

## Rogerwilco Terms & Conditions

We've published this terms and conditions document on our website to provide prospective clients with some insights to the agreement we'll want to sign with them should we end up working together. It is a fairly generic document - we'll inevitably adapt it to reflect the specific nature of the work you ask us to do - hence the references to the various appendices.

### 1. INTRODUCTION

1.1 The Client commissioned Rogerwilco to supply digital marketing services or web development services ("services"); and,

1.2 The Parties wish to record their agreement as set out hereunder to regulate their on-going relationship in respect of the provision of the services, [this will be presented to you in Annexure C once you've received a formal proposal from us].

1.3 Furthermore, the provision of the services necessitates the Client sharing marketing and business strategy and tactics with Rogerwilco and Rogerwilco sharing its technical know-how and business processes with the Client, which, for each party, are proprietary, secret and confidential.

1.4 The parties wish to also record their agreement to protect the information which they receive from the other in the course of their relationship, and commit to protect the information. Confidential information must remain confidential until either it has become public in some other way, or either party has consented to such information being made public.

### 2. DEFINITIONS AND INTERPRETATION

The terms used in this agreement and Annexures A and C are defined in Annexure B.

### **3. APPOINTMENT, ROLES AND EXPECTATIONS**

3.1 Rogerwilco will provide the digital marketing or web development resources and services in accordance with the specifications and costs described in Annexure C.

3.2 These specifications and costs may be reviewed from time to time, but amendments will only be binding once Annexure C has been updated and confirmed in writing.

3.3 Should any additional resources or services be required, or should the time allocated in Annexure C be exceeded, then the additional costs of the resources, services or time will be for the account of the Client.

3.4 Rogerwilco's ability to provide the Services is dependent on the full and timely co-operation of the Client and the accuracy and completeness of any information and data the Client provides to Rogerwilco. Accordingly, the Client will provide Rogerwilco with all information, data and documentation reasonably required by Rogerwilco.

### **4. CONSIDERATION AND PAYMENT**

4.1 THE Client will pay to Rogerwilco the Fees set out in Annexure C (plus VAT if applicable) per month on receipt of a valid VAT invoice. These fees will be payable monthly in advance, unless otherwise stated in Annexure C.

4.2 Where any additional services are to be provided or the time allocated may be exceeded, payment will be based on hours expended at the hourly charge rate of Rogerwilco as set out in Annexure C. In such a case, the Client will be provided with a written quotation at the rates set out in Annexure C, including a cost estimate for the additional work to be performed by Rogerwilco .

4.3 The parties agree that Rogerwilco may be required to review its fee structure periodically and that the parties will negotiate fee changes in good faith. All changes will be

confirmed in writing by way of updating the attached Annexure.

## 5. TERM AND TERMINATION

5.1 This agreement will be deemed to have commenced upon the date specified in Annex C and will remain valid as specified in Annex C;

5.2 This Agreement will remain valid and binding as between the parties subject to the right of each Party to terminate this Agreement, or any specific Services, are 3 (three) calendar month's prior written notice to the other Party, unless specified in Annex C. The Agreement, or any specific Services may not be terminated within the first 6 (six) months of the Commencement Date, without prior written agreement of both parties, unless specified in Annex C.;

5.3 Notwithstanding the provisions of clause 5.1 above, and without prejudice to any other rights it may have under this Agreement or at law the other of the Parties will have the right to terminate this Agreement forthwith upon notice if a Party:

5.3.1 enters into liquidation (whether voluntary or otherwise), or business rescue, or if any execution will be levied on any other Party's equipment or if a Party has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, or if a Party compounds or makes any arrangement with its creditors or commits any act of bankruptcy or suffers any analogous proceedings under foreign law; and/or

5.3.2 breaches any term or condition of this Agreement and fails to remedy the same within fourteen (14) days of written notice thereof specifying the breach and requiring the same to be remedied.

5.4 The parties will accept service of all documents, notices and processes in terms of this Agreement at their respective chosen addresses as set out in the title of this Agreement.

5.5 Any notice or communication sent by either party to the other shall be deemed to have been received on the seventh day after the date of posting or on the date of delivery if despatched by hand or email, and on the following day if sent by fax.

