

CHEEKY SOCIALS PROPRIETARY LIMITED

(Registration Number No.: 2022 / 741707 / 07)

TERMS AND CONDITIONS

PREAMBLE

WHEREAS the Parties wish to enter into an agreement for the provision of Services requested by the Client or for Services offered by the Contractor to the Client, the Parties hereby agree to be bound by the following Terms and Conditions.

TERMS AND CONDITIONS

1. Definitions

In this document the following defined terms apply:

- 1.1 **“Agreement”** means this document which contains the terms and conditions of the agreement between the Parties, together with the Client Intake Form and the Onboarding Doc, all of which form an inextricable part of the Agreement and all of which must be read in conjunction with each other, whether sent to you in physical or electronic format, and which constitutes the whole agreement between the Parties.
- 1.2 **“Client”** means you or any person which you legally represent that takes up any Services with us and whose details appear in the Agreement.
- 1.3 **“Client Intake Form”** means the form in which the Client discloses and consents to the collection, processing and storage of its personal and necessary special personal information which is required by the Contractor to be able to provide the Service/s requested, as well as but not limited to, the selected Service/s, the fee and payment structure of the selected Service/s, the duration of the selected Services and any other specifications required to be observed in the use of the Service/s;
- 1.4 **“Fee/s”** means the charges for our Services, any special development costs and service requested by you, administration costs and any other amount you must pay us for providing, using or maintaining the Services, and any other amount with specific reference to the Onboarding Doc.
- 1.5 **“Contractor”** means Cheeky Socials Proprietary Limited, Registration Number 2022/741707/07, a private, limited liability company incorporated in terms of the laws of the Republic of South Africa.

- 1.6 **“Onboarding Doc”** means the document sent to the Client by the Contactor in which it confirms, amongst other things, the contact details of key individuals responsible for managing the relationship and Service/s selected by the Client, the expectations of the Parties in the provision of the Service/s, specific processes to be followed to ensure that the Service/s are successfully accessed and delivered.
- 1.7 **“Party/ies”** means –
- 1.7.1 the Contractor (we/our/us); and
- 1.7.2 the Client (you/your).
- 1.8 **“Registered Office”** means 3 Frieda Street, Farrarmere, Benoni 1501, Republic of South Africa.
- 1.9 **“Service/s”** means the products and services we provide from time to time as specified in the Welcome Letter, including but not limited to: social media marketing, web development and graphic design.
- 1.10 **“We”, “our”** and **“us”** refers to the Contractor and **“you”** and **“your”** refers to the Client.

2. Communications between you and us

- 2.1 Our preferred method of written communication with you will be via a digital platform such as email or WhatsApp, although not limited to these platforms, but where this is not possible, we will write to you at your last known address.
- 2.2 You accept the risk that digital platforms and any systems and devices used in our communication with you may not be secure and must advise us to cease such communication where the security of this method of communication is at risk.
- 2.3 The Contractor maintains basic standards in our dealings with you, which include:
- 2.3.1 you receiving copies of all substantive correspondence;
- 2.3.2 your telephone calls or other correspondence using digital platforms being responded to during the course of the same day wherever this is possible;
- 2.3.3 all communications being in plain English;
- 2.4 We expect you to respond to our requests in a similar manner.
- 2.5 We will accept your instructions in relation to the Services we provide only from you, unless you direct us to accept instructions from anyone else.

- 2.6 As a matter of course, all incoming and outgoing communications with you may be recorded or retained for training and monitoring purposes and will be retained on your file in accordance with clause 14 of these Terms and Conditions.

3. Your relationship with the Contractor

- 3.1 We value our relationship with you and welcome any suggestion for its improvement.
- 3.2 Your relationship is solely with the Contractor.
- 3.3 The Contractor will only accept liability for the Services provided to you as described in the Agreement.
- 3.4 Our relationship is with you. We owe a duty of care only to you. No other person may rely on our Services or these Terms and Conditions without our prior written agreement.

4. Ending your relationship with the Contractor

- 4.1 You may ask us, in writing, to stop providing Services to you at any time, subject to the terms and conditions contained herein.
- 4.2 We may stop providing Services to you if we have good reason to, for example if:
- 4.2.1 we will be in breach of our legislative or regulatory obligations; or
 - 4.2.2 a conflict of interest arises; or
 - 4.2.3 an invoice or payment on account remains unpaid without justifiable reason.
- 4.3 We are entitled to be paid for all Services performed up to the point that the Agreement expires or the agreed notice period of terminating the Agreement by either Party has passed. Until all outstanding amounts have been paid, we are entitled to withhold any Services or work we were attending to for you.

