

# CONSTITUTION OF THE ELECTRICITY RE-SELLERS ASSOCIATION OF SOUTH AFRICA

(Duly adopted as such by the Members thereof at an Annual General Meeting held in Pretoria on the 17<sup>th</sup> day of June 2010, with alterations.

## 1. CONSTITUTION, NAME AND CORPORATE PERSONALITY

- 1.1. This is the Constitution of the body known as the **Electricity Re-sellers Association**. The Electricity Re-sellers Association shall hereinafter be referred to as "the Association."
- 1.2. The Association is a voluntary Association having a corporate identity separate from that of its Members and is entitled to sue and be sued in its own name and, notwithstanding any change in composition of its Members from time to time, shall have perpetual succession.

## 2. DEFINITIONS AND ABBREVIATIONS USED

For the purposes of this Constitution the following words and expressions shall have the following meanings unless the subject or context indicates otherwise:

- 2.1. "**Annual Financial Statements**" means the annual audited balance sheet, income expenditure account, Treasurers report and Auditors report.
- 2.2. "**AGM**" means the Annual General Meeting of Members held in accordance with the provisions of **Clause 13** of this Constitution.
- 2.3. "**Auditor**" any person registered in terms of section 23 of the Public Accountants and Auditors Act (Act 51 of 1951), as an accountant and auditor, and engaged in public practice as such.
- 2.4. "**Bank**" means a banking institution registered under the Banks Act (Act 23 of 1965).
- 2.5. "**Electricity Re-seller**" means a natural or juristic person or institution engaged in the buying and re-selling of electricity.
- 2.6. "**Chairman**" means the Chairman of the Association who has been duly elected in terms of this Constitution. (It is recorded that the term "Chairman" purely designates the post, has no connotations of gender and that the Chairman may be either a man or a woman).
- 2.7. "**Constitution**" means this Constitution.
- 2.8. "**Committee**" means the Management Committee of the Association constituted in terms of this Constitution, relating to specific headings.
- 2.9. "**Levies**" means the monies levied by the Association and paid to the Association by the members, and/or any other Associations or organizations which are affiliated directly to the Association, whether by way of subscriptions, Membership fees or by whatever other name such levies may be described.
- 2.10. "**Local Authority**" means the local authority, usually a city council or municipality but also includes Eskom, from whom electricity is purchased.
- 2.11. "**Members**" means all existing Members referred to in Clause 7.1 and 7.2 and all those Members who shall have made application and have been accepted as Members of the Association by the **Committee**.
- 2.12. "**Month**" means a calendar month and "year" means a calendar year.
- 2.13. "**Person**" means a natural person.
- 2.14. "**Representative**" unless otherwise implied means a person representing a Member of the Electricity Re-Sellers Association and shall include such reference as a member's duly appointed representative or proxy, which shall only be affected by written notification from the Member to the Association.
- 2.15. "**Treasurer**" means the Treasurer of the Association who shall be a person duly qualified to act as such and who shall have been elected as such at the Annual General Meeting.

## 3. INTERPRETATIONS

- 3.1. The heading to the clauses or paragraphs of this Constitution are for descriptive purposes only and shall not be used in the interpretation hereof.
- 3.2. Unless the context indicates a contrasting intention;
  - 3.2.1. the singular shall include the plural and vice versa.

3.2.2. the masculine includes the feminine and vice versa.

#### **4. AREA OF JURISDICTION OF THE ASSOCIATION**

- 4.1. The geographical area of jurisdiction of the Association is and shall be:-
- a) the area contained within the provincial boundaries of South Africa from time to time; and
  - b) the area contained within the municipal boundaries of any other city or town whose boundaries are at any point contiguous with the provincial boundaries of South Africa; and
  - c) in the case of land abutting a boundary which is not subject to the control of a provincial- or municipal council, so much of the area of that land as the Committee in its sole discretion shall decide; or
- 4.2. The area as determined by the National Energy Regulator of South Africa from time to time

#### **5. OBJECTS OF THE ASSOCIATION**

The objects of the Association are:

- 5.1. To be, to operate and to function as a governing body of Electricity Re-sellers (in terms of the powers designated herein,) within the area of its jurisdiction.
- 5.2. To promote, foster and create a credible Association within the area of jurisdiction.
- 5.3. To promote the interests of the members of the Association.
- 5.4. To uphold and enforce any code of conduct pertaining to the members of the Association approved by the members of the Association and/or any legislation (Act, Regulation, Standard) applicable to the members of the Association.
- 5.5. To establish and maintain relationships with other Associations and/or Legislators within the energy sector of South Africa and to co-operate with them on a national, provincial or regional level.
- 5.6. To raise funds for the Association's purposes whether by subscription, levies or otherwise.
- 5.7. To administer and manage a system for the registration of all members.

