

## 1. Agreement

- This Agreement is made between AfriCap Enterprise (“AFRICAP”) and the Customer on the following terms and conditions.
- This Agreement comprises these General Terms & Conditions and the Plan.

## 2. Plan & Cancellation Policy

- The Customer subscribes to the Plan and in so doing agrees upon and accepts these General Terms & Conditions.
- These General Terms & Conditions prevail over the Plan to the extent of any inconsistency.
- The Customer warrants the Plan meets the Customer’s needs from the date of payment until 6 months have lapsed.
- A Subscriber may cancel their Subscription Services Agreement at any time. A written request for termination of services may be emailed to [info@africap.finance](mailto:info@africap.finance). The Subscriber will be liable for payment of all services rendered during the subscription period. The Subscriber’s annual or six-month subscription fee will not be refunded.

## 3. Services

- AFRICAP shall provide the Services to the Customer in accordance with the Plan.
- AFRICAP shall deliver the Services in accordance with Good Industry Practice.
- The Customer uses the Services and the Website solely at its own risk.

## 4. Access

- The Customer shall access the Services via the Website.

- The Customer shall keep the Login Codes strictly confidential and secure from third parties.

## **5. Use**

- The Customer is licensed to use, and shall use, the Services and the Website only for the Authorised Use.
- The Customer shall comply with the Acceptable Use Policy.
- The Customer acknowledges and accepts the Privacy Policy.
- The Customer shall comply with AFRICAP terms of use of the Website.

## **6. Intellectual Property**

- AFRICAP owns all Intellectual Property in the Services and the Website.
- AFRICAP licenses the Customer to use the Services and the Website for the Authorised Use in accordance with these General Terms & Conditions.
- The Customer shall not copy, hack, alter or disseminate the Services or Website in any way, nor allow any third party to do so.
- The Customer agrees AFRICAP may suspend or terminate the Services and access to the Website if any infringement of a third party's Intellectual Property occurs or is alleged in connection with the Website.

## **7. Back Up and Disaster Management**

- The Customer shall regularly and independently store and back up all of its Content and Data submitted or uploaded to the Website in accordance with Good Industry Practice.
- The Customer shall implement and maintain a disaster management plan for its activities and/or enterprise and shall be solely responsible for rectifying any events which interrupt the Customer's ability to access and use the Services and the Website pursuant to the General Terms & Conditions.

## **8. DDoS**

- If the Services or the Website are the target of a DDoS or any other electronic attack or threat, AFRICAP may, at any time and without giving prior notice to any person, take such protection and/or mitigation measures as it in its sole discretion considers reasonably necessary, including:
  - a. suspending the Services and the Website;
  - b. moving the Services, the Website and/or any Content or Data to a quarantine server;
  - c. implementing access control lists; and/or
  - d. applying IP address filtering and/or blocking software or algorithms.
- If AFRICAP takes any such measures, it may continue them until such time as the attack or threat is considered by AFRICAP (in its absolute discretion) to be eliminated, avoided or otherwise dealt with.

## **9. Support**

- AFRICAP may provide the Customer with Help Desk Support for the Services and Website.
- The Customer may access Help Desk Support via any email address, phone number, website or other contact method designated by AFRICAP.
- AFRICAP shall use its best endeavours to respond to any Help Desk Support enquiries or reports in a timely manner but is otherwise not bound to respond or to rectify any defects, errors, threats or other issues arising within any particular timeframe.

## **10. Service Fees**

- The Customer shall pay the Service Fees set out in the Plan

- AFRICAP may block and/or suspend the provision of or access to the Services and Services if any Service Fees are unpaid or become overdue (whether in whole or in part).
- AFRICAP may pass on and charge the Customer any fees, levies or charges it incurs as a result of any credit card, direct debit, cheque or similar payment transaction failing or being declined.

## **11. Errors and omissions**

- AFRICAP shall use its best endeavours to rectify at its cost any material errors or omissions in the Services provided hereunder promptly whenever such an error or omission is found in the course of execution of the Services. An error or omission is material if AFRICAP determines in its absolute discretion (acting reasonably) that it is not minor and prevents the Services from satisfying the Customer's specifications, any Legislative Requirements and/or the standards of Good Industry Practice.
- The Customer shall submit all claims for rectification to AFRICAP in writing promptly upon discovering them.

## **12. General indemnity**

- To the fullest extent permitted by law, the Customer shall indemnify and keep indemnified AFRICAP from and against any and all losses, loss of profits, claims, damages, actions, suits, demand, costs (including reasonable legal costs and disbursements on a full indemnity basis), interest, charges and expenses of any kind whatsoever, which AFRICAP shall or may suffer or incur or be called upon to suffer or incur by virtue of:
  - any default or breach hereunder by the Customer;
  - any unlawful, negligent, fraudulent or indictable act or omission of the Customer or any of its officers, employees or agents;
  - the use or misuse of any Services by the Customer; or

- any Content or Data uploaded, processed or posted by the Customer using the Services or otherwise on the Customer Website or any other website of the Customer, except to the extent of any contributory negligence by AFRICAP.
- The Customer shall pay any and all indemnified amounts to AFRICAP within 7 days of receiving a written demand for the same.

## **13. General**

- These General Terms & Conditions prevail over any terms of trade or terms and conditions of supply or of acquisition of goods or services provided or submitted by the Customer or agreed to by AFRICAP to the extent of any inconsistency between them.
- The parties contract hereunder independently and at arm's length. Nothing herein constitutes either party a partner, joint venturer, agent or employee of the other party.
- Each party warrants, states and represents that the party has entered these General Terms & Conditions with full knowledge of the responsibilities of the party under it, with full knowledge of the effect of these General Terms & Conditions on the party's financial position, after either obtaining or electing not to obtain independent legal and accounting and taxation advice on the terms and subject matter of these General Terms & Conditions, and without any reliance on any other party in respect thereof.
- If any provision of these General Terms & Conditions shall be invalid, illegal or unenforceable, that provision shall be severed from these General Terms & Conditions and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired in any way.
- All notices required to be given by the Customer under these General Terms & Conditions must be given in writing (whether electronically or in hard copy), addressed to AFRICAP at its registered office (or other address published on the Website), in the English language, signed (whether digitally or in hard copy) by the Customer (or its duly authorised attorney or representative), and dated the date on which it was signed. AFRICAP may

give notices to the Customer in any form AFRICAP thinks fit and, without limiting the foregoing, if AFRICAP publishes a notice or any content on the Website then the Customer is deemed to have received that notice and notice of that content on and from the date of publication. The Customer shall check and monitor and keep updated with all notices and content published on the Website.

- AFRICAP may license or sub-contract all or any part of its rights and obligations without the Customer's consent. AFRICAP may also at its sole discretion transfer or assign all or any part of its rights and obligations hereunder to any third party without the Customer's consent.
- The Customer shall give AFRICAP not less than fourteen (14) days prior written notice of any proposed change of ownership or control of the Customer, or any change in the Customer's name, or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by AFRICAP as a result of the Customer's failure to comply with this requirement. In addition, any such change in ownership or control of the Customer shall be deemed hereunder to constitute a transfer or assignment of the Customer's rights and obligations hereunder to the person or entity take on or taking over such ownership or control, which change shall not be undertaken without first obtaining the prior written consent of AFRICAP.
- AFRICAP shall not be required to notify the Customer of, or obtain the Customer's consent to, any change or proposed change of ownership or control in AFRICAP.
- AFRICAP reserves the right to review these General Terms & Conditions at any time. If, following any such review, there is to be any change to these General Terms & Conditions, then that change will take effect from 7 days after the date on which AFRICAP notifies the Customer of such change. The Customer may not change or amend these General Terms & Conditions without AFRICAP's prior written agreement.

- Personal information about the Customer may be used and retained by AFRICAP for the provision of products or services, the marketing of products or services, credit checking, maintenance of the Customer's account/s with AFRICAP, processing any payment instructions or direct debit or credit facility, and debt collection, as well as for any other purposes as may be agreed between the parties or required by law from time to time.
- The failure by AFRICAP to enforce any provision of these General Terms & Conditions shall not be treated as a waiver of that provision, nor shall it affect AFRICAP's right to subsequently enforce that provision.
- Any party signing or executing or otherwise accepting these General Terms & Conditions on behalf of the Customer as the Customer's director, officer, attorney or representative hereby warrants, states and represents in his or her personal capacity that he or she is duly authorised and permitted to do so by the Customer and by law.
- Subject to any written agreement to amend the terms hereof, these General Terms & Conditions constitute the sole and entire agreement between the parties with respect to its subject matter. No warranties, representations, guarantees or other terms or conditions of any kind not contained and recorded in these General Terms & Conditions are of any force or effect.
- These General Terms & Conditions and any contract to which they apply shall be governed by the laws applicable in Queensland and are subject to the jurisdiction of the courts of Queensland. All legal proceedings in relation to these General Terms & Conditions shall be instituted and held in Brisbane in the State of Queensland, Australia.
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## 14. Definitions and interpretation

In these General Terms & Conditions:

- a. **Acceptable Use Policy** means AFRICAP's Acceptable Use Policy published on the Website from time to time.
- b. **Authorised Use** means the use for which a Service is provided as stated in the Plan or as otherwise notified by AFRICAP to the Customer from time to time.

- c. **Authorised Users** means the persons or entities who may use the Service as stated in the Plan or as otherwise notified by AFRICAP to the Customer from time to time.
- d. **Collateral** has the meaning set out in clause 18.1.
- e. **Commencement Date** means the first day of the Term.
- f. **Content** means any text, data, images, graphics, animations or other information or material or content to be published on the Website from time to time.
- g. **Customer** means the customer identified in the Plan to which these General Terms & Conditions apply.
- h. **Data** means information or data of any kind and includes Content.
- i. **DDoS** means a distributed denial of service attack.
- j. **Devices** means the plant, equipment and devices used by the Customer or its Authorised Users to access and use the Services, including any and all software and source code installed thereon.
- k. **Good Industry Practice** means, in relation to any work or task required to be performed by a party, the practices, methods, specifications and standards of safety, design and performance which are generally expected of competent and experienced professionals who perform the same or similar work or tasks in the same or similar industry or profession.
- l. **Help Desk Support** means help desk support for use of the Website provided at the time and in the manner published by AFRICAP from time to time.
- m. **Intellectual Property** means circuit layout rights, copyrights, patent rights, trademark rights, design rights, get up, know-how, trade secrets, source code, software and any and all other forms of Intellectual Property, wheresoever and howsoever arising, whether registered or unregistered, anywhere in the world.
- n. **Legislative Requirement** includes a requirement imposed by law, including to obtain any governmental or judicial approval or consent, to give a notice, to pay a fee charge or penalty, and to perform and act or omissions.
- o. **Login Codes** means login codes and authentication criteria provided by AFRICAP to access the Services.
- p. **Plan** means the Services plan agreed between AFRICAP and the Customer from time to time via the Website or otherwise in writing.
- q. **Privacy Policy** means AFRICAP's Privacy Policy published on the Website from time to time.
- r. **Services** means AFRICAP's services published on and provided via the Website under the Plan, and includes Help Desk Support.



- s. **Service Fees** means the fees described in the Plan.
- t. **Term** means the period specified in or covered by the Plan during which the Customer is bound by this Agreement.
- **Website** means AFRICAP's website at [www.africap/finance](http://www.africap/finance). In these General Terms & Conditions, except where the context otherwise requires:
  - a. the singular includes the plural and vice versa;
  - b. a gender includes other genders;
  - c. another grammatical form of a defined term has a corresponding meaning;
  - d. a reference to 'writing' or 'in writing' includes electronically via email, website or other digital communication.
  - e. a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these General Terms & Conditions, and a reference to these General Terms & Conditions includes any schedule or annexure;
  - f. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - g. a reference to a party is to a party to these General Terms & Conditions, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
  - h. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
  - i. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
  - j. headings are for ease of reference only and do not affect interpretation.