



**Global Employment
Compass
SOUTH AFRICA**

Contents

- 1. Summary of applicable rights for different categories of workers2
- 2. Legal requirements/rights/ practices for different categories of workers.....3
 - a. Employees.....3
 - b. Independent contractors/consultants*17
 - c. Volunteers23
 - d. Non-citizen employees and consultants, including refugees and others forcibly displaced.....26
- 3. Addendums29
 - 3.1 Employment contract template29
 - 3.2 Employment contract (fixed term) template....48
 - 3.3 Service contract template.....65

This document provides brief answers and recommendations to readers for information purposes. The information contained in this document is general and may differ according to the circumstances. Thus, this document does not constitute legal advice. We decline in advance any responsibility should you decide to act upon any information contained in this document.





1. Summary of applicable rights for different categories of workers

	Employees (part-time or full-time)	Independent contractors/ service providers	Volunteers
Employment laws and regulations	Yes	No	No
Employees' compensation/ remuneration requirements	Yes	No	No
Minimum wage requirements	Yes	No	No
Mandatory provident fund/retirement benefit fund contributions	No	No	No
Immigration requirements including the right to work in your country	Yes	No	No
Personal Data (Privacy) laws and regulations	Yes	Yes	Yes
Anti-discrimination laws and regulations	Yes	Yes	Yes



2. Legal requirements/rights/ practices for different categories of workers

a. Employees

Section Contents

1 Contracts of Employment	4
2 Conditions of employment	6
3 Safe and supportive work environment	12
4 Tax	13
5 Remote work	14
6 What to do when things go wrong?	15

The Basic Conditions of Employment Act (BCEA) defines an Employee as "any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer".

*A person who earns below the statutory earnings threshold (currently R245,371.67 per year with effect from 1 April 2024) (**Earnings Threshold**) and works for or renders services to any other person, will – until proven otherwise – be presumed to be an employee if any one or more of the following factors are present:*

- *Their work and working hours are controlled and directed by another person;*
- *In the case of a person who works for an organization, the person forms part of that organization;*
- *The person has worked for that other person for an average of at least 40 hours per month over the last three months;*
- *The person is economically dependent on the other person for whom he or she works or renders services;*
- *They are provided with tools of trade or work equipment by the other person; or*
- *They work for one person.*





1 Contracts of Employment

What types of employment contracts are available? E.g. fixed term, part time, zero hour contracts, other? Are there any specific employment contracts available for non-profit organizations?

Full time / permanent employment contracts, fixed term employment contracts and, part-time employment contracts are permissible. Whilst there isn't an express prohibition on zero hour contracts at this time, such contracts have been successfully challenged on other grounds and are not recommended.

No. The non-profit organization will be treated as an employer in the ordinary course and no special regime is application to employees of non-profit organizations. The organization is at liberty to decide whether it will employ people on a full time, part time or fixed term basis.

What are the key terms of employment contracts?

There is no strict requirement for an employment contract to contain any specific terms, however, in terms of the BCEA, the following terms / particulars of employment must be provided in writing to an employee. In practice, these terms are usually including in employment contracts:

- the full name and address of the employer;
- the name and occupation of the employee, or a brief job description of the employee;
- the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
- the date on which the employment began;
- the employee's ordinary hours of work and days of work;
- the employee's wage or the rate and method of calculating wages;
- the rate of pay for overtime work;
- any other cash payments that the employee is entitled to;
- any payment in kind that the employee is entitled to and the value of the payment in kind;
- how frequently remuneration will be paid;
- any deductions to be made from the employee's remuneration;
- the leave to which the employee is entitled;
- the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
- a description of any council or sectoral determination which covers the employer's business;
- any period of employment with a previous employer that counts towards the employee's period of employment; and





- a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

In addition, terms regulating non-competes and other restrictive covenants, data privacy, intellectual property, confidentiality and monitoring of electronic communications are common.

Is it acceptable to have a probation period for employees? If yes, for how long?

Yes. There is no prescribed probation period, however, there is a requirement that probation periods be reasonable and that they should not be used to deprive employees of the status of permanent employment. The length of the probationary period should be determined with reference to the nature of the job and the time it takes to determine the employee's suitability for continued employment. In practice, probation periods of 3 - 6 months are common.

Are fixed term employment contracts permissible? Are there any limitations on fixed term contracts? Are there any requirements to have a fixed term contract?

Yes, fixed term employment contracts are permissible.

Yes, there are limitations on fixed term contracts. Where an employee is employed in terms of a fixed term contract and earning less than the Earnings Threshold, that employee will be deemed to be employed indefinitely if their fixed term contract is for a period longer than 3 months or if they have been employed on successive fixed term contracts for longer than 3 months. The only exceptions to this rule are where:

- the nature of the work for which the employee is employed is of a limited or definite duration; or
- the employer can demonstrate any other justifiable reason for fixing the term of the contract.

Other requirements:

- An offer to employ an employee on a fixed term contract or to renew or extend a fixed term contract, must be in writing and state the nature of work for which the employee is employed (which must be of a limited / definite duration) or provide any other justifiable reasons for fixing the term of the contract.

Do employment contracts have to be in writing? Are there any signatory requirements for employment contracts? For example, could they be signed in-person or electronically, etc.)?

No, there is no requirement for an employment contract to be in writing, however, it is highly advisable. Noting that the particulars in paragraph b above must be provided in writing, it would be practical to conclude a written employment contract.

There are no signatory requirements as there is no legal obligation to have a written employment contract, but it is permissible in our law to conclude employment agreements electronically.





Do employees have to be issued with a written employment contract before they start work?

No, however, employees must be provided with the particulars in paragraph b above in writing when starting work.

Can you provide a simple template of the contracts mentioned above?

Please see the [Addendum 1](#) and the [Addendum 2](#).

Is there an obligation for an employer to run a criminal record check to the extent that any individual they hire will be working with children or vulnerable people?

Yes, the Children's Act requires any person, including volunteers, working with children to undergo a criminal record check. In addition, the Older Persons Act mandates criminal record checks for volunteers working with the elderly.

Can employers request references from former employers for new hires?

Yes, however, reference checks and requests should be conducted for verifying information provided by an applicant during the employment selection process and should not be conducted in a manner that unfairly discriminates against a prospective employee.

Is an employer required to set up any form of employee representative body? If so, what is the trigger for this?

Employers have no statutory obligation to set up an employee representative body.

Is it common to have collective agreements in your jurisdiction that apply to all employers in a particular region or sector?

Yes, such agreements are concluded at industry-level within sectoral bargaining units. This practice is particularly prevalent in sectors with strong trade union representation such as mining and manufacturing.

2 Conditions of employment

What is the minimum age requirement for employment?

15 years

What type of work may a child undertake? For example, are there any specific restrictions?





Children should not be required to perform any work that is inappropriate for their age, and they should not be required to perform work or provide services that place their well-being, education, physical or mental health, or spiritual, moral or social development at risk.

Wages

What is the minimum wage requirement for employees? Are there any exceptions in minimum wages for young persons or people with disabilities?

With effect from 1 March 2024, the national minimum wage is R27.58 for each ordinary hour worked. Workers employed on an expanded public works programme (a programme to provide public or community services through a labour-intensive programme determined by the Minister) are entitled to a minimum wage of R15.16. There are no specific exceptions applicable to young and disabled people.

Are there any conditions which warrant a pay raise or extra pay? If yes, what are they?

Overtime, night work, public holiday work and Sunday work require additional pay. Generally, however, wage increases are normally regulated by company policies, employment contracts and/or collective agreements, and not by legislation. In practice, and due to the inflationary environment in South Africa, annual wage reviews are common and expected, however, there is no statutory entitlement to an increase.

When are wages due? For example, is there any obligation to pay wages weekly, or monthly?

The BCEA requires an employer to pay an employee their remuneration daily, weekly, fortnightly, or monthly. The employer and the employee may agree on the payment frequency or stipulate a specific pay date for wages. Payment must be made within seven days of the end of the relevant period.

Are employers obliged to provide employees with paid leave on public holidays?

Yes, the employer must pay an employee who does not work on a public holiday at least the wage that the employee would ordinarily have received for work on that day. If an employee works on a public holiday, the employee will be entitled to double pay (subject to limited exceptions).

Are employers obliged to provide employees with annual leave?

Yes, an employer must grant an employee at least 21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle. For employees working a five-day workweek, this equates to at least 15 days' paid annual leave per annual leave cycle.

Are employees entitled to receive their usual salary during their annual leave?





Yes, they are entitled to their usual salary and benefits while on annual leave.

Is there a requirement to pay overtime? How is overtime compensated?

Yes, employees earning below the Earnings Threshold are entitled to remuneration for working overtime (subject to limited exceptions).

Where overtime laws apply, overtime work is limited to 10 hours a week and may only be performed if agreed between the employer and employee. In such a case, an employer must pay an employee at least 1.5 times the employee's wage for overtime worked. Alternatively, the employer and employee may agree for an employer to:

- pay the employee's ordinary wage for overtime worked plus grant the employee at least 30 minutes time off on full pay for every hour of overtime worked; or
- grant an employee at least 90 minutes paid time off for each hour of overtime worked.

Where the parties have agreed to paid time off, the employer must grant paid time off within one month of the employee becoming entitled to it.

Are there any extraordinary circumstances that could be relied on to temporarily cease paying employees for the hours worked?

No, even in instances of insolvency, the employees will have claims against the insolvent estate of the employer for hours worked.

Are employees entitled to an end-of-year payment?

No, it is not an entitlement. Bonus payments and 13th cheques are usually paid at the employer's discretion.

Are employees entitled to payments when their employment contract is terminated, such as notice or notice pay, accrued or untaken holiday and/or statutory severance?

Yes. Employees are entitled to receive payment for any accrued but untaken annual leave, paid time off that the employee is entitled to but has not taken and any other payments that they may be entitled to in terms of the employment contract or company policy or procedure.

Where an employee is dismissed due to the employer's operational requirements (retrenchment/redundancy), the employee will also be entitled to severance pay equal to at least one week's remuneration for each completed year of continuous service. Severance pay is also payable upon termination of certain fixed term contracts in limited circumstances.





Usually, an employee will work out their notice period and receive their remuneration in the ordinary course. However, the employer may elect to pay *in lieu* of notice.

Working hours

What is considered a full time working week? If the employee is contractually required to work less than this amount are they considered a part time employee?

Full time employment is not linked to any statutorily set number of hours – full time employment will be determined by the custom and practice of the employer. The BCEA does, however, limit the number of ordinary working hours to 45 working hours a week (subject to limited exceptions). In addition, the BCEA limits the number of ordinary working hours to 9 hours a day if the employee works for 5 days or less in a week, or 8 hours a day if the employee works more than 5 days a week. Notwithstanding, employers are encouraged to reduce the maximum ordinary hours of work to 40 ordinary hours of work per week and 8 ordinary hours of work per day.

Are there fixed public/statutory holidays each year? Can employees be required to work on public/statutory holidays? Are employees entitled to any other type of leave besides public/statutory holidays?

Yes, there are 12 public holidays in South Africa. Yes, employees may be required to work on public holidays by way of agreement with the employee. Yes, employees are also entitled to statutory annual leave (see paragraph c.v above), sick leave, maternity leave (where applicable), parental leave, commissioning parental leave, adoption leave and family responsibility leave.

Do part time employees receive any particular protection on the basis of their part-time status?

Yes, an employer must treat a part-time employee earning below the Earnings Threshold on the whole not less favourably than a comparable full-time employee doing the same or similar work, unless there is a justifiable reason for different treatment. The employee must be provided with access to training and skills development that is on the whole not less favourable than the access applicable to a comparable full-time employee. These statutory provisions don't apply to part-time employees earnings above the Earnings Threshold, however, the employer remains under a general obligation not to unfairly discriminate against such employees.

Do part-time employees receive the same pro-rated terms to full time employees, e.g. in relation to pay and benefits?

Yes, part-time employees earning below the Earnings Threshold are entitled to treatment that is on the whole not less favourable than that given to a comparable full-time employee doing the same or similar work, unless there is a justifiable reason for different treatment. Justifiable reasons for treating part-time employees differently would include seniority, experience or length of service, merit, the quality or quantity of work performed, any other criteria of a similar nature. These statutory provisions don't apply to part-time employees earnings above the Earnings Threshold, however, the employer remains under a general obligation not to unfairly discriminate against such employees.





Social security

What social security contributions are employers obliged to pay? Presumably, pro-rated contributions are required for part time employees?

Employees and employers are each obliged to contribute 1% of the employee's monthly gross remuneration to the Unemployment Insurance Fund (UIF), capped at R177.12 per month each. The employer will deduct the employee-contribution from the employee's remuneration and remit both the employer- and employee-contribution to the UIF on a monthly basis.

In addition, employers with a salary bill over R500,000 are obliged to contribute a skills development levy (SDL) equal to 1% of the total amount paid in salaries to employees (including wages, overtime payments, leave pay, bonuses, fees, commissions and lump sum payments). The employer will pay the SDL to the South African Revenue Service (SARS) on a monthly basis.

Employers are also obliged to make contributions to the Compensation Fund, a state insurance fund to settle claims for occupational injuries and diseases (subject to limited exceptions). The employer must register with the Compensation Fund and pay an annual assessment fee based on their workers' earnings and the risks associated with the type of work being done.

Are employers obliged to provide health insurance to their employees?

No, there is no obligation to provide health insurance. Where an employee sustains an occupational injury or suffers from an occupational disease, the employee or his beneficiaries may claim compensation from the Compensation Fund in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA).

Are employees entitled to unemployment insurance/benefits following the end of employment?

Yes, subject to the provisions of the Unemployment Insurance Act (UIA). The value of the payments from the UIF will depend on the earnings of the individual and the number of "credit days" accumulated. Notably, employees that resign from employment are not entitled to claim UIF benefits.

