



CONSULTING AGREEMENT
(Including Confidentiality and Non-Disclosure Agreement)

between:

THE PRINCIPAL

(as recorded in item 1 of the Table below)

("the Principal")



and

THE CONSULTANT

(as recorded in item 2 of the Table below)

(collectively referred to as the "Parties")

1. PRINCIPAL:									
Registration Number/Identity Number:									
Physical address:									
Postal address:									
Phone number:									
Email address:									
2. CONSULTANT:									
Registration Number/Identity Number:									
Physical address:									
Postal address:									
Phone number:									
Email address:									
3. COMMENCEMENT DATE:									
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	■■■■■■■■■■								
5. DATE OF PAYMENT OF FEES:									

6. SERVICES TO BE PROVIDED BY CONSULTANT:			
			
8. TERMINATION:	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.	Principal	Consultant
9. NOTICE PERIOD IRO EARLY TERMINATION:			
10. WILL THE NON-SOLICITATION OF STAFF ITO CLAUSE 12 APPLY:	Yes: Please include clause 12	No: Disregard clause 12	
			
12. WILL THE NON-SOLICITATION OF CUSTOMERS ITO CLAUSE 13 BE APPLICABLE:	Yes: Please include clause 13	No: Disregard clause 13	
13. LENGTH OF NON-SOLICITATION AS PER CLAUSE			

13 (IF APPLICABLE):	
14. PROVINCE OF AREA OF THE COURT WHICH WILL ADJUDICATE ANY DISPUTE THAT ARISES IN TERMS OF THIS AGREEMENT:	

1 **INTERPRETATION**

In this Agreement:

1.1 clause headings are for the convenience and are not to be used in its interpretation;

█ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.3 the following expressions bear the meanings assigned to them below and cognate expression bear corresponding meanings;

1.3.1 **"Agreement"** means this agreement;

1.3.2 **"Business"** means the business of the Principal from time to time;

1.3.3 **"Customer"** means the Principal's Customers from time to time;

1.3.4 **"Principal"** means the person or entity as recorded in item 1 of the above Table;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], internal control

systems, policies and strategies, salary and wage policies, security methods, knowledge of customers and business associates, control arrangements and financing techniques, personnel, strategic plans, any software and or database information and other matters which relate to the Business of the Principal in respect of which information is not readily available;

1.3.6 **"Commencement Date"** means the date as reflected in item 3 of the above Table;

1.3.7 **"Consultant"** means the person or entity as recorded in item 2 of the above Table;

1.3.8 **"Fee"** means the Fee payable to the Consultant for rendering the Services in terms of this Agreement, being the amount(s) stipulated in item 4 of the above Table;

[REDACTED]

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 Consultant for the purpose of rendering the Services, against payment of the Fees and for the Term of this Agreement; and

[REDACTED]

3 **APPOINTMENT**

3.1 The Principal hereby contracts with the Consultant and the Consultant hereby agrees to perform Services for the Principal from time to time, based on the Consultant’s independent specialised skills and expertise, on the terms and conditions stated herein.

3.2 **NATURE OF APPOINTMENT**

3.2.1 It is specifically agreed that:

3.2.1.1 this Agreement is not a contract of employment, but an Agreement between 2 (two) independent consultants for the delivery of the Services; and

[REDACTED]

3.3 The Consultant shall not be entitled to any employee fringe benefits of any nature.

3.4 Furthermore, it is acknowledged by the Consultant that neither the Consultant nor any of the Consultant’s employees (if applicable) will have the authority to bind the Principal to any Agreement of any nature whatsoever, nor may the Consultant or its employees (if applicable) describe themselves in any way, directly or indirectly, as being an employee, agent or representative of the Principal.

[REDACTED]

3.6 The Consultant acknowledges and agrees that the continual or intermittent nature of this Agreement does not give rise to the doctrine of legitimate expectation and even where the Principal makes regular use of the Consultant’s work, subject to the termination provisions as contained herein, the Principal is not obliged to continue to make use of the Consultant’s work.

