

CONSTITUTION OF THE DIGITAL MEDIA AND MARKETING ASSOCIATION OF SOUTH AFRICA

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1. NAME

The name of the association is the Digital Media and Marketing Association of South Africa.

2. INTERPRETATION

2.1. In this Constitution, unless the context clearly indicates a contrary intention, any expression which denotes one gender shall include the other, a natural person shall include a juristic person and other created entities and vice versa, the singular shall include the plural and vice versa, the words and expressions contained below shall bear the meanings assigned to them and related words and expressions shall bear corresponding meanings:

2.1.1. **“Creative or Development Agency”** shall mean an agency which offers creative or development services within the South African business environment. It is recorded that any dispute as to whether a person falls within the definition of a ‘Creative or

Development Agency' shall be determined by the Execo, acting as an expert and not an arbitrator and whose determination shall be final and binding;

2.1.2. "**DMMA**" is the abbreviation for the Digital Media and Marketing Association;

2.1.3. "**Digital Media**" (as opposed to analog media) shall mean electronic media that work on digital codes. Digital media like digital audio, digital video and other digital "content" can be created, referred to and distributed via digital information processing machines. Digital media represents a profound change from previous (analog) media. Ref http://en.wikipedia.org/wiki/Digital_media

2.1.4. "**Digital Marketing**" shall mean the promoting of brands using all forms of digital advertising. Whilst digital marketing does include many of the techniques and practices contained within the category of Internet Marketing, it extends beyond this by including other channels with which to reach people that do not require the use of The Internet. As a result of this non-reliance on the Internet, the field of digital marketing includes a whole host of elements such as mobile phones, sms/mms, display/banner ads and digital outdoor. (ref) http://en.wikipedia.org/wiki/Digital_marketing

2.1.5. "**Execo**" shall mean the Executive Committee of the DMMA, the structure of which is set out in 9 below;

2.1.6. "**Media Agency**" shall mean an agency which –

2.1.6.1. operates in the business of either media strategy, planning or buying in South Africa;

2.1.6.2. buys at least 40% (forty per cent) of its annual media purchase from South African publishers; and

2.1.6.3. makes use of and promotes the use of the DMMA endorsed statistics measurement tool for digital media in South Africa,

it being recorded that any dispute as to whether a person falls within the definition of an 'Media Agency' shall be determined by the Execo, acting as an expert and not an arbitrator and whose determination shall be final and binding;

2.1.7. **“Member”** shall mean an Online Publisher, Creative or Development Agency and/or Media Agency which has been accepted as a member of the DMMA in terms of this Constitution;

2.1.8. **“Online Publisher”** shall mean an online publisher (as the term is ordinarily understood in South Africa, it being recorded that such term includes a publisher of both original and aggregated content utilising electronic communications media) which –

2.1.8.1. is largely South African owned; or

2.1.8.2. has a dedicated, localized portal for the South African market (eg, <http://za.yoursite.com>) where all pages are tagged; or

2.1.8.3. has the ability to tag South African-only traffic with the DMMA’s analytics tags which may change from time to time,

it being recorded that any dispute as to whether a person falls within the definition of an ‘Online Publisher’ shall be determined by the Execo, acting as an expert and not an arbitrator and whose determination shall be final and binding.

Where any number of days is prescribed in this Constitution, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

3. PURPOSE

The DMMA , formerly the Online Publishers’ Association, is an independent body and voluntary association aimed at:

- 3.1. building trust in the digital medium as a viable and lucrative platform for South African advertisers to reach and engage with their target audiences;
- 3.2. increasing the share of advertising, sponsorship and marketing spend which is directed at the South African digital industry;
- 3.3.** ensuring a sustainable and vibrant digital industry in South Africa.

4. MISSION

The DMMA's mission is to provide a non-profit forum:

- 4.1. in which Online Publishers and/or their appointed Advertising Sales Representatives, Creative or Development Agencies and Media Agencies can address issues of common interest;

- 4.2. which can facilitate engagement, interaction, learning and commerce between Members, focused on growing the South African digital industry;
- 4.3. which can represent the South African digital industry before the marketing community, the press, government and the public; and
- 4.4. through which international digital players can enter the South African digital marketplace.

