

Terms and Conditions

Astral Media's Hosting Terms

(Last updated: 05 March 2011)

Astral Media is a leading South African web hosting service provider that provides a range of web hosting Services to its Customers. Astral Media provides the Services to its Customers subject to the Astral Media Hosting Terms.

1. Interpretation and Definitions

1.1 Unless the context clearly indicates to the contrary, any term defined in the General Terms will, when used in these Terms, bear the same meaning as defined in the General Terms.

1.2 Unless the context clearly indicates to the contrary, the following words will have these meanings:

1.2.1 "Abusive Content" means content that Astral Media considers to be defamatory, discriminatory, obscene, lewd, offensive, threatening, abusive, harassing, harmful, hateful, as hatespeech, or which contains child, explicit or violent pornography, content which may be harmful to minors, religious or racial slurs or threatens or encourages bodily harm or the like or which may violate any person's rights, regardless of whether the content is accessed, transmitted, propagated, distributed, created or stored in a public or private context;

1.2.2 "Domain Name/s" means the domain name or names that is/are the subject of the Domain Services;

1.2.3 "Domain Services" means the Services Astral Media renders to the Customer in respect of the Domain Name/s as set out in these Special Terms;

1.2.4 "Email" means the Services Astral Media renders to the Customer of

(i) an email box provided by Astral Media to the Customer on Astral Media's systems, which includes an email address or aliases to the email address from time to time and

(ii) best endeavours virus protection and filtering for unsolicited commercial email (SPAM);

1.2.5 "General Terms" means the general terms and conditions governing the contractual relationship between the Parties, duly supplemented by the Specific Terms;

1.2.6 "Harmful Code" means any computer code that:

(i) is designed to disrupt, disable, harm, or otherwise impede in any manner the operation of any software, hardware or network (generally referred to as "viruses", "Trojan horses" or "worms");

(ii) would disable any software, hardware or network or impair in any way its operation based on the running out of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral (generally referred to as "time bombs", "time locks", or "drop dead" code);

(iii) would permit any person to access any software, hardware or network of any other person without consent (generally referred to as "trap", "access code", "back door" or "trap door" codes); or

(iv) any other similar harmful, malicious or hidden procedures, routines or mechanisms that would cause the software, hardware or networks of any person to cease functioning or to damage or corrupt data, storage media, programmes, equipment or communications, or otherwise interfere with operations;

1.2.7 "Illegal Content" means content in violation of any law;

1.2.8 "Location" means the Astral Media is situated in Durban as well as in Germany or any other address indicated by Astral Media from time to time;

1.2.9 "Misrepresentation" by a Customer includes

(i) actions designed to deceive, mislead, defraud, or otherwise make incorrect representations to any person regarding any fact or circumstance,

(ii) impersonating or attempting to impersonate or otherwise misrepresenting your identity to any person for whatever purpose,

(iii) altering the content of communications received by you and thereafter forwarding it to others without indicating the nature of the alterations, or

(iv) forging or otherwise manipulating origination details and data on any electronic data message generated by the Server with a view to disguising or deleting the origin of anything posted or transmitted including the use of "Socks Proxies", "EZBounce", "Vhosts", "BNC's" or any other software or hardware methods used to disguise or misrepresent your own IP address;

1.2.10 "Registrar" means the entities referred to in clause 5, any replacement, or any other entity who attends to the administration of Domain Names;

1.2.11 "Server" means the computer hardware, machinery, and equipment on which the software operates;

1.2.12 "Server Hosting" means the Services that Astral Media renders to the Customer;

1.2.13 "Software" means the operating system and applications provided by Astral Media;

1.2.14 "System Abuse" means any conduct that does or may:

(i) damage, impair, overburden, or disable,

(ii) interfere with any other person's use of, or

(iii) compromise or tamper with the security of, including spamming and mass messaging, the use of software and technologies known as "floodbots", "clonebots", "automated client" (e.g. "bots", "fserv" or "script"), nuking and nuking tools (e.g. "7th Sphere")Astral Media's or any other person's software, hardware, systems, networks, or the Server.

