

Republic of South Africa

Companies Act, 2008

**MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY**

Name of company: MALUTI FM 971 NPC

Registration No.: 2020/892615/08

This MOI was revised and adopted and passed by Special Resolution on 2 December 2020 in substitution for the existing memorandum of incorporation of the Company.

## 1. INTERPRETATION

In this MOI:

1.1. words which are not otherwise defined in clause 1.2 below shall, if capitalised in the MOI, bear the same meaning in this MOI as in the Companies Act;

1.2. unless the context otherwise requires:

1.2.1. "Applicable Legislation" means:

1.2.1.1. the Companies Act, 2008;

1.2.1.2. any legislation applicable from time to time to the community broadcasting field, and to training provided in that field;

1.2.2. "Board" means the board of directors of the Company as constituted from time to time in terms of this MOI;

1.2.3. "Companies Act" means the Companies Act, 2008, as amended or any legislation which replaces it;

1.2.4. "Company" means Maluti FM 971 NPC or by whatever other name it may be known from time to time;

1.2.5. "Deliver" or "Delivery" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 30 and the Companies Act;

1.2.6. "Electronic Address" means in regard to Electronic Communication, any email address furnished to the Company by any Member;

1.2.7. "Management Committee" means the committee to be appointed in accordance with clause 17 below, having the powers, duties and responsibilities with respect to the implementation of organisational decisions as may be delegated to it by the Board from time to time;

1.2.8. "General Meeting" means any ordinary or extraordinary meeting of the Members (i.e. any meeting other than the annual general meeting);

1.2.9. "Ineligible or Disqualified" means, in respect of any Director, members of a Board Committee and/or Prescribed Officers, ineligible or disqualified as contemplated in the Companies Act;

1.2.10. "Member" means registered voting members of the Company;

1.2.11. "Membership" means membership of the Company;

1.2.12. "MOI" Means this Memorandum of Incorporation;

1.2.13. "Nominations Committee" means the committee to be appointed in accordance with clause 16 below, having powers, duties and responsibilities with respect to appointments of Directors to the Board, the admission of potential Members and termination of Membership as set out in this MOI;

1.2.14. "Regulations" means regulations published pursuant to the Companies Act;

1.2.15. "Rights" means those rights granted to a particular category of Members pursuant to clause 11 below and/or any additional rights granted to such category of Member in terms of Applicable Legislation; ,

1.2.16. "Round Robin Resolution" means:

1.2.16.1. in respect of Members, a resolution passed other than at a General Meeting, which:

1.2.16.1.1. was submitted for consideration to the Voting Members; and

1.2.16.1.2. was voted on by the requisite percentage of the Voting Members (as contemplated in clause 12.27) by signing a resolution in counterparts within 20 (twenty) Business Days after the resolution was submitted to them, and

1.2.16.1.3. includes written polling of Voting Members regarding the election of the Board;

1.2.16.2. in respect of the Board, a resolution passed other than at a meeting of the Board, which:

1.2.16.2.1. was submitted to each Director for consideration; and

1.2.16.2.2. was approved in writing by such number of Directors as may constitute a majority of members of the Board, being not less than a quorum of Directors, signing such resolution in counterparts, within 20 (twenty) Business Days after the resolution was submitted to them;

1.2.17. "Voting Members" means Members

1.2.17.1. being subscribers to the MOI; or

1.2.17.2. who qualified for and were accepted as Voting Members pursuant to clause 11.5.1 below, having the Rights, privileges and obligations provided for in respect of Members by this MOI, and "Voting Member" shall mean any one of them, as the context may indicate;

1.2.18. "Writing" includes Electronic Communication but as regards any Voting Members, only to the extent that such Members have notified the Company of an Electronic Address;

1.3. references to "Voting Members represented by proxy" shall include Members entitled to vote and represented by an agent appointed under a general or special power of attorney;

1.4. references to "Present at the General Meeting" shall include juristic persons represented by a duly authorised representative acting in the manner prescribed by the Companies Act;

1.5. all references to "section(s)" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;

1.6. the headings are for reference purposes only and shall not affect the interpretation of this  
MOI;

1.7. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);

1.8. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;

1.9. to the extent that item 4 of Schedule 5 to the Companies Act may permit this MOI to prevail if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act; and

1.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## **2. CALCULATION OF BUSINESS DAYS**

2.1. When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:

2.2. excluding the day on which the first such event occurs

2.3. including the day on or by which the second event is to occur; and

2.4. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

## **3. NON-PROFIT COMPANY**

The Company is a Non-Profit Company and the provisions of Schedule 1 to the Companies Act shall apply to the Company.

## **4. INCORPORATION CLAUSE**

The Incorporators of the Company for purposes of Item 3(b) to Schedule 1 of the Companies Act shall be Elisabeth Francina Mielmann, George Frederick van der Merwe, Henry Downing and Derek O'Connor.

## **5. MAIN PURPOSE AND OBJECTS OF THE COMPANY**

5.1. The main purpose of the Company is as a community radio station.

5.2. The main objects of the Company are as follows:

5.2.1. to broadcast to the community in order to inform, educate and entertain;

5.2.2. to promote community events;

5.2.3. to become a voice for the community and actively participate in community events;

5.2.4. to actively consider and encourage transformation and social development throughout the community, by developing and participating in transformative projects and initiatives; and

5.2.5. to generally encourage a broad culture of humanity within the context of a transformed, vibrant, and world class service.

5.3. In promoting the main objects as referred to above and implementing its mandate on behalf of the Members, the Company shall itself observe and promote the following guiding principles with respect to its operations, having regard to the best interests of community radio and the general public:

5.3.1. advance the rights and responsibilities of all people;

5.3.2. promote continuous improvement and quality in radio broadcasting and related training;

5.3.3. encourage a commitment to equal opportunity;

5.3.4. promote discussion of local and international affairs in order to inform, educate and entertain the community;

5.3.5. promote attention to local community needs and projects;

5.3.6. act with integrity and the highest standards of good governance in its operations and industry associations;

5.3.7. neither claim, nor accept, fees or the reimbursement of costs without a service having been delivered, or a cost incurred, of appropriate value to the client;

5.3.8. seek to contribute to the development of a world class communications industry

5.4. Notwithstanding anything to the contrary herein contained the Company shall, in exercising any of its powers herein, be deemed to be acting in the furtherance of its objects as set forth herein.

