

1 DEFINITIONS

In this Agreement the following words have the meanings set out below and derivative words will have corresponding meanings:

- 1.1 **"Agreement"** means the Letter and the Terms, and any amendments thereto;
- 1.2 **"Associate"** means in relation to:
 - 1.2.1 any company, any other company that is its Subsidiary, Holding Company or a Subsidiary of its Holding Company; or
 - 1.2.2 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;
- 1.3 **"Audit"** means the examination of, in accordance with applicable auditing or review standards, financial statements with the objective of expressing an audit opinion or review conclusion as to their fairness or compliance with a financial reporting framework and/or any applicable statutory or regulatory requirements;
- 1.4 **"Beneficiary"** or **"Beneficiaries"** means a third party or parties that Deloitte and the Client agree may obtain access to, benefit and rely on the Deliverables (or any part thereof) on terms and conditions to be agreed to in writing between Deloitte and such third party or parties;
- 1.5 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in Namibia;
- 1.6 **"Client"** or **"you"** or **"your"** means jointly and severally each person to whom the Letter is addressed, and includes any additional person who agrees either expressly or impliedly to be bound by this Agreement, but excludes a Beneficiary;
- 1.7 **"Confidential Information"** means irrespective of its format:
 - 1.7.1 the terms of this Agreement and the details of the Services;
 - 1.7.2 any Information:
 - 1.7.2.1 which is a trade secret or proprietary in nature used in relation to the technology, business, marketing, products, processes, services or operations of a Party;
 - 1.7.2.2 of a trade, commercial, financial and managerial information nature;
 - 1.7.2.3 acquired by either Party solely as a result of or for purposes of providing the Services;
 - 1.7.2.4 any Information designated as confidential by either Party;
 - 1.7.3 any Intellectual Property; and
 - 1.7.4 any Work;
 - but excludes any Information that:
 - 1.7.5 is or becomes publicly available, except by a breach of this Agreement;
 - 1.7.6 is disclosed to the Receiver by a third party provided that the Receiver believes, exercising reasonable business judgement, the third party is legally entitled to disclose such Information;
 - 1.7.7 was known to or in the possession of the Receiver without obligation of confidence before it received the Information from the Discloser;
 - 1.7.8 was developed by the Receiver independently of any disclosures previously made by the Discloser and in circumstances which do not amount to a breach of the provisions of this Agreement;
 - 1.7.9 is disclosed with the Discloser's Consent; or
 - 1.7.10 is required to be disclosed by law, regulatory framework, judicial order, any rules of court, an applicable tribunal or regulatory body, the rules of any stock exchange or under any professional obligation or code of conduct or requirement, provided that, in these circumstances, the Receiver shall (i) inform the Discloser of the requirement to disclose prior to making disclosure insofar as the Receiver is legally able to inform the Discloser; (ii) disclose only that portion of the Confidential Information which it is legally required to disclose; (iii) use reasonable endeavours to protect the confidentiality of such Information to the widest extent lawfully possible in the circumstances; and (iv) co-operate with the Discloser if the Discloser elects to contest such disclosure;
- 1.8 **"Consent"** means prior or duly ratified written consent which may be granted at either Party's discretion and may be subject to conditions;
- 1.9 **"Control"** means the power, direct or indirect, to direct or cause the direction of the management and policies of a person whether by contract or otherwise and, in any event and without limitation of the foregoing, any person owning more than 30% of the voting securities of a second person shall be deemed to control that second person and **"Controlling"** and **"Controlled"** shall have corresponding meanings;
- 1.10 **"Cut-off Date"** means, unless otherwise indicated in the Letter or the Deliverable, a date 10 (ten) Business Days after the delivery of the Deliverable or Output to the Client;
- 1.11 **"Data Protection Legislation"** means the following legislation:
 - 1.11.1 the GDPR; or
 - 1.11.2 legislation applicable to the protection of Personal Information in Namibia;

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- 1.12 **"Data Subject"** means the person to whom Personal Information relates;
- 1.13 **"Deliverable"** refers to anything in writing or otherwise tangible (whether in hard copy or electronic format) created or prepared by Deloitte for the Client as part of the Work;
- 1.14 **"Deloitte"** or **"we"** or **"our"** means Deloitte & Touche, a professional partnership established in accordance with the laws of Namibia;
- 1.15 **"Deloitte Group"** means Deloitte and any other company, body corporate, partnership, undertaking, entity or juristic person which is an Associate of or belongs to Deloitte, including a successor of Deloitte;
- 1.16 **"Discloser"** means the Party disclosing or granting access to Information;
- 1.17 **"DTTL"** means Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee;
- 1.18 **"D&T Party"** or **"D&T Parties"** means DTTL or the company, body corporate, partnership, undertaking, entity or juristic person that is a member of DTTL, and includes such member's Associates, divisions, departments, predecessors, successors, assignees, and Personnel individually or collectively as the context may require;
- 1.19 **"Effective Date"** means the date on which any Confidential Information or Intellectual Property is transferred between the Parties, or the date on which Deloitte commences rendering the Services to the Client, or the date of written acceptance by the Client of the Letter, whichever is the earlier date;
- 1.20 **"Employees"** means permanent and temporary employees;
- 1.21 **"Engagement"** means the assignment, including the Services and the Work, to which this Agreement relates;
- 1.22 **"EEA"** means the European Economic Area;
- 1.23 **"EU"** means the European Union;
- 1.24 **"Expenses"** means the actual costs incurred by Deloitte reasonably necessary for the successful completion of the Engagement, including but not limited to travelling, accommodation, subsistence, communication, stationery, administration, photocopying, printing, report and presentation material, secretarial time and computer charges, and charges related to goods and services purchased on the Client's behalf;
- 1.25 **"Fees"** means the fees charged by Deloitte for the Services as set out in the Letter, which excludes VAT and Expenses;
- 1.26 **"GDPR"** means the EU General Data Protection Regulation (2016/679) replacing the EU Directive 95/46/EC;
- 1.27 **"Government Official"** means: (a) any employee or officer of a government, including, without limitation, any national, regional or local department, agency or instrumentality of a government; (b) any official or employee of a public international organisation (such as the World Bank or United Nations); and (c) any person acting in an official capacity for, or on behalf of, any entity identified in subparts (a) and (b);
- 1.28 **"Holding Company"** means a company that controls a Subsidiary;
- 1.29 **"Information"** means any information as generally understood, 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 operational systems; methodologies, documents, presentations, spread sheets, materials, data, technologies, programmes, processes, records and facts, whether in hard copy or electronic format;
- 1.30 **"Information Officer"** means the information officer or deputy information officer of the Deloitte Group and who is also known as the **"Information Protection Officer"** or the **"Confidentiality Officer"** or the **"Data Protection Officer"** or the **"Privacy Officer"** as referred to in applicable Data Protection Legislation;
- 1.31 **"Intellectual Property"** means any and all Information of a proprietary nature in relation to the technology, business, products, processes, services or operations of a Party, including any patent, trade mark, logo or design, which has been registered or is capable of being registered in any national intellectual property office or association, as well as any copyrightable works, trade secrets and know-how;
- 1.32 **"Letter"** means the engagement letter or proposal (and any annexures, addendums and schedules thereto) to which these Terms are attached;
- 1.33 **"Losses"** means all judgments, awards, settlements, liabilities, damages, liens, claims, costs, expenses and other charges, including legal costs (on an attorney and own client basis) attorneys' fees and disbursements, costs of investigation, witnesses, experts, litigation, responding to subpoenas, settlement and judgment, time spent by Deloitte Personnel and any taxes, interest, penalties and fines with respect to any of the foregoing;
- 1.34 **"Operator"** means a person who processes Personal Information for a Responsible Party in terms of a contract or mandate, without coming under direct authority of that party also referred to as the **"Processor"** or **"Data Processor"** or such similar terms as defined in Data Protection Legislation;
- 1.35 **"Output"** refers to anything in writing or otherwise tangible (whether in hard copy or electronic format) which Deloitte provides inputs into and assists the Client to create or prepare, but which is not a

