



STANDARD TERMS AND CONDITIONS
Non - Assurance Services

Document reference:

<https://www.bdo.co.za/en-za/legal-privacy/terms-and-conditions-of-engagement>

Version: 3.00 Dated: 25 January 2023

1. INTRODUCTION & EXPLANATION

These standard Terms and Conditions apply to the services to be rendered, provided or created by BDO, as the case may be, to the Client and is incorporated by reference hereto in the Engagement Letter countersigned by the Client.

The Agreement shall commence on the Effective Date and shall, unless the Engagement Letter stipulates otherwise, is extended, or is terminated earlier will terminate once the Services have been rendered by BDO and all Fees, Vat and Expenses have been paid by the Client.

2. INTERPRETATION

This Agreement shall be governed and interpreted in accordance with South African law as follows.

2.1 Words and phrases used in this Agreement that are defined in any statute or regulations shall be construed in accordance with the applicable statute or regulation.

2.2 Headings shall be read for convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof

2.3 Words shall be gender neutral, the singular shall include the plural, natural persons shall include other legal persons (corporate or un-incorporate) and the State and vice versa

2.4 The provisions of this Agreement are severable. Any provision which is or may become unenforceable shall be ineffective to the extent of its unenforceability and shall be treated as if not written and severed without invalidating the remaining provisions.

2.5 References to statute, regulation or other legislation shall be a reference to the same as at the Effective Date, and as amended or substituted from time to time thereafter.

2.6 Words such as “include”, “in particular” etc. denote examples or emphasis and shall not be construed as limiting the generality of any preceding words.

2.7 The rule of construction that a contract shall be interpreted against the Party principally responsible for the drafting or preparation of the contract, shall not apply.

2.8 Any annexures and/or document referred to in this Agreement shall be deemed to be incorporated herein and in the event of a conflict, the provisions of this Agreement shall prevail.

2.9 Any provisions of this Agreement which either expressly or by its nature extends beyond the expiration or termination of this Agreement shall survive such expiration or termination.

2.10 Any substantive provision imposing rights or obligations, notwithstanding that it is in a definition clause, shall have effect as if it were a substantive provision in the body of this Agreement.

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

2.12 When any number of days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day.

3. DEFINITIONS

For purposes of the Engagement Letter and these standard Terms and Conditions, the following words and/or phrases will, unless the context clearly indicates otherwise, have the meanings set out below:

3.1 **'Agreement'** means the Engagement Letter, these Terms and Conditions and the Client Personal Information Privacy Notice (read with any other document referred to in either) or any amendments thereto properly effected in accordance herewith.

3.2 **'Associate'** means in relation to:

3.2.1 any company, any other company that is its Subsidiary, Holding Company or a Subsidiary of its Holding Company; or

3.2.1 any person (including a company, partnership or trust), any other person over which, or over the management of which, control can be or is exercised directly or indirectly by persons who can or do also exercise control directly or indirectly over that person or its management

3.3 **'BDO'** or **'we'** or **'us'** or derivatives thereof means the BDO contracting party identified in the Engagement Letter.

3.4 **'BDO Member Firms'** means those firms considered a BDO member firm, both locally and internationally, by virtue of a license or other Agreement with BDO International Limited, with 'BDO Member Firm' meaning any one of them.

3.5 **'BDO Persons'** means BDO and, where applicable, each and all of BDO's directors, employees, sub-contractors as the case may be, together with any other natural or juristic person, association, partnership, trust or other entity controlled or owned, directly or indirectly, by BDO or Associated with BDO, including, where applicable, BDO Member Firms, and each and all of its directors, employees and agents, with 'BDO person' meaning any one of them.

3.6 **'Business Day'** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa.

3.7 **'Client Personal Information Privacy Notice'** means the written Client Personal Information Privacy Notice, read together with these standard Terms and Conditions and Engagement Letter which are incorporated by reference explicitly, and which serves to notify the client when we collect personal information as anticipated in terms of section 18 of POPIA.

3.8 **'Colleagues'** or **'a colleague'** means collectively or individually, BDO Persons who are not members of the Engagement Team.

3.9 **'Confidential Information'** means the Information of the Parties which is deemed or designated by either of them to be confidential and/or proprietary and includes:

3.9.1 information which affords the Discloser a competitive advantage and includes its trade secrets, ideas, processes, formulas, computer software and information systems (whether developed in-house or operated under licence), data and know-how, copyrightable material, improvements, inventions (whether patentable or not), techniques, marketing plans, strategies, business and product development plans, timetables, forecasts and details and particulars in regard to its suppliers, (potential) customers and business associates, products and services (past, current and prospective), business or technical information, product plans, product designs, product costs, pricing structures and strategies, product names, finances and/or