5.6 Either party shall be entitled to change the address specified by it in terms of this Agreement to any other physical address in no less than 14 (fourteen) days prior written notice to the other party.

5.7 Termination of this Agreement will be without prejudice to the accrued rights of the Client or Rogerwilco prior to the date of termination.

5.8 For the avoidance of doubt, the mutual obligations to protect the information of the other party will survive the cancellation of this agreement for whatever reason for the agreed period of 2 (two) years.

## **6. SERVICE PERFORMANCE REVIEW**

The Client and Rogerwilco will, on a six-monthly basis, conduct a joint review of the Resources and Services in order to measure the performance and service levels of Rogerwilco. Such a performance review will be in addition to the standard monthly reporting meetings. No additional fees will be incurred for such reviews, unless agreed to by both parties. The performance and service levels will be reviewed and measured in line with the agreed levels of service as laid out in Annexure C.

## **7. HOURS OF SERVICE**

Rogerwilco will support the services to the best of its abilities during Business Hours on Business Days.

## 8. CONTENT

The Client warrants that any element of graphics, text, photos, designs, trademarks, sound, images, videos or other such material or Content furnished to Rogerwilco for use in the services are owned by the Client, or that the Client has the permission from the rightful owner to use such material and Content. The Client acknowledges that is solely responsible for the Content on the Deployment and will indemnify Rogerwilco accordingly.

## 9. INTELLECTUAL PROPERTY

The Parties acknowledge and agree that all Intellectual Property rights vested in or owned by a Party or held by a Party under any licensing agreement with any independent third party, will be and remain the sole property of such Party and/or the relevant licensors. This Agreement will not transfer or assign any intellectual property rights to any Party unless otherwise agreed in writing.

## 10. NON-SOLICITATION

10.1 Neither Party nor any entity in which such Party is directly or indirectly interested or by which it is controlled, nor any third party acting for and on behalf of either Party will, during the term of this Agreement and for a period of 6 (six) months following the date of termination of this Agreement –

10.1.1 Call on, solicit, or take away any of the other Party's clients, partners, investors or potential clients about whom the first Party became aware as a result of this Agreement;

10.1.2 Encourage or entice or incite or persuade or induce any employee of the other Party and its successors to terminate his/her employment by it and/or

10.1.3 Furnish any information or advice to any employee then employed by the other Party or its successors or to any prospective employer of such employee or use any other means which

are directly or indirectly designed, or in the ordinary course of events calculated, to result in any such employee terminating his/her employment by them and /or becoming employed by or directly or indirectly in any way interested in or associated with any other entity.

## **11. LIMITATION OF LIABILITY**

Rogerwilco, its directors, employees and representatives will take all reasonable care and skill in the performance of this Agreement. However, Rogerwilco, its directors, employees and representatives will not be held liable for, inter alia, any direct, indirect, punitive or consequential loss or damages, or any loss of income, profits, goodwill, data or business interruption that may result to the Client or a third party in connection with the Services delivered under this Agreement; except where claims or liabilities relating to loss or damages to the Client are caused by the negligent or wilful acts of Rogerwilco's employees. In no event will Rogerwilco's total liability exceed the sum of payments actually received from the Client in terms of this agreement.

## **12. DISPUTE RESOLUTION**

12.1 If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The reference to negotiation and mediation is a pre-condition to the parties having the dispute resolved by arbitration.

12.2 A dispute will arise if the dispute and the detail thereof is communicated by one party to the other in writing.

12.3 Within 21 (twenty one) days of the dispute arising, the Parties will seek an amicable resolution to such dispute by referring such dispute to representatives of each of the Parties concerned for their negotiation and resolution of the dispute. The representatives will be authorised to resolve the dispute.

12.4 In the event of the negotiation envisaged in 12.3 failing for whatsoever reason or cause, the Parties must, within 21 (twenty one) days of such failure refer the dispute for resolution by way of mediation in accordance with the then current rules of Tokiso Commercial Mediation Panel. The negotiation will, inter alia, be deemed to have failed if one of the parties declares in writing that it has failed.

12.5 In the event of the mediation envisaged in 12.4 failing in terms of the rules of Tokiso if one of the parties declares in writing that it has failed, the matter must, within 21 (twenty one) days thereafter, be referred to arbitration as envisaged in clauses below.

