

GENERAL TERMS OF SERVICE

1. INTERPRETATION

The headings of the clauses in this Agreement are for reference only and shall not be used in the interpretation of, nor modify nor amplify the terms of this Agreement, unless a contrary intention clearly appears:

1.1. words importing:

1.1.1. any gender includes all others;

1.1.2. the singular include the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2. the following terms have the meanings assigned to them in this clause 1.2 and cognate expressions shall have corresponding meanings, namely:

1.2.1. "**Affiliate**" means (with respect to any company, close corporation, trust or individual) any other company, close corporation, trust or individual which is related or controlled by, or controls the first mentioned company, close corporation, trust or individual, as described by section 2 of the Companies Act 71, of 2008;

1.2.2. "**Agreement**" means this agreement and all annexures and schedules to this agreement;

1.2.3. "**Applicable Laws**" means any law, by-law, ordinance, proclamation and/or statutory regulation which the Parties are required to observe by reason of the provision of the Services, use of or business with the Services and matters incidental thereto, including, but not limited to, any present or future legislation, measure, requirement, order, ordinance, rule, guideline, practice, concession, or request issued by any relevant authority, government body, agency or department, which is applicable to this Agreement and

which includes the requirements established by the Independent Regulatory Board for Auditors (if applicable) and the South African Institute of Chartered Accountants, as well as the provisions of the Auditing Profession Act, No.26 of 2005 (where applicable).

- 1.2.4. "**Business Day**" means any day excluding Saturday, Sunday and a public holiday in the Republic of South Africa;
- 1.2.5. "**Client**" means the client as described on the Letter of Engagement;
- 1.2.6. "**Company**" means Outsourced CFO Proprietary Limited, (Registration number 2014/002888/07), a private company incorporated under the company laws of the Republic of South Africa, with its registered address situated at 5th Floor, Vunani Chambers, Cape Town CBD, Cape Town, 8001, email: info@ocfo.com
- 1.2.7. "**Confidential Information**" means the terms and conditions of this Agreement, and any other information disclosed by one Party to the other, including, but not limited to, information regarding each Party's products, services, product designs, prices and costs, trade secrets, know how, inventions, development plans, techniques, processes, programs, schematics, software, data, customer lists, financial information, sales and marketing plans, business opportunities, personnel data, research and development activities, pre-release products and any other information which the receiving Party ("**Receiving Party**") knows or reasonably ought to know is confidential, proprietary or trade secret information of the disclosing Party ("**Disclosing Party**"). This definition also includes any information disclosed by or to any Affiliate concerning the Purpose;
- 1.2.8. "**CPI**" means the South African Consumer Price Index;
- 1.2.9. "**Effective Date**" means the Signature Date of the Letter of Engagement Letter;
- 1.2.10. "**Engagement Letter**" means the letter of engagement provided by the Company, signed by and between the Company and the Client

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

as it relates to the service offering of the Company to the Client and which refers to and incorporates the terms of this Agreement;

- 1.2.11. **"Intellectual Property"** means all the rights to intellectual property, including (without limitation) all rights in and to any know-how, methodologies, patents, copyright, (including all copyright in any designs and computer programs), registered design, trade mark, service marks, designs, design rights, source codes, object codes, inventions and trade secrets, and other intellectual property rights and rights of a similar character whether registered or capable of registration and all applications and rights to apply for the protection of any of the same anywhere in the world or other industrial or intellectual property rights, whether registered or not and whether or not capable of being registered, and any application for any of the aforementioned;
- 1.2.12. **"Handover Services"** means deliverables or such Services related to completion of pre-existing or ongoing Services and/or Services for the handover of a portfolio of deliverables to another service provider;
- 1.2.13. **"Parties"** means the parties to this Agreement;
- 1.2.14. **"Purpose"** means the execution and implementation of this Agreement and the delivery of the Services in terms of this Agreement;
- 1.2.15. **"Services"** means the independent services delivered by the Company as part of the Service Offerings, to be selected by the Client and are to be regulated by this Agreement, as well as the specific Service Specific Terms and Conditions;
- 1.2.16. **"Service Fees"** means the service fees applicable to the respective Services, to be communicated to the Client upon selection of relevant Services and to be further regulated by the Service Specific Terms and Conditions, and further contemplated in clause 8;

