

## Terms and Conditions

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# 1. Introduction

These terms are the general terms of the relationship between us and you. The terms cover any transactions where we provide services to you. The commercial terms of any transaction will be contained in an order that will incorporate these terms. The order will prevail if there is a conflict of meaning. Nothing in the terms obligates any party to enter into any orders.

2. **Definitions and interpretation** *Definitions.* In the agreement: **additional fee** means a charge you must pay us for the supply of any services outside of an order, which charge must be made at our then current standard prices and rates, unless otherwise agreed in writing between us;

**AFSA** means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);

**Agreement** means the agreement between us and you, consisting of the terms and any orders the parties enter into;

**Business day** means any day other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into the relevant order is organised;

**Business hours** means our normal business hours on business days;

**Control panel** means the section on the website accessible by you through a web browser;

**effective date** means in respect of each order, the effective date stipulated in each order, in the absence of which it will be the date the order is accepted by us; **existing material** means any code, forms, algorithms or materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;

**Fees** means the fees, charges, or purchase consideration that you will pay to us in respect of services we provide under orders; **Order** means a services order agreed to and signed by both the parties describing the specific services that we will provide to you; **our technology** means any technology that we have created, acquired or otherwise have rights in and may, in connection with the performance of our obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries;

**Inception month** means the month we begin to provide you with the service and not when the website goes live. **Personnel** means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

**related** and **related persons** means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;

**Services** means any services we or related persons provide to you, under orders;

**Sign** means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of each of our duly authorised representatives;

**Signature date** means the date of signature by the party signing last; **Tax** means any:

- tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction);
- duty (including stamp duty);
- tariff, rate, levy; or
- any other governmental charge or expense payable; **Terms** means the terms, consisting of:

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- these customer relationship terms; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific services);

**Third party contractor** means any contractor, supplier, service provider or licensor of a part of the services, which is not a party to the agreement;

**Third party software** means all third party software owned by a third party but legally licensed to us for use in providing the services;

**We, us, or our** means the vendor or service provider that enters into an order and, if specified in the order, those related to it;

**Writing** means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of email;

**You or your** means the customer that enters into an order and, if specified in the order, those related to it; **Your data** means your data (including information about an identifiable person) that:

- you (or any third party on your behalf) provide to us; or
- we generate, process, or supply to you in providing the goods or services; but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors;

2.1 **Definitions in the order.** Words defined (or assigned a meaning) in an order will have that meaning in the terms, unless the context clearly indicates otherwise.

2.2 **Interpretation.** All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever

“including” or “include”, or “excluding” or “exclude”, together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party’s successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

## 3. Duration

The terms commence on acceptance and continue until terminated. Where the duration of this agreement is specified in an order, if you are a “consumer” for purposes of the Consumer Protection Act, you may terminate the relevant service prior to the expiry of the term on 20 business day’s written notice to us. However, we may charge you an early termination fee.

## 4. Orders

4.1 **Capacity.** You represent and warrant that you (and any person who places an order):

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- are old enough under applicable law to enter into the agreement;
- are legally capable of concluding any transaction;
- possess the legal right, full power, and authority to enter into the agreement; • are authorised to use the credentials required for any account; and
- will submit true, accurate and correct information to us.

If you are younger than 18 years of age, you warrant that you have the consent of your legal guardian to enter into the agreement or that you have obtained legal status in another manner.

**4.2 Invitation to do business.** The marketing of the services by us is merely an invitation to do business or for you to make an offer to

procure services. The parties only conclude a valid and binding order when we accept the offer made by you. Unless proven to the contrary, we only accept an offer relating to services, when we begin providing the services. We may accept or reject any offer. If we do not accept any offer, then we will refund any monies already paid by you.

**4.3 Deemed order.** You will be deemed to have placed an order in regard to services when you start consuming any services you have requisitioned automatically from the control panel, it being agreed that each click of a button to requisition a service constitutes a billable event.

**4.4 Cancel.** Unless otherwise agreed, we may cancel any order at any time in our absolute discretion. We will refund any monies already paid by you.

**4.5 Fees.** Despite our best efforts, the stated fees may be incorrect. We will confirm the fees for any services when we accept your offer.

**4.6 Time and place.** The parties conclude any agreement between each other at the time when our duly authorised representative accepts the relevant offer and at the place where you have your head office. We do not need to communicate the acceptance of the offer to you.

