

**INDEPENDENT CONTRACTOR AGREEMENT  
(Including Confidentiality and Non-Disclosure Agreement)**

**Between**

[Principal Name]

\_\_\_\_\_

[Identity Number/Registration Number]

\_\_\_\_\_

**(hereinafter referred to as "the Principal")**

**And**

[Contractor Name]

\_\_\_\_\_

[Identity Number/Registration Number]

\_\_\_\_\_

**(hereinafter referred to as the "Contractor")**

**(collectively referred to as the "Parties")**

**Commented [LL1]:** Insert the name of the Company or Person that will be using/outsourcing the services to the sub-contractor/independent contractor.

This Person or Company is known as the "Principal" in this Agreement

**Commented [LL2]:** Insert the Registration Number or ID number of the Principal

**Commented [LL3]:** Insert the name of the Contractor that will be performing the Services assigned to he/she/it by the Principal.

This Person or entity is known as the "Contractor" in this Agreement

**Commented [LL4]:** Insert the Registration Number or ID number of the Contractor

1.3.6 **"Commencement Date"** means the date as reflected in item 13 of Annexure **"A"**;

1.3.7 **"Contractor"** means the person or entity as recorded in items 7, 8, 9, 10, 11 and 12 of Annexure **"A"**;

1.3.8 **"Fee"** means the Fee payable to the Contractor for rendering the Services in terms of this Agreement, being the amount(s) stipulated in item 14 of Annexure **"A"**;

1.3.9 **"Services"** means the independent specialised skills and expertise to be rendered by the Contractor to the Principal in terms of this Agreement, being those Services more fully described in item 16 of Annexure **"A"** hereto;

1.3.10 **"Term"** means the term of this Agreement set out in item 17 of Annexure **"A"** hereto.

1.4 if any provision is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect will be given to it as if it were a substantive provision in the body of the Agreement;

1.5 words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning assigned to such words and expressions in such clause;

## 2 INTRODUCTION

It is recorded that -

2.1 The Principal has agreed to engage the Contractor for the purpose of rendering the Services, against payment of the Fees and for the Term of this Agreement; and

2.2 The Parties wish to conclude this Agreement by way of formalising such Agreement on the terms and conditions stated herein.

3.7 It is specifically recorded that the intention of the Parties is not to create a master and servant relationship or an indefinite term of employment as between the Parties, but rather an Agreement that constitutes the letting and hiring of work (*locatio conductio operas*) as between the Parties. Furthermore, this is so notwithstanding the fact that for convenience loose reference may be made from time to time to the Contractor's Services.

#### 4 **DURATION AND TERMINATION**

4.1 This Agreement shall notwithstanding the signature date, be deemed to commence on the Commencement Date and shall endure for the Term, subject, without prejudice, to the right of either Party, or the Party so recorded in item 18 of Annexure "A" hereto, if and where applicable, to terminate this Agreement in accordance with item 19 of Annexure "A".

4.2 Notwithstanding the provisions contained in this Agreement, the Principal shall be entitled to terminate this Agreement forthwith on written notice to the Contractor if the Contractor fails to provide the Services in accordance with the standards and requirements of the Principal.

#### 5 **COMPANY'S OBLIGATIONS**

The Principal agrees to perform the following for the Contractor:

- 5.1 Pay the Fee(s) of the Contractor in accordance with item 14 of Annexure "A";
- 5.2 Will, at its sole and exclusive discretion, provide the Contractor with agreed administration and other required facilities, if applicable, to enable the Contractor to perform any work in terms of this Agreement;
- 5.3 The Principal will not, however, reimburse the Contractor for out of pocket expenses, unless otherwise agreed in advance by the Parties in writing.

#### 6 **CONTRACTOR'S OBLIGATIONS**

6.1 The Contractor, as and when required, shall provide to the Principal his/her/its Services to the best of his/her/its ability and use his/her/its best endeavors to promote and extend the Business of the Principal.

6.2 The Contractor agrees not to divulge the existence of this Agreement and any other assignment between the Principal and its Customers to any other individual or organisation regardless of whether it is a competitor or not.

