

Domain Registration

IMPORTANT NOTICE

This document contains the Terms and Conditions for registration, transfer and updates to Domain Names in the .co.za, .web.za, .org.za, .net.za, .africa, .capetown, .joburg and .durban namespaces.

Please note the following important clauses:

- You license a domain name to a 3rd party, you will be liable for harm that arises as a result (clause 7.3)
- You warrant that certain information given to us is correct and that you will not use the domain name to infringe intellectual property or in unlawful ways; you indemnify us and the registry if any loss results from a breach of this warranty (clause 8).
- You consent to processing of personal information as described in clauses 10.1 and 10.2
- If you submitted personal information from a third party, you warrant that you have obtained consent from that party (clause 10.4)
- You exempt and indemnify the registry from all loss relating to its registration of a domain name (clause 11)

1. Definitions

The following definitions apply to these Registrant Service Terms:

1.1 "Administration Sites" means the Registry's official administration website/s including, but not limited to: <http://www.registry.net.za> and the Registrar's official administration website/s including, but not limited to: <http://www.axxess.co.za>.

1.2 "Agreement" means the Application read together with these Registrant Service Terms.

1.3 "Applicant" means the party making application for the delegation, transfer or update of the Domain Name in terms of this Agreement, and who will be identified as the Registrant in the Application.

1.4 "Domain Name" means the Domain Name in the Namespace, designated in the Application, and governed by the Agreement.

1.5 "Effective Date" means, in respect of the delegation of the Domain Name to the Applicant, the date on which such delegation is registered by the Registry (as evidenced by an electronic message from the Registrar to the Applicant confirming same).

1.6 "General Terms" means the Registrar's (Axxess') General Terms.

1.7 "ICANN" means the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation.

1.8 "Namespace" means the .co.za, .web.za, .org.za, .net.za, .africa, .capetown, .joburg or .durban name space of the Internet as the case may be.

1.9 "Personal Information" means information relating to an identifiable, living, natural person.

1.10 "Registrar" means Axxess.

1.11 "Registrar Accreditation Agreement" means the agreement entered into between the Registrar and ICANN in terms of which the Registrar is accredited by ICANN as a registrar.

1.12 "Registry" means ZA Central Registry NPC, a company registered in accordance with the laws of South Africa with registration number 1988/004299/08, its successors or permitted assigns.

1.13 "Registry-Registrar Agreement" means the agreement between the Registrar and the Registry in terms of which the Registrar is accredited as a registrar for a Namespace.

1.14 "Published Policies" means those specifications and policies established and published by the Registry from time-to-time relating to the administration of a Namespace, and includes the Launch Policy, Sunrise Dispute Resolution Policy, and Auction Policy. The published policies can be found on the Administration Sites.

2. Applicability

2.1 The Registry is responsible for delegating (registering) domain names in the Namespaces.

2.2 These terms and conditions apply to all the above-mentioned domain names.

2.3 The Applicant also agrees to be bound by the Published Policies.

3. Status and Precedence

3.1 In addition to the General Terms, these terms and conditions govern the use of the Axxess registrar services. By contracting with Axxess for the services a Client will be lawfully regarded as having agreed to their use of the services specified being governed by this Agreement.

3.2 To the extent that any provision of this document conflicts with the provisions of the General Terms, the provisions of this document will prevail.

3.3 In providing the registrar services the Registrar is bound by the provisions of the Registrar Accreditation Agreement and the Registry-Registrar Agreement. If the Registrar acts contrary to any provision of this Agreement as a result of an obligation to either ICANN or the Registry set out in such agreements (including compliance with the Published Policies or any mandatory ICANN policy), such act or omission will not be a breach of this Agreement.

4. Registration, Transfer and Deletion

4.1 The Domain Name will be delegated (registered) once it has been accepted and approved by the Registrar and the Registry and after payment of the relevant fees.

4.2 The Domain Name registration will continue after the Effective Date for the period described in the Application unless it is transferred or otherwise deleted as described in this Agreement or one of the documents referred to in it.

