



Capitalize Digital (Pty) Ltd SLA Terms & Conditions

1. INTRODUCTION

1.1. The Client appoints Capitalize to render the Services, as set out in the Scope of Work(s) annexed hereto, on the basis set out in this Agreement.

1.2. Capitalize and the Client have reached agreement on the terms and conditions regulating the provisions of the Services, and wish to reduce the terms of this consensus to writing in the form of this Agreement.

****Please ensure you have read the SLA (Service Level Agreement) as well as annexures applicable to your project.**

2. INTERPRETING THIS AGREEMENT

2.1. This Agreement contains a number of words and phrases which have specific meanings denoted by such words being capitalised.

2.2. In this Agreement, headings are for convenience only and are not intended to be used to interpret the Agreement.

2.3. If the Agreement refers to a party who is liquidated or sequestrated (or has been through a comparable process under a different legal system), then the Agreement will also be applicable to, and binding on, that party's liquidator or trustee, as the case may be.



2.4. Unless this Agreement indicates to the contrary, any references to any gender includes the other gender, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa.

2.5. The contra proferentem rule, or rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting or preparation of this Agreement, shall not apply.

2.6. Where in this Agreement, provision is made for the Parties (or either of them) to agree on or grant approval in respect of any matter, such agreement or approval shall only be valid and binding on the Parties thereto if reduced to writing and Signed by the duly authorised representative of such Parties.

2.7. The use of the word “including” followed by a specific example 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 example.

2.8. Where this Agreement specifies any number of days, the number of days excludes the first day and includes the last day, unless the last day falls on a Saturday, Sunday or gazetted public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or gazetted public holiday in the Republic of South Africa. Generally speaking, references to a “day” are references to typical business days.

2.9. Any reference to “business hours” shall be construed as being the hours between 09h00 (nine hours) and 16h30 (sixteen hours, thirty minutes) on any day. Any reference to time shall be based on South African Standard Time;



2.10. All annexures, addenda and amendments to this Service Level Agreement form an integral part of this Agreement and, therefore, Capitalize's contract with the Client.

2.11. The words and phrases in the definitions sections, below, bear the meanings assigned to them and related expressions bear corresponding meanings.

3. DEFINITIONS

3.1. "Agreement" means these terms and conditions as well as any annexures, amendments, schedules, scope of works, or addenda to these terms and conditions from time to time;

3.2. "Client" means the Party which has consented to this Agreement, or where appropriate, the entity on behalf of which a duly authorised representative has bound by virtue of consenting to the terms of this Agreement on behalf of such entity;

3.3. "Confidential Information" means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is, or ought reasonably to be, identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. Without limitation, the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being "confidential", "restricted" or "proprietary" (or any similar designation) –



3.3.1. information relating to the Disclosing Party's business activities, business relationships, products, services, processes, data, and Staff, including agreements to which the Disclosing Party is a party;

3.3.2. the Disclosing Party's technical, scientific, commercial, financial and market information, methodologies, formulae and trade secrets;

3.3.3. the Disclosing Party's architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications, and the data relating thereto;

3.3.4. Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to an External Party, and data relating to the Clients of the Disclosing Party; and

3.3.5. where the Disclosing Party is the Client, demographic and other data relating to any staff or potential staff member of the Client, which data may be disclosed to Capitalize by the Client in order for Capitalize to perform the Services for the Client in terms of this Agreement.

3.3.6. Confidential Information excludes information or data which;

3.3.6.1. is lawfully in the public domain at the time of disclosure thereof to the Receiving Party;

3.3.6.2. subsequently becomes lawfully part of the public domain by publication or otherwise;



3.3.6.3. is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or

3.3.6.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order, but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

3.3.7. provided that:

3.3.7.1. the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;

3.3.7.2. the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession;

3.3.7.3. any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession; and

3.3.7.4. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

3.4. "Content" means all information regardless of the medium used for the communication of such Content (including, but specifically not limited to, data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which may be protected by copyright;



3.5. “Content License” means a perpetual, worldwide, royalty-free and sub-licensable license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute the subject matter of the license;

3.6. “Disclosing Party” means the Party disclosing Confidential Information to the Receiving Party;

3.7. “Effective Date” the date on which the terms of this Agreement are agreed to by virtue of the Client indicating its/his/her acceptance hereof by Signature, mark or otherwise.