6.3 The Contractor agrees to operate in accordance with any work or mandate stipulated by the Principal.

6.4 Should the Principal deem it necessary, the Contractor will be under the general direction of the Principal as to the Principal's policies and procedures, the general nature of the work, the targets to be met, the scope of work, and time to be taken.

6.5 The Contractor agrees to display a high duty of care and good faith in the performance of his/her/its duties. The Contractor agrees to strive for standard of excellence in as far as his/her/its performance is concerned and he/she/it hereby expressly represents to the Principal that he/she/it is qualified and experienced to do so.

## 7 **PAYMENT OF FEES**

In consideration for the Services performed, the Principal shall pay the Contractor the Fee(s) as stipulated in item 14 of Annexure "A" hereto. Payment shall be effected in accordance with the applicable timeframes as stipulated in item 15 of Annexure "A" hereto.

## 8 **CONFIDENTIALITY AND NON-DISCLOSURE**

8.1 During the Term of this Agreement the Contractor will acquire considerable Confidential Information relating to the Principal.

8.2 The Confidential Information is of considerable value to the Principal, and the Principal has in the past and will in the future continue to protect such information.

8.3 It is understood and agreed that, in the event that the Contractor uses the Confidential Information, then the Principal will suffer considerable loss.

8.4 In order to protect the interest of the Principal as set out above, the Contractor undertakes that he/she/it will not during the currency of this Agreement, and at any stage after the date of termination of this Agreement, reveal to any person, firm, or

8.5.7 not to reverse engineer, decompile or disassemble any inventions, designs software, or programs forming part of the Confidential Information.

8.5.8 the Contractor will not utilise the Confidential Information for his/her/its own benefit or for the benefit of any other person or party, including for purposes of publication, in any manner other than in terms of a written Agreement to be entered into with the Principal.

8.5.9 the Contractor will not publish any Confidential Information without the prior written approval of the Principal.

8.6 It is agreed that the undertaking given by the Contractor in terms of clause 8.5 will not apply to any information:

8.6.1 which was already known to or in the possession of the Contractor prior to commencing the Services with the Principal, provided such possession is evidenced by the written records of the Contractor existing at the Commencement Date; or

8.6.2 which has become part of the public domain by publication or otherwise, other than by the negligence or default of the Contractor or by the breach of this Agreement by the Contractor; or

8.6.3 which has lawfully become known by the Contractor on a non-confidential basis from a source (other than the Principal) having the legal right to disclose same.

8.7 For the sake of clarity, the provisions of this clause 8 restricting the disclosure and use of such Confidential Information, shall apply to both the Contractor and to any other entity or person associated, or to be associated, with the Contractor, and which may lawfully, or otherwise, be in possession of such Confidential Information.

## 9 STIPULATIO ALTERI

The stipulations in clause 8 are entered into for, *inter alia*, the benefit of the Principal and its Customers, which may accept the benefits at any time and in any combination of one or more of them after the Commencement Date of this Agreement by giving written notice to that effect to the Contractor and the Principal.

14.5 The Contractor also hereby agrees to disclose to the Principal all such Matter and deliver to the Principal all documents and other materials relating to such Matter.

14.6 At the request and expense of the Principal and as required, the Contractor will do all such things and sign all such documents reasonably necessary to confirm or vest in the Principal the rights assigned or otherwise transferred to the Principal under this Agreement and to the extent that the Contractor fails to do any such thing then a Principal representative is hereby authorised as the Contractor's duly appointed attorney to do such things and to sign such documents for the purpose of confirming and vesting the rights referred to in this clause 14.

14.7 All goodwill arising out of the provision of the Services shall accrue to the Principal on a month by month basis. No compensation shall be payable by the Principal to the Contractor on account of such goodwill or in the event of the termination of this Agreement, for whatever reason.

## 15 **INDEMNITIES AND LIABILITY**

The Contractor hereby indemnifies and holds the Principal harmless against all claims, demands, fines, penalties, actions, injury to person or property, proceedings, judgements, damages, losses, costs, expenses, or other liabilities of whatsoever nature caused, whether negligently or otherwise, whether arising at common law or by statute.

## 16 **BREACH**

If any Party commits a breach of this Agreement and fails to remedy such breach within 7 (seven) days of receipt of a written notice requiring the breach to be remedied by the other Party, then the Party giving notice shall be entitled, at its option, either to cancel this Agreement and claim damages or alternatively to claim specific performance of all the defaulting Party's obligations, together with damages, if any, whether or not such obligations have fallen due for performance.

