

# CONSTITUTION OF THE INTERNET EXCHANGE POINT (IXP) ASSOCIATION OF NAMIBIA

## ARTICLE 1 – ESTABLISHMENT AND CHARACTER


- 1.1 The IXP Association of Namibia is hereby established in terms of the provisions of the Communications Act No. 8 of 2009 and shall duly be registered as a voluntary and non-profit making organization.
- 1.3 The IXP Association of Namibia shall be a non-profit making organisation with powers to among others enter into contracts, acquire, own or dispose of movable or immovable property and sue and be sued in its own name.

## ARTICLE 2 – REGISTERED ADDRESS

- 2.1 The registered address of the IXP Association shall be:  
  
33 Lockestreet, Academia, Windhoek, Namibia

## ARTICLE 3 – OBJECTIVES

- 3.1 The objectives for which the Association is formed are:
  - 3.1.1 To establish and operate an Internet Exchange Point and other related Internet infrastructure for the benefit of the members and Namibian Internet users.
  - 3.1.2 To host Internet related services for the Internet community in Namibia.
  - 3.1.3 To share information with regional and international bodies and to forge linkages and partnerships with a view to adopting best practices relating to the provision of Internet services in Namibia.
  - 3.1.4 To carry out research to obtain current information for Internet users in Namibia.



## ARTICLE 4 – POWERS

- 4.1 In furtherance of its objectives, the Association shall exercise the following powers:
- 4.1.1 To levy fees for members and Namibian Internet users to enable the Association to sustain its operations.
- 4.1.2 To source funding or support or otherwise undertake any form of fundraising aimed at raising funds for sustaining the operations of the Association.
- 4.1.3 To appoint and engage employees or seek other services as may be required by the Association and determine the remuneration to such employees or for such services.
- 4.1.4 To open a bank account in the name of the Association and accept and endorse cheques and other negotiable instruments for the purposes of the Association; and
- 4.1.5 To invest or deal with the Association's funds which are not immediately required for its purposes in such securities and on such terms as it may deem fit, and from time to time vary or realise such investment.
- 4.2 The powers in 4.1 above will be vested and exercised by the Executive Committee.
- 4.3 All contracts and other documents binding the Association shall be signed jointly by the Chairperson and Secretary. In the event of their absence, the Chairperson may in writing, authorize any other member of the Executive Committee to sign such contracts and documents.

## ARTICLE 5 – MEMBERS

- 5.1 All entities having an interest in Information and Communications Technology (ICT) development matters are eligible for membership in the Association. Members who are initial signatories to this Constitution shall be founder members of the Association.
- 5.2 Each entity shall nominate members who shall be their official representatives in the meetings of the Association.
- 5.3 The Annual or Special General Meeting shall determine whether or not membership to the Association shall be for a fee. In the event that a decision to impose a fee is reached, the Executive Committee shall, from time to time, determine the fee which shall be endorsed by the Special General Meeting or Annual General Meeting.

- 5.4 The power to admit members to the Association shall be vested in the Executive Committee, which shall act in accordance with any regulations, directives or conditions determined by the Annual General Meeting.
- 5.5 A member may withdraw membership from the Association by delivering to the Executive Committee, a written letter of termination of membership.
- 5.6 A member may be suspended by the Executive Committee for good cause pending a determination by an Annual General Meeting or Special General Meeting regarding suspension or termination of membership by a member.

## ARTICLE 6 – FINANCIAL PROVISIONS

- 6.1 The Association shall carry out its operations through funds which shall be contributed by members in amounts agreed by members. The Association shall further source funds from donors or raise funds in any manner that it deems fit.
- 6.2 The Association as a non-profit making organization shall utilize its income or funds solely in promoting and furthering its objects.
- 6.3 The Association shall open and operate a bank account with a reputable banking institution in Namibia and all funds raised by or in the name of the Association shall be paid into the Association's bank account.
- 6.4 All withdrawals drawn on the account must be signed by at least two authorized signatories, being the Chairperson and Treasurer or the Vice-Chairperson in the absence of either the Chairperson or Treasurer.
- 6.5 The Executive Committee shall have powers to set withdrawal limits as may be required.
- 6.6 The Association shall keep or cause to be kept proper accounts and other records relating thereto in respect of its funds. An Income and Expenditure Account and Balance Sheet shall be prepared, audited and circulated in accordance with established practices.
- 6.7 The accounts of the Association shall be examined and audited by a qualified independent Auditor at the end of each financial year.
- 6.8 The Annual General Meeting shall appoint independent auditors to carry out financial audits of the Association for the ensuing financial year.
- 6.9 The financial year of the Association shall commence on the 1<sup>st</sup> day of April of each year and end on the 31<sup>st</sup> day of March the subsequent year.



