



This document, together with any Letter of Appointment, represents the Terms of Business (the "Agreement") between Faulds (Pty) Ltd ("FAULDS") and our Clients (the "Client"). In the event of any conflict between this document and any Letter of Appointment, the latter shall take precedence.

## 1. INTRODUCTION

FAULDS carries on business as independent insurance intermediaries and risk consultants, offering a wide range of related services to clients.

The Agreement shall apply to the services as agreed in the Letter of Appointment or, in the absence of such document, those services separately agreed between FAULDS and the Client.

FAULDS aims at all times to treat clients fairly and will not deliberately put itself in a position where its interests, or its duty to another party, prevents it from discharging its duty to clients. FAULDS maintains internal protocols to identify and manage any potential conflicts, to protect the interests of Clients.

## 2. AFFILIATES

Unless otherwise expressly stated by us, the Clients agree to and accept this Agreement on their own behalf and on behalf of each of their Affiliates. The Client will procure that each of their Affiliates will act on the basis that they are a party to and bound by this Agreement. All references in this Agreement to the "Client" (and derivatives of it) will mean the Client and each of the Client's Affiliates.

For the purpose of this Agreement "Affiliates" means, in relation to a company, its subsidiaries and subsidiary undertakings and any holding company it may have and all other subsidiaries and subsidiary undertakings of any such holding company (as such terms are defined in the Companies Act No 71 of 2008). As it applies to the Client, "Affiliate" shall also include the Client's partners, co-ventures and/or other co-insureds to whom FAULDS or any of its Affiliates may assume a responsibility as a consequence of the provision of the Services or any Additional Services.

## 3. CLAIM SUBMISSIONS

Unless specifically agreed in any Letter of Appointment, complying with the Insurance policy conditions, including but not limited to prescription periods, as they relate to any claim or potential claim is solely the responsibility of the Client.

Where FAULDS's services include claims service, it would be based on what could be reasonably expected when considering the claims reported in the recent past arising out of the normal course of the Client's business. Where claims reported are extraordinary in number or complexity, additional fees may be charged on a basis to be mutually agreed.

## 4. CLIENT MONEY

In lieu of costs and expenses otherwise incurred, FAULDS may from time to time earn interest or benefit from investment income, refund premiums, claim payments or from foreign exchange differentials in the process of handling client money as regulated or permitted by legislation.

FAULDS does not collect premiums on behalf of insurers.

## 5. CLIENT'S OBLIGATIONS

Provision of information: In order to be able to arrange insurance to meet the Client requirements, the Client must:

- a. act with utmost good faith;
- b. immediately disclose all information, facts or circumstances which are, or ought to be, known to the Client and which are material to the risk;
- c. ensure that when completing and signing any proposal form, or otherwise confirming information, the information

provided is complete, accurate and provided within an agreed timescale.

- d. acknowledge that this duty is not limited to answering specific questions that may be asked by FAULDS or the insurer, and further that the duty of disclosure arises again if the Client wishes to make changes to the Client's portfolio, when risk circumstances change or when the portfolio is renewed or extended.
- e. agrees to promptly check all documentation supplied by FAULDS or insurers to ensure it meets their needs and to advise FAULDS of any inconsistencies with their instructions or specifications.
- f. disclose information to FAULDS where the Client has any doubt whether the information is material (meaning it would influence an insurer's assessment of the risk or their decision to underwrite the risk), as failure to do so might lead to the Client's policy being avoided by insurers.
- g. maintain copies of any insurance policies, and any amendments to them for as long as it is possible for a claim to be made under them. New documentation may not be issued every year, and subject to any regulatory requirements, after expiry or termination (whatever the reason) of our appointment as the Client's Intermediary, FAULDS will only retain copies of policies placed by it on the Client's behalf for such periods of time as required by law.
- h. promptly pay any premium or other charges incurred as a consequence of FAULDS's execution of the Client mandate on presentation of a valid tax invoice of the service or product. Where a premium payment warranty or condition applies, the Client acknowledges that failure to pay the premium in sufficient time may result in the insurer having the right to void the relevant policy.

