



STANDARD TERMS AND CONDITIONS

July 2021

Standard Terms and Conditions

These standard terms and conditions apply to services rendered by TSRM Africa (Pty) Ltd and TSRM Chartered Accountants Inc (hereafter referred to as “TSRM”) to a client pursuant to a letter recording the engagement (‘the engagement letter’) referring to and including these standard terms and conditions or incorporating them by reference.

Definitions

The meanings of the following words and phrases, which are widely used in these standard terms and conditions, shall be as set out below:

Colleagues or a colleague: collectively or individually, TSRM persons who are not members of the engagement team.

Engagement team: collectively or individually, TSRM persons who are involved in delivering the services.

TSRM persons: The TSRM contracting party, each and all of our directors, employees and agents as the case may be, together with any other body or entity controlled by us or owned by us or associated with us and each and all of its directors, employees and agents and ‘TSRM person’ shall mean any one of them.

Other beneficiaries: Any and each person or organisation whose activities you may control, or any other organisation or entity associated with you, if any such person or organisation is identified in the engagement letter as a recipient or beneficiary of the services or any product thereof and any and each person or organisation which we and you agree may be so treated.

Services: The services to be delivered by us under the engagement letter.

Services contract: These standard terms and conditions and the Engagement Letter together with any documents or other terms applicable to the services (‘additional terms’) specified in any engagement letter, together with any documents or other terms applicable to the services to which specific reference is made in the engagement letter.

You (and derivatives): The client.

Service delivery

1. We will seek to ensure that our service to you is satisfactory at all times and delivered with reasonable skill and care. If at any time you would like to discuss with us how the service can be improved, you are invited to telephone the director identified in the engagement letter.
2. The engagement will be governed by and interpreted in accordance with the laws of South Africa and The Courts of South Africa shall have exclusive jurisdiction in relation to any matter arising from this engagement.
3. Where individuals are to be involved in delivering the services, which individuals are named in the engagement letter, we shall use reasonable endeavours to ensure that they are so involved. We may however substitute those named for others of equal or similar skills, should we deem it necessary or appropriate to do so but we shall endeavour to consult you before doing so.

Standard Terms and Conditions

Other services and responsibilities

4. We may acquire sensitive information concerning your business or affairs in the course of delivering the services, which constitutes personal, trade, business or industrial information not generally known ('confidential information'). In relation to confidential information we shall comply with the confidentiality standards of our regulatory bodies, the Independent Regulatory Board for Auditors and the South African Institute of Chartered Accountants as well as legislation contained in the Auditing Profession Act, 2005 (Act 26 of 2005) as amended. This restriction shall not apply where confidential information enters the public domain or where we may be required to disclose it to our insurers, legal advisers or under legal compulsion.
5. Prior to completion of the services we may supply oral, draft or interim advice or reports or presentations, but in such circumstances our final written advice or our final written report shall take precedence. No reliance shall be placed by you on any draft or interim advice or report or any draft or interim presentation. Where you wish to rely on oral advice or on an oral presentation made on completion of the services, you shall inform us and we shall supply documentary confirmation of the advice concerned.
6. We shall not be under any obligation in any circumstances to update any advice, report or any other product of the services, oral or written, for events occurring after the advice, report or product concerned has been issued in final forms, unless otherwise specifically agreed upon by mutual consent by you and us in the body of the engagement letter.
7. Any product of the services released to you in any form or medium shall be supplied by us on the basis that it is for your benefit and information only and that it shall not be copied, referred to or disclosed, in whole (save for your own internal purposes) or in part, without our prior written consent. The services shall be delivered on the basis that you shall not quote our name or reproduce our logo in any form or medium without our prior written consent. You may disclose in whole any product of the services on a confidential basis to your bankers including lenders, clients (including but not limited to investee companies, associates, partners, potential partners, entities which you bid to purchase or sell to), and legal and other professional advisers for the purposes of your seeking advice in relation to the services, provided that when doing so you inform them that:
 - Disclosure by them (save for their own internal purposes) is not permitted without our prior written consent, and
 - We accept no responsibility or liability whatsoever and neither do we owe any duty of care to them in connection with the services.
8. Any advice, opinion, statement of expectation, forecast or recommendation supplied by us as part of the services shall not amount to any form of guarantee that we have determined or predicted future events or circumstances.
9. It may become necessary as the services contract proceeds to change the scope of the services to include matters you may deem appropriate. You will discuss and agree such changes with us, which will include the payment of any additional fees and the period for provision of any additional services. Significant variations in the scope of the services, at your instance, will be the subject of a supplementary engagement letter.

