

**MEMORANDUM OF INCORPORATION  
FOR A NON PROFIT COMPANY WITH MEMBERS**

**OUT OF HOME MEDIA SOUTH AFRICA (NPC)**

Which is referred to in the rest of this Constitution as “the Company”

Registration Number: 2014/004036/08

**This MOI was adopted by a Special Resolution passed  
at a Special General Meeting held on 8<sup>th</sup> March 2018**

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## 1. INTERPRETATION

1.1. In this document, capitalised words shall bear the same meanings as in the Companies Act and the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

- 1.1.1. **“AGM”** means the Annual General Meeting to be initially held, no more than 18 months after The Company's date of incorporation, and thereafter once every calendar year within or not more than 6 months after the end of the financial year, but no more than 15 months after the date of the previous annual general meeting;
- 1.1.2. **“Associate Member”** means any company, person or firm within the ooh value chain and not qualifying for full membership of the Company.
- 1.1.3. **“Board”** means the board of Directors of the Company;
- 1.1.4. **“Business Day”** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.1.5. **“CEO”** – means the Chief Executive Officer of The Company, from time to time;
- 1.1.6. **“Chairman”** mean the Chairman of the Board of the Company;
- 1.1.7. **“Code of Practice”** means the Code of the Company approved by the Members, from time to time;
- 1.1.8. **“Commission”** means the Companies and Intellectual Property Commission established in terms of Section 185 of the Companies Act;
- 1.1.9. **“Competition Act”** means the Competition Act No. 89 of 1998;
- 1.1.10. **“Constitution”** means the Constitution of the Company approved by the Members, from time to time;
- 1.1.11. **“Constituent Member”** means any person/s belonging to a member;
- 1.1.12. **“Director”** means a Director of the Company; and where the context so provides, an alternative director appointed in respect of such director;
- 1.1.13. **“Effective Date”** means the date on which the Company’s MOI is filed with the Commission;
- 1.1.14. **“Ex officio director”** means a person who holds office as a director of a particular company, solely as a consequence of that person holding some other office, title, designation or similar status specified in this document;
- 1.1.15. **“File”** when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
- 1.1.16. **“Full Member”** means any person, company, close corporation, partnership, trust or other business enterprise, whether such organization is a legal person or not, engaged in the advertising media industry by way of selling or letting out advertising space to advertisers in or on all forms of out of home media within Southern Africa,

provided such applicants have no interest directly or indirectly in the purchasing of media space on behalf of third parties as a business.

- 1.1.17. **“Income Tax Act”** means the Income Tax Act No. 58 of 1962, as amended from time to time;
- 1.1.18. **“Individual”** means a natural person;
- 1.1.19. **“International Member”** means any person, company, close corporation, partnership, trust or other business enterprise, whether such organization is a legal person or not, engaged in the advertising media industry by way of selling or letting out advertising space to advertisers in or on all forms of Out of Home media not qualifying for full membership merely because such company, person or firm is not domiciled within Southern Africa, provided such applicants have no interest directly or indirectly in the purchasing of media space on behalf of third parties as a business.
- 1.1.20. **“Media Owner”** means any person, partnership, company or corporation that is engaged in the advertising media industry by way of selling or letting out advertising space to advertisers in or on all forms of out of home media, provided such company have no interest directly or indirectly in the purchasing of media space on behalf of third parties as a business.
- 1.1.21. **“Member”** means a member of the Company
- 1.1.22. **“Membership Register”** means the register of members established or maintained by the Company in terms of the Act;
- 1.1.23. **“MOI”** means the Memorandum of Incorporation of the Company, which shall become binding on the Company with effect from the date upon which it is filed with the Commission;
- 1.1.24. **“Ordinary Resolution”** means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution;
- 1.1.25. **“Record Date”** means the date upon which the Company determines the identity of its members;
- 1.1.26. **“Republic”** means the Republic of South Africa;
- 1.1.27. **“Rules”** means "rules" and "rules of a company" as defined in the Companies Act;
- 1.1.28. **“SARS Commissioner”** means the Commissioner of the South African Revenue Services;
- 1.1.29. **“Special Member”** means any company, person or firm, which, in the opinion of the Board is sufficiently representative of a particular industry or interest and may be invited by the Board to become Special Members of the Company.
- 1.1.30. **“Special Resolution”** means a resolution adopted with the support of more than 75% of the voting rights exercised on the resolution;

- 1.1.31. **“Temporary Member”** means all new entrants and smmes within the out of home advertising value chain who bill under an agreed financial threshold as agreed by the Board from time to time.
- 1.1.32. **“the Act”** means the Companies Act No. 71 of 2008, as amended from time to time;
- 1.1.33. **“the Company”** – means Out of Home Media South Africa (NPC), a non-profit company incorporated and existing under the laws of the Republic; and
- 1.1.34. **“the Office”** - means the registered office for the time being of the Company.

**1.2.** In this document:

- 1.2.1. a reference to a “Section” by number refers to the corresponding Section of the Companies Act;
- 1.2.2. a reference to a “paragraph” by number refers to the corresponding paragraph in this document;
- 1.2.3. a reference to a “Regulation” by number refers to the corresponding regulation in the Companies Regulations;
- 1.2.4. any reference to a “person” includes any natural, juristic or quasi-juristic person, including without limitation any sole proprietorship, firm, partnership, trust, close corporation, company, undertaking, joint venture, authority or other incorporated or unincorporated entity or association;
- 1.2.5. any reference to a “day” shall be to any calendar day. Where any number of days or Business Days are prescribed in this document, those days shall be reckoned exclusively of the first and inclusively of the last day or Business Day (as the case may be), unless (in the case of days) the last day falls on a day not being a Business Day, in which event the last day shall be the next succeeding Business Day;
- 1.2.6. words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include juristic persons, other corporate entities, unincorporated associations of persons and state entities, and vice versa;
- 1.2.7. any reference to an enactment includes any subordinate legislation made from time to time under that enactment, as may be amended from time to time;
- 1.2.8. words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the Companies Act shall when used in this document in a similar context bear the same meaning unless excluded by the subject or the context, or unless this document provides otherwise;
- 1.2.9. the provisions of this document shall be interpreted in the same way as the provisions of the Companies Act (which forms part of the Constitution of the Company in terms of Section 19(1)(c)) are interpreted; and
- 1.2.10. each provision and each sentence and each part of a sentence in this document is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or

contravenes any provision of the Companies Act, or void, such may to that extent only be modified or severed from this document, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the Companies Act or is not void.

- 1.2.11. The long standard form of MOI for a Non-Profit Company with members contained in the regulations published in terms of the Companies Act, as amended from time to time, shall not apply to the Company.

## 2. NAME

- 2.1. The name of the Company shall be Out of Home Media South Africa (NPC) (the “Company”).
- 2.2. The shortened name of the Company shall be OHMSA.

## 3. LEGAL STATUS

- 3.1. The Company is a juristic person incorporated under the Companies’ Act, 71 of 2008 (the “Act”) and is therefore a legal entity and shall continue to be a distinct and separate legal entity and body corporate with the power to acquire, hold and alienate property of every description whatsoever, and with the capacity to acquire rights and obligations. (*Section 19(1)(a) of the Act*)
- 3.2. All actions or suits, proceedings at law or any arbitration shall be brought by or against the Company in the name of the Company and the board may authorize any person or persons to act on behalf of the Company and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.
- 3.3. The Company will continue to exist regardless of any change in the composition of its board or of its membership unless, and until such time as the provisions of paragraph 53 hereof are invoked.

## 4. INCOME AND PROPERTY

- 4.1. The Company will keep a record of everything it owns.
- 4.2. Notwithstanding anything to the contrary herein contained:
  - 4.2.1. The Company is not formed and does not exist for the purpose of carrying on any business that has for its object the acquisition of gain by the Company or its individual members.
  - 4.2.2. Members and office-bearers have no rights in the property or other assets of the Company solely by virtue of their being members or office-bearers.
  - 4.2.3. The income and property of the Company whenever and howsoever derived shall be applied towards the payment of expenses, the acquisition of property and the promotion of its objects and purposes as set out in paragraph 11 and as per Schedule 1(1)(2)(a) of the Act, and such other lawful purposes as may be decided upon by the Board, or if the latter so desires, by a general meeting for the attainment of the objects and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the Members of the Company or its controlling or controlled company or office-bearers provided that nothing herein contained shall prevent the payment in good faith of

reasonable remuneration to any officer or servant of the Company or to any Member thereof except as reasonable compensation for any services actually rendered to the Company.

- 4.2.4.** The Company shall not be entitled to carry on any trading or other profit-making activities or participate in any business, profession or occupation carried on by any of its Members or provide to any of its Members financial assistance or any premises or continuous services or facilities for the purpose of carrying on any business, profession or occupation, provided that the Company may trade and engage in profit making activities solely for the purpose of and in pursuance of achieving its aims and objectives.

## **5. ADOPTION OF MEMORANDUM OF INCORPORATION**

- 5.1.** This MOI is in a form unique to the Company, as contemplated in Section 13(1)(a)(ii) of the Act.
- 5.2.** This MOI was proposed by the Board, and adopted by a Special Resolution of the Full Members.
- 5.3.** The incorporators of the company are:

- 5.3.1.** Leslie Stephen Holley

- 5.3.2.** Shaun Tony Lovegrove

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

- 6.1.** The Company is incorporated as a Non-Profit Company, with members, as defined in the Act.
- 6.2.** The Company is, in terms of Section 19(1)(c) read with Section 15(2) of the Act, incorporated in accordance with, and governed by:
  - 6.2.1.** the unalterable provisions of the Act, that are applicable to Non-Profit Companies;
  - 6.2.2.** the alterable provisions of the Act, that are applicable to Non-Profit Companies, subject to the limitations, extensions, variations or substitutions set out in the Company's MOI; and
  - 6.2.3.** the provisions of the Company's MOI.
- 6.3.** The Company's MOI does not necessarily refer to or address all of the provisions of the Constitution of the Company as contemplated in paragraph 6.1 and 6.2.
- 6.4.** The Company's MOI and any rules of the Company in terms of Section 15(6) of the Act, are binding between:
  - 6.4.1.** the Company and each Member of the Company
  - 6.4.2.** amongst the Members of the Company
  - 6.4.3.** the Company and each Director or prescribed Officer of the Company or any member of a Board Committee.
- 6.5.** All parties referred to in 6.4 are required to familiarise themselves with the relevant provisions of the Act, including those contemplated by paragraph 6.2 and the provisions of this Company's



MOI, as the MOI read together with the provisions of the Act contemplated by paragraph 6.2 forms the Constitution of the Company.

## **7. NON-PROFIT COMPANY**

- 7.1.** The Company is a Non-profit Company with members and aims to promote the interests of the out of home media industry in the Republic.
- 7.2.** The object of the Company is to promote and to protect the interests of the association and its members, while serving the needs of consumers, advertisers, and the public. This is achieved through co-operation between its members and affiliated associations, government and local authorities.
- 7.3.** The Company aims to uplift the industry through skills development and encouraging fair and free competition in the out-of-home industry.
- 7.4.** The Company is committed to recruit start-up companies to its membership supporting the whole outdoor advertising value chain and to effect meaningful transformation through the value chain.
- 7.5.** The Company is committed to assist and mentor start-up companies and new entrants in the industry to ensure that knowledge is imparted to these new companies to enable them to succeed in what is a highly competitive and regulated environment.

## **8. COMPLIANCE WITH SECTION 30 OF THE INCOME TAX ACT AND COMPETITION ACT**

- 8.1.** The Company and Members are cognisant of the advantage of competition to economies and endeavour not to act in a way that will lessen competition in any territory nor divide any markets nor act in any way that could result in any contravention of the Competition Act.
- 8.2.** The Company shall have at least three persons, who are not connected in relation to each other, to accept the fiduciary responsibility of the Company, and no single person shall directly or indirectly control the decision making powers relating to the Company.
- 8.3.** The Company is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking its objects) and is required to utilize its funds solely for the objects for which it has been established.
- 8.4.** The Company's activities shall be carried on in a non-profit manner.
- 8.5.** The Company is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of paragraphs 11 and 12.
- 8.6.** The Company may not pay any remuneration to any person which is excessive having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as percentage of any amounts received or accrued to the Company.
- 8.7.** The Company undertakes to submit to the Commission of the South African Revenue Service, when and if applicable, a copy of any amendment to the Company's MOI or other written instrument under which it is established.

- 8.8.** The Company is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of Income Tax Act; provided that a donor (other than a donor which is an approved public benefit organization or an institution board or body which is exempt from tax in terms of Section 10 (1)(cA)(i) of the Income Tax Act, which has as its sole and principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 8.9.** The Company has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

## **9. CONFLICTS WITH THE COMPANIES ACT**

### **9.1. Notification of conflicts**

Any person bound by the Company's MOI who has formed the view or forms the view or otherwise becomes aware that any provision of the Company's MOI or any agreement entered into by the Company contravenes or is or has become inconsistent with any provision of the Act (as it is amended from time to time), whether or not such provision is void or could be declared void by a court in terms of Section 218(1) of the Act or a person could incur personal liability in terms of Section 218(2) of the Act or otherwise, shall within 10 Business Days of forming that view or becoming aware of such contravention or inconsistency inform the Board in writing of the applicable contravention or inconsistency.

