

HITF T's & C's

These Ts & Cs regulate the relationship between the parties.

1. DEFINITIONS AND INTERPRETATION

- 1.1. **"Information Technology Development Services"** means any customization or specific upgrades made to the Client HITF Platform.
- 1.2. **"HITF Platform"** means the Client training and content HITF Platform where training material and/or digital content is hosted and saved, for the purposes of marketing and/or training internally and externally to The Client.
- 1.3. **"Services"** means the creative media development (any media or development of training material or digital content for use on the Client HITF Platform), information technology development, HITF Platform and any other service that HITF provides.
- 1.4. **"User"** is a person or thing that uses the services, including the HITF Platform of HITF.
- 1.5. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.6. **"Agreement"** or any reference to this agreement will be construed as a reference to this Agreement, Agreed to Fee Structure and Payment Terms.

2. COMMENCEMENT AND DURATION

Payment of any deposit constitutes acceptance of these terms and conditions or date of acceptance of this agreement digitally, whichever comes first.

3. HITF

- 3.1. Be responsible for providing the services as selected by the Client.
- 3.2. Provide a safe and secure hosting environment for the data and information to be used for the HITF Platform.
- 3.3. Ensure there is 99.9% uptime availability.
- 3.4. Provide the Client with access to all data and media loaded onto the HITF Platform.
- 3.5. Perform periodical cloud back-ups of all data and media loaded onto the HITF Platform.
- 3.6. Ensure that the system used is secure and to maintain and update the necessary software as required in the opinion of HITF.

4. MAINTENANCE ENHANCEMENTS

HITF reserves the right to make changes to the software, including, without limitation, the operating procedure, programming languages, library modules, timing, accessibility techniques, types of hardware supportability, and other related programming and documentation improvements required to maintain a current, competitive product.

5. FEE STRUCTURE AND INVOICING

- 5.1. The Client agrees to the fee structure and invoicing terms as set out more fully on each and every tax invoice.
- 5.2. HITF's fees will increase by 5% or in accordance with CPI – whichever is highest, which the client hereby accepts. Unless otherwise agreed to in writing between the parties.
- 5.3. Subject to clause 5.2 the parties agree to a fixed fee structure for the duration of this agreement, unless otherwise agreed.

6. TERMINATION

- 6.1. A party wishing to terminate the agreement will give the other party 30 (thirty) days prior written notice of such cancellation and all HITF Platforms and services will be automatically suspended after a 30 (thirty) day period.
- 6.2. In the event that either Party commits an act of insolvency or is placed under a provisional or final winding-up or judicial management order or if either Party makes an assignment for the benefit of creditors, or fails to satisfy or take steps to have set aside any judgment taken against it within 7 (seven) business days after such judgment has come

to its notice, then the other Party will be entitled to immediately terminate the Agreement.

7. BREACH

- 7.1. Should either Party breach or otherwise be in default of any of its obligations under or in terms of this Agreement and remain in default or fail to remedy such breach, if such breach is indeed capable of remedy, within 7 (seven) business days of receipt of written notice calling upon it to do so, the other Party will be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it:
 - 7.1.1. to cancel this Agreement, with or without claiming damages, or
 - 7.1.2. to obtain an order against such defaulting Party for specific performance, with or without claiming damages.
- 7.1.3. Immediately suspend any services provided or HITF Platforms.