Standard Terms and Conditions

Ownership

10. We shall retain copyright and all other intellectual property rights in the product of the services, whether oral or tangible as well as ownership of our working papers. For the purpose of delivering services to you or other clients, we shall be entitled to use or develop knowledge, experience and skills of general application gained through performing the services. You agree to keep confidential any methodologies and technology used by us to carry out our services.
11. We have the right to use your name as a reference in proposals or other similar submissions to other prospective clients, unless you specifically forbid such disclosure. If we wish to use details of the work done for you for reference purposes, we will obtain your permission in advance.

Professional fees

12. Our fees, together with disbursements, will be billed as work progresses, and are based on the time required by the resources assigned to the engagement plus out-of-pocket expenses. Individual hourly rates vary according to the degree of responsibility involved and the experience and skill required. Invoices are payable on presentation.
 13. VAT will be charged on all fees and disbursements at the statutory rate together with any other foreign taxes that might be payable thereon ('fees'). VAT may qualify for a deduction as input tax by registered vendors.
 14. Disbursement in respect of travelling expenses, photocopies, stationery, revenue stamps, postage and telephone calls will be recovered at our predetermined rates.
 15. You shall notify us not later than 48 (Forty-eight) hours before the planned commencement of an engagement, should it be your intention to cancel, postpone or in any other way delay commencement of the engagement. Should such notification be given less than 48 (Forty-eight) hours prior to the commencement date of the engagement, we reserve to ourselves, the right to account to you for any loss or costs incurred by us arising from such late notification. Such loss and / or costs will be directly related to the standing time of resources that would otherwise have been allocated to other projects. The hourly rates that will apply in such an instance will be those stated above.
 16. All payments to TSRM for services shall be made against TSRM's invoices which shall be presented during or after the period of the provision of the services in respect of services provided.
 17. Our fees are based on the time spent on your affairs by TSRM persons or agents, as the case may be and on the levels of skill and responsibility involved, the nature and complexity of the engagement. The fees may differ from estimates which shall be provisional only. Stringent reporting requirements or deadlines imposed by you might require work to be carried out at a higher level than usual or outside normal working hours. This may result in increased costs and additional fees may also be as a result of material changes in the services or difficulties in obtaining information which could not reasonably have been foreseen.
 18. In return for the delivery of services by us, you shall pay our fees, without any right of set-off, on presentation of our invoice. If you are not in agreement with
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Standard Terms and Conditions

any fee note, you are required to notify us in writing of your objection within 21 working days of the date reflected on the fee note. Failure to do so will constitute your acknowledgement that our fee note is prima facie correct and due and payable.

19. In the event of your appointing another adviser in our stead, or otherwise terminating our mandate, we will be entitled to raise a fee note upon receipt of such notification for all work done to date and not yet billed, at our standard charge-out rates, including disbursements incurred. In such event, you undertake to settle our account in full prior to us handing over books and records to you or to your appointee.

Interest

20. We shall be entitled to charge interest at the maximum rate of 2% per month from time to time on all overdue amounts, for whatsoever reason, outstanding for more than 30 days from the date reflected on our fee note. It is agreed that we may at any time increase or reduce the interest rate by the same margin as and in accordance with a change in the prescribed rates in terms of the National Credit Act.
21. Such interest will be calculated on a monthly basis. All payments will be allocated first to interest, then to disbursements and then to the oldest outstanding fee.

