

# Terms and Conditions

## 1. INTRODUCTION

1.1 ARROW MARKETING AND SALES (The Company) is a specialized Business Process Outsourcing Marketing and Sales company.

1.2 Client (The Client) wishes to appoint The Company to provide marketing and sales services, and The Company is willing to accept such an appointment.

1.3 The Parties have agreed to the terms and conditions on which The Company will render the Services, which terms and conditions are set out below.

1.4 The company includes six lines of service offerings:

- 1.4.1 Branding
- 1.4.2 Creative Design
- 1.4.3 Digital Marketing
- 1.4.4 Sales Development
- 1.4.5 SEO Management
- 1.4.6 Website Development

1.5 Each line of business carries several services as well as packages.

1.6 Each service and package have its own SoW and SLA.

## 2. DEFINITIONS

2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

2.2 "Agreement" means this professional services agreement and any annexure(s), schedule(s) and statement of work(s) attached hereto.

2.3 "Business Day" means any day other than a Saturday, Sunday, or official public holiday in South Africa.

2.4 "Fees" means the amounts to be paid to the Company by the Client for Services rendered, as set out in an SOW.

2.5 "Intellectual Property Rights" means copyright, patents, rights in know-how and Confidential Information, database rights, internet domain names, rights in web site addresses, semi-conductor topography rights, utility models, service marks, logos, trade names and design rights, in each case, whether registered or unregistered, and applications for registration of any of the foregoing and the right to apply for registration, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

2.6 "Operator" shall have the meaning ascribed to it in Chapter 1 of POPI.

2.7 "Parties" means the Client and the Company and "Party" means either one of the Parties, as the context requires.

2.8 "Personal Information" has the definition ascribed to it in POPI.

2.9 "POPI" means the Protection of Personal Information Act, No. 4 of 2013.

2.10 "Prime Rate" means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by First National Bank as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;

2.10.1 "Process" has the definition ascribed to it in POPI. The words "Process", "Processing" and "Processed" shall have a corresponding meaning.

2.11 "Project" means the project to which this Agreement relates, and which shall include any Services rendered under a SOW.

2.12 "Services" means the services to be rendered by the Company, as more fully set out in a SOW.

2.13 "Signature Date" means the date of signature of this Agreement by the last Party signing.

2.14 "SOW" means a statement of work concluded between the Parties, to which the terms of this Agreement shall apply (save for where the SOW specifically amends the terms of this Agreement), in the form as attached hereto as Annexure A; and

2.15 "VAT" means value-added tax as described in the Value-Added Tax Act of 1991, as amended or substituted.

### **3. INTERPRETATION OF THIS AGREEMENT**

3.1 In this Agreement unless the context indicates otherwise.

3.2 Words importing the singular shall include the plural, and vice versa, and words importing one gender shall include the other genders, and vice versa.

3.3 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

3.4 If any provision in clause 1 is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that such provision is contained in such clauses, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.

3.5 When any number of days is prescribed in this Agreement (including Business Days), same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday, or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

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

3.7 Expressions defined in this Agreement shall bear the same meanings in the schedules and annexures to this Agreement where they do not contain their own conflicting definitions.

3.8 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

3.9 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

3.10 This Agreement shall be binding on and enforceable by the estates, executors, administrators, trustees, permitted assigns, liquidators, curators or other legal representatives of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's estate, executors, administrators, trustees, permitted assigns, liquidators, curators or other legal representatives, as the case may be.

3.11 Any reference to any statute, regulation or other Laws shall be a reference to that statute, regulation as at the Signature Date, and as amended or substituted from time to time.

3.12 Use of the word "including" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific examples.

3.13 Any communication which is required to be "in writing" shall include a communication which is written or produced by any substitute for writing, or which is partly written and partly so produced, and shall include printing, typewriting, lithography, facsimile or electronic mail or any form of electronic communication or other process or partly one and partly another.

