



# WASPA Code of Conduct

Version 16.15

Changes since version 16.12:

- Clause 1.6A has been amended (part (b) deleted)
- Clause 15.20A has been added.
- Clause 15.30A has been added.
- Clause 16.5A has been added.

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## **1. Introduction**

### **About WASPA**

1.1. WASPA is a non-profit body, founded in 2004, which represents the interests of mobile application service providers operating in South Africa. WASPA provides a neutral forum for members to address issues of common interest and interact with industry stakeholders, network operators and government bodies.

1.2. WASPA aims to ensure that consumers receive world-class services and that members operate according to ethical and reasonable business practices. The WASPA Code of Conduct was developed as part of an industry self-regulatory framework.

### **Objectives of the Code**

1.3. The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services.

1.4. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.

### **Scope of the Code**

1.5. The WASPA Code of Conduct is binding on all WASPA members.

1.5A. If a company is a member of WASPA at the time of an alleged breach, the Code and the complaints process continue to be binding even if the company's membership is terminated. The company is entitled to represent itself in the complaints procedure as if it was still a member, and any sanctions imposed by WASPA remain applicable to that company.

1.6. Unless otherwise specified, this Code of Conduct applies to all mobile application services offered by WASPA members to customers in South Africa.

1.6A. The following platforms are specifically excluded from the scope of the Code of Conduct:

- (a) Vodacom VLive, Vodacom Charge to Bill (CTB); ~~and~~
- ~~(b) MTN Play.~~

WASPA may refer potential compliance concerns involving these exclusions to the relevant mobile network operator. For the avoidance of doubt, section 16 of the WASPA Code still applies to direct marketing of excluded platforms.

The remainder of clause 1.6A. will be deleted in 2021. WASPA will provide members with 30 days notice prior to the effective date of the deletion.

1.7. Where this Code deals with services provided by members, it applies only to mobile application services, and not to other unrelated services that the member may provide.

### **Alterations to the Code**

1.8. WASPA reserves the right to make alterations to this Code of Conduct from time to time, following due consultation with members. The amended Code of Conduct remains binding on all WASPA members.

1.9. WASPA will notify members of any changes to the Code of Conduct and will make each version of the Code available on the WASPA website.

1.10. WASPA reserves the right to immediately amend or alter this Code of Conduct without due consultation with members if directed to do so by a court of law.

### **Disclaimers**

1.11. WASPA's office bearers, employees and contractors shall not be held liable for any consequences that may arise from the implementation of this Code or for the failure to implement the Code.

1.12. This Code of Conduct does not constitute legal advice, nor is it warranted as legal advice.

## 2. Definitions

### Placement of definitions

2.1. Terms defined in all sections of the Code have the same meaning throughout the Code.

### Undefined terms

2.2. Any undefined terms will be given their ordinary meaning as defined in the Oxford English Dictionary.

### General definitions

2.2A. "**Consumer**" has the meaning defined in the Consumer Protection Act, 2008 (No. 68 of 2008).

2.2B. "**Customer**" means a consumer who has entered into a transaction with a WASPA member, either directly, or via a third party.

2.3. "**Member**" means a member of WASPA.

2.4. A "**standard rated**" service is one charged at the nominal rate on a typical customer's billing plan.

2.5. "**WASPA**" means the Wireless Application Service Providers' Association, a nonprofit organisation registered in terms of the Nonprofit Organisation Act, 1997, registration number 115-491 NPO.

2.6. A "**web page**" is a document on the world-wide web, and includes pages accessed by a mobile phone using protocols including but not limited to WAP and HTTP.

## 3. Services provided or marketed by third parties

### Extent to which the Code applies to third party services

3.1. If a client, supplier, affiliate or sub-contractor of a member provides or markets services covered by this Code of Conduct, those services are subject to the relevant provisions of this Code, as if the party providing or marketing them was a member.

3.2. If a client, supplier, affiliate or sub-contractor of a member is found to have breached this Code of Conduct, that member must abide by any order to suspend or terminate the services offered by that party.

### Third parties who are also WASPA members

3.3. In the case of a client, supplier, affiliate or sub-contractor who is also a member of WASPA, any complaint regarding the services provided or marketed by that member should be directed to that member. WASPA's members must assist WASPA in identifying services that belong to third parties who are also members of WASPA.

3.4. A member is not liable for any breaches of this Code of Conduct resulting from services offered or marketed by a third party, if that party is also a member of WASPA, provided that the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct.

### Third parties who are not WASPA members

3.5. Members must ensure that any client, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.

3.6. Members must ensure that any client, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of this Code of Conduct.

3.7. A member is liable for any breaches of this Code of Conduct resulting from services offered or marketed by a client, supplier, affiliate or sub-contractor if that party is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches.

## **4. General provisions**

### **Employee awareness of the Code**

4.1. Members must ensure that any relevant employees are made aware of this Code of Conduct and any associated procedures.

### **Professional conduct**

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

### **Lawful conduct**

4.3. Members must conduct themselves lawfully at all times and must cooperate with law enforcement authorities where there is a legal obligation to do so. A relevant finding by a statutory or regulatory body is required to support an allegation of unlawful conduct by a member.

4.3A. Members must take all reasonable measures to prevent unauthorised access to, interception of, or interference with data on its network and under its control.

### **Freedom of expression**

4.4. Members must respect the constitutional right to freedom of speech and expression.

### **Intellectual property**

4.5. Members must respect the intellectual property rights of their clients and other parties and must not knowingly infringe such rights.

### **Content control**

4.6. Members must not knowingly host, transmit, publish, or link to illegal content.

4.7. If a member becomes aware of illegal content under that member's control, the member must immediately suspend access to that content. Where required to do so by law, the member must report the illegal content to the relevant enforcement authority.

4.8. Members must co-operate with any content orders lawfully issued by enforcement authorities.

### **Decency**

4.9. Members must not provide any services or promotional material that:

- (a) contains a visual presentation of explicit violent sexual conduct, bestiality, incest or rape or extreme violence which constitutes incitement to cause harm;
- (b) results in any unreasonable invasion of privacy;
- (c) induces an unacceptable sense of fear or anxiety;
- (d) encourages or incites any person to engage in dangerous practices or to use harmful substances;
- (e) induces or promotes racial disharmony;
- (f) causes grave or widespread offence;
- (g) debases, degrades or demeans;
- (h) incite violence or constitute hate speech;
- (i) contain defamatory statements;
- (j) causes conflicts among persons for religious, political or any other reasons; or

(k) facilitates or encourages unlawful behaviour.

4.10. A service must not be replaced on the same number by another service that might give offence to or might be inappropriate for customers reasonably expecting the original service.

### **Fraud prevention**

4.11. Members must take reasonable steps to prevent their networks and systems from being used in a fraudulent manner, including:

- (a) complying with WASPA's published best practices for fraud prevention; and
- (b) ...
- (c) reporting any fraudulent activity identified on their networks or systems to WASPA within a reasonable period of time.

4.12. If a member becomes aware that one or more customers have been billed and/or joined a service as a result of fraudulent activity (e.g. malware installed on mobile handsets), the member must remove all affected customers from the service and refund those customers any resulting charges.

## **5. Customer relations**

### **Service levels**

5.1. Members must not offer or promise or charge for services that they are unable to provide.

5.2. Services must not be unreasonably prolonged or delayed.

5.3. A member is not liable for any failure to provide a service due to circumstances beyond that member's control.

### **Provision of information to customers**

5.4. Members must have honest and fair dealings with their customers.

5.5. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

5.6. Each member must provide contact details on their main corporate website, which must include the member's registered company name, telephone number and email address.

5.6A. Members must ensure that customers have ready access to information on how to access and use services.

5.6B. Where a member passes on information about a service and/or content to a mobile network operator, for example for display in a confirmation step presented to a customer, that information must be relevant to the service being provided and must not be misleading to the customer.

### **Terms and conditions**

5.7. A web page containing the full terms and conditions of a service must be readily available to current and potential customers of that service.

