

TERMS AND CONDITIONS

Domain registration.

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: <https://www.afrihost.co.za>, <https://xneelo.co.za>, <https://www.godaddy.com/>
- 1.2 "Agreement" means the application read together with these registrant service terms.
- 1.3 "Applicant" means the party making an 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 the same).
- 1.6 "General terms" means the Registrar's (SWDconnect's) 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 namespace 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 SWDconnect.
- 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.

02. 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 abovementioned domain names.
- 2.3 The applicant also agrees to be bound by the published policies.

03. Status and precedence.

- 3.1 In addition to the general terms, these terms and conditions govern the use of the SWDconnect registrar services. By contracting with SWDconnect 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.

04. 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.
- 4.6 Premium domains: Applicants will be notified after signup if additional fees may be incurred for a premium domain. At times SWDconnect may only be informed if the domain is premium domain after signup has been completed.
- 4.7 Availability: Domains may be unavailable for registration even though our system indicated it was available for registration during the signup process as the domain may be reserved at the registry or registered with a registrar.

05. 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.

06. 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 utilize such name.
- 6.2 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.
- 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.

07. 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 authorized person for contact purposes in the case of an applicant that is an organization, 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.

08. The applicant's warranties and 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,

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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.

09. 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 SWDconnect Portal.

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 organizational measures as required by applicable law to protect the personal information from loss, misuse, unauthorized 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 favor. 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.

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Domain and hosting.

01. Domain registration.

1.1 SWDconnect registers domains on the Internet through the relevant governing bodies and hosts websites and related material on the SWDconnect Third-party 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 SWDconnect.

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

1.3 SWDconnect's hosting and free registration is sold as a bundled package and cannot be separated, i.e. SWDconnect will not pay for registration if it is not combined with any of their hosting products.

1.4 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. SWDconnect may post links to these terms and conditions on the SWDconnect website purely as a convenience to the client.

1.5 Where SWDconnect 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. SWDconnect will provide the client with a link to these terms, which are incorporated into this agreement by reference.

1.6 SWDconnect will strive to ensure that registration and subsequent DNS propagation is affected in the shortest period of time. However, SWDconnect 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.

02. Free domain registration.

2.1 Domain registration may be offered free of charge with Hosting products, depending on the nature and type of TLD (Top Level Domain). This offer is based on the assumption that the domain (and site content) will be hosted with SWDconnect for a reasonable period. SWDconnect reserves the right to, at their discretion, charge a parking fee where a minimum period (3 months) has not been observed on the Hosting product before downgrading to a Parking product. The fee will depend on the type of domain and applicable administration fees. Waiving such fees will be entirely at SWDconnect's sole discretion.

2.2 SWDconnect reserves the right to charge a domain registration fee (in arrears) for any domain name which is registered as a FREE domain with a hosting package that is cancelled (or the domain is transferred) within 6 months of sign up. Such fee(s) will be invoiced exclusively at SWDconnect's discretion, and no leniency extended to Clients on previous occasions will in any way prejudice SWDconnect's right to enforce this clause. Such fees must be settled before any domain transfer can be effected with the applicable registrar.

2.3 SWDconnect will not tolerate any abuse of their free registration policy. Any such abuse will result in the immediate termination of accounts concerned and service agreement, as well as possible further action to recover applicable costs from the client.

2.4 SWDconnect only offers Free Domain registration for ".co.za" domains with new hosting package signups, or Domain Parking offered as a "Free Gift" in promotions. Other TLDs or gTLDs are not included in the Free Domain Registration offer. SWDconnect will register domains as per the clauses above, but will not be responsible for any further costs in relation to the domain, such as 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 SWDconnect 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 SWDconnect with the registrar concerned.

03. Domain renewal.

3.1 SWDconnect will register a domain for a specified period (generally one year).

3.2 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 SWDconnect of the failure.

3.3 SWDconnect will endeavor to send a courtesy reminder to the client, such as an SMS, email, or a Portal notification. Such reminders in no way transfer responsibility to SWDconnect for ensuring that the domain is renewed.

3.4 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.

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

3.6 Clients may manually renew domains by accepting renewal in SWDconnect Portal, or by selecting auto-renewal in SWDconnect Portal and ensuring that this is effected by SWDconnect.

04. Domain transfer.

4.1 SWDconnect will transfer existing (registered) domains from existing hosting providers to SWDconnect's 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 SWDconnect from any disputes regarding ownership of the domain and any claims as a result thereof.

05. Cancellation.

5.1 Cancellation will be dealt with as per the general terms.

5.2 Cancellation, by the client or SWDconnect, will result in any data being permanently removed from SWDconnect's 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. SWDconnect 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 SWDconnect will be made for legal purposes and not for data retention purposes and will not necessarily be made available to clients on request.

06. Payment and payment terms.

6.1 Payment will be dealt with as per the general terms.

6.2 In the case of a website being suspended due to non-payment a reconnection fee will be payable before the website is unsuspended. An additional waiting period of up to 72 hours may be imposed in the case of multiple payment bounces.

07. Liability for registration and use of domain names.

7.1 SWDconnect 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 SWDconnect reserves the right to disclose pertinent information to Registrars for public disclosure as per the terms and conditions of the Registrar. SWDconnect 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 is a service agreement requirement to the client.

7.4 The client indemnifies SWDconnect 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, trade name, 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 SWDconnect cannot act as an arbiter of disputes arising out of the registration and use of domain names. At the same time, clients acknowledge that SWDconnect may be presented with evidence that a domain name registered by a client violates the rights of a third party. In such instances SWDconnect shall be allowed to provide a complainant with the client's name and address and all further communication will exclude SWDconnect and SWDconnect will have no further obligations to the client. In such instances the client shall be entitled to continue using the domain name registered for the client by SWDconnect until a court or other body with jurisdiction directs otherwise.

08. Registrant contact details for co.za, net.za, web.za and org.za

The ZACR policy indicates that the registrant contact details have 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.

09. Hosting services.

9.1 SWDconnect does NOT provide SMTP mail services by default with shared hosting packages.

9.2 SWDconnect 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 SWDconnect 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 SWDconnect reserves the right (but does not assume any obligation) to inspect the contents of data that the client transmits, receives or stores on an SWDconnect server to ensure compliance with this agreement, SWDconnect's 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.

9.6 SWDconnect reserves the right to request additional information relating to hosting of domains or physical and cloud servers that are registered, hosted or managed by SWDconnect.

9.7 SWDconnect reserves the right to suspend or terminate services immediately without liability should additional information not be provided upon request.

9.8 Use of Hosting services with SWDconnect is strictly subject to 3rd party and upstream licensing requirements or agreements. Should incorrect or incomplete information be supplied service will be subject to suspension or terminations without prior warning.

10. Backups.

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

10.2 SWDconnect may, in some instances, offer a separate backup service in conjunction with dedicated hosting, and will make such backups available to clients on request as and when they are available. However, SWDconnect does not warrant or guarantee the availability, completeness or "up to date" status of such backups.

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10.3 Clients are ultimately responsible for their own data, and SWDconnect 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.

10.4 SWDconnect 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 SWDconnect by instruction from clients or by clients themselves.

10.5 SWDconnect 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.

11. Dedicated servers.

11.1 SWDconnect provides servers to clients for the purposes of their hosting needs. However ownership of physical hardware rests solely with SWDconnect at all times. Clients may not make any claim to hardware deployed for their hosting, and may not have access to SWDconnect property, hardware or hosting infrastructure (such as data centres) without prior consent, which must be obtained by written application with a minimum of 24 hours notice. SWDconnect, at its discretion, may refuse such requests within reason.

12. Cloud hosting.

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

12.2 SWDconnect 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.

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

12.4 SWDconnect 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.

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

12.6 SWDconnect 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.

12.7 SWDconnect deploys all Cloud servers with an initial OS disk of 25GB. Additional disks can be added in up to 50GB increments, up to the maximum size allowed by the chosen package.

13. 100% website uptime guarantee.

SWDconnect guarantees that its hosting services will attain 100% availability, subject to the following.

13.1 The 100% website uptime guarantee is applicable only if the web server on which a client's web hosting service resides crashes or goes down at an unscheduled time. This guarantee is not valid if there is any network problem between the client and the web server which prevents the client from seeing the web server, for instance - if the client's ISP's link to the respective data centre goes down or is faulty, but the web server SWDconnect hosts is still up, SWDconnect is not responsible for the client not being able to reach their website.

13.2 SWDconnect is not responsible if any third party operated network or service experiences problems and outages (i.e. all network infrastructure and links, client's internet connection, firewall service managed by external parties). If the applicable web server is up and running at all times then the website will be deemed to have achieved 100% uptime.

13.3 The 100% uptime guarantee does not apply to any scheduled downtime for maintenance of any of the SWDconnect web servers. If there is scheduled maintenance to be done the client will be notified at least 24 hours in advance. The scheduled maintenance will always be done after hours (based on Central African Time (CAT)) and the web server downtime will be kept to a minimum.

13.4 The 100% uptime guarantee does not apply if SWDconnect suspends the client's service as allowed in terms of this agreement.

13.5 Third party monitoring service reports may not be used for justification due to a variety of factors including the monitor's network capacity/transit availability. The uptime of the server is defined as the reported uptime from the operating system and the Apache Web Server which may differ from the uptime reported by other individual services.

13.6 Disputes arising out of the Uptime Guarantee must be submitted in writing and claims may not exceed fees paid (either monthly or on a pro-rata basis) to SWDconnect for services not received during downtime. No direct or indirect losses or damages resulting from downtime may be claimed. Service Level commitments will also be taken into account when reviewing disputes. Where agreed provisions have been met, such disputes will be dismissed.

13.7 The services provide access to the internet, which is subject to bandwidth constraints, system failures and all manner of other factors that may impact on the client's access, for which SWDconnect accepts no responsibility.

14. Use at client's risk.

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

14.2 Clients expressly agree that use of SWDconnect's server(s) and services are at the client's sole risk.

15. Spam / virus filtering.

15.1 SWDconnect 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 SWDconnect shall without limitation have no responsibility for, or liability in respect of any data lost as a result of this system.

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

16. Webmail.

16.1 Webmail and other web-based email services made available by SWDconnect are provided on an "as is" basis without representations, warranties or conditions of any kind, and the client acknowledges and agrees that SWDconnect 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 SWDconnect. As webmail storage space is limited, some webmail messages may not be processed due to space constraints or message limitations.

17. Limitation on mail size.

17.1 Individual mail sent to the client's POP3/IMAP box or forwarded to the client's existing email address may be limited to 3000kB in size each.

18. Takedown notice procedure.

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

18.2 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

18.3 Should SWDconnect receive a takedown notice from ISPA, SWDconnect will endeavor to:

18.3.1 Notify the client in good time of the takedown notice.

18.3.2 Allow the client reasonable time to remove the disputed, illegal or infringing content.

18.3.3 Takedown any sites or services which are included in the ISPA takedown notice.

19. Retention of rights.

19.1 SWDconnect makes no claim to the intellectual property (such as data) of clients hosted on their servers. However, all equipment remains the property of SWDconnect and retention of data does not directly or indirectly give ownership of SWDconnect hardware to clients.

20. IP addresses.

20.1 SWDconnect will issue IP addresses to dedicated servers or to other hosting servers, either as part of the standard product, or upon request (subject to applicable fees). IP addresses will be assigned to clients at SWDconnect's discretion and on a first come first serve basis.

21. Software updates.

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

21.2 SWDconnect will only affect software updates to Operating Systems on Managed Dedicated Servers (including cloud servers). SWDconnect will not affect other updates on Managed or UnManaged servers, as this is not part of the service offered.

22. Disclaimers, limitations and indemnities.

22.1 SWDconnect 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 SWDCONNECT IN RESPONSE TO THE ABUSE OF THE DOMAIN REGISTRATION SERVICES WHICH IT OFFERS.

22.2 The client hereby indemnifies and holds harmless SWDconnect 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 SWDconnect has been advised of the possibility of such damages;

22.3 SWDconnect 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.

22.4 Neither SWDconnect, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, warrant that SWDconnect's 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 SWDconnect server service, unless otherwise expressly stated in this agreement.

22.5 SWDconnect 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. SWDconnect specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

22.6 SWDconnect is not responsible if an external company network and firewall is set up to block access to services SWDconnect provides. If a client's network is set up to block certain ports or web addresses that

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compromise the services SWDconnect provides it is the client's responsibility to ensure that their network configurations are changed as necessary.

22.7 Clients also hereby indemnify SWDconnect 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 SWDconnect to share or cover such losses or liability, either directly or indirectly. SWDconnect is also indemnified from direct claims from clients for losses incurred due to 3rd party actions or claims.