

1 DEFINITIONS

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

- 1.1 **“Agreement”** means the Letter and the Terms;
- 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 **“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;
- 1.4 **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in Namibia;
- 1.5 **“Client, 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 any Beneficiary;
- 1.6 **“Companies Act”** means the Companies Act 28 of 2004, as amended or substituted;
- 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 purpose 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 either Party 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 either Party without obligation of confidence before it received the Information from the other;
 - 1.7.8 was developed by either Party independently of any disclosures previously made by the other Party and in circumstances which do not amount to a breach of the provisions of this Agreement;
 - 1.7.9 is disclosed with the other Party’s Consent; or
 - 1.7.10 is required to be disclosed by law, judicial order, any rules of court, an applicable tribunal or regulatory body, the rules

- of any stock exchange or under any professional obligation or requirement, provided that, in these circumstances, the Receiver shall (i) inform the disclosing Party of the requirement to disclose prior to making disclosure; (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 disclosing Party if the disclosing Party elects to contest such disclosure;
- 1.8 **“Consent”** means prior written consent which may be granted at either Party’s discretion and may be subject to conditions;
- 1.9 **“Cut-off Date”** means, unless otherwise indicated in the Letter or the Deliverable, a date 10 (ten) Business Days after the delivery of a final Deliverable or Output to the Client;
- 1.10 **“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;
- 1.11 **“Deloitte, we or our”** means Deloitte & Touche, a professional partnership established in accordance with the laws of Namibia;
- 1.12 **“Deloitte Group”** means Deloitte and any other company, body corporate, partnership, undertaking, entity or juristic person which is a Subsidiary or Associate of or belongs to Deloitte, including a successor of Deloitte;
- 1.13 **“Discloser”** means the Party disclosing or granting access to Information;
- 1.14 **“DTTL”** means Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee;
- 1.15 **“D&T Party or D&T Parties”** means DTTL or a Member Firm individually or collectively as the context may require;
- 1.16 **“Effective Date”** means 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;
- 1.17 **“Engagement”** means the assignment, including the Services and the Work, to which this Agreement relates;
- 1.18 **“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, photocopy, printing, report and presentation material, secretarial time and computer charges, and charges related to goods and services purchased on the Client’s behalf;
- 1.19 **“Fees”** means the fees charged by Deloitte for the Services as set out in the Letter, which excludes VAT and Expenses;
- 1.20 **“Government Official”** means: (a) any employee or officer of a government, including, without limitation, any federal, regional or local department, agency or instrumentality of a government;; (b) any official or employee of a public international organization (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);
- 1.21 **“Holding Company”** shall have the meaning defined in section 1 of the Companies Act;
- 1.22 **“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 operational systems; methodologies documents, presentations, spread sheets, materials, data, technologies, programmes, processes, records, facts, Personal Information and Intellectual Property, whether in hard copy or

- 1.23 **“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;
- 1.24 **“Letter”** means the engagement or proposal letter (and any annexures and schedules thereto) to which these Terms are attached;
- 1.25 **“Member Firm”** means 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;
- 1.26 **“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 Deliverable, is not Deloitte branded and in terms of which the Client retains the responsibility, risk, ownership and final judgement;
- 1.27 **“Party or Parties”** means Deloitte or the Client individually or collectively as the context may require;
- 1.28 **“Personal Information”** shall have the meaning set out in any legislation applicable to the protection of personal information in Namibia, and failing such applicable legislation shall all information relating to an identifiable natural person;
- 1.29 **“Personnel”** of a Party includes employees, partners, directors, agents, consultants, contractors, subcontractors, Professional Advisers or other representatives of a Party utilised in this Engagement;
- 1.30 **“Professional Advisors”** means the Client’s duly appointed attorneys, auditors and other professional or Transaction advisors from time to time;
- 1.31 **“Prohibited Payment”** means the payment referred to in 8.5;
- 1.32 **“Purpose”** means the purpose or purposes of the Services as specified in the Letter;
- 1.33 **“Receiver”** means the Party receiving or to whom Information is disclosed;
- 1.34 **“Services”** means the services as described in the Letter to be rendered by Deloitte to the Client, 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;
- 1.35 **“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;
- 1.36 **“Subsequent Event”** means:
 - 1.36.1 an event which occurs subsequent to a Cut-off Date; or
 - 1.36.2 Information not known to Deloitte prior to a Cut-off Date.
- 1.37 **“Subsidiary”** shall have the meaning defined in section 1 of the Companies Act;
- 1.38 **“Terms”** means these standard terms and conditions, and any annexure or schedule thereto;
- 1.39 **“Transaction”** means, if applicable to the Services, a commercial transaction or proposed transaction as described in the Letter;
- 1.40 **“VAT”** means value-added tax as described in the Value-Added Tax Act 10 of 2000, as amended;

- 1.41 **“Work”** means the work that Deloitte conducts, creates or prepares either alone, with the support of any subcontractors, with a D&T Party or with 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 Letters, 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;
 - 2.2.4 references to, annexures, schedules, parts and sections are, unless otherwise provided, references to annexures, schedules, parts and 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 a 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 signature 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 its nature extends 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 Where there is a conflict between these Terms and any other part of the Agreement, the following order of priority shall apply to resolve the conflict:
 - 2.10.1 The Letter; and then
 - 2.10.2 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

This Agreement shall commence on the Effective Date and shall, unless 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 Deloitte is a member of DTTL. The D&T Parties are all separate and independent legal entities, which cannot obligate each other.
- 5.2 Each Member Firm 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 Member Firm other than Deloitte, the Client undertakes that no Member Firm 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 Deloitte cannot negotiate for or commit the Client to the terms of any Transaction and the Client shall remain responsible for making all decisions that commit the client in respect of any Transaction.
- 6.4 Nothing in this Agreement shall be construed as:
 - 6.4.1 constituting a labour broking 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 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.
- 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 in its sole discretion deems 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 our Work;
 - 7.1.4.3 be entitled to manage, 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 and 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, contractors, administrative support, premises and facilities and those of its entities 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; and
 - 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 a Transaction;
 - 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;
- 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 by the Client in performing its obligations in terms of this Agreement.
- 8 DELOITTE OBLIGATIONS**
- 8.1 Deloitte shall:
- 8.1.1 ensure that any D&T Party appointed to assist 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 Deloitte is committed to working in an ethical, lawful, and professional manner as set forth in the DTTL Policies Manual and the ethical principles of the Member Firms of DTTL.
- 8.3 The Parties support the fight against corruption in all its forms and stands firmly against bribery in order to contribute to good governance, economic development, and the improvement of social welfare wherever we do business.
- 8.4 Deloitte understands that the Client may be subject to the laws of the United States of America or the United Kingdom 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 the bribery and corruption legislation of the United States of America or the United Kingdom.
- 8.5 Accordingly, both Parties agree that in connection with the Services to be provided under this Agreement, neither Party will 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.
- 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. They may however substitute Personnel at their discretion, provided that they provide reasonable replacement Personnel of 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 make any offer of employment to their respective Personnel, 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 Personnel 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 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 Force Majeure in terms of 16;
- 10.2.2 a change in the scope of the Services;
- 10.2.3 the Agreement is not accepted within 3 (three) months of the date of the Letter; and
- 10.2.4 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 Namibia Rand, 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 30 (thirty) 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;
 - 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 per cent) 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 milestone 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:
 - 11.1.1 not to divulge or disclose to any third party (excluding any D&T Party 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, 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 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 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 unfettered ownership of 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 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 only provide, collect, use, store or process Personal Information:
 - 13.2.1 in compliance with the applicable Namibian legislation;
 - 13.2.2 as is necessary for the purposes of this Agreement; and
 - 13.2.3 in accordance with the lawful and reasonable instructions of the Party providing the Personal Information.
- 13.3 Both Parties shall comply with the security and data protection obligations equivalent to those imposed on them in terms of the applicable Namibian data protection legislation, and failing such legislation, they shall 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 or Personal Information in its possession and to protect such Confidential Information or Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.
- 13.4 Deloitte may share Confidential or Personal Information with other D&T Parties or Beneficiaries where necessary in connection with this Agreement.

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 an audit;
 - 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 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 clause 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 to 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:
 - 15.3.1 that Deloitte has fulfilled all its obligations in terms of the Agreement;

15.3.2 of any scope extensions or additional Services requested by the Client;

15.3.3 that all Fees and Expenses are due and owing to Deloitte; and

15.3.4 that the Engagement and the Agreement 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 renders services to many clients and has relationships with many business partners. It is therefore a Deloitte requirement to check for conflicts of interest and auditor independence before taking on engagements. Deloitte undertakes to promptly notify the Client of any conflict with the Client's interests or an auditor independence concern on becoming aware thereof. The Client shall promptly notify Deloitte of any conflict of interest or auditor independence concern potentially affecting this Engagement which it becomes aware of.