### **9.2. No obligation to act inconsistently with the Companies Act**

**9.2.1.** Notwithstanding anything to the contrary contained elsewhere in the Company's MOI, no person bound by the Company's MOI shall be required, obliged or entitled in terms of the Company's MOI to do or omit to do something in terms of the Company's MOI to the extent that it is inconsistent with or contravenes any provision of the Act.

**9.2.2.** Any person bound by the Company's MOI who has complied with paragraph 9.1 and has done something or has failed to do something to the extent necessary so as not to be inconsistent with or contravene any provision of the Act or to avoid personal liability under Section 218(2) or otherwise in terms of the Act, but as a result thereof has contravened any provision of the Company's MOI which is void or is declared void by a court in terms of Section 218(1), shall not for that reason alone be liable or responsible therefor under or in terms of the Company's MOI with respect to any claim by any person bound by the Company's MOI and entitled under or in terms of the Company's MOI to do so, arising out of or in connection with any such act or omission.

### **9.3. Board must address inconsistencies**

**9.3.1.** If any provision of the Act is amended, or the Board is aware or informed of any inconsistency with or contravention of the Act in terms of paragraph 9.1 or otherwise, then in addition to and without limiting the rights or remedies of any other person in terms of the Company's MOI or otherwise, the Board shall expeditiously:

- 9.3.1.1.** assess that amendment to the Act and/or that inconsistency or contravention; and
- 9.3.1.2.** obtain reasoned written external legal opinion if the Board deems it necessary with respect to any such alleged inconsistency or contravention; and
- 9.3.1.3.** propose amendments to the agreement in question or propose the Special Resolutions required to appropriately amend the Company's MOI, as the case may be, as is necessary so as to remove or eliminate or address any applicable contraventions or inconsistencies.

## **10. MAIN BUSINESS OF THE COMPANY**

**10.1.** The Company is tasked with promoting the use of all forms of out of home advertising media to consumers, national government and local authorities to ensure the future sustainability of the medium.

**10.2.** To carry out the mandate the Company must keep track of local and international developments, ensure that new approaches are explored and developed, and that the regulatory environment takes into account the needs of the industry while at the same time protecting the interests of the environment and aesthetics in which the various media types are situated.

### **10.3. Business nature:**

**10.3.1.** OOH advertising offers big, bold, powerful storytelling, and a range of formats and unique locations that deliver larger-than-life impact.

**10.3.2.** New mobile, wireless, and digital OOH technologies offer creative and innovative ways to interact and transact with consumers.

**10.3.3.** OOH advertising delivers the right message, at the right time and place, to the right audience.

**10.3.4.** OOH offers highly targeted and contextually relevant advertising based on location, demographics, consumer behavior, and even day-part.

**10.3.5.** OOH uses leading-edge technology to strengthen bonds between brands and consumers, to improve targeting and ROI analysis, and to stay ahead of where consumers are heading.

**10.3.6.** With connected networks and platforms, OOH advertising is a fully integrated partner in the media planning and buying ecosystem.

**10.3.7.** OOH advertising drives awareness and brand affinity.

**10.3.8.** OOH is a proven media amplifier, because it extends reach and frequency in integrated campaigns and is the most efficient driver of mobile, social, and digital engagement.

## **11. OBJECTS OF THE COMPANY**

**11.1.** The Company is a Non-Profit Company with Members, and its main objects are to:

- 11.1.1.** promote and protect the interests of the out of home media industry and its Members, to encourage co-operation and to deal with all such matters as may affect the common interests of members;
- 11.1.2.** promote, support or oppose as may be deemed necessary, any legislative or other measures affecting the interests of the Company and its Members;
- 11.1.3.** confer with the Government, Provincial Administration or local authorities and their departments and all other interested bodies of concern to, or likely to be of concern to the Company or its Members;
- 11.1.4.** be affiliated to any association or organisation as may be decided upon by the Company from time to time;

**11.2.** The ancillary objects of the Company are to:

- 11.2.1.** collect and disseminate information likely to be of use to Members and users of the out of home medium;
- 11.2.2.** promote a high standard of quality, design, maintenance and workmanship in the out of home media industry;
- 11.2.3.** improve its product offerings and a measurement of its performance;
- 11.2.4.** promote and publicise the out of home media industry, by way of advertisements, exhibitions and otherwise;
- 11.2.5.** elevate the status of the out of home medium and industry in the eyes of the public at large;
- 11.2.6.** elevate the skills, knowledge levels and professionalism of employees and users of the out of home medium;
- 11.2.7.** encourage free and fair competition within the out of home media industry;
- 11.2.8.** aim to eradicate unlawful practice from the industry and to fully uphold the legal rules that apply to and affect the out of home media industry;
- 11.2.9.** aim to ensure that all out of home media owner members are in compliance with the provisions of the Company Code of Practice as amended from time to time.
- 11.2.10.** promote the principles and spirit of the Constitution of the Republic of South Africa of 1996;
- 11.2.11.** ensure that the essence of the preamble of the Constitution of the Republic of South Africa is embraced in its entirety by the Company; and

- 11.2.12.** ensure the appropriate deep and fundamental transformation of the industry is in line with the Broad-Based Black Economic Empowerment Legislation and the Broad-Based Black Economic Empowerment Codes of Good Practices as amended.

## **12. POWERS OF THE COMPANY**

- 12.1.** The objects of the Company are as set out in paragraph 11, and except to the extent necessarily implied by the stated objects, the Company has the powers and capacity of an Individual. Notwithstanding the omission from the Company's MOI of any provision to that effect, the Company is not subject to any special conditions and may do anything which the Act empowers a company to do if so authorised by its MOI.
- 12.2.** Subject to Schedule 1(1)(1)(2) of the Act, the Company may acquire and hold securities issued by a profit company or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its objects.
- 12.3.** As per Schedule 1(1)(3) of the Act, the Company must not, directly or indirectly, 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.
  - 12.3.1.** as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Company;
  - 12.3.2.** as reasonable payment of, or reimbursement for, expenses incurred to advance the object of the Company;
  - 12.3.3.** 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;
  - 12.3.4.** as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance the object of the Company; or
  - 12.3.5.** in respect of any legal obligation binding on the Company.
- 12.4.** In addition to observing the limitations set out in Schedule 1(1)(3) of the Act, the Company:
  - 12.4.1.** must carry out its activities in a non-profit manner and with an altruistic or philanthropic intent;
  - 12.4.2.** must refrain from carrying on any activity which is intended to directly or indirectly promote the economic self-interest of any director or employee other than by way of reasonable remuneration;
  - 12.4.3.** must utilise its funds solely for the object for which it has been established;
  - 12.4.4.** is prohibited from directly or indirectly distributing any of its funds to any person otherwise than in the course of undertaking any activity in furtherance of its object;
  - 12.4.5.** is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility of the donation in terms of Section 18A of the Income

Tax Act 58 of 1962 ("Income Tax Act"); provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of Section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

**12.5. The Company is Empowered:**

- 12.5.1.** to amalgamate with other companies having the same or similar objects to the Company;
- 12.5.2.** to establish, promote or assist in establishing or promoting and to subscribe to or become a member of any association or society whose objects are similar or partly similar to the objects of the Company, or the establishment or promotion of which may be beneficial to the Company, provided that no subscription be paid to any such other association out of the funds of the Company except *bona fide* in furtherance of the interests of the Company;
- 12.5.3.** to remunerate any person or persons in cash for services rendered in the formation or development of its business;
- 12.5.4.** to make donations except to Members or Directors;
- 12.5.5.** to make loans, exchanges, leases and any other forms of contract whatsoever including sales and purchase of property of any kind whatsoever;
- 12.5.6.** to secure the fulfillment of any contracts or engagements entered into by the Company by the mortgage of all or any part of the property of the Company;
- 12.5.7.** to pay remuneration, gratuities and pensions and establish pension schemes in respect of its *bona fide* employees and officers and Directors who are bona fide employees;
- 12.5.8.** to open bank accounts in the name of the Company and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques and other negotiable instruments connected with the business and affairs of the Company;
- 12.5.9.** to invest and deal with any monies of the Company not immediately required for the purposes of the Company;
- 12.5.10.** to acquire any movable or immovable property for the Company calculated to benefit the Company and to advance its objectives and to maintain, improve and alter any of the Company's property;
- 12.5.11.** to establish and maintain and/or assist in the establishment or maintenance of any fund or committee formed or which may be formed for the protection of the interests of the Company or its Members, or for the protection and benefit of employees, or for the benefit and protection of the joint interests of employers and employees in the out of home media industry;

**12.5.12.** to provide legal assistance to members where deemed necessary and to institute, conduct, defend, compound or abandon any legal proceedings by, against or on behalf of the Company, or otherwise concerning the affairs of the Company; provided that if the legality of laws, regulations or other statutory instruments, by any national, provincial or local authority is to be challenged in court, the Company may, if authorised by majority vote at a General Meeting or special General Meeting, institute action for and on behalf of the Company and/or any Member or Members. In the event of the Company not instituting action, individual Members may institute action in their own name; and

**12.5.13.** to do all such other lawful things as may appear to be in the interests of the Company and/or its Members and which are not inconsistent with the objects set out in this paragraph or any matter specifically provided for in this document.

**12.6.** The income and property of the Company whensoever and howsoever derived shall be applied solely towards the promotion of its objects and purposes as set out in paragraph 11, as per Schedule 1(1)(2)(a) of the Act, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the Members of the Company or to its controlling or controlled company, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any Member thereof in return for any services actually rendered to the Company.

**12.7.** The Company shall not be permitted to distribute any of its surplus, gains or assets to any person other than an association whose objects are in the furtherance of the objects for which the Company is established.

**12.8.** Upon its winding up, deregistration or dissolution, the assets of the Company remaining after the satisfaction of all its liabilities shall, as set out in Schedule 1(1)(4) of the Act, be given or transferred to a company or institution or companies or institutions having objects similar to its main objects to be determined by the members of the Company at or before the time of its dissolution or, failing such determination, by the court.

**12.9.** The objects set forth in this document shall not be restrictively construed, but the widest interpretation shall be given thereto and they shall not, except when the context expressly so requires, be in any way limited or restricted by reference to or inference from any other object or objects set forth in such paragraph, or from the terms of any other paragraph, or by the name of the Company. None of such paragraph or the object or objects therein specified or the powers thereby conferred, shall be deemed subsidiary or ancillary to the objects or the powers mentioned in any other paragraph, but the Company shall have full powers to exercise all or any of the objects conferred by and provided in any other or more of the said paragraphs.

### **13. AMENDMENT (NPO REQUIREMENT) (DSD)**

**13.1.** This MOI may be altered or amended only in the manner set out in Section 16 or 17 of the Act, being:

**13.1.1.** in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by publishing a notice of the alteration in any manner required or permitted by this MOI or the Rules of the Company and filing a notice of the alteration, or (*Section 17(1)(a)&(b) of the Act*)

- 13.1.2.** in compliance with a court order effected by a resolution of the Board; or *(Section 16(4)(a) of the Act)*
- 13.1.3.** at any other time if a Special Resolution to amend the MOI is proposed and adopted by the Full Members. *(Section 16(1)(c) of the Act)*
- 13.2.** Any of the provisions of this MOI, save for an amendment contemplated in paragraph 13.1 may be repealed, amended or added to in any manner only by a Special Resolution supported by 75% of the Full Members present at the meeting in person or proxy and entitled to vote provided that there are no less than 3 (three) present in person.
- 13.3.** A written notice of alteration of the provisions of the MOI shall be sent to each Member via electronic mail at least 21 (twenty one) days before the General Meeting to consider the proposed amendments
- 13.4.** If applicable, a copy of all amendments to this MOI must be submitted to the SARS Commissioner within 30 days of its amendment.
- 13.5.** A notice of amendment together with a copy of all amendments of the MOI or a consolidated revision of the MOI must be submitted to the Companies and Intellectual Properties Commission (CIPC) within 3 (three) months of the date of the resolution. *(Section 16(7) & 17(5) of the Act)*
- 13.6.** A consolidated revision of the Company's MOI must be accompanied by a sworn statement by a Director of the Company or a statement by an attorney or notary public stating that the consolidated revision is a true, accurate and complete representation of the Company's MOI, as altered and amended up to the date of the statement. *(Section 17(6) of the Act)*
- 13.7.** No amendments shall be made which will:
- 13.7.1.** allow any income or other funds of the Company to be applied for a purpose which does not promote the achievement of the objects of the Company;
  - 13.7.2.** amend this paragraph in any manner which would give any proprietary or similar interest in the Company's account to any natural person or any other entity which is not a public benefit organization or non-profit organisation;
  - 13.7.3.** have the effect of making the Company cease to exist. (DSD)
- 13.8.** An amendment to the Company's MOI takes effect from the later of the date on which the Commission accepts the filing notice of amendment, or the date, if any, set out in the notice of amendment. *(Sections 16.9.a & 16.9.b of the Act)*
- 13.9. Authenticity of versions of MOI**
- 13.9.1.** The MOI of the Company as altered or amended, prevails in any case of a conflict between it and a translation filed as per Section 17(3) of the Act, or a consolidated revision filed as per Section 17(5) of the Act, unless the consolidated revision has subsequently been ratified by a Special Resolution at a General Meeting of the Company. *(Section 18(1) of the Act)*



**13.9.2.** The latest version of the Company's MOI that has been endorsed by the Commission in terms of this paragraph prevails in the case of any conflict between it and any other purported version of the Company's MOI. *(Section 18.2 of the Act)*

## **14. RULES**

**14.1.** The Company will ensure that it generally complies with such requirements set out by the SARS Commissioner, as may be necessary to obtain approval that the Company is recognised for tax and other purposes as an association in terms of the provisions of Section 30B of the Income Tax Act.