5. Our Services to you

- 5.1 The extent and nature of the Services that we provide to you, and who will be responsible for it, is set out in the Client Intake Form and/or the Onboarding Doc.
- 5.2 We are not responsible for matters that are outside of the scope of the Services that we agree to provide to you, or which would not normally be considered part of the Services we offer and provide.

- 5.3 The Onboarding Doc sets out who is responsible, and where relevant their supervisor, for Services provided to you.
- 5.4 Your commencement and/or use of the Services will constitute automatic acceptance of the Agreement notwithstanding anything raised to the contrary by you.

6. Your obligations

- 6.1 If or where applicable, you must adhere to all relevant legislation when using the Services.
- 6.2 You must have the necessary capacity, power and authority to enter into a business relationship with us.
- 6.3 Where applicable, all information and documents you give to us must comply with the applicable legislation, be true and correct in all material aspects and be accurate and up to date.
- 6.4 You will follow the Monthly Process as set out in the Onboarding Doc.
- 6.5 Where applicable, you must make sure that only authorised people access and use the Services.
- 6.6 You must give us all the information and data that we may request to enable us to provide the Services.
- 6.7 You confirm that you understand and appreciate the risks and costs inherent in the Services, as well as your rights and obligations under the Services.
- 6.8 You must make sure that your digital systems and devices can communicate with ours if or where so required.
- 6.9 You explicitly indemnify us against any losses, claims or damages as a result of but not limited to:
 - 6.9.1 your failure to back up your data with any external service provider or hosting service you utilise;
 - 6.9.2 your failure to comply with the security requirements of any external service provider or hosting service you utilise;
 - 6.9.3 your digital systems and devices crashing, being offline, being hacked by a malicious party or as a result of any other incident as a result of which your data cannot be restored.

7. Charging for our Services

- 7.1 The basis of us charging for our Services is set out in the Onboarding Doc.
- 7.2 Where the Fee is fixed:
 - 7.2.1 it will be charged in line with the prevailing Services specifications as determined and published from time to time or as agreed with you; and
 - 7.2.2 additional Services, over and above that agreed for in the fixed fee, will be charged on the basis as set out in the Agreement.
- 7.3 Where the fee is calculated by reference to the time spent:
 - 7.3.1 the fee is calculated by multiplying the proportion of time spent per hour, or part thereof, by our hourly rates as set out in the Agreement;
 - 7.3.2 the hourly rates are subject to change, ordinarily at the beginning of each calendar year and you will be informed in writing of any change to the relevant rates;
 - 7.3.3 you will be charged for all chargeable work done on your Services which includes:
 - 7.3.3.1 bespoke research and development;
 - 7.3.3.2 essential travelling;
 - 7.3.4 accounts and time records will be provided to you upon written request.
- 7.4 Any requirement to make payments in arrears or on account of our invoices is set out in the Onboarding Doc or will be subsequently requested in writing.
- 7.5 You undertake that you have read and understood the Fees we are charging you, that these Fees may change from time to time and that you must pay all Fees when they are due to us.
- 7.6 Unless otherwise stated and where value-added tax (VAT) is applicable, it will be included in the Fees and indicated on your account statement, which will be regarded as a VAT invoice.

8. Other fees

- 8.1 Routine overheads are included in our agreed charges.
- 8.2 We may charge for non-routine items but where this is required, we will do our utmost to raise such charges with your consent before doing so. Where it is impossible to obtain your consent and where in our sole discretion the provision of such non-routine

item is essential for the delivery of the Service, we will incur the non-routine item and charge you accordingly. We will detail such items in our account to you.

8.3 Where we need to travel to provide your Services we do so by the most appropriate means and if applicable, hotel accommodation will be of a suitable business standard. Actual costs are charged, apart from car mileage charges which will be charged at the prevailing Automobile Association of South Africa rates.

8.4 We will set out any anticipated expenses in the Welcome Letter.

9. Invoices

9.1 Our invoices for Fees will be sent out at the time you accept our quotation, or upon receipt of your order.

9.2 Subject to any alternative arrangements set out in the Onboarding Doc or subsequently agreed between us in writing, invoices for time-based fees will be sent out upon the conclusion of each time-based Service.

9.3 Invoices must be paid in advance upon presentation of our invoice, or acceptance of your order.

9.4 Payment of invoices can be made in the ways set out on the face of the invoice.

9.5 If we hold any credit balances on your account, we will automatically use that money to pay, partially or in full, any outstanding invoice.

9.6 If an invoice remains unpaid after 7 (seven) days we may:

9.6.1 cease providing our Services to you;

9.6.2 exercise our right to charge interest on a daily basis at the interbank prime interest rate plus 2%;

9.6.3 take action to recover our unpaid invoice, which would include the costs associated with such action; and

9.6.4 withhold any Services until we are paid in full.

