

## FUND YOUR PASSION TERMS OF USE – 01092017

### 1. DEFINITIONS

- 1.1 The clause headings contained in this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.2 In this Agreement, unless the context indicates a contrary intention, an expression which denotes any gender includes the other gender, a natural person includes a legal person and vice versa and the singular includes the plural and vice versa.
- 1.3 The following words will have the meanings given to them below and similar expressions will bear a corresponding meaning:
- 1.4 “Agreement” - this agreement, as amended from time to time;
- 1.5 “FUND YOUR PASSION”- part of Pro Touch Sports (Proprietary) Limited, Company Registration number: 2015/151949/07;
- 1.6 “Commencement Date” – date on which the Participant electronically accepts these Terms and Conditions;
- 1.7 “Confidential Information” - all information of a confidential, sensitive or proprietary nature including, but not limited to the terms of this Agreement, marketing and strategies, research, product plans, products, services, inventions, processes, formulae, technology and other information relating to either Party which comes to the attention or knowledge of the other Party;
- 1.8 “Intellectual Property” - a product of the intellect that has commercial value, including copyrighted property such as literary or artistic works, and intangible property, such as patents, names of origin, methods and processes;
- 1.9 “Law” – common law, legislation, regulations and any subsidiary legislation prevailing from time to time in the Republic of South Africa;
- 1.10 “Loss” - loss, liabilities, claims, costs, charges, damages and outgoings of every description (including legal costs and expenses), compensation payable under contracts, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss, tracing and collection charges, costs of investigation, interest and penalties;
- 1.11 “the Parties” – FUND YOUR PASSION, the Participant and Supporters and their respective authorised agents and representatives and “Party” means any one of them, as the case may be;
- 1.12 “Personal Information” - information relating to an identifiable, living, natural person, including, but not limited to information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language, birth or any information that is particular to the person;
- 1.13 “Site” - the [www.FUND YOUR PASSION.co.za](http://www.FUND YOUR PASSION.co.za) website;
- 1.14 “Services” – the Site and the services available through the Site offered by FUND YOUR PASSION, together with its parents, subsidiaries, affiliates, agents, representatives, consultants, employees, officers, and directors, collectively “FUND YOUR PASSION”;
- 1.15 “Participant” – person or association that signs up for an Account on the Site and utilises the Services for the creation of a Campaign;
- 1.16 “Campaign” – fund raising campaign set up by a Participant;
- 1.17 “Supporter” – person, company or association that contributes to a Participants Campaign;
- 1.18 If any definition gives any right or imposes any duty on a Party, then, even though it is only in the definition section, it will be treated as if it were a substantive provision in the body of this Agreement.
- 1.19 Where the use of the word “including” is followed by specific examples which in turn are followed by a general expression, the general expression will not be limited to the shared characteristics of the specific words, and the general expression shall retain its ordinary broader meaning
- 1.20 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will determine the meaning.
- 1.21 Words defined in this Agreement shall bear the same meanings in schedules or attachments to this Agreement that do not themselves contain their own definitions.

1.22 Where any term is defined in any particular clause in this Agreement, then that term, unless it is clear from the clause in question that the term has limited application to the relevant clause, shall bear the meaning given to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definition clause.

## 2. **USAGE**

2.1 By using the Site and Services offered by FUND YOUR PASSION, together with its parents, subsidiaries, affiliates, agents, representatives, consultants, employees, officers, and directors, collectively FUND YOUR PASSION, the Participant agrees to these legally binding terms and conditions in this Agreement. FUND YOUR PASSION reserves the right to change these terms and conditions from time to time. If the Participant continues to use the Services after a change, the Participant accepts these new terms and conditions.

2.2 To sign up for a FUND YOUR PASSION Account and create a Campaign, the Participant needs to be a minimum of 18 years of age. If you are less than 18 years of age, the Participant will require parental or legal guardian consent and supervision. On creating an Account, the Participant agrees that the information provided is accurate and correct. Participant agrees not to impersonate anyone else or choose names that are offensive or that violate anyone's rights.

2.3 FUND YOUR PASSION reserves the right to validate Participants age and or information on Participants Account. FUND YOUR PASSION reserves the right to cancel any Account that does not comply the above terms and conditions. The Participant is responsible for all the activity on their Account, and for keeping passwords confidential.

## 3. **STANDARD CHARGES**

3.1 A once off fee of R 150 (One hundred and fifty Rand) will be charged to set up the Participants FUND YOUR PASSION Profile and Account.

3.2 FUND YOUR PASSION will retain 15% (Fifteen percent) of the total funds raised under the Campaign. FUND YOUR PASSION reserves the right to adjust these Standard Charges from time to time. Prior to the completion of the Campaign, the Participant may notify FUND YOUR PASSION to cancel their Campaign. Supporter's pledges received will not be refunded. On completion of the Campaign, FUND YOUR PASSION will deduct all Standard Charges prior to transferring the funds into Participants account.

3.3 FUND YOUR PASSION and its payment partners will subtract any relevant banking and transactional fees before transmitting the proceeds of a Campaign. The Participant will receive the amount of funding actually received, less Standard Charges and bank charges.

3.4 Supporters agree that payment will be processed immediately upon submission of a pledge. FUND YOUR PASSION doesn't offer refunds and cannot guarantee Athletes' work, claims or abilities.

## 4. **TERMINATION**

4.1 The Participant may terminate their Account at any time. All provisions of this agreement survive termination of an Account, including our rights regarding any of the Participants content. We will do our best to remove your Campaign from the Site in a timely fashion (at our sole discretion).

4.2 FUND YOUR PASSION reserves the right to decide who's eligible to use FUND YOUR PASSION and may cancel Accounts or decline to offer our Services at our sole discretion and for any reason. FUND YOUR PASSION may change our eligibility criteria at any time.

4.3 FUND YOUR PASSION has the right to reject, cancel, interrupt, remove, or suspend any Account at any time and for any reason. FUND YOUR PASSION is not liable for any damages as a result of any of these actions, and it is our policy not to comment on the reasons for any such action.

## 5. **INTELLECTUAL PROPERTY**

5.1 The Participant consents that by posting any content on the Site they are providing permission to FUND YOUR PASSION to use or copy this content however required. Participant is responsible for their content posted, and agree that it is accurate and correct.

5.2 The Participant grants FUND YOUR PASSION and others acting on their behalf, the worldwide, non-exclusive, perpetual, irrevocable, royalty-free, sub licensable, transferable right to use, exercise, commercialize, and exploit the copyright, publicity, trademark, and database rights with respect to this content.

5.3 FUND YOUR PASSION reserves the right to edit, modify, reformat, excerpt, delete, or translate any of the Participants content.

5.4 Participant content will not contain third-party copyrighted material, or material that is subject to other third-party proprietary rights, unless you have permission from the rightful owner of the material, or you are otherwise legally entitled to post the material (and to grant FUND YOUR PASSION all the license rights outlined here).

5.5 Participant agrees that if FUND YOUR PASSION uses your content, FUND YOUR PASSION will not be violating anyone's rights or copyrights. If FUND YOUR PASSION or its users exploit or make use of the Participant's content in the ways contemplated in this agreement, Participant promises that this will not infringe or violate the rights of any third party, including (without limitation) any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights.

FUND YOUR PASSION will not be liable for any errors or omissions in any of the Participants content.

## 6. FUND YOUR PASSION'S INTELLECTUAL PROPERTY

6.1 The Parties agree to respect all of FUND YOUR PASSION's intellectual property, information, and restrictions that are provide through the Services offered. Parties also agree not to change, translate, or otherwise create derivative works of the FUND YOUR PASSION content.

6.2 The Participant shall not advertise, print or use any advertising or promotional material incorporating FUND YOUR PASSION Intellectual Property without the specific prior written approval of that FUND YOUR PASSION.

6.3 Any Intellectual Property rights including those contained in material or documentation (in any media or format) which are prepared, created or authored for FUND YOUR PASSION in terms of this Agreement shall belong exclusively and in totality to FUND YOUR PASSION.

## 7. CONFIDENTIALITY

7.1 Except as allowed for in this Agreement, the Parties undertake to ensure that all Confidential Information shall remain confidential and shall not be used for any purpose other than the fulfilment of the respective obligations imposed on each Party by this Agreement or as required by Law.

7.2 The Parties shall take all reasonable steps to ensure the safe custody and confidentiality of any Confidential Information.

Neither Party may, unless otherwise provided in this Agreement, disclose the other Party's confidential information, whether written or oral, imparted or delivered to a Party or its employees, attorneys, agents, accountants, investment bankers, other advisors or representatives.

7.4 Confidential Information shall not include any information which is generally available to the public or becomes known to a Party on a non-confidential basis, or to the extent that the information may be required to be disclosed in terms of any Law.

7.5 Neither Party shall be permitted to make any press releases or disclose to any third party, in any marketing or advertising material or any other means of communication, the existence of the relationship between FUND YOUR PASSION and the Vendor or the existence or any terms of conditions of this Agreement or that work is being performed, unless that Party obtains written authorisation from an authorised officer of the other Party.

7.6 Any Confidential Information may be disclosed if a Party consents to such disclosure in writing and provided that such disclosure is not prohibited in terms of any Law.

7.7 The confidentiality provisions set out in this clause shall survive termination of this Agreement.

## 8. PERSONAL INFORMATION AUTHORIZATION

8.1 It is acknowledged and understood that the Parties will have access to Personal Information as part of performance of the Services.

8.2 The Personal Information provided shall be treated as confidential by the Parties and the Personal Information shall only be used in order to provide the Services and as allowed by any applicable Law.

8.3 The Parties shall take such steps as may be required to ensure that their directors, members, employees, contractors and agents comply with these confidentiality provisions and any Law which may become applicable to the holding and use of the Personal Information.

8.4 The Parties shall comply with all applicable Law in respect of the storage and security of Personal Information. The provisions of this clause shall survive the termination of this Agreement.

## 9. CONSUMER PROTECTION ACT

Each Party ("the Indemnifier") indemnifies the other against all and any Loss incurred or suffered by the other Party in respect of, or caused by any breach by the Indemnifier of any of its obligations under this Agreement and which arises from the negligence or willful default or failure to comply with Law on the part of its employees or agents.

9.1 The Parties understand that the Consumer Protection Act 2008 ("the CPA") has been promulgated in order to promote and advance the social and economic welfare of consumers in South Africa.

9.2 To the extent that the CPA includes the actions of either Party, this Agreement may be amended in order to ensure compliance with the terms of the CPA.

9.3 The CPA dictates a number of marketing practices, particularly in respect of direct marketing which may apply to the Parties and which the Parties hereby undertake to comply with.

9.4 To the extent that there is any other Law which comes into being which may affect any of the rights and obligations of the Parties under this Agreement, the provisions of this clause shall mutatis mutandis apply.

## 10. CESSION

FUND YOUR PASSION may cede any and all of its rights or delegate its obligations under this Agreement either absolutely or as security to any other person or persons without the written consent of the other Party.

## 11. FORCE MAJEURE AND LIMITATION

11.1 Neither Party shall have any claim against the other Party ("the Affected Party") for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause beyond the control of the Affected Party ("force majeure").

11.2 The performance of the obligations of the Affected Party shall be suspended for as long the force majeure lasts, which shall commence on the date of written notice by the Affected Party to the other Party, advising the other Party of the nature and extent of the force majeure. When the force majeure ends, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.

## 12. OWNERSHIP AND USE OF INFORMATION

The Parties acknowledges that all records and information is owned by and remains the sole property of FUND YOUR PASSION.

## 13. INDEMNITIES

## 14. DISCLOSURE

14.1 FUND YOUR PASSION reserves the right at all times to disclose any information as necessary to satisfy any Law and to the extent allowed in Law to protect its rights or property.

## 15. GENERAL

15.1 This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof.

15.2 No failure or delay by FUND YOUR PASSION to enforce any provision of this Agreement shall constitute a waiver or suspension of such provision or affect in any way it's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.

15.3 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, FUND YOUR PASSION will endeavour to amend or remove the invalidity.

15.4 Each Party acknowledges that it does not enter into this Agreement on the basis of and does not rely on any representation, warranty or other provision, whether express or implied, except as expressly provided in this Agreement.

15.5 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.