

KPMG FULCRUM

CLIENT TERMS OF SERVICE

KPMG Fulcrum Services Terms and Conditions

These terms and conditions create a contract between your organisation (or “You”, “Your”) and KPMG Digital Solutions (Pty) Ltd (“KPMG Digital”) (the “Agreement”) and by signing it, You agree to bind your organisation to the terms as set out. Reference to your organisation, includes all your employees, agents and officers.

A. OUR SERVICES

This Agreement governs the use of KPMG Digital’s services (“Services”) by your organisation. Our Services are delivered through web applications (“Webapps”) on the KPMG Fulcrum Platform (the “Platform”) and Mobile Applications (“Mobile Apps”), the use of which is governed by this Agreement. Our Services can be used by your organisation to buy, get, license, rent or subscribe to Webapps and other in-app services (“Content”).

B. USING OUR SERVICES

This agreement should be read together with the KPMG Digital Terms of Use, which must be agreed to by each of your employees who are authorised to access our Services (“Approved Users”). In the event of any breach of this agreement or any further agreement so concluded by your Approved Users, you shall remain liable to KPMG Digital. You shall remain responsible for any action by any of your Approved Users.

In order for your organisation to be added as an active Client Organisation on the Platform, we require you to:

- Initial each page, sign and date this Agreement;
- Appoint (and send us the contact details of) at least one Administrator within your organisation who will be responsible for various matters, including, but not limited to:
 - creating and administering user accounts for your employees;
 - maintenance of your organisation’s details on the Platform; and
 - escalation of issues to our support team.

Your rights to access our service

If You fail to comply with any of the provisions of this Agreement, KPMG Digital may, without derogating from any other claim that KPMG Digital may have against You: (i) terminate this Agreement and You will remain liable for any amounts due by your organisation up to and including the date of termination; and/or (ii) preclude access to any part of the Services provided to You through the Platform.

KPMG Digital further reserves the right to modify, suspend or discontinue the Services (or any part or Content thereof) at any time and KPMG Digital will not be liable to You or to any third party should it exercise such rights.

Access to KPMG content

Some of the content available on the Platform is provided by KPMG member Firms. Where the transactions performed by You is for access to such KPMG proprietary content, the transaction is subject to KPMG having satisfactorily completed its own risk and acceptance procedures. Where access to Content is denied due to issues raised in these procedures, Your exclusive and sole remedy is a refund of the price paid.

Payments, taxes and refunds

Your Approved Users can acquire Content on our Platform for free or for a charge, either of which is referred to as a “Transaction.” Each Transaction is an electronic contract between You and KPMG Digital, and/or You and the entity providing the Content on our Services. You are responsible for defining spending limits and permissions in accordance with your own internal procurement processes.

Transactions are not complete and You will not have access to the items added to carts until payment is received in full and any required KPMG permissions are provided.

All Transactions are final.

Content prices may change from time to time. Such changes will not impact purchases that have been concluded.

Risk of loss for all electronically delivered Transactions passes to You upon electronic transmission.

If technical problems prevent or unreasonably delay delivery of Content, Your exclusive and sole remedy is either replacement of the Content or refund of the price paid, as determined by KPMG Digital. From time to time, KPMG Digital may refuse a refund request if we find evidence of fraud, refund abuse or other manipulative behaviour that entitles KPMG Digital to a corresponding counterclaim.

Where Your Approved Users use a Credit Card to make purchases, KPMG Digital will charge their Credit Card for the Transaction, including any applicable taxes.

Using Vouchers on the Platform

From time to time You may be provided with a Voucher that can be used to reduce the amount due on a Transaction. Vouchers may expire and can only be used once and for the purpose specified. When You redeem a Voucher, the applicable discount will be added to the relevant order prior to the payment being processed.

C. GENERAL CONSENT

You consent to:

- us collecting and using information about your organisation, relating to the requested Services in accordance with this Agreement, to aggregate information for use in the creation of comparisons to average information provided by other Client Organisations;
- being contacted by a representative of KPMG Digital or any of its Content providers in relation to potential service offerings by KPMG Digital or any of its Content providers to You;
- your information relating to the requested Services being hosted on the Platform which is housed on the Microsoft Azure Cloud Infrastructure; and
- the transmission and storage of your information as regards the requested Services in accordance with this Agreement.

