

# Terms & Conditions

## Domains and Web Hosting

### 1. Introduction

- 1.1 In addition to the General Terms, these terms and conditions govern the use of the Exec Mail CC domain registration and hosting services. By contracting with Exec Mail CC for the services a Client will be lawfully regarded as having agreed to their use of the services specified being governed by this Agreement.

### 2. Domain Registration

- 2.1 Exec Mail CC registers domains on the Internet through the relevant governing bodies and hosts websites and related material on the Exec Mail CC 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 Exec Mail CC.
- 2.2 Exec Mail CC registers domains through approved Domain Registrars, such as FFG Connection. Exec Mail CC may, at its discretion use other approved entities for registration, but in general may limit domains offered based on availability from the registrar concerned. Exec Mail CC and their approved registrars, are bound by the rules and regulations of ISPA and the ZACR.
- 2.3 Exec Mail CC's hosting and registration is sold as a bundled package and cannot be separated, i.e. Exec Mail CC will not pay for registration if it is not combined with any of their hosting products.
- 2.4 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. Exec Mail CC may post links to these terms and conditions on the Exec Mail CC Website purely as a convenience to the Client.
- 2.5 Where Exec Mail CC 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. Exec Mail CC will provide the Client with a link to these terms, which are incorporated into this Agreement by reference.
- 2.6 Exec Mail CC will strive to ensure that registration and subsequent DNS propagation is effected in the shortest period of time. However, Exec Mail CC 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.

### **3. Domain Registration**

1. 3.1 Domain registration may be offered at a quoted amount. Exec Mail CC 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 Exec Mail CC's sole discretion.
2. 3.2 Exec Mail CC reserves the right to charge a domain registration fee (in arrears) for any domain name which is registered. Such fee(s) will be invoiced exclusively at Exec Mail CC's discretion, and no leniency extended to Clients on previous occasions will in any way prejudice Exec Mail CC's right to enforce this clause. Such fees must be settled before any domain transfer can be effected with the applicable registrar.
3. 3.3 Exec Mail CC will not tolerate any abuse of their 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.

### **4. Domain Transfer**

1. 4.1 Exec Mail CC will transfer existing (registered) domains from existing hosting providers to Exec Mail CC'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 Exec Mail CC from any disputes regarding ownership of the domain and any claims as a result thereof.

### **5. Cancellation**

1. 5.1 Cancellation will be dealt with as per the General Terms.
2. 5.2 Cancellation, by the Client or Exec Mail CC, will result in any data being permanently removed from Exec Mail CC's servers. Backups of web content and email detail, will only be supplied by Exec Mail CC to the client if all outstanding fee(s) have been settled. Exec Mail CC 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 Exec Mail CC will be made for legal purposes and not for data retention purposes and will not necessarily be made available to Clients on request.

### **6. Payment and Payment Terms**

1. 6.1 Payment will be dealt with as per the General Terms.
2. 6.2 In the case of a website being suspended due to non-payment a reconnection fee will be payable before the website is unsuspected. An additional waiting period of up to 72 hours may be imposed in the case of multiple payment bounces.

## **7. Liability for Registration and Use of Domain Names**

1. 7.1 Exec Mail CC 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.
2. 7.2 Exec Mail CC reserves the right to disclose pertinent information to Registrars for public disclosure as per the Terms and Conditions of the Registrar. Exec Mail CC will not be held liable for any claims of infringement of privacy by fulfilling such registration conditions.
3. 7.3 This forms a regulatory requirement by the registrar, and there a Service Agreement requirement to the Client.
4. 7.4 The Client indemnifies Exec Mail CC 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, tradename, 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.
5. 7.5 Exec Mail CC cannot act as an arbiter of disputes arising out of the registration and use of Domain Names. At the same time, Clients acknowledge that Exec Mail CC may be presented with evidence that a Domain Name registered by a Client violates the rights of a third party. In such instance Exec Mail CC shall be allowed to provide a complainant with the Client's name and address and all further communication will exclude Exec Mail CC and Exec Mail CC will have no further obligations to the Client. In such instance the Client shall be entitled to continue using the Domain Name registered for the Client by Exec Mail CC until a court or other body with jurisdiction directs otherwise.

## **8. Hosting Services**

1. 8.1 Exec Mail CC does NOT provide SMTP mail services by default with shared hosting packages.
2. 8.2 Exec Mail CC 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.

3. 8.3 Exec Mail CC 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.
4. 8.4 Exec Mail CC reserves the right (but does not assume any obligation) to inspect the contents of data that the Client transmits, receives or stores on an Exec Mail CC Server to ensure compliance with this Agreement, Exec Mail CC's AUP, or any applicable laws regulations or codes of practice.
5. 8.5 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. Backups**

1. 9.1 Exec Mail CC 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 Exec Mail CC by instruction from Clients or by Clients themselves.
2. 9.2 Exec Mail CC 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.

## **10. Dedicated Servers**

1. 10.1 Exec Mail CC provides servers to Clients for the purposes of their hosting needs. However, ownership of physical hardware rests solely with Exec Mail CC at all times. Clients may not make any claim to hardware deployed for their hosting, and may not have access to Exec Mail CC property, hardware or hosting infrastructure (such as data centers) without prior consent, which must be obtained by written application with a minimum of 24 hours' notice. Exec Mail CC, at its discretion, may refuse such requests within reason.