2. Undertakings and Acknowledgements

2.1 Astral Media undertakes to use its reasonable endeavours to provide the Services to the Customer on a continuous basis and for the duration of the Customer's agreement with Astral Media.

2.2 Although Astral Media uses reasonable care and diligence to ensure that the Services are available, accurate, complete, correct, error free, secure, up to date, and reliable, the Services are rendered "as is" and "as available" and is used at the Customer's own discretion and risk.

3. Hosting terms

General

3.1 Astral Media abides by and upholds the ISPA Code of Conduct.

3.2 Astral Media will only be required to provide the Customer with the Server type and configuration that is advertised by Astral Media at the time the Customer decides to procure the Service from Astral Media. If an existing Customer wishes to upgrade to a new Server, Astral Media may charge the Customer an additional setup fee.

3.3 Astral Media will use its reasonable endeavours to verify the identity of a Customer's representative wanting to access the Customer's Server at the Location, However, Astral Media will not be liable for any loss or damage suffered by the Customer (whether direct, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage) if a person is not authorized by the Customer to access the Customer's Server at the Location. The Customer must notify Astral Media in writing of its representatives who are entitled to access.

3.4 The Customer must not:

3.4.1 make any Misrepresentation;

3.4.2 post, upload or transmit any Abusive Content or Illegal Content by means of the Server or through Astral Media's information and communications facilities;

3.4.3 replicate or store Abusive Content or Illegal Content on the Server;

3.4.4 perform System Abuse;

3.4.5 propagate, distribute, or transmit Harmful Code, whether or not damage is actually caused;

3.4.6 access any of the Astral Media or any third party hardware, software or network without authorisation or through hacking, password mining or any other means; or

3.4.7 help any third party to do any of the above.

3.5 If Astral Media, in its sole and unfettered discretion, determines that the Customer has breached any of 3.4.1 to 3.4.7 above, Astral Media may exercise any rights it may have available to it in law, including (without notice) the right to terminate access to any Services, or suspend or terminate any Services.

Content

3.6 Astral Media has no knowledge of, nor interest in Customer content hosted by Astral Media or published by Astral Media on the Customer's behalf on a Server or a shared hosting account and further that Astral Media does not in any way contribute or approve the content.

3.7 Nothing that Astral Media does in the performance of its obligations under the Service will be construed as an assumption of responsibility or liability by Astral Media arising from or in connection with any content. In particular, the limitation of liability in the General Terms will apply specifically to any loss, destruction, or corruption of the Customer's data, irrespective of the cause, including Astral Media's negligence and any system error or failure, whether foreseen or unforeseen.

Web Hosting and Email Hosting

3.8 Astral Media will make an account available on a Server, where the Server is shared with other Customers. The Server will (at all times) remain the property of Astral Media. Astral Media will setup, as per the standard managed hosting server configuration, the Server at the Location on behalf of the Customer. Astral Media will not be responsible for the use by the Customer of any software that it may install (and any vulnerabilities including traffic generated as per clause 3.8 that may result from the use of the software). The software is accordingly used by the Customer at its own risk.

3.9 In this environment, a Customer may impact negatively on another Customer at times. If Astral Media deems a Customer's actions or activity on the Customer's account to be negatively affecting another Customer, Astral Media reserves the right to relocate or disable the account without any prior notice. If the account is found to be in violation of Astral Media's Acceptable Use Policy, it may result in termination of the account if the Customer does not take corrective measures.

3.10 Where appropriate, Astral Media will in its sole discretion, maintain the software on its managed servers.

3.11 The Customer will remain solely responsible for all bandwidth and traffic related to his hosting account. This includes regularly monitoring usage via Astral Media and the Customer will be liable for any over-usage charges. Any traffic management and reporting tools provided by Astral Media are provided solely to assist the Customer in this process, but do not absolve the Customer of responsibility, nor place any responsibility on Astral Media. If the Customer elects to make use of any traffic management and reporting tools:

(i) all information will not be real time information and there will always be a one day delay in the furnishing of information; and

(ii) Astral Media will not be responsible for any traffic spikes, information or denial of service attacks, or any loss or damage sustained by the Customer resulting from the information not being provided in real time.

