

ZISPA

TERMS AND CONDITIONS

for Domains registered in the CO.ZW Domain Name Space

1. Interpretation

1.1. In these terms and conditions, unless the context clearly indicates otherwise,

1.1.1. "**Agreement**" means the Application read together with these terms and conditions;

1.1.2. "**Applicant**" means the party making application for the registration or update of its Domain Name in terms of this Agreement and may apply to either or both the owner of the domain being registered and the Internet Service Provider or Domain Broker aiding the owner in the registration of the domain;

1.1.3. "**Application**" means the application for the registration or update of a Domain Name submitted by the Applicant and to which these terms and conditions apply;

1.1.4. "**Domain Name**" means domain names in the **".co.zw"** namespace of the Internet, including all other subdomains of **".zw"** that are administered by ZISPA;

1.1.5. "**effective date**" means, in respect of the registration or update of a Domain Name, the date on which such registration or update is registered by ZISPA (as evidenced by an electronic message from ZISPA to Applicant confirming same), provided that ZISPA receives payment of the fees in respect of such registration or amendment within the period contemplated in clause 3;

1.1.6. "**ZISPA**" means Zimbabwe Internet Service Providers Association;

1.2. Clause headings are for convenience and are not to be used in interpretation of this Agreement.

2. Assignment of Domain Names

ZISPA is responsible for assigning domain names in the ".co.zw" namespace of the Internet. These terms and conditions apply to the use and registration of Domain Names.

3. Fees

3.1. Applicant shall, within 30 (thirty) days of submitting its application, pay the then current fee in respect thereof, as determined by ZISPA from time to time. In addition, Applicant shall, within 30 (thirty) days of the anniversary of the effective date pay an annual maintenance fee, as determined and published by ZISPA from time to time, in respect of the Domain Name registration.

- 3.2. Should applicant fail to pay any of the fees contemplated in this clause 3 within the periods stated herein, ZISPA may, without derogating from any other right which it may have in terms of this Agreement or otherwise, and without notice, de-register the Applicant's Domain Name.

4. Registration of Domain Names

- 4.1. ZISPA shall under no circumstances whatsoever be obliged to determine the right of the Applicant to register a Domain Name. Domain Names are registered on a "first come, first served" basis and registration of a Domain Name by ZISPA shall in no way constitute any indication or warranty of Applicant's right to utilise such name.
- 4.2. ZISPA reserves the right not to register a Domain Name chosen by Applicant, if ZISPA has a bona fide belief that the usage of such name will be in breach of a third party's intellectual property rights or may lead to a situation as contemplated in clause 5.1.

5. Applicant's Warranties & Indemnity

- 5.1. Applicant hereby irrevocably represents, warrants and agrees as that:

- 5.1.1. its statements in the Application are true and correct;

- 5.1.2. it has the right without restriction to use and register the Domain Name requested in the Application;

- 5.1.3. it has a bona fide intention to use the Domain Name on a regular basis on the Internet;

- 5.1.4. the use or registration of the Domain Name by Applicant does not or will 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 or any other intellectual property right;

- 5.1.5. the use or registration of the Domain Name by Applicant is not against public policy, nor is it in contravention of any common or statutory law;

- 5.1.6. it is not seeking to use the Domain Name for any unlawful purpose whatsoever, including, without limitation, unfair competition, defamation, passing off or for the purpose of confusing or misleading any person;

- 5.1.7. at the time of the initial submission of the Domain Name request, and at all material times thereafter, it shall have an operational name service from at least two operational Internet servers for that domain name. Each server is and will continue to be fully connected to the Internet and capable of receiving queries under that Domain Name and responding thereto;

- 5.1.8. it has selected its Domain Name without any input, influence or assistance from ZISPA.

