

COMPANIES ACT, 71 OF 2008

MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY WITH MEMBERS

THE ADVERTISING REGULATORY BOARD NPC

Which is referred to in the rest of this Memorandum of Incorporation as “the Company”.

Without limiting the generality of the powers specifically referred to below, the Company shall, subject to the Memorandum of Incorporation, rules and governing legislation, have the power to do such acts as may be necessary to accomplish the objects referred to herein.

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ADOPTION OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation was adopted by the Board of Directors by virtue of special resolution passed on _____ 2019.

1. INTRODUCTION

- 1.1 The Memorandum of Incorporation in the prescribed form as contemplated in section 13(1)(a)(i) of the Companies Act of 2008 shall not apply to the Company.
- 1.2 In this Memorandum of Incorporation –
- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
 - (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act;
 - (c) words importing any gender included the other genders;
 - (d) the singular includes the plural and vice versa;
 - (e) the headings have been inserted for convenience only and are not for or to assist or affect the interpretation of the content;
 - (f) each of the following words and expressions has the following meaning:
 - i. “the Act” means the Companies Act, 71 of 2008, together with the Companies Regulations, 2011, as amended or substituted from time to time;
 - ii. “the Board” means the board of directors of the Company as constituted from time to time in terms of clause 7.1 below;
 - iii. “the Codes” means the Code of Advertising Practice and/or the Sponsorship Code of Practice, as created by the Board and amended from time to time in terms of this Memorandum;
 - iv. “the Company” means The Advertising Regulatory Board NPC, incorporated under the laws of the Republic with Registration Number;
 - v. “the Income Tax Act” means the Income Tax Act, No 58 of 1962, as amended from time to time;
 - vi. “this Memorandum” means this Memorandum of Incorporation and includes its Schedules, if any, which form part of it;
 - vii. “Person” includes a company or body corporate, a statutory body, a partnership or an association of persons, as the case may be, but specifically excludes any natural person;
 - viii. “the Republic” means the Republic of South Africa.
- 1.3 This Memorandum does not impose any liability on any person for the liabilities or obligations of the Company, in addition to those set out in the Act.

2. INCORPORATION AND NATURE OF THE COMPANY

- 2.1 The Company is incorporated as a non-profit company with members, as defined in the Act.
- 2.2 The Company is incorporated in accordance with, and governed by -
- (a) the unalterable provisions of the Act that are applicable to non-profit companies;
 - (b) the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
 - (c) the provisions of this Memorandum.

3. OBJECTS, VISION, MISSION AND POWERS OF THE COMPANY

- 3.1 The objects of the Company are to:
- 3.1.1 self-regulate the content of advertising in South Africa with quality decisions and fair process;
 - 3.1.2 be a securely funded centre of excellence for self-regulation of advertising and associated industry needs and determine whether advertising contravenes the Code of Advertising Standards;
 - 3.1.3 address and fill the lacuna left by the liquidation of the Advertising Standards Authority of South Africa (1995/000784/08), which lacuna creates a risk that consumers will be exploited, and the advertising and marketing industry will be brought into disrepute;
 - 3.1.4 adopt and enforce, as far as reasonably possible, the existing and established Code of Advertising practice in the Republic (as administered until now by the Advertising Standards Authority of South Africa (1995/000784/08)), which sets out the rules which the marketing and advertising industry agree to follow, which indicates to the consumer and the public the steps that are taken to ensure, through self-imposed regulation, that advertisements can be trusted, and which provides a system of recourse for those who may have been harmed or prejudiced by an advertisement;
 - 3.1.5 encourage all persons, corporations or organisations, or anybody to which they may be affiliated, and which are concerned with:
 - the preparation, printing, broadcasting or dissemination of advertising;
 - sponsorship;
 - the marketing of goods, whether corporeal or incorporeal, or services;
 - the protection of consumers or industry.to become Members of the Company.