Astral Media is not entitled to provide the Customer with further information on traffic usage other than what it reported.

3.12 Astral Media is not responsible for any licensing of any software used by the Customer.

Network Uptime Guarantee

3.13 Astral Media guarantees that its network will be available 99.9% of the time in a given month, excluding scheduled maintenance. This means that the Customer should not experience network downtime of more than 43 minutes in any given month counted from the first day of every month. Network uptime includes functioning of all network infrastructure including routers, switches and cabling, but excludes services or software running on the Customer's server. Network downtime exists when a Customer is unable to ping the server and is measured according to Astral Media's monitoring system.

3.14 If network uptime is less than 99.9%, (i.e. downtime exceeds 43 minutes in a given month), Astral Media will credit the Customer 5% of the base monthly fee for every 30 minutes of downtime (up to 100% of the Customers' monthly fee for the affected hosting account or server).

Troubleshooting, ad-hoc and emergency work

3.15 Any troubleshooting the Customer requests will be charged at Astral Media's standard hourly rate.

3.16 Should the Customer require any ad-hoc work to be done out of Business hours (as defined in clause 3.15), the Customer must specifically schedule this with Astral Media. Astral Media will only attend to emergency work outside of Business hours.

3.17 Astral Media reserves the right to invoice for time spent troubleshooting issues that are determined to be outside Astral Media's control that Astral Media cannot reasonably be expected to have prevented or solved quickly. Astral Media alone shall determine what is reasonably within or outside its reasonable control.

4. Email terms

4.1 Astral Media will provide the following email related Services for Customers selecting shared or managed dedicated hosting only:

4.1.1 Filtering of unsolicited commercial email (SPAM): This is done on a best effort basis, without any guarantees, using appropriate best of breed technologies (e.g. SpamAssassin which is the most widely used open source filtering software);

4.1.2 Virus filtering: This is done on a best effort basis without any guarantees, using appropriate best of breed technologies (e.g. Clam that is a very popular open source solution).

4.1.3 An SMTP (simple mail transfer protocol) server for the sending of outgoing mail;

4.1.4 A POP3 (post office protocol) server for the downloading of incoming mail.

4.2 Astral Media will endeavour to make the Customer's email environment secure and reliable.

4.3 Astral Media will

- (i) use its reasonable endeavours to support the setup and configuration; and
- (ii) not be held responsible should there be any incompatibility between the Astral Media Systems and any other third party application.

4.4 The Customer will not use the Astral Media Email Service to:

- (i) send messages or communications that are unsolicited, offensive, abusive, indecent, or obscene,
- (ii) send messages causing annoyance, inconvenience, or anxiety to other users of the Internet,
- (iii) send messages for the purposes of fraud or with the intention of committing a criminal offence; or
- (iv) use the Email Service in a way that breaches the Acceptable Use Policy.

4.5 Astral Media may prevent the sending of bulk unsolicited Email, to or from a Server where (i) Astral Media identifies a Server that has an open mail relay, (ii) a significant volume of Email is sent from a Domain in a defined time scale; and (iii) Astral Media has received a complaint concerning unsolicited Email originating from a Astral Media hosted Domain.

4.6 Astral Media may disable a Domain held on Astral Media's Servers to prevent Astral Media's IP addresses being blocked by IP address blocking technologies or services, where Astral Media has any complaints concerning unsolicited Email originating from or unsolicited Email being sent to promote sites being hosted on a Astral Media Server. The Customer of the offending Domain will be obliged to pay any third party costs required to unblock Astral Media's IP address. Refusal to do so may result in termination of Astral Media's hosting services.

