

# **CONSTITUTION**

## **OF**

### **THE INTERNATIONAL ICE SWIMMING ASSOCIATION**

The Association is hereby established, upon the terms and subject to the conditions, and for the objectives, as hereinafter set forth in this Constitution.

#### **1. NAME AND PURPOSE**

- 1.1. The name of this Association shall be the International Ice Swimming Association (“IISA”). This name may only be varied by the Board at its sole discretion.
- 1.2. The purpose of this Association is to encourage and promote safe ICE Swimming on a global basis and to facilitate interaction between participants in areas of common concern and enjoyment. To this end the Association shall engage in activities such as organizing events, marketing, global communications, creating and implementing codes of conduct and creating globally recognized standards and awards for distinguished work in this activity. It will also set the criteria for safe conduct for participants and events to ensure as far as possible that all activities of this type meet the highest possible standards of safety.
- 1.3. The main objectives of the Association shall therefore be:
  - 1.3.1. to promote ICE Swimming and IISA Swims around the world;
  - 1.3.2. to promote safety in extreme swimming events;
  - 1.3.3. the establishment and organisation of annual IISA Events around the world;
  - 1.3.4. to promote and assist with medical research on cold water swimming;
  - 1.3.5. to promote knowledge and understanding of swimming in ICE and cold waters;
  - 1.3.6. to promote and protect the ICE environment; and,
  - 1.3.7. to promote communities in places in which IISA swims take place.
- 1.4. The Association is committed to treating everyone equally within the context of its activity and with due respect to the differences of individuals, provided that at no time their safety is compromised as a result. The Association will not apply nor endorse unlawful or unjustified discrimination or behaviour.

#### **2. DEFINITIONS AND INTERPRETATION**

- 2.1. In this Constitution, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
  - 2.1.1. “Affiliate” means another association which has adopted the rules and regulations of IISA and which is authorised by IISA to use the IISA

name.

- 2.1.2. "Applicable Law" is the law of South Africa and means all legislation, regulations and directives enacted within South Africa, as amended, or substituted from time to time and applicable to the operations and objectives of the Association;
- 2.1.3. "Association" means the International ICE Swimming Association;
- 2.1.4. "'Board" means the persons appointed by reference to this Constitution to govern and manage the Association;
- 2.1.5. "Board Member" the persons appointed with reference to this Constitution to the IISA Board;
- 2.1.6. "Constitution" means this document as the governing document of the Association, including any annexes or attachments hereto;
- 2.1.7. "5.00C or 5c or 5C" means five degree Celsius with at least two decimal points or 41.00 degrees Fahrenheit
- 2.1.8. "Ice Kilometre or Ice 1 KM" is a Swim of one kilometre or 1,093.61 yards in water at a temperature of 5.00C or less which conforms to the IISA Rules and Regulations and has been confirmed as such by the Board.
- 2.1.9. "Ice Mile" is a Swim of one British mile or 1,609.33 metres in water at a temperature of 5.00C or less which conforms to the IISA Rules and Regulations and has been confirmed as such by the Board.
- 2.1.10. "ICE Swim" and "ICE Swimming" are terms which may be used interchangeably and shall mean a category of swimming or event conforming with the criteria established in this Constitution and the Rules and Regulations;
- 2.1.11. "Founder " means the person responsible for creating and founding of the Association and this person is Ram Barkai (ID Number 5710225222081) of PO Box 32448, Camps Bay 8040, Cape Town, South Africa.
- 2.1.12. "Initial Members" means Andrew Chin, Ryan Stramrood , Kieron Palframan and Toks Viviers.
- 2.1.13. "Member" means a person approved by IISA to become a Member of the Association and whose name is entered into the Register of Members.
- 2.1.14. "Proprietary Terms" means all terms that have been created by IISA and used by the Association to describe its activities and events.
- 2.1.15. "Rules and Regulations" refer to the Constitution and all of the IISA Rules and Codes of Conduct and Safety.
- 2.1.16. "South Africa" means the Republic of South Africa.
- 2.1.17. Clause headings are for convenience only and shall not be used in its interpretation;
- 2.1.18. Unless the context clearly indicates a contrary intention, an expression

which denotes:

- 2.1.18.1. any gender includes the other genders;
- 2.1.18.2. a natural person includes a juristic person and vice versa;
- 2.1.18.3. the singular includes the plural and vice versa.
- 2.1.19. The official language of IISA is English and all documents and the website shall be drafted in English.
- 2.1.20. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Constitution;
- 2.1.21. Terms other than those defined within this Constitution will be given their plain English meaning;
- 2.1.22. Defined terms appearing in this Constitution in italics shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning, and shall, unless the context otherwise requires, include the terms as defined;
- 2.1.23. Reference to any statutory enactment shall be construed as a reference to that enactment within the Republic of South Africa (“South Africa”) as at the date of signature of this Constitution by the Board Members, and as amended or substituted from time to time.

