



1. **INTERPRETATION**

In these terms and conditions, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

- 1.1. **'Agreement'** means these terms and conditions, and where an Instruction was provided to Renmere, it shall mean these terms and conditions as read with such Instruction;
- 1.2. **'Client'** means the party whom has agreed to the Services in terms of an Instruction;
- 1.3. **'Customs Act'** means the Customs and Excise Act No. 91 of 1964 as amended from time to time;
- 1.4. **'Designated Engagement Entity'** means the relevant Renmere Entity accepting the Instruction in terms of this Agreement. For purposes hereof, the Designated Engagement Entity shall be the entity appointed in terms of any letter of engagement issued by Renmere and, absent such letter of engagement, be the company identified in correspondence with the Client;
- 1.5. **'Effective Date'** means the date upon which Renmere first commences the provision of the Services to the Client pursuant to the Instruction;
- 1.6. **'Estate Duty Act'** means the Estate Duty Act No. 45 of 1955 as amended from time to time;
- 1.7. **'Income Tax Act'** means the Income Tax Act No. 58 of 1962 as amended from time to time;
- 1.8. **'Instruction'** means any instruction, issued orally or in writing by the Client and accepted by Renmere, whether formalised in terms of any letter of engagement, any appendix to such letter of engagement or otherwise;
- 1.9. **'New Instruction'** means any Instruction issued by the Client and accepted by Renmere on or after 18 September 2019 where (a) this version of the Agreement was communicated to the Client (whether as an attachment or referenced via hyperlink in any letter of engagement, deliverable or email correspondence with the Client) on or after 18 September 2019;
- 1.10. **'Participant'** means a 'participant' as defined in section 34 of the Tax Administration Act, being a Promoter or a person who directly or indirectly will derive or assumes that the person will derive a tax benefit or financial benefit by virtue of an arrangement;
- 1.11. **'Promoter'** means a 'promoter' as defined in section 34 of the Tax Administration Act, being a person who is principally responsible for organising, designing, selling, financing or managing the arrangement;
- 1.12. **'Renmere Intellectual Property'** means the various documents, agreements, templates, ideas, methods, methodologies, procedures, processes, know-how, and techniques and layouts which one or more of the Renmere Entities have created, acquired or otherwise has rights in prior to this Agreement, and may, in connection with the performance of Services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in;
- 1.13. **'Renmere'** means, save where used as part of the term 'Renmere Entities', the Designated Engagement Entity;
- 1.14. **'Renmere Entities'** means Renmere Consulting (Pty) Limited (Registration Number 2014/019888/07 and Renmere Consulting Johannesburg (Pty) Limited (Registration Number 2015/190426/07) and within this context referenced in singular form as a **'Renmere Entity'**;
- 1.15. **'Renmere functionaries'** means each and all of the partners, directors, employees, agents or consultants of the Renmere Entities;
- 1.16. **'Royalty Act'** means the Mineral and Petroleum Resources Royalty Act No. 28 of 2008, as amended from time to time;
- 1.17. **'Royalty Administration Act'** means the Mineral and Petroleum Resources Royalty (Administration) Act No. 29 of 2008, as amended from time to time;
- 1.18. **'Review Report'** means a written report, designated by the words 'review report' and issued in relation to any due diligence assignment or any accrual or tax compliance review;
- 1.19. **'Security Transfer Tax Act'** means the Security Transfer Tax Act No. 25 of 2007, as amended from time to time;
- 1.20. **'Security Transfer Tax Administration Act'** means the Security Transfer Tax Administration Act No. 26 of 2007, as amended from time to time;
- 1.21. **'Services'** means the services to be provided by Renmere to Client from time to time including, without limitation, as stipulated in an Instruction;
- 1.22. **'Tax'** means the taxes governed by the Customs Act, the Income Tax Act, the Tax Administration Act, the Value Added Tax Act, the Royalty Act, the Royalty Administration Act, the Transfer Duty Act, the Security Transfer Tax Act, the Security Transfer Tax Administration Act, the Transfer Duty Act and the Estate Duty Act;
- 1.23. **'Tax Administration Act'** means the Tax Administration Act No. 28 of 2011, as amended from time to time;
- 1.24. **'Tax Opinion'** means a written opinion issued by Renmere to the Client which is designated by the words 'tax opinion';

