



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 a person or entity that directly or indirectly controls, is controlled by, or is under common control with a specified person or entity as found in the Business Corporation Law of New York Section 912. it also includes future affiliates and affiliations as well as foreign entities or persons that share direct and indirect control.

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 laws of the State of New York as well as relevant case law established by the courts of the State of New York.

1.2.4. "**Business Day**" means any day excluding Saturday, Sunday or any Federal Holiday in the

United States;

1.2.5. "**Client**" means the client as described on the Letter of Engagement;

1.2.6. "**Company**" means Outsourced CFO Inc., .. a Delaware Corporation with offices at 260 Madison Avenue, New York, New York 10022 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, employees, agents, titles, backgrounds, 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. "Control" for purposes of an affiliate means the ability to direct or cause the direction of management and policies, which can be through ownership of voting shares, contracts, trusts.

1.2.9. "**CPI**" means Consumer Price Index as published and posted from time to time at www.bls.gov/news.release/cpi

1.2.10. "**Effective Date**" means the Signature Date of the Letter of Engagement Letter;

1.2.11. "**Engagement Letter**" means the letter of engagement provided by the Company, signed by and between the Company and the Client as it relates to the service offering of the Company to the Client and which refers to and incorporates the terms of this Agreement;

1.2.12. "**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;

1.2.13. "Deliverables" means any and all such Services related to completion of pre-existing or ongoing Services and/or Services for the completion of a project or of a portfolio of deliverables to another service provider;

- 1.2.14. "**Parties**" means the parties to this Agreement;
- 1.2.15. "**Purpose**" means the execution and implementation of this Agreement and the delivery of the Services in terms of this Agreement;
- 1.2.16. "**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;
- 1.2.17. "**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; "**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;
- 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, assigned for the benefit of creditors, or files for bankruptcy or is forced into bankruptcy, then the assignee or trustee shall be bound by this Agreement to the extent allowed by law. 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.
- 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, client shall have the right to discontinue using our Services.

4. **APPOINTMENT OF THE COMPANY TO PROVIDE THE SERVICES**

As of 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. letter of Engagement;
- 5.2. this Agreement;
- 5.3. Service Specific Terms and Conditions;
- 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 (ninety) 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 or bankruptcy;

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 any of its property, movable or immovable, attached in execution or by any process of any court;

6.3.7. makes default without remedy or threatens to make default in the payment of liabilities generally; or

6.3.8. 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 deliverables 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.

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). Company shall respond to the request for additional services within three (3) business days. Once acknowledged and agreed by Company, such services will commence upon a date agreed by the parties.
- 7.5. Removal or Reduction of Services: At any time during this Agreement, the Client shall be entitled to reduce 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 reduction 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 and accurate 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 the client hereby agrees to indemnify and hold the Company harmless against any claims resulting therefrom, as well as be responsible for the Company's attorneys' fees. Client acknowledges this obligation and accepts that Company is relying on Client for complete, accurate, relevant and truthful information and timely responses to requests by Company for further information and backup support for any such information.

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 ACH (AUTOMATED CLEARING HOUSE) , depending on the nature of the Services and as set out on the Engagement Letter, unless agreed to otherwise by the Parties in writing. If Company sustains any fees for accepting the Client funds, such fees or charges will be passed on to Client.
- 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. The failure to invoice a client shall not be deemed a waiver of such amount due.
- 8.4. Payment: payment of the Service Fees shall be made by the Client to the Company within 7 (seven) days of the date of issue of a valid invoice by the Company. In the event the parties have agreed to certain ongoing fees without the requirement for invoices then fees shall be received by the Company on or before the the 7th (seventh) 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 year. The Company shall use the (U.S. City Average) CPI index as published by the U.S. Bureau of Labor Statistics, on March 1, of each year, to increase fees. The fees shall be increased as per the index (or if no longer published, a governmental index of increased consumer costs). The change in fees will be as published, unless the published amount is less than 2%, in which case the fee will be increased by 2%, or if more than 4%, then the change shall be limited to 4%. The increase will automatically be applicable and as of March 1 billing in each year the increased Service Fees will be invoiced to the Client, and the new amount shall 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 which Company deems for the Client's benefit will be included in the Company's invoices. Company shall communicate to the Client, when practical such expenses undertaken 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 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 according to the terms of this Agreement is not paid when due, then the Company will be entitled to a late fee equal to 5% of such amount if not paid within ten (10) days of the due date. Additionally, if not paid within thirty (30) days of the due date, interest shall accrue and be charged upon such outstanding amounts at a rate of 1.5% (one and one-half percent) per month from the date of default and which interest shall be calculated on the same day of each month, in arrears, on the amounts due until the default has been remedied in full by the Client. The parties agree that this provision may be modified so that the amount of interest is in keeping with the maximum interest allowed pursuant to the New York General Obligations Law Section 5-501.
- 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 deliverables or work-in-progress 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 Deliverables and other Services up until the end of the notice period referred to in clause 7.5, after which period, the Company shall render any outstanding Services and Deliverables , 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 and all circumstances.