5. OBJECTIVES

In order for the DMMA to successfully pursue its mission and purpose, the DMMA will have to:

- 5.1. stay up-to-date on global digital media and marketing trends so as to develop an understanding of how the South African digital industry will change as it matures;
- 5.2. formulate, implement and continually evolve a strategy to educate the South African marketing and advertising community about the benefits of digital marketing and advertising;
- 5.3. enable the South African digital industry with a single, credible audience and revenue measurement and tracking product to act as a planning tool for advertising and media agencies and as an information source for the marketing community;
- 5.4. endorse the highest standards in digital publishing, development, creative and media planning with respect to quality and integrity, credibility and accountability;
- 5.5. where relevant, develop and promote standards across all aspects of the South African digital media and marketing industry;
- 5.6. help Online Publishers, Creative or Development Agencies and Media Agencies to drive revenue through providing relevant and effective digital marketing channels, solutions and services to the South African marketplace;
- 5.7. engage positively with all related bodies in order to further the interests of a sustainable digital media and marketing industry in South Africa.

6. STRUCTURE

- 6.1. The DMMA will consist of a general body of Members who comply with the criteria for membership as set out in 7 below.
- 6.2. The DMMA membership will elect the Execo to manage the day-to-day affairs of the DMMA.
- 6.3. The Execo may, from time to time and in its sole discretion, form and dissolve such sub-committees as it may deem appropriate to deal with specific matters of the DMMA, as contemplated in 14 below.

7. DMMA MEMBERSHIP

- 7.1. The DMMA shall have one class of membership, each Member being either an Online Publisher and/or their appointed Advertising Sales Representatives, a Creative or Development Agency or a Media Agency.
- 7.2. A person (“**Applicant**”) will be considered for Membership of the DMMA where the Applicant undertakes, in writing, to:

- 7.2.1. be in continuing compliance with the provisions of the DMMA Constitution as it may be amended from time to time and to continuously promote the DMMA Purpose, Mission and Objectives;
 - 7.2.2. be in continuing compliance with the DMMA's Code of Conduct as it may be amended from time to time;
 - 7.2.3. demonstrate an ongoing commitment to best practices in digital media and marketing as generally accepted within the digital media and marketing industry in South Africa;
 - 7.2.4. appoint a senior executive and an alternate from its ranks for the purpose of acting as its representative on the DMMA;
 - 7.2.5. employ only lawful and ethical marketing techniques and marketing practices which do not have the effect of misleading or confusing consumers and to comply with the rulings of the Advertising Standards Authority of South Africa (ASASA) and similar bodies; and
 - 7.2.6. adopt and comply with the audience measurement and tracking product adopted by the DMMA from time to time in terms of 11.2.6.
- 7.3. All applications for membership must be made via the then current DMMA membership application form or by such other means as may be determined by the Execo from time to time.
- 7.4. No person will be admitted as a Member unless –
- 7.4.1 the relevant membership application has been vetted by the Execo and approved by it, in writing, prior to distribution to the broader membership for the purposes of voting thereon. The Execo shall be empowered, in its sole discretion, to decline or accept any application for membership or to refer such application back to the Applicant for further clarification or detail, and shall not be obliged to distribute any application to the broader membership for the purposes of voting thereon; and
 - 7.4.2 75% of the then current Members have approved its application for membership.
- 7.5. As per the provisions of 7.2.4, each Member shall appoint a specific person, in writing, as its DMMA representative and such representative or his/her alternate shall attend all DMMA meetings on behalf of the Member and shall be entitled to act on behalf of the Member in all matters pertaining to the DMMA.
- 7.6. Only one representative or alternate for such representative per Member shall be entitled to attend DMMA meetings.
- 7.7. The Execo may, in its sole discretion, revoke the membership of any Member who fails to make full payment within 90 days of the due date for payment of membership fees.
- 7.8. A Member's membership may be terminated -
- 7.8.1. by a majority vote of the Members;
 - 7.8.2. by written notice of resignation delivered by the Member to the Execo; and,
 - 7.8.3. at the discretion of the Execo where the Member has -
 - 7.8.3.1. failed to pay membership fees despite demand therefor as set out in 7.7 above;
- or

- 7.8.3.2. failed to attend three or more meetings of the DMMA without providing valid prior written apology therefor; or
 - 7.8.3.3. failed to adopt and implement the audience measurement and tracking product adopted by the DMMA from time to time or otherwise failed to comply with the provisions of this Constitution, the DMMA's Code of Conduct and/or is otherwise in breach of the undertaking which the Member gave the DMMA on making its membership application.
- 7.9. Any Member whose membership of the DMMA has been terminated for whatsoever reason shall forfeit all membership fees and other amounts paid by it to the DMMA.