4.3 The Domain Name may be renewed upon payment of the relevant fees, and this Agreement will be renewed upon each renewal or other extension of the Domain Name's registration period.

4.4 If the Applicant wishes to transfer the Domain Name to another registrant (which is done by updating the domain name record), the Applicant must ensure that the new registrant has agreed to the terms of this Agreement. The Registrar will not give effect to the transfer until it has received confirmation of such agreement.

4.5 The Registrar's deletion and auto-renewal policy will not differ from the parameters set out in the Published Policies by the Registry. The Registrar will under no circumstances be liable if any Domain Name is deleted due to the Applicant's failure to renew the Domain Name registration.

5. Fees

5.1 See the provisions of the General Terms as they relate to fees, which are deemed to form part of this clause 5.

5.2 Should the Applicant fail to pay any of the fees contemplated within the periods stated, the Registrar may, without derogating from any other right which it may have in terms of these Service Terms or the General Terms or otherwise, and without notice, withdraw the Domain Name application or registration.

5.3 Under no circumstances whatsoever will the Registry or Registrar be obliged to refund any fees paid by the Applicant in terms of this clause 5.

6. Rights to Domain Name

6.1 The Registry or the Registrar will under no circumstances whatsoever be obliged to determine the right of the Applicant to the Domain Name. Domain names are delegated on a "first-come-first served" basis (unless the Application is made as part of a Namespace launch phase) and the delegation of the Domain Name by the Registry will in no way constitute any indication or warranty of the Applicant's right to utilise such name.

6.2 The Registry and Registrar give no warranties of any nature whatsoever regarding the Domain Name, the registration or use thereof and hereby disclaim all such warranties, whether express or implied.

6.3 Under no circumstances whatsoever will the Registry or Registrar be obliged to act as an arbiter of disputes arising out of the registration and use of the Domain Name.

6.4 Should a third party (the "Complainant"), in contemplation of legal action against the Applicant in court or as described in clause 6.5, present the Registry or Registrar with prima facie evidence that indicates that the Domain Name violates the rights of the Complainant, then the Registry will be entitled to provide the Complainant with the Applicant's name and contact particulars. All further communication will exclude the Registry and the Registrar, and who will have no further obligations to the Applicant or complainant.

6.5 The Applicant accepts the jurisdiction of any dispute resolution mechanism established in respect of a Namespace by the Registry, ICANN or by applicable law, as the case may be, in disputes relating to the Domain Name, including the Uniform Domain Name Dispute Resolution Policy ("UDRP") and the Uniform Rapid Suspension ("URS"), and agrees to be bound by any decision that may result.

7. The Applicant's Duties

7.1 The Applicant must provide to Registrar accurate and reliable contact details and correct and update them within seven (7) days of any change during the term of the Domain Name registration, including:

7.1.1 the full name, postal address, email address, voice telephone number, and fax number if available of the Applicant;

7.1.2 name of authorised person for contact purposes in the case of an Applicant that is an organisation, association, or corporation;

7.1.3 the names of the primary nameserver and secondary nameserver(s) for the Domain Name;

7.1.4 the name, postal address, email address, voice telephone number, and (where available) fax number of the technical contact for the Domain Name; and

7.1.5 the name, postal address, email address, voice telephone number, and (where available) fax number of the administrative contact for the Domain Name.

7.2 The Applicant's willful provision of inaccurate or unreliable information, its willful failure to update information provided to Registrar within seven (7) days of any change, or its failure to respond for over fifteen (15) days to inquiries by Registrar concerning the accuracy of contact details associated with the Applicant's registration will constitute a material breach of the Applicant-registrar contract and be a basis for suspension and/or cancellation of the Domain Name registration.

7.3 Any Applicant that intends to license use of a Domain Name to a third party is nonetheless the Applicant of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Domain Name. An Applicant licensing use of a Domain Name according to this provision will accept liability for harm caused by wrongful use of the Domain Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Applicant reasonable evidence of actionable harm.