D. TREATMENT OF YOUR INFORMATION

CONFIDENTIAL INFORMATION

We may receive confidential information about your organisation as You make use of any of our Services. We will keep confidential and will not disclose Your confidential information to any third party. This does not apply to your Confidential information that:

- is in the public domain; or
- we are required by Law to disclose; or
- we are required to disclose to our insurers or legal advisers; or
- is necessary for us to disclose in order reasonably to perform the Services; or
- is information we independently developed; or
- we received from a third party without restriction and without a breach of a duty of confidentiality.

To improve our understanding of clients and their business, to develop our intellectual capital and for purposes of internal review and quality control, applicable professional standards and best practises, we shall be entitled to share all confidential information with KPMG International and its member firms whom shall also comply with the provisions of confidentiality of this clause. The party receiving this information will be obliged to comply with these Confidentiality obligations.

You agree to keep confidential and not to disclose to any third party any methodology or technology we use to perform or provide the Services.

USING INFORMATION FOR MARKETING

You expressly agree that we may share your confidential information that was disclosed for the purpose of this Agreement with KPMG and within KPMG International and its member firms to allow us to identify and offer you extra services or products that may be of interest to your organisation relating to the services of this Agreement. The rights to share such confidential information does not extend to Content providers outside of KPMG unless you have given written approval for such use.

If You do not wish to receive marketing communications, You may at any time ask us to stop sending them.

To market, publicise or sell services to existing and prospective clients, we, KPMG International and its member firms shall request consent from You to use Your name as reference and to disclose that we have provided the Services to You. We will indicate only the general nature or category of the services we performed for You and any details that are in the public domain.

E. ADDITIONAL TERMS

CONTENT LICENSING

Webapp licenses are provided to You by KPMG Digital or a third party provider (“Webapp Provider”).

Any Webapp that You acquire is governed by the Licensed Application End User License Agreement (“Standard EULA”) set forth below, unless KPMG Digital or the Webapp Provider provides an overriding custom license agreement (“Custom EULA”). The Webapp Provider of any Third Party Webapp is solely responsible for its content, warranties and claims that You may have related to the Third Party Webapp. You acknowledge and agree that KPMG Digital is a third-party beneficiary of the Standard EULA or Custom EULA applicable to each Third Party Webapp and may therefore enforce such agreement.

IN-APP PURCHASES

Webapps may offer content, services or functionality for use within such Webapps (“In-App Purchases”). In-App Purchases that are consumed during the use of the Webapp cannot be transferred to other Webapps and, depending on the terms of the particular Webapp, benefits accruing to such In-App Purchases may expire.

LICENSED APPLICATION END USER LICENSE AGREEMENT (“EULA”)

Any Webapp that is subject to this Standard EULA is referred to herein as the “Licensed Application.” The Content Provider or KPMG Digital as applicable (“Licensor”) reserves all rights in and to the Licensed Application not expressly granted to You under this Standard EULA.

Licensed Applications made available through the Platform are licensed, not sold, to You. Your license to each Licensed Application is subject to your organisation’s prior acceptance of this Standard EULA between You and KPMG Digital and, where applicable, a Custom EULA governing the use of a specific Webapp provided by a Content Provider or Licensor.

Your license to any KPMG Digital Webapp under this Standard EULA or Custom Agreement is granted by KPMG Digital.

- a. **Scope of License:** Licensor grants to You a non-transferable license to use the Licensed Application as permitted by the Usage Rules. The terms of this Standard EULA will govern any content, materials or services accessible from or purchased within the Licensed Application as well as upgrades provided by Licensor that replace or supplement the original Licensed Application, unless such upgrade is accompanied by a Custom EULA. You may not copy (except as permitted by this license and the Usage Rules), reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Licensed Application, any updates, or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open-sourced components included with the Licensed Application).