## 6. CONFIDENTIALITY

- a. Except as required by law, the parties undertake to:
  - i. keep confidential all information (written or oral) concerning the business and affairs of each other and their clients, that may be obtained or received as a result of this Agreement;
  - ii. not without the other's prior written consent (such consent not to be unreasonably withheld or delayed), disclose such information in whole or in part to any other person save to employees, agents or sub-contractors involved in the provision or receipt of the Services, or in accordance with normal insurance broking practice to insurers and their agents;
- b. use the information solely in connection with the provision or receipt of the Services.
- c. The provisions of clause 6.a.i will not apply to the information to the extent that it is already lawfully in a party's possession on the date of its disclosure; in the public domain other than as a result of a breach of this clause; or required to be disclosed pursuant to legal or regulatory requirements.

## 7. DATA PROTECTION AND INTELLECTUAL PROPERTY

- a. The parties warrant that they will observe the provisions of all applicable data privacy legislation, in relation to this Agreement.
- b. FAULDS believes that all personal data it requests is necessary to provide quotations, arrange insurance cover, handle claims, and for client relationship management and conducting internal compliance checks. Personal data will



only be used by FAULDS for general insurance purposes including marketing, offering renewal, research and statistical analysis and crime prevention. Arranging insurance may involve certain disclosures of personal data to insurers, agents and service providers, including but not limited to consultants, market research and quality assurance companies; other Affiliates; industry regulators and FAULDS's professional advisors and auditors. Depending on the circumstances, the disclosure of personal data to any of the above may involve a transfer outside of the Republic of South Africa to other countries and the Client hereby confirm that the Client consent to transfer of their personal information outside the Republic of South Africa.

- c. FAULDS shall retain all ownership, title, copyright and other intellectual property rights in all materials developed, designed or created by FAULDS (or any of its Affiliates) before or during the Agreement, including systems, methodologies, software, know-how and working papers. FAULDS will also retain all ownership, title, copyright and other intellectual property rights in all reports, written advice or other materials provided by FAULDS to the Client, and FAULDS grants the Client a perpetual and royalty free licence to use those materials, but only for the purposes for which they were created under this agreement.
- d. The Client hereby consents to FAULDS including, on an anonymous basis, information relating to the Client's insurance program in benchmarking modelling and other analytics offerings.
- e. The Client warrants, represents and undertakes on an ongoing basis that they will disclose personal information to us in compliance with all applicable data protection laws.

## 8. ENTIRE AGREEMENT

- a. This Agreement sets out the entire understanding of the parties in relation to the matters that it deals with and supersedes and invalidates all previous letters, agreements and understandings (oral or written) in relation to those matters.
- b. This Agreement may only be amended or modified by written agreement between the parties.

## 9. FINANCIAL SERVICES CONDUCT AUTHORITY (FSCA)

FAULDS is a licensed Financial Services Provider (FSP 18716) in terms of the Financial Advisory and Intermediary Services Act 37 of 2002 ("FAIS"). The FSCA is the independent statutory body that regulates the financial services industry in South Africa. They can be contacted on 0800-110-443 or by visiting [www.fsca.co.za](http://www.fsca.co.za).

## 10. FORCE MAJEURE

- a. If the performance of any part of this Agreement by any party is prevented, restricted or delayed by reason of any cause beyond the reasonable control of that party (including (without limitation) fire, flood and other Act of God, industrial action including strike and lock out, riots, war, armed conflict, trade sanctions, contamination, disease and epidemic, interruption or failure of a utility service, failure of computer or other machinery, and change in law or regulatory requirements) the party so affected shall, upon giving written notice to the other party or parties, be excused from such performance to the extent of such prevention, restriction or delay, provided that the affected party shall use commercially reasonable endeavours to avoid or remove such causes of non-performance or to find an alternative manner or means of performance and shall continue performance as soon as reasonably practicable after such causes are removed. Upon such circumstances arising, the parties shall discuss what, if any, modification of

the terms of this Agreement may be required in order to arrive at an equitable solution.

- b. Notwithstanding clauses 10a and 17, FAULDS reserves the right to suspend or terminate this Agreement (in whole or in part) where it believes performance could be a breach of applicable economic or trade sanctions. FAULDS shall not provide insurance or reinsurance broking, risk consulting, claims or other services or provide any benefit to the extent that this would violate applicable law or expose FAULDS or any of its Affiliates to any sanction, prohibition or restriction under any applicable economic or trade sanctions, laws or regulations.

## 11. GOVERNING LAW AND JURISDICTION

- a. These Terms of Business, and the services provided under them, shall be governed by South African law, and any dispute shall be submitted to the exclusive jurisdiction of the South African Courts.
- b. This Agreement sets out the entire understanding of the parties in relation to the matters it deals with and supersedes and invalidates all previous letters, agreements and understandings (oral or written) in relation to those matters.

## 12. LIMITATION OF LIABILITY

- a. The maximum aggregate liability of FAULDS and its Affiliates to the Client, on any basis (including without limitation for damages for breach of contract or in negligence, in equity and/or for all interest, costs and expenses), arising out of or in connection with the provision of the Services or the Additional Services (including any amendments, variations or additions to those services whether expressly or impliedly agreed) shall be limited to amount of R15m.
- b. FAULDS and its Affiliates shall only be liable to the Client for any reasonably foreseeable losses, damages, costs or expenses arising directly from breach of contract, breach of duty or fault, negligence or otherwise, in connection with this Agreement. FAULDS and its Affiliates shall not be liable to the Client in any circumstances for any special, indirect or consequential loss.
- c. The Client accepts that FAULDS and its Affiliates have an interest in limiting the exposure of their directors, employees and consultants to litigation, and agree that the Client will not bring, or assist in bringing, any claim personally against any of FAULDS's individual directors, employees or consultants, in connection with the performance of the Services under this Agreement. The provisions of this clause are intended to be for the benefit of such directors, employees and consultants who shall have the right to rely on and enforce these terms.
- d. In respect of any loss suffered by the Client, for which FAULDS and/or its Affiliates, and any other party are (on any basis) liable, the liability of FAULDS and its Affiliates shall be limited so as to be proportionate to the relative contribution of FAULDS and its Affiliates to the overall fault giving rise to the loss in question.
- e. This clause 12 shall not apply to any liability arising as a result of fraud or wilful default on the part of FAULDS (or any of FAULDS's Affiliates) nor to any liability which cannot lawfully be excluded or limited.
- f. For the avoidance of doubt, this clause 12 shall be for the benefit of both FAULDS and any Affiliates involved in the provision of the Services. Any such Affiliates shall be entitled to rely upon and enforce its terms.



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### 13. MARKET SECURITY

FAULDS only places insurance with select markets, unless a client provides specific written instructions to the contrary.

Relevant information about any particular markets, including information about their financial strength is available should the Client need the information.

Whilst FAULDS does not guarantee the solvency or continuing solvency of any market, they will endeavor to assist Clients affected by a market that ceases to trade.

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### 14. NOTICES

Notices under this Agreement must be in writing and sent to the party concerned by hand, post or email, at its last known, or registered office address.

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### 15. PRODUCTS AND SERVICES

- a. The Letter of Appointment outlines the Services provided by FAULDS to the Client.
- b. Subject to the mandate from the Client, FAULDS will make recommendations based on an assessment of the Client's needs. These recommendations aim to provide the Client with relevant options to make an informed decision and to provide FAULDS with a clear mandate, which FAULDS will endeavour to meet.
- c. FAULDS will on request by the Client disclose the markets considered in support of their recommendations.
- d. FAULDS shall provide the Services or, where it considers it appropriate, through one or more of its Affiliates or sub-contractors. Where the Client requires services in any jurisdiction where neither FAULDS nor any of its Affiliates operates, FAULDS may defer these services to a correspondent in such jurisdiction to handle, subject to separate terms being agreed directly between the Client and such correspondent broker.
- e. Where the Client requires additional services to those agreed in the Letter of Appointment, these will be subject to agreeing an additional fee and/or commission. In the absence of such an agreement, the Client will pay FAULDS a reasonable fee for the services carried out, based on FAULDS's standard charge out rates for the resources involved, as disclosed by FAULDS.
- f. FAULDS does not assume any liability for the effectiveness or completeness of the Client's existing insurance programme other than where FAULDS acted as the Client's insurance broker, or any insurance policies placed by the Client directly, or by another insurance broker, or for any acts or omissions occurring prior to the date of the commencement of FAULDS's appointment.
- g. The Client should note that FAULDS is not qualified to provide, accounting, regulatory, legal or tax advice. Any information FAULDS provides on insurance regulatory, legal and tax issues is based on publicly available information and FAULDS's experience and involvement in such matters for other clients. In all instances, FAULDS recommends that the Client seek their own advice on such matters from professional legal and tax advisers. Subject to clause 15e above, FAULDS will work with the Client and their appointed advisers to help identify regulatory, legal and tax issues that could impact on any insurance arrangement.