Costs and collection commission

22. Should you fail to pay an invoice on due date and we have to instruct our attorneys to recover the outstanding amount on our behalf, then notwithstanding that such action may not involve the issue of process through any court, you will be liable for all legal costs incurred by us, on demand, including collection commission, attorney and own client costs and tracing charges.

Your responsibilities

23. You shall retain responsibility and accountability for:
 - The management, conduct and operation of your business and affairs
 - Any representations made by the company to third parties including published information
 - The maintenance of the accounting records, the preparation of annual financial statements and the safeguarding of the assets
 - The adopted policies and prescribed procedures are adhered to for the prevention of errors and irregularities, including fraud and illegal acts
 - The use of, extent of reliance on or implementation of advice or recommendations supplied by us or other products of the services
 - Making any decision in respect of the services delivered or any use of the product of the services
 - The delivery, achievement or realisation of any benefits directly or indirectly related to the services that require implementation by you.

Standard Terms and Conditions

- Ensuring that all arrangements are made for access, security procedures, virus checks, facilities, licences and/or consents (without any cost to us), where you require us, or the nature of the services is such that it is likely to be more efficient for us, to perform work at your premises or use your computer systems or telephone networks.

Working for other clients

24. We will not be prevented or restricted by virtue of our relationship with you, including anything in this engagement letter, from providing services to other clients. Our standard internal control procedures are designed to ensure that client confidentiality is maintained.

Information

25. To enable us to perform the services, you shall use your best endeavours to procure and promptly to supply all information and assistance, and access to all documentation in your possession or custody, or under your control, and to personnel under your control, where required by us. Where such information and/or documentation are not in your possession or custody or under your control, you shall use your best endeavours to procure the supply of the information and assistance and/or access to all the documentation.
26. You shall inform us of any information or developments which may come to your attention during the duration of the services contract, which might have a bearing on or be relevant to the services we have agreed to provide.
27. We may rely on any instructions or requests made or notices given or information supplied, whether orally or in writing, by any person whom we know to be or reasonably believe to be authorised by you to communicate with us for such purposes ('an authorised person').
28. We may choose to communicate with you by electronic mail where an authorised person wishes us to do so, on the basis that in consenting to this method of communication, you accept the inherent risks of such communications (including the security risks of interception of or unauthorised access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices) and that you shall perform virus checks. As you are however aware, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed or incomplete, or arrive late or otherwise be adversely affected or unsafe to use. Accordingly, whilst we will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically and notwithstanding any collateral contract, warranty or representation, neither TSRM nor its directors, employees, agents or servants shall have any liability to you on any basis, whether in contract, delict (including negligence) or otherwise, in respect of any error or omission arising from or in connection with the electronic communication of information to you, and your reliance on such information, including (but not limited to) the acts or omissions or misrepresentations that are negligent on the part of TSRM.

Standard Terms and Conditions

29. If the communication on which you wish to rely relates to a significant matter and you are concerned about the possible effects of electronic transmission, you should request a hard copy of such communication from us. If you wish us to password-protect all or certain documents transmitted electronically, you should discuss this with us and we will make appropriate arrangements.
30. We may receive information from you or from other sources in the course of delivering the services and:
 - We shall consider the consistency and quality of information received by us
 - We shall not seek to establish the reliability of information received from you or any other information source. Accordingly, we assume no responsibility and make no representation with respect to the accuracy, reliability or completeness of any information provided to us
 - We shall not be liable to you for any loss or damage suffered by you arising from fraud, misrepresentation, withholding of information material to the services or other default relating to such material information whether on your part or that of the other information sources.
31. You undertake to supply information in response to our enquiries to enable us to comply with our statutory obligations in terms of the Financial Intelligence Centre Act 38 of 2001 and the Prevention of Organised Crime Act 121 of 1998.