8. PROTECTION OF PERSONAL INFORMATION

- 8.1. HITF acknowledges that pursuant to this Agreement, it may have access to Personal Information relating to the Data Subjects. Accordingly, HITF shall:
 - 8.2. Treat the Personal Information as strictly confidential in accordance with the provisions contained in clause 8.
 - 8.3. Only Process Personal Information in accordance with applicable laws, including without limitation PAIA and POPIA, in terms of this Agreement and in accordance with any instructions, requirements or specific directions of The Client.
 - 8.4. Not disclose or otherwise make available the Personal Information to any third party (including sub-contractors and staff) other than authorised staff who require access to such Personal Information strictly in order for HITF to carry out its obligations under this Agreement, and only if The Client has provided its prior written permission to do so to HITF.
 - 8.5. Ensure that all staff having access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use.
 - 8.6. Take appropriate, reasonable technical and organisational measures to ensure that the integrity of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage or alteration. In this regard, and without limiting the foregoing, HITF shall:
 - 8.7. Immediately notify The Client if it becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this agreement relating to the Personal Information or the processing thereof.
 - 8.8. Provide The Client with all assistance requested by The Client in relation to any requests or complaints received from a client, including requests for the deletion, updating or correction of Personal Information or client data.

9. INTELLECTUAL PROPERTY

- This section is to protect both parties in terms of intellectual property.
- 9.1. The intellectual property and all programming infrastructure of the Online HITF Platform belongs to HITF but the complete database of the HITF Platform concerning all user-data and all media loaded on the HITF Platform is the property of the Client.
 - 9.2. HITF offers The Client complete access to all data and media loaded on the HITF Platform at all times and commits to making periodical, secure cloud-based backups. All data and media loaded on the HITF Platform will be considered the private property of The Client.
 - 9.3. The Client or any of its clients, users or partners shall not copy the programming infrastructure or programming code in whole or in part, modify the programming code, reverse compile or reverse assemble all or any portion of the programming code.
 - 9.4. The Client agrees that any part programming code is confidential. The Client agrees not to disclose, copy, provide or make this available to any third party without prior written consent given by HITF.

