

**CONSTITUTION**

**OF**

**COPYRIGHT SOCIETY OF BOTSWANA  
(COSBOTS)**

**A COMPANY LIMITED BY GUARANTEE**

**DRAFT**

## **PREAMBLE**

**WHEREAS** we recognise the immense importance of intellectual property and copyright protection;

**AND WHEREAS** there is an urgent need to embrace and appreciate the role of intellectual property rights in advancing the ideals of achieving a truly knowledge-based economy;

**MINDFUL THAT** the creation of employment especially amongst the youth is a challenge that requires a multi-faceted approach by focusing in all areas capable of generating industrial development;

**AND RECOGNISING THAT** there is currently acute lack of knowledge and ignorance amongst the larger population as to the nature and importance of intellectual property rights;

**AND FURTHER** appreciating that Copyright Laws of Botswana is a new phenomenon and faces on-going challenges of implementation;

**RECALLING** that the passing of various laws impacting on intellectual property rights were aimed at addressing the problems associated with abuse, misuse, deprivation and theft of artistic works belonging to members of our society;

### **NOW THEREFORE IT IS AGREED AS FOLLOWS;**

#### **1. NAME**

- 1.1 A company is hereby formed, in the name and style of Copyright Society of Botswana (hereinafter referred to as “COSBOTS”).
- 1.2 The registered Headquarters of COSBOTS shall be in Gaborone, Botswana.

#### **2. LEGAL PERSONALITY**

- 2.1 COSBOTS shall be a legal entity with full capacity to sue and be sued in its own name, and to do all things that a legal entity may, by law, do and as may be necessary and incidental to the exercise of its powers and the performance of its functions under this Constitution,

including acquiring and owning property in its own name and enforcing rights and incurring obligations.

2.2 COSBOTS shall not be a profit-making organisation and shall exercise powers in terms of this constitution, the Copyright and Neighbouring Rights Act and the Companies Act and any other law, which may be prescribed by parliament.

2.3 COSBOTS shall be a voluntary organisation, with perpetual succession.

2.4. Every Member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for the payment of debts and liabilities of the Company contracted before the time at which he ceases to be a Member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding P1.00.

2.5 THE liability of the Members is limited.

### **3. INTERPRETATION**

3.1 Headings are for convenience only and do not affect the interpretation of this constitution.

3.2 Words signifying the singular number shall include plural or vice versa and words signifying the masculine shall include the feminine unless they appear specifically otherwise from the context.

3.3 References to copies of a work shall include the original of the work.

3.4 The provisions set out in this Constitution shall constitute the whole of the regulations applicable to the company and no optional provisions within the meaning of sections of the Act shall apply to the company.

3.5 In this Constitution unless it is specifically stipulated or where the context indicates otherwise, the following words and expressions shall have the following meaning;

- a) “**Acts**,” means the Act, all statutory instruments, which are to be read together as one with the Act and every statutory modification and re-enactment thereof for the time being in force.
- b) “**Affiliated Societies**,” means any of the societies in other countries, having objects similar to those of the Company, and with which reciprocal representation agreements have been entered into.
- c) “**Artistic work**” means a graphic work, photograph, sculpture or collage, irrespective of its artistic quality; a work of architecture, being a building or model of a building irrespective of its artistic quality, a work of artistic craftsmanship not falling within this definition, irrespective of its artistic quality.
- d) “**Author**” means an author, adapter or translator of any words which are or may be associated with any music or an author as defined in the copyright and neighbouring rights act [CAP 68:02].
- e) “**Ballot**” or “**Secret Ballot**” means a Postal Ballot or Electronic Ballot as defined in these Articles.
- f) “**BOARD of Directors**” shall mean the Board of Directors for the time being of the company or the governing structure of the company established in terms of this constitution.
- g) “**Chief Executive Officer**” means a person appointed as such by the company.
- h) “**Candidate member**” shall mean a Member of the Company elected to provisional membership pursuant to Section 6.1.2, and having the rights, privileges and obligations provided for Candidate Members by this Constitution.
- i) “**Company**” shall mean Copyright Society of Botswana Company Limited by Guarantee.
- j) “**Communicating to the public**” means publishing of works protected in accordance with section 3 of the Copyright and Neighbouring Rights Act [CAP 68:02].
- k) “**Companies Act**” means the companies Act 2003, Act No. 32 of 2004 of the Republic of Botswana (as amended from time to time).
- l) “**Copyright Office**” means the office established under section 22A of the Copyright and Neighbouring Rights (Amendment) Act, 2005 Act No.6 of 2006.
- m) “Creative sectors” shall mean the following;
  - (i) Print and publishing - representing authors of literary, artistic and musical works as well as publishers in text- and image-based industries,

- (ii) Visual arts and photography – representing rights holders for visual material. Visual material takes many forms, including the following:
- a. Fine art, such as painting and sculpture
  - b. Photography, such as documentary, reportage and photographic artworks
  - c. Illustrations, such as cartoons, diagrams and maps
  - d. Craft and applied art, such as jewelry, ceramics and textiles
  - e. Design, such as graphic design
  - f. Architecture
  - g. Prints, such as engravings and woodcuts,
- (iii) Folklore – representing artists in the field of traditional knowledge and cultural expressions,
- (iv) Dramatic and theatrical – representing Writers and dramatists, directors and choreographers, scenic designers, actors and singers are involved in the production of a dramatic work,
- (v) Audio-visual and film – representing authors and performers as creative collaborators, and producers as financing partners in the video and film making industries,
- (vi) Music and sound recording – representing rightsholders of musical works being songwriters, performers, composers and music publishers as well as record companies.
- n) **“Dramatic work”** includes a work of dance or mime. **“Director”** means a member of the Board of Directors.
- o) **“Distribution”** means any distribution which may pursuant to the rules be made among the members and affiliated societies out of the monies received by the society in respect of the exercise of the rights, license or authority granted by them to the society and “distributed” and “distributable” have corresponding meetings.
- p) **“Economic rights”** means the rights derived as a consequence to the right to a copyright, the extent of which is provided for under section 7 of the Copyright and Neighbouring Rights Act Cap 68:02.
- q) **“Expression of Folklore”** means a group-oriented and tradition- based creation of groups or persons reflecting the expectation of the community as an adequate expression of its

cultural and social identity, its standards and values as transmitted orally, by imitation or by other means as provided for in the Copyright and Neighbouring Rights Act Cap 68:02.

- r) **“Electronic Ballot”** means a voting system in which votes are cast, transmitted, stored and counted and the results automatically produced by use of technological systems, programs or processes, the results announced at general meeting, and which voting system shall comply with such regulations and procedures as shall from time to time be determined by the Board of Directors pursuant to Article 10.1.21.
- s) **“Eligibility Requirements”** means the requirements set out in Article 6, which a person must satisfy, to be eligible for admission to Membership.
- t) **“External Director”** means a person appointed as a director of the Company pursuant to the provisions of Article 12.3.
- u) **“Film”** has the meaning ascribed to it in the Copyright and Neighbouring Rights Act.
- v) **“Film synchronisation right”** means in respect of any work the right to reproduce the work in any part of the world to the soundtrack of any cinematograph film.
- w) **“Fixation”** means the embodiment of sounds, or of the representation thereof, from which they can be perceived, reproduced or communicated.
- x) **“Founder member”** means the initial members involved in the setup of the company being the first directors of the company.
- y) **“Full member”** shall mean a member who has been registered as such in terms of this constitution.
- z) **“Literary Work”** means any work, other than dramatic or musical work which is written, spoken or sung and accordingly includes a table of compilation and a computer program;
- aa) **“Management”** shall refer to the offices created for the day to day running of the Company, working under the supervision of the Chief Executive Officer, and appointed as per this Constitution.
- bb) **“Mechanical/ reproduction right”** means in respect of any work the right to make in any part of the world a work protected.
- cc) **“Membership”** means membership of the company;
- dd) **“Member in good standing”** shall mean a member who has complied with all the obligations imposed on him/her by this constitution relating to the status of his/her membership.

- ee) **“Musical Work”** shall mean any musical work whether now existing or hereafter composed and, without prejudice to the generality of the expression includes all those provided in the Copyright and Neighbouring Rights Act Cap 68:02.
- ff) **“Neighbouring Rights”** means the rights Neighbouring on copyright as provided for under section 23 of the Copyright and Neighbouring Rights Act.
- gg) **“Officer of the Company”** means any Director, the Chief Executive Officer and the Secretary for the time being of the Company.
- hh) **“Owners of Copyright”** means,
- i. Where the economic rights are vested in the author, the author,
  - ii. Where the economic rights are originally vested in a person other than the author, that person,
  - iii. Where the ownership of the economic rights has been transferred to another person that person.
- ii) **“Performer”** means a singer, musician or other person who sings, deliver, declaim, play in, or otherwise perform literary and artistic works or expressions of folklore.
- jj) **“Performance”** includes, unless otherwise stated, any mode of acoustic presentation, including any such presentation by means of broadcasting or the causing of a work to be communicated to the public or causing the work to be transmitted to subscribers to a diffusion service or by the exhibition of a cinematograph film or by the use of a recording, or by any other means and references to “perform” and “performing” shall be construed accordingly.
- kk) **“Performing right”** means and includes the right of performing in public, public broadcasting, communicating to the public and causing to be transmitted in a diffusion service, in all parts of the world, by any means and in any manner whatsoever, all works or parts thereof and this includes all the rights enumerated in the Copyright and Neighbouring Rights Act Cap 68:02 and includes,
- The right to grant or refuse authorisation for cable retransmission of a broadcast or cable programme from another Country in which the musical work is included, as all of same are described or defined in the Act, and insofar as the above mentioned rights exist under the law in force from time to time relating to copyright in the Country, and includes such corresponding or similar rights as subsist under the laws relating to copyright in the Country and in all other countries in the world as are in force from time to time.

- ll) **“Postal Ballot”** means a voting system in which votes are cast and transmitted by post and the results announced at a general meeting, which voting system shall comply with such regulations and procedures as shall from time to time be determined by the Board of Directors made pursuant to Article 10.1.18.
- mm) **“Proprietor”** means any person. Juristic or otherwise, who owns or controls in the Republic of Botswana (and any other countries or territories) the certain copyrights in works or any interests in such copyrights.
- nn) **“Producer”** of an audio-visual work or a sound recording, means the person who undertakes the initiative and responsibility for the making of the audio-visual work or sound recording.
- oo) **“Public display”** means the showing of the original or a copy of the work as per the Copyright and Neighbouring Rights Act Cap 68:02.
- pp) **“Published”** in relation to a work or a sound recording means copies of which have been made available to the public in a reasonable quantity for sale, rental, lending or for other transfer of the ownership or the possession of the copies.
- qq) **“Qualifying Criteria,”** means the criteria for Membership prescribed in accordance with Article 6.
- rr) **“Recording”** has the meaning assigned to it by the Copyright and Neighbouring Rights Act [CAP.68:02].
- ss) **“Republic”** means the Republic of Botswana.
- tt) **“Rights Holder”** means the holder of any rights protected by the copyright and Neighbouring Rights Act [CAP .68:02] and shall be the owner of copyrights as defined in the said act.
- uu) **“Rules”** means such rules or byelaws and as the board may deem necessary or expedient or convenient for the proper conduct and management of the company and no rule or byelaw shall be inconsistent with or shall affect or repeal anything contained in this constitution.
- vv) **“Secretary”** means any person appointed to perform the duties of the secretary of the company and who is permitted in accordance with the requirements of the Companies Act 2003 Act No. 32 of 2004 to act as such.
- ww) **“Sound Recording”** means any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied, excluding fixation of sounds and images such as the soundtrack of an individualised work.



