

This agreement serves as the basis on which all sales agreements are established. AC Hosting has the right to amend this agreement at any given. A notice of change will be sent to all stakeholders in such an event. Please familiarize yourself with this agreement before continuing with the registration process. By registering you agree that you have read this agreement and accept it.

1. Customer Status

1. It is recorded that the Customer may be an incorporated entity (such as a company or close corporation), trust, partnership or individual. To the extent that a person enters into the Agreement in a representative capacity on behalf of a Customer who is an incorporated entity or on behalf of an unincorporated entity, or in any other representative capacity recognised in South African law, the Customer hereby warrants that: such person is legally authorised to do so and indemnifies AC Hosting against any loss or damage that AC Hosting may sustain resulting from such person's lack of authority; all the information relating to the entity, trust, partnership, association or other person who he/she represents and which he/she has supplied to AC Hosting at any time will be true, accurate and complete.
2. AC Hosting reserves the right to treat all misrepresentations by the Customer or its representative as fraud and such person indemnifies AC Hosting against any loss or damage that AC Hosting may sustain resulting from such person's lack of authority.
3. If AC Hosting discovers that the Customer has fraudulently contracted for the receipt of Services or that its representative has contracted without contractual capacity to do so, AC Hosting will be entitled to terminate the AC Hosting Terms of Service/s immediately without any further liability to the Customer whatsoever and the Customer shall not be entitled to claim any restitution or refund of any amount already paid, regardless of whether the Customer has used the Services or not.
4. The Customer shall, if requested by AC Hosting, furnish AC Hosting with sufficient evidence of the authority of the person who shall, on behalf of the Customer, take any action or execute any documents required or permitted to be taken or executed by such person under the Agreement. This would include providing proof of permission to debit from the authorised signatory of the Customer's bank account.
5. In the event of a dispute between individuals or entities involved with the Customer (including partners, shareholders, trustees, employees), AC Hosting shall be entitled to act on the representation of a person claiming to be duly authorised to represent the Customer, without being obliged to obtain independent verification of such authority and the Customer indemnifies AC Hosting from any action or inaction based on such representation. However, should AC Hosting, in its sole and absolute discretion, require independent verification of the authority of any individual, the Customer shall provide same in a format reasonably acceptable to AC Hosting.

2. Commencement and Duration

1. The application form submitted by the Customer to AC Hosting will be treated as an offer by the Customer to make application for the Service/s. The Customer's offer shall only be deemed to have been received by AC Hosting once this has been confirmed to the Customer by AC Hosting. Although the Website is configured to confirm receipt of any offer ("Confirmation"), technical or other problems may delay or prevent such Confirmation. The Customer should contact AC Hosting if it does not receive Confirmation from AC Hosting shortly after having sent the offer. Confirmation shall not mean that a transaction has been concluded. It merely serves to confirm that the application has been received by AC Hosting. Confirmation is deemed to have been sent by AC Hosting as soon as this is reflected in AC Hosting's log files.
2. The AC Hosting Terms of Service shall commence and become binding on the Customer with effect from the Commencement Date.

3. The AC Hosting Terms of Service shall endure for an indefinite period until terminated in terms of the provisions of clause 10 below.
4. Both Parties record and agree that Port Elizabeth, Eastern Cape shall be deemed to be the place where the Parties have concluded the Agreement or any portion thereof.

