

Toddler Friends Subscription Agreement

1. PREAMBLE

This agreement governs your acquisition and use of our services. By accepting this agreement, either by clicking a box indicating your acceptance or by executing an order form that makes reference to this agreement, you agree to the terms of this agreement. If you are entering into this agreement on behalf of a company or other legal entity, you present that you have the authority to bind such entity and its affiliates to the terms of this agreement, in which case the terms "you" or "your" will refer to such entity and its affiliates. If you do not have the necessitated authority to act on behalf the company or other legal entity you will be held responsible for the costs and/or damages suffered in relation to this agreement.

2. PARTIES

The Parties to this agreement are:

- 2.1. **Hauke Digital Productions CC** (2010/11919797/23), (HDP); and
- 2.2. **Subscriber/You/Your**

3. DEFINITIONS

Unless the context clearly indicates the contrary, any term defined in this Agreement, will bear the same meaning as defined in herein.

- 3.1. **"Acceptance Date"** means the date on which you accepted the Agreement, be that in writing or by way of electronic medium, for example by clicking "I agree" on a web page or via your mobile phone;
- 3.2. **"Account Holder"** means the person and/or entity responsible and legally liable for the payment of the account and/or keeping the account in a good order and/or any other outstanding costs, fees and/or monies due and owing to HDP as a result of this Agreement;
- 3.3. **"Activation Date"** means the date on which HDP will give you access to and/or enable you to use a product or service;
- 3.4. **"Agreement"** means the agreement concluded between you and HDP in respect of the product or service contemplated in the Application Form which agreement will be exclusively governed by these terms and conditions applicable to the relevant product or service read together with the Application Form;
- 3.5. **"Application Form"** means an application document specifying the Services to be provided hereunder that is entered into

between You and HDP, including any amendments thereto (including any electronic document);

- 3.6. **"Business Day"** means Monday to Friday, but excludes Saturdays and a day which is an official public holiday in the Republic of South Africa;
- 3.7. **"Business Hours"** means the hours between 08h00 and 17h00 on a Business Day;
- 3.8. **"CPA"** means the Consumer Protection Act, 2008;
- 3.9. **"ECT Act"** means the Electronic Communications and Transactions Act, 2002;
- 3.10. **"HDP Account"** means the subscription account under which you obtain access to our services;
- 3.11. **"HDP Marks"** means any trademarks, logos, brand names, trade names domain names or other names or marks of HDP whether registered or not;
- 3.12. **"HDP", "we", "us" and "our"** means Hauke Digital Productions CC;
- 3.13. **"Intellectual Property Rights"** means the copyright in any work in terms of the Copyright Act, No. 98 of 1978, and includes without limitation the right to reproduce that work, the rights in respect of a trade mark conferred by the Trade Marks Act, No. 194 of 1993, the rights in respect of a design conferred by the Designs Act, No. 195 of 1993, and the rights in respect of a patent conferred by the Patents Act, No. 57 of 1978 including any applications for the foregoing and any names, licenses, know how, trade secrets and data associated with the foregoing;
- 3.14. **"Listing Period"** means the fixed period that the Supplier will be featured on the website as indicated on the Application Form;
- 3.15. **"Service Fee"** means the amount that HDP will charge you for the Subscription Service selected by you, as recorded in the Application Form;
- 3.16. **"Service/s"** means the listing, banner and/or being featured otherwise (including posts, articles, photos etc.) that are ordered and applied for by You under a free trial or an Application Form and made available online by HDP, including associated offline components that may find application;
- 3.17. **"Subscriber", "you" or "Customer"** means an user of any of our products or services;
- 3.18. **"Termination Date"** means the date on which service is to terminate in concordance

with the pre-determined duration of the selected service package;

owing up to the date of cancellation

3.19. "Uncontrollable Event" means (including without limitation) any fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of HDP including the termination or suspension of a service or product provided by a Network Operator, that may result in a delay or a failure to provide any product or service;

3.20. "VAT" means Value Added Tax as provided for in the Value Added Tax Act, 1991;

3.21. "Website" means www.toddlerfriends.co.za; and

3.22. "You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

4. COMMENCEMENT, DURATION, TERMINATION AND CANCELLATION

4.1. The Agreement will commence on the Acceptance Date, subject to all payments being duly made and received by HDP, and endure until the Termination Date or until it is cancelled as provided for in this clause 4.2, or otherwise provided in this Agreement. In the event that the product or service you have applied for is not activated within 30 (thirty) days of the Acceptance Date (or such extended period as HDP may advise) due to an Uncontrollable Event, the Agreement will automatically terminate and no party will have any liability to the other as a result of such termination.

4.2. Cancellation of the Fixed Term Subscription Agreement will be as follows:

4.2.1. You may cancel the Agreement prior to the Termination date as selected on the Application Form by way of written notice to HDP no less than 20 Business Days in advance.

4.2.2. HDP may cancel the Agreement -

4.2.2.1. 20 (twenty) Business Days after giving you written notice to remedy a material breach of the Agreement and you have failed to remedy that breach within such time; and

4.2.2.2. In the event that you cancel the agreement prior to the Termination Date. You will remain liable for all amounts

4.3. Notwithstanding the termination of the Agreement, in the event that you continue to use the products or services despite the termination of the Agreement, you will remain liable for and promptly pay on demand all amounts that would have been due to HDP as a result of the use of or access to the product or service and this Agreement will be deemed to continue to apply until such time as all amounts due to HDP have been paid in full.

4.4. This Agreement will terminate automatically upon expiry of the selected listing period on the Application Form. HDP will notify You of the said expiry with the option to renew this Agreement.

5. CONDITIONS OF LISTING/BANNER/FEATURING

5.1. HDP will, unless it declines to activate the service as a result of non-payment by you, make the service available to you on the Activation Date;

5.2. The Activation Date will be scheduled for the first Business Day of the following month in which payment was effected and proof received by HDP;

6. HDP ACCOUNT

6.1. You, as the Supplier and/or Account Holder, acknowledge you are solely responsible for all payments in respect of a service charged to your HDP account, irrespective of whether the service has been utilized, is being utilized or is correctly linked to your site by you or not and accordingly the entire amount outstanding on your HDP account will be deemed to have arisen from (or relate to) your access to and/or use of a service; and

6.2. You agree to cause all persons who use any products or services under your account or with your authorization to comply with this Agreement. All acts or omissions of all persons who use services under your account or with your authorization will be treated for all purposes as your acts or omissions;

7. SERVICE DELIVERY, SERVICE AVAILABILITY

7.1. HDP will use reasonable endeavours to make its services available to its Subscribers, and to maintain the availability thereof for use by its subscribers. However, we provide the services "as is" and "as available" and do not warrant or guarantee that the services will at all times be free of errors or interruptions, be always available, fit for any purpose, not infringe any

third party rights, be secure and reliable, or will conform to your delivery timeline requirements subject always to the provisions of the CPA where applicable.

- 7.2. HDP will use its best endeavours to notify you in advance of any maintenance and repairs which may result in the unavailability of a service, but cannot always guarantee this.
- 7.3. You are responsible for providing the correct information to HDP that includes website addresses, links, IP addresses etc. Should this change during the course of this Agreement it is your duty to inform HDP accordingly. HDP will not be held responsible for any incorrect information or lack of service received as a result of incorrect or outdated information.
- 7.4. You hereby acknowledge and accept the responsibility of testing your listing. Any incorrect links or leads to wrong websites will fall under the responsibility of HDP.
- 7.5. We reserve the right to remove comments that we find inflammatory, offensive, self-promoting or otherwise inconsistent with our standards of business ethics or public policy.

8. DATA RETENTION

- 8.1. We will use reasonable endeavours to ensure the safekeeping of any data or content which you may receive or upload to our servers from time to time, such as (without being limited to) photographs, websites, videos, data and e-mail messages (hereinafter collectively referred to as "**your data**"). However, it is your obligation to keep copies and back-ups of your data, as:
 - 8.1.1. we will not be liable for any direct or indirect loss or damages of any kind that you may suffer as a result of the loss of your data, or any part thereof, for any reason whatsoever; and
 - 8.1.2. we will, unless otherwise required by law, delete all your data from our servers upon termination of the Agreement and any other agreement between us.

9. COMMUNICATION, COMPLAINTS HANDLING AND DISPUTE RESOLUTION

- 9.1. You agree that HDP may from time to time send you communications regarding (without being limited to) special offers or discounts which HDP may negotiate for and offer to its Subscribers and/or new services or products launched. All communications will abide by our Privacy Policy and applicable law. You will always be entitled to notify us in writing that you do not wish to receive or continue to receive such communications and if you are a consumer as contemplated in the CPA, to pre-

emptively block the receipt of such communications.

