

TERMS FOR ONLINE SERVICES

1. Binding nature of these Terms

Your use of covid19zim Application is subject to these Terms.

2. Amendment to these terms and conditions

2.1 Service Provider reserves the right, at any time, to amend any clause or provision of these Terms at its sole discretion.

2.2 An updated version of these Terms will be posted on the Website and emailed to the Customer at their designated email address.

2.3 The Customer agrees that it is their responsibility as a diligent user to review these Terms when using the Services.

2.4 If the Customer objects to any amendment to these terms and conditions, the Customer is entitled to terminate its relationship with the Service Provider.

3. Juristic persons

3.1 If the Customer is a juristic person (i.e. an incorporated entity such as a company or close corporation, or a trust or partnership), it warrants that:

3.1.1 The individual registering an account on behalf of the Customer is legally authorised to do so, and the Customer indemnifies the Service Provider against any loss or damage that the Service Provider may sustain resulting from that person's lack of authority;

3.1.2 all the information relating to the Customer supplied to the Service Provider at any time will be true, accurate and complete.

3.2 If Service Provider discovers that an individual has contracted for the use of the Services without proper authority to do so, the Service Provider may terminate this Agreement and the Customer's access to the Services immediately without incurring any liability to the Customer and the Customer will not be entitled to claim a refund of any amount already paid, regardless of whether the Customer has used the Services or not.

3.3 The Customer must, if requested by the Service Provider, provide proof of the authority of any person who takes any action or executes any documents on behalf of the Customer, including any authority given to the Service Provider to debit the Customer's bank account for the service fees payable in terms of this Agreement.

3.4 The Service Provider will be entitled to act on the representation of any person claiming to be duly authorised to represent the Customer, without being obliged to provide proof of their authority and the Customer indemnifies Service Provider from any loss or liability arising from their action or inaction based on such representation.

4. Commencement and Duration

4.1 These Terms will commence and become binding on the Customer upon the Customer's

acceptance of the Terms and Conditions.

4.2 This Agreement will be deemed to have been concluded in South Africa regardless of the place where the Customer accesses or makes use of the Services.

5. Service Fees

5.1 All service fees payable by the Customer for its use of the premium Services are payable in advance. Premium services will be indicated as such.

5.2 The service fees will be payable either on a monthly, quarterly, bi-annual or annual basis as specified on the Website and are calculated in accordance with the rate schedule on the Website.

5.3 The service fees will be paid by way of credit card or debit order and the Customer hereby authorises Service Provider to effect the necessary transfers from the Customer's designated bank account at the beginning of each and every month for the continued duration of this agreement. The Customer must ensure that the debit order is in place within seven (7) days of the Commencement Date. A rejected debit order will accrue a handling fee of R50.00 per rejection.

5.4 Where the Customer's use of any service commences during a month rather than at the start of that month, the Customer will be charged on a pro rata basis for those services that are provided during that month.

5.5 The Service Provider reserves the right to amend or vary the service fees charged to the Customer from time to time and on thirty (30) days prior notice of such amendment. If the Customer objects to any amended service fees, it may terminate its relationship with the Service Provider.

5.6 The Customer acknowledges that it is not entitled to withhold any payment of any service fees due to the Service Provider by reason of any alleged breach of this Agreement by the Service Provider or for any other reason. The Customer also acknowledges that it is not permitted to apply set-off to or demand any discount, refund or reduction for service fees owed to the Service Provider.

5.7 The service fees stipulated on the Website from time to time are exclusive of value added tax (VAT).

5.8 If a dispute arising between the parties, the Customer must continue paying the service fees as and when they become due and payable.

6. Monitoring

6.1 The Service Provider is not under any duty to monitor the Services or the Website, however it may choose to do so at its sole discretion to ensure that the Services or Website are operating properly.

6.2 If the Service Provider is required by any law enforcement or other authorities to intercept communications exchanged with the Customer, it shall do so strictly in accordance with the Regulation of Interception and Provision of Communication-Related Act, 70 of 2003 ("RICA").

6.3 If any content is uploaded to the Website by the Customer, it is hereby recorded that the Service Provider has no knowledge of, nor interest in, that content other than for the normal operation of the Website and/or the supply of the Services, and the Service Provider does not in any way contribute, exercise editorial control, or approve any such content.

