

**COBRA (COVID BUSINESS RESCUE ASSISTANCE) WAR ROOM**  
**WEBSITE TERMS AND CONDITIONS OF USE AND PRIVACY POLICY**

**1. Definitions and Interpretation**

- 1.1. In these terms and conditions, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
- 1.1.1. “**COBRA**” means a pro bono crisis management centre called the COBRA (COvid-19 Business Rescue Assistance) War Room, an unincorporated, non-profit joint venture between Schindlers Attorneys, IQbusiness and Engaged Business Turnaround;
- 1.1.2. “**ECT Act**” means the Electronic Communications and Transactions Act No. 25 of 2002, as amended from time to time;
- 1.1.3. “**Intellectual Property Rights**” means all and any of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under licence by COBRA, now or in the future including, without limitation, COBRA's rights, title and interest in and to all technology, source code(s), trade secrets, logos, systems, methods, trademarks, trade names, styles, insignia, designs, patents and copyright, and all similar proprietary rights which may subsist in any part of the world, whether registered or not;
- 1.1.4. “**Personal Information**” has the meaning ascribed thereto in the POPI;
- 1.1.5. “**POPI**” means the Protection of Personal Information Act No. 4 of 2013, as amended from time to time;
- 1.1.6. “**Terms**” means the agreement set out in this document, comprising the terms and conditions of use and data and privacy policy of this website, as amended from time to time;
- 1.1.7. “**User**” means any person who enters and utilises this website to subscribe for articles, register for webinars and to request direct assistance; and
- 1.1.8. “**Website**” means the website owned and operated by COBRA, available at <http://www.cobra.org.za>, including any page, part or element thereof.
- 1.2. Hyperlinks herein to legal documents shall be deemed part of these Terms in terms of section 11(3) of the ECT Act. The fact that some or all of the hyperlinks may, from time to time, be non-operational, shall not affect the validity and interpretation of these Terms.

## **2. Website Terms and Conditions of Use**

- 2.1. These Terms pertain to the access and use of the information, services and functions provided on the Website.
- 2.2. In terms of section 11 of the ECT Act and the common law, these Terms are valid, binding and enforceable against all persons that access this Website, its web pages or any part thereof.
- 2.3. COBRA permits the use of this Website subject to the Terms. By using this Website, the User shall be deemed to have accepted all the Terms on an unconditional basis. If the User does not agree to be bound by these Terms, the User must leave the Website without delay, as further use will automatically bind the User to these Terms.
- 2.4. If the User is under the age of 18 (eighteen) years, the User must obtain the User's parents' or legal guardians' advance authorisation, permission and consent to be bound by these Terms before utilising any services offered on this Website.
- 2.5. COBRA reserves the right, in its sole discretion, to amend and/or replace any part or the whole of the Terms. Such amendments shall supersede and replace any previous Terms and shall be made available on the Website. Each time a User accesses the Website and/or uses the services available, the User shall be deemed to have consented, by such access and/or use, to the Terms, as amended and/or replaced by COBRA from time to time. If the User is not satisfied with the amended Terms, the User should refrain from using the Website.
- 2.6. There is no legal entitlement to the benefits of the functions and services offered on this Website and COBRA has the right to refuse provision of its services without providing explanation.
- 2.7. If there is anything in these Terms that the User does not understand, please contact COBRA as soon as possible on the contact details provided for in clause 12 below. Please note that calls to COBRA are charged at national rates and may be monitored for training, security and quality assurance purposes.

## **3. Content of the Website and Disclaimers**

- 3.1. This Website is supplied on an "as is" basis and has not been compiled or supplied to meet the User's individual requirements. It is the sole responsibility of the User to satisfy itself prior to entering into these Terms that the services

available from and through this Website will meet the User's individual requirements and be compatible with the User's hardware and/or software, where applicable.