8. The Applicant's Warranties & Indemnity

8.1 The Applicant hereby irrevocably represents, warrants and agrees that:

8.1.1 the information provided in the Application is accurate and complete, and that it will keep such information up to date at all times;

8.1.2 it has the right without restriction to use and register the Domain Name;

8.1.3 to the best of its knowledge and belief the registration of the Domain Name or its use does not and will not directly or indirectly infringe any legal right of any third party in any jurisdiction, including with respect to trademark, service mark, trade name, company name, close corporation name, copyright or any other intellectual property right;

8.1.4 will not use the Domain Name for any unlawful purpose whatsoever, including, without limitation, distributing malware, abusively operating botnets, defamation, unfair competition, passing off, phishing, piracy, counterfeiting, fraudulent or deceptive practices or generally for the purpose of confusing or misleading any person;

8.1.5 at the time of the initial submission of the Application, and at all material times thereafter, it must have an operational name service from at least two operational name servers for the Domain Name. Each server is and will continue to be fully connected to the Internet and capable of receiving queries relating to the Domain Name and responding thereto; and

8.1.6 it has selected the Domain Name without any input, influence or assistance from the Registry and/or Registrar.

8.2 Pursuant to the above warranties, the Applicant hereby agrees that it will defend, indemnify and hold harmless the Registrar and the Registry, their directors, officers, members, employees and agents, for any loss, damage, expense or liability resulting from any claim, action or demand arising out of or related to a breach of the aforementioned warranties or the use

or registration of the Domain Name, including reasonable attorneys' fees on an attorney and own client basis. Such claims will include, without limitation, those based upon trademark infringement, copyright infringement, dilution, unfair competition, passing off, defamation or injury to reputation. The Registrar agrees to give the Applicant written notice of any such claim, action or demand within a reasonable time of becoming aware thereof. The Applicant agrees that the Registry and /or the Registrar will be defended by attorneys of their own respective choices at the Applicant's expense, and that the Applicant will advance the costs incurred in such litigation, to the respective parties on demand from time to time.

9. Suspension, Cancellation and Transfer

9.1 The Applicant agrees that the Registry or Registrar will have the right to withdraw the Domain Name delegation, suspend operation of the Domain Name, or transfer the Domain Name (as the case may be):

9.1.1 in the circumstances contemplated in clause 5.2;

9.1.2 should the Applicant breach any warranty given under clause 8.1;

9.1.3 if the Applicant withdraws its consent for processing of Personal Information described in clause 10;

9.1.4 should the Applicant breach any other provision of this Agreement, and fail to remedy such breach within 14 (fourteen) days of receiving written notice from the Registrar calling upon it to do so;

9.1.5 in order to correct mistakes by Registrar or the Registry in registering the Domain Name pursuant to the Published Policies or ICANN policy applicable to the Registrar;

9.1.6 on receipt of an order by any competent court having jurisdiction; or

9.1.7 on receipt of a decision by a dispute resolution provider appointed in terms of an official domain name Dispute Resolution Procedure introduced by law, or adopted and published by the Registry or ICANN (if applicable).

9.2 In the event that the Registrar's accreditation is withdrawn by the Registry, the Registry may initiate a forced transfer of the Domain Name to another registrar.

9.3 The Registrar's deletion and auto-renewal policy will not differ from the parameters set out in the Published Policies by the Registry.

10. Personal Information

10.1 Personal Information provided by the Applicant to the Registrar will be used in a manner generally accepted in the domain name industry, and in particular for the following purposes:

10.1.1 use of Personal Information by the Registrar and Registry in providing the registrar and registry services respectively and in particular providing a public WHOIS facility which may include the Personal Information;

10.1.2 inclusion of Personal Information in escrow deposits by the Registrar and Registry held by third parties located both inside and outside of the respective countries in which they provide the services;

10.1.3 transfer of Personal Information to the Registry's affiliates and service providers for the purposes of providing registry services;

10.1.4 transfer of Personal Information to a third party replacing the Registry in providing the Registry function in terms of the registry agreement between ICANN and the Registry, whether located inside or outside of South Africa

10.2 In processing the Personal Information as set out in clause 10.1 the Registrar and Registry may transfer such Personal Information to the parties described therein. If the Registrar is a reseller of registrar services, then the Personal Information will also be transmitted to the sponsoring registrar.

