

## **1. INTRODUCTION & EXPLANATION**

- 1.1. These standard Terms and Conditions apply to the services to be rendered, provided or created by “Quoin” to or for the Client and are incorporated by reference hereto in the Engagement Letter countersigned by the Client.

## **2. INTERPRETATION**

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

- 2.1 Words and phrases used in this Agreement that are defined in any statute or regulations shall be construed in accordance with the applicable statute or regulation.
- 2.2 Headings shall be read for convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof
- 2.3 Words shall be gender neutral, the singular includes the plural, natural persons include other legal persons (corporate or un-incorporate) and the State, vice versa
- 2.4 The provisions of this Agreement are severable. Any provision which is or may become unenforceable shall be ineffective to the extent of its unenforceability and shall be treated as if not written and severed without invalidating the remaining provisions.
- 2.5 References to statute, regulation or other legislation shall be a reference to the same as at the Effective Date, and as amended or substituted from time to time thereafter.
- 2.6 The words such as “include”, “in particular” etc. denote examples or emphasis and shall not be construed as limiting the generality of any preceding words.
- 2.7 The rule of construction that a contract shall be interpreted against the Party principally responsible for the drafting or preparation of the contract, shall not apply.
- 2.8 Any provision 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 Any substantive provision imposing rights or obligations, notwithstanding that it is in a definition clause, shall have effect as if it were a substantive provision in the body of this Agreement.
- 2.10 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail
- 2.11 When any number of days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day.

## **3. DEFINITIONS**

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

- 3.1 **'Accountable Institution'** means an organisation referred to and listed in Schedule 1 of the FIC Act that carries on the business of any entity of which both Quoin Wealth (Pty) Ltd and Quoin Trust (Pty) Ltd are listed
- 3.2 **'Agreement'** means the Engagement Letter and these Terms and Conditions and any amendments thereto;
- 3.3 **'Associate'** means in relation to:
- 3.3.1 any company, any other company that is its Subsidiary, Holding Company or a Subsidiary of its Holding Company; or
- 3.3.2 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
- 3.4 **'Business Day'** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa.
- 3.5 **'Confidential Information'** means the Information of the Parties which is deemed or designated by either of them to be confidential and/or proprietary and includes:
- 3.5.1 information which affords the Discloser a competitive advantage and includes its trade secrets, ideas, processes, formulas, computer software and information systems (whether developed in-house or operated under licence), data and know-how, copyrightable material, improvements, inventions (whether patentable or not), techniques, marketing plans, strategies, business and product development plans, timetables, forecasts and details and particulars in regard to its suppliers, (potential) customers and business associates, products and services (past, current and prospective), business or technical information, product plans, product designs, product costs, pricing structures and strategies, product names, finances and/or financial results, business opportunities, research, staff and development.
- 3.5.2 Information is not readily available in the normal course of business to a competitor or the public and/or under the circumstances would reasonably be deemed to be confidential and has not lawfully been made public or entered the public domain through lawful and authorised means.
- 3.6 **'Control'** will bear the meaning assigned to it in Section 2 of the Companies Act 71 of 2008.
- 3.7 **'Data Protection Law'** means the POPIA and the GDPR and all other applicable laws in relation to Personal Information.
- 3.8 **"Deliverable"** refers to anything in writing or otherwise tangible (whether in hard copy or electronic format) created or prepared by Quoin for the Client as part of the Services
- 3.9 **'Discloser'** means either Quoin or the Client, as the case may be, who is disclosing Confidential Information to the Receiver
- 3.10 **'Effective Date'** means the date on which any Confidential Information or Intellectual Property is transferred between the Parties, or the date on which Quoin commences rendering the Services to the Client, or the date of written acceptance by the Client of the Engagement Letter, whichever is earlier in date;
- 3.11 **'Engagement'** means the Services to which this Agreement relates;
- 3.12 **'Engagement Letter'** means The Engagement Letter (which includes any annexures, schedules, additional terms related to the Engagement) read together with these standard Terms and Conditions, which are incorporated by reference explicitly, sets out the entire Agreement between us and you with respect to our Services.