Are employers obliged to provide sick leave? If yes, for how long? How many days have to be paid by employers? Is it possible to have unpaid sick leave?

Yes. Employees are entitled to an amount of paid sick leave equal to the number of days that they would normally work during a period of 6 weeks in respect of each 36-month sick leave cycle. In other words, employees ordinarily working a 5-day work week are therefore entitled to 30 days' paid sick leave over a 3-year sick leave cycle. Notwithstanding, during the first 6 months of employment, employees are entitled to one day's paid sick leave for every 26 days worked.

Yes, if the employee has used up their paid sick leave entitlement, they may take their annual leave and if that has been used up as well, the employer may grant the employee unpaid leave.





Are employers obliged to provide maternity leave for employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid maternity leave?

Yes, employers are obliged to provide maternity leave for employees. Employees are entitled to at least 4 consecutive months of unpaid maternity leave, but the employer and employee may agree on payment or payment may be negotiated by way of a collective agreement. If an employee receives no payment during maternity leave, or less than the employee's normal income, the employee may be eligible to claim benefits under the UIA.

Is paternity leave available to employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid paternity leave?

South African employment legislation does not make reference to 'paternity leave'. Instead, local laws provide for 10 consecutive days' 'parental leave' which may be taken when the employee's child is born, adopted, or first placed in their care pending finalization of the adoption order. In practice, one parent usually utilizes 'parental leave' as so-called 'paternity leave', with the other parent utilizing maternity leave, adoption leave or commissioning parent leave.

The employer is not obliged to pay an employee on parental leave, however, such an employee may be eligible to claim benefits under the UIA.

Are employers liable for absence due to work-place injuries?

No. An employee who is met with an injury during the course of his employment may claim compensation in terms of COIDA. Any absence due to work-place injuries will be treated as sick leave (whether paid or unpaid).

Are employees entitled to retirement benefits from the employer? If yes, what benefits?

No, there are no statutory retirement benefits. However, many employers provide their employees with pension, provident, or other retirement fund benefits to attract and retain talented / experienced employees.

Are employers obliged to introduce reporting channels and legal safeguards for whistleblowers?

Yes. In terms of the Protected Disclosures Act, all employers are required to authorise appropriate internal procedures for receiving and dealing with information about improprieties and take reasonable steps to bring the internal procedures to the attention of every employee and worker. A disclosure made in good faith in accordance with such procedures is considered a protected disclosure. No employee or worker may be subjected to any occupational detriment on account of having made a protected disclosure.





3 Safe and supportive work environment

Broadly what measures have to be in place to ensure employers uphold health and safety? (such as fire or earthquake drills)

Every employer must provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of employees. There are a number of specific obligations to give effect to the general duty to maintain a safe workplace, as set out under the Occupational Health and Safety Act (OHSA). OHSA provides for a range of penalties for non-compliance, including fines and imprisonment. The penalty depends on the nature of the non-compliance and may include a fine or imprisonment up to two years, or both.

Is there a requirement for an employer to issue any form of non-discrimination policies? (such as gender equality policies, equal employment opportunities, diversity, and inclusion policies, etc.)

The Employment Equity Act (EEA) requires every employer to take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice and this may include the development and implementation of policies. Specific policies are not prescribed, however, they anti-harassment, grievance, equal employment opportunities, and diversity and inclusion policies are relatively common.

Is there a requirement to provide employees with training designed to combat discrimination and harassment?

The EEA requires employers to take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice. In addition, employers are under an obligation to take proactive and remedial steps to prevent all forms of unfair discrimination and harassment in the workplace. The provision of training is considered an integral measure to prevent, eliminate and manage unfair discrimination and harassment.

Is there a requirement to have a data protection policy?

Provided notification and other statutory obligations are met through the implementation of a privacy policy, there is no requirement to have a specific data protection policy. For completeness, responsible parties (which may include employers) collecting personal information must take reasonably practicable steps to ensure that a data subject is aware of the information being collected and the source from which it is collected.

Is it mandatory for employers to have a Child Protection Policy (CPP)? Are employees obliged to provide training on CPP to its employees?

No, however, this is highly recommended for organizations that work with children to ensure compliance with legal requirements, including those relating to background screening and guidelines for reporting child abuse and neglect, and to provide clear, practical rules for acting in the best interest of children.





4 Tax

Which taxes are mandatory for employers to pay and deduct on behalf of their employees?

Employers are required to withhold the following from an employee's remuneration, and pay such amounts to the relevant authorities on behalf employees: (i) employee income tax (PAYE or Pay-As-You-Earn), (ii) the employee-contribution to the UIF.

Please all see the responses to 2.e regarding social security contributions. Social security contributions are often viewed as a 'tax' or 'levy' and are therefore referenced here as well.

PAYE is an employees' income tax, and "refers to the tax that is required to be deducted by an employer from an employee's remuneration paid or payable. The process of deducting or withholding tax from remuneration as it is earned by an employee is commonly referred to as PAYE."¹ The amounts that are deducted or withheld must be paid by the employer to South African Revenue Service (SARS) on a monthly basis and deducted on behalf their employees.²

COIDA is a statutory insurance that is based on the risk of the job. The Compensation Fund provides employees with compensation when they are injured or contract diseases during the course of their employment. The Compensation Fund is governed by section 15 of the Compensation for Occupational Injuries and Diseases Act No.130 of 1993 (COIDA).

An employer will have to pay a contribution to the compensation fund, based on their annual assessment fee that is based on their employees' earnings and risks that are associated with the type of work being conducted as mentioned in section 86 of COIDA.³ Hence employers only have to pay a contribution once a year to COIDA. A failure to pay by the employer will result in the employer being fined based on section 87 of COIDA.

Please note that section 84 of COIDA mentions the employers that are exempt from assessment as the following, national and provincial governments, local authorities who have exemption certificates, municipalities and employers who are fully insured by a mutual association.⁴

SDL is a levy that is imposed for the encouragement of learning and development in South Africa. SDL is determined by the employer's salary bill, the SDL fund is meant to be used to develop and improve the skills of employees. An employer must pay SDL and an employer must pay "1% of the total amount paid in salaries to employees (including wages, overtime payments, leave pay, bonuses, fees, commissions and lump sum payments).⁵ Further "the amounts deducted or withheld by the employer must be paid to SARS on a monthly basis."⁶

Are all employee taxes deducted from the salary that the employer pays or is there a requirement for employees to pay certain taxes directly?

¹ [Pay As You Earn](#)

² Ibid.

³ [Basic Guide To Compensation Fund Assessment Fees](#)

⁴ Section 84(1)(a)(i)-(iii) and Section 84(1)(b) of the Compensation for Occupational Injuries and Diseases Act.

⁵ [Skills Development Levy](#)

⁶ Ibid.





Yes, employee taxes are withheld by employers. Employees do not have to pay taxes directly.

Taxes that are deducted from the Salary of the employee are PAYE and UIF. The employee does not pay these taxes directly. When considering UIF, the contribution the employee must pay is 1% and that 1% must be deducted from the employees' salaries by their employers, as mentioned in section 6(a)(i) of the Unemployment Insurance Contributions Act. UIF is paid on a monthly basis.

Further for PAYE, it is an employee's income tax and the amounts that are deducted or withheld must be paid by the employer to South African Revenue Service (SARS) on behalf of their employees on a monthly basis.⁷

The taxes that the employer pays are UIF, SDL and COIDA. When considering UIF and the employer's contributions, an employer according to section 6(a)(ii) of the Unemployment Insurance Contributions Act, must pay 1% of the remuneration that is paid or payable by the employer to the employee.⁸ UIF is paid on a monthly basis by the employer.

5 Remote work

Are employers required to have a registered legal entity in the jurisdiction in order to employ employees in the jurisdiction?

Yes, if the employer would like to employ the employees directly, then the employer would be required to either incorporate an entity under the laws of South Africa, or register a foreign employer as an external company (often referred to as a branch office) in South Africa.

Alternatively, a foreign entity could conclude a labour leasing agreement with an employer of record (also known as a 'labour broker' or 'temporary employment service'). Legal advice should be sought before embarking on this alternative approach as, in certain circumstances, the foreign entity may be deemed to be the sole employer after 3 months.

Are employers required to provide any form of physical working space for employees working in your country?

No, there is no express requirement to provide an employee with a physical working space, but the BCEA does require that an employee be provided with written particulars of their place of work.

Please provide general instructions for employers on what to check if the employer has remote employees, including concerning employee tax liabilities.

Employers should verify the tax residence status of remote employees. If employees are tax resident in South Africa, they will be taxed in South Africa on their worldwide income. If they are non-resident for tax purposes, they will only be taxed on income from a South African source. In the latter instance, a double tax agreement between South Africa and the employee's country of residence may assist to avoid double taxation.

⁷ Pay As You Earn

⁸ Ibid at Section 6(a)(ii).





The general obligation on employers to create and maintain a safe working environment extends to the remote working environment. Employers should undertake an assessment of the employee's home office environment and implement measures to address any hazard or assessed risks. This may include an ergonomics assessment to ensure the employee has appropriate furniture, proper lighting, adequate ventilation etc.

6 What to do when things go wrong

Dispute resolution

Do employees (including volunteers) need to go through any form of dispute resolution before bringing a claim to a court or tribunal?

If an employer has internal processes in place for resolving disputes, they need to be followed. If there are no internal dispute resolution processes provided for by the employer, or if the dispute is not resolved, it may be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) or the Bargaining Council applicable to that sector for conciliation and / or arbitration. If the dispute is not resolved following an approach to the CCMA or Bargaining Council, the Labour Court and subsequently the Labour Appeal Court may be approached. In certain limited circumstances, the Labour Court may be approached directly.

Resignation

What grounds do employees have for resignation?

Employees are free to resign without any grounds.

Termination

What grounds do employers have for the termination of employment contracts?

Employers may only terminate an employee's employment for reasons related to the employee's misconduct or incapacity or based on the employer's operational requirements. The employer and employee are also free to terminate the employment relationship by way of mutual agreement.

How do employers have to document the termination of an employment contract?

Notice of termination of a contract of employment must be given in writing.

What is the responsibility of employers for damages incurred by an employee's actions within his/her work?

The employer may be held vicariously liable to third parties for delicts committed by its employees within the course and scope of their employment. For a third party to hold an employer vicariously liable, they will have to prove that an employer/employee relationship exists between the employer and employee and prove that the delict was committed by the employee within the course and scope of employment. An employer may also be held liable for its employees' contraventions of the





EEA (e.g. for unfair discrimination), unless it is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of the EEA.





b. Independent contractors/consultants*

Section Contents

1 Contracts	17
2 Conditions of work for consultants	19
3 Safe and supportive work environment	21
4 Remote work	21
5 What to do when things go wrong.....	21

Legislation does not define what an independent contractor is but our courts often provide a description by differentiating a contractor from an employee. An independent contractor is a third party that does not form part of the employer's enterprise. They undertake to do a certain piece of work against payment but, as opposed to the employee, a contractor is not subject to the control or supervision of the employer. Some of the main distinguishing factors between an employee and an independent contractor are that an independent contractor is not subject to the supervision, authority and control of the employer.

* The term consultant will be used to also refer to independent contractors, or any other term that would mean a person that provides goods or services under a written contract or a verbal agreement but does not work to meet the definition of employee.

1 Contracts

What types of independent contractor/consultant agreements are available? Are there any specific agreements available to NGOs?

There are no types. Each contract must be drafted to accommodate the parties' needs and what they would like to achieve.

What are the main elements of consultant agreements?

The normal clauses found in these contracts include clauses dealing with:

- The scope, nature, duration, and deliverables of the services or work that the independent contractor will provide, and any specifications, standards, deadlines, or milestones that apply.
- The payment terms, and invoicing procedures for the services or work, and any expenses, taxes, or deductions that the parties are responsible for or entitled to.
- The ownership, use, and protection of any intellectual property, confidential information, or trade secrets that the independent contractor creates, accesses, or discloses in the course of the services or work, and any licenses, warranties, or indemnities that the parties grant or require.





- The degree of control, supervision, direction, and feedback that the client or hiring entity will have over the independent contractor's methods, means, and performance of the services or work, and the extent of the independent contractor's autonomy, discretion, and flexibility.
- The rights and obligations of the parties to terminate, renew, modify, or assign the agreement, and the notice, cause, and consequences that apply in such cases.
- A confirmation of the nature of the relationship between the parties.

Is it possible to have probation periods for independent contractors/consultants? If yes, for how long?

No. Probation periods apply to employees and not to independent contractors. If an independent contractor/consultant does not perform under the contract, the usual contractual remedies for non-performance and/or breach will apply.

Is it possible to have a fixed term consultation/independent contractor agreement? Are there any restrictions around fixed term consultant/independent contractor agreements?

Yes. The duration of the contract can either be agreed in advance or be dependent on completion of a specific project.

Do independent contractor/consultant agreements have to be in writing? Are there any signatory requirements? For example, could they be signed in-person or electronically, etc.)?

There is no legal requirement for an independent contractor agreement to be in writing nor are there any specific formalities regarding signature. Notwithstanding, written agreements / contracts are highly recommended and an electronic signature will suffice.

Do all types of independent contractors/consultants have to be under contract in order to be able to work?

There is no strict requirement for a contractor and a client to conclude a contract but it is highly recommended.

Can you provide a simple template of the agreements mentioned above?

Please see the [Addendum 3](#).

Is there an obligation to run a criminal record check to the extent that any independent contractor will be working with children or vulnerable people?





Yes, the Children's Act requires any person, including volunteers, working with children to undergo a criminal record check. In addition, the Older Persons Act mandates criminal record checks for volunteers working with the elderly.