6.4 If the Customer's content infringes the rights of any person or contravenes any applicable law

or the Service Provider's acceptable use policy, the Service Provider may (i) without notice, delete the infringing content; or (ii) require the Customer to immediately amend or modify the content; and/or (iii) without notice terminate the Customer's access to the Website and/or suspend or terminate any Services to the Customer; and/or (iv) notify the relevant authorities of the existence of the content (if required by law or otherwise), and/or make any back-up, archive or other copies of such material as may be required by such authorities, and/or disclose any Customer Data as requested by such authorities, and/or and take such further steps as may be required by such authorities.

6.5 The Customer shall have no right of action or claim against the Service Provider if the Service Provider acts in terms of this clause, and the Customer waives its right to make any claim or demand or to institute any legal proceedings against the Service Provider.

7. Security

7.1 The Customer is responsible for any username or password to access the Website and/or use the Services. The Service Provider will not be liable for any loss or damage sustained by the Customer, the Service Provider, or any third party resulting from any unauthorised disclosure or use of the Customer's username or password, and the Customer indemnifies the Service Provider for any liability, loss or damages arising from the unauthorised use of its account.

7.2 The Customer hereby authorises the Service Provider to act on any instruction given by and/or purporting to originate from the Customer, even if it transpires that both the Service Provider and the Customer have been defrauded by someone else, unless the Customer has notified the Service Provider prior to the Service Provider acting on a fraudulent instruction.

7.3 If any breach of security is reasonably believed to have occurred in connection with the Customer's account, the Service Provider will investigate the breach and, if necessary, change the relevant access details, including access codes and passwords and will notify the Customer of the change.

7.4 The Customer must notify the Service Provider immediately as soon as it has knowledge of any unauthorised access to or use of its account and it will co-operate fully with the Service Provider and the relevant authorities in any investigation into such unauthorised access or use of its account.

7.5 The Service Provider reserves the right to take whatever action it may deem necessary to secure the Website and its information systems and the Customer undertakes not to do or permit anything to be done which will compromise the Service Provider's security.

7.6 The Customer is required to make back-ups of all its content or data which may be used in conjunction with the Services. The Service Provider will not be responsible for making any back-ups of the Customer data.

8. Intellectual Property Rights

8.1 The Service Provider is and shall remain the owner of all Intellectual Property Rights in and relating to the Services, the Website, and any deliverables which are generated as a result of the Customer's use of the Services, but not of the Customer Data.

8.2 No licence or right of use in relation to any Intellectual Property Rights are granted by the Service Provider to the Customer, other than as provided for in this Agreement.

8.3 The Customer shall comply with all laws applicable to any Intellectual Property Rights in respect of the Website and the Services.

8.4 The Customer shall not make use of the Service Provider's Marks without the prior written approval of the Service Provider.

8.5 The Customer grants to the Service Provider a non-exclusive, royalty-free licence to use the Customer Data its Marks for the limited purposes of enabling the Service Provider to exercise its rights or to fulfil its obligations under this agreement.

9. Disclaimer of warranties

The Services and the Website are provided by the Service Provider "as is" and "as available" and without any further warranty, whether express or implied, including warranties of merchantability, fitness for purpose, title or non-infringement.

10. Indemnities

The Customer fully indemnifies the Service Provider, and its directors, employees, agents, service providers and subcontractors ("indemnified party") against all claims, liabilities, losses, costs and expenses (including reasonable legal costs) suffered or incurred by the Customer or the Service Provider or instituted against the Service Provider by any third party as a direct or indirect result of the Customer's use of the Services or the Website, and/or the Customer's failure to comply with any of the terms of this Agreement, and/or for any interruption in or unavailability of the Services of the Website as a result of any downtime, outage, degradation of the network, or other cause beyond the Service Provider's reasonable control.

11. Suspension of the Services

11.1 The Service Provider may suspend the Services at any time if any amount due in terms of this Agreement remains unpaid by the Customer, or if such suspension is reasonably necessary to enable the Service Provider to maintain, upgrade, modify, repair, or improve any of the Services, and/or where third parties have alleged that the Customer has engaged in unlawful activities arising from or connected to the Services or Website.

11.2 The Service Provider will use its best efforts to give prior notice to the Customer of any such suspension of the services, but the Service Provider will not be liable for any loss or damage incurred or suffered by the Customer arising from or relating to the suspension of Services.

12. Termination

Either party may terminate this agreement together with all Services on thirty (30) days' written notice to the other party at their respective addresses, either stated on the Website or in the Customer's application.