## **6. POWERS AND CAPACITY OF THE COMPANY**

6.1. The Company has the powers and capacity of an individual, save for the following limitations and/or specific powers, which the Members may rely upon against the Board, namely:

6.1.1. The Company may not distribute *in specie* or in kind any of its assets among the Members;

6.1.2. the Company must apply all its assets and income, however derived, to advance the main objects of the Company;

6.1.3. subject to clause 6.1.2, the Company may:

6.1.3.1. acquire and hold securities issued by a profit company;

6.1.3.2. directly or indirectly, alone and with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects; and

6.1.4. the Company shall be entitled to:

6.1.4.1. form and have an interest in any other company or companies having the same or similar objects to the Company, for the purpose:

6.1.4.1.1. of acquiring the undertaking, or all or any of the assets or liabilities of such other company or companies, or for any other purpose which may seem directly or indirectly calculated to benefit the Company and/or to promote and advance the main objects of the Company; and

6.1.4.2. amalgamate, liaise, and co-operate with any other companies, trusts or other legal Entities having the same or similar objects to the Company;

6.1.4.3. take part in the management, supervision and control of the business or other operations of any other Entities having the same or similar objects to the Company;

6.1.4.4. enter into joint ventures or partnerships with any other Entities having the same or similar objects to the Company;

6.1.4.5. remunerate any person in cash, or in kind, for services rendered in its formation or in the development or conduct of its activities, including payment of reasonable fees and charges for professional services rendered as aforesaid;

6.1.4.6. make grants and donations in pursuance of its main objects, provided that no such grants or donations may be made to Members or the Board; and

6.1.4.7. pay staff salaries, pensions, and other benefits, and to establish pension and incentive schemes, in respect of employees.

6.2. In addition to the powers and capacities of the Company as set out in clause 6.1 above, the following special conditions shall apply to the Company:

6.2.1. the Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any incorporator or any Person who is a Member or Director, or person appointing a Director, except:

6.2.1.1. as reasonable:

6.2.1.1.1. remuneration for goods delivered or services rendered to, or at the direction of, the Company; or

6.2.1.1.2. payment of, or reimbursement for, expenses incurred to advance the main objects of the Company;

6.2.1.2. as a payment of an account due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;

6.2.1.3. as 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 main objects of the Company; or

6.2.1.4. in respect of any binding legal obligation on the Company;

6.2.2. despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company:

6.2.2.1. no past or present Member or Director, or person appointing a Director, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

6.2.2.2. the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts:

6.2.2.2.1. having objects similar to the Company's main objects; and

6.2.2.2.2. as determined:

6.2.2.2.2.1. in terms of the MOI;

6.2.2.2.2.2. by the Members or the Board, at or immediately before the time of the Company's dissolution; or

6.2.2.2.2.3. by the court, if the MOI, the Members or the Board fail to make such a determination;

6.2.3. the Nominations Committee may apply to the court, on behalf of the Company, for a determination contemplated in clause 6.2.2.2.2.3 if the Company has:

6.2.3.1. no remaining Members or Board; and

6.2.3.2. failed to:

6.2.3.2.1. make a determination contemplated in clause 6.2.2.2.2.2; or

6.2.3.2.2. apply to the court for such a determination;

6.2.4. each Member undertakes to contribute to the assets of the Company an amount determined by the Board (but not exceeding R100.00 (one hundred rand)), in the event of the Company being wound up, either while he is a Member or within 1 (one) calendar year thereafter, for the purpose of payment of the debts and liabilities on the Company contracted before he ceased to be a Member, and for the payment of the costs, charges and expenses of the winding-up, and for the adjustment of the rights and the contributories amongst themselves.

6.3. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a company to do if so authorised by its MOI.

## **7. AMENDMENTS TO THE MOI**

7.1. The Board is empowered to correct errors in this MOI substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in accordance with section 17(1) of the Companies Act. All other amendments to the MOI shall be effected in accordance with section 16(1) of the Companies Act.

7.2. The Board shall publish a notice of any correction effected by the Board or amendment effected in accordance with section 16(1) of the Company's Act on the Company's web site or by any other

method of publication as may be determined by the board, and shall file the notice of amendment to the MOI with the ICASA.

7.3. Any provision of the MOI, or an agreement is void to the extent that it is inconsistent with, or purports to limit, set aside or negate the effect of section 159 of the Companies Act.

## **8. THE MAKING OF RULES**

The Board shall ensure that the standard statutory rules are applied within the Company Standards of Conduct; Company Policies; Company Broadcasting Policies and Operational Procedures. The Board shall take cognisance of and apply the relevant guidelines of the King Report on Corporate Governance, especially as it pertains to an NPO.

## **9. FINANCIAL YEAR**

The financial year of the Company shall commence on 1 March and terminate on the last day of February each year.

## **10. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

10.1. The Board shall cause to be kept such Accounting Records as are prescribed by the Companies Act, in order to fairly present the state of affairs and business of the Company and to explain the transactions and financial position of its trade or business. The Accounting Records shall be accessible from the Company's Registered Office or at such other place as the Board may deem fit.

10.2 The Company shall prepare its Financial Statement in accordance with the provisions prescribed by the Companies Act.

10.3. The Board shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the regulations published under the Companies Act, the documents which Members are entitled to inspect and take copies of (being the MOI, amendments to the MOI, records in respect of Directors, Accounting Records required to be maintained by the Company, ICASA reports, reports to annual General Meetings, annual Financial Statements, notices and minutes of General Meetings, communications generally to Members and the Members Register), shall be open to inspection by Members.

10.4. Apart from the Board or Voting Members, no other Person shall be entitled to inspect any of the documents of the Company unless expressly authorised by the Board or by Ordinary Resolution.

10.5. the Company shall notify the Members of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those annual Financial Statements. If a Member demands a copy of the annual Financial Statements, the Company shall make same available to such Member free of charge.

## **11. MEMBERSHIP: GENERAL, QUALIFICATION, CONTRIBUTION, RIGHTS AND TERMINATION**

### **11.1 General**

11.1.1 The minimum number of Members shall be 3 (three) and the maximum number of Members shall be restricted to seventy five (75).

11.1.2 If, at any time, the number of Members remaining should fall below the minimum stipulated above, the remaining Members shall determine whether or not it shall be in the best interest of the Company to be wound up, having due regard to Industry best practice.



11.1.3 The Company shall from time to time keep a Register of Members at its Registered Office.

11.1.4 No Member shall be entitled to transfer his Membership to any other person, or to alienate or exercise any Rights vested in or controlled by such Member without the prior authorisation of the Board.

11.1.5 Office bearers of any political party are excluded.

## 11.2 Membership

### 11.2.1 Granting of Membership

Voting Membership shall be granted to those Members who have subscribed to this MOI in their capacity as Incorporators as well as to those Members who were or may from time to time be admitted as Members by the Nominations Committee, should the membership fall below 75 (seventy five). A Member shall be admitted as a Member by the Nominations Committee at its discretion, and on condition that each such potential Member satisfies the following eligibility criteria:

11.2.1.1 Actively working in the community radio station field; and/or

11.2.1.2 Being a professional with experience valuable to the Company; and/or

11.2.1.3 Demonstrating a commitment to furthering the main purpose of the Company;

11.2.1.4 Qualification

11.2.1.4.1 Every application for Membership shall be made to the Station Manager or any other member of the Nominations Committee who may be appointed by the Board from time to time to fulfil such function (which shall include the evaluation and acceptance of applications for Membership as contemplated in this clause 11.6 and clause 11.7 and 11.8 below). This shall be known as the Designated Appointee. Such application shall be in writing. The applicant will be notified in writing that his Membership has been approved. Should any application be approved as aforesaid at any time other than at a duly constituted AGM or Nominations Committee meeting, the application shall be duly ratified by the Nominations Committee at their next meeting.