**4.7 Orders.** The terms in effect at the time you make an offer will govern the order. Each order will create a separate agreement. Despite that, we may consider the breach of any one order to constitute a breach of any or all orders.

## 5. Website design and website development

### 5.1 Description.

- We provide you with open-source development and bespoke solutions for your website.
- We carefully code to provide a faster page load time which also helps with the search engine optimization of your website.
- We make use Google Analytics which helps us with page speed across all browsers.
- We provide you with responsive design websites. We will make your website design and development user friendly, while making

sure that your website conforms to Google's best and responds well to all devices, desktop, mobile and tablets.

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### 5.2 **Manner of payment.**

- Once you receive the invoice, you must either pay us the total amount at once or in instalments over 12 months.
- If you choose the 12-month payment option and payment is not received within 14 days of the invoice date, the entire amount payable (all 12 months) will become due.
- Monthly payment must be made from the inception month, whether the site is live or not.
- If Payment is not received or a default of payment has occurred, FreelanceDirect reserves the right to suspend services within 72 hours of non-payment until such time as the full payment has been made. An email will be sent 24 hours prior to the suspension to allow for payment to be made.

5.3 **Termination.** The services will continue until the project is finished.

## 6. Website maintenance

### 6.1 **Description.**

- We will provide you with website maintenance that can also help involve your website's rank in search results.
- We will make sure that links on your website function properly.

### 6.2 **Manner of payment.**

- Once you receive the invoice, you must either pay us the total amount at once or in instalments over 12 months.
- If you choose the 12-month payment option and payment is not received within 14 days of the invoice date, the entire amount payable (all 12 months) will become due.

6.3 **Termination.** You may cancel the agreement 90 calendar days prior to the end of the 12 month period. If you do not cancel within the three months before the agreement ends, the agreement will automated be reinstated for another 12-month period. You may terminate at any point after 6 months of the agreement by giving 90 calendar days written notice to us.

## 7. Search Engine Optimisation (SEO)

### 7.1 **Description.**

- Search engine optimisation assists your website to become naturally accessible to a search engine when users search for your products or services. We provide you with our SEO solutions that will improve your rankings in various search engines.
- The optimisation we provide will help your website rank higher in natural or organic search results.
- The service we provide will improve your possibility of sale conversions. We encourage you to use both paid search (SEM) and organic search (SEO) marketing campaigns to improve your conversions.

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7.2 **Manner of payment.** We will provide you with a quote for our services. Once we receive the signed quote from you, we will invoice you.

Once we receive payment, we will start providing you the service. Payment can be made by EFT or debit order.

7.3 **Duration.** The SEO agreement between you and us will be a 12-month agreement.

7.4 **Termination.** You may cancel the agreement 90 calendar days prior to the end of the 12 month period. If you do not cancel within the three months before the agreement ends, the agreement will automatically be reinstated for another 12-month period. You may

terminate at any point after 6 months of the agreement by giving 90 calendar days written notice to us.

## 8. Google AdWords (Google paid search)

8.1 **Description.**

- We will provide Pay Per Click (Google Ads) services to you to use as an online marketing (lead generation) tool.
- We will run a keyword analysis on your industry and will assess various recommended keyword ideas.
- We do not guarantee lead generation through Pay Per Click (Google Ads)

8.2 **Duration and manner of payment.** This agreement is on a month to month basis. If we do not receive payment, the AdWords will stop automatically, and the account will be suspended. AdWords will only resume once payments is received.

8.3 **Termination.** You may cancel the Google AdWords by giving us one month's notice.

8.4 **General.**

- We are not liable if Google changes its algorithm and you drop in rank.
- We are not liable if a third party commits click fraud on your AdWords by deliberately clicking on your ad to deplete your budget.

## 9. Social media marketing

9.1 **Description.** We provide social media management to help you understand the demographics and patterns of your customer behaviour.

9.2 **Duration.** The social media agreement is a 90 day agreement. The agreement will automatically renew after 90 calendar days, for another 90 day period unless we receive 30 calendar days' notice prior to the end of the agreement.

9.3 **Manner of payment.** We will provide you with a quote for our services. Once we receive the signed quote from you, we will invoice you. Once we receive payment, we will start providing you the service. Payment can be made by EFT or debit order.

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9.4 **Termination.** You may cancel the agreement by giving us 30 calendar days' notice prior to the end of the agreement. If you do not give us such notice, the agreement will automatically renew for another 90 calendar days.

