

**REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 2008**

**MEMORANDUM OF INCORPORATION**

**OF**

**FERTILIZER ASSOCIATION OF SOUTHERN AFRICA NPC**  
**(Registration number 1971/000012/08)**

This Memorandum of Incorporation was adopted by a special resolution in terms of section 16(1)(c) of the Companies Act 2008 by members of the Company on 22 July 2020 in substitution for the existing memorandum of incorporation of the Company.

  
\_\_\_\_\_  
Chairperson

## A. INTERPRETATION

- (a) In this Memorandum of Incorporation the following words shall have the following meanings unless otherwise required by the context in which they are used, namely:-

<b>the Act</b>	shall mean the Companies Act No. 71 of 2008 (as amended), read with the Regulations thereto;
<b>Auditors</b>	shall mean the auditors of the Company from time to time;
<b>the Board</b>	shall mean the Board of Directors for the time being of the Company and appointed in terms of this Memorandum of Incorporation;
<b>the Company or Fertasa</b>	shall mean the FERTILIZER ASSOCIATION OF SOUTHERN AFRICA NPC with registration number 1971/000012/08;
<b>Director(s)</b>	shall mean a Director(s) of the Company from time to time;
<b>Writing</b>	shall mean written, printed or lithographed, or partly one and partly another, and other modes of representing or reproducing words in a visible form;
<b>Member(s)</b>	shall mean Ordinary Members and Affiliate Members;
<b>Member's Representative</b>	shall mean, in respect of the Ordinary Members of the Company, a natural person duly authorised by each Ordinary Member from time to time to represent such Ordinary Member in all proceedings of Ordinary Members and to sign all such documents as are required to be signed from time to time on behalf of such Ordinary Member;
<b>Month</b>	shall mean a calendar month;
<b>Affiliate or Non-voting Member</b>	shall mean the members of the Company as described in Paragraph 2 of Part E of Schedule 1 hereto;
<b>Non-voting Membership Fees</b>	shall mean the membership fee to be paid by Associate Members, levied in terms of Paragraph 6 of Part E of Schedule 1 hereto;
<b>the Office of the Company</b>	shall mean the registered office of the Company;
<b>The Register</b>	shall mean the register of Members of the Company;
<b>The Republic</b>	shall mean the Republic of South Africa as constituted from time to time;
<b>Voting Member or Ordinary Member</b>	shall mean the members of the Company as described in Paragraph 4 of Part E of Schedule 1 hereto;
<b>Ordinary Membership Fees</b>	shall mean the membership fee to be paid by Ordinary Members, levied in terms of Paragraph 4 of Part G of Schedule 1 hereto;

**Ordinary Member in Good Standing** shall mean an Ordinary Member who has no overdue Membership Fees at the date of any meeting of Ordinary Members or submission of written resolution for approval by Ordinary Members as contemplated in section 60 of the Act;

**year** shall mean a calendar year;

- (b) A reference to a section by number refers to the corresponding section of the Act;
- (c) Words that are defined in the Act bear the same meaning in this Memorandum of Incorporation as in the Act;
- (d) Words importing the singular number only shall include the plural number, and vice versa;
- (e) Words importing the masculine gender only shall include the feminine gender and vice versa;
- (f) Words importing persons shall include corporations, and vice versa;
- (g) The headings of the respective Articles are for reference purposes only and shall not be taken into account in the interpretation of this Memorandum of Incorporation;
- (h) Where consent or approval is required for any act by a Member, such consent or approval shall be:
  - (i) in Writing and duly signed;
  - (ii) not be unreasonably withheld; and
  - (iii) shall be given prior to the Member taking action.
- (i) The onus of proof in regard to receipt of any notice given or payment made by a Member shall be upon the giver of the notice or the maker of the payment;
- (k) In the event of any provision of the Articles being unenforceable for any reason whatsoever, then such provision shall be deemed to be separate and severable, without in any way affecting the validity of the remaining provisions;
- (l) This Memorandum of Incorporation shall in all respects and in regard to all matters arising therefrom be governed by the law of the Republic of South Africa; and
- (m) The Schedules attached to this Memorandum of Incorporation form part of this Memorandum of Incorporation.

# **ARTICLE 1**

## **Incorporation and Nature of the Company**

### **1.1 Incorporation**

- (1) The Company is a pre-existing company as defined in the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of and under the Act. The Memorandum of Incorporation replaces and supersedes the memorandum of incorporation which applied to the Company prior to the filing hereof.
- (2) The Company is incorporated in accordance with and governed by –
  - (a) The unalterable provisions of the Act;
  - (b) The alterable provisions of the Act that are applicable to non-profit companies, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
  - (c) The provisions of this Memorandum of Incorporation.

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

- (1) The objects of the Company are set out in Part A of Schedule 1 of this Memorandum. The Company is not subject to provisions contemplated in section 15(2)(b) or (c) of the Act.
- (2) Except to the extent necessarily implied by the objects of the Company referred to above and as specifically set out in Part A of Schedule 1, the purposes and powers of the Company are not subject to any restrictions, limitations or qualifications contemplated in section 19(1)(b)(ii).
- (3) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with the provisions, if any, set out in Part C of Schedule 1 of this Memorandum of Incorporation.

### **1.3 Memorandum of Incorporation and Company Rules**

- (1) This Memorandum of Incorporation of the Company may be altered or amended in the manner set out in section 16, 17 or 152(6)(b), subject to the provisions contemplated in section 16(1)(c), as set out in Part D of Schedule 1.
- (2) 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.
- (3) The Company must publish any Rules made in terms of section 15(3) to (5) in accordance with the requirements set out in Part D of Schedule 1.
- (4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17(1) of the Act, in accordance with the requirements set out in Part D of Schedule 1.