10.3 THE APPLICANT CONSENTS TO THE PROCESSING OF PERSONAL INFORMATION AS DESCRIBED IN CLAUSES 10.1 AND 10.2. AND ACKNOWLEDGES THAT REGISTRATION, TRANSFER OR RENEWAL OF THE DOMAIN NAME IS DEPENDENT ON SUCH CONSENT.

10.4 THE APPLICANT WARRANTS THAT WHERE IT SUPPLIES THE PERSONAL INFORMATION OF THIRD PARTIES TO THE REGISTRAR IT HAS FIRST PROVIDED SUCH THIRD PARTIES WITH EQUIVALENT NOTICE AND OBTAINED THEIR CONSENT AS DESCRIBED IN CLAUSES 10.1 AND 10.2 RESPECTIVELY.

10.5 When collecting or confirming Personal Information the Registrar will indicate in an appropriate manner which Personal Information is obligatory and which, if any, is voluntary.

10.6 The Applicant can access and rectify the Personal Information submitted to the Registrar by accessing Client Control Panel (CCP).

10.7 The Registrar will not process the Personal Information collected from the Applicant in any way incompatible with the purposes and other limitations about which it has provided notice to the Applicant in terms of clause 10.1.

10.8 The Registrar must take reasonable appropriate, reasonable technical and organisational measures as required by applicable law to protect the Personal Information from loss, misuse, unauthorised disclosure, alteration or destruction.

10.9 Provision of the Domain Name is dependent on the Applicant's consent, and the Domain Name may be suspended or withdrawn if the Applicant withdraws such consent.

11. Exemption and Indemnity of the Registry

11.1 THE REGISTRY ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS WILL UNDER NO CIRCUMSTANCES WHATSOEVER BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWSOEVER ARISING (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, BUSINESS INTERRUPTION OR LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, DELICT, OR OTHERWISE, EVEN IF THE REGISTRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 THE APPLICANT WILL INDEMNIFY, DEFEND, AND HOLD THE REGISTRY AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS HARMLESS AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING REASONABLE LEGAL FEES AND EXPENSES) RELATING TO OR ARISING OUT OF TO THE APPLICANT'S DOMAIN NAME REGISTRATION.

12. General

12.1 For adjudication of any legal disputes between the Applicant and the Registry, the Applicant hereby consents to the jurisdiction of the High Court of South Africa (Gauteng Division, Pretoria).

12.2 For adjudication of any legal disputes between the Applicant and the Registrar, the Applicant hereby consents to the jurisdiction of the High Court of South Africa (Gauteng Division, Pretoria) and to the jurisdiction of the courts of the Applicant's domicile.

12.3 The Agreement will be construed and interpreted in accordance with the law of the Republic of South Africa.

12.4 The Applicant acknowledges that the Registry or ICANN may oblige the Registrar to make changes to or supplement the Agreement or parts of the Agreement ("amendments") if these amendments are reasonably necessary for the administration of a Namespace. In the case of amendments required by the Registry these amendments will be published on the Administration Sites from time to time.

12.5 The Applicant accepts that it is incumbent on it to monitor such changes and it hereby agrees that should it fail to notify the Registrar of the Applicant's wish not to be bound by such amendments within 30 (thirty) days of such amendment being published, it will conclusively be deemed to have acceded and agreed to the amendments thus published.

12.6 To the extent that the Registry is granted rights, the relevant provisions of this Agreement will constitute an agreement for the benefit of a third party (*stipulatio alteri*) in the Registry's favour. Where the Registry has lawfully assigned its rights and duties under its Registry-Registrar Agreement with the Registrar, the assignee will be the beneficiary under this clause.

12.7 In the event that any of these terms are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.