8. FINANCES

- 8.1. Members will be required to pay an annual membership fee, payable annually in advance.
- 8.2. Members may, by way of resolution passed by not less than 75% of Members present and entitled to vote at a general meeting or a special meeting, determine and institute different categories of membership and may prescribe different membership fees for such different categories.
- 8.3. Notwithstanding anything to the contrary contained herein, no Member (or its representative) whose membership fees have not been paid on the due date will be entitled to vote at any meeting of the DMMA or of the Execo for as long as such membership fees remain outstanding.
- 8.4. Members will be responsible for all their own expenses in connection with their membership of the DMMA, including (without being limited to) travel costs associated with the attendance of DMMA meetings. Exceptions to this rule require prior written Execo authorisation.
- 8.5. The Execo may accept unconditional offers from Members or any other organisations to pay for special projects undertaken by the DMMA.
- 8.6. The Execo will be entitled to charge special levies to Members from time to time to fund special projects of the DMMA which are necessary for or ancillary to the DMMA's mission, provided that such a special levy has been approved by a majority of Members.
- 8.7. Membership fees as set by the DMMA shall not cover any costs associated with the adoption and implementation by Members of an audience measurement and tracking product which has been adopted by the DMMA.

9. STRUCTURE OF THE EXECO

- 9.1. Members will, annually at their annual general meeting, elect a Chairperson, a Deputy Chairperson and 6 (six) additional Members from their ranks to serve a one-year term of office. These elected persons, totalling 8 (eight) persons, will form the Execo.
- 9.2. The 6 (six) additional members of the Execo shall, unless otherwise decided by the Execo, act as chairpersons of the following subcommittees:
 - 9.2.1.1. Monitoring;
 - 9.2.1.2. Measurement;

- 9.2.1.3. Marketing;
 - 9.2.1.4. Research;
 - 9.2.1.5. Head of Agencies – Creative;
 - 9.2.1.6. Head of Agencies – Business.
- 9.3. The Execo will be entitled, but not obliged, from time to time to co-opt such additional members to the Execo as the Execo may deem appropriate, to assist the Execo with specified projects. Such co-opted members shall not, for the purpose of this Constitution, be deemed to be members of the Execo.
- 9.4. In the case of the vacation for whatsoever reason of any of the positions of the Execo prior to the appointment of a new Execo as aforesaid, a new office bearer will be elected by the majority of the Members for the remainder of such term.
- 9.5. Upon a motion of no confidence in any office bearer supported by a majority vote of the Members, such office bearer will be removed from his office and the provisions of 9.4 above shall apply.
- 9.6. The Execo shall hold not less than 1 (one) meeting during every quarter and may choose to hold additional meetings of the Execo, as and when necessary to the fulfilment of the Execo's duties.
- 9.7. If any Execo member has not been present in person or via a teleconferencing link at three consecutive meetings, the position of that Execo member may be reviewed and, if deemed necessary, terminated by the majority of the remainder of the Execo and the provisions of 9.4 above shall apply.
- 9.8. Resolutions of the Execo, in order to be of force and effect, must be approved by a majority vote of the members of the Execo present at any meeting in person or by proxy. The quorum for any meeting of the Execo shall be 6 (six) members of the Execo present in person or by proxy. If within 30 (thirty) minutes from the time appointed for a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place and, at such adjourned meeting, the members of the Execo then present shall be deemed to constitute a quorum, provided that written notice of such adjourned meeting was given to all the members of the Execo at least 48 (forty eight) hours before such adjourned meeting was held. Each member of the Execo shall have one vote. In the event of there being a deadlock at the meeting of the Execo or on a resolution proposed at such a meeting, then the Chairman shall have, in addition to his or her deliberative vote, a casting vote.
- 9.9. Giving the prominent place occupied by Online Publishers in the digital media and marketing industry, the position of at least one of Chairperson or Deputy Chairperson must at all times be occupied by the representative of a Member which is an Online Publisher.

