SDNP .mw ccTLD Registrar Agreement
Version 1.2, 21 July, 2015

BETWEEN

SDNP Limited
Limited Company No. 13920

AND

………………………………………………………………………………..

Registrar Agreement

This Agreement dated the ………. day of 20………. is between

SDNP Limited of Room 51 Polytechnic, Blantyre, Malawi

hereafter referred to as SDNP of the First Part; and

……………………………………………………………………..

a legal person registered under the laws of country of

………………………………………………………………………..

hereafter referred to as the Registrar of the Second Part; and

has a commencement date of ……………………………………….

WHEREAS:

1. SDNP is a registered company that is the body charged with the management and administration of the Malawi .mw ccTLD and its Registry (the Registry);

2. SDNP has upgraded the Registry on the Malawi .mw ccTLD from a 2R model to a 3R EPP model and hence needs to recruit and accredit registrars on its upgraded infrastructure and policy framework.

3. SDNP is committed to exercising its responsibilities to the Registrar and the Malawian Internet community in an open and transparent manner based on and applying existing standards and policies in a justifiable and equitable manner.

4. The Registrar desires to be certified by SDNP as a domain name registrar;

5. Both parties agree to be bound by this Agreement and all other policies for the administration of the Malawi .mw ccTLD

IT IS AGREED BY THE PARTIES AS FOLLOWS:

ARTICLE 1
DURATION OF AGREEMENT

1.1 **Duration:** This agreement has effect on and from the Commencement Date, and continues until it is terminated by SDNP or by the Registrar

1.2 **Termination by Registrar:** The Registrar may, at any time, terminate this document by giving SDNP 30 days prior notice in writing of its intention to do so.

1.3 **Fees:** For clarity, Fees paid by the Registrar to SDNP, as listed and detailed in the Fees Policy, are not refundable, regardless of the time of such termination.

ARTICLE 2
REGISTRAR ACCREDITATION

2.1 **Requirement for Accreditation:** The Registrar must be SDNP Accredited for the duration of the Term.

2.2 **Registrar Service:** Upon being accredited by SDNP, the Registrar is entitled to operate as a registrar under the .mw TLD and on any assigned SLD that is managed by the Registry on a non-exclusive basis.

2.3 **Exclusivity:** The Registrar acknowledges and agrees that there is no limit upon SDNP as to the number of registrars, which SDNP may accredit.

2.4 **Continuous Disclosure:** The Registrar must promptly notify SDNP if the Registrar becomes aware that it does not

meet any of the Accreditation Criteria or of any circumstance, fact or thing that affects its ability to continue to meet the Accreditation Criteria.

2.5 **Acknowledgments:** The Registrar acknowledges that
   2.5.1   SDNP may begin accepting or processing Domain Name Applications by the Registrar on a date which is later than the Commencement Date
   2.5.2   SDNP may post on its web site, the Registrar's name and contact information, and a link to the Registrar's web site.

ARTICLE 3
LOSS OF REGISTRAR ACCREDITATION

3.1 **Loss of Accreditation:** The Registrar's SDNP Accreditation is automatically terminated when this document terminates.

3.2 **Suspension or Termination Accreditation:** SDNP may suspend or terminate the Registrar's SDNP Accreditation if SDNP considers that an Event of Default has occurred in respect of the Registrar and/or Registrar has violated the terms in the Registrar Accreditation Policy.

3.3 **Consequences of Loss of Accreditation:** In the event that the Registrar's Accreditation is terminated because an Event of Default occurred in respect of the Registrar, the Registrar must not apply to SDNP to be a SDNP Accredited Registrar from the date of such termination for a period as determined by SDNP, but not exceeding 12 months.

3.4 **Waiver:** SDNP is entitled to waive the restriction referred to in the above clause 3.3.

ARTICLE 4
WARRANTIES

5.1 **Information Provided to SDNP:** The Registrar represents and warrants to SDNP that all written information and reports which it has furnished, or will furnish, to SDNP in connection with this document are true, accurate and not misleading in all material respects, whether by omission or otherwise; and where appropriate, contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and are fair and reasonable.

