

**REPUBLIC OF SOUTH AFRICA**

**Companies Act, 71 of 2008 (as amended)**

**MEMORANDUM OF INCORPORATION OF A  
NON-PROFIT COMPANY WITH VOTING MEMBERS**

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NAME OF COMPANY: **SOUTHERN AFRICAN SEXUAL HEALTH ASSOCIATION NPC**

REGISTRATION NUMBER: 2000/001844/08

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**SOUTHERN AFRICAN SEXUAL HEALTH ASSOCIATION NPC  
t/a SASHA**

The Company was incorporated previously as a company in accordance with Section 21 of the Companies Act, 61 of 1973.

The Company has adopted this Memorandum of Incorporation by Special Resolution passed on 17 January 2015 by the members of the Company at its 2015 Members' Meeting in substitution for the existing memorandum and articles of association of the Company.

**Registered office of the Company**

The Registered Office of the Company shall be situated at:

73 14<sup>th</sup> Street, Menlopark, 0081

## Table of Signatories

Names of all Directors	ID Number	Signature	Date
Elmari Craig			
Elna Rudolph			
Eugene Viljoen			
Deidre Pretorius			
Delene Van Dyk			

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## INTRODUCTION

### Name:

- 1 The name of the Company is **SOUTH AFRICAN SEXUAL HEALTH ASSOCIATION NPS**, hereinafter referred to as “the Company”.
- 2 The Company is a non-profit company with voting members.
- 3 In this Memorandum of Incorporation-
  - (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
  - (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
  - (c) The Schedules attached to this Memorandum are part of the Memorandum of Incorporation; and
  - (d) the following words shall bear the following meaning:
    - (i) “**Act**” means the Companies Act 71 Of 2008 as amended from time to time;
    - (ii) “**Board**” means the Board of Directors of the Company;
    - (iii) “**business days**” means working days and excludes any week day that is a public holiday and weekends;
    - (iv) “**Code of Conduct**” means a Code of Conduct for Directors as adopted and amended from time to time;
    - (v) “**Company**” means The Southern African Sexual Health Association, registration number 2000/001844/08;
    - (vi) “**Members**” means paying members;
    - (vii) “**Memorandum**” means this Memorandum of Incorporation.

## **Article 1 - Incorporation and Nature of the Company**

### **1.1 Incorporation**

- (a) The Company is incorporated as a non-profit company as defined in section 1 of the Companies Act 71, of 2008 with voting Members.
- (b) The Company is incorporated in accordance with and governed by-
  - i) the unalterable provisions of the Act that are applicable to non- profit companies;
  - ii) the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
  - iii) The provisions of this Memorandum.

### **1.2 Objects and Powers of the Company**

- (a) The Objects of the Company are as set out in Part A of Schedule 1 and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification.
- (b) The Company is not subject to any special conditions and is not prohibited from amending any particular provision of this Memorandum.
- (c) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with–
  - a. Item 1 (4) (b) of Schedule 1 of the Companies Act 2008; and
  - b. The provisions set out in Part B of Schedule 1 of this Memorandum.
- (d) From the date and time that the incorporation of the company was registered, as stated in its registration certificate, the Company has all of the legal powers and capacity of an individual, except to the extent that this Memorandum provides otherwise.
- (e) The following ancillary powers are also granted to the Company:
  - i) To incorporate other companies with similar objectives and/or to hold assets of the Company, which other companies are in the opinion of the Board beneficial to the Company.
  - ii) To amalgamate with other companies who have similar objectives.
  - iii) To partake in the management, supervision or activities of any other company or entity which conduct a business with similar objectives

to that of the Company and to conclude partnerships or joint ventures with such entities.

- iv) To compensate any third party for services rendered by a third party to, for and on behalf of the Company, excluding directors of the Company.
  - v) The Board is authorised to take whatever steps may be necessary to acquire, improve and/or expand the immovable property to be owned by the Company or its subsidiaries on the understanding that any acquisition and/or improvement fall within the greater object and powers of the Company.
  - vi) The ancillary powers granted to the Company may be exercised by the Board when so authorised by the Members.
- (f) The Company is subject to the provisions contemplated in section 15 (2) (b) or (c) in that:
- i) This Memorandum contains restrictive conditions applicable to the Company and any requirement for the amendment of any such condition in addition to the requirements set out in section 16 of the Act, are included in this Memorandum.
  - ii) This Memorandum may be amended in compliance with a court order.
  - iii) The court order must be affected by a resolution of the Company's Board and does not require a special resolution.
  - iv) In order for the Company to affect an amendment, the Company must file a Notice of Amendment together with the prescribed fee setting out the proposed changes.
  - v) If an amendment to this Memorandum has the effect of substituting this Memorandum with a new Memorandum, the changes required also apply to the filing of the Amendment.
  - vii) If the amendment to this Memorandum has altered this Memorandum, the Company must submit a copy of the amendment to the Commission, who may require the Company to file a full copy of its amended Memorandum within a reasonable time.
  - viii) This Memorandum may be amended by way of Special Resolution if it is proposed by:
    - The Board of the Company; or
    - Members entitled to exercise at least 10% (ten percent) of the voting rights of Members and it is adopted as a Special Resolution at a Members' Meeting.

