

## EMPLOYMENT AGREEMENT

between

Registration Number - - -  
“the Company”

and

- - -  
Identity Number - - -  
“the Employee”

## 1. INTERPRETATION AND PRELIMINARY

In this Agreement, unless the context otherwise indicates:

- 1.1. the singular shall import and include the plural and vice versa;
- 1.2. words indicating one gender shall import and include other genders;
- 1.3. words indicating natural persons shall import and include artificial persons;
- 1.4. the head notes to this Agreement are used for the sake of convenience only and shall not govern the interpretation of the clause to which they relate;
- 1.5. the following words and expressions shall, in addition to their respective ordinary meanings, bear the following meanings assigned to each of them respectively:
  - 1.5.1. **“Act”** means the Labour Relations Act, 1995;
  - 1.5.2. **“Agreement”** means this agreement and all annexures hereto;
  - 1.5.3. **“Board”** means the board of directors of the Company from time to time;
  - 1.5.4. **" Company"** means xxx, registration number - - -, a company duly registered and incorporated in accordance with the laws applicable in the Republic of South Africa;
  - 1.5.5. **“Confidential Information”** includes, knowledge of and details concerning the know-how, expertise, procedures and practices utilised by the Company in respect of, *inter alia*, the strategic planning, strategy, the obtaining of new clients, retaining current clients, all client information, financial information, pricing, estimating, setting rates, discounts, supplier information, purchasing arrangements, employee information, practices, techniques and the like used by the Company in the ordinary course of business;
  - 1.5.6. **“Disability”** means a state of occupational Disability which, in the opinion of a specialist medical practitioner of not less than 10 (ten) years' standing, is brought about as a result of injury, deterioration in health or surgical operation, rendering the person concerned for a period of not less than 6 (six) consecutive calendar months, totally incapable of earning an income from:

- 1.5.6.1. the occupation;
- 1.5.6.2. any similar occupation; or
- 1.5.6.3. any other occupation for which the Employee is fitted by knowledge, training, status and ability;
- 1.5.7. **“Effective Date”** means - - -;
- 1.5.8. **“Employee”** means - - -, identity number - - - **“Party”** or **“Parties”** means a party, or, the parties to this Agreement;
- 1.5.9. **“Termination Date”** means the date upon which the Employee’s employment by the Company ceases or is terminated.

**2. INTRODUCTION**

- 2.1. The Employee is to be appointed as - - - of the Company.
- 2.2. The Parties accordingly wish to:
  - 2.2.1. agree on the terms and condition(s) of the Employee’s employment; and
  - 2.2.2. agree on the protection of the Company’s Confidential Information and trade secrets.

**3. APPOINTMENT OF EMPLOYEE**

- 3.1. The Employee is hereby appointed as - - - of the Company, which appointment is hereby accepted by the Employee.
- 3.2. The Employee is employed at the Company’s premises situated at - - - or such other location as the Company may determine from time to time on notification to the Employee.
- 3.3. The Employee warrants that the Employee is not contractually or otherwise prohibited or limited from fulfilling the obligations that the Employee has committed to this Agreement.

**4. PERIOD OF EMPLOYMENT**

- 4.1. The Employee’s employment is to endure with effect from the Effective Date and indefinitely thereafter, unless otherwise terminated in terms hereof.
- 4.2. The Company shall be entitled to terminate the Employee's employment summarily or on such other basis as it considers appropriate if, *inter alia*, the Employee:
  - 4.2.1. is guilty of conduct justifying a summary dismissal according to the common law or the Act;

- 4.2.2. suffers a Disability; or
- 4.2.3. any other reason justified in law.

**5. SUSPENSION OF EMPLOYMENT**

- 5.1. If the Company suspects that the Employee is guilty of the conduct referred to in clause 4.2 or any other conduct which may, if proved, justify the Employee's dismissal, or has committed a breach of any of the terms of this Agreement, it may, pending a duly constituted 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 for a period not exceeding 30 (thirty) days during which the Employee shall:
  - 5.1.1. not be entitled to attend work at the premises of the Company;
  - 5.1.2. be entitled to the normal salary payable to the Employee;
  - 5.1.3. not be entitled to contact, visit, assist or deal with any clients, suppliers or employees or perform any functions or duties.