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- Deliverable, is not Deloitte branded and in terms of which the Client retains the responsibility, risk, ownership and final judgement;
- 1.36 **"Party"** or **"Parties"** means Deloitte or the Client individually or collectively as the context may require;
- 1.37 **"Personal Information"** means:
- 1.37.1 all Information relating to an identifiable natural or juristic person; and
- 1.37.2 Personal Information processed as part of the Services, but its meaning is limited to only Personal Information related to the natural EU residents' as far as the provisions of the GDPR apply;
- 1.38 **"Personal Information Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to, Personal Information transmitted, stored or otherwise processed;
- 1.39 **"Personnel"** means Employees, partners, directors, agents, consultants, contractors and subcontractors;
- 1.40 **"Professional Advisors"** means the Parties' duly appointed attorneys, auditors and other professional or Transaction advisors from time to time;
- 1.41 **"Purpose"** means the purpose or purposes of the Services as specified in the Letter;
- 1.42 **"Receiver"** means the Party receiving or to whom Information is disclosed;
- 1.43 **"Responsible Party"** means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and the means for processing Personal Information also referred to as **"Controller"** or **"Data Controller"** or such other similar terms as defined in Data Protection Legislation;
- 1.44 **"Services"** means the services as described in the Letter to be rendered by Deloitte to the Client, including the Outputs and the Deliverables, or such additional services as may be agreed to between the Parties in writing from time to time by way of an annexure to the Letter, but excludes Audit and Temporary Employment Services;
- 1.45 **"Social Media Platform"** means any social network or platform, including but not limited to Facebook, Twitter, Myspace or LinkedIn or similar social networks;
- 1.46 **"Subject Entity"** means the company, body corporate, undertaking or entity (or part thereof) described in the Letter as being the subject of the Work and in respect of which the Services are to be provided;
- 1.47 **"Subsequent Event"** means:
- 1.47.1 an event which occurs subsequent to a Cut-off Date; or
- 1.47.2 Information not known to Deloitte prior to a Cut-off Date;
- 1.48 **"Subsidiary"** means a company that is subsidiary to another company in that the latter:
- 1.48.1 is directly or indirectly able to exercise, or control the exercise of, a majority of the general voting rights associated with the issued securities of the subsidiary company, whether pursuant to a shareholder agreement or otherwise; or
- 1.48.2 has the right to appoint or elect, or control the appointment or election of, directors of the subsidiary company who control a majority of the votes at a meeting of the board of such subsidiary company;
- 1.49 **"Temporary Employment Services"** means the provision, assignment or secondment of Personnel to a client for reward, where such Personnel:
- 1.49.1 renders services to, or performs work for the client;
- 1.49.2 falls under the supervision and control of the client; and
- 1.49.3 are remunerated by Deloitte;
- 1.50 **"Terms"** means these standard terms and conditions, and any annexure or schedule thereto;
- 1.51 **"Transaction"** means, if applicable to the Services, a commercial transaction or proposed transaction as described in the Letter;
- 1.52 **"VAT"** means value-added tax or any similar tax applicable in Namibia;
- 1.53 **"Work"** means the work that Deloitte performs, creates or prepares either alone, with the support of any subcontractors, with a D&T Party, with the Client, and/or with any third party service provider utilised by the Client, in rendering the Services, which work includes Deliverables, Output, processes, procedures, investigations, notes, working papers, recordings, models, advice, findings or recommendations, whether in draft or final form, in writing or orally.
- 2 INTERPRETATION OF THIS AGREEMENT**
- 2.1 Words and phrases defined in this Agreement shall also apply in the interpretation of the same words and phrases in the Letter, save where specifically otherwise indicated.
- 2.2 Unless the context otherwise requires:
- 2.2.1 the singular includes the plural and vice versa;
- 2.2.2 words indicating a gender includes the other gender;
- 2.2.3 words indicating natural persons shall include juristic persons; and
- 2.2.4 references to annexures, schedules, parts and sections are, unless otherwise provided, references to annexures, schedules, parts and

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sections of this Agreement.

- 2.3 Should any provision in a definition be a substantive provision conferring rights or imposing obligations on anyone, then effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 2.4 The use of the word "including" followed by specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 2.5 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.
- 2.6 Any reference to any legislation is to such legislation as at the Effective Date and as amended or re-enacted from time to time.
- 2.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.8 Any provisions of this Agreement which either expressly or by their nature extend beyond the expiration or termination of this Agreement shall survive such expiration or termination.
- 2.9 The Parties agree that the rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting of the Agreement, shall not apply.
- 2.10 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.11 Where there is a conflict between these Terms and the Letter, the following order of priority shall apply to resolve the conflict:
 - 2.11.1 The Letter; and then
 - 2.11.2 The Terms.

3 APPOINTMENT

- 3.1 The Client hereby appoints Deloitte to render the Services, and Deloitte accepts such appointment on the terms and conditions set out in this Agreement.
- 3.2 Deloitte shall be entitled without Consent to assign, sell or otherwise transfer the benefit or burden of all or any part of this Agreement, or its rights, interests and obligations with respect to this Agreement, to another party within the Deloitte Group.
- 3.3 The Agreement revokes, replaces and supersedes all previous written proposals, quotations or submissions provided by Deloitte to the Client regarding the Services.

4 DURATION

- 4.1 Should the Agreement not be accepted by the Client in writing within 90 (ninety) days from the date of the Letter, the Agreement shall, unless otherwise agreed in writing, immediately terminate without notice.
 - 4.2 Subject to 4.1, this Agreement shall commence on the Effective Date and shall, unless extended or terminated earlier in terms of this Agreement, automatically terminate once the Services have been rendered by Deloitte and all Fees, VAT and Expenses have been paid by the Client.
- 5 DTTL**
- 5.1 The D&T Parties are all separate and independent legal entities, which cannot obligate each other.
 - 5.2 Each D&T Party renders professional services in a particular geographic area under licence and is subject to the laws and professional regulations of the particular country or countries in which it operates. DTTL does not itself render services to clients.
 - 5.3 Each D&T Party is only liable for its own acts or omissions and not those of any other D&T Party.
 - 5.4 This Agreement is entered into between the Client and Deloitte, unless it is assigned to another entity within the Deloitte Group as provided for in this Agreement. The Client therefore agrees that its relationship is solely with Deloitte and not with any other D&T Party.
 - 5.5 Notwithstanding the fact that certain of the Services may be rendered by a D&T Party other than Deloitte, the Client undertakes that no D&T Party other than Deloitte will have any responsibility or liability to the Client, and that the Client will not bring any claim or proceedings of any nature in connection with this Agreement against any D&T Party other than Deloitte.