- (g) Upon dissolution of the Company, its nett assets must be distributed as follows:
- i) the entire nett value after costs of the Company (and its subsidiaries) must be distributed to one or more non-profit companies carrying on activities within the Republic, or voluntary associations, or non-profit trust:
  - ii) having objects similar to its main object; and as determined:
    - in terms of the Company's Memorandum;
    - by its Members, if any, or its Directors, at or immediately before the time of its dissolution; or
    - by the court, if the Memorandum or the Members or Directors fail to make such a determination.
  - iii) The Company must give notice in the Government Gazette of its intended dissolution.
  - iv) The Company must comply with the remaining provisions of the Act.

### **1.3 Memorandum of Incorporation and Company rules/policies**

- (a) This Memorandum of the Company may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b) of the Act.
- (b) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5), is not limited or restricted in any manner by this Memorandum of Incorporation.
- (c) The Company's Board may make rules or policies, amend such rules or policies, or repeal any rule or policy relating to the governance of the Company in respect of matters that are not specifically addressed in this Memorandum. Such rules or policies shall be published:
  - i) on the Company's website; and
  - ii) emailed to any then serving Director; and
  - iii) be available for inspection by any Member at the Company's principal place of business.
- (d) A rule or policy contemplated above must be consistent with the Act and this Memorandum, and shall take effect on the date specified in the rule, or within 10 (ten) days after publication thereof.
- (e) These rules or policies shall be binding until the next General Members' Meeting of the Company and permanently thereafter once it has been ratified by an Ordinary Resolution at a Members' Meeting, if required.

- (f) The provisions of section 15 of the Act shall apply to any proposed.

#### **1.4 Optional provisions: Section 34 of the Act**

- (a) The Company does not elect to be audited unless otherwise directed by an Ordinary Resolution of Members. This election shall be valid until the next General Meeting of Members, where after the Members shall annually elect whether or not the Company should be audited for the next year.
- (b) The Company does not need to comply with the extended accountability requirements set out in Chapter 3 of the Act. It is not a requirement for the Company to be subject to an independent review of its Annual Financial Statements.
- (c) The Company may, by Ordinary Resolution by its Members, require to be voluntarily subjected to the provisions of Chapter 3 if so resolved at a General Members' Meeting. Such a resolution shall not be an amendment to this Memorandum of Incorporation.

#### **1.5 Members of the Company**

- (a) The Members of the Company are the persons who are defined as "Members" in this Memorandum.
- (b) Members of the Company constitute registered members who are up to date with membership fees.
- (c) The terms and conditions of Membership and voting rights in the company are as set out in Part D of Schedule 1 to this Memorandum. .

### **Article 2 - Rights of Members**

#### **2.1 Members' authority to act**

If, at any time, a Member of the Company is also a Director of the Company as contemplated in section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that section is limited as follows:

- (a) The Member cannot bind the Company unless authorised to do so by the Board.
- (b) The Member shall at all times remain subject to the Code of Conduct applicable to Directors, in addition to the conditions imposed on the Directors in the Act.



## **2.2 Members' right to Information**

A paid up member of the Company:

1. Has a right to inspect and copy the information contained in the following records of the Company:
  - (a) its Memorandum of Incorporation and any amendments or alterations to it, and any rules of the Company;
  - (b) its register of Directors;
  - (c) all reports presented at an annual general meeting of the Company for a period of seven years after the date of any such meeting;
  - (d) all annual financial statements required by the Companies Act 2008 for a period of seven years after the date on which each such particular statements were issued;
  - (e) notice and minutes of all Members meetings including all resolutions adopted by them for a period of seven years after the date each such resolution was adopted and any document that was made available by the Company to the Members in relation to each such resolution; and
  - (f) any written communications sent generally by the Company to all Members for a period of seven years after the date on which each such communication was issued;
2. Members may exercise the above right by direct request made to the Company in the prescribed manner, either in person or through an attorney or other personal representative designated in writing, or in accordance with the Promotion of Access to Information Act 2000.