2 Conditions of work for consultants

Are there any minimum age requirements for an individual to work under a consultant/independent contractor agreement?

Children must be at least 15 years old to conduct any work. The work must not place at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development. The work must also be appropriate for a person their age.

Does a consultant/independent contractor need to obtain a license or any other permission in order to work?

Independent contractors may need to have licenses or other permission to conduct work, depending on the type of work, the industry, and the contractual arrangements involved.

Payment

Are there any minimum pay requirements for consultants/independent contractors?

Payment terms and rates are to be agreed between the parties. There is no minimum payment requirement.

Are there any exceptions in minimum wages for young persons or people with disabilities?

There is no minimum payment requirement.

Is there any requirement to provide statutory/paid leave to consultants for statutory holidays?

No. Employment legislation, which makes provision for leave, does not apply to independent contractors.

Is there any requirement to pay annual leave to consultant/independent contractors? If so, how is this compensated, if at all?

No. Employment legislation, which makes provision for leave, does not apply to independent contractors.





**Is there an obligation to provide consultant/independent contractors with overtime?
How is this compensated if required?**

Independent contractors are not employees and as such their working hours are not regulated or fixed. Independent contractors are generally expected to manage their own working hours.

Are consultants entitled to an end-of-year payment?

No.

Are consultants entitled to a final payment when the contract is terminated?

They are entitled to what has been agreed contractually.

Working hours

Are consultants entitled to any type of leave, whether paid or unpaid?

No. Employment legislation, which makes provision for leave, does not apply to independent contractors.

Social security

Does the end user engager need to make any social security contributions on behalf of a consultant/independent contractor? Are independent contractors entitled to health insurance from the end user engager?

No, such benefits are for employees.

Are independent contractors/consultants entitled to unemployment insurance/benefits after termination of their independent contractor/consultancy agreement from the end user engager?

No, such benefits are for employees.

Are independent contractors/consultants entitled to sick leave from the end user engager? If yes, for how long? How many days have to be paid?

No, such benefits are for employees.

Are independent contractors/consultants entitled to maternity leave from the end user engager? If yes, for how long? How many days/months have to be paid?

No, such benefits are for employees.





Are independent contractors/consultants entitled to paternity leave from the end user engager? If yes, for how long? How many days/months should be paid?

No, such benefits are for employees.

Are employers obliged to cover work-place injuries for independent contractors/consultants?

No, such benefits are for employees and provided under COIDA. Notwithstanding, from a health and safety perspective, employers remain responsible for the safety of the workplace and may be held liable for the acts or omissions of independent contractors/consultants.

Are independent contractors/consultants entitled to retirement benefits from the end user? If yes, what benefits?

No.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

The OHS Act requires every employer to conduct their undertakings in a manner that ensures, as far as is reasonably practicable, that persons other than those in their employment who may be directly affected by their activities are not exposed to hazards that threaten their health or safety. This will apply to independent contractors.

4 Remote work

Are end user engagers required to have a registered legal entity in the jurisdiction in order to hire independent contractors/consultants there?

No.

5 What to do when things go wrong

Resignation

Do consultants/independent contractors need a reason to terminate the contract or can they terminate it for any reason in accordance with the terms of the contract?

They can terminate a contract for any reason in accordance with the terms of the contract. The contract may specify that no reason is needed.

Termination of agreement





What grounds do end user engagers have for the termination of consultant agreements?

The parties can agree specific grounds for termination. Alternatively, termination may be by agreement or due to a material breach by one of the parties.

What is the responsibility of the end user engagers for damages incurred by a consultant's actions within his/her work?

They may be held liable if the consultant caused the damage, subject to the terms of the contract between the parties. It is common for parties to agree to limit their liability.





c. Volunteers

Section Contents

1 Contracts	23
2 Conditions of employment	23
3 Safe and supportive work environment	24
4 Tax	24
5 What to do when things go wrong.....	25

Volunteers are persons performing work for another who do not receive or are not entitled to receive any remuneration.

1 Contracts

Are organizations required to sign any form of agreement with volunteers?

No.

2 Conditions of employment

Is there a minimum age requirement for volunteers?

Children must be at least 15 years old to conduct any work, even if it is voluntary.

What type of volunteering work may a child undertake? Are there any restrictions around this?

The work must not place at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development. The work must also be appropriate for a person their age.

Payments and reimbursement

Are organizations allowed to pay stipends to volunteers?

The payment of a stipend may create an employment relationship.

Are organizations allowed to reimburse volunteers? If yes, for what expenses (such as transportation, food, etc.).

Yes, organizations may reimburse volunteers for reasonable expenses incurred.





Working hours

Are there any obligations around how many hours volunteers can work?

The BCEA, which regulates working hours, does not apply to unpaid volunteers working for an organization serving a charitable purpose.

Are volunteers entitled to any type of leave?

The BCEA, which regulates leave entitlement, does not apply to unpaid volunteers working for an organization serving a charitable purpose.

Social security

Are organizations obliged to pay any social security contributions on behalf of their volunteers?

No, provided no stipend is paid.

Are organizations obliged to provide health insurance to volunteers?

No, provided no stipend is paid.

Are organizations liable for absences of volunteers due to work-place injuries?

No, provided no stipend is paid. Notwithstanding, the volunteer may claim damages from the employer if the injury was caused by the employer or one of the employer's employees in the course and scope of their employment with the employer.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

The OHS Act requires every employer to conduct their undertakings in a manner that ensures, as far as is reasonably practicable, that persons other than those in their employment who may be directly affected by their activities are not exposed to hazards that threaten their health or safety. This will apply to volunteers.

4 Tax

Are organizations obliged to pay taxes if they pay their volunteers stipends? If yes, what types of taxes are mandatory to pay?

Yes, the usual tax obligations apply to volunteer stipends. Please see the response in 4 above.





5 What to do when things go wrong

What grounds do organizations have for the termination of volunteer agreements/arrangements?

The termination conditions will be determined by the contract. The Labour Relations Act (LRA), which governs dismissals, does not apply to unpaid volunteers.

What is the responsibility of organizations for damages incurred by a volunteer's actions within his/her work?

They may be held liable if the volunteer caused the damage, subject to the terms of the contract between the parties. It is common for parties to agree to limit their liability.





d. Non-citizen employees and consultants, including refugees and others forcibly displaced

Section Contents

1 Status and the right to work	26
2 Contracts	27
3 Conditions of employment	27
4 Safe and supportive work environment	27
5 What to do when things go wrong?	28

1 Status and the right to work

Are employers obliged to secure legal status for their employees or consultants if they are non-citizens? (such as refugee status, humanitarian visas, visas for trafficking survivors, other recognized protection statuses, etc.)

No. Employers are not obliged to secure legal status for their employees or consultants.

Are employers obliged to secure work permits for their employees or consultants?

No. there is no such obligation.

Is it always necessary to obtain a work permit?

Yes, a work visa must be obtained by the non-citizen. Employers are not permitted to employ a non-citizen in South Africa unless such person has the requisite authority to work in South Africa. Employers are required to make a good faith effort to ascertain that no illegal foreigner is employed / ascertain the status or citizenship of employees.

Can asylum-seekers and other persons forcibly displaced access the right to work if they do not have refugee status or other recognized protection statuses?

An asylum seeker whose application for asylum has not been adjudicated is entitled to be issued with an asylum seeker visa under the Refugees Act. Such visa may include the right to work and/or study, however, this is not automatically granted and is within the discretion of the authorities. Forcibly displaced persons without recognized protection status typically do not have access to a right to work.





2 Contracts

Are employment contracts or consultant agreements for non-citizens different to those for citizens?

No.

3 Conditions of employment

Does national law regulate the quotas for the number of non-citizens within one organization?

No, there are no laws regulating quotas for the number of non-citizens within one organization. However, there are reporting obligations under immigration and employment equity laws, which may impact non-citizens.

Are employers obliged to report about employed non-citizens?

Under the Immigration Act, employers are required to report to the Director General of the Department of Home Affairs (i) the termination of a foreigner's employment and (ii) any breach on the side of the foreigner of his or her status.

An employer that is considered a 'designated employer' under the EEA for affirmative action purposes has various reporting obligations in this context. As part of such obligations, details regarding the workforce, including foreign nationals, is required.

Are there any other differences in conditions of employment for non-citizens and citizens?

No.

Are there any specific employment terms that apply to citizens but not apply to non-citizens?

No.

4 Safe and supportive work environment

Are there any differences in a safe and supportive work environment approach for non-citizens? If yes, please elaborate here.

No.

Does the employer have additional obligations for non-citizens?

Yes. An employer is required to make a good faith effort to ascertain that no illegal foreigner is employed by him or her or to ascertain the status or citizenship of those whom he or she employs. As mentioned above an employer must also report to the Director General of the Department of Home Affairs (i) the





termination of a foreigner's employment and (ii) any breach on the side of the foreigner of his or her status.

5 What to do when things go wrong

Is the process of termination of an employment contract for non-citizens different than for citizens? If yes, please explain here.

No.

Is the process of resignation for non-citizens different than for citizens? If yes, please explain here.

No.

Are non-citizens entitled to the equal protection of employment laws in the event of employment-related disputes?

Yes. The provisions of the LRA and BCEA apply to employees, which includes both citizens and non-citizens.





3. Addendums

Addendum 1

EMPLOYMENT CONTRACT

Between

[•]
(Employer)

and

[•]
(Employee)





CONTENTS

Clause	Page
1. Interpretations	1
2. Introduction	3
3. Appointment and working hours	4
4. Employee Obligations	4
5. Remuneration Package	5
6. Bonus	5
7. Disbursements	5
8. Retirement Fund, Group Life Insurance and Medical Aid	5
9. Annual Leave	6
10. Sick leave	6
11. Suspension of Employment.....	7
12. Termination	7
13. IT Systems.....	7
14. Monitoring Communications.....	8
15. Codes, Procedures, Practices, Rules and Regulations	8
16. Inventions, Discoveries, Copyright And Documents	8
17. Confidentiality	9
18. Restraint And Non Solicitation Undertaking	10
19. Employee Warranties	11
20. Domicilium and Notices	12
21. General.....	13
22. Governing law.....	13
23. Signature	13
Signatories.....	15





EMPLOYMENT CONTRACT

BETWEEN:

- (1) [●] (**Employer**), a private company incorporated in South Africa, with registration number [●], and with its registered address at [●]; and
- (2) [●], an adult, South African citizen with identity number [●] (**Employee**).

1. INTERPRETATIONS

1.1 Definitions

The following expressions shall bear the following meanings and related expressions bear corresponding meanings:

Agreement means this employment contract between the Parties.

BCEA means the Basic Conditions of Employment Act 75 of 1997.

Business Day means any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa.

Commencement Date means [●].

Companies Act means the Companies Act 71 of 2008.

Confidential Information means any information or data relating to the Employer or a Related Company (even if not marked as being confidential, restricted, secret, proprietary or any similar designation), in whatever format and whether recorded or not (and if recorded, whether recorded in writing, on any electronic medium or otherwise), which is identifiable as confidential and/or proprietary to the Employer or a Related Company, or is intended or by its nature or content could reasonable by expected to be confidential and/or proprietary to the Employer or a Related Company, and includes:

- (a) information relating to the Employer's or a Related Company's, existing and future strategic objectives and existing and future business plans and corporate opportunities;
- (b) trade secrets;
- (c) technical information, techniques, know-how, operating methods and procedures;
- (d) details of costs, sources of materials and customer lists (whether actual or potential) and other information relating to the existing and prospective customers and suppliers of the Employer or a Related Company;
- (e) pricing, price lists and purchasing policies;
- (f) computer data, programmes and source codes;





- (g) information contained in or constituting the hardware or software of the Employer, including third party products and associated material;
- (h) information relating to the Employer's or a Related Company's IT Systems;
- (i) any and all methodologies, formulae and related information in developed software and processes and other business of the Employer [or a Related Company];
- (j) products, drawings, designs, plans, functional and technical requirements and specifications;
- (k) Intellectual Property that is proprietary to the Employer or a Related Company or that is proprietary to a third party and in respect of which the Employer has rights of use or possession;
- (l) marketing information of whatsoever nature or kind;
- (m) financial information of whatsoever nature or kind;
- (n) information relating to any contracts to which the Employer or a Related Company is a party; and
- (o) any information which is not readily available to a competitor of the Employer or a Related Company in the normal and ordinary course of business.

Intellectual Property means the following in any location or jurisdiction worldwide:

- (p) all inventions (whether patentable or unpatentable) and whether or not reduced to practise), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all revisions, extensions and re-examinations thereof;
- (q) all trademarks, service marks, trade dress, logos, trade names and corporate names, (including all domain names, internet and intranet names, addresses, icons and other designations useful to identify or locate the Employer on a computer network such as the world wide web), together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith;
- (r) all works capable of copyright, all copyright, and all applications, registrations and renewals in connection therewith;
- (s) all trade secrets and business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supply lists, pricing and cost information, and business and marketing plans and proposals);
- (t) all computer software (including data and related documentation);





- (u) all patterns and/or designs and design applications and registrations;
- (v) all other proprietary rights;
- (w) all business or trade names used by or in connection with, or normally associated with the Employer or a Related Company; and
- (x) all copies and tangible embodiments thereof, in each instance in whatever form or medium.

LRA means the Labour Relations Act, No 66 of 1995.

Parties means the Employee and the Employer and **Party** shall be construed accordingly.

Related Company means all persons who are "related" or "inter-related" to the Employer (as the terms "related" or "inter-related" are defined in the Companies Act).

Signature Date means the date on which this agreement is signed by the party signing last in time.

ZAR means Rand, the lawful currency of South Africa.