5.8. The full terms and conditions for any service provided by a member must contain:

- (a) the registered company name of the WASPA member providing the service;
- (b) a customer support number;
- (c) unsubscribe instructions (for subscription services);
- (d) any handset compatibility requirements for the service;
- (e) an indication that network fees may apply;
- (f) an indication of how billing errors are handled;

- (g) a statement that the service must only be used with the permission of the bill-payer (for paid services);
- (h) a statement that the service must only be used with the permission of a parent or guardian (for children's services); and
- (i) the following statement: "[member name] is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. [member name] may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint. WASPA website: [www.waspa.org.za](http://www.waspa.org.za)";
- (j) a statement that the service must not be used:
  - (i) to intentionally engage in illegal conduct,
  - (ii) to knowingly create, store or disseminate any illegal content,
  - (iii) to knowingly infringe copyright,
  - (iv) to knowingly infringe any intellectual property rights, or
  - (v) to send spam or promote the sending of spam;
- (k) a statement that the member has the right to suspend or terminate the services of any customer who does not comply with these terms and conditions or any other related contractual obligations; and
- (l) a statement that the member has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.

5.9. The terms and conditions for any service must not contain clauses that contradict the requirements of this Code of Conduct.

5.10 Whenever a customer is asked to consent to the terms and conditions of a service, it must not be assumed that the customer consents by default; a customer must take a specific action to confirm consent. (Example: A consent tick-box must be empty when presented to the customer, and the customer must click on the tick-box to indicate consent.)

### **Customer support**

5.11. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to. (Example: support should not be limited to email if a significant number of customers do not have access to email).

5.12. Telephonic support must be provided via a South African telephone number and must function effectively. Customer support must be provided via standard rated numbers, and may not be provided via premium rated numbers. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers must not forward to full voice mailboxes.

5.13. The option of speaking to a call centre consultant (or leaving a message for a call centre consultant) should be obvious to the caller and available during business hours.

5.14. Members must have a procedure allowing customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

### **Privacy and confidentiality**

5.15. Members must respect the constitutional right of consumers to personal privacy and privacy of communications.

5.16. Members must respect the confidentiality of consumers' personal information and must not sell or distribute such information to any other party without the explicit consent of the consumer, except where required to do so by law.

5.16A. Members may not use the personal information of a consumer for any purpose without the prior explicit consent of that consumer.

### **Refunds**

5.17. Any refunds provided by members to customers must be provided either in South African Rands, air-time or any other form acceptable to the customer. Refunds must not cause the customer to incur any bank charges, or alternatively must compensate the customer for any bank charges incurred. Refunds must not be unreasonably delayed.

## **6. Billing threshold notifications**

### **Definition of billing threshold**

6.1. The "**billing threshold**" for any service is a total cost of R200 for that service for any calendar month.

### **Requirement to confirm billing over the threshold**

6.2. The requirement to send notifications and to confirm billing over the threshold only applies to services where the customer is not already confirming the billing of the service. Specifically, subscription services (where the customer is already confirming the service via a confirmation step) and ad hoc billing (where the customer is required to confirm each individual transaction) do not require billing threshold notices.

6.3. Once a customer reaches the billing threshold for a service, that customer must be sent a notification that they have reached that limit. If sent by the member, the member must keep a record of this notification, and provide that information to the customer, on request.

6.4. Where a member is in control of the billing for a service, in addition to the notification, a communication must be obtained from the customer confirming acceptance of any costs over the billing threshold before any additional charges can be billed. Where the member obtains confirmation of acceptance, the member must keep a record of this communication, and provide that information to the customer, on request.

6.5. Once a customer reaches any multiple of the billing threshold for a service, the member must send that customer a further notification of the total cost incurred for that service so far. The member must keep a record of this notification, and provide that information to the customer, on request.

### **Ability of a customer to opt-out of billing threshold notifications**

6.6. A customer may enter into a contract with a WASPA member or with a mobile network operator to opt-out of the required billing threshold reminders or amend the thresholds provided that:

- (a) Any such contract between the service provider and the customer is clear and easily understood.
- (b) The provisions in the contract which deal with opting out from reminders must be obvious to the customer and not hidden in the general terms and conditions or otherwise.
- (c) The contract contains a description of the service provided, the duration for which the service will be provided, the frequency and amount of any billing, and information on the mechanism the customer can use to terminate the service.
- (d) A copy of the contract is retained by the service provider.
- (e) A copy of the contract is made available to WASPA in the case of any dispute.
- (f) The contract must provide the customer with the ability to request the resumption of the billing threshold reminders.



## **7. Provision of information to WASPA**

### **Nominated representatives**

7.1. Each member must supply WASPA with contact information (including at least a telephone number and an email address) for a primary and a secondary Code of Conduct representative.

7.2. Should the nominated representatives change, or the contact information for the representatives change, the member must notify WASPA of the changes.

### **Provision of information about services**

7.3. Members must provide WASPA, on request, with a list of all short codes, long codes and alphanumeric identifiers assigned for use with that member's services or the services of any of the member's clients.

7.3A. A member must notify WASPA, within a reasonable period of time, if any of the numbering resources WASPA has on record for that member are:

- (a) reassigned to a different service provider,
- (b) rerated so that they incur a different cost for a customer, or
- (c) no longer in use by the member.

7.4. Members must not refuse a reasonable request from WASPA for information about the services they operate, for the purpose of testing those services or for the purposes of resolving a complaint. A member must provide the requested information within five (5) working days. If the member so requests, an extension to this time period may be given at the discretion of WASPA.

7.5. Members must provide WASPA with any customer records relating to any service which is the subject of a complaint, including, but not limited to:

- (a) where that information is available, a record of the marketing link that the customer followed prior to joining a service;
- (b) all communications sent by or to a customer in the process of joining a service;
- (c) all required reminder messages sent to a customer;
- (d) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (e) any record of successful or unsuccessful service termination requests.

### **Provision of information about unlawful conduct or content**

7.6. Members must notify WASPA if they become aware of any illegal conduct using its services, or any illegal content on its services and the steps that have been taken in response within a reasonable period of time.

7.7. Members must keep records of any take-down notices they receive in terms of the Electronic Communications and Transactions Act, Act 25 of 2002, for a period of three years. A copy of any content taken-down in response to a notice must also be kept for three years, provided it is lawful to do so.

7.8. Members must report any take-down notices they receive in terms of the Electronic Communications and Transactions Act, Act 25 of 2002 and the steps taken as a result to WASPA within five (5) working days of the lodging of the take-down notice.

### **Annual statement of compliance**

7.9. Members must confirm their compliance with the WASPA Code on at least an annual basis.

## 8. Advertising in general

### Definition of pricing information

8.1. For an ad hoc transaction, the "**pricing information**" consists of the cost to the customer for that transaction. Examples of pricing information: "R5 once off", "R10".

8.2. For a subscription service, the "**pricing information**" consists of the word "subscription" and the cost to the customer and frequency of the billing for the service. The cost and frequency portion of the pricing information must follow the following format, with no abbreviations allowed: "RX/day", "RX/week", or "RX/month" (or RX.XX if the price includes cents). For services billed at an interval other than daily, weekly or monthly, the required format is "RX every [time period]", with no abbreviations permitted when specifying the time period. Examples of pricing information: "Subscription R5/week", "R1.50/day subscription", "RX every three days", "RX every two weeks". In a case where the total amount is billed in smaller increments over the subscription period, the pricing must still reflect the full price and not the incremental amounts ("R30/month" and not "6 x R5 per month").

8.3. For a notification service, the "**pricing information**" consists of the cost to the customer for the notification service, including any regular and incremental costs. Examples of pricing information: "R5/notification", "R10/month plus R1/notification".

8.4. For a promotional competition, the "**pricing information**" consists of the total cost to the customer for an entry into that competition plus the words "per entry". Examples of pricing information: "R1.50 per entry", "R1 per entry".

8.5. For a contact and/or dating service, the "**pricing information**" consists of the cost to the customer for using the service. Examples of pricing information: "R1/message", "R5/month subscription".

8.6. For a service not covered above, which is billed on the basis of time or sessions of a particular length of time, the "**pricing information**" consists of the cost to the customer for using the service plus the time interval at which costs are incurred. Example of pricing information: "R1.80 per 30 seconds or part thereof".

### Accuracy of pricing information

8.7. Pricing information must not be misleading. The price must be the full retail price of the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.