- 9.5. In the case of HITF and The Client parting ways, there will be a handover of all The Client's data and any media that exists on the server. However, any software or programming infrastructure created by HITF on the HITF Platform will no longer be available for The Client's use.
- 9.6. Should any of the services or its use become subject of a claim alleging the infringement of the intellectual property rights of a third-party then HITF may use all reasonable endeavors to obtain for The Client a right to use the Service by procuring a license or otherwise;
- 9.6.1. where technically possible, modify the services to remove the infringement;
- 9.6.2. replace the Services with other non-infringing products with substantially equivalent functions and performance; or
- 9.6.3. refund The Client the cost of the services calculated on a pro rata basis per year or part thereof.
- 9.7. HITF shall notify The Client in writing without delay in the event of it being of the opinion that the services or its use may infringe the intellectual property rights of any third party.
- 9.8. Save as provided in this clause The Client shall not be under any liability in respect of any claim of infringement of any third party's intellectual property rights.
- 10. LIABILITY**
- 10.1. The parties hereby indemnify and hold each other harmless against any claims, loss or damages suffered by the other party arising out of the professional negligence, gross negligence or willful misconduct.
- 10.2. The exclusions and limitations contained in this clause shall not apply to any loss, damage, costs and expenses in respect of any fraud, fraudulent misrepresentation, or injury to, illness or death of any person caused by negligence on the part of either party.
- 11. DISPUTE RESOLUTION**
- 11.1. Prior to the initiation of formal arbitration procedures, the Parties shall, within 5 (five) business days after the arise of any dispute, first attempt to resolve their dispute informally by reference to a joint committee comprised of a single designated representative of each Party who shall have the authority of the Party he/she represents to settle the dispute.
- 11.2. Should the designated representatives, within 5 (five) business days after the dispute has been referred to them, conclude in good faith that they are unable to settle the dispute or should either Party have failed to appoint a designated representative on the written request of the other within 5 (five) business days after being requested to do so, then either Party may refer the matter for arbitration in terms of the Arbitration clause or to any court in the Republic of South Africa that has the authority to hear any legal proceedings connected with this Agreement.
- 12. ARBITRATION**
- 12.1. Subject to the Dispute Resolution clause, any dispute which may arise at any time between the Parties relating to any matter arising out of this Agreement or the interpretation, termination and/ or cancellation thereof, shall, if not resolved by dispute resolution, be submitted to and finally decided by arbitration, in accordance with the rules and regulations of the Republic of South Africa by an arbitrator or arbitrators appointed by the parties by mutual agreement and failing such agreement, by the Chairperson of the Arbitration Council of South Africa.
- 12.2. Either Party to this Agreement may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.
- 12.3. This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 12.4. The arbitration will be held:
- 12.4.1. at The Client Head Office (South Africa), in the English language; and
- 12.4.2. immediately and with a view to its being completed within 15 (fifteen) business days after it is demanded; and
- 12.5. The Parties irrevocably agree that the decision in arbitration proceedings:
- 12.5.1. will be final and binding upon the Parties;
- 12.5.2. will be carried into effect; and
- 12.5.3. may be made an order of any court of competent jurisdiction.
- 12.6. This clause is severable from the rest of this Agreement and therefore will survive the termination of this Agreement.
- 13. Force Majeure**
- 13.1. Neither party is responsible for any failure to perform its obligations under this contract, if it is prevented or delayed in performing those obligations by an event of force majeure. A force majeure for purposes of this agreement is, which list is not exhaustive:
- 13.1.1. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;
- 13.1.2. natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;
- 13.1.3. acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has assumed risk; and
- 13.1.4. acts and omissions of any other electronic communications provider or any utility provider, including but not limited to electricity 'load-shedding' activities.
- 13.1.5. Any event declared an epidemic, pandemic or quarantines
- 13.2. Where there is an event of force majeure, the party prevented from or delayed in performing its obligations under this contract must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfil its or their obligations under the contract.
- 13.3. Upon completion of the event of force majeure the party affected must as soon as reasonably practically recommence the performance of its obligations under this contract.
- 13.4. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.
- 13.5. HITF has no entitlement and the Client has no liability for:
- 13.6. any costs, losses, expenses, damages or the payment of any part of the contract price during an event of force majeure; and
- 13.7. any delay costs in any way incurred by HITF due to an event of force majeure.
- 14. GENERAL**
- 14.1. This agreement constitutes the whole agreement between the parties and there are no promises, terms, conditions or obligations, oral or written, express or implied, other than those contained in this agreement and the payment terms.
- 14.2. No amendment, addition or variation nor any extension of time, waiver, relaxation or suspension of any of the provisions or terms of this agreement shall have any force or effect unless same have been reduced to writing and signed by both parties to this agreement. Any such extension, waiver, relaxation, or suspension which is so given or made shall be strictly construed as relating to the matter in respect whereof it was made or given.
- 14.3. No extension of time or waiver, relaxation or suspension of any of the provisions or terms of this agreement shall operate as an estoppel against any party in respect of its rights under this agreement nor shall it operate so as to preclude such party thereof from exercising its rights strictly in accordance with this agreement
- 14.4. If any provision of this agreement is unenforceable in law, such provision shall be severed from the remaining provisions of this

agreement and the remaining provisions of this agreement shall not be affected and shall remain of full force and effect.

- 14.5. Neither HITF nor The Client shall be entitled to cede any of its rights or obligations under this contract to a third party without the prior written consent of the other party.
- 14.6. This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
- 14.7. The Parties hereby consent and submit to the exclusive jurisdiction of the North Gauteng High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement.
- 14.8. The parties hereby choose their *domicilium citandi et executandi* for all purposes of this agreement to be the email address used for general communication and/or invoicing.
- 14.9. All parties accepting to these terms and conditions confirm that they are authorized and have the necessitated authority to act on behalf of the party and thereby bind the said party to the terms of this agreement.
- 14.10. Any information provided by the client, which includes names, contact numbers, contact emails and personal information is confirmed to be confidential and HITF will not use or share any information, save for statistical purposes. Unless otherwise agreed between the parties.
- 14.11. The Client agrees that terms of this agreement may be amended, varied, novated or supplemented from time to time or updated on the website.