting at a regular meeting of the Executive Council, may upon application elect as a Retired Member any person who has retired from active business in the Building Industry and who was a Member or a Partner in a firm or a Director of a Company which is or was a member of the Association, provided that such position was held for a period of not less than 15 (fifteen) years or at the discretion of the Executive Council. Such a Retired Member shall pay an annual subscription of 15% (fifteen percent) of their subscription payable by members and shall not be entitled to a vote, nor shall he\she be eligible for election to the Executive Council or any Divisional Executive Council or any Divisional Executive Committee and shall not be taken into consideration in determining the representativeness of the Association as an Employers' Organisation in terms of the provisions of the Labour Relations Act.]

RIGHTS OF MEMBERS

8. **Members of the Association shall have the following rights:**

- 8.1 Master Contractor, Full and Ordinary members shall be the only members who are entitled to vote. and shall be the only members who are taken into consideration for determining the representativeness of the Association as an Employers' Organisation in terms of the provisions of the Labour Relations Act.
- 8.2 Master Contractor and Full Members shall be the only members who are entitled to hold office or be eligible for election to the Executive Council.
- 8.3 Master Contractor and Full Members may publicise their status as members of the Association and display the Association's logo only in the manner and form prescribed by the Executive Council from time to time.
- 8.4 Associate Members may publicise their status as members of the Association and display the Association's logo only in the manner and form prescribed by the Executive Council from time to time, provided that such manner and form shall clearly distinguish an Associate Member from Master Contractor and Full Members.
- 8.5 No other category of member shall be entitled to publicise their status as member of the Association, nor shall they be entitled to display the Association's logo.

GENERAL DUTIES AND OBLIGATIONS OF MEMBERS

- 11.1 A member is required to conduct [DELETE his\her AND REPLACE WITH its] business in a fair manner and shall in [DELETE his\her AND REPLACE WITH its] dealings with others at all times maintain a high standard of business ethics.
- 11.2 A member is required to ensure that all work is of the best standards and is carried out in an efficient manner.
- 11.3 A member is required to satisfy the building requirements of [DELETE his\her AND REPLACE WITH its] Clients by observing the spirit, as well as complying with the letter of [DELETE his\her AND REPLACE WITH its] contractual obligations and to handle all business transactions with fairness.
- 11.4 A Member is required to maintain healthy and safe working conditions for all its employees and to respect and protect the environment.

- 11.5 A member is required to organise [DELETE his\her AND REPLACE WITH its] business administration effectively and maintain adequate financial resources for the proper discharge of all [DELETE his\her AND REPLACE WITH its] contractual obligations.
- 11.6 A Member is required to assist wherever possible with the training of the future human resource needs of the Building Industry
- 11.7 A Member is required [DELETE and, where applicable,] to comply with all applicable legislation [DELETE applicable to the Building Industry in KwaZulu Natal.]
- 11.8 A member is required to endeavour to encourage all suitably qualified employers to apply for membership of the Association.
- 11.9 A Member is required to make itself conversant with, and shall be bound by this Constitution.
- 11.10 A Member in a specific category of Membership is required to observe the Qualifying Criteria of that specific category.
- 11.11 If elected, appointed or co-opted into any office, or onto any structure of the Association, carry out the applicable duties with the diligence and commitment required for the benefit of the Association.

EXECUTIVE COUNCIL

15. (1) The general management of the Association shall, subject to the direction and control of General Meetings of the Association be controlled by an Executive Council.
- (2) The Executive Council shall consist of:
- (i) The Office-Bearers as defined in Article 14;
 - [REPLACE
 - (ii) 2 (two) representatives of the Natal Midlands Division;
 - (iii) 1 (one) representative of other Divisions of the Association;

- (iv) Not less than 3 (three) but not more than 5 (five) members (or members' representatives) elected at the Annual General Meeting.]

WITH

Not less than 7 and not more than 9 member's representatives elected at the Annual General Meeting; provide that each of the divisions of the Associations shall be represented, as far as possible, from among these members.