## 10. Inbound Marketing

10.1 Acceptance by Client of an Inbound Marketing Agreement issued by FreelanceDirect ("FreelanceDirect (Pty) Ltd"), to which these terms and conditions are attached or by reference made a part of, shall constitute an agreement between Client and FreelanceDirect (Pty) Ltd with respect to the responsibilities of FreelanceDirect (Pty) Ltd and Client pursuant to the Inbound Marketing Agreement and these Standard Terms and Conditions (collectively referred to as the "Agreement"). Client represents and warrants that: (1) it has the full authority to enter into the Agreement and to perform the acts or obligations required of it in the Agreement; (2) the execution of the Agreement and the performance of its obligations do not and will not violate any other agreement that it is a party to; (3) the Agreement will constitute the legal, valid and binding obligation of each party, enforceable against each party in accordance with its terms. The formation, construction, performance and enforcement of the Agreement shall be in accordance with the laws of the State of Connecticut without regard to its conflict of law provisions

### 10.2 **Scope of Service**

FreelanceDirect (Pty) Ltd shall provide only those professional services and/or products specified in the Agreement (the "Work"). Client understands and agrees that, unless listed in the Agreement, FreelanceDirect (Pty) Ltd is not responsible for any other work or scope of supply or any disclosure, notifications or reports that may be required to be made to third parties, including appropriate governmental authorities. If Client requests and FreelanceDirect (Pty) Ltd agrees to perform any services that are in addition to or outside the scope of Work identified in the Agreement, Client shall promptly pay FreelanceDirect (Pty) Ltd for such services in accordance with the terms and rates shown in the Agreement or, if no such terms or rates are shown in the Agreement, in accordance with FreelanceDirect (Pty) Ltd standard terms and rates for the services performed.

### 10.3 **Client's Content**

Client represents and warrants to FreelanceDirect (Pty) Ltd that: (1) it owns, or has acquired the express written authority to use all of the content Client gives to FreelanceDirect (Pty) Ltd, ("Client Content"); (2) Client Content does not contain any obscene, threatening, harassing, vulgar, defamatory, libelous, infringing or unlawful content; (3) Client Content does not infringe upon nor violate the rights of any third party, including copyrights and trademarks; (4) there are no claims against Client regarding Client Content; and (5) Client will at all times ensure that it is in compliance with the terms and conditions of any licensing contracts between Client and a third party.

### 10.4 **Client's Ownership and FreelanceDirect (Pty) Ltd Ownership**

Once payment is received, FreelanceDirect (Pty) Ltd grants all rights to content produced for Client exclusively to Client, excluding third party components. Notwithstanding the foregoing, FreelanceDirect (Pty) Ltd retains the right to display graphics and other Web content elements as examples of FreelanceDirect (Pty) Ltd's work. FreelanceDirect (Pty) Ltd shall own, and retain all intellectual property rights in all pre-existing material, information, know-how and data created.

### 10.5 **Access to Site and Information**

Client will provide for right of entry and access to all relevant sites, equipment and other information in its control or possession as is necessary for FreelanceDirect (Pty) Ltd to timely and fully complete the Work. FreelanceDirect (Pty) Ltd is not responsible for the quality or accuracy of data or information, nor for the methods from which the data was developed, where such information or data is provided by or through Client or others that are not agents or FreelanceDirect (Pty) Ltd and FreelanceDirect (Pty) Ltd has no obligation to investigate facts or conditions not disclosed to it by Client.

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### 10.6 **Payment Terms**

*Client's failure to pay on time constitutes a material breach of contract by Client permitting FreelanceDirect (Pty) Ltd to suspend its performance hereunder; additionally, FreelanceDirect (Pty) Ltd shall have all other remedies permitted to FreelanceDirect (Pty) Ltd by law, equity and these terms. FreelanceDirect (Pty) Ltd reserves the right to apply interest charges at 12% APR on any past-due invoice. If Client has provided FreelanceDirect (Pty) Ltd with a credit card authorization, FreelanceDirect (Pty) Ltd shall be entitled to charge the invoice amount and interest against such card. Client will be responsible for all collections costs, including reasonable attorney's fees, incurred by FreelanceDirect (Pty) Ltd as a result of any collection process or proceeding.*

### 10.7 **Notice and Notice of Cancellation:**

FreelanceDirect (Pty) Ltd or Client may cancel this Agreement in advance by delivering written Notice of Cancellation to the other party at the address provided at least sixty (60) days prior to the requested cancellation date. Any notice ("Notice") shall be deemed sufficient if addressed in writing and mailed to the party's address listed in the Agreement or emailed to an authorized representative, provided such notice confirms the date of receipt.