- financial results, business opportunities, research, staff and development.
- 3.9.2 Information is not readily available in the normal course of business to a competitor or the public and/or under the circumstances would reasonably be deemed to be confidential and has not lawfully been made public or entered the public domain through lawful and authorised means.
- 3.10 **'Control'** will bear the meaning assigned to it in Section 2 of the Companies Act 71 of 2008.
- 3.11 **'CPA'** means the Consumer Protection Act, No 68 of 2008
- 3.12 **'Data Protection Law'** means the POPIA and the GDPR and all other applicable laws in relation to Personal Information/Personal Data (or the equivalent).
- 3.13 **'Deliverable'** refers to anything in writing or otherwise tangible (whether in hard copy or electronic format) created or prepared by BDO for the Client as part of the Services
- 3.14 **'Discloser'** means either BDO or the Client, as the case may be, who is disclosing Confidential Information to the Receiver
- 3.15 **'Effective Date'** means the date on which BDO commences rendering the Services to the Client or the date of written acceptance by the Client of the Engagement Letter, whichever is the earlier date.
- 3.16 **'Engagement'** means the Services to which this Agreement relates.
- 3.17 **'Engagement Letter'** means the written Engagement Letter (which includes any annexures, schedules, additional terms related to the Engagement) read together with these standard Terms and Conditions, which are incorporated by reference explicitly and which defines the terms of the engagement between us and you with respect to our Services.
- Any modification or variation to the Engagement Letter must be in writing and signed by an authorised representative of each of us. For the avoidance of doubt and in amplification of the immediately preceding clause, any modification of the Engagement Letter will include any modification of these standard Terms and Conditions and *vice versa*. No variation of the Engagement Letter will be of any force or effect, unless reduced to writing and signed by all the signatories thereto. By implication, no variation of these standard Terms and Conditions will be of any force or effect, unless reduced to writing and signed by all the signatories thereto.
- In the event of any inconsistency between the Engagement Letter and these standard Terms and Conditions, the Engagement Letter will prevail. In the event of any inconsistency between these standard Terms and Conditions and additional terms that may apply, the additional terms shall prevail.
- 3.18 **'Engagement team'** means collectively or individually, the BDO persons who are involved in delivering the services.
- 3.19 **'Entity'** means any juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate and any similar entity.
- 3.20 **'Expenses'** mean the actual costs incurred by BDO reasonably necessary for the successful completion of the Services, including but not limited to disbursements, travelling, accommodation, subsistence, communication, stationery, administration, photocopying, printing, report and presentation material, secretarial time and charges related to goods and services purchased on the Client's behalf.
- 3.21 **'Fees'** means the fees charged by BDO for the Services as set out in the Engagement Letter (or addendum thereto) or as agreed upon between the Parties, which excludes VAT and Expenses.
- 3.22 **'Force Majeure'** means any event beyond the reasonable control of the Party ('the Affected

- Party) claiming the occurrence of force majeure:
- 3.22.1 the occurrence of which could not have been reasonably foreseen at the date of the execution of this Agreement; and
- 3.22.2 includes, but is not limited to, war whether declared or not, revolution, riot, strikes or other protestor action, insurrection, civil commotion, invasion, armed conflict, the failure of suppliers or contractors, hostile act of foreign enemy, act of terrorism, sabotage, radiation nor chemical combination, ionizing radiation, act of God, plague or other serious endemic, epidemic or pandemic or any governmental action related to any of the foregoing.
- 3.23 **'GDPR'** means the EU General Data Protection Regulation (EU) 2016/679
- 3.24 **'Holding Company'** shall have the meaning defined in Section 1 of the Companies Act No 71 of 2008.
- 3.25 **'IESBA'** means International Ethics Standards Board for Accountants
- 3.26 **'Information'** means any information as generally understood, including Confidential Information, source codes, reports, notes, working papers, emails, designs, techniques, models, templates, generalised features of the structure, sequence and organisation of software, user interfaces, screen designs, general purpose consulting and software tools, utilities and routines logic, coherence and methods of operations systems; methodologies, documents, presentations, data technologies, programmes, processes, records and facts, whether in hard copy or electronic format;
- 3.27 **'Intellectual Property'** means all Information of a proprietary nature in relation to the technology, business, products, processes, services or operations of a Party, including any patent, trademark, logo or design, which has been registered or is capable of being registered in any national or international intellectual property office or association, as well as any copyrightable works, trade secrets and know-how.
- 3.28 **'Other beneficiaries'** means any and each person or entity whose activities you may control, or any other organisation or entity Associated with you, if any such person or organisation is identified in the Engagement Letter as a recipient or beneficiary of the services or any product thereof and any and each person or organisation which we and you agree may be so treated.
- 3.29 **'Party/Parties'** means BDO or the Client individually or collectively as the context may require
- 3.30 **'Personal Information/Personal Data'** shall have the meaning set out in POPIA and GDPR respectively, as amended from time to time, or such other legislation, as may become applicable to the protection of Personal Information/Personal Data (or the equivalent).
- 3.31 **'POPIA'** means the Protection of Personal Information Act No 4 of 2013
- 3.32 **'Professional Advisors'** means the Client's duly appointed attorneys, auditors and other professional or Transaction advisors from time to time.
- 3.33 **'Receiver'** means either BDO or the Client, as the case may be, who is receiving Confidential Information from the Discloser.
- 3.34 **'Services'** means the services to be delivered by BDO in terms of the Engagement Letter and if applicable, those additional services required by you from us. Services shall be deemed to include any deliverables and work/s.
- 3.35 **'Staff'** has the meaning assigned to "employee" in terms of Section 78 of the Labour Relations Act, No 66 of 1995
- 3.36 **'Subsidiary'** shall have the meaning defined in Section 1 of the Companies Act No 71 of 2008.

- 3.37 **'Subsequent Event'** means an event which occurs after the completion of the Services.
- 3.38 **'Term/s'** means the terms contained in this Agreement and any annexure or schedule thereto
- 3.39 **'VAT'** means value-added tax as described in the Value-Added Tax Act 89 of 1991, as amended.
- 3.40 **'Work/s'** means the work that BDO conducts, creates or prepares either alone, with the support of any subcontractors, member firm or with the Client in rendering the Services, which work includes Deliverables, processes, procedures, investigations, notes, working papers, recordings, models, advice, findings or recommendations, whether in draft or final form, in writing or orally.
- 3.41 **'You'** (and derivatives thereof) or **'the Client'** means the contracting party or parties identified in the Engagement Letter, collectively or individually, as the case may be and includes any additional personal or entity who agrees expressly to be bound by this Agreement, being the Client of BDO.
- 4. ACCEPTANCE AND THE RELATIONSHIP BETWEEN THE PARTIES**
- 4.1 The Parties are independent persons, and the Staff of one shall not be the Staff of the other. Save to the extent otherwise provided for in the Engagement Letter, neither Party shall act as the agent of the other, and neither Party shall have the authority, or represent that it has the authority, to bind the other Party.
- 4.2 Nothing in this Agreement shall be construed as:
- a) constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 66 of 1995; or
- b) creating a partnership, consortium or joint venture arrangement between the Parties, and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party, unless such has been expressly agreed between the Parties and recorded in writing.
- 4.3 The Parties acknowledge that they may from time to time conclude other agreements unrelated to this Agreement.
- 4.4 The Parties agree that all other agreements entered between them shall be separate and independent, and rights and obligations existing under any other agreement between them will not result in rights and obligations under this Agreement. Nothing in this Agreement shall be construed as creating an exclusive relationship between BDO and the Client
- 4.5 No Party shall be entitled to enforce its rights in such other agreements by withholding performance or applying set-off under this Agreement, or vice-versa.
- 4.6 The CPA will only be applicable in as far as the Act requires and all terms herein will be amended in accordance there with where relevant.
- 5. PROFESSIONAL OBLIGATION TO RESPOND TO NON-COMPLIANCE WITH LAWS AND REGULATIONS ('NOCLAR') IN TERMS OF the International Ethics Standards Board for Accountants ("IESBA Code")**
- 5.1 We have a professional obligation to act in the public interest, and to act in order to:
- a) enable you to rectify, remediate or mitigate the consequences of any identified or suspected non-compliance with laws or regulations as described in the IESBA Code; or
- b) deter the commission of the non-compliance or suspected non-compliance with laws or regulations where it has not yet occurred.
- 5.2 Non-compliance with laws or regulations ('non-compliance') comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, by management or by other individuals working for or under the direction

