

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.1.1 “**BeLoyal**” shall mean ChannelChat Communications (Proprietary) Limited (Registration No. 2008/001697/07), a private company with limited liability incorporated in accordance with the laws of South Africa.
- 1.1.2 “**Business Day**” shall mean any day other than a Saturday, Sunday or a public holiday in South Africa.
- 1.1.3 “**Content**” shall mean content, information, material and terms and conditions required to complete a Voucher.
- 1.1.4 “**Customer**” shall mean the party specified in the Registration Form.
- 1.1.5 “**Customer’s Database**” shall mean all e-mail addresses provided to BeLoyal by the Customer in order for BeLoyal to send Vouchers or other communications to those e-mail addresses.
- 1.1.6 “**Effective Date**” shall mean the date specified in the Registration Form.
- 1.1.7 “**Fees**” shall mean the fees payable by the Customer to BeLoyal in terms of the provisions of clause 4.
- 1.1.8 “**Intellectual Property**” shall include, without limitation, trade marks, copyright, inventions, designs, systems, processes and methodologies.
- 1.1.9 “**Parties**” shall mean BeLoyal and the Customer and “**Party**” shall, as the context requires, be a reference to any one of them.

- 1.1.10 “**Registration Form**” shall mean the form which accompanies these Terms and Conditions.
- 1.1.11 “**Services**” shall mean the services as described in clause 2.1.
- 1.1.12 “**Terms and Conditions**” shall mean these terms and conditions.
- 1.1.13 “**Voucher**” shall mean a voucher which entitles a member of the public to a discount on specified goods and/or services provided by the Customer.
- 1.2 The schedules to these Terms and Conditions form an integral part hereof and words and expressions defined in these Terms and Conditions shall bear, unless the context otherwise requires, the same meaning in such schedules.
- 1.3 When any number of days is prescribed in these Terms and Conditions, same shall be reckoned inclusively of the first and exclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day.
- 1.4 In the event that the day for payment of any amount due in terms of these Terms and Conditions should fall on a day which is not a Business Day, then the relevant date for payment shall be the following Business Day.
- 1.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.6 Where any term is defined within the context of any particular clause in these Terms and Conditions, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of these Terms and Conditions, notwithstanding that that term has not been defined in this interpretation clause.
- 1.7 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.

- 1.8 Any reference to an enactment in these Terms and Conditions is to that enactment as at the date upon which these Terms and Conditions are agreed to by the Customer and as amended or re-enacted from time to time.
- 1.9 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 1.10 The expiration or termination of these Terms and Conditions shall not affect such of the provisions of these Terms and Conditions as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. INTRODUCTION

- 2.1. BeLoyal provides a service in terms of which it creates, manages and distributes informational, promotional and marketing Vouchers via electronic mail and the internet for third parties.
- 2.2. The Customer appoints BeLoyal to provide the Services to it and agrees that the provision of the Services shall be subject to these Terms and Conditions, which the Customer acknowledges to have read and understood.
- 2.3. Accordingly, the Parties wish to conclude these Terms and Conditions to govern their relationship and to give effect to the provisions of this clause 2.

3. DURATION

The agreement contained in these Terms and Conditions shall commence on the Effective Date and shall endure indefinitely, provided that either Party may terminate this Agreement by giving the other Party 1 (one) month's written notice of termination.

4. FEES

4.1. In consideration for the Services, the Customer shall pay to BeLoyal the Fees, as may be determined by BeLoyal from time to time and published on its website and/or directly to the Customer.

4.2. The Fees shall be calculated with reference to the number of Vouchers which BeLoyal is required to distribute as part of the Services.

4.3. Payment of the Fees by the Customer to BeLoyal shall be made by credit card or electronic bank transfer, free of any deductions, transfer costs or set-off by payment into the bank account of BeLoyal as follows:

4.3.1. Bank Account: Business Cheque Account

4.3.2. Branch Code: 261-550 (Centurion)

4.3.3. Account Holder: ChannelChat Communications (Pty) Ltd

4.3.4. Account Number: 62281278046

5. COMPLETION OF VOUCHERS AND RENDERING OF THE SERVICES

5.1. The design and layout of Vouchers shall be at the sole and absolute discretion of BeLoyal.

5.2. The Customer shall be responsible to complete the Vouchers by adding Content in accordance with the procedure determined by BeLoyal.

5.3. The Customer shall not use the Vouchers to promote any goods or services which are obscene, vulgar, harassing, unlawful, illegal, harmful,

inflammatory, hateful or otherwise objectionable or infringes the rights of any third party or is otherwise unsuitable for distribution.

- 5.4. BeLoyal reserves the right to edit, revise, refuse to distribute for any period of time or reject any Content or Voucher if BeLoyal, in its sole and absolute discretion, deems the Content, Voucher, or goods or services promoted or marketed by way of the Voucher to be obscene, vulgar, harassing, unlawful, illegal, harmful, inflammatory, hateful or otherwise objectionable or infringes the rights of any third party in subject matter or wording, or to be otherwise unsuitable for distribution.
- 5.5. BeLoyal is not responsible for checking the Vouchers completed by the Customer. BeLoyal shall not be liable to the Customer or any other party for any loss, damages, costs or expenses of any nature whatsoever, including indirect or consequential damages or any loss of profit or special damages of any nature whatsoever incurred as a consequence of errors, omissions, inaccuracies or any other irregularity in the Content of any Voucher.
- 5.6. BeLoyal does not represent or warrant:
 - 5.6.1. that the electronic infrastructure which is required to render the Services shall be available at all times;
 - 5.6.2. that the Vouchers shall be delivered to, received, opened, read or forwarded by any party;
 - 5.6.3. the success of the promotion of any goods or services by way of the Services;
 - 5.6.4. that the Services shall increase sales of, or demand for, the Customer's goods or services.
- 5.7. The Services shall be non-exclusive and BeLoyal shall be entitled to render the Services to any third party.

6. WARRANTIES AND INDEMNITY

- 6.1. The Customer warrants in favour of BeLoyal that nothing in any Content or Voucher completed by the Customer shall:
- 6.1.1. be false, deceptive, misleading or defamatory;
 - 6.1.2. infringe the rights (including intellectual property rights) of any person;
 - 6.1.3. be unlawful, illegal or infringe any provision of any statute.
- 6.2. The Customer warrants that it has obtained the permission of all parties to whom BeLoyal is required to send Vouchers and other communications in order to send such Vouchers and other communications to such parties. The Customer indemnifies BeLoyal against any and all liability, loss, damage or claim of any nature suffered by BeLoyal as a result of sending a Voucher or other communication to a party that has not provided such permission.
- 6.3. The Customer hereby undertakes, at its own expense, to promptly defend any claim, demand or court proceeding that may be brought against BeLoyal on the basis of the distribution of any Voucher, provided that BeLoyal shall notify the Customer of such claim, demand or court proceeding. The Customer shall reimburse BeLoyal for any amount paid by BeLoyal in settlement of claims or in satisfaction of judgments obtained against BeLoyal by reason of the distribution of any Voucher for the Customer.
- 6.4. The Customer hereby indemnifies BeLoyal against any and all liability, loss, damage or claim of any nature suffered in relation to the Content of any Voucher distributed for the Customer or any act or omission by the Customer or the Customer's members, employees, representatives, agents or assigns or any third party in relation to the distribution of Vouchers for the Customer.

7. USE OF E-MAIL ADDRESSES, DATABASES AND INFORMATION The Customer shall have sole ownership of the Customer's Database, provided that BeLoyal shall be entitled to:

7.1.1. send Vouchers and communications to the e-mail addresses contained in the Customer's Database for purposes of rendering the Services;

7.1.2. promote and/or publicise the goods and/or services of other customers of BeLoyal to the e-mail addresses contained in the Customer's Database and send vouchers relating to other customers of BeLoyal to such e-mail addresses.

7.2. Beloyal retains the right to use all new e-mail addresses, databases and information that are gathered by Beloyal as a result of Beloyal's use of the e-mail addresses contained in the Customer's database pursuant to the provisions of this Agreement ("New Database"). The Customer shall not be entitled to request Beloyal to disclose the New Database and Beloyal shall not be obliged to disclose same, provided that the Customer shall be entitled to request Beloyal to send future Vouchers to the New Database. Notwithstanding the aforesaid, Beloyal shall, at the request of the Customer, provide the Customer with the New Database information it, at its own discretion, deems necessary in order to provide the Services as described in clause 2.1 above.

7.3. Where any other new database information, besides the e-mail addresses contained in the Customer's database, is gathered by Beloyal through the Service as described in clause 2.1 above, specifically through provision of services over the internet in any manner, Beloyal retains ownership of and the right to use this information to improve its Service, for statistical- and demographical analysis, to enable Beloyal to advise its Customers and accordingly to enable them to improve their use of the Beloyal Service as well as any other use that Beloyal requires and sees fit to render and improve its Service.

