



TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions apply to any services engaged by a client from Etude. In this agreement, all reference to the Client shall refer to such persons which have accepted a Proposal for services by Etude Risk Management.

1. INTERPRETATION

In this agreement, unless inconsistent with the context, words referring to:

- 1.1. one gender includes a reference to other genders;
- 1.2. natural persons include juristic persons and vice versa;
- 1.3. the singular includes the plural and vice versa;
- 1.4. the headings to this agreement are used for the sake of convenience only and shall not govern the interpretation of the clauses to which they relate.

2. DEFINITIONS

Unless such meaning is inconsistent with the context, the following terms shall throughout this agreement have the meanings ascribed to them, namely:

- 2.1. **“Agreement”** means these Terms and Conditions and the written Proposal
- 2.2. **“Annexures”** means any annexures or attachments to this Service Agreement
- 2.3. **“Client”** means the Party referred to in the written Proposal
- 2.4. **“Client Information Sheet”** means the information sheet completed by the Client in respect of its contact and billing information included herein by reference
- 2.5. **“Commencement Date”** means, irrespective of the date of signature of the Proposal or the date specified in the Proposal agreed by correspondence with the Client as being the date on which the services shall commence;
- 2.6. **“Etude”** means Etude Risk Management (Pty) Ltd, registration number 2012/218488/07, a private company duly incorporated under the laws of South Africa, its successors-in-title and assigns;
- 2.7. **“Proposal”** means any document, including without limitation, an estimate, quote or invoice, in respect of which Etude has provided a Proposal for the scope and fees of services and which was accepted by the Client. Such Proposal shall include these Terms and Conditions, which is included in the contents thereof

by reference;

- 2.8. **“Services”** means the Services specified in the Proposal agreed with the Client;

3. INTRODUCTION

- 3.1. The Client wishes to receive the Services from Etude to assist the Client with its risk management obligations, as outlined in the Proposal.
- 3.2. The Client acknowledges that it remains responsible for compliance with the legislation, irrespective of the terms of these terms and conditions or any services provided or recommendations made by any of the representatives of Etude Risk Management and that no such obligations have been delegated to or accepted by Etude.
- 3.3. This agreement contains the terms and conditions agreed to between the parties.

4. COMMENCEMENT DATE OF SERVICES

- 4.1. The agreement shall commence either at the acceptance of the Proposal or such later date as agreed to in writing between the Parties.

5. PERIOD

- 5.1. The agreement shall continue indefinitely until it is replaced or terminated in writing
- 5.2. Either Party may terminate this agreement with three month's written notice to the other Party

6. SERVICES OFFERED BY ETUDE

- 6.1. The type of service is specified in the Proposal to the Client.
- 6.2. The accepted Proposal will specifically form part of this agreement as an annexure
- 6.3. The services may be amended by completion of a substitute Proposal, which document will form part of this agreement
- 6.4. The process embodied in the services is at the full discretion of Etude and may be adjusted as the legislation requirements or the business model of Etude changes.

7. EXCLUDED SERVICES

The following services are expressly excluded:

- 7.1. those relating to any legislation or regulations not specified;
- 7.2. resolving any (regulatory or other) complaints, queries



or charges relating to the Client

- 7.3. services that relate to a period before the commencement date or after the expiry of the agreement;
- 7.4. resolving issues, complaints, queries or charges relating to any non-disclosure of information pertinent to the matter by the Client to Etude;
- 7.5. resolving or accepting responsibility or risk for any criminal and/or fraudulent and/or negligent acts and/or omissions by the Client that may have an impact on services or the reputation of Etude and which were not disclosed to Etude in writing when the Client became aware thereof before the complaint;
- 7.6. providing software or systems solutions to meet a compliance requirement of the Client, unless specified and independently contracted in writing with the Client;
- 7.7. providing training or any other form of instruction to the management or staff of the Client, including the provision of training notes, presentations, slides or any similar material unless independently contracted in writing with the Client;
- 7.8. liaison with the regulators on matters outside the scope of this agreement unless specified and independently contracted in writing with the Client;
- 7.9. legal advice and services not incorporated in the services.