11.2.1.4.2 The Nominations Committee may, from time to time, stipulate any further qualifications or admission requirements as it may deem appropriate in respect of admission to Membership, including the requirement of a written undertaking to submit to a code of conduct and to this MOI (including, for the avoidance of doubt, the provisions contained in clauses 11.9 to 11.12 below with respect to the financial obligations of Members).

11.2.1.4.3 For the avoidance of doubt, it is further stipulated that the Designated Appointee (after consultation with the Nominations Committee) shall be entitled to decline to admit a particular applicant for Membership, notwithstanding such applicant's ability and/or willingness to fulfil the usual qualifications and requirements defining eligibility in respect of Membership. The Designated Appointee and the Nominations Committee shall therefore have complete and unfettered discretion with respect to the admission of potential Members, and shall be under no obligation to

furnish reasons for, or to otherwise motivate its decisions with respect to the admission or refusal of Membership, as aforesaid.

#### 11.2.1.5 Contributions

11.2.1.5.1 The Board shall be entitled to determine and require payment by Members of such annual or other levy or contribution as the Board may deem necessary and desirable from time to time, in order to make due provision for the anticipated operational costs and other budgeted financial commitments of the Company.

11.2.1.5.2 In making such determination, the Board shall be entitled to expand the number of the Voting Members on the basis of turnover or on such other basis as the Board may deem fair and equitable.

11.2.1.5.3 Should any Member fail or refuse to remit full payment of his contribution within the time period stipulated by the Board, and remain in default for a period of more than 60 (sixty) days following the receipt of a written notice requiring the payment of such Contribution, the Board shall be entitled to suspend or terminate the Membership of such defaulting Member (as it may deem appropriate) in accordance with clause 11.2.2.7.1, provided that the Board shall also be entitled to condone or compromise any such default and to reinstate the Membership of the Member concerned.

11.2.1.5.4 The termination or suspension of Membership for any reason, including resignation, shall not *ipso facto* release a Member from liability for payment of any arrear Contributions which became due for payment prior to the date of such termination or suspension, unless the Member submitted notice of resignation in Writing to the Company not more than 60 (sixty) days after the date upon which such Contribution became due.

#### 11.2.1.6 Rights

11.2.1.6.1 In addition to rights conferred on it by the Companies Act, Membership of the Company shall confer upon each Member:

11.2.1.6.1.1 the right to inspect and to receive copies of the annual Financial Statements of the Company, in accordance with clause 10.3 above; and

11.2.1.6.1.2 the right to receive notice and to attend General Meetings in accordance with the provisions of this MOI; and

11.2.1.6.1.3 right to speak and vote at any such Meetings.

#### 11.2.1.6.2 Termination

11.2.1.6.2.1 Notwithstanding anything to the contrary herein contained or implied, Membership of the Company may be suspended or terminated at any time by the Nominations Committee, in the event of:

- 11.2.1.6.2.2 a Member ceasing to pursue the activities which rendered such Member eligible to become a Member in the category concerned; or failing and/or refusing, upon written request therefor, to provide proof to the satisfaction of the Nominations Committee as to such Member's continued compliance with the other eligibility criteria applicable to Membership; or
- 11.2.1.6.2.3 a Member
  - 11.2.1.6.2.3.1 being convicted of any criminal offence; or
  - 11.2.1.6.2.3.2 having been found guilty of committing any other material contravention of the Applicable Legislation; or
  - 11.2.1.6.2.3.3 having been guilty of any other conduct which in the opinion of the Nominations Committee might be seen to reflect adversely upon the Industry, or specifically the Company, or upon such Member's continued fitness and suitability to be a Member; or
  - 11.2.1.6.2.3.4 failing and/or refusing to remit payment of his Contribution, within the time and in the manner contemplated in clause 11.2.2.5.3 above; or
- 11.2.1.6.2.4 the Nominations Committee in its sole and absolute discretion, considering that such suspension or termination of Membership is, for any other reason, in the best interests of the Company and its Members.
- 11.2.1.6.3 Before adopting any Resolution to suspend or terminate Membership as aforesaid, the Nominations Committee shall afford the Member concerned an opportunity to make representations (either verbally or in writing, as the Nominations Committee may deem appropriate) with regard to the issues affecting the continuance of his Membership.
- 11.2.1.6.4 Should the Nominations Committee in its sole discretion deem it appropriate, the Nominations Committee may furnish reasons for its decisions with respect to the termination or suspension of Membership, but shall be under no express or implied obligation to furnish such reasons or to motivate its decisions with respect to the suspension or termination of Membership.
- 11.2.1.6.5 Membership of the Company shall be terminated immediately:
  - 11.2.1.6.5.1 insolvency, in the case of a natural person; or
  - 11.2.1.6.5.2 upon receipt by the Company of the resignation in Writing of the Member concerned, which resignation shall take effect immediately.
- 11.2.1.6.6 The Nominations Committee, in its sole discretion, may extend any period of grace to allow for the mitigation or rectification of the matter constituting the grounds for suspension or termination of Membership, to such extent, and for such reasons and upon such conditions, as the Nominations committee may deem appropriate in the circumstances.
- 11.2.1.6.7 A Member whose Membership has been terminated shall, with effect from the date of such termination, have no further recourse or claims whatsoever against the Company in respect of any exploitation or non-exploitation of his Rights taking place after such termination.
- 11.2.1.6.8 Subject to the confirmation of the Members at an Annual General Meeting, the Directors shall be entitled to refuse to accept any application for membership by

any person or organization. A rejected applicant may appeal in writing, should he/she so wish, to the Chairperson of the Board; who shall duly consider such appeal.

## 12. GENERAL MEETINGS AND ROUND ROBIN RESOLUTIONS

- 12.1 The Company shall convene an annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown which must, at a minimum, provide for the following business to be transacted:
  - 12.1.1 presentation of:
    - 12.1.1.1 the Annual report;
    - 12.1.1.2 Financial Statements for the immediately preceding financial year;
  - 12.1.2 election of the Nominations Committee, to the extent required by the Companies Act or the MOI;
  - 12.1.3 confirmation of the appointment of the Board by the Nominations Committee, to the extent required by the Companies Act or the MOI;
  - 12.1.4 any matters raised for discussion by Members, with or without advance notice to the Company.
- 12.2 The Company shall, as determined by the Board, either:
  - 12.2.1 hold a General Meeting in order to consider one or more resolutions; or
  - 12.2.2 as regards such resolution/s that could be voted on at a General Meeting, other than an annual General Meeting, instead require them to be dealt with by Round Robin Resolution.
- 12.3 The Company must hold a General Meeting or put the proposed resolution by way of a Round Robin Resolution:
  - 12.3.1 at any time that the Board is required by the Companies Act or the MOI to refer a matter to Members for decision; or
  - 12.3.2 whenever required in terms of section 70(3) to fill a vacancy on the Board, where such vacancy gives rise to the number of Directors falling below the minimum number of Directors stipulated in clause 14.1.
- 12.4 Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information and/or explanatory material to enable a Member to determine whether to participate in the General Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 12.5 The Board or any Members may, whenever they see fit, convene a General Meeting or put the proposed resolution by way of a Round Robin Resolution. A General Meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution if one or more Written and signed demands for such a General Meeting is/are delivered to the Company, and:

- 12.5.1 each such demand describes the specific purpose for which the General Meeting is proposed; and
- 12.5.2 in aggregate, demands for substantially the same purpose are made and signed by the Members who, at the earliest time specified in any of those demands, hold at least 10% (ten per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the General Meeting.
- 12.6 A Round Robin Resolution will be passed if signed by the Members entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted General Meeting.
- 12.7 A General Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company (and for this purpose clause 29.3 shall not apply) to all Members entitled to receive notice.
- 12.8 The Company may call a General Meeting with less notice than required by clause 12.7, but such General Meeting may proceed only if fifty one percent (51%) of the members:
  - 12.8.1 are Present at the General Meeting; and
  - 12.8.2 votes to waive the required minimum notice of the General Meeting.
- 12.9 A Member who is Present at a General Meeting:
  - 12.9.1 is regarded as having received or waived notice of the General Meeting;
  - 12.9.2 has a right to:
    - 12.9.2.1 allege a material defect in the form of notice for a particular item on the agenda for the General Meeting; and
    - 12.9.2.2 participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and
  - 12.9.3 except to the extent set out in clause 12.9.2, is regarded to have waived any right based on an actual or alleged defect in the notice of the General Meeting.
- 12.10 A notice of a General Meeting must be in Writing, in plain language and must include:
  - 12.10.1 the date, time and place for the Meeting, and the Record Date for the Meeting;
  - 12.10.2 the general purpose of the Meeting, and any specific purpose contemplated in clause 12.1, if applicable;
  - 12.10.3 in the case of an annual General Meeting, a summarised form of the Financial Statements shall be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding financial year;
  - 12.10.4 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the General Meeting;
  - 12.10.5 a reasonably prominent statement that:
    - 12.10.5.1 a Member shall be entitled to appoint a proxy to attend, participate in, speak and vote at the General Meeting in the place of the Member, or give or

- withhold written consent on behalf of the Member to a decision by a Round Robin Resolution;
- 12.10.5.2 a proxy need not be a Member;
- 12.10.5.3 a Member may not appoint more than 1 (one) proxy to exercise Voting Rights held by that Member at any General Meeting;
- 12.10.5.4 the proxy may not delegate the authority granted to him/her/it as proxy;
- 12.10.5.5 each participant at a General Meeting is required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the General Meeting that such participant is entitled to participate in and (if applicable) vote at such meeting;
- 12.10.5.6 participation in the General Meeting by way of Electronic Communication is available, and:
- 12.10.5.6.1 provide any information to enable Members and/or their proxies to access the available medium or means of Electronic Communication; and
- 12.10.5.6.2 advise 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.
- 12.11 A General Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 12.12, only if every Member present votes to approve the ratification of the defective notice.
- 12.12 If a material defect in the form or manner of giving notice of a General Meeting relates only to one or more particular matters on the agenda for the General Meeting:
- 12.12.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
- 12.12.2 the General Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 12.13 An immaterial defect in the form or manner of delivering notice of a General Meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Members to whom it was addressed, does not invalidate any action taken at the General Meeting.
- 12.14 Business may be transacted at any General Meeting only while a quorum is present;
- 12.15 The quorum for a General Meeting shall be 51% (fifty one per cent) of Voting Members present in person or by proxy.
- 12.16 A matter to be decided at a General Meeting may not begin to be considered unless sufficient Persons are present at the General Meeting to exercise, in aggregate, at least 51% of all the Voting Rights that are entitled to be exercised on that matter at the time the matter is called on the agenda for the General Meeting.
- 12.17 If within 30 (thirty) minutes from the time appointed for the General Meeting to commence, a quorum is not present:

- 12.17.1 the chairperson shall be entitled, but not obliged, to postpone the time appointed for the General Meeting to commence by another 30 (thirty) minutes; or
- 12.17.2 subject to clause 12.20, the General Meeting shall be postponed, without motion, vote or further notice, for 1 (one) week to the same day the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned General Meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the General Meeting, then the Persons entitled to vote who are Present shall be deemed to be the requisite quorum.
- 12.18 A General Meeting, or the consideration of any matter being debated at the General Meeting, may be adjourned from time to time without further notice on a motion supported by Members entitled to exercise, in aggregate, a majority of the Voting Rights:
- 12.18.1 held by all of the Members who are present at the General Meeting at the time; and
- 12.18.2 to be exercised on at least one matter remaining on the agenda of the General Meeting, or on the matter under debate, as the case may be. Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be delivered to Members) as agreed at the General Meeting.
- 12.19 A General Meeting may not be adjourned beyond the earlier of:
- 12.19.1 the date that is 120 (one hundred and twenty) Business Days after the Record Date; or
- 12.19.2 the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 12.20 No further notice is required to be Delivered by the Company of a General Meeting that is postponed or adjourned as contemplated in clause 12.17, unless the location for the General Meeting is different from:
- 12.20.1 the location of the postponed of adjourned General Meeting; or
- 12.20.2 the location announced at the time of the adjournment, in the case of an adjourned General Meeting.
- 12.21 If a quorum has been established for a General Meeting or for a matter to be considered at a General Meeting, and such an amount of Members subsequently departs from the meeting giving rise to a quorum no longer being present at the General Meeting, the General Meeting shall be adjourned and any matters not considered at the General Meeting shall be considered and/or voted upon at an adjourned meeting, which shall be conducted in accordance with clause 12.19 above.
- 12.22 The chairperson of the Board shall preside as chairperson at every General Meeting. If there is no such chairperson, or if at any General Meeting s/he is not present within 15 (fifteen) minutes after the time appointed for holding the General Meeting, or is unwilling to act as chairperson, the Members who are present shall select a Director present, or if no Director is present at the General Meeting, or if all the Directors present decline to take the chair, the Members shall select one of their number which is present to be chairperson of the General Meeting.