5.2 **SDNP' s Reliance:** The Registrar acknowledges that SDNP has entered into this document in reliance upon the representations and warranties in this agreement.

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ARTICLE 5
USE OF SDNP NAME AND LOGO

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5.1 **Grant of License:** SDNP grants to the Registrar a non-exclusive, worldwide, royalty-free license to:

    5.1.1   state that it is accredited by SDNP as a registrar for the .mw ccTLD

    5.1.2   use the logo specified by SDNP to indicate that the Registrar is accredited by SDNP as a registrar for the .mw ccTLD

    5.1.3   link to pages and documents within SDNP's web site, provided they are not framed by any other materials.

5.2 **Other Use not Permitted:** Other than in accordance with clause 5.1,

    5.2.1   the Registrar is not permitted to use SDNP's name or logo or trademark.

    5.2.2   The rights granted under this Article 5 are personal to the Registrar and must not be transferred or assigned or sub-licensed to any other person.

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ARTICLE 6
GENERAL OBLIGATIONS OF REGISTRAR

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6.1 **Registrar Services:** When performing the Registrar Services for the TLD and any SLD, the Registrar must do so in accordance with this agreement.

6.2 **Compliance with SDNP Policies:** The Registrar must comply with all SDNP Policies, as if they were incorporated into, and form a part of, this agreement.

6.3 **New Policies:** If SDNP introduces new SDNP Policies or makes changes to any existing SDNP Policies, then the Registrar must comply with those new or changed SDNP Policies as soon as practicable, but in any event within 7 days after SDNP notifies the Registrar of the new or changed SDNP Policies.

6.4 **Policy Notifications:** SDNP may notify the Registrar of the new or changed SDNP Policies by following the Notices Article procedures in this agreement or by posting the new or changed SDNP Policies on SDNP's website.

ARTICLE 7
PAYMENT OF FEES

7.1 **Obligation to Pay:**
The Registrar must pay Fees to SDNP in the manner set out in the SDNP Fees Policy.

7.2 **Value Added Tax (VAT):** All fees referred to in this agreement are inclusive of VAT, unless otherwise stated.
7.2.1 All applicable VAT must be paid by the Registrar to SDNP at the same time and in the same manner as the relevant fee is paid or given under this document.

7.3 **Timely Payment:** The Registrar must make all payments to SDNP under this agreement in a timely manner, despite

any dispute, which may exist between SDNP and the Registrar.

7.4 **Interest on Late Payment:** SDNP reserves the right to charge interest on late payments that are due to SDNP at the rate which is the aggregate of 2% per annum and the prevailing base lending rate by the Reserve Bank of Malawi

ARTICLE
APPLICATION FOR DOMAIN NAME

8.1 **Consideration by Registrar:** Whenever the Registrar receives a Domain Name Application, the Registrar must consider whether the Domain Name Application complies with the SDNP Policies and use reasonable endeavors to verify the information provided to the Registrar in the Domain Name Application.

8.2 Compliance with SDNP Policies:

8.2.1   Where the Registrar is satisfied that a Domain Name Application complies with the SDNP Policies, the Registrar must approve the Domain Name Application

8.2.2   Where the Registrar is not satisfied that a Domain Name Application complies with the SDNP Policies, the Registrar must reject the Domain Name Application.

8.3 **Approved Domain Name Applications:** The Registrar must, in relation to each approved Domain Name Application, ensure that the Registrant is bound by the SDNP Registrant Agreement in respect of that approved Domain Name and thereafter submit the Registrant Data to the Registry.

8.4 **Final Check by SDNP:** The Registrar acknowledges that even if the Registrar has approved a Domain Name Application, that Domain Name Application may still be rejected by SDNP in performing the final integrity checks.

8.5 **Rejected Domain Name Applications:** The Registrar must, in relation to each rejected Domain Name Application, immediately notify the Registrant that the Domain Name Application has been rejected, and provide the Registrant with written reasons for such rejection.