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 Consultant'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 8 of the above Table, if and where applicable, to terminate this Agreement in accordance with item 9 of the above Table.

■ [REDACTED]

5 COMPANY'S OBLIGATIONS

The Principal agrees to perform the following for the Consultant:

5.1 Pay the Fee(s) of the Consultant in accordance with item 4 of the above Table;

■ [REDACTED]

5.3 The Principal will not, however, reimburse the Consultant for out of pocket expenses, unless otherwise agreed in advance by the Parties in writing.

6 CONSULTANT'S OBLIGATIONS

█ [REDACTED]

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

6.4 Should the Principal deem it necessary, the Consultant 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.

█ [REDACTED]

7 PAYMENT OF FEES

In consideration for the Services performed, the Principal shall pay the Consultant the Fee(s) as stipulated in item 4 of the above Table. Payment shall be effected in accordance with the applicable timeframes as stipulated in item 5 of the above Table.

8 CONFIDENTIALITY AND NON-DISCLOSURE

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

█ [REDACTED]

- 8.3 It is understood and agreed that, in the event that the Consultant 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 Consultant 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 corporation, the Confidential Information, procedures or dealings or any information concerning the functions, transactions or affairs of the Principal or any details of the Customers of the Principal or the Services provided, and shall not use or attempt to use any such information in any manner which may injure or cause loss either directly or indirectly to the Principal, as the case may be, or may be liable to do so.
- 8.5 Furthermore, the Consultant hereby agrees not to exploit or turn such Confidential Information to account otherwise than in the interest of the Principal. To this end the Consultant agrees that his/her/its obligations include, without limitation, the following:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] the Consultant takes to protect their own Confidential Information;

- 8.5.2 to use the Confidential Information only in relation to the Services and for no other purpose whatsoever without the prior written consent of the Principal;
- 8.5.3 not to use the Confidential Information for the benefit of themselves or any third party or to use such Confidential Information for any commercial purpose, unless authorised in writing by the Principal;
- 8.5.4 not to copy or otherwise duplicate in any form such Confidential Information, or knowingly assist or allow anyone else to copy or otherwise duplicate any of such information in the possession or under the control of the Consultant without the Principal's prior written approval;
- 8.5.5 restrict disclosure or dissemination of such Confidential Information solely to the Consultant's employees (if applicable) or third parties who need to know the same for the permitted purpose;

8.5.6 advise the Principal promptly upon becoming aware of any loss, disclosure, or duplication of Confidential Information whether authorised or not, or the breach of confidentiality, use or misappropriation of the information;

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

[REDACTED]

[REDACTED]

8.6 It is agreed that the undertaking given by the Consultant 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 Consultant prior to commencing the Services with the Principal, provided such possession is evidenced by the written records of the Consultant existing at the Commencement Date; or

[REDACTED]

[REDACTED]

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 Consultant and to any other entity or person associated, or to be associated, with the Consultant, 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

[REDACTED]

10 **NON-DISPARAGEMENT**

During the term of this Agreement and thereafter, the Consultant agrees to take no action which is intended, or would reasonably be expected, to harm the Principal, its employees, consultants, shareholders and investors or its or their reputation or which would reasonably be expected to

[REDACTED]

[REDACTED] involves any confidential or proprietary information of any employees, consultants, shareholders and investors, or to malign, harm, disparage, defame or damage the reputation or good name of any employees, consultants, shareholders and investors (where applicable).

11 **RETURN OF INFORMATION**

The Consultant shall within 5 (five) days of completion of the Services or on receipt of a written request from the Principal, return to the Principal all documents and materials (including without limitation the originals, copies, reproductions and summaries thereof) containing the Principal's and/or Customer's Confidential Information or, at the request of the Principal, destroy such documents and materials. The Consultant shall certify in writing that it has complied with the requirements of this clause. The Consultant shall continue to be bound by the undertakings in this Agreement notwithstanding the completion of the Services or return of documents and material pursuant to this clause.