- 12.23 At any General Meeting a resolution put to the vote shall be decided on a show of hands. Each Member present at the Meeting shall have only 1 (one) vote.
- 12.24 A declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, 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 or against such resolution. No objection shall be raised as to the admissibility of any vote except during the General Meeting or adjourned General Meeting, at which the vote objected to is or may have been given or tendered; and every resolution carried at such General Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the General Meeting, whose decision shall be final and conclusive. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the General Meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or decisive vote.
- 12.25 Any poll demanded in accordance with the Companies Act shall be taken immediately. The demand for a poll shall not prevent the continuation of a General Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 12.26 Every Member shall, on a poll, have 1 (one) vote.
- 12.27 Every resolution of Members is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent provided in respect of any particular matter contemplated in this MOI, shall be adopted with the support of 51% (fifty per cent) of the Voting Rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall be adopted with the support of at least 75% (seventy-five per cent) of the Voting Rights exercised on the resolution.
- 12.28 No form appointing a proxy shall be valid after the expiration of 1 (one) month from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is suspended at any time and to the extent that the Member chooses to act directly and in person in the exercise of any rights as a Member.
- 12.29 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of such power or authority shall be delivered to the Company by no later than 48 (forty-eight) hours prior to the General Meeting, before the proxy exercises any rights of the Member at the General Meeting.
- 12.30 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such revocation as aforesaid shall have been received by the Company prior to the commencement of the General Meeting or adjourned General Meeting at which the proxy is used.
- 12.31 Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a generally standard form of proxy upon request by a Member provided that such form shall be valid only for the meeting in which it is intended to be used.
- 12.32 If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he/she/it sees fit unless the proxy indicates otherwise.



## 13 RECORD DATE

13.1 The Board may set the Record Date for the purpose of determining which Members are entitled to:

13.1.1 receive notice of a General Meeting;

13.1.2 participate in and vote at a General Meeting; or

13.1.3 decide any matter by Written consent or Electronic Communication, as contemplated in section 60 of the Companies Act.

13.2 A Record Date determined by the Board in terms of clause 13.1:

13.2.1 may not be:

13.2.1.1 earlier than the date on which the Record Date is determined; or

13.2.1.2 more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur;

and

13.2.2 must be published by the Company to the Members by:

13.2.2.1 Delivering a copy to each Member (and clause 29.3 shall not apply); and

13.2.2.2 posting a conspicuous copy of the notice:

13.2.2.2.1 at its principal office;

13.2.2.2.2 on its web site, if it has one.

13.3 If at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is:

13.3.1 in the case of a General Meeting, the latest date by which the Company is required to Deliver to Members entitled to vote, notice of that General Meeting; or

13.3.2 the date of the action or event, in any other case.

## 14 DIRECTORS AND CASUAL VACANCIES

14.1 The number of Directors shall be no less than three (3) and no more than five (5). Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company. For the avoidance of doubt, for as long as the number of Directors is reduced below the minimum number of Directors stipulated above, the remaining Directors may continue to act, but only:

14.1.1 to preserve and secure the assets and enterprise of the Company, and to ensure the continuity of its business activities and functions; and/or

14.1.2 to cause vacancies to be filled, and the number of Directors to be increased to the required minimum; and/or

- 14.1.3 to initiate a process, this may include the summoning of a meeting of the Nominations Committee and/or a General Meeting for that purpose, provided that if there is no Director able or willing to act, then any Member may initiate such process and convene the meetings of the Nominations Committee or a General Meeting.
- 14.2 Subject to the provisions of the Companies Act, clause 14 and clause 15 of this MOI, the Members shall be entitled (but not obliged) to nominate candidates for consideration by the Nominations Committee and ultimately to elect Directors to fill vacancies on the Board.
- 14.3 Pursuant to receiving such nominations, the Nominations Committee shall consider all nominations for Directors in accordance with the process stipulated in clause 15 below, to serve for a term and rotate in accordance with clause 15 below.
- 14.4 The Chairperson, Managing Director and Deputy Chairperson of the Company shall be elected by the Board from among themselves. They shall hold their respective offices concurrently for a period of 2 (five) years, and shall be eligible for re-election.
- 14.5 The Chairman, Managing Director and Director: Projects will have executive functions, to be determined by the Board and approved by the Members at an AGM.
- 14.6 In appointing a Person as Director, the Nominations Committee shall consider skill, knowledge and experience that would be valuable to the Company in pursuance of its main objectives; for maintaining high standards of ethics and governance; or with the capabilities that would benefit the Company.
- 14.7 The general qualifications mentioned in clause 14 and those mentioned in the Companies Act will serve as requirements for the position of Director of the Company.
- 14.8 No Alternate Directors may be appointed.
- 14.9 The Board shall appoint the Managing Director as Chief Executive of the Company (in accordance with the provisions of clause 21.3 below), who shall serve for such term and upon such conditions as the Board may determine from time to time.
- 14.10 No election of a Director shall take effect until s/he has delivered to the Company a Written consent to serve.
- 14.11 Any vacancy occurring on the Board through death, resignation or disqualification may be filled by the Nominations Committee, but the individual so appointed shall cease to hold office at the termination of the first General Meeting to be held after his/her appointment as Director, unless s/he is elected by the Nominations Committee and confirmed at such General Meeting or by Round Robin.
- 14.12 No person shall be elected as a Director if he/she is ineligible or disqualified and any such election shall be a nullity. A Person who is ineligible or disqualified must not consent to be elected as a Director, nor act as a Director. A Person placed under probation by a court must not serve as a Director unless the order of the court so permits.

## 15 **NOMINATIONS COMMITTEE**

- 15.1 All appointments of a Director (and his removal and substitution, if deemed necessary), shall be undertaken by the Members with the assistance of the Nominations Committee, in accordance with the provisions of this clause 15.
- 15.2 The Nominations Committee shall comprise of not less than 4 (four) and not more than 7 (seven) persons, who are considered to have the requisite industry knowledge, experience and skills, to enable them to assume the responsibility of determining the eligibility and merit of the candidacy of persons to be appointed to the Board and/or to obtain and retain membership of the Company from time to time.

- 15.3 The Nominations Committee shall consist of the Management Committee and other Member representatives (not being Directors), elected at the Annual General Meeting or another General Meeting in accordance with clause 15.4 (“the Elected Representatives”). In making such appointment, the Board shall give consideration to the main purpose and objectives of the Company.
- 15.4 The Elected Representatives on the Nominations Committee shall be elected at each Annual General Meeting by a process of nomination and election by the Members who are present at such Meeting. The elected Members shall hold office as the Nominations Committee until the following Annual General Meeting, provided that retiring members of the Nominations Committee shall be eligible for re-election in accordance with these provisions.
- 15.4.1 The Nominations Committee shall consider and review the composition of the Board from time to time. In order to facilitate and inform such consideration and review, the Nominations Committee shall, on an annual basis, first determine the number of new Directors who are to be appointed at the Annual General Meeting and thereafter address a Written notice to all Members of the Company calling for nominations to the Board. Such Notice shall be addressed at least 30 (thirty) days prior to the date of the forthcoming Annual General Meeting.
- 15.5 Upon receipt of such Notice, any Member may nominate any number of eligible persons to be considered by the Nominations Committee for appointment to the Board, provided such nominations must be in Writing, and must be Delivered to the registered office of the Company at least 20 (twenty) days prior to the date of the forthcoming annual General Meeting. Any such nominations must also include:
- 15.5.1 the Written consent of the person/s so nominated; and
- 15.5.2 a Curriculum Vitae
- 15.5.3 a motivation indicating the reasons for any such proposal, including particulars as to the attributes, skills and experience of the person/s so proposed.
- 15.6 The Nominations Committee shall consider the candidacy of any eligible persons who may have been duly proposed as aforesaid for appointment to the Board. They may require interviews or further written submissions regarding some or all candidates. The Nominations Committee may deem candidates ineligible depending on the required skill set, capabilities and experience required for the vacant positions. The decision of the Nominations Committee is final.
- 15.7 The Nominations Committee may at its discretion also consider possible candidacy of persons (including non-Members) who in its opinion may be suitable for appointment as Directors in the vacant positions, having regard *inter alia* to such eligibility guidelines which may be applicable from time to time.
- 15.8 Upon completion of the review contemplated in clauses 15.5 and 15.7, the Nominations Committee shall issue a further Written notice to Members at least 14 (fourteen) days prior to the date of the relevant annual General Meeting, stating the list of names of the persons for election to fill the relevant positions on the Board. Such notice shall also state that any Member who may be dissatisfied with the names of one or more of the candidates so proposed for appointment by the Nominations Committee, shall be entitled, by Written notice to this effect, to challenge such appointment/s, provided that any such challenge shall only be considered if it:
- 15.8.1 is in Writing, duly signed by or on behalf of a Member; and Delivered to the registered office of the Company not less than 7 (seven) days prior to the date of the forthcoming annual General Meeting;