### 3. ESTABLISHMENT OF THE ASSOCIATION

- 3.1. IISA is established as an unincorporated, not for profit organisation and shall remain as such until the Board, in its sole discretion, shall decide otherwise.
- 3.2. The Association shall :
  - 3.2.1. have complete legal personality and exist in its own right separately from its Members and Board Members;
  - 3.2.2. continue to exist notwithstanding any change in its Board and Members;
  - 3.2.3. be able to institute legal action, defend any legal action and be able to contract in its own name.
  - 3.2.4. All intellectual property associated with and belonging to IISA shall remain the sole property of the Founder and any use of that intellectual property for commercial purposes (to include, but not limited to, the Proprietary Terms, concept, logos, terms and codes of conduct and safety) shall only be allowed with the specific permission of the Founder.
  - 3.2.5. For legal purposes, the Association shall be regarded as domiciled in South Africa and until such time as the Board shall decide otherwise, shall be subject to the laws of South Africa.
  - 3.2.6. For accounting and record keeping purposes, the year-end of the

Association shall be the final day of February.

#### 4. AREA OF OPERATION

- 4.1. The headquarters of the Association shall be based in Cape Town, South Africa but the area of operation of the Association is intended to be global.
- 4.2. The Association may establish, supervise and support local country Affiliates but may, as the Board so decides, operate independently in any territory.

#### 5. IISA MEMBERSHIP

- 5.1. The total membership of the Association shall not normally be limited but if the Board considers that there is a good reason to impose any limits from time to time, then the Board may suspend the addition of new Members until such time as it feels it is appropriate to welcome further applications.
- 5.2. On payment of the appropriate subscription IISA offers a 3-tier membership structure:
  - 5.2.1. ICE Membership can only be acquired by a successful and accredited IISA ICE Mile, subject to approval by the Board.
  - 5.2.2. COLD Membership can only be acquired by anyone who successfully completes a 1km published IISA Event, subject to approval by the Board.
  - 5.2.3. COOL Membership - Shall be acquired by any person that wishes to associate with IISA as a coach, referee, support provider, medical, or as a volunteer.
- 5.3. The Board reserves the right to refuse membership of any category or to terminate Membership to any applicant and the decision of the Board in this regard is final.
- 5.4. IISA Membership will provide each member with a unique login to the IISA website and with a unique Members Page, called Members BIO.

#### 6. MEMBER'S RIGHTS AND OBLIGATIONS

- 6.1. Each Member shall abide by the Rules and Regulations of the Association as set out in this Constitution and elsewhere and as determined by the Board from time to time.
- 6.2. Each Member will not, in relation to IISA activities, act in a manner which will bring, or could bring, the organisation into disrepute.
- 6.3. No Member shall have the right to contract on behalf of or bind the Association in any manner whatsoever unless specifically authorised to do so by the Founder in writing.
- 6.4. No Member shall, as a result of becoming a Member of the Association, be entitled to any of the assets and/or proceeds derived by the Association as result of any IISA initiatives, activities or events and nor may any other person who may be connected in any way to a Member.

- 6.5. No Member shall, by virtue of becoming a Member of the Association, be liable for any of the Association's obligations.
- 6.6. Any Member who wishes to resign their membership of the Association must give IISA written notice of their resignation and the resignation will only take effect when this has been complied with.
- 6.7. Any Member who resigns shall not be entitled to have any part of their membership fees returned.

## 7. DISQUALIFICATION OF MEMBERS

- 7.1. Any breaches of the Rules and Regulations by a Member should be reported to IISA.
- 7.2. Any Member that breaches any of the terms of this Constitution or any Rule or Regulation, as determined by the Board from time to time, may be subject to immediate disqualification or suspension as a Member of the Association at the sole discretion of the Board. No fees paid by that Member shall be returned.
- 7.3. The Board may request a report of any alleged breaches of the Rules or Regulations to be prepared in a manner and form as the Board deems fit under the circumstances, and shall, as a result of the information received, make any such ruling as the Board at its sole discretion deems appropriate.
- 7.4. Any Member who is the subject of such a report or a review will be invited to explain their position, the circumstances surrounding the alleged breach and any mitigating factors that should be taken into account by the Board when considering its decision.
- 7.5. Rulings made by the Board in terms of this clause shall not be subject to appeal.