- xx) **‘Successor’** shall mean any person duly determined as a successor in terms of the administration of estates laws and Inheritance laws of Botswana.
- yy) **“User-owned Publisher”** means: - (a) any company in which more than fifty per cent of the shareholding is owned or controlled by persons whose main business or a substantial part thereof consists in any activity requiring a licence from the Company or from any of its Affiliated Societies; or (b) any firm in which more than fifty per cent of the assets are owned or controlled by persons whose main business or a substantial part thereof consists in any activity requiring a licence from the Company or from any of its Affiliated Societies.
- zz) **“Work”** means a work in which COSBOTS owns or controls any of the rights, which, under this Constitution, may be administered by COSBOTS.
- aaa) **“Works Protected”** means those works listed at section 3 of the Copyright and Neighbouring Rights Act [CAP.68:02].
- bbb) **“Representative Director”** means a person who is a representative of the various categories of works protected under the Copyright and Neighbouring Rights Act and: (i) is eligible under Article 14(a) to (e) and is appointed as a Representative Director in accordance with Article 19.3, or (ii) was appointed as a Representative Director prior to the date of the adoption of this definition into these Articles and the amendment to Article 14(a) to (e) and for as long as that person’s term of office in existence at that date continues, or (iii) is eligible under Article 14(a) to (e) and is appointed under this Constitution by the Company or the Board of Directors, as the case may be, to fill a vacancy in any such appointments, and **“Representative Directors”** means all such persons at a particular time.
- ccc) **“Representing various categories of works protected”** means the following: Book publisher, Producer/master rights owner of music, Composer/lyricist, Performer, Visual artist and Producer of audio visual/film.

3.6 Words or expressions contained in this constitution shall bear the same meaning as in the Companies Act *supra*, the copyright and Neighbouring Rights Act [CAP.68:02] or any statutory modification thereof.

3.7 Expressions referring to writing shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

3.8 Words importing the singular number shall include the plural number, and vice versa.

3.9 Words importing the masculine gender shall include the feminine and neuter genders.

3.10 Words importing persons shall include corporations.

#### **4. OBJECTIVES**

The objectives of the company shall be the following:

- 4.1 To exercise and enforce on behalf of proprietors of copyright works or persons entitled to the benefit of or interested in the copyright in such works (hereinafter called the “proprietors”) all rights and remedies of the proprietors by virtue of the Copyright and Neighbouring Rights Act 68:02 and any other act or regulation for the time being in force regulating copyright, or otherwise in respect of any exploitation of their works.
- 4.2 In the exercise or enforcement of such rights and remedies to make and from time to time to rescind alter or vary any arrangements and agreements with respect to any such exploitation of such works in regard to the mode, periods or extent in for or to which and the terms on which any such exploitation of such works may be made or employed, and to collect and receive and give effectual discharges for all royalties, fees and other monies payable under any such agreements or arrangements or otherwise in respect of any such exploitation by all necessary actions or other proceedings, and to recover such royalties, fees and other monies, and to restrain and recover damages for the infringement by means of any such exploitation as aforesaid of the copyrights of such works or any other rights of the proprietors or of the Company on their behalf in respect of such works, and to release, compromise or refer to arbitration any such proceedings or actions or any other disputes or differences in relation to the premises.
- 4.3 To obtain from the proprietors such assignments, assurances, powers of attorney or other authorities or instruments as may be deemed necessary or expedient for enabling the Company to exercise and enforce in its own name or otherwise all such rights and remedies as aforesaid; and to execute and do all such assurances, agreements and other instruments

and acts as may be deemed necessary or expedient for the purpose of the exercise or enforcement by the Company of such rights and remedies as aforesaid.

4.4 To make and from time to time alter or vary any rules for regulating;

4.4.1 The mode in which the works of proprietors are to be communicated or declared by them to the Company.

4.4.2 The mode in which, the periods or period for which, and the conditions under which the proprietors are to authorize the Company to exercise and enforce the rights and remedies aforesaid of the proprietors in respect of such works as aforesaid.

4.4.3 The mode and shares in which and the times at which the net monies received by the Company in respect of any such works as aforesaid are to be divided and apportioned among the proprietors interested therein respectively.

4.4.4 The procedures for investigation and determination of complaints by the Company including the payment of fines, penalties, costs and expenses by a Member, the withholding of distributions from a member, the payment to a Member of any distributions found owing to a Member by the Company and the payment of costs and expenses by the Company to a Member.

4.4.5 The terms and conditions under which;

4.4.5.1 A Member may require the Company to grant to such Member a non-exclusive license to permit such Member to exercise all or part of the Performing Right in respect of any particular work or works, the Performing Right in which has been assigned to the Company by such Member as the composer, author, publisher or proprietor thereof,

4.4.5.2 The Company may decline to exercise the whole or any part of the Performing Right in any particular work or works, and

4.4.6 The administration of the property or business of the Company and any matters incidental thereto.

4.5 To distribute the net monies received by the Company in the exercise of its powers under the Copyright and Neighboring Rights Act and any other law prescribed by parliament.

4.6 To grant gratuities, donations, pensions and emoluments to any person at any time in the employment of the Company, or engaged in any business acquired by the Company, and the

wives, widows, families and dependents of any such person; for the expenses and liabilities of the Company incurred in such exercise or in otherwise carrying out the purposes and operations of the Company and for any contributions or payments for any of the purposes specified in the next following sub-clause hereof, amongst the proprietors entitled thereto in accordance with the rules to be for the time being in force with respect to the distribution thereof.

- 4.7 To establish, support subscribe to and aid in the establishment and support of funds, trusts, associations or institutions calculated to benefit persons employed by or having dealings with the Company.
- 4.8 To receive contributions, subscriptions or donations for any of the aforesaid purposes from Members of the Company, employees or others.
- 4.9 To carry on any business which may seem to the Company capable of being conveniently carried on in connection with the above projects or calculated, directly or indirectly, to enhance the value of or render profitable any of the property or rights of the Company or the proprietors.
- 4.10 To acquire or undertake the whole or part of the business, property or liabilities of any person or company carrying on any undertaking or business which the Company is authorised to carry on or possessed of property suitable for the purposes of the Company.
- 4.11 To enter into reciprocal representation agreements with societies and companies having objects similar to those set out in this Constitution and to enter into partnership or into any arrangement for sharing profits, union of interests, co-operation, joint venture, reciprocal concession or otherwise with any person, association or company carrying on or engaged in or about to carry on or engage in or any business or transaction which this Company is authorised to carry on or engage in or any business or transaction capable of being conducted so as directly or indirectly to benefit this Company, and to amalgamate with or become affiliated to any such association or company, and to lend money to, guarantee the contracts of or otherwise assist any such person, association or company, and to take or otherwise

acquire shares and securities of any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same.

- 4.12 To take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of this Company or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company.
- 4.13 To promote any company or companies for the purpose of acquiring all or any of the property and liabilities of this Company or for any other purpose which may seem directly or indirectly calculated to benefit this Company.
- 4.14 Generally to purchase, take on lease or in exchange, hire or otherwise acquire any real and personal property and any rights or privileges which the Company may think necessary or convenient for the purposes of its undertaking or business.
- 4.15 To invest and deal with the monies of the Company not immediately required in such manner as may from time to time be determined.
- 4.16 To lend money to such persons and on such terms as may seem expedient and to guarantee the performance of contracts by any such persons. The power contained in this paragraph shall not extend to the lending of money to Directors or Members of the Company.
- 4.17 To borrow or raise or secure the payment of money in such manner as the Company shall think fit and in particular by the issue of debentures or debenture stock, perpetual or otherwise, charged upon all or any of the Company's property (both present and future), and to purchase, redeem, or pay off any such securities.
- 4.18 To remunerate any person or company for services rendered or to be rendered in placing or guaranteeing the placing of any debentures, debenture stock or other securities of the Company or in or about the formation or promotion of the Company or the conduct of its business.

- 4.19 To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, debentures and other negotiable or transferable instruments.
- 4.20 To sell or dispose of the undertaking of the Company or any part thereof for such consideration as the Company may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of this Company.
- 4.21 To adopt such means of making known the operations of the Company as may seem expedient, and in particular by advertising in the press, by circulars, by publication of books and periodicals.
- 4.22 To procure the Company to be registered or recognised in any foreign country or place.
- 4.23 To sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.
- 4.24 To appoint any agent or agents for the collection and recovery of any monies receivable by the Company in the exercise of its powers or otherwise for the purpose of the exercise of any of such powers.
- 4.25 To do all or any of the above things in any part of the world and as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with others.
- 4.26 To do all such other things as may be considered necessary to the attainment of the above objects or any of them.
- 4.27 To determine the criteria for, and classes of, membership of the company.
- 4.28 To promote and protect the interests of its members in Botswana and abroad.
- 4.29 To contribute by all appropriate means to the promotion of national creativity in the artistic, literary, dramatic and musical works;

- 4.30 To collect royalties and other remuneration from the users of works and performances on behalf of its individual or member associations and distribute these royalties amongst their members.
- 4.31 To make reciprocal agreements with foreign copyright Societies for the issue of authorizations in respect of their members' works and productions for the collection and distribution of royalties and other remuneration deriving from those works and productions;
- 4.31.1 To endeavour to obtain the transfer of membership of Botswana authors and publishers as well as performers and producers who are members of foreign Societies and safeguard in favour of Botswana authors and publishers whose membership has been transferred,
- 4.31.2 To help in the preparation of standard forms of contracts for the benefit and use of its members,
- 4.31.3 To foster such harmony and understanding between members and the users of their works and performances as are necessary for the protection of the members' economic rights,
- 4.31.4 To provide its members with information and advice on all matters relating to Copyright and Neighbouring (Related) Rights,
- 4.31.5 To set rates for royalties in accordance with acceptable international standards,
- 4.31.6 To measure that the Copyright liabilities resulting from the use of works are met with the minimum of administrative effort and in collaboration with all areas of intellectual life.
- 4.31.7 Maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters and publishers,
- 4.31.8 Publicize the rights of owners and act as the final arbiter in all matters relating to ownership of these rights where there is a dispute or an infringement.
- 4.32 Provided that the Company shall not support with its funds or endeavour to impose on or procure to be observed by its members or others any regulation or restriction which, if an object of the Company, would make it a Trade Union.