- 15.8.2 is supported by at least 2 (two) other Members (in addition to the Voting Member who is the initiator of the challenge);
  - 15.8.3 incorporates substantive reasons and motivation for such challenge;
  - 15.8.4 includes the name, and relevant particulars, of an alternative candidate to be considered for appointment;
  - 15.8.5 includes the Written consent of such alternative candidate to accept appointment, if so invited.
- 15.9 In addition to the requirements itemised in clause 15.8 above, a challenge shall only be considered as having been validly made:
- 15.9.1 if it has the Written support of at least 51% (ten per cent) of the Members at the relevant time; or
  - 15.9.2 if the Nominations Committee confirms that the proposed alternative candidate is in fact eligible and suitably qualified for appointment to the board, having regard, *inter alia*, to such eligibility guidelines which may be applicable from time to time. Any difference or dispute between the Member who initiated the challenge and the Nominations Committee as to the compliance with such conditions, including the eligibility and suitability of an alternative candidate, shall be referred for final determination by the Board, whose decision shall be final and binding.
- 15.10 If no valid challenge is made in compliance with clauses 15.8 and 15.9, the persons proposed by the Nominations Committee for consideration as Directors shall be duly elected by the Members by secret ballot at the General Meeting. The elected Persons shall take office as Directors from the date of the relevant General Meeting.
- 15.11 If a challenge is validly made in compliance with clauses 15.8 and 15.9, the choice between the candidate proposed by the Nominations Committee and the alternative candidate proposed by the challenger shall be placed before the annual General Meeting, and the issue determined by majority vote of all Members present at such annual General Meeting.
- 15.12 The Nominations Committee shall further administer all aspects relating to the contribution and/or qualification for a termination of Membership of the Company from time to time, including the specific matters set out in this MOI, in relation thereto.
- 15.13 Save as otherwise stipulated above, the determinations, decisions and selections of the Nominations Committee shall be final and binding upon all Members, the Board, and other persons affected thereby. The Nominations Committee may at its discretion, but shall be under no obligation to, provide reasons for, or to justify and motivate its decisions and recommendations.

## 16 THE MANAGEMENT COMMITTEE

The Management Committee consists of:

- 16.1 the Station Manager;
- 16.2 three (3) Members appointed by the Board. In making such appointment, the Board shall give due consideration to their capacity to oversee the management of the station, as well as support and further the Company's main purpose and objects.
- 16.3 the Management Committee reports to the Managing Director.

## **17 CESSATION OF OFFICE AS A DIRECTOR**

A Director shall cease to hold office as such:

- 17.1 immediately he becomes ineligible or disqualified or the Board resolves to remove him. In case of the latter, the Director will be suspended, if within the permitted period he has not filed an application for review or has filed an application but not received confirmation of removal from the court;
  - 17.1.1 when he dies;
  - 17.1.2 when he resigns by Written notice to the Company;
- 17.2 If there are 3 (three) Directors in office, and if the Board determines that he has become incapacitated to the extent that he is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, and the Board has not within the permitted period filed an application for review or has filed such application but the court has not yet confirmed the removal (during which period he shall be suspended);
- 17.3 if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director;
- 17.4 he files a petition for the surrender of his estate or an application for any administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally; or
- 17.5 he is otherwise removed in accordance with any provisions of this MOI;
- 17.6 if the Director, without special leave of absence from the Board, absents himself from the meetings of the Board either during a period of 3 (three) successive months or during a period covered by 3 (three) consecutive meetings of the any Committee to which he has been appointed to count as attendances at meetings;
- 17.7 when his term of office contemplated in clause 14.3 expires.

## **18 TERM OF APPOINTMENT**

- 18.1 The Directors will have no involvement in the setting up and running of the business. The Managing Director shall be responsible for the interface between Management and the Board.
- 18.2 The Managing Director will serve for a year, unless removed in terms of the Companies Act or in terms of this MOI, and shall retire at the Annual General Meeting, but shall be eligible, if so elected, to serve for one or more further terms of one (1) year, in accordance with the provisions of succession.
- 18.3 Notwithstanding the foregoing, Directors shall be deemed to have retired at the conclusion of the first meeting of the Board which occurs after they have attained the age of 75 (seventy-five) years, unless the Board, with the concurrence of the Nominations Committee, unanimously determine otherwise.

## **19 REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD COMMITTEES**

The Executive Directors are entitled to be remunerated for their services as Directors. No other directors or members of Board committees shall be remunerated for their services as Directors or members of Board Committees, nor shall they be entitled to any expenses for travelling (including expenses incurred in respect of accommodation) to and from meetings of the Board or Board Committees.

## **20 FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES**

- 20.1 The Company shall not be entitled to provide financial assistance to any Directors or Prescribed Officers, as contemplated in clause 45 of the Companies Act.