3.14 Where there is a conflict between this Agreement and any SOW, the following order of priority shall apply to resolve the conflict:

- 3.14.1 SOW; and then
- 3.14.2 this Agreement.

## 4. DURATION

4.1 This Agreement will commence on the Commencement Date and will continue to endure for an indefinite period, subject to either Party having the right to terminate this Agreement as per the provisions of clause 13 (Breach and Termination) or any other applicable provision of this Agreement.

4.2 The commencement date and duration of each Project will be stated in the relevant SOW.

4.3 Any SOW and the Services provided in terms of it shall be capable of termination without affecting the validity or enforceability of the remainder of this Agreement or any other SOW.

4.4 It is acknowledged that certain SOWs under this Agreement may expire before others, but that the terms of this Agreement shall remain in effect while there are still any Services to be delivered under a SOW.

4.5 Any SOWs which have already been executed at the time of expiry of this Agreement or delivery of a notice to terminate the Agreement shall continue in full force and effect until their completion and, if necessary, beyond the notice period and for the purposes only of such SOW the terms and conditions of this Agreement shall continue to apply.

## **5. SCOPE OF SERVICES**

5.1 The Company agrees to provide the Services as agreed upon between the Parties. These Services are described in further detail in a separate SOW or similar document.

## **6. PARTIES RESPONSIBILITY**

6.1 Each Party's responsibilities are described in further detail in a separate SOW or similar document.

## **7. FEES AND PAYMENT**

7.1 With effect from the Commencement Date, the Client agrees to pay Company the agreed-upon Fees as outlined in the relevant SOW, for the provision of the Services.

7.2 All Fees quoted and / or agreed to shall be exclusive of VAT.

7.3 Company will provide the Client with invoices for each payment due, which will clearly detail the amount, due date, payment instructions and subject to any additional payment terms as may be recorded in the relevant SOW.

7.4 All amounts payable by the Client to the Company in terms of this Agreement will be paid into the Company's bank account confirmed in writing by the Company to the Client or at any other address as the Company may notify the Client in writing from time to time.

7.5 Should the Client be in arrears with the payment of the Fees or any other amounts due and payable in terms of this Agreement, the Client will pay interest on such outstanding amount at the Prime Rate plus 5% (five percent), calculated from the due date for payment until the date of actual payment. Such payment will be made without prejudice to any right which the Company may have in law.

7.6 All invoices must be paid by electronic funds transfer and free from deduction or set off against any amount claimed by the Client. Any fees or charges associated with the chosen payment method shall be the responsibility of the Client.

7.7 All invoices must be paid by the 25th (twenty-fifth) of each month at the latest.

7.8 In the event that the Client fails to make any payment on or before the due date, regardless of the nature, extent, or reason for such delay, the Client shall be immediately liable for the full outstanding contract amount, which shall become due and payable in full without further notice, and the Client hereby irrevocably waives any right to dispute, contest, withhold, or delay such payment on any grounds whatsoever.

7.9 The Client hereby acknowledges and agrees that, in the event of non-payment of any amount due to The Company for any reason whatsoever, the director(s) of the Client's company shall be held jointly and severally personally liable, in their individual capacity, for the full outstanding amount, and expressly waive any defence based on the separation of corporate and personal liability.

## **8. NATURE OF RELATIONSHIP**

8.1 The Parties acknowledge that the Company is an independent contractor and nothing in this Agreement, whether express or implied, will be construed as creating an employment relationship or partnership or joint venture between the Parties.

8.2 Neither Party will have any authority to bind the other Party to any obligation or agreement with or undertaking to third parties.

## **9. NON-DISPARAGEMENT, CONFIDENTIALITY AND PENALTY CLAUSE**

9.1 Both The Company and The Client, including their respective directors, officers, employees, agents, contractors, and affiliates, hereby irrevocably agree to maintain absolute confidentiality regarding all non-public business practices, strategies, communications,

methodologies, intellectual property, trade secrets, financial information, and any other proprietary or sensitive information disclosed by or relating to the other party.

