

SERVICES AGREEMENT

entered into between

Kaufman Levin Associates Pty Ltd

And

(add name of service provider)

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This **Services Agreement** is dated _____ ("Effective Date") and made between:

Kaufman Levin Associates Pty Ltd, registration number 2006/018321/07, a company with limited liability, incorporated under the company laws of the Republic of South Africa, and having its principal place of business at The Workshop, 70, 7th Avenue, Parktown North, Johannesburg 2193, Gauteng, South Africa ("KLA");

and

_____ (*add company name of service provider*), with registration number: xxxx/xxxxxx/xx, a company with limited liability, incorporated under the company laws of the Republic of South Africa and having its principal place of business at _____ (*add business address of service provider*), South Africa ("Service Provider").

or

use the following text instead and delete the text above if the service provider is not a company, but an individual sole trader)

_____ (*insert name of sole trader*), _____ (*insert job title or description e.g. market research consultant*), a sole trader, with ID number _____ (*add ID number*), with a principal place of business at _____ (*add business address of sole trader*), South Africa ("Service Provider").

KLA and Service Provider are hereinafter collectively referred to as the "**Parties**" or individually a "**Party**".

Other capitalized terms are defined in Clause 1 of this Agreement.

WHEREAS:

1. KLA is a company specialising in market research.
2. The Service Provider is a _____ (*add either 'company' or 'sole trader' as applicable*) specialising in the provision of _____ (*add services that they are to provide e.g. recruiter services e.g. translator services; e.g. transcriber services etc, as applicable*).
3. This Agreement is to set out the terms and conditions for the provision of such Services by the Service Provider to KLA.

IT IS AGREED as follows:

1. DEFINITIONS

"AFSA" means the Arbitration Foundation of Southern Africa;
"Agreement" means these terms and conditions including all Annexures;

“Brief” has the meaning set out in clause 3.1;

“Business Day” means any day other than a Saturday, Sunday, or public holiday in the Republic of South Africa;

“Business Hours” means 8am to 5pm on a Business Day;

“Client” means the KLA client who has requested the Services;

“Confidential Information” means all information relating to the Agreement, or other information disclosed or otherwise acquired by the Parties under the Agreement, which is in a tangible, oral or visible form, including but not limited to:

- i. the services provided by the Service Provider to KLA under this Agreement;
- ii. the Results;
- iii. the IP;
- iv. the Purpose, and the existence, nature, form and content of this Agreement;
- v. Personal Information obtained or received as part of the Services or under the Agreement.

“Data Subject” means the natural or juristic person to whom the Personal Information refers;

“Dispute” shall have the meaning set out in clause 15;

“Fees” means the amounts payable by KLA to the Service Provider for the Services, subject always to the terms and conditions of this Agreement;

“Force Majeure Event” means an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strike, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, or any circumstances of like nature beyond the reasonable control of a Party;

“Guidelines” means the SAMRA guidelines, as published on its website at <https://www.samra.co.za/>;

“Incident” means an event or events resulting in a breach or potential breach of an Information System, which could significantly compromise the confidentiality, integrity or availability of an Information System, including but not limited to:

- i. unauthorised access to an Information System;
- ii. theft of equipment (e.g. computer, USB stick, tablet, mobile phone, etc.);
- iii. access to an Information System, or use of equipment or software licences, which is either not for the Purpose or which is after the completion of a KLA project;
- iv. unauthorised dissemination of Confidential Information;
- v. introduction of any harmful computer code such as viruses, worms, Trojan horses or any code infecting or affecting any program, software, data, file, database, computer or other elements, which are designed to damage, prejudice or compromise the integrity, confidentiality, or operation of the Information System.

“Information System” means an organized set of resources allowing the collection, consolidation, clarification, storage, processing and dissemination of information (including but not limited to computers and peripherals, software, data storage devices, network equipment and backup facilities), and including paper and printed material collection systems, whether or not owned by that party, or provided by a third party to enable a party to provide Services;

“IP” means any intellectual property rights generated within the context of the performance of the Services, and in particular any intellectual property rights pertaining to the Results such as inventions, patents, know-how, copyright, trade secrets, trademarks etc;

“KLA Data” means the information and data provided by KLA to the Service Provider, and provided to KLA by the Service Provider as part of the Services, and which shall include but is not limited to the Confidential Information defined in this Agreement;

“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:

- i. 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;
- ii. information relating to the education or the medical, financial, criminal or employment history of the person;
- iii. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- iv. the biometric information of the person;
- v. the personal opinions, views or preferences of the person;
- vi. 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;
- vii. the views or opinions of another individual about the person; and
- viii. 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;

and any information regarding a natural or a juristic person which can be identified directly, or indirectly by reference to any other information, including a personal identification number;