## **21 GENERAL POWERS AND DUTIES OF DIRECTORS**

- 21.1 The powers of management granted to the Board in terms of section 66(1) of the Companies Act are limited to the extent that the board may not take any action which requires approval by way of an Ordinary Resolution or Special Resolution in terms of the Companies Act and/or the MOI, unless such approval has been obtained.
- 21.2 The Board may:
- 21.2.1 establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and
  - 21.2.2 give pensions, gratuities and allowances to and make payments for or towards the insurance of any persons who are employees or ex-employees (including Directors and ex-Directors) of the Company, or of any company which is or was a subsidiary of the Company or is or was in any way allied to or associated with any such subsidiary, and the husbands, wives, life partners, widowers, widows, families and dependants of such persons.
- 21.3 The Board may from time to time appoint any person (whether being a Member or not) as Executive Chairman or Managing Director or Chief Executive Officer or Chief Operations Officer of the Company for such terms and at such remuneration as it may deem fit and generally on such terms as they may think fit, and (subject to any contract entered into between the Board and such appointee) may from time to time remove him/her and appoint some other person in his/her place; and it may be made a term of his/her appointment that he/she be paid a pension, gratuity or other benefit on his/her retirement from office.
- 21.4 The Board may from time to time entrust to and confer upon an Executive Chairman or Managing Director for the time being such powers vested in the Board as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Board, and may from time to time revoke or vary all or any of such powers. A Managing Director appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Board and after powers have been conferred upon him/her by the Board in terms hereof he/she shall be deemed to derive such powers directly from this clause.
- 21.5 The Board may regulate the general expenses of the Company and fix the salaries and emoluments of all employees, in consultation with the Managing Director or Chief Executive Officer or Chief Operations Officer.
- 21.6 The Board shall pay and defray the expenses and liabilities of the Company, incurred in the exercise or enforcement of the rights vested in or controlled by the Company, out of the monies received by the Company in respect of the exercise or enforcement of such rights.
- 21.7 The Board may from time to time borrow, raise or secure payment of such sum or sums of money as it may deem requisite for any purpose which it may deem expedient in the interests of the Company, but not so as to charge any right or interest of any Member in respect of his works.

- 21.8 The business and operations of Maluti FM 971 NPC shall be overseen by the Board and managed by the Management Committee, who may exercise all such powers of the Company as are not, by the Companies Act or by this MOI, required to be exercised by the Company in General Meeting, subject to the provisions of the Companies Act or of this MOI, and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Company in General Meeting. No regulation made by the Company in General Meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.
- 21.9 The Board may, from time to time and at any time, by power of attorney appoint any company, corporation, person or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes, and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this MOI) and for such period, and subject to such conditions, as it may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
- 21.10 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine. This provision shall also apply to any and all forms of financial transaction via Electronic Communication.

## **22 BOARD COMMITTEES**

- 22.1 The Board may appoint any number of Board committees and delegate to such committees any authority of the Board ("Board committee"). The members of such committees may include Persons who are not on the Board, nor Members of the Company, as long as they are not Ineligible or disqualified to be on the Board, and provided that no such Person shall have a vote on a matter to be decided by the Board Committee.
- 22.2 No Person shall be appointed as a member of a Board Committee if he is Ineligible or Disqualified and any such appointment shall be a nullity, and any Person so appointed shall cease to hold office immediately after he becomes Ineligible or Disqualified in terms of the Companies Act.
- 22.3 A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board Committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board Committee unless the order of the court so permits.
- 22.4 Subject to the provisions of clause 15 above in relation to the Nominations Committee, there are no general qualifications prescribed by the Company for a Person to serve as a member of a Board Committee, save for the requirements of the Companies Act, and the following specific conditions, namely that:
- 22.4.1 the Board shall determine the composition and membership of each Board Committee, and may review its own decisions with respect thereto, which may involve the appointment of persons who serve as Directors, and may also include Persons who are not Directors provided that, unless the Board shall otherwise determine, the chairperson of such Board Committee must be a designated Board member;
  - 22.4.2 each such Board Committee shall remain at all times accountable to the Board for the performance of its delegated functions and the Board shall not be divested of its overriding substantive powers by reason of any such delegation;

- 22.4.3 any written reports and/or recommendations issued by any such Board Committee must record any dissenting minority views in relation to the subject matter thereof;
- 22.4.4 any such Board Committee shall, in the exercise of its powers and functions, conform to any rules, restrictions or procedures imposed upon it by the Board, including such as may relate to quorum, voting, frequency of meetings, and notices, on condition that the Board shall be entitled, should it deem this necessary, to vary its directions, and to disband any such Committee at any time, without being required to give prior notice, or to give reasons for its decisions; and
- 22.4.5 without derogating from the generality of the foregoing, the Board Committees may, at the discretion of the Board, include the following committees (which committees' names may be changed from time to time, as the circumstances or the context may require):
  - 22.4.5.1. a Marketing Committee, whose primary focus shall be matters relating marketing the brand and selling advertisements;
  - 22.4.5.2 a Technical Committee, whose primary focus shall be technical issues regarding the station's signal distribution, transition to digital broadcasting, improved communication channels, new processes and sound recording;
  - 22.4.5.3 a Regulatory Affairs Committee, whose primary focus shall be regulatory, legal, compliance and ethical matters;
  - 22.4.5.4 a Transformation, Skills Development and Training Committee, whose primary focus shall be the training and development of the radio announcers, improving gender and cultural balance, creating meaningful skills and exposure for unemployed youth;
  - 22.4.5.5 such other committees as the Board may deem appropriate, from time to time, provided that the Board shall appoint such committees (if any) in terms of the Companies Act.

22.5 The Finance Committee shall consist of the members of the Management Committee, other than the Managing Director.

## **23 PERSONAL FINANCIAL INTERESTS OF DIRECTORS**

- 23.1 For the purposes of clause 23, "Director" includes a Prescribed Officer, and a person who is a member of a Board Committee, irrespective of whether or not the Person is also a member of the Board.
- 23.2 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.
- 23.3 If a Director has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or knows that a Related Person has a Personal Financial Interest in the matter, the Director:
  - 23.3.1 must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;



- 23.3.2 must disclose to the meeting any material information relating to the matter, and known to the Director;
- 23.3.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- 23.3.4 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 23.3.2 or 23.3.3;
- 23.3.5 must not take part in the consideration of the matter, except to the extent contemplated in clauses 23.3.2 or 23.3.3;
- 23.3.6 while absent from the meeting in terms of this clause 23.3:
- 23.3.6.1 is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
  - 23.3.6.2 is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 23.3.7 must not execute any document on behalf of the Company in relation to the matter unless specifically requested to do so by the Board.

23.4 If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a material interest, or knows that a related Person has acquired a Personal Financial Interest in the matter after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Persons' acquisition of that Personal Financial Interest.

23.5 A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if:

23.5.1 it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 23; or

23.5.2 despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

## 24 PROCEEDINGS OF DIRECTORS

24.1 A Director authorised by the Board

24.1.1 may, at any time, summon a meeting of the Board; and

24.1.2 must call a meeting of the Board if required to do so by at least 2 (two) Directors.

24.2 The Board may determine what period of notice shall be given of meetings of the Board and may determine the means of giving such notice which may include telephone or Electronic Communication. It shall be necessary to give notice of a meeting of the Board to all Directors, even those who are absent from South Africa for the time being.

24.3 If all of the Directors:

24.3.1 acknowledge actual receipt of the notice;

24.3.2 are present at a meeting of the Board; or

24.3.3 waive notice of the meeting

the meeting may  
proceed.

24.4 The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

24.5 Unless otherwise resolved by the Board, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of the Board may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of the Board by Electronic Communication as 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.