- 3.2. Information, ideas and opinions expressed on this Website should not be regarded as legal or other professional advice or the official opinion of COBRA, and Users are encouraged to consult professional advice before taking any course of action in relation to information, ideas or opinions expressed on this Website.
- 3.3. COBRA reserves the right to make improvements or to change or to discontinue, without notice, any aspect or feature of the Website and any information or content on the Website.
- 3.4. COBRA reserves the right to change and amend the services it offers on this Website from time to time and without notice.
- 3.5. COBRA may use the services of third parties to provide information on the Website. COBRA has no control over this information and makes no representations or warranties of any nature as to its accuracy, appropriateness or correctness. The User agrees that such information is provided "as is" and that COBRA and its online partners shall not be liable for any losses or damages that may arise from the User's reliance on it, howsoever these may arise.
- 3.6. COBRA makes no representations or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, data and/or content on the Website including, without limitation:
  - 3.6.1. COBRA does not warrant that the Website or information or downloads shall be error-free or that they shall meet any particular criteria of performance or quality. COBRA expressly disclaims all implied warranties including, without limitation, warranties of merchantability, fitness for a particular purpose, non-infringement, compatibility, security and accuracy;
  - 3.6.2. whilst COBRA has taken reasonable measures to ensure the integrity of the Website and its contents, no warranty, whether express or implied, is given that any files, downloads or applications available via this Website are free of viruses, or any other data or code which has the ability to corrupt, damage or affect the operation of the User's system; and
  - 3.6.3. COBRA disclaims any responsibility for the verification of any claims. Information published on this Website may be done so in the format in

which COBRA receives it and statements from external parties are accepted as fact.

#### **4. Linked Third Party Websites and Third-Party Content**

- 4.1. COBRA may provide links to third party websites on the Website (“**External Websites**”). These links are provided to the User for convenience purposes only and COBRA does not endorse, nor does the inclusion of any link imply COBRA’s endorsement of such External Websites, their owners, licensees or administrators or such External Websites’ content or security practices and operations.
- 4.2. While COBRA tries to provide links only to reputable External Websites or online partners, COBRA does not accept responsibility or liability for the information provided on such External Websites. External Websites or pages are not under, nor subject to, the control of COBRA. COBRA is not responsible for and gives no warranties or representations in respect of the privacy policies or practices of External Websites.
- 4.3. The User agrees that COBRA shall not be held liable, directly or indirectly, in any way for the content, the use or inability to use or access any External Website or any link(s) contained in an External Website, nor for any loss or damage of any sort incurred as a result of any dealings with, or as the result of the presence of such External Websites on the Website. Any dealings that the User may have with any External Websites, including advertisements, found on the Website, are solely between the User and the External Website and the User enters the External Website at their own risk.

#### **5. Usage Restrictions**

The User hereby agrees that it shall not itself, nor through any third party:

- 5.1. copy (other than for backup, archival or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, licence, sub-licence, encumber or in any other way deal with any part of the Website for any reason and in any manner, unless it is consistent with the intent and purpose of these Terms;
- 5.2. decompile, disassemble or reverse engineer any portion of the Website;
- 5.3. write and/or develop any derivative of the Website or any other software program based on the Website;

- 5.4. modify or enhance the Website and in the event of a User effecting any modifications or enhancements to the Website in breach of this clause, such modifications and enhancements shall be the property of COBRA;
- 5.5. without COBRA's prior written consent, provide, disclose, divulge or make available to or permit the use of or give access to the Website to persons other than the User;
- 5.6. remove any identification, trademark, copyright or other notices from the Website;
- 5.7. create a hypertext link to any part of this Website without COBRA's prior written consent and to the extent that such a link is created, the User acknowledges that they are solely responsible for the consequences of creating such link and they agree to defend, indemnify and hold COBRA harmless from and against all damages, costs, losses and expenses of any nature, whether direct or indirect, arising from or in connection with the creation of such link;
- 5.8. post or transmit, by means of reviews, comments, suggestions, ideas, questions or other information through the Website, any content which is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually-explicit, profane or hateful, or racially, ethnically or otherwise objectionable content of any kind; and/or
- 5.9. notwithstanding anything contained to the contrary in these Terms, use the Website content for any purpose other than non-commercial, educational, and informational purposes.

