

TERMS OF USE

MARSH FIDELITY WEBSITE AND MOBILE-APP

Last Updated: 27 September 2023

PLEASE READ THESE TERMS CAREFULLY BEFORE ACCESSING OR USING OUR WEBSITE OR MOBILE APP (“THE PLATFORM”).

1 INTRODUCTION

- 1.1 The Marsh Fidelity mobile application and website (**‘the Platform’**) is owned and operated by Marsh Fidelity (Pty) Ltd (**‘we’**, **‘us’**, **‘our’** or **‘Marsh Fidelity’**). A private company incorporated in South Africa.
- 1.2 These Terms of Use (**“these Terms”**) govern a user’s (**“you”** or **“your”**) access to and use of the Platform.
- 1.3 These Terms do not govern any mandate between you and Marsh Fidelity for the provision of our services to you. Our relevant service agreement and/or signed mandate will apply to those services.
- 1.4 By using the Platform or by registering a User Account on the Platform, whichever occurs sooner, you acknowledge that you have read and agree to be bound by these Terms in their entirety, which includes our Privacy Notice.
- 1.5 Our Privacy Notice is accessible through the Platform, forms an integral part of these Terms and describes how we collect and use your personal information.
- 1.6 If you are agreeing to these Terms on behalf of a company, trust, organisation, or other legal entity, you represent that you have the authority to bind that entity (and all users who access the Platform on its behalf) to these Terms. If you do not have authority, you may not access or use the Platform for this purpose.
- 1.7 If you do not agree to these Terms, you may not access or use the Platform or any of its features.
- 1.8 These Terms expressly supersede any prior agreements or arrangements we may have entered with you in respect of the Platform.

2 DEFINITIONS

- 2.1 In these Terms, unless clearly inconsistent with or otherwise indicated by the context, the following words and expressions shall have the following meanings:

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| “Client Data” | all data submitted by you, including Images, documents, text, video, audio files and other information supplied to Marsh Fidelity in any other format. |
| “Client Documents” | documents you upload as part of your estate management plan, including certified copies of Government-issued identity documents, last will and testament, antenuptial contracts and any other document you choose to upload onto the Platform. |

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| “Device” | any computer, tablet, smartphone, or other device you use to access the Platform. |
| “Images” | digital photographs or scanned images of Client Data uploaded and accessed on the Platform. |
| “Intellectual Property” | includes trademarks, copyrights, trade secrets, designs, inventions, source codes, databases, functionality, software, and other proprietary information associated with the Platform and Services whether registrable, registered or the subject matter of an application for registration or not, anywhere in the world. |
| “Loss” | any and all damages (including, but not limited to, direct, consequential, incidental, special and punitive) sanctions, settlement payments, disbursements, judgements, liability, losses (including but not limited to lost income or profit, loss of goodwill or reputation, injury, and intangible loss), penalties, costs or expenses of any nature whatsoever, whether accrued or absolute, contingent or otherwise, including, without limitation, attorneys’ fees and costs (whether or not actual proceedings commence). |
| “personal information” | ‘personal information’ as defined in the Protection of Personal Information Act 4 of 2013. |
| “Services” | Our services provisioned using the Platform, as we may change from time, which include hosting and giving you access to your Client Documents on personal a documentary repository, publishing newsletters and other related services. |
| “User Account” | the account and profile you create when signing-up on the Platform. |
| “User” or “You” | Any individual who uses or accesses the Platform as a client or potential client of the Marsh Fidelity. |

3 PLATFORM AND SERVICES

3.1 The Platform allows you to create a User Account to, among others:

- (a) upload and organise your Client Documents on the Platform.
- (b) communicate with our staff; and
- (c) Stay up to date with our newsletters and other important communications.

4 USER RESTRICTIONS

You must reside in South Africa and be at least 18 years of age to use the Platform. By using the Platform, you represent and warrant that you are at least 18 years of age and have the legal capacity to enter into this agreement.