- 9.2. Complaints must be submitted to HDP and will be dealt with by HDP in accordance with the provisions of this clause.
- 9.3. Any payment default on your part arising from, or in connection with, any service or product rendered or provided by HDP, will be excluded from the provisions of this clause, and HDP will be entitled to proceed to institute legal action against you. Without prejudice to your rights in law, you are required, to first approach us with any complaint or dispute and afford us an opportunity to resolve a complaint before you approach any other relevant authority, court or other dispute resolution body or refer the matter to Arbitration as contemplated in this clause.
- 9.4. Please direct all complaints to info@hauke.co.za. Your complaint should include proper referencing, a brief description of what gave rise to the complaint and should include supportive documents in the case of a billing complaint.
- 9.5. HDP will acknowledge receipt of your complaint within 3 (three) working days of receipt thereof.
- 9.6. HDP will formally respond with a view to proposing a resolution of your complaint in writing within 14 (fourteen) working days of receipt thereof, or within such longer period as we reasonably require under circumstances where the resolution of the complaint is for example (but without limitation) in the hands of a supplier or third party service provider.
- 9.7. You may approach any relevant authority, court or dispute resolution body or refer the matter to Arbitration as set out in this clause below, for resolution of the dispute, should you not be satisfied with the proposed resolution of the dispute by HDP.
- 9.8. Any dispute between the parties may be referred to arbitration and finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa. Such arbitration will be held either in Cape Town or Pretoria, and conducted in the English language before one arbitrator appointed in accordance with the said rules. Any award will be final and not subject to appeal. This agreement to arbitrate will be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute will be deemed to have arisen when either party notifies the other party in writing to that effect.

9.9. The arbitrator will have the power to give default judgement if any party fails to make submissions on due date and/or fails to appear at the arbitration.

9.10. The provisions set out above will not prevent either party from approaching any court of competent jurisdiction to obtain interim or other relief in cases of urgency.

10. PAYMENT

10.1. Activation of the Service is subject to the payment and the providing of a proof of payment to info@hauke.co.za. The amount will be pre-determined as per the chosen subscription package on the Application form.

10.2. You agree to pay all amounts due under this Agreement in consideration for a service or product in accordance with the Application Form under which that service is rendered or that product is offered.

10.3. Payments must be done by of a direct deposit or Credit Card payments.

10.4. Should you fail to pay any amount on the due date for payment then HDP may, without prejudice to any of its other rights and remedies:

10.4.1. take all such further steps as may be necessary to recover the outstanding amount from you, including without limitation the use of debt collection mechanisms;

10.4.2. suspend your listing and/or featuring on the website or the use of any product without notice to you until such time as the outstanding amount has been paid in full; or

10.4.3. subject to the termination clause above, terminate this agreement with immediate effect.

10.5. In the event of HDP suspending your listing to the service, HDP reserves the right to continue to charge you the minimum required to keep your account activated for the period of suspension, unless terminated by you in terms of this Agreement.

10.6. HDP will use its reasonable endeavours to inform you well in advance, and in any event prior to disconnection, about the possibility of disconnection in the case of non-payment.

10.7. To the extent that HDP may incur any additional expenditure relating to the tracing and/or collection of unpaid amounts, those costs will be for your account to the extent permitted by law.

11. SECURITY AND PRIVACY

11.1. HDP will be entitled to take whatever action HDP may deem necessary and reasonable to preserve the security and reliability of its network.

11.2. You may not utilize any service or provide HDP with such information in any manner that may compromise the security of HDP's network, or any other network connected to HDP's network, or tamper with a service or such a network in any manner whatsoever.

12. INTELLECTUAL PROPERTY RIGHTS

12.1. You agree to comply with all laws applicable to any Intellectual Property Rights in respect of any data, files and/or information accessed, retrieved or stored by you through your use of any of our services and/products.

12.2. You are prohibited from using any HDP Marks without the prior written approval of HDP.

12.3. You hereby warrant that you have the right to showcase any and all data, files and information provided by you and/or that the necessitated authorization, consent and approval of such publication was attained prior to providing HDP with such data, files and information. HDP will not be held responsible for any damage as a result of any infringement to any Intellectual Property Rights.

13. BREACH

13.1. Subject to any other provisions set out in these terms and conditions and without prejudice to any of these provisions, should you be in breach of any provision of this Agreement, then HDP will be entitled, without prejudice to any other rights that it may have and to the extent required or permitted, as the case may be, by law, to forthwith:

13.1.1. afford you a reasonable opportunity to remedy the breach, taking into account the nature of the breach in question;

13.1.2. suspend your access to a service;

13.1.3. cancel all agreements concluded between us; or

13.1.4. claim immediate performance and/or payment of all your obligations in terms hereof.

- 13.2. Should HDP suspend, disconnect or terminate your service, HDP will be entitled to, charge you a fee for reconnecting your service.

14. ARTICLES AND POSTINGS

- 14.1. This clause is subject to You, the Supplier, being listed as a Toddler Friends Supplier. Should you not be listed as such this clause will not find application herein and may be ignored for purposes of this Agreement;
- 14.2. You may provide HDP with articles and/or posts during the course of this Agreement for the featuring thereof on Toddler Friends;
- 14.3. HDP reserves the right to place this article or not, and is under no obligation to make use of any/all articles, posts or post suggestions provided by you;
- 14.4. All content provided under this section is and remains subject the Intellectual Property Law of South Africa and is likewise subject to the Intellectual Property Clause of this Agreement.

15. INDEMNITY

- 15.1. You hereby unconditionally and irrevocably indemnify HDP and agree to indemnify and hold HDP harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whensoever arising, suffered or incurred by HDP as a result of any claim instituted against HDP by a third party (other than you) as a result of (without limitation):
- 15.1.1. your use of our services or products other than as allowed or prescribed in this Agreement; or
- 15.1.2. any other cause whatsoever relating to this Agreement or the provision of services or products to you where you have acted wrongfully or failed to act when you had a duty to so act.

16. LIMITATION OF LIABILITY

- 16.1. Save to the extent otherwise provided for in this Agreement or where you are entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, we do not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality or security of any product or service.
- 16.2. Without limiting the generality of the provisions of clause 14, HDP will not be liable

for and you will have no claim of whatsoever nature against HDP as a result of:

- 16.2.1. any unavailability of, or interruption in the service due to an Uncontrolled Event;
- 16.2.2. wrong information provided by you and or any change in information;
- 16.2.3. any damage, loss, cost or claim which you may suffer or incur arising from any suspension or termination of the service/s for any reason contemplated in the Agreement.

- 16.3. In addition to and without prejudice to any other limitations of liability provided for in the Agreement and to the fullest extent permitted by applicable law, HDP will not be liable to you for any direct damages arising and neither party will be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent authority finally determines that HDP is liable to you for any damages, HDP's liability to you for any damages arising will be limited to the amounts paid by you under this Agreement in consideration for a service or product during the immediately preceding 12 (twelve) month period in respect of the service or product which gave rise to the liability in question.

17. CESSION AND DELEGATION

You may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all of your rights and obligations under and in terms of this Agreement without the prior written approval of HDP. HDP will be entitled to sell, cede, assign, delegate, alienate, dispose or transfer any or all of its rights and obligations under and in terms of this Agreement to any third party without your consent and without notice to you.

18. JURISDICTION

You hereby consent to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any proceedings that may be initiated by HDP arising out of this Agreement. The parties agree to follow the arbitration process set out in this Agreement.

19. AMENDMENT OF THIS AGREEMENT

HDP reserves the right to amend this agreement from time to time. Any new version of the Agreement will be displayed on our Website together with the date on which it will become effective, which will never be less than 30 (thirty) days after the date on which it is first published. It is your obligation to visit our web site on a regular basis in order to determine whether any amendments have been made.

20. GENERAL

- 20.1. The parties acknowledge and agree that this Agreement constitutes the whole of the agreement between them and that no other agreements, guarantees, undertakings or representations, either verbal or in writing, relating to the subject matter of this Agreement not incorporated in this Agreement will be binding on the parties. No changes or cancellation of this Agreement by you, including any changes to the Application Form will be binding on any of the parties unless recorded in writing and signed by both parties, notwithstanding activation of the service.
- 20.2. You agree that any notices we send to you in terms of any agreement concluded between us may be sent via e-mail unless otherwise prescribed by law.

- 20.3. No indulgence, leniency or extension of time which HDP may grant or show to you will in any way prejudice HDP or preclude HDP from exercising any of its rights in the future.
- 20.4. You warrant that as at the date of signature of the Application Form, all the details furnished by you to HDP are true and correct and that you will notify HDP in the event of any change to such details.
- 20.5. All our terms and conditions can be accessed, stored, and reproduced electronically by you.
- 20.6. The physical address where HDP will receive legal service of documents is the following: Studio on Club, 103 Club Avenue, Waterkloof Heights, Pretoria, Gauteng.
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