## **6. Security**

- 6.1. In order to ensure the security and reliable operation of the Website for all Users, COBRA hereby reserves the right to take whatever action it may deem necessary to preserve the security, integrity and reliability of its network and back-office applications.
- 6.2. The User may not utilise the Website in any manner which may compromise the security of COBRA's networks or tamper with the Website in any manner whatsoever, which shall include, without limitation, gaining or attempting to gain unauthorised access to the Website, or delivering or attempting to deliver any unauthorised, damaging or malicious code to the Website, all of which is expressly prohibited. Any person or entity which does so, or attempts to do so, shall be held criminally liable. Further, should COBRA suffer any damage or loss, damages shall be claimed by COBRA against the User.

- 6.3. Any User who commits any of the offences detailed in Chapter 13 of the ECT Act, more particularly sections 85 to 88 (both inclusive), shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by COBRA.

## **7. Intellectual Property Rights**

- 7.1. This Website is operated and controlled by COBRA. The information from this Website is protected by copyright and other proprietary rights laws. No information from this Website may be copied, reproduced, republished, uploaded, posted, transmitted or distributed in any way without the written consent of a duly authorised representative of COBRA. COBRA retains all Intellectual Property Rights in respect of COBRA's functions and services as provided for on this Website.
- 7.2. Any unauthorised copying, or attempt at copying, assignment or transfer of these Terms or of any content of the Website contrary to the provisions of these Terms, shall result in a breach of these Terms and COBRA reserves the right to, without limitation:
- 7.2.1. claim damages from the User; and/or
  - 7.2.2. institute criminal proceedings against the User; and/or
  - 7.2.3. pursue any other action/remedy against the User that COBRA deems reasonable.
- 7.3. Except as specified in these Terms, the User is not granted a license or any other right including, without limitation, under copyright, trademark, patent or other Intellectual Property Rights in or to the content of this Website.
- 7.4. Any Users who are media professionals or in any way involved with media, should contact COBRA at [info@cobra.co.za](mailto:info@cobra.co.za) for permission to use the copyrighted information.

## **8. Risk, Limitation of Liability and Indemnity**

- 8.1. The User's use of this Website and the information contained on the Website is entirely at the User's own risk and the User assumes full responsibility and risk of loss resulting from the use thereof.
- 8.2. The transmission of information via the Internet including, without limitation, via electronic mail, is susceptible to monitoring and interception. The User bears all risk of transmitting information in this manner. Under no circumstances shall COBRA be liable for any loss, harm, or damage suffered

by the User as a result thereof. COBRA reserves the right to request independent verification of any information transmitted via electronic mail and the User consents to such verification should COBRA deem it necessary.

8.3. To the extent permissible by law:

8.3.1. neither COBRA nor its directors, agents, consultants or employees shall be liable for any damages whatsoever including, without limitation, any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the use of, or the inability to access or use the content of the Website or any functionality thereof, or the information contained on the Website, even if COBRA knows or should reasonably have known or is expressly advised thereof;

8.3.2. the liability of COBRA for faulty execution of the Website as well as all damages suffered by the User, whether direct or indirect, as a result of the malfunctioning of the Website shall be limited to COBRA rectifying the malfunction, within a reasonable time and free of charge, provided that COBRA is notified immediately of the damage or faulty execution of the Website. This liability shall fall away and be expressly excluded if the User attempts to correct or allows third parties to correct or attempt to correct the Website without the prior written approval of COBRA. In no event, however, shall COBRA be liable to the User for loss of profits or for special, incidental, consequential or punitive losses or damages arising out of or in connection with the Website or its use or the delivery, installation, servicing, performance or use of it in combination with other computer software;

8.3.3. the User hereby unconditionally and irrevocably indemnifies COBRA and agrees to hold COBRA harmless from all loss, damages, claims and/or costs, of whatsoever nature suffered or incurred by COBRA or instituted against COBRA as a direct or indirect result of:

8.3.3.1. the use of the Website;

8.3.3.2. software, programs and support services supplied by, obtained by or modified by the User or any third party without the consent or knowledge of COBRA;

8.3.3.3. the User's failure to comply with any of these Terms or any other requirements which COBRA may impose from time to time;

8.3.3.4. the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software; or

8.3.3.5. any unavailability of, or interruption in, any service provided via the Website which is beyond the control of COBRA.

