



TERMS AND CONDITIONS THE CAPE 1000™

1. CLIENT ACKNOWLEDGEMENT

- 1.1. I hereby acknowledge that the The Cape 1000 Pty (Ltd) (hereafter “The Cape 1000”) Terms and Conditions and The Cape 1000 Tour Pack have been distributed to me during and as part of the The Cape 1000 The Cape 1000 Event and received on date of acceptance of these terms and conditions, remains property of The Cape 1000 and that the use of The Cape 1000 Tour Pack is subject to the Terms and Conditions, as set out in this document below.
- 1.2. All Copyright and Intellectual Property that subsists in The Cape 1000 Tour Pack and which enjoys protection *inter alia* under the South African Copyright Act, No. 98 of 1978 (as amended), international treaties and other applicable laws, remains exclusively the property of The Cape 1000.
- 1.3. Any unauthorized copying or reproducing of The Cape 1000 Tour Pack and/or any portion thereof, in any manner without the permission of The Cape 1000, is strictly prohibited and constitutes a violation of the relevant Copyright, unless copies or reproduced for purposes of research, private study or private use.
- 1.4. The Cape 1000 Tour Pack will be used solely for the purposes of providing information required in order to conduct The Cape 1000 Event, which include but are not limited to: (i) route information; (ii) activity information; (iii) accommodation information; (iv) and travel and/or flight information.
- 1.5. The Cape 1000 Tour Pack and Terms and Conditions contained herein are provided to you “as is” and your reliance thereon is entirely at your own risk. Moreover, The Cape 1000 does not represent or warrant that The Cape 1000 Tour Pack will meet any particular criteria of accuracy, completeness, reliability, performance or quality.
- 1.6. The Cape 1000 Tour Pack may only be used for the duration of The Cape 1000 Event, commencing from the date on which you receive The Cape 1000 Tour Pack. The Cape 1000 Tour Pack may only be used by you and may not be assigned, transferred, sub-licensed or distributed to any third party. You acknowledge that the ideas and expressions contained in The Cape 1000 Tour Pack and Terms and Conditions below

any modifications thereof are confidential and proprietary to The Cape 1000 and that you undertake not to divulge or disclose these documents to any third party.

1.7. The Cape 1000 will not be liable for any damages or losses whatsoever relating to your use of The Cape 1000 Tour Pack in any manner. This includes but is not limited to, any direct, indirect, special, incidental, punitive or consequential loss, whether in contract, statute or delict, that arises from your use of The Cape 1000 Tour Pack. I hereby indemnify The Cape 1000 against any claims of whatsoever nature by any third party or third parties arising from the use of The Cape 1000 Tour Pack.

2. TERMS OF USE

2.1. The Cape 1000 Tour Pack and Service related thereto are offered to the Client for the duration of The Cape 1000 Event.

3. DEFINITIONS

3.1. "**Agreement**" means this agreement any annexures related thereto;

3.2. "**Client**" means a party who has concluded an Agreement with The Cape 1000 for their services related to The Cape 1000 Event;

3.3. "**Commencement Date**" means the date of signature of the Client signing this Agreement

3.4. "**Confidential Information**" means any information which is confidential and/or proprietary to the Party disclosing such information to the Party receiving same, including but not limited to Personal Information, reports, pricing structures and any other proprietary and confidential information, trade secrets, business methods, any information of a Party's business, in whatever form including but not limited to all graphic and other reproductions of the written word, depictions and pictorial material, and all audio-visual and machine-readable;

3.5. "**ECTA**" means Electronic Communications and Transactions Act No. 25 of 2002, as amended;

3.6. "**IP**" means all and any intellectual property rights owned and/or utilized by The Cape 1000 in rendering the Services, including, but without limitation discoveries; inventions; designs; processes; know-how; technical know-how; research results; works of authorship; data, databases; trade or business names; domain names; the trade marks; rights in any design (registered or unregistered and applications for same); copyright (including rights in computer software and typography rights);

confidential and proprietary knowledge and information and any rights protecting same; business goodwill and reputation and rights protecting same; database rights; and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having an equivalent effect anywhere in the world;

- 3.7. "**The Cape 1000**" means The Cape 1000 Pty (Ltd), Registration No. 2022/503419/07 with its principal place of business at 61 East Hertford Road, Bryanston;
- 3.8. "**The Cape 1000 Tour Pack**" means an informative document providing important information to the Client regarding The Cape 1000 Event, and providing guidance to the Client regarding routes, functions, accommodation and activities associated with The Cape 1000 event.
- 3.9. "**Parties**" means The Cape 1000 and the Client collectively and "**Party**" shall mean either of them;
- 3.10. "**Personal Information**" means any personal information of a Third Party and/or indirectly the Client, and includes but is not limited to the Client or the Third Party's name, location, vehicle make, model, color, number plate contact numbers, e-mail address, driver license details, and any other personal information as defined in section 1 of the ECTA and POPI;
- 3.11. "**Disclosing Party**" means the Party disclosing Confidential Information to the Receiving Party under this Agreement;
- 3.12. "**Receiving Party**" means the Party receiving Confidential Information from the Disclosing Party under this Agreement.
- 3.13. "**POPI**" means the Protection of Personal Information Act No.4 of 2013, as amended;
- 3.14. "**Services**" means the services to be provided by The Cape 1000 to the Client in terms of this Agreement and in relation to The Cape 1000 Event; and
- 3.15. "**VAT**" means value-added tax as defined in the VAT Act No 89 of 1991.