- 5.2. Pursuant to the above warranties, Applicant hereby agrees that it shall defend, indemnify and hold harmless ZISPA, its 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 shall include, without

limitation, those based upon tradename infringement, copyright infringement, dilution, unfair competition, passing off, defamation or injury to reputation. ZISPA agrees to give Applicant written notice of any such claim, action or demand within reasonable time of becoming aware thereof. Applicant agrees that ZISPA shall be defended by attorneys of ZISPA's choice at Applicant's expense, and that Applicant shall advance the costs incurred in such litigation, to ZISPA on demand from time to time.

6. Disclaimer of Warranties

ZISPA gives no warranties of any nature whatsoever with regard to the Domain Name, the registration or use thereof and hereby disclaims all such warranties, whether express or implied.

7. Withdrawal of Domain Name

Applicant agrees that ZISPA shall have the right to withdraw the Domain Name from use and registration on the Internet:-

- 7.1. in the circumstances contemplated in clause 3;
- 7.2. should ZISPA receive an order by any competent court having jurisdiction that the Domain Name rightfully belongs to a third party or infringes a third party's rights;
- 7.3. should Applicant breach any other provision of this Agreement, and fail to remedy such breach within 14 (fourteen) days of receiving written notice from ZISPA calling upon it to do so;
- 7.4. should Applicant not make regular use, as determined by ZISPA in its reasonable discretion, of its assigned Domain Name for a period of 90 (ninety) days or more.

8. Publication of Information

Applicant acknowledges that all information provided to ZISPA in the Application may be published by ZISPA on its website at <http://www.zispa.org.zw> and Applicant hereby irrevocably and without limitation consents to the publication of such information.

9. Disputes and Refund of Fees

Under no circumstances whatsoever shall ZISPA be obliged to:-

- 9.1. act as an arbiter of disputes arising out of the registration and use of the Domain Name;
- 9.2. refund any fees paid by the Applicant once the registration or amendment, as the case may be, in respect of which such fees are paid, has been effected by ZISPA.

10. Provision of Information

Should ZISPA be presented with evidence that indicates that a Domain Name registered to Applicant violates the rights of a third party, ZISPA shall be entitled to provide the complainant with Applicant's name and address and all further communication will exclude ZISPA and ZISPA will have no further obligations to the Applicant or complainant.

11. Limitation of Damages

ZISPA WILL UNDER NO CIRCUMSTANCES WHATSOEVER AND HOWSOEVER ARISING BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (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 ZISPA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT DEROGATING FROM THE AFOREGOING, ZISPA'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED THE REGISTRATION OR AMENDMENT FEE, AS THE CASE MAY BE, PAYABLE BY APPLICANT.

12. Jurisdiction

The Applicant hereby consents to the jurisdiction of the High Court of Zimbabwe sitting in Harare for the adjudication of any legal dispute between ZISPA and Applicant and these terms and conditions will be construed and interpreted in accordance with the law of the Republic of Zimbabwe.

13. Variation or Cancellation

These terms and conditions may only be varied or cancelled by Applicant, with the express written consent of ZISPA.

14. Amendment of Terms and Conditions

Without derogating from the foregoing, Applicant hereby acknowledges that ZISPA may alter, delete or supplement ("**amend**") these terms and conditions by publishing such amendments on the ZISPA website at <http://www.zispa.org.zw> from time to time. Applicant accepts that it is incumbent on it to monitor such changes and it hereby agrees that should it fail to notify ZISPA of Applicant's wish not to be bound by such amended terms and conditions within 30 (thirty) days of such amendment being published, it shall conclusively be deemed to have acceded and agreed to the amendments thus published.

15. Severability

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.

16. Notices

16.1 Applicant chooses *domicilium citandi et executandi* for legal purposes, at the following address :

Name of Applicant:

.....

Physical Address:

.....

16.2 Applicant is obliged to notify ZISPA in writing, of any change of domicilium. Such change of domicilium shall take effect 7 (seven) days after such written notice has been received by ZISPA.

Signed at..... this day of 2001

By: _____ By: _____
(Company name) (Name)

Signed: _____ Signed: _____ (Who by his/her signature warrants

that he/she is authorised to do so)

Name: _____
(print name)