### Accuracy of services and content advertised

8.8. Content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service. Advertising must not mislead consumers into believing that it is for an entirely different service or for different content.

### Definition of call-to-action

8.9. A "**call-to-action**" is any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service. In the case where a mobile network operator provides a two-stage confirmation process for the service, the first page of this confirmation process may be considered to be the call-to-action.

### Language

8.10. The language used in all communications with the customer must be the same as the language used for the initial advertising, unless the customer elects to change the language to another language supported by the member.

8.11. Marketing material for services other than adult services must not contain strong language. Strong language means crude words, threats, abuse, profanity or language that amounts to prejudice.

## **9. Television and cinema advertising**

### **Display of pricing information**

9.1. For any television or cinema advert, pricing information does not need to be displayed for services which are free or which are billed at standard rates, provided that the mobile network operator does not prescribe any specific advice of charge requirements. For all other services, pricing information for the service must be shown on the screen for the entire duration of the advert. Pricing information must be clearly and prominently displayed adjacent to the call-to-action.

9.2. There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated.

### **Display of minimum terms and conditions**

9.3. For any television or cinema advert, the minimum terms and conditions for the use of the service must be shown on the screen for the entire duration of the advert. The minimum terms and conditions must be clearly displayed at the bottom of the screen. They must be legible, horizontal, and not obscured by any other information. They must be static and may not scroll across the screen.

9.4. The minimum terms and conditions displayed on any television or cinema advert must include at least the following information:

- (a) a customer support number, and
- (b) a link to a web page where the full terms and conditions for the service are available, and an indication that that link leads to the terms and conditions.

## **10. Radio advertising**

### **Pricing information**

10.1. For any radio advertising, pricing information does not need to be announced for services which are free or which are billed at standard rates, provided that the mobile network operator does not prescribe any specific advice of charge requirements. For all other services, radio advertising must include a voice over stating the pricing information clearly and unambiguously.

### **Terms and conditions**

10.2. Any radio advertising must include a statement that terms and conditions apply. "Ts&Cs" is an acceptable verbal abbreviation for "terms and conditions".

## **11. Print advertising**

### **Definition**

11.1 "Print advertising" includes, but is not limited to, advertising appearing in newspapers and magazines, on flyers and leaflets, distributed via email, in store promotional material, billboards and other outdoor advertising.

### **Display of pricing information**

11.2. For any print advert, pricing information does not need to be displayed for services which are free or which are billed at standard rates, provided that the mobile network operator does not prescribe any specific advice of charge requirements. For all other services, pricing information for the service must be clearly and prominently displayed adjacent to the call-to-action.

11.3. There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information.

### **Display of minimum terms and conditions**

11.4. For any print advert, the minimum terms and conditions for the use of the service must be included at the bottom of the advert. They must be legible, horizontal, and not obscured by any other information.

11.5. The minimum terms and conditions displayed on any print advert must include at least the following information:

- (a) a customer support number, and
- (b) a link to a web page where the full terms and conditions for the service are available, and an indication that that link leads to the terms and conditions.

### **Adverts with a long shelf-life**

11.6. For adverts which are likely to have a shelf-life of more than one (1) month, the date of publication must be stated and an indication provided that the information is correct as at the date of publication.

## **12. Web advertising**

### **Display of pricing information**

12.1. For any web page, pricing information does not need to be displayed for services which are free or which are billed at standard rates, provided that the mobile network operator does not prescribe any specific advice of charge requirements. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action.

12.2. There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated. It must not be a requirement that the viewer of an advert has additional software installed in order to see pricing information in the advert.

### **Verification of a customer's number**

12.3. A member must confirm that any MSISDN entered into a web page by a customer is, in fact, an MSISDN belonging to that customer. This must be done in one of the following ways, or in a functionally equivalent manner:

- (i) The customer's mobile carrier can provide the member with confirmation.
- (ii) The member can send an SMS to the customer's MSISDN containing a unique password or PIN which, when entered on a web page, validates the handset number.
- (iii) The member can send an SMS to the customer's MSISDN containing a unique link, which, when clicked, validates the handset number.

### **Display of minimum terms and conditions**

12.4. For any web page advertising a service for which there is not a subsequent confirmation step containing a link to the terms and conditions, the minimum terms and conditions for the use of the service must be clearly displayed.

12.5. The minimum terms and conditions displayed on any web page must include at least the following information:

- (a) a customer support number, and
- (b) a link to a web page where the full terms and conditions for the service are available.

## 13. USSD advertising

### Display of pricing information

13.1. For any service offered using USSD, pricing information does not need to be displayed for services which are free or which are billed at standard rates, provided that the mobile network operator does not prescribe any specific advice of charge requirements. For all other services, pricing information must be clearly and prominently displayed at the top of the first page. Any additional costs associated with specific menu selections must be clearly indicated.

### Display of minimum terms and conditions

13.2. The minimum terms and conditions for a USSD service must be clearly and easily available and must include at least the following information:

- (a) a customer support number, and
- (b) the full terms and conditions for the service, or a clear and unambiguous indication of where the full terms and conditions for the service are available.

## 14. Ad hoc transactions

### Record keeping

14.1. For all ad hoc transactions the member must keep a record of the source of the transaction request, and provide that information to the customer, on request. Records must be kept for a period of at least three years after the date of the transaction.

### Confirmation step

14.2. For all ad hoc transactions that are service-provider initiated, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can present the customer with a confirmation step.

14.3. The confirmation step for any ad hoc transaction must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

## 15. Subscription and notification services

### Definitions

15.1. A "**subscription service**" is any service for which a customer is billed on a repeated, regular basis without confirming each individual transaction.

15.2. A "**notification service**" is any service where there are ongoing charges for the service that are not individually authorised by the customer, but which are not subscription services, because the billing is not repeated/regular.

### Record keeping

15.3. For all subscription and notification services the member must keep a record of the source of the service initiation request, and all subsequent interactions with the customer. Those records must be made available to the customer, on request. Records must be kept for a period of at least three years after the customer terminates the service.

### General requirements

15.4. A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: "to claim your prize, join this service".)

15.5. A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: "if you join this subscription service, you will be entered into a monthly draw for a prize".)

15.6. Once a customer has joined a subscription service, neither the amount and frequency of the billing nor the frequency of the service may be increased without the customer's explicit permission.

15.7. Once a customer has joined a notification service, the amount of the charges may not be increased, nor may the trigger for the notification service billing be altered without the customer's explicit permission.

15.8. Billing for subscription services must not exceed the total amount specified in the pricing information.

15.8A. A customer may not be billed in advance for a subscription service if this exceeds the amount specified in the pricing information. For the avoidance of doubt, this restriction does not prevent a member from billing historical charges for a subscription service that have not yet been paid by the customer.

15.9. The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

#### **Subscriptions initiated via a web page**

15.10. For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can provide the customer with a "confirmation page".
- (iii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

15.11. A confirmation page must contain the following information:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,
- (d) instructions for confirming the initiation of the subscription service, and
- (e) a link to any applicable terms and conditions.

Additional information about the service may also be included, provided it follows the above information.

#### **Subscriptions initiated via an SMS**

15.12. For all subscription services initiated by the sending of an SMS, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

15.13. A confirmation message must contain only the following information, in this order:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,

- (d) instructions for confirming the initiation of the subscription service, and
- (e) (optionally) additional information about the service.

### **Subscriptions initiated via USSD**

15.14. For all subscription services initiated via USSD, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can present the customer with a confirmation step via USSD.

15.15. The confirmation step must present the following information, in this order:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number, and
- (d) instructions for confirming the initiation of the subscription service.

15.16. The option to unsubscribe must be listed in the top-level menu of any USSD-initiated subscription service, under the heading "unsubscribe".

### **Subscriptions initiated via a voice call**

15.16A. For all subscription services initiated via a voice call, whether automated or initiated by a person, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can present the customer with a confirmation step during the voice call. If the confirmation step takes the form of a verbal confirmation by the customer, then a recording of the call is required for record keeping purposes.

15.16B. The confirmation step must present the following information, in this order:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number, and
- (d) instructions for confirming the initiation of the subscription service.

