

# Terms of Use

**Effective Date: September 01, 2018**

**PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY BEFORE USING THIS SITE. THIS IS A BINDING CONTRACT.**

The Sicario Effect (Pty) Ltd (company registration number 2018/115544/07) (website: [www.s-effect.co](http://www.s-effect.co)) and its subsidiaries, affiliates and Licensees (“Event Organizers,” “SX,” “Us,” “We” or “Our”) provide website access, features, content and services to users (“You” or “Your”) subject to the following Terms and Conditions of Use (the “Terms”).

[www.thekrakenisalive.com](http://www.thekrakenisalive.com) (the “Site”) is owned and operated by The Sicario Effect (Pty) Ltd and constitutes, in part, the website access, features, content and services to users mentioned above.

The Terms are located at [www.thekrakenisalive.com /downloads/Terms-of-Use-The-Kraken-is-Alive-1-Sept-2018.pdf](http://www.thekrakenisalive.com/downloads/Terms-of-Use-The-Kraken-is-Alive-1-Sept-2018.pdf)

The Terms govern Your use of, and access to, the Site, as well as any of Our affiliated websites (together, the “Sites”) and any services, features and content offered by Us on or through the Sites (the “Services”). You may use the Sites and Services only on the condition that You abide by these Terms. Therefore, it is imperative that You read and comprehend these Terms.

Our Terms contain specific provisions to limit Our liability, allocate risk or liability to You or constitute acknowledgement of facts by You. You should pay particular attention to these terms since they limit Your ability to recover losses that You may incur in connection with Your use of Our Site(s)/Services.

**BY USING THE SITE(S) AND/OR SERVICES, YOU SIGNIFY YOUR AGREEMENT TO THESE TERMS.** Your continued use of the Site(s) and/or the Services implies that You have read and consent to these Terms (and all other policies set forth on the Sites) without limitation or qualification. If You do not agree to the Terms, such policies or any modifications thereto, please do not use the Sites. Additionally, as a condition of Your use of the Sites, You represent and warrant to Us that **YOU WILL NOT USE THE SITE, ANY CONTENT ON THE SITE OR ANY SERVICES PROVIDED ON OR THROUGHOUT THE SITE FOR ANY PURPOSE THAT IS UNLAWFUL, IMMORAL OR PROHIBITED BY THE TERMS.**

Hyperlinks, which are not operational, will not in any way detract from the validity and interpretation of these Terms.

## **AGE OF CONSENT**

By using the Sites and/or the Services, You represent that You are at least the age of majority in Your country of residence, 18 in South Africa, and that You are legally capable to enter into contracts. We will not be liable for any damages that may result from misrepresentation of age by a user of Our Site(s) and/or Services.

Tickets for sale are intended for purchase only by adults (18 years and older), and admission to our Events (part of our “Services”) is only for individuals 18 years of age and older and therefore this minimum age requirement will be enforced for the provision of all Services in South Africa despite the age of majority in any other territory outside of South Africa.

## **WE MAY DISCONTINUE OR SUSPEND OUR SITES, SERVICES OR YOUR ACCESS**

SX reserves the right to add, change, modify, suspend, or discontinue (temporarily or permanently) any portion of the Sites and/or the Services, in its sole discretion, at any time with or without notice to You. In addition, we may impose limits on any portion of the Sites and/or the Services or restrict your access to portions of or the entire Site(s) and/or Services in our sole discretion without notice or liability.

We have the right to restrict, deactivate, suspend, or terminate Your access to the Sites and/or the Services, including deletion of Your Account (when applicable) and all related information in Your Account, at any time and for any reason without giving You prior notice. We will not be liable to You for any of these actions.

If You violate any of the Terms, We reserve the right, without limiting any other remedy available in law or equity, to revoke Your right to use the Sites and/or the Services and to use any technological, legal, operational or other means available to use to enforce the provisions of these Terms, including blocking IP addresses.