6 RELATIONSHIP OF THE PARTIES

- 6.1 The Parties are independent persons, and the Personnel of one shall not be the Personnel of the other.
- 6.2 Save to the extent otherwise provided for in the 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.
- 6.3 Unless otherwise mandated to do so, Deloitte cannot negotiate for or commit the Client and the Client shall remain responsible for making all decisions that commit the Client in any manner.
- 6.4 Nothing in this Agreement shall be construed as:
 - 6.4.1 constituting a labour brokering arrangement; or
 - 6.4.2 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

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- been expressly agreed between the Parties and recorded in writing.
- 6.5 No person who is not a Party to this Agreement shall have any rights or obligations under the Agreement, or to enforce any of its terms, except the D&T Parties who may rely on and enforce this Agreement in so far as it relates to them.
- 6.6 The Parties acknowledge that they may from time to time conclude other agreements unrelated to this Agreement. The Parties agree that all other agreements entered into between them shall be separate and independent, and rights and obligations existing under any agreement between them will not result in rights and obligations under this Agreement. 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.
- 6.7 Nothing in this Agreement shall be construed as creating an exclusive relationship between Deloitte and the Client, or as precluding or limiting in any way the right of Deloitte or any D&T Party from rendering services of any kind or nature whatsoever to any person as Deloitte or any D&T Party in their sole discretion deem appropriate.
- 6.8 The relationship between the Parties shall be one of good faith and each Party therefore undertakes to observe good faith towards the other, and to act reasonably with respect to matters that relate to the Agreement.
- 7 CLIENT OBLIGATIONS**
- 7.1 The Client shall:
- 7.1.1 be responsible for determining that the scope of the Services is appropriate and adequate for its needs;
- 7.1.2 co-operate with and assist Deloitte to enable it to render the Services;
- 7.1.3 provide Deloitte with all the Information that is necessary for the performance of the Services even if such Information has previously been supplied to Deloitte for another engagement;
- 7.1.4 provide to Deloitte Information which is true, accurate, complete, relevant, current and not misleading, and Deloitte shall:
- 7.1.4.1 not be obliged to Audit or otherwise test or verify the Information so provided;
- 7.1.4.2 not be required to check or confirm input data or formulae in spreadsheets unless specifically required to do so as part of the Work;
- 7.1.4.3 be entitled to utilise, process and rely on all Information provided;
- 7.1.4.4 assume that all such Information provided from whatever source is true, accurate, complete, relevant, current and not misleading; and
- 7.1.4.5 not be responsible for the consequences of any Information provided in the course of the Services not being true, accurate, complete, relevant, current or being misleading;
- 7.1.5 take decisions and obtain management approvals promptly;
- 7.1.6 provide Deloitte with full, prompt, reasonable and fit for purpose access to its Personnel, suppliers, administrative support, premises and facilities and those of its Associates associated with the Engagement;
- 7.1.7 promptly obtain all and any approvals, licences and security clearances (including any relating to third parties or Personnel) reasonably required by Deloitte in rendering the Services;
- 7.1.8 keep Deloitte promptly informed of any new strategies, updates, proposals, developments or material changes to its business or the Information relevant to the provision of the Services;
- 7.1.9 remain solely responsible for managing all aspects, for taking all decisions, for making all enquiries, conducting all processes and operating all accounting, internal control or management information systems necessary to conduct its own business;
- 7.1.10 apply its independent business judgement to evaluate the Work including any decisions related to the Services;
- 7.1.11 assess the Work in the context of its business and make an independent decision on whether it wishes to rely on, implement or act on such Work, including the actions necessary to realise any expected benefits;
- 7.1.12 where it is using third parties to provide Information or assistance in support of the Services, or it is using third parties whose work or products may affect the ability of Deloitte to deliver the Services, the Client shall be responsible for the management of such third parties and their performance, including their attendance at meetings and the timeliness and quality of their input and work;
- 7.1.13 fulfil its obligations and honour its responsibilities by the dates specified in the Agreement;
- 7.1.14 be responsible for the acts, omissions and performance of its Personnel;
- 7.1.15 designate a competent Engagement manager to oversee the Services; and
- 7.1.16 not interfere with or impede the relationship between Deloitte and its own Personnel.
- 7.2 Deloitte shall not be liable to the Client for any delay or failure to render the Services either at all or in a timely manner, where such delay or failure is attributable to a breach of this Agreement or delay

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by the Client in performing its obligations in terms of this Agreement.

7.3 In the event that Deloitte is delayed or fails to render the Services either at all or in a timely manner, where such delay or failure is attributable to a breach of this Agreement or delay by the Client in performing its obligations in terms of this Agreement, the Client shall pay to Deloitte all Fees and Expenses due for the Services actually performed by Deloitte under this Agreement. In these circumstances a certificate signed by the relevant Engagement Director/Partner from Deloitte shall constitute *prima facie* proof of the Fees and Expenses due for the Services actually performed by Deloitte under this Agreement.

8 DELOITTE OBLIGATIONS

8.1 Deloitte shall:

- 8.1.1 ensure that any D&T Party assisting Deloitte in rendering the Services or any part thereof, performs its duties and functions as agreed under this Agreement;
- 8.1.2 ensure that the Services are rendered with due professional skill and care and comply with the standards and service levels as specified in the Agreement; and
- 8.1.3 where required, cooperate with third parties appointed by the Client in relation to the Services, provided that Deloitte shall owe no duty to such third parties in terms of this Agreement.

8.2 If any legislation, regulatory framework or code of conduct applies to Deloitte and/or any Personnel who are performing Work under the Agreement, the applicable rules shall constitute a part of the Engagement. The applicable rules may require Deloitte and/or its Personnel to disclose a matter arising from the Engagement and/or Deloitte's relationship with the Client or with a third party to an appropriate authority even when there is no legal or regulatory requirement to do so; or may require Deloitte to withdraw from the Engagement and/or from the professional relationship where permitted by law or regulation. Unless prohibited by law or regulation and where it is permitted, Deloitte will inform the Client of its intention to disclose the matter to an appropriate authority. The Client acknowledges and shall fully respect Deloitte's obligations arising therefrom.

9 PERSONNEL AND NON-SOLICITATION

9.1 Provision of Personnel:

- 9.1.1 The Parties will ensure that the Personnel which they utilise pursuant to this Agreement from time to time shall have the requisite skills and experience for the role which such Personnel are required to perform under this Agreement.
- 9.1.2 The Parties record that the Personnel of either Party may be unavailable for short periods of

time for reasons including annual leave, internal meetings and training, and each Party shall for these short periods take steps to minimise any disruption to the Services.

- 9.1.3 The Parties acknowledge the need for the continuity of Personnel utilised for the Engagement. Each Party may however substitute its own Personnel at its sole discretion, provided that such Party provides replacement Personnel of reasonably equivalent ability.
- 9.2 Engagement Managers:
 - 9.2.1 The Parties shall each nominate a manager or equivalent senior person responsible for the execution or oversight of the Engagement, who will:
 - 9.2.1.1 be available to consult with each other on reasonable notice on matters relating to the Engagement;
 - 9.2.1.2 engage with each other to ensure that day-to-day decisions and approvals with respect to the Engagement are made timeously;
 - 9.2.1.3 accept all notices and correspondence relating to the Engagement or the Agreement; and
 - 9.2.1.4 ensure the execution of any administrative or compliance-related matters under the Agreement.
- 9.3 Non-solicitation of Employees:

The Parties agree not to directly or indirectly solicit or make any offer of employment to the Employees of the other Party, who are involved in the Engagement, either during the term of the Agreement or for a period of 6 (six) months after its termination. Breach of this condition will render the Party in default liable to pay, as a genuine and agreed pre-estimate of damage, an amount equal to 6 (six) months' total cost to company remuneration of the Employee so recruited, which remuneration shall be calculated based on the remuneration for the last month of employment.
- 9.4 Subcontracting:
 - 9.4.1 Deloitte 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.
 - 9.4.2 The Client acknowledges that Deloitte is the prime service provider to the Client and shall be the prime interface with the Client in respect of the Engagement.
 - 9.4.3 Save for communication and interaction required for purposes of the day to day rendering of the Services, the Client undertakes to only communicate with Deloitte in relation to all rights, obligations and other

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- material matters relating to this Agreement.
- 9.4.4 The Client will not interfere with or impede the relationship between Deloitte and its subcontractors, or suggest or cause the subcontractors to modify, cancel, fail to renew or extend their agreements with Deloitte.
- 9.4.5 Deloitte shall assume full responsibility for making payment to its subcontractors, and no subcontractor will be entitled to seek payment directly from the Client for goods and/or services rendered to Deloitte.