- 3.2 The members of the Company declare that:
- 3.2.1 They regard themselves as bound by, and hereby adopt as precedent, the principles of the decision-making organs of the Advertising Standards Authority of South Africa (1995/000784/08), as at the date that the aforementioned ceased to trade; and
 - 3.2.2 All existing, binding decisions of the decision-making organs of the Advertising Standards Authority of South Africa (1995/000784/08) will continue in force and effect and will be given effect to by the Company.
 - 3.2.3 They regard themselves as bound by, and undertake to bind their members, to the jurisdiction of the Company and the provisions of the Code of Advertising Practice. For the avoidance of doubt, the members acknowledge that any reference in the Advertising Code of Practice to the Advertising Standards Authority will be read as if it refers to the Company, *mutatis mutandis*.
- 3.3 The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.
- 3.4 Except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification as contemplated in section 19(1)(b)(ii) of the Act.
- 3.5 The Company is not subject to any restriction contemplated in section 15(2)(b) or (c) of the Act.

4. RULES AND AMENDMENT OF MEMORANDUM OF INCORPORATION

- 4.1 The Board may not make Rules for the Company, as contemplated in section 15(3) to (5) of the Act and the authority of the Board is limited and restricted accordingly by this Memorandum of Incorporation.
- 4.2 This Memorandum may be altered or amended only in the manner set out in sections 16, 17 or 152(6)(b) of the Act and subject to the approval of the requisite majority of directors as contemplated in clause 6.3 below.
- 4.3 The Board must publish a notice of any alteration of this Memorandum, made in terms of section 17(1) of the Act within 10 (ten) business days after being approved by the Board, by delivering a copy of those alterations to each Member by electronic communication or by ordinary mail.

5. OPTIONAL PROVISIONS OF THE COMPANIES ACT, 2008

5.1 Annual financial statements

The Company elects to voluntarily audit its annual financial statements as provided for in section 30(2)(b)(ii) of the Act.

5.2 Auditor

For purposes of the audit of its annual financial statements, the Company will appoint an auditor and comply with the provisions of Part C of Chapter 3 of the Act.

5.3 Other

But for the above, the Company does not elect, in terms of section 34(2) of the Act, to comply voluntarily with any of the other provisions of Chapter 3 of the Act.

6. MEMBERS

6.1

(a) Members may be any commercial entity which represents any sector that is concerned with or engaged in advertising, commercial sponsorship or other means of marketing communication, and who has made written application to the Company for membership and such application has been approved by the Board.

(b) The Board may, on good cause and at the board's discretion, allow Members who do not meet the aforesaid criteria. Such exceptional Members will not, however, be automatically entitled to sit on the Board or Committees. Such representation will be at the sole discretion of the Board, and recognition of one exceptional Member in tis regard will not create an expectation that any future exceptional Member may expect the same benefits.

6.2 Every Member is obliged to comply with the provisions of this Memorandum and the rights of each Member are, amongst other things, to:

(a) vote at every general meeting of the Company, except where any of the clauses provides otherwise; and

(b) contribute to the accomplishment of the objectives of the Company, within the limits of their skills and commitments.

6.3 Persons wishing to apply for membership of the Company must make application to the Board in a manner and on an application form as the Board prescribes from time to time. In this respect, applications for membership must be submitted to the CEO and must be accompanied by any documents likely to assist the Board in considering the application. An application for membership of the Company will include an undertaking by the applicant to

subscribe to and be bound by this Memorandum, the Company's policies as laid down (including "general standards, ethics and practice"), the Codes and such ethical standards as are laid down by any entity to which the Company is a subscribing member.

- 6.4 The decision to admit an applicant for membership, to decide the class of membership of the applicant or to reject the application is at the sole and absolute discretion of the Board. The decision of the Board in this regard is final and binding and there is no basis of any appeal against such decision.
- 6.5 An applicant for membership will be admitted with the consent of the Board, provided that the applicant pays to the Company the current annual subscription or funding undertaking as determined by the Board from time to time. If any Member is indebted to the Company in respect of membership fees, which are due and payable, the Board may, at its sole discretion, suspend the membership of that Member as contemplated in clause 6.6 below.
- 6.6 The Board has the power to suspend a Member's membership of the Company by resolution which is supported by a 75% (seventy five percent) majority of the votes exercised thereon by the directors if:
 - (a) its annual subscription, if applicable, or any other sum due to the Company is in arrears;
 - (b) in the sole discretion of the Board, that Member is guilty of conduct inimical to the interests and/or objects of the Company; or
 - (c) in the sole discretion of the Board, it is inimical to the interests of the Company that that Member should continue as a Member of the Company.
- 6.7 The Board may at any time and in its sole discretion lift the suspension of membership of a Member as envisaged above if approved by resolution which is supported by a 75% (seventy five percent) majority of the votes exercised thereon by the directors.
- 6.8 While the membership of a Member is suspended as envisaged above for whatever reason, such Member is not be entitled to attend and to vote at any meeting of Members for the duration of such suspension.
- 6.9 At the first meeting of Members following the suspension of a Member as envisaged in clause 6.6 above, and unless the suspension of the relevant Member has been lifted by the Board as envisaged in clause 6.7 above, the Board may put a recommendation, together with a detailed motivation, to the Members for a termination of the membership of that Member, which termination will take immediate effect if approved by special resolution of the Members.
- 6.10 A Member whose membership has been suspended or terminated remains liable for all sums that may at the date of suspension and/or termination of its membership be due by it to the Company and is not entitled to any refund of subscription monies already paid, nor will it have any claim against the Company or its officers, its property or its funds.