**14.2.** The Board shall have the authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or the Company's MOI as contemplated in Section 15(3) to 15(5) of the Act by publishing a copy of these rules in any manner required or permitted by the Company's MOI or rules of the Company, and by filing a copy of those rules.

**14.3.** The procedure to be followed regarding 14.2 above is as follows:

**14.3.1.** a notice of a Board Meeting is to be sent out in the prescribed manner and form, together with a brief outline of the proposed rule/amendment/ appeal, etc.;

**14.3.2.** the rule or amendment thereof is to be adopted by a special resolution of the Board, whereafter it is to be sent to all Members and filed at the Registrar of Companies.

**14.4.** A rule contemplated in paragraph 14.2 must be consistent with the Act and the Company's MOI, and any such Rule that is inconsistent with the Act or the Company's MOI is void to the extent of the inconsistency, and takes effect on a date that is the later of 20 Business Days after the rule is published or the date, if any, specified in the rule. *(Section 15.4.b of the Act)*

**14.5.** The rule will be binding on an interim basis from the time it takes effect until it is put to a vote at the next Members meeting of the Company, and on a permanent basis only if it has been ratified by an ordinary resolution at the meeting as contemplated. *(Section 15.4.c of the Act)*

**14.6.** The Board must publish any rules made, amended or repealed by delivering a copy of those rules to each Member and Director by email, ordinary mail or fax.

## **15. PROVISIONS OF CHAPTER 3 OF COMPANIES ACT**

**15.1.** The Company is obliged to appoint an auditor and have their financials audited, even in the event of their Public Interest Score (PIS) score being below the required number. See paragraph 40 for the requirements for appointment of auditor. *(Chapter 3, part a – Section 84(1)(c) of the Act)*

**15.2.** The Company does not elect, in terms of Section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act.

**15.3.** The Board of the Company has the discretion to appoint a Finance and Audit Committee; and a Remuneration and Human Resources Committee.

## **16. AREA AND SCOPE OF OPERATION**

- 16.1.** The area in which the Company will conduct business and from which contributions shall be sought is the Republic.
- 16.2.** If the Company deems it in the interests of its members to conduct business in other countries, such a decision can be taken by the Members by way of a special resolution.
- 16.3.** The Company will work with similar companies and organisations in the rest of Africa to further the interests of its Members by assisting other African countries to develop and establish out of home media associations wherever required.

## **17. MEMBERSHIP AND MEMBERSHIP FEES**

### **17.1. General Provisions**

- 17.1.1.** As contemplated in Schedule 1(4)(1) and Section 4(2)(d) of the Act, the Company shall have no more than two classes of Members, being Voting Members, each of whom has an equal vote in any matter to be decided by the Members of the Company, and Non-voting Members, which shall have no vote in any matter to be decided by the Members of the Company other than as expressly provided for in this document.
- 17.1.2.** The Company shall have 5 (five) categories of membership, namely:
  - 17.1.2.1.** Voting Members:
    - 17.1.2.1.1. Full
  - 17.1.2.2.** Non-voting Members:
    - 17.1.2.2.1. Associate
    - 17.1.2.2.2. Temporary
    - 17.1.2.2.3. Special
    - 17.1.2.2.4. International.
- 17.1.3.** The Members of the Company shall be such persons as from time to time are admitted to membership, as hereinafter provided.
- 17.1.4.** No Member may directly or indirectly have any personal or private interest in the Company.
- 17.1.5.** The Company shall give regard to each of the Members' rights not to be discriminated against unfairly as provided in Section 9 of the Constitution of the Republic.
- 17.1.6.** Membership shall be personal to the Member concerned and may not be assigned or transferred by them to any other person, company or concern.
- 17.1.7.** Members may be any person including natural persons, companies including profit companies, or other bodies corporate, or statutory bodies, partnerships or associations of persons. Distinction is made between Voting Members and Non-voting Members.

## **17.2. Full Membership**

- 17.2.1.** Full Membership is open to any person, company, close corporation, partnership, trust or other business enterprise, whether such organization is a legal person or not, engaged in the advertising media industry by way of selling or letting out advertising space to advertisers in or on all forms of out of home media within Southern Africa, provided such applicants have no interest directly or indirectly in the purchasing of media space on behalf of third parties as a business.
- 17.2.2.** Full Members pay a once-off joining fee on approval of their membership by the Board, and a monthly membership fee as determined and reviewed by the Board from time to time and agreed to by the Member in writing. Should no agreement be reached in respect of the joining fee and monthly membership fee, then the applicant shall not become a member of the company and any joining fees, membership fees or other advanced payments made shall be refunded to the applicant. Payment shall be made via eft into the Company's bank account.
- 17.2.3.** Each Full Member has 1 (one) vote.
- 17.2.4.** A Full Member may be elected to the Board of the Company.
- 17.2.5.** Full Members shall be entitled to attend Members' meetings of the Company and to receive the minutes of those meetings.

## **17.3. Temporary Membership**

- 17.3.1.** Temporary Membership is open to all new entrants and smme's within the out of home advertising value chain who bill under an agreed financial threshold as agreed by the Board from time to time.
- 17.3.2.** Temporary Members pay a once-off joining fee on approval of their membership by the Board, however, this joining fee may be exempted at the discretion of the Chairman/CEO.
- 17.3.3.** Temporary members do not pay a monthly membership fee, but are encouraged to make contributions where possible.
- 17.3.4.** Temporary Members do not have any voting rights.
- 17.3.5.** Temporary members may elect an approved temporary member to represent them at a Board level where they are represented by 1 (one) vote.
- 17.3.6.** Temporary Members shall be entitled to attend Members' meetings of the Company and to receive the minutes of those meetings.

## **17.4. Associate Membership**

- 17.4.1.** Associate Membership is open to any company, person or firm within the ooh value chain and not qualifying for full membership in terms of paragraph 17.2.
- 17.4.2.** Associate Members pay a once-off joining fee on approval of their membership by the Board, and a monthly membership fee as determined and reviewed by the Board from time to time and agreed to by the Member in writing. Should no

agreement be reached in respect of the joining fee and monthly membership fee, then the applicant shall not become a member of the company and any joining fees, membership fees or other advanced payments made shall be refunded to the applicant. Payment shall be made via eft into the Company's bank account.

**17.4.3.** Associate Members do not have any voting rights.

**17.4.4.** Associate Members may not be elected to the Board of the Company.

**17.4.5.** Associate Members shall be entitled to attend Members' meetings of the Company and to receive the minutes of those meetings.

#### **17.5. Special Membership**

**17.5.1.** Special Membership is open to any company, person or firm, which, in the opinion of the Board is sufficiently representative of a particular industry or interest and may be invited by the Board to become Special Members of the Company.

**17.5.2.** Special Members pay a once-off joining fee on approval of their membership by the Board, however, this joining fee may be exempted at the discretion of the Chairman/CEO.

**17.5.3.** Special members do not pay a monthly membership fee.

**17.5.4.** Special Members do not have any voting rights.

**17.5.5.** Special Members may not be elected to the Board of the Company.

**17.5.6.** Special Members may attend Members' meetings of the Company by invitation of the Board only, but will not be entitled to receive the minutes of those meetings.

#### **17.6. International Membership**

**17.6.1.** International Membership is open to any person, company, close corporation, partnership, trust or other business enterprise, whether such organization is a legal person or not, engaged in the advertising media industry by way of selling or letting out advertising space to advertisers in or on all forms of Out of Home media not qualifying for full membership merely because such company, person or firm is not domiciled within Southern Africa, and provided such applicants have no interest directly or indirectly in the purchasing of media space on behalf of third parties as a business.

**17.6.2.** International members pay a once-off joining fee on approval of their membership by the Board, and an annual membership fee as determined and reviewed by the Board from time to time and agreed to by the Member in writing. Should no agreement be reached in respect of the joining fee and monthly membership fee, then the applicant shall not become a member of the company and any joining fees, membership fees or other advanced payments made shall be refunded to the applicant. Payment shall be made via eft into the Company's bank account.

**17.6.3.** International Members do not have any voting rights.

**17.6.4.** International Members may not be elected to the Board of the Company.

- 17.6.5.** International Members shall be entitled to attend Members' meetings of the Company and to receive the minutes of those meetings.

#### **17.7. Applications for admission**

- 17.7.1.** Applications for admission as a Member must be addressed in writing to the Chairman/CEO. Such applications must contain a commitment to abide by the MOI, Constitution and the Code of Conduct of the Company (along with any other relevant governance documents) and a commitment to meet the financial obligations of membership for the entire duration of membership.
- 17.7.2.** The Board shall determine procedures for the admission of Members.
- 17.7.3.** Subject to the provisions of this MOI, all persons, companies, corporations and associations from the out of home advertising value chain will be eligible for membership of the Company by approval of the sitting Board.
- 17.7.4.** Candidates for membership and accepted members shall disclose such information as reasonably and equitably requested by the Board from time to time and under appropriate and clearly defined conditions of confidentiality.
- 17.7.5.** Subject to the further provisions of these paragraphs, the Board may fix the contributions payable to the Company by the Members and, in fixing such contributions, may differentiate among Members belonging to different categories determined by it for the purpose thereof from time to time.
- 17.7.6.** Applications for membership shall be considered by the Board at its first meeting after the date of receipt thereof by the Chairman/CEO, and the applicant concerned shall be notified in writing by the Chairman/CEO of the decision of the Board within 7 days of the date of such decision.
- 17.7.7.** The Board shall scrutinise the admissibility of the candidate for membership on the basis of the application for admission and the conditions as set out in paragraphs 17.1 to 17.6. The decision to admit an applicant for membership or to reject the application shall be at the sole and absolute discretion of the Board who shall not be required to give reasons for their decision, and there shall be no appeal by any applicant to the Members or the Board.
- 17.7.8.** Every Member of the Company shall, on becoming a Member, sign a written consent to become a Member and such signature shall bind the Company and the Members *inter se* to the terms of the MOI, Constitution, Code of Practise and the Companies Act No. 71 of 2008 to the same extent as if they had signed it and such member will ensure that, his heirs, executors and administrators or successors in title, will observe all the provisions of the MOI, Constitution, Code of Practise and the Companies Act No. 71 of 2008.

#### **18. RIGHTS OF MEMBERS**

- 18.1.** Membership of the Company in any of the categories of membership does not and shall not give any member of any class a right to any of the monies, property or assets of the Company but only confers upon such members the privilege of membership subject to the fees and reasonable restrictions as the Board may impose from time to time, and subject to legislation.

**18.2.** No past or present Member shall be entitled to any part of the Company's income or have the Company's assets transferred to him directly or indirectly. A member may however receive reasonable compensation or reimbursements for the following:

**18.2.1.** remuneration for goods delivered or services rendered to or at the direction of the Company; or

**18.2.2.** payment of, or reimbursement for expenses incurred to advance a stated object of the Company; or

**18.2.3.** payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and the Member; or

**18.2.4.** payment in respect of any rights of that Member to the extent that such rights are administered by the Company in order to advance a stated object of the Company.

## **19. DUTIES AND LIABILITIES OF MEMBERS**

**19.1.** The financial liability of Members of any class for or on behalf of the Company towards any third party and the Company is limited to the amount of undisputed and unpaid membership fees or other monies owing by them to the Company.

**19.2.** All Members shall comply with the Company MOI, Constitution, the Code of Practice and Standards, the Companies Act No. 71 of 2008 and with all applicable national and other regulations having force of law and by-laws applicable in the provinces, cities, towns and suburbs in which they operate within South Africa.

**19.3.** Members are encouraged to provide monthly advertising expenditure figures to AC Nielsen for AdEx and such other bodies.