### **1.4 Application of optional provisions of Companies Act, 2008**

The Company does not elect, in terms of section 34(2), to submit voluntarily to the provisions of Chapter 3 of the Act.

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

- (1) As contemplated in item 4(1) of Schedule 1 of the Act, the Company has Members, being Ordinary Members, Affiliate Members and Honorary Members.
- (2) The terms and conditions of membership in the Company are as set out in Part E of Schedule 1 of this Memorandum of Incorporation.

## **ARTICLE 2**

### **Rights of Members**

#### **2.1 Members' right to information**

A Member of the Company has the right of access to information set out in section 26(1) of the Act.

#### **2.2 Representation by concurrent proxies**

A Voting Member of the Company is not entitled to appoint 2 (two) or more persons concurrently as proxies, as contemplated in section 58(3)(a) of the Act.

#### **2.3 Authority of proxy to delegate**

A Voting Member's proxy may not delegate the proxy's powers to another person as contemplated in section 58(3)(b) of the Act.

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

The requirement that a Voting Member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Voting Member's rights at a Voting Members' meeting, as set out in section 58(3)(c), is varied to the extent set out in Part C of Schedule 2.

#### **2.5 Deliberative authority of proxy**

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

#### **2.6 Record date for exercise of Voting Member rights**

If applicable and if, at any time, the Company's Board fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59(3).

## **ARTICLE 3**

### **Members' meetings**

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

The Company is required to hold Voting Members' meetings as required by the Act and as set out in Part A of Schedule 3.

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

The right of Voting Members to requisition a meeting, as set out in section 61(3) of the Act, may be exercised by not less than 10% (ten percent) of Ordinary Members in Good Standing.

#### **3.3 Location of Members' meetings**

The authority of the Board to determine the location of any Members' meeting is not limited or restricted or varied.

#### **3.4 Notice of Voting Members' meetings**

The minimum number of days for the Company to deliver a notice of a Voting Members' meeting to the Voting Members, as required by section 62, is 15 (fifteen) business days as provided for in section 62(1).

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

The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63, is as set out in Part C of Schedule 3.

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

- (1) The quorum requirement for a Voting Members' meeting to begin, or for a matter to be considered, is as set out in item 5, Part A of Schedule 3.
- (2) The time periods allowed in section 64(5) of the Act apply to the Company and the authority of a meeting to continue to consider a matter is as set out in section 64(9) of the Act.

#### **3.7 Adjournment of Voting Members' meetings**

The maximum period allowable for an adjournment of a Voting Members' meeting is as set out in section 64(13) of the Act.

#### **3.8 Voting Members' resolutions**

- (1) For an ordinary resolution to be adopted by Ordinary Members in Good Standing, it must be supported by at least the minimum percentage of Ordinary Members in Good Standing voting on the resolution, as set out in Part D of Schedule 3.
- (2) For a special resolution to be adopted by Ordinary Members in Good Standing, it must be supported by at least the minimum percentage of the Ordinary Members in Good Standing who voted on the resolution, as set out in Part D of Schedule 3.

## **ARTICLE 4**

### **Directors and Officers**

#### **4.1 Composition of the Board of Directors**

- (1) The Board of Directors of the Company comprises of the number of Directors to be elected by the Ordinary Members in Good Standing, in the manner set out in Part A of Schedule 4 as well as the number of Directors to be appointed by the Board as set out in Part A of Schedule 4.
- (2) In addition to the appointed Directors there may be *ex officio* Directors of the Company, as contemplated in section 66, to be designated in the manner specified in Part B of Schedule 4.
- (3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a Director or a prescribed officer of the Company, a person needs to be an employee of a legal entity that is a voting member.
- (4) Each elected or appointed Director of the Company serves for a term and in the manner specified in Part C of Schedule 4.

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

The authority of the Company's Board to manage and direct the business and affairs of the Company, as set out in section 66(1), is limited or restricted to the extent set out in Part D of Schedule 4.

#### **4.3 Directors' Meetings**

- (1) The authority of the Board to consider a matter other than at a meeting, as set out in section 74, is not limited or restricted.
- (2) The right of the Directors to requisition a meeting of the Board, as set out in section 73(1), may be exercised by no less than 2 (two) Directors.
- (3) The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted or varied.
- (4) The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4), is not limited or restricted or varied.
- (5) The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5), is not limited or restricted or varied.
- (6) The quorum requirement for a meeting of Directors to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject to the variations set out in Part F of Schedule 4.

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

- (1) The authority of the Company to advance expenses to a Director, or indemnify a Director, in respect of the defense of legal proceedings, as set out in section 78(3), is not limited, restricted or extended.
- (2) The authority of the Company to indemnify a Director in respect of liability, as set out in section 78(5), is not limited or restricted or varied.
- (3) The authority for the Company to purchase insurance to protect the Company, or a Director, as set out in section 78(6), is not limited, restricted or varied.

#### 4.5 **Committees of the Board**

- (1) The authority of the Board to appoint committees, and to delegate to any such committee any of the authority for the Board, as set out in section 72(1), and to include in any such committee persons who are not Directors, as set out in section 72(2)(a) is not limited or restricted or varied.
- (2) The authority of a committee appointed by the Board, as set out in section 72(2)(b) and (c), shall be limited or restricted to the extent determined by the Board from time to time.