12.6 The period of 21 (twenty one) days aforesaid for negotiation or mediation may be shortened or lengthened by written agreement between the parties.

12.7 The Arbitration will be an expedited arbitration in South Africa in accordance with the then current rules for expedited arbitration of the Arbitration Foundation of Southern Africa (below "AFSA") by 1 (one) arbitrator appointed by agreement between the Parties. If the parties cannot agree on the arbitrator within 10 (ten) Business Days after the referral of the dispute, the arbitrator will be appointed by the Secretariat of AFSA.

12.8 The provisions of this clause 12 will not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict or mandamus pending the outcome of the arbitration for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa having jurisdiction.

12.9 This clause is a separate, divisible agreement from the rest of this Agreement and will remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason.

## **13. REPRESENTATIONS AND WARRANTIES**

13.1 Each party represents and warrants that it has the authority necessary to enter into this agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this agreement.

13.2 The disclosing party warrants that:

13.2.1 disclosure of the information to the receiving party will not result in a breach of any other agreement to which it is a party;

13.2.2 will, to the best of its knowledge and belief, not infringe the rights of any third party and the disclosing party hereby indemnifies and holds the receiving party harmless against any liability for third party claims on such a basis.

## **14. ADDITIONAL ACTION**

Each party to this agreement will execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this agreement.

## **15. AMENDMENTS**

No amendment, interpretation or waiver of any of the provisions of this agreement will be effective unless reduced to writing and signed by both the parties.

## **16. ENFORCEMENT**

The failure to enforce or to require the performance at any time of any of the provisions of this agreement will not be construed to be a waiver of such provision, and will not affect either the validity of this agreement or any part hereof or the right of any party to enforce the provisions of



this agreement.

## **17. FORCE MAJEURE**

Neither party will be liable to the other for any failure to perform or delay in performance of its obligations under this Agreement caused by any circumstances beyond its reasonable control (including but not limited to war, invasion, act of foreign enemy, hostilities whether war be declared or not, civil war or strife, rebellion, illegal strikes, acts of God, acts of governments or other prevailing authorities), in each case if, and only to the extent that, the non-performing party is without fault in causing the failure or delay, the failure or delay could not have been prevented by reasonable precautions and the failure or delay cannot reasonably be circumvented by the non-performing party.

## **18. ENTIRE AGREEMENT**

This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral with respect to the subject matter of this agreement.

## **19. GOVERNING LAW**

This agreement and the relationship of the parties in connection with the subject matter of this agreement will be governed and determined in accordance with the laws of South Africa.

## **20. GENERAL**

20.1 The relationship between the parties will be one of the utmost good faith and each party undertakes to observe the utmost good faith towards the other, and to act reasonably with respect to matters that relate to this agreement.

20.2 This agreement is personal to the parties and will not be assigned or otherwise

transferred in whole or in part by either party without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed.

20.3 No latitude, extension or other indulgence which may be given or allowed by any party ("the Grantor") to the other party in respect of any obligation under this agreement will under any circumstances operate as a waiver or novation of, or otherwise effect, any of the Grantor's rights in terms hereof or arising herefrom, or preclude the Grantor from enforcing at any time and without notice strict and punctual compliance with each and every provision or term hereof.

## **21. NOTICES**

Any notice required to be given by one Party hereto to the other will be in writing and will be served by sending the same by facsimile or by email or by delivering the same to the Notice Address as detailed at the top of this Agreement for the attention of the Managing Director or such other address as a Party may from time to time notify to the other Party and any notice so served will be deemed to have been served when delivered by hand at the time of such delivery and when sent by facsimile or email during normal business hours on the date of transmission and in proving service of the same it will be sufficient to prove, in the case of a letter that such letter was properly delivered and in the case of a facsimile or email that the same was duly dispatched to a current facsimile number or email address of the addressee for the said address of service.

## **22. COSTS**

Each party will bear that party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this agreement.

## **23. SEVERABILITY**

In the event at any one or more of the provisions of this agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability

will not affect any other provision of this agreement and this agreement will be construed as if such invalid, illegal or unenforceable provision was not a part of this agreement, and the agreement will be carried out as nearly as possible in accordance with its original terms and intent.

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