- (v) Such further members to a maximum of 3 (three) as may be co-opted by the Executive Council from time to time from among the members and representatives of members of the Association. Co-opted members shall have voting powers in the Executive Council;
 - (vi) The Immediate Past President of the Association, if still an Employer or the representative of an Employer in the Building Industry or not otherwise disqualified, and willing to serve on the Executive Council.
- (3) Only representatives from Master Contractor and Full Members shall be entitled to serve on the Executive Council; provided that a maximum of 1 (one) Associate Member's representative serve on the Council, and provided further that no person shall be qualified to serve on the Executive Council unless he\she is actively engaged in a business associated with the Building Industry.
 - (4) When a vacancy occurs in the Executive Council, the members of the Executive Council may elect a successor to fill the vacancy, provided that in the event of a vacancy occurring because of the non-availability of the immediate Past President for any reasons whatever, that vacancy shall not be filled.
 - (5) Should a member of the Executive Council be absent from 4 (four) consecutive Executive Council Meetings without leave of absence, his\her position shall become vacant.
 - (6) Nominations for election of Office-Bearers and to the Executive Council shall be submitted in writing and lodged with the Executive Director at least 14 (fourteen) clear days prior to the Annual General Meeting. A preliminary notice of the Annual General Meeting shall be forwarded to each member not later than 21 (twenty-one) days prior to the date of such meeting in which attention shall be drawn to the provisions regarding nominations and notifying the date by which nominations must be lodged. A list of the nominations received shall be posted to each member with the Notice and Agenda of the Annual General Meeting.

- (7) The Executive Council shall remain in office until the election and appointment of their successors.
- (8) If it is not possible for the Executive Council to be composed as outlined above due to no candidates being available, the Executive Council shall continue to function but shall endeavour to rectify the defective composition as soon as possible, and shall notify the membership that such composition is defective, along with the reasons therefore, and shall further notify the membership once the composition has been rectified

POWERS OF THE EXECUTIVE COUNCIL

18. The Executive Council is entrusted with the following powers:-

- (1) To purchase, sell, rent or hire suitable premises for the purposes of the Association, and to provide all necessary equipment, and other articles.
- (2) To appoint, remove, and determine the duties, salaries and any other remuneration in cash or kind of the employees of the Association.
- (3) To regulate the form of procedure at meetings.
- (4) To suspend, fine (or both) or expel any member from membership for causes appearing sufficient to a properly constituted majority of any Executive Council Meeting, but only after giving such member an opportunity of being present and hear in defence, or to remove for such period decided upon by the Executive Council, any privileges which such member may be entitled to in consequence of his\her membership of the Association.
- (5) To elect Life, Honorary or Retired Members.
- (6) To have the custody of the funds and assets of the Association [DELETE and to allocate funds to the Divisions of the Association for the purposes of achieving the objects set out in Article 3 of this Constitution.]
- (7) To apply the funds of the Association, for the promotion of the Objects of the Association, or for any purpose in connection with it.

- (8) To prescribe the form of Application for Membership and to consider, determine and categorise applications for membership.
- (9) To make regulations not inconsistent with this Constitution for and in relation to the abovenamed Objects, and the election of members, and the management of the Association and from time to time to alter and amend and annul such regulations.
- (10) To appoint, from time to time, such Committees as it may deem fit for the purpose of investigating and reporting on any matter referred to them by the Executive Council.
- (11) To do, subject to the Constitution for the time being in force, all other things that they may consider conducive to the interests and good management of the Association or the promotion of its Objects.
- (12) To deal with disputes between members and their employees or Trade Unions and to endeavour to settle disputes.
- (13) To co-opt members or representatives of members to serve on the Executive Council from time to time as provided for in Article 15 of this Constitution.
- (14) Upon application and at its discretion, to establish Divisions and Divisional Offices of the Association and to attend to all matters related thereto as provided for in Article 21 of this Constitution.
- (15) To determine which services and benefits should be offered and delivered to members, and on what conditions.

ESTABLISHMENT AND CONTROL OF [REPLACE DIVISIONS with REGIONS throughout the constitution]

- (2) 21. (1) Divisions of the Association shall be established [REPLACE in the Natal Midlands and other areas. WITH Wherever it is deemed prudent]

ENTRANCE FEE

- 24. The entrance fee payable by each new member on election shall not exceed [REPLACE R500 (five hundred rand) WITH the amount stipulated in Annexure ?]; provided the Executive Council

may exempt from payment of the entrance fee a new member who at the time of election is a member of any other Association affiliated to Master Builders South Africa.