**ARTICLE 5**  
**General Provisions**

5.1 The shortened form of the name of the Company is: Fertasa.

5.2 **Notices**

(1) All notices intended or required to be given by the Company to any Member of the Company shall be given in Writing either:

(a) personally; or

(b) by sending the same through the post in a prepaid letter, envelope or wrapper addressed to such Member at his registered address; or

(c) by Electronic Communication.

(2) Each Member of the Company:

(a) shall notify in Writing to the Company an address, which address shall be his registered address for the purposes of items 5.2(1)(a) and (1)(b) and if he has not named such an address he shall be deemed to have waived his right to be served with notices; and

(b) may notify in Writing to the Company an email address, which address shall be his address for the purposes of receiving notices by way of Electronic Communication in terms of item 5.2(1)(c),

and in the event of a Member notifying the Company of an address in terms of this item 5.2(2), the Company shall be entitled to send all notices to either (or both) of the addresses so notified to the Company and provided that it does so it will have complied with its obligations to give notice to the Member concerned.

(3) Any notice or other document, if sent by the Company by means of Electronic Communication, shall be deemed to have been served at the time at which the Company releases the Electronic Communication.

# **SCHEDULE 1**

## **INCORPORATION AND NATURE OF THE COMPANY**

### **PART A**

#### **Objects of the Company, limitations and focus areas**

1. The main objects of the Company are to:
  - (a) render quality service upon requirements of its members;
  - (b) encourage practices conducive to the economic optimal use of fertilizer;
  - (c) seek active collaboration, on behalf of its members, with the relevant Department(s) of government, organised agriculture and other institutions in the interest of crop production and appropriate fertilizer use;
  - (d) strive for the adoption and application of a code of fertilizer practices aimed at the maintenance of an ecologically sound environment;
  - (e) promote the image of the fertilizer manufacturing industry;
  - (f) promote the common interest of customers and stakeholders of the Company; and
  - (g) do all such things as are auxiliary to and in support of the main objects as set out herein.
  
2. In the furtherance of the main objects of the Company, the Company shall, to the extent reasonably possible in the sole discretion of the Board and considering, amongst other things, the financial resources of the Company, do all or any of the following:
  - (a) act as a forum which will facilitate effective liaison and negotiations with government, organised agriculture and other interest groups to enhance the common interest of the fertilizer industry;
  - (b) assimilate, add value to and disseminate fertilizer related information in such a way that the agro-economic justifiable use of fertilizer is promoted and optimised, and;
  - (c) promote fertilizer practices conducive to the maintenance of a sustainable and ecologically sound environment;
  - (d) promote business practices in the fertilizer industry that are both ethical and competitive, including inter alia compliance with the requirements of the Competition Act, Consumer Protection Act and the Fertilizer Act; and
  - (e) promote food security through the improvement and maintenance of soil health and soil fertility by disseminating information regarding the efficient and responsible use of fertilizers and plant nutrition.

### **PART B**

#### **Common powers**

3. The Company shall have the following common powers, provided that such powers shall be exercised entirely in accordance with and in the furtherance of the objects of the Company, subject to the limitations as listed above in Part A of Schedule 1 and subject further to any relevant legislation applicable to the Company:
  - (a) to purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, shares, debentures and every other kind of description of movable and immovable property;

- (b) to manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with its undertaking or all of any part of its property and assets;
  - (c) to acquire and hold securities issued by a profit company;
  - (d) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to the object of the Company;
  - (e) to apply for, purchase or by any other means acquire, protect, prolong and renew any patents, patent rights, licenses, trademarks, concessions or other rights and to deal with and alienate them as provided in item 1(b) above;
  - (f) to invest money in any South African Accredited and Registered Financial Institution;
  - (g) to open and operate banking accounts and to overdraw such accounts;
  - (h) to take part in the management, supervision and control of the business or operations of any other company or business having the same or similar objects as the Company and to enter into partnerships having the same or similar objects as the Company;
  - (i) to enter into employment and other contracts for the delivery of services to the Company and to remunerate any person or persons for services rendered to the Company;
  - (j) to make grants and donations, provided that no donations or grants might be made to Members or Directors;
  - (k) to undertake and execute any trust;
  - (l) to act as principal, agent, contractor or trustee;
  - (m) to pay employees gratuities and pensions and establish pension schemes, medical schemes or any incentive schemes in respect of its bona fide employees;
  - (n) to form and have an interest in any company or companies or associations having the same or similar objects to the Company for the purpose of acquiring the undertaking of all or any of the assets or liabilities of that company or companies or for any other purpose which may seem, directly or indirectly, calculated to the benefit of the Company, and to transfer to any such company or companies or associations the undertaking of all or any of the assets or liabilities of the Company;
  - (o) to amalgamate, affiliate or co-operate with other companies having the same or similar objects to the Company; and
  - (p) to do all such things as legally or otherwise required to achieve the objects of the Company.
4. The assets and income of the Company, however derived, shall be applied solely towards the advancement and promotion of the objects of the Company.
5. The Company shall not, directly or indirectly by way of dividend, bonus or otherwise, pay any portion of its income or transfer any of its assets, regardless whether the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:
- (a) as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Company;
  - (b) as reasonable payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
  - (c) as payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
  - (d) as a payment in respect of rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; and
  - (e) in respect of any legal obligation binding the Company.