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### 16. REMUNERATION

- a. FAULDS will be remunerated for its Services in accordance with the Letter of Appointment (or as may be agreed with the Client), which shall be in the following ways:
  - i. a specific fee paid by the Client; or

- ii. a percentage commission of the premium due to the insurer for the Client's insurance policies; or
  - iii. a combination of fee and commission as set out in the Letter of Appointment.
- b. Where FAULDS accepts any remuneration from a third party (directly relating to the Client's portfolio), it will be disclosed to the Client. The Client is entitled, at any time, to request information regarding any remuneration received by FAULDS as a result of placing the Client's portfolio. FAULDS may also receive payments from insurers for certain consultancy, administrative and other outsourced services which is provided to them and which is not directly related to the services FAULDS provides to the Client.
- c. Unless specifically agreed to the contrary, FAULDS shall be considered to have earned all remuneration in full at the time the policy is placed. FAULDS reserves the right to retain in full all remuneration so earned even where an insurance policy is amended, terminated or otherwise cancelled. This does not affect any statutory cancellation rights. FAULDS's remuneration is not conditional on the placement of an insurance policy being made. If the Client gives FAULDS a mandate to proceed with the process of meeting their needs prior to the inception or renewal date of such policy or service and the Client subsequently terminates FAULDS appointment, the Client undertakes to pay FAULDS commission or a fee of no less than 40% of the annual commission and/or agreed fee based on the terms obtained by FAULDS. In the event the Client terminates FAULDS appointment due to a material breach, the Client undertakes to pay FAULDS a fair remuneration, commensurate with the work undertaken by FAULDS to such date of termination.
- d. FAULDS reserves the right to charge reasonable expenses in relation to travel, accommodation and meals while working on the Clients behalf away from the office, which costs will be agreed with the Client in advance, and for any excessive administrative costs in handling the Clients business.
- e. All fees, commissions and expenses are (unless otherwise expressly stated) exclusive of VAT, which will be added as appropriate.

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### 17. TERM AND TERMINATION

- a. The Letter of Appointment sets the commencement date of this agreement, failing which it shall commence on the Client's receipt of these Terms of Business, and shall continue thereafter until completion of the Services or until terminated.
- b. Either party may terminate this Agreement by serving not less than 90 days' written notice on the other.
- c. Either party may terminate this Agreement immediately, on notice, if the other party:
  - i. commits a material breach of any of its provisions, and in the case of a breach capable of remedy, fails to remedy it within 30 days of receipt of a notice setting out particulars of the breach;
  - ii. becomes insolvent, or bankrupt, goes into liquidation, or makes any voluntary arrangement with its creditors, becomes subject to an administration order or has a receiver or administrative receiver appointed over its assets, or suffers a similar effect at foreign law.
- d. Upon termination FAULDS will assist with a transfer of the Client's business, subject to the payment of all outstanding amounts due to FAULDS.
- e. After termination, unless otherwise agreed, FAULDS will have no obligation to handle (or to continue to handle)



claims relating to the policies placed by FAULDS on the Client's behalf.

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#### **18. THIRD PARTY RIGHTS**

We disclaim all responsibility for any consequence whatsoever should a third party rely upon any proprietary report, letter, information or advice without our first having given our written consent that such third party may do so.