8. FEES

- 8.1. The fees due and payable to Etude by the Client under this agreement are specified in the Proposal accepted by the Client or, if reviewed or amended, as per the tax invoice furnished to the Client, from time to time.
- 8.2. Any Clients who have agreed to services rendered onsite at the Client (or at such other location as required by the Client) shall be provided with a special quote in respect of travel.

9. PAYMENT OF FEES

- 9.1. Payment dates and terms of the fees are specified in the Proposal or as agreed with the Client.
- 9.2. All fees are quoted exclusive of VAT. Etude is registered for VAT and as such, all service fees rendered by Etude shall be subject to VAT.
- 9.3. Any late payments by the Client shall attract interest at the publicly published prime overdraft rate (charged by

Etude's bank from time to time) plus 2% per annum or at the maximum rate permitted under the National Credit Act (No 34 of 2005), if such is higher, calculated and compounded daily in arrears on all overdue amounts owing to Etude in terms of this agreement from the due date to the date of payment.

9.4. PAYMENT BY EFT:

- 9.4.1. All payments must be made into a bank account nominated by Etude.
- 9.4.2. The Client shall furnish Etude with proof of payment immediately after making any payment.
- 9.4.3. Etude is authorised by the Client to charge an administration charge to accept payments by EFT

9.5. PAYMENT BY DEBIT ORDER:

- 9.5.1. The Client understands and agrees that the amount of the debit order will be adjusted accordingly to take account of any amounts due in terms of the renewal of any services listed in the Quotation, provided that the adjustment to the debit order will only be made in accordance with the terms and conditions of this Service Agreement.
- 9.5.2. The Client understands and agrees that if any debit order due in terms of this Debit Order Authorisation is rejected by the Client's bank, all related bank rejection fees and the full amount that remains unpaid, will be due and payable immediately on demand by Etude and that any services provided by Etude in respect of the items listed in the Quotation, may be suspended immediately. The Client undertakes to ensure that adequate funds are available in the bank account detailed in this agreement, to cover the amounts due in terms of this Service Agreement.
- 9.5.3. The Client undertakes to inform Etude of any changes to the Client's bank account details listed in the Debit Order Authorisation Agreement. The Client acknowledges that Etude hereby authorised to effect the drawing(s) against the Client's account may not cede or assign any of its rights to any third party without the Client's written consent.

10. REVIEW OF FEES

- 10.1. Etude may revise the proposed costing and time allocations throughout the lifetime of the agreement and adjusted with the written agreement and approval of the Client.



11. FEES NON-REFUNDABLE

The Client understands and agrees that the fees, charges and costs payable in respect of this agreement are non-refundable and waives all its rights thereto excluding any amounts paid pursuant to genuine errors.

12. DISBURSEMENTS

12.1. Should Etude incur any disbursements and/or costs for and on behalf of the Client or at the request of the Client, the Client shall reimburse Etude forthwith upon receipt of an invoice stipulating:

- 12.1.1. the nature of the disbursements and costs so incurred;
- 12.1.2. the amount of the disbursements and costs so incurred; and
- 12.1.3. the reason for incurring such disbursements and/or costs.

13. CO-OPERATION

- 13.1. The Client agrees that this agreement is a living document that anticipates changes and amendments from time to time to reflect any changes in the parties' needs and/or any changes in market practice and/or any changes or amendments to the legislation.
- 13.2. The Client will facilitate Etude in familiarising itself with the Client, its business, its employees and any documentation or other information required by Etude to enable it to render the services efficiently and professionally.
- 13.3. The Client agrees to make any information that it has in respect of its business available to Etude upon request.
- 13.4. In providing the services, Etude will rely on the information and documentation provided by the Client and will accept these at face value. Etude will not, nor be required by the Client to, independently verify or review such information or documentation. Etude will also not undertake any procedures designed to discover defalcations, omissions or other irregularities in such information or documentation.
- 13.5. The Client shall provide the support and infrastructure to Etude, where reasonably possible, to permit Etude to perform its obligations under this agreement.
- 13.6. Any lack of co-operation by the Client with Etude shall be deemed to be a material breach of this agreement.