10 FEES & EXPENSES

- 10.1 The Client shall in return for the Services pay to Deloitte the Fees, the Expenses and any VAT thereon.
- 10.2 Deloitte shall be entitled to increase the Fees in the event of:
- 10.2.1 a change in the scope of the Services;
- 10.2.2 the Agreement not being accepted by the Client within 90 (ninety) days of the date of the Letter; and
- 10.2.3 the events contemplated in 10.3, 10.4 or 10.5 occurring.
- 10.3 Services rendered outside of Namibia:
 In the event that the Work or the Services are required to be rendered outside of Namibia, 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 Namibia, then, subject to this being permissible under the tax legislation of Namibia and the country where the Services are rendered, the Fee shall be increased by the amount of such additional taxes or levies.
- 10.4 Exchange rate fluctuations:
 To the extent that any Fees, Expenses or the VAT thereon are dependent on currencies other than that stated in the Letter, fluctuations in any applicable exchange rates shall not affect the Fees, Expenses or VAT thereon, unless such fluctuations are greater than 5% (five percent), in which instance the Parties agree to share any exchange rate gains or losses greater than 5% (five percent).
- 10.5 Escalation of rates:
 Deloitte rates increase on an annual basis, typically in June or December of each year. Deloitte may on written notice to the Client increase the Fees on the date on which it typically increases its annual rates.

- 10.6 Invoicing:
- 10.6.1 Deloitte will invoice the Client from time to time for the Fees due in respect of the Services rendered. All Deloitte invoices are payable on presentation.
- 10.6.2 Deloitte may, at its sole and absolute 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.
- 10.6.3 The Parties agree that payments may be effected by electronic transfer of funds or as otherwise agreed to between the Parties. The Deloitte banking details are set out on its invoices.
- 10.6.4 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.
- 10.6.5 Each Party shall be responsible for the payment of its own taxes.
- 10.7 Disputed or unpaid invoices:
- 10.7.1 Should a dispute arise relating to any Fees, Expenses or VAT due to Deloitte:
- 10.7.1.1 the Client must notify Deloitte of the disputed amount(s) and the reasons for the dispute in writing within 15 (fifteen) days of the date of the disputed invoice, failing which the Client shall be deemed to have accepted the invoice as correct, due and payable;
- 10.7.1.2 any undisputed amounts shall remain payable on presentation of the invoice; and
- 10.7.1.3 subject to 10.7.2 below, if the Client disputes and withholds payment of an amount in excess of 50% (fifty percent) of any invoice, Deloitte shall be entitled to suspend the rendering of the Services until the dispute is resolved and all outstanding amounts are paid to Deloitte.
- 10.7.2 Any suspension of Services as contemplated in 10.7.1.3 or 10.7.3 shall be applied to all performance milestones and dates, such that all such milestones and dates shall be automatically extended by a period of time equal to the period of the suspension.
- 10.7.3 Notwithstanding 10.7.2 above, Deloitte shall have the right to halt or terminate entirely the Services during any period in which any Fees, Expenses or VAT are overdue but, despite written demand, remain unpaid by the Client.

11 CONFIDENTIALITY

- 11.1 The Receiver hereby irrevocably undertakes and agrees:
- 11.1.1 not to divulge or disclose to any third party (excluding any Personnel involved in rendering the Services) in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the Discloser without the Consent of the Discloser;
- 11.1.2 not to, directly or indirectly, detract from,

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- expand on, amend, decompile, reverse engineer, use, exploit, permit the use of, or in any other manner whatsoever apply the Confidential Information for its own benefit or the benefit of any other person or for any purpose whatsoever other than for the Engagement and otherwise than in accordance with the provisions of this Agreement;
- 11.1.3 to treat all Information as Confidential Information where it is uncertain of the nature of the Information until written notice to the contrary is received from the Discloser;
- 11.1.4 to take reasonable security (including IT security) measures in line with its own security measures to keep the Confidential Information confidential;
- 11.1.5 to immediately notify the Discloser upon discovery of any unauthorised use or disclosure of the Confidential Information or any other breach of this 11;
- 11.1.6 to take all necessary steps or assist the Discloser to regain possession of the Confidential Information or to prevent its further unauthorised use;
- 11.1.7 subject to 11.2, and any applicable laws or internal policies, to immediately at the Discloser's reasonable request or in any event at the completion of the Engagement to forthwith return all originals, copies, reproductions, summaries or extracts of the Confidential Information, or at the Discloser's option destroy these and certify that it has done so; and
- 11.1.8 that all Confidential Information is and shall remain the property of the Discloser and that disclosure thereof does not grant the Receiver any express or implied license to use such Confidential Information or right other than as provided for in this Agreement.
- 11.2 Notwithstanding 11.1.7, Deloitte shall be entitled:
 - 11.2.1 in compliance with the applicable laws and its professional obligations, to retain copies of all Information of the Client which is relevant to or forms part of the Work;
 - 11.2.2 to share the Confidential Information with its Personnel and any D&T Party to the extent required to render the Services; and
 - 11.2.3 to share the Confidential Information with its Professional Advisors or insurers in the event of a claim arising from or in connection with this Agreement,

provided that the provisions of this 11 shall still apply to such copies.
- 11.3 Each Party shall procure that its Personnel comply with the provisions of this 11.

12 INTELLECTUAL PROPERTY

- 12.1 The Parties record that each Party has prior to the Engagement created, acquired or otherwise obtained rights to its own Intellectual Property. Each Party shall for the duration of the Engagement and thereafter retain the ownership of its own Intellectual Property.
- 12.2 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.
- 12.3 Any developments, modifications, improvements or enhancements to a Party's Intellectual Property arising from the Engagement will remain the property of that Party.
- 12.4 In the event of either Party requesting the use of the other Party's Intellectual Property outside the scope of the Engagement, this will be the subject of a separate agreement.
- 12.5 Each Party warrants that no aspect of its Intellectual Property lawfully utilised during the Engagement, will infringe the proprietary rights of any third party. In the event that the proprietary rights of any third party are infringed, the Party warranting ownership of or lawful rights to the Intellectual Property hereby indemnifies and shall hold harmless the other Party against any loss, claims, or expenses (including legal fees on the scale as between attorney and own client) from an aggrieved third party.
- 12.6 To the extent that there are any components of its Intellectual Property included in the Deliverable or Output, Deloitte hereby grants to the Client, upon full and final payment of all amounts owing to Deloitte 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 or Output only.
- 12.7 Deloitte shall be entitled to use the Client's trademarks and logos in its Work unless the Client informs Deloitte otherwise.