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 1.2.17. **"Service Offering"** means the selection of Services rendered by the Company to the Client in terms of this Agreement;
- 1.2.18. **"Service Specific Terms and Conditions"** means the terms and conditions applicable to the specific Services, communicated to the Client upon selection of the relevant Services;
- 1.2.19. **"Signature Date"** means the date on which the Party that is last to sign the Letter of Engagement, does so;
- 1.2.20. **"Tax"** means all taxes, charges, duties, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable arising out of the foregoing, imposed, levied, collected, withheld or assessed by a governmental authority, together with any penalties, fines or interest relating thereto;
- 1.3. reference to any legislation is to that legislation as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such legislation. Any reference to a particular section in any legislation is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in any legislation, provided that if as a result of such amendment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in this clause 1, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.5. when any number of days is prescribed in this Agreement, the method for calculation shall be to exclude the first day and include the last day, unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 1.6. if figures are referred to in numerals and in words and if there is any conflict between the two, the numbers shall prevail;

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. if any term is defined within the context of any particular clause in this Agreement, 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 meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in clause 1.2;
- 1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement that expressly provide 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;
- 1.10. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.11. any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.12. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word(s); and
- 1.13. any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.

2. INTRODUCTION

- 2.1. The Company makes provision for several different Service Offerings. This Agreement contemplates the general terms and conditions applicable to all such different Service Offerings, unless specified otherwise.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

2.2. The Parties wish to enter into this Agreement for the Company to provide various Services forming part of the Service Offering to the Client.

2.3. This Agreement will apply on the Effective Date, being the date upon which the Client signs the Letter of Engagement and the Client hereby expressly accepts the application of this Agreement by means of executing the Letter of Engagement.

2.4. This Agreement will apply to any future services and interaction channels that may be made available by the Company, unless stated otherwise.

3. CHANGES TO THESE TERMS

3.1. We may change or add to this Agreement. We will notify you of any material changes *via* email which will contain a link to the updated terms or with a prominent notice on the website. For continued use of the Services, you may be requested, from time to time, to accept new or amended versions of this Agreement.

3.2. We will give you 30 (thirty) calendar days' notice of a material change to this Agreement. Should you disagree with the changes made, you can discontinue using our Services.

4. APPOINTMENT OF THE COMPANY TO PROVIDE THE SERVICES

With effect from the Effective Date, the Client hereby appoints the Company to provide the Services in accordance with the terms and conditions set out below and the Company accepts the appointment.

5. APPLICATION OF AGREEMENT

Save as otherwise provided in this Agreement, any conflict between the provisions of this Agreement and any other related document shall be resolved in accordance with the following order of precedence (in descending order of priority) as follows:

5.1. this Agreement;

5.2. Service Specific Terms and Conditions;

5.3. letter of Engagement;

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 5.4. annexures to the Agreement;
- 5.5. schedules and/or annexures to Service Specific Terms and Conditions;
- 5.6. schedules and/or annexures to Letter of Engagement;