## **2.3 Representation by concurrent proxies**

- (a) The right of a Member of the Company to appoint persons concurrently as proxies, as set out in section 58 (3) (a), is not limited, restricted or varied by this Memorandum of Incorporation
- (b) A proxy should be in writing. Such a written proxy must clearly indicate the resolution for which it is given and the manner in which the person holding the proxy should exercise his/her vote.

## **2.4 Authority of proxy to delegate**

- (a) The authority of a Member's proxy to delegate the proxy's powers to another person, as set out in section 58 (3) (b), is not limited or restricted by this Memorandum of Incorporation

## **2.5 Requirement to deliver proxy instrument to the Company**

- (a) The requirement that a Member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Member's rights at a Members meeting is not varied by this Memorandum of Incorporation.

## **2.6 Deliberative authority of proxy**

- (a) The authority of a Member's proxy to decide without direction from the Member whether to exercise or abstain from exercising any voting right of the Member, as set out in section 58 (7), is not limited or restricted by this Memorandum of Incorporation.

## **2.7 Date set to exercise Members' rights**

- (a) The Board shall, on not less than 15 (fifteen) business days before the date of an intended meeting, notify Members of any such meeting.
- (b) Notification shall be given:
  - i) by way of written communication; or
  - ii) by way of electronic communication; or
  - iii) in a manner which the Board deems appropriate in the circumstances.
- (c) The Board may, in its discretion, increase the record date, but not decrease such a date.

## **Article 3 - Members' Meetings**

### **3.1 Requirement to hold meetings**

- (a) The Company is not required to hold any Members meetings other than those specifically required by the Companies Act 2008.

### **3.2 Members' right to requisition a meeting**

- (a) Members who hold at least 10% of the voting rights of the Company may, on requisition to the Board, demand a meeting.
- (b) The requisition should clearly identify the purpose for which the meeting is demanded and contain evidence of the request by 10% of the voting rights of the Company.

### **3.3 Location of members' meetings**

- (a) The Company's Board of Directors may determine the location of any Members meeting and the Company may hold any such meeting in the Republic of South Africa.

### **3.4 Notice of members' meetings**

- (a) The minimum number of days for the Company to deliver a notice of a Members meeting to the Members is 15 (fifteen) business days before the day of the proposed meeting.

### **3.5 Electronic participation in members' meetings**

- (a) Members meeting may be conducted entirely by electronic communication of one or more Members, or proxies for Members, members may also participate by electronic communication, such as Skype, in all or part of a Members meeting that is being held in person, as set out in section 63 (2).

### **3.6 Quorum for Members' meetings**

- (a) The quorum requirement for a Members meeting to begin, or for a matter to be considered, is at least 25% of all of the voting rights that are entitled to be exercised.
- (b) If, within one hour after the appointed time for a meeting to begin, the quorum required for that meeting to begin has not been satisfied, the meeting is postponed without motion, vote or further notice, to the next scheduled Members meeting. If, within one hour after the appointed time for a meeting to begin, the quorum required for consideration of a particular matter to begin has not been satisfied and there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote.
- (c) The person intended to preside at a meeting that cannot begin due to the absence of a quorum may extend the one hour limit allowed above for a reasonable period on the grounds that:
  - a. exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or
  - b. one or more particular Members, having been delayed, have communicated an intention to attend the meeting and those Members, together with others in attendance, would satisfy the quorum requirement.

- (d) The authority of a meeting to continue to consider a matter once a quorum has been established, so long as at least one Member with voting rights entitled to be exercised at the meeting or on that matter is present at the meeting, is not limited or restricted by this Memorandum of Incorporation.

### **3.7 Adjournment of members' meetings**

- (a) The maximum period allowable for an adjournment of a Members meeting is set out in Part A of Schedule 2.