### 10.8 **Indemnification**

Client agrees to defend, indemnify and hold harmless FreelanceDirect (Pty) Ltd from and against any and all claims, liabilities, suits, actions, proceedings, demands, damages, losses, costs, and expenses, including reasonable attorney's fees, based upon a third party claim arising, directly or indirectly, out of the Client Content.

## 11. E-commerce solutions

### 11.1 **Description.**

- We will help you build your online store.
- We do the research to help you understand the needs of your customers.
- We will provide the architecture, functionality and navigation for your e-commerce solutions website. We will make it as user-friendly and interactive as possible.
- We will help you develop a good product catalogue.

11.2 **Duration.** This agreement is for 12 months.

### 11.3 **Manner of payment.**

- Once you receive the invoice, you must either pay us the total amount at once or in instalments over 12 months.
- If you choose the 12-month payment option and payment is not received within 14 days of the invoice date, the entire amount payable (all 12 months) will become due.

11.4 **Termination.** You may cancel the agreement 90 calendar days prior to the end of the 12 month period. If you cancel the agreement, the remaining amount payable becomes due.



## 12. Copyright content creation

### 12.1 **Description.**

- We provide you with optimized copyright content creation to drive traffic to your website.
- We will brainstorm with you to determine what your website should represent and how it should be represented.
- We will then create uniquely written content for your business.

12.2 **Duration.** This agreement is for 12 months.

### 12.3 **Manner of payment.**

- Once you receive the invoice, you must either pay us the total amount at once or in instalments over 12 months.
- If you choose the 12-month payment option and payment is not received within 14 days of the invoice date, the entire amount payable (all 12 months) will become due.

12.4 **Termination.** You may cancel the agreement 90 calendar days prior to the end of the 12 month period. If you cancel the agreement, the remaining amount payable becomes due.

## 13. Analytic reporting

- If requested, Google Analytics reporting will come standard with your website.
- We use web analytics to measure, collect and analyse your website data. With this information we can optimize your website for search engine optimization.
- We will provide accurate figures on how well the website is doing.
- We will create custom reporting for you to help you understand the information you receive.

## 14. Services

14.1 **Ownership.** We will remain the legal owner of all services we provide until the services have been fully paid for.

14.2 **Grant of right.** We grant you a limited, non-exclusive, non-transferrable, revocable right to use our services in accordance with the terms and the terms of any third party agreement. Any person wishing to use the services contrary to the terms or third party agreement must obtain our prior written consent.

14.3 **Consent to monitoring.** You consent to us monitoring your use of the service for security purposes and in order to ensure that the service is always running and functioning as it should.

14.4 **Service levels.** We will provide the services to you at the service levels.

14.5 **Categories of website maintenance service request.**

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Category	Description	Response time	Time to fix	Personnel
P1	It is inoperable or computes incorrectly and it threatens your ability to generate revenue. You are losing money and there is no workaround. Includes a critical bug.	2 business hours	1 business day	Management
P2	Performance (throughput or response) is substantially degraded under reasonable loads, such that there is a severe impact on its use and it threatens your ability to generate revenue. It is usable but materially incomplete - one or more mainline functions or commands are inoperable or incomplete and it threatens your ability to generate revenue. You are losing money, but there is a workaround.	8 business hours	3 business days	Management
P3	It is usable or it does not threaten your ability to generate revenue, but there is a functional deficiency that does not fall within Level 1 or Level 2. Includes an update, support, and non-critical Bugs.	24 business hours	5 business days	Management
P4	Enhancements.	Next meeting	Next scheduled release	Management

The parties may amend any service level in writing from time to time.

## 15. Change control

15.1 **Changes to services.** During the currency of a Website Build and Development Order, events may occur which require a change to the nature and scope of services. The parties will not implement a change unless they comply with this clause. Once we hand over the website logins, we are at no point liable for any changes, breaks or hacks whatsoever. Changes or fixes that have to be made will be charged for at a rate of R600 per hour (excluding VAT).