9.2 This obligation shall apply throughout the duration of the engagement and shall survive termination or expiry of this agreement indefinitely.

9.3 Each party agrees that neither it nor any of its representatives shall, at any time and in any manner whatsoever, directly or indirectly, publish, post, distribute, share, transmit, broadcast, or otherwise disseminate any statement, comment, opinion, or content regardless of format or channel that may reasonably be construed as defamatory, disparaging, misleading, untrue, or damaging to the reputation, brand, personnel, operations, or clients of the other party.

9.4 This applies to all forms of media, including but not limited to social media, websites, blogs, podcasts, video content, printed publications, email, messaging apps, forums, radio, television, and any other public or private platform.

9.5 PENALTY CLAUSE: In the event that either The Company or The Client breaches Clause 9.1 or 9.2 above, the breaching party's directors shall be held jointly and severally personally liable to pay a fixed, non-negotiable penalty of ZAR 1,000,000.00 (One Million South African Rand) to the non-breaching party.

9.6 This penalty shall be immediately due and payable without the need for prior notice, formal demand, legal proceedings, or proof of actual loss. The breaching party irrevocably waives any right to contest, delay, or reduce such payment under any circumstances.

## 10. CONFIDENTIAL INFORMATION AND DATA PROTECTION

10.1 Each Party undertakes that information provided by either Party during the term of this Agreement may contain Personal Information and / or confidential information, the handling or Processing of which may be subject to applicable data protection legislation.

10.2 Each Party undertakes in favour of the other Party that for the duration and after the termination of this Agreement for any reason, it will keep confidential all information relating to the negotiation and conclusion of this Agreement and information which a Party from time to time communicates to the other Party or which comes to the knowledge of such other Party as a consequence of the terms of this Agreement and which is stated to be or by its nature is intended to be kept confidential.

10.3 Each Party agrees that it will:

10.3.1 comply with all applicable data protection legislation.

10.3.2 where it acts as an Operator, establish and maintain the security measures as referred to in section 19 of POPI.

10.4 This clause will survive the termination of this Agreement for whatsoever reason.

## 11. INTELLECTUAL PROPERTY

11.1 Save as is expressly otherwise set out in this Agreement, the Client acknowledges and agrees that all Intellectual Property Rights:

11.1.1 held by the Company as at the Commencement Date.

11.1.2 developed or acquired by the Company after the Commencement Date; and

11.1.3 developed by the Company after the Commencement Date, during implementation of this Agreement; and

11.1.4 developed by the Client and the Company jointly ("the jointly developed intellectual property"), shall be and remain the exclusive property of, and shall vest and remain vested exclusively in the Company.

11.2 Notwithstanding clause 11.1, the Client may, in writing, request the Company the perpetual, non-exclusive, royalty free and world-wide license to use the jointly developed intellectual property referred to in clause 11.1(d), but only for its own internal requirements from time to time and not for the purpose of sub-licensing, selling, granting any rights in respect of, providing a service to third parties with the aid of or in any way otherwise exploiting such jointly developed intellectual property.

11.3 All Intellectual Property Rights belonging to either Party prior to the execution of this Agreement shall remain vested in that Party. None of the Intellectual Property Rights in the Party's trademarks and brands shall be used by either Party without the other Party's prior written consent. Where there are modifications to pre-existing material which are inseparable from the pre-existing material, then the Party which owns the pre-existing material will own the modifications.

11.4 The provisions of this clause will survive the termination of this Agreement.

## 12. WARRANTIES

12.1 The Client warrants that it has the legal capacity and authority to procure the Services from the Company and enter subsequent Project/s with the Company and be bound by (i.e. accept) this Agreement.