- of a client which are contrary to the prevailing laws or regulations.
- 5.3 Where we encounter non-compliance or suspected non-compliance, we will seek to obtain an understanding of the matter. Where appropriate, we will discuss the matter with you at the appropriate level of management, or those charged with governance in order that such persons can take appropriate action to rectify, remediate or mitigate the consequences of the non-compliance, deter the commission of non-compliance where it has not yet occurred or disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest, having regard to the appropriateness of the response of management and, where applicable, those charged with governance and other relevant factors in accordance with the Code.
- 5.4 We, in encountering non-compliance or suspected non-compliance, are also obliged to comply with applicable legislation or professional standards, which may require us to disclose the matter to an appropriate authority, including the reporting of reportable irregularities.
- 5.5 We also have a professional responsibility to consider whether your response to the instance of non-compliance or suspected non-compliance is adequate and may determine that further action is necessary. Such further action may include, among other actions, the disclosure of the matter to an appropriate authority. We will disclose the matter to an appropriate authority only where, in the professional judgement of the engagement partner, the extent of the actual or potential harm that is or may be caused to you, investors, creditors, employees or the general public is sufficient to justify the disclosure.
- 5.6 In exceptional circumstances, we may be required to immediately disclose the matter to an appropriate authority where we have become aware of actual or intended conduct that we have reason to believe would constitute an imminent breach of law or regulation that would cause substantial harm to you, investors, creditors, employees or the general public. In such circumstances we will discuss the matter with the management or those charged with governance, where it is appropriate to do so.
- 6. DETECTION OF FRAUD, BRIBERY AND CORRUPTION AND/OR CORRUPT ACTIVITIES**
- 6.1 BDO undertakes that it will, throughout the duration of this Agreement:
- 6.1.1 Comply with (and shall procure that each person Associated with BDO who is performing under this Agreement shall comply with) all applicable South African anti-bribery laws, statutes, regulations, directives or by-laws, (“the Anti-Bribery Laws”)
- 6.1.2 In respect of the performance of this Agreement have and maintain in place throughout the duration of this Agreement, its own policies and procedures, to ensure compliance with the Anti-Bribery Laws (and shall procure that persons Associated with it in connection with this Agreement, or other persons who are performing services on its behalf in connection with this Agreement shall have, and shall maintain, such policies and procedures).
- 6.1.3 Be responsible for (and shall ensure) the observance, performance and compliance with Anti-Bribery Laws by each person Associated with BDO who is performing in terms of this Agreement; and
- 6.1.4 Immediately report to the Client
- a) any knowledge or suspicion of any violations by BDO, its officers, employees or any person Associated with it of any Anti-Bribery Laws; or
- b) any requests or demands for any undue financial or other advantage of any kind received by BDO in connection with the Client’s continued business.

- 6.2 The Client warrants and represents that neither It nor any of its officers, employees or, having made reasonable enquiries, so far as it is aware, other persons Associated with it in connection with this Agreement:
- 6.2.1 have been convicted of any offence involving bribery, corruption, fraud or dishonesty.
- 6.2.2 have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Anti-Bribery Laws; or
- 6.2.3 have been involved in any activity which may violate the Anti-Bribery Laws in respect of the conduct of business process and/or negotiation that resulted in the award of transaction and/or this Agreement.
- 6.3 Any infringement of any applicable Anti-Bribery Law and/or any breach of the foregoing provisions of this clause by either Party shall be a breach of a material term of this Agreement.
- 6.4 Without prejudice to either Party's rights or remedies in terms of this Agreement, either Party shall be entitled to terminate this Agreement with immediate effect upon written notice to the other Party.
- 6.5 The Parties are committed to working in an ethical and professional manner and in compliance with all laws that apply to this Agreement.
- 7. SUBSEQUENT EVENTS**
- 7.1 Once we have issued our deliverable/s and have completed our Services which has been accepted by the Client, BDO shall have no further responsibility to the Client to:
- a) amend or update the Deliverable.
- b) to monitor or identify the occurrence of any Subsequent Event or its impact on the Services or Deliverables.
- 8. PROCESSING AND TRANSFER OF PERSONAL INFORMATION/PERSONAL DATA**
- 8.1 Where necessary to enable us to deliver the Services, you may provide us with, or we may have access to, Personal Information/Personal Data relating to an identifiable natural person, and where applicable, an identifiable juristic person.
- 8.2 In making Personal Information/Personal Data available to us, you confirm that you have complied with applicable Data Protection Law.
- 8.3 We agree that if we process Personal Information/Personal Data on your behalf in the performance of the Services, we will:
- a) Only process the Personal Information/Personal Data on your documented instructions save where required by law or the order of competent court or tribunal.
- b) Ensure that Personal Information/Personal Data is processed in accordance with applicable Data Protection Law and any other relevant laws and where we act as a processor, notify you if any instruction infringes any Data Protection Law to which we are subject to.
- c) Take all reasonable steps to ensure that the Personal Information/Personal Data is protected against misuse and accidental loss or disclosure, and from unauthorised or unlawful processing, destruction or alteration, and in case of any Personal Information/Personal Data breach (as defined by applicable Data Protection Law) we will notify you without undue delay upon becoming aware of it.
- d) Not subcontract our processing of Personal Information/Personal Data, save that we may subcontract and, in doing so, transfer Personal Information/Personal Data, to BDO authorised staff including within BDO Member Firms in other jurisdictions, or third parties who are bound by appropriate confidentiality and security obligations consistent with the terms of this clause, with your prior written consent.
- e) Answer your reasonable enquiries to enable you to monitor our compliance with this clause and provide you with reasonable assistance to

