



Wireless Application Service Providers' Association

# WASPA Constitution

## 1. NAME

1.1. The name of the association is the Wireless Application Service Providers' Association (WASPA).

1.2. "WASPA" is the official abbreviation for the Wireless Application Service Providers' Association.

## 2. INTERPRETATION

In this Constitution, "Wireless Application Service Providers" shall mean persons that provide services and data through wireless and mobile devices over public networks.

Services may include but are not limited to content provision over mobile devices, as well as provision of any facilities that facilitate or enable transport of data over public mobile networks. Content may include information and any commerce-related services.

## 3. PURPOSE

WASPA is an independent body and voluntary association acting in the interests of those who provide mobile services over public networks in South Africa and generally dealing with matters related to the provision of mobile services and information in Southern Africa.

## 4. MISSION

WASPA's mission is to provide a non-profit forum in which members can address issues of common interest and interface with industry stakeholders, network operators, government and regulatory organisations, both locally and internationally so that end-users receive world-class service and industry participants earn a fair return on their investments.

## 5. MISSION SUCCESS FACTORS

WASPA's mission success factors are to:

5.1. Determine the needs of end-users in South Africa on an on-going basis;

- 5.2. Be a source and repository of relevant information for its members;
- 5.3. Promote ethical and sound business practices amongst its members;
- 5.4. Provide guidance from time to time on any regulatory issues that may affect WASPA and its members;
- 5.5. Influence industry regulation and policy in South Africa concerning structures, policies, tariffs and competition;
- 5.6. Support and promote the implementation of regulated competition in the mobile service providers' industry;
- 5.7. Keep track of international communication trends;
- 5.8. Promote staff development and training in respect of its members; and
- 5.9. Support where possible the social and economic development objectives of governments and civil society; and
- 5.10. Promote effective cooperation and partnership amongst members and other organisations in attainment of these objectives.

## **6. STRUCTURE**

- 6.1. WASPA will consist of a general body of members involved in the provision of mobile services in South Africa.
- 6.2. WASPA membership will elect a Management Committee to manage its day-to-day affairs.
- 6.3. The Management Committee may, from time to time and in its sole discretion, form and dissolve such committees as it may deem fit to deal with specific matters of WASPA, as contemplated in 15 below.

## **7. WASPA MEMBERSHIP**

- 7.1. The membership of WASPA shall consist of companies, persons or organisations that provide mobile services in South Africa as contemplated in Section 2.
- 7.2. Full membership to WASPA may be provided to companies, persons or organisations that provide mobile services in South Africa as contemplated in Section 2 and which have a direct connection to any of the mobile network operators in South Africa.
- 7.3. Full members of WASPA as contemplated in Section 7.2 shall have an equal vote.
- 7.4. Affiliate membership to WASPA will be provided to entities that provide mobile services in South Africa as contemplated in Section 2, but which do not have a direct connection to any of the mobile network operators in South Africa
- 7.5. Affiliate members of WASPA as contemplated in Section 7.3 shall be considered non-voting members, except under the provisions of Section 9.2
- 7.6. The Management Committee may approve persons that provide mobile services in other countries, situated in the Southern African region, to join WASPA as non-voting members.

7.7. Each of the entities contemplated in Section 7.1 may only be represented by a maximum of one natural person on the management committee.

7.8. All applications for membership must be made via the on-line membership application form housed on the WASPA website, or by such other means as may be determined by the Management Committee from time to time. No person will be admitted to be a member of WASPA unless the Management Committee has approved his application for membership.

The Management Committee shall be entitled to deny membership to any person who applies, provided that in such an event, such application may be approved by a majority of the members of WASPA, subject to the provisions of Section 7.10 below.

7.9. Membership of WASPA will also be dependent on payment in full of membership fees, whose cost shall be determined and published by the Management Committee.

7.10. The Management Committee may revoke the membership of any member who fails to make full payment within 60 days of the due date for payment of membership fees.

7.11. The size of WASPA will be restricted to such number of members, as may be determined by the Management Committee from time to time in their sole discretion, which will ensure the effective functioning of WASPA.

7.12. A member's membership may be terminated by a majority vote of the members of WASPA.

7.13. A member may terminate his membership of WASPA at any time in writing to the Management Committee.

7.14. Any member, whose membership of WASPA has been terminated for whatsoever reason, shall forfeit all membership fees and other amounts paid by him to WASPA.