1.2 Construction

- (a) Clause headings are for convenience and shall not be used in its interpretation, unless the context clearly indicates a contrary intention.
- (b) An expression which denotes:
 - (i) any gender includes the other genders;
 - (ii) a natural person includes an artificial or juristic person and vice versa; and
 - (iii) the singular includes the plural and vice versa.
- (c) If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- (d) If any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- (e) The expiration or termination of this Agreement shall not affect such provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination,





notwithstanding that the clauses themselves do not expressly provide for this.

- (f) The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- (g) Any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.
- (h) The words **include**, **including** and **in particular** shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word(s).
- (i) The words **other** and **otherwise** shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

2. INTRODUCTION

The Employer wishes to appoint the Employee as an employee of the Employer and the Employee wishes to accept such appointment on the terms contained in this Agreement.

3. APPOINTMENT AND WORKING HOURS

- 3.1 With effect from the Commencement Date, the Employer hereby appoints the Employee, who accepts such appointment, in the capacity of [●], or in such other capacity and with such job title as the Employer may from time to time reasonably require.
- 3.2 This Agreement replaces all existing employment contracts between the Employee and the Employer or any Related Company, including all modifications and amendments and any other written or oral agreements between the Parties.
- 3.3 [Notwithstanding clause 3.1, the Parties agree that, for the purposes of calculating continuity of service, the Employee shall be regarded as having commenced employment with the Employer on [●].]
- 3.4 [The Employee's appointment shall be subject to a six-month probation period, during which the Employee's suitability for continued employment will be assessed by the Employer.]
- 3.5 The Employee will report directly to [●], however, this may change from time to time.
- 3.6 The Employee's place of work will be [●] or such place or places in South Africa or elsewhere as the Employer may decide.
- 3.7 The Employee will work such hours and travel within and outside South Africa as may reasonably be required for the proper performance of the Employee's duties.





- 3.8 The Employee's normal working hours are from 08h00 to 17h00 from Monday to Friday. The Employee shall however be required to work such additional hours as may be necessary to give effect to and meet the demands of the Employer and/or requirements of the role. The Employee agrees to work such overtime as is requested or necessary, depending on the business requirements of the Employer. Overtime hours and remuneration shall always be in accordance with the provisions of the BCEA.
- 3.9 The Employee is entitled to a daily lunch break of one hour, usually taken from 13h00 to 14h00.

4. **EMPLOYEE OBLIGATIONS**

4.1 The Employee shall:

- (a) perform such duties and exercise such powers and functions as may from time to time be reasonably assigned to or vested in the Employee by the Employer, whether relating to the Employer or any Related Company;
- (b) observe and comply with all lawful and reasonable requests and instructions of the Employer;
- (c) devote so much of the Employee's time and attention and the full benefit of the Employee's knowledge, expertise and skills in the proper performance of the Employee's duties in terms of this Agreement;
- (d) carry out the Employee's duties in a proper, loyal and efficient manner to the best of the Employee's ability; and
- (e) at all times act in good faith and use the Employee's best endeavours to properly conduct, improve, extend, develop, promote, protect and preserve the business interests, reputation and goodwill of the Employer and of its Related Companies and not do anything or engage in any activity which is or may become harmful or contrary to such interests.

5. **REMUNERATION PACKAGE**

- 5.1 The Employee shall be entitled to an annual remuneration package of ZAR [●] on the basis that this constitutes the Employee's total cost to the Employer (excluding only the incentives provided for in clause 6).
- 5.2 The Employee agrees that the Employer may deduct from the Employee's remuneration any amounts due in relation to PAYE, UIF or as required by any other law, court order or written agreement applicable from time to time.
- 5.3 If the Employee at any time owes any amounts to the Employer that are not disputed, the Employee hereby authorises the Employer to deduct such amounts from, or set off such amounts against, any amount owed to the Employee by the Employer, in accordance with the BCEA.
- 5.4 The monthly cash component of the remuneration, after deductions, shall be paid into such bank account in South Africa as shall be designated by the Employee from time to time, on or before the last day of each month, in arrears.





5.5 The annual remuneration package is subject to an annual review by the Employer, however, the Employer shall not be obliged to increase the Employee's annual remuneration package at any time.

6. **BONUS**

6.1 The Employee may be entitled to participate in the bonus scheme of a Related Company, subject to the following provisions:

- (a) Such participation does not create a separate employment relationship between the Employee and any Related Company.
- (b) Such participation is subject to the rules and regulations set by the Related Company, as applicable from time to time.
- (c) The Employee's maximum bonus opportunity is [●]% of the annual remuneration package stipulated in clause 5.1 of this Agreement.
- (d) The applicable targets are set annually by the Related Company's management board.
- (e) In case of any changes to the respective grade and/or remuneration during the financial year, the potential bonus will be calculated pro rata for the respective period.

7. **DISBURSEMENTS**

7.1 The Employer shall refund to the Employee any disbursements made or expenses incurred by the Employee on behalf of the Employer, which are necessary to enable the Employee to perform the Employee's duties under this Agreement and/or which are authorised or ratified by the Employer from time to time.

7.2 The Employee must furnish to the Employer adequate proof of expenses incurred.

7.3 The Employer shall have the sole discretion to review and limit the disbursements and expenditure that the Employee incurs or may incur on behalf of the Employer.

8. **RETIREMENT FUND, GROUP LIFE INSURANCE AND MEDICAL AID**

8.1 The Employee shall become and remain a member of any retirement fund, provident fund or group life scheme established by or for the benefit of the employees and/or directors of the Employer, subject to the rules and regulations of such fund or scheme as amended from time to time, and further subject to the Employer's rules and policies regulating such membership and contributions payable by the Employer and Employee.

8.2 The Employee shall become and remain a member of the Employer's contracted medical aid scheme unless the Employee provides written proof that the Employer is a dependent member of the Employee's spouse's or life partner's medical aid scheme.

8.3 Should the Employee wish to remain a member of the Employer's contracted medical aid scheme after retirement, the Employee shall be solely responsible for all medical aid contributions as from the Termination Date.





8.4 On termination of the Employee's employment for whatever reason, it is specifically recorded that the Employee shall not be entitled to any post-retirement medical aid contributions made by the Employer.

8.5 The Employer may, in its sole discretion, decide to revise its policy and to change from its retirement fund, group life insurance and/or medical aid scheme in place at the Commencement Date to any other retirement fund, group life insurance and/or medical aid scheme or to change the contributions paid by the Employer. The Employer shall be entitled to affect such changes in its sole discretion subject to one month's notice to the Employee.

9. **ANNUAL LEAVE**

9.1 The Employee shall be entitled to [●] Business Days' paid annual leave per 12-month employment cycle. All annual leave requests must comply with the Employer's policy for the taking an approval of annual leave.

9.2 The Employee is obliged to take a minimum of 15 Business Days' leave per 12-month employment cycle.

9.3 Unless otherwise agreed in writing, all unutilised annual leave over and above what is referred to in clause 9.2 will be forfeited at the end of the 12-month employment cycle.

9.4 All annual leave shall be taken on dates to be agreed or determined by the Employer.

10. **SICK LEAVE**

10.1 If at any time the Employee is prevented by reason of ill-health, accident or other incapacity from properly performing the Employee's duties, the Employee shall promptly furnish to the Employer evidence of such incapacity in a form satisfactory to the Employer, and in accordance with the Employer's policy for the taking, and approval, of such leave.

10.2 The Employee shall be entitled to paid sick leave in accordance with the provisions of the BCEA. The payment of any remuneration during a period of sick leave will be subject to the production of satisfactory evidence from a registered medical practitioner, of the reason for the absence, if any period of absence is in excess of 2 (two) days in any 8 (eight) week period.

10.3 At the request and expense of the Employer, the Employee will from time to time submit to a medical examination by a doctor of the Employer's choice. If the doctor is unable to confirm that the Employee is fit to perform the Employee's duties or if there are factors which the doctor considers are relevant to the performance of those duties, the Employee will co-operate in ensuring the prompt delivery of all relevant medical reports to the Employer and will allow the Employer access to any relevant medical report which has been prepared by a medical practitioner responsible for the Employee's clinical care.

11. **SUSPENSION OF EMPLOYMENT**

11.1 If the Employer suspects that the Employee is guilty of conduct which may, if proved, justify the Employee's dismissal, or has committed a breach of any of





the terms of this Agreement, the Employer may, pending an enquiry into the alleged conduct in question, but without prejudice to its right of summary dismissal and without giving rise to any claim for damages or otherwise against it, suspend the Employee during which the Employee shall:

- (a) not be entitled to work for the Employer nor attend at any of the Employer's premises, except in accordance with the Employer's instructions;
- (b) not undertake any other work or other business activities, except with the prior written consent of the Employer; and
- (c) remain available and be contactable during normal business hours in order to provide the Employer with such assistance, whether in relation to its investigation or normal operational activities, as it shall reasonably require.

11.2 The suspension of the Employee shall not constitute a breach of this Agreement.

12. **TERMINATION**

12.1 The Employee's employment with the Employer shall terminate automatically by reason of retirement at the end of the calendar month on which the Employee reaches the age of 65 years, unless otherwise expressly agreed between the Parties and recorded in writing.

12.2 Except where summary dismissal is legally competent, or where the Parties mutually agree to terminate, either of the Parties may terminate this Agreement on three month's written notice, to the end of the calendar month.

12.3 Upon termination of this Agreement, or earlier if requested by the Employer, the Employee shall return all items and documents which are property of the Employer. The Employee does not have any right of retention over the items and any data saved by the Employee to any personal device(s) shall be deleted.

13. **IT SYSTEMS**

During the Employee's employment by the Employer, the Employee will be supplied with and/or have access to the Employer's equipment, hardware, laptops, network, printers, computer systems, servers, applications and software as well as the applications running on and services provided by these systems including e-mail and voicemail, internet and intranet, and file storage facilities (**IT Systems**). The Employer may at all times specify the manner in which the IT Systems may be used and the Employee hereby agrees to be bound by any information technology policy of the Employer in force from time to time. Without derogating from the generality of the aforesaid, the Employee shall:

- (a) be bound by the Employer's policies on use of electronic media, including but not limited to social networking sites;
- (b) utilise the IT Systems solely in pursuance of the Employer's business activities;





- (c) not copy any software whatsoever, for whatever purpose, from one device to another unless both the applicable software licence and the Employer permits it; and
- (d) not load onto the IT Systems any software, nor attach any hardware, without prior approval in writing from the Employer.

14. **MONITORING COMMUNICATIONS**

The Employee acknowledges, accepts and agrees as follows:

- (a) the Employee consents to the interception and monitoring of any communication that the Employee may send or receive using the IT Systems of the Employer or during the course and scope of employment by the Employer and waives any protections afforded in this regard in terms of the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 and the Protection of Personal Information Act 4 of 2013; and
- (b) the Employer shall be permitted to check, record and review telephone calls, computer files, records and e-mails and any other compliance, security or risk analysis checks the Employer considers reasonably necessary.

15. **CODES, PROCEDURES, PRACTICES, RULES AND REGULATIONS**

- 15.1 The Employee undertakes to acquaint and familiarise himself with and abide by the terms of any codes, policies, work practices, procedures, rules and regulations which have been, or may be, introduced or promulgated by the Employer and provided to the Employee in writing from time to time (**Internal Policies**).
- 15.2 The Employer reserves the right to amend any of the Internal Policies from time to time, including but not limited to Internal Policies in terms whereof the Employer's employees are expected to comply with work practices and/or provided with benefits of employment, subject to one month's written notice to the Employee.
- 15.3 The Employer's disciplinary and grievance procedures shall not form part of this Agreement and are intended to serve only as a guideline.

16. **INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS**

- 16.1 The Employee acknowledges that, because of the nature of the Employee's duties and the responsibilities arising as a result of such duties, such duties may include reviews of the products and services of the Employer, in the course of which the Employee may be tasked with, or involved in, development of original ideas and inventions and implementing such improvements.
- 16.2 Any Intellectual Property made, created or discovered by the Employee in the course and scope of employment by the Employer shall be disclosed to the Employer and shall belong to and be the absolute property of the Employer.





- 16.3 The Employee shall, if and when required by the Employer, and at the Employer's expense, apply or join with the Employer in applying for letters patent or other equivalent protection in South Africa or in any other part of the world for the Intellectual Property and shall execute all instruments and do all things necessary for vesting the said letters patent or other equivalent protection in the name of the Employer as sole beneficial owner or in the name of such other person as the Employer may nominate.
- 16.4 Insofar as may be necessary, the Employee hereby assigns to the Employer the copyright in all present and future works eligible for copyright including, without limitation, literary or artistic works or software programmes of which the Employee may be the author, which works were or are created, compiled, devised or brought into being during the course and in the scope of the Employee's employment by the Employer. No consideration shall be payable by the Employer to the Employee in respect of this assignment. The Employee hereby waives in favour of the Employer or any successor-in-title any moral rights in copyright as provided for in this Agreement, which may vest in the Employee.
- 16.5 All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the aforesaid items) which are created, compiled or devised or brought into being by the Employee or come into the Employee's possession during the course and in the scope of the Employee's employment by the Employer and all copies thereof, shall be the property of the Employer.
- 16.6 Notwithstanding anything otherwise provided for in this Agreement, should the Employee develop any Intellectual Property outside the course and scope of the Employee's employment (**Excluded Intellectual Property**), the Employee shall not be required to disclose such separately developed Excluded Intellectual Property to the Employer nor shall the Employer have any rights of ownership in such Excluded Intellectual Property.
- 16.7 Should the Employee develop any Excluded Intellectual Property and the Employer wishes to utilise such Excluded Intellectual Property, the Parties agree that they shall meet in good faith to agree to the terms and conditions of such utilisation, it being specifically agreed that the Employer shall not be entitled to the ownership such Excluded Intellectual Property.