- 1.25. **'Third Party'** means any 'person' as defined in the Interpretation Act No. 33 of 1957, other than the Renmere Entities, the Renmere functionaries or the Client;
- 1.26. **'Transaction Calculations'** comprises all calculations performed by Renmere in the course of performing the Services and includes all numbers and calculations contained in any document, including any Excel based spreadsheet which is designated by the words 'balance sheet stack-up', 'flow of funds' or 'cash flow model';
- 1.27. **'Transaction Structure Memorandum'** means a written transaction step document which is issued by Renmere to the Client which is designated by the words 'transaction structure memorandum';
- 1.28. **'Transfer Duty Act'** means the Transfer Duty Act No. 40 of 1949, as amended from time to time; and
- 1.29. **'Value Added Tax Act'** means the Value Added Tax Act No. 89 of 1991 as amended from time to time.

2. **VERSION**

- 2.1. The terms of this Agreement (Version 2) apply to any New Instruction. Any Instruction issued by a Client and accepted by Renmere prior to 18 September 2019 remains unaffected and shall be governed by [Version 1 of this Agreement](#) (Ctrl+Click to follow hyperlink).

3. **DURATION**

- 3.1. This Agreement shall commence on the Effective Date and shall continue thereafter for so long as Renmere provides Services to the Client or amounts are owing to Renmere in respect of the Services.
- 3.2. Each party has the right to terminate the Agreement or suspend its operation by giving thirty (30) days' notice in writing to the other at any time or as otherwise agreed between the parties. Termination or suspension under this clause shall be without prejudice to any rights that may have accrued for the benefit of either party before termination or suspension and all sums due to Renmere shall become payable in full at the time that termination or suspension takes effect.
- 3.3. The expiration or termination of this Agreement shall not affect the provisions of this agreement which of necessity must continue to have effect after such expiration or termination for purposes of enforcing any rights or claims which may arise in terms of the Agreement. For the purposes of clarity, it is specifically recorded that clause 10 will continue to be of force and effect, notwithstanding the expiration or termination of this Agreement.
- 3.4. Notwithstanding any provisions to the contrary, the confidentiality obligations under this Agreement shall continue for a period of three (3) years following the termination of this agreement.

4. **APPOINTMENT AND NATURE OF RELATIONSHIP**

- 4.1. The Client appoints Renmere to provide the Services, upon the terms and conditions of this Agreement, which appointment Renmere accepts.
- 4.2. Renmere will provide the Services to the Client as an independent contractor and not as the Client's employee, agent, partner or joint venturer. Neither Renmere nor the Client shall have any right, power or authority to bind the other.
- 4.3. The Services will be performed by the Renmere functionaries who may deal with the Client directly. Nevertheless, Renmere alone will be responsible to the Client for the Services and Renmere's obligations under this Agreement.
- 4.4. Renmere shall not assume any management responsibilities in connection with the Services and will not be responsible for the use or implementation of the subject matter of the Services.
- 4.5. Renmere shall not be under any obligation in any circumstances to update any advice or report for events occurring after the advice has been issued in final form unless otherwise specifically engaged for that purpose.

5. **CONFIDENTIALITY**

- 5.1. Except as otherwise permitted by this Agreement, neither party may disclose to Third Parties any information provided by or on behalf of the other that constitutes confidential information. However, either party may disclose such confidential information under the following circumstances:
  - 5.1.1. where the confidential information is part of or enters the public domain other than through a breach of this Agreement;
  - 5.1.2. the information is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information;
  - 5.1.3. the information was known to the recipient at the time of disclosure or is thereafter created independently;
  - 5.1.4. the information is disclosed as necessary to enforce the recipient's rights under this Agreement; or
  - 5.1.5. the information must be disclosed under applicable law, legal process or professional regulations.
- 5.2. For purposes of this Agreement, confidential information means all documents, software, reports, data, records, forms and other material