- 3.12.1 Any reference in these standard Terms and Conditions to the Engagement Letter will include and, if necessary, is deemed to include these standard Terms and Conditions, unless otherwise specifically provided for. Likewise, any reference in the Engagement Letter to these standard Terms and Conditions will include and, if necessary, is deemed to include the Engagement Letter itself. The Engagement Letter and these standard Terms and Conditions are one and the same document.
- 3.12.2 Any modification or variation to the Engagement Letter must be in writing and signed by an authorised representative of each of us. For the avoidance of doubt and in amplification of the immediately preceding clause, any modification of the Engagement Letter will include any modification of these standard Terms and Conditions and *vice versa*. No variation of the Engagement Letter will be of any force or effect, unless reduced to writing and signed by all of the signatories thereto. By implication, no variation of these standard Terms and Conditions will be of any force or effect, unless reduced to writing and signed by all of the signatories thereto.
- 3.12.3 In the event of any inconsistency between the Engagement Letter and these standard Terms and Conditions, the Engagement Letter will prevail. In the event of any inconsistency between these standard Terms and Conditions and additional terms that may apply, the additional terms shall prevail.
- 3.13 **'Engagement team'** means collectively or individually, the Quoin persons who are involved in delivering the services.
- 3.14 **'Entity'** means any juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate and any similar entity;
- 3.15 **'Expenses'** mean the actual costs incurred by Quoin reasonably necessary for the successful completion of the Services, including but not limited to disbursements, travelling, accommodation, subsistence, communication, stationery, administration, photocopying, printing, report and presentation material, secretarial time and charges related to goods and services purchased on the Client's behalf.
- 3.16 **'FCPA'** means the Foreign Corrupt Practices Act of 1977
- 3.17 **'FICA'** means the Financial Intelligence Centre Act of 2001
- 3.18 **'Fees'** means the fees charged by Quoin for the Services as set out in the Engagement Letter (or addendum thereto) or as agreed upon between the Parties, which excludes VAT and Expenses;
- 3.19 **'Force Majeure'** means any event beyond the reasonable control of the Party ('the Affected Party') claiming the occurrence of force majeure:
- 3.19.1 the occurrence of which could not have been reasonably foreseen at the date of the execution of this Agreement; and
- 3.19.2 includes, but is not limited to, war whether declared or not, revolution, riot, strikes or other protestor action, insurrection, civil commotion, invasion, armed conflict, the failure of suppliers or contractors, hostile act of foreign enemy, act of terrorism, sabotage, radiation nor chemical combination, ionizing radiation, act of God, plague or other serious endemic, epidemic or pandemic.
- 3.20 **"Government Official"** means
- 3.20.1 any employee or officer of a government, including, without limitation, any national, regional or local department, agency or instrumentality of a government,
- 3.20.2 any official or employee of a public international organization (such as the World Bank or United Nations); and

- 3.20.3 any person acting in an official capacity for, or on behalf of, any entity identified in subparts (a) and (b);
- 3.21 **'GDPR'** means the EU General Data Protection Regulation (EU) 2016/679
- 3.22 **'Network Firm'** means the revised definition under the code of ethics for professional accountants.  
A network firm is a firm or entity that belongs to a network. A firm can be a sole practitioner, partnership, or corporation of professional accountants or an entity that controls or is controlled by such parties.
- 3.23 **'Network'** is a larger structure that is aimed at co-operation, and that is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.
- 3.24 **'PACCA'** means the Prevention and Combatting of Corrupt Activities Act No 12 of 2004
- 3.25 **'Other beneficiaries'** means any and each person or entity whose activities you may control, or any other organisation or entity Associated with you, if any such person or organisation is identified in the Engagement Letter as a recipient or beneficiary of the services or any product thereof and any and each person or organisation which we and you agree may be so treated;
- 3.26 **'Holding Company'** shall have the meaning defined in Section 1 of the Companies Act No 71 of 2008;
- 3.27 **'IESBA'** means International Ethics Standards Board for Accountants
- 3.28 **'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
- 3.29 **'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;
- 3.30 **'Party/Parties'** means Quoin or the Client individually or collectively as the context may require
- 3.31 **'Personal Information'** shall have the meaning set out in POPIA, as amended from time to time, or such other legislation, namely the GDPR, as may become applicable to the protection of personal information;
- 3.32 **'POPIA'** means the Protection of Personal Information Act No 4 of 2013;
- 3.33 **'Professional Advisors'** means the Client's duly appointed financial planner, attorneys, auditors and other professional or transaction advisors from time to time;
- 3.32 **'Quoin'** or **'we'** or **'us'** or derivatives thereof means Quoin Wealth (Pty) Ltd, Quoin Trust (Pty) Ltd and/or Quoin Accounting and Tax Services (Pty) Ltd, as the case may be;
- 3.33 **'Quoin Network Firm'** means BDO
- 3.34 **'Quoin persons'** means Quoin and, where applicable, each and all of Quoin's directors, employees, sub-contractors as the case may be, together with any other natural or juristic person, association, partnership, trust or other entity controlled or owned, directly or indirectly, by Quoin or Associated with Quoin.
- 3.35 **'Receiver'** means either Quoin or the Client, as the case may be, who is receiving Confidential Information from the Discloser;
- 3.36 **'Services'** means the services to be delivered by Quoin in terms of the Engagement and if applicable, those additional services required by you from us. Services shall be deemed to include any deliverables and work/s;

- 3.37 **'Staff'** has the meaning assigned to "employee" in terms of Section 78 of the Labour Relations Act, No 66 of 1995
- 3.38 **'Subsidiary'** shall have the meaning defined in Section 1 of the Companies Act No 71 of 2008;
- 3.39 **'Subsequent Event'** means an event which occurs after the completion of the services;
- 3.40 **'Term/s'** means the terms contained in this Agreement and any annexure or schedule thereto
- 3.41 **'VAT'** means value-added tax as described in the Value-Added Tax Act 89 of 1991, as amended;
- 3.42 **'Work/s'** means the work that Quoin conducts, creates or prepares either alone or with the support of any subcontractors, in rendering the Services, which work includes Deliverables, processes, procedures, investigations, notes, working papers, recordings, models, advice, findings or recommendations, whether in draft or final form, in writing or orally;
- 3.43 **'You'** (and derivatives thereof) or **'the Client'** means the contracting party or parties identified in the Engagement Letter, collectively or individually, as the case may be, and includes any additional personal or entity who agrees either expressly or impliedly to be bound by this Agreement, being the Client of Quoin.