“Personal Information Regulator” means the independent body established in terms of section 39 of the Protection of Personal Information Act, 4 of 2013;

“Purpose” shall be the provision of the Services specified in the Brief;

“Research Participant” means any individual participating in a market research study;

“Responsible Party” means the natural or juristic person with the right to make decisions regarding the purposes and the methods of processing of Personal Information, and the means used, including the security measures for the Personal Information. The Responsible Party in this Agreement is the Service Provider;

“Results” means any results generated or developed through the performance of Services, including any deliverables, raw data, data analyses, databases, documents, methods, observations and conclusions, minutes and reports, including any intermediary or draft reports as well as final reports;

“SAMRA” shall have the meaning set out in clause 4.1.2 of this Agreement;

“Services” means the services as set out in a Brief issued by KLA;

“Term” has the meaning set out in clause 2 of this Agreement;

“VAT” means value added tax as envisaged in accordance with the Value Added Tax Act 89 of 1991;

2. TERM

- 2.1. This Agreement will commence on the Effective Date and continue for an unlimited period, to reflect that Services may be provided under one or more Briefs over ongoing or intermittent periods of time.

3. IMPLEMENTATION OF SERVICES

- 3.1. KLA may request from the Service Provider the provision of Services according to a particular statement of scope ("Brief") provided by KLA.
- 3.2. The Service Provider will provide the requested Services, in accordance with the Brief and the terms and conditions of this Services Agreement, and any additional terms that may be agreed between the Parties in writing.
- 3.3. This Agreement is not a guarantee that the Service Provider will be awarded Services, nor is there any minimum commitment by KLA to any level of Services being awarded to the Service Provider.

4. SERVICE PROVIDER OBLIGATIONS

- 4.1. Pursuant to the agreement to perform Services for KLA under a Brief, the Service Provider shall perform these Services:
 - 4.1.1. in strict compliance with applicable laws and regulations, and provide the Results in accordance with the Brief;
 - 4.1.2. in accordance with the South African Marketing Research Association ("SAMRA") Code of Conduct, as set out at <https://www.samra.co.za/ethics/>. The Code of Conduct comprises the ICC/ESOMAR International Code, Guidelines, and the SAMRA complaints procedure, and which may be updated from time to time. The Service Provider shall be responsible to keep up to date with changes in the SAMRA Code of Conduct and maintain their compliance accordingly; and
 - 4.1.3. *If requested by KLA where this is possible and appropriate*, maintain membership of SAMRA for the duration of this Agreement and provide evidence of this on request by KLA;
 - 4.1.4. perform the Services with appropriate care and skill, in a timely, diligent and professional manner;
 - 4.1.5. perform quality control of the market research data and the Results before issuance to KLA in accordance with the stipulated obligations in the Brief;
 - 4.1.6. use the name and brand of KLA responsibly and not bring it into disrepute;
 - 4.1.7. advise KLA as soon as reasonably possible of any issues or concerns regarding the provision of the Services;
 - 4.1.8. advise KLA of any possible improvements to the KLA requirements, in terms of achieving better timescales, quality and costs.
- 4.2. If the Service Provider wishes to delegate any of its obligations under this Agreement to a sub-contractor or to use contractors to perform the Services, the Service Provider shall:
 - 4.2.1. first obtain consent from KLA, who are obliged to obtain consent from the client;

- 4.2.2. ensure that all relevant obligations in this Agreement (including compliance with the SAMRA Code of Conduct), are flowed down in a written and signed contract with that sub-contractor or contractors, who will be made aware of the terms of this Agreement and bound to the same terms and conditions; and
- 4.2.3. at all times remain liable for the performance of all its obligations under this Agreement, even if sub-contracted to sub-contractors or performed by contractors.

- 4.3. Where there are market research studies to be provided as part of the Services, then in respect of Research Participants, namely their recruitment, consent, and the Service Provider's obligations in respect of such Research Participants:
 - 4.3.1. the Service Provider shall comply with applicable laws and regulations, including the Protection of Personal Information Act, 4 of 2013, and the SAMRA Code of Conduct; and
 - 4.3.2. KLA shall provide to the Service Provider the applicable Client's requirements in respect of such Research Participants.

5. CLIENT DEPENDENCIES

- 5.1. The Service Provider acknowledges that there are Client responsibilities which are outside of the control of KLA, and for which KLA shall have no liability to the Service Provider, including but not limited to:
 - 5.1.1. any delay/s in the provision of materials e.g. products, samples, questionnaires etc. by a Client to the Service Provider;
 - 5.1.2. any delay/s in the approval of Results, or any interim or final report of Results by the Client;
 - 5.1.3. any delay/s in the payment to KLA for the Services.

