

Proposed Constitution for the Voluntary Association

Drupal Association South Africa

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1. Name of Association

The name of the association is Drupal Association South Africa, the shortened name is DASA, hereinafter referred to as DASA.

2. Objective

DASA is a non-profit organisation established for the public benefit objective to foster and support the Drupal project, the community and its growth in South Africa.

3. Legal Status

DASA is a body with its own legal identity, which is separate and has an independent existence from its individual members. DASA shall thus, and by virtue of perpetual succession, continue to exist even if the members change. DASA may inter alia enter into contracts, and sue or be sued in its own name.

4. Income and Property of DASA

Members and office-bearers have no rights in the property or other assets of DASA solely by virtue of their being members or office-bearers.

The income and property of DASA shall be used solely for the promotion of its stated objectives and shall not be paid or distributed directly or indirectly to any person, or to any member of DASA or office-bearers, except as reasonable compensation for services actually rendered to DASA or reimbursement of actual costs or expenses reasonably incurred on behalf of DASA.

5. Taxation of DASA

DASA may apply to the Commissioner for the South African Revenue Service for approval as a Public Benefit Organisation in terms of section 30 of the Income Tax Act. Upon approval the provisions set out in Schedule B shall bind DASA.

6. Powers of Association

DASA shall have the same powers as that of a company under the Companies Act, as amended. Such powers include:

1. To institute or defend any legal or other proceedings and to settle any claims,
2. To prudently invest funds of DASA,
3. To buy, attain, maintain, manage, lease, sell, or in any way deal with property and assets of DASA,
4. To donate and transfer the property and assets of DASA to public benefit organisations with similar objectives,
5. To borrow and to use the property or assets of DASA as security for borrowing,

6. To execute any act or deed in any deeds registry, mining titles or other public office,
7. To exercise all the management and executive powers ordinarily vested in the Board of Directors of a Company, and
8. To carry out all the powers and authority of DASA in South Africa and in any other part of the world.

7. The Governing Board

1. **Powers:** The Governing Board shall manage the affairs of DASA in accordance with the resolutions of members in General Meeting.
2. **Number and Portfolios:** A minimum of five members shall serve on the Governing Board bearing the following portfolios: the Chairperson, the Vice-Chairperson, the Treasurer, the Secretary and the Portfolio Manager.
3. **Election:** All members of the Governing Board shall be members of DASA. The Governing Board shall be elected by the members of DASA at an Annual General Meeting.
4. **Term of office:** At least one board member of the Governing Board as a volunteer to do so, or failing that, designated through a vote by the Governing Board shall retire and will not be eligible as a Governing Board member for 12 months. No member of the Governing Board may serve for more than three consecutive years.
5. **Vacancies:** The Governing Board must, as soon as reasonably possible, appoint someone to fill any vacancy that reduced the number of board members to less than five. The next General Meeting must confirm the office of any board member appointed, otherwise it will lapse.
6. **Co-option:** The Governing Board may co-opt additional non-voting members as it may consider appropriate.
7. **Resignation, Disqualification and Removal:** A Governing Board member may resign from office in writing. A Governing Board member shall be disqualified from office upon termination of membership to DASA and becoming incapable by reason of mental illness. A member can be removed from office through a two-thirds resolution of the remaining Governing Board members, consisting of not less than four.
8. **Delegation of Powers:** The Governing Board may delegate any of its powers or functions to a committee or member(s) of DASA provided that: such delegation and conditions are reflected in the minutes for that meeting, at least one Board member serve on the committee, the Board in advance approves all expenditure incurred by the committee or member, and the Governing Board may revoke the delegation or amend the conditions.
9. **Procedures at Meetings:** The Governing Board may regulate its meetings and proceedings as it finds fit, subject to the following:
 - a. The Chairperson shall chair all meetings of the Governing Board.
 - b. Meetings of the Governing Board may be conducted face-to-face or

electronically which would allow Governing Board members to be present and participate through electronic means.