6. COMMENCEMENT, DURATION AND TERMINATION

- 6.1. This Agreement shall commence on the Effective Date and will continue indefinitely until terminated in accordance with the terms of this Agreement.
- 6.2. Either Party may terminate this Agreement, resulting in the total Service Offerings being terminated on 90 (nifty) calendar days written notice. The change or termination of any specific Services which make up the Service Offering will be regulated by clause 7.5.
- 6.3. The Company shall be entitled to terminate this Agreement immediately, if the Client:
 - 6.3.1. is in breach of its obligations in terms of this Agreement;
 - 6.3.2. has failed to pay the Service Fees due in terms of clause 8 and such payments are outstanding for more than 30 (thirty) days from the due date referred to in clause 8.4;
 - 6.3.3. takes any steps in contemplation of being placed under provisional or final liquidation;
 - 6.3.4. attempts a compromise, composition, assignment or arrangement with its creditors;
 - 6.3.5. passes a resolution for its voluntary winding-up;
 - 6.3.6. has a final judgment of any court, sounding in money to the equivalent value of R50 000 (fifty thousand Rand) or more, granted against it that remains unsatisfied for a period of 14 (fourteen) days after it has been granted;
 - 6.3.7. has any of its property, movable or immovable, attached in execution or by any process of any court;

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 6.3.8. makes default without remedy or threatens to make default in the payment of liabilities generally; or
 - 6.3.9. commits any act or omission which is an act of insolvency in terms of the applicable insolvency laws.
- 6.4. Upon termination of this Agreement for any reason:
- 6.4.1. all amounts outstanding to either Party shall become immediately due and payable, without demand or further notice of any kind, all of which are expressly waived by the Parties;
 - 6.4.2. the Client will immediately delete all electronic copies and destroy all hard copies of all Confidential Information; and
 - 6.4.3. any Services and/or Handover Services rendered subsequent to the termination of this Agreement shall be subject to clause 9.
- 6.5. The termination or expiration of this Agreement shall not affect any liabilities or obligations, including, without limitation, payment and indemnification obligations, which arose pursuant to the terms of this Agreement prior to the date of termination of this Agreement.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

7. SERVICES

- 7.1. Services: The Company provides the Service Offerings, in terms of which the Services forming the subject matter of the Service Offerings are advertised online and will be communicated to the Client from time to time, unless specified otherwise.
- 7.2. The Client may from time to time select the Services to be rendered by the Company and which selection of Services will be regulated by this Agreement, as well as the respective terms and conditions of those Services (being the Service Specific Terms and Conditions), any conflict of which to be regulated in terms of clause 5.
- 7.3. The Services will be rendered to the Client on a non-exclusive basis from the Effective Date.
- 7.4. Additional Services: Should the Client wish to subscribe for additional Services, the Client will place a written order for such services (for which email shall suffice).
- 7.5. Removal or change of Services: At any time during this Agreement, the Client shall be entitled to change its selection of Services and/or may remove any of the Services from its selected Service Offerings, by means of a written request (for which email shall suffice). Such change and/or removal of Services will amount to a termination of those selected Services and accordingly will only be effective 90 (ninety) days from written request received by the Company and which will be subject to clause 9.
- 7.6. The Services are subject to the information provided by you and/or requested. You hereby acknowledge that the Services are limited by such provision of information and you shall be responsible for the full disclosure thereof. Should any deliverables in terms of the Services be incomplete or in question as a result of the Client's failure to provide the relevant information, the Company shall not have any liability resulting therefrom and indemnifies the Company against any claims resulting therefrom.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

8. SERVICE FEES AND EXPENSES

- 8.1. Fees. In consideration for rendering the Services, the Client shall pay to the Company the Service Fees, as described in the Engagement Letter.
- 8.2. Manner of payment: The Company will accept payment by means of electronic funds transfer and/or debit order, depending on the nature of the Services and as set out on the Engagement Letter, unless agreed to otherwise by the Parties in writing.
- 8.3. Invoicing of Service Fees: the Company shall issue regular invoices to the Client on a monthly basis, in advance, unless specified otherwise on the Letter of Engagement or otherwise agreed in writing.
- 8.4. Payment: payment of the Service Fees shall (i) as regards electronic funds transfer, be made by the Client to the Company within 7 (seven) days of the date of issue of a valid invoice by the Company and/or (ii) as regards debit orders, be processed on the 15th (fifteenth) of each month that the relevant Service Fees are due.
- 8.5. Increases in the Service Fees: the Client agrees that the Service Fees will be reviewed and increased on the 1st (first) of March of each financial year between CPI +2% (plus two percent) and CPI +4% (plus four percent) and which will automatically be applicable and replace the Service Fees recorded in this Agreement.
- 8.6. Taxes: in addition to the Service Fees and subject to receipt of a valid Tax invoice, the Client shall pay any applicable Taxes, levies and customs duties with regard to the Services.
- 8.7. Expenses: any expenses incurred by the Company in the course of providing the Services to the Client will be for the Client's account and, which will be included in the Company's invoices, which additions shall be communicated to the Client prior to presentation of the invoice.
- 8.8. Time and Material Based Fees: Where the Fees are based on a time and materials basis, the Company shall keep full and accurate records, including timesheets, of the time spent and materials used in respect of the Services, which shall be

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

recorded on the invoice prepared for the Client in accordance with the terms of this clause 8.

8.9. Overdue amounts: in the event that any amount payable by the Client in terms of this Agreement is not paid when due, then the Company will be entitled to levy interest on such outstanding amounts at a rate of 2% (two percent) per month from the date of default and which interest shall be calculated and capitalised on the same day of each month, in arrears, on the amounts due until the default has been remedied in full by the Client.

8.10. General: all payments to be made by the Client to the Company in terms of this Agreement shall be made by the Client:

8.10.1. without set-off or deduction of any kind; and

8.10.2. into the Company's bank account, the details of which are set out on each invoice.

9. **TERMS APPLICABLE TO SERVICE CANCELLATIONS**

9.1. Any termination of a Service as contemplated in clause 7.5 shall be subject to the below terms.

9.2. Any Service, which is of a continuous nature, and which has been invoiced and paid for by the Client shall be regarded as non-refundable, subject to the below further terms and conditions:

9.2.1. the Company will not be required to refund or credit a Client's account for any work-in-progress deliverables related to the Services, which includes (without limitation) Service related deliverables which have been fully or partially invoiced but have not been delivered, or which are in draft phase, or for deliverables confirmed by the Client and for which the Company has commenced rendering the Services for; and

9.2.2. upon termination of any Service or this Agreement for whatsoever reason, the Company will continue to render the Services, which includes the Handover Services up until the end of the notice period referred to in clause 7.5, after which period, the Company shall
Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

render any outstanding Services and Handover Services, as well as any other requested Services on the billable hourly rate of the relevant practitioner(s) of the Company assisting the Client, unless specified otherwise by the Client.

- 9.2.3. The Company will have the sole discretion to either allow or deny any refunds or credit allowances in any other circumstances.

10. **INTELLECTUAL PROPERTY AND LICENCE**

- 10.1. Unless otherwise agreed in writing, the Company retains all Intellectual Property rights and copyright in any work or deliverables delivered to the Client as part of the Services.
- 10.2. Subject to the Client complying with its obligations in terms of this Agreement, the Company grants to the Client a non-exclusive and non-transferable license to use the Intellectual Property related to and provided as a result of or in the course of the Services, for the Client's internal business uses only.
- 10.3. The license referred to in clause 10.2 does not include the right to sublicense, provided that the Client may permit its suppliers, subcontractors and other related third parties to use the Intellectual Property referenced in clauses 10.1 and 10.2, solely on the Client's behalf and for the Client's benefit, provided that the Client ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of the Company's rights as are specified in this Agreement.

11. **WARRANTIES**

- 11.1. Each Party hereby warrants and represents to the other that:
- 11.1.1. it has all requisite power and authority to execute and implement this Agreement and has all necessary power and authority to perform its obligations as set out in this Agreement;
- 11.1.2. the entering into of this Agreement will not result in the violation of any of the terms and provisions of any agreement, written or oral, to which the relevant Party may be a party; and

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 11.1.3. the execution and implementation of this Agreement has been duly authorised by all necessary action on the part of the relevant Party and this Agreement, when duly executed and implemented by the Parties, will constitute a legal and binding obligation of the Parties enforceable in accordance with its terms.
- 11.2. The Company hereby warrants and represents to the Client that the Services shall be rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence and in accordance with Applicable Laws.
- 11.3. Subject to clauses 11.1 and 11.2, the Company makes no warranties to the Client of any nature.