10. DUTIES OF THE EXECO

- 10.1. The primary duty of the Execo is to further the DMMA's mission, as specified in this Constitution.

- 10.2. The Execo shall report on its activities and the affairs of the DMMA at all general meetings of the Members.
- 10.3. The Chairperson shall preside at all meetings at which he/she is present and shall enforce observance of the Constitution, sign minutes of meetings after confirmation, exercise supervision over the affairs of the DMMA and perform such duties as customarily pertain to the office of Chairperson.
- 10.4. The Deputy Chairperson shall, in addition to such duties as may be mandated by the Execo, perform the functions of the Chairperson in the event of the absence or inability to act of the latter.
- 10.5. The Deputy Chairperson shall be responsible for ensuring:
 - 10.5.1. the proper collection, administration and disbursement of the funds of the DMMA;
 - 10.5.2. compliance by the DMMA with the provisions of 15 below;
 - 10.5.3. drafting and ensuring the audit of annual financial statements for the DMMA;
 - 10.5.4. tabling the annual financial statements of the DMMA at each Annual General Meeting for approval by the Members; and
 - 10.5.5. compliance with all legal and fiscal requirements.
- 10.6. The Execo may appoint persons to act as the Secretariat, Bookkeeper and Auditor of the DMMA and to perform the functions and duties set out in 10.7 and 10.8 below and such other duties and functions as the Execo may from time to time determine. These persons will not be required to be Members, and if they are not Members, may be remunerated for their services as the Execo may determine.
- 10.7. Duties of the Secretariat shall include, *inter alia*:
 - 10.7.1. organising all meetings of the DMMA and the DMMA;
 - 10.7.2. assuming responsibility for all DMMA correspondence;
 - 10.7.3. keeping originals of letters received and copies of those dispatched;
 - 10.7.4. attending all meetings, recording minutes of the proceedings and distributing such minutes to all Members; and
 - 10.7.5. keeping a register of all Members and associated information.
- 10.8. Duties of the Bookkeeper shall include, *inter alia*:
 - 10.8.1. maintaining the DMMA's bank accounts, as approved by the Execo from time to time; and
 - 10.8.2. ensuring that all financial information of the DMMA is available at meetings for discussion and approval.

11. POWERS OF THE EXECO

- 11.1. In addition to anything contained in this Constitution and subject to the limitations stipulated in 11.3 below, the Execo shall be entitled to incur expenditure in the furtherance of its duties and take action in all matters on behalf of the DMMA.
- 11.2. The Execo is empowered to:

- 11.2.1. administer the funds of the DMMA generally;
- 11.2.2. open and close accounts at registered commercial banks in South Africa on behalf of the DMMA;
- 11.2.3. issue press statements on behalf of the DMMA;
- 11.2.4. revoke DMMA membership, as contemplated in 7.8.3 above;
- 11.2.5. call special general meetings, as contemplated in 13 below;
- 11.2.6. adopt an audience measurement and tracking product for use by Members and vary such product from time to time as it sees fit. It is recorded, in this regard, that while the Execo shall consider any submissions by Members in regard to the categories by which measurements and tracking shall take place and the definitions of such categories, the Execo shall adopt such categories and definitions in this regard as it deems fit; and
- 11.2.7. appoint sub-committees from time to time, as contemplated in 14 below.
- 11.3 The powers of the Execo shall be limited by the requirement that the signature of the Chairperson and two other members of the Execo be obtained for the Execo to enter into any contract on behalf of the DMMA..

12. GENERAL MEETINGS OF MEMBERS

- 12.1. There will be not less than one DMMA meeting during any three-month period.
- 12.2. A quorum for meetings shall be thirty percent (30%) of all Members in good standing, present in person (including via a teleconferencing link) or by proxy. If within 30 (thirty) minutes from the time appointed for a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place and, at such adjourned meeting, the members of the Execo then present shall be deemed to constitute a quorum, provided that written notice of such adjourned meeting was given to all the members of the Execo at least 48 (forty eight) hours before such adjourned meeting was held.
- 12.3. Each Member shall have one vote at each meeting.
- 12.4. Notwithstanding anything to the contrary herein contained, in order to ensure the smooth running of the DMMA, where despite adequate notice, a quorum is not secured at a meeting of the Members then the DMMA may serve notice, per email, on each Member that a failure to advise the DMMA, per email, within 3 (three) days of receipt of the foregoing notice email, that such Member wishes to vote against the proposed resolution shall be deemed to constitute a vote in favour of such proposed resolution provided such resolution formed part of the agenda of the meeting of the Members at which a quorum was not present.