- c. If the Chairperson is not present within fifteen minutes of the appointed time of the meeting, the Vice-Chairperson shall chair such meeting. In both their absence, the Board members present at the meeting shall elect a chairperson for that meeting.
 - d. The Chairperson shall convene a meeting of the Governing Board at least quarterly and at the written request of any two members of the Governing Board.
 - e. The quorum for a meeting of the Governing Board shall be two-thirds of the serving Governing Board members.
 - f. If no quorum is present, the Governing Board may make no decision, except to preserve the assets of DASA and to call a meeting of the general members.
 - g. Each Governing Board member present or represented through written proxy shall have one (1) vote.
 - h. Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
 - i. Proper minutes and attendance records must be kept of all meetings of the Governing Board. The chairperson for the meeting shall sign the minutes which shall be available at all times for inspection or copying by any member of DASA on two days' notice to the Secretary or the Vice-Secretary.
 - j. A resolution signed by all members of the Governing Board shall be as valid as if passed at a duly convened meeting of the Governing Board.
 - k. The Governing Board may appoint employees upon such lawful terms and conditions as it may deem necessary.
10. **Conflicting Interests:** Any actual, potential or perceived conflict of interest on the part of any member of the Governing Board, on a matter pertaining to DASA, must be disclosed in writing to the Governing Board which shall record such conflict of interest in the minutes of the Board meeting. Such member may be requested by the Governing Board to state his/her position in the matter or to respond to pertinent questions, but shall not vote or use his/her influence on the matter and shall not be counted for purposes of determining a quorum for the meeting where the voting takes place.
11. **Confidentiality:** All matters pertaining to litigation, security measures, contractual negotiations, employment matters and any other matters deemed confidential by the Governing Board, must be treated as confidential and only the actual decisions may be disclosed to the general public.

8. Membership

1. **First and Subsequent Members:** The first members of DASA shall sign Schedule A of this Constitution. The Governing Board may admit natural persons over eighteen [and legal persons] as members to DASA.

2. **Conditions and Criteria:** The Governing Board may determine the conditions and criteria for membership. Applications for membership that do not comply with such conditions and criteria may be refused by the Governing Board.
3. **Transfer of Membership:** Membership is not transferrable.
4. **Register of Members:** The Governing Board must keep a register with the names and addresses (Name, Contact number, E-mail address) of all the members.
5. **Automatic Termination of Membership:** Membership automatically terminates upon the receipt by DASA of a notification of the death of a natural member or dissolution of an organisational member, and written resignation.
6. **Termination by Governing Board:** Membership terminates if a member is removed by a resolution of the Governing Board. Provided that the member has been given an opportunity to make written or verbal representations at a meeting of the Governing Board pertaining to the proposed termination, and the Board's decision to terminate membership was confirmed by resolution of two-thirds of the members present at the next General Meeting, otherwise it will lapse.

9. Meetings of Membership

1. **Annual General Meetings:** All Annual General Meetings (AGMs) must be held within six months of DASA's financial year-end. At least twenty-one days' written notice must be given to all members stating the date, time, place and business of the AGM, which business must include:
 - a. The Chairperson's report,
 - b. The presentation of DASA's Annual Financial Statements,
 - c. The election of Governing Board members,
 - d. The appointment of Auditors, and
 - e. Other appropriate matters.
2. **Special General Meetings:** The Governing Board or not less than one-third of the members may call a Special General Meeting of DASA. At least fourteen (14) days' written notice must be given to all members stating the date, time, place and business of the Special General Meeting. If the Board fails to give notice within seven days of the request of one-quarter of the members, such members shall be entitled themselves to give notice of and to convene the meeting.
3. **Powers of the General Meetings:** The members in a properly convened General Meeting of DASA is the highest decision-making structure of DASA as set out in this Constitution. The members in General Meeting may review, approve or amend any decision taken by the Governing Board but no such resolution of DASA shall nullify any earlier resolution taken by the Governing Board in accordance with the provisions of this Constitution.
4. **Procedures at General Meetings:** The Members may regulate their meetings and proceedings as it finds fit, subject to the following:
 - a. The Chairperson shall chair all General Meetings.
 - b. General Meetings of DASA may be conducted face-to-face or electronically which would allow members to be present and participate through

electronic means.

