

GENERAL TERMS & CONDITIONS

1. RECORDAL

Linux Worx CC hereby sells the service to the User on the terms and condition herein contained which terms and conditions the user is deemed to have familiarised himself/herself with and to have irrevocably accepted.

2. ITERPRETATION

In these terms and conditions:

- a. "the user" means the party who has purchased the service and/or any person using the service;
- b. "the service" means the Internet service described herein provided by Linux Worx CC to the User in terms of the terms and conditions herein contained;

3. MAINTENANCE AND REPAIR

Linux Worx CC may temporarily suspend its obligations in terms of this agreement in order to service, repair, maintain, upgrade, modify, alter, replace or improve any of Linux Worx CC's services. Where the circumstances permit, Linux Worx CC shall use its best endeavors to provide prior notice of any such suspension to the client. The client shall not be entitled to any setoff, discount, refund or other credit in respect of any such suspension of service nor in respect of any suspension, which is beyond Linux Worx CC's control.

4. PAYMENT

Linux Worx CC shall bill the client in advance for the period 25th of the month to the 24th of the following month.

The User pays to Linux Worx CC such charges as levied by Linux Worx CC from time to time as follows:

- a. Monthly Subscriptions
 - i. The charge for a subscription to the Service on a monthly basis is a monthly fee, payable monthly in advance by the User to Linux Worx CC, including a pro-rata charge for the first month's billing.
 - ii. Payment is rendered without deduction, free of exchange, or in such manner as determined by Linux Worx CC.
 - iii. This amount is non-refundable.
- b. Annual Subscriptions
 - i. The charge for a subscription to the Service on an annual basis is payable in full in advance by the User to Linux Worx CC.
 - ii. Annual subscriptions will be renewed automatically.
 - iii. This amount is non-refundable.
- c. Usage fees, if applicable, will be billed in arrears. Linux Worx CC reserves the right to withhold access for overdue accounts, while the User shall continue to be liable for the service until the conditions of notice of termination are fulfilled.
- d. Without prejudice to rights granted to Linux Worx CC in terms hereof, any amount due by the User to Linux Worx CC not paid on due date thereof:
 - i. shall bear interest at a rate equal to the maximum allowable in terms of the Usury Act, 1968, calculated daily in advance from date payment was due until date of actual payment thereof; and
 - ii. Should the client fail to pay any amount owing to Linux Worx CC on due date, Linux Worx CC shall be entitled, in its discretion and without prejudice to any other rights which it may have, to cancel this agreement without notice to the client, or to suspend performance of its obligations pending full payment by the client.
- e. In the instances where this agreement, in respect of any products applied for, specifies a minimum period of one year's duration and a client cancels or purports to cancel this agreement in respect of such products, prior to expiration of such year, the remainder of all monthly payments payable during the year shall immediately become due and payable to Linux Worx CC.
- f. Linux Worx CC shall be entitled to take all such steps, without notice to the User, as may be necessary to recover such outstanding amount. The User shall be liable to pay all costs incurred in respect of the recovery of such outstanding amount.
- g. Linux Worx CC reserves the right to levy a charge for handling fees at an amount determined by Linux Worx CC for monies due in the event of a User's payment being returned or rejected by the User's bankers.
- h. Linux Worx CC furthermore reserves the right to blacklist with any or all credit bureau agencies within the Republic of South Africa, any such User who fails to comply with the payment agreement for subscription to the Service. In addition, Linux Worx CC will not be held responsible or be required to assist with the removing or rescinding of any such information, which may be recorded by a credit bureau agency.
- i. Linux Worx CC reserves the right to amend Service subscription charges at its sole discretion. Linux Worx CC shall give the User 30 (thirty) days notice of any such amendment and the User shall be bound to such adjustments.
- j. The client shall not be entitled to any set off, discount, refund or other credit in respect of any suspension or interruption of or delay in service, or where in any month the client has utilised less than any minimum bandwidth specified.
- k. The provision and costs of development, including HTML coding, design and maintenance are not included in the prices set out in this agreement unless otherwise specified.