## **[WWW.THEKRAKENISALIVE.COM](http://WWW.THEKRAKENISALIVE.COM) TERMS AND CONDITIONS**

BY USING THE SITE(S) AND/OR SERVICES, YOU SIGNIFY THAT YOU HAVE READ AND CONSENT TO THESE TERMS AND THAT YOU AGREE TO BE BOUND BY OUR TERMS, WITHOUT LIMITATION OR QUALIFICATION.

We reserve the right, without notice and in Our sole and absolute discretion, to make changes to these Terms. It is Your responsibility to review our Terms on each occasion prior to making use of Our Site and/or Services.

Such changes will be effective immediately after updates have been posted/published to this Site. If you continue to use Our Site and/or Services after Our amended Terms have been published, it will constitute a deemed acceptance of such amended terms of use. If We make changes to Our Terms that, in Our sole discretion, are material, We may notify You via the email address You have provided to Us (when applicable), or via a notification on the Site however we are not obliged to do so.

## **GENERAL TERMS AND CONDITIONS**

You may not access or use Our Site(s) and/or Services for any purpose other than for utilising the Services offered via such systems in the normal manner.

You may not access Our Site(s) for the purposes of downloading, redistributing or otherwise using any of Our content for Your own purposes (including business purposes) unless You are expressly licensed thereto by Us in writing or the particular element is expressly made

available for downloading or redistribution. You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Service, or access to the Service (including all Site content) or any contact on the website through which the Service is provided (including all affiliates and third parties), without express written permission by Us.

You may not use Your access to Our Site in a manner that would bring Us, Our business and/or any of Our affiliates into disrepute.

Furthermore, You may not access Our Site for unlawful purposes or use it in a manner which infringes Our rights or the rights of any other person or restricts or inhibits the use of or enjoyment of Our Site and/or Services by any other person.

In this regard, You must comply with the laws, regulations and Terms applicable to Your use of Our Site. You may not post or transfer any material to Our Site that is unlawful or violates any third party's rights or which is obscene, misleading, inaccurate, defamatory, illegal, in breach of any copyright or other intellectual property right, or damaging to data, software or the performance of Our or any other parties' computer system / Site. We may delete any material You have submitted to Our computer systems and/or suspend Your access to any part of our Site at any time without notice (see above).

We do not usually monitor, edit, control or filter the content submitted to Our Site by our users or related to Our system on other platforms. Such content, including as may be found in blogs, forums, chat groups, comment sections and bulletin boards, do not represent Our views and We have not authorised or endorsed such content. Such content should also not be viewed as professional advice of any kind, be it medical, legal, financial or otherwise. Please notify Us if You have a complaint about the activities of or content submitted by a user of Our Site and/or Services.

Proprietary rights (including without limitation, the trade marks, copyright and patent rights) in Our computer system / Site and the content thereof belong to Us and Our licensors, including in the compilations, collective works and derivative works created incorporating the content of Our users.

**THE DOWNLOADING AND USE OF DATA FROM OUR SITE IS DONE AT YOUR SOLE DISCRETION AND MAY ONLY BE DONE WHERE A PARTICULAR ELEMENT IS EXPRESSLY MADE AVAILABLE FOR SUCH DOWNLOADING OR USE. YOU SHOULD INDEPENDENTLY VERIFY THE COMPLETENESS AND RELIABILITY OF INFORMATION OBTAINED FROM OUR SITE. ALSO, BE AWARE THAT VIRUSES OR CODE WHICH MAY HAVE A HARMFUL EFFECT ON YOUR COMPUTER SYSTEM COULD BE TRANSMITTED TO YOU. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUITABLE PROTECTION MECHANISMS TO PREVENT SUCH HARM FROM OCCURRING.**

We have to protect Our business and secure Our Site. Consequently, You should note that We may monitor and keep records of any communication that You may send to or receive from Our Site or computer systems and We may use, publish and disclose such communications for any lawful purpose. This may include Our filtering of incoming and outgoing electronic data messages to identify, limit and/or prevent the transmission of unlawful or otherwise undesirable material or content.