- c. If the Chairperson is not present within fifteen minutes of the appointed time of the meeting, the Vice-Chairperson shall chair such meeting. In both their absence, the members present at the General Meeting shall elect a chairperson for that meeting.
- d. The quorum for General Meetings of DASA shall be one quarter of the members of DASA.
- e. If a quorum is not present within fifteen minutes of the appointed time of the meeting, the meeting must be adjourned to another date, within fourteen days thereafter. Notice, as provided for under the constitution, must be given to all members of DASA of such adjournment.
- f. If no quorum is present at the reconvened meeting within fifteen minutes of the appointed time, the members present, or represented by proxy, shall deem to constitute a quorum for that meeting.
- g. A resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot can be demanded by not less than one third the members present, or represented by proxy.
- h. Each member present or represented by proxy shall be entitled to one (1) vote.
- i. Except where this constitution requires a higher threshold, questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
- j. Proper minutes and attendance records must be kept of all General Meetings. The chairperson must sign the minutes which shall be available at all times for inspection or copying by any member of DASA on two days' notice to the Secretary or the Vice-Secretary.

10. Notice of Meetings

1. All notices in terms of this constitution must be given to members in writing (personally, post or electronic communication) to the address provided by the members.
2. The accidental omission to address notices to any member shall not nullify the proceedings of any meeting.
3. A member present in person at any meeting shall be deemed to have received notice of such meeting.
4. If posted, notices shall be deemed to have been received seven days after posting.

11. Finances and Reports

1. **Bank Account:** The Governing Board must open a bank account in the name of DASA with a registered Bank.
2. **Signing:** Cheques and other documents requiring signature on behalf of DASA shall

be signed by at least two persons authorised by the Governing Board.

3. **Financial year-end:** The financial year end of DASA shall be end of February.
4. **Financial Report:** The Governing Board must ensure that proper records and books of account which fairly reflect the affairs of DASA are kept, and within six months of its financial year a report is compiled by an independent practicing auditor registered in terms of the Auditing Profession Act stating whether or not the financial statements of DASA are consistent with its accounting records, the accounting policies are appropriate and have been appropriately applied with in preparing the financial statements and DASA has complied with the financial provisions of this constitution.

12. Amendments and Dissolution

1. This Constitution may be amended, the name of DASA may be changed and the Association may be dissolved by resolution of two-thirds of the members present at a General Meeting.
2. At least twenty-one days' notice of the Meeting stating the nature of the resolution to be proposed must be given to all the members of DASA.
3. Upon the dissolution of DASA, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation, firstly to the Drupal Association (international) if possible otherwise to some other non-profit organisation which the Governing Board (and failing which the members in General Meeting) considers appropriate and which has objectives the same or similar to the objectives of the Association, and should DASA be exempt from the payment of any taxes and duties;
 - i. Any similar public benefit organization which has been approved in terms of section 30 of the Income Tax Act,
 - ii. Any institution, board or body which is exempt from tax under the provisions of section 10 (1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity,
 - iii. Any department of state or administration in the national or provincial or local sphere of government of the Republic.

13. Indemnity

1. Subject to the provisions of any relevant law, members, office-bearers or appointed delegates of DASA shall be indemnified by DASA for all acts done by them in good faith on its behalf.
2. Subject to the provisions of any relevant law, no member of DASA or appointed delegates shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by DASA, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

Schedule B

Requirements for Approval as Public Benefit Organisations

As provided for in Clause 5 of this Constitution, The Association intends to apply to the Commissioner for SARS for approval as a Public Benefit Organisation in terms of Section 30 of the Income Tax Act. Upon approval the Association shall:

1. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organisation.
2. Ensure that no single person directly or indirectly controls the decision making powers relating to the Association.
3. Is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established.
4. Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
5. Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
6. Submit to the Commissioner a copy of any amendment to this constitution.
7. Not pay any remuneration to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
8. Comply with such reporting requirements as may be determined by the Commissioner.
9. Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule of the Act are utilised for the purpose for which they are provided.
10. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

Reference:

- Model Constitution for a Voluntary Association by nonprofitlawyer.co.za
<http://www.nonprofitlawyer.co.za/media/37e74ae44a34f13bffff80d47f000101.pdf>
- <https://association.drupal.org/about>
- <http://eventgreening.co.za/wp-content/uploads/2012/03/EGF-Constitution-29-Feb-2012.pdf>
- <http://www.mangaung.co.za/legal-services/documents/Constitution-for-voluntary-association.PDF>
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