## **11. Cloud Hosting**

1. 11.1 Exec Mail CC reserves the right to manage the cloud environment at its discretion for the overall benefit of cloud hosted Clients. Any virtual machine which Exec Mail CC deems at its sole discretion to have a negative effect on the environment may be powered down or suspended.
2. 11.2 Exec Mail CC 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.

3. 11.3 Exec Mail CC strictly forbids the creation of nested VM's, or virtual instances within a virtual server. This severely degrades overall performance and will be treated as a violation of Exec Mail CC's AUP and Terms & Conditions (contrary to the intended use of the product).
4. 11.4 Exec Mail CC 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.
5. 11.5 Exec Mail CC may also, at its discretion, restrict server to limited IOPS (Input Output Operations Per Second) where a Client's use of available virtual resources is negatively affecting the overall environment.
6. 11.6 Exec Mail CC 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. 100% Website Uptime Guarantee**

1. 12.1 Exec Mail CC guarantees that its hosting services will attain 100% availability, subject to the following.
2. 12.2 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 center goes down or is faulty, but the web server Exec Mail CC hosts is still up, Exec Mail CC is not responsible for the Client not being able to reach their website.
3. 12.3 Exec Mail CC 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.
4. 12.4 The 100% uptime guarantee does not apply to any scheduled downtime for maintenance of any of the Exec Mail CC 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.
5. 12.5 The 100% uptime guarantee does not apply if Exec Mail CC suspends the Client's Service as allowed in terms of this Agreement.
6. 12.6 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.

7. 12.7 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 Exec Mail CC 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.
8. 12.8 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 Exec Mail CC accepts no responsibility.

### **13. Use at Client's Risk**

1. 13.1 Exec Mail CC will exercise no control whatsoever over the content of the material hosted on, or the information passing through the Exec Mail CC network and in no way moderates such content.
2. 13.2 Clients expressly agree that use of Exec Mail CC's Server(s) and Services are at the Client's sole risk.

### **14. Spam/Virus Filtering**

1. 14.1 Exec Mail CC 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 Exec Mail CC shall without limitation have no responsibility for, or liability in respect of any data lost as a result of this system.
2. 14.2 Exec Mail CC reserves the right to examine incoming or outgoing mail to the extent necessary to determine if it is classified as spam or malicious.

### **15. Webmail**

1. 15.1 Webmail and other web-based email services made available by Exec Mail CC are provided on an "as is" basis without representations, warranties or conditions of any kind, and the Client acknowledges and agrees that Exec Mail CC 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 Exec Mail CC. As webmail storage space is limited, some webmail messages may not be processed due to space constraints or message limitations.

### **16. Limitation on Mail Size**

1. 16.1 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.

## **17. Takedown Notice Procedure**

1. 17.1 In terms of section 75 of the Electronic Communications and Transactions Act ("the ECT Act") the Internet Service Providers' Association (ISPA) can instruct Exec Mail CC to perform a site takedown upon receipt of notification of infringements as defined in Section 77 of the Act.

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](mailto:takedown@ispa.org.za)

Should Exec Mail CC receive a takedown notice from ISPA, Exec Mail CC will endeavor to:

1. Notify the Client in good time of the takedown notice.
2. Allow the Client reasonable time to remove the disputed, illegal or infringing content.
3. Takedown any sites or services which are included in the ISPA takedown notice.

## **18. Retention of Rights**

1. 18.1 Exec Mail CC makes no claim to the intellectual property (such as data) of Clients hosted on their servers. However, all equipment remains the property of Exec Mail CC and retention of data does not directly or indirectly give ownership of Exec Mail CC hardware to Clients.

## **19. IP Addresses**

1. 19.1 Exec Mail CC 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 Exec Mail CC's discretion and on a first come first serve basis.

## **20. Software Updates**

1. 20.1 Exec Mail CC will be responsible for updates to Operating Systems and Shared Libraries on Shared Hosting Servers.
2. 20.2 Exec Mail CC will only effect software updates to Operating Systems on Managed Dedicated Servers (including cloud servers). Exec Mail CC will not affect other updates on Managed or UnManaged servers, as this is not part of the service offered.

## **21. Disclaimers, Limitations and Indemnities**

1. 21.1 Exec Mail CC 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 EXEC MAIL CC IN RESPONSE TO THE ABUSE OF THE DOMAIN REGISTRATION SERVICES WHICH IT OFFERS.
2. 21.2 The Client hereby indemnifies and holds harmless Exec Mail CC 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 Exec Mail CC has been advised of the possibility of such damages;
3. 21.3 Exec Mail CC 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.
4. 21.4 Neither Exec Mail CC, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, warrant that Exec Mail CC'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 Exec Mail CC Server service, unless otherwise expressly stated in this Agreement.
5. 21.5 Exec Mail CC 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. Exec Mail CC specifically denies any responsibilities for any damages arising as a consequence of such unavailability.
6. 21.6 Exec Mail CC is not responsible if an external company network and firewall is setup to block access to services Exec Mail CC provides. If a Client's network is setup to block certain ports or web addresses that compromise the services Exec Mail CC provides it is the Client's responsibility to ensure that their network configurations are changed as necessary.
7. 21.7 Clients also hereby indemnify Exec Mail CC 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 Exec Mail CC to share or cover such losses or liability, either directly or indirectly. Exec Mail CC is also indemnified from direct claims from Clients for losses incurred due to 3rd party actions or claims.

I, \_\_\_\_\_ hereby accept the Terms and Conditions as described.



This done and signed at \_\_\_\_\_ on this \_\_\_\_\_  
day \_\_\_\_\_ 20\_\_\_\_\_