13. Breach

13.1 Each party shall have the right, without prejudice to its other rights or remedies, to terminate this agreement immediately by written notice to the other party if:

13.1.1 the other party commits a breach of any obligations on its part to be observed and performed under this agreement and either such breach is incapable of remedy, or the other party shall have failed to remedy such breach within 7 (seven) days after receiving written notice requiring it to remedy such breach; or

13.1.2 the other party becomes insolvent, or for statutory purposes is deemed to be unable to pay

its debts as they become due, or the value of its assets is less than the amount of its liabilities; or

13.1.3 the other party allows a civil judgment to be entered against it and fails to pay the amount of such judgment within 10 (ten) business days after the date on which the judgment became final (in the sense that the other party has exhausted all avenues for appeal, review or rescission open to it); or

13.1.4 the other party has taken steps to propose any compromise or other arrangement with its creditors generally, or to obtain or has allowed a winding-up order to be taken against it; or

13.1.5 the other party is placed under debt review or business rescue, as the case may be.

13.2 Any cancellation of this Agreement shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this agreement which is expressly or by implication intended to come into force or continue in force on or after that termination.

13.3 The provisions of this clause are severable from the rest of the provisions of the agreement and shall survive its termination and continue to be of full force.

14. Force Majeure

14.1 For purposes of this clause, a "Force Majeure Event" means any act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strike, riot, blockage, embargo, sanctions, epidemics, act of any Government or other authority, compliance with Government orders, failure of any supplier of electricity and telecommunications infrastructure and/or telecommunications lines provided by any third party, or any circumstances of like or different nature beyond the Service Provider's reasonable control.

14.2 On the happening of a Force Majeure Event, any delay or failure in performance or breach by the Service Provider occasioned thereby or resulting therefrom will not be deemed to be a breach of this agreement, nor shall it subject the Service Provider to any liability whatsoever.

15. Dispute Resolution

15.1 Any dispute which may arise between the parties shall be referred to arbitration and resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator.

15.2 The arbitrator shall be agreed upon between the parties and failing such agreement, and within a period of ten (10) days after the arbitration has been demanded by either the parties, either of the parties shall be entitled to request the chairperson for the time being of AFSA to make the appointment who, in making the appointment, shall have regard to the party's requirement of speedy arbitration.

15.3 This clause will not preclude either party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.

15.4 The arbitration must be held (i) in Cape Town at a venue agreed to between the parties in writing, (ii) in English and (iii) as soon as practically possible and with a view to it being completed within twenty one (21) days after it has been demanded.

15.5 The parties irrevocably agree that any award that may be made by the arbitrator (i) will be final and binding, (ii) will be carried into effect and (iii) may be made an order of any Court to whose jurisdiction the parties are subject.

15.6 The provisions of this clause constitute an irrevocably consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefrom or to claim at any such proceedings that it is not bound by such provisions and (ii) are severable from the other provisions of this agreement and will remain in effect notwithstanding the termination of, or invalidity for any reason, of this agreement.

16. Exclusion and Limitation of Liability

16.1 The Service Provider, its directors, employees, agents, consultants and advisers will not be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising, or may arise out of the Services and/or the use of the website/application, under contract, delict or otherwise), sustained by the Customer, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts and/or profits.

16.2 The Service Provider's total liability to the Customer will be limited to the payment of direct damages only, which direct damages will be limited to a maximum amount equivalent to 3 (three) months of fees paid by the Customer or (ii) (insert amount), whichever is the lesser.

16.3 The Service Provider's liability for direct damages under clause 16.2 will be excluded where such liability results or may result from the Customer's use of any third party services or products accessible or used in conjunction with the Services, but which are not provided by the Service Provider.

16.4 The exclusions and limitations of liability under this clause will apply notwithstanding the fact that the Service Provider may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.

17. General

17.1 These Terms constitute the entire agreement between the parties in respect of the subject matter hereof and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement.

17.2 No variation or consensual cancellation of this agreement and no addition to this agreement will be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.

17.3 No waiver of any of the terms and conditions of the agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given.

17.4 No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

17.5 Should any of the terms and conditions of the agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions, which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

17.6 This Agreement will be governed by and interpreted in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be

determined in accordance with such law.

17.7 Notwithstanding termination of this Agreement, any clause, which, from the context, contemplates ongoing rights and obligations of the parties, will survive such termination and continue to be of full force and effect.

Last updated: *23 March 2020*