5. MONITORING AND TERMINATION RIGHTS

- a. The client acknowledges that Linux Worx CC has no knowledge of, nor interest in, nor in any way contributes to, nor approves the creation of the client's content as hosted by Linux Worx CC and published by the client on the client's web site and that hosting or publication of certain kinds of content may be offensive, unlawful, in breach of codes of conduct binding on Linux Worx CC, violations of legislation (including regulations), violations of the common law generally, and violations of the requirements and rules of any regulatory authority and that hosting and publication of certain kinds of content may cause harm to the name, goodwill and reputation of Linux Worx CC, its affiliates, and its business partners.
- b. Accordingly the client agrees, if Linux Worx CC in the exercise of its sole discretion is of the opinion that the client's content is offensive, unlawful, or harmful, as set out above, or the client has uploaded and utilized illegal or harmful software or licenses, that Linux Worx CC without derogating from any of its other rights in terms of this agreement, may:
 - i. request the client forthwith to remove the offensive, unlawful, or harmful content, as the case may be; or
 - ii. request the client forthwith to amend or modify the content; or
 - iii. without notice delete the client's web site from the server; or
 - iv. without notice terminate access to the client's web site; or

- c. The client agrees that nothing that Linux Worx CC does in the performance of its obligations in terms of this agreement or in the carrying on of its business generally shall be construed as an assumption of responsibility or liability by Linux Worx CC for the content of the client's web site or the illegal use of software or licenses and the publication thereof, whether or not Linux Worx CC had knowledge of such content and the client hereby indemnifies Linux Worx CC and holds it harmless against any liability and any claims of whatever nature made by any person for any loss or damage suffered arising directly or indirectly from the hosting and/or publication of the client's content or software as well as any other data or software on the client's web site.
- d. Linux Worx CC shall use its best endeavours to notify the client of any action taken in terms of clause 5b above, but does not warrant that notice shall be given to the client prior to such action being taken.

6. CESSION, DELEGATION OR ASSIGNMENT

- a. The client shall not cede, assign or delegate or in manner whatever transfer (including but not limited to the sub-letting or re-sale of any disk space, server capacity or web hosting) of any of its rights or obligations under this agreement without the prior written consent of Linux Worx CC. In the event of any change in controlling interest in the client, Linux Worx CC shall be entitled to terminate this agreement on notice to the client. The client shall notify Linux Worx CC of any change in its controlling interest within fourteen days of such change.
- b. Linux Worx CC shall be entitled to cede, assign, transfer or delegate all or any of its rights or obligations under this agreement to an affiliate of Linux Worx CC or to any third party.

7. DOMICILIUM

- a. The parties choose domicilium citandi et executandi ("domicilium") for the purposes of giving any notice, the payment of any sum, the service of any process and for any other purpose arising from the agreement at the addresses specified in the application form.
- b. Each of the parties shall be entitled from time to time by written notice to the other to vary his domicilium to any other address within South Africa, which is not a post office box or poste restante.
- c. Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- d. Any notice given and any payment made by one party to the other ("the addressee") which: -
 - i. is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee.
 - ii. is transmitted by telefax or e-mail shall be deemed (in the absence of proof to the contrary) to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours and within 4 (four) hours of the commencement of the following business day where it is transmitted outside those business hours.
 - iii. delivery is posted by prepaid registered post from an address within South Africa to the addressee at the addressee's domicilium for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the 14th (fourteenth) day after the date of posting;

8. BREACH

If either Linux Worx CC or the client breaches any term of this agreement and fails to remedy such breach within seven days of written notice requiring it to do so, then the party not in breach shall be entitled, but not obliged, without prejudice to any rights or remedies which it may have, to cancel this agreement or to claim immediate performance and/or payment by the party in breach.

9. COMMENCEMENT, DURATION AND TERMINATION

This agreement shall, save as expressly indicated to the contrary in any specific product application form, commence upon acceptance of the application by Linux Worx CC and shall continue indefinitely thereafter, provided that either party shall be entitled to terminate this agreement (or any specific product applied for) on one calendar month's written notice to the other to that effect.