9. ARTICLE 9
REGISTRANT AGREEMENTS

9.1 **Registrar-Registrant Agreement:** The Registrar must enter into a binding and enforceable Registrant Agreement with each of its Registrants upon approval of the Domain Name Application and comply with the provisions of the Registrant Agreements.

9.2 **SDNP Registrant Agreement:** The Registrar must ensure that the Registrant endorses the SDNP Registrant Agreement with each of its Registrants upon approval of the Domain Name Application and comply with the provisions of the Registrant Agreements.

9.3 **Make Information Available to Registrant:** The Registrar must make available relevant information on the registration of domains including SDNP-Registrant Agreements from SDNP, Registrar-Registrant Agreement and, at SDNP's request, inform its Registrants by email about new or changed SDNP Policies or any Code of Practice. If such documents are made available through the Registrar's web site, they must link to the SDNP homepage and SDNP documents must contain SDNP logo;

9.4 **SDNP Provisions:** All Registrar-Registrant Agreements must contain, as a minimum, the provisions set out in Schedule A below; and in a prominent location, a summary of the main provisions in this Agreement.

10. ARTICLE 10

REGISTRANT DATA

10.1 **Submit to Registry:** In respect of each approved Domain Name Application, the Registrar must promptly submit to the Registry, or must place in the Registry database, the mandatory information required under the Registry Access Protocol.

10.2 **Updated Registrant Data:** The Registrar must, immediately after receiving any updated Registrant Data or information from the Registrant, submit the updated Registrant Data to the Registry and place the updated Registrant Data in the Registry database.

10.3 **Access to Registrant Data:** The Registrar must not sell or otherwise grant access to any Registrant Data to any person, other than in order to comply with its obligations under this document

11. ARTICLE 11
DOMAIN TRANSFERS

11.1 **Transfers:** The Registrar must ensure that its Registrant can easily transfer registered Domain Names to another registrar or registrant in accordance with the SDNP Policies including the Domain Registration Policy.

11.2 **Transfer fees:** The parties acknowledge that fees that the Registry charges for transfers are listed in the SDNP Fees Policy.

12. ARTICLE 12

ON SOLICITATION OF REGISTRANTS

12.1 **Use of Registry WHOIS Service Information:** The Registrar must not use information obtained from the Registry WHOIS Service to solicit business from or to otherwise make contact with a Registrant, unless the Registrar is the registrar of the Registrant as identified in the Registry or the Registrant has previously contacted the Registrar in respect of the registration of a Domain Name or the Registrant is otherwise a customer of the Registrar and has authorized the Registrar to use information obtained to accept business from or contact with the Registrant or both the Registrant and the Registrant's registrar as identified in the Registry have consented in writing to such use of the information.

12.2 **No Application:** The Registrar must not submit a Domain Name Application to the Registry or provide any other Registrar Services to a Registrant unless the Registrar is the registrar of the Registrant, as identified in the Registry, or the Registrant has asked the Registrar to provide such services.

13. ARTICLE 13
LIMITATIONS OF LIABILITY

13.1 **General:** The Registrar and SDNP both acknowledge and agree to exercise responsibilities in good faith and in an open and transparent manner

13.2 **General Exclusion of Liability**: SDNP is not liable to the Registrar for any claim arising under this agreement in contract, tort, and statute or otherwise, except where SDNP has acted in bad faith.

13.3 **Specific Performance:** Either party may seek specific performance of any provision in this agreement, provided that the party seeking such specific performance is not in material breach of its obligations under this agreement.

13.4 **Limitation of Liability:** The liability of SDNP for breach of a condition or warranty implied by any law in Malawi in relation to the supply of goods or services not of a kind ordinarily acquired for personal domestic or household use or consumption is limited, at SDNP's option, to:

13.4.1   in the case of goods - the replacement of the goods or the supply of equivalent goods or the payment of the cost of replacing the goods or the payment of the cost of acquiring equivalent goods; or

13.4.2   in the case of services - the supplying of the services again or the payment of the cost of having the services supplied again.