12 **NON-SOLICITATION OF STAFF**

[REDACTED]

assist, any of the Principal's consultants or employees in leaving the custom or employ of the Principal.

13 NON-SOLICIATION OF CUSTOMERS

If applicable, as per item 12 of the above Table, the Consultant will not, without the prior written consent of the Principal, whether directly or indirectly (which may also include being effected through any associated entity or person), during the period of the Services and for the period as stipulated in item 13 of the above Table thereafter, approach contact or solicit Customers or potential customers, which have been identified as such, regardless of which party initiates the matter, for the purpose of securing employment or for the purpose of selling, offering, or otherwise providing to those Customers any products or services which are the same as or substantially similar to, or in competition with, the products or services offered by the Principal, or are being contemplated by the Principal, or the Services so rendered herein by the Consultant to the Customer.

14 INTELLECTUAL PROPERTY RIGHTS AND GOODWILL

[REDACTED]

14.2 The Consultant hereby agrees to waive any and all moral rights vesting in such copyrighted works.

14.3 The Consultant also agrees to disclose to the Principal all such copyright works and deliver to the Principal all documents and other materials relating to such works.

14.4 By signing this Agreement the Consultant agrees that the Consultant is hereby ceding and assigning to the Principal, all patent, design or similar rights including but not limited to any invention, development, process, plan, design, formula, matter or work in respect of which the Consultant, directly or indirectly make, develop or discover or jointly make, develop or

discover while employed by, or in association with, the Principal (hereinafter referred to as "Matter"). All such Matter shall be deemed to have been made, developed or discovered by the Consultant, while in the course of and scope of the Consultant's Services with the Principal unless prior written approval to the contrary is obtained from the Principal.

14.5 The Consultant 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.

[REDACTED]

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 Consultant on account of such goodwill or in the event of the termination of this Agreement, for whatever reason.

15 **INDEMNITIES AND LIABILITY**

The Consultant 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**

[REDACTED]

[REDACTED] 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 item 1 of the above Table;

18.1.2 the **Consultant**: As per item 2 of the above Table,
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;

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]
[REDACTED].

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.

19 **APPLICABLE LAW AND JURISDICTION**

19.1 This Agreement and the relationship between the Parties hereto shall be regulated entirely by the laws of the Republic of South Africa.

20 **DISPUTE RESOLUTION**

20.1 The Parties agree to submit any dispute or difference between them arising out of this Agreement, should it not be resolved informally, to a court of appropriate jurisdiction in the province/area as recorded in item 14 of the above Table.

21 **VARIATION**

21.1 No addition to, variation or consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement, or its breach or termination, shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representatives.

█ [REDACTED]

22 **SEVERABLE PROVISIONS**

22.1 Each provision in this Agreement is severable from all other provisions, notwithstanding the manner in which they may be linked together, arranged in the context or grouped grammatically, and if in terms of any judgment or order of court any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, that provision, phrase, sentence, paragraph or clause shall be severed from the other, but the validity of the remaining provisions, phrases, sentences, paragraphs and clauses shall not be effected and shall nevertheless continue to be of full force and effect.

23 **WHOLE AGREEMENT**

23.1 This Agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no Agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein, are binding on the Parties.

24 **INDULGENCES**

24.1 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**

█ [REDACTED]

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.

SIGNED AT _____ on the _____ day of _____ 20____, in the presence of the undersigned witnesses:

For and on behalf of the Principal

Being duly authorised hereto

Name: _____

Title: _____

SIGNED AT _____ on the _____ day of _____ 20____, in the presence of the undersigned witnesses:

For and on behalf of the Consultant

Being duly authorised hereto

Name: _____

Title: _____