#### **4. ACCEPTANCE AND THE RELATIONSHIP BETWEEN THE PARTIES**

- 4.1 The Parties are independent persons, and the Staff of one shall not be the Staff of the other. Save to the extent otherwise provided for in the Letter, neither Party shall act as the agent of the other, and neither Party shall have the authority, or represent that it has the authority, to bind the other Party.
- 4.2 Nothing in this Agreement shall be construed as:
- a) constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 66 of 1995; or
  - b) creating a partnership, consortium or joint venture arrangement between the Parties, and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party, unless such has been expressly agreed between the Parties and recorded in writing.
- 4.3 The Parties acknowledge that they may from time to time conclude other agreements unrelated to this Agreement.
- 4.4 The Parties agree that all other agreements entered 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. Nothing in this Agreement shall be construed as creating an exclusive relationship between Quoin and the Client
- 4.5 No Party shall be entitled to enforce its rights in such other agreements by withholding performance or applying set-off under this Agreement, or vice-versa.

#### **5. PROFESSIONAL OBLIGATION TO RESPOND TO NON-COMPLIANCE WITH LAWS AND REGULATIONS**

- 5.1 We have a professional obligation to act in the public interest, and to act in order to:
- a) enable you to rectify, remediate or mitigate the consequences of any identified or suspected non-compliance with laws or regulations as described in the Code; or
  - b) deter the commission of the non-compliance or suspected non-compliance with laws or regulations where it has not yet occurred.

- 5.2 Non-compliance with laws or regulations ('non-compliance') comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, by management or by other individuals working for or under the direction of a client which are contrary to the prevailing laws or regulations.
- 5.3 Where we encounter non-compliance or suspected non-compliance we will seek to obtain an understanding of the matter. Where appropriate, we will discuss the matter with you at the appropriate level of management, or those charged with governance in order that such persons can take appropriate action to rectify, remediate or mitigate the consequences of the non-compliance, deter the commission of non-compliance where it has not yet occurred or disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest, having regard to the appropriateness of the response of management and, where applicable, those charged with governance and other relevant factors in accordance with the Code.
- 5.4 We, in encountering non-compliance or suspected non-compliance, are also obliged to comply with applicable legislation or professional standards, which may require us to disclose the matter to an appropriate authority, including the reporting of reportable irregularities.
- 5.5 We also have a professional responsibility to consider whether your response to the instance of non-compliance or suspected non-compliance is adequate, and may determine that further action is necessary. Such further action may include, among other actions, the disclosure of the matter to an appropriate authority. We will disclose the matter to an appropriate authority only where, in the professional judgement of the engagement partner, the extent of the actual or potential harm that is or may be caused to you, investors, creditors, employees or the general public is sufficient to justify the disclosure.
- 5.6 In exceptional circumstances, we may be required to immediately disclose the matter to an appropriate authority where we have become aware of actual or intended conduct that we have reason to believe would constitute an imminent breach of law or regulation that would cause substantial harm to you, investors, creditors, employees or the general public. In such circumstances we will discuss the matter with the management or those charged with governance, where it is appropriate to do so.

**6. FRAUD, BRIBERY, CORRUPTION AND/OR CORRUPT ACTIVITIES AND DETECTION OF ANTI-MONEY LAUNDERING**

- 6.1 In terms of Financial Intelligence Centre Act of 2001 (FICA), Quoin is obliged to report suspicious and unusual transaction which may facilitate any form of money laundering to the Financial Intelligence Centre in South Africa.
- 6.2 Quoin undertakes that it will, throughout the duration of this Agreement:
- 6.2.1 Comply with (and shall procure that each person Associated with Quoin who is performing under this Agreement shall comply with) all applicable anti-bribery laws, statutes, regulations, directives or by-laws, including, the FICA, PACCA and FCPA ("the Anti-Bribery Laws")
- 6.2.2 In respect of the performance of this Agreement have, and maintain in place throughout the duration of this Agreement, its own policies and procedures, to ensure compliance with the Anti-Bribery Laws or the equivalent thereof (and shall procure that persons Associated with it in connection with this Agreement, or other

persons who are performing services on its behalf in connection with this Agreement shall have, and shall maintain, such policies and procedures);