24.6 The quorum for a Board meeting shall be at least two thirds of the Directors currently in office.

24.7 The Board shall elect the chairperson of their meetings by majority vote and determine the period for which he is to hold office, provided that he shall remain eligible for re-election. If no such chairperson is elected, or if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairperson of the meeting. The Board may further elect a Director to be Deputy Chairperson.

24.8 Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution. For the avoidance of doubt, a majority shall be understood to be 50% (fifty per cent) plus 1 (one).

24.9 In the case of a tied vote, the chairperson may cast a deciding vote.

24.10 All acts done by any meeting of the Board, or by a Board Committee, or by any person acting as a Director shall be deemed to be valid as if every such person had been duly appointed and was qualified to be a Director, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or person acting as aforesaid, or that they or any of them were disqualified.

24.11 The Company must keep minutes of the meetings of the Board, and any Board Committees, and include in the minutes:

24.11.1 any declaration given by notice or made by a Director as required by clause 23;

24.11.2 every resolution adopted by the Board.

24.12 A resolutions adopted by the Board:

24.12.1 must be dated; and

24.11.2 is effective as of the date of the resolution, unless the resolution states otherwise.

24.13 Any minutes of a meeting or resolutions, signed by the chair of the meeting, or by the chair of the next meeting of the Board are evidence of the proceedings of that meeting, or adoption of the resolutions, as the case may be.

- 24.14 A Round Robin Resolution of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, provided that each Director who is in South Africa at the time, has received notice of the matter to be decided upon.

## 25 PRESCRIBED OFFICERS

- 25.1 No Person shall hold office as a Prescribed Officer if he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer, nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to any office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of the court so permits.

## 26 APPOINTMENT OF SECRETARY

- 26.1 In terms of the requirements of the Companies Act, the Board may appoint a company secretary from time to time ("Secretary") who:

26.1.1 shall be a permanent resident of South Africa and remain so while serving as Secretary; and

26.1.2 shall have the requisite knowledge of, or experience in, relevant laws; and

26.1.3 may be a juristic person subject to the following:

26.1.3.1 every employee of that juristic person who provides company secretary services, is not Ineligible or Disqualified;

26.1.3.2 at least 1 (one) employee of that juristic person, or one partner or employee of that partnership, as the case may be, satisfies the requirements of clauses 26.1.1 and 26.1.2.

- 26.2 If a Secretary has been appointed, and a vacancy arises in that office, the Board must within 60 (sixty) days after the vacancy arises appoint another Person who the Board considers to have the requisite knowledge and experience. A change in the membership of a juristic Person or partnership that holds office as Secretary does not constitute a casual vacancy in the office of Secretary if the juristic Person or partnership continues to satisfy the requirement of clause 26.1.3.
- 26.3 If at any time a juristic Person or partnership holds office as Secretary:

26.2.1 the juristic Person or partnership must immediately notify the Board if the juristic Person or partnership no longer satisfies the requirements of clause 26.1.3, and is regarded to have resigned as Secretary upon giving that notice to the Company;

26.2.2 the Company is entitled to assume that the juristic Person or partnership satisfies the requirements of clause 26.1.3, until the company has received a notice contemplated in clause 26.3.1; and

26.2.3 any action taken by the juristic Person or partnership in performance of its functions as Secretary is not invalidated merely because the juristic Person or partnership has ceased to satisfy the requirements of clause 26.1.3 at the time of that action.

- 26.3 The Secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.

- 26.4 If the Secretary is removed from office by the Board, the Secretary may, by giving Written notice to that effect to the Company not later than the end of the financial year in which the removal took

place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the Secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Board report in its annual Financial Statements.

## **27 MINUTES AND MINUTE BOOK**

- 27.1 The Board shall, in accordance with the provisions of sections 24(3)(d), 24(3)(f) and 73(6) of the Companies Act, cause Minutes to be kept:
- 27.1.1 of the appointments of Prescribed Officers;
  - 27.1.2 of names of Members present at every General Meeting of the Company, and of Directors present at every meeting of the Board; and
  - 27.1.3 of all proceedings at all General Meetings of the Company, and of the Board.
- 27.2 Such Minutes shall be signed by the chairperson of the meeting at which the proceedings took place, or by the chairperson of the next succeeding meeting.

## **28 DISTRIBUTIONS**

The Company shall not make any Distributions.

## **29 NOTICES**

- 29.1 The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Member or by sending them prepaid through the post or by transmitting them by Electronic Communication.
- 29.2 Any Member who has furnished an Electronic Address to the Company, by doing so:
- 29.2.1 authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him/her; and
  - 29.2.2 confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
- 29.3 Any notice required to be given by the Company to the Members and not expressly prohibiting the provisions of this clause from applying, shall be sufficiently given (subject to giving a notice in accordance with clause 29.1 or 29.2), if given by posting it on the Company's Facebook page or website until at least the date when the event to which the notice refers occurs.
- 29.4 Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with the Companies Act.
- 29.5 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2), the provisions of clause 2 shall also be applied.
- 29.6 As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Board may specify to demonstrate that the Electronic Communication is genuine, or failing any

such specification by the Board, it shall be constituted by the Member indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

## 30 INDEMNITY

30.1 The liability of Members is limited to the amount referred to in clause 6.2.4 above.

30.2 For the purposes of this clause 30, "Director" includes a former Director, a Prescribed Officer, and a person who is a member of a Board Committee, irrespective of whether or not the person is also a member of the Board.

30.3 The Company may:

30.3.1 not pay - directly or indirectly - any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of the Director having been convicted of an offence in terms of any national legislation;

30.3.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

30.3.3 directly or indirectly indemnify a Director for:

30.3.3.1 any liability other than in respect of:

30.3.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or

30.3.3.1.2 any fine contemplated in clause 30.3.1;

30.3.3.2 any expenses contemplated in clause 30.3.2, irrespective of whether it has advanced those expenses, if the proceedings:

30.3.3.2.1 are abandoned or exculpate the Director; or

30.3.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 30.3.3.1.

30.4 The Company may purchase insurance to protect:

30.4.1 a Director against any liability or expenses contemplated in clause 30.3.2 or 30.3.3; or

30.4.2 the Company against any contingency including but not limited to:

30.4.2.1 any expenses:

30.4.2.1.1 that the Company is permitted to advance in accordance with clause 30.3.2; or

30.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 30.3.3.1; or

30.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 30.3.3.1.

30.5 The Company is entitled to claim restitution from a Director or from a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 75 of the Companies Act.

31. **WINDING UP**

Despite any provision in any law or agreement to the contrary, upon the winding up or dissolution of the Company:

31.1 no past or present Member or Board member, or Person appointing a Board member, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

31.2 the entire net value of the Company must be distributed to one or more non-profit companies, external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts:

31.2.1 having objects similar to its main object; and

31.2.2 as determined:

31.2.2.1 in terms of the Company's MOI;

31.2.2.2 by the Members, if any, or its Directors, at or immediately before the time of its dissolution; or

31.2.2.3 by the court, if the MOI, or the Members or the Board fail to make such determination.

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