#### **6. POWERS OF THE ASSOCIATION TO CARRY OUT ITS OBJECTS**

- 6.1. The Association shall have all such powers and authorities as shall be necessary or desirable or conducive to achieving any and all of its objects of the Association. Without in any way limiting the generality of the foregoing, the powers and authorities of the Association shall include those specific powers set out in 6.2 to 6.15 below. These powers and authorities shall be exercised by the Committee and/or by any duly constituted sub-committee in accordance with and subject to the provisions of this Constitution. The specific powers of the Association are:
- 6.2. To regulate relations between its Members *inter se*, and between its Members and the Association.
- 6.3. To consult with other bodies within the electricity supply industry on national-, provincial- and local government levels.
- 6.4. To collaborate and align itself with other relevant Associations and Organizations.
- 6.5. To promote and protect the interests of the members of the Association.
- 6.6. To draw, make, accept, endorse, execute, negotiate and issue cheques, promissory notes, bills of exchange, warrants and other negotiable or transferable instruments.
- 6.7. To institute, conduct, defend, compound or abandon any legal proceedings by and against the Association or its officers or otherwise concerning the affairs of the Association, or the action of its Members, and also compound and allow time for payment or satisfaction of any debts due or any claims or demands made by or against the Association.
- 6.8. To spend or otherwise apply moneys to the advancements and/or development of the Association or its Members.
- 6.9. To impose fines and/or any other disciplinary measures on its Members or former Members arising out of or connected with any contravention or breach of the provisions of this Constitution or any rule, by-law or

regulation passed by the Committee and to recover by legal action or otherwise such fines or compulsory contributions or damages from its Members or former Members.

- 6.10. To take all such action as may be required or necessary to enforce fully and effectively all obligations of whatsoever nature and howsoever arising which may be owed to the Association by its Members, former Members or any other persons or body.
- 6.11. To ensure against losses, damage, risk and liability of all kinds.
- 6.12. To raise money, whether by subscription or levy, from its Members and/or from any Associations or Organisations concerned with the re-selling of electricity or from any other source, and recover by legal process monies due by Members or ex-Members, Associations or Organisations.
- 6.13. To contribute or subscribe to bodies with aims similar to the aims of the Association.
- 6.14. To make and pass rules or regulations and to add to, repeal or alter such rules or regulations, with or without penalties for the execution, administration and implementation of this Constitution and to refer such rules or regulations or the repeal, addition or alteration to the members for scrutiny and approval prior to adoption and implementation thereof, for the attainment of the objects of the Association.
- 6.15. To take all such action as may be required or necessary to enforce fully and effectively all obligations of whatsoever nature and howsoever arising which may be owed to the Association by its Members, former Members or any other persons or bodies.

## **7. MEMBERSHIP**

- 7.1. All existing Members in good standing with the Association shall continue to be Members of the Association.
- 7.2. Membership of the Association shall be confined to Electricity Re-sellers approved by the Association.
- 7.3. Application of Membership shall be in writing to the Association and shall be submitted to the Committee for approval. The Committee shall have the right to call upon any applicant for Membership to furnish it with further information as the Committee may require.
- 7.4. The Committee shall have the right to accept or reject any application to membership. On rejection of an application, reasons of the rejection shall be given in writing to the applicant applying for membership.
- 7.5. The Membership shall commence forthwith upon the Committee having resolved to admit that member to Membership but only once the member has bound himself to the provisions of this constitution.

## **8. DUTIES OF MEMBERS**

Upon being admitted to Membership, Members agree to abide by the provisions of this Constitution and such rules and regulations as have been passed in terms hereof, and to pay all subscriptions and other levies payable in terms thereof.

