

1. GENERAL

- 1.1.** These terms and conditions constitute the conditions upon which Spookfish (Pty) Ltd acting through its Kenai Visitor Management division (the Supplier) is to supply the Services specified in the Engagement Letter, to which this Appendix is attached, to the customer named in that Engagement Letter (the Customer). These standard terms and conditions and the Engagement Letter shall collectively be known as the Agreement.
- 1.2.** No variation, amendment or addition to the Agreement shall be binding on either party unless agreed in writing between a director of the Supplier and the Customer.
- 1.3.** No forbearance or delay by either party in or before enforcing this Agreement shall prejudice its rights. No waiver of any right or breach of this Agreement shall be effective unless in writing and signed by the party making the waiver and any such waiver shall not be construed as a waiver of any other right or breach.
- 1.4.** This Agreement shall supersede all prior representations and agreements and sets out the entire agreement and understanding between the parties relating to the provision of Services.
- 1.5.** This Agreement shall be binding and shall inure for the benefit of the successors and permitted and personal representatives (as the case may be) of each of the parties.
- 1.6.** This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Agreement by signing any such counterpart.
- 1.7.** Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. pro non scripto) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 1.8.** Save as expressly provided for herein, no party shall be entitled to cede, assign, transfer, encumber or delegate any of its rights, obligations and/or interest in, under or in terms of this Agreement to any third party without the prior written consent of all the other parties.

2. USE OF THE SERVICES

On payment of all fees due to the supplier, unless otherwise agreed in writing and signed by a director of the supplier, supplier hereby grants a non-exclusive, non-transferable, non-sublicensable, revocable, fully paid up license to the customer, at the location/s to use the services (including but not limited to all software (including all upgrades and updates thereof provided by the supplier to its customers in the ordinary course (if any))) during the term of this agreement, for the agreed purpose outlined in the engagement letter, save for third party material, which shall be licensed on such third party's terms.

3. INTELLECTUAL PROPERTY

- 3.1.** The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, as well as that made available via <https://www.kenai.co.za> all of its affiliated blogs, platforms and applications (Website)
- 3.2.** Same intellectual property includes, but is not limited to, all Website' and Services' content and material, information, data, software, business pitching content, icons, text, graphics, lay-outs, images, business ideas, sound clips, advertisements, video clips, trade names, logos, trade-marks, patents, designs, copyright and/or service marks (as well as the organisation and layout of the Website and/or any Service product) together with the underlying software code of the Website, regardless of their registration or not.
- 3.3.** Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Services and/or Website intellectual property.

3.4. All other rights to all intellectual property on the Website and of Services are expressly reserved by the Supplier and/or its licenced third parties. Subject to what is agreed to in this Agreement or as between the parties in writing, the Customer may not copy, download, use, print, modify, alter, publish, broadcast, distribute, sell or transfer any intellectual property, editorial content, graphics or other material from the Website, and/or of the Services, whether in whole or in part, without the written consent of the Supplier first being granted, which consent may be refused at the discretion of the Supplier.

3.5. The Supplier reserves the right to make improvements or changes to the intellectual property, information, artwork, graphics and other materials on the Website or of the Services at any time and without notice (other than where same changes will affect the Services to be provided as per this Agreement).

3.6. Where any of the Website and/or Services intellectual property has been licensed to the Supplier or belongs to any third party, all rights of use will also be subject to any terms and conditions which that licensor or third party imposes from time to time and the Customer agrees to comply with such third party terms and conditions too.

4. CUSTOMER'S OBLIGATIONS

4.1. The Customer shall be obliged to provide, in a timely manner, any information and assistance reasonably required by the Supplier in providing the Services.

4.2. The Customer shall ensure that its employees that will have access to the Services: (i) use the Services only in accordance with the provisions of this Agreement and the Supplier's instructions from time to time; and (ii) use secure passwords, which are changed no less frequently than 6 months and that each authorized employee shall keep his/her password confidential.

4.3. The Customer shall not attempt to copy, reverse engineer, modify, duplicate, create derivative works from, frame, mirror, republish or distribute or sell all or any portion of the Services in any form or media or by any other means.

4.4. The Customer shall use all reasonable endeavours to prevent any unauthorized access to, or use of, the Services and, in the event of any unauthorized access or use, promptly notify the Supplier.

4.5. The Customer shall, without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities in terms of this Agreement.

4.6. The Customer shall ensure that the Hardware specified in the Engagement Letter is installed when using the Services.