## 8. PROPRIETARY TERMS

- 8.1. The following terms are regarded as IISA Proprietary Terms:
  - 8.1.1. IISA
  - 8.1.2. IISA ICE MILE
  - 8.1.3. IISA ICE SWIM / SWIMMING
  - 8.1.4. IISA 1km / IISA ICE KM
  - 8.1.5. IISA ICE CUP
  - 8.1.6. IISA ICE 7s

## 9. AMENDMENT OF THE CONSTITUTION

- 9.1. The Constitution will be reviewed and amended annually as required by the Board.
- 9.2. Members may at any time suggest amendments to the Constitution, Rules and Regulations but any changes are at the sole discretion of the Board.

## 10. IISA BOARD

- 10.1. All the business activities and functions of the Association shall be conducted by either the Founder / Chairperson and IISA Board.
- 10.2. There will at all times be a minimum of 3 (three) and maximum of 11 (eleven) Board Members in office.
- 10.3. All Board Members must be Members of IISA and over 18 years of age.
- 10.4. For as long as the Founder is willing and able to so act, he shall be appointed as a Board Member and chairperson of the Board. Otherwise the Board Members shall nominate and vote in a chairperson to be elected by a simple majority of votes. All Board Members must vote and cannot abstain.
- 10.5. Board Members may relinquish their position by a letter of resignation or by the Founder or chairperson dismissing them from their position under the conditions in Clause 11 below.
- 10.6. Dismissal from the Board can be for a number of reasons, such as gross misconduct (as determined by the Board), continual non-attendance at Board meetings, non-adherence to the IISA Constitution and codes of practice or for any other reason as the Board shall, in its sole discretion, determine, subject to Clause 11.
- 10.7. Any vacancies within the Board shall be declared on the IISA website and filled by nominations from IISA Members. The Board shall consider nominated candidates and the decision of the Board as to the preferred candidate is final. If at any time the Board membership falls below the required minimum of 3 (three), the remaining Board Members shall immediately ask Members for their nominations.
- 10.8. A Board Member must be a Member of the Association.

## 11. BOARD MEETINGS

- 11.1. If the Founder is not present, the Board Members shall appoint one of their own to act as chairperson and shall meet for the dispatch of business, adjourn and, subject to any specific provisions herein contained, may regulate their meetings as they think fit, provided that they shall meet at least once per annum.
- 11.2. The Founder shall call a meeting of the Board by giving at least one weeks notice in writing to the other Board Members and including a proposed agenda. A Board Member may at any time request a meeting of the Board by notice in writing to the Founder with at least 10 (ten) days' notice and a proposed agenda. The Founder may however determine that such a meeting is not necessary.
- 11.3. The quorum for meetings of the Board shall be at least 50% of the Board Members then in office but never any less than 3 (three).

- 11.4. Each Board Member shall have 1 (one) vote in respect of all matters requiring a resolution of the Board. Resolutions of the Board shall be carried by a simple majority of votes of the Board Members present. In the event of a tie, the Founder shall have the casting vote.
- 11.5. A resolution in writing signed by all the Board Members shall be regarded as if it had been passed at a valid meeting of the Board.
- 11.6. The Board shall keep minutes of their meetings in writing and all resolutions passed by the Board shall be duly minuted.
- 11.7. Notwithstanding any other provisions, meetings of the Board may consist of a telephone or internet conference between Board Members, some or all of whom are in different places to each other, provided that the requisite quorum of Board Members participates in such conference and each of the Board Members who participates is able to hear each other participating Board Member and, if he so wishes, to address all of the other participating Board Members simultaneously, whether directly, by conference telephone, video link or by any other form of communications equipment or by a combination of those methods.
- 11.8. In accordance with the laws governing fiduciary responsibility, a Board Member shall be obliged forthwith to declare any self-interest or conflict of interest that may arise with regard to matters coming before the meeting of the Board. In any such event, the Board member concerned, after declaring his/her interest, shall promptly excuse him/herself, and take no further part in the deliberations concerning that matter and in addition shall subsequently refrain from participating in further discussions or decisions affecting the relevant matter unless the continued presence and participation of the Board Member concerned is unanimously requested and approved by all the other Board Members. The minutes of the meeting shall record any such declaration of interest, excusal, and (if applicable) the continued presence and participation of the Board Member concerned.
- 11.9. The Board may from time to time appoint from amongst their number such sub-committees as they may consider necessary and may delegate to them such terms of reference, powers and duties as the Board feels appropriate. Other Members may also be invited onto these sub-committees with the approval of the Board.