### **Welcome message**

15.17. Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. The message must be provided in one of two ways:

- (i) The customer's mobile carrier may send the message.
- (ii) The member can send the "welcome message". The customer must not be charged for the welcome message.

15.18. The "welcome message" must be a single message and may not contain any line breaks or carriage returns. The welcome message must contain only the following additional information:

- (a) (optionally) the word "welcome" at the beginning,
- (b) confirmation that the customer has subscribed to a service,
- (c) the name of the service,
- (d) the pricing information,
- (e) a customer support number,
- (f) instructions for terminating the service, and
- (g) (optionally) a link to a WAP landing page or a web page describing the service.

## **Reminder messages**

15.19. A reminder SMS message must be sent to a subscription or notification service customer within 30 days of the initiation of the service, and at least once per calendar month thereafter. The message must be provided in one of two ways:

- (i) The customer's mobile carrier may send the message.
- (ii) The member can send the "reminder message". The customer must not be charged for any reminder message.

15.19A. For subscription or notification services for which the successful billing in one calendar month reaches R500, an additional "reminder message" must be sent to the customer at the point the billing reaches this threshold. The customer must not be charged for this reminder message.

15.20. The "reminder message" must be a single message for each service the customer is subscribed to, and must not contain any line breaks or carriage returns. The reminder message must contain only the following additional information:

- (a) (optionally) the word "reminder" at the beginning,
- (b) the name of the service,
- (c) the pricing information,
- (d) an indication that the customer has already reached the threshold (if this is an additional reminder message),
- (e) a customer support number,
- (f) instructions for terminating the service, and
- (g) (optionally) a link to a WAP landing page or a web page describing the service.

[15.20A. Members must not send reminder messages between 21:00 and 07:00.](#)

15.21. Some notification services are of a seasonal nature (example: sports-related notifications). During calendar months where a member does not send the customer any notifications and where no billing takes place, the member is not required to send a monthly reminder message.

## **Terminating a service**

15.22. Any instructions for terminating a subscription or notification service must be clear and easy to understand and should be readily available to customers.

15.23. Any instructions for terminating a subscription or notification service must not be phrased in such a manner as to result in the customer inadvertently terminating services offered by any other service provider.

15.24. A member may not charge any fee for receiving a service termination request. Network fees may still apply.

15.25. If a service termination request received from a customer is unclear, the customer making the request must be provided with sufficient information to be able to terminate any services provided by that member to that customer.

15.26. If a member is unable to immediately act on a service termination request received from a customer, the customer must be informed. (Example: "This may take up to 24 hours to be processed.")

15.27. The processing of any service termination request must not be unreasonably delayed. Termination requests submitted to the member in an automated fashion (including via SMS, USSD or the WASPA API) must be honored within 24 hours, and all other termination requests (including email requests) must be honored within two working days (48 hours).



## Terminating a service via SMS

15.28. If technically feasible, a recipient must be able to terminate a subscription or notification service by replying 'STOP' to any SMS sent to the customer regarding that service, including the welcome message and any reminder messages.

15.29. If a 'STOP' reply could pertain to multiple services, either all services must be terminated upon receipt of the termination request, or the customer must be given a clear choice of services to terminate.

15.30. If the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the member must honor the unsubscribe request as if the word 'STOP' had been used.

## Terminating a service via USSD

15.30A. A USSD menu provided by a member to facilitate the termination of a subscription service must allow the customer to unsubscribe from all services offered by that member in addition to individual services.

## Confirmation of termination of a service

15.31. Once a customer has terminated a service, a message confirming this must be sent to that customer. This message must specify the service the customer has terminated, and the customer must not be charged for this message.

# 16. Direct marketing messages

## Definitions

16.1. "**Consent**" means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information.

16.2. "**Direct marketing**" means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or (b) requesting the person to make a donation of any kind for any reason.

16.3. "**Electronic communication**" means communication by means of electronic transmission, including by telephone, fax, SMS, wireless computer access, automated calling machine, email or any similar technology or device.

## Right to restrict unwanted direct marketing

16.4. Any member authorising, directing or conducting any direct marketing must implement appropriate procedures to facilitate the receipt of a demand from a person who has been approached for the purposes of direct marketing to desist from initiating any further communication (an "**opt-out request**").

16.5. Unless the target person has expressly or implicitly requested or agreed otherwise, any member authorising, directing or conducting any direct marketing must not direct or permit any person associated with that activity to direct or deliver any communication for the purpose of direct marketing to:

- (a) a person who has submitted an opt-out request to that member,
- (b) a person who has registered a pre-emptive block with a registry established by the National Consumer Commission, or
- (c) a person who has registered a pre-emptive block with a registry established by WASPA.

16.5A. Members must take reasonable steps to block only direct marketing messages to numbers listed in the WASPA Do Not Contact registry and must not automatically block all messages (e.g. transactional and commercial) to those numbers.

16.6. If an opt-out request or a pre-emptive block is specified as being limited to a particular service, or to a particular category of services, then the member may apply that block only to the services specified. If it is not abundantly clear that a limited block has been requested, then the member must assume that the block request applies to all services and all marketing.

16.7. A member may not charge a consumer a fee for processing an opt-out request or for registering a pre-emptive block.

### **Prohibited times for direct marketing**

16.8. Unless a consumer has expressly or implicitly requested or agreed otherwise, a member may not engage in any direct marketing directed to a consumer on:

- (a) Sundays, public holidays contemplated in the Public Holidays Act, 1994;
- (b) Saturdays before 09:00 and after 13:00; and
- (c) all other days between the hours of 20:00 and 08:00 the following day.

### **Rights of consumers regarding direct marketing**

16.9. A member may engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing, to a person who has given his or her consent.

16.10. A member may engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing, to a person who:

- (a) has provided the party responsible for sending the direct marketing communication with his or her contact details in the context of the sale of a product or services, and the responsible party's own similar products or services are being marketed, and
- (b) has been given a reasonable opportunity to object, free of charge, and in a manner free of unnecessary formality, to such use of his or her details at the time when the information was collected and on the occasion of each subsequent direct marketing communication sent to that person.

16.11. A member may not engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing other than as provided for above.

16.12. Any communication for the purpose of direct marketing must contain the details of the identity of the sender or the person on whose behalf the communication has been sent and an address or other contact details to which the recipient may send a request that such communications cease.

### **Disclosure of source of contact details**

16.13. Upon request of the recipient of a direct marketing message, the member must, within a reasonable period of time, identify the source from which the recipient's contact details were obtained. The member must also provide proof that the recipient has given consent to receive that message, or alternatively provide proof that the recipient has provided his or her contact details in the context of the sale of a product or service the same as that being marketed.

### **Confirmation of opt out**

16.14. Once a recipient has opted out, a message confirming the opt-out must be sent to that recipient. This confirmation message must specify the marketing from which the consumer has been opted out, and the consumer must not be charged for this message.

### **Reply STOP option for SMS messages**

16.15. If technically feasible, a recipient must be able to opt out of any further direct marketing messages sent by SMS by replying to a message with the word 'STOP'. If this is not technically feasible then clear instructions for opting out must be included in the body of each marketing message.

16.16. If the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the member must honor the opt-out request as if the word 'STOP' had been used.

### **WAP push direct marketing messages**

16.17. All WAP push direct marketing messages must contain a short code, or some other similar means by which the recipient can easily identify the member providing the service being marketed.

16.18. All WAP push direct marketing messages must include instructions for opting out of any further WAP push messages.

16.19. The web page to which a WAP-push direct marketing message links must have instructions for opting out of further direct marketing messages readily available on that page, or via one clearly identified link from that page.

16.20. The terms and conditions for any service initiated via WAP must be readily available via the WAP landing page. The landing page must not be designed in such a way as to obscure ready access to the terms and conditions.

## **17. Messaging services**

### **Opt-out facility**

17.1. With the exceptions noted below, all subscription services, notification services, contact and/or dating services and other bulk SMS services (such as free newsletters) must have a functional opt-out procedure, including the option to reply 'STOP' to SMS messages.

### **Limitations on opt-outs**

17.2. Members are not obliged to honour an opt-out or block request from communications that are necessary for the conclusion of or performance of a contract to which the recipient is a party.