- enable you to comply with applicable Data Protection Laws.
- f) Upon termination or expiry of the Engagement promptly return to you or, if requested by you, destroy all copies of the Personal Information/Personal Data, in which case any right to use, copy or disclose that Personal Information/Personal Data ceases. This shall, however, be subject to legislative, regulatory or internal company policy requirements for the retention of Personal Information/Personal Data for periods of time after the processing has ceased.
- 8.4 Where we process Personal Information/Personal Data that originates from a jurisdiction where the applicable Data Protection Law requires additional safeguards to be put in place for the protection of that Personal Information/Personal Data, or we transfer the latter mentioned information or data from such a country (either to other BDO Member Firms, or third parties) we agree to take such steps reasonably required, including entering into contractual clauses to meet the requirements of applicable Data Protection Law.
- 8.5 If, due to the nature of the Services as described in the Engagement Letter or with your consent, we determine the purpose and means of all or any of the processing of Personal Information/Personal Data, we will comply with applicable Data Protection Laws when we do so.
- 8.6 BDO and each of its subsidiaries have taken all technical and organizational measures necessary to protect the information technology systems used in connection with the operation of BDO's and its subsidiaries' businesses. Without limiting the foregoing, BDO and its subsidiaries have used reasonable efforts to establish and maintain, and have established, maintained, implemented and complied with, reasonable information technology, information security, cyber security and data protection controls, policies and procedures, including oversight, access controls, encryption, technological and physical safeguards and business

continuity/disaster recovery and security plans that are designed to protect against and prevent breach, destruction, loss, unauthorized distribution, use, access, disablement, misappropriation or modification, or other compromise or misuse of or relating to any information technology system or Data used in connection with the operation of BDO's and its subsidiaries' businesses

9. INTELLECTUAL PROPERTY

- 9.1 The Parties record that each Party has prior to this Agreement created, acquired or otherwise obtained rights to its own Intellectual Property. Each Party shall for the duration of this Agreement and thereafter retain the ownership of its own Intellectual Property.
- 9.2 Except where a licence is expressly granted or where ownership is expressly transferred in writing, a Party shall acquire no right or interest in the Intellectual Property of the other Party.
- 9.3 Any developments, modifications, improvements or enhancements to a Party's Intellectual Property arising from the Services will remain the property of that Party.
- 9.4 In the event of either Party requesting the use of the other Party's Intellectual Property outside the scope of the Services or this Agreement will be the subject of a separate Agreement.
- 9.5 Each Party warrants that no aspect of its Intellectual Property lawfully utilised during this Agreement, will infringe the proprietary rights of any third party.
- 9.6 Notwithstanding the above BDO shall always retain all intellectual property rights, including but not limited to copyright, in the product of its' Services, Work and Deliverables, whether oral or tangible, as well as ownership of our working papers and the files created by us during delivering our Services, including electronic documents and files.

- 9.7 To the extent that there are any components of the Client's Intellectual Property included in the Deliverable, BDO hereby grants to the Client, upon full and final payment of all amounts owing to BDO in respect of the Services and Work, a royalty-free, perpetual, world-wide, non-exclusive, non-transferable licence to use such Intellectual Property as an embedded part of the Deliverable only.
- 9.8 Any other Deliverable released to you in any form or medium will be supplied by us on the basis that it is for your benefit and information only and that it will not be copied, referred to or disclosed, in whole (save for your own internal purposes) or in part, without our prior written consent.
- 9.9 The Services shall be delivered on the basis that you will not quote our name or reproduce our logo in any form or medium without our prior written consent. You may disclose in whole any Deliverable to your regulators, bankers and legal and other professional advisers for purposes of seeking advice in relation to the services, provided that when doing so you inform them that:
- a) disclosure by them (save for their own internal purposes) is not permitted without our prior written consent; and
 - b) we accept no responsibility or liability whatsoever; and
 - c) we owe no duty of care to them in connection with the services.
- 9.10 Prior to completion of the Services we may supply oral, draft or interim advice or reports or presentations, but in such circumstances our final written advice or our final written report shall take precedence. No reliance shall be placed by you on any draft or interim advice or report or any draft or interim presentation. Where you wish to rely on oral advice or on an oral presentation made on completion of the services, you will inform us and we shall, where appropriate, supply documentary confirmation of the advice concerned.
- 9.11 We shall not be under any obligation, under any circumstances, to update any advice, report or any other Deliverable, oral or written, for events occurring after the advice, report or product concerned has been issued in final form, unless otherwise specifically agreed upon by mutual consent by you and us in the body of the Engagement Letter.
- 9.12 Any advice, opinion, statement of expectation, forecast or recommendation supplied by us as part of the Services shall not amount to any form of guarantee that we have determined or predicted future events or circumstances.
- 9.13 It may become necessary to change the scope of our Services to include matters you may deem appropriate. You will discuss and agree such changes with us, which will include the payment of any additional fees and the period for provision of any additional services. Significant variations in the scope of our services, at your instance, will be the subject of a supplementary Engagement Letter.
- 10. PROFESSIONAL FEES**
- 10.1 The Client shall in return for the Services pay to BDO the Fees, Expenses and any VAT thereon. BDO shall be entitled to increase the Fees in the event of a change in the scope of the Services.
- 10.2 In the event that the Services are required to be rendered outside the Republic of South Africa, and as a result of which additional taxes or levies become due which are not offset by credits from any revenue authority having authority in the Republic of South Africa and the country where the Services are rendered, the Fee shall be increased by the amount of such additional taxes or levies.
- 10.3 To the extent that any Fees, Expenses or the VAT thereon are dependent on currencies other than the Republic of South African Rand, the Parties agree to share any exchange rate gains or losses.
- 10.4 BDO rates increase on an annual basis. BDO may therefore on written notice to the Client