You may be required to choose a user name and a password (an “Account”) when registering with Us or using some of Our Services. You are responsible for keeping Your user name and password secret. You will be required to enter Your username and password every time You want to use one of Our subscription services (part of “Services”). **YOU ACCEPT THAT YOU WILL BE PERSONALLY LIABLE FOR ALL TRANSACTIONS CONCLUDED ON YOUR ACCOUNT.**

By registering at [www.thekrakenisalive.com](http://www.thekrakenisalive.com), we may either collect and transfer personal information to a third-party service provider or use a third-party service provider to collect information for us. See also the Privacy Policy (below) for more information regarding information gathering, use and sharing practices for the Site, including what information is collected, how that information is acquired, maintained, stored, shared and/or used, and how You may access and update certain information You provide us.

You also may visit third party websites through links on our Site who may collect and use Your personal information and other non-personal information. We encourage You to review the policies of any such third parties before disclosing Your personal information, as we have no control over, and are not liable for, their privacy practices. Notwithstanding that Our Site may enable access to third party systems and that some third-party systems may contain enable access to our Site we do not control, endorse or approve the activities or content made available via any such third-party systems. Please contact the relevant system proprietor if you have a complaint about the activities or content made available via a third-party system.

There may be registration fees, ticketing fees or other fees associated with Your use or participation of/in Our Services (including if provided on our behalf by a third-party service provider). Please ensure you are familiar with such third parties fees and charges and by participating in the use of such services you accept that you will be personally liable for all transactions concluded on your Account.

Use of / participation in, and the benefits of, the Services are offered to You at the sole discretion of Event Organizers.

We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites.

Attendance at an Event or the provision of other Services supplied by Us may be hazardous to the health or safety of the attendees or their property. **YOU ATTEND EVENTS AT YOUR OWN RISK. WE ARE NOT RESPONSIBLE FOR YOUR SECURITY OR THE SECURITY OF YOUR PROPERTY IN ATTENDING SUCH EVENTS.**

## **PRIVACY POLICY**

We respect the privacy of Our customers. Please read Our Privacy Policy, located at [www.thekrakenisalive.com/downloads/Privacy-Policy-The-Kraken-is-Alive-1-Sept-2018.pdf](http://www.thekrakenisalive.com/downloads/Privacy-Policy-The-Kraken-is-Alive-1-Sept-2018.pdf), to understand Our practices so that You may make an informed decision about using the Sites and the Services. Any information We may collect through Your use of the Sites and the Services is subject to Our Privacy Policy. Our Privacy Policy, together with the Terms, govern Your use of the Sites, and the Privacy Policy is incorporated into the Terms by this reference. By continuing to use the Sites and/or the Services, You agree to be bound by

Our Privacy Policy. We may revise Our Privacy Policy from time to time and any additional or different terms to Our Privacy Policy will be effective immediately after updates have been posted to this Site. Any continued use or access of the Site after changes to Our Privacy Policy have been posted constitutes Your agreement to be bound by the revised Privacy Policy. If We make changes to Our Privacy Policy that, in Our sole discretion, are material, We may notify You via the email address You have provided to Us (when applicable), or via a notification on the Site.

## **GOVERNING LAW; JURISDICTION**

Use of our Site and Services are subject to the laws of the Republic of South Africa, and subject to the jurisdiction of any South African Magistrate's Court or High Court of competent jurisdiction in respect of your person to adjudicate on any dispute arising from or in connection with these terms of use notwithstanding that the amount in dispute may exceed such court's jurisdiction, and you consent thereto. You agree to accept service of legal process at the addresses you may provide to us and You are obliged to provide such information (including the address(es) for notice) within 24 hours of such a dispute arising.

