

Terms of Service



1 Introduction

These are the general terms of our relationship with you. They cover any transactions where we provide services to you. Under these terms:

- **We** are the service provider – **Eighty Twenty Consulting (Pty) Ltd** with registration number 2012/019879/07, also known as Eighty20, us or our; and
- **You** are the client – your full name and registration number will be in an order.

An order is a separate document or form (including a written contract, agreement, estimate, quote, proposal, engagement letter, statement of work, email, form or invoice) that contains the commercial terms of each specific transaction and incorporates these terms.

2 Agreement

2.1 **Composition.** The agreement consists of these terms of service and any orders or any other specific terms applicable to the services.

2.2 **Definitions.** In the agreement:

- **business day** means any day other than a Saturday, Sunday, or holiday (including a public or bank holiday) in the jurisdiction where we are organised;
- **business hours** means our normal business hours on business days;
- **day** means a day counted from midnight to midnight, including all days of the month, Saturdays, Sundays, and public holidays;
- **sign** means the handwritten signature or an electronic signature that the parties agree to use of each of the duly authorised representatives of each of the parties; and
- **writing** means the reproduction of information or data in physical form or any mode of reproducing information or data in electronic form that the parties agree to use but excludes information or data in an email.

2.3 **Departure.** These terms apply to all our clients and are not generally open to negotiation for reasons of consistency. Should the parties negotiate any departure from these terms, they will record that departure in the relevant order or other specific terms.

2.4 **Conflict.** If there is a conflict of meaning between these terms and any word or phrase in an order or other specific terms, the meaning in the order or specific terms will prevail in respect of the relevant services.

3 Duration

3.1 **Commencement.** These terms start whenever you accept them by:

- **doing so explicitly** – such as by checking a checkbox saying that you do or agreeing to an order that incorporates them by reference;
- **using the services in any way** – such as by accessing them; or
- **exercising any rights** granted to you under the agreement;

and continue until terminated.

- 3.2 **Automatic renewal.** If an order involves a subscription, the agreement will continue automatically from the end of the initial term or subsequent automatic renewal period for an automatic renewal period equivalent to the initial term.
- 3.3 **Renewal termination.** Either party may terminate the agreement before the end of the initial term or subsequent automatic renewal period by giving the other party at least 30 calendar days prior written notice.

4 Orders

- 4.1 **Request for services.** If you at any time require additional services related to the services, you may submit a request for proposal (RFP) to us detailing the nature of and scope of the services required together with any other requirements or information relevant to the provision of additional services and stipulating a reasonable timeframe within which we may submit a proposal to you.
- 4.2 **Submission of proposal.** We may submit a proposal to you. It may be in the form of an order.
- 4.3 **Acceptance of proposal.** The parties will execute an order if the proposal is acceptable to you.
- 4.4 **Placing orders.** You place orders with us whenever you order (or start using) the services (including through the website or application). These orders are offers to us to buy our services.
- 4.5 **Capacity and authority.** You promise that you have the legal capacity and authority to enter into the agreement.
- 4.6 **Invitation to do business.** Marketing is merely an invitation to do business, and we only conclude the agreement when we provide the services to you.
- 4.7 **Cancellations.** We may cancel any order, but we will refund any money you have paid in relation to that particular order if we do.
- 4.8 **Time and place.** We conclude the agreement when we accept the order and where we are domiciled when we do.
- 4.9 **Separate agreements.** Each order is a separate agreement, but you are deemed to have breached all of them if you have breached one of them.

5 Services

- 5.1 **Right.** We grant you a right to use the services subject to the following limitations:
- **duration of agreement** – you may only use the services for the duration of the agreement;

- **limited to terms** – you may only use the services according to these terms;
- **non-exclusive** – we may allow anyone else to use the services;
- **non-transferable** – you may not transfer the right to anyone else; and
- **specified purposes** – you may only use the services for the specified purposes that we've communicated to you in writing from time to time.

5.2 **Breach.** We may cancel your right if you breach the agreement.

6 Online services

6.1 **Basis.** We provide the online services to you on the following basis:

- you give us permission to monitor how you use them for security and stability purposes; and
- you agree that our records are undisputed evidence of the services provided to you.

6.2 **Access conditions.** We will only provide online service access to you or your authorised users (where you are a juristic person) on the conditions that you or each one of them will:

- accurately provide us with any information that we ask for on registration or account creation;
- create or have the necessary credentials (such as a username and password) assigned to them on registration or account creation;
- look after their credentials and not give them to anyone else;
- not interfere with or introduce any malicious software into the online services or otherwise misuse them;
- be responsible for any activity that happens under their account, even if someone else was acting under their credentials;
- have the necessary infrastructure, equipment, and software to access the online services; and
- abide by the agreement and any policies that we communicate to them in writing.

6.3 **Availability.** We will do our best to make the online services available at all times. However, we cannot guarantee that they will always be available. We may make them unavailable for scheduled and emergency maintenance.

7 Bespoke services

7.1 **Service levels.** We will provide the services at the service levels agreed between the parties in writing from time to time. Service levels mean the levels according to which we will provide each service as agreed by the parties in writing and signed.

7.2 **Changes to services.** During the term of an order, events may occur which require a change to the nature and scope of services. The parties will only implement a change if they comply with this clause.

- 7.3 **Change request.** A party may propose a change to the nature and scope of services by sending a scope change document to the other party detailing the desired changes.
- 7.4 **Scope change document.** If a scope change document is made by:
- you, you will specify the reasons for that change and describe the change in sufficient detail to enable us to formulate a response. We will investigate the likely impact of any proposed changes on the provision of services and will provide you with a scope change proposal, including amended pricing and timeframes; or
 - us, we will detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the relevant order.
- 7.5 **Sign-off.** The parties will discuss and agree on the proposed changes and make the necessary amendments to our scope change proposal. You will then consider the scope change proposal and may approve or reject it in writing within fourteen business days. If you:
- accept a scope change proposal, duly authorised representatives of the parties will sign off the scope change proposal, and the parties will incorporate it into the relevant order; or
 - reject a scope change proposal, we will continue to provide the services on the existing terms.
- 7.6 **No change effective until sign-off.** No party may proceed with any change to an order until the change and all matters relating to the change have been agreed upon in writing between the parties. Pending sign-off, the parties will continue to perform their obligations without considering the proposed changes. No party must agree to any change but will not unreasonably delay or withhold their agreement to a proposed change.
- 7.7 **Exception.** Amendments to the agreement's content that do not directly impact the nature and scope of the services will not be subject to this change control procedure, but the parties will execute them in writing.

8 Personnel

- 8.1 **Requests and directions.** We (and our personnel) will comply with all your reasonable requests and directions.
- 8.2 **Time sheets.** On request and if we agree, our personnel will complete daily time sheets, which accurately record work durations and activities.
- 8.3 **Access.** From the signature date and if necessary, you will allow us and our personnel access to your premises at all reasonable times strictly to fulfil our obligations under orders.
- 8.4 **Compliance with your policies.** If our personnel access your premises, we will comply, and ensure that our personnel comply, with your policies. Your policies

are incorporated into the agreement by this reference. We can either already access them from you or we must request them from you.

- 8.5 **Allocation of resources.** We may allocate and re-allocate all our personnel who carry out our obligations under the agreement. We will notify you in advance if we do. We will ensure that the provision or continuity of our obligations to you is not prejudiced.

9 Your data

- 9.1 **Definition.** Your data is any data belonging to you or your customer that you or your customer (or any third party on your behalf) provide to us; but excludes any data that we create for our own purposes or which is proprietary or confidential to us or our third-party contractors.
- 9.2 **You own it.** You own all your data but give us a right to use it to provide the services when you provide us with access to it.
- 9.3 **Responsibility.** We take the protection of your data very seriously and will always do everything in our power to protect it. We will
- comply with all relevant laws that affect your data, including data protection, retention, and destruction laws;
 - comply with any of your policies or procedures relating to your data that you communicate to us timeously in writing;
 - not disclose any personal information from your data, other than in terms of the agreement.
- 9.4 **Subcontracting.** Subcontracting involves engaging a subcontractor outside our organisation to do work as part of providing the services. We may subcontract work involving your data, provided that we:
- where we have already subcontracted or are in the process of subcontracting work involving your data before the conclusion of this agreement, we inform you in writing of any pre-existing subcontractors;
 - where we wish to engage a subcontractor after the conclusion of this agreement, we get your written permission to subcontract work involving your data beforehand;
 - notify you in writing of: (i) the purpose of sharing your data with the subcontractor; and (ii) how we have carried out due diligence on them;
 - do so only through a written agreement with the subcontractor, which imposes the same obligations on them as are imposed on us; and
 - remain fully liable for any processing of your data under the agreement by our subcontractor.
- 9.5 **Location.** Your data will remain wherever we place it initially unless:
- we have to transfer it to another country to comply with our obligations to you;
 - or

- we transfer it to our group of companies, associated companies, service providers, or agents who may be located in other countries to provide the services.

