

These General Terms and Conditions (“Terms”) apply to all consultancy services that the Consultant will provide for or on behalf of the Principal.

1. DEFINITIONS

1.1 In these Terms the following words have the meanings set out below and derivative words will have a corresponding meaning:

“Affiliate” means, with reference to a party, any other party which: (a) directly or indirectly controls or is controlled by the first party; or (b) is directly or indirectly controlled by a party which also directly or indirectly controls the first party; and for the purposes of this definition, a party controls another party if such party has the power to direct or cause the direction of the management and policies of the other party, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by ownership of shares or other equity interests, the holding of voting rights or contractual rights, by being the general partner of a limited partnership, or otherwise.

“Agreement” means the Letter concluded between the Principal and the Consultant in accordance with Article 2.1 hereof and any documents referred therein or attached thereto, including, but not limited to, these Terms.

“Consultant” means the Party that will undertake the Services, as specified in the Letter.

“Confidential Information” means any information in whatever form (including, without limitation, in written, oral, visual or electronic form or any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of a Party for the time being confidential to the Party or its Affiliate(s) and trade secrets including, without limitation, technical data and know-how relating to the business of a Party or its Affiliate(s) or any of its or their suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (but not limited to) information that the Consultant creates,

develops, receives or obtains in connection with the Agreement whether or not such information (if in anything other than oral form) is marked confidential.

“Deliverables” means anything in writing or otherwise tangible (whether in hard copy or electronic format), which arises out of or is made, created or generated in the course of carrying out the Services.

“Expenses” means actual costs incurred by the Consultant reasonably necessary for carrying out the Services, including but not limited to, travelling, accommodation, subsistence, official translation charges and charges related to goods and services purchased on the Principal’s behalf.

“Fees” means the fees charged by the Consultant to the Principal for the provision of Services, as set out in the Letter, excluding VAT and Expenses.

“Force Majeure Event” means any circumstance not within a Party’s reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors; and interruption or failure of utility service.

“Intellectual Property Rights” means all intellectual property rights, including patents, rights to inventions, copyright and related rights, goodwill, rights in designs, rights in computer software, trade or service marks, business names and domain names, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade

secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Jurisdiction**” means the country, state or province where the Consultant has its corporate seat.

“**Letter**” means the (engagement) letter drawn up by the Consultant to which these Terms relate, detailing, among others, the Services, the Deliverables, Fees and/or Expenses.

“**Mandatory Policies**” means the Consultant’s Code of Conduct and relevant policies (on ethics, anti-slavery and human trafficking, anti-bribery, and corruption, data protection and privacy) reasonably established and amended by the Consultant from time to time, a copy of which will be delivered to the Principal.

“**Party or Parties**” means the Consultant or the Principal individually or collectively as the context may require.

“**Principal**” means jointly and severally each Party to whom (a) the Letter is addressed; and/or (b) the Services and/or the Deliverables are to be delivered.

“**Services**” means the services as described in the Letter to be rendered by the Consultant to the Principal, or such additional services as may be agreed upon between the Parties in writing from time to time by way of an annexure to the Letter.

“**Standards of Practice**” means, with reference to the Services and the supply thereof, the standards of practice that would usually be applied by professional consultants of such kind of Services in similar circumstances and at the relevant time.

“**Subcontractor**” means any party, other than the Consultant or its employees, engaged by the Consultant, through a sub-contract, to perform the Services, or any part thereof, for and on behalf of the Consultant.

“**VAT**” means value added tax chargeable under applicable tax legislation or any similar replacement, additional or alternative tax imposed in the Jurisdiction.

- 1.2 Capitalized words used in these Terms and not specifically defined in the Letter have the same meaning as provided in these Terms.

2. LETTER/AGREEMENT & TERMS

- 2.1 The Agreement between the Principal and the Consultant shall be effective and shall commence upon (a) receipt of Principal’s unqualified acceptance of the Letter in writing; (b) receipt of Principal’s instruction to commence with the Services; or (c) payment of Consultant’s premier invoice or any advance payment, whichever is earlier (the **Effective Date**). The Letter, as well as the acceptance or acknowledgement thereof, may be transmitted electronically and must be signed (electronically or in writing) by a duly authorised representative of both Parties to be enforceable. Neither Party will contest the enforceability of the Agreement transmitted and signed electronically.
- 2.2 These Terms form an integral part of the Letter, and the resulting Agreement (if any).
- 2.3 The Agreement is not concluded and the acceptance of the Letter shall not bind the Consultant if the Principal’s acceptance of the Letter, including these Terms, in any respect, differs from the Letter issued to the Principal by the Consultant.
- 2.4 Unless provided otherwise in the Letter, the Letter is valid for three (3) months following the date of issuance. Even though the Letter points out a period for its acceptance the Letter may be revoked by the Consultant, at any time, as long as the Letter has not been accepted by the Principal.
- 2.5 The Letter is based on the information provided by the Principal to the Consultant at the time the Letter was drafted.