17.3. Members are not obliged to honour an opt-out or block request for communications required by law.

17.3A. Members are not obliged to honour an opt-out or block request for communications of a personal nature or which are intended only for the recipient of a particular message.

### **Services billed based on messages sent to the customer**

17.4. Services where billing is based on messages sent to a customer (examples: chat services, quiz services) may send no more than one billed message for each message the customer sends to the service. In addition, if more than 24 hours have elapsed since the customer last sent a message to the service, no billed messages may be sent until the customer sends another message to the service.

## **18. Promotional competitions**

### **Definition**

18.1. A "**promotional competition**" means any competition, game, scheme, arrangement, system, plan or device for distributing prizes as defined in section 36 of the Consumer Protection Act, 2008.

### **Cost of entry**

18.2. The cost for a single entry into a promotional competition must not exceed R150.

18.3. All valid and correct entries must have the same chance of winning.

### **Provision of information**

18.4. An offer to participate in a promotional competition must clearly state:

- (a) the competition to which the offer relates;
- (b) the steps required by a person to participate in the competition;
- (c) the full cost to enter the competition;
- (d) the basis on which the results of the competition will be determined;
- (e) the closing date for the competition;
- (f) how the results of the competition will be made known;
- (g) how a person can obtain a copy of the competition rules; and
- (h) how the successful participant can obtain the prize.

18.5. The requirement to provide the above information may be satisfied either by including the information in the advertisement for the competition, or by presenting it before the participant enters the competition. (Example: An SMS advertising a competition could direct a participant to a web page where the above information is provided as part of the process of participating in the competition.)

### **Closing date**

18.6. Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, if there are any valid entries.

18.7. Prizes must be awarded within 28 days of the closing date, unless a longer period is clearly stated in the competition rules.

18.8. For thirty days after a competition closing date, any customer entering the competition must be sent a reply indicating that the competition has already closed.

### **Prohibited practices**

18.9. Promotional competitions must not:

- (a) use words such as "win" or "prize" to describe items intended to be offered to all or a substantial majority of the participants;
- (b) exaggerate the chance of winning a prize;
- (c) suggest that winning a prize is a certainty;
- (d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

## **19. Charitable and fundraising promotions**

### **Definitions**

19.1. A "**beneficiary**" is a charity or organisation benefitting from a charitable or fundraising promotion.

19.2. A "**charitable promotion**" is any service which has the primary goal of benefiting a charitable organisation.

19.2A. A "**fundraising promotion**" is any promotion to raise funds for a cause or an organisation.

### **Provision of information**

19.3. Advertising for charitable and fundraising promotions must make it clear that network fees and administration fees will be deducted from amounts paid.

19.4. Advertising for charitable and fundraising promotions must specify the identity of the beneficiary, and must make clear any restrictions or conditions attached to the contribution to be made to the beneficiary.

19.5. Advertising for charitable and fundraising promotions must specify the closing date for that promotion, if applicable.

19.6. For the avoidance of doubt, the requirements in section 8 through 13 of this Code also apply to the advertising of charitable and fundraising promotions.

## **20. Contact and dating services**

### **Provision of advice to customers**

20.1. Providers of contact and/or dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.

20.1B. Promotional material for contact and/or dating services must make clear any restrictions on the location, gender and age range of users of the service.

### **Handling of customer information**

20.2. Providers of contact and/or dating services must ensure that they do not make information provided by customers publicly available. This does not apply to information that a customer has voluntarily disclosed to other users of the service.

20.3. When so requested by a customer, the provider of a contact and/or dating service must ensure that any information provided by the customer is no longer visible to other users of the service at the earliest opportunity and in all cases within 24 hours.

### **Marketing of dating services**

20.4. Promotional and marketing material for any dating service must contain the words "18+ only".

20.5. Marketing messages for a dating service may not be sent to a customer of that service if that customer has not made use of the service during the preceding three months. This is to prevent the accidental marketing of such services to children as a result of a recycled telephone number.

## **21. Adult services**

### **Definitions**

21.1. An "**adult service**" is any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.

21.2. An "**adult content service**" is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified.

### **Required practices**

21.3. Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words "18+".

21.4. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.

21.5. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Reasonable steps may include the customer confirming his or her age prior to or as part of initiating the service.

21.6. Marketing messages for an adult service may not be sent to a customer of that service if that customer has not made use of the service during the preceding three months. This is to prevent the accidental marketing of such services to children as a result of a recycled telephone number.

21.7. A marketing message sent to initiate or re-initiate adult services may not:

- (a) include any graphical or photographic content that includes full frontal images or portrayal of intimate parts of the body; or
- (b) include any words or phrases that may be considered profane, including common popular or slang terms for excretory functions, sexual activity and genitalia; or
- (c) include any links to any content described in (a) or (b).

### **Prohibited practices**

21.8. Adult services must not contain references that suggest or imply the involvement of children.

21.9. Promotions for adult services must not appear in publications or other media specifically targeted at children.

21.9A. Under no circumstance may promotional material for an adult service which itself contains material of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature, be presented to children. For the avoidance of doubt, this includes any marketing material appearing in applications that are not restricted to adults, and which children may therefore access.

21.10. Members may not offer adult content which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.

21.11. Marketing material for any adult services may not make use of material which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.

## **22. Children**

### **Definitions**

22.1. A "**child**" refers to a natural person under 18 years of age.

22.2. "**Children's services**" are those which, either wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children.

### **Promotional competitions**

22.3. Promotional competitions that are aimed at, or would reasonably be expected to be particularly attractive to children must not offer cash prizes and must not feature long or complex rules.

### **Subscription services**

22.4. Subscription services must not be intentionally targeted at children.

### **Prohibited practices**

22.5. Children's services and associated promotional material must not contain anything that is likely to result in harm to children or which exploits their credulity, lack of experience, vulnerability or sense of loyalty.

22.6. Children's services must not include anything that a reasonable parent would not wish their child to hear or learn about in this way.

22.7. Children's services must not involve an invasion of privacy of any child.

22.8. Children's services must not unduly encourage children to ring or procure other premium rated services or the same service again.

22.9. Advertising for children's services must not make use of adult themes or adult material.

## 23. Premium rated services

### Definitions

23.1. A "**premium rated service**" is a service defined as premium rated in the Numbering Plan Regulations published in *Government Gazette* 39861, which means a service provided by means of premium rated numbers where the charge is higher than standard rate.

### Scope

23.2. The requirements set out in this section of the Code apply only to premium rated services. Where the requirements set out in this section differ from those set out in earlier sections, these requirements take precedent for premium rated services.

### Customer support

23.3. Telephonic customer support for premium rated services must be provided using a toll free number, if the relevant mobile network offers this as a service to members.

### Record keeping

23.4. For premium rated services, members must keep an accurate and complete record of all complaints raised regarding those services, including:

- (a) the particulars of the complainant;
- (b) the date of the complaint;
- (c) a description of the complaint; and
- (d) the action taken to address the complaint.

23.5. Records of premium rated service complaints must be retained for a period of five (5) years.

### Billing threshold notifications

23.6. For services provided by means of premium rated numbers, the requirement to confirm billing over the threshold applies to all services, even where the customer is already confirming the billing of the service.

### Subscription services

23.7. A "**premium rated subscription service**" is a subscription service provided by means of premium rated numbers where the charge is higher than standard rate.

23.8. For a premium rated subscription service, the "**pricing information**" consists of the words "subscription service" and the cost to the customer and the frequency of the billing for the service.

23.9. Premium rated subscription services must be confirmed using a "confirmation message". The instructions for confirming the service must not require a response to a premium rated number.

23.10. The number used to terminate a subscription service must not be a premium rated number.

### Advertising in general

23.11. Adverts for premium rated services must contain a description of the service offered and the registered name of the provider.

23.12. An advert for a premium rated subscription service, which includes examples of the content provided as part of that service, must have at least two (2) examples of the content clearly provided.

## **Television and cinema advertising**

23.13. Pricing information for premium rated services must be included in a voiceover as well as shown on screen.

## **Contact and dating services**

23.14. Contact and/or dating services accessed via premium rated numbers must not be offered to children. Reasonable steps must be taken to ensure that the users of the service are authorised by the bill-payer to use that service and to confirm the user's age prior to the activation of the service.