- increase the Fees on the date on which it typically increases its annual rates.
- 10.5 BDO will invoice the Client from time to time for the Fees due in respect of the Services rendered. All BDO invoices are payable on presentation of its invoice.
- 10.6 BDO may at its sole discretion, charge the Client interest on all due and unpaid invoices at the prime interest rate of its banker as published from time to time, which interest shall be compounded monthly in arrears.
- 10.7 The Parties agree that payments may be affected by electronic transfer of funds or as otherwise agreed to between the Parties. The BDO banking details are set out on its invoices.
- 10.8 All payments made or arising out of this Agreement shall be made free of bank exchange, commission and any deductions, or set-off to the Party entitled to the payment and each Party shall be responsible for the payment of its own taxes.
- 10.9 Should a dispute arise relating to any Fees, Expenses or VAT due to BDO the Client must notify BDO of the disputed amounts and the reasons for the dispute in writing within 21 (twenty-one) Business Days from the date of being presented with the relevant invoice, failing which the Client shall be deemed to have accepted the invoice as correct, due and payable.
- 10.10 Excluding instances where the Client disputes the invoice/s, BDO shall have the right to suspend or terminate the Services during any period in which any Fees, Expenses or VAT are overdue and remain unpaid despite written demand.
- 10.11 Our bank account details will not change during a transaction. If you have any concerns, please speak to us before transferring any money. We will not take responsibility if you transfer money to an incorrect bank account. If you receive an email from BDO requesting your bank details or purporting to amend our bank details, please immediately contact us, or your attorney, as appropriate, by telephone to clarify.
- 11. REFERRAL COMMISSION**
- As a consequence of our relationship with other professionals in various areas of business, we may from time to time receive referral commission from them. Prior to us referring you to such party, our terms of arrangement shall be disclosed to you
- 12. CLIENT RESPONSIBILITIES RELATING TO THE SERVICES**
- 12.1 You shall retain responsibility and accountability for:
- a) The management conduct and operation of your business and affairs.
 - b) Any representations made by You to third parties including published information.
 - c) The maintenance of the accounting records, the preparation of annual financial statements and the safeguarding of your assets.
 - d) The adopted policies and prescribed procedures adhered to for the prevention of errors and irregularities, including fraud and illegal acts.
 - e) The use of, extent of, reliance on or implementation of advice or recommendations supplied by us.
 - f) Making any decision in respect of the Services delivered or any use of the Deliverables.
 - g) The delivery, achievement or realisation of any benefits directly or indirectly related to the Services that require implementation by you.
 - h) Ensuring that all arrangements are made for access, security procedures, virus checks, facilities, licences and/or consents (without any cost to us), where you require us, or the nature of the Services is such that it is likely to be more efficient for us, to perform Services at your premises or use your computer systems or telephone networks.
 - i) Unless expressly agreed upon either in the Engagement Letter provided to you or by way of a separate agreement, vulnerability and penetration testing or cyber security testing

- will not form part of any general controls review performed.
- 12.2 To enable us to perform the services, you shall use your best endeavours to procure and promptly to supply all information and assistance, and access to all documentation in your possession or custody, or under your control, and to personnel under your control, where required by us. Where such information and/or documentation are not in your possession or custody or under your control, you shall use your best endeavours to procure the supply of the information and assistance and/or access to all the documentation.
- 12.3 You shall inform us of any information or developments which may come to your attention during the duration of this Agreement, which might have a bearing on or be relevant to the services we have agreed to provide.
- 12.4 We may rely on any instructions or requests made or notices given, or information supplied, whether orally or in writing, by any person whom we know to be or reasonably believe to be authorised by you to communicate with us for such purposes ('an authorised person').
- 12.5 We may choose to communicate with you by electronic mail where an authorised person wishes us to do so, on the basis that in consenting to this method of communication, you accept the inherent risks of such communications (including the security risks of interception of or unauthorised access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices) and that you shall perform virus checks. As you are however aware, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed or incomplete, or arrive late or otherwise be adversely affected or unsafe to use. Accordingly, whilst we will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically and notwithstanding
- any collateral contract, warranty or representation, neither BDO nor its directors, employees, agents or servants shall have any liability to you on any basis, whether in contract, delict (excluding gross negligence) or otherwise, in respect of any error or omission arising from or in connection with the electronic communication of information to you, and your reliance on such information.
- 12.6 If the communication on which you wish to rely relates to a significant matter and you are concerned about the possible effects of electronic transmission, you should request a hard copy of such communication from us. If you wish us to password-protect all or certain documents transmitted electronically, you should discuss this with us, and we will make appropriate arrangements.
- 12.7 We may receive information from you or from other authorised sources while delivering the services and:
- a) We shall consider the consistency and quality of information received by us.
 - b) We shall not seek to establish the reliability of information received from you or any other information source. Accordingly, we assume no responsibility and make no representation with respect to the accuracy, reliability or completeness of any information provided to us
 - c) We shall not be liable to you for any loss or damage suffered by you arising from fraud, misrepresentation, withholding of information material to the services or other default relating to such material information whether on your part or that of the other authorised information sources.
 - d) You undertake to supply information in response to our enquiries to enable us to comply with our statutory obligations in terms of the Financial Intelligence Centre Act 38 of 2001 and the Prevention of Organised Crime Act 121 of 1998.

13. CONFIDENTIALITY

13.1 Confidential information shall only be used for the purposes intended by the Discloser and for no other purpose whatsoever, the Parties hereby acknowledging:

- a) The proprietary and confidential nature of the Discloser's Confidential Information and that the Discloser is the owner and/or licenced user thereof including all patents, copyrights and other proprietary rights in connection therewith.
- b) that the disclosure thereof to the Receiver grants no licence to make public or use the confidential information for any unlawful or private purpose.