- 2.6 The applicability of the purchase and other terms and conditions of the Principal are expressly refuted by the Consultant and the (purchase) terms and conditions of the Principal do not apply to the Agreement (not even additionally), unless such terms and conditions have been explicitly accepted by the Consultant in writing, in which case a reference to such terms and conditions will be incorporated in the main body of the Letter by the Consultant. Unless provided otherwise in the Letter, these Terms shall prevail should there be any conflict or inconsistency between the provisions of the terms and conditions of the Principal and these Terms.
- 2.7 These Terms may not be modified or eliminated, unless such modified or eliminated provisions have been explicitly accepted by the Consultant in writing signed by a duly authorised representative of both parties, in which case specific provisions to that effect will be incorporated in the main body of the Letter by the Consultant, referring to the provisions of these Terms to be modified or eliminated and shall then apply exclusively to the Agreement for which they were agreed.

3. RELATIONSHIP OF THE PARTIES

- 3.1 The Parties are independent legal subjects, and no employee of either Party shall be considered to be an employee of the other Party. The Principal and the Consultant specifically and expressly disclaim any intention to create a partnership, consortium or joint venture.
- 3.2 Save to the extent otherwise provided in the Letter, neither Party shall act as the agent of the other Party and neither Party shall have the authority (or represent that it has the authority) to: (a) bind the other Party; or (b) incur any liability on behalf of the other Party.

- 3.3 Nothing in these Terms shall, except as otherwise agreed in the Agreement, be construed as creating an exclusive relationship between the Principal and the Consultant, or as precluding or limiting, in any way, the right of the Consultant from rendering services of any kind or nature whatsoever to any third party as the Consultant in its sole discretion deems appropriate.
- 3.4 A person who is not a Party to the Agreement shall not have any rights or obligations under the Agreement, or to enforce any of its provisions.
- 3.5 The relationship between the Parties shall be one of good faith and each Party therefore undertakes to observe good faith towards the other Party, and to act reasonably with respect to matters that relate to the Agreement.
- 3.6 The Parties undertake, either during the Term of the Agreement (hereinafter defined) or for a period of twelve (12) months after its termination or expiration, not to (directly or indirectly) solicit any of the other Party's employees (other than through a general public advertisement) who is or has been involved in the performance of the Agreement, without the prior written consent of the other Party. Breach of this provision will render the breaching Party liable to pay, as a genuine and agreed pre-estimate of damage, an amount equal to six (6) months' total cost to the affected Party's remuneration of the employee so recruited.

4. EXECUTION OF THE AGREEMENT

- 4.1 The Consultant shall carry out the Services and provide the Deliverables as specified in the Agreement.
- 4.2 The Consultant will carry out the Services with due professional skill and care, in accordance with the Agreement (including, if any, the services levels set forth the Letter), and otherwise all Standards of Practice.

- 4.3 In the performance of the Services the Consultant will apply professional personnel, who are, in the reasonable opinion of the Consultant, properly qualified, trained, competent, skilled and experienced.
- 4.4 The Consultant has the right to determine the means, manner and methods by which the Services will be performed, with due regard and observance of (a) the terms and conditions contained in the Agreement; and (b) where possible, the needs and wishes of the Principal.
- 4.5 The Consultant shall use reasonable efforts to carry out the Services and provide the Deliverables on such milestones and dates as set forth in the Letter; however these milestones and dates shall not be deemed to be fixed deadlines unless agreed otherwise in the Letter. In case of suspension of the Services or a Force Majeure Event, all milestones and dates shall be automatically extended by a period of time equal to the period of suspension or Force Majeure Event.
- 4.6 The Consultant shall, where required, cooperate with third parties appointed by the Principal in relation to the Services, provided that the Consultant shall owe no duty to such third parties in terms of the Agreement.
- 4.7 Either Party may nominate a manager or equivalent senior person responsible for the execution or oversight of the execution of the Agreement in the Letter, who will: (a) be available to consult with each other, on reasonable notice, on matters relating to the performance of the Agreement; and (b) accept all notices and correspondence relating to the performance of the Agreement.
- 4.8 The Principal agrees that Consultant's employees may be unavailable for short periods of time for reasons, including but not limited to, annual leave, internal meetings and training, and the Consultant shall for these short periods take reasonable steps to minimise any disruption to the Services. The Consultant may, subject to prior notification to the Principal, replace employees with other employees of equivalent qualifications, competences, skills and experience.
- 4.9 The Services provided by the Consultant and any Deliverables prepared by the Consultant shall be only for the Principal's use and benefit.
- 4.10 The Principal agrees that reliance on the Deliverables or any other output of the Services is limited to the facts and representations set out therein, which represent Consultant's review and/or analysis of facts, information, documents and/or other materials in existence at the time of the performance of the Services only.
- 4.11 All warranties, conditions and other terms implied by state or common law (including, but not limited to, any implied warranties of merchantability and fitness for the purpose) are, to the fullest extent permitted by applicable law excluded from the Agreement.
- 4.12 No performance, Deliverables, information or advice provided by the Consultant or its employees or Subcontractors will create a warranty or otherwise increase the scope of any warranty provided in terms of the Agreement.