## **20. SUSPENSION AND TERMINATION OF MEMBERSHIP**

**20.1.** Unless an alternative arrangement has been agreed to in writing between a Member and the Company, a member may be suspended or expelled and shall be deemed to be out of good standing:

**20.1.1.** if the subscriptions or other charges due by him to the Company are more than 3 (three) months in arrears; or

**20.1.2.** in gross misconduct of the MOI, Constitution, Code of Practice and the Companies Act No. 71 of 2008.

**20.2.** Any Member who has been suspended shall, for the period of such suspension, remain liable for membership fees and any other payments due to the Company but will not be entitled to:

**20.2.1.** vote at or attend any meeting

**20.2.2.** receive notices, minutes or circulars relating to the Company's activities

**20.2.3.** any other benefits of membership.

**20.3.** The Board shall have the power to suspend or terminate a Member's membership of the Company:

- 20.3.1.** if, in the sole discretion of the Board, it is guilty of conduct inimical to the interests and/or objects of the Company;
- 20.3.2.** upon the death of any Member, or upon any Member being declared by a court to be insane or incapable of managing its own affairs;
- 20.3.3.** in the event of non-compliance by a Member with any such obligations as may attach to its Membership, including without limitation the payment of any entrance fee, membership fee, levy or other contribution (if any) as contemplated in the Company's MOI and Constitution, upon the expiration of a period of 1 month reckoned from the date of written notice by the Company to the Member concerned requiring the remedying of such default in circumstances where such default is not remedied within that period; save that the Board shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate and save that the Board shall have the power to reinstate such Member on such terms as the Board may think fit; or if, in the sole discretion of the Directors, it is inimical to the best interests of the Company that it should continue as a Member of the Company.
- 20.4.** The Board shall furnish their reasons for suspending or terminating a Member's membership in terms of paragraph **20.1** to that Member in writing and that Member shall have the right, exercisable by notice in writing to the Chairman/CEO within 14 days of receipt of those reasons, to be heard by the Board within a period of 14 days after receipt by the Chairman/CEO of such notice. Within 14 days of the hearing, the Board may, upon such terms if any, as it may deem appropriate, rescind or confirm the suspension or expulsion, or amend it, and until such rescission or confirmation or amendment is made no public announcement within or outside the Company of such suspension or expulsion shall be made.
- 20.5.** A Member will automatically cease to be a Member of the Company if such Member is dissolved, liquidated/sequestrated whether provisionally or finally, or placed under judicial management, whether provisionally or finally is placed under curatorship, or is de-registered or a comparable action occurs under the insolvency laws of the Members jurisdiction of organisation.
- 20.6.** No Member whose membership has been terminated whether as a result of automatic termination, resignation, expulsion or otherwise, will have any claim against the assets of the Company or for refund of any monies paid by it to the Company or of any nature whatsoever but shall remain fully liable to the Company for all amounts, contributions and membership fees due and payable by such Member at the date of termination of such Member's membership. This includes the honouring of long term commitments undertaken by the Member up to the predetermined end of such commitment as was previously agreed to by the Member.
- 20.7.** Upon expulsion of a member, all monies due to the Company by such member shall become payable. If payment thereof is not made within 30 (thirty) days, the Board may take such steps as it deems necessary to secure payment.
- 20.8.** An extract from the books and records of the Company made by the Chairman/CEO will be sufficient prima facie proof of the amounts in arrears and the period for those amounts or any part thereof is in arrears. If the amounts in arrears and/or the period for payment of those amounts, or any part thereof, are contested, verification by the auditor of the Company

will be made, and the decision of the auditor will be final.

- 20.9.** A Member who has resigned or whose membership has been terminated as contemplated above, may be re-admitted to membership on such conditions and after such period as the Board may, in its sole discretion, determine.

## **21. RESIGNATION OF MEMBERS**

**21.1.** A member may resign at any time by giving 1 (one) calendar month's written notice to this effect to the Company; provided that his resignation shall not absolve a member from the duty of paying any money due or owing by him to the Company at the time of his resignation and provided further that all monies owed to the Company shall immediately become due and payable.

**21.2.** A Member who resigns shall not be entitled to any refund and shall be liable for its financial and/or any other responsibilities to the Company, including its financial obligations as given in the budget for the 12 month notice period, as well as any arrears which are due up to the date of expiry of his/her period of notice. This includes the honouring of long term commitments undertaken by the Member in writing (and provided the Member has obtained all corporate approvals, including board approval) up to the predetermined end of such commitment as was previously agreed to by the Member.

## **22. MEMBERSHIP REGISTER**

The Company shall maintain at the Office or at such other place as may from time to time be determined and authorised, a register of Members as provided in Section 24 (4) and Schedule 1(1)(9) of the Act.

## **23. MEMBERS RIGHT TO INFORMATION**

**23.1.** The Members of the Company shall have the right to inspect and copy information contained in the records of the Company as set out in Section 26 of the Act.

## **24. RECORD DATE FOR EXERCISE OF MEMBER RIGHTS**

If, at any time, the Board fails to determine a Record Date, the Record Date for participating in and voting at a General Meeting is the latest date by which the Company is required to give Members notice of that meeting. (*Section 59(3)(a) of the Act*)

## **25. LIMITATION OF LIABILITY**

No Member or any other person who is a Member or officer of such Member shall have any claim against any person whomsoever or whatsoever arising from any *bona fide* act or decision of the Company, the Directors or any advisory board, council or committee or employee of the Company except where such person or persons has acted with negligence or wilful act of misconduct.

## **26. MEMBERS MEETINGS (*Section 61 of the Act*)**

**26.1.** A General Meeting of Members of the Company shall be held at least 2 times per annum on a date fixed by the Chairperson.

**26.2.** The Board may call a Members' meeting at any time. (*Section 61(1) of the Act*)



**26.3.** The Chairman of the Board, or in his absence a Vice Chairman, shall be entitled to take the chair at every General Meeting. If there is no Chairman or Vice Chairman present within 10 (ten) minutes after the time appointed for holding the meeting, or is unwilling to act, the Directors may choose a Chairman, and in default of their doing so the Members present shall choose 1 (one) of them to be Chairman.

**26.4.** If the Company is unable to convene a meeting because it has no Directors or because all of its Directors are incapacitated then the Company authorises any Member to convene a meeting in these circumstances.

**26.5. Requirement to hold meetings**

**26.5.1.** The Company is required to hold Members meetings in the following circumstances:

**26.5.1.1.** when adopting any Ordinary Resolution or Special Resolution;

**26.5.1.2.** whenever required in terms of Section 70(3) to fill a vacancy on the Board; and *(Section 61(1)(b) of the Act)*

**26.5.1.3.** when one or more written and signed demands for such a meeting are delivered to the Company, and each such demand describes the specific purpose for which the meeting is proposed, and in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting. *(Section 61(3)(a)&(b) of the Act)*

**26.5.2.** Special General Meetings shall be called whenever desired by a majority of the Board or upon a requisition signed by not less than 10% of the members of the Company in good standing and entitled to vote. Such special General Meetings shall be called within 21 (twenty one) days from the date of decision of the majority of the Board or from the date of receipt of the requisition by the Chairman.

**26.5.3.** Notwithstanding paragraph 26.5.1, the Company, or any Member, may apply to a court for an order setting aside such a demand on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious. *(Section 61(5) of the Act)*

**26.5.4.** At any time before the start of a Members meeting contemplated herein, a Member who submitted a demand for that meeting may withdraw that demand, and the Company must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting. *(Sections 61(3)(a) & 61(3)(b) of the Act)*

**26.6. Annual General Meeting**

**26.6.1.** Notwithstanding anything to the contrary in this document, the Company shall in each year hold an AGM of the Members within or not more than 6 (six) months after the end of every financial year of the Company; provided that not more than

15 months shall be permitted to elapse between the date of one AGM and that of the next. *(Section 61(7) of the Act)*

- 26.6.2.** Notice of an AGM must be given to members in writing by the Chairman/CEO not less than 15 (fifteen) business days before the date of such meeting.
- 26.6.3.** The AGM shall deal with and dispose of all matters prescribed by the Act. All business laid before any other general meeting shall be considered special business. *(Section 61(8) of the Act)*
- 26.6.4.** If any business that would ordinarily be concluded at the AGM cannot be concluded for whatever reason, a General Meeting can be called to transact such business.
- 26.6.5.** At each AGM the agenda must provide for the following:
  - 26.6.5.1.** attendance & apologies
  - 26.6.5.2.** confirmation of the agenda
  - 26.6.5.3.** confirmation of the minutes of the previous AGM
  - 26.6.5.4.** the Chairman's report
  - 26.6.5.5.** the Director's report, which shall comply with Section 30(3)(b) of the Act
  - 26.6.5.6.** the auditor's report
  - 26.6.5.7.** audited financial statements for the immediately preceding financial year
  - 26.6.5.8.** an audit committee report (if applicable)
  - 26.6.5.9.** the election of Directors, to the extent required by the Act or the Company's MOI.
  - 26.6.5.10.** the appointment of an auditor for the ensuing financial year; and an audit committee (if applicable)
  - 26.6.5.11.** changes to the company MOI, Constitution or Code of Practice.
  - 26.6.5.12.** any general matters raised by Members, with or without advance notice to the company.
  - 26.6.5.13.** closing of the meeting.

**26.7. Members acting other than at a meeting** *(Section 60(1)(a)&(b) of the Act)*

- 26.7.1.** Notwithstanding paragraph 26.5, an ordinary resolution or special resolution that could be voted on at a Members meeting may instead be voted on in writing, via a round-robin resolution if:
  - 26.7.1.1.** the resolution is submitted to Members entitled to exercise voting rights in relation to the resolution; and
  - 26.7.1.2.** is thereafter voted on in writing by the Members within 20 business days after the resolution was submitted to them.
- 26.7.2.** A resolution contemplated in paragraph 26.7.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted, as an ordinary resolution or Special Resolution, as the case may be, at a properly constituted Members meeting and if adopted, has the same effect as if it had been approved by voting at a Members meeting. *(Section 60(2)(a)&(b) of the Act)*

**26.7.3.** Within 10 business days after adopting a resolution, or conducting an election of directors, the Company must deliver a statement describing the results of the vote, consent process or election to every Member who was entitled to vote on or consent to the resolution, or vote in the election of the director, as the case may be. *(Section 60(4) of the Act)*

**26.7.4.** The written resolution, as set out in paragraph 26.7, shall be deemed (unless a statement to the contrary is made in that resolution) to have been passed on the last day on which that resolution is signed by any one or more of the Members who are entitled to exercise voting rights in relation to that resolution. The written resolution may consist of two or more documents in the same form, each of which is signed by one or more such Members, as the case may be.

**26.8. Location of Members' meetings** *(Section 61(9)(a) of the Act)*

The Board may determine the location of Members' meetings.

**27. NOTICES OF MEETINGS**

**27.1.** Notice of a Members meeting must be given to members in writing by the Chairman/CEO not less than 15 (fifteen) business days before the date of such meeting, provided that in the case of Special General Meetings such shorter notice being not less than 48 (forty eight) hours, as may be decided by the Chairman, may be given, and must include: *(Section 62(3) of the Act)*

**27.1.1.** the date, time and place for the meeting; *(Section 62(3)(a) of the Act)*

**27.1.2.** the general purpose of the meeting; *(Section 62(3)(b) of the Act)*

**27.1.3.** a reasonably prominent statement that: *(Section 62.3.e.i & 62(3)(e)(ii) of the Act)*

**27.1.3.1.** a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member;

**27.1.3.2.** a proxy need not also be a Member of the Company.

**27.2.** Notices may be sent in electronic format and for purposes of this document a notice sent in electronic format will be deemed to be delivered to the representative of the member if it is sent to the address supplied by the member in writing or electronically and is not returned as undelivered within 24 (twenty four) hours from the time that it is sent. All members present in person at any meeting shall be deemed to have received notice of such meeting.

**27.3.** The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting. In the event of a dispute as to whether the omission was accidental or not, the decision of the Board shall be final and binding on the Members. *(Section 62(6) of the Act)*

**27.4.** Further, if the Company fails to give the required notice of a Members meeting, or if there was a material defect in the giving of the notice, the meeting may proceed if 75% of Members entitled to exercise voting rights in respect of each item on the agenda of the meeting: *(Section 62(4) of the Act)*

**27.4.1.** acknowledges actual receipt of the notice;

**27.4.2.** is present at the meeting; and

**27.4.3.** waives notice of the meeting, or in the case of a material defect in the manner and form of giving notice, ratifies the defective notice.

**27.5. Proxies** (*Section 58 of the Act*)

**27.5.1.** A person entitled to attend and vote at a members meeting may appoint a proxy. The proxy shall be given in a form as approved by the Chairman. The instrument appointing a proxy shall be under the hand of the appointer or of his agent duly authorised, in writing, dated and signed. A proxy need not be a Member. The holder of a General or Special Power of Attorney incorporating the necessary powers contemplated hereunder, shall be entitled to attend and vote at any meetings on behalf of the Member granting such power.

**27.5.2.** The Company shall be obliged to give effect to the appointment of a proxy, provided the instrument appointing such proxy, including the Power of Attorney or other authority, if any, under which it is signed or a duly certified copy thereof, shall have been delivered to the Company or to any other person acting on behalf of the Company provided that such instrument of proxy is delivered before the time for holding such meeting or any adjournment thereof. (*Section 58(3)(c) of the Act*)

**27.5.3.** The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit: (*Section 58(8) of the Act*)

I, \_\_\_\_\_ of \_\_\_\_\_ being a Full Member of OUT OF HOME MEDIA SOUTH AFRICA NPC, hereby appoint

\_\_\_\_\_ of \_\_\_\_\_ failing

\_\_\_\_\_ of \_\_\_\_\_

as my proxy to vote for me and on my behalf at the Annual General Meeting or General Meetings (as the case may be) of The Company to be held on the \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution to .....			
Resolution to .....			
Resolution to .....			

(Indicate instruction to proxy by way of a cross in the space provided above.)

Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

---

Signature

(Note: A Full Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy does not have to be a Member of the Company.)

**27.6. Electronic participation in Members' meetings**

- 27.6.1.** A Members meeting may be conducted entirely by electronic communication or one or more members to participate by electronic communication in all or part of a members meeting that is being held in person, provided that the electronic communication employed ordinarily enables participants in the meeting to communicate concurrently with each other without an intermediary and to participate effectively. *(Section 63(2) of the Act)*
- 27.6.2.** A resolution signed by the requisite majority or percentage of Members who were connected electronically shall be deemed to have been passed on the date on which the resolution was signed by the Member last to sign it (unless a statement to the contrary is made in that resolution) and such resolution may consist of several documents, each of which may be signed by one or more Members who participated in the electronic meeting where:
- 27.6.2.1.** all such Members remained connected for the duration of the electronic meeting;
  - 27.6.2.2.** the subject matter of the resolution has been discussed; and
  - 27.6.2.3.** the Chairman of the meeting or any other Member certifies in writing that the aforementioned requirements have been met,
- 27.6.3.** In the event that a meeting is conducted as above, the Company must comply with the following: *(Section 63(3) of the Act)*
- 27.6.3.1.** the notice of such meeting must inform Members of the availability of that form or participation, and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication; and
  - 27.6.3.2.** members must be informed that access to the medium or means of electronic communication is at the expense of the Member or proxy, except to the extent that the company determines otherwise.

**28. GENERAL MEETINGS – QUORUM AND ADJOURNMENT** *(Section 64 of the Act)*

- 28.1.** No business shall be transacted at any General Meeting unless a quorum of Members is present. The quorum shall be more than 25% (twenty five percent) of the Members entitled to vote, provided that there are no less than 3 (three) Members present in person and entitled to vote at such meeting. *(Sections 64(1)&64(2)&64(3) of the Act)*
- 28.2.** If within 30 (thirty) minutes after the time appointed for a 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 following week or if that is a public holiday, to the next succeeding business day at the same time and place and if there is no

quorum at such adjourned meeting the Members present will be deemed to constitute a quorum.

- 28.3.** The 30 minutes limit specified in paragraph 28.2 may be extended by the Chairman presiding at the Members' meeting as contemplated in Section 64(5) of the Act for a reasonable period on grounds that: *(Section 64(5) of the Act)*
- 28.3.1.** exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or *(Section 64(5) of the Act)*
  - 28.3.2.** one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of paragraph 28.1 *(Section 64(5) of the Act)*
- 28.4.** If a quorum is not present when a matter is called on the agenda, consideration of that matter may be postponed to a later time in the meeting, without motion or vote, if there is other business on the agenda. However, if there is no further business on the agenda, the meeting is automatically, without motion or vote, unless the location of the meeting is different, adjourned to a date determined by the Chairman on written notice to the Members but which shall be no earlier than one week and no later than 21 days from the date of the meeting (or if that is not a Business Day, to the next succeeding Business Day) to be continued at the same time and place, or to such other time and place as the Chairman of the meeting may appoint. *(Sections 64(4)(b)&64(7)&64(11) of the Act)*
- 28.5.** Where a meeting has been adjourned the Company shall set a new time and place or adjourn until further notice. If the meeting is adjourned until further notice, a new notice is required. *(Section 64(11) of the Act)*
- 28.6.** The Chairman of a General Meeting may, with the consent of the meeting, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 28.7.** A Members' meeting (or consideration of a particular matter on the agenda) may be adjourned without further notice to a fixed time and place (but will require a notice if it is adjourned "until further notice") by a vote in favour thereof by holders of a majority of those voting rights present or represented at the meeting and entitled to be exercised on at least one matter remaining on the agenda of the meeting or, where the adjournment is in respect of a particular matter, by a vote in favour thereof by holders of a majority of those voting rights present or represented by proxy and entitled to be exercised in respect of the matter in question.
- 28.8.** Pursuant to Section 64(8) of the Act, if within 30 minutes of the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, those Members who are entitled to exercise Voting Rights at the meeting, present or represented at the meeting will be deemed to constitute a quorum.

## **29. PROCEEDINGS AT MEETINGS**

- 29.1.** The Chairman and in his absence the Vice Chairman shall chair all meetings.

- 29.2. General meetings of the Company may be conducted face-to-face or electronically, which would allow members to be present and participate through electronic means.
- 29.3. If the Chairman or Vice Chairman is not present within (ten) minutes after the time appointed for holding the meeting, or is unwilling to act, the Directors may choose a Chairman, and in default of their doing so the Members present shall elect a Chairman for that meeting.
- 29.4. At every General Meeting the Minutes of the last preceding General Meeting shall be read and signed by the presiding officer after confirmation.
- 29.5. It shall be competent for a meeting to authorise the presiding officer to sign and confirm Minutes as correct if after perusal thereof he is of the opinion that the Minutes reflect a true record of the proceedings.
- 29.6. The proceedings of any meeting shall not be invalidated by reason of the non-receipt by any member of the notice of the meeting.

**30. VOTING AT MEMBERS MEETING** (*Sections 63(4)&63(5) of the Act*)

- 30.1. Save as is otherwise expressly provided by the Act or in this document, all resolutions to be considered at any Members' meeting shall be decided by a majority of votes cast by those present in person or by proxy and entitled to vote at the meeting.
- 30.2. Every Full Member will have one vote at a meeting of the Company; provided that if a member is a subsidiary of a holding company or any person that is controlled by a member, that subsidiary or controlled person shall not have a vote as long as the holding/subsidiary situation or the controlled/controlling relationship exists. "Control" shall mean the right to control, manage and regulate the affairs of such other person and the Board shall have the complete discretion to decide whether in any particular case control exists and such decision shall be final.
- 30.3. At a meeting of Members, voting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded by the Chairman of the meeting or no less than five Members. Subject to the provisions of the Act, unless a poll is demanded, a declaration by the Chairman that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, shall be final and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 30.4. If a poll is demanded as aforesaid, it shall be taken in such manner and at such place and time as the Chairman of the meeting directs and either immediately or after an interval or adjournment which shall not exceed seven days, the demand for a poll may be withdrawn. Scrutineers shall be appointed by the Chairman to count the votes and to declare the result of the poll, and their declaration, which shall be announced by the Chairman of the meeting, shall be deemed to be the resolution of the meeting at which the poll was demanded. In case of any dispute as to the admission or rejection of a vote, the Chairman of the meeting shall determine the dispute and the determination of the Chairman made in good faith shall be final and conclusive.
- 30.5. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

- 30.6.** In the case of an equality of votes, the Chairman will have a casting vote.
- 30.7.** All members must abide by the majority decision.
- 30.8.** Any Member who has not paid any entrance fee, membership fee, levy or other contribution (if any) which has become due and payable to the Company in respect of his membership in accordance with this document shall not be entitled to vote at any meeting.
- 30.9.** Any Member who has been suspended shall not be entitled to vote at any meeting or to any other benefits of membership, for the period of such suspension.

**31. MEMBERS RESOLUTION** (*Section 65 of the Act*)

- 31.1.** A resolution must be in writing and include the reason for the resolution and the effect of the resolution, and will be in effect for a period of 3 months from the date of adoption. If the process is not complete within the specified 3 months, a new resolution will have to be adopted on the process.
- 31.2.** For an ordinary resolution to be adopted at a Meeting, it must be supported by more than 50% (fifty percent) of the Members who voted on the resolution, as provided for in Section 65(7) of the Act.
- 31.3.** For a special resolution to be adopted at a Meeting, it must be supported by at least 75% (seventy five percent) of all Members, as provided for in Section 65(9) of the Act.
- 31.4.** A special resolution adopted at a General Meeting is not required for a matter to be determined by the Company, however a special resolution at a General Meeting will be required to: (*Section 65(11) of the Act*)
  - 31.4.1.** amend the Company's MOI, Constitution and Code of Practice
  - 31.4.2.** approve the voluntary winding up of the Company; and
  - 31.4.3.** approve the implementation of fundamental transactions provided for in Part A, Chapter 5 of the Act.
- 31.5.** A resolution in writing, signed by the Board on behalf of the Members entitled to vote or their duly appointed agents, shall (except in cases where a meeting is prescribed by the Act) be as valid and effectual as if it has been passed at a meeting of the Company duly convened and held, provided that such resolution is duly inserted in the minute book of meetings of the Company.

**32. RECORDS OF MEETINGS**

- 32.1.** Proper minutes and attendance records must be kept for all meetings of the Company.
- 32.2.** The minutes shall be confirmed as a true record of proceedings by the next meeting of the general members, and shall thereafter be signed by the Chairman.
- 32.3.** Minutes shall be kept safely.



### **33. NON-MEMBERS OF THE COMPANY**

- 33.1.** From time to time, the Company will have to deal with persons that are not members or constituent members of OHMSA and do not want to become members either. The Board is hereby specifically empowered to deal with such and other similar situations in the best interests of the Company and to make such agreements or arrangements and reach such accommodations with such persons as it deems necessary.
- 33.2.** In order to do this without undermining the interests of the Members of the Company, the following procedure must be followed in all cases:
- 33.2.1.** before any agreement, arrangement or accommodation as contemplated in 33.1 is reached with a person or persons operating outside of the Company membership structures, it must be approved by special resolution of the Board at a meeting with the support of at least 75% (seventy five percent) of all Board members;
  - 33.2.2.** arrangements such as these must be regarded as temporary and must therefore be reviewed by the Board on a regular basis but not less than once a year and management must report back on the arrangements at each Board Meeting or at such frequency as required by the Board; and
  - 33.2.3.** any agreement, arrangement or accommodation such as contemplated in 33 must allow for cancellation, whether immediate or after a cancellation period, if the Company feels that it has served its purpose or that continuing with the arrangement is not in the best interests of the Company or its members.

### **34. DIRECTORS**

- 34.1.** In this section, director includes an alternate director, prescribed officer and a committee member, irrespective of whether or not the person is also a member of the company's board.
- 34.2. Powers of Directors** (*Section 66(1) of the Act*)
- 34.2.1.** The business of the Company shall be managed and supervised by the Board in accordance with the stated objects of The Company and as envisioned in terms of Section 66(1) of the Act. The Board may exercise all powers of the Company which are not excluded by a statute or this document.
  - 34.2.2.** The Board will be the official spokesperson for the Company and no statements in respect of the Company may be made without the prior permission of the Board. Board may delegate its rights and duties in this respect to a committee of members constituted out of the Board.
- 34.3. Appointment**
- 34.3.1.** Subject to paragraph 34.10.3 and as per Section 66(2) of the Act, the Company shall have a minimum of 3 (three) Directors and a maximum of 9 (nine) Directors. No Director may be a 'connected person' (as defined in the Income Tax Act) in relation to any other Director. No single Director shall directly or indirectly control the decision making powers relating to the Company.
  - 34.3.2.** Subject to the proportions in paragraph 34.3.1, vacancies occurring on the Board shall be filled at the first ensuing General Meeting. Each Member of the Company

shall be entitled but not obliged to nominate one Director to fill such vacancy. Once the nominations have been made by the Members, the Full voting Members shall be entitled but not obliged to vote on the nominations by show of hands or by ballot. Where a vacancy occurs subsequent to the date on which the notice of that meeting was issued it shall be filled at the next ensuing General Meeting. Nominations for the vacancy may be submitted to the Chairman/CEO in writing at any time before the meeting or may be made verbally or in writing during the meeting. A member appointed to fill a vacancy shall hold office for the unexpired portion of the period of office of his predecessor.

- 34.3.3.** Each Member will be entitled to remove and replace any Director nominated by such Member at any time provided that such Member immediately notifies the Chairman, CEO or public officer of the company of such removal and the name and details of the person nominated in such Director's place.
- 34.3.4.** Every Director must satisfy the qualification and eligibility requirements set out in Section 69 of the Act to become or remain a Director.
- 34.3.5.** The election or appointment of a Director is a nullity if, at the time of the election or appointment, that person is ineligible or disqualified in terms of Section 69 of the Act.
- 34.3.6.** On appointment a director has to deliver to the company a written consent to act as director.
- 34.3.7.** The Board will be appointed by the general membership at the AGM of the Company on nomination, duly seconded and voted upon by the members entitled to vote and present in person or represented by proxy by a show of hands, of one representative per member, or by ballot.
- 34.3.8.** The Chairman and Vice Chairman shall be elected by the Board, from the representatives elected to the Board in terms of the process outlined in 34.3.7 above, on nomination by a Board Member.
- 34.3.9.** The Chairman and Vice Chairman of the Board shall ipso facto be Chairman and Vice Chairman of the Company. The remaining members of the Board shall each be the CEO or an experienced senior professional serving as a director of that member, or a member in the case of a close corporation, provided that "director" shall also include an alternate director, and shall be appointed as follows:
  - 34.3.9.1.** Independent Chairman, elected by the Board
  - 34.3.9.2.** CEO appointed by the Board
  - 34.3.9.3.** Board Members will be constituent members and nominated and elected by the general membership and not to exceed 7 (seven), as follows:
    - 34.3.9.3.1.** 6 x full members
    - 34.3.9.3.2.** 1 x approved representative from the temporary membership category.

- 34.3.10.** The Directors may from time to time appoint one or more candidates to the office of CEO on such terms and conditions as may be determined from time to time and may revoke such appointment. Such appointed CEO shall be appointed to the Board.
- 34.3.11.** The Board shall have the power from time to time to appoint any other person as a Director (in addition to the Directors appointed in terms of paragraph 34.3.1) as an addition to the Board, provided that no more than three Directors so appointed shall be members of the Board at any one time. Any Director so appointed shall have no voting power at meetings of the Board or be taken into consideration for the purpose of constituting a quorum at meetings of the Board, provided further that such persons shall only serve on the Board for as long as determined by the Board or a General Meeting.
- 34.3.12.** It shall not be necessary for the Directors of the Company to retire by rotation in any year, and a Director once appointed shall remain in office until he either resigns, is disqualified or is removed in terms of paragraph 34.5 and 34.6, provided that at least one third of the elected Directors shall be available for re-election at the end of the term.
- 34.3.13.** The Director appointed by a Member who is under suspension or whose financial responsibilities to the Company are in arrears for more than 90 (ninety) days shall not be entitled to attend or vote at any meeting of the Board.
- 34.3.14.** If any Director is not entitled to attend or vote at any meeting of the Board then his alternate shall likewise not be entitled to attend or vote thereat.
- 34.3.15.** The Board may appoint regional representatives in regions where Company representation may become necessary. The regional representatives would be responsible for furthering the aims of the Company in those areas and would be required to hold at least 2 (two) meetings per annum with local members. Minutes must be taken at meetings and forwarded to the Chairman/CEO for distribution to the Board.
- 34.3.16.** The Board may, at the first or any subsequent meeting following the annual election, appoint a Treasurer from amongst its members.
- 34.3.17.** The Treasurer, if appointed, shall be responsible for managing the funds of the Company, to the extent consented to by the Board of the Company.
- 34.3.18.** The Board shall have the power to vary or alter the powers and duties of the Treasurer and to allocate to other office bearers or officials such of the Treasurer's duties as the Board may in its discretion direct.