## **5. MEMBERSHIP**

- 5.1 The number of Members is declared to be unlimited.

5.2 The Members of the Company are the persons admitted to Membership pursuant to the provisions of this Constitution.

5.3 There shall be the following categories of members;

5.3.1 Full Memberships: shall be any individual rights holders, phonogram producers and any rights holder organisation who has been accepted by the Board as a full member in terms of the provisions of this constitution.

5.3.2 Candidate memberships: shall be any person/persons who has/have registered his/their works with the company but has not attained the status of full member.

## **6. ADMISSION OF MEMBERS**

6.1 The following shall constitute the requirements for membership of the Company:

6.1.1 Full membership to the Company shall be open to any individual or association seeking for membership with the company and shall fill in application forms addressed to the company, provided that the same is committed to the objectives and functions of the Company as per the constitution and has met the following conditions;

6.1.1.1 he/she owns or holds any rights protected under the Copyright and Neighbouring Rights Act,

6.1.1.2 he/she has successfully created and registered new works with the company for a continuous period of three (3) years or has received in aggregate by way of distributions from the Company (or from the Company and any Affiliated Society collectively) an amount determined by the Board of Directors from time to time and provided for under the distribution rules the amount which on the immediately preceding 30 June was the annual financial qualifying criteria for admission to Full Membership,



- 6.1.1.3 although he/she is not the owner of any rights protected under the Act, he/she has control or possession over such rights through an agreement with the owner,
- 6.1.1.4 He/she is a spouse, child or other relative, next of kin, beneficiary in respect of the Performing Right in works of a deceased Writer, or personal representative or trustee of any deceased Writer, Publisher or Proprietor, or of any deceased Member.
- 6.1.2 Candidate membership shall be open to any individual or association seeking for membership with the company, provided that the said person has duly registered his/her works with the company
- 6.2 The board shall reserve the right to prescribe and set additional requirements and or conditions for admission of a member into the company, provided that such requirements and conditions shall be for the interest of the company.
- 6.3 Every application for admission as a member shall be in writing and addressed to the management and shall be signed by the applicant, and shall be in such form, as the Board of Directors shall from time to time prescribe. Each applicant shall submit such evidence of eligibility and fulfillment of the Qualifying Criteria as the Board of Directors considers being reasonably necessary.
- 6.4 Upon receipt of an application as per Article 6.3 above, the Chief Executive Officer shall cause it to be tabled before the Board for determination and approval.
- 6.5 In determining an application brought to it in terms of this Article, the Board shall be at liberty to invite the participation of any expert/s or any person with relevant skills relating to the application brought before it.
- 6.6 The Board reserves the power to deny application for membership if, in its opinion, the applicant does not fulfill the qualifying criteria prescribed in accordance with this constitution or as set by the board from time to time, provided that any person who is

aggrieved by its decision shall be at liberty to appeal the decision at the next Annual General Meeting.

- 6.7 No person may be admitted by the Board as a Member of any category unless;
- 6.7.1 he/she has fulfilled the Eligibility Requirements,
  - 6.7.2 he/she has fulfilled the Qualifying Criteria prescribed for that category, and
  - 6.7.3 In the case of a Foreign-owned Publisher, has complied with such requirements as the Board of Directors may from time to time stipulate, save that the Board of Directors may, in its discretion at any time admit any person who is eligible for Membership to any category of Member notwithstanding that he has not fulfilled the Qualifying Criteria for that category if the Board is satisfied that there are special circumstances, in view of which it would be in the interests of the Company for that person to be so admitted.
- 6.8 The Qualifying Criteria for each category of Member shall be prescribed from time to time by the Board of Directors and in the case of Candidate and Full Members, shall be approved by the Company at its general meeting of members;
- 6.8.1 As soon as practicable after any Qualifying Criteria have been prescribed and, when necessary, approved, the Board of Directors shall cause them to be published in a journal or other periodical published by the Company for the information of Members.
- 6.9 Any promotion of a Candidate member to Full Membership of existing Candidate Members who have fulfilled the relevant qualifying criteria for such promotion shall take place as soon as practicable after the commencement of each calendar year.
- 6.10 For the purpose of this article the Chief Executive Officer or such other manager of the Company as the Directors may from time to time specify shall cause a statement to be prepared as soon as possible after the commencement of each calendar year containing the names of all Candidate Members who have fulfilled the Qualifying Criteria for promotion to Full Membership.

- 6.11 The Chief Executive Officer or such other manager of the Company as the Directors may from time to time specify shall examine the list and when satisfied that it is correct shall certify that the persons named thereon have been duly promoted Full Membership.

## **7. RIGHTS AND OBLIGATIONS OF MEMBERSHIP**

- 7.1 Save as maybe provided herein or by any provision of the law, a Candidate Member shall not have the same rights and privileges and will not be subject to the same obligations as a Full Member;

7.1.1 Assignment of Rights-Every Member shall, on election, or at any time thereafter if requested by the Company, assign or cause to be assigned to the Company all rights to be administered on his behalf by the Company.

7.1.2 every assignment to the Company pursuant to this Article shall be in such form as the Board of Directors may from time to time prescribe and shall operate for and during the period of the assignor's Membership, subject to the provisions of Articles 8.1 and 8.2.

Provided always that any assignment to the Company of the Film Synchronization Right shall expressly provide that the Company will at any time at the request of the Composer or Author of the Work assign or license the Film Synchronization Right in the Work to the film producer or other person who commissioned the composition or writing thereof provided that the Company shall have obtained from the producer of the Film on the sound-track of which the Work is to be reproduced an agreement in a form satisfactory to the Company providing for payment to the Company of such fees either by way of a lump sum payment or share of receipts or royalties or otherwise as the Company may require in respect of any exhibition of any Film embodying the Work in cinemas (motion picture theatres) in the Country

7.1.3 Different rights administered by the Company shall include the following;

- i. Broadcasting of the work and recording for purposes of broadcasting,
- ii. Public performance of works,
- iii. Rental or public lending of the following;
  - a) Original copy or copy of the audio-visual work,
  - b) A work embodied in a sound recording, a computer (except where the computer program itself is not the essential object of the rental or lending),
  - c) A database or a musical work.
- iv. Translation of the work,
- v. Adaptation, arrangement or other transformation of the work,
- vi. The first public distribution of the original copies of the work by sale or rental to the public,
- vii. Other communications to the public such as advertising and promotions,
- viii. Administration of rights of reprographic reproduction in literary works, the rights of public performance and broadcast in literary, dramatic and dramatico-musical works and the right of reproduction in visual works of art.

7.1.4 Pending the assignment of rights to the Company pursuant to this Article, every Member by virtue of his election grants to the Company, for and during the period of Membership, subject to the provisions of Articles 8.1 and 8.2, in his name or in that of the Company but at the Company's sole charge and expense, the sole power and authority;

- (i) To authorize or permit or forbid the exercise of the rights to be administered by the Company on behalf of the Member,
- (ii) To grant licenses on his behalf for the exercise of such rights,
- (iii) To collect fees, subscriptions, or monies whether for the authorised use of any of the Member's Works, or by way of damages or compensation for the unauthorized use of such Works,
- (iv) To institute and prosecute proceedings against all persons infringing the said rights and, if the Company in its discretion thinks fit, to defend or oppose any proceedings taken against any Member in respect of such rights and to compound, compromise, refer to arbitration or submit to judgment in any such proceedings, and generally to represent the Member in all matters concerning the said rights,
- (v) To protect generally the said rights in the Member's Works, and
- (vi) To delegate authority to do any acts as aforesaid to any Affiliated Society and to any agent or representative in territories overseas, for the purpose of exercising the said rights in such territories.

7.1.5

- (i) The Company may exercise and enforce the rights of members of any Affiliated Societies pursuant to the terms of any contract now existing or which may hereafter be made between the Company and such Affiliated Societies.
- (ii) The Company may exercise and enforce copyrights belonging to persons who are not Members of the Company or members of an Affiliated Society pursuant to the terms of any contract, which may be made between the Company, and any such persons.

(iii) The Company may exercise and enforce copyrights belonging to persons who are not Members of the Company, or where as Members they have not transferred the particular copyrights in question, where the Company is deemed by statute to be permitted to manage these copyrights. Save where expressly agreed otherwise, the exercise and enforcement of these copyrights shall be in accordance with the Rules of the Company in force from time to time.

7.1.6 The Company may, by notice in writing to any Member decline to exercise, the whole or any part of the Performing Right in any particular work or works of which such Member is the Composer, Author, Publisher or Proprietor, and thereupon the provisions of sub-clauses 7.1.1 to 7.1.4 of this Constitution shall cease to apply to such right. Provided always that the Company may at any time and from time to time by further notice in writing to such Member withdraw such notice in respect of all or any of its rights comprised therein, whereupon the provisions of sub-clauses 7.1.1 to 7.1.4 of this Constitution shall again apply to such right or rights.

7.1.7 Any Member may (subject to compliance by the Member with the Rules) require the Company to grant to the Member a non-exclusive license to permit the Member to exercise all or part of the Performing Right in respect of any particular Work or Works, the Performing Right in which has been assigned to the Company by such Member as the Composer, Author, Publisher or Proprietor thereof.

## **7.2 Membership not transferable**

7.2.1 No Member shall be at liberty to transfer his Membership to any other person or to alienate or exercise the rights to be administered by the Company on behalf of the Member.

7.2.2 No Member shall enter into any contract under which he shall or may be required, whether for valuable consideration or not, to write or compose any

work for any non-Member whether as employer or otherwise, without inserting in such contract an express provision reserving to such Member the rights to be administered by the Company on behalf of the Member.

7.3 A candidate member shall not be eligible for election into the board, cannot nominate candidates for elections into the Board. A Candidate member and shall not be entitled to receive notice of or attend or vote at general meetings.

7.4 Notwithstanding the provisions of Article 7.3, a candidate member shall enjoy any other rights of membership of the company.

## **8. TERMINATION OF MEMBERSHIP**

8.1 Membership of the Company shall terminate upon the following grounds and all rights, privileges and obligations of Membership shall cease on the date of cessation of Membership. In particular, but without prejudice to the generality of the foregoing, the Member concerned shall cease to have any claim upon the assets of the Company, and shall not be entitled to participate in any further Distributions, save as to any payment to which he may be entitled in accordance with the Rules in respect of any period prior to termination of Membership;

8.1.1 Upon submission to the Board of a written notice of intention to terminate membership to the Company and subsequent approval by the Board of such notice of termination,

8.1.2 Any Member may, by giving three months' notice in writing to the Secretary, terminate his Membership:

- (i) One year after the date with effect from which he/she was first elected to Membership, and
- (ii) Thereafter, on any anniversary of that date.