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## **ARTICLE 6 – INSTITUTIONS OF THE IXP ASSOCIATION OF NAMIBIA**

- 6.1 The following are hereby established as institutions of the IXP Association of Namibia:
- 6.1.1 The Annual General Meeting.
  - 6.1.2 The Special General Meeting.
  - 6.1.3 The Executive Committee.

## **ARTICLE 7 – THE ANNUAL GENERAL MEETING**

- 7.1 The Annual General Meeting is the supreme decision making organ of the Association comprising representatives of all members of the Association. The Annual General Meeting shall consider and pronounce itself on reports from other organs of the Association. The Annual General Meeting has the powers to consider any matter and amend or overturn any decisions made by the other organs of the Association.
- 7.2 The Annual General Meeting shall be held once every year and the date of the Annual General Meeting shall be determined at the preceding Annual General Meeting.
- 7.3 Written invitations for Annual General Meetings shall be received by members at least fourteen (14) days before the dates of the proposed meetings.
- 7.4 The Annual General Meeting shall be properly constituted and two-thirds of the membership shall form a quorum. It shall determine its procedure for conducting meetings provided that a simple majority of the members present in any meeting shall pass binding resolutions.
- 7.5 All members present in an Annual General Meeting shall be entitled to one vote.

## **ARTICLE 8 – THE SPECIAL GENERAL MEETING**

- 8.1 The Association may hold a Special General Meeting at any time during the financial year at the instance of the Executive Committee or whenever requested by half of the membership of the Association. A seven days' written notice shall be given for the convening of such a Meeting.
- 8.2 Notwithstanding the designation of the Special General Meeting, it shall follow the same procedure as the Annual General Meeting and shall have the same powers as the Annual General Meeting.

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## ARTICLE 9 – THE EXECUTIVE COMMITTEE

- 9.1 The Executive Committee shall oversee and execute the decisions of the organs of the Association. It shall execute the decisions of the Annual General Meeting and the Special General Meeting. It shall oversee the operations of the Secretariat including administration, supervision and remuneration of the staff of the Association in accordance with good corporate principles. It shall arrange for meetings of the organs of the Association. The Executive Committee shall comprise the Chairperson, the Vice-Chairperson, the Secretary, the Vice-Secretary, the Treasurer, the Vice – Treasurer, and the Users’ Representative.
- 9.2 Members of the Executive Committee shall be elected by the Annual General Meeting and shall hold office for a period of one year but shall be eligible for re-appointment. This notwithstanding, any member of the Executive Committee can be recruited through advertisement followed by conduct of interviews by the Annual General Meeting.
- 9.3 In the event of vacancies within the Executive Committee, a member may be co-opted by members. The term of a member elected in this manner shall expire at the following Annual General Meeting.
- 9.4 A member of the Executive Committee shall cease to hold office if he/she:
- 9.4.1 Is disqualified from acting by virtue of any legal condition;
  - 9.4.2 Becomes incapable of performing his duties by reason of mental disorder, illness or injury or any form of incapacity which could prevent him from administering his/her own affairs;
  - 9.4.3 Resigns from office;
  - 9.4.4 Absents himself/herself from three consecutive meetings without apology;
- 9.5 Any member of the Executive Committee may be removed from office at any Special General Meeting specially convened for this purpose provided:
- 9.5.1 The proposal is carried by a two-thirds majority of members present at the meeting; and
  - 9.5.2 At least ten days’ written notice of such meeting has been given to all members.
  - 9.5.3 Provided that the labour laws of Namibia shall be fully complied with in the removal of an Executive Committee member.