5. Domain Names terms

Registration

5.1 All Domain Names registered by Astral Media on behalf of the Customer within the .ZA domain name space, or registered by the Customer directly or through third parties are subject to the terms of the relevant domain name Registrar that may be amended from time to time. Astral Media utilises the Services of various Registrars to register generic Top Level Domains (gTLDs such as .COM and .ORG) as well as names in non-South African country code Top Level Domains (ccTLDs such as .uk and .eu), which registration is subject to the terms of the relevant Registrar or registry, as amended from time to time. Registration, maintenance, or transfer of a Domain Name is subject to the terms of the relevant Registrar operator who allocates and governs the Domain Name. Astral Media cannot guarantee the registration of any Domain Name selected by the Customer. Registrars used by Astral Media may change or be replaced from time to time.

5.2 Astral Media will use its best efforts to attend to the registration of a Domain Name or, where applicable, the transfer of an existing Domain Name as soon as reasonably possible after the commencement of the Domain Services. Astral Media will insert its details as the billing and technical contact of the relevant Domain Name/s, unless the Customer registers the domain itself or manages the domain record with the Registrar directly.

5.3 No Domain Name will become the property of Astral Media and Astral Media will not insert its details as the registrant of any Domain Name.

5.4 The Customer will pay Astral Media (in addition to any Service Fees) all reasonable expenses or charges relating to the registration, transfer, or renewal of a Domain Name. Astral Media will, as part of the Domain Services, host the Domain Name.

5.5 The Customer warrants in favour of Astral Media that: i. it is the lawful registrant of the Domain Name/s or it has the consent of the registrant to use the Domain Name/s or it is not prohibited by law or otherwise from registering the Domain Name/s; and ii. in using the Domain Name, it has not violated any Intellectual Property Rights of whatever nature of any person who may lawfully claim title of

whatever nature to the Domain Name or to any word or name forming a constituent part of the Domain Name/s.

5.6 Astral Media has no interest in the Domain Name/s and nothing that Astral Media does in the performance of its obligations under the Domain Services will be construed as an assumption of responsibility or liability by Astral Media for attending to the Domain Services.

5.7 Astral Media does not guarantee that the Domain Name/s requested by the Customer is/are available for registration or that the use of the Domain Name/s will not infringe any third party rights. Domains are available on a first come, first serve basis and are available either through Astral Media or directly with a Registrar. Astral Media will not be held responsible if the Customer registers a domain through Astral Media, and provides incomplete or inaccurate information that will lead to a delay in the registration process, and the domain is subsequently taken by someone else.

5.8 Astral Media is not a Domain Name provider, but merely a third party agent acting on the Customer's instructions, to the extent that those instructions are possible and lawful.

5.9 The registration of the Domain Name/s and its/their future availability and use are subject to the terms of use of the relevant Domain Name Registrar

5.10 Astral Media charges an additional fee for the administrative processes involved in applying for, and where applicable, maintaining the registration of a Domain Name/s on behalf of the Customer.

5.11 Any Service Fees incurred in the process of applying for, renewal of, or maintenance of registration of the Domain Name/s will be borne exclusively by the Customer and are not refundable.

5.12 Any Internet Protocol (IP) address allocated by Astral Media to the Customer, will at all times remain the sole property of Astral Media who grants the Customer a non-exclusive, non-transferable licence to use the Internet Protocol address for the duration of the Astral Media Hosting Terms.

5.13 Without limiting the generality of the Astral Media Hosting Terms, the Customer indemnifies Astral Media and holds it harmless against any liability or claim made by any person for any loss or damages suffered or arising directly or indirectly from the use, display, or publication of the Domain Name/s.