13 DATA PROTECTION

- 13.1 In order to render the Services or to comply with the obligations imposed on Deloitte in terms of 17, either Party may need to provide, collect, use, store or process Confidential Information and/or Personal Information of the other Party. Each Party hereby authorises such collection, use, storage and processing where the need arises, subject to compliance with the further provisions of this 13.
- 13.2 Each Party shall comply with its obligations under Data Protection Legislation in respect of Confidential Information and Personal Information processed by it in connection with this Agreement and the Services.
- 13.3 Each Party shall only provide, collect, use, store or process Personal Information:
 - 13.3.1 in compliance with the applicable Data Protection Legislation ;

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- 13.3.2 as is necessary for the purposes of this Agreement and the Services;
- 13.3.3 for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
- 13.3.4 for internal and external business related purposes and statistical or research purposes; and
- 13.3.5 in accordance with the lawful and reasonable instructions of the Party providing the Personal Information.
- 13.4 Both Parties shall:
- 13.4.1 comply with the specific security and data protection obligations imposed on them in terms of applicable Data Protection Legislation; and/or
- 13.4.2 where applicable, comply with the specific obligations imposed on them in terms of the GDPR in respect of the specific role they fulfil in terms of providing the Services as agreed between the Parties;
- 13.4.3 take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Confidential Information and Personal Information in its possession and to protect such Confidential Information and Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.
- 13.5 Deloitte collects data directly from the Client, other D&T Parties, Professional Advisors, third parties, Beneficiaries and in some instances from the Data Subject directly.
- 13.6 Deloitte may share Confidential Information and Personal Information with other D&T Parties, Personnel, Professional Advisors, third parties or Beneficiaries where necessary in order to protect the legitimate interests of any of the parties or in connection with this Agreement and the Services.
- 13.7 Deloitte may notify the Client about important developments, proposals and services which it thinks may be relevant to the Client's business, including advising the Client on current business offerings, sending the Client newsletters, invitations to seminars and similar marketing material. The Client shall notify Deloitte if it does not wish to receive any electronic or other communications from Deloitte.
- 13.8 Electronic communications between Deloitte and the Client may be monitored by Deloitte to ensure compliance with its professional standards and internal compliance policies.
- 13.9 Deloitte may for purposes of the collection, use, storage or processing thereof, need to transfer the Client's Confidential Information and/or Personal Information to:
- 13.9.1 an outsourced information technology service provider; or
- 13.9.2 another country for legitimate purposes, including the use of cloud-based solutions; or
- 13.9.3 a D&T Party.
- 13.10 Deloitte will in relation to 13.9, require that any third party, outsourced service provider, foreign legal entity or other D&T Party involved in the collection, use, storage or processing, undertakes to ensure that such Confidential Information or Personal Information is protected with the same level of protection as is required in terms of 13.4.
- 13.11 The Client acknowledges and agrees that Deloitte shall not be held accountable for Confidential Information and Personal Information sent to Personnel, third parties, or Professional Advisors used by the Client.
- 13.12 The Client warrants that it has obtained written consent from all applicable Data Subjects for the collection, use, storage, processing or transfer of such Data Subjects' Personal Information whenever this is required for purposes of this Agreement and the Services.
- 13.13 Where it has been agreed specifically between the Parties or implied in terms of the nature of the Services that Deloitte is the Responsible Party (Controller) for purposes of the GDPR, the following clauses shall apply:
- 13.13.1 The Parties acknowledge that Personal Information may be processed by Deloitte as a Responsible Party, for the purpose of, or in connection with: (i) the provision of the Services; (ii) applicable legal or regulatory requirements; (iii) requests and communications from competent authorities; and (iv) administrative, financial accounting risk analysis and client relationship purposes (the "**Information Purposes**").
- 13.13.2 The Parties further acknowledge that Personal Information may be disclosed to, and processed by, other D&T Parties, Deloitte's service providers and competent authorities for one or more of the Information Purposes.
- 13.13.3 Personal Information may also be disclosed to, and processed by, other third parties to the extent reasonably necessary in connection with the Information Purposes referenced in 13.13.1.
- 13.13.4 The processing and disclosure of Personal Information referenced in this 13.13 may involve the transfer of Personal Information outside of the EEA to countries where the level of protection for Personal Information is not as high as within the EEA.
- 13.13.5 The Client will ensure that any Personal Information provided to Deloitte by, or on

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- behalf of the Client; has been collected lawfully, fairly and in a transparent manner so as to enable such Personal Information to be processed by Deloitte and the other parties referenced in 13.13.2 and 13.13.3 for all of the Information Purposes.
- 13.13.6** Each Party shall comply with Data Protection Legislation when processing Personal Information. The Parties acknowledge and agree that Deloitte will act as a Responsible Party when processing Personal Information for the Information Purposes.
- 13.14** Where it has been agreed specifically between the Parties or implied in terms of the nature of the Services that Deloitte is the Operator (Processor) for purposes of the GDPR, the following clauses shall apply:
- 13.14.1** The Parties acknowledge and agree that when processing Personal Information as part of the Services, Deloitte will process such Personal Information as an Operator of the Client. In such circumstances, the scope of the processing of Personal Information carried out by Deloitte as an Operator of the Client under this Agreement and the Services is as follows:
- 13.14.1.1** Without prejudice to 13.14.3, Deloitte shall only process Personal Information on the documented instructions of Client, unless required or requested to process such Personal Information for other purposes by applicable law or regulatory authorities. In such circumstances Deloitte shall provide prior notice to Client unless the relevant law or regulatory authority prohibits the giving of notice on important grounds of public interest.
- 13.14.1.2** In alignment with the provisions of 13.12 the Client will ensure that any Personal Information provided to Deloitte by, or on behalf of Client has been collected lawfully, fairly, and in a transparent manner so as to enable such Personal Information to be processed by Deloitte and the other parties referenced in 13.14.4 and 13.14.5 for all of the Information Purposes referenced in 13.14.3 .
- 13.14.1.3** Deloitte shall inform the Client if (in Deloitte's opinion) Client's instructions would be in breach of: (i) the GDPR; or (ii) Data Protection Legislation that are applicable to Deloitte.
- 13.14.1.4** Deloitte shall only subcontract processing of Personal Information in accordance with the general written authorisation set out in 13.14.1.10 and shall ensure that it has a written contract with any Operators it engages to process Personal Information. That contract shall impose obligations on the Operator equivalent to those in this
- 13.14** (the "**Equivalent Obligations**") and Deloitte shall ensure that such Operator complies with the Equivalent Obligations. Where such appointed Operator fails to comply with the Equivalent Obligations, Deloitte shall remain liable to Client for such failure.
- 13.14.1.5** On expiry or termination of this Agreement, and at the option of Client, Deloitte shall promptly return or delete Personal Information and confirm that it has done so (except where Deloitte is obliged to retain a copy of such Personal Information by applicable law or in terms of its internal retention policy requirements).
- 13.14.1.6** Deloitte shall, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to protect Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access.
- 13.14.1.7** Deloitte shall notify Client without undue delay after becoming aware of a Personal Information Breach.
- 13.14.1.8** Following a written request from the Client, and at the cost of the Client, Deloitte shall, in fulfilment of its obligation to demonstrate compliance with this 13.14.1 make available to Client Information on its processing of Personal Information under this Agreement. At Deloitte's discretion, such Information may take the form of certificates, third-party audit reports or other relevant documentary Information.
- 13.14.1.9** Where additional information to demonstrate Deloitte's compliance with this clause 13.14.1 is required by Client as a result of a legal obligation applying to Client, Deloitte shall on Client's written request and at the cost of the Client, allow an independent auditor nominated by Deloitte or as otherwise agreed to by the Parties, to carry out a documentary audit of that compliance on behalf of Client.
- 13.14.1.10** The Client provides a general authorisation to Deloitte to engage further Operators to process Personal Information. Deloitte shall give Client prior notice of any intended addition to or replacement of those further Operators. If the Client objects to that change, the Client may, within 30 (thirty) days of such change, escalate its objection to the Deloitte