10. INTELLECTUAL PROPERTY AND LICENSE

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.

The license referred to in clause 10.2 does not include the right to sub-license, 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

11.1.3. the execution and implementation of this Agreement has been duly authorized 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 or any extensions or other agreements between the parties hereto or any of the affiliates of any of the parties, for whatever purpose, the CLIENT , 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 Company has a legitimate interest in enforcing a restriction relating to estopping the Client from soliciting its personnel. Additionally, Client acknowledges that the Company expended and continues to expend significant time and expense in recruiting, cultivating, educating, training and/or developing its employees, agents, personnel and contractors, and others working with the Company in any capacity. Further in the working relationship, in accordance with this agreement, Client and Company's personnel may have a close working relationship, and based thereon, the Client

may find comfort with the Company's representative assigned to work with the Client and direct contact and relationships.

- 12.3. Client therefore acknowledges and understands 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 in scope, duration and territory for such purpose. The Client agrees that any breach of this Agreement will cause the Company substantial harm and irrevocable damage and therefore, in the event of any such breach, in addition to such other remedies at law, which Client acknowledges are available, the Company shall have the right to seek specific performance and injunctive relief against the Client.
- 12.4. 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 preparatory plans to do business.
- 12.5. If the Client violates the provisions of this clause 12 i the Client will be liable to pay compensation to the Company equal to 400 (four hundred) hours of billing at the rate at which that personnel member was last charged for by the Company. This provision does not cover the full damages of any such solicitation, it is just a token of remuneration which is to be paid immediately upon demand. The Client remains liable for damages and subject to all legal and equitable relief, whether in the form of injunctive relief, specific performance or damages as may be assessed in such circumstances.

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, a violation of law, t 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.

15. **INDEMNITY**

The Client hereby indemnifies and holds harmless the Company (including its shareholders, directors and employees, in whose favor 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 written 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

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

In this Agreement, the terms below shall have the meanings as defined in herein and in the following statutes in effect under the Laws of New York:

The Personal Privacy Protection Law (Public Officers Law, Article 6-A, sections 91-99) acknowledging such as if the state law pertained to private persons.

THE SHIELD ACT (Stop Hacks and Improve Electronic Data Security Act. Senate Bill S5575B, signed into law on July 25, 2019).

NYPA (New York Privacy Act) (presently under review in Albany)

THE GLOBAL DATA PRIVACY LAWS

The above Laws of New York shall be referred to herein as the "DATA SECURITY LAWS") 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, color, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person; information relating to the education or the medical, financial, criminal or employment history of the person;

17.1.3.2. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;

17.1.3.3. the biometric information of the person;

17.1.3.4. 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

17.1.3.5. the personal opinions, views or preferences of the person;

17.1.3.6. the views or opinions of another individual about the person; and

17.1.3.7. 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. "**Processing**" means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:

17.1.4.1. the collection, receipt, recording, organization, collation, storage, updating or modification, retrieval, alteration, consultation or use;

17.1.4.2. dissemination by means of transmission, distribution or making available in any other form; or

17.1.4.3. merging, linking, as well as restriction, degradation, erasure or destruction of information,

17.1.4.4. and "Process", "Processes" and "Processed" shall have the corresponding meanings;

17.1.5. "**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 familiarized themselves with the requirements and provisions of DATA SECURITY LAWS 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 DATA SECURITY LAWS .
- 17.5. For purposes of DATA SECURITY LAWS 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 DATA SECURITY LAWS .
- 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 authorized to engage further Operators or service providers to Process the Client's Personal Information, subject to the Company:

- 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 unauthorized person.
 - 17.10. The Company implements reasonable appropriate technical and organizational measures to prevent loss of, damage to, unauthorized destruction of, or unauthorized access to Personal Information Processed by the Company in order to establish and maintain the security safeguards as required by.
 - 17.11. While the Data Security Laws allow for thirty (30) days for the Company to report to the Client or for the client to report breaches of security to the Company, the parties agree to notify the Client or Company as the case may be promptly and within ten (10) 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 unauthorized 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 unauthorized access to the Client's Personal Information by any unauthorized person.
 - 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 DATA SECURITY

LAWS 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
- 17.15. 17.13 and shall give the independent third party auditor reasonable and timely access to the Company's premises and any necessary documentation or other reasonably related information about the Client's account, requested by such third party.
- 17.16. 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.
- 17.17. 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.
- 17.18. 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' willful 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 injunction or other equitable order for relief, 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.

19. **ARBITRATION MEDIATION and Dispute Resolution**

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

19.1.5. the rectification or proposed rectification of, this Agreement, or out of or pursuant to this Agreement, (other than where an injunction is sought or urgent relief may be obtained from a court of competent jurisdiction in the County, City and State of New York), shall be submitted to (1.) Dispute Prevention Attorneys chosen, one by COMPANY, and one by CLIENT who shall attempt to prevent the dispute from enlarging. Each party shall be responsible to pay the Attorney they have selected. If unsuccessful within one three hour meeting held with the parties present, attention and responses to all questions, then the parties agree to mediation by a mediation service or attorney referred by the New York County Lawyers Association as part of their fee dispute panel and if not successfully concluded within one 1/2 day hearing then the dispute shall be heard and resolved by arbitration with one (1) arbitrator.

19.1.6. All of the above dispute resolution methods shall be in person, in Manhattan, New York, either at the office of the COMPANY or some other office as may be agreed. The parties may also select to proceed in any of these sessions via video conferencing (such as Zoom or Teams) if both parties agree. If both parties do not agree, then the sessions shall be in person. If the parties cannot agree upon the arbitrator within five business days then the attorneys that

served as the dispute prevention attorneys shall each put two names of arbitrators in nomination and the parties shall select one person from the four names (from a hat, if the parties cannot agree on the selection). Each of those arbitrators will be bound to agree to hold the arbitration hearing in the County, City and State of New York, The costs of such arbitration hearing shall be borne by the parties equally, subject to reimbursement as may be directed by the arbitrator if the prevailing party is deemed to be so entitled by the arbitrator.

- 19.2. It is the intention that the arbitration shall, where possible, be commenced within 21 (twenty one) Days after it has been demanded. The Parties shall use their best endeavors to procure the expeditious completion of the arbitration.
- 19.3. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 19.4. The arbitrator shall be obliged to give his/her award in writing fully supported by reasons.
- 19.5. 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.
- 19.6. 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.
- 19.7. The arbitrator's award shall be final and binding on the Parties.
- 19.8. 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.
- 19.9. 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, labor 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 organization 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, act in good faith.

21.3. No assignment: No Party will be entitled to assign its rights or delegate its obligations in terms of this Agreement without the express prior written consent of the other Party.

21.4. Relationship between the Parties: the Parties agree that neither Party is an owner, shareholder, member, officer, director, employee, partner nor 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 favor 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, authorization, 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 of a sealed post paid overnight mail package with The United States Post Office or a commercial overnight carrier with written verification of receipt; or

21.10. Governing law: It is agreed that the law of the State of New York will apply to the interpretation and enforceability of these terms and consent is given, subject to the alternative dispute mechanism's above set forth, to the jurisdiction of any court of competent jurisdiction in the City, County and State of New York. in respect of all legal proceedings arising out of the interpretation or enforcement of these terms.

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.

21.13. ANCILLARY AND CONTEMPORANEOUS AGREEMENTS: It is acknowledged by the parties hereto, that this AGREEMENT contains Terms and conditions which govern the working relationship between the Parties. However, this Agreement shall be read so as to be part and parcel of the AGREEMENT FOR SERVICES executed contemporaneously herewith. It is acknowledged that as to any inconsistency between the terms and conditions of this Agreement versus the rights and obligations in the Agreement for Services that the Agreement for Services shall supersede this Agreement.