SUBSCRIPTION AND LEVIES

- 25 (1) All members shall pay an annual subscription which shall be determined annually by the Executive Council provided that such subscription shall not exceed [REPLACE R2000 (two thousand rand) WITH the amount stipulated in Annexure ?] and shall be payable in advance on or before the 15 April in each year.
- (2) Members elected after the 30 September in any year shall pay one-half of the annual subscription for that year.
- (3) [REPLACE Members elected after the 30 September in any year shall pay one-half of the annual subscription for that year. WITH Members who are elected during a financial year shall pay a pro rata portion of the subscription]
- (4) Notwithstanding the provisions of the preceding paragraphs of this Article the amount of subscription payable by members in terms thereof may be increased by means of levies payable as directed by the Executive Council and imposed either –
- (i) By resolution of the Executive Council provided that any levy imposed by the Executive Council shall not exceed the sum [REPLACE of R100 (one hundred rand) WITH the amount stipulated in Annexure ?] per member in any financial year; or
- (ii) By resolution of at least 75% (seventy-five percent) of those members present or represented at a General Meeting of the Association provided the proposed increase appears as a specific item on the Agenda of that meeting and provided that such levy shall not exceed the sum [REPLACE of R10 (ten rand) per week WITH the amount stipulated in Annexure ?] in respect of persons employed by members.

MISCONDUCT AND DISCIPLINE

29. All members should make themselves conversant with and shall *ipso facto* be bound by the Constitution, whether the same may or may not have been signed by them.

[DELETE

- (1) Any member who shall depart from any of the Articles of the Association or any Resolutions adopted by the Association or the Executive Council or who shall have been guilty of any conduct which in the opinion of the Executive Council renders the member unworthy of membership of the Association may be suspended on such terms and conditions and for such period as the Executive Council may determine, or may be fined such amount, not exceeding R3000 (three thousand rand) as the Executive Council may determine, or may e both suspended and fined, or may be fined and expelled from the Association, or may have any of the privileges he\she is entitled to by virtue of his\her membership removed or suspended for such period as may be determined by the Executive Council.
- (2) Notice of such suspension, fine or expulsion shall be forwarded by the Executive Director within 7 (seven) working days to the member by registered letter, and such member desiring to appeal to the members of the Association against the decision of the Executive Council, shall within 14 (fourteen) working days of such notice, request, in writing, the Executive Director to call a General Meeting of the Association, and the Executive Director shall convene such meeting to be held within 30 (thirty) working days of receipt of such request.
- (3) The member appealing shall be entitled to be present at such General Meeting and shall be heard; and the majority vote at such meeting shall be final.
- (4) Should a penalized member fail to appeal as provided, he\she shall have no further right of appeal; and should he\she fail to appeal; or should his\her suspension, fine or expulsion be confirmed, the Executive Director shall forthwith notify such decision to every member of the Association and notice of such decision may also be sent to other interested persons or bodies, or published, at the discretion of the Executive Council.
- (5)]

And INSERT

- 29.1 In the event that the Executive Council becomes aware that any Member:
1. has departed from or contravened any provision of this constitution; or
 2. had departed from or contravened any provision of the Qualifying Criteria applicable to the category of membership in which that Member is classified; or
 3. has acted in such a manner which appears to be contrary or opposed to the Objectives of the Association; or

4. has acted in any manner which may render the Member unworthy of Membership

it shall appoint a Disciplinary Committee and invoke the Disciplinary Procedure as provide for in Annexure C of this Constitution.

- 29.2 If the finalised Disciplinary Procedure results in the Member being found guilty of misconduct, the Disciplinary Committee, or the Executive Council in the case of an appeal, shall impose such Disciplinary Action as it deems appropriate, as provided for in the Disciplinary Procedure being Annexure C hereto.
- 29.3 Upon the finalisation of the Disciplinary Procedure, the Executive Director shall forthwith advise all other members of the Association of the outcome of the Disciplinary Procedure and the Disciplinary Action imposed and may also publicise this information to any other person or the public at large.
- 29.4 If the Disciplinary procedure is invoked as a result of a complaint received about a Member, the Association shall keep the complainant reasonably informed about the progress and outcome of the Disciplinary Procedure
- 29.5 If a Member, in respect of which the Disciplinary Procedure has been invoked or is about to be invoked, resigns or has its membership terminated, such member shall remain bound by the provisions of this Clause and the Disciplinary Procedure as though it were still a Member until such time as the matter in respect of which disciplinary proceedings have been invoked is finalised.
- 29.6 In the event of [DELETE the suspension or expulsion of any member he\she and REPLACE with “the imposition of any Disciplinary Action being imposed on a Member in terms of the Disciplinary Procedure, such Member] shall have no claim against the Association or any of its members in respect thereof.
- 29.7 In the event of any member presenting to the Executive Council a complaint in writing of the conduct of any member, a meeting of the Executive Council shall as soon as practicable be held to consider same, and determine what course shall be taken with reference thereto.

LEGAL PROCEEDINGS

32. [DELETE The Association shall sue and be sued in the name of the Executive Director for the time being of the Association, and] all summonses, notice of action, and the like, against the

Association, shall be validly and effectively served if served at the office of the Executive Director of the Association.