9.7 You are entitled to complain about our Services and your invoice.

10. Disputes

10.1 Should any dispute, disagreement or claim arise between the Contractor and you concerning the Agreement that cannot be resolved in good faith, we both agree to –

- 10.1.1 In the absence of any specific provision to the contrary, resolve the dispute by negotiation. This entails one of the parties inviting the other in writing to meet and to attempt to resolve the dispute within 14 (fourteen) days from the date of the written invitation.
- 10.1.2 If the dispute has not been resolved by negotiation within 14 (fourteen) days, then submit the dispute to arbitration before an appropriate alternate dispute resolution body and agree to be bound by their decision.
- 10.2 the Parties nevertheless agree that nothing contained in the Agreement or these Terms and Conditions shall prevent or prohibit a Party from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.

11. Intellectual Property Rights

- 11.1 We retain all intellectual property rights to the Services and documents used to provide the Services.
- 11.2 You may not duplicate, reproduce, decompile, reverse-engineer or create derivative works from, or in any way tamper with any of our intellectual property or any systems and devices or documents.
- 11.3 You may not infringe, misappropriate, impair or contest the validity of any of our third party's intellectual property rights when accessing and using the Services and performing your obligations under these Terms and Conditions or any agreement with us.
- 11.4 Our copyright will not be transferred to you although you have our licence to use our Services for the purposes for which it was created. However, in those circumstances we retain the right:
 - 11.4.1 to be identified as the author or creator of the Services; and
 - 11.4.2 to object to any misuse of it.

12. Complaints

- 12.1 Despite our best efforts you may feel the need to complain about the level of our service.
- 12.2 In the event of any complaint, please contact our office on +27 (0)82 404-4424 or at info@cheekysocials.co.za where we will follow our internal procedures to resolve your complaint within 7 (seven) days.

12.3 You will not incur a charge for us handling your complaint.

13. Confidentiality

13.1 We will not disclose anything we are doing for you, or indeed that we provide Services to you, without your prior consent unless such disclosure is made in terms of clause 13.2 below.

13.2 You explicitly consent to our disclosure in the following circumstances:

13.2.1 it is in the proper course of the Services we are providing you; or

13.2.2 it is on a confidential basis to our auditors or external assessors or similar; or

13.2.3 it is to our insurers; or

13.2.4 the disclosed information is already in the public domain; or

13.2.5 we are compelled by law to do so.

13.3 Where we are compelled to disclose information, or you ask us to object to disclosure, we will charge for the work involved.

13.4 We both agree not to issue any publicity material or information about our relationship and the work we are doing to the media without the other's consent, unless it is already in the public domain.

14. Data Protection in terms of the Protection of Personal Information Act (POPIA)

14.1 We comply strictly with current laws on data protection.

14.2 We store and process information about you in the context of our business. We are able to supply you on request with that information.

14.3 You can find our Privacy Notice And Consent To Process Personal Information on our website www.cheekysocials.co.za.

15. Newsletters

15.1 We regularly send out, by email or via publication on our social pages, news of our services, seminars or items of interest to our clients.

15.2 If you do not wish to receive such material, inform our office on +27 (0)82 404-4424 or at info@cheekysocials.co.za and we will remove your name from our distribution list.

16. Retention of papers and documents

- 16.1 We will retain your papers or electronic records for the minimum prescribed period from the date of the final invoice after which time we reserve the right to destroy them.

17. Legal jurisdiction

- 17.1 All the work we do for you is governed by the laws of the Republic of South Africa.
- 17.2 Where we conduct business with Clients in other jurisdictions and a dispute arises, we both agree that:
- 17.2.1 the alternate dispute resolution mechanisms contemplated in clause 10 will apply and that any proceedings that may arise between us will be conducted in terms of the Arbitration Foundation of South Africa's set of rules for international arbitration.

18. Events beyond our control

- 18.1 Events beyond either of our control include acts of God, strikes, lockouts, riots, acts of war, civil disorder, rebellions and revolutions in any country, pandemics, acts of terrorism, vandalism or sabotage, governmental regulations imposed after the fact, communication line failures, power and telecommunications failures, earthquakes, fire, floods or other natural disasters or events.
- 18.2 If either of us or our agents are affected by an event beyond control where it becomes impossible to perform, the affected Party will inform the other Party as soon as reasonably possible.

