

# Terms and Conditions

## 1. INTRODUCTION

- 1.1 **The Data Factory** (hereinafter referred to as **DF**) and **CLIENT** wish to enter into an agreement whereby DF shall perform one or more of the following services:
  - 1.1.1 Trace Member/Beneficiary;
  - 1.1.2 Obtain correct and complete Documentation;
  - 1.1.3 Send a form/letter to member/beneficiary;
  - 1.1.4 Verify Bank Account ownership and details;
  - 1.1.5 Facilitate payment of monies to member or beneficiary;
  - 1.1.6 Send payment confirmation notification to member/beneficiary
- 1.2 **CLIENT** shall supply **DF** with predetermined data of individuals for the aforementioned;
- 1.3 The parties shall provide the necessary support to the other party in order to achieve the stated objective of this agreement;
- 1.4 It is specifically recorded that these terms and conditions represent generic terms and conditions for all **DF** services and will be applicable where no separate service contract for specific service has been concluded;
- 1.5 These terms and conditions will be superseded by a separate service contract;
- 1.6 A **CLIENT** will be deemed to have agreed to these terms and conditions unless written communication is received prior to the commencement of the relevant **DF** service;
- 1.7 In the absence of a separate service contract, all information relating to fees, processes and service levels as contained within proposals and/or emails sent to the **CLIENT** shall be deemed to form part of these terms and conditions.

## 2. DUTIES AND RESPONSIBILITIES OF DF

- 2.1 **DF** shall indemnify **CLIENT** against any actions instituted against **CLIENT** or losses incurred directly as a result of a breach in this agreement, however the **CLIENT** recognizes that the ability for DF to correctly perform under this agreement is directly related to the completeness and integrity of the data provided by **CLIENT**;
- 2.2 **DF** shall undertake all reasonable processes to trace, identify, communicate and obtain required information of provided individuals;
- 2.3 With respect to **CLIENT** instructions involving Tracing, **DF** does not warrant a success rate per individuals submitted to **DF**. For the purposes of this agreement, success shall mean providing **CLIENT** with confirmed contact details;
- 2.4 **DF** shall submit an invoice to **CLIENT**, together with supporting documentation and submissions to **CLIENT** of individuals contacted, information confirmed, bank accounts verified and/or individuals paid during the previous month on a monthly basis;
- 2.5 **DF** shall maintain an electronic audit trail, together with electronic copies of all forms completed by an individual for the duration of this Agreement, which shall be made available to **CLIENT** upon 72 hours written notice;
- 2.6 In the event that **CLIENT** cancels the instruction to perform the services outlined under this agreement within a 90 day period of receiving original instruction under clause 1.2, DF reserves the right to deem the service as having been completed and relevant fees may apply;

## 3. DUTIES AND RESPONSIBILITIES OF CLIENT

- 3.1 **CLIENT** shall provide **DF** with every electronic file submitted to **DF**:
  - 3.1.1 A completed batch information form that will be provided by **DF** for **CLIENT** to complete;
  - 3.1.2 A letter from **CLIENT** confirming the appointment of **DF** which can be forwarded to members if required;
  - 3.1.3 Any prescribed oral communication script required during communication with an individual traced under this agreement;
  - 3.1.4 Details of how **CLIENT** requires **DF** to deal with members that are found to be deceased.

## 4. PAYMENT TERMS

- 4.1 **CLIENT** shall pay **DF** the fees as outlined under proposal or separate email and agreed with client
- 4.2 All fees quoted are exclusive of Value Added Tax;
- 4.3 **DF** shall submit an invoice to **CLIENT** on a monthly basis;
- 4.4 All invoices shall be payable within 30 days of receipt by **CLIENT**;
- 4.5 Where the **CLIENT** pays and **DF** receives payment within 15 (fifteen) days of an invoice date, TDF shall apply a discount of 3% (three percent) of the total invoice;

4.6 No discount shall be applicable where **CLIENT** has not paid in full any invoices which have an earlier invoice date and/or late payment interest remains outstanding;

4.7 DF reserves the right to charge interest calculated at 20% per annum (pro rata) where payment is received outside payment terms outlined under 4.4;

4.8 Unless otherwise instructed by **CLIENT**, if an individual is found to be deceased then all of the above fees will apply, however the contact details provided will be those of the next of kin.

## 5. CONFIDENTIALITY

5.1 Confidential information shall, for the purposes of this Agreement include, without limitation, any **CLIENT**, member, beneficiary or DF confidential and business information, any commercial and process information, know-how, trade secrets, technical and specifically includes the details of THE **CLIENT**'s beneficiaries and members, communicated to the receiving party or required by the receiving party from the disclosing party during the course of operations contemplated in this agreement.

5.2 The Parties agree that:

5.2.1 They will not, during the term of this Agreement or thereafter into perpetuity, disclose the confidential information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this Agreement.

5.2.2 that the unauthorised disclosure of the confidential information to a third party may cause irreparable loss, harm and damage to the disclosing party, accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, action, expense, claim, harm or damage of whatever nature suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of this Agreement.

5.2.3 Not to utilise, exploit or in any other manner whatsoever use the confidential information disclosed pursuant to the provisions of this Agreement for any purpose whatsoever otherwise than as contemplated in this Agreement, without the prior written consent of the disclosing party;

5.3 The parties agree that they shall protect the confidential information disclosed pursuant to the provisions of this Agreement, using the same standard of care that each party applies to safeguard its own proprietary, secret or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

## 6. ARBITRATION

6.1 Any dispute arising from or in connection with this Contract shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA"), by an arbitrator who is agreed to between the parties, or failing agreement within 7 (seven) days of the dispute arising, an arbitrator or arbitrators appointed by the president of AFSA.

6.2 Nothing in this clause shall prevent any party from obtaining urgent and interim relief in the courts pending the outcome of the arbitration.

## 7. AMENDMENTS

7.1 No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless reduced to writing and signed by, or on behalf of the parties.

## 8. GOVERNING LAW

8.1 This Agreement, and the relationships of the parties in connection with the subject matter of this Agreement, shall be governed and determined in accordance with the laws of the Republic of South Africa.

## 9. JURISDICTION

9.1 The parties hereby submit themselves to the exclusive jurisdiction of the Cape Town Local Division of the High Court of South Africa.

## 10. BREACH

10.1 Subject to any provision of this Agreement specifically providing for the remedy of any breach, should **DF** on the one hand, or **CLIENT** and/or the Trustees on the other hand, ("the defaulting party") commit a breach of any of the terms and conditions of this Agreement or any of the warranties incorporated herein and fail to remedy such breach within 14 (fourteen) days after receipt of written notice by the other party calling upon the defaulting party to do so, the other party shall be entitled without prejudice to any of the Parties' rights in law, to cancel this Agreement or to claim specific performance, in either event .

## 11. DURATION OF AGREEMENT

- 11.1 The Agreement shall remain in force for a period of 12 (Twelve) Months;
- 11.3 The Agreement shall automatically renew for a further period of 12 (Twelve) Months, unless either party provides notice at least 2 (Two) Months prior to the expiry of the period referred to in clause 11.2.