3. Service Fees

1. All Service Fees payable by the Customer in terms of the AC Hosting Terms of Service are payable in advance, including but not limited to the registration of domain names, renewal of domain names and SSL certificates.
2. The Service Fees shall be payable either on a monthly, quarterly, bi-annual or annual basis as specified by the Customer and are calculated in accordance with the rate schedule on the Website.
3. Should the Customer have specified that they wish to pay annually, a discount rate of 2 calendar months will be calculated into the final amount.
4. The Service Fees shall be paid by ways of stop order, EFT or cash and the Customer hereby agrees that the Customer will be responsible for payment at the beginning of each and every calendar month for the continued duration of the AC Hosting Terms of Service.
5. Where the Customer's use of any service commences during a month rather than at the start of that month, the Customer will be charged on a pro rata basis for those Services provided during that month.
6. AC Hosting reserves the right to amend or vary the Service Fees from time to time and any amendment or variation of such Service Fees will be deemed to be an amendment of the AC Hosting Terms of Service. In the event that AC Hosting does amend its Service Fees, it will give the Customer prior notice of such amendment to the Service Fees. If the Customer objects to any amended or varied Service Fees which affect it, it shall be entitled to terminate its relationship with AC Hosting upon the terms and conditions set forth in clause 10.1 below.
7. The Customer acknowledges that it is not entitled to withhold any payment of any Service Fees due to AC Hosting by reason of any alleged breach of the AC Hosting Terms of Service by AC Hosting or for any other reasons whatsoever. In addition, the Customer acknowledges that it is not permitted to apply set-off to or demand any discount, refund (other than in terms of clause 3.10 below) or reduction in respect of any Service Fees owed to AC Hosting.
8. The Customer acknowledges that the Service Fees (Where stipulated) are inclusive of value added tax. Should any alterations to the Value Added Tax Act, 89 of 1991 be gazetted or promulgated during the duration of the AC Hosting Terms of Service, resulting in a high level of Value Added Tax being attracted to any payment due under the AC Hosting Terms of Service, such increased Value Added Tax shall be borne by the Customer.
9. In the event of a dispute arising between the parties, the Customer shall be obliged to continue paying the Service Fees as and when they become due and payable in terms of the AC Hosting Terms of Service.
10. The Customer may terminate the Service within:
 - o seven (7) days after the Commencement Date should the Customer decide not to continue subscribing for the Service/s; or
 - o within thirty (30) days after the Commencement Date should AC Hosting fail to meet the service levels for hosting services and e-mail services as specified in the Specific Terms, provided that the Customer's right to terminate shall be exercised by notice from the Customer to AC Hosting transmitted via e-mail to accounts@achosting.co.za. In the event of the Customer terminating the Service for the aforesaid reasons, the Customer shall be entitled to a refund of any Service Fees. AC Hosting shall not, however, be obliged to refund the Customer with any third party costs already incurred by AC Hosting directly or indirectly as a result of the initial request for the Service. The Customer remains responsible for any third party costs.

4. Monitoring

1. Whilst AC Hosting monitors its Services to determine that its facilities are operating satisfactorily, AC Hosting does not, as a general practice, monitor its Customers activities. Where AC Hosting is required to intercept communications in accordance with the provisions of the Regulation of Interception and Provision of Communication-Related Act, 70 of 2003 ("the Monitoring Act"), any interception of communications shall be strictly carried out in accordance with the requirements of the Monitoring Act, as and when required under the Monitoring Act.
2. With specific regard to the monitoring of content which is found on a website belonging to a Customer and which is hosted by AC Hosting, the Customer acknowledges that AC Hosting has no knowledge of, nor interest in, Customer content hosted by AC Hosting or published by AC Hosting on the Customer's behalf using the Services and further that AC Hosting does not in any way contribute or approve such content.
3. Notwithstanding this, the Customer agrees that if AC Hosting, in its sole and unfettered discretion determines that the Customer's content is in violation of any law (including the Films and Publications Act 65 of 1996) or of the Acceptable Use Policy, it may (i) forthwith request the Customer to remove such content; and/or (ii) forthwith require the Customer to amend or modify such content; and/or (iii) without notice terminate access to any Services and/or suspend or terminate any Services; and/or (iv) without notice, delete the offending content; and/or (v) notify the relevant authorities of the existence of such content (if required by law or otherwise), make any back-up, archive or other copies of such material as may be required by such authorities, disclose such elements of the Customer data as may be requested by such authorities and take such further steps as may be required by such authorities.
4. The Customer specifically agrees that it shall have no recourse against AC Hosting in the event of AC Hosting acting in terms of clause 4 and accordingly waives its right to make any claim or demand or to institute any legal proceedings against AC Hosting.