4.7. The Customer shall, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely be responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centers and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunication links caused by the internet.

4.8. The Customer shall maintain all licenses, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement.

5. SUPPLIER'S OBLIGATIONS

5.1. The Supplier undertakes that it will provide the Services at all times in accordance with the provisions of this Agreement. The undertaking in this clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier. If the Services do not conform with the Supplier's foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in this clause 5.1.

5.2. The Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error free; or that the Services, or the information obtained by the Customer through the Services will meet the Customer's requirements.

5.3. The Supplier shall not be responsible for any delays, delivery failures, or any loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the

Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6. AVAILABILITY, SUPPORT AND UPGRADES

6.1. The Supplier shall use commercially reasonable endeavors to make the Services available 24 hours a day, seven days a week, except for: (i) planned maintenance; and/or (ii) unscheduled maintenance performed outside of Normal Business Hours, provided the Supplier has used reasonable endeavors to give the Customer advance notice where possible. For the purpose of clause 6, Normal Business Hours shall mean between 08:00 to 18:00 South African time, on a day other than a Saturday, Sunday or public holiday in South Africa.

6.2. The Customer acknowledges and agrees that the Supplier may, during the Term, offer additional functionality or upgrades to the Services, but is under no obligation to do so. The Supplier shall notify the Customer of such upgrades and where necessary provide support as set out in clause 5.3 above. The Customer shall only be entitled to be provided with upgrades to the Services that the Supplier provides to its customers in the ordinary course of its business. Bespoke upgrade to the Services or the software will be subject to a separate written agreement between the parties.

6.3. The Supplier will, as part of the Services and at no additional costs to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours

7. THE FEE

7.1. The fee for the Services as set out in the Engagement Letter (the Fee) is exclusive of VAT (or any such tax on the provision of services) and expenses unless otherwise stated. Such taxes and Supplier's reasonable expenses incurred in providing the Services, as well as Hardware costs, are payable by the Customer. Schedules of costs incurred will be provided on request.

7.2. Notwithstanding anything to the contrary in this Agreement, in the event that the Customer requires the Supplier to procure the Hardware and the Customer cancels the Services or Agreement, the Customer shall be fully liable for costs incurred by the Supplier in procuring the Hardware.

8. PAYMENT

Payment of the fee and any expenses shall be due and made (without any deduction by way of set-off or otherwise) on the dates specified in the engagement letter or, if no such date is specified, within 7 (seven) days after presentation of invoice and supplier hereby reserves the right to charge interest at the rate of 2% (two percent) per annum over the prime rate from time to time of the standard bank of South Africa limited on sums outstanding from the due date until payment. The supplier also reserves the right to suspend the provision of services pending receipt of all outstanding fees.

9. LIABILITY

9.1. Supplier's liability in respect of the supply of the Services hereunder shall be limited to carrying out further services to correct any Services supplied, or at Supplier's option, to paying a refund of the lower of (i) the Fees paid in the 12 (twelve) months prior to the incident giving rise to liability, or (ii) R100,000 (one hundred thousand rand).

9.2. Supplier shall in no circumstances be liable to the Customer for any indirect or consequential loss, or for any loss of profit, business interruption or other economic loss, provided that nothing in this condition shall limit the liability of Supplier in respect of fraud or in respect of death or personal injury caused by the negligence of Supplier.

10. FORCE MAJEURE

If either party is prevented or delayed from performing its obligations due to circumstances beyond its reasonable control, such party shall not be liable and shall be entitled to terminate this agreement or extend the time for performance of its obligations by a period at least equivalent to that during which performance has been prevented or delayed by any of such circumstances. Force majeure does not extend to an obligation to pay any monies due by one party to the other.

11. LIMITED WARRANTY

Supplier warrants that:

11.1. If either party is prevented or delayed from performing its obligations due to circumstances beyond its reasonable control, such party shall not be liable and shall be entitled to terminate this Agreement or extend the time for performance of its obligations by a period at least equivalent to that during which performance has been prevented or delayed by any of such circumstances. Force Majeure does not extend to an obligation to pay any monies due by one party to the other.

11.2. It shall not knowingly infringe any copyright or South African patent.

11.3. Save as set out in clauses 11.1.1 and 11.2.1, all warranties, representations and guarantees relating to the Services, the Hardware and any other matter relating to this Agreement, including merchantability and fitness for purpose, and whether express or implied by statute, common law usage, or otherwise, are expressly excluded to the maximum extent permitted by law.