8.1.3 Has committed an offence under the Copyright and Neighbouring Rights Act

8.1.4 Commits an act which is contrary to the objectives of this Constitution or which is contrary to the Code of Conduct of the Company, pending proceedings and continuation of control of rights. If any proceedings have been instituted by or against the Company in respect of a Member's works, either in the name of the Company or of the Member, and such Member ceases to be a Member during the pendency of the proceedings, any rights the subject of such proceedings which have been vested in the Company by such Member, or are controlled by the Company by virtue of his Membership, shall remain so vested or controlled until such proceedings are finally disposed of.

8.1.5 Where the period of protection of a member's rights under the Copyright and Neighbouring Rights Act has lapsed. The Membership of any Member shall ipso facto cease;

(i) Upon the expiration of the longest period for which copyright subsists by virtue of statute in any country which is either a member of the Berne Union or a party to the Universal Copyright Convention in any of the Works in respect of which such Member is entitled to participate in Distributions, or

8.1.6 Upon the death of a member

On the death of the Member his Membership shall cease and shall not be transmitted to any other person, but the rights (if any) already vested in the Company by the Member, or controlled by the Company by virtue of his Membership, shall, subject to Article 8.1, 8.2 and 8.3, remain so vested or controlled;

(i) For a period ending either on the 30<sup>th</sup> day of June in the seventh year following the year in which the Member's death took place unless within that period an election as mentioned in the following paragraphs (ii) and (iii) takes place, or



(ii) If a Successor shall be elected to Membership during such period, then for so long as such Successor remains a Member, or

(iii) If a person is elected during such period to Membership of an Affiliated Society in respect of the rights of the deceased Member, then up to the date of such election.

Any payment to which the Member would, if living, have been entitled in accordance with the Rules in respect of any period prior to the election of such Successor shall be made to the Member's personal representative until a Successor is elected or a person is elected to membership of an Affiliated Society as provided for in (iii) above, or until the end of such seventh year as aforesaid, whichever is the earlier date. Upon the election to Membership of any Successor as aforesaid, any payment to which the Member would, if living, have been entitled in accordance with the Rules in respect of any period subsequent to such election shall be made to such Successor.

8.1.7 Cessation of Membership - termination of rights, privileges, etc.

Subject to the provisions of Articles 8, 8.1.7 and 8.1.10, all rights, privileges and obligations of Membership shall cease on the date of cessation of Membership. In particular, but without prejudice to the generality of the foregoing, the Member concerned shall cease to have any claim upon the assets of the Company, and shall not be entitled to participate in any further Distributions, save as to any payment to which he may be entitled in accordance with the Rules in respect of any period prior to cesser of Membership.

8.1.8 On the bankruptcy of a Member or the bankruptcy (if a sole trader), or the liquidation (if a body corporate) or cessation of business (if a firm) of a Publisher Member any payment from the Company to which such Member would otherwise have been entitled shall be made to the person entitled for the time being to receive debts due to such Member and any existing

direction given by such Member to the Company to make payments to any other person shall cease to have effect.

8.2 The Board reserves the right to terminate membership of any member for non-compliance with any of the provisions of this Constitution, the Copyright and Neighbouring Rights Act, Membership Rules and Code of Conduct of the Company;

8.2.1 The membership of a candidate Member may at any time be terminated by fourteen days' notice in writing, either by the Board or in accordance with such general directions as the Board may determine from time to time,

8.2.2 Any Full Member may be given notice by the Board of Directors determining his Membership at the expiration of fourteen days from the date of such notice, and his Membership shall cease accordingly. Such notice shall be in writing and shall be signed by the Secretary or other officer designated by the Board of Directors. Provided always that if, before the expiration of such notice from the Board of Directors, such Member shall in writing require the Board of Directors to submit the question of the continuance of his Membership to the decision of the Company in Extraordinary General Meeting, he shall not cease to be a Member unless and until the Company in Extraordinary General Meeting shall have approved the action of the Board of Directors. If the Company in Extraordinary General Meeting shall approve the action of the Board of Directors, the Member shall cease to be a Member at the conclusion of such meeting.

8.3 Expulsion at the Annual General Meeting by more than half of members present voting.

## **9. THE MANAGEMENT**

9.1 There shall be the management of the company, which shall be headed by a Chief Executive Officer.

9.2 The Management shall be subject to the overall supervision and direction of the board and shall be responsible for the administrative affairs of the company.

9.3 The officers serving in the management shall be employed in accordance with the Employment Policy of the company.

## **10. THE BOARD**

10.1 There shall be a Board of Directors of the company, which shall exercise the principal supervisory role over the business and operations of the company and shall have the following responsibilities, duties and powers;

10.1.1 To convene Annual General Meetings or any other meeting, which may be requested as per the provisions of this Constitution,

10.1.2 The power to approve the budget of the company, the execution of 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 of Directors shall from time to time by resolution determine,

10.1.3 The power to 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,

10.1.4 The power to approve the purchase, to take on lease or in exchange, hire or otherwise acquire any movable or immovable property which may be deemed necessary for carrying out objectives and purposes of the company, and to sell, exchange, mortgage, change, account, dispose of, and deal with property and rights of any kind;

- 10.1.5 The duty to approve the investment of the funds of the company from time to time in such investments or other securities as the Board may deem fit or necessary,
- 10.1.6 Receive and consider applications for membership,
- 10.1.7 Appoint or remove the Chief Executive Officer.  
The Board of Directors may from time to time appoint any person (other than a Member of the Company) as Chief Executive Officer and/or other manager of the Company for such term and at such remuneration as it may think fit, and (subject to any contract entered into between the Board of Directors and such Chief Executive Officer and/or other manager) may from time to time remove him and appoint some other person as Chief Executive Officer and/or other manager in his place.
- 10.1.8 To approve the Conditions of Service, remuneration and benefits of the officers serving under the management of the Company in consultation with the Chief Executive Officer.
- 10.1.9 Give advice and guidance to the management and other structures of the Company.
- 10.1.10 To approve the issuance of powers of attorney to any body corporate, firm, person or body of persons, whether nominated directly or indirectly by the Board of Directors 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 of Directors under this Constitution), 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 of Directors may think fit, and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him;

- 10.1.11 To approve the company's contracts with third parties;
- 10.1.12 To approve the borrowing by way of overdraft or loan for the purpose of the company and where necessary to pledge any of the Company's assets for security for such acquisition;
- 10.1.13 To promote partnerships between the Company and its members with the Government and other stakeholders; and
- 10.1.14 To distribute of all monies received by the Company in respect of the exercise of the rights, license or authority granted by the Members and the Affiliated Societies shall, subject to Article 10.1.15, be Distributed or otherwise dealt with by the Board of Directors in accordance with the Rules.

**10.1.15 Distribution of receipts – specific purposes**

The Board of Directors may, before making any Distribution among the Members;

- a) Apply out of the receipts such sums as it thinks proper or has agreed to contribute;
  - i. As gratuities, donations, pensions and emoluments to any person at any time in the employment of the Company or engaged in any business acquired by the Company and the wives, widows, families and dependents of any such persons;
  - ii. To any charitable or benevolent or similar fund which may be established for the benefit of employees of the Company or their spouses, widows, families or dependents;

- iii. To establish any fund, trust, association or institution to carry out any of the purposes referred to in (i) to (ii) hereof.

Provided that any payments under (ii) hereof shall not in any one accounting year in aggregate exceed a sum which is equivalent to one percent of the total of the amounts allocated to Members and Affiliated Societies during the preceding accounting year as shown in the Directors' Report and Accounts for that year adopted by the Company.

- (b) Set aside out of the receipts such sums as it thinks proper as a reserve fund to meet contingencies, or for future Distribution, or for repairing, improving and maintaining any of the property or premises of the Company, and for such other purposes as the Board of Directors shall in its absolute discretion think necessary or conducive to the interests of the Company, and may invest the several sums so set aside in such investments as it may think fit, and from time to time deal with or vary such investments and dispose of all or any part thereof for the benefit of the Company, and may divide the reserve fund into such special funds as it thinks fit, and employ the reserve fund or any part thereof for the general purposes of the Company, and that without being bound to keep the same separate from the other assets.

10.1.16 The power to make and alter Membership Rules;

- 10.1.16.1 The Board of Directors may make, and from time to time alter, the Rules specified in Clause 4(d) of the Constitution, and, without prejudice to the generality of the foregoing, may also make, and from time to time alter, separate or additional rules for regulating the provision, through trusts or associations, of gratuities, donations, or pensions for employees of the Company, or their wives, widows, families or dependents. Provided that any rules (other than such separate or additional rules) or any alterations of such rules (other than as aforesaid) shall not take

effect or come into operation unless or until the Company in General Meeting has approved the same,

10.1.16.2 The Board of Directors may make Rules establishing a Disciplinary Committee for investigation and determining a complaint or complaints by the Company against a Member and by a Member against the Company including the payment of fines, penalties, costs and expenses by a Member, the withholding of Distributions from a Member, the payment to a Member of any Distributions found owing to a Member by the Company and the payment of costs and expenses by the Company to a Member.

**10.1.17 Directors' additional power to prescribe Regulations and Procedures concerning Ballots and Nominations**

10.1.17.1. Independent of the power to make rules in Article 10.1.16.1 and 10.1.16.2, the Board of Directors shall establish the regulations and procedures, which govern the conducting and regulation of all Ballots and Nominations and shall have the power to;

- (i) Make such regulations and procedures, which govern the conducting and regulation of all Electronic Ballots and Postal Ballots,
- (ii) Make such regulations and procedures which govern Nominations pursuant to Article 12.3, and
- (iii) Make such regulations and procedures, which govern electronic proxies pursuant to Article 28.12.

10.1.17.2 And shall also have the power to amend or vary any such regulations and procedures as may be required from time to time. Such regulations and procedures shall take effect from the date of their approval by the Board of Directors and all Ballots and

Nominations shall be conducted in compliance with such regulations, and procedures.

10.1.18 Save as it may be provided by the provision of any law of parliament in Botswana, or by the express provisions of this constitution, the Board of Directors shall delegate to the Chief Executive Officer and/or other manager all such of its administration powers as aforesaid as it may deem necessary for the full and proper administration of the affairs of the Company.

10.2 **RENUMERATION**

Members of the board shall be remunerated at a rate determined by members at the AGM.

**11. TERM OF OFFICE OF THE BOARD**

11.1 Subject to Article 11.6 of this constitution, the term of office of the board shall be **Thirty-Six (36) months**, and the said term shall be calculated from the date of election of the new board in terms of this constitution.

11.2 Subject to Article 11.4 of this constitution, where more than half of the members of the board cease to be members of the board for whatever reason, the board shall be deemed to have been dissolved and a new board shall be elected in terms of this constitution.