17.2 Deloitte is committed to complying with the rules of all relevant governmental, regulatory, professional, or other entities having the force of law. In particular, Deloitte undertakes to comply with audit independence and professional audit rules so as to maintain its independence as external auditors when rendering non-audit services to and forming business relationships with audit clients.

17.3 Deloitte and the Client shall take all reasonable commercial steps necessary to attempt to resolve a conflict or independence concern if any arises during the course of the Engagement. Deloitte shall in its sole and absolute discretion be entitled to terminate this Agreement where the conflict or independence concern cannot be resolved.

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 it becomes 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 cancel this Agreement, such cancellation 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.

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 addresses (including email addresses) as set out in the Letter, or such other address as a Party elect in writing .

19.2 Any notice addressed to a Party at its physical or postal address shall be sent by prepaid registered post or delivered by hand.

19.3 Any notice shall be deemed to have been given:

19.3.1 If posted by prepaid registered post, 7 (seven) days after the date of posting thereof;

19.3.2 If hand delivered, on the day of delivery; or

19.3.3 If sent by email, the next Business Day.

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 in business rescue or liquidation proceedings are instituted (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 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 affiliates) 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 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 The liability of Deloitte to the Client arising from this Agreement shall not be limited where the liability arose as a result of theft, fraud or wilful misconduct by Deloitte or its Personnel.

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 Other than is set out in 21.1 and 21.2, the aggregated maximum liability of Deloitte for all claims from whatever source or however arising from this Agreement, whether arising in contract, delict or otherwise, shall, unless otherwise stated in the Letter, be limited to the total Fees paid by the Client to Deloitte as at the date on which the claim arises.

- 21.4 Neither Party will be liable to the other Party (or any cessionary or 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.
- 21.5 In the absence of any theft, fraud, wilful misconduct or breach of this Agreement, the Client shall indemnify and hold all D&T Parties harmless against:
 - 21.5.1 any third party claims caused by or arising from the Services; and
 - 21.5.2 loss, damages, costs or expenses (including legal fees on the scale as between attorney and own client) directly or indirectly incurred by any D&T Party as a result of a breach by the Client of its obligations in terms of this Agreement.

22 DISPUTE RESOLUTION

- 22.1 This Agreement is governed by Namibian law and any disputes will be subject to the provisions of this 22 without giving effect to any conflict of laws.
- 22.2 Should any dispute of whatever nature arise from or in connection with this Agreement (including an urgent dispute), then the dispute shall, unless the Parties otherwise agree in writing:
 - 22.2.1 in the first instance be referred to mediation by a mediator acceptable to both Parties; and
 - 22.2.2 failing resolution by mediation or agreement in respect of a mediator, shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by agreement between the Parties from the Society of Advocates of Namibia, or where the Parties are unable to agree on an arbitrator, by the chairperson of the Society of Advocates of Namibia in his or her sole and absolute discretion.
- 22.3 This 22 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

23 GENERAL

- 23.1 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.
- 23.2 No amendment, variation or consensual cancellation of this Agreement, including an amendment to this 23.2, and no settlement of any disputes arising under this Agreement, shall be binding unless recorded in writing by the Parties.
- 23.3 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.
- 23.4 No undertaking shall be limited or restricted by reference to or inference from any other separate acknowledgement and undertaking.
- 23.5 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.
- 23.6 Unless the Client expressly and in writing forbids such disclosure, Deloitte shall have the right to use the name or logo of the Client and a broad description of the Engagement, as a reference in proposals or similar submissions which it makes to prospective clients.
- 23.7 Either Party desiring to issue a news release or advertisement or other form of media publicity in relation to this Engagement shall obtain the Consent of the other Party prior to the release of such publicity, which Consent will not be unreasonably delayed or withheld.

- 23.8 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.
- 23.9 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.
- 23.10 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.
- 23.11 Except as otherwise provided in this Agreement, Deloitte provides no implied warranties regarding the Services.
- 23.12 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.