You acknowledge and agree that we make no representation that the Site is governed by or operated in accordance with the laws of other nations, or that the Site (or any portion thereof) is appropriate or available for use in any particular jurisdiction.

Visitors who elect to access the Site, acknowledge and agree that they do so on their sole initiative and at their sole risk, and are solely responsible for complying with all local laws, rules and regulations.

By using this Site, visitors from outside of the Republic of South Africa acknowledge this Site is subject to the laws and regulations of the Republic of South Africa and waive any claims that may arise under other laws.

You agree that any disputes arising from or relating to Your use of the Site and/or Services hereunder, use of the Site or any relationship or dispute between You and the Event Organizer or You and any company or person employed by or which is affiliated with the Event Organizer, (a "Dispute") shall only be resolved subject to FINAL AND BINDING ARBITRATION.

**IF YOU ARE A USER ACCESSING THE SITES OR SERVICES FROM ANY OTHER COUNTRY WITH LAWS OR REGULATIONS GOVERNING PERSONAL DATA COLLECTION, USE, AND DISCLOSURE THAT DIFFER FROM THE LAWS OF SOUTH AFRICA, PLEASE BE ADVISED THAT THROUGH YOUR CONTINUED USE OF THE SITES AND/OR SERVICES, YOU ARE TRANSMITTING YOUR PERSONAL INFORMATION TO SOUTH AFRICA AND YOU CONSENT TO THAT TRANSMISSION. ADDITIONALLY, YOU UNDERSTAND THAT YOUR PERSONAL INFORMATION MAY BE TRANSMITTED TO AND PROCESSED IN COUNTRIES (INCLUDING SOUTH AFRICA) WHERE LAWS REGARDING PROCESSING PERSONAL INFORMATION MAY BE LESS STRINGENT THAN IN YOUR COUNTRY.**

## **DISCLAIMER OF WARRANTIES**

THE SITES AND THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. SX MAKES NO WARRANTY AS TO THE QUALITY, ACCURACY, CURRENTNESS, COMPLETENESS OR RELIABILITY OF ANY CONTENT AVAILABLE THROUGH, OR THE PERFORMANCE OF, THE SITES OR THE SERVICES. YOU ARE RESPONSIBLE FOR VERIFYING ANY INFORMATION BEFORE RELYING ON IT. USE OF THE SITES, AND/OR THE SERVICES IS AT YOUR SOLE RISK. SX DOES NOT WARRANT THAT YOU WILL BE ABLE TO ACCESS OR USE THE SITES, AND/OR THE SERVICES AT THE TIMES OR LOCATIONS OF YOUR CHOOSING; THAT THE OPERATION OF THE SITES AND/OR THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; THAT THE SITES OR THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ASSUME ALL COSTS ARISING AS A RESULT OF THE USE OF THE SITES OR THE SERVICES.

## **LIMITATION OF LIABILITY**

To the maximum extent permitted by law, in no event shall SX or any of its subsidiaries, sponsors or affiliates, together with its respective directors, officers, shareholders, employees and agents, be liable for any direct, incidental, indirect, consequential, special, punitive or exemplary damages of any kind, including, without limitation: (a) lost revenues or profits; (b) loss of business or loss of data; (c) loss or damage to any personal property including computer, mobile phone or other device that is in any way related to our Sites or Services, your use of the Sites and/or the Services available on our Sites or Services, even if SX and/or its subsidiaries, sponsors or affiliates have been advised of the possibility of such damages; or (d) for any claim, loss or injury based on errors, omissions, interruptions or other inaccuracies in our Sites and/or Services, including, without limitation, as a result of breach of any warranty or other term of the Terms, the use or inability to use the Sites or Services, the software, unauthorized access to or alternation or your transmissions of data, statements or conduct of any third party on the site, any other matter relating to the Sites or the Services.