14.   ARTICLE 14
15.   DISPUTE RESOLUTION

Arbitration: Any question, dispute, difference or controversy which cannot be settled by mutual negotiation between the parties shall, at the written request of either of the parties hereto may be submitted to be resolved by an arbitrator agreed upon by the parties under the Laws of Malawi.

16.   ARTICLE 16
DEFAULT AND TERMINATION

16.1 **Events of Default:** In this document, Event of Default means, in relation to a party, any of the following events:

16.1.1 where a party becomes bankrupt; or

16.1.2 the Registrar does not continue to meet the Accreditation Criteria; or

16.1.3 any amount due and payable by the party under this document is in arrears for 30 days after formal demand has been made; or

16.1.4 the party commits a breach of this document which is not capable of being remedied; or

16.1.5 the party commits a breach of this document and fails to rectify that breach within 30 days after receipt of written notice specifying the breach and requiring rectification.

16.2 **Consequences of Default:** At any time following an Event of Default, the non-defaulting party may, by notice in writing to the party do all or any of the following:

16.2.1 demand that all money actually or contingently owing under this agreement are immediately due and payable by the party and the party must immediately repay those moneys; or

16.2.2 demand that the party must pay to the non defaulting party interest at the rate in here stipulated for late payments and computed on the amount overdue during the period of default and the party must immediately pay such interest; or

16.2.3 declare that the obligations of the non defaulting party under this document cease and the non defaulting party is no longer obliged to perform any obligations under this agreement; or

16.2.4   if the defaulting party is the Registrar, SDNP may demand that the Registrar pay the reasonable expenses incurred by SDNP as a result of any breach of this agreement by the Registrar and the service of notices as required by this clause, and the Registrar must immediately pay those expenses; or

16.2.5   terminate this Agreement.

17. ARTICLE 17

CONSEQUENCES OF TERMINATION

17.1 **Rights and Obligations on Termination:** If this agreement is terminated for any reason, in addition to and without prejudice to any other rights, powers or remedies provided by law, each party is released from its further obligations under this agreement.

17.2 **Assignee:** Either party may propose an assignee to perform its obligations under this agreement by supplying the name, address and occupation of the Proposed Assignee;

17.3 If it is the Registrar choosing or providing its Proposed Assignee then the Registrar must ensure that such a Proposed Assignee meets the requirements to accredited as a .mw ccTLD Registrar.

18. ARTICLE 18

GENERAL

18.1 **Amendment:** This agreement may only be varied or replaced by a document duly executed by the parties.

19.   ARTICLE

NOTICES

19.1 **Service of Notice:** A notice or other communication required or permitted, under this agreement, to be served on a person must be in writing and must be served using at least two of the following methods:

- 19.1.1   personally on the person;
- 19.1.2   by leaving it at the person's current address for service;
- 19.1.3   by posting it by prepaid post addressed to that person or to the person's current postal address for service; or
- 19.1.4   by email to the person's current email address for service.
- 19.1.5   by FAX to the personal official fax number

20.   ARTICLE 20

INTERPRETATION

20.1 **Governing Law and Jurisdiction:** This agreement is governed by and is to be construed in accordance with the laws of the Republic of Malawi.

IN WITNESS WHEREOF, the parties have signed this Agreement on the day, month and year first above mentioned.

The Common Seal of the Registrar is hereby affixed in execution of this agreement

………………………………………..   ………………………….
Common Seal   Director

In the Presence of:
Name:
Address:
Occupation:
Signature:

The Common Seal of the SDNP is hereby affixed in execution of this agreement

………………………………………………….   ……………………………
Common Seal   SDNP Coordinator

In the Presence of:
Name:
Address:
Occupation:
Signature:

Schedule A: Registrar Registrant Agreement – Mandatory Provisions

Notes: This document contains the minimum terms and conditions for a Registrar-Registrant Agreement. It does not purport to be, and is not, a comprehensive Registrant Agreement.

The Registrar-Registrant Agreement must contain the following minimum terms and conditions:

1. REGISTRAR

Details showing clearly that the Registrar is accredited as .mw ccTLD registrar.