- 6.11 A Member ceases to be a member of the Company if:
- (a) its membership is terminated in terms of clause 6.9 above;
 - (b) upon the deregistration or winding up of a Member or the issue of a final order of liquidation in respect of the Member concerned; or
 - (c) upon its resignation in terms of clause 6.12 below; and
- A termination of membership will take effect immediately after notice in writing to the Member concerned, or acceptance of such resignation, as the case may be.
- 6.12 Any Member may resign by giving at least 12 (twelve) months written notice to the Board.
- 6.13 Once membership has been terminated, Members lose all of their rights and benefits in respect of the Company. In the event of a person wishing to be reinstated as a Member, such person is obliged to submit a new application on the basis set out in clause 6.3 above.
- 6.14 Upon the cessation of membership of a Member, the Board has, in its discretion, the right to notify all persons with an interest therein, whether Members of the Company or not, that the membership of the Member in question has been terminated and the Member hereby consents to such notification and will have no claim against the Company for any damages or loss of business that the Member may suffer or incur as a result of such notification.
- 6.15 The Members hereby acknowledge that the Company has locus standi and an interest in preventing a Member whose membership has ceased from representing that it is a Member of the Company, and the Company is accordingly be entitled to an interdict against such former Member who persists or threatens to persist in making any such representation.
- 6.16 Members of the Company may not assign or transfer their membership to the Company to any person.
- 6.17 The Company shall have one class of membership.
- 6.18 The right of a Member of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a) of the Act is not limited, restricted or varied by this Memorandum.
- 6.19 A Member's proxy may not delegate the proxy's powers to another person, as set out in section 58(3)(b) of the Act and the proxy's authority is thus limited and restricted accordingly by this Memorandum.
- 6.20 A Member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Member's rights at a Members' meeting, as contemplated in section 58(3)(c) of the Act, by no later than 48 (forty eight) hours before the start of the meeting. Late submissions may only be accepted with the written approval of the chairman of the meeting, whose decision will be in his sole discretion and will be final and binding.
- 6.21 Subject to clause 6.18 above, the authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising any voting right of the Member, as set out in section 58(7) of the Act, is not limited or restricted by this Memorandum.

- 6.22 If, at any time, the Company's Board fails to determine a record date, as contemplated in section 59 of the Act, the record date for the relevant matter is as determined in accordance with section 59(3) of the Act.
- 6.23 The Company elects to convene annual general meetings as contemplated in section 61(7) of the Act.
- 6.24 The right of Members to requisition a meeting, as set out in section 61(3) of the Act, may be exercised by at least 25% (twenty five percent) of the voting Members, as provided for in that section.
- 6.25 The authority of the Company's Board to determine the location of any Members' meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) of the Act, is not limited or restricted by this Memorandum.
- 6.26 The Company must deliver a notice of a Members' meeting to the Members, as required by section 62 of the Act, at least 10 (ten) business days prior to the date of the meeting.
- 6.27 The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act is not limited or restricted by this Memorandum.
- 6.28 The quorum requirement for a Members' meeting to begin, or for a matter to be considered are as set out in section 64(1) of the Act, subject to a majority of the Members or their duly appointed representatives being present at the commencement of and throughout the meeting. Notwithstanding the foregoing, if the Company has more than 2 (two) Members, there must at all times be at least 3 (three) Members present at the meeting as required by section 64(3)(a) of the Act.
- 6.29 The authority of a meeting to continue to consider a matter, as set out in section 64(9) of the Act, is limited or restricted by the provisions of clause 6.29 above.
- 6.30 If within 30 (thirty) minutes after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, will be dissolved; in any other case it shall stand adjourned for 1 (one) week as contemplated in section 64(4) of the Act and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Members present in person or by proxy at such adjourned meeting will be a quorum.
- 6.31 Voting at any meeting of Members will be done by way of ballot and it will be taken as the chairman of the meeting directs and the result of the ballot will be the resolution of the meeting. The chairman of the meeting may appoint scrutineers to determine the result of the ballot.
- 6.32 In the case of an equality of votes the chairman of the meeting does not have a second or casting vote and the resolution will fail.
- 6.33 At any meeting of Members, each Member will have one vote.

- 6.34 For an ordinary resolution to be adopted at a Members' meeting, it must be supported by more than 50% (fifty percent) of the votes exercised on the resolution.
- 6.35 For a special resolution to be adopted at a Members' meeting, it must be supported by at least 75% (seventy five percent) of the votes exercised on the resolution.
- 6.36 A special resolution adopted at a Members' meeting is required for the matters to be determined by the Members as listed below, in addition to those matters set out in section 65(11) of the Act:
- the approval of the termination of membership of a Member as recommended by the Board and contemplated in clause 6.9 above;
- 6.37 Any matter that requires approval by Members may be approved by Members at a duly constituted meeting of Members or by way of round robin resolution as contemplated in section 60 of the Act.
- 6.38 It is recognised that the Founding Members of the Company are the following:
- The Association for Communication and Advertising (ACA)
 - The Marketing Association of South Africa (MASA)
 - IAB South Africa (IAB)

7. DIRECTORS AND OFFICERS

7.1 Composition of the Board of Directors

- (a) The Board must at all times comprise of not less than 4 (four) and not more than 11 (eleven) directors.
- (b) Directors are to be appointed as follows at the Annual General Meeting:
- i. each Founding Member may nominate 2 (two) individuals as directors to the Board.
 - ii. each Full Member may nominate 1 (one) individual for appointment as director to the Board.
 - iii. An independent person as nominated by the Board, who is not to be perceived to be biased in any way, can be appointed by the Members to the Board at an Annual General Meeting.
 - iv. The Chief Executive Officer of the Company will be an *ex officio* director. The Chief Executive Officer must not be a representative of any Member and must be appointed by the Board on such terms as and conditions as may be determined from time to time by the Board; and
 - v. At a general meeting, the Members may appoint additional directors, provided that the directors in total do not exceed the maximum number of directors stipulated in this Memorandum.

- (c) Subject to the provisions of clause 7.1(b) above, the Board must, from amongst their number, elect one or more office bearers as deemed necessary including, but not limited to, a chairperson and a deputy chairperson.
- (d) Subject to the requirements as set out in clause 7.1(b) above, apart from satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director of the Company, a person need not satisfy any further eligibility requirements or qualifications.
- (e) The directors appointed in terms of clauses 7.1(b)(i), (ii), (iii) and (v) above will be appointed for a limited period and will retire from office on the following basis:
 - i. at least 50% (fifty percent) of the directors appointed in terms of clauses 7.1(b)(i), (ii) and (v) shall retire at each annual general meeting and will, if eligible and willing to act, be available for re-election;
 - ii. the independent director appointed in terms of clause 7.1(b)(iii) will be appointed for a 2 (two) year period and will stand down at the first annual general meeting following this period and will, if eligible and willing to act, be available for re-election;
 - iii. the directors to retire in terms of clause 7.1(e)(i) above, will be those who have been longest in office since the last election but, as between persons who were elected as directors on the same day, those to retire will, unless they otherwise agree among themselves, be determined by lot;
 - iv. in the event of no nominations made by either the Members as contemplated in clause 7.1(b)(i) or the Board as contemplated in clauses 7.1b(ii) and/or (iii), the directors standing for re-election will be deemed to have been re-appointed and there will be no requirement for voting to take place in respect of their re-election.

7.2 Authority of the Board

Subject to the provisions of clause 7.3 below, the authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Act is not limited or restricted by this Memorandum.

7.3 Board meetings

- (a) The authority of the Board to consider a matter other than at a meeting as set out in section 74 of the Act is not limited or restricted by this Memorandum on condition that the resolution is signed and approved by a majority of the directors in office from time to time.
- (b) The chairman of the Board or any 2 (two) directors have the authority to requisition a meeting of the Board, despite the provisions of section 73(1) of the Act.
- (c) The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Act is not limited or restricted by this Memorandum.

- (d) 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 Memorandum.
- (e) The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) of the Act is not limited or restricted by this Memorandum.
- (f) The quorum requirement for a directors meeting to begin, being a majority of directors being present at the meeting, the voting rights at such a meeting, being one vote per director and the requirements for approval of a resolution at such a meeting, being by way of a simple majority unless otherwise provided in this Memorandum of Incorporation, are as set out in section 73(5) of the Act.

7.4 Indemnification of Directors

- (a) The authority of the Board to advance expenses to a director, or indemnify a director in respect of legal proceedings, as set out in section 78(3) of the Act, is not limited or restricted by this Memorandum.
- (b) The authority of the Board to indemnify a director in respect of liability, as set out in section 78(5) of the Act, is not limited or restricted by this Memorandum.
- (c) The authority of the Board to purchase insurance to protect the Company, or a director, as set out in section 78(6) of the Act, is not limited or restricted by this Memorandum.
- (d) The provisions of clauses 7.4(a) to (c) above shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board.

7.5 Officers and Committees

- (a) The Board may appoint any officers it considers necessary to better achieve the objects of the Company.
- (b) The authority of the Board to appoint committees of directors, and to delegate to any committee any of the authority of the Board as set out in section 72(1) of the Act, or to include in any committee persons who are not directors, as set out in section 73(2)(a) of the Act is not limited or restricted by this Memorandum.
- (c) The following industry committees will be appointed by the Board but are not Board Committees as contemplated by the Act:
 - Advertising Appeals Committee which will be regulated by the Code of Advertising Practice;
 - Final Appeal Committee which will be regulated by the Code of Advertising Practice.
- (d) The authority of a committee appointed by the Board, as set out in section 72(2)(b) and (c) of the Act is not limited or restricted by this Memorandum.

7.6 Establishment and amendments to the Codes

- (a) The Board may amend the Code of Advertising Practice for approval by Members by ordinary resolution.
- (b) The Board may delegate its power to recommend amendments to the Codes to the Code Review Committee. This Committee will be vested with powers to recommend code amendments to the Members in general meeting who will approve such changes by way of ordinary resolution.
- (c) Invitations for proposals to amend the Codes should not only be extended to Members, but to anyone likely to be affected.
- (d) The Members may nominate 1 (one) representative each to serve on the Code Review Committee, subject to ratification by the Board. Such nominations will take place at the Annual General Meeting. The representation will run for 1 (one) year after the date of ratification by the Board, and not from the date of their initial nomination.
- (e) The Code Review Committee will be entitled to co-opt any interested party.
- (f) The chairman of the Board will be an *ex officio* member of the Code Review Committee.
- (g) The chairman of the Board, and in their absence, the Chief Executive Officer, will preside as the chairman of the Code Review Committee.
- (h) If both the chairman and the CEO are unavailable for a meeting of the Code Review Committee, the members of that Committee will elect a member of that Committee as a chairman.

8. PUBLIC BENEFIT ORGANISATION

- 8.1 The Board will, if and when deemed appropriate, submit an application to the South African Receiver of Revenue to be registered as a public benefit organisation ("PBO") as provided for in terms of section 30 of the Income Tax Act.
- 8.2 In order for the Company to comply with the requirements relevant to a PBO and for the period while it is so registered, it is expressly agreed that:
 - 8.2.1 the sole object of the Company as described in this Memorandum will at all times be to carry on one or more public benefit activity as defined in section 30(1) of the Income Tax Act;
 - 8.2.2 no activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company otherwise than by way of reasonable remuneration;
 - 8.2.3 at least 85% (eighty five percent) of the Company's activities measured either in cost or time spent, will be carried out for the benefit of persons in the Republic;

- 8.2.4 at least three directors will not be connected persons in relation to each other and no single director will directly or indirectly control the decision making powers relating to the Company;
- 8.2.5 the funds of the Company will be used solely for the objects for which it was established or will be invested with a financial institution as defined in section 1 of the Financial Services Board Act No 97 of 1990, as amended or replaced from time to time;
- 8.2.6 the Company will not carry on any business undertaking or trading activity unless specifically permitted in terms of section 30(3)(b)(iv) of the Income Tax Act;
- 8.2.7 no remuneration will be paid to any employees, office bearer or other person which in the opinion of the Board is excessive, having regard to what is reasonable in the sector in relation to the services rendered;
- 8.2.8 the Company will not economically benefit any person in a manner that is inconsistent with its objects as described in this Memorandum; and
- 8.2.9 to the extent that the Income Tax Act is amended so as to delete, change or add to any of the above requirements, then this clause 8 shall be deemed to be altered to reflect such deletion, change or addition.

9. PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY

The income and property of the Company, howsoever derived, will be applied solely towards the promotion of its objects, provided that nothing herein contained will prevent the payments as contemplated in Item 1(3) of Schedule 1 of the Act.

10. DISSOLUTION OR WINDING-UP

- 10.1 If upon the winding up, deregistration or dissolution of the Company, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, that property will not be paid to or distributed among the directors or other members of the Company or component bodies nominating directors to the Board, but will be given and transferred to some other entity which has been approved as a public benefit organisation in terms of section 30 of the Income Tax Act, to be determined by the Board at or before the time of deregistration or dissolution.
- 10.2 In the absence of a determination by the Board as contemplated in clause 10.1 above, such determination will be made by the court as contemplated in Item 1(4)(b)(ii)(cc) of Schedule 1 of the Act.

10.3 For the purpose of carrying to its final termination the dissolution process of the Company, and notwithstanding anything to the contrary in this Memorandum, the persons then constituting the Board will remain in office until the earlier of the final termination, on the one hand, or on the other their deaths or other disqualification in terms of this Memorandum. If vacancies occur, resulting in there being less directors than are needed to establish a quorum, then the remaining directors will form a quorum.

11. DISPUTE RESOLUTION

11.1 If any dispute arises out of or in connection with this Memorandum, or related thereto, whether directly or indirectly, including the enforcement of the provisions hereof, the Board may, in its sole discretion, refer such dispute for resolution by way of arbitration.

11.2 A dispute within the meaning of this clause exists once the Board notifies the relevant parties in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.

11.3 Within 10 (ten) business days following such notification, the matter will be referred to arbitration as envisaged in the clauses below.

11.4 The arbitration will be held as an expedited arbitration in accordance with the then current rules for expedited arbitration of the Arbitration Company of Southern Africa ("AFSA") by 1 (one) arbitrator appointed by agreement between the Board and the relevant disputing party/ies. If the parties cannot agree on the arbitrator within 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator will be appointed by the Secretariat of AFSA.

11.5 The decision of the arbitrator will be final and binding on all parties and there will be no further right of appeal.

11.6 The provisions of this clause will not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters pending finalisation of this dispute resolution process.

12. NOTICES

12.1 All notices intended or required to be given by the Company to any Member will be given in writing either:

- (a) personally; or
- (b) by Electronic Communication.

12.2 Each Member of the Company:

- (a) will notify in writing to the Company an address, which address will be his registered address for the purposes of clause 12.1(b) and if it has not named an address it will be deemed to have waived its right to be served with notices; and
- (b) in the event of a Member notifying the Company of an address in terms of this clause 12.2, the Company will be entitled to send all notices to either (or both) of the addresses so notified to the Company and provided that it does so it will have complied with its obligations to give notice to the Member concerned.

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

13. ADVERTISING APPEALS COMMITTEE

13.1 The Board appoints the Advertising Appeals Committee and delegates to it the powers and functions as set out in the Code of Advertising Practice including the right to co-opt.

13.2 The quorum for a meeting of the Advertising Appeals Committee will be 4 (four) members, including the Chairperson of the Advertising Appeals Committee.

13.3 Representation on the Advertising Appeals Committee is determined on the following basis: Members may nominate 2 (two) representatives each to serve on the Advertising Appeals Committee, all of whom will serve. These nominations will occur at a general meeting and will be ratified by the Board. The representation will run for a period of 3 (three) years after the date of ratification by the Board, and not from the date of their initial nomination.

13.4 The Advertising Appeals Committee will have the right to co-opt any specialist or expert in relation to the subject matter of the Appeal.