5 USER ACCOUNTS

- 5.1 Only registered Users may access or make use of the Platform and/or the services provided through the Platform.
- 5.2 To register as a User, you must provide your email address or phone number, and unique password (**“Credentials”**), and provide certain information and personal details to us.
- 5.3 You may only possess 1 User Account.

- 5.4 You must use your own Credentials to access the Platform and utilise the services under your User Account.
- 5.5 You agree and warrant that your Credentials shall:
- (a) be used for your own personal use only;
 - (b) not be disclosed by you to any third party; and
 - (c) not be stored in a way that enables others to access it or impersonate you.
- 5.6 You are responsible for maintaining the confidentiality of your User Account and Credentials, and for all activities that occur under your User Account.
- 5.7 If the correct Credentials are entered, we will assume that you are the person accessing your account.
- 5.8 If you disclose your Credentials to any person who you authorise to access the Platform, you are also responsible and liable for any access, use, misuse or disclosure of your Credentials by such person.
- 5.9 You agree to notify us immediately upon becoming aware of or reasonably suspecting any unauthorized access or use of your Credentials or User Account. We will then disable your account as soon as is reasonably practicable until we are able to reset your account with us. Unless and until you provide such notice:
- (a) you will be responsible for any instruction that we receive and act on through your account, even if it was not given by you; and
 - (b) we will not be responsible for any unauthorised access to confidential information on the Platform.
- 5.10 **Neither Marsh Fidelity, its directors, employees, contractors and agents will be liable for any Loss or damage arising from your failure to comply with this section.**

6 ACCURATE AND COMPLETE INFORMATION

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| <p>When registering a User Account or otherwise using the Platform, you warrant and agree to provide accurate, current, and complete information when creating your User Account and submitting any Client Documents and Client Data.</p> |
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7 LEGAL INFORMATION DISCLAIMER

Not advice. The legal and estate-related information available on the Platform (“**Legal Information**”) is provided for educational and informational purposes only. It is designed for your private use. It should be noted that this Legal Information does not constitute legal or professional advice, and you should not rely on it as such. We cannot guarantee that Legal Information is always correct, up-to-date, or suitable for every unique situation you may encounter.

No professional review. Unless you engage us separately for professional services, we will not review any information you provide or generate through the Platform for legal or professional accuracy or sufficiency. You are responsible for ensuring the accuracy and appropriateness of any documents created using the Platform.

Document templates. The Platform offers customizable document templates that serve as a starting point for creating legal and estate-related documents. However, these templates should be seen as

general guidelines and must be adapted by you to meet your specific needs. If you require legal advice for a particular issue, we strongly recommend consulting a qualified lawyer.

No lawyer-client relationship. Your use of the Platform does not establish a lawyer-client relationship between you and Marsh Fidelity. Therefore, any communication between you and us may not be protected under legal professional privilege. Legal professional privilege is a legal principle that allows clients to keep certain confidential legal communications private and not disclose them to third parties, including courts, regulatory authorities, and law enforcement.

8 PROHIBITED CONDUCT

8.1 When registering a User Account or otherwise using the Platform, you warrant and agree to:

- (a) not knowingly or intentionally misrepresent your identity or provide false information or documents in connection with the use of the Platform;

For example, you may not upload, submit or use any fraudulent documents or photographs or impersonate other people;

- (b) not create a User Account for anyone other than yourself;
- (c) not use bots or other automated methods to access, scrape, copy or monitor the Platform;
- (d) not use the Platform for any illegal or unauthorized purpose;
- (e) not use the Platform to infringe upon the privacy or intellectual property rights of others;
- (f) not use the Platform to engage in any form of harassment, abuse, or hate speech; and
- (g) not use the Platform to transmit any viruses, malware, or other harmful components.

9 END-USER LICENSE AND INTELLECTUAL PROPERTY

In summary, all content within the Platform is protected by intellectual property rights. Unauthorized use or distribution of this content is not permitted. When you upload content, you maintain ownership but grant us specific usage rights. If you provide feedback, we may use it to improve the Platform, and such feedback is treated as non-confidential and non-proprietary.