7.4. The information as stated in clause 7.3 above includes, but is not limited to, contact details, social media profile- and user information gathered through the Beloyal Facebook Application and any other internet and/or social media applications which Beloyal may develop and include as part of its Service.

8. INTELLECTUAL PROPERTY

8.1. BeLoyal is the sole proprietor of all Intellectual Property used to render the Services including, but not limited to, Intellectual Property vesting in the

website, system and equipment through which the Services are rendered. The Customer shall not in any way contest BeLoyal's ownership of such Intellectual Property and shall not obtain any rights in relation to such Intellectual Property unless otherwise agreed to by BeLoyal in writing.

- 8.2. Unless otherwise agreed to between the Parties in writing, BeLoyal shall be the sole proprietor of all Intellectual Property created or developed in the course of rendering the Services.

9. RELATIONSHIP BETWEEN THE PARTIES

BeLoyal shall serve as an independent contractor, and under no circumstances shall it be, or be deemed to be, an agent, partner, joint venture or employee of the Customer in the performance of its duties and responsibilities pursuant to the Terms and Conditions.

10. BREACH

Should any Party ("**the Defaulting Party**") commit a breach of any of the provisions hereof, then the other Party ("**the Aggrieved Party**") shall, if it wishes to enforce its rights hereunder, be obliged to give the Defaulting Party 10 (ten) Business Days written notice to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel these Terms and Conditions or to claim immediate payment and/or performance by the Defaulting Party of all of the Defaulting Party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the Aggrieved Party's rights to claim damages. The foregoing is without prejudice to such other rights as the Aggrieved Party may have at law: provided always that, notwithstanding anything to the contrary contained in these Terms and Conditions, the Aggrieved Party shall not be entitled to cancel these Terms and Conditions, for any breach by the Defaulting Party unless such breach is a material breach going to the root of these Terms and Conditions and is incapable of being remedied by a payment in money, or if it is capable of being remedied by a payment in money, the Defaulting Party fails to pay the amount concerned within 10 (ten) Business Days after such amount has been determined.

11. FORCE MAJEURE

In the event of any act of God, strike, war, warlike operation, rebellion, riot, civil commotion, lockout, combination of workmen, interference of trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond or outside the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (“**Force Majeure**”) then the Party affected by such Force Majeure shall be relieved of its obligations hereunder during the period that such Force Majeure continues but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the Force Majeure, provided always that a written notice shall be promptly given of any such inability by the affected Party. Any Party invoking Force Majeure shall upon termination of such Force Majeure give prompt written notice thereof to the other Parties. Should Force Majeure continue for a period of more than 90 (ninety) days, then either Party shall be entitled forthwith to cancel these Terms and Conditions.

12. DISPUTE RESOLUTION

- 12.1. If a dispute between the Parties arises out of or is related to these Terms and Conditions, including any matter relating to the breach of any of the provisions of these Terms and Conditions, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after 30 (thirty) days from the date upon which the dispute was declared by a Party by written notice, the dispute is not resolved the matter shall be determined in accordance with the following provisions.
- 12.2. Save in respect of those provisions of these Terms and Conditions which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from or in connection with these Terms and Conditions will be finally resolved by arbitration as follows:

- 12.2.1. the arbitrator shall be a practising attorney or practising advocate of not less than 15 (fifteen) years standing. The Party calling the dispute (“**the Referring Party**”) shall nominate in writing, 3 (three) arbitrators of its choice to determine the dispute and shall furnish such nomination to the other Parties. The other Parties shall, within 14 (fourteen) days after receipt of the nomination, nominate 1 (one) out of the 3 (three) arbitrators nominated to act as an arbitrator as contemplated in this clause 18. In the event that the other Parties fail to nominate or fail to agree on the arbitrator to be appointed as contemplated herein, the referring Party shall, in its sole discretion, be entitled to appoint 1 (one) out of the 3 (three) arbitrators nominated to act as an arbitrator as contemplated herein;
- 12.2.2. the arbitration shall be held at Pretoria;
- 12.2.3. the arbitration shall otherwise be held in accordance with the rules of the Arbitration Foundation of South Africa (“**AFSA**”), or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and the provisions of the Arbitration Act, 1965;
- 12.2.4. the arbitrator shall be entitled to:
- 12.2.4.1. investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;
- 12.2.4.2. make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate;
and

- 12.2.5. the arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- 12.3. This clause 12 will be severable from the rest of these Terms and Conditions so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of these Terms and Conditions.
- 12.4. Neither Party shall be entitled to withhold performance of any of their obligations in terms of these Terms and Conditions pending the settlement of, or decision in, any dispute arising between the Parties and each Party shall in such circumstances continue to comply with their obligations in terms of these Terms and Conditions.

13. ADDRESSES

- 13.1. Each Party chooses the addresses set out opposite its name below as its addresses to which all notices and other communications must be delivered for the purposes of these Terms and Conditions and its *domicilium citandi et executandi* ("*Domicilium*") at which all documents in legal proceedings in connection with these Terms and Conditions must be served:

BeLoyal :	<i>Domicilium:</i>	1100 Pretorius Street Hatfield Pretoria 0083
	<i>Postal address:</i>	1100 Pretorius Street Hatfield Pretoria 0083

Telefax No: 086 563 6982
Telephone No: 082 415 8507
E-mail: info@ Beloyal.co.za
Attention: Andries Volschenk

Customer: Shall be as set out in the Registration Form.

- 13.2. Any notice or communication required or permitted to be given to a Party in accordance with these Terms and Conditions shall be valid and effective only if in writing and sent to a Party's chosen address, telefax number or e-mail address in accordance with the provisions of clause 13.5, provided that documents in legal proceedings in connection with these Terms and Conditions may only be served at a Party's *Domicilium*.
- 13.3. Any Party may by written notice to the other Party, change its chosen address, telefax number or e-mail address to another address, telefax number or e-mail address, provided that:
- 13.3.1. the change shall become effective on the 10th (tenth) Business Day after the receipt or deemed receipt of the notice by the addressee in accordance with the provisions of clause 13.4, and
- 13.3.2. any change in a Party's *Domicilium* shall not be a post office box or a poste restante.
- 13.4. Any notice to a Party contained in a correctly addressed envelope and:
- 13.4.1. sent by prepaid registered post to it at its chosen address in 13.1; or
- 13.4.2. delivered by hand to a responsible person during ordinary business hours at its chosen address in 13.1;
- 13.4.3. shall be considered to have been received in the case of clause 13.4.1 on the fifth business day after posting (unless the contrary is proved) and, in the case of clause 10.4.2 on the day of delivery.

- 13.5. Any notice by telefax or e-mail to a Party at its telefax number or e-mail address shall be considered, unless the contrary is proved, to have been received on the first business day after the date of transmission.
- 13.6. Despite anything to the contrary contained in this clause 14, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it despite the fact that it was not sent to or delivered at its chosen address, telefax number or e-mail address as set out in clause 13.1 on the day of delivery.

14. GOVERNING LAW

The entire provisions of these Terms and Conditions shall be governed by and construed in accordance with the laws of the Republic of South Africa. Furthermore, the Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria, in regard to all matters arising from these Terms and Conditions.

15. GENERAL

- 15.1. No Party shall be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like which is not included or recorded in this document whether it induced the contract and/or whether it was negligent or not.
- 15.2. No variation, amendment or consensual cancellation of these Terms and Conditions or any provision or term hereof and no settlement of any disputes arising under these Terms and Conditions and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of these Terms and Conditions shall be binding or have any force and effect unless reduced to writing and signed by or on behalf of the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be construed as relating strictly to the matter in respect of which it was made or given.

- 15.3. No extension of time or waiver or relaxation of any of the provisions or terms of these Terms and Conditions shall operate as an estoppel against any Party in respect of its rights under these Terms and Conditions.
- 15.4. No failure by any Party to enforce any provision of these Terms and Conditions shall constitute a waiver of such provision or affect in any way such Party's right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.
- 15.5. Except as provided for under these Terms and Conditions, the Customer shall not cede any of its rights or delegate any of its obligations under these Terms and Conditions without the prior written consent of BeLoyal.
- 15.6. If any clause or term of these Terms and Conditions should be invalid, unenforceable, defective or illegal for any reason whatsoever, then the Parties shall negotiate in good faith to replace such clause with a clause which is valid, enforceable and legal but maintaining the essential provisions of that clause to the extent possible, provided that if the Parties should fail to reach agreement on such replacement clause, then the remaining terms and provisions of these Terms and Conditions shall be deemed to be severable and shall continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of these Terms and Conditions.