6. FEES, INVOICING AND PAYMENT

- 6.1. The Fees shall be in accordance with the Brief provided by KLA.
- 6.2. Invoices are to be rendered by the Service Provider before the 25th day of a month, and all valid, undisputed invoices are payable by KLA within thirty (30) days from receipt of the invoice or within fourteen (14) days (unless specified otherwise in the Brief) of the date that KLA is paid for the Services by the Client, whichever is later.
- 6.3. Where a quote is applicable, the Service Provider shall include the quote number for, or attach the accepted quote to, each invoice, unless specified otherwise in the Brief.
- 6.4. Payment of invoices is dependant upon, and will only be made following the provision by the Service Provider of an up to date, valid B-BBEE certificate or sworn affidavit, as applicable.
- 6.5. KLA shall pay the Fees to the Service Provider by electronic funds transfer or direct deposit to the bank account nominated by the Service Provider, unless specified otherwise in the Brief.
- 6.6. The Fees exclude any value added tax (VAT) which may be charged by the Service Provider, and will be paid by KLA. Any VAT shall be identified on the invoice as a separate item.

7. DATA PRIVACY

7.1. The Service Provider shall comply with SAMRA requirements in respect of the protection of data, the provisions of the Protection of Personal Information Act, 4 of 2013, and in accordance with the requirements set out in Annexure A: Data Privacy.

8. INFORMATION SECURITY

8.1. The Service Provider undertakes to ensure the security of its Information System, and will adopt all necessary measures to:

- 8.1.1. ensure data integrity by protecting it from accidental or unlawful destruction or accidental loss or alteration;
- 8.1.2. ensure data confidentiality by protecting it from disclosure or access by unauthorised third parties; and
- 8.1.3. ensure control of the data by limiting communication to only those who have a need to know in order to fulfill the Purpose.

8.2. The Service Provider shall comply with the requirements set out in Annexure B: Information Security.

9. CONFIDENTIALITY

9.1. Both Parties agree and undertake:

- 9.1.1. except as permitted by this Agreement, not to disclose or publish any Confidential Information, including this Agreement, without the prior written consent of the other Party;
- 9.1.2. except as permitted by this Agreement, not to use the Confidential Information except for the Purpose and not for any other purpose whatsoever, without the prior written consent of the other Party;
- 9.1.3. to restrict the dissemination of the Confidential Information to only those of its employees who are actively involved in activities for which use of the Confidential Information is authorized and then only on a 'need to know' basis and to take all practical steps, both before and after disclosure, to impress upon its employees who are given access to Confidential Information, the secret and confidential nature thereof;
- 9.1.4. Before revealing Confidential Information to its employees, sub-contractors, contractors, or advisors the receiving Party is obliged to have in place with any such employees, sub-contractors, contractors, or advisors a confidentiality agreement which meets the confidentiality standards set out in this Agreement. If a suitable confidentiality agreement is not available, then the Service Provider may request one from KLA which provides that the parties will observe and comply with the confidentiality obligations as set out herein, and which shall continue to apply after they cease their employment or tenure with the receiving Party. This confidentiality acknowledgement does not need to be submitted to KLA, unless requested by KLA;
- 9.1.5. The Parties acknowledge that the Confidential Information disclosed by the disclosing Party to the other Party or which otherwise comes to the knowledge

of the receiving Party, does not confer any rights of whatever nature in such Confidential Information on the receiving Party from the disclosing Party;

9.1.6. Confidential Information excludes information which:

- 9.1.6.1. is lawfully in the public domain at the time of disclosure or subsequently becomes lawfully part of the public domain; or
- 9.1.6.2. becomes available to the receiving Party from a source other than the disclosing Party; or
- 9.1.6.3. is disclosed pursuant to a requirement or request by operation of law, regulation, court order or as a consequence of any judicial proceedings to which a Party is a party;

9.1.7. The onus to establish whether the Confidential Information falls within the exclusions referred to in clause 9.1.6 shall rest on the receiving Party. The information disclosed in terms of this Agreement shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession. Any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession but only if the combination itself is in the public domain or in a Party's possession;

9.1.8. The receiving Party shall protect the Confidential Information in the manner, and with the endeavour of a reasonable person protecting his own Confidential Information;

9.1.9. The Parties record that this clause 9 shall not be applicable where either Party discloses Confidential Information to its attorneys or auditors, provided that such disclosure is reasonably required by the disclosing Party for the purposes of conducting its business activities; and

9.1.10. This clause 9 is severable from the rest of the Agreement and shall remain valid and binding on the Parties after the termination or expiration of the Agreement, without any limitation in time.