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- Engagement Partner/Director for discussion. The Parties agree that Deloitte is not required to obtain Client's authorisation under this 13.14.1.10 for involving, adding or replacing service providers or other third parties merely having incidental access to Personal Information (e.g. in the context of system maintenance) but not actively participating in the processing of Personal Information or processing the Personal Information for own purposes.
- 13.14.1.11 The Client acknowledges that it has primary responsibility for the processing of Personal Information as part of the Services and shall notify Deloitte of any assistance it requires pursuant to Articles 28(3)(a) to 28(3)(h) inclusive of the GDPR. The Client shall pay Deloitte for any reasonable costs incurred in providing such assistance within 30 (thirty) days of receiving an invoice for such costs.
- 13.14.1.12 Deloitte may transfer Personal Information outside of the EEA where it has a lawful basis for that transfer under Articles 44-49 GDPR.
- 13.14.2 The Client indemnifies Deloitte against all costs, expenses (including legal expenses on an attorney own client scale), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which Deloitte may incur arising out of: (i) Deloitte's compliance with any instruction given by Client to Deloitte in relation to the processing of Personal Information (including instructions in connection with requests from individuals exercising their rights under Data Protection Legislation and any instructions to retain, disclose, amend or otherwise process Personal Information); or (ii) any breach by Client of this 13.14.
- 13.14.3 In addition to processing Personal Information as part of the Services, the Parties acknowledge that Deloitte may also process Personal Information as a Responsible Party (Controller) for the purpose of, or in connection with: (i) applicable legal or regulatory requirements; (ii) requests and communications from competent authorities; (iii) to pursue the legitimate interest of either of the Parties and (iv) administrative, financial accounting, risk analysis and client relationship purposes (the "**Information Purposes**").
- 13.14.4 The Parties further acknowledge that Personal Information may be disclosed to, and processed by, other D&T Parties, Deloitte's service providers and competent authorities for one or more of the Information Purposes.
- 13.14.5 Personal Information may also be disclosed to, and processed by, other third parties to the extent reasonably necessary in connection with the Information Purposes.
- 13.14.6 The processing and disclosure of Personal Information referenced in this 13.14 may involve the transfer of Personal Information outside of the EEA to countries where the level of protection for Personal Information is not as high as within the EEA and in such instances, the provisions of 13.10 will apply.
- 13.15 Subject to legislative, regulatory, contractual and other legitimate conditions, Data Subjects have certain rights in terms of how their information is processed. The Client can request access to information or guidance on how to lodge a complaint or a request to exercise afforded rights to the Deloitte Information Protection Officer or his / her delegate(s) or where relevant, the applicable Data Protection Regulator at africafirmcompliance@deloitte.co.za. These contact details can also be used for information on any automated decision making queries, where this is applicable.
- 14 THE WORK**
- 14.1 The Client accepts that the Work or any part thereof:
- 14.1.1 is based on the instructions and Information provided to Deloitte by the Client relevant to the Engagement at a particular point in time;
- 14.1.2 does not constitute Audit services;
- 14.1.3 was created for the Purpose only;
- 14.1.4 is for the Client's exclusive information and internal use;
- 14.1.5 may not be applicable to or relevant to a third party; and
- 14.1.6 may not be applicable to or relevant for the Purpose should the instructions and Information differ or change over time.
- 14.2 Unless Deloitte so Consents, the Work or any part thereof:
- 14.2.1 shall not be used for (or disclosed as relevant for) any purposes other than the Purpose as specified in this Agreement;
- 14.2.2 shall, subject to 14.3, not be made available or disclosed to any other person;
- 14.2.3 may not be relied on by anyone other than the Client;
- 14.2.4 may not be referred to in any other written materials, except as provided for in 14.3.
- 14.3 The Client may provide a copy of the Work to:
- 14.3.1 its Professional Advisors provided that:
- 14.3.1.1 the Client informs its Professional Advisors in writing of the limitations placed on the Work in terms of this Agreement;
- 14.3.1.2 the Work shall only be used by the

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- Professional Advisors to provide advice in relation to the Engagement or for purposes of conducting the Client's external or internal audit; and
- 14.3.1.3 the Professional Advisors treat the Work as Confidential Information; and
- 14.3.2 any other person with the Consent of Deloitte.
- 14.4 Deloitte shall not be liable for any loss, damage or costs directly or indirectly incurred or arising where the Client discloses the Work to a third party without the Consent of Deloitte, and the Client hereby indemnifies and holds Deloitte harmless against any such loss, damage or costs.
- 14.5 Notwithstanding the above, the Client may disclose (but not sell, licence or otherwise purport to transfer any rights in) the Output (including any amendments or modifications thereto) to third parties, provided that the Client shall in no way associate Deloitte, its Personnel or any D&T Party with the Output or any portion or derivative thereof, including the use of the Deloitte name, its marks, logo or branding.
- 14.6 Any Deliverable or Output that is provided to the Client orally or in draft format shall not be relied on by the Client, and only final or signed Deliverables and Output may be relied on. The Client hereby indemnifies and holds Deloitte harmless against any loss, damage or costs arising from the reliance by the Client or a third party on any oral or draft Deliverable or Output.
- 14.7 The Client acknowledges that failure by it to comply with the provisions of this 14 by providing access to Work to an unauthorised third party could result in exposing Deloitte to risk and claims from third parties.
- 15 ACCEPTANCE**
- 15.1 The Services shall in respect of each Deliverable or Output be considered final and accepted by the Client on the Cut-off Date.
- 15.2 Deloitte shall after the Cut-off Date have no responsibility to the Client to:
 - 15.2.1 amend or update the Deliverable or Output;
 - 15.2.2 monitor or consider the Subject Entity any further;
 - 15.2.3 monitor or identify the occurrence of any Subsequent Event or its impact on the Services.
- 15.3 The Cut-off Date in respect of the final or last Deliverable or Output required for the Services shall constitute acceptance by the Client of the Services and an acknowledgment or acceptance by the Client that:
 - 15.3.1 Deloitte has fulfilled all its obligations in terms of the Services;
 - 15.3.2 any scope extensions or additional Services requested by the Client and agreed to by

- Deloitte has been satisfactorily completed;
- 15.3.3 all Fees and Expenses are due and owing to Deloitte; and
- 15.3.4 the Engagement is satisfactorily concluded.

16 FORCE MAJEURE

No Party shall have any claim against another Party (the "**Affected Party**") for any delay or failure by the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, fire, epidemic, war, terrorism, labour action or unrest, failure of suppliers or contractors, law, government or regulatory requirements, or any other cause whatsoever beyond the control of the Affected Party ("**Force Majeure**").