11.3 A new board elected in terms of 11.2 above shall serve only for the remainder of the period, which would have been served by the old board, but for the dissolution.

11.4 Notwithstanding the provisions of Article 11.2 of this constitution, where more than half of the members of the board cease to be members of the board for whatever reason, and that cessation arises less than twelve (12) months before the expiry of the term of office for the board, the members of the board remaining shall continue to administer the functions of the board in the same manner as if there had not been a vacancy until the next election of the new board.



- 11.5 Where the board fails to discharge its functions under this constitution, for any other reason not provided for under this constitution, or where the board fails to meet on three (3) consecutive occasions, the Chief Executive Officer shall assume the powers of the chairperson of the Board and shall cause a Special General Meeting of the members to be convened as per the provisions of this constitution.
- 11.6 A term of office for the Board shall lapse where members as per the provisions of this constitution have passed a motion of no confidence on the board.

## **12. COMPOSITIONS AND ELECTION OF THE BOARD**

12.1 The Board shall consist of ten (10) members who shall be;

12.1.1 Six (6) Representative members

12.1.2 Two (2) External directors

12.1.3 Government representative

12.1.4 The Chief Executive Officer

12.2 Representative Directors

The Six Representative board members shall be elected through a secret ballot at the AGM and shall be representative of all the categories of protected works.

12.2.1 the six (6) elected representative Board members as referred to in Article 12.2 of this constitution shall be representatives of the following sectors;

12.2.1.1 Music and sound recording,

12.2.1.2 Dramatic and theatrical works,

12.2.1.3 Visual arts and photography,

12.2.1.4 Print and publishing (Reprographic reproduction in literary works),

12.2.1.5 Film and audiovisual,

12.2.1.6 Folklore,

12.3 There shall further be one (1) representative of the government in the board.

12.4 External Directors

The Board of Directors may appoint such person or persons (not being a Member of the Company) to be a Director or Directors of the Company (an “External Director” or “External Directors”) and shall determine the term of office for which any External Director shall hold office PROVIDED that any External Director shall be eligible for reappointment at the expiry of his term of office.

12.4.1 The two (2) external Directors of the board as referred to in Article 12.4 of this constitution shall be;

12.4.1.1 a legal practitioner (member of the Law Society of Botswana) with more than six (6) years experience,

12.4.1.2 A Chartered Accountant (member of the Botswana Institute of Accountants) with more than Six (6) years experience.

12.5 Executive Director

The Chief Executive Officer of the Company shall serve as the Executive Director of the Board with no voting rights, PROVIDED that he/she shall automatically cease to be a Director upon the termination of his employment as Chief Executive Officer.

12.6 The Six (6) Representative directors of the Board shall be nominated at an AGM called for that purpose and the following provisions should apply;

12.6.1 A member desirous of serving in the Board shall indicate his/her intention in a letter addressed to the Chief Executive Officer At least Twenty-One (21) days before the date of the AGM,

12.6.2 The said letter as referred in article 12.6.1 above shall contain the following details;

- 12.6.2.1 The age of the applicant,
- 12.6.2.2 The category of works protected under the Copyright and Neighbouring Act, which he/she owns,
- 12.6.2.3 When he/she last registered new works with the company.
- 12.6.3 The Chief Executive Officer shall act as the returning officer for purposes of election of the six (6) candidates seeking elections into the Board under Article 12.2 of this constitution at the AGM.
- 12.6.4 With the exception of the External Directors as per Article 12.4 of this constitution, any person desirous of being a member of the Board shall be a full member in good standing and shall provide proof that he/she has registered with the company new works which are protected under the Copyright and Neighbouring Rights Act in the last 24 months preceding the date of the AGM.
- 12.6.5 Any member who has been charged and convicted of contravention of any of the disciplinary codes of the company; any member who has violated the laws of Botswana in the 24 months preceding the date of the AGM and any person charged and convicted, in the 24 months preceding the date of the AGM, of contravention of any provision of the laws of Botswana relating to intellectual property shall not be eligible for election into the Board.
- 12.6.6 Subject to Article 12.6.7 of this constitution, composition of the Board shall be representative of the various categories of works protected under the Copyright and Neighboring Rights Act and each category shall be entitled to at least one (1) representative.
- 12.6.7 Where, having received the names of persons intending to contest for election into the Board, the Chief Executive Officer determines that there has not been

submission of names from other categories of works as stated in Article 12.6.6, he/she shall make that fact known to the members through a notice published in any locally circulating newspapers, wherein he/she shall call on members from those categories thereby affected to submit their names within seven (7) days from the date of publication of the notice.

- 12.6.8 If at the close of the seven (7) days after the publication of the notice as per Article 12.6.7 of this constitution no names have been submitted, the elections shall proceed and the elected board shall be legitimate despite the fact that there is no representation from the other categories of works protected under the Copyright and Neighboring Rights Act.
- 12.7 For purposes of elections of Board members, the vote shall be conducted by secret ballot.
- 12.8 Once elected, the Board members shall, at their first meeting, elect amongst themselves the positions of Chairperson and the Vice-Chairperson;
- 12.8.1 Any Director, save for an Executive Director, shall be eligible for appointment as Chairperson and Vice – Chairperson respectfully.
- 12.8.2 The Board of Directors may appoint the Chairperson and the Vice Chairperson for a term not exceeding three years and may at any time by a two-thirds majority of the votes of the members of the Board of Directors for the time being remove him or her.
- 12.8.3 Any person who may be appointed as Chairperson and Vice Chairperson shall not, while he continues to hold this office, be subject to retirement under Article 19.1 but he shall be subject to the same provisions as to disqualification and removal under Articles 15 and 16 as the other Directors.
- 12.9 Notwithstanding the provisions of Article 12.6.3 of this constitution, the Board may, at the cost of the company, appoint any person or organisation to administer and conduct the elections if it deems it necessary for the conduct of a free and fair election.

### **13. MEETINGS OF THE BOARD**

- 13.1 The meetings of the Board shall be called by the Chairperson of the Board, in consultation with the Chief Executive Officer.
- 13.2 The Board shall meet at least once every three (3) months at a place and time it may consider appropriate to discuss issues relating to the affairs of the Company.
- 13.3 Notwithstanding Article 13.2 above, the Board may meet anytime and at any place in cases of any urgent matter, which it may have to address.
- 13.4 The Chairperson shall preside and chair all meetings of the Board, provided that where he is absent the Vice Chairperson shall assume his role.
- 13.5 Notwithstanding 13.4 above, the Board may elect any of its members present to preside and chair the meetings of the board in the absence of the Chairperson and the Vice Chairperson.
- 13.6 Decisions of the Board shall be taken by a simple majority of the members of the Board present.
- 13.7 The Board may appoint a person as per Section 161 and 162 of the Companies Act to serve as the Secretary of the board in accordance with Section 163(Duties of the Company Secretary) of the Act. The Secretary shall be appointed for such term, at such remuneration, and upon such conditions, as the Board may think fit; and any Secretary so appointed may be removed by the Board of Directors.

### **14. Eligibility for appointment as Director**

- 14.1 Subject to paragraphs (14.2), (14.4) and (14.5) of this Article, no person who is not a Full Member shall be appointed or act as a Director.

- 14.2 Subject to paragraph (14.3) of this Article, in the case of a body corporate or firm being a Full Member they may be appointed as a Director pursuant to Articles 19.2, 19.5 or 19.6 any person being either an Executive Director, Proprietor, Partner, Principal Shareholder, or Manager or other Officer in the employment of such a Body Corporate or Firm, notwithstanding that such person is not himself a Member and is not as such eligible for appointment as a Director, unless there is already in office as a Representative Director a person who (in any of the above capacities) represents or is in the employment of the same Body Corporate or Firm, or another Body Corporate or Firm in the same group.
- 14.3 For an individual who is a Full Member to be eligible for appointment as a Representative Director more than 50% of that individual's receipts from the Company over the three (3) preceding calendar years, must derive from the making available of copyright works, which are not composed in whole or if in part, to the extent of that part, by that individual;
- 14.4 An individual (representing a body corporate or firm pursuant to Article 14.1 and 14.2 of this constitution proposed to be appointed as a Director being a representative of the various categories of works protected under the Copyright and Neighboring Rights Act also being an author contributing more than 50% of the receipts of the body corporate or firm referred to in Article 14.1 from the Company in the three preceding calendar years must be derived from the making available of copyright works not composed, in whole or, if in part, to the extent of that part, by the person;
- 14.5 No person being or representing a Member qualifying for Membership under Article 6 or being a Director, (within the meaning of Section 126(1) of the Act) or Alternate Director (within the meaning of section 126(1) (a) of the Companies Act) of any Affiliated Society or holding a position which is equivalent to that of a Director, or Alternate Director of an Affiliated Society, shall be eligible for appointment as a Director.

14.5.1 Any question as to whether or not a person is a shadow Director or holds a position, which is equivalent to that of Director or Shadow Director of an Affiliated Society may be determined by the Board of Directors.

14.5.2 Article 14.5.1 shall not apply to an External Director.

14.5.3 Article 14.5.1 shall not apply to an Executive Director.

#### **14.6 BOARD SECRETARY**

The Board may appoint a person, in accordance with section 161 and having qualifications prescribed in section 62 of the Companies Act, to be the Board Secretary, whose duties shall be the following;

14.6.1 To set up meetings and appointments for the Board,

14.6.2 To record minutes of the Board,

14.6.3 To provide personal administrative support to members of the Board,

14.6.4 To provide other duties as prescribed in section 163 of the Companies Act.

#### **15. DISQUALIFICATIONS, REMOVAL AND RESIGNATION**

15.1 A person shall not be elected and appointed as a member of the Board, qualify to be appointed a member of the Board nor shall any person continue to serve as a member of the Board who;

15.1.1 In terms of a law in force in any country;

- (i) Has been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged;

15.2 Has within a period of five (5) years immediately preceding the date of his or her proposed election and or appointment been convicted;

- (i) In Botswana, of a criminal offence which has not been overturned on appeal or in respect of which he or she has not received a free pardon, or
  - (ii) Outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and which conviction has not been overturned on appeal and/or for which he or she has not received a free pardon;
- 15.3 Surrender his or her estate or if his or her estate is finally sequestrated and is insolvent.
- 15.4 Is removed by the General Meeting in terms of the Constitution.
- 15.5 Becomes of unsound mind.
- 15.6 Are absent, without leave of or for other cause acceptable to the Board from its meetings for a period of three (3) consecutive sittings.
- 15.7 Is suspended or expelled by the Board after committing a serious misconduct; or
- 15.8 Dies.
16. A member of the Board shall vacate office if;
- 16.1. He or she becomes subject to a disqualification in accordance with Article 15.1,
- 16.2. He or she gives not less than one month's written notice of resignation to the Chairperson,
- 16.3. He or she is guilty of abuse of office as the AGM may determine; or



16.4. Such members' ceases membership with the Company.

17. The Chairperson shall, as soon as it is practically possible after the vacancy occurs in the membership of the Board, notify the Chief Executive Officer in writing.