## **Interactive voice response services**

23.15. For any interactive voice response service that is a premium rated service, there must be a clear announcement of the cost per minute at the beginning of the call. This announcement must be no longer than five (5) seconds in duration, and must use the following format: "Call billed at X rand per minute".

23.16. No interactive voice response service may have a false ringing sound (or other sound, including no sound at all) at the beginning of the call which might cause the user of the service to believe that the call has not yet started.

23.17. Premium rated services provided by means of a voice call shall not be intentionally prolonged or delayed for the purposes of extracting additional revenue from end-users.

## **Adult services**

23.18. Adult services accessed via a premium rated number may only be advertised in media that is intended for persons over eighteen (18) years of age.

## **Children**

23.19. Premium rates services must not be intentionally targeted at children.

# **24. Complaints procedure**

## **Definitions**

24.1. An "**adjudicator**" is an independent legal expert in the field of information and communications technology appointed by WASPA to review complaints.

24.2. A "**complaint**" means a new complaint or a complaint of a breach of a previous WASPA adjudication.

24.4. A "**panel**" consists of three (or more) adjudicators appointed to review an appeal or an emergency complaint.

## **Lodging of complaints**

24.5. Any person may lodge a complaint against any member who, in the view of the complainant, has acted contrary to the provisions of this Code. This includes a consumer, competitor or WASPA. A competitor may not lodge a complaint disguised as a member of the public, or through a member of the public. The competitor must lodge a complaint directly. For the avoidance of doubt, nothing in this clause prevents a competitor from reporting a potential breach of the Code to WASPA; in such an event, WASPA may investigate the matter and, if necessary, lodge a complaint.

24.6. A complaint must be made within six months of the date of alleged breach of the Code. WASPA may, at its discretion, accept a complaint after this six month window, if the complainant provides a compelling reason for the delay in lodging the complaint. For matters referred back to WASPA by an adjudicator for further review, the date of the original complaint is also treated as the date for any subsequent matters for the purpose of the six month window.



24.7. Any complaint must be lodged with WASPA using the contact information published on the WASPA web site.

24.8. A complaint should contain the following information:

- (a) the name of the WASPA member against whom the complaint is being made, or if the identity of the member is not clear, the number of the service or other identifying information;
- (b) the full names, address and contact details of the complainant;
- (c) to the extent that the information is known or available, identification of the part or parts of the Code of Conduct which has allegedly been breached; and
- (d) a detailed description of the actions (or inactions) that resulted in the alleged breach.

24.9. Any complaint lodged that does not contain the above information may be referred back to the complainant by WASPA, together with a request to provide the missing information.

24.10. If the complainant has not identified all of the relevant clauses of the Code, WASPA may assign the relevant clauses based only on the content of the complaint. The complaint and subsequent response and adjudication will be limited to those clauses identified by either the complainant or WASPA at the start of the matter.

24.11. WASPA will not consider a complaint if it:

- (a) falls outside the jurisdiction and mandate of WASPA,
- (b) is prima facie without merit, or
- (c) is vexatious, taking into account factors such as malicious motive and bad faith.

24.12. Where the complainant has lodged a complaint or dispute, or instituted an action with any other regulatory body or in a Court, and where the subject matter of that complaint, dispute or action is substantially the same as the subject matter of a complaint lodged by that complainant with WASPA, WASPA may, at its discretion, decline to consider and deal with the complaint.

24.13. In the event that WASPA refuses to investigate a complaint for any reason, WASPA will refer the matter back to the complainant. Should the complainant thereafter amplify the complaint in a manner that addresses WASPA's concerns, WASPA may, at its discretion, proceed to investigate the complaint.

24.14. If a complainant requests anonymity, the complainant's identity may, in exceptional circumstances, be withheld from the member at the discretion of WASPA. If WASPA decides not to grant such anonymity, the complainant will be given a choice as to whether they wish to proceed.

24.15. WASPA has the discretion to make use of either the informal, formal or emergency complaint procedure, as appropriate, to process any complaints received.

24.15A. At any point in the complaints process, prior to the assignment of a complaint to an adjudicator for review, a complainant may request that WASPA withdraw a complaint, and WASPA must do so. However, if there is prima facie evidence of a breach of the Code which may affect other consumers, WASPA is entitled to pursue a new complaint against the relevant member regarding the same services that were the subject of the withdrawn complaint, and may use any evidence submitted by the original complainant as part of the new complaint.

24.15B. At any point in the complaints process, prior to the assignment of a complaint to an adjudicator for review, WASPA may withdraw a complaint, provided that it is determined that the complaint:

- (a) falls outside the jurisdiction and mandate of WASPA,
- (b) is prima facie without merit, or
- (c) is vexatious, taking into account factors such as malicious motive and bad faith.

### **Informal complaint procedure**

24.16. In the case of a complaint for which it is feasible for the member to provide a prompt remedy and where no material breach of the Code seems to have occurred, the following informal complaint procedure will be followed.

24.17. WASPA will forward the complaint to the member concerned. The member has five (5) working days to effect an appropriate remedy and inform WASPA thereof.

24.18. Once the member has informed WASPA of the steps taken to remedy the complaint, WASPA will attempt to confirm that the complainant is satisfied with the steps taken. If the complainant is satisfied, then the complaint will be considered closed and no further action is taken. If the complainant is not satisfied with the informal resolution, WASPA will determine if the complaint should be closed or escalated to the formal complaint procedure.

24.19. WASPA will maintain a record of any complaints resolved through the informal complaint procedure, for a minimum period of three years after the complaint is closed.

### **Formal complaint procedure**

24.20. In the case of a complaint for which it is not feasible for the member concerned to provide a prompt remedy, or a complaint that has been escalated from the informal complaint procedure, the following formal complaint procedure will be followed.

24.21. If WASPA believes that a complainant has not provided sufficient evidence for an adjudicator to be able to make a decision regarding their complaint, WASPA must request that the complainant provide additional supporting material for their complaint. Should the complainant fail to provide any additional information WASPA will close the complaint due to lack of evidence without it proceeding to adjudication.

24.22. The member named in the complaint, or identified by WASPA on the basis of any identifying information included in the complaint is considered to be the respondent to the complaint. The respondent will be notified that a complaint has been lodged and that the formal complaint procedure is being followed. WASPA will provide the respondent with a copy of the complaint, and any additional information relevant to the complaint. A complaint may be directed at more than one respondent.

24.22A. A member will not be considered to be a respondent to a complaint unless specifically identified as such by WASPA. For the avoidance of doubt, a courtesy notice sent to an aggregator regarding a complaint targeted at the aggregator's client, supplier, affiliate or sub-contractor does not make the aggregator a respondent to the complaint unless specifically identified by WASPA as such.

24.23. The respondent will be given ten (10) working days to respond to the complaint, and to provide any additional information the respondent deems relevant to the complaint, including any mitigating factors that the respondent wishes the adjudicator to consider. If the respondent so requests, an extension to this time period may be given at the discretion of WASPA.

24.24. Where a complaint involves any interaction with a consumer, when requested to do so, a respondent must provide clear copies of all relevant logs of that interaction and all relevant marketing material.

24.25. Providing incorrect or fraudulent information in response to a complaint or in response to any other request to provide information is itself a breach of this Code.

24.26. If the respondent fails to respond within ten (10) working days, it will be assumed that the respondent does not wish to respond.

24.27. Once (and if) the respondent has provided a response to the complaint, this response will be provided to the complainant. The complainant will be given five (5) working days to provide a response to the respondent's submission. If the complainant so requests, an extension to this time period may be given at the discretion of WASPA.

24.28. Once (and if) the complainant provides a response to the respondent's submission, this response will be provided to the respondent. The respondent will be given five (5) working days to provide a further response to the complainant's submission. If the respondent so requests, an extension to this time period may be given at the discretion of WASPA.

24.29. WASPA will assign the complaint to an adjudicator, and provide the adjudicator with all materials submitted by the parties to the complaint.