13.5 At the first meeting of the Board, and after every subsequent Annual General Meeting, the Advertising Appeals Committee will be ratified by the Board.

13.6 The Chairperson of the Advertising Appeals Committee will be appointed by the Board. The Chairperson must be independent practising advocate. In the absence of the Chairperson, the Directorate of the Company will source a suitably qualified alternated Chairperson.

13.7 Vacancies on the Advertising Appeals Committee will be filled by the organisation that nominated the retiring member, and will be ratified by the Board.

13.8 If the position of Chairperson is vacated, the Board will have the power to fill the vacancy in the Committee. The appointment of any such Chairperson will terminate at the conclusion of the next Annual General Meeting, unless such Chairperson's re-appointment is confirmed at that Annual General Meeting.

13.9 At meetings of the Advertising Appeals Committee, voting will be by a show of hands and matters will be decided by a majority vote of the tribunal members present. Where an equality of votes occurs, the Chairperson concerned will have a casting vote in addition to his/her deliberative vote.

14. FINAL APPEAL COMMITTEE

14.1 The Board appoints the Final Appeal Committee and delegates to it the powers and functions as set out in the Code of Advertising Practice, including the right to co-opt.

14.2 The quorum for a meeting of the Final Appeal Committee shall be 3 (three) members, including the Chairman.

14.3 The Chairperson of the Final Appeal Committee will be appointed by the Board and will serve for a period of 5 (five) years. This term may only be renewed by the Board once.

14.4 The Chairperson will be independent and will be a practising or retired legal practitioner or judicial officer of at least 10 (ten) years standing.

14.5 Representation on the Final Appeal Committee is determined on the following basis:

14.5.1 The Chairperson of the Final Appeal Committee will be a member of the Final Appeal Committee and will preside as Chairperson of this committee.

14.5.2 **Members** will be entitled to nominate 1 (one) representative each to serve on the Final Appeal Committee, subject to ratification by the Board. These nominations will occur at a general meeting and will be ratified by the Board. The Full Members' representation will run for a period of 3 (three) years after the date of ratification by the Board, and not from the date of their initial nomination.

14.5.2 **Public bodies** of note serving the public interest may nominate 1 (one) representative. This representative may also be an independent individual of note. Nominations will occur at a general meeting and will be ratified by the Board.

14.6 Serving members of the Advertising Appeals Committee may not serve on the Final Appeal Committee. It is, however, a requirement that as far as is possible, new members for the Final Appeal Committee nominated by the Members must previously have served on either the previous Advertising Standards Committee or Advertising Industry Tribunal, or the Advertising Appeals Committee.

14.7 At the first meeting of the Board, and after every subsequent Annual General Meeting, the Final Appeal Committee will be ratified by the Board.

14.8 Vacancies occurring in the membership of the Final Appeal Committee between one Annual General Meeting and another will be filled by a nominee of the interest represented and will be ratified by the Board or, in the case of a co-opted member, by co-option.

14.9 In the case of a vacancy of other members, the Board will have the power to fill such vacancy in the Committee. The appointment of any such member will terminate at the

conclusion of the next Annual General Meeting, unless the member's re-appointment is confirmed at such Annual General Meeting.

- 14.10 If the Chairperson is unavailable for a meeting of the Final Appeal Committee, the Chairperson may nominate a person with legal qualifications and experience to preside as Chairperson. Should the President be unable to nominate an alternate, the Chairperson of the Board will make the nomination of his/her behalf.
- 14.11 In any appeal, the members of the Final Appeal Committee, elected and co-opted, will sit with the Chairperson (or his/her nominee) as full voting members (i.e. not merely as assessors) of the Appeal Committee.
- 14.12 Whenever the Chairperson (or his/her nominee) presides at a meeting of the Final Appeal Committee, he/she must be paid, in addition to any other payment or retainer which he/she may receive from the Company, a session fee to be determined from time to time
- 14.13 At a meeting of the Final Appeal Committee, voting will be by a show of hands. Appeals will be decided by the majority vote of elected and co-opted Members present. Where an equality of voting occurs, the Chairman of the Final Appeal Committee will have a casting vote in addition to his/her deliberative vote.

Signed on _____ 2019:

CHRISTOPHER MARK BORAIN

GAIL DIANE SCHIMMEL VAN ONSELEN

MICHAEL NORMAN GENDEL

DANIEL PADIACHY