## 12. ANNUAL GENERAL MEETING

- 12.1. The purpose of the Annual General Meeting (“AGM”) is to transact the following business of the Association:
- 12.2. To receive the Chairman’s report of the activities of the Association during the past 12 months;
- 12.3. To review the accounts and financial position of the Association;
- 12.4. To elect the Chairman and Board Members for the following year.

- 12.5. Any vacancies on the Board shall be notified to the Members on the IISA website together with the dates for nominations.
- 12.6. Nominations for election of Members to the Board shall be made in writing to the IISA Board through the IISA website. Each nomination must have a proposer and seconder who are full Members and the nominee will be required to indicate in writing their willingness to stand for election and why they would be a suitable candidate for the Board.

### 13. POWERS OF BOARD MEMBERS

- 13.1. The Board Members shall, in addition to such other powers as may be conferred upon them by the applicable law or elsewhere in this Constitution (whether express or implied), have the following powers as a Board (but not acting individually), subject only to the veto of the Founder, namely:
- 13.1.1. to receive, consider, approve or decline applications for Membership of the Association;
  - 13.1.2. to determine and publish rules of conduct for Members and ICE Swimming events;
  - 13.1.3. to determine and provide disciplinary procedures to Members;
  - 13.1.4. instead of acting personally, to employ, as far as may reasonably be necessary, and to pay any attorney, contractor or any other person to transact any business or do any act of whatsoever nature required to be done pursuant to the furtherance of the objectives of the Association provided that any fees are approved by the Founder in advance;
  - 13.1.5. to take and act upon any expert or professional advice;
  - 13.1.6. to delegate to any person as approved by the Board the performance of all or any acts or the exercise of all or any discretions to which they are entitled to perform or exercise under this Constitution;
  - 13.1.7. to open and operate accounts of all descriptions with registered banks provided this has been agreed by the Founder in advance;
  - 13.1.8. to accept cheques, bills of exchange or promissory notes for and on behalf of the Association;
  - 13.1.9. to acquire property of any description on behalf of the Association provided that any expenditures to be borne by the Association for so acquiring has been approved in advance by the Founder;
  - 13.1.10. to deal with the property of the Association and to sell such property with the agreement of the Founder;
  - 13.1.11. to make investments on behalf of the Association if so agreed by the Founder;
  - 13.1.12. to, unless specifically prohibited by any provision in this Constitution,



exercise all rights and perform all actions necessary to fulfil the Association's objectives;

- 13.1.13. to exercise such further rights, powers and authorities as may from time to time be conferred upon them by the Members and/or the resolution of the Board and/or as if they were acting as Members of an incorporated company;
- 13.1.14. to have full capacity to contract on behalf of the Association, subject always to such limitations, if any, as may be imposed by this Constitution and the Founder, provided that they will under no circumstances be personally liable on any such contract; and
- 13.1.15. to have locus standi in judicio and be capable of bringing, defending, opposing, withdrawing, settling and/or otherwise acting in connection with any proceedings whatsoever in or before any court, or in any arbitration, or before any other forum, provided that all costs reasonably incurred by them in that regard shall be for the account of the Association.

#### 14. OBLIGATIONS OF THE BOARD MEMBERS

- 14.1. The Board shall, in the conducting of the affairs of the Association, act in a business-like manner in accordance with the same fiduciary obligations required of a director of an incorporated company, and accordingly shall ensure that:
  - 14.1.1. a bank account is opened in the name of the Association, and that all business activities of the Association are conducted via the bank account;
  - 14.1.2. proper records and books of account are kept of the business and affairs of the Association, and their administration thereof, which records and books shall be in the custody of the Founder on behalf of the Board;
  - 14.1.3. the records and books of account referred to above are at all times available for inspection by any Member or Board Member; and,
  - 14.1.4. as soon as possible after the end of each year-end of the Association, financial statements are prepared.