15.2 **Change request.** A party may propose a change to the nature and scope of services by sending a scope change document to the other party detailing the desired changes. We build the website within 30 calendar days based on a brief from you. Once it is built, you have the opportunity to request three changes. You must submit the changes to us within 15 business days of delivery of the website. We will make the change within one week of receiving them, then the website will go live.

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15.3 **Scope change document.** If a scope change document is made by:

- you, you will specify the reasons for that change and describe the change in sufficient detail to enable us to formulate a response. We will investigate the likely impact of any proposed changes on the provision of goods or services and will provide you with a scope change proposal, including amended pricing and timeframes; or
- us, we will detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the relevant order.

15.4 **Sign-off.** The parties will discuss and agree the proposed changes and make the necessary amendments to our scope change proposal, or via email. You will then consider the scope change proposal and may approve or reject it in writing within three business days. If you:

- accept a scope change proposal, a duly authorised representative of the parties will sign off the scope change proposal and it will be incorporated into the relevant order; or
- reject a scope change proposal, we will continue to provide the goods or services on the existing terms.

15.5 **No change effective until sign-off.** No party may proceed with any change to an order until the change and all matters relating to the

change have been agreed in writing between the parties. Pending sign-off, the parties will continue to perform their obligations without taking account of the proposed changes. No party must agree to any change, but a party will not unreasonably delay or withhold their agreement to a proposed change.

15.6 **Exception.** Amendments to the content of the agreement that do not directly impact the nature and scope of the goods or services will not be subject to this change control procedure, but the parties will execute it in writing.

## 16. Your data

16.1 **Your data.** We are not responsible for any of your data stored on our system.

16.2 **Location of your data.** We are able to provide the website in multiple locations that are located in different countries. Your data will remain in whatever location you place it, unless we have to transfer it across a country border to enable us to comply with our obligations under the agreement.

16.3 **Privacy and protection of personal information.**

- **Legal obligations.** We are responsible for complying with our obligations and you are responsible for complying with your obligations under applicable laws governing your data. We both acknowledge that we are not investigating the steps the other is taking to comply with any applicable privacy and protection of personal information laws.
- **Responsible party.** You remain the responsible party for determining the purpose and means of our processing of your data, including that processing will not place us in breach of any laws.
- **Trans-border flows of your data.** You consent to us transferring your data across a country border to enable us to comply with our obligations under the agreement. You are solely responsible for determining that any transfer of your data across a country border complies with the applicable laws.

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- **Indemnity.** You agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to you failing to comply with your obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.

16.4 **Access.** On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding your data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.

16.5 **Preservation of integrity of your data.** Both of us will take reasonable precautions (having regard to the nature of each of our obligations under the agreement), to preserve the integrity of your data and prevent any unauthorised access, corruption or loss of your data.

16.6 **Records.** You agree that our records are prima facie evidence of the services provided to you.

16.7 **Return of data.** On termination of any order, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of the performance of the relevant order.

## 17. Intellectual property

17.1 **Your data.** You own all your data. We do not source any images for you to use as part of your website. We do not own your data or other third party content used as part of the website. All title, ownership rights and intellectual property rights in and to the content accessed through the website belong to you or the applicable content owner and may be protected by applicable copyright or other law.

17.2 **Your data license.** When you upload your data to the website, you give us a worldwide license to use, host and store your data, solely for purposes of providing the services.

17.3 **Retention of rights.** We have created, acquired or otherwise obtained rights in our technology and despite anything contained in the agreement, we will own all right, title, and interest in our technology.

17.4 **SEO.** We own all SEO related information. We will at no point give out information regarding how we optimise websites.

17.5 **Use of our technology.** If we utilise any of our technology in connection with our performance under an order, our technology will remain our property and you will not acquire any right or interest in it.

17.6 **Trademarks.** Our logo and sub-logos, marks, and trade names are our trademarks and no person may use them without permission. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.

17.7 **Restrictions.** Except as expressly permitted under the agreement, the services may not be:

- modified, distributed, or used to make derivative works;
- rented, leased, loaned, sold or assigned; • decompiled, reverse engineered, or copied; or
- reproduced, transferred, or distributed.

17.8 **Prosecution.** All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.

## 18. Confidential information

18.1 **Responsibility to keep information confidential.** Each party must keep confidential any information it receives from the other party or under this agreement.