18. The Chief Executive Officer shall as soon as it is practically possible after receiving the notification in accordance with Article 17, facilitate an urgent Meeting of the Board in accordance with this Constitution for purposes of filling the vacant post as per Article 19.5 to 19.7 of this Constitution.

## **19. RETIREMENT OF DIRECTORS**

**19.1 Retirement:** Subject to Articles 12.8.2 and 12.8.3, the provisions relating to retirement of Directors shall be as follows: -

(a) On the third anniversary commencing in 2021, Four Elected Directors shall retire from office;

(b) The Directors due to retire on each occasion shall be the Directors who have been longest in office since their last appointment or reappointment by the Company; but as between Directors who have been in office for the same period, the Directors to retire shall (unless otherwise agreed among themselves) be determined by lot.

## **19.2 Replacement or re-appointment**

The Company at the Annual General Meeting at which any Director (other than an External Director) retires in manner aforesaid may, subject to Article 19.3, fill the vacancy by appointing any other person qualified pursuant to Article 14, in the place of the Director so retiring, but the person so appointed shall always have the same qualification as an author, publisher etc. as the Director in whose place he is appointed. In the event that a Ballot shall be held to fill any vacancy in accordance with Article 19.3, then the persons who are

successful in such a Ballot shall be deemed appointed by the Annual General Meeting to fill any such vacancy pursuant to this Article 19.2.

### **19.3 Eligibility for appointment or re-appointment**

- (a) A retiring Director shall be eligible for re-appointment.
- (b) No person shall be eligible for appointment or reappointment as a Director at any general meeting unless a notice in writing signed by two Full Members proposing the appointment of the person as a Representative Director and a notice in writing signed by the person proposed expressing his willingness to be appointed or reappointed as a Representative Director shall have been left at the registered office of the Company not less than three calendar months before the day appointed for the meeting and the person proposed is eligible under Article 14 to be appointed a Director. No person may be nominated as a Representative Director for election at the same General Meeting.
- (c) Upon receipt of a nomination, the Board Secretary shall promptly verify, based on the information in the Company's records, that the person nominated is eligible to be appointed a Director and that the nomination is otherwise valid and the Board Secretary's decision shall be conclusive in the absence of manifest error or an appeal as provided for below. Where the Board Secretary determines that the person nominated for election is not eligible or that the nomination is otherwise invalid the Board Secretary shall notify in writing the person concerned and the proposing Members of the reasons why the person nominated is not eligible or why the nomination is otherwise invalid. That person or the proposing Members shall have seven days to notify the Board Secretary in writing at the registered office of their wish to appeal the decision of the Board Secretary and the reasons for the appeal. The Board of Directors shall as soon as possible thereafter consider the reasons for the Board Secretary's decision and the reasons mentioned in the notice of appeal and shall make a determination. The Board of Directors determination shall be notified to the Board Secretary and the person lodging the appeal and shall be final.

(d) The proposal for Nomination of a Representative Director and such person's expression of willingness to be appointed or reappointed in accordance with paragraph (b) hereof may be communicated to the Company electronically in compliance with such procedures as shall from time to time be determined by the Board of Directors pursuant to Article 10.1.17.

(e) In the event that three calendar months before the day appointed for any general meeting there are more candidates than there are vacancies for Directors being representatives of the various categories of works protected under the Copyright and Neighboring Rights Act, then the Secretary shall cause a Ballot to be held. The Company's Auditors, shall act as scrutinizers of any such Ballot, which shall be carried out in accordance with the regulations and procedures made by the Board of Directors pursuant to Article 10.1.17

#### **19.4 Removal of Director**

The Company may by Ordinary Resolution and in accordance with Section 151 of the Companies Act remove any Director before the expiration of his period of office, notwithstanding anything in this Constitution or in any agreement between the Company and such person.

#### **19.5 Filling vacancy caused by removal**

19.5.1 The Company may by Ordinary Resolution, subject to Article 19.3, appoint any other person qualified pursuant to Article 14 in place of any Director (other than an External Director) removed from office under Article 19.4, but the person so appointed shall always have an equivalent qualification as Representative Director as the Director in whose place he is appointed, and shall be subject to retirement at the same time as his immediate predecessor in office would have been.

19.5.2 The Board of Directors may appoint any person or persons in place of any External Director removed from office under Article 19.4.

## **19.6 Casual vacancy**

19.6.1 The Board of Directors may, in the event of any casual vacancy occurring in the Board of Directors (other than a vacancy arising as a result of the departure of an External Director) fill such vacancy by appointing any person qualified pursuant to Article 14. The person so appointed shall always have an equivalent qualification as Representative Director as the Director in whose place he is appointed and shall be subject to retirement at the next Annual General Meeting at which Directors are due to retire pursuant to Article 19.1 and for which he can be validly proposed for re-appointment in accordance with the provisions of Article 19.3.

19.6.2 The Board of Directors may, in the event of a casual vacancy occurring in the Board of Directors as a result of the departure of an External Director, fill such vacancy.

## **19.7 Directors change of employment**

Subject to the provisions of Article 15 a Representative Director voted onto the Board by virtue of being employed by a publisher who ceases to be in the employment, of one Full Member Publisher but immediately thereupon enters the employment of another Full Member Publisher during his term of office shall, subject to Article 15 be subject to retirement at the next Annual General Meeting at which Directors are due to retire pursuant to Article 19.1 and for which he can be validly proposed for re-appointment in accordance with the provisions of Article 19.3.

## **19.7 DISCLOSURE OF INTEREST**

Members of the Board shall disclose any interest in all matters relating to procurement, employment and other related matters to the Chairperson.

## **20. THE ANNUAL GENERAL MEETING**

20. 1 There shall be an Annual General Meeting of the Company, which shall act as the supreme structure of the company and the highest decision-making structure of the company.
20. 2 The decisions of the AGM shall be final and binding on the members.
20. 3 Pursuant to Section 105 (1) of the Companies Act, the Annual General Meeting shall be held once in each calendar year, not later than Six (6) months after the balance sheet date of the Company and not later than Fifteen (15) months after the previous AGM at such a time and place as may be determined by the Board.
20. 4 The AGM shall be open to all full members of the Company in good standing.
20. 5 The notice of the AGM shall be communicated by the Chief Executive Officer to the members through publication in locally circulating newspapers, on the Company's' official website, official Facebook page, via text message service, WhatsApp service and any other emerging social media platform thirty calendar (30) days before the scheduled date of the AGM and in accordance with provisions of article 30 and such notice shall contain information as to the date and place of the AGM, and the agenda of the AGM.
20. 6 Notwithstanding the provisions of Article 20. 5, the failure by the Chief Executive Officer to give notice of the AGM as required should not invalidate the business of the AGM where such failure was on account of reasonable grounds.
20. 7. The business of the AGM shall be;
20. 7.1. To adopt the Agenda of the meeting.
20. 7.2. The consideration of the Company's statutory financial statements and the report of the Directors delivered by the Chairman and the report of the statutory auditors on those statements and that report.

20.7.3. The review by the Members of the Company's affairs.

20.7.4. The appointment of Directors in the place of those retiring, and

20.7.5. The appointment and fixing of the remuneration of the statutory auditors.

20.8 Business deemed special that is transacted at an Extraordinary General Meeting and also that is transacted at an Annual General Meeting;

20. 8.1 Consideration and voting on any motion brought to the AGM by a member in terms of this Constitution.

20. 8.2 Determining any appeals brought by any person with respect to any issue relating to membership application.

20. 8.3 Consideration and voting on any motion to amend the provisions of this Constitution provided that same has been brought as per procedures laid out in this Constitution.

20. 9 Where any member seeks to have any item to form part of the agenda of the AGM, he shall notify the Chief Executive Officer in writing not less than thirty (30) days before the publication of the notice communicating the date of the AGM;

20. 9.1 Upon receipt of the notice as referred to in 22.8, the Chief Executive Officer shall cause the said notice to be included in the notice communicating the AGM under Article 22.6 of this Constitution.

20. 9.2 Where a notice has been given as per Article 22.9 above, and such item has been included in the agenda, but the member who gave the notice is not present at the AGM and has not withdrawn it, any member may adopt the said item in the same manner as if he had given notice as per Article 22.9, and move it in the same manner as if the notice had been given by him, failing which the item shall be removed from the agenda.

20.10 The AGM shall exercise such other powers as may be necessary for the proper functioning of the Company.

## **21. EXTRAORDINARY MEETINGS**

21.1 Subject to Article 21.1.3 of this Constitution, the Board shall reserve the right to call an Extraordinary General Meeting under the following circumstances;

21.1.1 Whenever there is an urgent matter that requires consideration by the members of the Company, provided that such urgency has been so determined by a vote of two thirds majority of the Board members, or

21.1.2 At the request of Twenty-Five (25) of the full members of the Company.

21.1.3 Where the Board is unable to discharge its functions under this Constitution and or where the Board is unable to convene and hold meetings as per the provisions of this Constitution, the Chief Executive Officer shall have the power to call Extraordinary General Meeting of the members for purposes of election of a new Board.

21.2 The Chief Executive Officer shall communicate the date, time and place of the Extraordinary General Meeting to the members by way of publication of the notice of such a meeting in locally circulating newspapers, on the company's official Website, official Facebook page, text message service, WhatsApp service and any other emerging social media platforms

21.3 The notice as stated in 21.2 above should specify the matters that will be dealt with at the meeting, the place and time of the meeting and the resolutions, which are proposed to be adopted at the meeting.

21.4 The Extraordinary General Meeting shall only deal only with the particular business of which notice has been given as per the provisions of this Constitution.

21.5 The Extraordinary General meeting shall not discuss any other business apart from business brought in terms of the provisions of this Constitution.

21.6 Notwithstanding the provisions of Article 21.1, Extraordinary General Meeting maybe called at such shorter notice than required in this Constitution where the Board considers that there is a situation of extreme urgency.

## **22. SUB-COMMITTEES**

The Board shall appoint various sub-committees either from amongst their members exclusively, or include non-members and shall;

22.1 Determine what the duties, rights and obligations such sub-committees shall be.

22.2 Delegate to such committees those of its powers it deems necessary. Any Committee so formed shall in the exercise of the powers so delegated conform to any regulations (including one as to the quorum necessary to transact its business) that may be imposed on it by the Board of Directors.

22.3 Avail resources to the sub-committees for purposes of enabling them to discharge their functions.

22.4 Shall co-opt any expert to sit in any relevant sub-committee where it deems such to be necessary for purposes of addressing the mandate of the said committee.

### **Chairpersons of Committees**

22.5 Any Committee may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their numbers to be chairperson of the meeting.