## **9. TERMINATION OF MEMBERSHIP**

- 9.1. Any Member may withdraw from Membership at any time, by giving notice, in writing, to the Association.
- 9.2. The Committee may require, without assigning any reason therefore, the withdrawal from the Association of any Member upon a three fourths majority vote of the Committee.
- 9.3. Any Member which is more than 2 months in arrear with its levies, subscriptions and/or any other amount of whatsoever nature which may be due to the Association shall, at the discretion of the Committee, cease to be a Member, unless a satisfactory explanation is rendered by the Member and accepted by the Committee. For the purpose of this rule, a levy shall be deemed to fall due and payable on the 1<sup>st</sup> day of February of each year.
- 9.4. The withdrawal for any reasons whatsoever of any Member shall not affect any existing liability for payment due by that Member to the Association.

## **10. THE COMMITTEE**

- 10.1. The Committee shall consist of a Chairman, Secretary, Treasurer and two Additional Members who shall be elected at the Annual General Meeting.

- 10.2. The Committee shall have the power to co-opt Committee Members from the Association's Members but such co-opted members shall have no vote.
- 10.3. The existing Committee shall hold office until the next ensuing Annual General Meeting and shall then retire.
- 10.4. Retiring Members of the Committee shall be eligible for re-election without nomination, but a co-opted Member must be nominated for election.
  - 10.4.1. A candidate for election to the Committee shall be nominated by at least one Member of the Association and such nomination, together with the consent in writing of the nominee, shall be delivered to the Association not less than forty eight-four hours before the Annual General Meeting.
  - 10.4.2. Such nomination shall specify whether the candidate concerned is nominated as an ordinary Member of the Committee or to a particular office on the Committee and, if the latter, to which particular office.
  - 10.4.3. Any person who is nominated as a candidate for election to a particular office on the Committee and who, upon a vote, is not elected to that office shall thereupon automatically be deemed to have been nominated as a candidate for election as an ordinary Member on the Committee.
  - 10.4.4. Where only one person is nominated to a particular office on the Committee or where the number of candidates nominated for election as ordinary Members is equal to the number of vacancies then such a person shall be declared to have been duly elected.
  - 10.4.5. Where the number of persons nominated as candidates for election either to a particular office or as ordinary Members of the Committee exceeds the number of vacancies then a vote shall be held by secret ballot.
- 10.5. Election to office or co-option to the Committee shall be open to any Member's nominated representative of a Member of the Association.
- 10.6. No person who does not ordinarily reside within the area of Jurisdiction shall be eligible to hold the office of Chairman or Treasurer.
- 10.7. Any salaried employee/s of the Association, serving on the Committee, shall not be entitled to vote.

## **11. POWERS OF THE COMMITTEE**

- 11.1. The Committee shall have the power to do all things which in its discretion are necessary to further the objects of the Association, which powers shall include but not be limited to the following:-
  - 11.1.1. To control and apply all expenditure of the funds of the Association in such a manner as it shall be deemed to be in the best interest of the members of the Association and it shall not incur any liability nor enter into any commitment which cannot be discharged out of the funds of the Association;
  - 11.1.2. No cheque or promissory note drawn on behalf of the Association shall be valid unless signed by 2 (two) committee members i.e. the Chairman and any other committee member.
  - 11.1.3. To act as a mediator in all disputes between members but not between members and the committee.
  - 11.1.4. To levy subscriptions, fees or other imposts as may be required to enable the Association to meet its objects.
  - 11.1.5. To abide by and enforce the policies as set up by the various Local Authorities.
  - 11.1.6. To open and operate a banking account in the name of the Association.
  - 11.1.7. The Treasurer shall ensure that all the Financial Records of the Association are kept up to date and that in collaboration and with the guidance of the Auditor, financial reporting is done for the meetings of the Committee and of the Annual General Meetings.

## **12. MEETINGS OF THE COMMITTEE**

- 12.1. The Committee shall meet a minimum of 4 times per annum to attend to the ordinary business of the Association.