12. DATA PROTECTION

12.1. For the purposes of clause 12 Data Subject, Responsible Party, Operator, Processing, Personal Information and Special Personal Information shall bear the meaning as set out in the Protection of Personal Information Act, 4 of 2013 (POPIA). Any reference in clause 12 to Personal Information shall also include Special Personal Information. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under POPIA.

12.2. The parties warrant that they will at all times comply with the applicable legislation relating to data protection and privacy laws, including but not limited to POPIA (whether or not all of the provisions thereof are fully in force and effect).

12.3. The Supplier acknowledges that it may obtain direct and/or indirect access to Personal Information of various persons from the Customer who is the Responsible Party under this Agreement, and will act as an Operator in respect of that Personal Information.

12.4. The Supplier shall process Personal Information only with the knowledge and written authorisation of the Customer, treat personal information which comes to its knowledge as confidential and not disclose it, in each case unless required by applicable law or in the course of the proper performance of its duties.

12.5. The Customer shall obtain all necessary consents, from the Data Subjects, which are required by POPIA for the Supplier to process the Personal Information, in order to provide the Services.

12.6. The parties shall establish and maintain adequate security measures to secure the integrity and confidentiality of any and all Personal Information that the process, and in this regard will strictly comply with the requirements in section 19 of POPIA, whether or not they are a Responsible Party.

13. CONFIDENTIALITY AND NON-SOLICITATION

13.1. The parties undertake that they shall at all times keep confidential and shall not use or disclose any information provided to them by the other party in connection with the Services or this Agreement, save as may be necessary for the proper performance of the Services or as may be required by law or any regulatory authority. The Supplier may refer to the provision and general nature of the Services in its promotional and other material.

13.2. Subject to clause 13.1, the Supplier shall not be prevented from marketing or using any skills, tools or techniques learned during the course of performing the Services.

13.3. The Customer undertakes that during and also for the period of twelve months after any period during which any employee of Supplier is engaged in the provision of the Services or any other services to the Customer, the Customer shall not solicit, induce or entice any such employee to leave the service or employment of Supplier.

14. TERM

14.1. This Agreement shall, commence on the Effective Date set out in the Engagement Letter for a period of 13 months or

such other period specified as the Initial Term in the Engagement Letter (the Initial Term) and, thereafter this Agreement shall automatically renew for successive periods of 12 months or such other period specified as the Renewal Term in the Engagement Letter (each a Renewal Term), unless: (i) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Term or any Renewal Term, in which case this Agreement shall terminate upon the expiry of the Initial Term or applicable Renewal Term; or (ii) as otherwise terminated in accordance with the provisions of this Agreement.

14.2. For the purpose of this Agreement, Term shall collectively or singularly mean the Initial Term and any Renewal Term.

15. TERMINATION

15.1. Either party may terminate this agreement forthwith by notice in writing to the other if the other:

15.1.1. Commits any material or continuing breach of any of the terms and conditions of this Agreement which is not remediable, or which in the case of a breach capable of remedy, is not remedied within 30 (thirty) days after the non-breaching party has given written notice requiring such breach to be remedied;

15.1.2. Becomes bankrupt or insolvent (commercially or otherwise); (ii) has an application made, or a resolution is adopted, for its winding-up (whether provisional or final); (iii) commences business rescue in accordance with the Companies Act, 2008; (iv) proposes or effects an offer of compromise with its creditors or begins negotiations or takes any other step with a view to generally deferring, re-scheduling or otherwise re-adjusting all or a material part of its indebtedness or proposes or makes a general scheme, arrangement or composition with or for the benefit of its creditors or a moratorium is proposed or agreed in respect of or affecting all or a material part of its indebtedness; or (v) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

16. TERMINATION OBLIGATIONS

On termination of this agreement, for any reason, all licenses granted under this agreement shall immediately terminate and the customer shall immediately cease all use of the services.

17. GOVERNING LAW

17.1. In the event of any dispute, controversy or claim (a dispute) as to any parties respective rights and obligations or as to any matter arising from or that in any way is related to the Supplier's appointment, including any question as to its existence, validity or termination, the parties shall attempt in good faith to resolve the dispute between themselves.

17.2. If the parties are unable to resolve the dispute by mutual agreement within 14 (fourteen) days after the dispute is notified in writing by either one to the other, or within such further period as may be agreed, then the dispute shall be submitted to and finally resolved by a court having jurisdiction over the dispute.

17.3. These terms and conditions shall be governed by and construed in accordance with South African law.