



internet solutions
A DIVISION OF DIMENSION DATA

3 November 2009

.za Domain Name Authority
The Business Centre
377 Rivonia Boulevard
Rivonia

Per Fax (011) 234 5022
(Copied to e-mail: vika@zadna.org.za)

**ATTENTION: MR VIKI MPISANE
GENERAL MANAGER, zaDNA**

Dear Sirs

REFORMULATION OF ORG.ZA TERMS OF USE

As registrar of the ORG.ZA domain space, IS would like to advise the ZA Domain Name Authority (zaDNA) that it wishes to publish and thereafter apply a revised set of ORG.ZA Registration Terms and Conditions (hereinafter "Terms") to domain-name holders operating within the ORG.ZA domain space. The purpose of this revision is not to make any material changes to the existing Terms, but rather to clarify what until now has been a somewhat ambiguous rule-set, particularly in respect of the required non-profit status of registrants in this space. It must be emphasized that it is NOT the intention of IS to introduce different rules in respect of registrant status. The ORG.ZA Charter has, since its original constitution, always stipulated that this domain space is intended for non-profit use by registrants. (It should be noted that this rule is not intended to exclude commercial or for-profit entities from ORG.ZA registration per se, but rather to exclude **use of the domain name by any entity for commercial/profitable gain**). IS, as duly constituted registrar of the ORG.ZA domain space, has in the past always honoured this principle and it fully intends to continue to do so under zaDNA's guidance in the future. It is as a result of a number of recent cases which have resulted in abuse of this non-profit principle (together with trademark infringement and abuse) in the ORG.ZA space that IS has embarked on this "clarification" of the Terms.

To this end IS attaches hereto for the attention of zaDNA a copy of the original Terms (marked "A") and a copy of the proposed revised Terms (marked "B"). Once given the go-ahead by zaDNA to do so, IS will publish the revised Terms in accordance with the timelines prescribed in the original Terms (30 days), and will thereafter substitute the old Terms with the new Terms and begin to apply them to new applicants.

Internet Solutions – A Division of Dimension Data (Pty) Ltd Registration No: 1987/006587/07

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Do what you love. Love what you do.

In the same vein IS believes it is necessary to embark on a clean-up process whereby the existing ORG.ZA Registry is vetted to ensure compliance with the Terms. IS is of the view that such a process is necessary in order for it to be able to properly fulfil its mandate as registrar of ORG.ZA in terms of the Charter. IS would like to solicit zaDNA's assistance and guidance in how best to execute this process in such a way that the non-profit principle is applied whilst the rights of existing registrants are not unduly infringed.

Finally, reference was made above in passing to trademark infringement cases which have occurred within the ORG.ZA domain name space. IS would like to take this opportunity to again reiterate the benefit that would accrue to registrants if the Alternate Dispute Resolution (ADR) Regulations promulgated by the Minister of Communications on 22 November 2006 could be amended so as to incorporate a reference to the ORG.ZA domain space and provide that the ORG.ZA domain space could together with the CO.ZA space be opened to alternative dispute resolution under these Regulations. The status quo is somewhat illogical insofar as disputes in the commercial CO.ZA space are able to take advantage of the less costly ADR process, whilst those in the non-profit ORG.ZA space are forced (in the absence of unanimous consent by the parties to the dispute) to rely on costly and time-consuming litigation in order to resolve disputes.

IS would appreciate it if each of the above-mentioned issues could be given the urgent attention of the zaDNA Board and looks forward to a response at zaDNA's very earliest convenience. Insofar as the publication of the revised Terms are concerned, IS would request that zaDNA respond to IS by no later than 30 November 2009, failing which IS will assume approval of such revised Terms by zaDNA.

Yours faithfully



Marc Furman
Legal Manager

ATTACHMENT A - CURRENT ORG.ZA REGISTRATION TERMS AND CONDITIONS

Internet Solutions is responsible for assigning domain names in the ORG.ZA namespace of the Internet. Should you not accept these terms and conditions and agree to be bound by them in their entirety, do not make application for a domain name in the ORG.ZA namespace.

1. Internet Solutions has been assigned the administrative function of registering domain names in the ORG.ZA namespace of the Internet. Internet Solutions registers these Domain Names on a "first come, first served" basis. Internet Solutions has neither the resources nor the legal obligation to screen requested Domain Names to determine if the use of a Domain Name by any applicant (hereafter referred to as "Applicant") may infringe upon the right(s) of a third party. Consequently, as an express condition of the grant of Applicant's request to register a Domain Name, Applicant represents, warrants and agrees as follows:
 - (a) Applicant's statements in the application are true and applicant has the right to use the Domain Name as requested in the Application;
 - (b) Applicant has a bona fide intention to use the Domain Name on a regular basis on the Internet;
 - (c) The use or registration of the Domain Name by Applicant does not interfere with nor infringe the right 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;
 - (d) Applicant is not seeking to use the Domain Name for any unlawful purpose, including, without limitation, delictual interference with contract or prospective business advantage, unfair competition, injuring the reputation of another, nor for the purpose of confusing or misleading any person, whether natural or incorporated.
2. Applicant acknowledges and agrees that these conditions prevailing on the registration and use of Domain Names may change from time to time and that, upon thirty (30) days posting on the Internet at <ftp://ftp.is.co.za/internet/african-templates/za/ORG.ZA-terms>, Internet Solutions may modify or amend such terms.
3. (a) Applicant agrees to pay a registration fee of Two Hundred Rand (R200 EXCL) for the registration of each new domain, unless this domain is being registered by a non-profit organisation - see 3b. If payment for a new domain has not been made within 30 days of a successful application, Internet Solutions reserves the right in its sole and absolute discretion to remove the domain from ORG.ZA and make it available for re-registration. Applications for domain updates and deletions are free.
3. (b) If the organisation on whose behalf the application is being made is a non-profit organisation and the Applicant has indicated this on

the application template, registration is free. A copy of the Section 21 registration certificate must be submitted to Internet Solutions as proof, and the application will not be processed until such certificate is received. If no such certificate is available, a statement on an official letterhead that the organisation is nonprofit may be substituted, but Internet Solutions reserves the right to refuse such applications. In such event, Internet Solutions may, but is not obliged to, request such further documentary proof of the applicant's legal status as it considers necessary.

4. Applicant agrees that if the application for a domain is made by a proxy agent for the Applicant, such as an Internet Service Provider (ISP) or Administrative Contact, the Applicant is nonetheless bound as a principal by all terms and conditions contained herein.
5. At the time of the initial submission of the Domain Name request, the Applicant is required to have operational name service from at least two operational Internet servers for that domain name. Each server must be fully connected to the Internet and capable of receiving queries under that Domain Name and responding thereto.
6. Applicant is responsible for its selection of the Domain Name. Consequently, Applicant shall defend, indemnify and hold harmless Internet Solutions, its officers, employees and agents, for any loss, damage, expense or liability resulting from any claim, action or demand arising out of or related to the use or registration of the Domain Name, including attorneys fees on the attorney and own client scale. Such claims shall include, without limitation, those based upon tradename infringement, copyright infringement, dilution, delictual interference with contract or prospective business advantage, unfair competition, defamation or injury to business reputation. Internet Solutions agrees to give Applicant written notice of any such claim, action or demand within a reasonable time. Applicant agrees that Internet Solutions shall be defended by attorneys of Internet Solutions' choice at Applicant's expense, and that Applicant shall advance the costs of such litigation, on the request by Internet Solutions' attorneys from time to time. The failure to abide by this provision shall be considered a material breach of these terms and conditions and permit Internet Solutions, without limiting any other rights which it may have hereunder or in law, to immediately withdraw the use and registration of Domain Name from Applicant, without any liability whatsoever, including without limitation for damages whether direct or consequential for any loss of use, 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 or delict.
7. Applicant agrees that Internet Solutions shall have the right to withdraw a Domain Name from use and registration on the Internet upon thirty (30) days prior written notice (or earlier if ordered by any Court) should Internet Solutions receive an order by any competent court that the Domain Name in dispute rightfully belongs to a third party or infringes a third party's rights.

8. (a) In the event that the Applicant breaches any of its obligations under these terms, Internet Solutions may request that Applicant relinquish the Domain Name by way of a written notice describing the alleged breach. If Applicant fails to provide evidence that it has not breached its obligations which is reasonably satisfactory to Internet Solutions within 14 (fourteen) days of the date of receipt of such notice, then The Internet Solution may terminate Applicant's use and registration of the Domain Name.
8. (b) Applicant acknowledges and agrees that Internet Solutions cannot act as an arbiter of disputes arising out of the registration and use of Domain Names. At the same time, Applicant acknowledges that Internet Solutions may be presented with evidence that a Domain Name registered by Applicant violates the rights of a third party. In such instance Internet Solutions shall be allowed to provide a complainant with Applicant's name and address and all further communication will exclude The Internet Solution and Internet Solutions will have no further obligations to the Applicant.
8. (c) In such instance Applicant shall be entitled to continue using the Domain Name registered for Applicant by Internet Solutions until a court as described in 5 directs otherwise.
9. Internet Solutions will not be liable for any loss of use, 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, even if Internet Solutions has been advised of the possibility of such damages.
10. The Applicant consents to the jurisdiction of any competent South African Magistrate's court for the adjudication of any legal dispute between Internet Solutions and the Applicant and these terms and conditions will be construed and interpreted in accordance with the law of the Republic of South Africa.
11. In the event that any of the terms of this Annexure 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.
12. Applicant agrees that this registration agreement is the complete and exclusive agreement between the Applicant and Internet Solutions regarding the registration of the Applicant's ORG.ZA domain. This registration agreement supersedes all prior such agreements.

ATTACHMENT B - PROPOSED ORG.ZA REGISTRATION TERMS AND CONDITIONS

Internet Solutions is responsible for assigning domain names in the ORG.ZA namespace of the Internet. Should you not accept these terms and conditions and agree to be bound by them in their entirety, do not make application for a domain name in the ORG.ZA namespace.

1. Internet Solutions has been assigned the administrative function of registering domain names in the ORG.ZA namespace of the Internet. Internet Solutions registers these Domain Names on a "first come, first served" basis. Internet Solutions has neither the resources nor the legal obligation to screen requested Domain Names to determine if the use of a Domain Name by any applicant (hereafter referred to as "Applicant") may infringe upon the right(s) of a third party. Consequently, as an express condition of the grant of Applicant's request to register a Domain Name, Applicant represents, warrants and agrees as follows:
 - (a) Applicant's statements in the application are true and applicant has the right to use the Domain Name as requested in the Application;
 - (b) Applicant has a bona fide intention to use the Domain Name on a regular basis on the Internet. Should Applicant breach this warranty (which for purposes of this clause 1(b) means that the Applicant fails to use its Domain for a period of 90 (ninety) days or more) Internet Solutions reserves the right to deregister the Applicant's Domain;
 - (c) The use or registration of the Domain Name by Applicant does not interfere with nor infringe the right 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;
 - (d) Applicant is not seeking to use the Domain Name for any unlawful purpose, including, without limitation, delictual interference with contract or prospective business advantage, unfair competition, injuring the reputation of another, nor for the purpose of confusing or misleading any person, whether natural or incorporated.
 - (e) The use of the Domain by the Applicant will not be for any commercial purposes or monetary gain, which includes but is not limited to the use of the Domain for financial gain or reward, any form of sale, resale, rent, lease and/or any related endeavours. Any attempt by the Applicant to use the Domain for commercial purposes or monetary gain as aforementioned will result in Internet Solutions

immediately deregistering the Domain and banning the Applicant against any Domain registrations for a period of no less than 24 months thereafter.