13. ANNUAL AND SPECIAL GENERAL MEETINGS

- 13.1. There shall be one annual general meeting not less than once every calendar year, which meeting will be held not less than ten months and not more than fourteen months after the previous annual general meeting, and Members will be given at least 14 days' notice of such meeting.

- 13.2. The Execo may call a special general meeting at any time, provided that at least 14 days' notice of any special general meeting is given to Members.
- 13.3. The provisions of 12.2, 12.3 and 12.4 shall apply *mutatis mutandis* to any annual and special general meeting.

14. SUB-COMMITTEES

- 14.1. Sub-committees may be formed by the Exco in its sole discretion from time to time to deal with specific issues in accordance with a statement of objectives, as determined by the Execo.
- 14.2. Each sub-committee shall have a chairperson, which will be appointed by the Execo.
- 14.3. Minutes of each sub-committee meeting must be submitted to the Execo within 14 days of the meeting.
- 14.4. The statement of objectives of each sub-committee, as well as its minutes must be made available by the chairperson of such sub-committee to any Member on request, provided that such Member shall bear all expenses in respect of such request.
- 14.5. Members of the Execo will be ex officio members of any sub-committee formed in terms of 14.1.

15. ACCOUNTING

- 15.1. The DMMA shall only utilise its funds for the objects for which it has been established.
- 15.2. All monies received on behalf of the DMMA shall be deposited in one or more accounts as contemplated in 11.2.2 above. All payments to be made on behalf of the DMMA shall be made by cheque drawn on any such account or by cheques issued by the commercial bank with which a particular account is operated.
- 15.3. Any operations on any account of the DMMA, with the exception of deposits, shall be upon the signatures of at least two members of the Execo.
- 15.4. The DMMA shall keep proper books of account of its operations. Such books, together with all other papers and documents connected with or relating to the DMMA, shall be kept at such place as may be determined from time to time by the Execo and shall be accessible to all the Members.

16. INDEMNITY

- 16.1. Each member of the Execo is indemnified out of and from the funds of the DMMA against all losses, charges, costs, damages and other liability which that member of the Execo may suffer or incur as a result of executing his duties as a member of the Execo, save to the extent that such member acted negligently or fraudulently.
- 16.2. No Member shall be answerable or deemed to be in any way responsible for any act or default of any other Member, save to the extent that such Member acted negligently or fraudulently.

17. DISSOLUTION

- 17.1. The DMMA shall be dissolved upon a resolution to that effect by 75% of the Members at a general meeting or at a special general meeting convened for that purpose, provided that notice of the proposed resolution is given to Members not less than 14 days before the date of the meeting.
- 17.2. Upon the dissolution of the DMMA, the Execo shall, after making provision for the costs of dissolving the DMMA, distribute the accumulated funds of the DMMA equally amongst all Members whose membership fees are fully paid-up at the time of dissolution.

18. AMENDMENT OF THE CONSTITUTION

This Constitution, or any part thereof, may be altered by a resolution passed by not less than 75% of the Members present in person (including via a teleconferencing link) or by proxy and entitled to vote at a general meeting or a special meeting convened for this purpose, provided that notice of the proposed amendment is given to members not less than 14 days before the date of the meeting.

19. GENERAL

- 19.1. The DMMA may not be used by any Member, representative, liaison body or industry sector to further its own business interests, outside the objectives of the DMMA.
- 19.2. The list of the Members and their contact details may not be used for any purpose other than the business of the DMMA, unless with the prior written approval of the Execo.
- 19.3. No action may be taken against a Member or a Member's representative, unless a report was tabled to the Execo and reasonable opportunity was given to the Member or the Member's representative to defend such Member's position.
- 19.4. The DMMA shall conduct its business in English.
- 19.5. This Constitution may be executed in one or more counterparts, all of which shall be considered to be one and the same agreement.
- 19.6. Any provision in this Constitution which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as *pro non scripto* and severed from the balance of this Constitution,