- 6.1.3 Be responsible for (and shall ensure) the observance, performance and compliance with Anti-Bribery Laws by each person Associated with Quoin who is performing in terms of this Agreement, and shall be directly liable to the Client for any breach by such persons of any of the Anti-Bribery Laws; and
- 6.1.4 Immediately report to the Client
  - a) any knowledge or suspicion of any violations by Quoin, its officers, employees or any person Associated with it of any Anti-Bribery Laws; or
  - b) any requests or demands for any undue financial or other advantage of any kind received by Quoin in connection with the Client's continued business.
- 6.2 The Client warrants and represents that neither It nor any of its officers, employees or, having made reasonable enquiries, so far as it is aware, other persons Associated with it in connection with this Agreement:
  - 6.2.1 have been convicted of any offence involving bribery, corruption, fraud or dishonesty;
  - 6.2.2 have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Anti-Bribery Laws; or
  - 6.2.3 have been involved in any activity which may violate the Anti-Bribery Laws in respect of the conduct of business process and/or negotiation that resulted in the award of transaction and/or this Agreement.
- 6.3 Any infringement of any applicable Anti-Bribery Law and/or any breach of the foregoing provisions of this clause by Quoin (or any person Associated with Quoin who is performing in connection with this Agreement) shall be a breach of a material term of this Agreement.
- 6.4 Without prejudice to the Client's other rights and remedies in terms of this Agreement, the Client shall be entitled to terminate this Agreement with immediate effect upon written notice to Quoin.
- 6.5 The Parties are committed to working in an ethical and professional manner and in compliance with all laws that apply to this Agreement
- 6.6 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.

## 7 SUBSEQUENT EVENTS

- 7.1 Once we have issued our deliverable/s and have completed our Services which have been accepted by the Client, Quoin shall have no further responsibility to the Client to:
  - a) amend or update the Deliverable;
  - b) to monitor or identify the occurrence of any Subsequent Event or its impact on the Services or Deliverables.

## 8 FINANCIAL ADVISORY AND INTERMEDIARY SERVICES

Quoin Wealth (Pty) Ltd is a registered financial services provider and does provide a financial service as contemplated in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), as amended. Should any financial service be provided by Quoin Wealth (Pty) Ltd this is done so in accordance with these regulations.

## 9 PROCESSING OF PERSONAL DATA AND DATA TRANSFER

- 9.1 Where necessary to enable us to deliver the Services, you may provide us with, or we may have access to, Personal Information relating to an identifiable natural person, and where applicable, an identifiable juristic person.
- 9.2 In making Personal Information available to us, you confirm that you have complied with applicable Data Protection Law.
- 9.3 We agree that if we process Personal Information on your behalf in the performance of the Services, we will:
- a) Only process the Personal Information on your documented instructions save where required by law or the order of a competent court or tribunal;
  - b) Ensure that Personal Information is processed in accordance with applicable Data Protection Law and any other relevant laws and where we act as a processor, notify you if any instruction infringes any Data Protection Law to which we are subject;
  - c) Take all reasonable steps to ensure that the Personal Information is protected against misuse and accidental loss or disclosure, and from unauthorised or unlawful processing, destruction or alteration, and in the case of any Personal Information breach (as defined by applicable Data Protection Law) we will notify you without undue delay upon becoming aware of it;
  - d) Not subcontract our processing of Personal Information, save that we may subcontract and, in doing so, transfer Personal Information, to Quoin authorised staff, or third parties who are bound by appropriate confidentiality and security obligations consistent with the terms of this clause, with your prior written consent;
  - e) Answer your reasonable enquiries to enable you to monitor our compliance with this clause and provide you with reasonable assistance to enable you to comply with applicable Data Protection Laws;
  - f) Upon termination or expiry of the Engagement promptly return to you or, if requested by you, destroy all copies of the personal information, in which case any right to use, copy or disclose that Personal Information ceases. This shall, however, be subject to legislative, regulatory or internal company policy requirements for the retention of personal data for periods of time after the processing has ceased.
- 9.4 Where we process personal data that originates from a jurisdiction where the applicable Data Protection Law requires additional safeguards to be put in place for the protection of that Personal Information, or



- we transfer personal data from such a country we agree to take such steps as you reasonably require, including entering into contractual clauses to meet the requirements of applicable Data Protection Law.
- 9.5 If, due to the nature of the Services as described in the Engagement Letter or with your consent, we determine the purpose and means of all or any of the processing of personal Information, we will comply with applicable Data Protection Laws when we do so.
- 9.6 Quoin and each of its subsidiaries have taken all technical and organizational measures necessary to protect the information technology systems and Data used in connection with the operation of Quoin's and its subsidiaries' businesses. Without limiting the foregoing, Quoin and its subsidiaries have used reasonable efforts to establish and maintain, and have established, maintained, implemented and complied with, reasonable information technology, information security, cyber security and data protection controls, policies and procedures, including oversight, access controls, encryption, technological and physical safeguards and business continuity/disaster recovery and security plans that are designed to protect against and prevent breach, destruction, loss, unauthorized distribution, use, access, disablement, misappropriation or modification, or other compromise or misuse of or relating to any information technology system or Data used in connection with the operation of Quoin's and its subsidiaries' businesses

## 10 INTELLECTUAL PROPERTY

- 10.1 The Parties record that each Party has prior to this Agreement created, acquired or otherwise obtained rights to its own Intellectual Property. Each Party shall for the duration of this Agreement and thereafter retain the ownership of its own Intellectual Property.
- 10.2 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.
- 10.3 Any developments, modifications, improvements or enhancements to a Party's Intellectual Property arising from the Services will remain the property of that Party.
- 10.4 In the event of either Party requesting the use of the other Party's Intellectual Property outside the scope of the Services or this Agreement will be the subject of a separate Agreement.
- 10.5 Each Party warrants that no aspect of its Intellectual Property lawfully utilised during this Agreement, will infringe the proprietary rights of any third party. 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 from an aggrieved third party.
- 10.6 Notwithstanding the above Quoin shall at all times retain all intellectual property rights, including but not limited to copyright, in the product of its' services, work and deliverables, whether oral or tangible, as well as ownership of our working papers and the files created by us during the course of delivering our services, including electronic documents and files.
- 10.7 To the extent that there are any components of the Client's Intellectual Property included in the Deliverable, Quoin hereby grants to the Client, upon full and final payment of all amounts owing to Quoin in respect of the Services and Work, a royalty-free, perpetual, world-wide, non-exclusive. Non-transferable licence to use such Intellectual Property as an embedded part of the Deliverable only.

- 10.8 Any other product of the Services released to you in any form or medium will be supplied by us on the basis that it is for your benefit and information only and that it will not be copied, referred to or disclosed, in whole (save for your own internal purposes) or in part, without our prior written consent.
- 10.9 The Services shall be delivered on the basis that you will not quote our name or reproduce our logo in any form or medium without our prior written consent. You may disclose in whole any product of the Services to your regulators, bankers and legal and other professional advisers for purposes of seeking advice in relation to the services, provided that when doing so you inform them that:
- a) disclosure by them (save for their own internal purposes) is not permitted without our prior written consent; and
  - b) we accept no responsibility or liability whatsoever; and
  - c) we owe no duty of care to them in connection with the services.
- 10.10 Prior to completion of the Services we may supply oral, draft or interim advice or reports or presentations, but in such circumstances our final written advice or our final written report shall take precedence. No reliance shall be placed by you on any draft or interim advice or report or any draft or interim presentation. Where you wish to rely on oral advice or on an oral presentation made on completion of the services, you will inform us and we shall, where appropriate, supply documentary confirmation of the advice concerned.
- 10.11 We shall not be under any obligation, under 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 form, unless otherwise specifically agreed upon by mutual consent by you and us in the body of the Engagement Letter.
- 10.12 Any advice, opinion, statement of expectation, forecast or recommendation supplied by us as part of the Services shall not amount to any form of guarantee that we have determined or predicted future events or circumstances.
- 10.13 It may become necessary to change the scope of our Services to include matters you may deem appropriate. You will discuss and agree such changes with us, which will include the payment of any additional fees and the period for provision of any additional services. Significant variations in the scope of our services, at your instance, will be the subject of a supplementary Engagement Letter.

## **11 PROFESSIONAL FEES**

- 11.1 The Client shall in return for the Services pay to Quoin the Fees, Expenses and any VAT thereon. Quoin shall be entitled to increase the Fees in the event of a change in the scope of the Services.
- 11.2 In the event that the Services are required to be rendered outside the Republic of South Africa, and as a result of which additional taxes or levies become due which are not offset by credits from any revenue authority having authority in the Republic of South Africa and the country where the Services are rendered, the Fee shall be increased by the amount of such additional taxes or levies.
- 11.3 To the extent that any Fees, Expenses or the VAT thereon are dependent on currencies other than the Republic of South African Rand, the Parties agree to share any exchange rate gains or losses.
- 11.4 Quoin rates increase on an annual basis. Quoin may therefore on written notice to the Client increase the Fees on the date on which it typically increases its annual rates.

- 11.5 Quoin will invoice the Client from time to time for the Fees due in respect of the Services rendered. All Quoin invoices are payable within 30 (thirty) Business Days of presentation of its invoice.
- 11.6 Quoin may at its sole discretion, charge the Client interest on all due and unpaid invoices at the prime interest rate of its banker as published from time to time, which interest shall be compounded monthly in arrears.
- 11.7 The Parties agree that payments may be effected by electronic transfer of funds or as otherwise agreed to between the Parties. The Quoin banking details are set out on its invoices.
- 11.8 All payments made or arising out of this Agreement shall be made free of bank exchange, commission and any deductions, or set-off to the Party entitled to the payment and each Party shall be responsible for the payment of its own taxes.
- 11.9 Should a dispute arise relating to any Fees, Expenses or VAT due to Quoin the Client must notify Quoin of the disputed amounts and the reasons for the dispute in writing within 21 (twenty-one) Business Days from the date of being presented with the relevant invoice, failing which the Client shall be deemed to have accepted the invoice as correct, due and payable.
- 11.10 Excluding instances where the Client disputes the invoice/s, Quoin shall have the right to suspend or terminate the Services during any period in which any Fees, Expenses or VAT are overdue and remain unpaid despite written demand.

**12 CLIENT RESPONSIBILITIES RELATING TO THE SERVICES**

- 12.1 You shall retain responsibility and accountability for:
  - a) The management, conduct and operation of your business and affairs;
  - b) Any representations made by You to third parties including published information;
  - c) The maintenance of the accounting records, the preparation of annual financial statements and the safeguarding of the assets;
  - d) The adopted policies and prescribed procedures adhered to for the prevention of errors and irregularities, including fraud and illegal acts;
  - e) The use of, extent of reliance on or implementation of advice or recommendations supplied by us or other products of the Services;
  - f) Making any decision in respect of the Services delivered or any use of the product of the Services;
  - g) The delivery, achievement or realisation of any benefits directly or indirectly related to the Services that require implementation by you;
  - h) Ensuring that all arrangements are made for access, security procedures, virus checks, facilities, licences and/or consents (without any cost to us), where you require us, or the nature of the Services is such that it is likely to be more efficient for us, to perform Services at your premises or use your computer systems or telephone networks.
- 12.2 To enable us to perform the services, you shall use your best endeavours to procure and promptly to supply all information and assistance, and access to all documentation in your possession or custody, or under your control, and to personnel under your control, where required by us. Where such information and/or documentation are not in your possession or custody or under your control, you shall use your best

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

- 13.1 Confidential information shall only be used for the purposes intended by the Discloser and for no other purpose whatsoever, the Parties hereby acknowledging:
- a) The proprietary and confidential nature of the Discloser's Confidential Information and that the Discloser is the owner and/or licenced user thereof including all patents, copyrights and other proprietary rights in connection therewith.
  - b) that the disclosure thereof to the Receiver grants no licence to make public or use the confidential information for any unlawful or private purpose.
- 13.2 The Parties undertake, the one in favour of the other:
- a) not to disclose any Confidential Information of the Discloser or any information derived therefrom to any third party (excluding its' Associated parties, sub-contractors and professional advisors).
  - b) to use the same degree of care to avoid publication or dissemination of such Confidential Information as a reasonable person would employ with respect to its own Confidential Information which it does not desire to have published or disseminated.
  - c) to use all reasonable steps to keep the information which is in physical form (including in electronic form) secure.
  - d) unless where the law prohibits such advice, agree to advise the Discloser if requested or compelled by law to disclose any of the Discloser's Confidential Information and agree to comply with the Discloser's reasonable requests as to the terms of any such disclosure.
  - e) if compelled by law or institutional authority to disclose the Discloser's Confidential Information, the Receiver undertakes to limit the extent of the disclosure to that expressly required in terms of the relevant law or institutional authority.
  - f) not after the date hereof or after the termination date, to divulge or disclose to others either directly or indirectly, any of the Discloser's Confidential Information.
- 13.3 The foregoing obligations of confidence and non-use shall not apply to public information that was lawfully in the Receiver's possession prior to disclosure by the Discloser (as evidenced by written records) or subsequently comes into its possession (as evidenced by written records) otherwise than through disclosure, provided that neither Party nor the source of such information was subject to any Agreement or other duties imposing confidentiality in respect thereof or was required to be disclosed by law or institutional authority having jurisdiction over the Receiver.

#### **14 KNOWLEDGE AND CONFLICTS**

- 14.1 Quoin 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, Quoin is required to comply with professional independence rules so as to maintain its independence when rendering non-audit services to and forming business relationships with any client of a Network Firm providing audit services to its clients. Quoin is, as a professional services provider, further required to ensure that it does not have a conflict of interest when rendering services to its clients.

- 14.2 Quoin's Network Firm renders external audit as well as non-audit services. It is therefore a Quoin 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.
- 14.3 The Client agrees that it has provided Quoin with all such information that has been requested by Quoin for the purposes of checking for conflict of interests to ensure auditor independence and the Client warrants that such information so provided was complete and accurate in all respects.
- 14.4 The Client agrees that it will immediately notify Quoin during the subsistence of this Agreement upon becoming aware of any changes in circumstances which may give rise to a conflict of interest or an auditor independence concern.
- 14.5 The Client indemnifies Quoin and/or any Quoin Persons against all losses, claims, penalties, fines, costs, damages, liabilities and expenses as may be incurred or suffered by Quoin and/or any Quoin Persons or Quoin Network firm, arising out of a breach by the Client of its obligations in terms of 14.3 and 14.4 above.
- 14.6 Quoin acknowledges that it has the responsibility of reviewing and considering the effect on its independence of the Information received from the Client with regards to 14.3 and 14.4 above, and undertakes to notify the Client of any conflict with the Client's interest or an auditor independence concern on becoming aware thereof.
- 14.7 Should it be deemed by Quoin that a conflict or independence concern exists or has come into existence in relation to this Agreement, Quoin and the Client shall take all reasonable commercial steps necessary to attempt to resolve such conflict or independence concern.
- 14.8 We shall endeavour to have mechanisms operating between Quoin 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.
- 14.9 Where it is not reasonably possible to so resolve such a conflict or independence concern, Quoin 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 Quoin of any nature.