3.8. “External Party” means a party other than the Parties to this Agreement;

3.9. “Intellectual Property” means the expression and/or representation of an intellectual and/or creative process and includes, but is not limited to, any text, images, data, multimedia, ideas, source code, concepts, know-how, data processing techniques, copyrights, trademarks, logos, patents, designs, inventions;

3.10. “Intellectual Property Rights” shall include, but not be limited to, rights in Intellectual Property attaching to any Content –

3.10.1. Created, invented and/or developed by Capitalize at the Client’s specific instance and request pursuant to Services rendered in terms of a Scope of Work (“the Proprietary Content”); and

3.10.2. Developed independently and/or owned by Client (“Client’s Content”); and/or developed independently and/or owned by Capitalize (“Capitalize’s Content”); and/or developed and owned by any External Party (“External Party Content”);

3.11. “Interruption Event” means theft, strike, lock-out, load shedding, blackout, fire, explosion, flood, riot, war, accident, act of nature, embargo, legislation, shortage of or a



breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, server downtime, government interference or control, or any other cause or contingency beyond the control of the Party concerned;

3.12. “Interrupted Party” means a Party prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of an Interruption Event;

3.13. “Losses” means all losses (including, but not limited to, those in respect of injury, damage to physical property or loss of life), liabilities, costs, expenses, fines, penalties, damage, and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);

3.14. “Capitalize” means Capitalize Digital (Pty) Ltd, a private company duly registered and incorporated in accordance with the laws of the Republic of South Africa and with registration number 2016/100384/07;

3.15. “Capitalize’s Associates” means Capitalize’s officers, servants, agents, contractors or other persons in respect of whose actions Capitalize may be held to be vicariously liable;

3.16. “Outsourced Services” means Services outsourced by Capitalize to one or more Service Providers;

3.17. “Parties” means Capitalize and the Client. “Party” shall have a corresponding meaning;

3.18. “Quotation” means Capitalize fees and charges associated with the Services, as presented and agreed to by the Client, prior to consenting to the terms of this Agreement.



3.19. “Receiving Party” means the Party directly or indirectly receiving Confidential Information from the Disclosing Party;

3.20. “Signed”, unless the context clearly illustrates otherwise, includes a Signature or other identifying mark, whether affected digitally, by hand or otherwise. “Signature” shall have a corresponding meaning;

3.21. “Scope of Work”, which may be comprised of more than 1 (One) schedule annexed to this Agreement, means the detailed descriptions of Capitalize’s roles and responsibilities as well as Services rendered or proposed to be rendered to the Client. The Scope of Work(s) shall be annexed hereto, or hyperlinked herefrom, and forms an integral part of this Agreement and ought to be read as if specifically incorporated herein;

3.22. “Scope Variation” means a material change in the Services’ scope described in the Scope of Work;

3.23. “Service Provider” means an External Party service provider;

3.24. “Services” mean the services to be rendered by Capitalize to the Client as described in the Scope of Work(s) annexed hereto or hyperlinked herefrom.

4. COMMENCEMENT AND DURATION

4.1. The Client hereby appoints Capitalize, which appointment Capitalize hereby accepts with immediate effect, to render the Services on the terms and conditions as set out in this Agreement.

4.2. This Agreement shall commence on the Effective Date and endure until terminated on the basis catered for in this Agreement.



5. EFFECT OF TERMINATION

5.1. In the event this Agreement is terminated for any reason whatsoever, the following clauses shall survive termination:

5.1.1. Clause 7 pertaining to Fees;

5.1.2. Clause 8 pertaining to the Termination of this Agreement;

5.1.3. Clause 9 pertaining to Confidentiality;

5.1.4. Clause 10 pertaining to the Prohibition on Solicitation or Interference;

5.1.5. Clause 11 pertaining to Liability;

5.1.6. Clause 12 pertaining to Breach;

5.1.7. Clause 13 pertaining to Governing Law and Jurisdiction; and

5.1.8. Clause 17 pertaining to Domicilium and Notices.

6. THE SERVICES

6.1. Scope of Work

6.1.1. Capitalize shall, during the currency of this Agreement, render the Services on the basis set out in the Scope of Work(s) annexed hereto or hyperlinked herefrom. The Parties agree that the Scope of Work details the extent and nature of the Services and the Client acknowledges that its failure to complete its obligations described in the dependencies portion of the Scope of Work may delay or impair the further performance of the Services.



6.1.2. Scope of Works may be amended or wholly replaced by the Parties provided that each amended or replaced version of the Scope of Work shall be effected in writing and be agreed to by way of Signature by both Parties' representatives.

6.1.3. Scope of Work amendments and/or replacements may, at Capitalize's sole and unfettered discretion, require consequential changes to Capitalize's fees payable and delivery timeframe for the Services, as described in the amended or replaced Scope of Work. Capitalize shall notify the Client of any such changes in writing, and Services based on such amended or replaced Scope of Work shall commence on acceptance of such changes by the Client, and receipt of any additional fees, if required, into Capitalize's designated bank account.

6.1.4. Each version of the Scope of Work shall, with the exception of Services rendered on the basis described in clause 6.2 below (where appropriate), become binding on the Parties upon the Effective Date, and shall be governed by the terms of the main body of this Agreement and shall not interrupt the enforceability of any term or condition contained herein.

6.1.5. Capitalize shall not be required to render Services until such time as the relevant Scope of Work is Signed by the Parties, and any required deposits in terms of the Quotation, be paid in full. In the event that Capitalize renders Services not described in a Scope of Work Signed by both Parties, doing so shall not constitute a waiver or relaxation of Capitalize's requirement for a Signed Scope of Work as contemplated in this clause.

6.1.6. The Scope of Work, as amended and Signed by the Parties' representatives from time to time, shall specify the Services to be rendered by Capitalize pursuant to this Agreement, as well as any other responsibilities of the Parties.

6.1.7. To the extent a conflict or inconsistency arises between the terms of any Scope of Work, as amended from time to time, and the terms of the main body of this Agreement in



respect of the Services' description, the provisions of the Scope of Work, insofar as they pertain to the Services, shall prevail to the extent of such inconsistency.

6.1.8. The Services shall, unless specified in the Scope of Work or otherwise agreed in writing, be rendered during business hours.

6.1.9. The Client acknowledges and agrees that it is responsible for appropriately evaluating the Services and/or Deliverable described in the Scope of Work, and reasonably satisfying itself that the relevant Services have been rendered.

6.1.10. The Parties expressly record that each of the Services constitutes a separate and distinct service, and nothing set out in this Agreement shall be construed as obliging Capitalize to render all such Services as a single, indivisible service.

6.2. Scope Variation

6.2.1. Departures from the Scope of Work, as determined in the sole and unfettered discretion of Capitalize, shall constitute a Scope Variation.

6.2.2. In dealing with Scope Variations, this clause 6.2 must be read in conjunction with the clause pertaining to Scope Variation, if any, in the Scope of Work.

6.2.3. Capitalize shall not be required to render Services subject to a Scope Variation, unless the Scope Variation is appropriately recorded in an agreed, written and Signed amendment to, or replacement of, an existing Scope of Work or, where appropriate, a new Scope of Work, in addition to the receipt of any additional fees, if required, into Capitalize designated bank account.

6.2.4. To the extent the Client instructs Capitalize to render Services not described in an existing and Signed Scope of Work, such instructions shall signify the Client's agreement



with the additional services to be rendered in accordance with such additional instructions, as well as agreement to Capitalize fees associated with such additional Services, provided such instructions are recorded in writing and communicated to Capitalize, whereupon they will be reduced to writing (if required) and Signed by the Parties.

6.2.5. To the extent a conflict or inconsistency arises between the terms of the Scope of Work, as amended from time to time, and the terms of the main body of this Agreement in respect of the Scope Variation, the provisions of the Scope of Work, insofar as they pertain to Scope Variation, shall prevail to the extent of the inconsistency.

6.3. Intellectual Property

6.3.1. All Intellectual Property Rights together with all rights, titles and/or interest therein attaching to –

6.3.1.1. the Proprietary Content, shall remain vested in Capitalize, and Capitalize shall, subject to –

6.3.1.1.1. Capitalize receiving payment for the Proprietary Content in full; and

6.3.1.1.2. the Client not materially breaching this Agreement,

hereby grant to the Client, which the Client hereby accepts, a non-exclusive Content License in respect of the Proprietary Content, until such time as Capitalize has been paid, in full, for the Proprietary Content.

6.3.1.2. Notwithstanding the foregoing;

6.3.1.2.1. the Client's Content shall, at all times remain vested in the Client; and



6.3.1.2.2. Capitalize's Content shall, at all times remain vested in Capitalize; and

6.3.1.2.3. External Party Content shall, at all times remain vested in the applicable External Party owner,

and no other provisions in this Agreement shall be deemed to be a transfer of the aforesaid Intellectual Property Rights to either Party.

6.3.2. In the event that the Client materially breaches this Agreement, the licence granted to the Client in respect of the Proprietary Content shall automatically terminate should the Client fail to remedy its breach of this Agreement within the time period afforded to the Client in terms of this Agreement.

6.3.3. The Client grants Capitalize a non-exclusive Content License in respect of the Client's Content and External Party Content the Client supplies Capitalize with same pursuant to this Agreement.

6.3.4. The Client warrants that it is sufficiently authorised to grant the Content Licenses described in clause 6.3.3, and that there are no legal restrictions that would render such Content Licenses ineffective, either in part or as a whole.

6.3.5. Capitalize grants the Client a non-exclusive, revocable Content License in respect of Capitalize Content for the strict purposes described in the Scope of Work.

6.3.6. Notwithstanding the provisions of clause 6.3.5 above, the Client shall not –

6.3.6.1. remove and/or tamper with the copyright, trademark and/or other proprietary notices contained on or in the Proprietary Content, Capitalize Content and/or External Party Content and shall reproduce such notices on all copies of such Content;



6.3.6.2. save as may be required for the fulfilment of this Agreement, reproduce or modify Capitalize Content; or

6.3.6.3. cause or allow the discovery by any External Party of the source code of any software owned by Capitalize; or

6.3.6.4. rent or lease Capitalize's Content or its direct derivatives; or

6.3.6.5. distribute Capitalize's Content to External Parties.

6.3.7. Capitalize shall not:

6.3.7.1. remove and/or tamper with the copyright, trademark and/or other proprietary notices contained on or in the Proprietary Content, the Client's Content and/or External Party Content, and shall reproduce such notices on all copies of such Content;

6.3.7.2. save as provided for herein, reproduce or modify the Proprietary Content, the Client's Content and/or External Party Content; or

6.3.7.3. cause or allow the discovery by any External Party of the Code of any software owned by the Client's and/or any External Party; or

6.3.7.4. distribute the Proprietary Content, the Client's Content and/or External Party Content to External Parties.

6.4. External Party services

6.4.1. The Services may incorporate the use of External Party websites, software and/or services.



6.4.2. The Client acknowledges that Capitalize does not render legal services, and that the Client shall remain solely responsible for familiarising itself with and complying, as well as ensuring compliance, with the terms and conditions governing the use of those External Party websites and/or services.

6.4.3. Capitalize will notify the Client of the use of External Party services where relevant.

6.4.4. Capitalize accepts no liability whatsoever for the Client's failure to comply with the terms and conditions governing the use of the External Party websites and/or services, nor the content contained therein.

6.5. Outsourced Services

6.5.1. As at the commencement of this Agreement, certain of the Services set out in the Scope of Work(s), and which are to be provided by Capitalize to the Client in terms of this Agreement, may be outsourced by Capitalize to one or more Service Providers;

6.5.2. Capitalize shall be entitled at any time and from time to time to change the identity of any Service Provider and/or to sub-contract any of the Outsourced Services to a new Service Provider and/or to delegate to one or more existing or new Service Provider/s all or any part of its obligations to provide any particular Service to the Client in terms of this Agreement.

6.5.3. The Client acknowledges that the Service Providers' terms and conditions shall govern the provision of the Outsourced Services as between Capitalize and such Service Provider. The Parties further record and agree that Capitalize shall, at any time during the term of this Agreement, be entitled to appoint and/or terminate the services of such Service Providers, provided that such appointment and/or termination of Service Providers shall not be



materially detrimental to Capitalize's performance of its obligations and/or compromise the service levels agreed to in terms of this Agreement.

6.6. Service Levels

6.6.1. Capitalize hereby undertakes to ensure that the standard of the Services it shall render to the Client in terms of this Agreement shall be in accordance with the Scope of Work(s).

7. FEES

7.1. The Client shall, as consideration for the Services to be rendered by Capitalize in terms of this Agreement, effect payment to Capitalize of its fees as set out in the Scope of Work.

7.2. Capitalize may require a deposit, payable in advance, prior to the Services commencing, and such deposit shall be stipulated in the Quotation.

7.3. In the event that Scope of Works are amended or replaced, the corresponding Quotation shall be amended appropriately, and be reflected in the amended Scope of Work, alternatively, an addendum thereto.

7.4. Where Capitalize requires a deposit from the Client, it shall not be required to render any Services until such time as the deposit is received into Capitalize's designated bank account.

7.5. Should the Client attend to payment of the deposit prior to entering into this Agreement, and thereafter, elect not to Sign this Agreement for whatever reason, the Client shall have 7 (Seven) business days from the date on which the deposit was paid to request a refund of the deposit. In this event, Capitalize shall not be required to render any Services in terms of this Agreement.



7.6. In the event that Capitalize renders the Services at the Client's request before such time as the Client signs a Scope of Work in respect of such Services, the Client agrees that –

7.6.1. it shall be liable for Capitalize's usual fees for similar Services; and

7.6.2. such fees shall be established by a certificate issued by Capitalize's manager/s (whose authority need not be proven) stating, in his/her sole discretion, the applicable fees for the Services rendered.

7.7. A certificate issued in terms of clause 7.6.2 shall constitute a Quotation in respect of the Services described in the Scope of Work.

7.8. Expenses

7.8.1. The Client agrees to pay any reasonable expenses Capitalize incurs on the terms on which they are invoiced in accordance with this Agreement and the Scope of Work.

7.8.2. The Client acknowledges and agrees that certain expenses may be payable in advance due to the nature and purpose of the expenses concerned and, further, that related Services may be delayed until such time as these expenses are paid in full. The Client shall not hold Capitalize liable for any delays in the Services resulting from delayed expense payments by the Client.

7.8.3. Capitalize shall take reasonable steps to procure the Client's written approval of any necessary expenses before incurring such expenses, however, the Client agrees that it shall be liable for reasonable and necessary expenses incurred by Capitalize should it receive a written request for approval and fail to respond to the written request within 2 (Two) days or such time period as may be reasonable in the circumstances.



7.8.4. The reasonableness and necessity of expenses shall be determined in Capitalize's sole discretion and communicated to the Client as soon as is reasonably possible after Capitalize makes such a determination.

7.9. Payments

7.9.1. The Client shall pay the fees and expenses due to Capitalize, in the amounts and on the terms stated in the Scope of Works coupled with the Quotation. In the event that Capitalize's invoices do not state Capitalize's payment terms, all fees are payable on receipt of invoice with any deposits being payable on presentation of the Quotation.

7.9.2. The Client agrees that it shall be liable for Capitalize's fees and/or expenses reasonably incurred from time to time and it will be liable for fees and expenses associated with partially rendered Services where the Client is responsible for interruptions to the Services or otherwise delays their completion.

7.9.3. Unless otherwise agreed in writing and where appropriate, recurring fees shall escalate at a rate of up to 20% per annum, applicable from 1 January each year.

7.9.4. In the event of the Client failing to timeously effect payment of any amount due to Capitalize in terms of this Agreement, Capitalize shall without prejudice to any other rights which it may have in terms of this Agreement or otherwise at law, be entitled to –

7.9.4.1. suspend the provision of the Services in terms of this Agreement for any period in which any payment remains outstanding; and/or

7.9.4.2. retain any or all relevant Service Deliverables and/or materials under Capitalize's effective control until such time as the outstanding amounts are paid in full.



7.9.5. Capitalize reserves the right to charge a cancellation fee in the event that the Client terminates this Agreement prematurely, which cancellation fee or method for calculating the cancellation fee shall be specified in the Quotation where appropriate, should the Client unilaterally terminate this Agreement in a manner and/or for a reason not expressly provided for in this Agreement. Unless stipulated otherwise in the Quotation, the cancellation fee shall be calculated based on the hours worked by Capitalize up until the date of the termination of this Agreement, as tracked by Capitalize, multiplied by the associated hourly rate(s) ordinarily charged out by Capitalize to its clients in respect of the same or similar services as those being rendered under this Agreement.

7.9.6. The Client agrees that it shall pay all Capitalize's expenses in recovering any amounts the Client owes Capitalize, including legal costs on the attorney and client scale, collection charges and tracing fees, and VAT thereon.

8. TERMINATION

8.1. Either Party may immediately terminate this Agreement by giving written notice to the other Party if the other Party is insolvent or has a petition brought by or against it under the insolvency laws of any jurisdiction, if the other Party makes an assignment for the benefit of creditors, if a trustee, or similar agent is appointed with respect to any property or business of the other Party, or in the case of the Client, if the Client materially breaches its obligations to make payment pursuant to this Agreement.

8.2. Capitalize shall, at any point be entitled to terminate this Agreement on 7 (Seven) days' written notice.

8.3. Should Capitalize deem the nature of the business or the requirements of the Client to be, in its sole discretion, morally offensive, Capitalize specifically reserves its right prior to



commencing the Services, to terminate this Agreement forthwith, and refund any deposits paid by the Client.

Reimbursement of certain expenses already incurred

8.4. The Client acknowledges that in the execution of the Services, Capitalize may be required to incur certain expenses to fulfill the Scope of Work. Where this Agreement is terminated subsequent to Capitalize incurring these expenses, the Client will be liable to reimburse Capitalize for such expenses on a cost price basis.

8.5. External Party Service Provider expenses shall also be for the Client's account.

8.6. The Client will be entitled to call for documentation confirming that the expenses have been incurred and as evidence in respect of the nature and extent of such expenses.

8.7. Capitalize undertakes to use their best efforts to minimise such liabilities so arising.

MATERIALS UNPAID FOR

8.8. If upon termination there exist any materials furnished by us or any Services performed by Capitalize for which you have not paid us in full, until such time as you have paid us in full, you agree not to use any such materials, in whole or in part, or the product of such Services, and further, Capitalize reserves the right, at its sole instance and discretion, to restrict access to any such materials and/or Services.

TRANSFER OF MATERIALS

8.9. Upon termination of this Agreement, provided that there is no outstanding indebtedness then owing by the Client to Capitalize, we shall transfer, assign and/or make available to the Client, all property, and materials in our possession or control belonging to the Client. In the



circumstances outlined herein, the Client agrees to pay for all costs associated with the transfer of materials

9. CONFIDENTIALITY

9.1. The Receiving Party shall not, without the prior written consent of the Disclosing Party (which consent may, for the avoidance of doubt, be withheld in the unfettered discretion of the Disclosing Party) disclose such Confidential Information to any person, and/or make use of such Confidential Information for any purposes other than in connection with the rendering of the Services.

9.2. The Receiving Party may disclose Confidential Information to its officers, employees, and subcontractors but only to the extent required for the purposes of the rendering of the Services pursuant to the provisions hereof.

9.3. The Receiving Party shall inform any officer, employee or subcontractor to whom it discloses such Confidential Information, that such information is confidential and shall instruct them to keep it confidential and not to disclose it to any External Party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement), on the basis that the Disclosing Party is responsible for any disclosure, in breach of this clause 9, by the person to whom it is disclosed.

9.4. Notwithstanding the provisions of this clause 9 –

9.4.1. either Party may make reference to this Agreement, the Parties' identities and a general description of the Services rendered pursuant to and in terms of this Agreement, unless such information is explicitly and specifically identified as Confidential Information on written notice by either Party to the other in the Scope of Work; and



9.4.2. either Party shall be entitled in its discretion from time to time to publish and/or to make known to members of the public, including (without limitation) its shareholding, the details of its financial performance, its financial performance forecast and the Party's strategic planning.

10. PROHIBITION ON INTERFERENCE AND SOLICITATION

10.1. Neither Party shall knowingly, for the duration of this Agreement and for a period of one year after this Agreement terminates for any reason, furnish any information or advice to anyone else which results in any staff member or any representative and/or agent of the other Party who was involved in the implementation or execution of this Agreement to terminate his employment with that Party and/or any other contractual relationship and/or becoming employed by, or directly or indirectly interested in any manner in, any concern which carries on business, directly or indirectly, in competition with any part, aspect or facet of the business conducted by the other Party.

10.2. In the event that either Party breaches clause 10.1 the Offending Party shall pay the Aggrieved Party a sum equal to three hundred percent (300%) of the annual compensation of such staff member or any representative and/or agent, to compensate the Aggrieved Party for its considerable investment of time, effort and money to train and maintain its staff or representatives and/or agents.

11. LIABILITY

11.1. Disclaimers and limitation of liability



11.1.1. To the fullest extent permissible by law, Capitalize disclaims all warranties, any representations of fitness for purpose of any kind, whether express or implied in respect of the Services and the Client utilises the Services at its own risk.

11.1.2. The Client agrees that Capitalize is unable to, and is not required to, guarantee a particular result or set of commercial results.

11.1.3. The Client agrees that neither Capitalize nor Capitalize's Associates shall be liable for any Losses however arising and whatever the cause including, but not limited to, Losses arising as a result of the Client's negligence, and/or failure to furnish Capitalize with adequate information it requires in order to render the Services.

11.1.4. The Client irrevocably waives any claims it may have against Capitalize arising out of, or related to (and agrees not to institute any proceedings in respect of), the Services or this Agreement more than 1 (One) year after the cause of action relating to such claim or legal action arose.

11.1.5. Capitalize liability to the Client pursuant to the provisions of 11.1.4 shall furthermore be limited to the total amount of the fees charged and paid by the Client in the year in which the liability arose.

11.2. Indemnity

11.2.1. The Client hereby indemnifies Capitalize and Capitalize's Associate's from any Losses, which may arise as a result of the Client's unlawful conduct, wilful misconduct, negligence and/or gross negligence.



12. BREACH

12.1. Subject to any other provision of this Agreement providing for the remedy of any breach of any provision hereof, should either Party (“the Offending Party”) commit a breach of any provision of this Agreement and fail to remedy such breach within 10 (Ten) days of receiving written notice from the other Party (“the Aggrieved Party”) requiring the Offending Party to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law to –

12.1.1. cancel this Agreement, provided the breach in question is a breach going to the root of this Agreement; or

12.1.2. claim specific performance of all of the Offending Party’s obligations whether or not due for performance,

in either event, without prejudice to the Aggrieved Party’s right to claim damages.

13. GOVERNING LAW AND JURISDICTION

13.1. This Agreement shall be governed in all respects by and shall be interpreted in accordance with the laws of the Republic of South Africa and the Parties hereby consent and submit to the jurisdiction of the Durban High Court

14. INTERRUPTION EVENT

14.1. An Interrupted Party shall be relieved of its obligations in terms of this Agreement during the period that the Interruption Event and its consequences continue, only to the



extent so prevented, and shall not be liable for any Losses which the other Party may suffer as a result.

14.2. The Interrupted Party shall notify the other Party of an Interruption Event in writing as soon as it becomes reasonably aware of the Interruption Event as such.

14.3. In the event that an Interruption Event exceeds –

14.3.1. 20 (Twenty) consecutive days, and in the event that alternative services and/or facilities cannot be provided by the Interrupted Party or its nominee, the Parties agree to meet and negotiate the suspension, termination or restructuring of this Agreement; or

14.3.2. 3 (Three) consecutive months, and in the event that alternative services and/or facilities cannot be provided by the Interrupted Party or its nominee, either Party may terminate this Agreement and shall only remain liable for performance under this Agreement which fell due immediately prior to the Interruption Event.

15. ASSIGNMENT

15.1. Save as expressly stated to the contrary herein, no Party ("the Ceding Party") shall be entitled to cede, delegate, assign or otherwise transfer all or any of its rights, interests or obligations under and/or in terms of this Agreement, other than as provided for in this Agreement, except with the prior written consent of the other Parties.

15.2. The Parties may not unreasonably withhold the necessary consent as mentioned in clause 15.1 above.

16. SEVERABILITY



16.1. If any clause or term of this Agreement shall have been held by a court of competent jurisdiction to be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

17. DOMICILIUM AND NOTICES

17.1. The Parties choose domicilium citandi et executandi ("domicilium") for all purposes arising from or pursuant to this Agreement, their address and contact details as set out in the Quotation and/or Capitalize invoices.

17.2. Any Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number, and shall be in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.

17.3. All notices, demands, communications or payments intended for any Party shall be made or given at such Party's domicilium for the time being.

17.4. A notice sent by one Party to another Party shall be deemed to be received:

17.4.1. on the same day, if delivered by hand;

17.4.2. one day after transmission if sent by email;

17.4.3. on the third day after despatch, if sent by prepaid courier.

17.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall 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.

18. MISCELLANEOUS

18.1. Except as otherwise set forth referred to in this Agreement, this document constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof, and supersedes all prior discussions, agreements, and understandings of whatsoever nature between Parties as to such subject matter.

18.2. No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

18.3. No addition to, variation or consensual cancellation of this Agreement, or this clause, shall be of any force or effect unless in writing and Signed by or on behalf of all the Parties.

18.4. No indulgence, which any of the Parties ("the Grantor") may grant to any other or others of them ("the Grantee(s)"), shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee(s) which might have arisen in the past or which might arise in the future.

18.5. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

19. Terms & Conditions for Website, Brand, and Creative Design Production - In Conjunction with Our Executed Scope of Work:



TERMS Your approval for work to commence shall be deemed a contractual agreement between you and Capitalize Digital (Pty) Ltd. A 50% deposit payment indicates that you accept the Terms and Conditions outlined in this document and on our website. PLEASE TAKE NOTE OF THE FOLLOWING:

- 19.1. Payment terms are strictly COD, EFT or Debit / Credit unless prior arrangements have been made.
- 19.2. Payment terms are strictly 50% deposit, with the remaining balance to be paid on completion of the project.
- 19.3. The contracted client will be responsible for the entire and original quote total if you decide to cancel or late payments during the contract/agreement period.
- 19.4. By paying a deposit you agree to our Terms and Conditions and agree that you are responsible for the full payment of the work requested.
- 19.5. Large projects will be broken into different production stages. Each stage will be marked off, completed and paid for before commencing to the next stage.
- 19.6. Change Requests: A limited number of changes (2 sets) may be made to all design work (examples of design work include websites, corporate branding work, social media designs, logo designs etc.) submitted by Capitalize Digital, but if continuous changes occur, Capitalize will charge extra for overtime.
- 19.7. All design corrections will be charged at R500 per hour after design concepts have been approved.
- 19.8. Hosting is at clients responsibility, Capitalize will advise the best hosting solutions for the project at hand.
- 19.9. Items remain the property of Capitalize Digital until full payment has been made. Ownership / copyright will only be transferred once payment has been settled in full.
- 19.10. Should you choose not to make use of our services the deposit is non-refundable. Amount not paid on the due date by the client shall bear interest at a rate of 10% per month.
- 19.11. For website, brand, and new business naming services, we provide a 3-5 working day review period for both the initial and final drafts. It is the client's responsibility to communicate the timeline for feedback at each stage of the design journey with Capitalize Digital. Delays in feedback may incur a 5% penalty on the total project amount, exclusive of VAT, which will be added to the final invoice. Timely responses are encouraged to ensure efficient project progress, and for any questions or clarifications, feel free to contact us.
- 19.12. Client Content Preparation: The client is responsible for assembling all website content and will communicate the proposed timeline and mutually agree on deadlines during the project kick-off meeting. Typically, a maximum period of two weeks will be allowed for the client to have content ready, unless prior arrangements have been communicated and agreed upon with Capitalize Digital. In the event of delays in content submission, an



additional penalty of 5% on the total project amount, exclusive of VAT, will be applied and subsequently added to the final invoice.

19.13. Copywriting Services: Should the client wish to engage Capitalize Digital's copywriting services, this preference should be communicated during our project kick-off meeting. The cost for these copywriting services will be quoted separately, allowing the client to review and consider the associated expenses.

19.13. CAPITALIZE DIGITAL PRODUCTION IS AS FOLLOWS:

- Should you accept the quotation: Capitalize will send the design / demo of the look and feel for your approval. + Once the design is approved, Capitalize Digital will begin to develop the site on a live link and will unveil the final site on the agreed timeline and date.
- Once the site is complete - the client will have the opportunity to review and make changes to the content and images (1 x list of changes).
- When all changes have been implemented, the website will be present again for final approval and last minute tweaks (1 x set of final changes).
- Site goes live!