5. SUB-CONTRACTING

- 5.1 The Consultant will not subcontract any part of the Services without the prior written consent of the Principal, which consent shall not be unreasonably withheld or delayed; provided that the Consultant may, without consent, subcontract the whole or any part of the Services to its Affiliates.
- 5.2 The Principal acknowledges that the Consultant is solely liable for its approved Subcontractors (including the employees of the Subcontractor) to the Principal and the Consultant will be responsible

for all work, and acts, omissions and defaults of any Subcontractor as if they were the work, acts, omissions or defaults of the Consultant. The Principal will not bring any claim or proceeding of any nature in connection with this Agreement against any Subcontractor.

5.3 The Principal acknowledges that the Consultant is the prime service provider to the Principal and shall be the prime interface with the Principal in respect of the Agreement and the Services contemplated thereby. Save for communication required for purposes of the day to day rendering of the Services, the Principal shall therefore only communicate with the Consultant in relation to all rights, obligations and other material matters to this Agreement.

6. CO-OPERATION OF THE PRINCIPAL

6.1 The Principal undertakes to provide the Consultant, at its own expense, with all information which the Consultant requires for the timely and proper execution of the Services, and the Principal represents and warrants that any information supplied by the Principal to the Consultant is true, accurate, representative, complete and is not misleading in any respect. The Principal further acknowledges that the Consultant will rely on such information provided by the Principal (without any duty to confirm or verify the accuracy thereof) in order to provide the Services and the Consultant shall not be liable for the consequences of any information provided not being true, accurate, complete or being misleading.

6.2 The Principal shall provide the Consultant with full, prompt and reasonable access to its personnel, external advisors, suppliers, contractors and other relations, premises and facilities which the Consultant reasonably believes to be required for the execution of the Services. If specific personnel

are required, this will be expressly stated in the Letter.

6.3 Upon the reasonable request of the Consultant, the Principal will make certain materials, equipment and/or facilities available to the Consultant as may be required for the execution of the Services.

6.4 The Principal shall obtain all and any approvals, licenses and security clearances of the Consultant by the Principal's clients or others controlling third-party sites where Consultant shall render the Services.

6.5 The Principal shall undertake to keep the Consultant apprised of any events, developments or changes in circumstance relating to the provision of the Services.

6.6 The Principal shall apply its independent business judgement to evaluate the Services and any Deliverables or output arising from the Services and any Deliverables. The Principal shall evaluate the Services, Deliverables and any such output in the context of its business and make an independent decision on whether it wishes to implement or act on the Services, Deliverables or output arising from the Services and any Deliverables.

6.7 The Principal is responsible for acting as it sees fit on the basis of the use of the Deliverables or any other use deriving from the Services. The Consultant, and its employees and Subcontractors shall not be liable for any loss or damage to the Principal or any third party for any actions taken or not taken on the basis of the use of the Deliverables or use deriving from the Services except where it can be proven that such loss or damage has been caused by the gross negligence or wilful misconduct of the Consultant.

6.8 The Principal agrees that it will not use the Deliverables issued by the Consultant pursuant to the Agreement in a misleading manner and

that the Principal shall not distribute or publish the content of any Deliverables or any extracts, excerpts or parts thereof, without the prior written consent of the Consultant.