9.1 Our Intellectual Property: all the Intellectual Property included in or arising from the Platform belongs to us or our licensors. You will not acquire any rights to that Intellectual Property.

9.2 Your license: As long as you comply with these Terms, we grant you a revocable, personal, limited, non-exclusive, non-sub-licensable, and non-transferrable license to install and use the Platform on your personal Device that you control for non-commercial purposes and for the sole purpose of accessing the available services on the Platform.

9.3 The right granted to you above is revocable which means we can take back the right we have given to you to use the Platform.

- 9.4 Any rights not expressly granted herein are reserved by us and our licensors.
- 9.5 You shall not do or attempt to do any of the following:
- (a) reproduce, modify, reverse engineer or use the source code of the Platform;
 - (b) probe, scan or test the vulnerability of the Platform or any network connected to it, nor breach the security or authentication measures on the Platform. You may not reverse look-up, trace or seek to trace any information on any other user of the Platform, including any profile not owned by you
 - (c) decrypt the Platform or override any security features;
 - (d) copy the Platform except for your own reasonable backup purposes;
 - (e) make derivative work from the Platform; or
 - (f) remove, hide or alter any proprietary notice on or associated with the Platform.
- 9.6 Where the Platform consists of components, plugins or integrations that have been licensed to us from or belong to any third party, your rights of use will also be subject to any terms and conditions which that licensor or third party imposes from time to time and you agree to comply with such third party terms and conditions.
- 9.7 Content. The Platform may contain a variety of materials, including but not limited to videos, text, graphics, user interfaces, photographs, trademarks, logos, sounds, music, artwork, computer code, interactive features, software, metrics, and other materials, collectively referred to as "**Content.**" This Content can be provided by you, us, or third parties.
- 9.8 All Content made available on the Platform is owned, controlled, or licensed by us, and is protected by copyright, trademark, and other Intellectual Property rights.
- 9.9 Restrictions on use of Content. No part of the Platform or any Content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, or distributed in any manner. This includes actions such as publishing or distributing the Content on other computers, servers, websites, or mediums for commercial purposes or non-commercial purposes, without obtaining our prior written consent. Unauthorized replication or redistribution of any Content available on the Platform is strictly prohibited unless we have provided written consent beforehand.
- 9.10 User-Provided Content. When you upload content to the Platform, you retain ownership of any intellectual property rights associated with that content. However, you grant Marsh Fidelity a limited, non-exclusive, transferable license to use your intellectual property for specific purposes, including:
- (a) Storing the Content in your document repository under your User Account;
 - (b) Sharing the Content with your authorised contacts (if applicable); and
 - (c) Any other actions reasonably necessary to provide the services and features of the Platform to you.
- 9.11 Feedback and suggestions. If you provide feedback or suggestions concerning the Platform, you hereby assign to us all rights to that feedback or suggestion. This includes allowing us to use and fully exploit the feedback and related information in any manner we

deem appropriate. Please note that any feedback you provide is considered non-confidential and non-proprietary.

10 INDEMNITY

To the maximum extent permitted by applicable law, **you agree to defend, indemnify, and hold us and our affiliates, agents, suppliers, and licensors** (and our and their employees, contractors, agents, officers, and directors) **harmless from and against any and all Losses** arising from: **(i)** your access to or use of the Platform; **(ii)** your violation of any aspect of these Terms, including your breach of any of your representations and warranties; **(iii)** your violation of any third-party right, including any right of privacy or intellectual property rights; **(iv)** your violation of any applicable law, rule, or regulation; **(v)** Your Images or Client Documents, including without limitation any misleading, false, or inaccurate information in such images or documents; **(vi)** your wilful misconduct; or **(vii)** any third party's access to or use of the Platform with your Credentials.