13.2 The Parties undertake, the one in favour of the other:

- a) not to disclose any Confidential Information of the Discloser or any information derived therefrom to any third party (excluding its' Associated parties, sub-contractors and professional advisors).
- b) to use the same degree of care to avoid publication or dissemination of such Confidential Information as a reasonable person would employ with respect to its own Confidential Information which it does not desire to have published or disseminated.
- c) to use all reasonable steps to keep the information which is in physical form (including in electronic form) secure.
- d) unless where the law prohibits such advice, agree to advise the Discloser if requested or compelled by law to disclose any of the Discloser's Confidential Information and agree to comply with the Discloser's reasonable requests as to the terms of any such disclosure.
- e) if compelled by law or institutional authority to disclose the Discloser's Confidential Information, the Receiver undertakes to limit the extent of the disclosure to that expressly required in terms of the relevant law or institutional authority.
- f) not after the date hereof or after the termination date, to divulge or disclose to others either directly or indirectly, any of the Discloser's Confidential Information.

13.3 The foregoing obligations of confidence and non-use shall not apply to public information that was lawfully in the Receiver's possession prior to disclosure by the Discloser (as evidenced by written records) or subsequently comes into its possession (as evidenced by written records) otherwise than through disclosure, provided that neither Party nor the source of such information was subject to any Agreement or other duties imposing confidentiality in respect thereof or was required to be disclosed by law or institutional authority having jurisdiction over the Receiver.

14. KNOWLEDGE AND CONFLICTS

14.1 BDO is obliged to comply with the law, including the rules of all relevant governmental, regulatory, professional or other bodies having the force of law. BDO is required to comply with professional independence rules to maintain its independence as an external auditor when rendering Non-Audit services to and forming business relationships with audit clients. BDO is as a professional services provider further required to ensure that it does not have a conflict of interest when rendering services to its clients.

14.2 BDO and BDO Member Firms renders external audit as well as Non-Audit services. It is therefore a BDO requirement to check for possible conflicts of interest and to ensure auditor independence before entering client relationships, and on an ongoing basis during a client relationship.

14.3 The Client agrees that it has provided BDO all such information that has been requested by BDO for the purposes of checking for conflict of interests to ensure auditor independence and the Client warrants that such information so provided was complete and accurate in all respects.

14.4 The Client agrees that it will immediately notify BDO during the subsistence of this Agreement upon becoming aware of any changes in circumstances which may give rise to a conflict

- of interest or an auditor independence concern.
- 14.5 The Client indemnifies BDO and/or any BDO Persons against all losses, claims, penalties, fines, costs, damages, liabilities and expenses as may be incurred or suffered by BDO and/or any BDO Persons or BDO Member firms, arising out of a breach by the Client of its obligations in terms of 14.3 and 14.4 above.
- 14.6 BDO acknowledges that it has the responsibility of reviewing and considering the effect on its independence of the Information received from the Client with regards to 14.3 and 14.4 above and undertakes to notify the Client of any conflict with the Client's interest or an auditor independence concern on becoming aware thereof.
- 14.7 Should it be deemed by BDO that a conflict or independence concern exists or has come into existence in relation to this Agreement, BDO and the Client shall take all reasonable commercial steps necessary to attempt to resolve such conflict or independence concern.
- 14.8 We shall endeavour to have mechanisms operating between BDO persons designed to facilitate the protection of each client's interests using, inter alia, one or more of the following safeguards: separate teams, geographical separation, and operational independence.
- 14.9 Where it is not reasonably possible to so resolve such a conflict or independence concern, BDO shall in its sole and absolute discretion be entitled to terminate this Agreement, in which event the Client shall not have any claim whatsoever against BDO of any nature.
- 15. FORCE MAJEURE**
- 15.1 No Party shall be responsible to the other for its failure to perform or any delay in performing any obligation under this Agreement (excluding the payment of fees) in the event and to the extent that such failure or delay is caused by Force Majeure.
- 15.2 The Affected Party shall give notice to the other Party immediately upon the occurrence of an event of force majeure.
- 15.3 If the event of Force Majeure is of such a nature that it will:
- a) result in impossibility of performance of an obligation going to the root of this Agreement, the Party not so Affected ("the other Party") shall be entitled on receipt of notice of the force majeure event to terminate this Agreement upon notice to the Affected Party but shall not be entitled to recover any damages which it may suffer as a result of premature termination.
- b) not result in impossibility of performance of the obligation in question but will delay performance, the affected Party shall be entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both Parties; provided that if such force majeure event persists for a period in excess of 10 (ten) Business Days the other Party shall be entitled to terminate this Agreement but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.
- 16. DOMICILIUM CITANDI ET EXECUTANDI**
- 16.1 The Parties select as their respective *Domicilia Citandi et Executandi*, and for the purposes of giving or sending any notice provided for or required in terms of this Agreement, the addresses (including email addresses) as set out in the Engagement Letter, or such other address as a Party elects in writing.
- a) Any notice addressed to a Party at its physical address shall be delivered by hand or by courier.
- b) Any notice shall be deemed to have been given If delivered by hand or courier on the day of delivery or If sent by email, the next Business Day

17. EXCLUSIONS AND LIMITATIONS OF OUR LIABILITY

- 17.1 The maximum liability of BDO in respect of all claims, direct economic loss or damage suffered by you or by other beneficiaries arising out of or in connection with the Services provided under this Agreement, excluding our wilful misconduct, gross negligence and fraud, shall be limited to an amount equal to the Fees paid for the Services and in respect of which the claim arises. The maximum liability shall be an aggregate liability for all claims arising from whatever source and however arising, whether under the law of contract, delict, or otherwise including but not limited to statute.
- 17.2 In the particular circumstances of the services, the liability to you and to other beneficiaries of each and all BDO and BDO persons in contract or delict or under statute or otherwise, for any indirect or consequential economic loss or damage (including loss of profits) suffered by you (or by any such other party) arising from or in connection with our services, however the indirect or consequential economic loss or damage is caused, excluding our wilful or grossly negligent misconduct, will be excluded to the extent that such limitation is permitted by law.
- 17.3 We will not be liable to you or any cessionary or third party claiming through or on behalf of you for any punitive damages whatsoever or for any consequential or other loss or damages beyond the maximum liability specified, to the extent that such an exclusion of liability is permissible in law.
- 17.4 You and other beneficiaries shall not bring any claim personally against any BDO Person in respect of loss or damage suffered by you or by other beneficiaries arising out of or in connection with our services, save as may be expressly permitted in terms of any statute. This restriction will not operate to limit or exclude our liability as a company for the acts or omissions of any BDO Person.
- 17.5 Any claim by you or other beneficiaries must be made within two years of the date on which

you or any other beneficiaries become aware, or ought reasonably to have become aware, of the facts or circumstances giving rise to a claim or potential claim against BDO. For the purposes of this clause a claim will be deemed to have been made upon the service on BDO of any process instituting legal proceedings, or upon the commencement of dispute resolution proceedings in terms of clause 21.3 of these standard Terms and Conditions.

