

TERMS AND CONDITIONS FOR WHATSON NAMIBIA

Version: 28.06.2016

IN BRIEF – RULES OF THE GAME.....	1
1 WHATSON PLATFORM.....	2
2 ACCEPTANCE OF TERMS.....	2
3 INTERPRETATION	2
4 BOOKING OF ADVERTISING AND OTHER SERVICES	4
5 EVENTS	4
6 SPECIALS.....	4
7 RIGHTS AND COMMITMENTS OF THE PUBLISHER	5
8 RIGHTS AND COMMITMENTS OF THE ADVERTISER	5
9 PAYMENT OF SERVICES	6
10 WHATSON MAILING SERVICE.....	6
11 PROPRIETARY RIGHTS.....	6
12 INDEMNIFICATION.....	6
13 CANCELLATION AND TERMINATION	6
14 ASSIGNMENT.....	7
15 AMENDMENTS AND NOTICES.....	7
16 MUTUAL CONFIDENTIALITY	7
17 CHOICE OF LAW AND JURISDICTION.....	8
18 WAIVER.....	8

IN BRIEF – RULES OF THE GAME

- Commit yourself to accuracy.
- Be honest. No hidden costs, no undisclosed terms and conditions.
- Be clear, avoid typing mistakes, use good quality images and artworks.
- Do not use any text or images you are not allowed to use.
- Pay your bills.
- Read the T&C. If anything is unclear, please ask.

1 WHATSON PLATFORM

- 1.1 The WhatsOn Website www.whatsonnamibia.com and all associated electronic communications are products of the Publisher, WhatsOn Media and Consulting CC, and the content provided subject to the terms and conditions of use as set out on www.whatsonnamibia.com.
- 1.2 The content contained within the Platform is made available **for personal, non-commercial use** only. Any other use is strictly prohibited.
- 1.3 All content on this Platform including text, graphics, logos, icons, and advertisements, including the selection and arrangement thereof is copyright to the Publisher unless otherwise stated and **no part thereof may not be copied, reproduced, transmitted, published, broadcasted, sold, licensed, displayed, distributed or commercially exploited** through any medium without the prior written consent of the Publisher.
- 1.4 No one is allowed to use the Website in a manner which may cause the Website to be interrupted, damaged or rendered less efficient.

2 ACCEPTANCE OF TERMS

- 2.1 Access to the Website by both Advertisers and Users is conditional upon the acceptance and compliance with the terms, conditions, notices and disclaimers contained on this Website by such Advertisers or Visitors.
- 2.2 Use or access of this Platform constitutes agreement to these Terms and Conditions.
- 2.3 In the event that an Advertiser or User should not agree with any of the terms or conditions appearing on this Platform, s/he should discontinue using this Platform forthwith.
- 2.4 Insofar as any Advertiser or User is a legal entity or acts on behalf of a legal entity, such person warrants his authority to act on behalf of the legal entity, and through his use or access of the Platform legally binds such legal entity to the terms and conditions on this Platform.

3 INTERPRETATION

- 3.1 **“Advertiser”** means any person who submits any type of Advertising Material for publication on the Platform or any other WhatsOn advertising channel such as social media and e-mail.
- 3.2 **“Advertising Material”** means the advertisements and other content submitted by the Advertiser to the Publisher for publication on the WhatsOn Platform. This includes promotional artworks as well as any information about events, activities, specials, places and venues.
- 3.3 **“Agreement”** shall mean this written document together with all amendments hereto and/or documents incorporated herein by means of reference;
- 3.4 **“Confidential”** or **“Disclosed Information”** means the following information:
 - 3.4.1 information which a Party (Discloser), when providing same to the other Party (Recipient), expressly indicates to be confidential, proprietary, or similar legend by the disclosing party;
 - 3.4.2 any information about clients or potential clients of the Publisher;
 - 3.4.3 any dispute between the parties resulting from this agreement.
- 3.5 **“Prohibited Content”** means works and materials that:
 - 3.5.1 breach any law, regulation or legally-binding code;