### **3.8 Members' resolutions**

- (a) For an ordinary resolution to be adopted at a Members' meeting, it must be supported by at least 50% of the Members present and voting at the meeting.
- (b) For a special resolution to be adopted at a Members' meeting, it must be supported by at least 75% of the Members present and voting at the meeting.
- (c) A special resolution adopted at a Members' meeting is required to:
  - a. amend the Company's Memorandum of Incorporation to the extent required by section 16 (1) (c) a section 36 (2) (a);
  - b. ratify a consolidated revision of the Company's Memorandum of Incorporation;
  - c. ratify actions by the Company or Directors in excess of their authority;
  - d. approve the voluntary winding up of the Company;
  - e. approve the winding up of the Company in the circumstances contemplated in section 81 (1);
  - f. approve an application to transfer the registration of the Company to a foreign jurisdiction;
  - g. approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or
  - h. revoke a resolution contemplated in section 164 (9) (c).

## Article 4 - Directors and Officers

### 4.1 Composition of the Board of Directors

- (a) The Board of Directors of the Company shall not be less than 3(three), each of whom is to be elected by the Members.
- (b) The Board may appoint an Individual who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the earlier of the date of the next Annual General Meeting of the Company and the date on which the vacancy has been filled by election in terms of its policy and, during that period, any Individual so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director of the Company.
- (c) The authority of the Board in this regard is not limited or restricted by this MOI.
- (d) In addition to the appointed Directors, there are no appointed or ex officio Directors of the company.
- (e) A person is ineligible to be a Director of the Company if the person is a juristic person or an un-emancipated minor (or similar legal disability). As per section 69 (8) to (12), a person is disqualified to be a Director of the Company if:
  - a. a court has prohibited that person from being a Director or declared the person to be delinquent in terms of section 162 or in terms of section 47 of the Close Corporations Act 1984;
  - b. the person is an un-rehabilitated insolvent;
  - c. the person is prohibited in terms of any public regulation to be a Director of the Company;
  - d. the person has been removed from an office of trust on the grounds of misconduct involving dishonesty; or
  - e. the person has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
    - i. involving fraud, misrepresentation or dishonesty;
    - ii. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69 (2) or (5); or
    - iii. under the Companies Act 2008, the Insolvency Act 1936, the Close Corporations Act 1984, the Competition Act, the Financial Intelligence Centre Act 2001, the Securities Services Act 2004 or Chapter 2 of the Prevention and Combating of Corruption Activities Act 2004.

- (f) Directors serve for a period of 3 (three) years, where after they have to resign. A Director can make himself/herself available for re-election for a further period of 3 (three) years, excluding executive directors.

#### **4.2 Authority of the Board of Directors**

- (a) The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company is limited further by the Code of Conduct for Directors, as amended from time to time.

#### **4.3 Board of Directors meetings**

- (a) The Company's Board of Directors are not authorised to consider a matter other than at a meeting.
- (b) The right of the Company's Directors to requisition a meeting of the Board may be exercised by at least 10% of the Directors.
- (c) A meeting of the Company's Board of Directors may be conducted by electronic communication and one or more Directors may participate in a meeting by electronic communication, as set out in section 73 (3).
- (d) The Company's Board of Directors may determine the form and time for giving notice of its meetings, but such a determination must comply with any requirements set out in any rules of the Company and no meeting of the Board of Directors may be convened without notice to all of the Directors, subject to section 73 (5).
- (e) The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, provided that all Directors of the Company either acknowledge actual receipt of the notice, are present at the meeting or waive notice of the meeting, is not limited or restricted by this Memorandum of Incorporation.
- (f) The quorum requirement for a Directors meeting to begin is at least 25% of all Directors. Each Director has one vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- (g) In the case of an equality of votes, the Chairman may cast a deciding vote.

#### **4.4 Indemnification of Directors**

- (a) The Company may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company and may directly or indirectly indemnify a Director for such expenses, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Director or arise in respect of any liability for which the Company may indemnify the Director in terms of section 78 (5) and (6).
- (b) The Company's Board of Directors may indemnify a Director in respect of any liability arising, with the following exceptions:
  - a. The Board may not indemnify a Director in respect of any liability arising in terms of section 77 (3) (a), (b) or (c) or from wilful misconduct or wilful breach of trust on the part of the Director;
  - b. The Board may not indemnify a Director in respect of any fine imposed on a Director of the Company, or of
    - i. A related Company, who has been convicted of an offence in terms of any national legislation.
- (c) The Company may purchase insurance to protect:
  - a. a director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with clause (2) above; or
  - b. the Company against:
    - i. any expenses that the Company is permitted to advance or indemnify a Director in accordance with clause (1) above; or
    - ii. any liability for which the Company is permitted to indemnify a Director in accordance with clause (2) above.