2. REGISTRATION OF DOMAIN NAMES

2.1   Eligibility: Both registrant and domain name chosen must meet eligibility requirements under SDNP Policies
2.2   Registrant grants to SDNP the right to disclose all information entered for the WHOIS

3. CHANGE OF REGISTRARS

3.1   The Registrar must commit and ensure that the Registrant can easily transfer registered Domain Names in accordance with the SDNP Policies.

3.2   In the event that the Registrar Agreement is terminated by SDNP, the Registrant is responsible for transferring the registered Domain Name to a new registrar in accordance with the SDNP Policies within 30 days of written notice being provided to the Registrant by SDNP.

3.3   In the event that the Registrar Agreement between SDNP and the Registrar is terminated, the Registrar must not charge the Registrant any fee for the transfer of the registered Domain Name to another registrar.

4. REGISTRAR'S OBLIGATIONS

4.1 The Registrar must immediately give written notice to the Registrant if the Registrar is no longer a registrar or the Registrar's SDNP Accreditation is suspended or terminated; or the Registrar Agreement is terminated by SDNP.

4.2 SDNP may post notice of the fact that the Registrar is no longer a registrar or the suspension or termination of a Registrar's SDNP Accreditation or the termination of the Registrar Agreement between SDNP and the Registrar on its web site and may, if it considers appropriate, give such notice to the Registrant.

5. REGISTRANT'S OBLIGATIONS

5.1 Throughout the Term of the Registrant Agreement, the Registrant must comply with the SDNP Policies;

5.2 give notice to SDNP, through the Registrar, of any change to any information in the Registrant Data.

5.3 The Registrant must not, directly or indirectly, through registration or use of its Domain Name or otherwise:

    5.3.1   register a Domain Name for the purpose of selling it;

    5.3.2

            register a Domain Name for the purpose of diverting trade from another business or web site;

    5.3.3   deliberately register misspellings of another entity's company or brand name in order to trade on the reputation of another entity's goodwill; and

    5.3.4   register a Domain Name and then passively hold a Domain Name License for the purpose of preventing another registrant from registering it.

5.4 the Registrant must not in any way:
    5.4.1   transfer or purport to transfer a proprietary right in any domain name registration;
    5.4.2   grant or purport to grant a registered domain name as security; or
    5.4.3   encumber or purport to encumber a domain name registration.

6. **Dispute Resolution:**

6.1 SDNP currently has in place a dispute resolution policy called SDNP Dispute Resolution Policy which applies and binds the Registrar and the Registrant as if it were incorporated in the Registrant Agreement.

7. LIABILITIES

7.1 The Registrant must not pursue any claim against SDNP, and SDNP is not liable for any direct, indirect, special, punitive, exemplary or consequential damages, including but not limited to damages resulting from loss of use, lost profits, lost business revenue or third party damages arising from any breach by the Registrar of its obligations under the Registrant Agreement or the Registrar Agreement between SDNP and the Registrar.

7.2 The Registrant acknowledges and agrees that if the Registrar has any outstanding fees owing to SDNP, entitling SDNP to terminate the Registrar Agreement between SDNP and the Registrar, SDNP may in its sole discretion terminate the Registrar Agreement.

7.3

7.4 The Registrant agrees that SDNP is not responsible for the use of any Domain Name in the Registry database and that SDNP is not responsible in any way for any conflict or dispute with or any actual or threatened claim against a Registrar or Registrant, including one relating to a registered or unregistered trademark, a corporate, business or other trade-name, rights relating to a name of an individual or other intellectual property rights of a third

party or relating to the defamation or unlawful discrimination with respect to any other person.

7.5   Notwithstanding any other provision of this document and to the fullest extent permitted by law, SDNP will not be liable to the Registrant for consequential, indirect or special losses or damages of any kind suffered by the Registrant as a result of any act or omission whatsoever of SDNP, its employees, agents or sub-contractors.

REGISTRAR Particulars

Company Name:
Company Registration Number:
Street Address:
Postal Address:
Facsimile number:
Email address:
Attention: