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## **PART A: INTRODUCTION**

1. The parties
  - 1.1. We are EGlobalbuscom Proprietary Limited trading as (t/a) SwiftMart. We are a private company registered in South Africa under the Companies Act, 2008 and our registration number is 2020/578243/07. When the pronouns “we”, “us”, or “our” are used in this document, then we are referring to this company.
  - 1.2. Where we use the words “Business Host(s)” in this document, then we are referring to those members that will be offering their services for hire to others, who we call “Clients”.
  - 1.3. When we speak of “Clients”, then we are referring to those persons that will be renting services from the Business Hosts.
  - 1.4. When referring to both Business Hosts and Clients, we will use the pronoun “you”.
  - 1.5. Your details appear in the registration form that you filled in when you apply for a Business Host or Client account or any subsequent amendment of these details.
2. Introduction and purpose of this document
  - 2.1. We offer an online marketplace that will allow you (that includes juristic persons such as companies or close corporations) to search for and hire services that Business Hosts offer on our marketplace. We also provide payment processing facilities.
  - 2.2. This document determines the rights and obligations of all parties and thereby regulates the relationship between us and you.
  - 2.3. This document is applicable to all actions and transactions that occur on our marketplace.
  - 2.4. This document also incorporates several of our policies by referring to it. This means that although the policy is not expressly repeated herein, the mere referral to it by name means that it is a part hereof. Policies include but are not limited to, our Refund Policy, Privacy Policy, Content Policy and Website Use Policy.
  - 2.5. The policies and this document may be accessed and downloaded from our website.

### 3. Eligibility to enter into this agreement

3.1. We guarantee that we may legally enter into this agreement with you. We hold all the necessary licenses, approvals, or similar consents that may be necessary for us to enter into and perform under this agreement.

3.2. By registering or applying for an account, you **guarantee** that you may lawfully enter into this agreement with us. This means:



3.2.1. that you are 18 years or older.

3.2.2. if you are representing a company, close corporation, or any other legal entity, that the entity has decided (resolved) to enter this agreement and that it has mandated and authorised you to enter into this agreement on their behalf.

3.2.3. that there are no legal reasons (impediments) why you cannot enter into this agreement with us. Legal impediments would be events such as your estate having been sequestered, or liquidated, a curator being appointed to you and/or to your estate, or that you have been ordered (restrained) by a court order, enforcement-, or compliance notice from concluding agreements.

3.3. If you are hiring a service that will be delivered to a minor, then you **guarantee** that you are legally authorised to act on behalf of the minor and you **guarantee** that all necessary consents have been obtained.



### 4. Verification of information

4.1. We may, but have no obligation to do so:

4.1.1. ask for identification or supporting information (or documentation) to verify your identity;

4.1.2. conduct verification checks with third-party service providers to verify your identity or background;

4.1.3. screen you against third-party databases or other sources and request reports from service providers for risks;

4.1.4. obtain reports from public records of criminal convictions or sex offender registrations or their local equivalents; and

4.1.5. request certain documents (such as your driver's license) to verify that you are eligible to receive a given service.

4.2. If you do not provide such information or documents, then we may suspend and/or terminate:

4.2.1. your application or registration for a Business or Client Account; or

4.2.2. ongoing use of our marketplace.

5. Start of this agreement and termination in the absence of a breach

5.1. This agreement starts when we register you for a Client or Business Host account.

5.2. This is a tri-partite agreement.

5.3. This agreement will endure for as long as you hold a Client or a Business Account on our marketplace. Certain provisions of this agreement will survive any termination of this agreement.

5.4. You may terminate this agreement at any time by:

5.4.1. delete your account with us; or

5.4.2. sending us an email requesting termination.

5.5. We may terminate this agreement and delete your account:

5.5.1. for any reason at any time but we will give you reasonable written notice of our intention to do so.

5.5.2. if your account has shown little to insignificant activity in any rolling 24 (twenty-four) month period.

5.6. Should you breach any term or condition of this agreement, then we may:

5.6.1. suspend your membership and account; and

5.6.2. terminate your membership and account.

## PART B: CLIENTS

6. Client membership & accounts
  - 6.1. A Client account allows a person to access our online marketplace, search for and browse listings, and hire services from Business Hosts. We continuously strive to add new features and functionality to enhance a Client's use of our marketplace.
  - 6.2. A Client account may be opened by:
    - 6.2.1. persons 18 years or older; or
    - 6.2.2. legal entities such as a company or a close corporation.
  - 6.3. A person will only be allowed to register one Client account.
  - 6.4. A Client account may only be used by the person in whose name it was registered or (in the event of a juristic entity) the person(s) authorised to do so by that entity.
  - 6.5. A person who wants to obtain a Client membership must:
    - 6.5.1. register for an account by filling in the online form; and
    - 6.5.2. submit the online form for processing; and
    - 6.5.3. agree to be bound by the terms and conditions contained in this document.
  - 6.6. We may decline membership as a Client and refuse to register a Client account if a person does not meet our eligibility requirements or fails to verify the information that will prove eligibility.
  - 6.7. We may cancel a Client's membership and delete the associated Client account if a Client fails to maintain good standing with us.
  - 6.8. Clients must provide accurate, current, and complete information during registration and keep their account information up to date. We don't accept any responsibility for incorrect information submitted by you.
  - 6.9. Clients are responsible for maintaining the confidentiality and security of their account credentials and may not disclose the credentials to any third party.

6.10. Clients are responsible and liable for all activities conducted on their account and must immediately notify us if the Client suspects that credentials have been lost, stolen, or otherwise compromised.

## 7. Orders and bookings

7.1. A Client can book a service (and quantity or duration), by adding the service to the shopping cart and selecting its quantity or duration.

7.2. The Client will have an opportunity to review, correct, or cancel a service, quantity or duration before being required to confirm the order. Confirming the service and quantity (where applicable) will lead to a booking of the service.

7.3. Once a Client has confirmed an order/request, we will inform the Business Host of the booking.

7.4. A Business Host will then have an opportunity to accept or decline the order/request and must do so within 24 (twenty-four) hours.

7.5. Should a Business Host not respond within 24 (twenty-four) hours of a Client having confirmed the order/request, then the Client may deem such booking as being declined.

7.6. We will notify the Client of the Business Host's decision (to accept or decline the booking). At this point, a booking comes into being.

7.7. A contract for the rendering of a booked service will come into effect between the Business Host and the Client upon dispatch of our notification referred to in 7.6 above.

7.8. The Client must then first pay the service charge, disbursements, or other costs for the booking before performance of the service will be due.

7.9. Neither we nor the Business Host will have any obligation to render the booked service until payment has been received from the Client.

## 8. Time for delivery of services and delays

8.1. A listing will tell the Client the parameters of a service, such as:

8.1.1. when or how soon a service can be delivered;

8.1.2. where a service can or will be delivered;

8.1.3. the availability/unavailability of service on specific days of the week;

8.1.4. for how long the service will or can endure;

8.1.5. the limitations of a service.

8.2. If a listing is silent about the time of delivery, then the service will be due for delivery by no later than 30 (thirty) days after we have notified the Client of the Business Host's decision to accept the order.

## 9. The contract to render services

9.1. Clients must familiarise themselves with the service that they wish to hire. The Client must ensure that it understands who the Business Host is, where and how a service will be delivered, and what is offered and what is not offered. This can be achieved by reading the listing descriptions given and photos posted by a Business Host and reading the Business Host's profile and the reviews left by other Clients. It is each Client's responsibility to read and understand the terms and conditions and policies prior to booking a service. We give no guarantee about the correctness of a listing or Business Host.

9.2. The service offered by each Business Host is determined and limited to parameters given in a listing.

9.3. When accepting a booking from a Client, the Business Host will be entering into an agreement with the Client for delivery of that service. We will never have an obligation to deliver the service to the Client.

## 10. What does it cost?

10.1. When a Client hires a service on our marketplace, the Client must pay for the following:

10.1.1. the service fee charge(s) by us;

10.1.2. value added tax, where applicable;

10.1.3. insurance fee, if purchased or included as part of the listing;

10.1.4. any other charge or disbursement that may be mentioned in the listing.

10.2. We will charge the payment method that the Client listed in its Client account.

10.3. A payment made by a Client will be held as an irrevocable deposit in favour of the Business Host and us. Partial or full repayment of the deposit will be done in terms of the refund provisions contained in this document and the Refund and Service Issue policy.

10.4. The Business Host will become entitled to receive the payment (less any monies/fees due to us) once the service has been rendered, or a refund has been processed by us and there is a balance due to the Business Host, or as agreed to otherwise.

11. Cooling off

11.1. All cancellations must be done on our marketplace.

11.2. A Client may cancel a booking within 7 days of our notification that the Business Host has accepted the booking provided that the Client has not requested or accepted delivery of the service before the 7-day period has passed. In this instance, no fees or charges will be charged, and the Client will be entitled to a full refund.

11.3. If the Client has requested or accepted delivery of the service before the 7 day period has passed, then cancellation will be dealt with as provided for in clauses 12.3 or 12.4 as the case may be.

11.4. A Business Host may cancel a booking within 7 (seven) days of our notification that the Business Host has accepted the booking. No fees or expenses will be charged and the Client will be entitled to a full refund.

12. Cancellation of a booked service

12.1. All cancellations must be done on our marketplace.

12.2. A booked service cannot always be cancelled.

12.3. Certain services (such as those delivered over a period of time or in phases) may be cancelled and the Client may be entitled to a partial refund. The Client is referred to our Refund Policy and Protocol below that stipulates in more detail when cancellation is possible, when refunds will be possible, and the extent of the refund.

12.4. No cancellation or refund will be possible for those services that are by the nature not capable of being cancelled.

12.5. Refund provisions and protocol

12.5.1 A Client will be entitled to a partial refund, subject to informing the business host at least 7 days in advance that the service is no longer required. Any losses incurred by the Business Host due to the cancellation of a booked service will be deducted from the deposit, before a refund is issued.

12.5.2 We may charge a reasonable cancellation fee. A reasonable cancellation fee will be determined by the circumstances of each cancellation and we will consider the following:

- the nature of the services that were booked.
- how much notice did you give us of the cancellation.
- the likelihood of the Business Host receiving another booking to make up for the cancelled booking.

12.5.3 The Client will be entitled to a full refund if the booked service is cancelled 7 days in advance of the date the service is required.

12.5.4 You may apply for a refund or lodge a service issue by sending us a message/email with the Refund Request Form that is available on your Dashboard.

12.5.5 In your message/email, you need to provide us with the following information:

- (a) Your booking ID/Reference.
- (b) Who the Business Host was or is.
- (c) When the service was rendered or was supposed to be rendered.
- (d) Detail about your grievance, if the refund relates to a service issue so that we can consider it.
- (e) Provide the Invoice Number you received from us.

12.5.6 We will then ask the Business Host to provide feedback within 48 hours.

12.5.7 After receipt of feedback from the Business Host or 48 hours (should the Business Host fail to respond), then we will give feedback to you within 48 hours.

12.5.8 Refunds will be credited to your SwiftMart account within another 21 working days.

12.5.9 Our decision will be final. Should you feel aggrieved by our decision then you may approach the National Consumer Commission (NCC) for relief, or you may pursue other legal remedies.



13. Changes to a booking

- 13.1. A material change to a booking will be treated as a cancellation of the booked service. In this instance, the new request will be treated as a new booking and the booking process will be followed once again.
- 13.2. A cancellation due to a material change will not incur a penalty or cost if:
- 13.2.1. the change is requested within 7 (seven) days after we notified the Client that the Business Host has accepted the booking; and
- 13.2.2. the Business Host has not commenced delivering the services.
- 13.3. The Client will be liable for the value of services received, disbursements incurred, plus a reasonable cancellation penalty when a booking is cancelled because of a material change.
- 13.4. A non-material change will incur an additional fee to accommodate the impact of the change on the Business Host. A 'top-up' to the payment (deposit) will be required before the Business Host will be required to deliver the amended service.

14. Disruptions or hindrances to a service

- 14.1. If the delivery of a service is temporarily or permanently interrupted by a Client conduct or inaction (irrespective of the cause or intention), then:
- 14.1.1. a reasonable delay penalty may be charged that is commensurate with the delay; and/or
- 14.1.2. the service may be cancelled,
- 14.2. In the event of cancellation as contemplated by clause 14.1.2 above, the Client will be liable for the actual value received, disbursements, and a reasonable cancellation penalty.
- 14.3. Where a booked service is to be delivered in phases or over a period of time:
- 14.3.1. the Client may not cancel such service because of a temporary or minimal delay in the delivery of a service when the delay does not cause material prejudice to the Client.
- 14.3.2. the Client may cancel such a booked service if there has been an excessive delay (due to the Business Host's conduct) in the delivery of a service or time was of the essence.

14.4. In this event of a cancellation contemplated by clause 14.3.2, the Client may claim a refund subject to deduction of the following:

14.4.1. expenses or disbursements that were incurred and which benefitted the Client; and/or

14.4.2. a reasonable portion of the service charge may be charged based on a percentage of work completed and which benefits the Client.

15. Service delivery standards and issues

15.1. A Client must notify us when the Client:

15.1.1. experiences a service issue; or

15.1.2. is not satisfied with the quality and standard of any service; or

15.1.3. is not satisfied with the conduct of a Business Host.



15.2. Service issues and complaints must be lodged without delay but never later than 72 hours after the discovery that there was a service issue.

15.3. A Client may be entitled to a refund based on an evaluation of the events and the reasons provided to us by the Business Host.

16. A Client's liability for damage and risks and services to minors

16.1. A Client will be held liable for damages to a Business Host's property if the damages arise from the Client's grossly negligent conduct or omissions.

16.2. A Business Host may also hold the Client liable for damages caused to the property of any person for whose acts and omissions the Business may be responsible, and which is caused by gross negligence.

16.3. The Client remains solely responsible for the safety, supervision, and person of a minor.

16.4. A Business Host may recover from a Client, under any applicable insurance policies that the Client may have, such loss or damage. The Client agrees to give cession of any claim, cooperate in good faith, provide any information that the Business Host may require, execute documents, and take further reasonable action, in connection with claims.

- 16.5. A Client cannot hold us liable for the acts or omissions (whether negligent or otherwise) of a Business Host. Any claim for damages lies against the Business Host.



17. Fitness to use a service and disclaimer of liability

- 17.1. Clients must inform Business Hosts of any medical, physical, or other similar condition which may impact their ability to use a service safely or that may endanger any other person or cause them harm.

17.2. Each time an order is placed, the Client:

17.2.1. guarantees that the Client and all relevant persons will meet any minimum requirement for the service. This includes meeting the minimum age, proficiency, fitness, or health requirements. The guarantee is given for each person that will receive the services because of the Client).

17.2.2. agrees to indemnify us and the relevant Business Host against any damage or loss that we or the Business Host may suffer because of your use of the service and/or a breach of the guarantees given herein.

17.2.3. acknowledges that some services may carry an inherent risk to property, life, and health.

17.2.4. acknowledge a responsibility to ensure that a Business Host and service presents an acceptable risk to the Client.

### **PART C: BUSINESS HOSTS**

18. Our offering to Business Hosts

18.1. We offer Business Hosts:

18.1.1. a non-exclusive opportunity to offer and market their services to a digital-online audience.

18.1.2. a non-exclusive opportunity to transact with Clients.

18.1.3. a facility to collect payments from Clients through our marketplace.

18.1.4. the processing of refunds to Clients.

18.1.5. process reviews, ratings, service complaints, and other information regarding the services and Business Hosts.

18.2. Business Hosts may use our marketplace to list their business, services, and profile where Clients can find it. Business Hosts may set their own prices, availability, service parameters, and offerings. We continuously strive to add new features and functionality to enhance a Client's use of our marketplace.

18.3. We do not guarantee that Business Hosts will:

18.3.1. receive any bookings at all; or

18.3.2. be exposed to a specific audience, target market, or potential clients in a given geographic area.

18.4. Business Hosts may:

18.4.1. set their own prices.

18.4.2. define their services and the characteristics, functions, and deliverables of a service.

18.4.3. Determine where they wish to offer a service.

18.4.4. define their own operating hours.

18.4.5. set limits to their services.

18.4.6. target certain sectors of the market.

## 19. Business Host membership & accounts

19.1. A Business Host account allows a person to:

19.1.1. list, market, and offer services to Clients and users of our marketplace; and

19.1.2. conclude agreements with Clients for the hiring of services offered by the Business Host; and

19.1.3. invoice and receive payment from Clients when booked services have been delivered.

- 19.2. A Business Host account may be opened by:
  - 19.2.1. persons 18 years and older; or
  - 19.2.2. legal entities such as a company or a close corporation.
- 19.3. A person who wants to obtain a Business Host membership must:
  - 19.3.1. register for an account by filling in the online form; and
  - 19.3.2. submit the online form for processing; and
- 19.4. agree to be bound by the terms and conditions contained in this document.
- 19.5. A person may only register a single Business Host account but may offer several services under this single account.
- 19.6. We may decline membership as a Business Host and refuse to register a Business Host account if:
  - 19.6.1. a prospective Business Host does not meet our eligibility requirements.
  - 19.6.2. the services that a prospective Business Host wishes to list and offer, do not fall within the scope of services that we wish to offer on the marketplace.
  - 19.6.3. a Business Host fails to pay the applicable annual membership fee in advance.
- 19.7. We may cancel a Business Host membership and delete the associated account if the Business Host is not in good standing with us.
- 19.8. Business Hosts must provide accurate, current, and complete information during the application process and keep their account information up to date. We don't accept any responsibility for incorrect information submitted by you.
- 19.9. Business Hosts are responsible for maintaining the confidentiality and security of their account credentials and may not disclose the credentials to any third party.
- 19.10. Business Hosts are responsible and liable for all activities conducted on their account and must immediately notify us if the Business Host suspect that their credentials have been lost, stolen, or otherwise compromised.

## 20. Orders and bookings

The provisions of clauses 7.1 to 7.9 above apply to Business Hosts with the changes that the context requires. This means that each Business Host is bound to the rights and obligations dealt with by these clauses.

## 21. Time for delivery of services and delays

21.1. The provisions of clauses 8.1 to 8.2 above apply to Business Hosts with the changes that the context requires. This means that each Business Host is bound to the rights and obligations dealt with by these clauses.

21.2. The Business Host must notify us if there is a delay in the delivery of the service. Depending on the circumstances, the Client may be entitled to cancel the booked service and receive a partial or complete refund.

## 22. The contract

22.1. The provisions of clauses 9.1 to 9.2 above apply to Business Hosts with the changes that the context requires. This means that each Business Host is bound to the rights and obligations dealt with by these clauses.

22.2. When accepting a booking from a Client, the Business Host will be entering into an agreement with the Client for delivery of that service. We will never have an obligation to deliver the service to the Client.



22.3. The Business Host and we will always remain independent of each other. This agreement does not bring about a partnership, contract of employment, agent-principal relationship, joint venture, or an association of any kind between us and the Business Host.

22.4. Business Hosts must honour the price and time frame for delivery of the service as per the relevant listing.

22.5. A Business Host's terms and conditions must align with and be consistent with our terms, conditions, and policies.

22.6. A Business Host must ensure that they render services to the correct recipient. A Business Host has a duty to ask for proper identification and ensure that they are dealing with the Client who made the booking or the person for whom the booking was made. **A Business Host cannot hold us liable for loss or damage if services were rendered to the wrong person.**

23. Cooling off

The provisions of clauses 11.1 to 11.4 above apply to Business Hosts with the changes that the context requires. This means that each Business Host is bound to the rights and obligations dealt with by these clauses.

24. Cancellation of a booked service

The provisions of clauses 12.1 to 12.4 above apply to Business Hosts with the changes that the context requires. This means that each Business Host is bound to the rights and obligations dealt with by these clauses.

25. Changes to a booking

The provisions of clauses 13.1 to 13.4 above apply to Business Hosts with the changes that the context requires. This means that each Business Host is bound to the rights and obligations dealt with by these clauses.

26. Disruptions or hindrances to a service

The provisions of clauses 14.1 to 14.4 above apply to Business Hosts with the changes that the context requires. This means that each Business Host is bound to the rights and obligations dealt with by these clauses.

27. Service delivery standards and issues

The provisions of clauses 15.1 to 15.3 above apply to Business Hosts with the changes that the context requires. This means that each Business Host is bound to the rights and obligations dealt with by these clauses.

28. Fees and Payment to a Business Host

28.1. Business Hosts are responsible for paying relevant fees to us.

28.2. We will collect payment from Clients on behalf of Business Hosts.

28.3. The Business Host mandates and authorises us to collect payments and hold it as a deposit in favour of the Business Host until the Business Host becomes entitled to payment thereof. In this respect, we act as a payment agent for the Business Host and Client.

- 28.4. We may first deduct our fees and charges from any funds held for a Business Host before we must pay over any funds to a Business Host.
- 28.5. A Business Host will become entitled to claim payment from us after 30 (thirty) days have lapsed from the time that:
- 28.5.1. the booked service was completed; or
  - 28.5.2. at the intervals that the Client and Business Host agreed to in the listing; or
  - 28.5.3. the Client's has been refunded (in the event of a refund).
- 28.6. If we owe (or allegedly owe) a Business Host any amount of money, then the Business Host may not set off or deduct such amount from any amount owed by the Business Host to us.
- 28.7. If a Business Host requires us to make any payment to another person, on behalf of the Business Host, then such request and instruction must be given in writing on in a form or format of our choosing. A Business Host will be liable for any additional costs associated with processing the payment and we may charge a fee.
- 28.8. A Business Host is responsible to ensure that all payment details given to us are correct. There is no duty on us to verify payment details and/or to ensure that payments are received by the Business Host.
- 28.9. The Business Host must indemnify us against any loss or damage that we may incur or for which a third party may hold us liable if the loss or damage arises from incorrect payment details.

29. Promotions

- 29.1. From time to time we may decide to run promotions, advertisements, or other forms of marketing (in this clause "the promotion").
- 29.2. The terms and conditions of partaking in the promotion shall be within our sole discretion.
- 29.3. A Business Host may choose to partake in the promotion or decide against partaking in it.
- 29.4. Should a Business Host decide not to partake in a promotion, then we may exclude such Business Host and their listing from the promotion and only include those Business Hosts that are partaking.



30. Managing your listing

30.1. A listing must always comply with the following requirements. All listings must contain:

30.1.1. complete and accurate information about the Business Host.

30.1.2. sufficient and material information about the service so that a Client will be able to identify what service is being offered and what is not being offered.

30.1.3. the fixed price for a service and/or the rate per unit that will be charged or both.

30.1.4. the units at which a rate will be charged (i.e. per hour, per day, per month etc.).

30.1.5. a description, estimate, or exact disbursements that a Client may be liable for and that may be payable to the Business Host.

30.1.6. the cost of conveyance, transport, or similar costs.

30.1.7. whether there are optional and/or additional value-added charges (such as insurance) that may be purchased in addition to the service.

30.1.8. the taxes payable on the services.

30.2. All listings must always comply with our content policy.

30.3. We may remove any listing that does not comply with our policies. We may use our exclusive discretion to determine if the listing complies or fails to comply with our policies. We will provide you with an opportunity to make representations to us on whether the listing does or does not violate our policies.

30.4. A Business Host must create a listing per service offered and will be charged for each listing as per membership package.

30.5. We do not guarantee a certain search engine ranking or ranking on our platform to any Business Host.

30.6. The Business Host is responsible for removing a service listing or deactivating their account with us whether the removal is of a temporary or permanent nature.

31. Standards of service

31.1. The Business Host is responsible for maintaining their service standards.

- 31.2. We may, from time to time, publish service standards which the Business Host may choose to decline. If a Business Host declines a published standard, then we have the right to cancel this agreement with the Business Host.
- 31.3. We may conduct an audit at any time and at any frequency on a Business Host's service standards. Should we find that a Business Host has failed to comply with a service standard, then we may issue a compliance notice. A Business Host will then have 14 (fourteen) days to rectify the situation. Failure to rectify the non-compliance with the given time will allow us to terminate this agreement with the Business Host.
- 31.4. Should a Business Host be issued with a third compliance notice to rectify the same issue within a rolling 12-month period, then we may terminate this agreement on delivery of the compliance notice.

32. Compliance with laws

- 32.1. A Business Host must always hold the license, approval, or concession that may be required for the Business Host to deliver any service it offers.
- 32.2. The Business Host must comply with any laws, regulations, or compulsory codes of conduct (whether of national, provincial, or municipal origin) that regulate the service or industry it operates in.
- 32.3. Where a voluntary code of conduct has been generally deployed for an industry, we may determine (on a case-by-case basis) that a certain Business Host or class of Business Hosts must first subject itself and/or comply with the code of conduct before it may join or continue using our marketplace.
- 32.4. We may immediately cancel this agreement with a Business Host if the obligations in clauses 32.1 to 32.3 above has been breached.
- 32.5. If a Business Host was prohibited from offering, marketing, or delivering a service under South African law and we are required by law to refuse to pay over any amount held, then we may decline to pay over any payment to a Business Host, even though:
- 32.5.1. the service has been rendered; or
- 32.5.2. the Business Host has incurred cost; or
- 32.5.3. the Business Host will or has suffered harm or loss.

32.6. The Business Host indemnifies us against any damages suffered, penalties, fines, or loss in the event that we suffer damages, have to pay penalties or fines or suffer a loss of any kind. This indemnity includes damages, penalties, fines, or loss claimed against us by a Client or any other party.

32.7. A Business Host cannot hold us liable for special or indirect damages irrespective of the cause thereof. Special or indirect damages includes, but won't be limited to, damage or loss because of loss of profit, loss of revenue, and a loss of savings.

