

# Registrant Agreement Mandatory Terms

## 1. Definitions

- 1.1 “Administration Sites” means the Registry’s official administration website/s including, but non limited to: [www.registry.net.za](http://www.registry.net.za) and the Registrars official administration website/s including, but not limited to: ([www.zawebhosts.co.za](http://www.zawebhosts.co.za)).
- 1.2 “Agreement” means the Application read together with these terms and conditions.
- 1.3 “Applicant” means the party making application for the delegation or update of the Domain Name in terms of this Agreement, and who will be identified as the Registrant on the Application.
- 1.4 “Application” means the application for the delegation or update of the Domain Name submitted by, or on behalf of, the Applicant and to which these terms and conditions apply.
- 1.5 “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.
- 1.6 “Domain Name” means the domain name in the Namespace, designated by the Applicant in the Application, and governed by the Agreement.
- 1.7 “Namespace” means the **.za domain** namespace of the internet.
- 1.8 “Personal Information” means information relating to an identifiable, living, natural person.
- 1.9 “Registrar” means (**ZAWebs cc t/a ZAWebHosts**).
- 1.10 “Published Policies” means those specifications and policies established and published by the Registry from time-to-time relating to the administration of the 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 domain names in the **.za domain** namespace of the Internet.
- 2.2 These terms and conditions apply to all the **.za domain** domain names.
- 2.3 The Applicant also agrees to be bound by the Published Policies.

## 3. Fees

- 3.1 **(Insert Registrar specific payment terms)**
- 3.2 Should the Applicant fail to pay any of the fees contemplated in this clause 3 within the periods stated herein, the Registrar may, without derogating from any other right which it

may have in terms of this Agreement or otherwise, and without notice, withdraw the Domain Name delegation.

- 3.3** Under no circumstances whatsoever will the Registry or Registrar be obliged to refund any fees paid by the Applicant in terms of this clause 3.

#### **4. Rights to Domain Name**

- 4.1** 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 the 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.
- 4.2** The Registry and Registrar give no warranties of any nature whatsoever with regard to the Domain Name, the registration or use thereof and hereby disclaim all such warranties, whether express or implied.
- 4.3** 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.
- 4.4** Should a third party (the “Complainant”), in contemplation of legal action against the Applicant in court or as described in clause 4.5, 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.
- 4.5** The Applicant accepts the jurisdiction of any dispute resolution mechanism established in respect of the 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.

#### **5. The Applicant’s Warranties & Indemnity**

- 5.1** The Applicant hereby irrevocably represent, warrants and agrees that:
- 5.1.1** the information provided in the Applicant is accurate and complete, and that it will keep such information up to date at all times;
- 5.1.2** it has the right without restriction to use and register the Domain Name;
- 5.1.3** 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 trade mark, service mark, trade name, company name, close corporation name, copyright or any other intellectual property right;

- 5.1.4** 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;
  - 5.1.5** 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
  - 5.1.6** it has selected the Domain Name without any input, influence or assistance from the Registry and/or Registrar.
- 5.2** 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 trade mark 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 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.

## **6. Withdrawals and Transfers**

- 6.1** 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):
- 6.1.1** in the circumstances contemplated in clause 3;
  - 6.1.2** should the Applicant breach any warranty given under clause 5.1;
  - 6.1.3** if the Applicant withdraws its consent for processing of Personal Information described in clause 7;
  - 6.1.4** 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;
  - 6.1.5** in order to correct mistakes by Registrar of the Registry in registering the Domain Name pursuant to the Published Policies or ICANN policy applicable to the Registrar;
  - 6.1.6** on receipt of an order by any competent court having jurisdiction; or

**6.1.7** 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 of ICANN (if applicable).

**6.2** 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.

## **7. Personal Information**

**7.1** 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:

**7.1.1** 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;

**7.1.2** 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;

**7.1.3** transfer of Personal Information to the Registry's affiliates and service providers for the purposes of providing registry services wherever in the world such parties may be located;

**7.1.4** 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, wherever in the world such third party may be located.

**7.2** In processing the Personal Information as set out in clause 7.1 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.

**7.3** THE APPLICANT CONSENTS TO THE PROCESSING OF PERSONAL INFORMATION AS DESCRIBED IN CLAUSES 7.1 AND 7.2 AND ACKNOWLEDGES THAT REGISTRATION, TRANSFER OR RENEWAL OF THE DOMAIN NAME IS DEPENDENT ON SUCH CONSENT.

**7.4** 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.

## **8. Exemption and Indemnity of the Registry**

**8.1** 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, EVENT IF THE REGISTRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 8.2** 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 THE APPLICANT'S DOMAIN NAME REGISTRATION.

**9. General**

- 9.1** 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).
- 9.2** The Agreement will be construed and interpreted in accordance with the law of the Republic of South Africa.
- 9.3** The Applicant acknowledges that the Registry 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 the Namespace. These amendments will be published on the Administration Sites from time to time.
- 9.4** 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.
- 9.5** 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 (*stipulation 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.
- 9.6** 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.

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