## 17 **EXCLUSION OF THE LABOUR ACTS**

It is specifically agreed between the Parties that the, shall not be deemed to be an employee of the Principal or to have any of the rights of employees under the Labour Acts of the Republic of South Africa.

## 18 NOTICES AND DOMICILIUM

18.1 The Parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary of this Agreement, the following:

18.1.1 the **Principal**: As per items 3, 4, 5 and 6 of Annexure "A";

18.1.2 the **Contractor**: As per items 9, 10, 11 and 12 of Annexure "A" hereto,  
provided that a Party may change its *domicilium* to any other physical address or telephone or email address by written notice to the other Party to that effect. Such change of address will be effective seven days after receipt of notice of change of *domicilium*.

18.2 All notices to be given in terms of this Agreement will:

18.2.1 be given in writing;

18.2.2 be delivered by email, facsimile or sent by courier;

18.2.3 if delivered, be presumed to have been received on the date of delivery.

18.3 If any notice is sent by email, the provisions of the Electronic Communications and Transactions Act 25 of 2002 governing receipt of data messages, shall apply.

18.4 Notwithstanding the above, any notice actually received by the party to whom notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has been given in accordance with the provisions of this clause.

24 **INDULGENCES**

No indulgence, which any of the Parties ("the Grantor") may grant to any other or others of them ("the Grantee(s)"), shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee(s) which might have arisen in the past or which might arise in the future.

25 **ASSIGNMENT**

This Agreement is personal to the Principal and the Contractor shall not be entitled to assign, transfer, alienate or otherwise dispose of all or any of his/her/its rights and/or obligations under this Agreement, except with the written consent of the Principal.

26 **SIGNATURE**

- 26.1 This Agreement is signed by the Parties on the dates and at the places indicated opposite their respective names.
- 26.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- 26.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

**Annexure "A"**

1.	Full legal name of Principal	
2.	Registration/I.D Number of Principal	
3.	Physical Address of Principal	
4.	Postal Address of Principal	
5.	Email Address of Principal	
6.	Contact Telephone Numbers of Principal	
7.	Full Legal Name of Contractor	
8.	Registration/I.D Number of the Contractor	
9.	Physical Address of Contractor	
10.	Postal Address of Contractor	
11.	Email Address of Contractor	
12.	Contact Telephone Numbers of Contractor	
13.	Commencement Date	
14.	Agreed Fee(s) (excl. VAT & Taxes) (State per month/ once-off)	
15.	Date(s) on which Fee shall be paid	

**Commented [LL5]:** This is the date on which the Agreement will start/commence

**Commented [LL6]:** The Fee(s) that will be paid to the contractor needs to be specified, including how it is calculated (if complex), and how often the Fees need to be paid, or whether it may be a lump sum Fee.

16.	Services (List services to be provided by the Contractor)		
17.	Term		
18.	Tick the box of the Party which is allowed to terminate this Agreement early as per clause 4.1 of the Agreement, if any, in accordance with the notice period in item 19 below.	Principal	Contractor
19.	Notice period to terminate/cancel the Agreement early		
20.	Will the non-solicitation of staff clause 12 be applicable	Yes	No
21.	If "Yes" to the above, how long will this period of restraint be applicable for?		
22.	Will the non-solicitation of Customers clause 12 be applicable	Yes	No
23.	If "Yes" to the above, how long will this period of restraint be applicable for?		
24.	Province of area of the Court which will adjudicate any dispute that arises in terms of this Agreement (such as Gauteng)		

**Commented [LL7]:** This is the duration of the Agreement. For example 6 months or 1 year.

**Commented [LL8]:** This might be for example, 30 days' notice, to terminate/cancel the agreement.

**Commented [LL9]:** If you would like, by ticking "Yes" you can include clause 12, which prevents the Contractor from employing the Principal's staff from the period that you stipulate in item 21 below.

**Commented [LL10]:** If you would like, by ticking "Yes" you can include clause 13, which prevents the Contractor from employing the Principal's Customers from the period that you stipulate in item 23 below.