10. AUDIT RIGHTS & RECORD KEEPING

10.1. On request by KLA, the Service Provider will permit KLA and/or the Client, or the authorized representatives or auditors of either KLA and/or the Client to:

- 10.1.1. audit and examine the Services related activities, installations, equipment, documents and other resources used for the performance of the Services in order to verify compliance with the Service Provider's obligations under this Agreement;
- 10.1.2. conduct all relevant quality assurance and quality control assessments, including access to all Service's related sites and documents.

10.2. The Service Provider shall retain any documentation or other data obtained or generated within the scope of the Services for a period of five (5) years, or as required by applicable law, whichever is later. This shall not apply to Personal Information which will be retained in accordance with the SAMRA Code of Conduct and applicable law.

11. INTELLECTUAL PROPERTY

- 11.1. The Service Provider will deliver exclusively to KLA, all Results and IP from the performance of the Services, as set out in the Brief.
- 11.2. In consideration of the payment of Fees applicable to the Services, KLA will acquire exclusive title to all Results and IP from the Services, whether these are tangible or intangible, and will be free to use them or to assign such title and rights to other parties.
- 11.3. KLA will have the right to acquire protection of the IP, including filing any patent application in any country, and take any measures or filings necessary to protect its rights in relation to the IP. The Service Provider therefore agrees to refrain from taking any measures filing any IP protection applications related to the IP.
- 11.4. The Service Provider agrees to do all things necessary to give effect to the assignment of exclusive title to all Results and IP from the Services under clause 11.2, including signing any required documents.
- 11.5. The Service Provider shall remain the exclusive owner of its pre-existing IP, acquired before and independently from the performance of the Services for KLA.
- 11.6. The Service Provider hereby grants KLA a worldwide, royalty-free, non-exclusive and non-transferable (other than to the relevant KLA client) licence to use the Service Provider's pre-existing IP, if required to exploit or realise commercial benefits from the Results and/or IP.
- 11.7. The Service Provider shall not publish or issue any written communication or verbal communication pertaining to all or part of the Results and/or IP, in particular any report regarding the Results and/or IP, unless it has obtained the prior written consent of KLA.
- 11.8. This clause 11 is severable from the rest of the Agreement and shall remain valid and binding on the Parties after the termination or expiration of the Agreement, without any limitation in time.

12. WARRANTIES AND INDEMNITIES

- 12.1. The Service Provider warrants that it will apply the necessary level of care and diligence in its performance of the Services.
- 12.2. The Service Provider warrants that it has the appropriate skills, training, qualifications and resources to perform the Services.
- 12.3. The Service Provider warrants to KLA that the Results and IP are legally free from any third party rights or encumbrances and that their use does not constitute any infringement of third party rights.
- 12.4. The Service Provider indemnifies KLA against any actions or claims from third parties in respect of infringement of intellectual property rights in the Results or IP.
- 12.5. The Service Provider warrants that they will perform the Services in accordance with the SAMRA Code of Conduct, to the extent that are applicable to the Services being provided.

13. LIABILITY

- 13.1. Neither Party will be liable to the other for any indirect or special damages, including but not limited to, loss of profit, loss of goodwill, or consequential losses of any kind

whatsoever, regardless of the form of action, whether in contract, delict, under statute or otherwise.

14. NO PARTNERSHIP OR JOINT VENTURE

14.1. KLA and the Service Provider are independent parties, and nothing contained in this Agreement will be deemed to constitute a partnership, joint venture, and / or employer and employee relationship.

15. DISPUTE RESOLUTION

15.1. Should any dispute, disagreement, or claim arise between the Parties (hereinafter referred to as “**Dispute**”) arising out of or in connection with this Agreement, the Parties will first endeavour to resolve the dispute by negotiation.

15.2. The negotiation will entail one Party inviting the other in writing to a meeting and to attempt to resolve the Dispute within ten (10) Business Days from the date of the written invitation.

15.3. If the Dispute has not been resolved by negotiation, either Party may submit the Dispute either to SAMRA for mediation or to AFSA for administered mediation upon the terms set by the AFSA secretariat, and in either case such mediation shall be held in Johannesburg.

15.4. Failing such resolution by mediation, the Dispute, if arbitrable in law, will be finally resolved in accordance with AFSA's rules by an arbitrator or arbitrators appointed by AFSA, such arbitration to be held in Johannesburg.

15.5. None of the terms of this clause 15 will prevent a Party from approaching a court of the agreed jurisdiction to obtain urgent relief.

16. BREACH

16.1. Should any Party be in breach of any of its obligations in this Agreement and fail to remedy such breach within seven (7) Business Days of receipt of written notice calling upon it to do so, the other Party will be entitled, but not obliged (in addition to any other rights which it may have or remedies which may be available to it):

- 16.1.1. to cancel this agreement in writing;
- 16.1.2. to obtain an order against such defaulting Party for specific performance, with or without claiming damages;
- 16.1.3. to claim such damages as it may have suffered in lieu of specific performance, together with all amounts owing under or in terms of this Agreement, whether or not such amounts have become due for payment; and
- 16.1.4. to refer the matter to dispute resolution in accordance with clause 15;
- 16.1.5. where the Party in breach is the Service Provider, KLA shall be entitled to:
 - 16.1.5.1. suspend or refuse to perform its payment obligations;
 - 16.1.5.2. have a third party perform the Service Provider's obligations, at the Service Provider's expense;
 - 16.1.5.3. ask for a reduction in the Fees proportional to the failure in performance.

17. TERMINATION

17.1. Termination for Cause

- 17.1.1. Without prejudice to any rights and remedies that may have accrued, either Party may terminate this Agreement with immediate effect, upon written notice in accordance with clause 19, if the other Party:
 - 17.1.1.1. ceases to trade (either in whole, or as to any part involved in the performance of this Agreement). For the avoidance of doubt, this does not include a business restructure; or
 - 17.1.1.2. has a court order issued against it placing it under final liquidation. For the avoidance of doubt, where a Party is undergoing business rescue in accordance with the Companies Act No. 71 of 2008, and for so long as that Party is still complying with its obligations under this Agreement, the other Party may not terminate the Agreement in accordance with this clause 17.1.

17.2. Termination for Material Breach

- 17.2.1. Either Party shall be entitled to terminate this Agreement in the event of the other Party committing a material breach of the Agreement and failing to remedy such breach within a period of seven (7) Business Days after receipt of written notice in accordance with clause 19, drawing its attention to the breach and demanding that it be remedied, in which case written notice of the termination shall be given to the defaulting Party, and the termination shall take immediate effect on the giving of the notice. The provision of fraudulent market research data by a Service Provider will be deemed to be a material breach of this Agreement. KLA shall have the option to terminate the relevant Service/s under a Brief/s instead of terminating this Agreement.

- 17.2.2. If either Party terminates the Agreement for Material Breach under this clause 17.2:
 - 17.2.2.1. the defaulting Party shall be immediately liable for any amounts due and owing at the date of such termination; and
 - 17.2.2.2. the defaulting Party shall be liable to the other Party for all legal expenses for enforcement of this clause 17.2 (including any collection fees), on the attorney and client scale.

17.3. Termination from KLA Client

- 17.3.1. Should the KLA client terminate its agreement with KLA for any reason whatsoever, KLA will be entitled to terminate the relevant Service (under one or more Briefs), or this Agreement with the Service Provider, by written notice in accordance with clause 19, with or without a notice period (aligned to the notice period given by KLA by the client), and without liability or compensation to the Service Provider. If costs have already been incurred by the Service Provider, the Service Provider may present a case to KLA for reimbursement, with provision of appropriate documentation and evidence, and KLA will pay for costs incurred following receipt of such evidence.

17.4. Consequences of Termination

- 17.4.1. KLA will continue to be the owner of any Results and IP generated until the date of termination of the Agreement and/or a Service. Following termination, KLA will retain ownership of any Results and IP generated during the Agreement.
- 17.4.2. Termination of this Agreement will not necessarily lead to a termination of Services being provided under a Brief that are in progress. KLA will have the option to have Services which are in progress continue to be performed until their completion, in accordance with the terms of this Agreement.
- 17.4.3. Termination of a Service being provided under a Brief will not necessarily lead to termination of this Agreement. KLA will have the option to terminate Services under a Brief without terminating this Agreement, in accordance with its rights set out in this Agreement.
- 17.4.4. KLA will pay the Service Provider for the portion of Services agreed by the Parties to be provided up until the date of termination, (or the date that the relevant Services are completed in accordance with clause 17.4.2).
- 17.4.5. The Service Provider will continue providing the Services and adhere to the same standards of quality, security and confidentiality, until the date of termination (or the date that the relevant Services are completed in accordance with clause 17.4.2).

18. FORCE MAJEURE

- 18.1. If either Party is prevented or restricted directly from carrying out all or any of its obligations under this Agreement by a Force Majeure Event, such Party will not be deemed to be in breach of this Agreement.
- 18.2. The Parties agree that, should the Force Majeure Event last more than two (2) months, then either Party may terminate the affected Services under a Brief, or this Agreement, by giving seven (7) Business Days written notice to the other Party.

19. NOTICES

- 19.1. The Parties select as their respective *domicilia citandi et executandi* (domicilium) the following physical addresses, for the purposes of giving or sending any notice required under this Agreement:

KLA

KLA

The Workshop

70, 7th Avenue

Parktown North

Johannesburg 2193

Gauteng

South Africa

Attention: Angela van der Westhuizen

e-mail: angelaw@kla.co.za

Tel: 011 447 8411

Service Provider (*service provider to complete address and contact details below*)

Attention: _____

e-mail: _____

Tel: _____

- 19.2. A Party may change its domicilium by written notice to the other Party to that effect, provided that the new domicilium is a physical address and not a postal address, and is within the Republic of South Africa or within the African continent. Such change of domicilium will be effective five (5) Business Days after receipt of the notice of the change.
- 19.3. Any notice to be given in terms of this Agreement must be given in writing, in English, and shall:
 - 19.3.1. Be delivered by hand or via courier to the domicilium and if delivered during Business Hours, be presumed to have been received on the date of delivery. Any notice delivered after Business Hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and
 - 19.3.2. any notice that is served on a domicilium, must also be sent to the e-mail address listed herein.
- 19.4. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

20. GENERAL

Entire Agreement

- 20.1. This Agreement reflects the entire agreement concluded between the Parties and no amendment or alteration shall be valid unless recorded in writing and signed by both Parties. Neither Party relies in entering into this Agreement upon any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this Agreement as warranties or undertakings.

Non-Assignment / Cession

20.2. This Agreement may not be assigned or ceded by a Party, either in whole or in part, without the prior written consent of the other Party, whose consent will not be unreasonably withheld.

Severability

20.3. If any provision of this Agreement is found to be illegal or invalid, the illegal or invalid provisions will be treated as being deleted from this Agreement and no longer incorporated, but all other provisions of this Agreement will continue to be binding on the Parties.

No Waiver

20.4. Neither Party shall be regarded as having waived or be precluded in any way from exercising any right under or arising from this Agreement by reason of having at any time granted an extension of time, or having shown any indulgence, or having failed to enforce or delayed the enforcement of any right of action.

No Variation

20.5. No addition to, variation, deletion or agreed cancellation of this Agreement, including this clause shall be of force or effect unless in writing and signed by the Parties.

Law and Jurisdiction

20.6. This Agreement shall be governed by and construed in accordance by the laws of the Republic of South Africa and the parties hereby submit to the exclusive jurisdiction of the South African courts.

Costs

20.7. Each Party is responsible for its own costs incurred in the negotiation, preparation, and finalization of this Agreement, and for any changes to this Agreement.

21. INTERPRETATION

21.1. In this Agreement:

21.1.1. Clause headings are for convenience only and are not to be used in its interpretation.

21.1.2. An expression which denotes:

21.1.2.1. Any gender includes the other genders;

21.1.2.2. a natural person includes a juristic person and vice versa; and

21.1.2.3. the singular includes the plural and vice versa.

21.1.3. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail.

21.1.4. The *contra preferentum* rule of construction shall not apply, nor shall this Agreement be construed in favour of or against any Party by reason of the

extent to which any Party or its professional advisors participated in the preparation of this Agreement.

21.1.5. The cancellation or termination of this Agreement will not affect the provisions of this Agreement that of necessity must continue to have effect after cancellation or termination, notwithstanding that the clauses themselves may not expressly provide for this.

22. ORDER OF PRECEDENCE

22.1. The Parties agree that in the event of any Disputes arising from this Agreement, the order of precedence for their agreement shall be:

- 22.1.1. Amendments to this Agreement signed later in time taking precedence over those signed earlier in time, subject to clause 20.5;
- 22.1.2. the main body of this Agreement; and
- 22.1.3. the Annexures to this Agreement.

EXECUTED by the Parties

Signing this Services Agreement will serve as confirmation that the Parties have accepted the terms and conditions contained herein.

SIGNED at _____ this ___ day of _____ 20___

Name

Title

Signature

Who warrants that they are duly authorized to sign on behalf of **KAUFMAN LEVIN ASSOCIATES PTY LTD**

1. Witness Name _____

2. Witness Name _____

Witness Signature _____

Witness Signature _____

Date _____

Date _____

SIGNED at _____ this ___ day of _____ 20___

Name

Title

Signature

Who warrants that they are duly authorized to sign on behalf of *(INSERT FULL COMPANY NAME/FULL INDIVIDUAL'S NAME OF SERVICE PROVIDER)*

2. Witness Name _____

2. Witness Name _____

Witness Signature _____

Witness Signature _____

Date _____

Date _____

Annexure A: Data Privacy

In accordance with clause 7 of the main body of this agreement, the Service Provider will specifically comply with the following data privacy requirements.

The Service Provider will implement all appropriate technical and organisational measures to protect Personal Information from:

- accidental or unlawful destruction or accidental loss or alteration;
- unauthorised disclosure or access, especially where there is transmission of data over a network; and
- against all other unlawful forms of processing.

1. Responsible Party and Data Subjects

- 1.1. In terms of the Protection of Personal Information Act, 4 of 2013, the Service Provider will be the “Responsible Party”, and the Research Participants will be the “Data Subjects”.

2. Processing of Personal Information

- 2.1. The Service Provider shall process Personal Information in a lawful, legitimate and responsible manner.

- 2.2. Any Personal Information received by the Service Provider must have been obtained directly from the Data Subject, with the exception of client lists received in accordance with SAMRA guidelines.

- 2.3. The Service Provider shall obtain each Data Subject’s express and informed permission to process their Personal Information.

2.4. The Service Provider will:

- 2.4.1. obtain only the Personal Information required for the performance of the Service;
- 2.4.2. process the Personal Information provided by Data Subjects solely for the purpose for which it is collected; and

- 2.4.3. will not perform any additional processing of the Personal Information, without first obtaining the Data Subject’s consent for such additional processing.

3. Storage of Information

- 3.1. Subject always to the retention requirements in section 4 below:

- 3.1.1. All Personal Information provided to the Service Providers by the Data Subjects will be held and stored securely.

- 3.1.2. All Personal Information shall be kept separate (at a minimum logically separated) from the Service Providers own information, or any information of the Service Provider’s other customers or suppliers.

- 3.1.3. The Data Subject’s Personal Information will be stored electronically, and/or in hard copy form, where it will remain until such time as a Data Subject requests their individual Personal Information to be deleted, or it is destroyed in accordance with paragraph 4.2 of this Annexure A.

- 3.1.4. The Data Subject’s Personal Information may also be retained in soft or hard copy reports, presentations, or other records pertaining to the Services (subject to compliance with paragraph 4 of this Annexure A). Notwithstanding, storage will be secure and may be audited by KLA or its auditors to determine the safety and the security of the information.

- 3.1.5. Written or printed copies containing the Data Subject's Personal Information and data will be kept securely with access to those Services records well protected and restricted by physical means such as locked cabinets, and within secure premises.
- 3.1.6. The Data Subject's Personal Information shall be stored electronically in South Africa, and may not be stored or transferred electronically outside the borders of South Africa, unless:
 - 3.1.6.1. KLA provides their approval; and
 - 3.1.6.2. Each Data Subject is informed that their Personal Information may or will be stored or transferred electronically outside South Africa; and
 - 3.1.6.3. The facilities in the overseas countries and territories are bound contractually to comply with data privacy regulations that are at least equivalent to those imposed by the Protection of Personal Information Act, 4 of 2013.

4. Retention and Destruction of Personal Information
 - 4.1. The Service Provider will capture, keep, and maintain Personal Information records solely to the extent that they are relevant to the provision of the Services (as per the purpose explained to the Data Subject).
 - 4.2. Upon reaching two (2) years after the completion of Services under a Brief, or upon request from KLA (whichever is earlier), the Service Provider will delete all the Data Subject's Personal Information in whatever form it exists (except to the extent the Service Provider is required to retain the data in accordance with any applicable law), and will provide a certificate of destruction to KLA.
5. Data Subject's Rights to Access, Modify, or Delete Personal Information
 - 5.1. The Personal Information shall be able to be accessed, modified or deleted by the Service Provider on request by the Data Subject.
 - 5.2. On request by a Data Subject, the Service Provider will provide the Data Subject with the details of their Personal Information held, and the details of what the Service Provider has done with that Personal Information.
6. Data Subject's Right to Object
 - 6.1. The Data Subject has the right to object in the prescribed manner under the Protection of Personal Information Act, 4 of 2013, to the Service Provider regarding the processing of their Personal Information. On receipt of the Data Subject's objection the Service Provider will place a hold on any further processing until the cause of the objection has been resolved.
7. Notification to Information Regulator
 - 7.1. The Service Provider shall advise the Information Regulator that Personal Data is being processed as part of the Services being provided to KLA.
8. Breach of Data Privacy
 - 8.1. The Service Provider will take all necessary measures to detect, prevent, and mitigate any breach of data privacy.
 - 8.2. The Service Provider shall inform both the Personal Information Regulator and the affected Data Subjects (unless the identity of the Data Subjects cannot be determined) in writing or via email as soon as reasonably possible, that there is a breach or a suspected breach of data privacy (i.e. where the Service Provider has reasonable grounds to believe that Personal Information of a Data Subject has been accessed or acquired by an unauthorised person).

- 8.3. The notification to the Data Subjects shall contain sufficient information to enable the Data Subjects to take protective measures against the potential consequences of the breach.
- 8.4. If instructed to do so by the Personal Information Regulator, the Service Provider will publicise the breach or suspected breach of data privacy.

Annexure B: Information Security

In accordance with clause 8 of the main body of this Agreement, the Service Provider will specifically comply with the following information security requirements.

1. The Service Provider shall ensure:
 - 1.1. that they have read and understand the security policy;
 - 1.2. have an active anti-virus i.e. have anti-virus software installed and working on their machine e.g. their laptop or desktop;
 - 1.3. they have a security password to access their machine;
 - 1.4. that software updates are happening on the machine;
 - 1.5. that upon leaving the machine, they ensure that it is password locked and physically secured e.g. in a locked room or in secured private premises;
 - 1.6. that they shall download and upload KLA Data only through the provided method (sharepoint); and
 - 1.7. that they shall delete the KLA Data promptly after providing the Service for KLA;

2. Collection and Storage of Data on Portable Devices
 - 2.1. In respect of data that is collected from Data Subjects via portable devices e.g. iPads, mobile phones, laptops, etc, the Service Provider shall:
 - 2.1.1. Adhere to requested security measures such as the use of temporary access files, password protected files, password or biometric protected or encrypted devices, device tracking and remote information deletion;
 - 2.1.2. Delete all market research study data, and any related photos, video/film, or tape recordings, as soon as it is no longer required, or it has been backed up (e.g. to a desktop PC, or a storage device) whichever is earlier;
 - 2.1.3. Not take any screen shots or photographs of market research study data;
 - 2.1.4. Keep the data collected for a market research study separate from data for other market research studies on the same device (i.e. keep the data for each study in a separate file and keep each file in a separate folder, and in a separate location on the device from other market research data files);
 - 2.1.5. Securely store the portable devices when not in use e.g. on secured premises, and within a locked cabinet or safe.

3. Incidents
 - 3.1. Device Theft
 - 3.1.1. If any device holding KLA data is stolen, the Service Provider shall report the theft to KLA immediately and will advise what KLA data was held on the device.
 - 3.1.2. The Service Provider shall promptly open a case with the police, and within two (2) Business Days following the theft shall supply KLA with a written report of the Incident, which will include the police case number.
 - 3.2. Other Incidents
 - 3.2.1. The Service Provider shall:
 - 3.2.1.1. inform KLA immediately and by any means in the event the Service Provider becomes aware of an Incident; and
 - 3.2.1.2. notify KLA in writing within forty-eight (48) hours after becoming aware of an Incident; and

- 3.2.1.3. undertake to correct the Information System vulnerability and correct and/or mitigate any Incident; and
- 3.2.1.4. notify KLA of the corrective measures taken and the effectiveness of those measures.
- 3.2.2. KLA and the Service Provider agree to work together in order to determine the origin of an Incident, and to eliminate or mitigate the consequences of the Incident.

4. Where the Service Provider is a medium to large business it shall:

- 8.5. identify, maintain and enforce an Information System security policy;
- 8.6. have a business continuity plan to set out the technical, organizational and procedural measures to be taken in the event of an Incident or a disaster, to ensure the continuity of the Information System;
- 8.7. provide a single point of contact to KLA deal with any issues related to the security of Information Systems;
- 8.8. maintain an operable traceability system (and ensure its integrity) to cover the previous period of twelve (12) months, so that the traces of any actions carried out on its Information System used as part of the Services can be reconstituted for control, audit, and evidence purposes;
- 8.9. ensure that a network firewall is in place to protect the Information System;
- 8.10. ensure that its Information System has up-to-date virus protection software in place;
- 8.11. promptly apply the updates and patches recommended by the hardware and software solution providers for all software and hardware in the Information System;
- 8.12. where there is an emergency (e.g. virus attack or critical flaw), apply the update or patch within 24 hours of being notified by the hardware or software solution provider. Where no update or patch is available, the Service Provider will undertake the temporary workaround advised by the hardware or software solution provider;
- 8.13. prior to applying a patch or an update, perform a specific system and data backup;
- 8.14. where requested by KLA, comply with good practice for Information Security documentation or policies for protection of information, or safety regulations, that may be provided by KLA (e.g. originating from a KLA client), to the extent reasonably possible and as appropriate to the size and nature of the Service Provider's business;
- 8.15. provide that the Information System data pertaining or related to the Services is accessible, usable, and available to KLA on request; and
- 8.16. where the Service Provider uses encryption to protect the Information System data, it shall do so in accordance with any applicable legislation or regulations and provide supporting documentation to KLA on request.