12.2 The Client also warrants that any person who enters an SOW with the Company is authorised by the Client to do so.

12.3 Furthermore, the Client warrants that the person who receives delivery of the Services is authorized to do so.

## 13. BREACH AND TERMINATION

13.1 Notwithstanding any provision to the contrary of this Agreement, should the Client fail to make payment in terms of this Agreement, the Company reserves the right to summarily suspend the rendering of Services ordered until payment is made in full for previous SOWs and / or take legal action against the Client.

13.2 If either Party:

13.2.1 breaches any provision or term of this Agreement or any SOW and fails to remedy such breach within 7 (seven) days of receipt of written notice requiring it to do so;

13.2.2 repeatedly breaches any of the terms or conditions of this Agreement or any SOW within a 6 (six) month period in such manner as to justify the aggrieved Party holding that the defaulting Party's conduct is inconsistent with the intention or ability of the defaulting Party to carry out the terms or conditions of this Agreement or any SOW;

13.2.3 commits any act of insolvency; or

13.2.4 contemplates business rescue proceedings or the like, is placed under liquidation or sequestration either provisionally or finally or if a judgment against the defaulting Party of any competent court will, subject to an appeal against an application for rescission of such judgment, remain unsatisfied for more than 30 (thirty) days after the date of such judgment;

13.2.5 then the aggrieved Party will be entitled, without notice, notwithstanding any previous waiver, relaxation or indulgence granted by it to the defaulting Party, in addition to any other remedy available to it at law or under these terms and conditions, to:

13.2.5.1 Cancel the Agreement or an impacted SOW and claim damages or any other claim of any nature whatsoever; or

13.2.5.2 to claim specific performance of any obligation, whether the due date for performance has arrived, in either event without prejudice to the aggrieved.

13.3 Party's right to claim damages.

13.4 The Client will be liable for the payment of all Fees due to the Company for Services for the full term of the contract. In the event that the contract extends beyond its initially agreed due date, the agreement shall automatically continue on a month-to-month basis under the same terms and conditions. Should the client wish to terminate the contract during this extended period, they must provide at least 30 days' written notice. If notice is given on the first day of a month, the contract will terminate at the end of that same month. If notice is given on any day after the first, the 30-day notice period will start from the first day of the following month.

## 14. INDEMNIFICATION

14.1 The Client agrees to indemnify and hold harmless the Company, its officers, employees, and affiliates from any claims, losses, damages, or liabilities arising from the use of the Services. This includes, but is not limited to, legal fees and expenses.

## 15. LIMITATION OF LIABILITY

15.1 In case of termination, the Company shall not be responsible for any loss, liability, or damage occurring after the Project is completed.

15.2 Under no circumstances will the Company be responsible for indirect or consequential loss or damages howsoever arising.

15.3 Notwithstanding any other provision to the contrary of this Agreement, the Company's liability shall not exceed the contract value of the relevant SOW or amount actually paid in terms of the SOW, whichever amount is lesser.

## 16. NON-SOLICITATION

16.1 The Client will not, for the duration of this Agreement and for 12 (twelve) months after the termination of this Agreement, without the prior written consent of the Company, solicit

for employment, whether directly or indirectly, any person who during the currency of this Agreement is/was an employee or contractor of the Company.

16.2 To the extent that the Client breaches the provisions of this clause, then the Client will pay the Company a recruitment fee equal to 12 (twelve) times the gross monthly remuneration or consideration (in the event of contractors) paid by the Company to the person concerned. Such amount will be payable by the Client within 5 (five) days of commencement of such person's appointment with the Client.

## 17. DISPUTE RESOLUTION

17.1 This clause is a separate, divisible agreement from the rest of this Agreement and shall:

17.1.1 not be or become void, voidable, or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall be subject to the terms of this clause; and

17.1.2 remain in effect even if the Agreement terminates or is cancelled.