17 INDEPENDENCE & CONFLICT

- 17.1 Deloitte is obliged to comply with the law, including the rules of all relevant governmental, regulatory, professional, or other bodies having the force of law. In particular, Deloitte is required to comply with professional independence rules so as to maintain its independence as an external auditor when rendering non-audit services to and forming business relationships with audit clients. Deloitte 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.
- 17.2 Deloitte renders external audit as well as non-audit services to numerous clients other than to the Client, and Deloitte also has business relationships with many persons or entities. It is therefore a Deloitte requirement to check for possible conflicts of interest and to ensure auditor independence before entering into client relationships, and also on an ongoing basis during a client relationship.
- 17.3 The Client agrees that it will immediately provide to Deloitte such Information as may be requested by Deloitte for the purposes of checking for conflicts of interest and ensuring auditor independence, and the Client warrants that such Information so provided will in each instance be complete and accurate in all respects.
- 17.4 The Client shall immediately notify Deloitte during the subsistence of the Agreement upon becoming aware of any changes in circumstances which may give rise to a conflict of interest or an auditor independence concern, including but not limited to:
 - 17.4.1 changes to its registered auditor; and/or
 - 17.4.2 a material change in its shareholding; and/or
 - 17.4.3 any changes to director, officer and trustee positions that any of its directors, trustees and/or executive officers may hold in any juristic person, including but not limited to any company or trust;

and shall immediately provide Deloitte with any and all reasonably applicable Information with regard thereto.

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- 17.5 The Client indemnifies Deloitte and each of the D&T Parties against all losses, claims, penalties, fines, costs, damages, liabilities and expenses (including legal fees on the scale as between attorney and own client) as may be incurred or suffered by Deloitte or any of the D&T Parties, arising out of a breach by the Client of its obligations in terms of 17.3 or 17.4.
- 17.6 Deloitte acknowledges that it has the responsibility of reviewing and considering the effect on its independence of the Information received from the Client with regard to 17.3 and 17.4 above, and undertakes to notify the Client of any conflict with the Client's interests or an auditor independence concern on becoming aware thereof.
- 17.7 Should it be deemed by Deloitte that a conflict or independence concern exists or has come into existence in relation to this Agreement, Deloitte and the Client shall take all reasonable commercial steps necessary to attempt to resolve such conflict or independence concern.
- 17.8 Where it is not reasonably possible to so resolve such a conflict or independence concern, Deloitte 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 Deloitte of any nature.

18 BREACH

- 18.1 The Parties shall promptly remedy any defect or deficiency in the fulfilment of their respective obligations in terms of this Agreement and shall advise the other Party verbally and in writing as soon as either of the Parties become aware of anything which may hamper or delay the other Party in fulfilling its obligations in terms of this Agreement.
- 18.2 Should any Party (the "**Defaulting Party**") commit a breach of any of the provisions of this Agreement, then the other Party (the "**Aggrieved Party**") shall be obliged to give the Defaulting Party 10 (ten) Business Days' written notice (or such longer period as the Aggrieved Party may specify), to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall, without prejudice to the Aggrieved Party's rights to claim damages or such other rights it may have at law, be entitled to:
 - 18.2.1 terminate this Agreement for a material breach, such termination to be effective immediately upon receipt by the Defaulting Party of a written notice to that effect; and/or
 - 18.2.2 claim immediate payment of all monies due or specific performance by the Defaulting Party of all the Defaulting Party's obligations.
- 18.3 In the absence of any theft, fraud, wilful misconduct or breach of this Agreement by Deloitte, the Client shall indemnify and hold Deloitte harmless against loss, damages, costs or expenses (including legal fees on the scale as between attorney and own client) directly or indirectly incurred by Deloitte as a result of:

- 18.3.1 claims by any third party service providers utilised by the Client to assist or support the rendering of the Services; or
- 18.3.2 a breach by the Client of its obligations in terms of this Agreement.

19 DOMICILIUM CITANDI ET EXECUTANDI

- 19.1 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 physical and email addresses as set out in the Letter, or such other physical and email addresses as a Party elects in writing.
- 19.2 Any notice addressed to a Party at its physical address shall be delivered by hand or by courier.
- 19.3 Any notice shall be deemed to have been given:
 - 19.3.1 If delivered by hand or courier on the day of delivery; or
 - 19.3.2 If sent by email, the next Business Day.
- 19.4 The Parties may communicate with each other by electronic means; provided that electronic communication will not be acceptable for formal notices required to be given under this Agreement. Formal notices are only acceptable provided that they are delivered in compliance with applicable law.

20 TERMINATION

- 20.1 Unless otherwise provided for in the Letter including, without limitation, the stipulation of a certain period or a project, the Agreement may be terminated by either Party at any time, with or without cause, by giving 10 (ten) Business Days' written notice to the other Party, provided that, in the event of a termination for breach, the Defaulting Party shall have the right to cure the breach within the notice period if and to the extent such cure is reasonably feasible.
- 20.2 Either Party may terminate the Agreement immediately by giving written notice to the other Party if the other Party:
 - 20.2.1 is placed under business rescue, judicial management, receivership or similar proceedings applicable in Namibia (except where the Services relate to the reorganisation, liquidation or business rescue of the Client); or
 - 20.2.2 does not cure a material breach within the required notice period.
- 20.3 Deloitte may in addition terminate the Agreement with immediate effect upon written notice to the Client if Deloitte in its sole and absolute discretion determines that:
 - 20.3.1 a governmental, regulatory, professional, or an entity having the force of law, has introduced a new, or modified an existing law, rule, regulation, interpretation, or decision, the

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result of which would render Deloitte's performance of any part of the Agreement illegal or otherwise unlawful or in conflict with independence or professional rules; or

20.3.2 circumstances change (including changes in ownership of the Client or any of its Associates) such that Deloitte's performance of any part of the Agreement would be illegal or otherwise unlawful or in conflict with independence or professional rules.

20.4 Upon termination of the Agreement, the Client shall pay to Deloitte all Fees and Expenses due for the Services performed and Expenses incurred from the Effective Date to the date of termination of the Agreement.

21 LIMITATION OF LIABILITY

21.1 With the exception of liability for death or personal injury, or loss resulting from fraud, or any other liability for which restriction or exclusion is prohibited by law, the liability of Deloitte for the aggregate of all claims arising out of or in connection with this Agreement in respect of breach of contract or breach of duty or fault or negligence or otherwise (collectively referred to herein as "fault") shall be:

21.1.1 no more than that proportion of the loss or damage (including interest and costs) suffered by the Client, which is ascribed to Deloitte by a court or arbitrator of competent jurisdiction allocating a proportionate responsibility to Deloitte having regard to the contribution to the loss or damage in question by the Client or any other person based upon relative degrees of fault. Provided that for the purposes of assessing the contribution to the loss and damage in question of any other person pursuant to the preceding wording, it is agreed that no account shall be taken of any limit imposed or agreed on the amount of liability of such person by any agreement (including any settlement agreement) made before or after the loss and damage in question occurred; and

21.1.2 unless otherwise stated in the Letter, limited to the total Fees paid by the Client to Deloitte as at the date on which the claim arises.

21.2 Deloitte shall not be liable to the Client or to a third party for any loss or damages arising from or which is caused by:

21.2.1 Force Majeure as described in 16; or

21.2.2 a breach by the Client of its obligations in terms of this Agreement.

21.3 Subject to the other provisions of this Agreement, neither Party will be liable to the other Party nor any cessionary nor third party claiming through or on behalf of the other Party for any indirect, special, punitive or consequential damages arising out of or related to this Agreement.

21.4 Deloitte will only accept any form of liability, limited as specified, if it is the subject of a final judgement

in a court of law or by way of arbitration.

22 LAWS & REGULATORY

22.1 The Parties are committed to working in an ethical and professional manner, and in compliance with all laws that apply to the Agreement.