Knowledge and conflicts

32. The engagement team shall not be required, expected or deemed to have knowledge of any information known to colleagues which is not known to them personally, or be required to obtain such information from colleagues. The engagement team shall not be required to make use of, or to disclose any information to you, whether known to them personally or known to colleagues, which is confidential to another client of TSRM.
 33. We or other TSRM persons may be approached to advise another party or parties who are in dispute with you, or to advise or represent the interests of a party or parties whose interests are opposed to yours through their material concern in matters to which the services are specifically and directly related ('adversarial conflicts'). We seek and shall continue to seek to identify adversarial conflicts. If you know or become aware of any which may arise, you shall inform us promptly.
 34. We shall endeavour to have mechanisms operating between TSRM persons designed to facilitate the protection of each client's interests through the use of, inter alia, one or more of the following safeguards: separate teams, geographical separation, and operational independence.
 35. We shall not accept an engagement which may give rise to an adversarial conflict for an engagement team. Colleagues may accept such an engagement only where effective barriers exist to prevent the flow of confidential information from the engagement team. The existence of such barriers shall constitute full compliance with our duty of confidentiality in relation to adversarial conflict. We may accept such an engagement only when the adversarial conflict is disclosed to all the parties involved and their consent is obtained.
 36. We or other TSRM persons may be approached to advise another party or parties where there is no adversarial conflict but whose interests compete with yours specifically and directly in relation to the subject-matter of the services ('competing party' or 'competing parties'). We seek and shall continue to seek
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Standard Terms and Conditions

to identify competing parties. If you know or become aware that a TSRM person is advising or proposing to advise a competing party, you shall inform us promptly. In such situations, we shall take appropriate measures to ensure that strict confidentiality is maintained in all respects where such confidentiality is warranted.

37. Where a party being advised by us, has been identified by us or notified by you as a competing party, we shall activate appropriate barriers and when operating we shall be entitled to advise the competing party concerned at any time and in any capacity (save in relation to an adversarial conflict). We will supply you with the detail of the potential adversarial conflict and how this will be approached either before we commence work in accordance with these standard terms and conditions or during the engagement. The existence of appropriate barriers shall constitute full compliance with our duty of confidence in relation to competing parties.
38. Where a party has engaged our services, and during the delivery of our services we are of the opinion, even with the barriers introduced, that your interests or the other party's interests are likely to be prejudiced, we may, after consultation with you, choose to terminate the services contract and we shall be entitled to terminate the services with immediate effect on written notice to you. We shall not be responsible for any costs that you may incur in securing other professional services.

The service contracts

39. The services contract sets out the entire agreement and understanding between us in connection with the services. Any modifications or variations to the services contract must be in writing and signed by an authorised representative of each of us, save to the extent provided otherwise in law. No variation of the terms and conditions of the engagement will be of any force or effect, unless reduced to writing and signed by all of the signatories thereto save to the extent provided otherwise in law. In the event of any inconsistency between the engagement letter and any other elements of the service contract, the engagement letter will prevail. In the event of any inconsistency between these standard terms and conditions and additional terms that may apply, the additional terms shall prevail.

Third party rights

40. The service contract shall not create or give rise to, nor shall it be intended to create or give rise to, any third-party rights.

Standard Terms and Conditions

Circumstances beyond your or our control

41. Neither of us shall be in breach of our contractual obligations nor shall either of us incur any liability to the other if we or you are unable to comply with the services contract as a result of any cause beyond our or your reasonable control. In the event of any such occurrence affecting one of us, that one shall be obliged as soon as reasonably practicable to notify the other, who shall have the option of suspending or terminating the operation of the services contract on written notice, which notice will take effect immediately on delivery thereof.

Waiver, assignment and sub-contractors

42. Failure by any one of us to exercise or enforce any rights available to us shall not amount to a waiver of any rights available to either of us.
43. Neither of us shall have the right to assign the benefit or burden of the services contract without the written consent of the other.
44. We shall have the right to appoint sub-contractors to assist us in delivering the services.

Exclusions and limitations of our liability

45. The maximum liability of TSRM or any individual director, or employee, as the case may be, of the TSRM contracting party or of anybody or entity controlled by us or owned by us or associated with us in respect of all claims, direct economic loss or damage suffered by you or by other beneficiaries arising out of or in connection with the services provided, shall be limited to an amount equal to the fees charged for the services in respect of which the claim arises, except where TSRM is at fault through wilful default or gross negligence. The maximum liability shall be an aggregate liability for all claims arising from whatever source and however arising, whether under the law of contract, delict, or otherwise including but not limited to statute.
46. In the particular circumstances of the services set out in the engagement letter, the liability to you and to other beneficiaries of each and all TSRM persons in contract or delict or under statute or otherwise, for any indirect or consequential economic loss or damage (including loss of profits) suffered by you (or by any such other party) arising from or in connection with the services, however the indirect or consequential economic loss or damage is caused, excluding our wilful or grossly negligent misconduct, shall be excluded to the extent that such limitation is permitted by law.
47. TSRM will not be liable to you or any cessionary or third party claiming through or on behalf of you for any punitive damages whatsoever or for any consequential or other loss or damages beyond the maximum liability specified, to the extent that such an exclusion of liability is permissible in law, except where TSRM is at fault through wilful default or gross negligence. This engagement is governed by South African law and any claims will be subject to the exclusive jurisdiction of the Courts of South Africa.

Standard Terms and Conditions

48. In further consideration of our agreement to provide these services, you agree to indemnify TSRM and hold it harmless against all and any claims made against it by any party whatsoever in respect of any loss, damages, costs or expenses referred to above and against the actual costs incurred by TSRM in defending such claims.
49. In determining the liability of TSRM for purposes of this paragraph, a court or an arbitrator shall limit the liability of TSRM to that proportion of the loss or damage suffered by you which is ascribed to TSRM by such court or arbitrator allocating a proportionate responsibility having regard to your contribution to the loss or damage in question, or that of any other person based upon relative degrees of fault; it being a term of the services contract that the provisions of Section 1 of the Apportionment of Damages Act, 1956, will apply to all claims between us and that 'breach of contract' and 'damages' or 'losses' as used herein shall be deemed to fall within the meaning of 'fault' and 'damage' as contained in the said section of the above Act.
50. Our liability to you shall in no circumstances exceed the lower of the amount determined by the application of the monetary limit based upon fees charged to you and the amount determined by the apportionment of responsibility as the case may be, except where TSRM is at fault through wilful default or gross negligence.
51. You and other beneficiaries shall not bring any claim personally against any individual director, employee or agent, as the case may be, of the TSRM contracting party or of anybody or entity controlled by us or owned by us or associated with us in respect of loss or damage suffered by you or by other beneficiaries arising out of or in connection with the services, save as may be expressly permitted in terms of any statute. This restriction shall not operate to limit or exclude the liability of the TSRM contracting party as a company for the acts or omissions of its directors, employees and agents. Any claim by you or other beneficiaries arising from or in connection with the engagement (or any variation or addition thereto) must be made within three years of the date on which you or they became aware, or ought reasonably to have become aware, of circumstances (alleged breach of contract, negligence or other act or omission) giving rise to a claim or potential claim against us. For these purposes, a claim shall be made when court or other dispute resolution proceedings are commenced.
52. The services contract is between you and the TSRM contracting party only, and the following provisions shall apply where, and to the extent, permitted by applicable laws:
 - If one of our colleagues carries out any work for you in relation to the services to which the services contract applies, our colleagues will do so as sub-contractors of the TSRM contracting firm, which will be the sole entity that is responsible to you, including for the work carried out by any of our colleagues.

Standard Terms and Conditions

- These exclusions shall not apply to any liability, claim or proceeding founded on an allegation of fraud or wilful misconduct or other liability that cannot be excluded under applicable laws.
- It is agreed that, unless otherwise specified, the benefit of the limitation of liability provisions in the services contract shall apply equally to the TSRM contracting party and our colleagues may involve as sub-contractors in the services.
- You agree that any of our colleagues whom we may involve as sub-contractors in the services or TSRM entities shall each have the right to rely on and enforce the provisions of the foregoing sub-clauses as if they were parties to the services contract.

