

# Hosting

## 1. Introduction

1.1. In addition to the General Terms, these terms and conditions govern the use of the Axxess domain registration and hosting 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.

1.2. Hosting services refers to the following: Linux Shared Hosting, Email Only Hosting, Wordpress Hosting, Windows Shared Hosting, Cloud Servers.

## 2. Domain Registration

2.1 Axxess registers domains on the Internet through the relevant governing bodies and hosts websites and related material on the Axxess server(s) on behalf of Clients. These terms and conditions apply to the use and registration of domain names and the web hosting services offered by Axxess.

2.2 Axxess registers domains through approved Domain Registrars, such as OpenSRS (for gTLDs). Axxess may, at its discretion use other approved entities for registration, but in general may limit domains offered based on availability from the registrar concerned.

2.3 The Client will be bound by the terms and conditions of the relevant domain name space (e.g. .com or .co.za) under which any domain name registered on its behalf falls, and should become familiar with them. Axxess may post links to these terms and conditions on the Axxess Website purely as a convenience to the Client.

2.4 Where Axxess is acting as a registrar or reseller in registering a domain name for the Client, the Client may be required to agree to further terms. Axxess will provide the Client with a link to these terms, which are incorporated into this Agreement by reference.

2.5 Axxess will strive to ensure that registration and subsequent DNS propagation is effected in the shortest period of time. However, Axxess cannot be held liable for any delays that may accompany the registration of domains. Initial Setup fees are non-refundable. Domain Name Registration fees constitute a once-off payment subject to certain renewal charges.

## 3. Domain Registration

Annual Renewal Fees, Redemption fees or any other fees which may become payable in respect of domain ownership. Clients are exclusively responsible for such fees, and Axxess will not enter into any disputes resulting from non-payment. Should such domains be automatically renewed, Clients will be billed for such renewal without exception. Clients not wanting to continue with a specific domain must ensure that cancellation is effected before any such renewal is actioned by Axxess with the registrar concerned.

## 4. Domain Renewal

4.1 Axxess will register a domain for a specified period (generally one year)

4.2 Thereafter, the Client is solely responsible for ensuring that the domain is renewed at the end of that period, and subsequent periods, until the domain is either cancelled or transferred by the client. This includes domains which have been set to auto-renew. Should the auto-renewal process fail, the onus will be on the client to notify Axxess of the failure.

4.3 Axxess will endeavour to send a courtesy reminder to the Client, such as an SMS, email. Such reminders in no way transfer responsibility to Axxess for ensuring that the domain is renewed.

4.4 Should this reminder fail to reach the Client, or should the reminder fail to be issued, this will not constitute a breach of this agreement, as this is solely performed as a courtesy.

4.5 Clients registering domains must take note of the registration date, and ensure that renewal is effected.

## **5. Domain Transfer**

5.1 Axxess will transfer existing (registered) domains from existing hosting providers to Axxess' DNS and web servers. Upon requesting the transfer, and accepting the relevant Service Terms, the Client explicitly agrees that it has the authority to do so, being the registrant of the domain in question, or having been nominated as an agent of the registrant. The Client thereby indemnifies Axxess from any disputes regarding ownership of the domain and any claims as a result thereof.

5.2 On application and payment for the transfer of a hosting a service the domain space is reserved on our hosting server. It is the client's responsibility to ensure that the transfer request from Axxess is accepted and to advise Axxess of any delays. The client will be billed for the reserved hosting space regardless of the domain being transferred or not unless cancelled.

## **6. Cancellation**

6.1 The service is a monthly billed service which will continue on a month to month basis until cancelled. Cancellations require a calendar months' notice and must be submitted via the Control Panel (Purchases on Promotion may carry additional T's & C's).

6.2 Cancellation, by the Client or Axxess, will result in any data being permanently removed from Axxess' servers. Clients are solely responsible for ensuring that backups are made of web content and email data, or any other data stored on their hosting space. Axxess will not be liable for loss of data, or be obliged to provide any such data once the hosting contract term has expired. Any backups made by Axxess will be made for legal purposes and not for data retention purposes and will not necessarily be made available to Clients on request.

## **7. Liability for Registration and Use of Domain Names**

7.1 Axxess has not and does not conduct pre-registration searches in respect of the Client's use and registration of its selected Domain Name/s and is therefore not obliged to either advise the Domain Name client about possible conflicting third party rights or to take steps to ensure against possible disputes concerning a third party's intellectual property or other rights.

7.2 Axxess reserves the right to disclose pertinent information to Registrars for public disclosure as per the Terms and Conditions of the Registrar. Axxess will not be held liable for any claims of infringement of privacy by fulfilling such registration conditions.

7.3 This forms a regulatory requirement by the registrar, and there a Service Agreement requirement to the Client.

7.4 The Client indemnifies Axxess by warranting that the use or registration of the Domain Name by a Client does not interfere with nor infringe the rights of any third party in any jurisdiction with respect to trademark, service mark, tradename, company

name, close corporation name, copyright nor any other intellectual property right, and that Client has the right to use the Domain Name as requested.

7.5 Axxess cannot act as an arbiter of disputes arising out of the registration and use of Domain Names. At the same time, Clients acknowledge that Axxess may be presented with evidence that a Domain Name registered by a Client violates the rights of a third party. In such instance Axxess shall be allowed to provide a complainant with the Client's name and address and all further communication will exclude Axxess and Axxess will have no further obligations to the Client. In such instance the Client shall be entitled to continue using the Domain Name registered for the Client by Axxess until a court or other body with jurisdiction directs otherwise.

## **8. Registrant Contact Details for co.za, net.za, web.za and org.za**

The ZACR policy indicates that the registrant contact details has to be updated to the legitimate beneficiary of the domain which would be the domain owner and not the reseller.

8.1 The registrant, being the legitimate beneficiary of the domain name service, is accurately identified on the domain name record (full legal name); and

8.2 The registrant's designated email address is accurately identified on the domain name record where prescribed.

## **9. Hosting Services**

9.1 Axxess does NOT guarantee SMTP mail relay services by default with shared hosting packages. This is provided merely as a value added extra.

9.2 Axxess reserves the right to suggest suitable alternatives to the Client and / or charge for excessive traffic or system resources as it deems necessary, at its sole discretion. Excessive traffic or use of system resources will be determined as set out in the Acceptable Use Policy.

9.3 Axxess reserves the right to move a website between web servers and Internet backbones, both within South Africa and internationally as it deems necessary. If a Client moves in excess of their monthly web traffic allocation, then the Client will be contacted and various options will be presented.

9.4 Axxess reserves the right (but does not assume any obligation) to inspect the contents of data that the Client transmits, receives or stores on an Axxess Server to ensure compliance with this Agreement, Axxess' AUP, or any applicable laws regulations or codes of practice.

9.5 The Client must immediately and adequately respond to a denial of service attack (DOS / DDOS). If the Client's facilities are targeted by a DOS attack that affects other network users, the Client's Service will be suspended.

## **10. Backups**

10.1 Clients are solely responsible for backing up their data and Axxess strongly encourages ALL Hosting Clients to do so as frequently and completely as possible. Axxess will not be liable for any data loss or any other losses or damages related to backups or data recovery without exception.

10.2 Clients are ultimately responsible for their own data, and Axxess strongly encourages such Clients to continue to make their own backups as frequently and completely as possible to ensure that they have recourse in the event of any failure.

10.3 Axxess also cannot guarantee the condition or fitness of any backups provided. Such backups are provided "as is" and are used at the Client's own risk and discretion - whether restored by Axxess by instruction from Clients or by Clients themselves.

10.4 Axxess will not be liable for any losses or damages relating to any incidents arising out of such backups being provided (or not provided) to Clients on request.

10.5 Axxess endeavours to keep a backup of the domain, the backup is of the last 3 days content only. Whilst we endeavour to keep a backup of the last 3 days content this can in no way be guaranteed, it is the client/site owners responsibility to keep a local backup of their site/s at all times. Axxess will in no way be held responsible for any loss of content whatsoever.

## **11. Cloud Hosting**

11.1 Axxess reserves the right to manage the cloud environment at its discretion for the overall benefit of cloud hosted Clients. Any virtual machine which Axxess deems at its sole discretion to have a negative effect on the environment may be powered down or suspended.

11.2 Axxess deploys all new Cloud Servers with HyperV tools (VMadditions, LIS) pre-loaded. VMadditions is integral to the smooth running of virtual servers, including managing resources and smooth and safe rebooting. VMadditions must be running at all times, as shutting it down will severely affect the performance of the server, and efficiency of the core controllers i.e. affecting other clients' virtual servers.

11.3 Axxess strictly forbids the creation of nested VM's, or virtual instances within a virtual server. This severely degrades overall performance and will be treated as a violation of Axxess' AUP and Terms & Conditions (contrary to the intended use of the product).