22.2 The Parties support the fight and stand firmly against all forms of bribery and corruption in order to contribute to good governance, economic development, and the improvement of social welfare wherever they do business.

22.3 The Parties understand that they may be subject to local or foreign laws that prohibit bribery and corruption. Deloitte further understands that the Client has retained Deloitte with the expectation that in performing the Services for the Client, Deloitte will conduct itself as if it were subject to and obliged to act in compliance with accepted global practices and legislation that prohibit bribery and corruption, including providing anything of value to a Government Official with the intent to influence that person's actions in respect of the Client.

22.4 Accordingly, both Parties agree that in connection with the Services to be provided under this Agreement, neither Party will:

22.4.1 offer, promise or give financial or other advantage to another person with the intention of inducing a person to perform improperly or to reward improper behaviour for the benefit of any other person; or

22.4.2 make, authorize, or offer to make, either directly or indirectly, for the purpose of securing any improper advantage in connection with the Services provided, any loan, gift, donation or payment, or transfer of any other thing of value to any Government Official, or for the benefit of any Government Official or any family member of a Government Official.

22.5 The Parties agree that, in the course of performing the Services hereunder, each will, in so far as is legally permissible, promptly notify the other of any solicitation, demand or any other request for anything of value that it receives, directly or indirectly, by or on behalf of any Government Official or of becoming aware of any violation of 22.4.

22.6 Notwithstanding any other provision of this Agreement to the contrary, either Party may on written notice immediately terminate this Agreement upon learning that the other Party or any of its Personnel have breached the provisions of 22.

22.7 The Client agrees, at the reasonable request of Deloitte, and at the cost of the Client to:

22.7.1 confirm in writing that it has complied with its obligations under this Agreement and has complied with all applicable laws and shall provide any Information reasonably requested by Deloitte in support of such compliance;

22.7.2 permit Deloitte to have such access to its

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- books, accounts, and records that concern its activities under this Agreement (and to take such copies thereof) as reasonably necessary in order to verify compliance with this Agreement and applicable laws, and to meet with those of its Associates and Personnel as are relevant to this Agreement to verify such compliance, for up to 7 (seven) years after termination or expiry of this Agreement; and
- 22.7.3 permit Deloitte to appoint, and the Client must cooperate with, a Professional Advisor to carry out such verification as Deloitte reasonably requires in order to verify compliance with this Agreement and applicable laws.
- 22.8 The Client shall, at its cost, fully assist and cooperate with Deloitte in relation to any police, judicial or regulatory investigation or enquiry in relation to any suspected bribery or corruption, whether during the term of the Agreement or up to 7 (seven) years after its termination or expiration.
- 22.9 The Client shall provide Deloitte with access to any audit or investigation: (i) by any regulator, professional body or law enforcement agent; (ii) arising out of reasonable suspicion of misappropriation, fraud or business irregularities of a potentially criminal nature.
- 22.10 Deloitte may allow any regulator, professional body or law enforcement agent to receive the results of, any such verification.
- 22.11 The Client shall, at its cost, promptly comply with any reasonable request of Deloitte for Information (including any books and/or records) relating to the Agreement that may be required by Deloitte to enable Deloitte to comply with: (a) applicable law; or (b) any request from a regulator, professional body or law enforcement agent.
- 22.12 Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by Deloitte arising out of or in connection with
- 22.12.1 the verification conducted in terms of this clause; and
- 22.12.2 a breach by the Client of this Agreement shall be borne by the Client and the Client shall immediately reimburse such costs to Deloitte.
- 23 GOVERNING LAW & DISPUTE RESOLUTION**
- 23.1 This Agreement is governed by the laws of Namibia and any disputes will be subject to the provisions of this 23 without giving effect to any conflict of laws.
- 23.2 Should any dispute of whatever nature arise from or in connection with this Agreement, then the dispute shall, unless the Parties otherwise agree in writing:
- 23.2.1 In the first instance be referred to confidential mediation by written notice to the Parties, by a mediator appointed by the Parties.

- 23.2.2 Failing resolution by mediation or agreement in respect of a mediator, within 60 (sixty) days after the date of the aforementioned written notice (or such longer period, if the Parties so agree in writing), the dispute shall be finally resolved by way of binding arbitration.
- 23.2.3 The arbitration shall be conducted before an arbitrator jointly appointed by the Parties. Failing appointment of the arbitrators by the Parties within 10 (ten) Business Days from the date the matter was first referred to arbitration, the chairperson of the Society of Advocates of Namibia will appoint the arbitrator.
- 23.2.4 The arbitration shall be conducted in accordance with the rules to be determined by the arbitrator. The seat of arbitration shall be in Windhoek, Namibia and the language of the arbitration shall be English.
- 23.2.5 The arbitrator will make an appropriate cost order in relation to the costs incurred by the Parties in respect of the mediation and arbitration. Should the arbitrator fail to do so then, subject to the other provisions of this Agreement, each Party shall bear its own costs in both the mediation and the arbitration; however, the Parties shall share the fees and expenses of both the mediator and the arbitrator equally.
- 23.3 Nothing in this 23 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.

24 GENERAL

- 24.1 The Agreement constitutes the entire agreement between the Parties relating to its subject matter, and supersedes all other oral or written representations, understandings or agreements.
- 24.2 No amendment, variation or consensual cancellation of this Agreement, including an amendment to this 24.2, and no settlement of any disputes arising under this Agreement, shall be binding unless recorded in writing and signed by the Parties.
- 24.3 Each undertaking in this Agreement shall be deemed to be and shall be construed as an undertaking separate and severable from every other undertaking given in terms of this Agreement.
- 24.4 No undertaking shall be limited or restricted by reference to or inference from any other separate acknowledgement and/or undertaking.
- 24.5 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.
- 24.6 The Client expressly and specifically gives permission to Deloitte for it to use the name and/or logo of the Client, as well as, a broad description of

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the Engagement, as a reference in proposals or similar submissions which it may make to prospective clients.

negotiating, drafting, preparing and implementing this Agreement.

- 24.7 Either Party desiring to issue a news release or advertisement or other form of media publicity in relation to this Agreement shall obtain the Consent of the other Party prior to the release of such publicity, which Consent will not be unreasonably delayed or withheld. 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 Deloitte in connection with any marketing, co-branding and/or promotional materials or activities, or for any other purpose whatsoever.
- 24.8 The Client undertakes and agrees that for the duration of this Agreement and after the termination thereof:
 - 24.8.1 not to make any disparaging remarks, derogatory statements or any other comments about Deloitte on any Social Media Platform; and
 - 24.8.2 to remove any reference to Deloitte of whatsoever nature that the Client has made on any Social Media Platform.
- 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 each Party has executed at least one counterpart. Each such counterpart shall be deemed to be an original, but all the counterparts shall together constitute the 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 Subject only to 3.2, neither Party shall be entitled 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, which Consent shall not be unreasonably delayed or withheld.
- 24.12 Except as otherwise provided in this Agreement, Deloitte provides no implied warranties regarding the Services.
- 24.13 Deloitte is entitled to recover from the Client all Losses a D&T Party has incurred as a result of or in connection with a claim which has arisen due to the fault of the Client, Client Associates and their Personnel. The Client will promptly reimburse the relevant D&T Party upon demand for all such Losses suffered or incurred as a result of or in connection with the applicable claim.
- 24.14 The persons signing this Agreement on behalf of the Parties warrant that they are duly authorised to sign for and on behalf of the Party they are signing for.
- 24.15 The Parties shall each pay their own costs of

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