- 12.2. Written notice of each ordinary meeting plus the agenda thereof shall be sent to each Committee Member by the Secretary not less than two weeks before the meeting.
- 12.3. The Secretary shall with the consent of the Chairman, or, if he is unavailable, any other Member of the Committee, convene an extraordinary meeting of the Committee whenever in his opinion, business of such an urgent nature has arisen as to make it desirable to hold a meeting immediately.
- 12.4. The Secretary shall give not less than forty-eight hours notice of such an extraordinary meeting as well of the business to be attended thereat to the Committee Members.
- 12.5. The accidental omission to give any Member of the Committee notice of a meeting whether ordinary or extraordinary or the non-receipt of such notice by any Member of the Committee shall not invalidate any resolution passed at any such meeting.
- 12.6. Three Members of the Committee shall constitute a quorum.
- 12.7. Meetings shall be chaired by the Chairman, or, failing him, such other Member of the Committee as those present shall select.
- 12.8. Each elected Member of the Committee shall have one vote. In the event of voting on any motion being equal for and against, the Chairman shall have a deliberate and casting vote.

### **13. GENERAL MEETINGS OF THE ASSOCIATION**

- 13.1. An Annual General Meeting of the Members of the Association shall be held at least once in every calendar year and not more than fourteen months after the holding of the previous Annual General Meeting.
- 13.2. The Committee may, whenever they think fit, and shall, upon a requisition in writing and signed on behalf of not less than one half of the Members of the Association for the time being, convene an extraordinary General Meeting.
- 13.3. Notice of the General Meeting shall be in writing or electronic mail and shall be posted, sent or delivered to Members not less than 21 days in advance of the meeting. Such notice shall state the place, date and hour of the meeting.
- 13.4. In the case of the Annual General Meeting the notice thereof shall be accompanied by the agenda, the minutes of the preceding Annual General Meeting and on any intervening extraordinary general meeting, the final statements of the account and balance sheet, duly audited, and the Treasure's report which are to be submitted to the meeting.
- 13.5. In the case of an extraordinary general meeting the notice shall be accompanied by a statement explaining the purpose for which the meeting is being called.
- 13.6. The accidental omission to give any such notice to any Member or the non-receipt of such notice by any Member shall not invalidate any resolution passed at any such meeting.
- 13.7. General meetings shall be held at such time and place as the Committee shall decide in the area of jurisdiction of the Association.
- 13.8. A quorum shall consist of the representatives of not less than one quarter of the Members for the time being.
- 13.9. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or, if that day be a public holiday, to the next succeeding day other than a public holiday, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present by representation shall be a quorum.
- 13.10. The business to be done at the Annual General Meeting shall be:-
  - 13.10.1. the acceptance of the minutes of the previous Annual General Meeting and any intervening extraordinary general meeting, if any;
  - 13.10.2. to receive and consider the report of the Chairman on the affairs of the Association for the past year;
  - 13.10.3. to receive, consider and adopt the statement of final accounts and balance sheets for the financial year ending 31<sup>st</sup> December of the past year;
  - 13.10.4. to elect a Chairman of the Association.

- 13.10.5. to elect a Committee for the ensuing year;
- 13.10.6. to appoint an auditor for the ensuing year;
- 13.10.7. to consider and resolve any particular matter of which notice has been given in the agenda;
- 13.10.8. general.
- 13.11. The following persons shall be entitled to attend the General Meeting:-
  - 13.11.1. the existing Committee Members;
  - 13.11.2. Members of the Association;
  - 13.11.3. any Electricity Re-seller who wishes to attend; or
  - 13.11.4. any person who has been invited by the committee to attend the General Meeting.
- 13.12. Save with the permission of the Chairman, only persons who are entitled to attend the General Meeting in terms of the preceding sub-clause shall be entitled to address the meeting.
- 13.13. Save as prescribed below or elsewhere herein all motions at a General Meeting shall be decided by a show of hands unless a secret ballot is called for by the Chairman or any two Members or the representatives of any two Members, in which event sub-clause 13.14 below shall apply.
- 13.14. The following votes shall apply;
  - 13.14.1. Each Member shall have one vote.
  - 13.14.2. Each Member of the Committee personally present shall have one vote in his capacity as a Member of the Committee.
  - 13.14.3. The representative of any Member which is in arrears with its levies or subscriptions shall not be entitled to vote.
- 13.15. In the event of voting on any motion being equal for and against, the Chairman shall have a deliberate casting vote.