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## **Article 10 – MEETINGS OF THE EXECUTIVE COMMITTEE**

- 10.1 The Executive Committee shall meet at least once every quarter of the year.
- 10.2 Notwithstanding clause 10.1 above, the Executive Committee may hold extraordinary meetings whenever required by the Chairperson or at the request in writing, of any two or more of its members.
- 10.3 Voting at all meetings shall be by a majority vote. In the event of an equality of votes, the Executive Secretary or other person presiding shall have the right to a casting vote as well as a deliberative vote.
- 10.4 A quorum of the Executive Committee shall consist of a simple majority of the members elected thereto.

## **ARTICLE 11 – THE CHAIRPERSON**

- 11.1 The duties of the Chairperson shall be:
  - 11.1.1 To preside over all meetings of the Executive Committee.
  - 11.1.2 To plan for the Executive Committee meetings and the Association's meetings in liaison with the Secretary.
  - 11.1.3 To sign all official documents of the Association including financial reports.

## **ARTICLE 12 – THE VICE-CHAIRPERSON**

- 12.1 The duties of the Vice-Chairperson shall be:
  - 12.1.1 To act in the position of the Chairperson in the absence of the incumbent.
  - 12.1.2 To study documents pertaining to the operations of the Association and advise the Chairperson.
  - 12.1.3 To submit to the Chairperson, any recommendations pertaining to the execution of the mandate of the Association.

## **ARTICLE 13 – THE SECRETARY**

- 13.1 The duties of the Secretary shall be:
  - 13.1.1 To take and produce the minutes of the organs of the Association.

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13.1.2 To make follow-ups on the decisions of the Association.

13.1.3 To produce the record of proceedings of all meetings in a timely manner and make necessary follow-ups on the resolutions of the Association.

13.1.4 To attend to all correspondence and other duties incidental to his/her office.

13.1.5 To liaise with the Chairperson to draft the agenda for meetings.

13.1.6 To sign the Association's documents.

#### **ARTICLE 14 – THE VICE-SECRETARY**

14.1 The duties of the Vice-Secretary shall be:

14.1.1 To deputize the Secretary and act in the position of Secretary in the absence of the incumbent.

14.1.2 To assist the Secretary in responding to correspondence from outside parties and drafting documents of the Association.

14.1.3 To assist the Secretary in making follow-ups on the resolutions of the Association.

#### **15. THE TREASURER**

15.1 The duties of the Treasurer shall be:

15.1.1 To act as custodian of all books of account of the Association.

15.1.2 To prepare and present management accounts on a periodic basis.

15.1.3 To disburse the funds of the Association in accordance with best accounting practices.

15.1.4 To ensure that the books of account of the Association are audited by an independent firm of auditors in accordance with best practices.

15.1.5 To attend to all financial matters of the Association.

15.1.6 To open and operate a bank account for the Association.

15.1.7 To receive and keep the Association's funds safely.

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**16. ASSISTANT TREASURER**

16.1 The duties of the Assistant Treasurer shall be:

16.1.1 To make deposits and withdrawals of funds in the Association's bank account in liaison with the Treasurer.

16.1.2 To make purchases of the necessary documents and stationery for the office of the Treasurer.

16.1.3 To assist the Treasurer with any other related duties from time to time.

**17. USERS' REPRESENTATIVE**

17.1 The duties of the Users' Representative shall be:

17.1.1 To participate in the meetings of the Association to ensure that the interests of Internet users are safeguarded during meetings and any deliberations of the Association.

17.1.2 To gather the views of the users of the Internet and present them in the meetings of the Association.

17.1.3 To advise the Association on any relevant issues pertaining to Internet usage and Internet governance matters.

**ARTICLE 18 – CONFLICT OF INTEREST**

14.1 All members of the Executive Committee shall refrain from any practices that could give rise to conflict of interest. Any matter which gives rise to conflict of interest shall be declared by an Executive Committee member. Failure to make such a declaration may result in disciplinary measures being taken against an Executive Committee member.