24.30. The adjudicator must carefully review:

- (a) the complaint;
- (b) any responses the respondent(s) and complainant have made to the complaint; and
- (c) the version(s) of the WASPA Code of Conduct applicable at the time of the alleged breach.

24.31. An adjudicator may ask WASPA to request that the complainant, the respondent, or both, furnish additional information relating to the complaint. A party requested to provide additional information must provide that information within five (5) working days. If the party so requests, an extension to this time period may be given at the discretion of WASPA.

24.32. If, during the investigation of the complaint, an adjudicator identifies potential breaches of clauses of the Code of Conduct which were not specified in the complaint, the adjudicator may not rule on those clauses but must instead refer those potential breaches back to WASPA. WASPA may lodge a new complaint against the member covering those clauses.

24.32A. An adjudicator may only make a ruling against the member(s) identified as the respondent(s) to the complaint. If, during the investigation of the complaint, the adjudicator identifies potential breaches of clauses of the Code of Conduct by a WASPA member other than the respondent(s), the adjudicator may not rule against that member but must instead refer those potential breaches back to WASPA. WASPA may lodge a new complaint against the member.

24.33. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the clauses of the Code identified in the complaint. Each case will be considered and decided on its own merits. When making adjudications and determining sanctions, previous precedent should be taken into account. Precedent set by appeals panels should carry more weight than that set by adjudicators.

24.34. If the adjudicator determines that there has been a breach of the Code, then the adjudicator must determine appropriate sanctions. In determining any appropriate sanctions, the adjudicator must take into consideration:

- (a) any previous successful complaints made against the respondent in the past three years;
- (b) any previous successful complaints of a similar nature;
- (c) the nature and severity of the breach;
- (d) the loss suffered by the complainant;
- (e) any efforts made by the respondent to resolve the matter; and
- (f) any other factors that the adjudicator considers material.

24.35. Once the adjudicator has determined whether there has been a breach of the Code, and any sanctions, the adjudicator will provide WASPA with a written report detailing these findings. WASPA will provide the respondent and the complainant with access to the adjudicator's report.

24.36. Should technical errors be identified in an adjudicator's report, the adjudicator has the sole discretion to decide whether the initial report should be withdrawn and replaced with an amended report.

24.37. The respondent has ten (10) working days to notify WASPA if it wishes to appeal against the decision of the adjudicator.

24.38. In exceptional circumstances, where WASPA believes that the decision of the independent adjudicator is patently wrong, unfairly prejudices the industry, unfairly prejudices the consumer or brings the good name of WASPA into disrepute, WASPA itself may, at its discretion, institute an appeal against the decision of an adjudicator.

24.39. Unless otherwise specified in the adjudicator's report, any sanctions will be considered suspended if an appeal is lodged, until the appeal procedure is completed.

24.40. If no appeal is lodged, or if the adjudicator has specified certain sanctions as not being suspended pending an appeal, the failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed. WASPA itself may initiate a further complaint against a member for non-compliance with any sanctions.

24.41. The respondent must provide WASPA with written confirmation of compliance with any applicable sanctions within ten (10) working days of receiving the adjudicator's report. The respondent must pay any applicable fines imposed by an adjudicator within five (5) working days of receipt of invoice. The respondent must provide proof of payment of any applicable fines if requested to do so by WASPA.

24.42. WASPA will maintain a record of any complaints resolved through the formal complaint procedure, for a minimum period of three years after the complaint is closed.

## **Sanctions**

24.43. Sanctions that may be imposed on a member found to be in breach of the Code of Conduct include one or more of the following:

- (a) a requirement for the member to remedy the breach (including ordering a refund);
- (b) a formal reprimand;
- (c) an appropriate fine on the member, to be collected by WASPA;
- (d) suspension of the member from WASPA for a defined period;
- (e) expulsion of the member from WASPA;
- (f) a requirement for the member to disclose the identity of any client found to be acting in breach of this Code of Conduct;
- (g) a requirement for the member to suspend or terminate the services of any client that provides a service in contravention of this Code of Conduct;
- (h) a requirement to withhold a specified amount or portion of money payable by the member to the client.

24.44. In addition, possible sanctions against a member in breach of the Code include advising the relevant network operators or instructing that member's aggregator to do one or more of the following:

- (a) block a member's access to a specific number for a defined period;
- (b) block a member's access to a specific category of service for a defined period;
- (c) terminate a member's access to a specific number;
- (d) terminate a member's access to a specific category of service;

- (e) withhold a specified amount or portion of money payable by the network operator to that service provider;
- (f) pay some or all of withheld funds to WASPA, as an appropriate fine on the service provider;
- (g) issue a blanket refund to the customers of a service found to be in breach of the Code of Conduct; or
- (h) a requirement to remove content that is the subject of a take-down notice.

24.44A. Any sanction which requires the suspension or termination of services must clearly and unambiguously identify the service or services included in the sanction.

24.45. Where a service is provided by one WASPA member using the facilities of another member, if the member providing these facilities has taken reasonable steps in response to any alleged breach of the Code by the member providing the service, this must be considered as a significant mitigating factor when considering any sanctions against the member providing the facilities.

24.46. For the avoidance of doubt, no sanction may be applied to a member for a breach of a clause, if that member has not been given an opportunity to respond to the alleged breach of that clause in accordance with the Code.

24.47. In the case of sanctions which are imposed as a result of the failure of a member to comply with previous sanctions, the adjudicator may specify that those sanctions will not be suspended if an appeal is lodged.

24.48. In a case where the adjudicator is concerned that there may be ongoing harm to consumers if any imposed sanctions are suspended pending an appeal, the adjudicator may request that WASPA use the emergency procedure to prescribe an appropriate urgent remedy.

24.49. If a sanction specifies that a member be suspended from WASPA for a defined period, then this means that WASPA will:

- (a) update the member's status to reflect as "suspended" on the WASPA web site;
- (b) notify the relevant network operators of the member's suspension and recommend the suspension of WASP services to that member for the period specified in the ruling; and
- (c) notify WASPA's general membership of the member's suspension.

### **Non-member notices**

24.50. If the adjudicator has determined that a non-member of WASPA is operating in breach of the Code of Conduct, and the adjudicator is of the reasonable opinion that the non-member may persist in such breach, the adjudicator may instruct WASPA to issue a notice to WASPA's members.

24.51. If an adjudicator is considering issuing a notice involving a non-member of WASPA, WASPA will notify that non-member, explaining the existence of WASPA, and drawing their attention to the provisions of the Code dealing with non-member notices. The non-member must be given the option of responding within five (5) working days.

24.52. Any non-member notice must clearly identify the non-member and the relevant breach or breaches of the Code of Conduct identified by the adjudicator. The notice must specify a date from which the notice applies.

24.53. Any member permitting a non-member to operate in breach of the Code of Conduct (in the same or substantially similar manner to that identified in a non-member notice), after the date specified in the notice, will be automatically in breach of the same part or parts of the Code of Conduct as the non-member. Such members will be subject to sanctions determined by an adjudicator.

## **Appeal procedure**

24.54. Any member found to have breached the Code of Conduct by an adjudicator has the right to appeal for a review of the adjudicator's decision, and/or a review of the sanctions imposed by the adjudicator. The member must notify WASPA of its intention to appeal within ten (10) working days of receipt of the adjudication.

24.54A. The version of the appeal procedure which applies is the version in effect at the time the notification of the intention to appeal is lodged with WASPA.

24.55. When notifying WASPA of the intention to appeal, the appealing party must specify if they wish to request a face-to-face appeal hearing. If a face-to-face appeal hearing is requested then the relevant member (or their representative) and the appealing party (if not the member) will be given an opportunity to present in person to the appeals panel.

24.56. A member requesting an appeal must pay an appeal fee. The fee may vary depending on the type of appeal requested. Appeal fees will be set by WASPA and communicated to members. The member must pay any applicable appeals fee within five (5) working days of receipt of invoice. Failure to do so will result in the appeal not being validly lodged. In the case that WASPA instituted the appeal, no appeal fee will apply.

24.57. Once WASPA has been notified that a party wishes to appeal a decision, the relevant member (and the appealing party, if this is not the member) has fifteen (15) working days to supply WASPA with any additional information deemed relevant to the complaint. An extension to this time period may be given at the discretion of WASPA. In the case that WASPA instituted the appeal, WASPA must provide the relevant member with the basis for the appeal, give the member fifteen (15) working days to respond, with a discretionary extension period as above.