6. The Company shall be entitled to bind Members to contribute by way of Membership Fees towards the funds of the Company and to enforce payment thereof and collect and receive from Members such contributions.
7. The Company shall not carry on business activities being ordinary trading operations in the commercial sense, speculative transactions or dividend stripping activities.
8. The Company may not:
  - a. amalgamate or merge with, or convert to, a profit company;
  - b. dispose of any part of its assets, undertaking or business to a profit company, other than for fair value except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company;
  - c. without the approval requirements as set out in sections 112 and 113, 115 and 116 of the Act, dispose of all or the greater part of the assets or undertaking of the Company or amalgamate or merge with another Non-profit company.

### **PART C**

#### **Dissolution, deregistration or winding up of the Company**

1. If upon the **winding up, deregistration or dissolution of the Company** the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts - having objects similar to its main object as determined by the Board.

### **PART D**

#### **Alteration and Amendment of Memorandum of Incorporation**

##### **Rules of the Company**

1. The Memorandum of Incorporation of the Company may be altered or amended as provided for in the Act.
2. Publication of any Rules made in terms of section 15(3) to (5) or notice of any alteration of the Memorandum of Incorporation or the Rules shall be done in accordance with the relevant requirements of Act, as and when applicable.

### **PART E**

#### **Terms and conditions of Membership**

##### **General**

1. Membership of the Company shall be limited to the Ordinary Members, Affiliate Members and Honorary Members, if any.
2. In the event of the Company being wound up, each Member's contribution shall be limited to any outstanding Membership Fees.

### **Ordinary Members (Voting Members)**

1. An Ordinary Member shall be companies and institutions in agriculture which derive its income from any of the following activities:
  - (a) manufacturing of raw materials, intermediate and/or finished fertilizer products;
  - (b) mixing of, and resale of raw materials, intermediate and/or finished fertilizer;
  - (c) product under own brand name;
  - (d) trading in raw materials, intermediate and/or finished fertilizer products;
  - (e) supply of micronutrients and other materials for use in fertilizers;
  - (f) production and marketing of agricultural lime;
  - (g) in all instances "fertilizers" means chemical, organic and semi-organic fertilizers included in Group 1, Group 2 and Group 3 fertilizers as defined in the Regulations, 2012 of Act 36 of 1947.
2. Companies or institutions wishing to apply for Ordinary Membership shall make such an application in Writing to the Board in such a manner and on such application form as prescribed by the Board from time to time.
3. Admission of new Ordinary Members shall be in the sole discretion of the Board, who may determine the conditions of such membership, which discretion shall include the qualification of the voting rights of the aspirant Ordinary Member. If an application for membership as an Ordinary Member is rejected by the Board, then the application shall be referred back to the aspirant Ordinary Member with or without reasons.
4. In addition to the provisions of Part F of this Schedule 1 (termination of membership), any Ordinary Member may give notice in Writing of its intention to resign as a Member, and on expiration of the period of 12 months from receipt of such notice by the Company, the Member shall cease to be an Ordinary Member. During the notice period the Ordinary Member is still responsible to pay the full Membership Fee.
5. Ordinary Members shall pay the full Membership Fee as contemplated in Part G of this Schedule 1.
6. Each Ordinary Member in Good Standing has voting rights on all matters in line with its membership level.

### **Affiliate Members (Non-voting Members)**

7. An Affiliate shall be a company, institution, association and/or any individual or individual of a company he/she works for who do not qualify for Ordinary Membership and/or where its holding company (if applicable) is already an Ordinary Member of the Company.
8. Affiliate Membership for companies and organisations must be evaluated against the following criteria:
  - (a) Subsidiaries or affiliates of existing ordinary members that would qualify for ordinary membership;
  - (b) Local agents who act on behalf of producers and/or suppliers of fertilizers to the Southern African market who don't have registered offices in the Republic of South Africa;

- (c) Governmental agencies (research, extension, regulatory) and non- governmental organisations with activities (e.g. research) in the fields of plant nutrition, fertilizer and soil fertility management;
  - (d) Institutions and enterprises which are involved in plant nutrition, fertilizer or soil fertility management activities;
  - (e) Universities with agricultural faculties, soil fertility, plant nutrition or engineering related to fertilizer technology and production departments.
9. Affiliate Membership for individuals (natural persons) must be evaluated against the following criteria:
- (a) involved in plant nutrition, fertilizer or soil fertility management;
  - (b) natural scientists who specialise in, soil fertility and plant nutrition related research or practice;
  - (c) Researchers, extension officers, lecturers and teachers who are involved in activities related to, soil fertility and plant nutrition; and
  - (d) Students in the disciplines of soil science, agronomy, horticulture, pasture science or any other field related to soil fertility or plant nutrition.
  - (e) not in the employ of a company that qualifies for membership.
10. Affiliate Members shall have no voting rights.
11. Applications for membership as Associate Members shall be addressed in Writing to the Board giving such particulars as the Board may require. Admission of Associate Members shall be in the sole discretion of the Board, who may determine the conditions of such membership. If an application for membership as an Associate Member is rejected by the Board, then the application shall be referred back to the aspirant Associate Member with or without reasons.
12. Affiliate Members shall pay an annual membership fee as contemplated in Part G of this Schedule 1.
13. In addition to the provisions of Part F of this Schedule 1, any Affiliate Member may give notice in Writing of its intention to resign its membership, and on expiration of the said period of 12 months from receipt of such notice shall cease to be an Affiliate Member. Notwithstanding the afore going, an Affiliate Member shall at all times remain responsible for payment of its full membership fee after 30 January each year.
14. The Board may, in its sole discretion, remove any person or company as an affiliate member.