Third parties

53. You shall indemnify the TSRM contracting party and any TSRM persons and hold the aforesaid parties and/or persons harmless against any loss, damage, expense or liability incurred by the parties and/or persons as result of, arising from or in connection with a combination of the following two circumstances:
- Any breach by you of your obligations under the services contract and
 - Any claim made by a third party or any other beneficiaries which results from or arises from or is connected with any such breach.

Termination

54. Each of us may terminate the services contract or suspend its operation by giving thirty (30) days notice in writing to the other at any time or as otherwise agreed between us. Termination or suspension under this clause shall be without prejudice to any rights that may have accrued to either of us before termination or suspension and all sums due to us shall become payable in full when termination or suspension takes effect. We will be entitled to raise a fee note upon receipt of such notification for an amount adequate to cover all work done to date and not yet billed including disbursements incurred. On termination, each of us on request will return any property belonging to the other that it has in its possession. We may retain one copy of any documentation upon which the services are based to enable us to maintain a professional record of our involvement.

Standard Terms and Conditions

55. The following clauses of these standard terms and conditions shall survive expiry or termination of the services contract: clauses 2, 4, 5, 6, 7, 8, 10, 18, 19, 22, 27, 30, 31, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58.

Severability

56. Each clause or term of the service contract constitutes a separate and independent provision. If any of the provisions of the services contract are held by any court or authority of competent jurisdiction to be void or unenforceable, the remaining provisions shall continue in full force and effect.

Capacity

57. You agree to and accept the provisions of the services contract on your own behalf and as the agent for other beneficiaries. You shall procure in such circumstances that any other beneficiaries shall act on the basis that they are a party to the services contract, as if they had each signed a copy of the engagement letter and agreed to be bound by it. However, you alone shall be responsible for payment of our fees.

Dispute Resolution

58. Save as expressly provided elsewhere, any dispute, controversy or claim shall firstly be referred to the parties' Chief Executive Officers (or their nominees) in an attempt to resolve and settle the dispute through negotiation.
59. If the dispute is not resolved by such persons within 7 days (or such additional period as the parties may agree), the parties agree first to try in good faith to settle the dispute by mediation to be administered by a mediator appointed by agreement between the parties.
60. If the parties are unable to agree on a mediator, or if the dispute is not settled or fully resolved within 7 days after being referred for mediation, the initiating party may determine the dispute resolution process that will be followed and the other party must abide thereby.
61. If the initiating party refer the matter for arbitration, the arbitration shall be held in Johannesburg in English. The arbitration shall be held before a single arbitrator - nominated by you and TSRM or failing agreement between us within 7 days after the arbitration has been demanded, appointed by the Secretariat of AFSA. The arbitrator shall deliver a written award setting forth findings of fact, conclusions of law and the reasons for the decision. The arbitrator's award shall be final and binding on both parties and shall not be subject to appeal.

Staff

62. Our staff undergo periodic training and this, together with the taking of annual leave, may lead to staff turnover and lack of continuity. We will use our best endeavours to avoid any disruption to an engagement's progress.
63. You agree not to make any offer of employment or to employ any member of the TSRM staff working on an assignment. You further agree not to employ such
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Standard Terms and Conditions

person or use such a person's services as a consultant either independently or via a third party for a period of 6 months following the end of any involvement in the services contract by the individual concerned, without our consent\

Recruitment fee

64. TSRM reserves the right, but will not be obliged, to levy a recruitment fee of 15% (excluding VAT) on the first year's cost to company of any of its staff accepting direct employment with you, or any associate of yours, while under an employment contract or within three months of the termination of employment with TSRM. This clause shall apply mutatis mutandis in respect of TSRM hiring your staff.

Jurisdiction

65. You hereby consent to the jurisdiction of the Magistrate's Court Act No 32 of 1944 of any district having jurisdiction in terms of section 28 of the said Act, in any action instituted by us against you arising from this agreement.