7.15. The Management Committee may revoke the membership of any member who is in breach of the WASPA code of conduct.

## **8. FINANCES**

8.1. Members will be required to pay such membership fees and by no later than such dates as may be determined by the Management Committee from time to time.

8.2. The Management Committee may, at its sole discretion, determine and institute different categories of membership and may prescribe different membership fees for such different categories.

In this case, membership of WASPA will be equal irrespective of any categorisation for the determination of fees, save to the extent that this Constitution provides otherwise or that the Management Committee determines otherwise at the time of creating such different categories.

8.3. Notwithstanding anything to the contrary contained herein, no member (or his representative) whose membership fees have not been paid on the due date will be entitled to vote at any meeting of WASPA or the Management Committee for as long as such membership fees remain outstanding.

8.4. Members will be responsible for all of their own expenses in connection with their membership of WASPA. Exceptions to this rule require prior written authorisation from the Management Committee.

8.5. The Management Committee may accept unconditional offers from members or any other organisations to pay for special projects undertaken by WASPA.

8.6. The Management Committee will be entitled to charge special levies to WASPA members from time to time to fund special projects necessary for or ancillary to WASPA's mission as contemplated in 4 above, provided that such a special levy will have to be accepted by a majority of the WASPA membership as well.

## **9. STRUCTURE OF THE MANAGEMENT COMMITTEE**

9.1. WASPA members shall at their founding meeting or annual general meeting, elect seven persons to a Management Committee who will act for a period not exceeding 12 months, unless decided otherwise by no less than 75% of members of WASPA. These elected persons will form the Management Committee of WASPA and shall all be natural persons.

9.2. All members of the Management Committee shall have an equal vote.

9.3. No company shall have more than one representative on the Management Committee.

9.4. The Management Committee shall elect a Chairperson (or joint-Chairpersons), a Treasurer, and four or five additional persons to bring the total number of members to seven.

9.5. The Management Committee will be entitled, but not obliged, from time to time to co-opt such additional members to the Management Committee to assist with specified projects. Such co-opted members shall not, for the purpose of this Constitution, be deemed to be members of the Management Committee.

9.6. In the case of the vacation for whatsoever reason of any of the positions of the Management Committee prior to the appointment of a new Management Committee as aforesaid, a new office bearer will be elected by the majority of the members of WASPA for the remainder of such term.

9.7. Upon a motion of no confidence in any office bearer supported by a majority vote of the members of WASPA, such office bearer will be removed from his office and the provisions of 9.5 above shall apply.

9.8. The Management Committee shall hold not less than one meeting during every two month period and may choose to hold additional meetings of the Management Committee, as and when necessary to the fulfilment of the Management Committee's duties.

9.9. If any Management Committee member has not been present in person or via a teleconferencing link at three consecutive meetings, the position of that Management Committee member may be reviewed and, if deemed necessary, terminated by the majority of the remainder of the Management Committee.

## **10. CONDUCT OF COMMITTEE MEMBERS**

10.1. The overriding duty of a Committee Member is to act in the best interests of WASPA as a whole, and not in any sectional, commercial or personal interest.

10.2. A conflict of interest arises where an individual with a responsibility to act as an impartial Committee member may be affected, or may be thought by an independent observer to be affected, in that action by a personal interest or association. Such a conflict may involve a direct or

indirect financial interest but may also be non-financial – for example a present or past business or personal association or relationship.

10.3. A Committee member is required to disclose interests which might give rise to a conflict of interest relating to his or her WASPA duties. Disclosure is also required of any non-financial interest (such as kinship or a past, present or prospective business relationship) which might influence his or her judgement as a Committee member.

## **11. DUTIES OF THE MANAGEMENT COMMITTEE**

11.1. The primary duty of the Management Committee is to further WASPA's mission, as specified in section 4 of this Constitution.

11.2. The Management Committee shall report on its activities and the affairs of WASPA at all general meetings of the members of WASPA.

11.3. The Chairperson(s) shall preside at all meetings at which he or she is present and shall enforce observance of the Constitution, sign minutes of meetings after confirmation, exercise supervision over the affairs of WASPA and perform such duties as customarily pertain to the office of Chairperson.

11.4. Where two joint-Chairpersons have been elected, the Chairperson for any given meeting will be agreed beforehand and the member not occupying the chair will only have the rights accruing to a Management Committee member. In the event that no agreement on the foregoing can be reached, the majority of all other members present at such meeting will determine the chairperson of such meeting.

11.5. The Treasurer shall be responsible to the members through the Management Committee for ensuring the proper collection, administration and disbursement of the funds of WASPA and that all legal and fiscal requirements are met.

11.6. The Management Committee may appoint such persons, to act, on its behalf, as the Secretariat of WASPA from time to time and to perform such functions and duties as are prescribed in this Constitution and as the Management Committee may from time to time determine, provided that these persons will not be required to be members of WASPA and that, if they are not members of WASPA, may be remunerated for their services as the Management Committee may determine.

11.7. Duties of the Secretariat shall include, inter alia:

11.7.1. receiving requests for meetings;

11.7.2. assuming responsibility for all WASPA correspondence;

11.7.3. keeping originals of letters received and copies of those dispatched;

11.7.4. attending all meetings, recording minutes of the proceedings and distributing such minutes to all members of WASPA; and

11.7.5. keeping a register of all members and associated information.

11.8. Duties of the Treasurer shall include, inter alia:

11.8.1. maintaining WASPA's accounts in such bank accounts as may be approved by the Management Committee from time to time;

11.8.2. ensuring that all financial information of WASPA is available at meetings for discussion and approval; and

11.8.3. tabling a financial statement of the year's transactions at each Annual General Meeting for approval by the membership.

11.9. Prior to any Annual General Meeting, the Management Committee shall appoint a person or organisation to audit the financial statement, which is to be tabled thereat.

## **12. POWERS OF THE MANAGEMENT COMMITTEE**

12.1. In addition to anything contained in this Constitution and subject to the limitations stipulated in paragraph 12.3, the Management Committee shall be entitled to incur expenditure in the furtherance of its duties and take action in all matters on behalf of WASPA.

12.2. The Management Committee is empowered to:

12.2.1. administer the assets of WASPA generally;

12.2.2. open and close accounts at registered commercial banks in South Africa on behalf of WASPA;

12.2.3. issue press statements on behalf of WASPA;

12.2.4. approve or decline WASPA membership applications (as specified in 7.5 and 7.6 above);

12.2.5. revoke WASPA membership (as specified in 7.8 and 7.13 above);

12.2.6. call special general meetings (as specified in 14 below); and

12.2.7. appoint committees from time to time (as contemplated in 15 below).

12.3. The powers of the Management Committee shall be limited to the extent that it must seek the approval of the WASPA membership before:

12.3.1. determining membership fees (as specified in 8.1 and 8.2 above);

12.3.2. entering into any contracts other than in the ordinary course of performing its duties in terms hereof;

12.3.3. undertaking business transactions where the total amount of the transaction exceed WASPA's income during the previous three months.

## **13. GENERAL MEETINGS OF MEMBERS OF WASPA**

13.1. There will be not less than one WASPA meeting during any three month period.

13.2. A quorum for meetings shall be one third of all members of WASPA, present in person or via a videoconferencing link; or ten members, whichever is the smaller number.

13.3. Each WASPA member shall have one vote at each meeting.

13.4. Subject to the provisions of section 7, any WASPA member unable to attend any scheduled meeting electronically or in person may provide a proxy in an approved manner to the secretariat, provided that this is done in no less than three working days before any scheduled meeting.

13.5. All meetings will be open to all members and to any other interested observers at the discretion of the Management Committee.

## **14. ANNUAL AND SPECIAL GENERAL MEETINGS**

14.1. There shall be one annual general meeting not less than once every calendar year, which meeting will be held not less than ten months after and not more than fourteen months after the previous annual general meeting and members of WASPA will be given at least twenty one days' notice thereof.

14.2. The Management Committee may call a special general meeting at any time, provided that at least fourteen days' notice of any special general meeting is given to WASPA members.

14.3. The provisions of 13.2 to 13.4 above, inclusive, shall apply mutatis mutandis.

14.4. Subject to the provisions of section 7, any WASPA member unable to attend any scheduled meeting electronically or in person may provide a proxy in an approved manner to the secretariat, provided that this is done in no less than three working days before any scheduled meeting.