- b. Consent to Use of Data: You agree that Licensor may periodically collect and use technical data and information related to the Services per this Agreement to facilitate the provision of software updates and product support related to the Licensed Application.
- c. Termination. This Standard EULA is effective until terminated by You or Licensor. Your rights under this Standard EULA will terminate automatically if you fail to comply with any of its terms.
- d. This agreement does not and is not intended to create any rights for a third party. We do not owe any third party any legal obligation or duty concerning this agreement. We are not bound by any contract between You and any third party.
- e. NO WARRANTY: SAVE FOR THE PROVEN WILLFUL AND/OR NEGLIGENT MISCONDUCT OF THE LICENSOR, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE LICENSED APPLICATION IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED APPLICATION AND ANY SERVICES PERFORMED OR PROVIDED BY THE LICENSED APPLICATION ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE LICENSED APPLICATION AND ANY SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY AND OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ITS AUTHORISED REPRESENTATIVE SHALL CREATE A WARRANTY. Some jurisdictions do not allow the exclusion of implied warranties or limitations on applicable statutory rights of a consumer, so the above exclusion and limitations may not apply to You.
- f. LIMITATION OF LIABILITY: TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR PERSONAL INJURY OR ANY DIRECT, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE LICENSED APPLICATION, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UNLESS IT IS PROVEN THAT SUCH LOSS RESULTED FROM NEGLIGENT AND/OR WILLFUL MISCONDUCT BY THE LICENSOR. Some jurisdictions do not allow the limitation of liability for personal injury or injury of incidental or consequential damages so this limitation may not apply to You.
- g. This Agreement and the relationship between you and KPMG Digital shall be governed by the laws of the Republic of South Africa. You and KPMG Digital agree to submit to the personal and exclusive jurisdiction of the courts located in South Africa, to resolve any dispute or claim arising from this Agreement.

F. MISCELLANEOUS TERMS APPLICABLE TO ALL SERVICES

DEFINITION OF KPMG DIGITAL

KPMG Digital Solutions (Pty) Ltd, located at 85 Empire Road, Parktown, Gauteng, South Africa. KPMG Digital Solutions (Pty) Ltd is a South African Company and subsidiary of KPMG Services (Pty) Ltd, a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"). KPMG International is a Swiss cooperative that serves as a

coordinating entity for a network of independent firms operating under the KPMG name. KPMG International provides no services to clients. Each member firm of KPMG International is a legally distinct and separate entity and each describes itself as such.

CONTRACT CHANGES

KPMG Digital reserves the right at any time to modify this Agreement and to add new or additional terms or conditions on Your use of the Services. Such modifications and additional terms and conditions will be agreed with You and incorporated into this Agreement.

INTELLECTUAL PROPERTY

You agree that the Services, including but not limited to Content, graphics, user interface and the scripts and software used to implement the Services, contain proprietary information and material that is owned by KPMG Digital and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright. No portion of the Services may be reproduced in any form or by any means, except as expressly permitted by this Agreement. You agree not to modify, rent, loan, sell or distribute the Services or Content in any manner and You shall not exploit the Services in any manner not expressly authorised.

The KPMG name and logo are registered trademarks or trademarks of KPMG International and other product and service names mentioned on the platform may be the registered trademarks or trademarks of KPMG International or a member firm of the KPMG network of independent firms or their respective affiliates. Use of these marks requires express prior permission from, and a license agreement with, KPMG International or a KPMG member firm. Unauthorised use of these and any other of KPMG's portfolio of trademarks will be prohibited to the fullest extent of the law. You are granted no right or license with respect to any of the aforesaid trademarks.

THIRD-PARTY MATERIALS

KPMG Digital is not responsible or liable for third party materials included within or linked from the Content or the Services.

COPYRIGHT NOTICE

If you believe that any Content available through the Services infringe a copyright claimed by you, please contact KPMG Digital.

DISCLAIMER OF WARRANTIES; LIABILITY LIMITATION PERTAINING TO THE PLATFORM

KPMG DIGITAL DOES NOT GUARANTEE, REPRESENT OR WARRANT THAT YOUR USE OF THE PLATFORM OR ITS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE AND YOU AGREE THAT FROM TIME TO TIME KPMG DIGITAL MAY REMOVE THE SERVICES AND/OR THE PLATFORM FOR INDEFINITE PERIODS OF TIME, CANCEL THE SERVICES AT ANY TIME OR OTHERWISE LIMIT OR DISABLE YOUR ACCESS TO THE PLATFORM AND/OR SERVICES.

YOU EXPRESSLY AGREE THAT YOUR USE OF, OR INABILITY TO USE, THE PLATFORM IS AT YOUR SOLE RISK. THE SERVICES AND ALL CONTENT DELIVERED TO YOU THROUGH THE PLATFORM ARE (EXCEPT AS EXPRESSLY STATED BY KPMG DIGITAL) PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. Some jurisdictions do not allow the exclusion of implied warranties so this limitation may not apply to You.

SAVE FOR PROVEN WILLFUL AND/OR NEGLIGENT MISCONDUCT, IN NO CASE SHALL KPMG DIGITAL, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF THE PLATFORM OR ANY OF THE SERVICES OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OF THE PLATFORM AND/OR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, EVEN IF ADVISED OF THEIR POSSIBILITY. Because some countries or jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, in such countries or jurisdictions, KPMG Digital's liability shall be limited to extent such limitation is permitted by law.

KPMG DIGITAL SHALL USE REASONABLE EFFORTS TO PROTECT INFORMATION SUBMITTED BY YOU IN CONNECTION WITH THE PLATFORM, BUT YOU AGREE THAT YOUR SUBMISSION OF SUCH INFORMATION IS AT YOUR SOLE RISK, AND YOU HEREBY RELEASE KPMG DIGITAL FROM ANY AND ALL LIABILITY, SAVE FOR PROVEN WILLFUL AND/OR NEGLIGENT MISCONDUCT, TO YOU FOR ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY.

KPMG DIGITAL DOES NOT REPRESENT OR GUARANTEE THAT THE PLATFORM OR ANY SERVICES WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING OR OTHER SECURITY INTRUSION AND YOU HEREBY RELEASE KPMG DIGITAL FROM ANY LIABILITY RELATING THERETO.

KPMG DIGITAL IS NOT RESPONSIBLE FOR DATA CHARGES YOU MAY INCUR FOR DOWNLOADING OR STREAMING FILES OVER A DATA CONNECTION.

WAIVER AND INDEMNITY

BY USING THE SERVICES, YOU AGREE, TO THE EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD KPMG DIGITAL, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS AND LICENSORS HARMLESS WITH RESPECT TO ANY CLAIMS ARISING OUT OF YOUR BREACH OF THIS AGREEMENT, YOUR USE OF THE SERVICES OR ANY ACTION TAKEN BY KPMG DIGITAL (BARRING NEGLIGENT AND/OR WILLFUL MISCONDUCT) AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT OR AS A RESULT OF ITS FINDING OR DECISION THAT A VIOLATION

OF THIS AGREEMENT HAS OCCURRED. YOU AGREE THAT YOU SHALL NOT SUE OR RECOVER ANY DAMAGES FROM KPMG DIGITAL, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS AND LICENSORS AS A RESULT OF ITS DECISION TO REMOVE OR REFUSE TO PROCESS ANY INFORMATION OR CONTENT, TO WARN YOU, TO SUSPEND OR TERMINATE YOUR ACCESS TO THE SERVICES, OR TO TAKE ANY OTHER ACTION DURING THE INVESTIGATION OF A SUSPECTED VIOLATION OR AS A RESULT OF KPMG DIGITAL'S CONCLUSION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS WAIVER AND INDEMNITY PROVISION APPLIES TO ALL VIOLATIONS DESCRIBED IN OR CONTEMPLATED BY THIS AGREEMENT SAVE FOR WILLFUL AND/OR NEGLIGENT MISCONDUCT ON THE PART OF KPMG DIGITAL.

OTHER PROVISIONS

This Agreement constitutes the entire agreement between You and KPMG Digital and governs Your use of the Services, superseding any prior agreements with respect to the same subject matter between You and KPMG Digital. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, third-party software or additional services. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties and the remaining portions shall remain in full force and effect. KPMG Digital's failure to enforce any right or provisions in this Agreement will not constitute a waiver of such or any other provision. KPMG Digital will not be responsible for failures to fulfil any obligations due to causes beyond its control.

You agree to comply with all legislation and regulation that applies to your use of the Services.

KPMG Digital may notify You with respect to the Services by sending an email message to Your designated email address or by a posting on the Services. Notices shall become effective immediately. KPMG Digital may also contact You by email or push notification to send you additional information about the Services.

You hereby grant KPMG Digital the right to take steps KPMG Digital believes are reasonably necessary or appropriate and within the confines of the Law to enforce and/or verify compliance with any part of this Agreement. You agree that KPMG Digital has the right, without liability to You, to disclose any data and/or information to law enforcement authorities, government officials and/or a third party, as KPMG Digital believes is reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement (including but not limited to KPMG Digital's right to cooperate with any legal process relating to Your use of the Services and/or Content, and/or a third-party claim that Your use of the Services and/or Content is unlawful and/or infringes such third party's rights).

Any rights not expressly granted herein are reserved.

Dated at _____ this _____ day of _____ 20 ____

Signature _____

Full names _____ Designation _____

For and on behalf of _____
who hereby warrants that he/she is duly authorised to sign this agreement

Second Signatory (OPTIONAL where You may deem it necessary)

Dated at _____ this _____ day of _____ 20 ____

Signature _____

Full names _____ Designation _____

For and on behalf of _____
who hereby warrants that he/she is duly authorised to sign this agreement