8.4. The User expressly waives and renounces all their rights of whatever nature that they may have against COBRA for any loss suffered as a result of information supplied by COBRA being incorrect, incomplete or inaccurate.

## **9. COBRA Privacy and Cookie Policy**

9.1. This clause 9 provides details regarding COBRA's privacy and cookie policy (the "**Privacy Policy**"), which forms part of these Terms.

9.2. This Privacy Policy sets out how COBRA uses and protects any Personal Information given to it electronically by the User. By accessing any part of this Website or providing information to COBRA, the User consents to the use and transfer of such information on the provisions as set out herein. COBRA shall, however, take all reasonable measures to ensure that the User's Personal Information remains protected and confidential and shall store the User's Personal Information on the terms required by applicable legislation.

9.3. Personal Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User, such as the User's name, age identity number and contact information. For purposes of this clause 9, a cookie means a small computer file created by a web browser to save User information for the Website. Cookies ensure that COBRA is able to continually improve its Website and provide information such as the User's location and IP address.

9.4. COBRA has security systems and measures in place to protect the User's Personal Information against loss, unlawful access and unauthorised destruction.

9.5. The User shall have a right to request the details of their Personal Information held by COBRA in terms of POPI. Should the User suspect that their Personal Information is incorrect or outdated, the User may contact COBRA at the details provided for in clause 12 below for the purpose of correcting, updating or removing such Personal Information.

9.6. How COBRA collects Personal Information?

9.6.1. You may provide Personal Information to COBRA when communicating with COBRA and/or utilising its functions and/or services.

9.6.2. We may collect the following information including, but not limited to, the User's:

9.6.2.1. data concerning the User as an individual, including the User's full name, telephone numbers, email addresses, location, biometric information, date of birth, physical and postal address, identity number and/or passport number and any other information provided which concerns the User as an individual;

9.6.2.2. business related information (such as name, address, telephone numbers, payment arrangements, financial information, etc.), the User's relationship with that business or organisation (such as owner, partner, director, shareholder, employee, or agent), and the User's contact details within that business (such as work address, work telephone and mobile numbers, work fax number, and work e-mail address);

9.6.2.3. information collected or generated out of any surveys COBRA conducts;

9.6.2.4. correspondence, communications and messages, including between the User and COBRA, and between COBRA and third parties; and

9.6.2.5. Website usage information.

9.6.3. In the event of a User providing Personal Information to COBRA on behalf of an organisation, the User warrants that it is an authorised representative of such organisation and is authorised to provide the Personal Information on behalf of the relevant organisation.

9.7. How COBRA uses the User's Personal Information?

9.7.1. COBRA may use the User's Personal Information to validate the User as a customer, for market segmentation, remarketing to the User, marketing upcoming events and services on behalf of selected third parties and recruiting new business. The User is entitled to request that COBRA desists from using the User's Personal Information for the purposes of marketing, and COBRA will provide the User with the necessary functionality for the User to do so with ease, each time COBRA markets to the User.

9.7.2. COBRA utilises "**first party cookies**" (cookies originating from COBRA) amongst other reasons, to simply track the User's visits between sessions and deliver a more personalised experience. COBRA also utilises "**third party cookies**" (cookies not originating from COBRA) to provide traffic analysis and tracking.