Changes to the Domain Name

5.14. Astral Media may not cancel, transfer, or change the Domain Name/s, including transferring registration of the Domain Name/s from the registered holder to another person or entity, without being in receipt of:

5.14.1 written instructions from the Customer or its authorised agent to take action;

5.14.2 written instructions from the liquidator of an incorporated or unincorporated business, where the business has been wound up, whether provisionally or finally, whether compulsory or voluntary, to do so;

5.14.3 a written and valid resolution of the members/shareholders/trustees of a close corporation/company/trust authorising the transfer of the domain name from the close corporation/company/trust to the new registrant;

5.14.4 a written consent signed by all the partners in a partnership where a partner requests that the Domain Name be transferred to the partner;

5.14.5 a letter from the executor where the registrant of the Domain Name has died requesting that the Domain Name be transferred to a named entity;

5.14.6 an order of Court in relation to any of 5.10.1 to 5.10.5; or

5.14.7 being in receipt of an order of an Arbitration Tribunal of competent jurisdiction requiring action in any administrative proceeding to which the Customer is a party and which was conducted under the Uniform Dispute Resolution Policy adopted by ICANN, the Alternate Dispute Resolution Regulations applicable in South Africa or any similar proceedings in any other ccTLD or gTLD (see clause below).

Domain name renewal

5.15 Within 30 days prior to the renewal date of a .co.za domain name and within 60 days prior to the renewal date of all other domain names, Astral Media will submit a renewal reminder to the Customer via email. Should the Customer not want to renew the domain name, the Customer must give notice by clicking on the link provided in the renewal reminder e-mail and this will automatically instruct Astral Media not to renew the domain name. Such notice must be given at least 3 Business Days prior to the renewal date in the case of .co.za domain names and 33 Business Days prior to the renewal date in the case of all other domain names. Should the Customer not give notice as aforesaid, the domain name will automatically be renewed and a renewal fee will be added to the Customer's invoice.

Default in respect of the Domain Service

5.16 If a Customer fails to pay Astral Media any cost or charge relating to the registration, renewal, update, change, or administration of any Domain Name, Astral Media may, in its sole and absolute discretion:

- (i) Exercise a lien over the Domain Name until the relevant cost or charge has been paid,
- (ii) Procure or allow the suspension, termination, or deletion of the Domain Name; or
- (iii) Transfer the Domain Name.

Termination of the Domain Service

5.17 If the Domain Service is terminated for any reason, Astral Media may, without incurring any liability or limiting the generality of the Astral Media Hosting Terms, notify the relevant Registrar or registry of the termination and to instruct the Registrar or registry to remove Astral Media or any of its systems as the host of the Domain Name/s even if no replacement is available.

5.18 In the event that any of the Registrars or registries amend, suspend or terminate its provision of a Domain Service or any other aspect of its services upon which Astral Media depends for the provision of the Domain Service to the Customer, Astral Media will use reasonable endeavours to ensure the continuance of the Domain Service. In the event that Astral Media is unable to ensure the continuance under any circumstances, Astral Media will not be liable to the Customer or any other third party for any loss or damages (as contemplated in the Astral Media Hosting Terms) incurred by the Customer or by any third party arising from, or in any way relating to, the termination of the Domain Services.

Domain Name Disputes

5.19 Various alternate dispute resolution mechanisms apply in respect of domain names registered globally, including the Uniform Dispute Resolution Policy adopted by ICANN for certain gTLDs, the Alternate Dispute Resolution Regulations applicable in South Africa and similar proceedings in other ccTLDs. These mechanisms allow for the resolution of disputes concerning the registration or use of a domain name.

5.20 Disputes between the Customer and any third party regarding the registration or use of any Domain Name registration may be brought under any available alternate dispute resolution mechanisms, Court, or Arbitration Tribunal.

5.21 Astral Media will not participate in any way in any dispute between the Customer and any third party. If the Customer involves Astral Media in any dispute, the Customer indemnifies Astral Media as provided for in clause 12 of the General Terms. The Customer will be responsible for all legal costs incurred by Astral Media on the attorney and own client scale.

6. Other Services

Astral Media offers third party services from time to time. While Astral Media makes every effort to select reliable vendors, maintain relationships and hold them accountable to ensure a reliable service on behalf of Customers, Astral Media does not control and is not responsible for those services and the Customer accordingly uses those third party services at its own risk. Under no circumstances whatsoever shall Astral Media be liable for any loss or damage suffered by the Customer as a result of its use of such third party services including any interruption or unavailability of such third party services. Astral Media accordingly disclaims all liability arising from the Customer's use of such third party services.