2. Applicant acknowledges and agrees that these conditions prevailing on the registration and use of Domain Names may change from time to time and that, upon thirty (30) days posting on the Internet at <ftp://ftp.is.co.za/internet/african-templates/za/ORG.ZA-terms> and <http://www.org.za/>, Internet Solutions may modify or amend such terms.
3. (a) Applicant agrees to pay a registration fee of Two Hundred Rand (R200 EXCL VAT) for the registration of each new domain, unless this domain is being registered by a non-profit organization - see 3b. If payment for a new domain has not been made within 30 days of a successful application, Internet Solutions reserves the right in its sole and absolute discretion to remove the domain from ORG.ZA and make it available for re-registration. Applications for domain updates and deletions are free.
3. (b) If the organization on whose behalf the application is being made is a non-profit organization and the Applicant has indicated this on the application template, registration is free. A copy of the Section 21 registration certificate must be submitted to Internet Solutions as proof, and the application will not be processed until such certificate is received. If no such certificate is available, a statement on an official letterhead that the organization is non-profit may be substituted, but Internet Solutions reserves the right to refuse such applications. In such event, Internet Solutions may, but is not obliged to, request such further documentary proof of the applicant's legal status as it considers necessary. In order for the domain of a non-profit organization to be registered, the domain must relate to the principles of the non - profit organization.
4. Applicant agrees that if the application for a domain is made by a proxy agent for the Applicant, such as an Internet Service Provider (ISP) or Administrative Contact, the Applicant is nonetheless bound as a principal by all terms and conditions contained herein.
5. At the time of the initial submission of the Domain Name request, the Applicant is required to have operational name service from at least two operational Internet servers for that domain name. Each server must be fully connected to the Internet and capable of receiving queries under that Domain Name and responding thereto.
6. Applicant is responsible for its selection of the Domain Name. Consequently, Applicant shall defend, indemnify and hold harmless

Internet Solutions, its officers, employees and agents, for any loss, damage, expense or liability resulting from any claim, action or demand arising out of or related to the use or registration of the Domain Name, including attorneys fees on the attorney and own client scale. Such claims shall include, without limitation, those based upon tradename infringement, copyright infringement, dilution, delictual interference with contract or prospective business advantage, unfair competition, defamation or injury to business reputation. Internet Solutions agrees to give Applicant written notice of any such claim, action or demand within a reasonable time. Applicant agrees that Internet Solutions shall be defended by attorneys of Internet Solutions' choice at Applicant's expense, and that Applicant shall advance the costs of such litigation, on the request by Internet Solutions' attorneys from time to time. The failure to abide by this provision shall be considered a material breach of these terms and conditions and permit Internet Solutions, without limiting any other rights which it may have hereunder or in law, to immediately withdraw the use and registration of Domain Name from Applicant, without any liability whatsoever, including without limitation for damages whether direct or consequential for any loss of use, 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 or delict.

7. Applicant agrees that Internet Solutions shall have the right to withdraw a Domain Name from use and registration on the Internet upon thirty (30) days prior written notice (or earlier if ordered by any Court) should Internet Solutions receive an order by any competent court that the Domain Name in dispute rightfully belongs to a third party or infringes a third party's rights.
8. (a) In the event that the Applicant breaches any of its obligations under these terms, Internet Solutions may request that Applicant relinquish the Domain Name by way of a written notice describing the alleged breach. If Applicant fails to provide evidence that it has not breached its obligations which is reasonably satisfactory to Internet Solutions within 14 (fourteen) days of the date of receipt of such notice, then The Internet Solution may terminate Applicant's use and registration of the Domain Name.
8. (b) Applicant acknowledges and agrees that Internet Solutions cannot act as an arbiter of disputes arising out of the registration and use of Domain Names. At the same time, Applicant acknowledges that Internet Solutions may be presented with evidence that a Domain Name registered by Applicant violates the rights of a third party. In such instance Internet Solutions shall be allowed to provide a complainant with Applicant's name

and address and all further communication will exclude The Internet Solution and Internet Solutions will have no further obligations to the Applicant.

- 8.(c) In such instance Applicant shall be entitled to continue using the Domain Name registered for Applicant by Internet Solutions until a court as described in 5 directs otherwise.
9. Internet Solutions will not be liable for any loss of use, 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, even if Internet Solutions has been advised of the possibility of such damages.
10. The Applicant consents to the jurisdiction of any competent South African Magistrate's court for the adjudication of any legal dispute between Internet Solutions and the Applicant and these terms and conditions will be construed and interpreted in accordance with the law of the Republic of South Africa.
11. In the event that any of the terms of this Annexure 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.
12. Applicant agrees that this registration agreement is the complete and exclusive agreement between the Applicant and Internet Solutions regarding the registration of the Applicant's ORG.ZA domain. This registration agreement supersedes all prior such agreements.