5. Security

1. All Customer Data allocated to the Customer is personal to the Customer and the Customer shall be liable for any loss or damage sustained by the Customer, AC Hosting or any third party as a result of any actions by the Customer or any other person to whom the Customer has disclosed its Customer Data.
2. The Customer authorises AC Hosting to act on any instruction given by and/or purporting to originate from the Customer, even if it transpires that both AC Hosting and the Customer have been defrauded by someone else, unless the Customer has notified AC Hosting in terms of clause 5.3 below prior to AC Hosting acting on a fraudulent instruction.
3. If any security violations are reasonably believed to have occurred in connection with the Customer's account, AC Hosting will investigate forthwith and, if necessary, change the relevant Customer data, including access codes and passwords and give the Customer immediate notification. A copy of the results of any investigation will be provided to the Customer at no cost.
4. The Customer shall advise AC Hosting immediately should any other person gain access to its Customer Data following the AC Hosting procedures relating to reporting misuse and shall give its full co-operation to AC Hosting in any investigation carried out by AC Hosting.
5. The Customer hereby indemnifies AC Hosting against any claim howsoever arising from (i) the Customer's disclosure of its Customer Data to a third person, (ii) the use of such Customer Data by a third person and/or (iii) any action by the Customer or third party as a result thereof.
6. AC Hosting reserves the right to take whatever action it may deem necessary at any time to preserve the security and reliable operation of its infrastructure and the Customer undertakes that it will not do or permit anything to be done which will compromise AC Hosting's security.
7. Although AC Hosting applies reasonable endeavours to provide disaster recovery, AC Hosting does not specify any recovery time, nor is AC Hosting liable for any loss or damage of whatever nature

incurred or suffered by the Customer arising from or in connection with any cause whatsoever as a result of its failure to provide, or delay in providing, or providing only partial disaster recovery. The Customer is required to make back-ups of its data. Nothing contained in the AC Hosting Terms of Service shall be construed as a representation that any back-ups of data implemented by AC Hosting will be successful or in any way will avoid disaster.

6. Warranties

1. AC Hosting warrants that it has the facilities, infrastructure, capacity and capability to provide the Services.
2. Save for the foregoing warranty, the Services are provided "as is" and "as available" and without any further warranty of any nature whatsoever, whether express or implied, including without limitation warranties of merchantability, fitness for purpose, title or non-infringement.
3. Under no circumstances shall any advice or information furnished by AC Hosting, its agents or employees be construed as a warranty of any kind.

7. Intellectual Property Rights

1. The Customer is obliged to comply with all laws applicable to any Intellectual Property Rights in respect of any data and/or information accessed, retrieved or stored by the Customer through the Customer's use of the Services.
2. The Customer is prohibited from using any of the AC Hosting Marks without the prior written approval of AC Hosting.
3. The Customer hereby grants AC Hosting a non-exclusive licence to use its Marks for the limited purposes of enabling AC Hosting to exercise its rights or to fulfil its obligations under the AC Hosting Terms of Service.
4. Other than as specifically provided for in the AC Hosting Terms of Service, AC Hosting will wholly and exclusively retain all existing, and become the exclusive and unencumbered owner of all Intellectual Property Rights employed in or otherwise related to its network infrastructure, business and the provision of any of the Services in terms of the AC Hosting Terms of Service.

8. Customer Indemnities

1. The Customer acknowledges that the Services are provided subject to all applicable laws and the Customer accordingly hereby indemnifies AC Hosting from any liability attributable to any regulatory body or civil or criminal proceedings instituted against AC Hosting or for any loss or damage suffered by the Customer or any third party as a consequence of any interruption or unavailability of the Services.
2. The Customer hereby unconditionally and irrevocably indemnifies AC Hosting and agrees to hold AC Hosting free from and harmless against all losses suffered or incurred by the Customer or AC Hosting or instituted against AC Hosting by any third party as a direct or indirect result of the Customer's use of the Services, the Customer's failure to comply with any AC Hosting Terms of Service, or any downtime, outage, degradation of the network, interruption in or unavailability of the Services. Included, but without limitation, within the ambit of downtime, outage, degradation of the network, interruption, or unavailability of the Services is any of the following: (i) software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services, (ii) non-performance or unavailability, of whatever nature and howsoever arising, of any of the services provided by a electronic communications network or service provider, including, but not limited to, line failure, or in any international Services or remote mail servers, (iii) non-performance or unavailability, of whatever nature and howsoever rising, of external communications networks to which the Customer or AC Hosting's network infrastructure is connected and (iv) repairs, maintenance, upgrades, modifications, alternations or replacement of any hardware forming part of the Services or any faults or defects of whatever nature in such hardware.