**15 FORCE MAJEURE**

- 15.1 No Party shall be responsible to the other for its failure to perform or any delay in performing any obligation under this Agreement in the event and to the extent that such failure or delay is caused by Force Majeure, excluding the payment of fees.
- 15.2 The Affected Party shall give notice to the other Party immediately upon the occurrence of an event of force majeure.
- 15.3 If the event that force majeure is of such a nature that it will:
  - a) result in impossibility of performance of an obligation going to the root of this Agreement, the Party not so affected ("the other Party") shall be entitled on receipt of notice of the force majeure event to terminate this Agreement upon notice to the affected Party but shall not be entitled to recover any damages which it may suffer as a result of premature termination.
  - b) not result in impossibility of performance of the obligation in question but will delay performance, the affected Party shall be entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both Parties;

provided that if such force majeure event persists for a period in excess of 10 (ten) Business Days the other Party shall be entitled to terminate this Agreement but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

**16 DOMICILIUM CITANDI ET EXECUTANDI**

The Parties select as their respective *domicilia citandi et Executandi*, and for the purposes of giving or sending any notice provided for or required in terms of this Agreement, the addresses (including email addresses) as set out in the Engagement Letter, or such other address as a Party elects in writing;

- a) Any notice addressed to a Party at its physical address shall be delivered by hand or by courier;
- b) Any notice shall be deemed to have been given  
If delivered by hand or courier on the day of delivery or If sent by email, the next Business Day

**17 EXCLUSIONS AND LIMITATIONS OF OUR LIABILITY**

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

**18 QUOIN NETWORK FIRM (BDO)**

- 18.1 Quoin and BDO are part of a Network but are separate and independent legal entities from one another which cannot obligate each other.
- 18.2 BDO 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.

- 18.3 This Agreement is between you and us only, and the following provisions will apply where, and to the extent, permitted by applicable law:
- 18.4 You shall bring no claims or proceedings of any nature whatsoever (whether in contract, delict, breach of statutory duty or otherwise) against BDO.
- 18.5 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.

**19 THIRD PARTIES AND THIRD PARTY RIGHTS**

- 19.1 This Agreement shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights.
- 19.2 You shall indemnify and hold us and all Quoin persons harmless against any loss, damage, expense or liability incurred by us and all Quoin persons as result of, arising from any claim made by a third party or any other beneficiaries pursuant to, from or is connected with any breach.

**20 BREACH AND TERMINATION**

- 20.1 In the event that there is a breach by any Party of any of the terms of this Agreement, either Party shall be entitled to provide the Party in breach with a written notice of 30 (thirty) Business Days to remedy such breach.
- 20.1.1 Either Party shall be entitled to terminate this Agreement, where the other Party:
  - a) Commits a material breach of any of its obligations under this Agreement which is incapable of remedy; or
  - b) Fails to remedy, where it is capable of remedy, or persists in, any breach of any of its obligations under this Agreement after having been required in writing to remedy or defects from such breach within the period of 30 (thirty) Business Days.
- 20.2 Excluding all other terms in this Agreement related to termination due to breach or force majeure, as the case may be, either party has the right to terminate this Agreement, without prejudice to any other of its rights herein, by providing 30 (thirty) Business Days' written notice to either party.

**21 DISPUTE RESOLUTION**

- 21.1 Save in respect of those provisions of this Agreement which provide for their own remedies or disputes which would be incompatible with arbitration, any dispute which arises and which cannot be resolved by the Parties:
- 21.2 Mediation

Shall be referred to a joint committee comprising of the Chief Executive Officer (or equivalent) of each of the Parties or a suitably authorised alternate or nominee, who will use their reasonable commercial endeavours to resolve the dispute within 20 (twenty) Business Days of the dispute having been referred to them. Should the joint committee be unable to resolve a dispute within that time, any Party shall have



the right to demand that the dispute be referred for determination by an arbitrator agreed on by the Parties.

21.3 Arbitration

21.3.1 The arbitrator shall be, if the matter in dispute is principally:

- a) a legal matter, a practicing advocate admitted to the bar of at least 10 years standing.
- b) an accounting matter, a practicing chartered accountant of at least 10 years standing.
- c) any other matter, an independent person, agreed upon between the Parties to the dispute.

21.3.2 The arbitrator shall be appointed by the Parties or, failing Agreement by the Parties within 5 (five) Business Days after the arbitration has been demanded, at the request of either of the Parties shall be nominated by the President for the time being of the South African Institute of Chartered Accountants' ("SAICA") National Council. If that person fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment and the court is expressly empowered to do so.

21.3.3 The arbitrator shall:

- a) have power to open, review and revise any certificate, opinion, decision, requisition or notice relating to all matters in dispute submitted to him and to determine all such matters in the same manner as if no such certificate, opinion, decision, requisition or notice had been issued;
- b) be obliged to give an award in writing fully supported by reasons and shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

21.3.4 The arbitration shall be conducted in accordance with, save as set out herein, the Commercial Rules of the Arbitration Foundation of Southern Africa:

- a) be held at such place as the Parties may agree with only the Parties and their representatives present thereat; and
- b) where possible, be concluded within 20 (twenty) Business Days after it has been demanded and the Parties shall use their reasonable commercial endeavours to procure the expeditious completion of the arbitration; and
- c) the evidence, representations, transcript and information generally made available during the course thereof and/or arbitrator's award constitute confidential information and shall be treated as such.