12. NON SOLICITATION

- 12.1. For the duration of this Agreement and for a period of 24 (twenty four) months following the termination of this Agreement for whatever purpose, the Company, shall not, either alone or in association with others:
- 12.1.1. provide or attempt to provide any information or advice (whether oral or written) to or take any other action to result in any client or prospective client of the Company ending their association with the Company and/or transferring business to any person other than the Company;
- 12.1.2. encourage, entice, incite, persuade, induce, recruit or solicit any person who was employed by the Company or was engaged with the Company as an independent contractor at any time during the term of this Agreement; or
- 12.1.3. hire or engage as an independent contractor any person who was employed by the Company at any time during the term of this Agreement.
- 12.2. The Client acknowledges that the restrictions contained in this Agreement are necessary for the protection of the business and goodwill of the Company and are considered by the Client to be reasonable for such purpose. The Client agrees that any breach of this Agreement will cause the Company substantial

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

and irrevocable damage and therefore, in the event of any such breach, in addition to such other remedies which may be available, the Company shall have the right to seek specific performance and injunctive relief against the Client.

12.3. The geographic scope of this clause 12 shall extend to anywhere the Company, the Client or any of their Affiliates are doing business, has done business or has preparation plans to do business.

12.4. If the Client violates the provisions of this clause 12 it, the Client will be liable to pay compensation to the Company equal to 180 (one hundred and eighty) hours of billing at the rate at which that personnel member was last charged for by the Company.

13. LIMITATION OF LIABILITY

The Company will not, under any circumstances, be liable to the Client for any costs, claims, damages, penalties, actions, judgements, suits, expenses, disbursements, fines or other amounts which the Client may sustain or suffer (or with which the Client may be threatened) as the result of, whether directly or indirectly, any act or omission in the course of or in connection with the implementation of this Agreement or in the course of the discharge or exercise by the Parties or their employees, agents, professional advisors or delegates of their obligations or rights in terms of this Agreement or the termination of this Agreement for any reason. To the extent applicable, the total liability of the Company shall be limited to the amount of Service Fees invoiced within the 6 (six) months preceding the date of any such claim arising.

14. NO CONSEQUENTIAL LOSSES

Under no circumstances whatsoever shall the Company be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising under contract, delict or otherwise and whether the loss or damage was actually foreseen or reasonably foreseeable), including but not limited to any loss of commercial opportunities or loss of profits, and whether as a result of negligent (including grossly negligent) acts or omissions of the Company or its servants, agents or contractors or other persons for whose actions the Company may otherwise be liable for in law.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

15. **INDEMNITY**

The Client hereby indemnifies and holds harmless the Company (including its shareholders, directors and employees, in whose favour this constitutes a stipulation capable of acceptance in writing at any time) against any claim by any third party for any costs, damages (including, without limitation, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind), penalties, actions, judgements, suits, expenses, disbursements, fines or other amounts arising, whether directly or indirectly, from a breach of this Agreement by the Client.

16. **CONFIDENTIALITY**

16.1. The Receiving Party is obliged to treat all the Confidential Information as confidential. In addition, the existence and terms of this Agreement shall not be disclosed by any Party to any third party without the consent of the other Party, except as may be required by law.

16.2. The Receiving Party may use the Confidential Information exclusively for the Purpose.

16.3. The Receiving Party shall only disclose Confidential Information to its employees and contractors who:

16.3.1. have a need to access such Confidential Information solely for the Purpose; and

16.3.2. have been advised of the obligations of confidentiality and are under obligations of confidentiality substantially similar to those set out in this Agreement.