4. TERMINATION

- 4.1. The Cape 1000 shall reserve the right to terminate this Agreement by giving the Client 10 days written notice.
- 4.2. The Client shall reserve the right to terminate this Agreement by giving The Cape 1000 30 days written notice.
- 4.3. The Parties can enter into an alternative agreement to terminate this Agreement; provided that both Parties will shall agree to such an alternative agreement in writing.

5. PROVISIONS RELATED TO THE SERVICES

- 5.1. The Cape 1000 undertakes to render the Services to the Client in terms of this Agreement.
- 5.2. The Cape 1000 may temporarily suspend its obligations in terms of this Agreement in order to service, repair, maintain, upgrade, modify, alter, replace or improve any of the Services. Where circumstances permit, The Cape 1000 shall use reasonable endeavors to provide prior notice of any such suspension to the Client. The Client shall not be entitled to any set-off, discount, refund or other credit in respect of any such suspension of the Services.

6. PAYMENT TERMS

- 6.1. The Cape 1000 shall invoice the Client in no less than 60 days before The Cape 1000 Event.
- 6.2. A payment of 50%, of the invoice referenced in paragraph 6.1 shall be paid by the Client in no less than 7 days of receipt of invoice, failing which The Cape 1000 will be within its rights to remove the Client from The Cape 1000 Event. Consequently, such removal shall allow for The Cape 1000 to invoice an alternative Client for Services to be rendered under this Agreement, subject to reasonable amendments. This payment shall be regarded as the deposit payment in relation to The Cape 1000 Event. Moreover, a schedule of payment arrangements is attached herewith as Annexure A.
- 6.3. The Cape 1000 shall be entitled to increase any charges payable by the client on 10 days' notice subject to both parties agreeing to the increase in writing.
- 6.4. The Cape 1000 shall be entitled to charge interest on any outstanding balance owed by the Client at 2% per month above the prime bank rate of interest quoted by the Standard Bank of South Africa.
- 6.5. Should the Client fail to pay any amount owing to The Cape 1000 as set out in paragraph 5.1 and 5.2, The Cape 1000 shall be entitled, in its discretion and without prejudice to any other rights which it may have, to cancel this Agreement on written notice to that effect to the Client, or to suspend performance of its Services pending payment in full by the Client.
- 6.6. The Cape 1000 shall be entitled to retain a 20% facilitation fee where The Cape 1000 Event is cancelled and/or rescheduled due to circumstances beyond the control of The Cape 1000.

6.7. The Client shall not be entitled to any set-off, discount, refund or other credit in respect of any suspension or interruption of or delay where The Cape 1000 is unable to provide the client with the Services due to circumstances beyond the control of The Cape 1000; other than the provisions set out in paragraph 6.6 above.

7. DISCLAIMERS

7.1. The Client shall have no claim against The Cape 1000 and hereby indemnifies and holds The Cape 1000 harmless in respect of any liability for loss or damage as follows:

- 7.1.1. caused by or arising from any fact or circumstance beyond the reasonable control of The Cape 1000;
- 7.1.2. if such loss or damage is consequential or incidental;
- 7.1.3. circumstances arising from directives and proclamations issued by the government arising from COVID-19 and related circumstances subject to the Disaster Management Act 57 of 2002; and
- 7.1.4. a Client diverges from the instructions provided in The Cape 1000 Tour Pack, and suffers harm as a result of such actions.

8. BREACH

8.1. In the event of either of the Parties ("the defaulting party") committing a breach of any of the provisions of this Agreement and failing to remedy such breach within a period of 10 days after receipt of a written notice from the other Party ("the aggrieved party") calling upon the defaulting party to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either:

- 8.1.1. to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations under this Agreement, whether or not the due date for such payment and/or performance shall have arrived; or
- 8.1.2. to cancel this Agreement as against the defaulting party, in either event without prejudice to the aggrieved party's rights to claim damages.

8.2. Any amount falling due for payment by either Party, in terms of or pursuant to this Agreement, including any amount which may be payable as damages shall bear interest at 2% above the prime bank rate of interest quoted by The Standard Bank of South Africa, calculated from the due date for payment (or, in the case of any amount

payable by way of damages, with effect from the date upon which those damages are sustained) to the actual date of payment thereof, both dates inclusive.

8.3. All costs, charges and expenses of whatsoever nature which may be incurred by either Party in enforcing its rights in terms hereof including legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been actually instituted, shall be recoverable from the other Party.

9. GIVING OF NOTICE

9.1. The Parties choose as their respective *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of payments, court process, notices or other documents or communications of whatsoever nature the addresses contained in the Application Form to which these terms and conditions are attached.

9.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if given in writing but it shall be competent to give notice by telefax, provided receipt is received confirming due completion of transmission.

9.3. Either Party may by notice to the other change the physical address chosen as its *domicilium citandi et executandi* to another physical address in the Republic of South Africa, or its telefax number, provided that the change shall only become effective upon receipt of the notice by the addressee.

9.4. Any notice to a Party which is:

9.4.1. sent by prepaid registered post in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 10th day after posting (unless the contrary is proved); or

9.4.2. delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

9.4.3. transmitted by telefax to its chosen telefax number (if any) stipulated in the Application Form, shall be deemed to have been received on the date of dispatch (unless the contrary is proved); or

9.4.4. transmitted by electronic mail to its chosen e-mail address (if any) stipulated in the Application Form, shall be deemed to have been received on the first business day succeeding the date of dispatch (unless the contrary is proved).

9.5. 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*.

10. PROCESSING PERSONAL INFORMATION

- 10.1. For purposes of this clause, the definition as provided in POPIA for the term “Process” and “Personal Information shall herein apply.
- 10.2. Each Party may Process Personal Information of the other, and accordingly consents to the Processing of the Personal Information. The Parties further undertake, in terms of POPIA, to:
 - 10.2.1. maintain reasonable security measures similar to those considered to be best practice in its industry;
 - 10.2.2. implement additional security measures as may be required by agreement between the Parties from time to time;
 - 10.2.3. Process Personal Information only with the knowledge and authorization of the Disclosing Party;
 - 10.2.4. ensure that where the Disclosing Party’s Personal Information is being transferred to a third party outside the Republic of South Africa, that the Receiving Party enters into a written agreement with the third party that provides an adequate level of protection substantially similar to that of POPIA;
 - 10.2.5. notify the other Party immediately of becoming aware of an actual or suspected security breach;
 - 10.2.6. indemnify the other Party against any loss, damages, claims, penalties, fines and/or any other cost (including legal fees) that a Party may suffer due to the Receiving Party’s failure to comply with POPIA and/or the provisions of this clause.
- 10.3. The Receiving Party hereby agrees that any breach of this Agreement may result in irreparable injury and damage to the Disclosing Party that may not be adequately compensable in money damages, and for which there may be no adequate remedy at law. The Receiving Party therefore consents and agrees that, as a non-exclusive remedy for the Receiving Party’s breach of this Agreement, the Disclosing Party may obtain injunctions, orders or decrees as may be necessary to protect its Confidential Information.

11. GENERAL

The Parties acknowledge and agree that:

- 11.1. this Agreement constitutes the entire contract between them and no provisions, terms, conditions, stipulations, warranties or representations of whatsoever nature, whether express or implied have been made by any of the Parties or on their behalf except as are recorded herein;
- 11.2. no relaxation, extension of time, latitude or indulgence which either Party ("the grantor") may show, grant or allow to the other ("the grantee") shall in any way constitute a waiver by the grantor of any of the grantor's rights in terms of this Agreement and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee which may have then already arisen or which may arise thereafter;
- 11.3. no alteration, variation, amendment or purported consensual cancellation of this Agreement or this clause 9 or any deletion therefrom:
 - 11.3.1. shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties; and
 - 11.3.2. shall be valid if done by electronic means;
- 11.4. they have undertaken to each other to do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the provisions, terms, conditions and import of this Agreement;
- 11.5. the Client shall not be entitled to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this Agreement without the prior written consent of The Cape 1000;
- 11.6. The Cape 1000 shall be entitled, at its discretion, to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this Agreement without the prior written consent of the Client; and
- 11.7. The Cape 1000 shall be entitled, at its discretion, to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this Agreement without the prior written consent of the Client.

Customer Full Name: _____

Customer Signature: _____

Or otherwise acknowledged on electronic registration form

ANNEXURE A

PAYMENT SCHEDULE

1. A refundable deposit amounting to 50% of the total invoice amount will be payable within 7 days of receipt of invoice in respect of the The Cape 1000 Event.
2. The balance of payment as specified in the invoice will be due between 1st December and 15th December 2022.

CANCELLATION POLICY

1. The Registration in respect of the The Cape 1000 Event will be transferable to another party up to and including the 16th December 2022, subject to that vehicle's approval by the admissions committee.
2. It will be understood between the Parties that the transfer of the Registrations set out in paragraph 1 above will result in logistical challenges wherein some regalia items cannot be supplied to a newly registered Client due to time constraints.
3. A 50% Cancellation fee will be applied where a Client cancels his or her Registration between 16th December 2022 and 14th January 2023.

A 100% Cancellation fee will be applied where a Client cancels his or her Registration from 15th January 2022 onwards, as this inhibits The Cape 1000 from making such Registration available to another client