9.8. How long does COBRA keep the User's information for?

The time periods for which COBRA keeps the User's Personal Information may vary according to the use or purpose attached to the Personal Information. Unless there is a specific legal requirement requiring COBRA to keep the User's Personal Information, COBRA will not keep it for longer than necessary for the purpose for which the Personal Information was collected or for which it is to be processed.

9.9. Disclosing the User's Personal Information to third parties

9.9.1. COBRA may provide its Website information to third parties but these statistics will not include any information that could identify the User. COBRA will only disclose, distribute or transfer the User's Personal Information to third parties on the following basis:

9.9.1.1. where COBRA has the User's permission;

9.9.1.2. where COBRA is required to do so by law; or

9.9.1.3. where such transfer would otherwise comply with law.

9.9.2. Subject to clause 9.9.1, the User consents to COBRA and/or any of its partners disclosed on this Website using, reviewing, collecting, processing and distributing the Personal Information provided to COBRA via this Website for any purposes associated with COBRA's objectives.

9.10. When and where does COBRA use cookies?

COBRA allocates cookies amongst other times, from the time that the User lands on the Website, during the registration process for COBRA's services, in obtaining COBRA's services, to make an inquiry and to engage in COBRA'S services. These cookies will hold information collected during the User's registration and will allow COBRA to recognise the User as a customer and provide the User with the services the User require.

9.11. How can the User refuse or opt out of cookies?

Most browsers are set by default to accept cookies automatically, but usually the User can alter the settings of the User's browser to prevent automatic acceptance and to prompt the User every time a cookie is sent to the User or to allow the User to choose not to receive cookies at all. In these circumstances, however, the User then runs the risk that part of this Website may not work or be fully accessible.

9.12. How can the User manage the User's privacy preferences?

If the User would like COBRA to stop processing the User's information for marketing purposes, please write to COBRA at its address set out in clause 12 below.

## **10. Confidentiality**

- 10.1. As a User, the User agree that the User shall hold in the strictest confidence and not disclose to any third-party information acquired in connection with any aspect of the services offered by COBRA. You shall notify COBRA should the User discover any loss or unauthorised disclosure of the information.
- 10.2. Any information or material sent to COBRA will be deemed not to be confidential, unless otherwise agreed in writing between the User and COBRA.

## **11. Breach or Cancellation by COBRA**

- 11.1. COBRA is entitled, without notice, in addition to any other remedy available to it at law or under these Terms, including obtaining an interdict, to limit or deny such User use of the Website and services, or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to COBRA's right to claim damages, should any User:
- 11.1.1. breach any of these Terms;
  - 11.1.2. in the sole discretion of COBRA, use the Website in an unauthorised manner; or
  - 11.1.3. infringe any statute, regulation, ordinance or law.
- 11.2. Breach of these Terms entitles COBRA to take legal action without prior notice to the User and the User agrees to reimburse the costs associated with such legal action to COBRA on an attorney and own client scale.

## **12. Compliance with section 43 of the ECT Act**

Access to the services, content, software and downloads available from the COBRA Website may be classified as "electronic transactions" as defined in the ECT Act and Users, therefore, have the rights provided for in Chapter 7 of the ECT Act. Pursuant to this and in accordance with COBRA's statutory obligations, it hereby discloses the following information to the User:

- 12.1. Full name and legal status of Website owner: COBRA (COvid-19 Business Rescue Assistance) War Room, an unincorporated, non-profit joint venture between Schindlers Attorneys, IQbusiness and Engaged Business Turnaround
- 12.2. Physical address, registered address and address where COBRA will receive legal service of documents: c/o Schindlers Attorneys. 2<sup>nd</sup> Floor, 3 Melrose Boulevard, Melrose Arch
- 12.3. Telephone number: 011 448 9600
- 12.4. Website address: [www.cobra.org.za](http://www.cobra.org.za)
- 12.5. E-mail address: info@cobra.co.za
- 12.6. Names of office bearers: Adam Craker; Ian Fleming and Maurice Crespi
- 12.7. Description of main characteristics of the services offered by COBRA: A Pro bono service to South African businesses in distress to co-ordinate bank, government and stakeholder support through a structured business rescue process.