16.4. The Receiving Party shall have no obligation to retain as confidential any information which:

16.4.1. was legally in its possession or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party;

16.4.2. is, or subsequently becomes, legally and publicly available without breach of this Agreement; or

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 16.4.3. is legally obtained by the Receiving Party from a third party source without any obligation of confidentiality.
- 16.5. Subject to the provisions of clause 16.4, the confidentiality obligations of the Receiving Party shall be perpetual and will survive the termination or expiry of this Agreement.
- 16.6. The Receiving Party may disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the Receiving Party provides the Disclosing Party:
 - 16.6.1. prior written notice of such obligation; and
 - 16.6.2. the opportunity to oppose such disclosure or obtain a protective order.

17. DATA PROTECTION

- 17.1. In this Agreement, the terms below shall have the meanings as defined in **POPIA** and cognate expressions shall have corresponding meanings:
 - 17.1.1. "**Data Subject**" means the person to whom Personal Information relates;
 - 17.1.2. "**Operator**" means a person who Processes Personal Information for a Responsible Party in terms of a contract or mandate, without coming under the direct authority of that party;
 - 17.1.3. "**Personal Information**" means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to:
 - 17.1.3.1. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 17.1.3.2. information relating to the education or the medical, financial, criminal or employment history of the person;
 - 17.1.3.3. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
 - 17.1.3.4. the biometric information of the person;
 - 17.1.3.5. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence
 - 17.1.3.6. the personal opinions, views or preferences of the person;
 - 17.1.3.7. the views or opinions of another individual about the person; and
 - 17.1.3.8. the name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about the person;
- 17.1.4. "**POPIA**" means the Protection of Personal Information Act 4 of 2013, as amended from time to time, including any regulations and/or code of conduct made under the Act;
- 17.1.5. "**Processing**" means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- 17.1.5.1. the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
 - 17.1.5.2. dissemination by means of transmission, distribution or making available in any other form; or

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 17.1.5.3. merging, linking, as well as restriction, degradation, erasure or destruction of information,
- 17.1.5.4. and "Process", "Processes" and "Processed" shall have the corresponding meanings;
- 17.1.6. **"Responsible Party"** means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for Processing Personal Information.
- 17.2. The Parties acknowledge that as a result of the Services rendered in terms of this Agreement, or otherwise in their dealings, Personal Information (in various forms) of the Client and its customers, potential customers, or service providers may be accessed, viewed and Processed by the Company.
- 17.3. The Parties warrant that they have familiarised themselves with the requirements and provisions of POPIA and have implemented processes and measures to meet the compliance requirements to the extent applicable to that Party.
- 17.4. The Company warrants that all of its staff members, agents and contractors that will have access to or will Process Personal Information in terms of this Agreement have been adequately trained on all requirements and obligations in terms of POPIA.
- 17.5. For purposes of POPIA and in terms of the Services, the Company shall be a Responsible Party and/or an Operator mandated by the Client (as Responsible Party) to Process Personal Information in terms of this Agreement and will reasonably comply with all requirements relating to Responsible Parties and/or Operators as prescribed by POPIA.
- 17.6. The Company agrees that it will not obtain any rights to the Personal Information provided by the Client and agrees to Process the Personal Information received from the Client as a result of this Agreement in a manner that is adequate, relevant and not excessive for purposes of providing the Services.
- 17.7. Unless otherwise instructed, the Company shall be generally authorised to engage further Operators or service providers to Process the Client's Personal Information, subject to the Company:

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 17.7.1. notifying the Client of any intended use of further Operators;
 - 17.7.2. including terms in its contract with each further Operators which are no less protective those set out in this Agreement; and
 - 17.7.3. remaining liable to the Client for any failure by each further Operator to fulfil its obligations in relation to the Processing of the Personal Information.
- 17.8. The Company shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to the Personal Information under the Company's possession or control and establish and maintain appropriate safeguards against any risks identified.
- 17.9. The Company will notify the Client where there are reasonable grounds to believe, within the discretion of the Company, that the Personal Information has been accessed or acquired by any unauthorised person.
- 17.10. The Company implements reasonable appropriate technical and organisational measures to prevent loss of, damage to, unauthorised destruction of, or unauthorised access to Personal Information Processed by the Company in order to establish and maintain the security safeguards as required by POPIA.
- 17.11. The Company shall notify the Client promptly and within 10 (ten) Business Days if it receives:
- 17.11.1. any request or complaint received from a Data Subject (together with the full details of the request or complaint);
 - 17.11.2. where there are reasonable grounds to believe that the Personal Information received from and Processed on behalf of the Client has been accessed or acquired by any unauthorised person; and
 - 17.11.3. where there are reasonable grounds to believe that a security breach has occurred or that a security breach is anticipated by the Company (together with the full details of the breach or anticipated breach), any of its personnel, contractors or further Operators that could result in the unauthorised access to the Client's Personal Information by any unauthorised person.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 17.12. The Company may transfer Personal Information to a foreign country if such transfer of Personal Information will comply with the applicable requirements of POPIA and/or other foreign applicable laws relating to such transfer. This includes but is not limited to the transfer of Personal Information to a foreign country for purposes of storing or archiving the Personal Information.
- 17.13. The Client shall be entitled to, at the Client's sole cost and upon reasonable written notice, appoint an independent audit firm to perform an annual audit on the Company's privacy practices and controls relating to Personal Information received in terms of this Agreement.
- 17.14. The Company shall co-operate with an audit initiated in accordance with clause 17.13 and shall give the independent third party auditor reasonable and timeous access to the Company's premises and any necessary documentation or other information requested by such third party.
- 17.15. The Company will not retain records of Personal Information any longer than is necessary for achieving the purpose for which the information was collected or subsequently Processed save for where record is to be retained for lawful purposes related to the functions and/or activities of the Company and, to the extent necessary, the Company will retain necessary Personal Information and Confidential Information for purposes of proof, however, will restrict any Processing of Personal Information if the information is no longer necessary for achieving the purpose for which it was collected or subsequently Processed.
- 17.16. The Client acknowledges and understands that the Company uses data (including de-identified Personal Information) provided by the Client for the development of the Company's products and services generally (for example conducting benchmarking, market research, data analysis), for the purposes of which the Company shall process aggregated, de-identified data, and shall not publish externally or otherwise disclose any information which derives from the Client's Personal Information, including but not limited to Personal Information which would identify an underlying Data Subject or the Client without the Client's prior written consent. The Company does not intend to Process Client Personal Information for these purposes, but to the extent that it does, the Company shall be a Responsible Party in respect of this Processing.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

17.17. The Client hereby expressly indemnifies and keeps the Company harmless against any claims by or liability arising out of the Company's performance of the Services and other obligations in terms of this Agreement and any instructions given to it by the Client from time to time as it relates to the Company's obligations in terms of this clause 17, to the extent that such claims do not arise as a result of the Company's or its further Operators' wilful and/or grossly negligent acts or omissions.

18. BREACH

18.1. If either Party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it to do so then the aggrieved Party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

18.2. The Parties agree that the Apportionment of Damages Act, 34 of 1956 shall apply to this Agreement

19. ARBITRATION

19.1. Other than in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:

19.1.1. the interpretation of;

19.1.2. the carrying into effect of;

19.1.3. any of the Parties' rights and obligations arising from;

19.1.4. the termination or purported termination of or arising from the termination of; or