### **Honorary Members**

15. Any Member may nominate any person who, in their opinion, has made a significant contribution to the advancement of the industry which Fertasa represents. The nomination must be made in writing, together with a motivation, and must be delivered to the Board, who may on its own discretion confer honorary membership to such nominated person.
16. The Board shall determine the nomination process as envisaged above from time to time.
17. The Board may, in its sole discretion, remove any person as an honorary member.
18. Honorary members shall be exempted from paying any Membership Fees unless otherwise determined by the Members in a general meeting and shall have no voting rights.

**PART F**  
**Grounds for Termination of Membership and Register of Members**

1. Should any Member –
  - 1.1 Cease to be actively or directly engaged in the matters of the Company, in the case of an Ordinary Member;
  - 1.2 Cease to be a role player in the Industry in the case of an Affiliate Member;
  - 1.3 Fail to pay its Ordinary or Affiliate Membership Fees within 30 (thirty) days after notice informing him that such Membership Fees are overdue and requiring payment; or
  - 1.4 Be in breach of any of the terms and conditions of this Memorandum of Incorporation (except those issues relating to payment of Membership Fees) or the Fertasa Code of Conduct and continue to be in breach 14 days after notice specifying such breach;
  - 1.5 In the best interest of the Company, be voted out by the Ordinary Members at a general meeting by a majority vote;

then the Board may resolve that such Member's membership be terminated which termination shall thereby take immediate effect but without prejudice to the right of the Company to claim membership fees which have already fallen due.

2. In addition to the above, Membership will terminate on the grant of an order of sequestration, curatorship, liquidation, or business rescue of a Member or if the Member is a natural person, upon such Member becoming deceased.
3. A Member whose membership has been terminated shall not be entitled to any refund of an amount already paid nor have any claim against the Company, its officers, properties or funds.
4. The Board shall furnish its reasons for terminating a Member's membership in terms of item 1.1 to 1.4 above to that Member in Writing and that Member shall have the right, exercisable by notice in Writing to the Chair of the Board within 10 (ten) business days of receipt of those reasons, to be heard by the Board within a period of 20 (twenty) business days of receipt by the Chair of such notice. Within 5 (five) days of hearing the said Member, the Board may, upon such terms if any and as it may deem appropriate and without any obligation to give reasons, rescind or confirm the termination and until such decision or confirmation is made, no public announcement within or outside the Company of such suspension or expulsion shall be made
5. No Member may transfer their interest in the Company.
6. The Company shall maintain and make available for inspection at its registered office a register of Members of the Company as provided by the Act.

**PART G**  
**Membership Fees**

1. Ordinary Membership fees shall be determined annually and shall be based on a formula as determined by the Board from time to time. The said formula shall be based on annual turn-over of the Ordinary Member as well as the required running costs of Fertasa.
2. Affiliate Membership Fees shall be determined by the Board from time to time in its sole discretion and shall be based on the annual turn-over of the Affiliate Member as well as the required running costs of Fertasa.
3. Membership Fees shall fall due on the 1<sup>st</sup> of January each year and shall be payable before the end of February of the same year or within 60 (sixty) days from the date of approval of a new Member.
4. No Ordinary Member shall be entitled while any Ordinary Membership Fees or other sum due to the Company is more than 3 (three) months in arrear to exercise any of the rights or privileges of membership including but without being limited to the right to nominate individuals for election as Directors and the right to vote at general meetings and membership discounts for events.

**PART H**  
**Voluntary Suspension**

1. Voluntary suspension of Membership is possible if a Member does not intend to be active within the areas defined as a precondition for membership in South Africa for a specified period of time.
2. If a Member wishes to voluntarily suspend their membership for a period of time, a request for voluntary suspension has to be submitted for approval on the prescribed form, by hand or electronically, to the Board.
3. Voluntary suspension will become effective from the end of the quarter of the year in which voluntary suspension is approved by the Board.
4. Upon approval of voluntary suspension, Membership fees will be payable for the remainder of the calendar year as specified under Affiliate members point 13.
5. To restore Membership after voluntary suspension, the suspended Member must apply for reinstatement to the Board on the prescribed form, submitted by hand or electronically.
6. Upon approval of reinstatement, Membership fees will become due on a pro rata basis for the calendar year in which the application is approved.



## **SCHEDULE 2**

### **RIGHTS OF MEMBERS**

#### **PART A**

##### **Limitations and restrictions on rights of Members**

1. Each Ordinary Member's Representative or proxy appointed by an Ordinary Member shall, vote accordingly to membership level, on behalf of the Ordinary Member he represents and on condition that the Ordinary Member is an Ordinary Member in Good Standing, be entitled and have the right to vote at general meetings of the Company and shall each have one vote. For clarity purposes, it is confirmed that an Ordinary Member that is not an Ordinary Member in Good Standing, shall not be entitled to exercise a vote at any meeting of Voting Members or via written resolution as per section 60 while payment of overdue Membership Fees remain outstanding.
2. Subject to the provisions of Schedule 4, Part A, item 2, each Ordinary Member in Good Standing shall be entitled to nominate individuals who are in the full time employment of any Ordinary Member in Good Standing for election as Directors to the Board of the Company.
3. Affiliate Members shall not have the right to appoint or nominate individuals for election as Directors and may be represented at any engagement between the Company and Affiliate Members, by a duly authorised representative/s.

#### **PART B**

##### **Members' right to information**

1. A Member has the right to inspect and copy, without any charge for such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company:
  - (a) The Company's Memorandum of Incorporation and any amendments to it, and any rules made by the Company in terms of section 24(3)(a) of the Act;
  - (b) The records in respect of the directors of the Company as mentioned in section 24(3)(b) of the Act;
  - (c) The reports to annual general meetings and annual financial statements;
  - (d) The notices and minutes of annual general meetings; and
  - (e) The members' register.