14. INDEMNITY

- 14.1. The Client waives any claim and indemnifies Etude and any of its employees or agents against any damage or loss that the Client may suffer as a result of or pursuant to this agreement, or any matter ancillary thereto.
- 14.2. In any event, the maximum liability of Etude in total (inclusive of the aggregate liability if any, of partners or employees of Etude) in respect of any claim for loss, damage, cost or expense suffered by the Client as a result of, arising from or in connection with such services will be limited to Ten thousand Rand only (excluding VAT) issued in respect of such services (excluding any fees in respect of other services) and on which Etude has received payment in respect of the 12 (twelve) month period preceding the date of presentation of the claim.
- 14.3. The maximum liability in total of Etude (inclusive of the aggregate liability if any, of any of our partners or employees) in respect of any claim will apply irrespective of whether such claim arose in contract, delict or otherwise. The Client will have no claim for any indirect or consequential loss or damage.
- 14.4. Etude will further not be liable in respect of any claim unless the Client has commenced arbitration proceedings or served a court summons (if the Client's claim may be validly instituted in a court) within three years of the date on which the Client became aware or ought reasonably to have become aware of circumstances giving rise to a claim or a potential claim against Etude.
- 14.5. Should any dispute between the parties be referred to an Independent Person, in terms of clause 19 hereof, in determining any liability, the Independent Person will be bound to limit such liability through the application of the provisions of the Apportionment of Damages Act, 1956 ("AOD Act") to that portion of the loss, damage, cost or expense suffered by the Client and which is ascribed to Etude by allocating a proportionate responsibility based on the relative degrees of fault to the loss, damage, cost or expense in question, it being a term of this letter of engagement that the AOD Act will apply to all claims between the Parties. The liability of Etude to the Client shall in no circumstances exceed the lower of the amount determined by the application of the monetary limit referred to in clause 14.2 or the amount determined by the apportionment of liability as envisaged in this



clause 14 as the case may be.

- 14.6. The Client may not bring a claim personally against any partner or employee of Etude in respect of any loss, damage, cost or expense suffered by you as a result of, arising from, or in connection with the services rendered.
- 14.7. The Client hereby indemnifies and holds Etude harmless (including partners and employees) against any loss, damage, cost or expense suffered by any third party as a result of, or arising from, or in connection with any services provided to the Client under this Service Agreement.

15. STATUTORY OBLIGATIONS

The Client acknowledges that Etude has certain reporting obligations to regulators in terms of the legislation and it authorises Etude to make such disclosures on behalf of or in respect of the Client where applicable.

16. CONFIDENTIALITY AND USE OF INFORMATION

- 16.1. The parties agree and accept that their respective information, data and business details are confidential and their exclusive property.
- 16.2. The Client agrees to:
 - 16.2.1. the use of reasonable means, being not less than that used to protect its proprietary information, in safeguarding Etude' proprietary materials;
 - 16.2.2. not show and/or disclose any portion of the proprietary materials or their contents to anyone other than employees or advisers who have need to use the proprietary materials in the performance of their obligations under this agreement;
 - 16.2.3. not to remove any of Etude' proprietary materials without its prior written consent;
 - 16.2.4. not make copies of the proprietary materials except as needed only for performance under this agreement;
 - 16.2.5. return all copies of the proprietary materials to Etude upon request;
 - 16.2.6. ensure that the provisions of this agreement are not violated by any employee and/or agent of or any other person; and
 - 16.2.7. not disclose to any other person the structure of the services.
- 16.3. Etude may acquire sensitive information concerning

the Client's business or affairs in the course of providing the service. Etude undertakes to keep such information confidential, unless required to disclose the information to the insurers or legal advisors of Etude, or unless Etude is under legal compulsion or unless the information is in the public domain.