<p>obtained by either party in the course of the Services and which have been marked as confidential and the confidential nature of which has been made known to the other party or information which, due to their character and nature, would be treated as confidential by a reasonable person under similar circumstances.</p> <p>5.3. Either party may use electronic media to correspond or transmit information. The use of such media will not in itself constitute a breach of any confidentiality obligations under this Agreement.</p> <p>6. <b>CLIENT'S RESPONSIBILITIES</b></p> <p>6.1. The Client shall assign a qualified person to oversee the Services and remains responsible for all management decisions relating to the Services, the use or implementation of the relevant deliverables in terms of the Services.</p> <p>6.2. It shall be assumed that any of the Client's personnel who purport to interact and correspond with Renmère in a formal capacity in the course of the Services is properly appointed and authorised to conduct the relevant actions on the Client's behalf. Renmère is under no obligation to verify whether this is in fact the case.</p> <p>6.3. Unless such deliverables are specifically required to be issued by Renmère in terms of a written Instruction, the Client is responsible to procure that any advice which may be provided by Renmère is formalised in the form of a final Tax Opinion, Review Report or Transaction Structure Memorandum prior to implementing any decision based on any such advice. The Client furthermore remains responsible to ensure that it complies with the applicable provisions of the Tax Administration Act in the manner set out in clause 12 of this Agreement.</p> <p>6.4. The Client remains responsible to retain its own records and copies of any advice which may be provided by Renmère as part of the Services, including any correspondence which may be exchanged between the Client and Renmère.</p> <p>6.5. The Client shall ensure that all information provided to Renmère by or on the Client's behalf will comply with the requirements of clause 11 of this Agreement and will not infringe any copyright or third-party rights.</p> <p>6.6. The Client may disclose advice provided by Renmère to a Third Party, only in unaltered form and provided this is done with Renmère's prior written consent.</p> <p>6.7. Where the Client discloses any advice which is provided by Renmère in terms of this Agreement to a Third Party, the Client shall be under an obligation to inform the Third Party that they may not place any reliance on Renmère's advice without Renmère's prior written consent and that the Renmère Entities do not owe them any duty of care.</p> <p>6.8. Where the Client copies or includes any Third Party on any correspondence or discussion with Renmère, instructs Renmère to copy or include any Third Party or to correspond, discuss or relay advice to any Third Party directly, any disclosure of advice made by Renmère to the Third Party which takes place under such circumstances shall be deemed to be a disclosure to such Third Party made by the Client as contemplated in, and which is subject to the requirements of clause 6.7 of this Agreement.</p> <p>7. <b>THIRD PARTY RIGHTS</b></p> <p>7.1. This Agreement shall not create or give rise to, nor shall it be intended to create or give rise to, any third-party rights. Renmère may agree in writing to allow a third party to use or have access to the Services upon terms and conditions acceptable to Renmère after having received the Client's authority to do so. Any contractual agreement between the Client and the third party, which seeks to impose such requirements, will not be binding upon Renmère.</p> <p>7.2. The terms in this Agreement which pertain to Third Parties apply, irrespective of the fact that Renmère may refer to or provide advice in relation to any Third Party, whether in writing or otherwise and irrespective of Renmère's deemed or actual knowledge of any Third Party's tacit, implied or express intention to place reliance on the Services.</p> <p>8. <b>FEES</b></p> <p>8.1. As consideration for the Services rendered by Renmère hereunder, Client shall pay:</p> <p>8.1.1. the fees set out in the Instruction, on the terms set out therein; or</p> <p>8.1.2. if no fees are set out in the Instruction, Renmère's standard hourly rates, as same are increased on an annual basis in March each year; and all such fees are payable by the Client within 30 (thirty) days of the date of Renmère's invoice in respect thereof or as otherwise stipulated in the Instruction. Renmère shall invoice the Client monthly for Services rendered in and during the month in question, or earlier should the particular Instruction be completed during the month.</p> <p>8.2. No deduction or set-off may be applied in respect of any fees payable in terms of this Agreement.</p>	<p>8.3. All fees stipulated are exclusive of Value Added Tax or any withholding tax that may be applicable to such fees, and such taxes shall be added to the relevant fees.</p> <p>8.4. Interest is charged on any outstanding amounts at the prime rate of interest charged from time to time by Renmère's bankers, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, plus 3%, calculated daily and compounded monthly in arrears, from the due date of such payment to the date of actual payment, both days inclusive.</p> <p>8.5. Save as otherwise provided for in any Instruction, as a standard practice, Renmère charges an additional amount of 3% (three percent) on fees to cover disbursements relevant to the Services rendered to the Client. In addition, the Client shall reimburse all reasonable travelling, subsistence and other expenses as are properly incurred by Renmère in providing the Services pursuant to this Agreement.</p> <p>8.6. In the event that Renmère's mandate in terms of this Agreement is terminated in the manner contemplated in clause 2 of this Agreement, Renmère shall be entitled to raise an invoice upon receipt of a notification of termination for all work done to date and not yet invoiced.</p> <p>9. <b>COPYRIGHT &amp; OWNERSHIP</b></p> <p>To the extent that Renmère utilises any of the property of the Renmère Entities (including, without limitation, the Renmère Intellectual Property) in connection with the performance of Services hereunder, such property shall remain the property of the relevant Renmère Entity and Client shall acquire no right, title or interest in such property.</p> <p>10. <b>LIMITATION OF LIABILITY</b></p> <p>10.1. Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, and subject to the provisions of clauses 10.2 to 10.10 (inclusive), Renmère's maximum liability for general and/or direct damages for any breach of this Agreement or any wilful or negligent misconduct or omission arising in the provision of Services (or otherwise), shall be limited to an aggregate amount of 50% (fifty percent) of all the fees paid by the Client to Renmère in respect of the Services provided pursuant to the particular Instruction during the 12 (twelve) month period preceding the date on which the relevant cause of action first arose. Such maximum amount shall be an aggregate amount for all claims thus arising.</p> <p>10.2. Renmère shall not under any circumstances whatsoever be liable for any loss of profits, goodwill, business, clients, contracts, revenue, the use of money, anticipated savings or data or any special, indirect or consequential loss and such liability is excluded whether it is foreseen, foreseeable, known or otherwise. For the purposes of clarity, it is recorded that the provisions of this clause apply whether such loss is direct, indirect, consequential or otherwise.</p> <p>10.3. Under no circumstances shall a Renmère Entity which is not the Designated Engagement Entity be held liable, nor shall any Renmère functionary or shareholder of any Renmère Entity be held liable in his or her personal capacity, as a consequence of any work performed, advice given, action taken or failure to take action where such work, advice, action or failure to take action is performed, provided or occurs in providing the Services pursuant to this Agreement.</p> <p>10.4. Renmère's liability shall be limited to an aggregate amount of nil Rand unless the advice is recorded by Renmère in the form of a Tax Opinion, Review Report, or Transaction Structure Memorandum which is issued to Client by Renmère in final form and, where the advice pertains to a proposed transaction, unless Renmère has confirmed that the final transaction agreements give effect to the advice in the Tax Opinion, Review Report or Transaction Structure Memorandum prior to their conclusion.</p> <p>10.5. To the extent that any advice is issued or appears to be issued by Renmère in verbal or email form, as a concept or discussion document or any informal manner, it is the Client's responsibility to ensure that such advice is formalised in a Tax Opinion, Review Report or Transaction Structure Memorandum, failing which Renmère's liability will be limited in the manner contemplated in clause 10.4.</p> <p>10.6. Where the Client relies on or incorporates any Transaction Calculations for purposes of its commercial decisions, cashflow or accounting treatment, the Client accepts responsibility for the verification of the correctness of any Transaction Calculations, including the mathematical accuracy of all calculations, formulas and inputs. For the purposes of clarity, it is specifically recorded that all Transaction Calculations which may be produced by Renmère in the course of the Services are intended to illustrate the applicable Tax principles and do not purport to be an accurate representation of the commercial, cash or accounting implications of the relevant transaction or arrangement.</p> <p>10.7. Renmère shall not under any circumstances whatsoever be liable:</p>