10. DISCLAIMER FOR LIABILITY

- a. Although Linux Worx CC shall use reasonable endeavours to provide disaster recovery, Linux Worx CC does not specify any recovery time, nor shall Linux Worx CC be liable for any loss or damage of whatever nature incurred or suffered by the client from any cause whatsoever as a result of Linux Worx CC's failure to provide, or delay in providing, or providing only partial, disaster recovery. The client is accordingly advised to make back-ups of its data. Nothing contained in this paragraph should be construed as a representation that any back-ups of data implemented by client will be successful or in any way will avoid disaster.
- b. The client shall have no claim against Linux Worx CC and the client hereby indemnifies and holds Linux Worx CC free from liability in respect of any loss or damage:
 - i. caused by or arising from any fact or circumstances beyond the reasonable control of Linux Worx CC; or
 - ii. if such loss or damage is consequential or incidental loss or damage; or
 - iii. any downtime, outage, interruption in or unavailability of the server or the Linux Worx CC network as a result of or attributable to any of the following causes:
 - a. software service, repairs, maintenance, upgrades, modification, alterations or replacement;
 - b. system downtime for any reason (including, but not limited to, service, repairs, routine maintenance, agreed maintenance, environmental maintenance, upgrades, modifications, alterations, replacement or a relocation of premises);
 - c. the damage, contamination or corruption of any kind of the server or any of the client's data, material, information and/or content howsoever occasioned;
 - d. any inaccuracies in the impression statistics given to the client or in the page counter on the client's web site;
 - e. any breakdown of whatever nature and howsoever arising in any of the services provided by Telkom (including, but not limited to, line failure) or in any international services or remote mail servers;
 - f. the non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks to which the server or the Linux Worx CC network is connected;
 - g. any infringement of the client's rights of privacy and/or any other like rights (including those of any other person or entity), by any person whomsoever arising from the hosting of the client's web site in terms of this agreement;
 - h. any breach of security by any third party or any breach of confidentiality by a third party or otherwise arising from any access howsoever obtained by a third party to the client's information, data or content;
 - i. the service, repairs, maintenance, upgrades, modification, alterations or replacement of hardware forming part of the server or any faults or defects of whatever nature in the hardware;
 - j. any service, repairs, maintenance, upgrades, modification, alterations, replacement or work of any nature done on the server by any third party;

- k. Linux Worx CC reserves the right to take whatever action it deems necessary at any time to preserve the security and reliable operation of the Linux Worx CC network and the client undertakes that it will not do or permit anything to be done which will compromise the security of the Linux Worx CC network.
- l. Without limiting the foregoing, as a result of any fact, cause or circumstances whatsoever and howsoever arising if Linux Worx CC has substantially performed its obligations under this agreement.

11. GENERAL

- a. No extension of time or indulgence which one party (the grantor) may grant to the other (the grantee) shall constitute a waiver of any of the rights of the grantor who shall not be precluded from exercising any past or future rights against the grantee.
- b. This document constitutes the sole record of the agreement between the parties and no addition, variation or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties;
No party shall be bound by any express or implied term, representation, warranty or the like which is not recorded in this agreement;
- c. These terms and conditions may change from time to time. The User may view such terms and conditions at <http://www.linuxworx.co.za/terms> and unless otherwise notified, Linux Worx CC shall deem that the User has been acknowledge and agrees thereto within 14 (fourteen) days of such changes being.

12. JURISDICTION

The User hereby irrevocably consents to the jurisdiction of the Magistrates' Court in the terms of Section 28 of the Magistrates' Courts Act of 1994, provided that Linux Worx CC shall, should it so elect, be entitled to institute proceedings in the High Court of South Africa.

13. DOMAIN SERVICES TERMS AND CONDITIONS

- a. Linux Worx CC shall in accordance with the client's instructions as set out in this application form and at such charge specified in the main order form procure the registration, transfer, modification and / or forwarding of a domain name for the client.
- b. The client acknowledges that such the registration, transfer, modification and / or forwarding of a domain name is subject to the rules and regulations of the authority responsible for registrations and that Linux Worx CC cannot guarantee the registration of the domain selected by the client.
- c. The client hereby warrants that it is the lawfully entitled owner of the domain name, or has the consent of the owner to use such domain name and that 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 such domain name and hereby indemnifies and holds Linux Worx CC free from any liability and any claims of whatever nature howsoever arising as a result of the use of the domain name.
- d. The client agrees to refund to Linux Worx CC the costs levied by registration authorities in procuring the registration of the domain name.

14. WEB SITE HOSTING TERMS AND CONDITIONS

Linux Worx CC shall, in accordance with the client's choices as indicated on this application form:

- a. host the client's Web site on the server;
- b. permit users of the Internet access to the Web site, limited to a maximum monthly data traffic allowance of bandwidth measured in megabytes as set out in the application form and subject to such additional charges as set out in the application form;
- c. provide such platform as set out in the application form;
- d. allocate the client disk space on Linux Worx CC's server as indicated on this application form;
- e. take such steps as Linux Worx CC regards as reasonable to secure the client's Web site from unauthorised access;
- f. provide the client with statistics, at an additional charge.
- g. shall not be liable for any illegal software or licenses,

18. E-MAIL TERMS AND CONDITIONS

- a. Linux Worx CC shall provide the client with e-mail services in accordance with the client's choices as set out in the this application form.
- b. Linux Worx CC assumes no responsibility for the failure of any mail delivery or the loss of any mail.
The client is responsible for ensuring that the client mail site is protected against viruses.