## **INDEMNIFICATION**

You agree to defend, indemnify and hold SX, and its successors and assigns, and any affiliated companies, subsidiaries or sponsors and their respective officers, directors, affiliates, agents and employees, harmless from and against any and all claims, actions, proceedings and suits and all related liabilities, losses, damages, judgments, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable attorney’s fees and costs) arising out of or relating to (a) your use or misuse of the Sites and/or the Services, (b) your breach or alleged breach of the Terms including, without limitation, a breach or alleged breach of any representation or warranty by you in the Terms; (c) your violation of any law, rule, regulation or rights of others in connection with your use of the Sites or the Service, or (d) any infringement, violation or misappropriation of any copyright, trade secret,

or any other intellectual property rights or the violation of any property or privacy right arising from any of the User Content that you post or otherwise transmit on the Sites and/or Services.

## **PROHIBITED USES**

In addition to other prohibitions as set forth in the Terms, You are prohibited from using the Site or its content: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Site or of any related website, other websites, the Services, or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of the Site or any related website, other websites, the Services, or the Internet.

We reserve the right to terminate Your use of the Service or any related website for violating any of the prohibited uses.

## **TICKETS/SUBSCRIPTIONS**

The Services provided by SX (including any elements pertaining hereto through the Site), include the sale and issue of tickets and or subscription services to You.

We may make use of a third-party service provider to collect information for us, manage Accounts, distribute tickets and manage access amongst other services. We encourage You to review the policies of any such third parties before disclosing Your personal information, as we have no control over, and are not liable for, their privacy practices. Notwithstanding that Our Site may enable access to third party systems and that some third-party systems may contain enable access to our Site we do not control, endorse or approve the activities or content made available via any such third-party systems. Please contact the relevant system proprietor if you have a complaint about the activities or content made available via a third-party system.

A **Cancellations>Returns/Refunds Policy** is also available on the third-party website and the terms thereof apply to the Services provided as such. Please familiarise yourself with the third-party suppliers terms in this regard.

## **GENERAL**

*Relationship of Parties.* You agree that no joint venture, partnership, employment, or agency relationship exists between you and SX as a result of the Terms or your use of the Sites or the Services.

*Assignment.* SX may assign the Terms, in whole or in part, to any person or entity at any time with or without your consent. You may not assign the Terms without SX's prior written consent, and any unauthorised assignment by you shall be null and void.

*Severability.* If any of the provisions of the Terms is found to be invalid or unenforceable, then that provision will be construed in a manner consistent with applicable laws to reflect, as nearly as possible, the original intentions of the parties, and the remaining provisions shall remain in full force and effect.

*Attorneys' Fees.* In the event any litigation is brought by either party in connection with the Terms, the prevailing party in such litigation shall be entitled to recover from the other party all the reasonable costs, attorneys' fees and other expenses incurred by such prevailing party in the litigation.

*No Waiver.* Our failure to enforce any provision of the Terms shall in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by us of any provision, condition or requirement of the Terms shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

*Notices.* All notices given by you or required under the Terms shall be in writing and addressed to: [info@thekrakenisalive.com](mailto:info@thekrakenisalive.com), unless otherwise specified herein.

*Equitable Remedies.* You hereby agree that SX would be irreparably damaged if the terms of the Terms were not specifically enforced, and therefore you agree that we shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of the Terms, in addition to such other remedies as we may otherwise have available to us under applicable laws.

All questions and concerns regarding the Terms should be directed to [info@thekrakenisalive.com](mailto:info@thekrakenisalive.com).

Please include the following information into your email to us:

- Your full names, physical address, telephone number and email address;
- The location and description of the service feature or transaction which is the cause of your comment, suggestion, question, concern, compliment or complaint;
- The actions you would like us to take to remedy the problem (if applicable) or to add to our service offering;
- A statement confirming that you are making the comment, suggestion, question, concern, compliment or complaint in good faith
- A statement confirming that the information you are providing to us is to the best of your knowledge true and correct;
- Please incorporate your signature into the email.

(Ends)