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10.7.1. as a consequence of any advice or any action which may be deemed to be or construed as advice pertaining to matters other than Tax. In this regard, notwithstanding the fact that Renmere may comment or provide insight in respect of any such matters, it remains the Client's responsibility to ensure that the Client obtains the necessary professional advice in respect of the commercial, financial, legal, foreign tax, accounting and regulatory implications of the Client's decisions and actions;	arrangement or transaction as well as any subsequent transactions which may relate to the matter under consideration;
10.7.2. as a consequence of any implications which arise in respect of the Client relating to the promulgation of any legislation, publication of any regulation or notice, a change in policy or any developments in case law following the date of any advice issued by Renmere to the Client;	11.1.2. the identity and legal nature of the parties involved or impacted by the transaction or arrangement;
10.7.3. as a consequence of any errors in respect of the legal or commercial terms of any agreements or resolutions, notwithstanding the fact that Renmere may have reviewed and provided comments in respect of these aspects in performance of the Services; or	11.1.3. the contractual and/or family relationships between the relevant parties;
10.7.4. as a consequence of any failure on the part of the Client to timeously register for any applicable tax or to complete, submit and/or retain, whether in original or copied form, any return, notice, affidavit, supporting documentation or forms as required by any applicable law. For the purposes of clarity, it is recorded that it remains the Client's responsibility to keep abreast of the filing and payment compliance requirements which may be applicable to its business and transactions.	11.1.4. existing regulatory or legal obligations, restrictions or restraints applicable to any relevant party, business, asset or transaction;
10.8. Due to the importance to Renmere's work of relevant, timely, accurate and complete information being furnished to Renmere by the directors and employees of the Client (whether requested or not), and because Renmere is reliant on the information for the purposes of discharging Renmere's obligations in terms of this Agreement, Renmere shall not be liable for any loss, damage, costs, or expenses whatsoever and howsoever caused, incurred, sustained or arising from a failure to disclose any material factual information to Renmere or from incorrect information and/or due to the disclosure of incomplete information or from misrepresentation, notwithstanding the fact that a person in Renmere's position, acting with reasonable care or otherwise, would have been able to detect the relevant error or omission. For purposes of this Agreement, without limiting the general ambit of this clause, the specific items identified in clause 11.1 constitute material factual information.	11.1.5. the tax and exchange control residence of the relevant parties and the existence of any 'headquarter companies' as defined in the Income Tax Act;
10.9. Renmere's liability for the aggregate of all claims arising out of or in connection with the Agreement during any annual period in respect of breach of contract or breach of duty or fault or negligence or otherwise (collectively referred to herein as 'fault') shall be no more than that proportion of the loss or damage (including interest and costs) suffered by the Client, which is ascribed to Renmere by a court of competent jurisdiction or arbitrator allocating a proportionate responsibility to Renmere having regard to the contribution to the loss or damage in question by the Client or any other person based upon relative degrees of fault, it being a term of the Agreement that the provisions of Section 1 of the Apportionment of Damages Act, 1956 will apply to all claims between Renmere and the Client and 'fault' and 'loss or damage' as used herein shall respectively be deemed to fall within the meanings of 'fault' and 'damage' as contained in Section 1 of the Apportionment of Damages Act, 1956. For the purposes of assessing the contribution to the loss and damage in question of any other person pursuant to the preceding paragraph, it is agreed that no account shall be taken of any limit imposed or agreed on the amount of liability of such person by any agreement (including any settlement agreement) made before or after the loss and damage in question occurred.	11.1.6. activities conducted or decisions made by the functionaries of any person in a country outside of its country of incorporation;
10.10. The Client shall make any claim relating to the Services or otherwise under the Agreement no later than within two years after the Client becomes aware (or ought reasonably to have become aware) of the facts that give rise to the claim, and in any event, regardless of the knowledge, by no later than three years after the date of any alleged breach of contract, delictual act or other act or omission giving rise to a cause of action. This clause expressly overrides any statutory provision that would otherwise apply.	11.1.7. activities conducted by the functionaries of any person in a country outside of its country of tax residence;
<b>11. CLIENT RESPONSIBILITIES IN RESPECT OF DISCLOSURE OF AND VERIFICATION OF FACTUAL INFORMATION AND ASSUMPTIONS</b>	11.1.8. the existence and terms of any agency arrangements;
11.1. It remains the Client's responsibility to ensure that the financial, legal, tax and commercial context, facts and circumstances which may have a material impact on Renmere's advice is completely, accurately and timeously disclosed to Renmere at the time of the Instruction or as soon as reasonably possible once the information comes to the Client's knowledge (as applicable). In this regard, it is specifically recorded that information which is likely to have a material impact on Renmere's advice includes the items listed below, to the extent that such items relate to or is impacted, whether directly or indirectly, by the relevant arrangement or transaction under consideration by Renmere:	11.1.9. assets located in or income derived by a person from a source located outside of its country of tax residence;
11.1.1. the Client and other relevant parties' expectations and intentions regarding the tax, legal and commercial outcomes of the relevant	11.1.10. ownership, interests and beneficial interests in respect of any trust, partnership, company or joint venture;
	11.1.11. any shareholdings where the beneficial interest differs from the registered ownership thereof;
	11.1.12. the terms, purpose and use of any debt instruments and shares in issue as well as the circumstances under which such instruments were issued;
	11.1.13. the terms of any security or guarantee arrangements;
	11.1.14. the terms of any financial instruments, including all forms of options, forward contracts, futures, swaps, and security lending agreements;
	11.1.15. the existence of any hedging arrangements;
	11.1.16. any foreign currency transactions, loans and related hedging contracts and arrangements;
	11.1.17. the existence of any lease, rental, license, royalty, management, technical service or contract manufacturing agreements;
	11.1.18. the existence of any annuity arrangements, investment or endowment policies or any short-term insurance policies which are akin to an investment or endowment policy.
	11.1.19. the existence of any employee incentive structures or special arrangements designed to benefit directors, employees or functionaries in a manner other than by means of salary or bonus payments and which are not recognised and disclosed as a fringe benefit.
	11.1.20. the existence of shares, options or share appreciation rights held by any directors, employees or functionaries of a company or any employee incentive trust;
	11.1.21. the accounting cost, the tax base and market value of all relevant assets, whether or not recognised in any financial statements;
	11.1.22. the nature of, holding period, intention, purpose and use in respect of every asset contemplated in 11.1.21;
	11.1.23. the tax allowances historically claimed in respect of every asset contemplated in 11.1.21;
	11.1.24. transactions or arrangements utilising any form of tax roll-over relief, including the Corporate Rules contained in Part III of Chapter II the Income Tax Act;
	11.1.25. the existence of any tax losses, unredeemed capital expenditure, contributed tax capital or credits as well as details regarding losses which arose between related parties or as part of any 'dividend stripping' arrangements;
	11.1.26. any equity shares held as trading stock as defined in section 1 of the Income Tax Act;
	11.1.27. any asset-for-share, asset-for-debt or share-for-share arrangements;
	11.1.28. any amalgamation or merger transaction in terms of section 113 of the Companies Act, No. 71 of 2008;
	11.1.29. the terms of any transactions which gave rise to any debt as part of any acquisition funding;
	11.1.30. the terms and conditions attaching to any ruling or agreement with any revenue service;
	11.1.31. any share buy-back arrangements;
	11.1.32. any arrangement or agreement in respect of the waiver or release of any debt;
	11.1.33. any distributions of capital, share premium or contributed tax capital made in respect of any relevant share;
	11.1.34. any dividends distributed in respect of any relevant share in the past 18 months;
	11.1.35. any profits which were capitalised or any capitalisation issue of shares and any dividends which were declared, but left owing on loan account;
	11.1.36. the existence of any arrangements of which the legal form may differ from the commercial substance thereof.





- 11.1.37. any arrangements entered into which are not at arm's length;
- 11.1.38. any shares or options issued for no consideration;
- 11.1.39. any back-to-back agreements;
- 11.1.40. any securitisation, factoring, sale and lease back or bare dominium arrangements;
- 11.1.41. any agreements pertaining to the cession of dividends or the right to any dividends; and
- 11.1.42. the existence of any arrangements in terms of which a service, asset, waiver, release, action or inaction is tendered *in lieu* of any consideration which may otherwise be or become owing between persons dealing at arm's length.
- 11.2. To enable Renmere to perform the Services, the Client shall use its best endeavours to procure and promptly supply all information and assistance, and all access to documentation in the Client's possession, custody, or under the Client's control, and to personnel under the Client's control, where required by Renmere. Where such information and/or documentation is not in the Client's possession, custody or control, the Client shall use its best endeavours to procure the supply of the information, assistance and/or access to all the documentation.
- 11.3. The Client shall inform Renmere of any material factual information which may come to the Client's attention during the duration of the Services which might have bearing on or be relevant to the Services.
- 11.4. Renmere may rely on any instructions or requests made or notices given or information supplied, whether orally or in writing, by any person whom Renmere may know or reasonably believe to be authorised by the Client to communicate with Renmere for such purposes.
- 11.5. Renmere shall not seek to establish the reliability of information received from the Client or any other information source. Accordingly, Renmere assumes no responsibility and makes no representations with respect to the accuracy, reliability or completeness of any information provided to Renmere.
- 12. SPECIAL TERMS REGARDING THE TAX ADMINISTRATION ACT**
- 12.1. It is specifically recorded that the Client is aware of and understands the provisions of section 223 of the Tax Administration Act and specifically the following:
- 12.1.1. the fact that a liability for an understatement penalty may arise in the hands of a taxpayer. To the extent that the understatement constitutes a 'substantial understatement', the penalty may be averted provided the taxpayer properly disclosed the relevant transaction or arrangement to the South African Revenue Service and the taxpayer is in a possession of an opinion issued by an independent registered tax practitioner by no later than the date on which the relevant return is due; and
- 12.1.2. the requirement that the aforementioned opinion should confirm that the taxpayer's position is 'more likely than not to be upheld if the matter proceeds to court'.
- 12.2. It is Renmere's view that it is prudent to ensure that any material transaction or arrangement which is contemplated by a taxpayer is accompanied by a tax opinion which complies with the requirements of section 223(3) of the Tax Administration Act.
- 12.3. It remains the responsibility of the Client to request that a tax opinion which complies with the requirements of section 223(3) of the Tax Administration Act is issued by Renmere or another qualified tax advisor to the Client or relevant taxpayer in respect of any transaction, arrangement or any part thereof which may form the subject of the Instruction.
- 12.4. With reference to the quoted phrase in clause 12.1.2, it is agreed that the phrase will, for purposes of all Services rendered in pursuance of this Agreement, including any correspondence or advice issued by Renmere, be interpreted to contemplate a hypothetical court judgment or ruling which:
- 12.4.1. is based on a proper application of the law as it stood at the time that the relevant opinion was issued; and
- 12.4.2. is based on and limited to the specific facts and assumptions contained in the relevant opinion; and
- 12.4.3. places the same level of emphasis on the facts and assumptions which are considered material and relevant to the conclusion reached in terms of any opinion issued by Renmere.
- 12.5. The Client acknowledges that, notwithstanding the use of the term 'more likely than not' and the meaning attributed thereto in terms of Clause 12.4:
- 12.5.1. no advice, opinion, statement of expectation, forecast or recommendation supplied by us as part of the Services shall be construed as any form of guarantee that Renmere has determined or predicted future events or circumstances or assigned a likelihood thereto;
- 12.5.2. given the nature of tax jurisprudence, the possibility will always exist that a court may arrive at a different view to that expressed by Renmere; and
- 12.5.3. to the extent that the Client requires an accurate estimate of the likelihood or probability attaching to any element of the Services, it is recommended that an actuary or professional statistician be engaged for this purpose.
- 12.6. It is specifically recorded that the Client is aware of and understands the provisions of section 181 of the Tax Administration Act and specifically that, where any arrangement or transaction involves the winding up or liquidation of a company other than by means of involuntary liquidation without having settled the tax debt of the company, the persons who were shareholders of that company within one year preceding the wind-up may be jointly and severally liable to pay the unpaid tax:
- 12.6.1. to the extent that they receive assets of the company in their capacity as shareholders within one year prior to its winding up; and
- 12.6.2. the tax debt existed or would have existed at the time of the receipt of the asset had the company obliged with its obligations in terms of the relevant tax laws.
- 12.7. It is specifically recorded that the Client is aware of and understands the 'Reportable Arrangements' provisions contained in Part B of Chapter 4 of the Tax Administration Act as well as the related penalty provisions contained in section 212 of the Tax Administration Act, specifically the following:
- 12.7.1. an obligation may arise in terms which a transaction, operation, scheme, agreement or understanding which forms the subject of the Instruction should be reported to the South African Revenue Service to the extent that it falls within the ambit of section 35 of the Tax Administration Act;
- 12.7.2. the arrangement must be disclosed within 45 business days after an amount is first received by or has accrued to a Participant or is first paid or actually incurred by a Participant in terms of the arrangement;
- 12.7.3. most convertible debt instruments, preference shares and certain equity shares fall within the ambit of section 35 of the Tax Administration Act;
- 12.7.4. the penalty for failure to disclose a reportable arrangement may be an amount of R300,000 for every month that the failure continues; and
- 12.7.5. the obligation to report a reportable arrangement and the liability for the penalty may reside with the Promoter or any of the Participants.
- 12.8. Notwithstanding the fact that Renmere may be found to be the Promoter in respect of any transaction or arrangement, it remains the responsibility of the Client, in terms of this Agreement, to ensure that any Reportable Arrangement which relates to the Services is timely reported in terms of Part B of Chapter 4 of the Tax Administration Act.
- 13. INDEMNITY**
- The Client shall indemnify the Renmere Entities and the Renmere functionaries and hold the aforesaid parties and/or persons harmless against any loss, damage, expense or liability incurred by the parties and/or persons as a result of, arising from or in connection with the following:
- 13.1. all claims by Third Parties arising out of the disclosure of Renmere's advice by the Client, or a Third Party's use of or reliance on Renmere's advice. The Client shall have no obligation hereunder to the extent that Renmere has specifically authorised, in writing, the Third Party's reliance on the advice;
- 13.2. all claims by Third Parties arising out of the disclosure of any information to Renmere by the Client which gives rise to the infringement of any copyright or third-party rights; and
- 13.3. any liability in terms of section 212 of the Tax Administration Act in the event that a Renmere Entity is considered to be the Promoter or one of the Participants in respect of any transaction or arrangement which relates to the Services.
- 14. NON-EXCLUSIVITY**
- Nothing in this Agreement shall be construed as precluding or limiting in any way the right of Renmere to provide advisory services of any kind or nature whatsoever to any person or entity as Renmere in its sole discretion deems appropriate.
- 15. GENERAL**
- 15.1. This Agreement constitutes the whole of the agreement between the parties hereto relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties hereto or their duly authorised representatives.
- 15.2. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given.
- 15.3. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be



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<p>severable from the remaining terms and conditions which will continue to be valid and enforceable.</p> <p>15.4. Neither party shall be entitled to transfer or assign, partially or entirely, any of its rights or obligations under this Agreement to a Third Party without the prior written consent of the other party.</p> <p>15.5. Each of the provisions of this Agreement has been drafted for the benefit of Renmere and the Client, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of the agreement (i.e. the <i>contra proferentem</i> rule), shall not apply.</p> <p>15.6. Neither party shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond the relevant party's reasonable control.</p> <p>15.7. This Agreement may be executed by the parties by electronic means and each party may sign a different copy of the same document.</p> <p>15.8. Renmere may use the Client's name publicly to identify the Client as a client of Renmere, but may only refer to the Client in connection with the Services if the matter is public knowledge.</p>	<p>15.9. This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.</p> <p>15.10. Where there is any inconsistency between any of the terms in this appendix and any letter to which this appendix may be attached or between the terms of this appendix, the terms of such letter and the terms of any other appendix attached to such letter, the relevant terms shall have precedence as follows: firstly, the terms of this appendix, secondly, the terms of any other appendix and thirdly, the terms of the letter.</p> <p>15.11. Where there is any inconsistency between this Agreement and any terms which may be imposed in terms of the Client's supplier terms and conditions, this Agreement shall have precedence, irrespective of any provision which may seek to resolve conflicting terms in favour of such supplier terms and irrespective of the order and manner in which the relevant agreements are concluded.</p> <p style="text-align: center;">*****</p>
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