CHANGE OF THE CONSTITUTION

- 35 (1) Any of the provisions of this Constitution may be repealed, changed or added to in any manner by unanimous resolution of the Executive Council provided that at least 21 (twenty-one) day's notice of any proposed alteration shall have been given to the members of the [REPLACE Executive Council WITH "Association"]. If within that period 10 % of the membership of the [REPLACE Executive Council WITH "Association"] demands in writing that a ballot be taken on the matter, a ballot shall be taken; provided that all comments received from the membership on the proposed alterations, shall be reduced to writing and tabled at the Executive Council meeting at which the alteration is considered for adoption.
- (2) The Annual general Meeting or any General Meeting of the Association shall also be empowered to change the Association's Constitution by a majority resolution provided the members shall be notified within at least 7 (seven) day's notice by the Executive Director of the intended change and specified in the notice convening the meeting.
- (3) No change or addition shall have any force or effect until certified in terms of sub- section (3) of Section 101 of the Labour Relations Act.

.....
PRESIDENT

.....
EXECUTIVE DIRECTOR

DATE.....

KwaZulu Natal Master Builders & Allied Industries Association

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WESTVILLE 3630

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Annexure A**Code of Conduct****Code of Conduct for all Members**

1. A member is required to conduct **its** business in a fair manner and shall in **its** dealings with others at all times maintain a high standard of business ethics.
2. A member is required to ensure that all work is of the best standards and is carried out in an efficient manner.
3. A member is required to satisfy the building requirements of **its** Clients by observing the spirit, as well as complying with the letter of **its** contractual obligations and to handle all business transactions with fairness.
4. **A Member is required to maintain healthy and safe working conditions for all its employees and to respect and protect the environment.**
5. A member is required to organise **its** business administration effectively and maintain adequate financial resources for the proper discharge of all **its** contractual obligations.
6. **A Member is required** to assist wherever possible with the training of the future human resource needs of the Building Industry
7. **A Member is required** to comply with all **applicable** legislation.
8. A member is required to endeavour to encourage all suitably qualified employers to apply for membership of the Association.
9. **A Member is required to make itself conversant with, and shall be bound by this Constitution.**
10. **A Member in a specific category of Membership is required to observe the Qualifying Criteria of that specific category.**
11. **If elected, appointed or co-opted into any office, or onto any structure of the Association, a Member is required to carry out the applicable duties with the diligence and commitment required for the benefit of the Association.**

Qualifying Criteria for Associate Members

In addition to the Code of Conduct for all Members, Associate Members shall also observe the following where applicable:

12. Associate Members who provide services to Members, shall ensure that such services comply with all legislation, and are performed to the highest standards and norms of best practice recognised within the industry or sector from which they originate.
13. Associate members who manufacture articles or supply materials for use by Members, shall ensure that such articles or materials comply with all necessary legislation and prescribed performance standards, and attain the highest standards and norms of best practice recognised within the industry or sector from which they originate.

Qualifying Criteria for Full Members

In addition to the Code of Conduct for all Members, Full Members shall also:

14. Perform their work to a standard that will not diminish the collective reputation of the Members and the Association's brand.
15. Observe reasonable standards of financial and business practice including:
 - 15.1. having up to date accounts that are audited if required
 - 15.2. maintaining up to date and accurate books of account and financial records
 - 15.3. not be an unrehabilitated insolvent
16. For Occupational Health and Safety purposes, manage their premises, yards and all construction sites and activities in such a manner as to achieve no less than a 4 star rating as defined in the Master Builder South Africa safety system.
17. Demonstrate a commitment to skills development and training that is practicable and commensurate with the size of the enterprise and the nature of the work it undertakes.
18. When undertaking work for clients, work at all times in terms of a generally recognised standard form of contract, or to a written contract which contains all of the essential elements to ensure efficiency, fairness and certainty in the dealings between the Member and its clients.
19. Ensure it adheres to reasonable standards of Human Resource and Labour Relations practice including:

- 19.1. Maintaining written contracts of employment with all personnel
 - 19.2. Implementing and observing generally accepted HR policies and procedures.
20. Be registered with the following where required by legislation:
- 20.1. SARS for purposes of
 - 20.1.1. PAYE
 - 20.1.2. VAT
 - 20.1.3. UIF
 - 20.1.4. Skills Levies
 - 20.2. The COID Commissioner or FEM
 - 20.3. CIDB
 - 20.4. NHBRC
 - 20.5. All other bodies for which registration is required for the specific Member undertaking the specific work it performs.