#### 15. RESIGNATION OF BOARD MEMBERS

- 15.1. A Board Member may voluntarily resign his position on the Board by writing to the Chairman on behalf of the Board and giving one month's notice of his intention to quit. The Board may, at their discretion, waive the period of notice so that the resignation becomes effective immediately.
- 15.2. A Board member shall immediately vacate his office upon the Board Member:
  - 15.2.1. having been convicted of a criminal offence; or,

- 15.2.2. having become prohibited to hold the office of a director of a company; or,
  - 15.2.3. having been removed from office at any time upon the Board giving 1 (one) calendar month's notice in writing to such Board Member, with the consent of the majority of the Board Members from time to time;
  - 15.2.4. having had their Membership withdrawn by the Board;
- 15.3. The decision of the Board in this regard is final.

## 16. INDEMNITY OF BOARD MEMBERS

- 16.1. The Board Members shall not be liable for any loss sustained by the Association from any cause save and except where any loss is sustained as a result of the wilful dishonesty or gross negligence of the Board Member, either collectively or individually.
- 16.2. No Board Member shall be liable for any act of dishonesty or other misconduct committed by any other Board member unless he knowingly allowed it or was an accessory thereto.
- 16.3. The Association indemnifies the Board Members and every attorney, agent or other person appointed by the Board Members against all actions, proceedings, costs, liabilities, claims, expenses and demands in respect of any matter or act committed or omitted to be done in any way in the execution of their offices as Board Member, otherwise than in respect of claims for which in terms of the Applicable Law the Board Members cannot be indemnified, subject to Clause 12.1.

## 17. REMUNERATION OF BOARD MEMBERS

- 17.1. The Board Members shall not be entitled to any remuneration for their services save as provided for in this Constitution.
- 17.2. The Board Members shall be reimbursed by the Association (if possible) for all reasonable expenses incurred by them in and about the execution of their duties as Board Member provided that they provide receipts for all such expenses claimed and these are agreed by the Founder.
- 17.3. Nothing herein contained shall preclude the Board from remunerating any Board Member for the performance of any function on behalf of the Association as a professional or person appointed by the Board to further the objectives of the Association provided that the Board approves the appointment and terms of reference.

## 18. AFFILIATES

- 18.1. Any association that wishes to become an Affiliate of IISA must apply to IISA for approval and agree to adopt and conform to the Constitution of this Association and to the rules and regulations of any other bodies that the Association may determine from time to time.

- 18.2. The business and affairs of the Affiliate shall at all times be conducted in accordance with the Rules and Regulations unless there is a conflict with the laws of that territory in which case those laws take precedence.
- 18.3. By virtue of the affiliation of the Affiliate to the Association, the Affiliate and its members will acknowledge that they are subject to the Rules and Regulations.
- 18.4. In the event that there shall be a conflict between any rule or regulation of the Affiliate and the Association, then the Rules and Regulations shall take precedence unless the law of the territory in which the Affiliate is located determines otherwise.
- 18.5. The Association retains the right to refuse an applicant Affiliate status and the decision of the Board in this regard is final.
- 18.6. If an Affiliate is in breach of the Rules and Regulations, or is thought to be in breach, then the disciplinary procedure outlined in Clause 7 shall also apply to Affiliates and the Affiliate may, as a result of the findings of the Board, be asked to leave the Association.

## 19. AUDITORS

- 19.1. If required, the Association shall appoint an independent practising Chartered Accountant, or firm of independent practising Chartered Accountants as Auditors to the Association. The Board shall also determine the period and conditions of appointment of such Auditors; with power, if deemed necessary, to remove and substitute any such appointee/s as may be deemed appropriate from time to time.
- 19.2. The Auditor/s appointed as aforesaid shall have an unrestricted right of access to the systems, books, vouchers, and records of the Association, and shall be entitled to require from the Board Members, officers, and employees of the Association, any information or explanation the Auditor/s may deem necessary for the proper performance of such audit.

## 20. DISSOLUTION

- 20.1. A resolution to disband the Association shall only be proposed at an AGM, unless required by law.
- 20.2. The resolution to disband the Association must be agreed by all the Board Members at the time.
- 20.3. There must be a specific date determined for the disbanding of the Association and the disbanding will then take effect from that date.
- 20.4. The Board Members shall be responsible for the winding up of the liabilities and assets of the Association.
- 20.5. Any property remaining after the discharge of debts and obligations of the Association shall be given to a charity or other non-profit making organization as nominated by the Board.

## 21.ACKNOWLEDGEMENT

The Members acknowledge that this Constitution and the Rules and Regulations constitute a binding contract to regulate the relationship of the Members with the Association and each other.