#### **14. Sub-committees**

- 14.1. The Committee may appoint a management sub-committee and such other standing sub-committees as it considers fit. In addition, the Committee may appoint ad hoc sub-committees as it shall from time to time by resolution determine.
- 14.2. The membership of each sub-committee shall be determined by the Committee provided that there shall be at least one member of the Committee on each sub-committee which member shall, unless the Committee decides otherwise, be the Chairman of such Committee.
- 14.3. Each sub-committee shall, subject to the provisions of this Constitution, perform such duties and functions as are delegated to it by the Committee.
- 14.4. The powers and authority of each standing sub-committee shall be as set out by the Committee.

#### **15. LIMITATION OF LIABILITY OF MEMBERS AND INDEMNITY**

- 15.1. The liability of any Member is limited to the sum of any monies then due and payable by such Member to the Association, by way of subscription or otherwise howsoever.
- 15.2. The patrons, the Chairman, all Members of the Committee, the Secretary, the Treasurer, all officials, servants, agents and persons (natural, corporate or otherwise) acting on behalf of the Association, in terms of this Constitution and under delegated powers from Members in General Meeting or from the Committee, shall be and they are hereby indemnified and held harmless out of funds of the Association against any claim or demand by any third party as a result of any act or omission in the performance of their duties for and on behalf of the Association, from whatever cause arising, provided such person/s acted in good faith.

#### **16. NOTIFICATIONS**

For the purpose of this Constitution, all notifications by the Association to any Member or to any person shall, unless delivered by hand or electronic mail, be effective from the date of posting or sending by any official of the Association; but all notifications to the Association by any Member or person shall only be effective from the date of

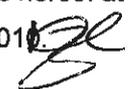
receipt thereof by the Secretary. Any notifications required to be submitted to Members in terms of the Constitution shall be submitted by prepaid ordinary postage or electronic mail or fax to the last known address of such Member, or delivered by hand.

**17. DISSOLUTION OR WINDING UP OF THE ASSOCIATION**

- 17.1. The Association may be dissolved or wound-up, at any time, by Members in General Meeting, upon a majority vote of not less than 75% (seventy five percent) of the total votes of Members who are represented and present and entitled to vote, provided that not less than 90 (ninety) days written notification of such meeting and of any such resolution aimed at dissolving or winding-up the Association shall have been given to all Members.
- 17.2. Upon the dissolution or winding-up of the Association, all the property and assets of the Association, after payment of all monies owing to any third parties, shall be transferred free of compensation to any other Association/s or organization/s having object similar to the Association in the discretion of Members.

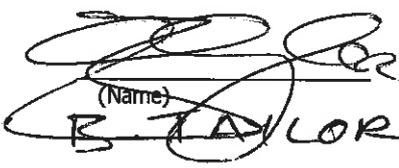
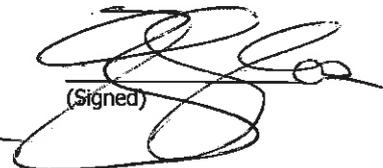
**18. INTERPRETATION AND AMENDMENT OF THIS CONSTITUTION**

- 18.1. The decision of the members as to the intention, meaning and effect of any provision in this Constitution or any rule or regulation passed in terms hereof shall be final and conclusive.
- 18.2. The provisions of this Constitution may be repealed, added to or amended only by the Members at a general meeting provided:-
  - 18.2.1. that due notice of all proposed repealing additions or alteration be given in the notice convening the General Meeting at which such repealing additions or alteration are to be discussed; and
  - 18.2.2. that the same are passed by not less than a three-fourths majority at a General Meeting at which a quorum is present.

This Constitution has been duly adopted as such by the Members hereof at an Annual General Meeting held at Pretoria on the 3rd day of AUGUST 2010. 

Signed at Pretoria on the 3rd day of AUGUST 2010. 

**Chairman:**

  
(Name) B TAYLOR (Signed) 

**Secretary:**

\_\_\_\_\_  
(Name) (Signed)

**Committee Members:**

\_\_\_\_\_  
(Name) (Signed)

\_\_\_\_\_  
(Name) (Signed)

\_\_\_\_\_  
(Name) (Signed)