- 16.4. Any advice, report, document or product prepared for the Client will be solely for the Client's benefit and may not in any format or any part be disclosed to or shared with any third parties without the prior written consent of Etude. The Client may however disclose in whole or in part, the product of Etude' services to their bankers, legal and other professional advisors for purposes of seeking advice in relation to the services, provided that in so doing, the Client informs them that disclosure by them (save for their internal purposes) is not permitted without the prior written consent of Etude and that Etude accepts no responsibility or liability whatsoever and neither does Etude owe a duty of care to them in connection with the services.
- 16.5. The Client may not quote Etude's name or reproduce Etude's logo in any form or media without the prior written consent of Etude.
- 16.6. Nothing contained in this clause 16 shall be construed as to alter the title to or ownership of the proprietary materials.
- 16.7. This obligation of confidentiality shall extend indefinitely, even following the termination of this agreement.

17. COPYRIGHT

- 17.1. Etude shall own and retain copyright in any material or documentation provided by it to the Client or its members.
- 17.2. This clause shall extend indefinitely, even following the termination of this agreement.

18. PUBLIC ANNOUNCEMENTS

Public notices disclosing the existence of this agreement or describing the contents hereof, except for those notices required by law, shall be subject to the prior written consent of both parties.

19. DISPUTES

- 19.1. Notwithstanding anything else to the contrary contained in this agreement, in the event of any dispute arising between the parties, the Client shall continue to pay timeously the fees, charges and/or



costs referred to in this agreement.

- 19.2. In the event that a dispute between the parties cannot be resolved by the parties, including a claim that either party has failed to meet the standards and criteria envisaged in this agreement, the aggrieved party shall advise the other party in writing of its dissatisfaction and the nature of the dispute, whereupon:
- 19.2.1. the other party shall admit that it is the cause of the dispute and in so doing that party shall be obliged to rectify the issue giving rise to the dispute e.g. improve its standards and services accordingly; or
- 19.2.2. that party shall refute the other party's opinion, in which event the parties shall have 30 days within which to agree upon and appoint an independent person (to act as an expert and not an arbitrator). Should the parties fail to agree upon and/or appoint an independent person, then Etude shall have the right to appoint CISA as an independent person. The independent person to determine whether or not the non-aggrieved party has failed to comply with this agreement. The independent person's determination shall be final and binding on the parties. Costs of such determination shall be borne by the unsuccessful party.
- 19.3. If it is found that the non-aggrieved party has failed to meet the requirements of this agreement as set out above, then the other party shall be entitled to terminate this agreement by giving that party one month's written notice.

20. BREACH

- 20.1. If either party ("the Defaulter") commits a breach of this agreement, and/or fails to comply with any of the provisions hereof, and fails to remedy such breach and/or failure within 7 calendar days of receipt of such notice from the other party requiring such remedial action then the other party shall forthwith be entitled, but not obliged, without prejudice to any other right which that party may have in law, including the right to claim damages:
- 20.1.1. to cancel this agreement and/or claim damages; or
- 20.1.2. to claim immediate performance and/or payment of all the Defaulter's obligations in terms hereof and/or claim damages.
- 20.2. Fees shall be due and payable for a further 3 months after the date of cancellation if the Client is the

Defaulter.

- 20.3. On cancellation of this agreement, the Client shall immediately deregister or permit Etude to deregister, Etude as the Client's Compliance Officer with the FSB, if applicable.

21. SUMMARY TERMINATION

- 21.1. Etude may terminate this agreement with immediate effect should the Client:
- 21.1.1. commit any act of dishonesty, commit any crime, act in an unprofessional or unethical manner or behave in an intolerable manner towards Etude; or
- 21.1.2. not pay any amount on the due date.