### 33. Tax

33.1. Each Business Host is responsible for complying with the tax laws applicable to that Business Host.

33.2. Should there be an obligation on us to withhold tax and pay it over to the South African Revenue Service ("SARS") on your behalf, then the Business Host authorises us to withhold the determined or required amount and pay it to the tax authority on the Business Host's behalf.

33.3. If the South African Revenue Services (SARS) requires us to pay additional amounts to discharge the Business Host tax obligations, then we may seek additional amounts from the Business Host and such additional amounts may be collected from payments due on other bookings.

33.4. Should SARS require any information from us regarding a Business Hosts, then we may provide such information to them. We will notify you of any such request so that you can attend to it. A Business Host also undertakes to sign the documents that may be necessary to allow us to comply with a request from SARS.

### 34. Liability towards third parties

34.1. A Business Host is responsible for its own acts and omissions. This includes the acts or omissions of any person who works for them.

34.2. A Business Host cannot hold us liable for damage or loss caused by the Business Hosts, agents on its behalf, or employees thereof.

### 35. Insurance

- 35.1. Business Hosts must obtain public liability insurance and further comprehensively insure their business, operations, and listed assets and/or other items that are necessary to deliver their services, where applicable.
- 35.2. A Business Host guarantees that, at the time of applying for a Business Host account, and each time that they post a listing, that they have reviewed the relevant policy terms and conditions pertaining to them, including coverage details and exclusions.
- 35.3. Insurance cover is optional if you already have appropriate business insurance cover. However, if you don't have business insurance cover relevant to your type of business you MUST insure your business or assets when subscribing as a Business Host to SwiftMart. Business Hosts MUST select the insurance option checkbox, if they don't have existing business insurance cover, before their listing will be approved and published. Business Hosts will be contacted directly by our insurance broker agent and be provided with the relevant information and quotation that applies to their business or asset/s listed. The applicable insurance premium payable to the insurer will be determined by the type of business or asset listed by the Business Host. SwiftMart will not be held responsible or accept liability for any financial losses, damage, injury or loss of life, should you fail to insure your business or asset/s.

#### **PART D: TERMS AND CONDITIONS GENERALLY APPLICABLE TO ALL PARTIES**

36. Reviews
  - 36.1. After each service has been completed, both the Client and Business Host must review each other.
  - 36.2. All reviews must be accurate and must comply with our Content Policy.
  - 36.3. Reviews are essential to a successful marketplace since it enables us to maintain and improve the quality and standards of our services. Reviews also play an important role in informing other Clients about the quality and standard of service delivered by Business Hosts.
  - 36.4. Reviews will not be verified by us for accuracy and we give no guarantee about its correctness or accuracy.
  - 36.5. If a Business Host or a Client fails or refuses to leave a review, they will be prompted with a reminder message to complete the outstanding review.

37. Content

37.1. Our marketplace allows both Clients and Business Hosts to post, amongst other types of media:

37.1.1. written feedback;

37.1.2. text;

37.1.3. photographs;

37.1.4. video;

37.1.5. audio.

We call this "Content".

37.2. By providing us with Content, you are granting us a non-exclusive, worldwide, royalty free, irrevocable, perpetual, sub-licensable, transferable license to:

37.2.1. publish the Content on our website;

37.2.2. to use the Content in our promotional materials;

37.2.3. to copy or modify the Content;

37.2.4. produce derivative works with the Content.

37.3. Should you provide Content to us, you promise (guarantee) without restriction or limitation that you own Content or that you have the right to grant us the rights mentioned in clause 37.2 above.

37.4. All moral rights subsisting in copyright-protected creations are included in this assignment. You waive any reliance on any moral rights that you may have.

37.5. You agree to sign any documents and/or take any steps that might be necessary to give effect to this assignment.

37.6. Should you breach any of the clauses dealing with intellectual property, then you will be liable for the cost incurred as a result of such breach whether the cost arose from legal action taken to protect our rights or to defend a claim made against us. Legal costs may be charged on the scale as between attorney and client.

- 37.7. We own any creations such as photographs, imagery, visuals, sketches, audio, videos, or other similar creations (that was produced with or without Content),
- 37.8. Content that contains personal information will be dealt with according to our Privacy Policy.
- 37.9. We may make use of automated tools or service providers to translate Content. We do not guarantee that translations will be accurate.
- 37.10. You acknowledge that we may, but does not have to:
  - 37.10.1. monitor the use of the marketplace.
  - 37.10.2. remove Content that we deem to comply with our policies, but which nonetheless offends you.
- 37.11. We may remove any content, in whole or in part, that violates these terms and conditions, Our Content Policy, any other policy, or code of conduct, or which we consider to have the potential to harm our reputation or that of a Business Host.
- 37.12. In the event of repeated or severe violations, we may also restrict, suspend, or remove the associated account.

## 38. Code of Conduct

- 38.1. Both Clients and Business Hosts must act with integrity, treat others with respect, and always comply with applicable laws. A Business Host may refuse to render a service if a Client fails to act as such.
- 38.2. We offer you the right to use a marketplace that enables Business Hosts to publish, offer, search for, and book services. We do not and cannot control the conduct of Clients and Business Hosts.
- 38.3. You must adhere to the following code of conduct:
  - 38.3.1. do not misrepresent who you are, your details, your business, or the service offered (as the case may be).
  - 38.3.2. be polite and courteous in your dealings with each other and us.
  - 38.3.3. do not discriminate against others.
  - 38.3.4. do not harass others.

39. Privacy and personal information
  - 39.1. How we collect, store, process, analyse, and use your information is determined by our Privacy Policy.
  - 39.2. If you provide us with someone else's personal information, you must:
    - 39.2.1. do so in compliance with applicable law;
    - 39.2.2. be authorised to do so; and
    - 39.2.3. authorise us to process that information under our privacy policy.
  - 39.3. **Client** data must be shared with a **Business Host** so that the Service can be delivered. Business Hosts and Clients agree that their data may be processed in accordance with the provisions of annexure "A" hereto.
40. Direct marketing

How we will use your information for marketing purposes is dealt with in our Privacy Policy.
41. Changes and improvements to the marketplace
  - 41.1. We may add or remove functions and features from the marketplace and the decision and timing of such changes will be within our sole discretion. This right includes the right to add security measures and associated features, processes, and functions.
  - 41.2. You will have no claim against us for the addition or removal of a function, feature, security measure, improvement, or other aspect of the marketplace.
42. Use of our marketplace, its functions, features, and tools, and other intellectual property
  - 42.1. You may only use:
    - 42.1.1. our marketplace as provided for by these terms or conditions.
    - 42.1.2. Content solely for informational purposes.
  - 42.2. You may not use:
    - 42.2.1. our marketplace to send promotional, digital, bulk messages.

42.2.2. Content unless you have permission from the Content owner or the use is authorised by us.

42.2.3. engage in any practices that are intended to manipulate our search algorithm.

42.3. In respect of our marketplace, you may not:

42.3.1. scrape, hack, reverse engineer, compromise or impair it.

42.3.2. use bots, crawlers, scrapers, or other automated means to access or collect data or other content (in general) from it.



42.3.3. hack, avoid, remove, impair, or otherwise attempt to circumvent any security or technological measure used to protect it.

42.3.4. decipher, decompile, disassemble, or reverse engineer any of the software or hardware used to provide it.

42.3.5. take any action that could damage or adversely affect the performance or proper functioning of it.

42.4. You may not:

42.4.1. use our name, logo, branding, trademarks, or any other proprietary information without permission our express written permission.

42.4.2. use or register any domain name, social media handle, trade name, trademark, branding, logo, or other source identifier that may be confused with our branding.

42.4.3. use, copy, display, mirror or frame our marketplace, any Content, or any page layout or design without our consent.

42.5. Our marketplace may contain links to third-party websites, applications, services or resources (“**Third-Party Services**”) that are subject to different terms and privacy practices. **You cannot hold us liable for any loss, damage caused by any part of such Third-Party Services and links to such Third-Party Services are not an endorsement.**

43. Breach

43.1. This clause 43 is applicable to actions or omissions which amount to a breach of the terms of this agreement. This clause does not apply where another part of this agreement specifically deals with breach or non-compliance.



- 43.2. Should you breach any term of this agreement, then we may:
- 43.2.1. suspend our obligations to you;
  - 43.2.2. limit your access and use of our marketplace;
  - 43.2.3. cancel pending bookings and offer (if we wish to do so) the booking to another Business Host;
  - 43.2.4. terminate this agreement and claim damages;
  - 43.2.5. require you to comply with it and claim damages for any loss or damages suffered.



The listed actions do not mean that we may not resort to other forms of relief available to us under law. We may also resort to more than one of the above listed actions.

44. Accuracy of information and data

- 44.1. We provide all information and data as is. We give no warranty or assurance regarding the correctness, accuracy, or any other characteristics of the information.
- 44.2. We do not endorse or warrant the existence, conduct, performance, safety, quality, legality or suitability of any Client, Business Host, listing, or service.
- 44.3. We do not warrant:
  - 44.3.1. the performance or non-interruption of our marketplace;
  - 44.3.2. that verification, identity or background checks conducted on listings or Business Hosts or Clients will identify past misconduct or prevent future misconduct.

45. Limitation of liability

You cannot hold us (including our directors, employees, or officers) liable for any incidental, special, or consequential damages, including lost profits, loss of data or loss of goodwill, service interruption, computer damage or system failure or the cost of substitute products or services, or for any damages for personal or bodily injury or emotional distress arising out of or in connection with:

- 45.1. this agreement;
- 45.2. the use of or inability to use of our marketplace or any Content;

45.3. any communications, interactions, or meetings you may have with someone you interact or meet with through, or as a result of, your use of our marketplace; or

45.4. publication or booking of a listing;

irrespective of the cause thereof.

46. Severance of clauses

46.1. If any term or condition of this agreement is or becomes illegal, invalid, or unenforceable:

46.2. then the legality, validity and enforceability of the other terms and conditions hereof shall not be affected.

46.3. but would be legal, valid and enforceable if some part of it was deleted, modified, or removed from this agreement, then the term or conditions shall apply with such deletions or modifications as may be necessary to make it legal, valid and enforceable.

47. Waiver of rights

47.1. Should we not enforce any right or provision in these terms, it will not amount to a waiver of any rights.

47.2. Any waiver of rights must be recorded in writing and be agreed to by all parties involved.

48. Transfer of rights and obligations

48.1. You cannot transfer your rights or obligations under this agreement to another person unless we have consented to it.

48.2. We may transfer our rights or obligations under this agreement to any other person.

49. Notices and address for delivery thereof

49.1. As part of your onboarding as a Client or Business Host, you will be required to provide a physical address. This address may be changed by you from time to time by changing it directly on our marketplace.

49.2. Any change in address will only become effective 3 (three) days after the change was made.

49.3. We may deliver any notice or legal process to you at the address that you have provided.

49.4. A notice may be a notice required by this agreement, a notice that may be relevant to the business relationship between us, or any legal notices.

49.5. You may likewise deliver notices or legal process to us. You must deliver all such notices or legal process at our registered address as shown at the time on the website of the Companies and Intellectual Property Commission.

## 50. Force Majeure

50.1. If something happens that is beyond our or your reasonable control that prevents either us or you from doing what this agreement requires of us, then that party shall not be required to deliver performance.

50.2. The right is dependent on the following steps having been taken:

50.2.1. you have promptly notified us of the event and how long it will take to remove the hindrance; and

50.2.2. both you and we must use reasonable endeavours to minimise the effects of the event.

50.3. If, after 30 (thirty) days, you are still unable to perform under the agreement due to the event (or ensuing events that are causally linked to the initial event), then the other party may cancel this agreement. This cancellation requires notice of 7 (seven) days to be given.

50.4. Such cancellation will not affect rights and/or obligations that accrued prior to the initial event.

## 51. Entire agreement, representations, and variations

51.1. This document contains the entire agreement between us and the Client and us and the Business Host.

51.2. We are entitled to unilaterally publish changes to this agreement. We should give you notice of any intended changes. Should the changes not be acceptable, then you may cancel this agreement by giving us notice in writing. Such cancellation shall only affect future obligations and will not affect any rights, claims, or obligations that arose prior to delivery of your notice to cancel.

51.3. No variation of this agreement shall be of any force or effect unless the variation has been agreed.

51.4. By entering into this agreement with us, you acknowledge that you have investigated our marketplace and that you are familiar with its inherent risks.

52. Governing law

The law of the Republic of South Africa will govern this agreement.

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## **Annexure “A”**

### ***DATA PROCESSOR, CONFIDENTIALITY, AND NON-DISCLOSURE***

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1. In this annexure and the term “Client Data” means all data passed by Us to a Business Host.
2. A Business Host must:
  - 2.1. only process Client Data for the purpose of delivering the service that a Client has leased and must not use Client Data for any other purpose. Delivering the service includes processing the data for the purpose of accounting and complying with applicable laws and regulations.
  - 2.2. when transferring Client Data or storing data with a third party, ensure that it has in place a written agreement with the recipient and/or conveyer which compels this person to respect and maintain the confidentiality and security thereof. Such agreement must also hold the recipient and/or conveyer liable for breach of the agreement.
  - 2.3. take appropriate technical and organisational measures to protect and safeguard Client Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which in addition, provide a level of security appropriate to the risk represented by the processing and the nature of the Client Data to be protected and which safeguards comply with the requirements set out by the Protection of Personal Information Act, 4 of 2013.
  - 2.4. notify us immediately where it has reasonable grounds to believe that Client Data, which has been provided to it may have been further processed, has been lost, destroyed, or accessed or acquired by any unauthorised person.
  - 2.5. ensure that further operator agreements are concluded where it intends that a third-party process Client Data. Such further agreements must provide the same or better protection than this agreement does.
  - 2.6. ensure that any person acting under its authority, including any employee or sub-operator, shall be obligated to process Client Data only on our instructions and strictly in accordance with this agreement.
3. All parties to this agreement may, from time to time, be exposed to and be in possession of information and data that may be confidential or personal in nature.
4. Business Host:

- 4.1. may only disclose, transfer, or hand over Client Data to their employees or agents for the purpose of delivering services. Delivering the service includes processing the data for the purpose of accounting and complying with applicable laws and regulations.
  - 4.2. must obtain a secrecy undertaking from all employees or agents that corresponds with the obligations imposed on them by this agreement.
  - 4.3. must treat Client Data as confidential and not disclose it to any other person unless so required by law and only once it has provided us with adequate warning of this requirement to disclose. The notice must include all relevant details, including the identity of the person who requires the disclosure, the reason for the disclosure and confirmation that the person to whom the Client Data is to be disclosed to, and on the taking of reasonable safeguards.
  - 4.4. must take steps that are reasonably necessary to prevent Client Data from falling into the hands of an unauthorised third party.
5. Client data will remain a Client's property.
  6. A Business Host may only retain copies of Client Data for the purpose of delivering the services, keeping records required by law and complying with the laws of South Africa.
  7. The above undertakings will not apply to information which:
    - 7.1. is lawfully in the public domain;
    - 7.2. lawfully comes into the public domain otherwise than as a result of the conduct of a party or one of its employees or agents;
    - 7.3. a party is compelled to disclose in terms of a court order;
    - 7.4. is required by law to be disclosed.
  8. A Business Host that intends to rely on the exceptions listed in clause 7 of this annexure "A", must prove that the exception applies.
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