### **Committees - meeting and voting**

22.6 Any Committee may meet and adjourn as it deems proper. Questions arising at any meeting shall be determined by a majority of votes of the Directors present, every director has one (1) vote.



## Validation of appointment of Directors

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

## Resolutions in writing

22.8 A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the Board of Directors, or of any Committee of the Board of Directors shall be as valid and effectual as if it had been passed at such a meeting duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors so entitled. A Director may supply any such resolution in electronic form to the Company if such resolution is sent to an address specified for the purpose by the Company and is authenticated in such manner as may be specified by the Company and approved by the Board from time to time.

## Attendance by teleconference or other acceptable form of digital presence

22.9 For the purposes of this Constitution, the contemporaneous linking together by teleconference or other acceptable form of digital presence (with or without a contemporaneous video link) of a number of Directors not less than the quorum shall be deemed to constitute a meeting of the Directors, and all the provisions in these Articles as to meetings of the Directors shall apply to such meetings provided that;

- (a) Each of the Directors taking part in the meeting can speak, be heard and to hear each of the other Directors taking part;
- (b) At the commencement of the meeting each Director acknowledges his presence and that he accepts that the conversation shall be deemed to be a meeting of the Directors; and
- (c) A Director may not cease to take part in the meeting by disconnecting his teleconference or other acceptable form of digital presence unless he has previously obtained the express consent of the Chairperson of the meeting, and

a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he has previously obtained the express consent of the Chairperson of the meeting to leave the meeting as aforesaid.

A minute of the proceedings at such meeting by teleconference or other acceptable form of digital presence shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairman of the meeting.

### **23. STAFF MEMBERS**

- 23.1 Other members of the management staff shall be appointed by the Chief Executive Officer, subject to the provisions of the Human Resources and Staff Welfare Policy, and the approved structure of the Company.
- 23.2 The Board shall set down an Employment Policy and Guidelines, which shall inform the appointment of staff of the Company.

### **24. FINANCE**

- 24.1 The income of the Company shall be derived from;
  - 24.1.1 Licensing fees and royalty income,
  - 24.1.2 Interest and investment income,
  - 24.1.3 Income from levy on Technical Devices,
  - 24.1.4 Donations and other sources as agreed upon by the Annual General Meeting from the recommendation of the Board
- 24.2 The Company's accounts in respect of each financial year shall be audited by the Auditors nominated by the Board and a report thereof shall form part of the agenda at the AGM.

24.3 For the purposes of this Constitution, the financial year of the Company shall be a period of 12 months beginning July of one year and ending June of the following year.

24.4 The Financial Reports and the External Auditors Report shall be made available to members through presentation at the AGM as per the provisions of this Constitution.

## **25. STATE OF THE COMPANY REPORT AND AUDIT REPORT**

25.1 There shall be a report termed the COSBOTS Annual Report which report shall consist of the Directors report and the External Auditor's Report.

25.2 The report, as referred to in Article 25.1, shall be presented by the Chairperson to the members at the AGM as per the provisions of this Constitution.

25.3 At least fourteen (14) working days before the AGM, the COSBOTS Annual Report, shall lie for inspection by members at the management office.

25.4 The Board of Directors shall cause proper books of accounts to be kept with respect to;

25.4.1 All sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure take place, and

25.4.1 All sales and purchases of goods by the Company, and

25.5 Proper Books of accounts shall not be deemed to be kept if they are not kept, such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

25.6 The books of accounts shall be kept at the registered office of the Company, or at such other place or places in the State as the Board of Directors thinks fit and shall be open to the inspection of the Directors. The books of account shall be open to the inspection of the Directors, but no Director shall be entitled to inspect such books for information on Distributions made to individual Members of the Company save only in performance of his

duty as an Officer of the Company to secure compliance by the Company with the statutory requirements under the Companies Act to keep proper books of accounts. A Director shall notify the Board in writing in advance of his intention to inspect the books of accounts for information on any such Distributions in performance of such duty.

- 25.7 Inspection of books of accounts - The Board of Directors shall from time to time determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors, and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company, except as conferred by statute, or authorised by the Board of Directors, or by the Company in General Meeting.
- 25.8 Accounts, Statement of Comprehensive Income, Statement of Financial Position, Statement of Changes in Equity, Statement of Cashflow and reports - The Board of Directors shall from time to time, in accordance with the Companies Act, cause to be prepared, and to be laid before the Company in General Meeting, such accounts, Statement of Comprehensive Income, Statement of Financial Position, Statement of Changes in Equity, Statement of Cashflow and reports as are required by the Companies Act.
- 25.9 Copies of Statement of Comprehensive Income, Statement of Financial Position, Statement of Changes in Equity, Statement of Cashflow and reports- A copy of every Statement of Comprehensive Income, Statement of Financial Position, Statement of Changes in Equity and Statement of Cashflow (including every document required by law to be annexed thereto) which is to be laid before the Company in Annual General Meeting, together with a copy of the Directors and the Auditor's report, shall be sent to all Members, either by email in accordance with Articles 29.1 and 29.1.1 or by post in accordance with Article 29.1.2 or Companies official Website in accordance with Article 29.1.3 not less than twenty-one days before the date of the meeting.
- 25.10 STATUTORY AUDIT - Statutory auditors shall be appointed, and their duties regulated in accordance with the Companies Act and any statutory modification or extension thereof for the time being.

## **26. STANDING RULES AND PROCEDURES**

### **Quorum**

26.1 No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting is scheduled to commence.

26.2 The quorum for the Annual General Meeting and the Extraordinary General meeting shall be the presence of Twenty-five (25) members present at the meeting.

26.2 Where within half an hour from the time appointed for the meeting to commence, and a quorum is not met, the Chairperson shall adjourn the meeting for a period of not more than three (3) hours, and thereafter if at the expiration of such period a quorum is still not met, the meeting shall proceed in the same manner as if a quorum has been met.

### **26.3 Adjournment of meeting**

Any meeting may be adjourned to another date if the members present at the meeting direct that it be so adjourned.

26.4 The Chairperson of the Board of Directors shall be responsible for chairing the meetings of company, and shall have the powers to order any member to discontinue his speech, withdraw his remark and in cases where there is a breach of the peace, cause such a member disrupting the meeting to withdraw from the meeting.

26.5 In the event the Chairperson of the Board is not available within fifteen minutes from the time when the meeting is scheduled to commence, the members of the board present shall select one of the director's present to chair the meeting.

26.6 If at any meeting no Director is willing to act as Chairperson, or if no Director is present within fifteen (15) minutes after the time scheduled for the commencement of the meeting,

the Full Members present shall choose one of their numbers to act as chairperson of the meeting.

26.7 All minutes of the meetings convened under the provisions of this Constitution shall be kept under the care and custody of the management and or the Board Secretary, and the members shall have the right to inspect them.

26.8 Save as may otherwise be provided under the provisions of this Constitution, decisions at the meetings of the Company shall be taken by a simple majority of members voting.

## **27 Method of voting**

27.1 At any General Meeting a resolution put to the vote of the meeting shall be decided either by show of hands and or by secret ballot.

27.2 In the case of a poll being so demanded, a declaration by the chairperson of the meeting that a resolution has on a show of hands the basis of the Poll been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book, containing the minutes of proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution.

27.3 The demand for a poll may be withdrawn.

## **28. Poll**

28.1 Notwithstanding the provisions of Article 27, if at any meeting of the company a poll is demanded, it shall be taken in such a manner as the chairperson of the meeting directs, and the result of the poll shall be deemed to be the resolution of the meeting.

### **28.2 Time for taking poll**

28.2.1 Except in the case where the full members have to elect a full member to chair a meeting of the company under the provisions of Article 26.6, a poll to elect the chair of the meeting shall be taken before any business of the meeting. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs; and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

### **28.3 Voting to alter certain articles**

28.3.1 For the purpose of deleting or altering this Article or Articles 12.1. To 12.3, 10.1, 10.1.17, 16.4 19.1, or 13 the necessary special resolution shall be passed by a majority containing not less than three-fourths of the votes of the Members voting.

### **28.4 VOTES OF MEMBERS**

28.4.1 Every Full Member shall have a vote. No Member shall be entitled to vote unless he is present in person or by proxy.

28.4.2 On a poll or on a secret ballot held under Article 19.1;

28.4.2.1 Every Full Member shall have weighted votes based on aggregate distribution earned as provided for in the Distribution rules

28.4.2.2 Each Full Member who has been a Member of the Company (or of the Company and any Affiliated Society collectively) for a continuous period of not less than one (1) year and, during the immediately preceding five (5) years or less, has received in aggregate by way of distributions from the Company (or from the Company and any Affiliated Society collectively) an amount determined by the Board of Directors from time to time and provided for under the distribution rules the amount which on the immediately preceding 30 June was the annual financial qualifying criteria for admission to Full Membership shall, subject to paragraphs 28.4.5 and 28.4.6 of this Article, be entitled to ten additional votes, five additional

votes, three additional votes respectfully and one additional vote, depending on the member level of earnings of the Full member . Provided that the aggregate sum referred to in the distribution rules shall be computed by reference only to distributions made by the Company (or any Affiliated Society) in respect of a membership as a representative of the various categories of works protected under the Copyright and Neighboring Rights Act but not in respect of a membership as Successor.

28.4.2.2 The Board of Directors may determine from time to time the evidence that the Company shall require to vouch a Member's period of Affiliated Society membership and the amount of a Member's distribution from any Affiliated Society for the purposes of these Articles.

28.4.3. As soon as practicable after the 1st day of July in each year the Board Secretary shall cause to be prepared and submitted to the Chief Executive Officer or such other manager of the Company as the Directors may from time to time specify a list containing the name of each Full Member whose aggregate receipts from the Company (or from the Company and any Affiliated Society collectively) during the immediately preceding five (5) years or less, were such as to entitle the Member to additional votes under the provisions of the Distribution Rules.

28.4.4. As soon as the list has been certified as being correct by the Chief Executive Officer or such other manager of the Company as the Directors may from time to time specify pursuant to this Article the Board Secretary shall notify in writing each Full Member whose name is on the list. As soon as each succeeding list has been certified pursuant to this Article the Board Secretary shall notify in writing each Full Member whose name was on the immediately preceding list but whose name is not on the latest list that, in accordance with the provisions of this Article, the Member is no longer entitled to additional votes.

28.4.5 Each Full Member whose name is on a list certified pursuant to this Article may cast in accordance with the distribution rules, on a secret ballot or by a poll at any General



Meeting or in any ballot to determine the eligibility of a Director for appointment held under Article 19.3(c), which takes place during the currency of that list.

28.4.6 Subject to paragraph (i) of this Article any Member shall be entitled;

- (i) To inspect the list of Full Members entitled to additional votes during the normal business hours on any day when the offices of the Company are open;
- (ii) To be supplied by the Board Secretary as soon as practicable with a copy of the list on payment to the Company of a sum calculated at the rate prescribed from time to time under the Act in respect of the provision of copies of a Company's register of Members.