- 3.5.2 infringe upon the rights of any other party, including but not limited to copyrights, trademarks, privacy rights, moral rights, trade secrets, patents, intellectual property rights or other legal rights;
 - 3.5.3 contains false, untrue, misleading, defamatory, harmful or abusive information;
 - 3.5.4 contains vulgar, obscene, indecent, pornographic, lewd or graphic works and materials; or
 - 3.5.5 may cause annoyance, inconvenience or anxiety to any internet user in the opinion of the Publisher.
- 3.6 **“Proof of Payment”** exists if
- 3.6.1 amount shows in the Publisher’s bank account;
 - 3.6.2 payment was done in cash against delivery;
 - 3.6.3 the Advertiser submits a proof by its bank that payment has been transferred or;
 - 3.6.4 a deposit slip is submitted.
- 3.7 **“Publisher”** means WhatsOn Media and Consulting CC, Registration Number CC/2014/05198, and all its partners, affiliates, successors-in-title or assigns.
- 3.8 **“Term”** means the time period advertising or other services are booked for.
- 3.9 **“User”** means any member of the public accessing the Platform, for whatever purpose or duration.
- 3.10 **“Platform”** means the website <http://www.whatsonnamibia.com> (and the redirected websites <http://www.whatsonwindhoek.com>, and <http://www.whatsonswakopmund.com>), as well as all WhatsOn social media accounts, and the WhatsOn e-mail marketing service.
- 3.11 **“Working Day”** means Monday to Friday from 8:00 to 17:00, excluding public holidays;
- 3.12 Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include females and words importing persons shall include individuals, partnerships, corporations, government agencies, committees, departments, authorities and other bodies, corporate or unincorporated, whether having distinct legal personality or not.
- 3.13 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 3.14 When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday or public holiday in Namibia, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in Namibia.
- 3.15 The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 3.16 The use of the word *“including”* followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example or examples.
- 3.17 This Agreement shall be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party’s administrators, trustees, permitted assigns or liquidators, as the case may be.
- 3.18 Any provision of contained in this Agreement imposing a restraint, prohibition or restriction on the Parties shall be so construed that the Parties are not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the Farm or the Homestead through, under, by arrangement with, or at the invitation of the Parties, including (without limiting the generality of this provision) the family,

guests and employees of the Parties or their shareholders and any independent contractors or workers engaged by the Parties.

- 3.19 Each of the provisions of this Agreement shall be regarded as distinct and severable from the other provisions thereof, and shall be given effect to as such notwithstanding the manner in which it has been linked grammatically to any other provision of this Agreement.
- 3.20 If any one or more such provisions are found to be invalid or unlawful or unenforceable for any reason whatsoever, such finding shall in no way affect any other provision which shall continue to be of full force and effect.

4 BOOKING OF ADVERTISING AND OTHER SERVICES

- 4.1 Advertising Services are booked by submitting the respective Advertising Materials through the submission form on www.whatsonnamibia.com or by acceptance of a quotation.
- 4.2 The Publisher has the right and option to approve, in its absolute discretion, the content of any advertising material that the Advertiser submits if the Publisher finds that it does not meet its advertising specification, if it is objectionable to the Publisher in any way, or if it contains Prohibited Content. Even after the Publisher accepts the Advertising Materials, the Publisher has the right to remove it if it does not function correctly or for any of the reasons described above. The Publisher placing the advertising on its Platform does not signify its approval or waiver of the right to object to it in the future.
- 4.3 The Advertiser may periodically make changes to its advertising material which then will be considered as the initial submission.

5 EVENTS

- 5.1 An event:
- Is a once-off happening
 - Can be on one or several days, or recurring
 - Is open to the public
 - Can require a registration but does not require a long-term commitment or membership
- An event is not:
- A course offered by a commercial training provider.
 - Free trial session at a fitness club.
 - Facilities that are permanently available.
 - Extended opening hours of a restaurant.

6 SPECIALS

- 6.1 Specials listed on Whatson should relate to anything that people do in their free time.
- 6.2 Specials can be:
- Dining specials (e.g. two for one, kids eat free, cocktail happy hours, theme nights, menu specials)
 - Accommodation specials
 - Activity specials (e.g. discounts at GoKart, cinema, spa)
- 6.3 Permanent specials (e.g. discounts for Namibians) are displayed on the Whatson Calendar for maximum one month.