14.2 No member of the Executive Committee shall carry out and charge professional services for the Association. However, under exceptional circumstances, the Association may contract a member to carry out professional duties for the Association provided that full justification is recorded regarding the need to engage such a Committee member. Such a Committee member shall be paid for the services rendered.

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**ARTICLE 19 – AMENDMENT TO THE CONSTITUTION**

- 19.1 This Constitution and all or any amendments thereto may be amended by the Annual General Meeting or Special General Meeting specially convened for such purpose. Amendments shall receive assent of not less than two-thirds majority of the members present and voting at the meeting.
- 19.2 Due notice of the proposed amendment shall be sent in writing to the Executive Committee not less than thirty days before the meeting.

**ARTICLE 20 – DISPUTES**





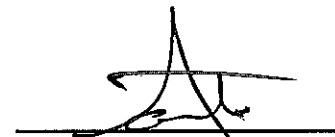
- 20.1 The Executive Committee shall handle and/or determine all disputes within the Association. A dispute may be escalated to a Special Meeting for resolution by an aggrieved person.

**ARTICLE 21 – DISSOLUTION OF ASSOCIATION**

- 21.1 Other than dissolution through operation of law, the Association may be dissolved by a resolution of an Annual General Meeting or a Special General Meeting.
- 21.2 Upon dissolution of the Association, all the assets and funds of the Association shall be donated to identified charitable organization or organizations.
- 21.3 The members attest their signatures hereunder signifying their consent to be bound by the articles articulated above.

**THUS DONE AT WINDHOEK ON THIS 27<sup>TH</sup> DAY OF FEBRUARY 2013.**

**Signature(s) & Name(s):**

 ..... E.A. Kamuniese	<i>9 May</i> ..... JILL SZAY	 ..... Richard Luyt
 ..... DANIE VAN DER MEER	 ..... Chairperson: S. EYWUS	 ..... Witness: M. M. MARTENS

**ANNEXES:**

**Annexure 1 - List of members**

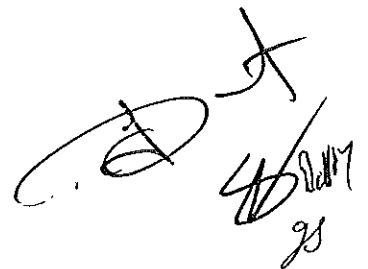
**Annexure 2 - Executive Committee members**

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# Annexure 1

## List of members:

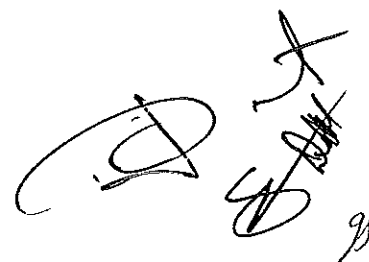
1. All the individual Executive Committee Members as per Annexure 2
2. Government:
  - a. Ministry of Education
  - b. Ministry of Health and Social Services
  - c. Office of the Prime Minister
3. Regulator:
  - a. CRAN
4. Educational Institutions:
  - a. Polytechnic of Namibia
  - b. UNAM
  - c. XNET
5. Parastatals:
  - a. LEO
  - b. MTC
  - c. Telecom Namibia
6. Other Public / Private Institutions:
  - a. Africa Online
  - b. Gijima
  - c. ICT Alliance
  - d. Internet Technologies Namibia (ITN)
  - e. MTN Business
  - f. NA-Nic / Omadhina
  - g. NICTA
  - h. Salt Essential IT
  - i. Wireless Technologies Namibia (WTN)

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## Annexure 2

### Executive Committee members:

1. Mr. Schalk Erasmus (ITN) – Chairperson
2. Mr. Richard Luyt (Africa Online) – Vice Chairperson
3. Prof. Dr. Jill Slay (Polytechnic of Namibia) – Secretary
4. Ms. Elizabeth Kamutuezu (Ministry of ICT) – Vice Secretary
5. Mr. Danie van der Merwe (Telecom Namibia) – Treasurer
6. Mr. Patrick Mushimba (MTC) – Vice Treasurer
7. Mr. Jochen Traut (CRAN)

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