21.3.5 The costs of the arbitrator and the incidental costs of the arbitration shall be borne equally by the Parties to the dispute subject thereto that the arbitrator shall be competent to make an order as to the costs or parts thereof, as appropriate. The award of the arbitrator shall be final and binding on the Parties and any Party shall be entitled to apply to a competent court to have the award made an order of court.

21.4 Nothing in this clause shall, however, prevent any Party from seeking urgent relief from a court of competent jurisdiction.

- 22.1 Quoin will ensure that its' Staff have the requisite skills and experience for the roles they are required to perform under this Agreement.
- 22.2 Quoin records that there may be Staff who are unavailable for short periods of time for reasons including, but not limited to, annual leave, internal meetings and training. Quoin shall for these short periods take steps to minimise any disruption to the Services provided to the Client.
- 22.3 Quoin acknowledges the need for the continuity of service and therefore may substitute those members of Staff at its sole discretion, provided that Quoin provides replacements of reasonable equivalent ability.
- 22.4 The Client agrees not to directly or indirectly solicit or make any offer of employment to the Staff involved in the Engagement.
- 22.5 Quoin reserves the right, but will not be obliged, to levy a recruitment fee of 15% (fifteen percent) (excluding VAT) on the first year's cost to company, of any Staff forming part of the Engagement team, accepting direct employment with you, or any Associate of yours, while under an employment contract or within 3 (three) months of the termination of employment with us.

### **23 SUB-CONTRACTING AND SUB-CONTRACTORS**

- 23.1 Quoin shall, provided that it shall remain responsible to the Client for the fulfilment of its obligations in terms of this Agreement, have the right to make use of subcontractors to assist it in rendering the Services.
- 23.2 The Client acknowledges that Quoin is the prime service provider to the Client and shall be the prime interface with the Client in respect of the Engagement.
- 23.3 Save for communication and interaction required for purposes of the day to day rendering of the Services, the Client undertakes to only communicate with Quoin in relation to all rights, obligations and other material matters relating to this Agreement.
- 23.3 The Client will not interfere with or impede the relationship between Quoin and its subcontractors, or suggest or cause the subcontractors to modify, cancel, fail to renew or extend their Agreements with Quoin
- 23.4 Quoin shall assume full responsibility for making payment to its subcontractors, and no subcontractor will be entitled to seek payment directly from the Client for services rendered to Quoin.

### **24 GENERAL**

- 24.1 This Agreement constitutes the entire Agreement between the Parties relating to its subject matter, and supersedes all other oral or written representations, undertakings or Agreements.
- 24.2 No amendment, variation or consensual cancellation of this Agreement, including an amendment to this clause and no settlement of any disputes arising under this Agreement, shall be binding unless recorded in writing and signed by both Parties.
- 24.3 This Agreement is governed by the laws of the Republic of South Africa and any dispute arising from or in connection with this Agreement will be subject to the jurisdiction of a competent tribunal or court within the Republic of South Africa only.
- 24.4 Each undertaking in this Agreement shall be deemed to be and shall be construed as an undertaking given in the terms of this Agreement.

- 24.5 No undertaking shall be limited or restricted by reference to or interference from any other separate undertaking and/or acknowledgement.
- 24.6 If any provision or undertaking in this Agreement is or becomes illegal, invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto*, the remainder of this Agreement to be regarded as valid and binding.
- 24.7 Unless the Client expressly objects, Quoin has the option to use the name and/or logo of the Client, as well as a broad description of the Engagement, as a reference in proposals or similar submissions which it may make to prospective clients
- 24.8 Either party desiring to issue a news release or advertisement or other form of media publicity in relation to this Agreement shall obtain the written consent of the other Party prior to the release of such publicity, which consent will not be unreasonably 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 Quoin in connection with any marketing, co-branding and/or promotion materials or activities, or for any other purpose whatsoever.
- 24.9 This Agreement may be executed in counterparts, each of which together constitutes a single Agreement between the Parties, but shall not be effective until both Parties have executed each counterpart. Each such counterpart shall be deemed to be an original, but all the counterparts shall together constitute this Agreement.
- 24.10 No extension of time or waiver or relaxation of any of the provisions of this Agreement shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate to preclude such Party from exercising its rights strictly in accordance with this Agreement.
- 24.11 Quoin has the right to assign, cede or otherwise transfer the benefit or burden of all or any part of this Agreement without the consent of the other Party.
- 24.12 The Client shall not be entitled to assign, cede, or otherwise transfer the benefit or burden of all or any part of this Agreement without the written consent of Quoin, which consent shall not be unreasonably withheld.
- 24.13 Except as otherwise provided in this Agreement Quoin provides no implied warranties regarding the Services
- 24.14 This Agreement revokes, replaces and supersedes all previous written proposals, quotations or submissions provided by Quoin to the Client regarding the Services.
- 24.15 All terms regarding indemnification, warranty, liability, and limits thereon, confidentiality, protections of proprietary rights and trade secrets shall survive the termination of this Agreement.
- 24.16 Parties represent to each other that the person executing this Agreement has full authority to bind that Party to the terms of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective representatives, successors and assigns