17. **CONFIDENTIALITY**

- 17.1 The Employee acknowledges that:
- (a) the Confidential Information, whether it is regarded as confidential in terms of this Agreement, or in terms of another binding instrument, is a valuable, special and unique asset of the Employer or a Related Company; and
 - (b) the Employer or a Related Company may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used by the Employee.
- 17.2 The Employee irrevocably and unconditionally agrees and undertakes:





- (a) not to use the Confidential Information, whether directly or indirectly for the Employee's own benefit, or for the benefit of any person other than the Employer or a Related Company;
- (b) to treat and safeguard the Confidential Information as strictly private and confidential;
- (c) not to use, disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Employer, which consent may be granted or withheld in the sole and absolute discretion of the Employer;
- (d) not to decompile, disassemble or reverse engineer or otherwise modify, adapt, alter or vary the whole or any part of the Confidential Information; and
- (e) to take all such steps as may be reasonably practicable to prevent Confidential Information from falling into the hands of unauthorised third parties.

17.3 Subject to the provisions of clause 17.5, the undertakings given by the Employee in clause 17.2 shall not apply to any Confidential Information which:

- (a) is or becomes generally available to the public other than by the negligence or default of the Employee or by the breach of this clause 17 by the Employee;
- (b) has been supplied to the party to whom it is disclosed by a third party who is under no obligation to maintain such information in confidence; or
- (c) is disclosed pursuant to a requirement or request by operation of law, to the extent of compliance with such requirement or request only and not for any other purpose,

provided that:

- (d) the onus shall at all times rest on the Employee to establish that such information falls within such exclusions;
- (e) information shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Employee's possession; and
- (f) any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in the Employee's possession, but only if the combination itself is in the public domain or in the Employee's possession.

17.4 If the Employee is uncertain as to whether any information is Confidential Information, the Employee shall treat such information as confidential until the contrary is agreed by the Employer in writing.





- 17.5 In the event that the Employee is required to disclose information relating to the Employer or a Related Company, the Employee shall:
- (a) advise the Employer thereof prior to disclosure, if possible;
 - (b) take such steps to limit the disclosure to the extent that it lawfully and reasonably can;
 - (c) afford the Employer a reasonable opportunity, if possible, to intervene in the proceedings; and
 - (d) comply with the Employer's reasonable requests as to the manner and terms of any such disclosure.
- 17.6 A breach of the confidentiality undertakings in clause 17 constitutes a material breach of the Agreement.

18. **RESTRAINT AND NON SOLICITATION UNDERTAKING**

18.1 The Employee agrees that:

- (a) the business that the Employer and/or a Related Company is engaged in is highly competitive;
- (b) by reason of the Employee's appointment in terms hereof, the Employee will acquire an in-depth knowledge and be exposed to the Confidential Information, including but not limited to:
 - (i) acquiring knowledge of the technical information and know-how of the Employer and/or a Related Company relating to their activities;
 - (ii) representing the Employer and/or a Related Company in its dealings;
 - (iii) becoming acquainted with the needs of and services provided to the Employer and/or a Related Company clients;
 - (iv) being continuously exposed to all of the Confidential Information, databases and trade secrets of the Employer and/or a Related Company;
 - (v) being appraised of a wealth of highly Confidential Information, which, in the hands of a competitor, would cause irreparable harm, prejudice, and loss to the Employer and/or a Related Company;
- (c) should the Employee sever the Employee's employment with the Employer and make the Confidential Information available to a competitor of the Employer and/or a Related Company or utilise such Confidential Information in competition with the Employer and/or a Related Company, it would cause the Employer and/or a Related Company to suffer considerable financial loss;





- (d) substantial benefits will accrue to the Employee arising out of the Employee's appointment in terms hereof and association with the Employer;
 - (e) it is necessary for the Employer, in order to protect its legitimate proprietary interests in the Confidential Information, and other legitimate interests, to conclude an agreement pursuant to which the Employee shall be restrained in certain respects;
- 18.2 The Employee therefore undertakes not to be interested, engaged in, whether directly or indirectly, whether as a proprietor, partner, shareholder, director, employee, independent contractor, agents, consultant or otherwise in any firm, business or undertaking, which carries on any activity, either solely or in conjunction with any other party in competition with the Business carried on by the Employer and/or a Related Company for a period of six months after the termination of the Employee's employment with the Employer.
- 18.3 The Employee will not, during the period of the Employee's employment with the Employer or for a period of six months thereafter persuade, induce, encourage or procure any employee employed by the Employer and/or a Related Company to terminate their employment or become employed by or directly or indirectly in any way interested in or associated with any person, a firm or business of the kind conducted by the Employer and/or a Related Company.
- 18.4 The restraints set out in this Agreement shall apply throughout South Africa, or any other area in respect of which the Employee has rendered services to the Employer and/or a Related Company save as expressly agreed to in writing by the Employer in a document appended to this Agreement.
- 18.5 The Employee acknowledges and agrees that the aforesaid restraints are fair, reasonable and necessary for the protection of the Employer and/or a Related Company, the Employer's trade name and the goodwill attached thereto.
- 18.6 Notwithstanding the manner in which the aforesaid restraints have been grouped, each constitutes a separate and independent restraint severable from, and independent of each of, the other restraints, including in respect of each province and magisterial district, each of the months falling within the restrain period, and every capacity in which the Employee is prohibited from acting.
- 18.7 The provisions of this clause 18 constitute a *stipulatio alteri* in favour of the Related Companies that are not a party to this Agreement and each Related Company may accept the benefits conferred on it by this clause 18 by giving written notice to that effect to the Parties at any time.

19. **EMPLOYEE WARRANTIES**

- 19.1 The Employee hereby warrants that:
- (a) by entering into this Agreement, the Employee will not be in breach of any terms of any contract or of any other obligation binding upon the Employee;
 - (b) the Employee is suitably qualified for the post and all information supplied to the Employer detailing the Employee's experience and qualifications and





all representations made by the Employee and/or during any interviews conducted with the Employer and its representatives are true and accurate;

- (c) the Employee is free of any conflict of interest between the duties the Employee will owe to the Employer and the Employee's private interests and will ensure that this will not change in the future; and
- (d) during and after the termination of their employment, they will not make, publish, or communicate any statements or remarks, whether orally, in writing, or through any other medium, that are false, defamatory, derogatory, disparaging, or otherwise harmful to the reputation, goodwill, or business interests of the employer, its affiliates, subsidiaries, directors, officers, employees, agents, customers, suppliers, or partners.

19.2 Each warranty shall:

- (a) be a separate warranty and will in not be limited or restricted by reference to or inference from the terms of any other warranty or by any words in this Agreement; and
- (b) be given as at the Signature Date and the Commencement Date.

20. **DOMICILIUM AND NOTICES**

20.1 The Parties choose *domicilium citandi et executandi* (**Domicilium**) for all purposes relating to this Agreement, including the giving of any notice or the serving of any process, as follows:

(a) **Employee**

Physical

Email

(b) **Employer**

Physical:

Email:

20.2 Any Party shall be entitled from time to time, by giving written notice to the other, to vary its physical *Domicilium* to any other physical address (not being a post office box or poste restante) within South Africa, and to vary its email *Domicilium* to any other email address.

20.3 Any notice given or communication made by a Party to the other (**Addressee**) which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical *Domicilium* for the time being shall be deemed to have been received by the Addressee at the time of delivery.

20.4 Any notice given by any Party to the other which is successfully transmitted by e-mail to the Addressee's e-mail *Domicilium* for the time being shall be deemed (unless the contrary is proved by the Addressee) to have been received by the





Addressee on the day immediately succeeding the date of successful transmission thereof.

- 20.5 This clause 20 shall not invalidate the giving or receipt of any written notice, which is actually received by the Addressee other than by a method referred to in this clause 20.
- 20.6 Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the Addressee.

21. GENERAL

- 21.1 This Agreement and its annexures replace all existing employment contracts between the Parties including and constitute the sole record of the agreement between the Parties in relation to the subject matter hereof.
- 21.2 No Party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement.
- 21.3 No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 21.4 No indulgence which any Party may grant to any other 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 which may have arisen in the Past or which might arise in the future.
- 21.5 This Agreement shall be interpreted and governed in all respects by the laws of South Africa.
- 21.6 All costs, charges and expenses of every nature whatever which may be incurred by any Party in enforcing its rights in terms of this Agreement, including without limiting the generality of the foregoing, legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable from the Party against which such rights are successfully enforced.
- 21.7 Each provision of this Agreement is, notwithstanding the grammatical relationship between that provision and the other provisions of this Agreement, severable from the other provisions of this Agreement. Any provision of this Agreement which is or becomes invalid, unenforceable or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the other provisions of this Agreement which shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such invalid, unenforceable or unlawful provision if they were aware of such invalidity, unenforceability or unlawfulness at the time of execution of this Agreement.
- 21.8 The signature by any Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as all of the other Parties. Signatures exchanged by fax or e-mail of scanned copies shall be as effective as original signatures.





21.9 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.

21.10 In the event of ambiguity between this Agreement and any documents issued by the Employer to the Employee, this Agreement shall take precedence.

22. **GOVERNING LAW**

The entire provisions of this Agreement shall be governed by and construed in accordance with the laws of South Africa.

23. **SIGNATURE**

23.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

23.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

23.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

23.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.





SIGNATORIES



Name: _____

Title: _____

Date: _____

Place: _____



Date: _____

Place: _____





Addendum 2

FIXED-TERM EMPLOYMENT CONTRACT

Between

[●]
(Employer)

and

[●]
(Employee)





CONTENTS

Clause	Page
1. Interpretations.....	1
2. Introduction.....	3
3. Duration and Appointment.....	4
4. Working Hours.....	4
5. Employee Obligations.....	4
6. Remuneration Package.....	5
7. Disbursements.....	5
8. Annual Leave.....	5
9. Sick leave.....	5
10. Family Responsibility leave.....	6
11. Part-time employment.....	6
12. Termination.....	6
13. Non-solicitation.....	6
14. IT System.....	6
15. Monitoring Communications.....	7
16. Codes, Procedures, Practices, Rules and Regulations.....	7
17. Inventions, Discoveries, Copyright And Documents.....	7
18. Confidentiality.....	8
19. Employee Warranties.....	10
20. Domicilium and Notices.....	10
21. General.....	11
22. Governing law.....	12
23. Signature.....	12
Signatories.....	13





EMPLOYMENT CONTRACT

BETWEEN:

24. [●] (**Employer**), a private company incorporated in South Africa, with registration number [●], and with its registered address at [●]; and
25. [●], an adult, South African citizen with identity number [●] (**Employee**).

INTERPRETATIONS

Definitions

The following expressions shall bear the following meanings and related expressions bear corresponding meanings:

Agreement means this employment contract between the Parties.

BCEA means the Basic Conditions of Employment Act 75 of 1997.

Business Day means any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa.

Commencement Date means [●].

Companies Act means the Companies Act 71 of 2008.

Confidential Information means any information or data relating to the Employer or a Related Company (even if not marked as being confidential, restricted, secret, proprietary or any similar designation), in whatever format and whether recorded or not (and if recorded, whether recorded in writing, on any electronic medium or otherwise), which is identifiable as confidential and/or proprietary to the Employer or a Related Company, or is intended or by its nature or content could reasonable by expected to be confidential and/or proprietary to the Employer or a Related Company, and includes:

- (a) information relating to the Employer's or a Related Company's, existing and future strategic objectives and existing and future business plans and corporate opportunities;
- (b) trade secrets;
- (c) technical information, techniques, know-how, operating methods and procedures;
- (d) details of costs, sources of materials and customer lists (whether actual or potential) and other information relating to the existing and prospective customers and suppliers of the Employer or a Related Company;
- (e) pricing, price lists and purchasing policies;
- (f) computer data, programmes and source codes;



- (g) information contained in or constituting the hardware or software of the Employer, including third party products and associated material;
- (h) information relating to the Employer's or a Related Company's IT Systems;
- (i) any and all methodologies, formulae and related information in developed software and processes and other business of the Employer [or a Related Company];
- (j) products, drawings, designs, plans, functional and technical requirements and specifications;
- (k) Intellectual Property that is proprietary to the Employer or a Related Company or that is proprietary to a third party and in respect of which the Employer has rights of use or possession;
- (l) marketing information of whatsoever nature or kind;
- (m) financial information of whatsoever nature or kind;
- (n) information relating to any contracts to which the Employer or a Related Company is a party; and
- (o) any information which is not readily available to a competitor of the Employer or a Related Company in the normal and ordinary course of business.

Intellectual Property means the following in any location or jurisdiction worldwide:

- (p) all inventions (whether patentable or unpatentable) and whether or not reduced to practise), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all revisions, extensions and re-examinations thereof;
- (q) all trademarks, service marks, trade dress, logos, trade names and corporate names, (including all domain names, internet and intranet names, addresses, icons and other designations useful to identify or locate the Employer on a computer network such as the world wide web), together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith;
- (r) all works capable of copyright, all copyright, and all applications, registrations and renewals in connection therewith;
- (s) all trade secrets and business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supply lists, pricing and cost information, and business and marketing plans and proposals);
- (t) all computer software (including data and related documentation);





- (u) all patterns and/or designs and design applications and registrations;
- (v) all other proprietary rights;
- (w) all business or trade names used by or in connection with, or normally associated with the Employer or a Related Company; and
- (x) all copies and tangible embodiments thereof, in each instance in whatever form or medium.

LRA means the Labour Relations Act, No 66 of 1995.

Parties means the Employee and the Employer and **Party** shall be construed accordingly.

Related Company means all persons who are "related" or "inter-related" to the Employer (as the terms "related" or "inter-related" are defined in the Companies Act).

Signature Date means the date on which this agreement is signed by the party signing last in time.

Termination Date means [●].

ZAR means Rand, the lawful currency of South Africa.

Construction

- (a) Clause headings are for convenience and shall not be used in its interpretation, unless the context clearly indicates a contrary intention.
- (b) An expression which denotes:
 - (i) any gender includes the other genders;
 - (ii) a natural person includes an artificial or juristic person and vice versa; and
 - (iii) the singular includes the plural and vice versa.
- (c) If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- (d) If any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- (e) The expiration or termination of this Agreement shall not affect such provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination,





notwithstanding that the clauses themselves do not expressly provide for this.

- (f) The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- (g) Any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.
- (h) The words **include**, **including** and **in particular** shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word(s).
- (i) The words **other** and **otherwise** shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

INTRODUCTION

The Employer wishes to appoint the Employee as an employee of the Employer on a fixed-term basis and the Employee wishes to accept such appointment on the terms contained in this Agreement.

DURATION AND APPOINTMENT

This Agreement shall commence on the Commencement Date and terminate automatically on the Termination Date, subject to early termination in terms of Clause 12 below.

The Parties may agree to renew this Agreement, provided such renewal is reduced to writing and signed by both Parties. The Parties agree that, in the absence of a written renewal, this Agreement will terminate automatically on the Termination Date.

The automatic termination of this Agreement on the Termination Date will not give rise to a dismissal for operational reasons or otherwise, and as such no severance pay or notice pay will be payable by the Employer to the Employee.

With effect from the Commencement Date, the Employer hereby appoints the Employee, who accepts such appointment, in the capacity of [●]. A job description is attached to this contract of employment as Annexure A.

This Agreement replaces all existing employment contracts between the Employee and the Employer [or any Related Company], including all modifications and amendments and any other written or oral agreements between the Parties.

The Employee will report directly to [●], however, this may change from time to time.





WORKING HOURS

The Employee's normal working hours are from [08h00 to 17h00] from Monday to Friday. The Employee shall however be required to work such additional hours as may be necessary to give effect to and meet the demands of the Employer and/or requirements of the role. The Employee agrees to work such overtime as is requested or necessary, depending on the business requirements of the Employer. Overtime hours and remuneration shall always be in accordance with the provisions of the BCEA.

The Employee is entitled to a daily lunch break of one hour, usually taken from 13h00 to 14h00.

The Employee's place of work will be [●] or such place or places in South Africa or elsewhere as the Employer may decide.

EMPLOYEE OBLIGATIONS

The Employee shall:

- (a) perform the duties, and responsibilities set out in Annexure A and such other responsibilities related thereto as may be required and determined by the Employer from time to time;
- (b) observe and comply with all lawful and reasonable requests and instructions of the Employer;
- (c) devote so much of the Employee's time and attention and the full benefit of the Employee's knowledge, expertise and skills in the proper performance of the Employee's duties in terms of this Agreement;
- (d) carry out the Employee's duties in a proper, loyal, and efficient manner to the best of the Employee's ability; and
- (e) at all times act in good faith and use the Employee's best endeavours to properly conduct, improve, extend, develop, promote, protect, and preserve the business interests, reputation and goodwill of the Employer [and of its Related Companies] and not do anything or engage in any activity which is or may become harmful or contrary to such interests.

REMUNERATION PACKAGE

The Employee shall be entitled to an annual remuneration package of ZAR [●] on the basis that this constitutes the Employee's total cost to the Employer.

The Employee agrees that the Employer may deduct from the Employee's remuneration any amounts due in relation to PAYE, UIF or as required by any other law, court order or written agreement applicable from time to time.

If the Employee at any time owes any amounts to the Employer that are not disputed, the Employee hereby authorises the Employer to deduct such amounts from, or set off such amounts against, any amount owed to the Employee by the Employer, in accordance with the BCEA.





The monthly cash component of the remuneration, after deductions, shall be paid into such bank account in South Africa as shall be designated by the Employee from time to time, on or before the last day of each month, in arrears.

DISBURSEMENTS

The Employer shall refund to the Employee any disbursements made or expenses incurred by the Employee on behalf of the Employer, which are necessary to enable the Employee to perform the Employee's duties under this Agreement and/or which are authorised or ratified by the Employer from time to time.

The Employee must furnish to the Employer adequate proof of expenses incurred.

The Employer shall have the sole discretion to review and limit the disbursements and expenditure that the Employee incurs or may incur on behalf of the Employer.

ANNUAL LEAVE

The Employee shall be entitled to [one day of annual leave on full remuneration for every 17 days on which the Employee worked] per 12-month employment cycle. All annual leave requests must comply with the Employer's policy for the taking an approval of annual leave.

The Employee will not be allowed to accumulate any leave and all leave must be taken within 6 months after the end of the annual leave cycle on which it accrued.

All annual leave shall be taken on dates to be agreed or determined by the Employer.

SICK LEAVE

The Employee shall be entitled to thirty (30) days paid sick leave in every three (3) year cycle of employment.

During the first six (6) months of employment, the Employee will be entitled to one (1) day's sick leave for every twenty-six (26) days worked.

If at any time the Employee is prevented by reason of ill-health, accident or other incapacity from properly performing the Employee's duties, the Employee shall promptly furnish to the Employer evidence of such incapacity in a form satisfactory to the Employer, and in accordance with the Employer's policy for the taking, and approval, of such leave.

The payment of any remuneration during a period of sick leave will be subject to the production of satisfactory evidence from a registered medical practitioner, of the reason for the absence, if any period of absence is in excess of 2 (two) days in any 8 (eight) week period.

FAMILY RESPONSIBILITY LEAVE

The Employee shall be entitled to three (3) days paid family responsibility leave per annum or pro-rata thereof. This leave will be granted on request when the Employee's child is sick, or in the event of the death of the Employee's spouse or





life partner; or the Employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

PART-TIME EMPLOYMENT

The Employee shall not, for the duration of this Agreement, be engaged in any part-time work in any capacity whatsoever without the prior written consent of the Employer.

TERMINATION

This contract will terminate automatically on the Termination Date [or on the completion of the project or task for which the employee is employed, whichever is earlier,] without the need for any notice or payment in lieu of notice.

The Employee may terminate this contract before the expiry of the fixed term by giving the Employer written notice within the notice period required by the BCEA.

The Employer may terminate this contract before the expiry of the fixed term for any reason recognised by law, such as the Employee's misconduct, poor performance, or the Employer's operational requirements.

The Parties may terminate the contract by mutual agreement.

Upon termination of this Agreement, or earlier if requested by the Employer, the Employee shall return all items and documents which are property of the Employer. The Employee does not have any right of retention over the items and any data saved by the Employee to any personal device(s) shall be deleted.

NON-SOLICITATION

The Employee undertakes in favour of Employer that he shall not, for the duration of this Agreement and for a period of six months thereafter:

- (a) persuade, induce, encourage or procure any contractor or employee engaged by the Employer to terminate his/her relationship with the Employer;
- (b) solicit, or attempt to solicit, custom from any of the Employer's clients other than in furtherance of the Employer's interests; and/or
- (c) otherwise interfere with or entice away, or attempt to interfere with or entice away, from the Employer any of the Employer's clients.

IT SYSTEMS

During the Employee's employment by the Employer, the Employee will be supplied with and/or have access to the Employer's equipment, hardware, laptops, network, printers, computer systems, servers, applications and software as well as the applications running on and services provided by these systems including e-mail and voicemail, internet and intranet, and file storage facilities (**IT Systems**). The Employer may at all times specify the manner in which the IT Systems may be used and the Employee hereby agrees to be bound by any





information technology policy of the Employer in force from time to time. Without derogating from the generality of the aforesaid, the Employee shall:

- (a) be bound by the Employer's policies on use of electronic media, including but not limited to social networking sites;
- (b) utilise the IT Systems solely in pursuance of the Employer's business activities;
- (c) not copy any software whatsoever, for whatever purpose, from one device to another unless both the applicable software licence and the Employer permits it; and
- (d) not load onto the IT Systems any software, nor attach any hardware, without prior approval in writing from the Employer.

MONITORING COMMUNICATIONS

The Employee acknowledges, accepts and agrees as follows:

- (a) the Employee consents to the interception and monitoring of any communication that the Employee may send or receive using the IT Systems of the Employer or during the course and scope of employment by the Employer and waives any protections afforded in this regard in terms of the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 and the Protection of Personal Information Act 4 of 2013; and
- (b) the Employer shall be permitted to check, record and review telephone calls, computer files, records and e-mails and any other compliance, security or risk analysis checks the Employer considers reasonably necessary.

CODES, PROCEDURES, PRACTICES, RULES AND REGULATIONS

The Employee undertakes to acquaint and familiarise himself with and abide by the terms of any codes, policies, work practices, procedures, rules and regulations which have been, or may be, introduced or promulgated by the Employer and provided to the Employee in writing from time to time (**Internal Policies**).

The Employer reserves the right to amend any of the Internal Policies from time to time, including but not limited to Internal Policies in terms whereof the Employer's employees are expected to comply with work practices and/or provided with benefits of employment, subject to one month's written notice to the Employee.

The Employer's disciplinary and grievance procedures shall not form part of this Agreement and are intended to serve only as a guideline.

INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS

The Employee acknowledges that, because of the nature of the Employee's duties and the responsibilities arising as a result of such duties, such duties may include





reviews of the products and services of the Employer, in the course of which the Employee may be tasked with, or involved in, development of original ideas and inventions and implementing such improvements.

Any Intellectual Property made, created or discovered by the Employee in the course and scope of employment by the Employer shall be disclosed to the Employer and shall belong to and be the absolute property of the Employer.

The Employee shall, if and when required by the Employer, and at the Employer's expense, apply or join with the Employer in applying for letters patent or other equivalent protection in South Africa or in any other part of the world for the Intellectual Property and shall execute all instruments and do all things necessary for vesting the said letters patent or other equivalent protection in the name of the Employer as sole beneficial owner or in the name of such other person as the Employer may nominate.

Insofar as may be necessary, the Employee hereby assigns to the Employer the copyright in all present and future works eligible for copyright including, without limitation, literary or artistic works or software programmes of which the Employee may be the author, which works were or are created, compiled, devised or brought into being during the course and in the scope of the Employee's employment by the Employer. No consideration shall be payable by the Employer to the Employee in respect of this assignment. The Employee hereby waives in favour of the Employer or any successor-in-title any moral rights in copyright as provided for in this Agreement, which may vest in the Employee.

All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the aforesaid items) which are created, compiled or devised or brought into being by the Employee or come into the Employee's possession during the course and in the scope of the Employee's employment by the Employer and all copies thereof, shall be the property of the Employer.

Notwithstanding anything otherwise provided for in this Agreement, should the Employee develop any Intellectual Property outside the course and scope of the Employee's employment (**Excluded Intellectual Property**), the Employee shall not be required to disclose such separately developed Excluded Intellectual Property to the Employer nor shall the Employer have any rights of ownership in such Excluded Intellectual Property.

Should the Employee develop any Excluded Intellectual Property and the Employer wishes to utilise such Excluded Intellectual Property, the Parties agree that they shall meet in good faith to agree to the terms and conditions of such utilisation, it being specifically agreed that the Employer shall not be entitled to the ownership such Excluded Intellectual Property.

CONFIDENTIALITY

The Employee acknowledges that:

- (a) the Confidential Information, whether it is regarded as confidential in terms of this Agreement, or in terms of another binding instrument, is a valuable, special and unique asset of the Employer or a Related Company; and





- (b) the Employer or a Related Company may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used by the Employee.

The Employee irrevocably and unconditionally agrees and undertakes:

- (a) not to use the Confidential Information, whether directly or indirectly for the Employee's own benefit, or for the benefit of any person other than the Employer or a Related Company;
- (b) to treat and safeguard the Confidential Information as strictly private and confidential;
- (c) not to use, disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Employer, which consent may be granted or withheld in the sole and absolute discretion of the Employer;
- (d) not to decompile, disassemble or reverse engineer or otherwise modify, adapt, alter or vary the whole or any part of the Confidential Information; and
- (e) to take all such steps as may be reasonably practicable to prevent Confidential Information from falling into the hands of unauthorised third parties.

Subject to the provisions of clause 18.5, the undertakings given by the Employee in clause 18.2 shall not apply to any Confidential Information which:

- (a) is or becomes generally available to the public other than by the negligence or default of the Employee or by the breach of this clause 18 by the Employee;
- (b) has been supplied to the party to whom it is disclosed by a third party who is under no obligation to maintain such information in confidence; or
- (c) is disclosed pursuant to a requirement or request by operation of law, to the extent of compliance with such requirement or request only and not for any other purpose,

provided that:
- (d) the onus shall at all times rest on the Employee to establish that such information falls within such exclusions;
- (e) information shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Employee's possession; and
- (f) any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in the Employee's possession, but only if the combination itself is in the public domain or in the Employee's possession.





If the Employee is uncertain as to whether any information is Confidential Information, the Employee shall treat such information as confidential until the contrary is agreed by the Employer in writing.

In the event that the Employee is required to disclose information relating to the Employer or a Related Company, the Employee shall:

- (a) advise the Employer thereof prior to disclosure, if possible;
- (b) take such steps to limit the disclosure to the extent that it lawfully and reasonably can;
- (c) afford the Employer a reasonable opportunity, if possible, to intervene in the proceedings; and
- (d) comply with the Employer's reasonable requests as to the manner and terms of any such disclosure.

A breach of the confidentiality undertakings in clause 16 constitutes a material breach of the Agreement.