10 Confidential information

10.1 **Definition.** Confidential information is any information the parties share with one another in terms of this agreement with the intention that the other party should keep it secret, such as personal information, business records, or customer details.

10.2 **Responsibilities.** Each party will keep any confidential information it receives from the other party under the agreement confidential, and the receiving party will:

- protect the other party's interests;
- only use it to comply with their responsibilities under the agreement;
- only give it to their employees or agents that need it (and only as much as they need);
- use reasonable security procedures to make sure their employees or agents keep it confidential;
- get promises of confidentiality from those employees or agents who need access to the information;
- not reveal the information to anyone else; and
- not use it for any purpose other than under this agreement.

10.3 **End of agreement.** On request, the parties will give back to the other all confidential information of the other that they have at the end of the agreement unless:

- the other party agrees that they may destroy or retain it instead; or
- it is lawfully in the public domain;
- someone else who is allowed to reveal it gives it to them;
- someone gives it to them to comply with a court order or other legal duty.

10.4 **Indemnity.** Each party indemnifies the other against any loss or damage that the other may suffer because of a breach of this clause by a party, its employees, or agents.

10.5 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.

11 Intellectual property

11.1 **Ownership.** We or our third-party licensors own all proprietary rights in our services, technology or data, and we or they may prosecute you for any violations of those rights.

11.2 **Our technology or data.** Our technology or data is anything that we have or acquire rights in and may use to perform our obligations under the agreement.

- 11.3 **Retention of rights.** We own all intellectual property rights in our technology or data, and you may not use those rights without our permission. You do not acquire any rights in our technology or data if we use it to provide services to you.
- 11.4 **Our trademarks.** Our trademarks are our property and you may not use them without our permission. All other trademarks are their respective owners' property.
- 11.5 **Restrictions.** You may not change, hire out, reverse engineer, or copy the services without our permission.
- 11.6 **Your intellectual property.** You grant us a non-exclusive and royalty-free licence to use any of your trademarks and copyright works that you deliver to us to provide the services. We may not use them for any other purpose without your prior written permission. The licence expires automatically when the agreement ends. You retain all rights in your trademarks and copyright works despite this licence.

12 Non-solicitation

You will not contract with any of our personnel, other than through us, who were involved in providing services under an order for the duration of that order or 24 calendar months after its termination.

13 Fees and payment

- 13.1 **Payment.** You will pay us the fees on the due date in the manner agreed between the parties in writing. You may not withhold payment of any amount due to us for any reason.
- 13.2 **Late payments.** Additional charges agreed between the parties in writing apply to any payment we receive after the due date, and you must pay them to us on demand. We may stop providing any services until you have paid all amounts due.
- 13.3 **Interest.** Overdue amounts on any outstanding invoice will bear interest for our benefit from its due date until you pay it at whichever rate is higher between:
- 2% above the prime (or prime lending) rate; or
 - 15%.
- Interest will be payable on a claim for damages from when we suffered the damages.
- 13.4 **Appropriation.** We may use any money you pay us to settle your indebtedness under the agreement, despite any particular reason you may have paid it to us.
- 13.5 **Certificate.** We may appoint an accountant to sign a certificate proving the amount due by you and the date on which it is payable.
- 13.6 **Tax.** All fees exclude any tax (unless indicated otherwise), which you will pay where applicable in addition to the fees.

14 Our warranties

- 14.1 **Service warranties.** We warrant that we will:

- employ enough trained personnel with the knowledge and expertise to provide the services;
- use reasonable efforts consistent with prevailing industry standards to maintain the services; and
- provide the services in accordance with all applicable laws.

14.2 **General warranties.** We warrant further that we:

- have the legal right and authority to perform our obligations under the agreement; and
- will not knowingly introduce any malicious software into your systems.

15 Disclaimer of warranties

15.1 **Disclaimer.** You use the services at your own risk, and we disclaim all other warranties to the extent allowed by applicable law. We are not liable for any defect that you cause.

15.2 **Exclusion of liability.** Despite our warranties, we are not liable for any defects that your negligence, failure to follow our instructions, or misuse causes.

16 Your warranties

16.1 **Agreement warranties.** You warrant that:

- no one has induced you to enter into the agreement by any prior representations, warranties, or guarantees; and
- you are not breaching any other agreement by entering into the agreement.

16.2 **Indemnity.** You indemnify us against any claim for damages by any third party resulting from a breach of your warranties, including all legal costs. Legal costs mean the costs that a lawyer may recover from their client for their disbursements and professional services if permissible under applicable law.

17 Limitation of liability

17.1 **Direct damages limited.** We are only liable to you for any direct damages that the particular services may cause up to the total amount of fees that you have already paid us for them in the previous 12 months.

17.2 **Indirect damages excluded.** We are not liable for any other damages or losses the services may cause you.

17.3 **Your default.** We are not liable for any damage or loss that your breach, misrepresentation, or mistake causes.

18 Breach and termination

18.1 **Breach.** If either party

- does not fix a breach within fourteen days of receiving written notice from the other party;
- breaches the agreement materially twice or more in six months;

- is bankrupt or has some legal disability;
- takes steps to or is closed down (such as becoming insolvent or entering sequestration);
- makes any settlement or arrangement with their creditors; or
- fails to pay a court order against themselves for a significant amount within 21 days;

then the other party may:

- make the party comply with the agreement; or
- immediately cancel the agreement in writing and claim damages from the other party, including fees already due.

18.2 **Suspension.** We may immediately suspend your right to use the services if:

- you try to gain unauthorised access to them;
- we decide that your use poses a security threat to us or another user other than you;
- there is evidence of fraud on your account; or
- we believe you are using them for an illegal purpose or in a way that infringes a third party's rights.

19 Termination or change

19.1 **Termination or change for good cause.** We may need to terminate or change the agreement immediately if:

- we discontinue or stop providing the services;
- believe providing the services could burden or pose a risk to us;
- have to terminate to comply with the law;
- one of our providers (including service or data) is unable to provide a satisfactory service (for example no data, poor data quality, or data at high price) to us that we depend on to be able to provide the service to you; or
- determine that providing the services has become impractical.

If we need to terminate or change, we will give you as much notice as reasonably possible in writing.

19.2 **Duties on termination.** We will stop providing the services, you will no longer be able to access them, and we may erase your data on termination, cancellation, or expiry of the agreement.

20 Effect of termination

20.1 **Acceleration.** All amounts due to us for the services become due and payable on the agreement's termination, cancellation, or expiry.

20.2 **Assistance.** We may provide you with post-termination assistance (such as data retrieval) subject to additional fees and conditions but are not obliged to.

20.3 **No expectation.** The agreement does not create any expectation of continued service, agreement renewal, or additional agreement between the parties.

21 General

- 21.1 **Resolving disputes.** Either party may inform the other in writing if there is a dispute. The parties must first try to negotiate to end the dispute, enter into mediation if negotiation fails, and finally go to arbitration if mediation fails. If they go to arbitration, they will agree in writing on a recognised and appropriate forum for arbitration that is accessible to both parties.
- 21.2 **Notices and domicile.** The parties will send all notices to each others' email addresses and choose their respective street addresses as their service addresses for all legal documents. Our email and street addresses are available on our website, while you provide your email and street addresses to us when concluding the agreement. You may change either address on 14 calendar days written notice to the other.
- 21.3 **Beyond human control.** Neither party is responsible for a breach of the agreement caused by circumstances beyond human control. However, the other party may cancel the agreement on written notice to the other if the circumstances persist for more than 60 calendar days.
- 21.4 **Assignment.** You may not assign the agreement to anyone. We may assign it to any successor or purchaser of our business or some of our assets.
- 21.5 **Relationship.** The agreement does not create an employment relationship between the parties.
- 21.6 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 21.7 **Changes.** We will notify you of any changes to the agreement by email. Those changes will only apply to future services orders. If you disagree with the changes, you must stop using the services. If you continue to use the services following notification of a change, the changed terms will apply to you, and you will be deemed to have accepted them.
- 21.8 **Waiver.** Any favour we may allow you will not affect any of our rights against you.
- 21.9 **Severability.** Any invalid, unenforceable, or illegal term may be removed from the agreement without affecting the rest of it.

22 Region specifics (ZA)

The clauses in this section only apply to the agreement if we were legally registered in South Africa when we accepted it.

- 22.1 **Governing law.** South African law governs this agreement.
- 22.2 **Mediation.** If the negotiation fails, the parties must refer the dispute to mediation under AFSA's rules. AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).
- 22.3 **Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English

in Cape Town. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within ten business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

22.4 ***Jurisdiction***. You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.

23 Last updated

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