3. The Customer shall defend AC Hosting against any claim against which AC Hosting is indemnified in terms of clause 8.2 and elsewhere in the AC Hosting Terms of Service ("indemnified claim") and pay any and all costs, damages and expenses (including attorneys fees on the attorney and own client scale) finally awarded against AC Hosting by a court of competent jurisdiction or agreed to in a written settlement agreement signed by the Customer directly arising out of such indemnified claim, provided that (i) AC Hosting shall notify the Customer in writing as soon as AC Hosting becomes aware of the indemnified claim to enable the Customer to take steps to contest it, (ii) the Customer may assume sole control of the defence of such claim and/or related settlement negotiations and (iii) AC Hosting shall provide the Customer, at the Customer's expense, with the assistance, information and authority necessary to enable the Customer to perform its obligations under this clause.
4. The Customer shall pay to AC Hosting the amount of an indemnified claim forthwith upon receipt of request for payment unless the Customer contests the indemnified claim in which case the Customer shall pay to AC Hosting the amount of the indemnified claim forthwith after any judgment or order is granted, provided that in those circumstances where the Customer does not at any time proceed with the contest of the claim timeously and promptly, AC Hosting shall be entitled to require the Customer either to pay the amount of the claim in question in trust to its attorneys pending the outcome of the proceedings, or AC Hosting shall be entitled to require the Customer to give proper and adequate security therefore.

9. Suspension of the Services

1. AC Hosting is entitled to temporarily suspend its obligations in terms of the AC Hosting Terms of Service (i) in order to give effect to the provisions of clauses 4.3 and/or 5.5, (ii) in order to service, repair, maintain, upgrade, modify, alter, replace or improve any of the Services and/or (iii) where third parties have alleged that the Customer has engaged in unlawful activities arising from or connected to the Services.
2. Where circumstances permit, AC Hosting will use its best endeavours to provide prior notice of any such suspension to the Customer and AC Hosting shall not be liable for any loss or damage of whatever nature incurred or suffered by the Customer arising from or in connection with or from any cause whatsoever as a result of such suspension.
3. A Customer's account that is more than ninety (90) days in arrears will have the Service/s suspended until payment is furnished for the ninety (90) days arrears combined with one payment in advance. Should the Customer's account not be settled to the above-mentioned conditions, the account will be handed over for debt collecting, and the Customer remains liable for any and all fees accumulated during this process as disclosed in clause 8 of the AC Hosting Terms of Service.

10. Termination

1. Termination by either Party: Either party may terminate the AC Hosting Terms of Service together with all Services, or individual Services, on thirty (30) days written notice (accounts@achosting.co.za) to the other Party at their chosen domicilium citandi et executandi in terms of clause 14.
2. All purported terms of termination communicated to AC Hosting in any manner other than as specified above may, at AC Hosting's sole discretion, be deemed to have been invalidly given and without force and effect.
3. Breach: Should the Customer breach any of the AC Hosting Terms of Service, then AC Hosting shall be entitled, without prejudice to any other rights that AC Hosting may have and without notice to the Customer, to (i) forthwith claim immediate payment of all outstanding charges due to AC Hosting, (ii) terminate or suspend the Customer's use of any or all of the Services, (iii) terminate its relationship with the Customer and/or (iv) list the Customer with any credit bureau or Internet service provider list or the South African Fraud Prevention Service which the Customer hereby expressly consents to. In all instances, AC Hosting shall be entitled to retain all Services Fees

already paid by the Customer and recover all of its costs associated with the Customer's breach, including without limitation, legal costs on an attorney and own client scale, whether incurred prior to the institution of, or during legal proceedings, or if judgment has been granted, in connection with the satisfaction of such judgment.

4. Retention of hardware or software: The Customer acknowledges that where AC Hosting is in possession of any hardware or software belonging to the Customer as a result of AC Hosting's provision of the Services to the Customer, and the Customer is in default of its payment obligations to AC Hosting, AC Hosting shall be entitled to retain such hardware and/or software pending the Customer's settlement of all amounts owed by the Customer to AC Hosting. In addition, where the Customer fails to make payment of all amounts owed to AC Hosting within ninety (90) days of any notice by AC Hosting to the Customer in that regard, AC Hosting shall be entitled, but not obliged, to dispose of such property in order to defray any expenses as well as any amounts owed by the Customer to AC Hosting.
5. Return of hardware or software: Where the Customer is in possession of any AC Hosting hardware or software in consequence of the provision of a Service and the Service to which that hardware or software relates is terminated, the Customer will immediately return such hardware or software to AC Hosting and shall not be entitled to retain such hardware or software for any reason whatsoever.