#### **PART C**

##### **Authority to delegate**

1. Ordinary Members in Good Standing may, for purpose of a general meeting of the Company and in addition to the Ordinary Member's Representative, nominate and appoint an alternate person to act as Ordinary Member's Representative in the event of an Ordinary Member's Representative being unable to attend at or participate in or vote on behalf of an Ordinary Member in Good Standing at general meetings of the Company.
2. Alternatively, Ordinary Members may appoint a proxy to participate in, and speak and vote on behalf of such Ordinary Member at general meetings of the Company.

3. The instrument appointing a proxy shall be in Writing under the hand of the person granting such proxy or his attorney duly authorised in Writing, or, if the appointer be a corporation, either under its common seal or under the hand of an officer or attorney so authorised. The holder of a power of attorney from an Ordinary Member may, if so authorised by the power of attorney, vote for and represent such Ordinary Member at any meeting of the Company.
4. Every instrument of proxy, whether for a specified meeting or otherwise, shall comply with section 58 of the Act and subject thereto be in the form as the Directors may approve from time to time, and the Directors may, if they think fit, send out with the notice of any meeting forms of instrument of proxy for use at the meeting.
5. Any power of attorney and any instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a certified copy of such power of attorney shall be deposited at the Office of the Company or at such other place within the Republic as is specified for that purpose in the notice convening the meeting, prior to the exercise of the rights afforded by the said instrument
6. A vote given in accordance with the terms of a power of attorney or an instrument of proxy shall be valid notwithstanding the previous legal incapacity of the principal or revocation of the power of attorney or instrument of proxy, unless an intimation in writing of such legal incapacity or revocation shall have been received by the Company (at the office at which such power or instrument is registered) before commencement of the meeting or the taking of the poll at which the instrument of proxy is used.

## **SCHEDULE 3**

### **MEMBERS MEETINGS**

#### **PART A**

#### **Requirement to hold meetings and procedure**

1. The Ordinary Members of the Company shall hold the following meetings:
  - (a) General Meetings of Ordinary Members at any time:
    - (i) that the Board is required in terms of the Act or this Memorandum of Incorporation to refer a matter to the Voting Members of the Company for decision (if a written resolution in terms of section 60 may not be used or is not deemed appropriate by the Board under the circumstances);
    - (ii) when otherwise required and for any other special purpose as the Board may determine.
  - (b) An Annual General Meeting once in every year at such time as may be determined by the Board, provided that every Annual General Meeting shall be held not more than 15 (fifteen) Months after the date of the last preceding such meeting of the Company. At an Annual General Meeting, the Ordinary Members present will, as a minimum, consider the annual financial statements of the Company, the reports of the Board and of the Auditors on the annual financial statements and otherwise, the, appointment of the Auditors.
2. The Board may whenever it thinks fit convene a general meeting of Ordinary Members, and general meetings may also be convened on requisition as provided by this Memorandum of Incorporation and section 61 of the Act.
3. Subject always to the provisions of section 62 of the Act, the Company must deliver notice of each Ordinary Member's meeting in the manner and form prescribed to all Ordinary Members, at least 15 (fifteen) business days before the meeting is to begin. The notice shall specify the place, the date and the hour of the meeting and shall be given in the manner hereinafter provided to Ordinary Members.
4. No business shall be transacted at any general meeting unless a quorum of Ordinary Members in Good Standing is present at the time when the meeting proceeds to business. The quorum requirement for an Ordinary Members' meeting to begin, or for a matter to be considered is Ordinary Members in Good Standing representing more than 25% of the voting rights as determined by the Board from time to time.
5. In the event of a quorum not being present within the specified time period, being 1 (one) hour after the appointed time for a meeting to begin, the meeting shall be postponed without further motion, vote or notice for one week (5 business days) as provided for in section 64(4) of the Act and the Ordinary Members in Good Standing present in person or by proxy at the start of the postponed meeting shall be deemed to constitute a quorum.
6. The chairman of the Board shall preside at any general meeting of Ordinary Members, or should he be absent or unwilling to serve, the vice chairman, or should both be absent or unwilling to serve, the Ordinary Members present shall nominate as chairman one of the Directors of the Company or, if no Director of the Company is present or willing to serve, then one of the representatives of the Ordinary Members present.

7. All voting at any general meeting of Ordinary Members shall be done by way of ballot and the required procedure and appointment of scrutineers will be in the sole discretion of the Chair of the general meeting.

**PART B**  
**Location of Members' Meetings**

Unless otherwise determined, all Members' meetings shall be held at such location as the officials of the Company may from time to time propose and/or determine.

**PART C**  
**Electronic participation in Members' meetings**

In exceptional circumstances given to the unavailability of one or more Ordinary Members at an Ordinary Member's meeting, the Company may, in the sole discretion of the Board, provide for:

- (a) an Ordinary Members' meeting to be conducted entirely by electronic communication, or
- (b) one or more Ordinary Members, or representatives or proxies for Ordinary Members, to participate by electronic communication in all or part of a Members' meeting that is being held, provided that the electronic communication employed ordinarily enabled all persons participating in the meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

**PART D**  
**Members' Resolutions**

1. Unless otherwise prescribed by this Memorandum of Incorporation, all resolutions of Ordinary Members in Good Standing shall be subject to the provisions of section 65 of the Act.
2. An ordinary resolution shall be deemed to have been adopted by Ordinary Members with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution.
3. A special resolution shall be deemed to have been adopted by Ordinary Members with the support of not less than 75% (seventy five percent) of the voting rights exercised on the resolution.

## **SCHEDULE 4**

### **DIRECTORS OF THE COMPANY**

#### **PART A, B and C Composition of the Board of Directors**

Subject to the provisions of sections 66, 68 and 69 of the Act:

1. The minimum number of Directors shall be 3 (three) elected and the maximum number shall be 9 (nine), made up as follows:
  - (a) Not more than 6 (six) Directors elected by Ordinary Members in Good Standing from the list of nominees included in the notice of the general meeting where the election is to take place (“the Elected Directors”);
  - (b) Not more than 2 (two) Directors appointed by the Board (“the Appointed Directors”); and
  - (c) The CEO of the Company shall be appointed by the Board and shall be an *ex officio* director;
2. Subject to item 3 below, each Ordinary Member in Good Standing shall be entitled, but not be obliged, by notice in Writing addressed to the Company in the form as approved by the Board from time to time, to nominate individuals for election as Directors to the Board of the Company for a period of 3 (three) years, with such nomination being supported in Writing by another Ordinary Member in Good Standing, where after such individual shall stand down and, if eligible and willing, may be re-nominated by an Ordinary Member in Good Standing (and such nomination must also be supported in Writing by another Ordinary Member in Good Standing) for election by Ordinary Members in Good Standing.
3. Notwithstanding the foregoing, there shall at no time be more than 1 (one) Director in office being in the full time employment of the same Ordinary Member in Good Standing unless otherwise determined by the Ordinary Members in Good Standing by way of Special Resolution prior to any election of Directors being undertaken. The Board shall, within its sole and absolute discretion, determine the appropriate nomination and election process to ensure adherence to this provision and advise Ordinary Members in Good Standing accordingly.
4. The Board shall determine the nomination process as envisaged above from time to time and advise Ordinary Members in Good Standing accordingly. Nominations for election of individuals as Directors at a general meeting shall be done in accordance with the process as advised by the CEO, if any, or such other Director as authorised by the Board.
5. An Elected Director may be re-elected as envisaged in item 2 above, and Ordinary Members in Good Standing shall at all times take into consideration good governance recommendations relevant to the composition of a board of a non-profit organisation when submitting nominations and when voting for the election of Directors. An Elected Director’s period of office shall at all times be calculated in increments of 3 (three) years from the date of his election or re-election as an Elected Director.

6. As required by the Act, and notwithstanding the 3 (three) year term as prescribed above, a third of the Elected Directors shall stand down (retire) at each Annual General Meeting and, if eligible and willing, may be re-nominated by an Ordinary Member in Good Standing for election by Ordinary Members in Good Standing for a further 3 (three) year period.
7. The Elected Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election. As between Directors of equal seniority, the Elected Directors to retire shall, in the absence of agreement, be identified as follows:
  - (a) The Elected Director/s to retire shall be those who have been longest in office since his **first** election as Elected Director.
  - (b) As between Elected Directors who are again of equal seniority (having first been elected on the same date and last re-elected on the same date), the Elected Director/s so to retire shall be determined by lot.
8. In addition to the provisions of section 69 of the Act, the office of a Director shall also be vacated in any of the following events, namely:-
  - (a) if he is removed by a resolution of the Board or the Voting Members pursuant to section 71 of the Act;
  - (b) if by 1 (one) Months' notice in Writing to the Company he resigns his office;
  - (c) If he is absent from meetings of the Board for two meetings in one calendar year otherwise than on the business of the Company, and the Directors resolve that his office be, by reason of such absence be vacated; or
  - (d) If his employment with any Ordinary Member in Good Standing is terminated for whatever reason

#### **PART D** **Authority of Directors**

1. Subject to the provisions of section 76 of the Act, the business of the Company shall be managed by the Directors, who may exercise all such powers of the Company, and do, on behalf of the Company, all such acts as may be exercised and done by the Company, and are not by the Act or by this Memorandum of Incorporation required to be exercised or done by the Company in general meeting.
2. The Directors may act notwithstanding any vacancy in their body; provided always that in case the number of Directors shall at any time be or be reduced to less than the minimum number prescribed by or in accordance with this Memorandum of Incorporation, it shall be lawful for them to act for the purpose of summoning a general meeting or for filling up vacancies, but not for any other purpose. The filling of vacancies can also be done in terms in terms of section 60 of the Act (written resolution).
3. A Director may hold any other office or place of profit under the Company (except that of auditor) in conjunction with his office of Director for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as an Appointed Director and otherwise as the Directors may determine.
4. A Director of the Company may be or become a Director or other officer of, or otherwise interested in, any Company promoted by the Company or in which the Company may be interested as shareholder or otherwise and (except insofar as otherwise decided by the Directors), he shall not be accountable for any remuneration or other benefits received by him as a Director or officer of or from his interest in such other Company.

5. Any Director may act by himself or through his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm may be entitled to remuneration for professional services as if he were not a Director.
6. A Director who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest to the Board and shall at all times comply with the provisions of section 75 of the Act in the event of a Personal Financial Interest as defined in the Act.
7. Subject to the provisions of section 75 of the Act and of this Memorandum of Incorporation, no Director or intending Director shall be disqualified by his office for contracting with the Company either with regard to his tenure of any other office or place of profit under the Company or in any Company promoted by the Company or in which the Company is interested or in respect of professional service rendered or to be rendered by such Director or as vendor, purchaser or in any other manner whatever, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such appointment, contract or arrangement by reason of such Director holding the office or of the fiduciary relationship thereby established.
8. Directors elected by Ordinary Members in Good Standing shall not receive any remuneration or fees from the Company for their services as Directors. Appointed Directors may receive such remuneration for their services as Directors as determined by the Ordinary Members by way of Ordinary Resolution.
9. Any Director who serves on any executive or other committee or who devotes special attention to the business of the Company, or who otherwise performs services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director, may be remunerated for such. This is in addition to the fees to which Appointed Directors may be entitled to. Subject to item 15 of this Part of Schedule 4, the Appointed Directors may be paid all their travelling and other expenses properly and necessarily expended by them in and about the business of the Company.
10. Subject to the requirements of the Act being complied with at all times, a Director shall not vote for his own appointment to any other office or place of profit under the Company or in respect of any contract or arrangement in which he is interested (and if he does so, his vote shall not be counted on any resolution), but this prohibition shall not apply to:-
  - (a) any arrangements for giving to any Director any security or indemnity in respect of money lent by him to or obligation undertaken by him for the benefit of the Company; or
  - (b) any arrangement for the giving by the Company of any security to a third party in respect of a debt or obligation of the Company which the Director has himself guaranteed or secured; or
  - (c) any contract or arrangement with a company in which he is interested by reason only of being a Director, officer, creditor or Member of such Company (subject to section 45);and these prohibitions may at any time be suspended or relaxed to any extent either generally, or in respect of any particular contract or arrangement, by the Ordinary Members by Ordinary Resolution.
11. The Directors may establish any reserve fund or funds for the purpose of meeting contingencies or for the furtherance of any of the objects of the Company and such funds may be invested as the Directors may think fit, subject to the common powers relevant to the Company.

12. Unless otherwise determined by the Ordinary Members of the Company, Elected Directors shall not be entitled to any remuneration and/or fees.

## **PART E**

### **Meetings of Directors**

1. Subject to the provisions of section 73 of the Act, the Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
2. A Chair and Vice-Chair of the Company shall be elected from the Directors as individuals every 2 (two years) by the members at an Annual General Meeting. The term of each shall be 2 (two) years and will be eligible for re-election after the 2 (two) year period.
3. A quorum necessary for the transaction of any business at a meeting of Directors shall be a majority of the Directors in office from time to time.
4. The Chair of the Board elected in terms of item 2 above shall preside as chair at any meeting of the Board. If at any meeting the Chair or vice Chair of the Board is not present within 10 (ten) minutes after the time appointed for holding the same, the Directors present shall choose one of their number present to act as chair at such meeting.
5. All matters requiring a formal resolution arising at any Board meeting shall be decided by a majority of votes (more than 50%) and each director shall have 1 (one) vote. The Chair of the meeting shall in the case of an equality of votes not have a second or casting vote and the matter shall fail.
6. A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the powers, authorities and discretion by or under this Memorandum of Incorporation for the time being vested in or exercisable by the Directors generally. In the event of a meeting of the Board not being quorate, the meeting shall, at the discretion of the Chair, either be postponed to a date suitable to the majority of the Directors that is not more than 15 (fifteen) Business Days from the date of the original non-quorate meeting, or the non-quorate meeting may proceed as an informal discussion with formal resolutions being circulated for approval as provided for in terms of section 74 of the Act.
7. The Directors are authorised to act in the manner as set out in section 74 of the Act and a written resolution signed by a majority of Directors in office from time to time shall be as valid and binding as if it had been passed at a duly constituted meeting of the Directors, on condition that all Directors received notice of the matter requiring approval..

## **PART F**

### **Electronic communication between Directors**

In exceptional circumstances given to the unavailability of one or more Directors entitled to vote at a Board meeting, the Directors may provide for:

- (a) a Board meeting to be conducted entirely by electronic communication; or
- (b) one or more Directors to participate by electronic communication in all or part of a Board meeting that is being held, provided that the electronic communication employed ordinarily enabled all persons participating in the meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.



**PART G**  
**Liability and Indemnification of Directors**

1. The liability of Directors and prescribed officers of the Company or members of a committee of the Board shall be subject to the provisions of sections 77 and 78 of the Act.
2. The Company may in particular indemnify a Director in respect of:
  - (a) any liability arising in terms of section 77 (3)(a), (b) or (c) of the Act or from wilful misconduct or wilful breach of trust on the part of the Director;
  - (b) any fine contemplated in section 78(3) of the Act.
3. Every Director or prescribed officer of the Company or member of a committee of the Board shall be indemnified out of the funds of the Company against all expenses in order to defend litigation in any proceedings arising out of the director/officer/committee member's service to the Company, irrespective of whether the Company has advanced such expenses, if the proceedings are abandoned or exculpate the Director/officer/committee member or arise in respect of any other liability for which the Company may indemnify the Director/officer/committee member.
4. The Company may otherwise indemnify a Director/officer/committee member in respect of any liability arising other than as contemplated in clause 2 (a) and (b) of this Part G.

**PART H**  
**Committees of the Board**

1. The Board may by power of attorney appoint any company, firm or person or any fluctuating body or persons, whether nominated directly or indirectly by the Directors, to be the attorney or agent of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Memorandum of Incorporation) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit, and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him or them.
2. The Board may in terms of section 72 of the Act appoint any number of or delegate any of their powers to an executive or other committee whether or not consisting of a member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the Board and any such regulations may authorise the appointment of sub-committees.