7 RIGHTS AND COMMITMENTS OF THE PUBLISHER

- 7.1 The Publisher agrees to approve or reject submitted Advertising Materials within five (5) working days. This also included changes made to the Advertising Materials.
- 7.2 If the Publisher rejects or removes any adverting material, the Publisher will notify the Advertiser in writing.
- 7.3 Free Advertising Services will be published with immediate effect after approval. Paid services will be published on the first day of the term given proof of payment has been received.
- 7.4 During the term, the Publisher will use reasonable endeavors to maintain the availability of the Platform, and the published Advertising Materials. The Publisher is not responsible for periodic downtime for maintenance, backup, or for any failure, delay in performance related to acts of God, storm, natural disaster, act of terrorism, utility outages or interruptions, system transmission failure, server failure, strike, lockout, or any other situation or circumstances which is beyond its control, or affecting the Publisher's appointed hosting services provider or which are a normal part of the Internet business.
- 7.5 The Publisher does not guarantee any given amount of impressions or traffic generated of the Advertising Materials on the Advertiser's Platform or any partner media as a result of its Services.

8 RIGHTS AND COMMITMENTS OF THE ADVERTISER

- 8.1 The Advertiser agrees to provide Advertising Materials meeting **the advertising specifications** of both the website and also other platforms that's been used (e.g. Facebook).
- 8.2 The Advertiser accepts responsibility for the accuracy, truthfulness and reliability of any information submitted for publication.
- 8.3 **The Publisher cannot be held responsible for the accuracy, truthfulness or reliability of any information submitted for publication.** The Publisher does not warrant the accuracy, truthfulness or reliability of any opinion, statement, representation or other information displayed or accessible through the Platform, nor of any Platforms operated by entities other than the Publisher which are or may become linked from or linked to this Platform
- 8.4 The Advertiser warrants and undertakes:
 - 8.4.1 that it has the unrestricted right to use all such materials;
 - 8.4.2 to ensure that all content is accurate and fair;
 - 8.4.3 to ensure that the content of Advertising Material does not consist of, contain, or link to any Prohibited Content;
 - 8.4.4 promptly to request the removal or editing the content of any Advertising Material which ceases to be accurate and fair, or becomes Prohibited Content, for whatever reason;
 - 8.4.5 to ensure that the advertising and sale of any products and services that are advertised through the Advertising Material is legal under all applicable laws; and
 - 8.4.6 to ensure that the content of the Advertising Material is of a quality commensurate with the standards of the advertising platforms used.
- 8.5 The Advertiser agrees to submit artwork not less than five (5) working days before the start of the term.
- 8.6 The Advertiser agrees that information about events, specials, activities, venues and places remain in the Publisher's database indefinitely, for statistical and evaluation purposes.

9 PAYMENT OF SERVICES

- 9.1 After the Advertiser has booked any paid Advertising Services the Publisher will e-mail an invoice to the Advertiser that has to be settled **before the beginning of the advertising term**, unless otherwise agreed with the Publisher.
- 9.2 **Interest:** If the Advertiser fails to settle its accounts in the period as set forth above, the Publisher has the right to suspend service delivery or to cancel the contract with immediate effect. If payment is not made in on time, the Publisher reserves the right to charge a fixed amount of N\$200 per week starting from the date on which payment became due until the date on which payment is made, to compensate for costs of collecting the debt.
- 9.3 Delayed submission of artwork or other Advertising Material does not affect the advertising term or billing.
- 9.4 **Advertising Materials are only published upon proof of payment.**

10 WHATSON MAILING SERVICE

- 10.1 Every User and Advertiser of WhatsOn Namibia will automatically be subscribed to the WhatsOn mailing service.

11 PROPRIETARY RIGHTS

- 11.1 The Publisher will retain all proprietary rights in and to its respective sites and other proprietary materials such as copyrights, trademarks, trade secrets, patents and confidential information. The Publisher does not grant any Advertiser or Visitor any rights in and to such proprietary material.
- 11.2 By submitting information for publication on the Platform, the Advertiser grants the Publisher a royalty-free, perpetual, irrevocable, non-exclusive license to use, reproduce, modify, publish, edit, translate, distribute, perform, and display the information alone or as part of other works in any form, media, and the Advertiser agrees that he shall not have any claim against the Publisher for breach of copyright as a result.

12 INDEMNIFICATION

- 12.1 The Advertiser will indemnify and hold the Publisher harmless from and against any claims, suits, threats, demands, settlements, actions, causes of action, liabilities, obligations and all other matters, including but not limited to court costs, attorney fees, witness fees, settlement fees, and all other direct and indirect expenses and losses that may occur arising from the breach of any of the representations and warranties that the Advertiser has made to the Publisher and otherwise arising directly or indirectly from the placement of its Advertising Materials on the Publisher's Site.

13 CANCELLATION AND TERMINATION

- 13.1 Before and during the advertising term the Advertiser may terminate this agreement, with or without cause, with 60 working days' notice.
- 13.2 During the advertising term the Publisher reserves the right to terminate this agreement for any reason, with or without cause, with ten (10) working days' notice.

- 13.3 If the agreement is terminated during the advertising term by the Publisher, the Advertiser will be entitled to a refund of any prepaid amounts to the Publisher in respect of Advertising Services which were to have been provided after the effective date of termination.
- 13.4 In the event that either party should commit any breach or default in respect of the provisions, terms and conditions of this Agreement, then the other party shall have the right to demand that the defaulting party remedy such breach or default, by giving 7 (seven) days prior written notice to the defaulting party, and failing compliance within the said period of 7 (seven) days, the party giving such notice shall be entitled thereafter to terminate this Agreement forthwith by written notice, without prejudice to any other remedy which it may have against the defaulting party in law, including an award of reasonable attorney fees and costs.

14 ASSIGNMENT

- 14.1 The Advertiser is not permitted to assign its rights or responsibilities hereunder.

15 AMENDMENTS AND NOTICES

- 15.1 The Publisher reserves the right to amend this Agreement from time to time.
- 15.2 Any notice given by either Party to the other shall:
 - 15.2.1 If sent to the Advertiser by the Publisher, be sent to the e-mail, postal or physical address or mobile phone number designated by the Advertiser when completing the submission form or signing the quotation;
 - 15.2.2 If sent to the Publisher by the Advertiser, be sent to:
 - P.O. Box 11259, Klein Windhoek
 - E-mail address: delia@whatsonnamibia.com
 - Mobile number: +264 81 8626488
- 15.3 Any notice delivered to a Party's
 - 15.3.1 Physical Address, shall be deemed to have been received upon such delivery;
 - 15.3.2 Postal Address, shall be deemed to have been received 14 (fourteen) days after delivery of such letter to the Post Office for posting, provided that it was sent by registered mail;
 - 15.3.3 E-mail address, or mobile phone number, be deemed to have been received on the date and at the time of transmission, provided that such time falls within the working days.

16 MUTUAL CONFIDENTIALITY

Both the Advertiser and the Publisher will

- 16.1 keep Confidential Information secret, and will not disclose the Confidential Information except as expressly permitted by the Discloser;
- 16.2 use the Confidential Information only for the disclosing purpose and for no other reason whatsoever;
- 16.3 ensure proper and secure storage of all Confidential or Disclosed Information;
- 16.4 not at any time without prior written consent of the Discloser disclose or reveal the Confidential Information to any other person or party whatever, other than employees of the Recipient who are in each case required in the course of their duties to receive and consider the same for the disclosing purpose and who shall be made aware of the obligation of the Recipient to observe the

- same restrictions on the use of the Confidential or Disclosed Information as are contained in the agreement and in respect to whom the undertaking of the Recipient as contained in this agreement shall apply and, if required by the Discloser, the Recipient shall take such steps as may be reasonably desirable to enforce such obligations on the part of its employee; or
- 16.5 not create the impression with or lead any third party to interpret or construe any condition contained in this agreement, that this agreement is an agency agreement and/or partnership agreement and/or a joint venture and/or any other similar agreement;
- 16.6 not allege that this agreement grants it, either directly, or by implication, or by estoppel or otherwise that it is entitled to utilize the Confidential or Disclosed Information in any way contrary to the stipulations contained in this agreement.

17 CHOICE OF LAW AND JURISDICTION

- 17.1 The proper law of this Agreement is the law of Namibia, and accordingly any dispute about this Agreement, including any dispute about its validity, existence, interpretation, rectification, breach or termination or any dispute about any matter arising out of this Agreement, its avoidance, interpretation, rectification, breach or termination shall be determined according to the laws of Namibia.
- 17.2 The Parties submit to the jurisdiction of any Namibian Magistrate's Court having jurisdiction in respect of any matter arising from or in connection with this Agreement, including its termination, provided that nothing shall prevent a Party from approaching the Namibian High Court for relief in appropriate circumstances, nor from being entitled to costs on the High Court scale of tariffs in that event.

18 WAIVER

- 18.1 No relaxation or indulgence which any Party may show or give at any time whatsoever in regard to the other Party's obligations in terms of this Agreement shall prejudice the first-mentioned Party in regard to its rights according to the terms and conditions hereof, nor shall such relaxation or indulgence be regarded as a waiver of any of the first-mentioned Party's rights in terms of this Agreement.