11. Force Majeure

1. On the happening of a Force Majeure Event, any delay or failure in performance or breach by AC Hosting occasioned thereby or resulting therefrom will not be deemed to be a breach of the AC Hosting Terms of Service by AC Hosting, nor shall it subject AC Hosting to any liability whatsoever.
2. For purposes of clause 11.1, a "Force Majeure Event" means any act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strike, riot, blockage, embargo, sanctions, epidemics, act of any Government or other authority, compliance with Government orders, failure of any supplier of electricity, including Eskom, and telecommunications infrastructure and/or telecommunications lines provided by any third party, including, but not limited to, the Telkom Limited group of companies, or any circumstances of like or different nature beyond AC Hosting's reasonable control.

12. Dispute Resolution

1. Any dispute which may arise between the Parties shall be referred to arbitration and resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator.
2. The arbitrator shall be agreed upon between the Parties and failing such agreement, and within a period of ten (10) days after the arbitration has been demanded by either the Parties, either of the Parties shall be entitled to request the chairperson for the time being of AFSA to make the appointment who, in making the appointment, shall have regard to the Party's requirement of speedy arbitration.
3. Clauses 12.1 and 12.2 shall not preclude either Party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.
4. The arbitration shall be held (i) in Port Elizabeth at a venue agreed to between the Parties in writing, (ii) in English and (iii) as soon as practically possible and with a view to it being completed within twenty one (21) days after it has been demanded.
5. The Parties irrevocably agree that any award that may be made by the arbitrator (i) shall be final and binding, (ii) will be carried into effect and (iii) may be made an order of any Court to whose jurisdiction the Parties are subject.
6. The provisions of this clause 12 (i) constitute an irrevocably consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or to claim at any such proceedings that it is not bound by such provisions and (ii) are severable from the other provisions of the AC Hosting Terms of Service and shall remain in effect notwithstanding the termination of, or invalidity for any reason, of any of the AC Hosting Terms of Service.

13. Exclusion and Limitation of Liability

1. Neither AC Hosting, its directors, employees, agents, consultants and advisers shall be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising, or may arise out of the Services and/or the use thereof, under contract, delict including negligence and / or gross negligence or otherwise), sustained by the Customer, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts and/or profits.
2. AC Hosting's total liability to the Customer shall accordingly be limited to the payment of direct damages only, which direct damages shall be limited to a maximum amount of (i) three months of the Customer's base hosting fee or (ii) R2 500,00 (Two Thousand Five Hundred Rand), whichever is the lesser.

3. AC Hosting's liability for direct damages under clause 13.2 shall be excluded where such liability results or may result from the Customer's use of any third party Services or products accessible or used in conjunction with the Services, but which are not provided by AC Hosting.
4. The exclusion of liability under clauses 13.1 and 13.3 and limitation of liability under clause 13.2 shall apply notwithstanding the fact that AC Hosting may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.

14. Domicilium Citandi Et Executandi

1. Addresses: The Parties choose as their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:
2. AC Hosting: 13 Caledon Avenue, Framesby Extension, Port Elizabeth, Eastern Cape, South Africa, 041 360 4661(Tel), 079 812 0555(Cell);
3. The Customer: The physical address furnished to AC Hosting on the application form when the Customer first subscribed for the Services, as amended in writing pursuant to any change of address, which the Customer is hereby required to furnish to AC Hosting within ten (10) days of the change of such address.
4. Notice or communication to be in writing: Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
5. Requirements for notices: Any notice to a Party (i) sent by prepaid registered post in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 10th (tenth) business day after posting, (ii) delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery.

15. General

1. Whole Agreement: The Agreement making up the AC Hosting Terms of Service constitutes the entire agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representations, warranties or promises not recorded in the Agreement.
2. No Variation: No variation or consensual cancellation of the Agreement and no addition to the Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.
3. Waiver: No waiver of any of the terms and conditions of the Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
4. Severability: Should any of the terms and conditions of the Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions, which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
5. Applicable Law: The Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
6. Survival: Notwithstanding termination of the Agreement, any clause, which, from the context, contemplates ongoing rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect.