

GENERAL TERMS & CONDITIONS OF CONTRACT

1. DEFINITIONS

In this Agreement, the following words and expressions shall bear the meanings assigned to them hereunder:-

- 1.1. **"Agreement"** means this written and/or electronic document together with all written appendices, annexures, exhibits or amendments attached to it from time to time;
- 1.2. **"Business Day"** means any Day other than a Saturday, Sunday or recognised public holiday in the Republic of South Africa;
- 1.3. **"Client"** means the party with whom Ornico has entered into this Agreement;
- 1.4. **"Clipping"** means an excerpt taken from any Media;
- 1.5. **"Commencement Date"** means the date as stated in the Application Form, to which these terms and conditions are attached, and on which date this Agreement becomes enforceable;
- 1.6. **"Data"** means all and any information (whether visual or otherwise), facts and statistics possessed by Ornico, collected for reference or analysis at any relevant time, including but not limited to, Clippings and Meta-data;
- 1.7. **"Day"** means a calendar day, being any day including Saturdays, Sundays and public holidays in the Republic of South Africa;
- 1.8. **"Duration"** means the number of Days between the Commencement Date and the End Date;
- 1.9. **"End Date"** means, subject to any prior expiry or termination in accordance with the terms and conditions of this Agreement, the date as stated in the Application Form, to which these terms and conditions are attached, and on which date this Agreement shall come to an end, unless extended in accordance with the terms and conditions hereof;

- 1.10. **"IP"** means all and any intellectual property rights created by Ornico and/or any third-party in rendering the Services, including without limitation, discoveries; inventions; designs; processes; know-how; technical know-how; research results; works of authorship; Data, databases; trade or business names; domain names; patents and patent applications; rights in any design (registered or unregistered and applications for same); copyright (including rights in computer software and typography rights); confidential and proprietary knowledge and information and any rights protecting same; business goodwill and reputation and rights protecting same; database rights; all methodologies to rate, classify and categorise both Meta-data and Data; the application of these methodologies to the collected Data; and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having an equivalent effect anywhere in the world;
- 1.11. **"Media"** means all main means of mass communication including, but without limitation, television, radio, newspapers, digital, outdoor, magazines and Social Media;
- 1.12. **"Meta-data"** means a set of data that describes and gives information about other data;
- 1.13. **"Ornico"** means Ornico Group (Proprietary) Limited, Registration No 2004/017673/07;
- 1.14. **"Parties"** means Ornico and the Client collectively and "Party" shall mean either of them;
- 1.15. **"Services"** means the services to be provided by Ornico to the Client in terms of this Agreement, as set out in the Service Level Agreement attached hereto as **Annexure A**;
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- 1.16. "VAT" means value-added tax as defined in the VAT Act No 89 of 1991;
- 1.17. In these Terms and Conditions, words importing one gender shall include the other gender, and words importing the singular, shall include the plural (and *vice versa*);
- 1.18. the Headings in the Conditions are for convenience only and are not to be taken into account for the purpose of interpreting this Agreement.

2. COMMENCEMENT AND DURATION

- 2.1. Subject to clause 3, this Agreement shall commence on the Commencement Date and terminate on the End Date.

3. TERMINATION AND RENEWAL

- 3.1. Unless Ornico and/or the Client gives written notice, at least 30 (THIRTY) Days prior to the End Date, of its election to terminate the Agreement on the End Date, this Agreement shall automatically renew for the same Duration immediately after the End Date.
- 3.2. All the provisions of this Agreement shall continue to apply during the period of any renewal in terms of clause 3.1, save that the price of the Services shall increase equal to the percentage increase in the official South African Consumer Price Index (CPI) from the Commencement Date to the End Date.
- 3.3. Clause 3.1 concerning termination and renewal shall apply *mutatis mutandis* to the renewal Agreement.

4. PROVISIONS RELATED TO THE SERVICES

- 4.1. Ornico undertakes to render the Services to the Client in terms of this Agreement.
- 4.2. Within 7 Days before the Commencement Date, Ornico shall furnish the Client with a Media list and the Client shall in writing within 7 Days of receipt thereof:
- 4.2.1. approve the Media list; or
- 4.2.2. request changes to the Media list and may include extra costs.

- 4.3. The Client agrees and acknowledges that should it request changes to the Media list as per 4.2.2:

4.3.1. Ornico shall be entitled at its sole discretion to affect any changes; and

4.3.2. the Client shall notify Ornico in writing of its approval of the amended Media list within 7 Days of receipt thereof.

- 4.4. The Client acknowledges and agrees that it shall acquire ownership of the report only and that it shall have no right or entitlement to the methodology used by Ornico in compiling the report.

- 4.5. The Client acknowledges and agrees that the Data furnished to it by Ornico from time to time in rendering the Services will contain items (such as publicly published Media and Clippings) which are subject to copyright in favour of third-parties and compilations and analyses which are subject to copyright in favour of Ornico and accordingly undertakes that:-

4.5.1. the Data will only be used by the Client and its employees for its own internal research purposes;

4.5.2. upon the termination of this Agreement, the Client will return to Ornico all tangible copies of the Data and erase all electronic or other intangible copies thereof or under its control;

4.5.3. it will not disseminate any portion of the Data to any third-party whomsoever, whether via the Media or otherwise, without the prior written consent of Ornico and the payment of such fee as Ornico may stipulate;

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- 4.5.4. it hereby indemnifies Ornico against any loss or damage, including consequential loss or damage, which Ornico may suffer as a result of a breach of clause 4.2.3 by the Client or its personnel;
- 4.5.5. it will not copy, store or distribute (whether electronically or otherwise) any publicly published Media comprised in the Data, nor amend nor incorporate them or any portion thereof into a larger work (other than for internal purposes) without a copyright license or permission from the publisher or broadcaster;
- 4.5.6. where access to the Data that Ornico collected under this Agreement is provided by the Client to a third-party for any purpose, it shall disclose this to Ornico for approval, as a levy may be applicable.
- 4.6. Prices quoted from time to time by Ornico in respect of the Services are based, *inter alia*, on volumes and are subject to increase in accordance with the official South African Consumer Price Index from time to time. In the event that volumes increase significantly from past trends or additional Services are required to be performed by Ornico, prices will be adjusted accordingly.
- 4.7. Save for IP belonging to third-parties, Ornico is and remains the sole proprietor of the IP as defined in clause 1.10 above and any and all copyright subsisting therein.
- 4.8. Ornico reserves the right to take such steps as it deems necessary to preserve the security and reliable operation of the Data and the Client undertakes not to do or omit to do anything which might compromise such security and/or reliable operation.
- 4.9. Although Ornico shall use reasonable endeavours to provide disaster recovery, Ornico does not specify any recovery time, nor shall Ornico be liable for any loss or

damage of whatever nature incurred or suffered by the Client from any cause whatsoever as a result of Ornico's failure to provide, or delay in providing, or providing only partial, disaster recovery. The Client is accordingly advised to make back-ups of its publicly published Media, although this recommendation is not to be construed as a representation that any back-ups of publicly published Media implemented by the Client will be successful or will in any way avoid disaster.

- 4.10. Ornico may temporarily suspend its obligations in terms of this Agreement in order to service, repair, maintain, upgrade, modify, alter, replace or improve any of the Services. Where circumstances permit, Ornico shall use reasonable endeavours to provide prior notice of any such suspension to the Client. The Client shall not be entitled to any set-off, discount, refund or other credit in respect of any such suspension of the Services.

5. PAYMENT TERMS

- 5.1. Ornico shall invoice the Client no later than the **7th (SEVENTH)** of every month in respect of the monthly fees and any other fees payable in terms of this Agreement whether in writing and/or by electronic copy and the total owing shall be payable by the Client to Ornico within **30 (THIRTY)** Days of date of invoice. In cases where the relevant Application Form provides for an alternative time frame, payment shall be made in terms of the Application Form.
- 5.2. Notwithstanding clause 5.1, in the event that Ornico fails, for whatever reason, to invoice the client before the **7th (SEVENTH)** of any particular month:

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- 5.2.1. Ornico shall endeavour to invoice the Client as soon as is reasonably possible thereafter; and
- 5.2.2. such failure shall have no effect on the Client's obligations in terms of and arising from this Agreement.
- 5.3. To the extent that the Client works with purchase orders, the Client undertakes:
- 5.3.1. to supply Ornico, within 5 (FIVE) Days of the Commencement Date, with a purchase order for the Services to be delivered for the entire Duration of this Agreement; or
- 5.3.2. to supply Ornico, by no later than the 5th (FIFTH) of every month for the Duration of this Agreement, with a purchase order for the Services to be delivered for that specific month.
- 5.4. Notwithstanding clause 5.3, the Parties may agree in writing that the Client supply Ornico with a purchase order on terms other than those set out herein.
- 5.5. The Client acknowledges and understands that in the event of its non-compliance with clause 5.3:
- 5.5.1. it will have breached this Agreement and Ornico shall be entitled, but not obliged, to rely on and enforce clause 8 of this Agreement, without prejudice to any other rights it may have; and
- 5.5.2. no Services will be delivered by Ornico unless the breach is remedied to the satisfaction of Ornico.
- 5.6. Ornico shall be entitled to increase any charges payable by the Client on **30 (THIRTY) Days'** notice subject to both Parties being in agreement, such charge to be reduced to writing and signed by representatives of both Parties.
- 5.7. The Client shall not be entitled to any set-off, discount, refund or other credit in respect of any suspension or interruption of or delay in the Services, or where in any

particular month the Client has utilised less Data than that originally specified.

- 5.8. Ornico shall be entitled in its sole discretion to appropriate any amounts received from the Client towards the payment of any debt or amounts owing by the Client to Ornico in terms of this Agreement.
- 5.9. Should the Client fail to pay any amount owing to Ornico on due date, Ornico shall be entitled, in its discretion and without prejudice to any other rights which it may have, to cancel this Agreement on written notice to that effect to the Client, or to suspend performance of its obligations pending payment in full by the Client.

6. DISCLAIMERS

- 6.1. The Client shall have no claim against Ornico and the Client hereby indemnifies and holds Ornico harmless in respect of any liability for loss or damage:-
- 6.1.1. caused by or arising from any fact or circumstance beyond the reasonable control of Ornico; or
- 6.1.2. caused by or arising from the hosting and/or publication of the Client's content as well as any other Data; or
- 6.1.3. caused by or arising from inaccurate content and/or Data;
- 6.1.4. if such loss or damage is consequential or incidental; or
- 6.1.5. caused by or arising from any downtime, outage, interruption in or unavailability of the server or the Services as a result of or attributable to any of the following causes:-
- 6.1.5.1. software service, repairs, maintenance, upgrades, modification, alterations or replacements;

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6.1.5.2. system downtime for any reason (including, but not limited to, service, repairs, routine maintenance, agreed maintenance, environmental maintenance, upgrades, modifications, alterations, replacements or a relocation of business premises);

6.1.5.3. any breakdown of whatever nature and howsoever arising in any of the Services provided by Telecom Service Providers (including, but not limited to, line failure) or in any international services or remote mail servers;

6.1.5.4. the non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks to which the server or the Ornico network is connected;

6.1.5.5. any infringement of the Client's rights of privacy and/or any other similar rights (including those of any other person or entity), by any person whomsoever arising from the implementation of the provisions of this Agreement;

6.1.5.6. any breach of security by any third-party or any breach of confidentiality by a third-party or otherwise arising from any access howsoever obtained by a third-party to the Client's information, Data or content;

6.1.5.7. the damage, contamination or corruption of any kind of the server or any of the Client's Data, material, information and/or content howsoever occasioned;

6.1.5.8. the service, repairs, maintenance, upgrades,

modification, alterations or replacement of hardware forming part of the server or any faults or defects of whatever nature in the hardware;

6.1.5.9. any service, repairs, maintenance, upgrades, modification, alterations, replacement or work of any nature done on the server by any third-party.

6.2. Ornico accepts no responsibility for any of the standards of any Services delivered if the processors required by the Client differ from the processors stipulated in Ornico's standard operating procedure.

7. LIMITATION OF LIABILITY

7.1. The Parties agree that the maximum liability of Ornico for all proven claims arising as a result of loss or damages suffered by the Client or any cessionary or any third-party claiming through or on behalf of the Client, in connection with this Agreement, due to any act or omission of Ornico or its employees, whether arising under contract, delict, statute or otherwise, shall be limited to the aggregate of fees paid by the Client to Ornico for the Services during the year in which the loss or damages were sustained until the exact date on which the loss or damages were sustained.

7.2. Any claims arising as a result of loss or damages suffered by the Client or any cessionary or any third-party claiming through or on behalf of the Client, in connection with this Agreement, must be instituted in the relevant forum within 6 (SIX) months of the loss or damage occurring, alternatively within 6 (SIX) months of the Client becoming aware of the loss or damage.

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8. BREACH

8.1. In the event of either of the Parties ("the defaulting party") committing a breach of any of the provisions of this Agreement and failing to remedy such breach within a period of **10 (TEN)** Days after receipt of a written notice from the other Party ("the aggrieved party") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either:-

8.1.1. to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations under this Agreement, whether or not the due date for such payment and/or performance shall have arrived; or

8.1.2. to cancel this Agreement as against the defaulting party, in either event without prejudice to the aggrieved party's rights to claim damages.

8.2. Ornico shall be entitled to recover all legal costs incurred by it, including attorney and own client charges, tracing fees and such collection commission as Ornico is obliged to pay to its own attorneys, from the Client. The costs would include, but not be limited to, costs incurred for dispute resolution, debt collection and/or Agreement enforcement, irrespective of whether any action has actually been instituted..

9. GIVING OF NOTICES

9.1. The Parties choose as their respective *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of payments, court process, notices or other documents or communications of whatsoever nature the addresses contained in the Application Form to which these terms and conditions are attached.

9.2. Any notice or communication required or permitted to be given in terms of this

Agreement shall be valid and effective only if given in writing, but it shall be competent to give notice by email, provided receipt is received confirming due completion of transmission.

9.3. Either Party may, by notice to the other, change the physical address chosen as its *domicilium citandi et executandi* to another physical address in the Republic of South Africa, or its email address, provided that the change shall only become effective upon receipt of the notice by the addressee.

9.4. Any notice to a Party which is:-

9.4.1. delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the Day of delivery; or

9.4.2. transmitted by electronic mail to its chosen e-mail address (if any) stipulated in the Application Form, shall be deemed to have been received on the first Business Day succeeding the date of dispatch (unless the contrary is proved).

9.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

10. COMPLIANCE WITH LAWS

10.1. The Client shall comply with all Laws, including all Statutes, Ordinances, By-Laws, Proclamations, Regulations and other enactment, which are required to be complied with by the Client or Ornico for the purposes of this Agreement; and the Client indemnifies Ornico against any loss, damage, costs or other liability incurred by the Client as a result of Ornico failing to comply with any such Law.

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11. PROPER LAW

- 11.1. The validity of this Agreement, its interpretation, the respective rights and obligations of the Parties and/or all other matters arising in any way out of it or its performance or expiration or earlier termination for any reason, shall be determined in accordance with the Laws of the Republic of South Africa as amended from time to time.

12. JURISDICTION

- 12.1. The Parties hereby consent and submit themselves to the jurisdiction of the Magistrate's Court having jurisdiction over its person in respect of all legal proceedings related to this Agreement, notwithstanding that the value of the matter in dispute might exceed the jurisdiction of the Magistrate's Court.
- 12.2. Notwithstanding the foregoing, Ornico shall be entitled to institute any action in terms of or arising from this Agreement in any other Court of competent jurisdiction.

13. GENERAL

- 13.1. In the event that the signatories sign for and on behalf of a Client in respect of the placing of an official contract and/or order and/or documentation in respect of collection/delivery, the signatory is not so authorized, then and in such event, the signatory hereby specifically acknowledges that he shall become personally liable to Ornico and co-principal debtor in *solidum* with the Client in respect of all and any amounts that may become due and payable to Ornico arising out of this Agreement.

- 13.2. The Parties acknowledge and agree that:-

- 13.2.1. this Agreement constitutes the entire contract between them and that no

Party shall be bound by any express or implied terms, provisions, conditions, stipulations, representations, warranties, promises, or the like not recorded in this Agreement. In the event that any additional terms and conditions are agreed to by the Parties that conflict with the terms of this Agreement, this Agreement shall take precedence;

- 13.2.2. no relaxation, extension of time, latitude or indulgence which either Party ("the grantor") may show, grant or allow to the other ("the grantee") shall in any way constitute a waiver by the grantor of any of the grantor's rights in terms of this Agreement and the grantor shall thereby be prejudiced or estopped from exercising any of its rights against the grantee which may have then already arisen or which may arise thereafter;

- 13.2.3. no alteration, variation, amendment or purported consensual cancellation of this Agreement or this clause 13.2.3 or any deletion therefrom shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties;

- 13.2.4. this Agreement, if signed by both Parties in electronic form or by electronic means shall be valid;

- 13.2.5. they have undertaken to each other to do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the provisions, terms, conditions and import of this Agreement;

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13.2.6. the Client shall not be entitled to cede, assign or otherwise transfer any of its rights, interest or obligations under and in terms of this Agreement without the prior written consent of Ornico;

13.2.7. Ornico shall be entitled, at its discretion, to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this Agreement without the prior written consent of the Client.

The Client acknowledges that the provision of the Services and products after acceptance of the application is subject to these terms and conditions and that the general terms and conditions and the terms and conditions relating to specific products are incorporated and form part of the Agreement between Ornico Group (Pty) Ltd and the Client. The Client has read and understood the terms and conditions contained herein and agrees to be bound by such terms and conditions and the terms and conditions relating to the specific products, if any.

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ACKNOWLEDGEMENT

The Client acknowledges that the provision of the Services and products after acceptance of the application is subject to these terms and conditions and that the general terms and conditions and the terms and conditions relating to specific products are incorporated and form part of the Agreement between Ornico Group (Pty) Ltd and the Client. The Client has read and understood the terms and conditions contained herein and agrees to be bound by such terms and conditions and the terms and conditions relating to the specific products, if any.

Thus done and signed at _____ on this the _____ day of _____

CLIENT [Print name who is duly authorized to sign]

SIGNATURE [who is duly authorized to sign]

Thus done and signed at _____ on this the _____ day of _____

ON BEHALF OF ORNICO [Print name who is duly authorized to sign]

SIGNATURE [who is duly authorized to sign]