EMPLOYEE WARRANTIES

The Employee hereby warrants that:

- (a) by entering into this Agreement, the Employee will not be in breach of any terms of any contract or of any other obligation binding upon the Employee;
- (b) the Employee is suitably qualified for the post and all information supplied to the Employer detailing the Employee's experience and qualifications and all representations made by the Employee and/or during any interviews conducted with the Employer and its representatives are true and accurate;
- (c) the Employee is free of any conflict of interest between the duties the Employee will owe to the Employer and the Employee's private interests and will ensure that this will not change in the future; and
- (d) during and after the termination of their employment, they will not make, publish, or communicate any statements or remarks, whether orally, in writing, or through any other medium, that are false, defamatory, derogatory, disparaging, or otherwise harmful to the reputation, goodwill, or business interests of the employer, its affiliates, subsidiaries, directors, officers, employees, agents, customers, suppliers, or partners.

Each warranty shall:

- (a) be a separate warranty and will in not be limited or restricted by reference to or inference from the terms of any other warranty or by any words in this Agreement; and
- (b) be given as at the Signature Date and the Commencement Date.





DOMICILIUM AND NOTICES

The Parties choose *domicilium citandi et executandi* (**Domicilium**) for all purposes relating to this Agreement, including the giving of any notice or the serving of any process, as follows:

(a) **Employee**

Physical

Email

(b) **Employer**

Physical:

Email:

Any Party shall be entitled from time to time, by giving written notice to the other, to vary its physical *Domicilium* to any other physical address (not being a post office box or poste restante) within South Africa, and to vary its email *Domicilium* to any other email address.

Any notice given or communication made by a Party to the other (**Addressee**) which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical *Domicilium* for the time being shall be deemed to have been received by the Addressee at the time of delivery.

Any notice given by any Party to the other which is successfully transmitted by e-mail to the Addressee's e-mail *Domicilium* for the time being shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the day immediately succeeding the date of successful transmission thereof.

This clause 20 shall not invalidate the giving or receipt of any written notice, which is actually received by the Addressee other than by a method referred to in this clause 20.

Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the Addressee.

GENERAL

This Agreement and its annexures replace all existing employment contracts between the Parties including and constitute the sole record of the agreement between the Parties in relation to the subject matter hereof.

No Party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement.

No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.





No indulgence which any Party may grant to any other 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 which may have arisen in the Past or which might arise in the future.

This Agreement shall be interpreted and governed in all respects by the laws of South Africa.

All costs, charges and expenses of every nature whatever which may be incurred by any Party in enforcing its rights in terms of this Agreement, including without limiting the generality of the foregoing, legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable from the Party against which such rights are successfully enforced.

Each provision of this Agreement is, notwithstanding the grammatical relationship between that provision and the other provisions of this Agreement, severable from the other provisions of this Agreement. Any provision of this Agreement which is or becomes invalid, unenforceable or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the other provisions of this Agreement which shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such invalid, unenforceable or unlawful provision if they were aware of such invalidity, unenforceability or unlawfulness at the time of execution of this Agreement.

The signature by any Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as all of the other Parties. Signatures exchanged by fax or e-mail of scanned copies shall be as effective as original signatures.

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.

In the event of ambiguity between this Agreement and any documents issued by the Employer to the Employee, this Agreement shall take precedence.

GOVERNING LAW

The entire provisions of this Agreement shall be governed by and construed in accordance with the laws of South Africa.

SIGNATURE

This Agreement is signed by the Parties on the dates and at the places indicated below.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same





Agreement as at the date of signature of the Party last signing one of the counterparts.

The persons signing this Agreement in a representative capacity warrant their authority to do so.

The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.





SIGNATORIES

[●]	
Name:	
Title:	
Date:	
Place:	

[●]	
Date:	
Place:	





Addendum 3

INDEPENDENT CONTRACTOR AGREEMENT

as between

[insert full name of contracting entity]

(**"Company"**)

and

[insert full name of individual]

(**"Independent Contractor"**)





CONTENTS

Clause	Page
1. Interpretations.....	1
2. Introduction	4
3. Duration	4
4. Nature of the relationship	5
5. Warranties	5
6. Obligations of the independent contractor.....	5
7. Service fee	6
8. Inventions, discoveries, copyright and documents.....	6
9. Consent to use personal information	7
10. Cession.....	8
11. Indemnity	8
12. Good faith	8
13. Termination.....	9
14. Breach.....	9
15. Confidentiality obligations.....	9
16. Non-solicitation	10
17. Computer systems	11
18. Interception and monitoring of electronic communications	11
19. Domicilium and Notices.....	11
20. Benefit of the agreement.....	12
21. Applicable law	13
22. Independent advice.....	13
23. General.....	13
24. Costs.....	14
25. Signature	14
Signatories.....	15
Annex	
1. Services.....	16
2. Independent Contractor Disclosure of Interests	16





THIS AGREEMENT is dated [insert date]

BETWEEN

1. [Full name of the Company], a private company duly incorporated in [insert country] with registration number [insert registration number]; and
2. [Full name(s) of independent contractor], an individual adult with identity number [insert identity number].

THE PARTIES AGREE as set out below.

INTERPRETATION

Definitions

In this Agreement, unless the context clearly indicates a contrary intention, the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

Agreement means this Agreement, together with all annexures hereto.

Business means the business of [●], and any other business conducted by the Company at any time during the period of this Agreement.

Business Day means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa.

Company means [insert full name of contracting entity], a private company duly incorporated in [insert country] with registration number [insert registration number].

Confidential Information means any information or data relating to the Company (even if not marked as being confidential, restricted, secret, proprietary or any similar designation), in whatever format and whether recorded or not (and if recorded, whether recorded in writing, on any electronic medium or otherwise), which:

- (a) by its nature or content is identifiable as confidential and/or proprietary to the Company; or
- (b) is intended or by its nature or content could reasonably be expected to be confidential and/or proprietary to the Company,

and includes but is not limited to:

- (i) information relating to the Company's, existing and future strategic objectives and existing and future business plans and corporate opportunities;





- (ii) trade secrets;
- (iii) technical information, techniques, know-how, operating methods and procedures;
- (iv) details of costs, sources of materials and customer lists (whether actual or potential) and other information relating to the existing and prospective customers and suppliers of the Company;
- (v) pricing, price lists and purchasing policies;
- (vi) computer data, programmes and source codes;
- (vii) information contained in or constituting the hardware or software of the Company, including third party products and associated material;
- (viii) information relating to the Company's network telecommunications services and facilities;
- (ix) any and all methodologies, formulae and related information in developed software and processes and other business of the Company;
- (x) products, drawings, designs, plans, functional and technical requirements and specifications;
- (xi) Intellectual Property that is proprietary to the Company or that is proprietary to a third party and in respect of which the Company has rights of use or possession;
- (xii) marketing information of whatsoever nature or kind;
- (xiii) financial information of whatsoever nature or kind;
- (xiv) information relating to any contracts to which the Company is a party; and
- (xv) any information which is not readily available to a competitor of the Company in the normal and ordinary course of business.

Confidential Records means any records of any nature whatsoever (including documents, diagrams and data which have been created or stored in any medium irrespective of who created or owns such records) which contain any of the Confidential Information.

Designated Account means the bank account nominated by the Independent Contractor, the details of which are set out below, or such other account as may be designated by the Independent Contractor in writing on five Business Days' notice:





Name of Account:	[insert details]
Bank:	[insert details]
Branch:	[insert details]
Branch Code:	[insert details]
Account Number:	[insert details]

Effective Date means [insert start date], being the date from which the Company contracts with the Independent Contractor to provide the Services in terms of this Agreement.

Independent Contractor means [insert full name of the contracting person or entity].

Parties means the parties to this Agreement and “**Party**” means either one of them.

Personal Information has the same meaning as defined in POPIA.

POPIA means the Protection of Personal Information Act, 2013.

SARS means the South African Revenue Service.

Services means the services described in Annex 1.

Signature Date means the date of signature of this Agreement by the Party signing last in time.

Successor-in-Title means any third party who or which acquires:

- (a) the Business or any part thereof; or
- (b) pursuant to any cession or otherwise, the right to enforce the rights and undertakings contained in this Agreement or part thereof; and

Termination Date means [insert end date] or any date upon which the Company's contract with the Independent Contractor to provide the Services in terms of this Agreement ceases for whatsoever reason.





Construction

- (a) In this Agreement, a reference to any Party shall include its Successors-in-Title, permitted assigns and permitted transferees.
- (b) Unless the context clearly indicates a contrary intention any expression which denotes:
 - (i) any gender includes all genders;
 - (ii) a person includes any individual, entity, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having a separate legal personality); and
 - (iii) the singular includes the plural and vice versa.
- (c) Unless the context clearly indicates a contrary intention any reference to:
 - (i) any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date and as amended or substituted from time to time;
 - (ii) any agreement, deed, bond or other document shall include a reference to all annexures, schedules and other attachments thereto and shall be a reference to that agreement, deed, bond or other document (including such annexures, schedules and other attachments thereto) as amended, novated and/or replaced from time to time;
 - (iii) a time of day, is a reference to time in Johannesburg; and
 - (iv) days (other than a reference to Business Days) or years shall be a reference to calendar days or years, as the case may be.
- (d) If any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision of this Agreement.
- (e) Where any term is defined in a particular clause other than this Clause 1.2, that term shall bear the meaning assigned to it in that clause wherever it is used in this Agreement.
- (f) Where any number of days is to be calculated from a particular day, then:
 - (i) such number shall be calculated as including that particular day; and
 - (ii) if the last day of the number of days to be so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the





next Business Day in that calendar month, if there is one, or if there is not, the immediately preceding Business Day.

- (g) Where any day for the performance of any obligation or the payment of any amount under this Agreement falls on a day other than a Business Day, such obligation shall be performed or such amount shall be paid on the immediately preceding day which is a Business Day.
- (h) Any term which refers to a South African legal concept or process (including winding up, business rescue or curatorship) shall be deemed to include a reference to the equivalent concept or process in any other jurisdiction in which this Agreement may apply or to which a Party may be or become subject.
- (i) The use of the word **including** followed by a specific examples shall not be construed as limiting the meaning of the general wording preceding them and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.
- (j) The word **month** means a period starting on one day in a calendar month and ending on the day before the numerically corresponding day in the next calendar month, provided that:
 - (i) if any such period would otherwise end on a day in the later calendar month which is not a Business Day, it shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
 - (ii) if there is no numerically corresponding day in the next calendar month in which that period is to end, that period shall end on the last Business Day in that later calendar month.
- (k) Clause headings are for ease of reference only and shall not be used in the interpretation of this Agreement.
- (l) Any rule of construction requiring that this Agreement be interpreted or construed against the Party responsible for the preparation hereof shall not be of any application (whether or not in relation to any dispute arising out of the interpretation of this Agreement or otherwise).

INTRODUCTION

The Company hereby contracts with the Independent Contractor to provide the Services set out in Annex 1.

The Parties may agree to renew this Agreement, provided such renewal is reduced to writing and signed by both Parties. The Parties agree that, in the absence of a written renewal, this Agreement will terminate automatically on the Termination Date.





[The automatic termination of this Agreement on the Termination Date will not give rise to a dismissal, for operational reasons or otherwise, and as such no severance pay or notice pay will be payable by the Company to the Independent Contractor.]

DURATION

This Agreement shall commence on the Effective Date and automatically terminate on the Termination Date, subject to early termination in terms of Clauses 13 and 14 below.

NATURE OF THE RELATIONSHIP

The Parties expressly agree that no employment relationship or contract of employment comes into being or exists between the Company and the Independent Contractor. The Parties further agree that no such relationship has been or will be established between them, nor shall this Agreement or the provision of the Services hereunder give rise to such a relationship and/or agreement by way of inference, legitimate expectation or otherwise.

The Independent Contractor shall not and shall not be deemed to be the agent, representative or servant of the Company, save where he is authorised in writing by the Company to act on its behalf, in which event he shall do so only in accordance with the terms of the Company's prior authorisation.

The Independent Contractor agrees and undertakes not to bind the Company, save with the prior written authorisation of the Company.

WARRANTIES

The Independent Contractor warrants as follows:

- (a) by entering into this Agreement, the Independent Contractor will not be in breach of any express or implied terms of any contract or of any other obligation binding upon it; and
- (b) it is permitted to provide the Services set out in Annex 1 in the Republic of South Africa.

Each warranty will:

- (a) be a separate warranty and will in no way be limited or restricted by reference to or inference from the terms of any other warranty or by any words in this Agreement;
- (b) be given as at the Signature Date and the Effective Date; and
- (c) be deemed to be a material representation and to be a material representation inducing the Company to enter into this Agreement.





- (d) The Independent Contractor acknowledges that in the event that it is found that it has made any misrepresentation to induce the entering into of this Agreement, the Company may in its sole discretion declare this Agreement null and void.

OBLIGATIONS OF THE INDEPENDENT CONTRACTOR

The Independent Contractor is aware of the standard and quality of service required by the Company, and agrees and undertakes to ensure that the Services are provided in compliance with the Company's standard and quality of service.

Without detracting from the generality of Clause 6.1, the Independent Contractor agrees and undertakes to:

- (a) provide the Services set out in Annex 1 within the timeframe set out by the Company from time to time;
- (b) provide the Services in a diligent and professional manner;
- (c) compile and maintain complete, accurate and written records of the Services provided;
- (d) have the requisite tools and equipment to provide the Services, unless otherwise agreed to in writing by the Parties;
- (e) refrain from exercising any management control over any of the Company's employees; and
- (f) refrain from requiring any of the Company's employees to provide any of the Services, unless expressly agreed to in writing by the Company.

The Independent Contractor shall promptly disclose to the Company any direct or indirect interest which it has in any trade, business, entity or occupation which is similar to the Business, whether or not such trade, business, entity or occupation is conducted for its profit or personal gain.

The Independent Contractor shall be liable for any disbursements made and/or expenses incurred by it in providing the Services, unless otherwise agreed to in writing by the Parties.