**6. EMPLOYEE'S DUTIES**

The Employee shall:

- 6.1. devote the whole of the Employee's time and attention during the Company's normal business hours, and such reasonable amount of additional time as may be necessary on an unpaid basis, having regard to the exigencies of the business of the Company, to the business and affairs of the Company and shall not, during the currency of this Agreement, without the Company's prior written consent, whether as proprietor, partner, director, shareholder, member, Employee, consultant, contractor, broker, financier, agent, representative, employee, assistant, trustee or beneficiary of a trust or otherwise, and whether for reward or not, directly or indirectly be interested or engaged in or concerned with or employed by any business, trade, undertaking or concern:
  - 6.1.1. other than that of the Company; or
  - 6.1.2. which competes with any business carried on by the Company;
- 6.2. obey the orders of the Board and shall carry out such functions and duties as are from time to time assigned to the Employee and are consistent with the Employee's status and use the utmost endeavours to protect and promote the business and interests of the Company and to preserve its reputation and goodwill;
- 6.3. be true and faithful to the Company in all dealings and transactions whatsoever relating to its business and interests;
- 6.4. disclose to the Company all acts and omissions of the Employee which constitute a breach by the Employee of the Employee's obligations to the Company from whatsoever cause arising;

- 6.5. not, during the operation of this Agreement or thereafter, regardless of the reason for termination of the Employee's employment, use for the Employee's own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those of the officials of the Company whose province it is to know the same, any of the Company's secrets or any other Confidential Information which the Employee may receive or obtain in relation to the Company's affairs or its customers or to the working of any process or invention or to any marketing technique which is carried on or used by the Company; and
- 6.6. comply with all policies, procedures, instructions, directions and customs of the Company.

## 7. **REMUNERATION**

- 7.1. The cost to company remuneration package of the Employee shall be - - - per month.
- 7.2. The salary element of the package shall be paid directly into the Employee's bank account and monthly in arrears on the 25<sup>th</sup> day of each month. Such package shall be subject to review by the Company from time to time, however it shall be within the sole and absolute discretion of the Company whether or not to grant an increase on review.
- 7.3. The Company may in its sole and absolute discretion pay the Employee a performance bonus having due consideration to the performance of both the Employee and the Company.
- 7.4. The Company may deduct from the Employee's salary all deductions (including tax) which the Company is lawfully obliged to do before payment to the Employee.

## 8. **INVENTIONS, DISCOVERIES & COPYRIGHT**

- 8.1. Any discovery or invention or secret process or improvement in procedure made or discovered by the Employee in the course and scope of the Employee's employment by the Company 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.
- 8.2. The Employee shall, if and when required by the Company, apply or join with the Company at its expense in applying for Letters Patent or other equivalent protection in the Republic of South Africa or in any other part of the world for such discovery, invention, process or improvement and shall at the Company's expense 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.
- 8.3. Insofar as may be necessary the Employee 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 the Employee may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of the Employee's employment by the Company. No

consideration shall be payable by the Company to the Employee in respect of this assignment.

- 8.4. 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 or devised or brought into being by the Employee or come into the Employee's possession during the course and scope of the Employee's employment by the Company and all copies thereof will 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.

9. **LEAVE**

- 9.1. The Employee shall be entitled to - - - working days leave on full pay in respect of each 12 (twelve) months' cycle of employment.
- 9.2. Leave is to be taken at some time or times as are convenient to the Company.
- 9.3. Leave may not be accumulated and must be taken after completion of the leave cycle.
- 9.4. The Employee shall be entitled to sick leave in accordance with the provisions of the Basic Conditions of Employment Act, 1997.