19. No warranty, liability and indemnity

- 19.1 We will be bound only by warranties expressly given in the Agreement about our Service/s and will not be bound by any other warranty, whether express, implied or tacit.
- 19.2 Except if we were grossly negligent or guilty of wilful misconduct, we will not be liable for, and you specifically indemnify us against and hold us harmless from, all demands, claims, actions, losses and damage that may be brought against us or that we or you may suffer or incur arising from –
- 19.2.1 the freezing, suspension, modification, restriction and termination or withdrawal of Services;
- 19.2.2 events beyond our reasonable control;
- 19.2.3 incorrect information you or anyone else gave us;
- 19.2.4 the use of any of the Services;

- 19.2.5 any infringement of intellectual property rights;
- 19.2.6 any theft, fraud or other unlawful activity or any negligent, wilful or fraudulent misconduct by you;
- 19.2.7 your use of digital platforms to communicate with us and any of the associated risks explained herein;
- 19.2.8 any costs we incurred to enforce our rights or defend any legal action brought against us because you have access to the Services;
- 19.2.9 any instruction you gave us, including any incorrect, illegible, incomplete or inaccurate information or data;
- 19.2.10 any unintentional delays in accessing or using the Services or any use, misuse, abuse or possession of any software used to access the Services;
- 19.2.11 any unauthorised or unlawful access to any of your data or any loss, destruction or theft or damage to any of your or our data or equipment;
- 19.2.12 any fluctuation in exchange rates, interest rates or values applicable to any transactions conducted using the Services;
- 19.2.13 any malfunction, distortion, interruption, failure, glitch, bug or defect experienced with or the unavailability of any hardware, software, system, equipment, network or communication links used for the Services;
- 19.2.14 any security breaches that you or a third party caused;
- 19.2.15 the inability of a third party to process a transaction or deliver a service;
- 19.2.16 the destruction of or damage to our or your facilities because of power failures or similar occurrences;
- 19.2.17 any false, fraudulent or altered instruction, mandate, consent, commitment or the like that you allegedly gave;
- 19.2.18 any lack or defect in your authority to represent or act on behalf of any third party;
or
- 19.2.19 your acting outside of your mandate.
- 19.3 We do not guarantee that the Service/s will meet your requirements or be reliable, always on time, secure, uninterrupted or error-free and disclaim all express or implied warranties and conditions regarding the Service's fitness for a particular purpose.

- 19.4 We will be liable for direct damages only, and only if we are guilty of gross negligence or wilful misconduct, and the damages will be limited to the actual financial loss and will not extend to any consequential or other damages.

20. Changes

- 20.1 Any amendment to the Terms and Conditions and/or the Agreement will not constitute a novation of the Agreement or of any of your obligations.

21. Legal Notices

- 21.1 The Parties choose the following addresses as their *domicilia citandi executandi* to receive written legal notices, for example letters of demand as well as court and alternate dispute resolution documents:

21.1.1 Us: 3 Frieda Street, Farrarmere, Benoni 1501, Republic of South Africa.

21.1.2 You: the last known physical address you gave us, or your last known email address.

21.2 A Party can change its address to another physical address or email address by giving the other Party written notice. The change will be effective 7 (seven) days after receipt of the written notice, which notice will be deemed to have been received:

21.2.1 on the date of delivery if the notice was delivered by hand during ordinary business hours; and

21.2.2 within 7 (seven) days after the posting date if the notice was delivered by registered post; or

21.2.3 in the case of email service, if the recipient of the notice does not acknowledge service within 3 (three) days, then the other Party must serve the notice by hand at the physical address.

22. General

22.1 You cannot cede, assign or transfer your rights and/or delegate obligations in terms of the Agreement to anyone without our prior written consent. We may cede our rights or delegate our obligations in terms of the Agreement to anyone. You consent to any splitting of claims that arise as a result of this cession and/or delegation.

22.2 Even if the Agreement terminates, the parties must meet obligations that arise before or after the termination.

- 22.3 If we do not exercise any of our rights or parts thereof, or if we do not exercise them immediately, it does not mean that we have waived those rights.
- 22.4 The Agreement which includes these Terms and Conditions, the Client Intake Form and Onboarding Doc is the whole agreement between the Parties.
- 22.5 You renounce and agree not to rely on any immunity you may have in respect of your obligations under this Agreement, even if immunity is granted through a legal process or court in any jurisdiction.
- 22.6 If you are subject to laws other than South African laws, the expressions used in the Agreement that refer to South African legal process will also include comparable proceedings under the other laws.
- 22.7 We may approach any court with jurisdiction for any claim, no matter the amount of the claim, and you consent to the jurisdiction of that court. You must pay all legal fees, costs, charges and disbursements (on the attorney-and-own-Client scale) we incur to enforce any of the provisions of the Agreement as soon as we ask you to.
- 22.8 If any court finds any provision of the Agreement to be defective or unenforceable, the remaining provisions of the Agreement will still apply.
- 22.9 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 22.10 Each of the Parties to this Agreement acknowledges and agrees that it has been free to obtain independent legal and other professional advice regarding the provisions of the Agreement and that the content of this Agreement is in accordance with the Party's intentions.
- 22.11 These terms and Conditions form an inextricable part of the Agreement and must be read in conjunction with the Client Intake Form and Onboarding Doc.