28.4.7 The information in the list of Full Members entitled to additional votes is confidential to the Members of the Company and a Member who has inspected the list or has been supplied with a copy of the list shall not disclose any information on the list to any person who is not a Member.

## **28.5 Members of unsound mind**

28.5.1 A Member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction, may vote, whether by a secret ballot or on a poll, by his receiver, guardian or other person in the nature of a committee or receiver appointed by that Court, and any such committee or receiver, or guardian or other person may, on a poll or secret ballot, vote by proxy.

## **28.6 Proxy**

28.6.1 Any Member of the Company entitled to attend and vote at a meeting of the Company shall be entitled to appoint any person, either a member of the company or a non-member as his proxy to attend and vote on his behalf of him, and a proxy so appointed shall have the same right as the Member to speak at the meeting and to vote in a secret ballot and on a poll.

## **28.7 Proxy instrument**

28.7.1 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing; or, if the appointer is a Body Corporate, either under the common seal, or the hand of an officer thereof duly authorised; or, if the appointer is a Firm, under the hand of a partner in the Firm, or their attorney duly authorised.

## **28.8 Deposit of proxy**

28.8.1 The instrument appointing a proxy or a power of attorney or other authority, if any, under which it is signed, or a notarial certified copy of that power or authority, shall be deposited at the registered office of the Company, or at such other place within the Country as is specified for that purpose in the notice convening the meeting, not less than forty-eight (48) hours before the time for holding the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote, or in the case of a poll, not less than twenty-four (24) hours before the time appointed for taking the poll; and, in default, the instrument of proxy shall not be treated as valid.

## **28.9 Form of proxy**

28.9.1 An instrument appointing a proxy may be in the form prescribed by the Companies Act or a form as near thereto as circumstances permit and shall be deemed to confer authority to demand or join in demanding a poll.

## **28.10 Revocation etc. of proxy**

28.10.1 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principle or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have

been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

## **28.11 Electronic or Internet Proxies**

28.11.1 Notwithstanding anything in Articles 28.6 to 28.10, the Board of Directors may from time to time allow appointments of a proxy to be made by means of an electronic or internet communication or facility and may in a similar manner permit supplements to, or amendments or revocations of, any such electronic or internet communication or facility to be made. The Board of Directors may in addition prescribe the method of determining the time at which any such electronic or internet communication or facility is to be treated as received by the Company and such other procedures relating to electronic proxies in such regulations and procedures as shall from time to time be determined by the Board of Directors pursuant to Article 10.1.17. The Board of Directors may treat any such electronic or internet communication or facility which purports to be or is expressed to be sent on behalf of a Member as sufficient evidence of the authority of the person sending that instruction to send it on behalf of that Member.

## **28.12 Company representatives**

28.12.1 Any Body Corporate which is a Full Member of the Company may, by resolution of its directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the Company which he represents as that Company could exercise if it were an individual Full Member of the Company as the case may be.

## **29 NOTICES**

29.1 Method of giving notice -A notice may be given by the Company to any Member personally, by sending it to his registered residential address as appearing on the register of Members or

by sending it by post to him to his registered postal address as appearing on the register of Members or by way of publication of the notice of such a meeting in locally circulating newspapers, on the company's official Website, official Facebook page, text message service, WhatsApp service and any other emerging social media platforms.

#### 29.1.1 Service by Email

29.1.1.1 Where a notice to a Member is sent by email to his registered email address, service of the notice shall be deemed to be effected properly at the expiration of twenty-four (24) hours after the email containing the same is sent.

#### 29.1.2 Service by post

29.1.2.1 Where a notice to a Member is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four (24) hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

#### 29.1.3 Service by official Website

29.1.3.1 Where a notice to a Member is published on the official Website, service of the notice shall be deemed to be effected on the date it is published by the Chief Executive Officer or mandated by the Board of Directors, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four (24) hours after the official Website containing the same is published, and in any other case at the time at which it is posted electronically and its visible to anyone visiting the site and the page in the ordinary course of surfing the internet.

#### 29.1.3 Service by official WhatsApp channel or text message service

29.1.3.1 Where a notice to a Member is sent via WhatsApp/text message service or such related technology, service of the notice shall be deemed to be effected on the date the text message is sent by the Chief Executive Officer or by an Officer mandated by the Board of Directors, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four (24) hours after the text sent via WhatsApp or such related technology containing the same is indicated as seen by the recipient, and in any other case at the time at which it is read by the rightful recipient in the ordinary course of social media communication.

29.1.2.2 Without prejudice to the provisions of Article 29.1, if at any time by reason of the suspension or curtailment of postal services within the Country, the Company is unable effectively to convene a General Meeting by notices sent through the post, a General Meeting may be convened by a notice advertised on the same day in at least one national newspapers published in the Country and such notice shall be deemed to have been duly served on all Members entitled thereto at noon on the day on which the said advertisements shall appear. In any such case the Company shall send confirmatory copies of the notice through the post to those members whose registered addresses are outside the Country (if or to the extent that in the opinion of the Directors it is practical so to do) or are in areas of the Country unaffected by such suspension or curtailment of postal services and if at least ninety-six hours prior to the time appointed for the holding of the meeting the posting of notices to Members in the Country, or any part thereof which was previously affected, has become practical in the opinion of the Directors, the Directors shall send forthwith confirmatory copies of the notice by post to such Members. The accidental omission to give any such confirmatory copy of a notice of a meeting to, or the non-receipt of any such confirmatory copy by, any person entitled to receive the same shall not invalidate the proceedings at the meeting. Notwithstanding anything contained in this Article the Company shall not be obliged to take account of or make any investigations as to the existence of any suspension or curtailment of postal services within or in relation to all or any part of any jurisdiction or other area other than the Country.

**29.2** Notice of General Meeting - Notice of every General Meeting shall be given in some manner hereinbefore authorised to (i) every Member, (ii) the Auditors for the time being of the Company and (iii) the Directors of the Company. No other persons shall be entitled to receive notices of General Meetings.

### **30. INDEMNITY**

30.1 Directors and officers entitled to indemnity -The Board of Directors of the Company may in any case in which it is alleged that an employee of the Company has acted improperly in relation to any of the affairs of the Company resolve to render such employee harmless and/or to indemnify them their heirs, executors or administrators in respect of any claim for loss or damage whether arising by reason of negligence, breach of duty or breach of contract (fraud excepted) in relation to any act, omission, default or neglect touching and concerning the business of the Company whether or not such act, omission, default or neglect causes loss to the Company, any Member thereof or to any third party.

30.2 The Board of Directors may to the extent permitted by section 159 of the Act, indemnify any Officer of the Company or any person employed by the Company as Auditor against such liability incurred by the Officer:

- (i) In defending any proceedings (whether civil or criminal) in which judgment is given in his or her favour or in which he or she is acquitted; or
- (ii) In connection with any proceedings or application referred to in, or under, Section 517 of the Companies Act in which the court grants relief to him or her.

30.3 The company may purchase and maintain for any of its officers' insurance in respect of any liability referred to in Section 159 of the Companies Act.

### **31. WINDING UP**

31.1 **Procedure on winding-up-** In the event of and upon the winding up of the Company whether voluntary or otherwise at any time, the assets of the Company (other than the Performing

Right vested in or controlled by the Company pursuant to these Articles and any sums Distributable in accordance with the Rules) shall, in so far as they are available for the purpose, be apportioned among the persons who are Members at the date of such winding up in the proportions in which such Members received Distributions from the Company in respect of the year ending on the 30th day of June immediately prior to such winding up; and the rights (if any) vested in the Company by any Member, or controlled by the Company by virtue of his Membership, shall revert to such Member or his personal representative.

## **32 VOTE OF NO CONFIDENCE**

32. 1 Subject to article 32. 6 of this Constitution, members shall have the right to pass a motion of no confidence against a member of the Board and or the entire Board.
32. 2 The motion of no confidence shall be communicated to the management in writing giving a thirty calendar (30) days' notice, and the Chief Executive Officer shall cause such a motion to be presented before the members at the EGM.
32. 3 The members, in deciding whether the motion as referred to in Article 29.1 passes, shall vote by way of a two-thirds of full members present at the EGM.
32. 4 In the event a motion of no confidence is successful against a member of the Board, such a member who has been voted against shall immediately vacate his/her position and shall be replaced by another person nominated by the EGM.
32. 5 If a motion of no confidence is successful against the entire board, all the members of the Board shall forthwith vacate their positions and an interim Board shall be elected from the members present at the EGM for purposes of arranging fresh elections of the Board in accordance with the provisions of this Constitution.
32. 6 No motion of no confidence shall be brought against a member of the Board, and or the entire Board unless it is shown by a full member moving such a motion that he/she has

support of seventy-five percent (75%) of the full members of the company thirty calendar (30) days before holding of the Extraordinary General Meeting.

### **33. INTERPRETATION OF THE CONSTITUTION**

33.1 Where there arises any question about the interpretation of the provisions of this Constitution, the Board shall decide by way of a two-thirds majority as to which interpretation to adopt.

33.2 The decision of the Board as referred to in Article 28.1 above shall remain valid until the AGM decides otherwise.

### **34. AMMENDMENT OF THE CONSTITUTION**

34.1 Any provision of this Constitution may be amended by way of a two-thirds majority of full members present at an EGM called specifically for purposes of amending the Constitution.

34.2 Any member who proposes an amendment shall do so by notice in writing to the Chief Executive Officer at least ninety calendar (90) days before the meeting called specifically for this purpose.

34.3 Upon receipt of notice as referred to in Article 34.1 above; the Chief Executive Officer shall circulate the notice to the members at least thirty (30) calendar days prior to the meeting called for this purpose.

34.4 The proposal to call a meeting for purposes of amending the provisions of this Constitution shall be subject to support of at least one third of the full members of the company, and such support shall be forwarded to the Chief Executive Officer in writing within fourteen (14) calendar days from the date when the notice in terms of Article 34. 1 was issued.

### **35. APPLICABLE LAW**



35.1 This Constitution, its applicability and interpretation shall be in terms of the laws of the Republic of Botswana and in this regard the Courts of Botswana shall have exclusive jurisdiction to determine all matter arising thereto.

**36. EFFECTIVE DATE**

36.1 This Constitution shall come into effect upon adoption by the members at Extraordinary General Meeting called for purposes of its adoption in terms of and subject to approval of the Registrar of Companies.

36.2 Except for the management of the Company, the term of office of any structure established under the Constitution, which was in force immediately prior to the adoption of this Constitution, shall lapse immediately after the registrar of companies approves this Constitution.

36.3 Notwithstanding article 36.2, the Board established in terms of the Constitution, which was in force before the adoption of this Constitution shall continue to exercise its powers in terms of the old Constitution pending the election of the new Board in terms of this Constitution.