SERVICE FEE

In exchange for the Independent Contractor providing the Services in terms of this Agreement, the Company shall pay the Independent Contractor an amount of R[insert amount in numbers] ([insert amount in words] Rand) a month.





The Independent Contractor shall submit invoices to the Company, together with the timesheets on which the invoices are based, on or before the last Business Day of each month.

Payment of the Independent Contractor's invoices shall be made by the Company within 30 (thirty) days of receipt thereof by electronic funds transfer into the Independent Contractor's Designated Account, subject to receipt by the Company of proof to the satisfaction of the Company that the relevant Services have been provided to the satisfaction of the Company.

INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS

Any trade mark, design, concept, drawing, discovery, invention, secret process or improvement in procedure (**Intellectual Property**) made, created or discovered by the Independent Contractor when providing the Services in connection with or in any way affecting or relating to the Business of the Company, or capable of being used or adapted for use by the Company or in connection with its business shall be disclosed to the Company and shall belong to and be the absolute property of the Company.

The Independent Contractor shall, if and when required by the Company, and at the Company's expense, apply or join with the Company in applying for letters patent or other equivalent protection in the Republic of South Africa or in any other part of the world for the Intellectual Property, and shall execute all instruments and do all things necessary for vesting the said letters patent or other equivalent protection in the name of the Company as sole beneficial owner or in the name of such other person as the Company may nominate.

Insofar as may be necessary:

- (a) The Independent Contractor hereby assigns to the Company the copyright in all present and future works eligible for copyright including, without limitation, literary or artistic works or software programmes of which he may be the author, which works were or are created, compiled, devised or brought into being when providing the Services. The Independent Contractor hereby waives in favour of the Company or any Successor-in-Title any moral rights in copyright as provided for in this Agreement, which may vest in him.
- (b) The Parties agree that the payments received by the Independent Contractor pursuant to the provision of the Services shall be sufficient consideration (at a fair, market related price) in respect of any assignment and/or transfer of Intellectual Property rights from the Independent Contractor to the Company, and no additional consideration shall be payable in respect of such assignment or transfer.





- (c) The Parties agree that the assignment and/or transfer of Intellectual Property rights in terms of this Agreement is conducted at arms-length between the Parties, who are unrelated.

All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the foregoing items) which are created, compiled, devised or brought into being by the Independent Contractor or come into the Independent Contractor's possession when providing the Services and all copies thereof, shall be the property of the Company and upon the Termination Date, or earlier if required by the Company, such documents and all copies shall be returned to the Company.

CONSENT TO USE PERSONAL INFORMATION

The Independent Contractor agrees and acknowledges that the collection and processing of its Personal Information is necessary to carry out actions for the conclusion and/or performance of this Agreement and to comply with obligations imposed by law on the Company.

Notwithstanding Clause 9.1, the Independent Contractor hereby consents to the collection, processing and further processing of its Personal Information by the Company for reasons relating to the operations and proprietary interests of the Company such as, but not limited to, the following:

- (a) carrying out actions for the conclusion and/or performance of this Agreement;
- (b) complying with obligations imposed by law on the Company;
- (c) maintaining full and accurate records of third party service providers;
- (d) running day-to-day operations of the Company; and
- (e) resolving disputes and/or claims.

In the event that the Independent Contractor withdraws consent to the processing of its Personal Information, it acknowledges that the Company may continue to process its Personal Information where a legal justification exists as set out in POPIA.

The Independent Contractor undertakes to make available to the Company all Personal Information of the Independent Contractor, as required by the Company for the purposes set out in Clause 9.1 and/or Clause 9.2, including:

- (a) identifying information, such as name (including name prefix or title), [identity number, title and/or position];





- (b) contact information, such as postal address, email address and phone number(s);
- (c) financial information, such as payment-related information;
- (d) technical information, such as information from the Independent Contractor's use of the Company's technology, applications or in relation to materials and communications sent between the Company and the Independent Contractor;
- (e) information provided to the Company for the purposes of attending meetings and events, including access and dietary requirements;
- (f) identification and background information provided to or collected as part of the Company's onboarding processes; and
- (g) any other Personal Information relating to the Independent Contractor which may be provided to the Company.

The supply of Personal Information set out in this clause 9 is mandatory. Failure to provide such Personal Information will impede the Company's ability to carry out actions for the conclusion and/or performance of this Agreement and/or actions relevant to the Company's operations and proprietary interests as set out in Clause 9.2.

The Independent Contractor acknowledges that the Company intends to transfer and/or process the Personal Information to/in [insert country]. The Company will ensure that the level of protection afforded to the Personal Information is equivalent to the protection afforded by POPIA.

The Independent Contractor specifically consents to the Company transferring its Personal Information to a third party who is in a foreign country for the purposes set out in Clause 9.1 and/or Clause 9.2.

The Company hereby informs the Independent Contractor that it has certain rights relating to its Personal Information, including the right of access to and the right to rectify Personal Information, as well as the right to lodge a complaint to the Information Regulator, the contact details of which are available on <https://inforegulator.org.za/> .

CESSION

The Independent Contractor may not cede or delegate any of the rights and obligations in terms of this Agreement to any person without the prior written consent of the Company.

The Company may on written notice to the Independent Contractor cede and delegate its rights and obligations under this Agreement.





INDEMNITY

The Independent Contractor hereby indemnifies and holds the Company and its agents harmless against all claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses or other liabilities caused, whether negligently or otherwise by the Independent Contractor, as a result of non-observance of and/or non-compliance with any obligations under this Agreement.

GOOD FAITH

In the implementation of this Agreement, the Independent Contractor undertakes to observe the utmost good faith and warrants that in its dealings with the Company, it shall neither do anything nor refrain from doing anything, which might prejudice or detract from the rights or interests of the Company. The Independent Contractor shall refrain from any conflicts of interest with the Company and will not engage itself in a similar Business as that of the Company for the duration of this Agreement.

The Independent Contractor is permitted to perform work or conduct other business provided that this does not present any conflicts of interest with the business of the Company or place it in breach of its agreed duty of good faith contained herein.

TERMINATION

This Agreement may be terminated at any time by any Party giving the other Parties three months' written notice of termination.

BREACH

If the Independent Contractor breaches any of the provisions of this Agreement, the Company shall be entitled to furnish the Independent Contractor with seven days' written notice to remedy the breach. Should the Independent Contractor fail to remedy the breach within the seven days, the Company will be entitled to immediately cancel this Agreement or to demand fulfilment by the Independent Contractor of all obligations in terms of this Agreement, without prejudice to the Company's right to claim whatever damages may have been sustained as a result of the breach.

The aforementioned provisions are without prejudice to any other rights the Company may have in law, including the immediate termination of this Agreement without notice in the event of a material breach of this Agreement.

CONFIDENTIALITY OBLIGATIONS

The Independent Contractor acknowledges that:





- (a) the Confidential Information, whether it is regarded as confidential in terms of this Agreement, or in terms of another binding instrument, is a valuable, special and unique asset of the Company; and
- (b) the Company may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used by the Independent Contractor.

The Independent Contractor irrevocably and unconditionally agrees and undertakes:

- (a) not to use the Confidential Information, whether directly or indirectly:
 - (i) for the Independent Contractor's benefit; or
 - (ii) for the benefit of any person other than the Company;
- (b) to treat and safeguard the Confidential Information as strictly private and confidential;
- (c) not to use, disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Company, which consent may be granted or withheld in the sole and absolute discretion of the Company;
- (d) not to decompile, disassemble or reverse engineer or otherwise modify, adapt, alter or vary the whole or any part of the Confidential Information; and
- (e) to take all such steps as may be reasonably necessary to prevent Confidential Information from falling into the hands of unauthorised third parties.
- (f) Subject to the provisions of Clause 15.6, the undertakings given by the Independent Contractor in Clause 15.2 shall not apply to any Confidential Information which:
 - (i)** is or becomes generally available to the public other than by the negligence or default of the Independent Contractor or by the breach of this Clause 15 by the Independent Contractor;
 - (ii)** has been supplied to the party to whom it is disclosed by a third party who is under no obligation to maintain such information in confidence; or
 - (iii)** is disclosed pursuant to a requirement or request by operation of law, to the extent of compliance with such requirement or request only and not for any other purpose,

provided that:





- (iv) the onus shall at all times rest on the Independent Contractor, as the case may be, to establish that such information falls within such exclusions;
- (v) information shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Independent Contractor's possession; and
- (vi) any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in the Independent Contractor's possession, but only if the combination itself is in the public domain or in the Independent Contractor's possession.

The Independent Contractor acknowledges that any use, dissemination, disclosure, using for financial gain or otherwise making available of Confidential Information to third parties, will cause the Company's interest in such Confidential Information to be prejudiced and will result in the Company suffering damages.

If the Independent Contractor is uncertain as to whether any information is Confidential Information, it shall treat such information as confidential until the contrary is agreed by the Company in writing.

In the event that the Independent Contractor is required to disclose information relating to the Company pursuant to Clause 15.2(f)(iii), it shall:

- (a) advise the Company thereof prior to disclosure, if possible;
- (b) take such steps to limit the disclosure to the extent that it lawfully and reasonably can;
- (c) afford the Company a reasonable opportunity, if possible, to intervene in the proceedings; and
- (d) comply with the Company's reasonable requests as to the manner and terms of any such disclosure.

A breach of the confidentiality undertakings contained in this Clause 15 constitutes a material breach of this Agreement.

NON-SOLICITATION

The Independent Contractor undertakes in favour of Company that it shall not, for the duration of this Agreement and for a period of six months thereafter:





- (a) persuade, induce, encourage or procure any contractor or employee engaged by the Company to terminate his/her relationship with the Company;
- (b) solicit, or attempt to solicit, custom from any of the Company's clients other than in furtherance of the Company's interests; and/or
- (c) otherwise interfere with or entice away, or attempt to interfere with or entice away, from the Company any of the Company's clients.

COMPUTER SYSTEMS

During the provision of Services to the Company, the Independent Contractor may have access to the Company's technology, equipment (including hardware), network, computer systems and software (including email and internet) (**Facilities**).

The Company may specify the manner in which the Facilities may be used and the Independent Contractor hereby agrees to be bound by any information technology policy of the Company in force from time to time.

Without derogating from the generality of the foregoing, the Independent Contractor shall:

- (a) utilise the Facilities solely in pursuance of the Company's business activities;
- (b) not copy any software whatsoever, for whatever purpose, from one computer to another unless both the applicable software licence and the Company permits it, and
- (c) not load onto the Facilities any software, nor attach any hardware, without prior approval in writing from the Company.

INTERCEPTION AND MONITORING OF ELECTRONIC COMMUNICATIONS

The Independent Contractor acknowledges, accepts and agrees that:

- (a) it consents to the interception and monitoring of all communications, of whatsoever nature, that it may send or receive using the Facilities or during the course and scope of rendering of Services to the Company and waives the protections afforded to it in terms of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002; and
- (b) the Company shall be permitted to check, record and review telephone calls, computer files, records and emails sent or received using the Facilities and any other compliance, security or risk analysis checks the Company considers reasonably necessary.





DOMICILIUM AND NOTICES

Domicilium

The Parties choose *domicilium citandi et executandi* (**Domicilium**) for all purposes relating to this Agreement, including the giving of any notice and the serving of any process, as follows:

Company:

Physical: [insert details]

Email: [insert details]

Attention: [insert details]

Independent Contractor:

Physical: [insert details]

Email: [insert details]

Attention: [insert details]

Variation of Domicilium

Any Party shall be entitled from time to time, by giving written notice to the other, to vary its physical Domicilium to any other physical address (not being a post office box or *poste restante*).

Delivery

- (a) Any notice given by any Party to another Party (**Addressee**) which is delivered by hand between the hours of 08h00 and 17h00 on any Business Day to the Addressee's physical Domicilium for the time being shall be deemed to have been received by the Addressee at the time of delivery.
- (b) Any notice given by any Party to another which is successfully transmitted by facsimile to the Addressee's facsimile Domicilium for the time being shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the day immediately succeeding the date of successful transmission thereof.
- (c) This Clause 19.3 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the Addressee other than by a method referred to in this Clause 19.3.





Notices in writing

Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing in the English language and if received or deemed to be received by the addressee.

Electronic communication

- (a) Any communication to be made between the Parties under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Parties:
 - (b) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (c) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (d) notify each other of any change to their address or any other such information supplied by them.
- (e) Any communication transmitted by way of electronic communications shall be deemed to have been received when actually received in readable form.

BENEFIT OF THE AGREEMENT

This Agreement will also be for the benefit of and be binding upon the Successors-in-Title and permitted assigns of the Parties or either of them.

APPLICABLE LAW

This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

INDEPENDENT ADVICE

Each of the Parties to this Agreement hereby acknowledges and agrees that:

- (a) it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
- (b) all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party's intentions.





GENERAL

Whole Agreement

- (a) This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- (b) This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof, except to the extent expressly provided to the contrary.

Variations to be in Writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

No Indulgences

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

No Waiver or Suspension of Rights

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.





Provisions Severable

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

Continuing Effectiveness of Certain Provisions

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

No Assignment

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior signed written consent of the other Party, save as otherwise provided herein.

COSTS

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and signature of this Agreement.

SIGNATURE

This Agreement is signed by the Parties on the dates and at the places indicated below.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

The persons signing this Agreement in a representative capacity warrant their authority to do so.





The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

[Remainder of this page left intentionally left blank. Signature pages follow thereafter.]





SIGNATORIES

COMPANY

By: _____

Name: _____

Title: _____

Date: _____

INDEPENDENT CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____





ANNEX 1

SERVICES

The Independent Contractor shall provide the following Services:





For more information please visit pilnet.org