17.2 Any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement including any dispute concerning:

17.2.1 the existence of the Agreement apart from this clause;

17.2.2 the interpretation and effect of this Agreement;

17.2.3 the Parties' respective rights or obligations under this Agreement;

17.2.4 the rectification of the Agreement;

17.2.5 the breach, termination or cancellation of the Agreement or any matter arising out of the breach, termination, or cancellation; or

17.2.6 damages in delict, compensation for unjust enrichment or any other claim, whether the rest of the Agreement apart from this clause is valid and enforceable, shall be decided by means of the process set out below.

17.3 The matter referred to in clause 17.2 shall be submitted to mediation before a single mediator ("the Commercial Mediator") who is qualified with an accredited body such as the South African Association of Mediators ("the SAAM").

17.4 If the parties cannot agree on the Commercial Mediator within a period of 10 (ten) Business Days after the referral of the dispute, question or difference to mediation, the commercial mediator shall be appointed by the SAAM.

17.5 The mediation process shall be terminated:

17.5.1 by a written declaration by the Commercial Mediator that a settlement has been reached;

17.5.2 by a written declaration by the Commercial Mediator that further efforts at mediation are no longer worthwhile;

17.5.3 by a declaration by either Party that the proceedings must be terminated; or

17.5.4 after the effluxion of 14 (fourteen) Business Days from the referral to mediation unless the Parties agree to an extension thereof in writing.

17.6 A written agreement reflecting the settlement of the matter (where applicable) shall be carried into effect and may be made an order of court.

17.7 In the event of the termination of the mediation process, either Party shall be entitled, but not obliged, to require, by written notice to the other, that the matter be submitted to arbitration in accordance with rules of the Arbitration Foundation of South Africa.

17.8 This arbitration shall be held online or in Cape Town, South Africa, in English and the Parties shall endeavour to ensure that it is completed within 60 days after notice requiring the matter to be referred to arbitration.

17.9 Nothing in this clause shall prevent the Parties from approaching the High Court for urgent relief.

## 18. DOMICILIA

18.1 The Parties hereby choose domicilium citandi et executandi for all purpose in terms hereof at the addresses on the cover page of this Agreement.

18.2 Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if in writing, but it will be competent to give notice by e-mail.

18.3 Either Party may by notice to the other Party change the physical address chosen as its domicilium citandi et executandi to another physical address where postal delivery occurs in South Africa, provided that the change will become effective on the 7th (seventh) business day from the deemed receipt of the notice by the other Party.

18.4 Any notice to a Party:

18.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi will be deemed to have been received on the day of delivery; or

18.4.2 sent by email to its chosen email address stipulated in clause 18.1, will be deemed to have been received on the date of dispatch (unless the contrary is proved).

18.5 Notwithstanding anything to the contrary herein contained a written notice or communication received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

## 19. GOVERNING LAW AND JURISDICTION

19.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. Any disputes arising from this Agreement shall be resolved in the appropriate courts of the Republic of South Africa.

## 20. MISCELLANEOUS MATTERS

20.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term, or condition relating to the subject matter of this Agreement not incorporated in this Agreement will be binding on either of the Parties.

20.2 No variation, alteration, or consensual cancellation of this Agreement or any of the terms thereof, shall be of any force or effect, unless done in writing and signed by the Parties hereto.

20.3 No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by or on behalf of the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

20.4 All provisions and the various clauses of this Agreement are, notwithstanding the way they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever,

will, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement will remain of full force and effect.

## 21. ACCEPTANCE

21.1 Please carefully review and accept this Agreement to acknowledge the Client's acceptance of the terms and conditions. By accepting, the Client agrees to the terms of engagement set forth herein.

21.2 This Agreement is accepted by the Parties on the dates indicated below.

21.3 This Agreement may be executed in counterparts in hardcopy or by electronic means, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

BY ARROW MARKETING AND SALES

Signed: Adrian Mitchell

Name: Adrian Mitchell

Title: Chief Executive Officer

Company: Arrow Marketing and Sales

Date: October 31, 2025