## **15. COMMITTEES**

15.1. Committees may be formed by the Management Committee in their sole discretion from time to time to deal with specific issues in accordance with a statement of objectives, as determined by the Management Committee.

15.2. Each committee must have a chairperson, who will be appointed by the Management Committee.

15.3. Minutes of each committee meeting must be submitted to the Management Committee within fourteen days of the meeting.

15.4. The statement of objectives of each committee, as well as its minutes must be made available by the chairperson of such committee to any WASPA member on request, provided that such member shall bear all expenses in respect of such request.

15.5. Members of the Management Committee will be ex officio members of any such committee.

## **16. LEGAL PERSONALITY**

16.1. WASPA shall be a juristic person capable of acquiring rights, incurring obligations, entering into legal transactions and of suing and being sued in its own name.

16.2. Immovable property acquired by WASPA shall be registered in the name of WASPA.

## **17. ACCOUNTING**

17.1. WASPA shall not distribute any of its profits or gains to any person and shall utilise its funds for the objects for which it has been established.

17.2. All moneys received on behalf of WASPA shall be deposited in one or more accounts as contemplated in 12.2.2 above.

All payments to be made on behalf of WASPA shall be made by cheque drawn on any such account or by cheques issued by the commercial bank or by electronic transfers to approved creditors with which a particular account is operated.

17.3. Deposits into any such account may be made on the signature of any one Management Committee member, but all other operations on any such account shall be upon the signatures of two members of the Management Committee.

17.4. Proper books of the accounts of WASPA will be kept as contemplated herein before. Such books, together with all other papers and documents connected with or relating to WASPA, shall be kept at such place as may be determined from time to time by the Management Committee and must be accessible to each of the members of WASPA.

## **18. INDEMNITY**

18.1. Each member of WASPA is indemnified out of and from the funds and property of WASPA, against all losses, charges, costs, damages and other liability, which that member may suffer or incur as a result of executing his duties as a member of WASPA, save to the extent that such member acted negligently or fraudulently.

18.2. No member of WASPA shall be answerable or deemed to be in any way responsible for any act or default of any other member or for any deficiency or insufficiency of any title or security whatsoever taken by WASPA, save to the extent that such member acted negligently or fraudulently.

18.3. No member of WASPA shall be liable for any losses occasioned by the commercial bank or other persons with whom monies or securities of WASPA are deposited or entrusted for safe custody, investment or otherwise, nor for any loss, misfortune or damage which may happen or take place in the execution of that member's duties or as a result thereof WASPA, save to the extent that such member acted negligently or fraudulently.

18.4. WASPA will not be liable for any acts or omissions of its members in regard to the Code of Conduct.

## **19. DISSOLUTION**

19.1. WASPA shall be dissolved upon a resolution to that effect by two-thirds 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 fourteen days before the date of the meeting.

19.2. Upon the dissolution of WASPA, the Management Committee shall, after making provision for the costs of dissolving WASPA, distribute the accumulated funds of WASPA to an Association not for Gain with similar objectives to those of WASPA, as may be determined by the Management Committee in its sole discretion.

## **20. ALTERATION OF THE CONSTITUTION**

This Constitution or any part thereof may be altered by a resolution passed by not less than 75% (seventy five percent) of WASPA members present at a general meeting or a special meeting convened for this purpose, provided that at least fourteen days' notice of such special meeting is given to members.

## **21. IMPLEMENTATION**

This revision of the constitution shall serve as the founding constitution of WASPA if adopted by no less than 51% of those companies recognised as WASPs and who are present at the founding plenary, or who have provided accredited proxies.

## **22. MISCELLANEOUS**

22.1. WASPA may not be used by any representative, liaison body or industry sector to further its own business interests, outside the objectives of WASPA.

22.2. WASPA address lists may not be used for any purpose other than the business of WASPA, unless with the prior approval of the Management Committee.

22.3. No action may be taken against a member or a member's representative, unless a report was tabled to the Management Committee and reasonable opportunity was given to the member or the member's representative to defend such member's position.

## **23. LANGUAGE**

WASPA shall conduct business in any of the official languages of the Republic of South Africa. In the event of conflict, the English text of this Constitution shall take precedence over any translation thereof.