#### **4.5 Officers and Committees**

- (a) The Board may appoint any officers it considers necessary to better achieve the objects of the Company.
- (b) The Company's Board of Directors may appoint any number of committees of Directors and may delegate to any such committee any of the authority of the Board. Any such committee may include persons who are not Directors of the Company, but any such person must not be ineligible or disqualified to be a Director in terms of clause 4.1 (3) and no such person has a vote on a matter to be decided by the committee.

- (c) Any committee appointed by the Company's Board of Directors may consult with or receive advice from any person and has the full authority of the Board in respect of a matter referred to it.
- (d) The authority of a committee appointed by the Company's Board is not limited or restricted by this Memorandum.

## **Article 5 - General Provisions**

### **5.1 Public Benefit Organisation**

- (a) The company is a Public Benefit Organisation as provided for in terms of section 10(1) (cN) with section 30 of the Income Tax Act at the time of the adoption of this Memorandum.

### **5.2 Dispute Resolution**

- (a) If any dispute arises out of or in connection with this Memorandum, or related thereto, whether directly or indirectly, including the enforcement of the provisions hereof, the Board may, in its sole discretion, refer such dispute for resolution by way of arbitration.
- (b) A dispute within the meaning of this clause exists once the Board notifies the relevant parties in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.
- (c) Within 10 (ten) business days following such notification, the matter will be referred to arbitration as envisaged in the clauses below.
- (d) The arbitration will be held as an expedited arbitration in accordance with the then current rules for expedited arbitration of the Arbitration Company of Southern Africa ("AFSA") by 1 (one) arbitrator appointed by agreement between the Board and the relevant disputing party/ies. If the parties cannot agree on the arbitrator within 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA.
- (d) The decision of the arbitrator shall be final and binding on all parties and there shall be no further right of appeal.
- (e) The provisions of this clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters pending finalization of this dispute resolution process.



## **Schedule 1 - Incorporation and Nature of the Company**

### **Part A**

#### **Objectives**

- (a) To engage in such activities and programs that will encourage and provide in the field of human sexuality for an association where it contributes: to the improvement, education and regulation for professionals that provide medical services, therapy, professional services, counselling, the management of sexually related illnesses and disorders, sexual health and rights.
- (b) To provide credible information and education on sexual health issues from a multi-disciplinary perspective for the general public, the media, clergy, counsellors as well as registered health care and social service professionals.

### **Part B**

- (a) On dissolution of the Company, any assets remaining after all obligations have been met shall not be divided amongst or paid out to the Members but shall be donated to another charitable organisation with objectives as similar as possible to those of the Company. Should the Members not be able to arrive at a decision with regards to the disposal of the assets of the Company on dissolution, the Director of Non Profit Organisations shall be requested to decide on the disposal.

### **Part C**

- (a) The Board must publish any rules made in terms of section 15 (3) to (5) by delivering a copy of those rules to each Director by hand, ordinary mail or electronic mail.
- (b) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the rules, made to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by delivering a copy of such notice to each Director by hand, ordinary mail or electronic mail and filing a notice of the alteration.

### **Part D**

- (a) Every person who is appointed to the Company's Board of Directors is also appointed as a Member of the Company and vice versa.
- (b) Members are categorised as follows:
  - a. Full Members
  - b. Associated Members
  - c. Students
  - d. Originations and Institutions
  - e. Honorary Members

- (c) Only Full Members who are up to date with membership fees will have voting rights at any meetings where a vote is called for.
- (d) The Company shall exist in its own right, separately from its Members.
- (e) The Company will continue to exist despite changes in the Membership and office bearers.

## **Schedule 2 - Members Meetings**

### **Part A**

- (a) An adjourned Members Meeting must be adjourned to no later than the following scheduled Members meeting.

### **Schedule 3 - Directors of the Company**

#### **Part A**

The Board shall have the following powers:

- (a) To buy, hire or let any property, whether movable or immovable, and to exercise all other ancillary powers necessary to achieve the objectives of the Company;
- (b) To borrow money for the furtherance of the objectives of the Company and to encumber any of its assets to this end;
- (c) To appoint employees, determine the conditions of their service and discharge them;
- (d) To institute or oppose lawsuits;
- (e) To appoint sub-committees to assist in the management of the affairs of the Company;
- (f) To invest available funds which are not necessary for immediate utilisation in the projects of the Company with a registered financial institution as defined in Section 1 of the Financial Institutions (Investments of Funds) Act 1984 or in the acquisition of securities listed on a licensed stock exchange as defined in the Stock Exchange Control Act of 1985.