

BIZPRENEUR TERMS AND CONDITIONS FOR THE PROVISION OF PRODUCTS AND SERVICES

1. INTRODUCTION

This document sets out the terms and condition upon which You will engage Bizpreneur for services and in terms of which Bizpreneur will provide services to you. These terms and conditions shall be read together with the relevant Letter of Engagement, which shall be incorporated hereinto.

“You”, “Your” or “Customer” means the entity executing a Letter of Engagement with Bizpreneur. “Engagement” shall mean the engagement contemplated in the relevant Letter of Engagement.

2. INTERPRETATION

In this Agreement -

References to clauses are, unless otherwise stated, references to Clauses of this Agreement.

Unless the context otherwise requires (a) the singular in all cases includes the plural and *vice versa*; (b) words importing a gender include any other gender; and (c) a reference to a person shall include both natural and juristic persons.

The headings of the clauses in this Agreement are for convenience of reference only and shall not in any way affect the construction of the Agreement.

The words “include” and “including” mean “include without limitation” and “including without limitation” and their use followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order or regulation or instrument or as contained in any subsequent re-enactment thereof.

Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

3. SCOPE OF SERVICES

3.1. Bizpreneur shall perform the services described in the Letter of Engagement and provide the deliverables to the Client as set out and detailed in this Agreement. The term “Deliverables” shall mean those things delivered in tangible form described as being Bizpreneur’s responsibility in the Letter of Engagement, which Deliverables shall be delivered in accordance with the provisions of this Agreement.

3.2. You acknowledge that the success of the Engagement is the joint responsibility of both Parties.

3.3. The Parties recognise they must both use reasonable endeavours to meet agreed target dates.

3.4. Changes to the scope of services shall be made only in writing and executed by authorised representatives of both Parties. Bizpreneur will not be obliged to work on a change until the Parties agree in writing upon its fee and/or schedule impact.

3.5. Bizpreneur shall be entitled to charge the Client at Bizpreneur’s then current rates for examination of the effect of any changes requested by the Client. Notwithstanding the foregoing, if Bizpreneur, at the request of or with the consent of the Client, performs work that is not covered by the Letter of Engagement or that exceeds the scope set out in the Letter of Engagement, such work shall be deemed as part of the Engagement for which You shall compensate Bizpreneur pursuant to clause 6.

4. CLIENT RESPONSIBILITIES

4.1. You understand that Bizpreneur’s performance is dependent on the Your timely and effective performance

of Your tasks and responsibilities and providing timely decisions and approval.

4.2. You agree to provide Bizpreneur’s promptly with accurate and complete information concerning Your activities, decisions and approvals relevant to the Engagement.

4.3. All Deliverables submitted to You for approval shall be deemed accepted if, within ten (10) days after delivery, You have not provided to Bizpreneur written notice identifying specifically any basis for not approving the Deliverables.

4.4. Bizpreneur shall be entitled to rely on all Your decisions and approvals in connection with any Engagement.

4.5. Where Bizpreneur personnel are performing work on Your premises, You will provide such personnel with suitable office accommodation and services, and full and free access to any required computing facilities, telephone, internet etc and ensure that same are fully compliant with all applicable health and safety regulations.

4.6. You shall be responsible for Your operation and use of the Deliverables and for ensuring that the Engagement meets Your requirements.

4.7. You are prohibited from using Bizpreneur’s name, brand, logo, trademarks or domain names for marketing purposes or otherwise, outside Your organisation, without Bizpreneur’s express written consent, which may be withheld by Bizpreneur in its sole discretion.

4.8. It is Your responsibility to comply with all legislation, regulation and other laws applicable to Your business and the Deliverables. Bizpreneur will not be responsible for or assume liability for the legality of the Engagement and the extent to which the Engagement and Your use of the deliverables is legally permissible or enables You to comply with whatever legislation is applicable to Your business operation.

5. RESOURCES

5.1. Bizpreneur reserves the right to determine which of its personnel shall be assigned to undertake the Engagement and to replace or reassign such personnel during the term hereof, provided, however, that it will, subject to scheduling and staffing considerations, attempt to satisfy Your request for specific individuals. Bizpreneur shall also be permitted to use sub-contractors to undertake parts of the Engagement, where appropriate.

5.2. In connection with this Agreement and any Engagement, each Party is an independent contractor and, as such will not have any authority to bind or commit the other Party. Nothing in the Agreement will be deemed or construed to create a joint venture, partnership or agency relationship between the Parties for any purpose.

5.3. You may not during the engagement and for a period of six (6) months after its termination (for whatever reason), directly or indirectly solicit for employment, nor offer employment to, nor enter into any contract for services with any employee of Bizpreneur or person who, at the time of such action or during a period of six (6) months’ immediately preceding such action, carried out work in connection with the Engagement.

6. PAYMENT TERMS

6.1. As consideration for the services to be performed by Bizpreneur to You, You agree to pay to Bizpreneur the fees to be calculated as set out and detailed in the relevant Letter of Engagement. All fees and expenses will be charged monthly in arrears or as otherwise specified in this Agreement and are payable within 30 (thirty) days upon presentation of the Bizpreneur’s invoice.

6.2. You will reimburse Bizpreneur for all reasonable expenses incurred by Bizpreneur in the performance of the Engagement, including, but not limited to, travel, subsistence and accommodation expenses, communications

charges and other reasonable supplies.

- 6.3. In the event of a good faith dispute with regards to an invoice (or any part thereof), You will notify Bizpreneur in writing within seven (7) days from receipt of such invoice, providing details of the dispute. The dispute shall be referred to the chief financial officers of the Parties (or their nominated representatives). If they are not able to resolve the matter within ten (10) days of it being referred to them, then in that case it shall be referred to the auditors of the Parties acting jointly and their decision shall be binding on the Parties. Upon resolution of the disputed portion, any amounts owed to Bizpreneur shall be paid with interest calculated at prime plus 2%, accruing from the date such amounts were originally due and Bizpreneur shall be entitled to suspend the services until You have made the payment in full.
- 6.4. You will pay for all taxes incurred in connection with the Engagement including value-added, sales, use, excise, services, consumption, withholding and other taxes and duties assessed on the provision of services performed by Bizpreneur and on any goods or services used or consumed by either Party in connection with the Engagement.

7. CONFIDENTIALITY

- 7.1. During the Engagement, each Party may be given access to information (in hard copy, verbal and/or electronic form) that relates to the other's past, present and future research, development, business activities, finances, products, services and technical knowledge and which is either marked as confidential or which by its nature should reasonably be understood to be confidential ("Confidential Information").
- 7.2. Each Party agrees to protect the confidentiality of the Confidential Information of the other in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information. Access to the Confidential Information shall be restricted to: (a) Bizpreneur and the Client personnel engaged in the performance of the Engagement; and (b) professional legal advisers and/or insurers of the Parties.
- 7.3. The Confidential Information of the discloser may be used by the receiver only in connection with the performance of the Engagement. The Confidential Information may not be copied or reproduced without the discloser's prior written consent except for the purpose of the performance of the Engagement.
- 7.4. All Confidential Information made available hereunder, including copies thereof, shall be returned or destroyed upon the first to occur of (a) completion of the Engagement; or (b) request by the discloser, unless the receiver is otherwise allowed to retain such Confidential Information. Bizpreneur may retain, subject to the terms of this clause 7, copies of the Your Confidential Information required for compliance with legislation.
- 7.5. Nothing in this Agreement shall prohibit or limit either Party's use of information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it without obligation of confidence; (b) independently developed by or for it; (c) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information; or (d) which is or becomes publicly available through no breach of this Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. Subject to the payment of all fees and expenses due to Bizpreneur in respect of the Engagement, the Deliverables shall belong to the Client.
- 8.2. You will grant to Bizpreneur a non-transferable, non-exclusive licence to use, modify engineer, reproduce and

create derivative works for its use of such Deliverable.

- 8.3. You acknowledge that in the course of its performance of the Engagement, Bizpreneur may use products, materials or methodologies proprietary to Bizpreneur or a third party or Bizpreneur may produce proprietary materials or methodologies that are not part of the Deliverables. You agree that You will not have nor obtain rights in such proprietary products, materials and methodologies except pursuant to a separate written agreement on terms to be agreed with Bizpreneur.

9. INDEMNITIES

- 9.1. Bizpreneur will defend, at its expense, any third party claim that the Deliverables infringes a copyright, provided that You -
- 9.1.1. allow Bizpreneur conduct of the defence of such claim, including any settlement;
- 9.1.2. make no prejudicial admission or statement;
- 9.1.3. notify Bizpreneur promptly of any claim; and
- 9.1.4. actively co-operate and assist Bizpreneur, at its expense, in the defence of the claim. In the event that any damages are finally awarded against You in respect of such a claim or agreed by Bizpreneur in final settlement, these will be paid by Bizpreneur.
- 9.2. This indemnity will not apply if the infringement is the result of -
- 9.2.1. You modifying or misusing the relevant Deliverable or providing such Deliverable to a third party;
- 9.2.2. Your failure to use enhancements or modifications offered by Bizpreneur to avoid infringement; or
- 9.2.3. the use of information, documents, facilities or items supplied by You for the purposes of the Engagement.
- 9.3. The indemnity contemplated in this clause constitutes Your sole and exclusive remedy and Bizpreneur's entire liability with respect to any part of the Deliverables infringing any third party rights of any kind.
- 9.4. Notwithstanding the aforementioned, You agree to bear (a) the cost for any compliance with the laws applicable to the Engagement and/or Deliverables and health and safety regulations; and (b) any liability, penalties, costs or expenses for any non-compliance with such applicable laws and health and safety regulations.
- 9.5. The express obligations and warranties made by Bizpreneur in this Agreement are in place of and to the exclusion (to the fullest extent permitted by law) of any other warranty, condition, term or undertaking of any kind, express or implied, statutory or otherwise, including (without limitation) as to the condition, performance, fitness for purpose or satisfactory quality, adequacy or otherwise, of the Deliverables or any part thereof.

10. LIMITATION OF LIABILITIES

- 10.1. You agree to give Bizpreneur a reasonable opportunity to remedy any failure or shortcoming in the provision by Bizpreneur of the services or Deliverables, including, without limitation, any failure to achieve specified service levels.
- 10.2. Bizpreneur undertakes, at its expense, to use all reasonable efforts to implement such remedy as soon as reasonably practicable after any such failure or shortcoming is identified and reported to it in writing.
- 10.3. Bizpreneur's total liability for all claims under or in connection with this Agreement including any arising from clause 10, (whether in contract or in delict and regardless of the nature of the conduct giving rise to such liability), shall not exceed in the aggregate the total fees received by Bizpreneur in respect of the Engagement.
- 10.4. Bizpreneur will not be liable for any loss or damage suffered by You unless Bizpreneur was the sole cause of

such loss or damage.

10.5. Bizpreneur will not be liable (whether in contract or in delict and regardless of the nature of the conduct giving rise to such liability) for any loss of production, loss of or corruption to software or data, loss of profits or of contracts, loss of business or of revenues, loss of operation time, loss of goodwill or reputation, whether caused directly or indirectly, or for any indirect, incidental, punitive or consequential loss, damage, cost or expense whatsoever.

10.6. Any action by You against Bizpreneur relating to or arising out of the Engagement or this Agreement must be brought within 2 (two) years after occurrence of the cause of action, failing which Bizpreneur will be discharged of any liability with respect to such claim.

10.7. This clause 10 survives the termination of the Agreement and the Engagement for any reason.

11. BREACH AND TERMINATION

11.1. Bizpreneur may at any time and without cause terminate this Agreement or the Engagement by giving 10 (ten) days written notice of termination to You.

11.2. If a defaulting Party has failed to remedy a breach of the terms hereof within 15 (fifteen) days after receipt by it of written notice from the aggrieved Party calling upon the defaulting Party to remedy a breach of this Agreement or the Engagement within such period, then in that case the aggrieved Party may terminate this Agreement with immediate effect.

11.3. Upon termination of this Agreement as envisaged under clause 11, You shall pay Bizpreneur for all services rendered and expenses reasonably incurred and proved by Bizpreneur prior to the date of termination.

11.4. Either Party may terminate the Agreement forthwith by written notice if the other Party becomes subject to business rescue proceedings, commits an act of insolvency or goes or is put into liquidation (other than solely for solvent amalgamation or reconstruction) or if a liquidator is appointed over all or any part of its business or assets or a judicial management order is made in respect of it or does anything analogous to the above under the laws of another country.

11.5. The Parties agree that all terms and conditions of the Agreement which by their intent or nature should be deemed to survive termination of hereof will be deemed to so survive. Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party, in particular, without limitation, termination shall not discharge either Party from payment of any sums already due under this Agreement.

12. NOTICES

12.1. Any notice or other communication given pursuant to this Agreement shall be in writing and shall be effective either when delivered personally to the Party for whom intended, or ten (10) days following deposit of the same into the mail (registered or recorded delivery), facsimile (with confirmation of delivery) or overnight delivery services (with confirmation of delivery), addressed to such Party at the address set forth in clause 12.2 or 12.3 below. Either Party may designate a different address by notice to the other given in accordance herewith.

12.2. In the case of Bizpreneur, the address is P.O Box 6629, Roggebaai, 8012, South Africa.

12.3. In the case of the Client, such address as set out on the

Letter of Engagement.

13. GENERAL

13.1. Applicable Law - The Agreement will be governed by and construed in accordance with the laws of South Africa and will be subject to the jurisdiction of the South African High Court.

13.2. Entire Agreement - This Agreement constitute the entire agreement between the Parties relating to the subject matter hereof and supersede all previous communications, representations and arrangements, written or oral, except in respect of any fraudulent misrepresentation made by either Party. The Client acknowledges that no reliance is placed on any representation made but not embodied in the Agreement. No variation will be effective unless in writing and signed by authorised representatives of both Parties. In the event of any conflict between the terms of the Letter of Engagement and this Agreement, the terms of the Letter of Engagement shall prevail.

13.3. Assignment - Bizpreneur's rights, benefits and/or obligations under this Agreement may be assigned, novated or transferred (as appropriate) to any other third party.

13.4. Data Privacy - Both Parties will comply with all relevant data privacy legislation. If Bizpreneur receives personal data, in connection with the Engagement, in relation to You and Your employees, directors and other officers, Bizpreneur may use and disclose this data for purposes connected with the Engagement.

13.5. Force Majeure - Neither Party shall be liable for any delay in performing or failure to perform their obligations (other than payment obligations hereunder) if such failure or delay is as a result of causes outside the reasonable control of the responsible Party including, without limitation, acts of God, inclement weather, fire, explosions, floods, epidemics, strikes, work stoppages, slowdowns or other industrial disputes, riots or civil disturbances, health, safety and security risks and acts of government ("Force Majeure"). The Party affected by Force Majeure shall notify the other Party within five (5) days from the date on which the occurrence or expected occurrence of Force Majeure comes to the notice of such Party, providing details of the Force Majeure and the expected duration thereof. If Force Majeure continues for more than ten (10) consecutive days, either Party may summarily terminate this Agreement by written notice to the other Party.

13.6. Costs - At the instance of Bizpreneur (where applicable) You will bear all of the costs, expenses and liabilities arising out of, or in connection with the preparation and/or negotiation of the Engagement.

13.7. Waiver - No waiver of any provision hereof shall be effective unless it is in writing and signed by both Parties. The delay or failure by either Party to exercise or enforce any of its rights hereunder shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

13.8. Severability - If at any time any one or more of the provisions hereof becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality or enforceability of its other provisions shall not in any way be affected or impaired.

13.9. Counterparts - This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.