18.2 **The receiving party's responsibilities.** The party that receives confidential information agrees to protect the interests of the party it is from, and will:

- only use it to comply with its responsibilities under this agreement;
- only give the information to any of its employees or agents that need it, and only give as much of it as they need;
- use reasonable security procedures to make sure employees or agents keep the information confidential;
- get promises of confidentiality from those employees or agents who need access to the information;
- not reveal the information to anyone else; and
- not use it for any purpose other than this agreement.

18.3 **End of this agreement.** At the end of an agreement, the parties will give back to the other all originals and copies of confidential information of the other that they have. If the other agrees, they may destroy the confidential information they have.

18.4 **Exceptions.** These responsibilities will not apply to any information that:

- is lawfully in the public domain (available to the general public) when a party received it;
- lawfully becomes part of the public domain afterwards;
- is given to the receiving party afterwards by a different person who is allowed to reveal the confidential information; or
- is given to comply with a court order or other legal duty.

18.5 **Indemnity.** You indemnify us against any loss or damage that we may suffer because of a breach of this clause by you or your employees or agents.

18.6 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.

## 19. Non-solicitation

No party will, during the currency of any order or for a period of 12 calendar months following termination, directly or indirectly solicit, offer employment to, employ, or contract in any manner with any personnel of the other party who were involved in the implementation or execution of the order.

## 20. Our warranties

20.1 **Service warranties.** We warrant that in relation to the services:

- we and our personnel will possess and have the right to use knowledge and expertise sufficient to enable us to provide the services;
- we will employ a sufficient number of suitably trained personnel to provide the services and to achieve the service levels; and
- we will provide the services in accordance with all applicable laws, enactments, and regulations.

20.2 **General warranties.** We warrant further that:

- we have the legal right and full power and authority to execute and deliver, and to exercise our rights and perform our obligations under the agreement; and
- we and our personnel will not knowingly introduce any malicious software into your material or your system.

## 21. Disclaimer of warranties

21.1 **Disclaimer.** You use our services at your sole responsibility and risk. We provide the services on an “as is” and “as available” basis. Except for the warranties given in this agreement and to the extent allowed by law, we expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied, including:

- any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement;
- any warranties regards third party software;
- that the services will meet your requirements or be uninterrupted, legally effective or complete, timely, secure, error-free or free from infection by malicious software. You should keep up-to-date security software on any systems used to access the services.

21.2 **Exclusion of liability.** Despite any warranty we give, we will not be liable regards any defect arising from negligence, failure to follow our instructions (whether oral or in writing) or misuse.

22.1 you have not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;

22.2 by entering into an order you are not acting in breach of any agreement to which you are a party; and you agree to indemnify, defend, and hold harmless us (and those related to us and our personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.

## 23. Fees and payment

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23.1 **Due dates.** Inception of the project incurs 50% of the project total upfront. You will be liable for and pay the fees specified in the order and any additional fees promptly on the due date, without any deduction, set off or demand and free of exchange in the currency specified in the order.

23.2 **Manner of payment.** You must make payment in the manner specified.

23.3 **Late payments.** Any additional surcharges and penalties specified will apply to any payment received after the due date to cover collection fees and additional administration costs. You must pay the surcharges and penalties to us on-demand. We may halt the provision of any services until you have paid all amounts that are due.

23.4 **Interest on overdue amounts.** Any amount not paid by Customer on the due date will bear interest for the benefit of Vendor, from the due date until the date Customer pays it. The rate of interest will be either 2% above the published prime overdraft rate from time to time of Vendor's bankers or 15%, whichever is higher. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.

23.5 **Appropriation.** We may appropriate any payment received from you towards the satisfaction of any indebtedness of you to us under the agreement.

23.6 **Withhold payment.** You may not withhold payment of any amount due to us for any reason.

23.7 **Certificate.** A certificate, signed by an accountant appointed by us, of the amount due by you and the date on which it is payable will be proof of the correctness of the certificate's contents.

23.8 **Tax.** All fees exclude any tax, which will be payable where applicable by you in addition to the fees.

23.9 **Payment profile.** You and any signatory consent and agree that we may provide any registered credit bureau with information about the payment of amounts.

23.10 **Reimburse costs.** If we suspend the service or remove any goods supplied by us, you will pay to us the costs incurred by us (including redeployment, travel and associated expenses) in remobilising our employees affected by the agreement and recommencing the services or re-installing the removed goods.

23.11 **Inbound Marketing Payments.** The client acknowledges that Inbound Marketing is a full project that is paid off over a monthly period and is not a month to month retainer. If a client cancels their Inbound Marketing project before the end term has been reached they will be liable for all work already carried out and will be required to pay a settlement fee.

## 24. Intellectual property infringement

24.1 **Defence.** We will defend you against any claims made by an unaffiliated third party that any goods or services infringe its patent, design, copyright, or trade mark and will pay the amount of any resulting adverse final judgement (or settlement to which we consent). We will reimburse you with all costs you reasonably incurred in connection with assisting us with the defence of the action. You will promptly notify us of the claim in writing and we will have sole control over its defence or settlement.

24.2 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, we may within 30 calendar days of the infringing item having been found to so infringe:

- obtain for you the right to continue using the infringing item or the parts that constitute the infringement;

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- replace the infringing item or the parts that constitute the infringement with another product that does not infringe and that in all respects operates substantially in accordance with its specifications;
  - alter the infringing item in a way as to render it non infringing while still in all respects operating substantially in accordance with its specifications; or
  - withdraw the infringing item and refund to you all fees paid by you to us under the relevant order specifically with regard to the infringing item in the preceding six calendar month period.
- 24.3 **Exclusion.** We will not be liable for any claim that arises out of goods or services you select and acquire from third parties.
- 24.4 **Survival.** This clause will survive termination of the agreement.

## 25. Project managers

25.1 **Appointment.** On the effective date, each party will appoint a suitably qualified and responsible person to act as their project manager. If a party does not appoint a project manager and that party is a natural person, then that party will be its own project manager.

Otherwise, the natural person that is ordinarily responsible for the day-to-day administration of that party will be its project manager.

25.2 **Function.** The project managers' responsibilities include to manage and coordinate the services and to discuss and manage any changes.

25.3 **Replacement.** A party may, on seven calendar days' written notice to the other, appoint an alternative project manager who is suitably qualified and responsible.

## 26. Limitation of liability

26.1 **Direct damages limited.** <b>To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, our maximum liability to a you for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by you to us for the Goods or Services related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.<b>

26.2 **Indirect damages excluded.** To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the agreement.

26.3 **Exclusions.** The limitation contained in this clause will not apply to any breach by a party of the other party's proprietary or confidential information or intellectual property or damages arising from a party's gross negligence.

26.4 **We are not liable for your default.** We will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of the agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or your personnel.

26.5 **Other goods or services.** We are not liable for any other deliverable, including website, goods, or service provided by any third party.

26.6 **Indemnity.** We agree to indemnify, defend and hold you (and your personnel) harmless against any and all:

- loss of or damage to any property or injury to or death of any person; and



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- **loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses that you may suffer or incur arising directly or indirectly from: (i) any wilful misconduct or fraud by us or our personnel; or (ii) a breach by us of your proprietary or confidential information, or intellectual property.**

26.7 **Liability.** Without limiting liability, neither party will be liable to the other for any loss that it may suffer as a result of theft, fraud, or other criminal act by a party or its personnel.

## 27. Breach and termination

If a party:

- does not fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from the other party to do so;
- breaches this agreement materially twice or more in any six month period;
- is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- takes steps to deregister itself (close down) or is deregistered;
- makes any settlement or arrangement with its creditors; or
- fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days; then the other party may, without prejudice to any of its rights:
- claim specific performance of this agreement (make the party comply with this agreement); or
- immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.

## 28. Suspension of service

28.1 **Immediate suspension.** We may immediately suspend your right to use any of the services in any of the following circumstances:

- you attempt a denial of service attack on any of the services;
- you seek to hack or break any security mechanism on any of the services;
- we determine in our sole discretion that your use of the services poses a security threat to us, or to any other user of the services;
- you otherwise use the services in a way that disrupts or threatens the services;
- we determine, in our sole discretion, that there is evidence of fraud with respect to your account;

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- we receive notice, or we otherwise determine, in our sole discretion, that you may be using the services for any illegal purpose or in any way that breaches the law or infringes the rights of any third party; or
- we determine, in our sole discretion, that our provision of any of the services to you is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason.
- If payment has not been received after a written warning within 24 hours.

28.2 **Preservation of data (suspension).** In the event that we suspend your access to any services, we will not take any action to intentionally erase any of your data in our possession during the period of suspension and the fees will continue to accrue.