11 DISCLAIMERS AND EXCLUSIONS OF LIABILITY

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| 11.1 | The use of the Platform and our services is entirely at your own risk. |
| 11.2 | The Platform and services are provided “as is”. We make no representations or warranties of any kind, either express or implied, including but not limited to, warranties of merchantability, title, fitness for a particular purpose, completeness, or non-infringement, as may be allowed in law. |
| 11.3 | We do not make or imply any warranties or representations as to the safety, effectiveness, adequacy, accuracy, availability, or legality of any of the information contained on the Platform or the services offered in connection with the Platform. |
| 11.4 | You acknowledge that we do not warrant that the Platform will be uninterrupted, timely, secure, error-free, and no information or advice obtained by you from us or through the Platform shall create any warranty not expressly stated in these Terms. |
| 11.5 | We also make no warranty or representation, whether express or implied, that the information or files available on the Platform are free of viruses, spyware, malware, trojans, destructive materials or any other data or code which is able to corrupt, destroy, compromise, disrupt, disable, harm, jeopardise or otherwise impede in any manner the operation, stability, security functionality or content of your computer system, computer network, hardware or software in any way. You accept all risk associated with the existence of such viruses, destructive materials or any other data or code which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation or content of a computer system, computer network, any handset or mobile device, or your hardware or software, save where such risks arise due to the gross negligence or wilful misconduct of Marsh Fidelity, its employees, agents or authorised representatives. |
| 11.6 | In no event will Marsh Fidelity or its directors, employees, or agents be liable to you or any third party for any Loss whatsoever out of or in connection with your access to or use of the Platform, even if Marsh Fidelity has been advised of the possibility of such damages. |

12 FORCE MAJEURE

12.1 If Marsh Fidelity is unable to perform any obligation under these Terms due to the occurrence of a Force Majeure event, we will be absolved from performing that obligation

for as long as the circumstances prevail or, if performance of the obligation is or becomes impossible, Marsh Fidelity will be entitled to terminate these Terms on reasonable written notice to you.

12.2 In these Terms “**Force Majeure event**” means any event or circumstances beyond the control of Marsh Fidelity provided such circumstances are not caused by fault, of any degree, on the part of Marsh Fidelity and shall include fire, explosion, power blackout, earthquake, flood, severe storms, strike, riot, civil disturbance, embargo, labour disputes, acts of civil or military authority, war, terrorism (including cyberterrorism or cybercrimes), acts of God, acts or omissions of internet traffic carriers or mobile application stores, actions or omissions of regulatory or governmental bodies (including the passage of or material change in the law applicable) that materially affect the Marsh Fidelity or a key service provider’s performance under these Terms.

12.3 Any delay or failure in the performance by Marsh Fidelity hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure event.

13 AVAILABILITY, SUSPENSION AND TERMINATION

13.1 We may at any time for any reason whatsoever discontinue or disable certain parts of the services available via the Platform.

13.2 While we will use reasonable efforts to ensure that the Platform operates as it was designed by us, we cannot warrant or guarantee that the Platform is compatible with, or will operate with your Device.

13.3 We will use our reasonable endeavours to maintain the availability of the Platform, except during scheduled maintenance periods, and are entitled to discontinue providing the Platform or any part thereof with or without notice to you.

13.4 We may in our sole discretion terminate, suspend or modify the Platform or services, or your rights to use the Platform or services, with or without notice to you. You agree that we will not be liable to you in the event that we choose to suspend, modify or terminate the Platform or associated services.

13.5 For purposes of preventing suspected fraud and/or where we suspect that you have committed any prohibited conduct, including conduct described in section 8 (Prohibited Conduct), we may, without limitation, blacklist you on our database (including suspending or terminating your access to the Platform).

14 ELECTRONIC AND IN-APP PUSH-NOTIFICATIONS

14.1 By using the Platform, you consent to receive communications from us electronically. These communications may include but are not limited to emails, messages within the Platform, and push notifications. Push notifications may include but are not limited to updates, reminders, and alerts related to your account, documents, and other relevant information.

14.2 You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

14.3 You may opt-out of receiving certain push notifications by adjusting your Device’s notification settings or following any opt-out instructions provided on the Platform. Please

note that some essential communications, such as account-related notifications, may still be sent to you, and you cannot opt out of receiving them.