Qualifying Criteria for Master Contractor Members (ROUGH DRAFT)

In addition to the Qualifying Criteria for Full Members, Master Contractor members shall also:

21. Provide Bank Reports which shall be of an acceptable standard
22. Provide proof of balance sheets which shall be of an acceptable standard
23. Have a ratio of professional or appropriately experience employees which shall be of an acceptable standard
24. Shall have a certified BBBEE rating
25. Shall spend at least x% of wage bill in training
26. Shall offer Employee Benefits to a degree that shall be of an acceptable standard
27. Shall observe a quality management system that shall be of an acceptable standard
28. Shall at all time maintain insurance which shall be of an acceptable standard
29. Shall observe environmental policies and practices which shall be of an acceptable standard
30. Shall observe OHS which shall be of an acceptable standard
31. Length of time in business
32. Prior insolvencies of management
33. etc

Annexure C

Disciplinary Procedure

Disciplinary Committee

1. If the Executive Council is required to invoke the Disciplinary Procedure, it shall appoint a Disciplinary Committee which shall consist of:
 - 1.1. A Chairperson, who is not a member or employed by a member or has any interest in any member, of the Association and who is sufficiently experienced in the field of dispute resolution or disciplinary investigations.
 - 1.2. Two members of the Executive Council
2. No person shall serve on a Disciplinary Committee if he/she has any direct interest in the matter under consideration by the Committee.

Disciplinary Investigation

3. In order to ascertain if a member is guilty of misconduct, the appointed Disciplinary Committee shall conduct an enquiry into such alleged misconduct on the part of the member, and such Committee shall be entitled to determine the time, place and procedure to be adopted at the enquiry. The Disciplinary Committee may also co-opt for the enquiry such experts, from the ranks of the Association's members or officials, as it may require and may call witnesses, including any complainants in the matter, if necessary.
4. Any member whose conduct is being investigated shall be entitled to not less than 14 (fourteen) days notice as to the place, date and time of the investigation, and shall be afforded ample opportunity to present its defence including the right to know the allegations against it, call witnesses and cross examine the Association's witnesses.
5. If the Member elects not to be present at the investigation, the investigation shall go ahead in the member's absence. If the member resigns or its membership terminates, the Disciplinary Procedure shall continue as though the former Member was still a Member.
6. Where the conduct of a Member under investigation is sufficiently serious, in the opinion of the Executive Council, such Member may be suspended from membership of the Association, pending the outcome of the investigation.

7. The decision of the Disciplinary Committee on the outcome of the enquiry, as well as any disciplinary action to be applied, shall be communicated to the Member by registered post, as well as any other expedited means, by the Executive Director, and shall be tabled at the next meeting of the Executive Council.
8. A Member who wishes to appeal against the decision of the outcome and / or the disciplinary action applied shall, within 7 (seven) days of receipt of such decision, forward to the Executive Director written notification that it is appealing along with the grounds of such appeal. The Executive Director shall table such appeal for discussion at the next meeting of the Executive Council. The Executive Council shall **hear the appeal and shall** uphold, vary or set aside the decision of the Disciplinary Committee.
9. Should the member found guilty of misconduct fail to appeal within the prescribed time period, it shall have no further right of appeal.

Disciplinary Action

10. Subject to the provisions of this Constitution and the principles of natural justice, the Executive Council shall, *vis-à-vis* any member found guilty of misconduct, have the power to:
 - 10.1. Expel such Member from the Association.
 - 10.2. Unconditionally suspend such Member from membership of the Association, or from having access to such rights, benefits and services, for such period as the Council deems fit.
 - 10.3. Suspend such member from membership of the Association pending the fulfilment of such conditions as it may prescribe; Provided that if such conditions are not fulfilled after a prescribed or reasonable period of time has elapsed, the Committee may expel such member. Conditions which may be prescribed in terms of this clause are:
 - 10.3.1. Requiring such member to undergo such training or other remedial action, to the satisfaction of the Council, which the Council deems appropriate to address the cause of the misconduct in question.
 - 10.3.2. Requiring such member to rectify any work found to be unacceptable and which forms the subject matter of the misconduct in question.
 - 10.3.3. Requiring such member to issue an apology or other statement which may, as deemed by the Council, be necessary to rectify or mitigate the effects of the misconduct in question.

- 10.4. Impose a fine on such member for any amount up to a maximum as reflected in Annexure B; Provided that such fine shall be a debt due, by such member, to the Association recoverable in any court of competent jurisdiction.
- 10.5. Re-categorise any member, either conditionally or unconditionally.