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 19.1.5. the rectification or proposed rectification of, this Agreement, or out of or pursuant to this Agreement, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.
- 19.2. That arbitration shall be held:
- 19.2.1. with only the Parties and their representatives present;
- 19.2.2. at Cape Town.
- 19.3. It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) Business Days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 19.4. The arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa.
- 19.5. The arbitrator shall be an impartial admitted attorney whether practising or non-practising of not less than 10 (ten) years standing appointed by the Parties or, failing agreement by the Parties within 14 (fourteen) days after the arbitration has been demanded, at the request of either of the Parties shall be nominated by the President (or his/her nominee) for the time being of the Cape Law Society (or its successor body in the Western Cape), following which the Parties shall immediately appoint such person as the arbitrator. If that person fails or refuses to make the nomination, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 19.6. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 19.7. The arbitrator shall be obliged to give his/her award in writing fully supported by reasons.
- 19.8. The provisions of this clause 19 are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 19.9. The arbitrator shall have the power to give default judgment if any Party fails to make submissions on the due date and/or fails to appear at the arbitration.
- 19.10. The arbitrator's award shall be final and binding on the Parties.
- 19.11. The costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the hearing shall be borne by the Parties in equal shares and shall be recoverable, as costs in the cause under the provisions of any award.
- 19.12. The Parties, together with the arbitrator will agree from time to time on the arbitrator's remuneration, which will be paid by the Parties in equal shares, upon receipt of invoices.

20. **FORCE MORCE MAJEURE**

- 20.1. Except for the obligation to pay monies due and owing, neither Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including, without limitation, acts of God, earthquakes, labour disputes, actions of governmental entities, riots, war, terrorism, fire, epidemics or other circumstances beyond its reasonable control.
- 20.2. The obligations and rights of the defaulting Party shall be extended for a period equal to the period during which such event prevented such Party's performance, provided that if such period exceeds 90 (ninety) days, then either Party shall be entitled to terminate this Agreement immediately on written notice while the Party's performance continues to be prevented.

21. **GENERAL**

- 21.1. Subcontract: the Company reserves the right to subcontract Services to a third party organisation to provide Services to the Client. Any such subcontract shall not relieve the Company of any of its obligations under this Agreement.
- 21.2. Good faith: the Parties shall in their dealings with each other display good faith.
- 21.3. No assignment: no Party will be entitled to cede its rights or delegate its obligations in terms of this Agreement without the express prior written consent of the other Party.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 21.4. Relationship between the Parties: the Parties agree that neither Party is a partner or agent of the other Party and neither Party will have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party.
- 21.5. No representation: to the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 21.6. Severability: any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement.
- 21.7. Counterparts: this Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.
- 21.8. No stipulation: no part of this Agreement shall constitute a stipulation in favour of any person who is not a party to this Agreement unless the provision in question expressly provides that it does constitute such a stipulation.
- 21.9. Address for service: any notice, approval, request, authorisation, direction, or other communication under this Agreement shall be given in writing, directed to the addresses of the Parties set forth in clause 1.2, and shall be deemed to have been delivered and given for all purposes:

21.9.1. on the delivery date if delivered by email;

21.9.2. on the delivery date if delivered personally to the Party to whom the same is directed;

21.9.3. 1 (one) business day after deposit with a commercial overnight carrier with written verification of receipt; or

21.9.4. 5 (five) business days after the mailing date whether or not actually received, if sent by registered or recorded delivery post or any other means of rapid mail delivery for which a receipt is available to the contact at the address of the Party to whom the same is directed.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07

- 21.10. Governing law: It is agreed that the law of the Republic of South Africa will apply to the interpretation and enforceability of these terms and consent is given to the jurisdiction of any Magistrate's Court of Cape Town in respect of all legal proceedings arising out of the interpretation or enforceability of these terms. Notwithstanding the foregoing, the Company is still entitled to institute proceedings in the High Court of South Africa (Western Cape Division, Cape Town).
- 21.11. Whole agreement: As it relates to the general terms of service contemplated in this Agreement, this Agreement sets forth the entire agreement and supersedes any and all prior or contemporaneous agreements and representations, written or oral, of the Parties with respect to such terms, all of which are excluded, except for fraudulent misrepresentations. The Parties acknowledge that as of the date hereof, no binding commitments exist between the Parties with respect to the subject matter of this Agreement except as may be provided herein.
- 21.12. Amendment: no change, amendment or modification of any provision of this Agreement shall be valid unless attended to in accordance with clause 3.

Vunani Chambers, 5th Floor 33 Church Street,
Cape Town City Centre, 8000.
Registration No. 2014/002888/07