24.58. WASPA will inform the complainant that the service provider has lodged an appeal against the adjudicator's decision, and provide the complainant with a copy of the member's appeal submission. The complainant will be given ten (10) working days to submit a response to the member's appeal submission. An extension to this time period may be given at the discretion of WASPA. In the case that WASPA instituted the appeal, WASPA must provide the complainant with the basis for the appeal and the member's response, and give the complainant ten (10) working days to submit a response, with a discretionary extension period as above.

24.59. Once (and if) the complainant provides a response to the member's submission, this response will be provided to the member. The member will be given ten (10) working days to provide a further response to the complainant's submission. If the member so requests, an extension to this time period may be given at the discretion of WASPA.

24.60. WASPA will thereafter convene an appeals panel, consisting of three adjudicators. The adjudicator who initially reviewed the complaint may not be a member of the appeals panel. No person who could be considered to represent either the complainant or the service provider concerned, or is in any other manner conflicted, may sit on the appeals panel.

24.61. The appeals panel must consider the evidence provided to the adjudicator, the adjudicator's decision and any additional information provided by the parties. If the member has requested a face-to-face appeal hearing, then the appeals panel must also consider the member's appeal, as presented during the appeal hearing.

24.62. An appeals panel may ask WASPA to request that the complainant, the member, or both, furnish additional information relating to the complaint. A party requested to provide additional information must

provide that information within five (5) working days. If the party so requests, an extension to this time period may be given at the discretion of WASPA.

24.63. On the basis of the evidence presented, the panel will decide whether there has, in fact, been a breach of the Code. If the panel determines that there has, in fact, been a breach of the Code, then the panel must review the sanctions recommended by the adjudicator. The panel may maintain the same sanctions recommended by the adjudicator, or may determine such other sanctions, as it deems appropriate given the nature of the breach and the evidence presented.

24.64. An appeals panel must also determine, based on the merits of the appeal, whether the appeal fee must be refunded, partially refunded or forfeited by the service provider.

24.65. Once the panel has determined whether there has been a breach of the Code, and reviewed any associated sanctions, the panel will provide WASPA with a written report detailing these findings.

24.66. WASPA will provide a copy of this report to the relevant member and to the complainant. The member must, within five (5) working days, comply with any sanction imposed. The member must pay any applicable fines imposed by the panel within five (5) working days of receipt of invoice.

24.67. The failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

24.68. The member may not request a further review of the panel decision or request a further appeal.

24.69. WASPA itself may lodge an appeal against a decision of the adjudicator, in such case the procedure set out above will be followed, *mutatis mutandis*.

24.70. WASPA will maintain a record of any appeals panel proceedings, for a minimum period of three years after the complaint is closed.

### **Emergency procedure**

24.71. Where it appears to WASPA that a breach of the Code has taken place that is serious, requires urgent remedy, and which may cause harm to a significant number of consumers, the following emergency procedure will be used.

24.72. An adjudicator may request that WASPA use the emergency procedure if there is a risk of ongoing harm to consumers pending an appeal. In this case, if an appeal is lodged, WASPA may also use the following emergency procedure.

24.73. The member concerned will be notified by WASPA that the emergency procedure has been invoked. The member will be given twenty-four (24) hours (excluding weekends and public holidays) to make representations in respect of the emergency hearing.

24.74. WASPA will convene an emergency panel, consisting of at least three (3) adjudicators. No person who could be considered to represent the member concerned may sit on the emergency panel.

24.75. As soon as reasonably possible, the emergency panel will determine if a breach of the Code has taken place that requires urgent remedy, and prescribe such remedy. The panel will provide WASPA with a report detailing their decision.

24.75A. Any remedy which requires the suspension or termination of services must clearly and unambiguously identify the service or services included in the remedy.

24.76. WASPA will provide the member concerned with access to the emergency panel's report. The member concerned must comply with any urgent remedy ordered as soon as practicable. Failure to do so constitutes a breach of this Code.

24.77. WASPA may also advise the relevant network operator or operators to block a member's access to a specific number or a specific service, or order a member's aggregator to do similarly, if so instructed by an emergency panel. Additionally WASPA may send a notification to all WASPA members, if instructed to do so by an emergency panel.

24.78. If the emergency procedure was triggered by a request from an adjudicator concerned about a risk of ongoing harm to consumers pending an appeal, then the member must comply with any urgent remedy ordered until the appeal procedure is completed.

24.79. In all other cases, once the emergency procedure has been completed, the breach of the Code will be reviewed using the formal complaint procedure detailed above. Both the complainant and the respondent(s) must be given an opportunity to respond to the emergency panel's report. If, during the formal complaint procedure, the urgent remedy exercised above is deemed to be inappropriate, it may be reversed.

24.80. The emergency procedure may be invoked for a complaint that is already being handled by the formal complaint procedure. In this case, the member must be provided an opportunity to supplement any response already submitted to the formal complaint once the emergency procedure has been completed.

24.80A. An emergency panel may, if the evidence before it indicates possible breaches of clauses of the Code not identified in the initial complaint, amend the triggering complaint to include the additional clauses. The member concerned must be given an opportunity to respond to the revised complaint.

### **Heads Up procedure**

24.82. WASPA may lodge complaints using the procedures outlined above.

24.83. An adjudicator reviewing a complaint may request that WASPA perform further tests to ensure compliance with the Code.

24.84. In addition to the complaints process, WASPA may also make use of the "Heads Up" process set out below. WASPA may make use of this process if it seems feasible for the member concerned to provide a prompt remedy to the problem identified. When deciding which process to use, WASPA should take into account whether the problem was caused by a member or a third-party using the member's services.

24.85. For the "Heads Up" process, WASPA must send a notification of the problem directly to the relevant WASPA member. The member has two (2) working days to respond to the "Heads Up" complaint, thereafter, if WASPA is satisfied that the member has adequately addressed the "Heads Up" complaint, it is considered closed, and no further action is taken against the member.

24.85A. Information that may be requested as part of a "Heads Up" complaint includes, but is not limited to:

- (a) Copies of communications between the member and marketing partners;
- (b) Evidence that the member has withheld revenue from marketing partners for non-compliant services;
- (c) Confirmation that the member has removed links to non-compliant services;
- (d) Confirmation that non-compliant marketing material has been withdrawn; or
- (e) Copies of banners or other marketing material, landing pages, terms and conditions, or unsubscribe instructions which have been amended to resolve non-compliance issues.



24.86. If WASPA is not satisfied that the "Heads Up" complaint has been satisfactorily resolved then WASPA may either give the member a further two (2) working days to resolve the matter, or proceed to lodge a complaint.

24.87. The record of any "Heads Up" queries and responses for a particular service or problem will not form part of the record for any formal complaint which is subsequently lodged by WASPA as a result of a member's failure to resolve a "Heads Up" satisfactorily.

24.88. If a WASPA member believes that the remedies suggested by WASPA in order to satisfy a "Heads Up" request are inappropriate, the member may request that WASPA review that "Heads Up". WASPA will review the request and may amend the remedies suggested.

### **Take-down notice procedure**

24.89. Any person may lodge a take-down notice with WASPA, as defined in section 77 of the Electronic Communications and Transaction Act, Act 25 of 2002. WASPA will accept any take-down notice which meets the requirement of the Act and which is targeted at a member of WASPA and which is hosted in South Africa.

24.90. WASPA will send an accepted take-down notice to the targeted member. That member must report the steps taken to remove or disable access to the relevant data within five (5) working days of receiving the take-down notice from WASPA.

24.91. A member who fails to provide a response to a take-down notice is in breach of the WASPA Code of Conduct, and WASPA may initiate a complaint against that member.

### **Table of abbreviations**

HTTP	Hypertext Transfer Protocol
MSISDN	Mobile Station International Subscriber Directory Number
PIN	Personal Identification Number
PRS	Premium Rated Service
SMS	Short Message Service
USSD	Unstructured Supplementary Service Data
VAT	Value Added Tax
WAP	Wireless Application Protocol