#### **34.4. Alternate Directors**

- 34.4.1.** Each company who has a member represented on the Board will have the power to appoint a person that is a Constituent member to act as Alternate Director for each Director, and at its discretion to remove such alternate and appoint another in his place.
- 34.4.2.** On such appointment being made and approved, the Alternate Director shall in all respects be subject to the terms and conditions existing with reference to the other

Directors of the Company, but shall not be entitled to receive any remuneration from The Company.

- 34.4.3.** An Alternate Director, whilst acting in the place of the Director appointing him, shall exercise and discharge all the duties and functions of the Director he represents.
- 34.4.4.** The appointment of an Alternate Director shall be cancelled and the Alternate Director shall cease to hold office whenever the Member who appointed him gives notice in writing to the Chairman, CEO or public officer of the Company that the alternate Director representing him have ceased to do so.
- 34.4.5.** Notwithstanding the foregoing, neither the Chairman nor the CEO shall be entitled to appoint an alternate Director.
- 34.4.6.** Each member of the Board will be entitled to appoint an alternate to represent him at the Board, should he be unable to attend. Such alternate however, will have to be approved in advance unanimously by all members of the Board and shall also be the Chief Executive Officer or an experienced senior professional serving as a director of that member, and provided further that “director” shall also include an alternate director. In the event of both the member of the Board and the alternate being unable to attend a meeting, the member of the Board will be entitled to appoint a proxy from the other members of the Board.

**34.5. Vacation of office (Sections 70(1)(a)&70(1)(b) of the Act)**

- 34.5.1.** The office of the Director shall *ipso facto* be vacated if such Director:
  - 34.5.1.1.** is a representative of a Member and the Member who appointed him, ceases to be a Member of the Company;
  - 34.5.1.2.** dies;
  - 34.5.1.3.** resigns, by giving 1 (one) calendar month’s notice to the Company;
  - 34.5.1.4.** becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time;
  - 34.5.1.5.** ceases to be a representative of the Member which appointed him;
  - 34.5.1.6.** is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;
  - 34.5.1.7.** holds any other office of profit under the Company, without the consent of the Company, except that of CEO;
  - 34.5.1.8.** is absent from a board meetings for more than 3 (three) consecutive meetings without permission of the Board; and is not represented at any such meeting by an alternate Director or proxy, and the Board resolves that his office be vacated;

**34.5.1.9.** is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof;

**34.5.1.10.** becomes ineligible or disqualified in terms of Section 69 of the Act; or is removed.

#### **34.6. Removal from office**

**34.6.1.** The Company may in accordance with Section 71 of the Act remove any Director before expiration of this period of office, and may by Ordinary Resolution appoint another Member in his stead.

**34.6.2.** A Director may further be removed from office by order of the court as contemplated in Section 71(5) or (6) of the Act.

#### **34.7. Vacancies**

**34.7.1.** The Directors may act notwithstanding any vacancy on the Board, provided that for so long as their number is reduced below the number fixed in paragraph 34.3.1 as the minimum number of Directors, then the remaining Directors may act for the purpose of increasing the number of Directors to that number, but for no other purpose.

#### **34.8. Conduct of Directors**

**34.8.1.** The conduct of Directors will be as prescribed by Section 76 of the Act.

#### **34.9. Meetings (Section 73 of the Act)**

**34.9.1.** The Directors will endeavour to meet together at least once a month for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit.

**34.9.2.** Special meetings of the Board shall be called by the Chairman whenever he deems it advisable or upon the request of 2 Board members (DSD), in which event the meeting shall be called within 21 (twenty one) days of receipt of the requisition by the Chairman, and 30 (thirty) days if one of the matters to be discussed is to appoint a new Board member. A notice of such special meeting must include the matters to be discussed at the Board meeting.

**34.9.3.** A quorum at Board Meetings will consist of more than 50% (fifty percent) of the directors, provided that there will be no quorum unless at least 4 (four) Directors (or their duly appointed alternates) are present in person.

**34.9.4.** If within 15 (fifteen) minutes after the appointed time for a meeting to begin, a quorum has not been reached, the Board meeting shall stand adjourned to a day not less than 7 (seven) days and not more than 14 (fourteen) days from the date of the meeting at a time and place determined by the Chairman. At such an adjourned meeting of which written notice shall be given, the members present shall form a quorum.

- 34.9.5.** The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) of the Act is not limited or restricted by this document.
- 34.9.6.** Due and proper notice of a Board Meeting as per section 73 (4)(b) of the Act shall be given to all the Directors and such notice shall be given seven (7) Business days before the meeting and include the agenda and, if possible, any resolution to be proposed at the meeting.
- 34.9.7.** Notices may be sent in electronic format and for purposes of this document a notice sent in electronic format will be deemed to be delivered to the Director if it is sent to the address supplied by the member in writing or electronically and is not returned as undelivered within 24 (twenty four) hours from the time that it is sent. All Directors present in person at any meeting shall be deemed to have received notice of such meeting.
- 34.9.8.** The conduct of meetings shall generally be governed in terms of Section 73 of the Act. Notwithstanding the aforementioned, the Board may regulate their meeting as they think fit.
- 34.9.9.** Where the Chairman has failed to give the required notice of the Board meeting, or there was a defect in the giving of the notice, such meeting may proceed, provided that all of the Director acknowledge actual receipt of the notice, or are present at the meeting or waive notice of the meeting. *(Section 73(5)(a) of the Act)*
- 34.9.10.** A Board meeting may be conducted by electronic communication, or one or more Directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting. *(Section 73(3) of the Act)*
- 34.9.11.** Board meetings may be conducted face-to-face or electronically, which would allow members to be present and participate through electronic means.
- 34.9.12.** The Chairman and in his absence the Vice Chairman shall chair all meetings.
- 34.9.13.** If the Chairman or Vice Chairman is not present within (ten) minutes after the time appointed for holding the meeting, or is unwilling to act, the Directors may choose a Chairman.
- 34.9.14.** At every Board Meeting the Minutes of the last preceding Board Meeting shall be read and signed by the presiding officer after confirmation.
- 34.9.15.** It shall be competent for a meeting to authorise the presiding officer to sign and confirm Minutes as correct if after perusal thereof he is of the opinion that the Minutes reflect a true record of the proceedings.
- 34.9.16.** The proceedings of any meeting shall not be invalidated by reason of the non-receipt by any member of the notice of the meeting.

- 34.9.17.** The CEO of the Company shall attend all Members' meetings and Board meetings and shall not in his capacity as CEO have a casting vote in addition to any vote he may have by virtue of being a Director of the Company.
- 34.9.18.** A decision that could be voted on at a Board meeting may instead be adopted by written consent of the required number of Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting. *(Section 74 of the Act)*
- 34.9.19.** All matters for consideration by the Board shall be decided on motion duly seconded and voted upon by show of hands or by ballot, and shall unless otherwise provided herein, be decided by the votes of a majority of the members of the Board present in person or represented by proxy.
- 34.9.20.** Each Director shall be entitled to one vote in regard to all business brought before the Board. *(Section 73(5)(c) of the Act)*
- 34.9.21.** The Chairman of the Board meeting shall have a casting vote in the event of a tie. *(Section 73(5)(e) of the Act)*
- 34.9.22.** All Board Members must abide by the majority decision.
- 34.9.23.** For a special resolution to be adopted at a Board Meeting, it must be supported by at least 75% (seventy five percent) of all the Directors.
- 34.9.24.** For an ordinary resolution to be adopted at a Board meeting, it must be supported by more than 50% (fifty percent) of the Directors who voted on the resolution and in the case of a tied vote, the Chairman may cast a deciding vote.
- 34.9.25.** Resolutions adopted by the Board must be dated and sequentially numbered; and are effective as of the date of the resolution, unless the resolution states otherwise. *(Section 73(7) of the Act)*
- 34.9.26.** Proper minutes and attendance records must be kept for all Board meetings and any of its committees, of the Company, and include in the minutes any declaration of personal financial interest given by notice or made by a Director as required by Section 75; and every resolution adopted by the Board. *(Section 73(6) of the Act)*
- 34.9.27.** The minutes shall be confirmed as a true record of proceedings by the next meeting of the general members, and shall thereafter be signed by the Chairman
- 34.9.28.** Minutes shall be kept safely.
- 34.9.29.** Any minutes of a Board meeting, or a resolution, signed by the Chairman of the meeting, or by the Chairman of the next Board meeting, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be. *(Section 73(8) of the Act)*
- 34.9.30.** The Directors may delegate any of their powers to committees, sub-committees, divisions or working groups consisting of such Member or Members of their body or

such other persons nominated by the Directors as they think fit, and may from time to time revoke such delegation. (*Section 72 of the Act*)

**34.9.31.** Any committee so formed shall, in the exercise of the powers so delegated, conform to any conditions that may from time to time be imposed upon it by the Directors. The meetings and proceedings of any such committee, sub-committee, division or working group consisting of or more Members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors, so far as the same are applicable thereto, and are not superseded by any rule made by the Directors under this paragraph.

**34.9.32.** All acts done at any meeting of the Board or of a committee, sub-committee, task team, division or working group of Directors, or by any person acting as a Director and/or nominated representative shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

#### **34.10. Directors acting other than at meeting**

**34.10.1.** The Board may pass resolutions in writing or by any electronic communication without there being a meeting, provided that each Director receives a notice of the matter to be decided on. A decision made in the manner contemplated in this paragraph is of the same effect as if it had been approved by voting at a meeting. (*Sections 73(1)&73(2) of the Act*)

#### **34.11. Personal Financial Interests**

**34.11.1.** If a Director has a personal financial interest, (or knows that a related person has such an interest) he must disclose in advance, in writing, to the Board the nature and extent of that interest. This disclosure must comply with the requirements of the Act. If the personal financial interest (including that of a related person), arises after the matter has been approved by the Board then the Director or prescribed officer concerned must promptly, after the interest arises, disclose same to the Board in accordance with Section 75 of the Act.

#### **34.12. Remuneration**

**34.12.1.** The Directors of the Company shall not be entitled to any remuneration or reimbursement of expenses in consideration for or respect of their services as directors (except as contemplated in this document).

**34.12.2.** Where a Director renders additional services to the Company, other than his services as a Director, such Director may be remunerated by the Company for such services, provided that such remuneration is fair and reasonable, and has been approved by Board resolution following the procedure set out in Section 75(5) and Section 1(1)(5)(4)(a) of the Act and supported by no less than 75% of the disinterested Directors of the Company.

#### **34.13. Reimbursements**

**34.13.1.** A Director of the Company may be reimbursed by the Company for reasonable and necessary expenses incurred in the *bona fide* performance of his/her duties to the



Company, provided that any reimbursement of any expense not of a category of expenses expressly budgeted for in the annual budget of the Company approved by the Board or of an amount exceeding any limit with respect to any category of expenses specified in the annual budget of the Company approved by the Board shall be subject to the prior approval of a disinterested majority of the Directors of the Company by resolution.

#### **34.14. Loans**

**34.14.1.** As per Section 1(5)(3) of the Act, the Company may not provide any loan to secure any debt or obligation of any nature whatsoever; or otherwise provide any direct or indirect financial assistance to a Director of the Company or of a related or inter-related company or to a person related to any such Member or Director.

### **35. INDEMNIFICATION AND DIRECTORS INSURANCE** *(Section 78 of the Act)*

**35.1.** In this section, director includes a former director, an alternate director, prescribed officer and a committee member, irrespective of whether or not the person is also a member of the company's board.

**35.2.** The Company may not directly or indirectly pay any fines or penalties that may be imposed on a Director who has been convicted of an offence in terms of any national legislation.

**35.3.** Subject to a resolution of the Directors, the Board may:

**35.3.1.** advance expenses to a Director to defend litigation in any proceedings arising out of that Director's service to the Company; and *(Section 78(4)(a) of the Act)*

**35.3.2.** may directly or indirectly indemnify a Director for expenses contemplated in paragraph 35.3, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Director, or arise in respect of any liability for which the Company may indemnify the Director as provided in terms of Sections 78(5) and (6) of the Act. *(Section 78(4)(b) of the Act)*

**35.4.** Subject to the limitations imposed by Section 78(6) of the Act, the Company may indemnify a Director, committee member or officer of the Company and every person (whether an officer of the Company or not) employed by the Company out of the funds of the Company against all liability incurred by him as such Board member, manager, or officer when acting as a result of, or implementing a decision taken by the Board, or a general meeting of the Company provided that such actions are not illegal nor in contravention of the King 3 guidelines on corporate governance.

**35.5.** The Company may purchase insurance to protect: *(Section 78(7) of the Act)*

**35.5.1.** a Director against any liability or expenses for which the Company is permitted to indemnify a Director; or

**35.5.2.** The Company against any contingency including, but not limited to:

**35.5.2.1.** any expenses that the Company is permitted to advance in accordance with paragraph 35.3; or

**35.5.2.2.** any liability for which the Company is permitted to indemnify a Director in accordance with paragraph 35.3.2.