### **13. Compliance with laws**

The User shall comply with all applicable laws, statutes, ordinances and regulations pertaining to the use of and access to this Website.

### **14. Time and Place of Contracting**

- 14.1. The User and COBRA agree that the User shall be bound to these Terms and such agreement is concluded in Johannesburg (South Africa) at the time the User enters the Website for the first time.
- 14.2. The information and services advertised on the Website do not constitute an offer but merely an invitation to do business.

### **15. Notices and Electronic Communications**

- 15.1. Except as explicitly stated otherwise, any notices shall be given by email to [info@cobra.co.za](mailto:info@cobra.co.za) (in the case of COBRA) or to the email address the User have provided to COBRA (in the User's case), or such other address that has been specified.
- 15.2. Notice shall be deemed to have been received 48 (forty eight) hours after an email is sent, unless the sending party is notified that the email address is

invalid. Alternatively, COBRA may give the User notice by registered mail, postage prepaid and return receipt requested, to the address which the User has provided to COBRA. In such case, notice shall be deemed to have been received 7 (seven) days after the date of mailing.

- 15.3. Notwithstanding anything to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address for that purpose.
- 15.4. The User acknowledges that all agreements, notices or other communication required to be given in terms of the law or these Terms may be given via electronic means and that such communications shall be "in writing".
- 15.5. Subject to the provisions of the Regulation of Interception of Communications Act No. 70 of 2002, as amended from time to time, the User agrees to COBRA's right to intercept, block, filter, read, delete, disclose and use all communications (including "data messages" as defined in the ECT Act) sent or posted by the User to the Website.

## **16. General**

- 16.1. These Terms shall be governed in all respects by the laws of the Republic of South Africa as such laws are applied to agreements entered into and to be performed within the Republic of South Africa.
- 16.2. This Website is controlled, operated and administered by COBRA from its offices within the Republic of South Africa. COBRA makes no representation that the content of the Website is appropriate or available for use outside of the Republic of South Africa. Access to the Website from territories or countries where the content of the Website is illegal is prohibited. Users may not use this Website in violation of South African export laws and regulations. If the User accesses this Website from locations outside of the Republic of South Africa, that User is responsible for compliance with all local laws.
- 16.3. If any provision of these Terms is held to be illegal, invalid or unenforceable for any reason, such provision shall be struck out from these Terms and the remaining provisions shall be enforced to the full extent of the law.
- 16.4. COBRA's failure to act with respect to a breach by the User does not constitute a waiver of COBRA's right to act with respect to subsequent or similar breaches.

- 16.5. The User shall not be entitled to cede or assign their rights or delegate their obligations in terms of these Terms to any third party without the prior written consent of COBRA.
- 16.6. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 16.7. The headings of the clauses to these Terms are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 16.8. 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 partnerships and corporate and unincorporated entities.
- 16.9. These Terms set forth the entire understanding and agreement between COBRA and the User with respect to the subject matter hereof.
- 16.10. These terms and conditions constitute the sole record of the agreement between COBRA shall be bound by any express tacit nor implied representation, warranty, promise or the like not recorded herein. These terms and conditions supersede and replace all prior commitments, undertakings or representations, whether written or oral, between the User and COBRA in respect of the subject matter hereof. No indulgence or extension of time which either the User or COBRA may grant to the other will constitute a waiver of or, whether by estoppels or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event or to the extent that the grantor has signed a written document expressly waiving or limiting such rights.
- 16.11. COBRA will use reasonable endeavours to maintain the availability of the Website, except during scheduled maintenance periods, and reserves the right to discontinue providing the Website or any part thereof with or without notice to the User.
- 16.12. COBRA may in its sole discretion terminate, suspend and modify this Website, with or without notice to the User. The User agrees that COBRA will not be liable to the User in the event that it chooses to suspend, modify or terminate this Website.