## 29. Termination

29.1 **Termination for good cause.** We may immediately terminate this agreement at any time by giving you notice in writing if:

- we discontinue the services;
- we believe providing the services could create an economic or technical burden or material security risk for us;
- termination is necessitated by us having to comply with any applicable law or requests of governmental entities; or
- we determine that your use of the service or the provision of any of the services to you has become impractical or unfeasible for any legal or regulatory reason.

29.2 **Duties on termination.** On termination, cancellation, or expiry of this agreement:

- we will stop providing the services;
- your access rights will cease to exist; and
- we will erase your data, unless we have agreed to provide you with post termination assistance in writing.

29.3 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

## 30. Effect of termination

30.1 **Amounts due to us become due and payable.** On termination, cancellation, or expiry this agreement, all amounts due to us for services rendered before termination will become due and payable even if we have not yet invoiced them. You may not withhold the amounts for any reason, unless the arbitrator directs otherwise.

30.2 **Post termination assistance.** Following termination, you may take advantage of any post-termination assistance that we may generally make available (such as data retrieval arrangements). We may provide you with post-termination assistance, but we will not be under an obligation to do so. Your

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right to take advantage of any post termination assistance will depend on your acceptance of and compliance with any additional fees and terms that we may impose for such assistance.

30.3 **No expectation.** We acknowledge and confirm that no expectation has been created by anyone, by the agreement or any other agreement, entitling us or you to expect: the renewal or extension of the term of any agreement; or

30.4 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

## 31. Resolving disputes

31.1 **Notifying each other.** There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation (direct talks to try and agree how to end the dispute); failing which
- mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

31.2 **Negotiation.** Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

31.3 **Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.

31.4 **Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

31.5 **Agree otherwise in an order.** The parties may agree otherwise in an order.

31.6 **Periods.** The parties may agree in writing to change the periods for negotiation or mediation.

31.7 **Urgent interim relief.** This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

31.8 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

## 32. Notices and domicile

32.1 **Notices.** The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the specific terms. All notices must be in writing.

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32.2 **Service (delivery) address for legal documents.** Each party chooses its street addresses and numbers as its *domicilium citandi et executandi* (its address for the service of any document used in legal action) for this agreement.

32.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in the specific terms to any other addresses or numbers in South Africa by writing to the other party 14 days before the change.

32.4 **Deemed delivery.** Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

32.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.

## 33. Force majeure

33.1 **Parties not liable.** No party will be responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.

33.2 **Party affected to notify other party.** If there is an event of force majeure, the party affected will tell the other immediately, and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.

33.3 **Right to cancel.** If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 60 days because of force majeure, the other party may cancel this agreement by written notice.

## 34. Assignment and subcontracting

34.1 **No assignment.** No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part. We may assign this agreement to any successor or purchaser of our business or some of our assets.

34.2 **Exception.** Despite this clause, we may cede and assign all rights and obligations under this agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.

34.3 **Our third party contractors.** We may subcontract or delegate our obligations under this agreement to third party contractors. We will remain liable for performance of the third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement.

## 35. Relationship

35.1 **No temporary employment service or partnership.** Nothing in this agreement will be construed as constituting a temporary employment service or as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.

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35.2 **No employment relationship.** Each party enters into the agreement as an independent contractor. The agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.

## 36. General

36.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.

36.2 **Changes to the terms.** We may change the terms at any time and where this affects your rights and obligations, we will notify you of

any changes by placing a notice in a prominent place on our website or by email. If you do not agree with the change you must stop using the services. If you continue to use the services following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.

36.3 **Changes to any third party software license agreement.** We will notify you of any changes to any third party software license terms by placing a notice in a prominent place on our website, or notifying you by email. The updated third party software license terms will be effective immediately and you will be deemed to have accepted them upon notification.

36.4 **Acceptance of changes.** If you do not agree with the changes, you must stop using the service. If you continue to use the service following notification of a change, the changed terms will apply to you and you will be deemed to have accepted them.

36.5 **Waiver (giving up of rights).** Any favour we may allow you will not affect or substitute any of our rights against you.

36.6 **Severability.** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.

36.7 **Governing law.** South African law governs this agreement.

36.8 **Jurisdiction.** You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.

36.9 **Non-exclusivity.** We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.

36.10 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.

36.11 **Publicity.** A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.