**35.6.** The Company is entitled to claim restitution from a director of the Company for any money paid directly or indirectly by the Company to or on behalf of that director in any manner inconsistent with this section. (*Section 78(8) of the Act*)

## **36. OFFICE BEARERS AND OFFICIALS**

### **36.1. The Chairman and Vice Chairman**

**36.1.1.** The Board shall from time to time appoint a Chairman of the Board. Such appointment of the Chairman shall be upon such terms and conditions and for such periods as the Board may decide. The Board may elect a Vice Chairman from any of its nominated Board Members upon such terms and conditions and for such period as the Board may decide.

**36.1.2.** Subject to the provisions of any contract between himself and the Company, a Chairman shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

**36.1.3.** The position of Chairman of the Company is a non-remunerated position.

**36.1.4.** The Chairman shall be elected by the Board and can either be a representative of a Member's company or an independent third party, provided that such a person must in the opinion of the Board:

**36.1.4.1.** be available for all meetings of the Company;

**36.1.4.2.** have extensive experience in the out of home industry;

**36.1.4.3.** have extensive knowledge of issues pertaining to the out of home industry; and

**36.1.4.4.** benefit the Company and the out of home industry.

**36.1.5.** The Chairman of the Board shall *de facto* be Chairman of the Company and is independent and as such will not be entitled to represent his company on the Board, if he is a representative of a ~~Full~~ Member. The Chairman's company may however be entitled to nominate a senior executive other than the Chairman as its representative on the Board. This applies to the Vice Chairman as well to the extent that the Vice Chairman is acting as the Chairman.

**36.1.6.** Where the Board wishes to appoint a Board member as Chairman of the Board, such Board member shall, provided that he wishes to accept such appointment, not be entitled to represent his company. The Member who appointed such Director shall thereafter be entitled to replace such Board member provided that such Member immediately notifies the Chairman, CEO or public officer of the Company of the name and details of the person nominated in such Director's place.

**36.1.7.** The Directors may from time to time entrust to and confer upon a Chairman for the time being such of the powers exercisable hereunder by the directors as they

may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient. They may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that regard, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

**36.1.8.** The Chairman or a Vice Chairman may be suspended or removed by a majority vote of not less than 75% (seventy five percent) of the number of votes of the members of the Board. Notwithstanding the foregoing, the Chairman or a Vice Chairman may be suspended or removed by a resolution of the simple majority of the Board if such person, in the opinion of the Board, has:

**36.1.8.1.** infringed or threatened to infringe any term of this document; or

**36.1.8.2.** acted or threatened to act in a manner detrimental to the interests of the Company; or

**36.1.8.3.** been guilty of conduct, which, in the discretion of the Board, has brought the Company into disrepute.

## **36.2. Acting Chairman**

**36.2.1.** In the event of both the Chairman and the Vice Chairman being temporarily unable to perform their duties, the Board shall appoint a member of the Committee to act as Chairman until the Chairman or Vice Chairman is able to resume his or her duties, or, in the event of the Chairman and Vice Chairman being permanently unable to perform their duties, until the next ensuing General Meeting when a new Chairman and Vice Chairman shall be elected in accordance with the provisions of paragraph 36.1.1.

## **36.3. Responsibilities of the Chairman and Vice Chairman**

**36.3.1.** The Chairman and the Vice Chairman shall exercise the powers and perform the duties as set out in this document.

**36.3.2.** The Chairman shall preside at all meetings of the Board and at all General Meetings of the Company in his capacity as Chairman of the Company. The Chairman shall perform such duties as by usage and custom pertain to this office.

**36.3.3.** The Chairman shall preside at all meetings at which he is present to enforce observance of this document, sign Minutes of meetings after confirmation or on authority to confirm in terms of paragraph 10.8 and 10.9, sign cheques of the Company, generally exercise supervision over the affairs of the Company and perform such other duties as by usage and custom pertain to the office. He or she shall have a deliberative vote and in the event of equality of voting, a casting vote.

**36.3.4.** The Vice Chairman shall exercise the powers and perform the duties of the Chairman in the absence of the Chairman for whatsoever reason or when called upon to do so by the Chairman. The provisions of this document, in so far as they apply to the Chairman, shall apply to the Vice Chairman/s.

**36.3.5.** Notwithstanding anything elsewhere provided in this document, the Chairman and all Vice Chairmans shall be entitled to attend and speak at all Board and General Meetings and shall be entitled to a vote as a Director or to form part of the quorum of Directors at Board meetings.

**36.3.6.** The Chairman shall have a second vote or a casting vote at meetings of the Board and the General Meetings of the Company. The Vice Chairman and any other Director who acts as Chairman shall only have a deliberative vote in their capacity as Director.

**36.4. Chief Executive Officer (CEO)**

**36.4.1.** The Board shall from time to time appoint a CEO. Such appointment of the CEO shall be upon such terms and conditions and for such periods as the Board may decide.

**36.4.2.** Notwithstanding anything elsewhere provided in this document, the CEO shall be entitled to attend and speak at all Board and General Meetings and shall be entitled to a vote as a Director or to form part of the quorum of Directors at Board meetings.

**36.4.3.** Subject to the direction of the Board, the CEO shall be vested with all the powers and authorities expressly conferred by the Board on him and may exercise all such powers and do all such acts and things as may be exercised or done by the Board, and are not hereby directed or required to be exercised or done by the Company in General Meetings. The CEO shall report directly to the Chairman.

**36.4.4.** The Directors may from time to time entrust to and confer upon the CEO for the time being such of the powers exercisable hereunder by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and condition, and with such restrictions, as they think expedient. They may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that regard, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

**36.4.5.** Without limiting the generality of the foregoing, the CEO shall, in particular:

**36.4.5.1.** be responsible for the budgeting and administering of the Company's affairs, with the aim of achieving the Company's annually approved objectives and budgets;

**36.4.5.2.** use such personnel, councils, committees, task teams and/or external contractors, within an approved budget, as he deems necessary to achieve the main object and objectives of the Company and the Board.

**36.4.6.** Subject to the provisions of any contract between himself and the Company, the CEO shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

**36.4.7.** The CEO may resign by giving 2 (two) months' notice to the Board.

## **37. FUNDING OF OPERATIONS**

**37.1.** The Board shall have the power, from time to time, to determine the manner in which the operations of the Company shall be funded. Without limiting the generality thereof, the Board shall be entitled to fund its operations by determining, imposing and recovering contributions, soliciting donations, and/or subscriptions or by engaging in any other income producing activity and to determine the terms and conditions upon which these activities will be conducted.

## **38. FINANCE**

**38.1.** The Directors shall cause true accounts as required by the Act to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipts and expenditure take place, and of the assets, credits and liabilities of the Company. The accounting records of the Company shall be kept at the Office of the Company, or at such place or places as the Directors think fit.

**38.2.** As per this document, the Company must apply all of its assets and income, however derived, to advance the objects of the Company.

**38.3.** The Funds of the Company shall be applied to the payment of expenses, the acquisition of property, the objects of the Company and such other lawful purposes as may be decided upon by the Board, or if the latter so desires, by a general meeting for the attainment of the objects specified in paragraph 4 of this document but shall not be distributed to members or office bearers except as reasonable compensation for services rendered.

**38.4.** All amounts due or collected on behalf of the Company, where not paid by electronic funds transfer shall be paid to the Company's bank account; provided that any surplus funds not for the time being required for the purposes specified in paragraph 38.3 may be invested upon such security and on such terms and conditions as the Board may approve.

**38.5.** Payments made by the Company shall require the approval of the Chairman/CEO and shall be made by cheque or electronic transfer, except where the amount in question is less than the amount agreed upon by the Board, when payment may be made from petty cash.

**38.6.** All cheques and formal documents shall be signed by no less than 2 of the 3 account signatories as appointed by the Board for the purpose.

**38.7.** A general meeting may at any time with a view to securing funds for any particular purpose, impose a special levy, the amount and method of payment of which will be determined by a majority vote of members present at the meeting, provided that:

**38.7.1.** notice of the proposed levy appeared in the Agenda for the meeting;

**38.7.2.** a levy may only be imposed by a resolution passed by a two-thirds majority of the members in good standing represented in person or by proxy at such meeting; and

**38.7.3.** the amounts of levy imposed on members may be varied at that or any subsequent meeting and that any member may be exempted in whole or in part for any period from the obligation to pay such levy.

**38.7.4.** The Company may make payments contemplated in paragraphs 34.12 and 34.13 if such payment: *(Schedule 1(5)(4) of the Act)*

**38.7.4.1.** is in the ordinary course of the Company's business and for fair value; or

**38.7.4.2.** constitutes an accountable advance to meet:

**38.7.4.3.** legal expenses in relation to a matter concerning the Company; or

**38.7.4.4.** anticipated expenses to be incurred by the Member or Director on behalf of the Company.

**38.8.** The Company's financial year end shall be the last day of February.

## **39. BORROWING POWERS**

**39.1.** The Board may from time to time and in such manner and on such terms as they deem fit, exercise all the power of the Company to borrow, raise or secure the payment of money, either with or without any specific security on the undertaking or property of the Company.

**39.2.** The Directors may raise or secure the repayment of such sum or sums in such manner and upon such terms and conditions in all respects as they think fit, and in particular by the issue of bonds, perpetual or redeemable debentures or debenture stock, or any mortgage, charge or other security on the undertaking or the whole or any part of the property of the Company (both present and future).

## **40. AUDITORS *(Section 90 of the Act)***

**40.1.** Each year at the Annual General Meeting, the Members shall appoint an auditor.

**40.2.** A person or company must be a registered auditor and may or may not be a constituent member of the Company.

**40.3.** In addition to the prohibition contemplated in section 84.5, no person shall be qualified for appointment of auditor of the Company if in terms of Section 90(b) of the Act if he is:

**40.3.1.** a director or prescribed officer of the Company;

**40.3.2.** an employee or consultant of the Company who was or has been engaged for more than one year in the maintenance of any of the Company's financial records or the preparation of any of its financial statements;

**40.3.3.** a Director, officer or employee of a person appointed as company secretary in terms of Part B of Section 3 of the Act;

**40.3.4.** a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs secretarial work for the Company;

**40.3.5.** a person who, at any time during the five financial years immediately preceding the date of appointment, was a person contemplated in any of sub-paragraphs 40.3.1 to 40.3.4; or

**40.3.6.** a person related to a person contemplated in sub-paragraphs 40.3.1 to 40.3.5.

**40.4.** The appointment, powers, rights, remuneration and duties of the auditors shall be regulated by the provisions of the Act.

**40.5.** The resignation of an auditor is effective in terms of Section 91(1)to(5) of the Act when the notice is filed. (*Section 91 of the Act*)

#### **41. COMPANY RECORDS AND ACCOUNTING RECORDS**

**41.1.** All company records contemplated by Section 24 of the Act, and all accounting records contemplated by Section 28 and Section 25 of the Act, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company, or in the case of all or any of the Company records at or from such other location or locations within the Republic of South Africa as the Board may from time to time determine.

#### **42. ANNUAL FINANCIAL STATEMENTS**

**42.1.** Each year, the Company must prepare annual financial statements, as contemplated in Section 30 of the Act, within six months after the end of its financial year.

**42.2.** The Company elects, in terms of Section 30(2)(b)(ii)(aa) of the Act, that the annual financial statements of the Company be audited voluntarily.

**42.3.** The annual financial statements must:

**42.3.1.** include an auditor's report;

**42.3.2.** include a report by the Directors with respect to the state of affairs, the business and surplus or shortfall of the Company, including:

**42.3.2.1.** any material matter relating to the Company's state of affairs; and

**42.3.2.2.** any prescribed information;

**42.3.2.3.** be approved by the Board and signed by an authorised Director; and

**42.3.2.4.** be submitted to the Members in the first General Meeting, after such annual financial statements have been approved by the Board and signed by the authorised Director, within nine months of the end of the financial year.

#### **43. ANNUAL RETURNS (*Section 33 of the Act*)**

**43.1.** Each year, the Company must file an annual return in the prescribed form with the prescribed fee, and within the prescribed period (currently being 30 days) after the end of the anniversary of the date of its incorporation, which return must:

**43.1.1.** include a copy of the Company's annual financial statements;

**43.1.2.** designate a Director, employee or other person who is responsible for the Company's compliance with the transparency, accountability and integrity

requirements in terms of Part C of Chapter 2 of the Act, and the requirements of Chapter 3 of the Act, if these requirements apply to the Company; and

**43.1.3.** any other prescribed information.

#### **44. ENHANCED ACCOUNTABILITY AND TRANSPARENCY**

- 44.1.** The Company does not elect, in terms of Section 34(2) of the Act to comply voluntarily with the provisions of Chapter 3 of the Act.
- 44.2.** The Company may, but is not obliged to, appoint a person to serve as company secretary and/or appoint a person to serve as an auditor, and/or establish an audit committee, on such terms and subject to such conditions as the Board in its discretion may from time to time determine.
- 44.3.** The Company elects to have its annual financial statements audited in terms of Sections 30(2)&(7) of the Act, read with Section 28 and Section 26(2) of the Act, and therefore the Company shall comply to the extent necessary with the provisions of Chapter 3 of the Act with which it is required to comply.

#### **45. RESERVES**

- 45.1.** The Directors shall set aside and carry to a reserve fund all the surplus funds of the Company, which may at their discretion be applied for any purpose for which such funds of the Company may properly be applied in such manner as the Directors deem fit.