11.4 Axxess also strictly forbids any misuse of shared or cloud resources, such as Ram Disks (use RAM memory as storage disk space), which abuses resources and compromises the integrity of the cloud environment.

11.5 Axxess may also, at its discretion, restrict server to limited IOPS (Input Output Operations Per Second) where a Client's use of available virtual resources is negatively affecting the overall environment.

11.6 Axxess reserves the right to move a Cloud server between our virtual environments and Internet backbones, both within South Africa and internationally as it deems necessary.

## **12. Use at Client's Risk**

12.1 Axxess will exercise no control whatsoever over the content of the material hosted on, or the information passing through the Axxess network and in no way moderates such content.

12.2 Clients expressly agree that use of Axxess' Server(s) and Services are at the Client's sole risk.

## **13. Spam/Virus Filtering**

13.1 Axxess provides a spam and virus filtering system to protect Clients from unsolicited mail and viruses. The Client acknowledges that this system might incorrectly identify a valid message as spam or as a virus and consequently this message might not be delivered to the Client. The Client acknowledges and agrees that Axxess shall without limitation have no responsibility for, or liability in respect of any data lost as a result of this system.

13.2 Axxess reserves the right to examine incoming or outgoing mail to the extent necessary to determine if it is classified as spam or malicious.

## 14. Webmail

Webmail and other web-based email services made available by Axxess are provided on an "as is" basis without representations, warranties or conditions of any kind, and the Client acknowledges and agrees that Axxess shall have no responsibility for, or liability in respect of, any aspect of the webmail services, including without limitation for any lost or damaged data or any acts or omissions of Axxess. As webmail storage space is limited, some webmail messages may not be processed due to space constraints or message limitations.

## 15. Takedown Notice Procedure

In terms of section 75 of the Electronic Communications and Transactions Act ("the ECT Act") the Internet Service Providers' Association (ISPA) can instruct Axxess to perform a site takedown upon receipt of notification of infringements as defined in Section 77 of the Act.

Any enquiries can be directed to ISPA at:

Postal address: PO Box 518, Noordwyk, 1687, Midrand

Tel: 010 500 1200

Email: [takedown@ispa.org.za](mailto:takedown@ispa.org.za)

Should Axxess receive a takedown notice from ISPA, Axxess will endeavour to:

1. Notify the Client in good time of the takedown notice.
2. Allow the Client reasonable time to remove the disputed, illegal or infringing content.
3. Takedown any sites or services which are included in the ISPA takedown notice.

## 16. Software Updates

Axxess will be responsible for updates to Operating Systems and Shared Libraries on Shared Hosting Servers.

## 17. Disclaimers, Limitations and Indemnities

17.1 Axxess will not be liable for any loss or damage, interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits), regardless of the form of action, whether in contract, delict, or otherwise which may be suffered as a result of or which may be attributable, directly or indirectly, to the use and/or registration of the Client's selected domain names/s OR ANY ACTION TAKEN BY AXCESS IN RESPONSE TO THE ABUSE OF THE DOMAIN REGISTRATION SERVICES WHICH IT OFFERS.

17.2 The Client hereby indemnifies and holds harmless Axxess against any loss whatsoever arising from any dispute or claim or other action occasioned by the Client's use and registration of its selected Domain Name, even if Axxess has been advised of the possibility of such damages;

17.3 Axxess will not be liable for any indirect or consequential loss, damage, cost or expense of any kind, irrespective of how such damage or loss was caused, whether arising under contract, delict or otherwise, including, and not limited to, data loss or corruption, loss of profits, contracts, operation time and goodwill.

17.4 Neither Axxess, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, warrant that Axxess' Server service will not be interrupted or error-free; nor do they make any warranty as to the results that may be obtained from the use of the Server service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the Axxess Server service, unless otherwise expressly stated in this Agreement.

17.5 Axxess expressly limits its liability to the Client for damages suffered due to any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. Axxess specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

17.6 Axxess is not responsible if an external company network and firewall is setup to block access to services Axxess provides. If a Client's network is setup to block certain ports or web addresses that compromise the services Axxess provides it is the Client's responsibility to ensure that their network configurations are changed as necessary.

17.7 Clients also hereby indemnify Axxess against any 3rd party claims against themselves as resellers or services provided to the public or privately. Clients will be solely liable to external parties for losses and may, in no way, petition Axxess to share or cover such losses or liability, either directly or indirectly. Axxess is also indemnified from direct claims from Clients for losses incurred due to 3rd party actions or claims.