18. BDO MEMBER FIRMS

- 18.1 All BDO Member firms are separate and independent legal entities from one another which cannot obligate each other.
- 18.2 Each BDO Member firm renders professional services in a particular geographic area under licence and is subject to the laws and professional regulations of the country or countries in which it operates.
- 18.3 This Agreement is between you and us only, and the following provisions will apply where, and to the extent, permitted by applicable law:
- 18.4 If one of our colleagues carries out any work for you in relation to our Services to which the Engagement Letter applies, our colleagues will do so as our sub-contractors, with us remaining responsible to you, including for the work carried out by any of our colleagues.
- 18.5 Where appropriate, we may use other BDO Member Firms to assist us with the delivery of our services. Notwithstanding that our Services may be carried out by other BDO Member Firms, assisting us as supplementary providers of services and as sub-contractors, we shall have sole liability, both for our own acts and/or omissions and for all acts and/or omissions of any BDO Member Firm, which are sub-contractors.
- 18.6 You shall bring no claims or proceedings of any nature whatsoever (whether in contract, delict, breach of statutory duty or otherwise) against any BDO Member Firm, which are subcontractors, including, without limitation, BDO International Limited, Brussels Worldwide

- Services BVBA) and/or any other BDO Member Firm in any way arising from, in respect of or in connection with the Services or the Engagement Letter.
- 18.7 These exclusions shall not apply to any liability, claim or proceeding founded on an allegation of fraud or wilful misconduct or other liability that cannot be excluded under applicable laws.
- 18.8 Unless otherwise specified, the benefit of the limitation of liability provisions in the Engagement Letter shall apply equally to us, our colleagues and any BDO Member Firm we may involve as sub-contractors in the delivery of our services.
- 18.9 Any of our colleagues and any BDO Member Firm who we may be involved as sub-contractors in our Services or BDO International entities or other BDO Member Firms shall each have the right to rely on and enforce the provisions of the foregoing clauses as if they were parties to the Engagement Letter.
- 19. THIRD PARTIES AND THIRD-PARTY RIGHTS**
- 19.1 This Agreement shall not create or give rise to, nor shall it be intended to create or give rise to, any third-party rights.
- 19.2 You shall indemnify and hold us and all BDO persons harmless against any loss, damage, expense or liability incurred by us and all BDO persons as result of, arising from any claim made by a third party or any other beneficiaries pursuant to, from or relates to your breach of this Agreement or any provision contained herein.
- 20. BREACH AND TERMINATION**
- 20.1 In the event that there is a breach by any Party of any of the terms of this Agreement, either Party shall be entitled to provide the Party in breach with a written notice of 14 (fourteen) Business Days to remedy such breach.
- 20.1.1 Either Party shall be entitled to terminate this Agreement, where the other Party:
- a) Commits a material breach of any of its obligations under this Agreement which is incapable of remedy; or
- b) Fails to remedy, where it is capable of remedy, or persist in, any breach of any of its obligations under this Agreement after having been required in writing to remedy or defects from such breach within the period of 14 (fourteen) Business Days.
- 20.2 Excluding all other terms in this Agreement related to termination due to breach or force majeure, as the case may be, either party has the right to terminate this Agreement, without prejudice to any other of its rights herein, by providing 30 (thirty) Business Days' written notice to either party.
- 21. DISPUTE RESOLUTION**
- 21.1 Save in respect of those provisions of this Agreement which provide for their own remedies or in respect of disputes which would be incompatible with arbitration, any dispute which arises, and which cannot be resolved by the Parties through negotiation shall be referred to Arbitration in accordance with clause 21.3 below:
- 21.2 Negotiation
- Any dispute which arises shall first be referred to a joint committee comprising of the Chief Executive Officer (or equivalent) or each of the Parties or a suitably authorised alternate or nominee, who will use their reasonable commercial endeavours to resolve the dispute within 20 (twenty) Business Days of the dispute having been referred to them. Should the joint committee be unable to resolve a dispute within that time, any Party shall have the right to demand that the dispute be referred for determination by an arbitrator in accordance with clause 21.3 below.
- 21.3 Arbitration
- 21.3.1 Unless expressly agreed otherwise between the parties, the dispute shall be deemed to