#### **46. REGISTERED OFFICE** (*Section 23 of the Act*)

- 46.1.** The registered office of the Company from time to time shall be at such location within the Republic of South Africa as the Board may from time to time determine.

#### **47. REGISTERS** (*Section 24 of the Act*)

- 47.1.** The Company shall keep at the places prescribed by the Act and maintain in proper form and in the manner prescribed by the Act the under mentioned registers, namely:
- 47.1.1.** register of Members
  - 47.1.2.** register of Directors and officers
  - 47.1.3.** register of declarations of interests of Directors and officers in contracts
  - 47.1.4.** attendance registers in respect of the Company, Directors' and Board meetings.
  - 47.1.5.** register of fixed assets.

#### **48. PUBLIC OFFICER**

- 48.1.** The Board shall appoint a person to the position of public officer of the Company.
- 48.2.** The Board may appoint an assistant public officer who shall assist the public officer in the execution of his duties. The provisions of this paragraph shall *mutatis mutandis* apply to the assistant public officer.



## **49. GENERAL**

- 49.1.** Any error in the appointment of any Director, committee, employee or agent of the Company will not invalidate any proceedings or decisions of the Company or the directors or advisory board, council or committee concerned or employee or agent of the Company, unless any person affected by such proceedings or decisions satisfies the Board that he has suffered substantial prejudice or that the error was not a bona fide error.
- 49.2.** Any procedural irregularity or non-observance of this document will not invalidate any proceedings or decisions of the Company or the Directors or advisory board, council or committee concerned or employee or agent of the Company, unless any person affected by such proceedings or decision satisfies the Board that he has suffered substantial prejudice or that the irregularity or non-observance did not occur in good faith.
- 49.3.** In the event that any provision contained in this document is in conflict with any statutory law or regulation, such provision will be *pro non scripto* and of no force and effect and will be deemed to be separate and severable from this document without in any way affecting the validity of the remaining provisions of this document. Each provision of this document is to create a right or obligation, as the case may be, independently of the existence of the other provisions.

## **50. NOTICES**

- 50.1.** Each Member and each Director of the Company shall notify the Company of his registered address and if he has not named such an address he shall be deemed to have waived his right to be served with notices.
- 50.2.** All notices intended or required to be given by the Company to any Member or Director shall be given either personally, by electronic mail or through the post in a prepaid letter, addressed to such Member at his registered address.
- 50.3.** Any notice sent by post shall be deemed to have been given on the day on which the letter is posted, and in proving such service it shall be sufficient to prove that the notice was properly addressed and put in the post.
- 50.4.** Any notice or document delivered, sent by electronic mail, sent by post to or left at the registered address of any Director in pursuance of this document shall, notwithstanding that such Director was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served.
- 50.5.** Any notice, if delivered by electronic mail, will be deemed to have been duly given if it is delivered to the electronic mail address specified by a Member or Director from time to time in writing, which delivery shall be evidenced by the delivery confirmation mail received by sender following transmission.
- 50.6.** For the purposes of notice by means of electronic mail, each Member and Director warrants to the other that they have enabled their electronic mail servers and procured the enabling of electronic mail services for their service providers to generate, send and receive automatic delivery confirmations. Failure to comply with this warranty shall invalidate any notice sent using electronic mail regardless of the identity of the addressor.
- 50.7.** For the avoidance of doubt, notice shall be deemed to have been given upon receipt of such delivery confirmation whether or not such notice has actually been read.

**50.8.** Notices, requests, demands and determinations sent by facsimile and by electronic mail and received prior to 13:00 on a business day shall be deemed duly given on such business day. Notices, requests, demands and determinations sent by facsimile and electronic mail and received at other times shall be deemed duly given on the first business day following the date that such facsimile or electronic mail is received.

**51. DISPUTE RESOLUTION**

**51.1.** Subject to the Company's MOI, all disputes arising out of the MOI that are not resolved internally, shall be resolved externally in line with Appendix A of the Company MOI.

**52. JURISDICTION, CHOICE OF LAW, CHOICE OF COURT**

**52.1.** Any action or application arising out of the Company's MOI for the obligations of the members hereunder may be brought in any Magistrate's Court in terms of Section 45 of the Magistrates' Court Act, Act 32 of 1944 having jurisdiction in respect of the Company's MOI, notwithstanding that the amount in issue may exceed the jurisdiction of such Court. This paragraph to be read in conjunction with Addendum1.

**53. DISSOLUTION OF THE COMPANY**

**53.1.** The Company may be wound up voluntarily by the Board by virtue of the general meeting, passing a resolution supported by at least 75% of the members present in person or by proxy and entitled to vote. Not less than 21 (twenty one) clear days' notice shall be given of such meeting and the notice convening the meeting shall clearly state that the question of dissolution of the organisation and disposal of its assets will be considered. Any such voluntary winding up shall be affected in accordance with Section 80 of the Act.

**53.2.** If there is no quorum at such a General Meeting, the meeting shall stand adjourned for not less than 1 (one) week and the Members attending such adjourned meeting shall constitute a quorum.

**53.3.** Upon the dissolution of the Company, after all debts and commitments have been paid, and in the manner determined in accordance with Schedule 1(1)(4)(b) of the Act and Section 30B(8) of the Income Tax Act, its net assets must be distributed to another non-profit organisation that has similar objectives. This may be determined by the members of the Company at or before the time of its dissolution, or, failing such determination, by the court.

**53.4.** For the avoidance of doubt, in accordance with Schedule 1(1)(4)(a) of the Act, no past or present Member or Director of The Company, or person appointing a Director of The Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied.

**53.5.** The liability of members shall for the purposes of this paragraph be limited to the amount of subscriptions due by them to the Company in terms of this document as at the date of dissolution.

**54. SIGNATURES**

**54.1. COMPANY:**

NAME:

ADDRESS:

SIGNATURE:

DATE:

**54.2. OUT OF HOME MEDIA SOUTH AFRICA NPC - REGISTRATION NUMBER: 2014/004036/08**

ADDRESS:

SIGNATURE OF CHAIRMAN/CEO:

DATE:

## APPENDIX 1 - ALTERNATIVE DISPUTE RESOLUTION

### 1. DISPUTE RESOLUTION

Each Party shall be entitled to require the other Party to give reasonable security for the payment of such costs prior to taking any steps to contest any of the terms of this agreement. If the Parties are unable to agree upon the nature or amount of such security, the amount shall be determined by the Mediator/Referee, in consultation with the Parties, in an attempt to reach sufficient consensus. In the event of consensus not being reached, the Mediator/Referee shall have the final decision on the amount and nature of the security.

### 2. CONCILIATION

- 2.1. The Parties to this Alternative Dispute Resolution agreement will avail themselves to a conciliation meeting, facilitated by a mutually agreed to facilitator, to explore the possibility of resolving the issues in dispute prior to going into formal mediation and/or arbitration. This conciliation will be coordinated in the utmost of good faith by all the Parties present.
- 2.2. Should either or any of the Parties not be available for conciliation, the party initiating the proceedings may elect to go directly to Arbitration as out at paragraph 4 below. This election will be formally communicated in writing.

### 3. MEDIATION

- 3.1. The party initiating the proceedings may choose to go directly to Arbitration, without having to explore the option of mediation. This election will take effect upon written notification to the other side.
- 3.2. Any dispute (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) arising out of or pursuant to this agreement including, but not limited to, any dispute or difficulty arising in connection with the interpretation, application and/or effect of any of the terms or conditions contained herein and/or arising out of the termination or cancellation of this agreement or any provisions hereof, and any question to be agreed between the Parties in respect of which no agreement can be reached (hereinafter also included in the term "the Dispute") shall, unless resolved between the Parties to the Dispute, be referred to a practicing Attorney of The Law Society of The Northern Provinces or practicing Advocate at the Johannesburg Bar and nominated by the president of The Law Society of The Northern Provinces, and president of the Johannesburg Bar Council respectively.
- 3.3. Alternatively to paragraph 3.2 above, the Parties, may, by mutual consent, choose to agree as to who the mediator may be. In the event of there not being mutual agreement the terms of paragraph 3.2 above will take effect.
- 3.4. Any person agreed upon or nominated as aforesaid ("the Referee") shall in all respects act as a referee and mediator, and not as an arbitrator. The Referee shall, in consultation with the Parties, be vested with entire discretion as to the procedure and manner to be followed.
- 3.5. The Parties to the Dispute shall use their best endeavours to procure that the decision of the Referee shall be given within 15 (fifteen) business days or as soon thereafter as reasonably possible after it has been demanded, but never later than 30 (thirty) business days.

- 3.6.** The Mediation outcome shall be final and binding on the Parties to the Dispute, and shall be carried into effect and may be made an order of any competent court at the instance of any of the Parties to the Dispute.
- 3.7.** The provisions constitute an irrevocable consent by the Parties to this Agreement, to any proceedings in terms thereof and none of the Parties to a Dispute shall be entitled to withdraw therefrom or claim at any such proceedings that he is not bound by the provisions.
- 3.8.** In the event of Mediation not being successful, the provisions of paragraph 4 below comes into effect.
- 3.9.** The Parties have 5 (five) business days to indicate their intention to the Referee, as to whether they wish to continue with the mediation process, or alternatively proceed with the Arbitration process.
- 3.10.** The Referee will be given within 15 (fifteen) business days to present the Parties with certified copies of the signed settlement agreement.
- 3.11.** The settlement agreement shall be deemed a unanimous resolution of the Parties.
- 3.12.** With the consent of the disputing Parties, the mediation session can go directly to arbitration, with the Referee acting as the Arbitrator.

#### **4. ARBITRATION**

- 4.1.** A dispute between the Parties relating to any matter arising out of this Agreement or the interpretation thereof shall be referred to arbitration, by either of the Parties, by way of a Notice to the other party, in which Notice particulars of the dispute are set out.
- 4.2.** Such arbitration proceedings shall be held in Johannesburg, at a neutral venue, as chosen by the Arbitrator, and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out:
  - 4.2.1.** the usual formalities of procedure (e.g. there shall not be any pleadings or discovery);
  - 4.2.2.** the strict rules of evidence;
- 4.3.** Paragraph 4.2 above is designed to ensure that the process takes place immediately and with a view to its being completed within 14 (fourteen) calendar days after it is demanded.
- 4.4.** The arbitrator for such arbitration proceedings shall:
  - 4.4.1.** if the matter in issue is primarily an accounting matter, be an independent auditor with at least 5 (five) years' experience, agreed upon by the Parties and, failing agreement, nominated by the Chairman for the time being of the institute of chartered accountants; or
  - 4.4.2.** if the matter in issue is primarily a technical matter, be a suitably qualified person agreed upon by the Parties and, failing agreement, nominated by the Chairman for the body governing the profession of the relevant field of expertise within which the technical matter falls; or
  - 4.4.3.** any other matter, be a practicing attorney or advocate, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 5 (five) years'

experience, agreed upon by the Parties and, failing agreement, nominated by the Chairman or president of the Johannesburg Bar Council respectively; or

**4.4.4.** in the event where the Parties are unable to agree whether the nature of a dispute is primarily of an accounting nature, technical nature, or any other nature, then the nature of that dispute shall be decided by a practicing attorney or advocate, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 5 (five) years' experience, agreed upon by the Parties and, failing agreement, nominated by the Chairman for the time being of The Law Society of The Northern Provinces or president of the Johannesburg Bar Council respectively.

**4.4.5.** This paragraph 4.4 to be interpreted in harmony with paragraph 7 below.

**4.5.** The decision of the arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.

**4.6.** The decision of the arbitrator shall be deemed to be a unanimous resolution of the Parties.

**4.7.** No paragraph in this Agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

**4.8.** The Arbitration Act 42 of 1965, as amended, shall apply to any arbitration process set out in this ADR.

**5.** This ADR will be available to the disputing Parties at the sole selection and discretion of the Attorney.

**6.** The sole discretion mentioned at paragraph 5 above, will be available to the Attorney up to a period/time before judgement is handed down in a judicial tribunal.

## **7. SERVICE PROVIDERS**

Should the Parties' dispute be escalated to Arbitration, the Parties agree to utilise the professional services of The Arbitration Foundation of Southern Africa (AFSA) or any other reputable Arbitrator, and/or Arbitration service provider as referred to in the appointment process as set out above. This paragraph 7 to be read with paragraph 4.4 above. Further, this paragraph 7 shall take effect at the sole election of the Attorney.

## **8. SEVERABILITY**

**8.1.** The various provisions of this **Appendix 1** are severable from each other and from the other provisions of this **Appendix 1**, and in the event that any provision in this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this **Appendix 1** shall be fully effective, operative and enforceable.

**8.2.** This Alternate Dispute Resolution Agreement (**Appendix 1**) shall remain effective between the Parties after the termination of the mandate.

**9. SIGNATURES**

**9.1. OUT OF HOME MEDIA SOUTH AFRICA NPC  
FOR / ON BEHALF OF OHMSA**

**Signature:** \_\_\_\_\_

Thus done and signed at \_\_\_\_\_ on this the \_\_ day of \_\_\_\_\_ 20\_\_.

**9.2. COMPANY:**

**Signature:** \_\_\_\_\_

Thus done and signed at \_\_\_\_\_ on this the \_\_ day of \_\_\_\_\_ 20\_\_.

**THE PARTIES CONFIRM BY THEIR SIGNATURE THAT THEY ARE DULY AUTHORISED TO SIGN THIS CONTRACT.**