15 GENERAL

15.1 Changes to these Terms

- (a) We may, in our sole discretion, change, modify and update any of these Terms at any time. It is your responsibility to regularly check these Terms and make sure that you are satisfied with the changes. Should you not be satisfied, you must not in any way use the Platform and/or the Services.
- (b) Any such change will only apply to your use of this Platform and/or the Services after the change is displayed on the Platform. Any material changes to these Terms will be sent to the email address provided by you when you register as a user of the Platform. Your continued use of the Platform will be deemed to constitute your acceptance of such changes.

15.2 Arbitration

- (a) Any dispute arising from or in connection with these Terms or the Platform must be referred to and finally resolved by arbitration in accordance with the Restricted Representation Rules of the Arbitration Association of Southern Africa NPC or its successor (“**the Association**”).
- (b) If the parties cannot agree on an arbitrator within 7 days of referring the matter for arbitration, then the Association will appoint an arbitrator.
- (c) Irrespective of the applicable arbitration rules, the appointed arbitrator will apply the law as far as practicably possible, tempered by fairness, and as informally as he chooses, and with a view to limit costs in his sole discretion and without being bound at all by any pleadings the parties may have exchanged.
- (d) The arbitration seat shall be in Durban, South Africa, but the arbitration may be conducted online (remotely), and the arbitration proceedings shall be conducted in English.
- (e) Either party may make the arbitration award an order of court.

15.3 Choice of law and jurisdiction

- (a) These Terms will in all respects be governed by and construed under the laws of the Republic of South Africa.
- (b) For purposes of clause (e) (making an arbitration award a court order), the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, KwaZulu Natal Local Division (Durban).

15.4 Entire Agreement

These Terms will constitute the entire agreement between you and us concerning the Platform. None of our employees or representatives are authorised to make any modification or addition to these Terms. Any statements or comments made between you and any of our employees or representatives are expressly excluded from these Terms and will not apply.

15.5 Relaxation and Waiver

No relaxation or indulgence which any Party may allow to the other Party at any time with regard to the carrying out of these Terms, shall:

- (a) prejudice any of the rights of the Party granting the relaxation or indulgence under these Terms in any manner whatsoever; and
- (b) be regarded as a waiver of those rights.

15.6 No Representations

No Party shall be entitled to rely on any representation or understanding or undertaking or commitment or anything whatsoever which is claimed to have induced such Party into concluding these Terms unless such representation or understanding or undertaking or commitment or such other things is recorded in these Terms.

15.7 Cession, Assignment and Substitution

These Terms, and any rights and licenses granted in these Terms, may not be ceded, transferred or assigned by you without our prior express written consent, but may be assigned by us without restriction. Any attempted transfer or assignment in violation hereof will be null and void.

We may cede, assign or transfer our agreement with you including any of our associated rights or obligations at any time, and you agree to cooperate with us in connection with such cession, assignment or transfer.

15.8 Severability

The provisions of these Terms are severable from each other. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of these Terms, which will remain in full force and effect.

15.9 Legal Notices

- (a) Marsh Fidelity selects the address in clause 15.10 as its address for the service of all formal notices and legal processes in connection with these Terms ("**legal address**"). Marsh Fidelity may change this address from time to time by updating this Agreement.
- (b) You hereby select your email address and physical address specified in your User Account as your legal address, but you may change it to any other physical address by giving us not less than 7 days' notice in writing.
- (c) Notices must be sent either by hand, prepaid registered post, or email and must be in English. All notices sent -
 - (i) by hand will be deemed to have been received on the date of delivery;
 - (ii) by prepaid registered post, will be deemed to have been received 14 days after the date of posting;

(iii) if transmitted by email be deemed to have been received by the addressee on the business day following the date of dispatch.

15.10 **Our Company Information**

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| Company Name: | Marsh Fidelity (Pty) Ltd |
| Registration Number: | 2020/204203/07 |
| Primary business: | Deceased Estates, Trusts and other related services |
| Physical Address for receipt of legal service | 9 Church Place, Westville, KwaZulu-Natal |
| Telephone Number | 082 839 6160 |
| Email Address | daniel@marshfidelity.co.za |