- have been referred to arbitration upon referral thereof to the Arbitration Foundation of Southern Africa ("AFSA") and the filing of the statement of claim.
- 21.3.2 The arbitrator shall be, if the matter in dispute is principally:
- a) a legal matter, a practicing advocate admitted to the bar of at least 10 years standing or a retired judge.
 - b) an accounting matter, a practicing chartered accountant of at least 10 years standing.
 - c) any other matter, an independent person, agreed upon between the Parties to the dispute.
- 21.3.3 The arbitrator shall be appointed by agreement between the Parties, failing Agreement by the Parties within 10 (ten) Business Days after the arbitration has been demanded and at the request of either of the Parties – the arbitrator shall be appointed as follows;
- (a) in the event of an accounting dispute, be nominated by the President for the time being of the South African Institute of Chartered Accountants' ("SAICA") National Council; and
 - (b) in the event of a legal dispute, be nominated by the President for the AFSA.
- If that person fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment and the court is expressly empowered to do so.
- 21.3.4 The arbitrator shall:
- a) have power to open, review and revise any certificate, opinion, decision, requisition or notice relating to all matters in dispute submitted to him and to determine all such matters in the same manner as if no such certificate, opinion, decision, requisition or notice had been issued; and
 - b) be obliged to give an award in writing fully supported by reasons and shall have the power to give default judgment if any Party fails to
- make submissions on due date and/or fails to appear at the arbitration.
- 21.3.5 Unless expressly agreed otherwise between the Parties, the arbitration shall be conducted in accordance with, save as set out herein, the Commercial Rules of:
- a) the arbitration shall be held in Johannesburg with only the Parties and their representatives present thereat at such place as the Parties may agree on; and
 - b) the evidence, representations, transcript and information generally made available during the course thereof and/or arbitrator's award constitute confidential information and shall be treated as such.
- 21.3.6 The costs of the arbitrator and the incidental costs of the arbitration shall be borne equally by the Parties to the dispute subject to the proviso that the arbitrator shall be competent to make an order as to the costs or parts thereof, as appropriate. The award of the arbitrator shall be final and binding on the Parties and any Party shall be entitled to apply to a competent court to have the award made an order of court.
- 21.4 Nothing in this clause shall, however, prevent any Party from seeking urgent relief from a court of competent jurisdiction.
- 22. BDO STAFF AND NON-SOLICITATION**
- 22.1 BDO will ensure that its' Staff have the requisite skills and experience for the roles that are required to perform under this Agreement.
- 22.2 BDO records that there may be Staff who are unavailable for short periods of time for reasons including, but not limited to, annual leave, internal meetings and training. BDO shall for these short periods take steps to minimise any disruption to the Services provided to the Client.
- 22.3 BDO acknowledges the need for the continuity and therefore may substitute those members of Staff at its sole discretion, provided that BDO

- provides replacements of reasonable equivalent ability.
- 22.4 The Client agrees not to directly or indirectly solicit or make any offer of employment to the Staff involved in the Engagement.
- 22.5 BDO reserve the right, but will not be obliged, to levy a recruitment fee of 15% (fifteen percent) (excluding VAT) on the first year's cost to company, of any Staff forming part of the Engagement team, accepting direct employment with you, or any Associate of yours, while under an employment contract or within 3 (three) months of the termination of employment with us.
- 23. NON-BDO MEMBER FIRM SUB-CONTRACTING AND SUB-CONTRACTORS**
- 23.1 BDO shall, provided that it shall remain responsible to the Client for the fulfilment of its obligations in terms of this Agreement, have the right to make use of subcontractors to assist it in rendering the Services.
- 23.2 The Client acknowledges that BDO is the prime service provider to the Client and shall be the prime interface with the Client in respect of the Engagement.
- 23.3 Save for communication and interaction required for purposes of the day to day rendering of the Services, the Client undertakes to only communicate with BDO in relation to all rights, obligations and other material matters relating to this Agreement.
- 23.4 The Client will not interfere with or impede the relationship between BDO and its subcontractors, or suggest or cause the subcontractors to modify, cancel, fail to renew or extend their agreements with BDO
- 23.5 BDO shall assume full responsibility for making payment to its subcontractors, and no subcontractor will be entitled to seek payment directly from the Client for services rendered to BDO.
- 24. GENERAL**
- 24.1 This Agreement constitutes the entire Agreement between the Parties relating to its subject matter, and supersedes all other oral or written representations, undertakings or Agreements.
- 24.2 No amendment, variation or consensual cancellation of this Agreement, including an amendment to this clause and no settlement of any disputes arising under this Agreement, shall be binding unless recorded in writing and signed by both Parties.
- 24.3 This Agreement is governed by the laws of the Republic of South Africa and any dispute arising from or in connection to this Agreement will be subject to the jurisdiction of a competent tribunal or court within the Republic of South Africa only.
- 24.4 Each undertaking in this Agreement shall be deemed to be and shall be construed as an undertaking given in the terms of this Agreement.
- 24.5 No undertaking shall be limited or restricted by reference to or interference from any other separate undertaking and/or acknowledgement.
- 24.6 If any provision or undertaking in this Agreement is or becomes illegal, invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto*, the remainder of this Agreement to be regarded as valid and binding.
- 24.7 The Client expressly accepts that BDO has the option to use the name and/or logo of the Client, as well as, a broad description of the Engagement, as a reference in proposals or similar submission which it may make to prospective clients.
- 24.8 Either party desiring to issue a news release or advertisements or other form of media publicity in relation to this Agreement shall obtain the written consent of the other Party prior to the release of such publicity, which

- consent will not be unreasonably delayed. Further the Client agrees that it is not authorised to use the name, trademarks, marks, devices, trade names, business names, trading styles, logos or domain names of BDO in connection with any marketing, co-branding and/or promotion materials or activities, or for any other purpose whatsoever.
- 24.9 This Agreement may be executed in counterparts, each of which together constitutes a single Agreement between the Parties but shall not be effective until both Parties have executed each counterpart. Each such counterpart shall be deemed to be an original, but all the counterparts shall together constitute this Agreement.
- 24.10 No extension of time or waiver or relaxation of any of the provisions of this Agreement shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate to preclude such Party from exercising its rights strictly in accordance with this Agreement.
- 24.11 BDO has the right to assign, cede or otherwise transfer the benefit or burden of all or any part of this Agreement without the consent of the other Party.
- 24.12 The Client shall not be entitled to assign, cede, or otherwise transfer the benefit or burden of all or any part of this Agreement without the written consent of BDO, which consent shall not be unreasonably withheld.
- 24.13 Except as otherwise provided in this Agreement BDO provides no implied warranties regarding the Services
- 24.14 This Agreement revokes, replaces and supersedes all previous written proposals, quotations or submissions provided by BDO to the Client regarding the Services.
- 24.15 All terms regarding indemnification, warranty, liability, and limits thereon, confidentiality, protections of proprietary rights and trade secrets shall survive the termination of this Agreement.
- 24.16 Parties represent to each other that the person executing this Agreement has full authority to bind that Party to the terms of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective representatives, successors and assigns