10. **CONFIDENTIALITY UNDERTAKING**

- 10.1. In performing the duties and functions with the Company, the Employee will have access to Confidential Information.
- 10.2. In relation to Confidential Information, the Employee agrees that during the Employee's employment by the Company and thereafter in perpetuity, regardless of the reason for the termination of the Employee's employment, the Employee shall:
- 10.2.1. hold the Confidential Information in strict confidence and will not, nor will the Employee permit any other person to, copy, reproduce, sell assign, license, market, transfer or otherwise dispose of, give and/or disclose the Confidential Information to any unauthorised person;
- 10.2.2. take all reasonable steps to minimise the risk of disclosure of the Confidential Information to unauthorised persons, and to ensure the proper and secure storage of any such Confidential Information;
- 10.2.3. not, during the Employee's employment by the Company or thereafter, use for the Employee's own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those of the officials of the Company whose province it is to know same, any of the Company's secrets or any other Confidential Information which the Employee may receive or obtain in relation to their affairs or their clients or to the working of any process or invention or to any marketing technique which is carried on or used by the Company; and

- 10.2.4. upon the termination of the Employee's employment, for any reason whatsoever, return to the Company the documents, papers or other materials relating to the Company or obtained or developed in the course of the Employee's employment by the Company or containing or derived from the Confidential Information and all copies thereof.

## 11. **INCAPACITY**

- 11.1. If the Employee shall at any time be incapacitated or prevented by illness, injury, accident or any other circumstances beyond the Employee's control (the "**Incapacity**") from discharging in full the Employee's duties hereunder, then the Company undertakes:
- 11.1.1. for the first 30 (thirty) days of such indisposition in any period of 1 (one) year, to pay the Employee at the full rate of the Employee's remuneration; and
- 11.1.2. for the next 60 (sixty) days of indisposition in the same period, the Company will have no obligation or requirement to pay the Employee remuneration and/or benefits, and this further period of 60 (sixty) days shall be unpaid, provided that if, after the lapse of 3 (three) months, the Employee is unable to resume or properly perform the Employee's duties, the Company shall be entitled forthwith and with immediate effect to cancel this Agreement on notice to that effect to the Employee, notwithstanding any provisions to the contrary contained in this Agreement.

## 12. **COMPANY RECORDS & ASSETS**

On termination of this Agreement, the Employee shall forthwith deliver to the Company all Confidential Information, including without limitation, records, documents, accounts, letters and papers of every description within the possession or control of the Employee relating to the affairs and business of the Company, whether or not such were originally supplied by the Company.

## 13. **INVOLVEMENT IN OTHER ENTITIES**

- 13.1. It is recorded that the Employee is not involved with other companies.
- 13.2. The resources of the Company may not be used for any other business operations.

## 14. **RETIREMENT**

- 14.1. The Company's retirement age is - - - years old and on the attainment thereof, this agreement and the Employee's employment by the Company shall automatically terminate. The Employee shall not have any claim against the Company in consequence of the termination of the employment relationship pursuant to the Employee having reached the aforesaid retirement age (including any extension thereof as envisaged by clause 14.2).
- 14.2. In the event that the parties agree that the Employee's employment will continue beyond the retirement age in terms of clause 14.1 above, or any extension thereof, then in the absence of an agreement in writing to the contrary, the retirement age shall be extended by a period/s of 1 (one) year at a time.