22. GENERAL

- 22.1. *Understanding of agreement*
- 22.2. The parties acknowledge that each has read this agreement, understands it, and agrees to be bound by its terms, conditions and covenants.
- 22.3. *Entire agreement*
- 22.3.1. This agreement together with the Proposal, as revised from time to time, constitutes the complete and exclusive written expression of the terms of this agreement between the parties and supersedes all prior or contemporaneous proposals, oral or written, understandings, representations, conditions, warranties, covenants and all other communications between the parties relating to the subject matter of this agreement.
- 22.3.2. This agreement may not in any way be interpreted or supplemented by a prior or existing course of dealings between the parties pursuant to this agreement or otherwise.
- 22.4. *Time is of the essence*
- 22.5. Time shall be of the essence in this agreement concerning the performance of the Client's obligations hereunder.
- 22.6. *Indulgences*
- 22.7. No indulgence granted by a party shall constitute a waiver or abandonment of any of that party's rights under this agreement; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.



22.8. Severability

22.9. If any provisions of this agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction or arbitrator, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby, and this agreement shall be of full force and effect.

22.10. Force majeure

22.11. Neither party shall be responsible for delays or failures in performance (with the exception of the obligation to pay money) resulting from acts reasonably beyond the control of such party (force majeure). In such an event, the time for the performance may be extended for any period during which the performance is so prevented, provided that the non-defaulting party shall be entitled to terminate this agreement if such non-performance continues for more than ninety (90) consecutive days.

22.12. Jurisdiction

22.12.1. If either party elects to institute proceedings in any Magistrates Court, the other party hereby consents in terms of the Magistrates Court Act, 1944, as amended, to the jurisdiction of the Magistrates Court.

22.12.2. Notwithstanding any other provision of this agreement, for the purposes of any legal proceedings arising from or in connection with this agreement and which either party elects not to institute in the Magistrates Court, the Client hereby consents and submits to the jurisdiction of any Division of the High Court of South Africa.

22.13. Costs

22.13.1. In the event of Etude incurring any costs as between attorney and his client in recovering and/or attempting to recover any amount due to Etude and/or having to enforce any of its rights under this agreement, the Client considers itself bound and agrees and undertakes to pay Etude or its attorneys the full amount of the costs thus incurred on the scale as between attorney and his client, plus collection commission, tracing fees and advocates fees.

23. DOMICILIUM CITANDI ET EXECUTANDI

23.1.1. Any written notice in connection with this agreement may be addressed:

Etude Risk Management

23.1.1.1. Contact person: Sarina Du Plessis

23.1.1.2. e-mail address: sarina@etude.co.za

23.1.1.3. postal address:

PO Box 315, Somerset Mall, 7137

23.1.1.4. physical address:

Unit 4, Palata Building, Bella Rosa Road,
Bella Rosa Village, Rosendal, Bellville, 7530.

The Client

At such address as completed on the Client Information Sheet

23.1.2. Any notice by either party shall be deemed to have been duly given:

23.1.2.1. 7 days after posting, if posted by registered post to the party's address in terms of this sub-clause;

23.1.2.2. on delivery, if delivered to the party's physical address in terms of either this sub-clause or the next sub-clause dealing with service of legal documents;

23.1.2.3. on dispatch, if sent to the party's e-mail and confirmed by e-mail receipt tracker no later than the next business day.

23.2. A party may change that party's address for this purpose to another physical address in the Republic of South Africa, by notice in writing.

24. ELECTRONIC COMMUNICATION

24.1. The Client agrees that Etude may correspond with the Client electronically. The Client accepts the risks inherent in such communications (including the security risks of interception, or unauthorised access to, the risks of corruption, the risks of viruses, or other harmful devices).

24.2. Etude shares news articles and updates with its clients through bulk electronic media. From time to time Etude may also invite the Client to workshops, industry talks or other events of interest or to inform the Client of new services or opportunities offered by Etude. Under no circumstances shall Etude make the Client's contact information available to unauthorised third parties.