**15. GENERAL**

- 15.1. The termination of the Employee's employment for any reason whatsoever shall not affect the operation of any provisions of this Agreement to the extent to which they confer rights or impose obligations upon the Parties which are exercisable or enforceable after the Termination Date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Employee's employment shall furthermore not prejudice any rights that have accrued to the Parties as at the Termination Date.
- 15.2. No remedy granted by this Agreement shall exclude any other remedy available at law.
- 15.3. No amendment of this Agreement or any consensual cancellation thereof or any part thereof shall be binding on the Parties unless reduced to a written document and signed by them.
- 15.4. If any of the terms of this Agreement, such as the rate of remuneration payable to the Employee, are varied, the other terms shall, unless otherwise agreed in writing, remain of full force and effect.
- 15.5. No relaxation or indulgence which the Company may show to the Employee shall in any way prejudice or be deemed to be a waiver of its rights hereunder nor shall such relaxation or indulgence preclude or estop the Company from exercising its rights in terms of this Agreement in respect of any further breach.
- 15.6. This Agreement constitutes the whole agreement between the Parties and no warranties or representations whether express or implied have been given or made by the Company to the Employee.
- 15.7. The Company shall be entitled to cede and delegate all or any of its rights and obligations under this Agreement to the successor in title of the undertakings of the Company or any member thereof, whether such cession and delegation takes place before or after the Termination Date.
- 15.8. The Employee hereby expressly gives the Company permission to intercept, monitor, read, block or act upon any of the Employee's electronic and other communications (including any communications that are personal in nature) which shall include but not be limited to telephonic conversations, e-mails and any stored filed.
- 15.9. This Agreement shall be governed and interpreted by the laws of South Africa.
- 15.10. The Company shall be entitled, at its election, to institute all or any proceedings against the Employee in connection with this Agreement in any Magistrate's Court having jurisdiction of that Court, or in the High Court of South Africa.

**16. DOMICILIA CITANDI ET EXECUTANDI**

- 16.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or



communications of whatsoever nature (including the exercise of any option), the following addresses:

**The Company**

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Email: ---

**The Employee**

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Email: ---

- 16.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 16.3. Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in the Republic of South Africa or its postal address or its telefax number, provided that the change shall become effective on the 10th (tenth) business day from the deemed receipt of the notice by the other Party.
- 16.4. Any notice to a Party:
- 16.4.1. sent by courier in a correctly addressed envelope to it at its chosen address shall be deemed to have been received on the 3rd business day after sending (unless the contrary is proved);
- 16.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 16.4.3. sent by telefax to its chosen telefax number stipulated in clause 16.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 16.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_

Employer Name     **xxx**

**Employer Signature:** \_\_\_\_\_

Witness Full Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Signed at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_

Employee Name     - - -

**Employee Signature:** \_\_\_\_\_

Witness Full Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

**CONSENT OF EMPLOYEES WHOSE PERSONAL INFORMATION IS COLLECTED IN TERMS OF THE PROVISIONS OF SECTION 11 OF THE PROTECTION OF PERSONAL INFORMATION ACT (“POPIA”)**

I, the undersigned

\_\_\_\_\_

Identity Number: \_\_\_\_\_

Hereby agree to provide my Personal Information to **xxx** Registration Number - - - (“**the Company**”), on the express understating that:

1. This constitutes my consent, as required under Section 11(1)(a) of the Protection of Personal Information Act 4 of 2013 (“POPIA”).
2. The accounts department, finance department or any other relevant department of the Company will have access to my personal details which have been furnished to them for the purpose of my employment as an employee of the Company.
3. The Company will collect my Personal Information, which shall include, but not be limited to:
  - 3.1. Identity Number;
  - 3.2. Copies of identity documentation;
  - 3.3. Curriculum Vitae including education certificates and/or any Industry accreditation certificates;
  - 3.4. Financial information including, income tax number, proof of banking details, and any applicable SARS documentation;
  - 3.5. Medical information, including sick notes;
  - 3.6. Next of Kin information;
  - 3.7. Contact details, including cell phone number, home number, email address, postal and home address;
  - 3.8. Disciplinary Record including all Disciplinary Proceedings and Hearings instituted;
  - 3.9. Any other information that may be provided by me from time to time.
4. The Company will collect my Personal Information as required by POPIA from the following sources:
  - 4.1. Publicly accessible platforms and verification agencies; and
  - 4.2. Myself.
5. The personal data will be used by the Company only for the purposes that are related to my employment with the Company.

**SIGNED BY THE EMPLOYEE**

\_\_\_\_\_

**FULL NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**SIGNED FOR THE COMPANY**

\_\_\_\_\_

**FULL NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_