- 6.9 The Principal undertakes to comply with all applicable legislation and regulations in the field of protection of personal data relative to the processing of personal data by the Principal in connection with the Agreement. In respect of any personal data originating from third parties or provided by any third party on the Principal's instructions the Principal declares that it has proper authority and consent from the relevant person to disclose such personal information;
- 6.10 The Consultant shall neither be in breach of this Agreement nor liable to the Principal for any breach of this Agreement if such breach is a result of the Principal's failure (or any of its directors, agents or employees) to comply with its obligations set out in this Article 6. The Principal furthermore acknowledges that the impact of any failure by the Principal to perform its obligations set out herein on the provisions of the Services by the Consultant will not affect the Principal's obligations under the Agreement for payment of the Fees pursuant to Article 8.

7. LEGAL COMPLIANCE

- 7.1 Each Party shall comply with all applicable laws, statutes and regulations from time to time in force having jurisdiction over the performance of its obligations under this Agreement.
- 7.2 Each Party shall comply with the Mandatory Policies.
- 7.3 The non-breaching Party may terminate the Agreement with immediate effect by giving written notice to the Party in breach if such Party commits a breach of Article 7.2.

8. PAYMENT & INVOICING

- 8.1 The Principal shall in consideration for the Services pay to the Consultant the Fees, the Expenses and any VAT.
- 8.2 Unless otherwise stated in the Letter, the Agreement shall not be construed as to perform the Agreement at a fixed price.
- 8.3 The Consultant shall, from time to time, invoice the Principal for the Fees and Expenses. The Principal shall pay each invoice within thirty (30) days of the receipt of invoice pertaining to the Agreement.
- 8.4 The Parties agree that payments may be effected by electronic transfer of funds or as otherwise agreed in the Letter. The Consultant's banking details are set out on its invoices. Electronic invoicing and PDF invoices are acceptable.
- 8.5 The Principal will be responsible for arranging foreign exchange clearance and for meeting all related costs in the Jurisdiction to which the funds are being remitted.
- 8.6 Should a dispute arise relating to any invoice, the Principal must notify the Consultant of the disputed amount and the reasons for the dispute in writing within thirty (30) days of the date of the disputed invoice, failing which the Principal shall be deemed to have accepted the invoice as due and payable. In the event the Principal withholds payment of a disputed invoice, the Consultant shall be entitled to suspend the rendering of the Services until the dispute is resolved. Notwithstanding any of the foregoing, the Principal shall be obliged to pay any undisputed part of the invoice.
- 8.7 If any invoice is not paid on the due date, the Consultant shall have the right to charge, and the Principal shall pay interest on the amount, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate of two per cent (2%) per month.

8.8 In the event the Principal fails to pay any invoice when due the Consultant may, without having to obtain a court order and without having to pay any damages or penalties: (a) suspend the performance of its obligations under the Agreement and/or the performance of the Services; or (b) terminate the Agreement by giving five (5) days' written notice. As a consequence of termination all Fees and Expenses that the Principal owes under the Agreement shall become immediately due and payable.

8.9 The Fees of the Consultant may increase on an annual basis, in accordance with the appropriate (in which decision the Consultant acting reasonably shall be the sole judge) consumer price index in the Jurisdiction.

9. CONFIDENTIALITY

9.1 Where a Party (the **Receiving Party**) obtains Confidential Information of the other Party (the **Disclosing Party**) in connection with the Agreement it shall: (a) keep that Confidential Information confidential, by applying the same level of care that it uses for its own Confidential Information and in no case shall the degree of care be less than a reasonable degree of care; (b) use that Confidential Information only for the purposes of performing its obligations under this Agreement; and (c) not disclose or divulge that Confidential Information to any third party without the prior written consent of the Disclosing Party.

9.2 If the Receiving Party becomes aware of any unauthorised disclosure of Confidential Information, it shall immediately inform the Disclosing Party and the Parties shall seek to find a remedy to the situation and prevent its further unauthorised use.

9.3 The Receiving Party may disclose the Disclosing

Party's Confidential Information on a "need to know" basis to: (a) any legal advisers and statutory auditors that it has engaged for itself; (b) any regulator having regulatory or supervisory authority over its business; (c) any director, officer or employee of the Receiving Party; (d) its Affiliates and Subcontractors and their directors, officers or employees, where the Receiving Party is the Consultant (the **Authorised Recipients**), provided that the Receiving Party shall in each case first advise the Authorised Recipients of the conditions set out herein and shall ensure that the Authorised Recipients are bound by conditions of confidence in respect of the Confidential Information no less onerous than those set out in these Terms. The Receiving Party will be fully and solely responsible to Disclosing Party for its Authorised Recipients and Authorised Recipients' compliance with the Terms.

9.4 The obligations of confidentiality referred to in this Article will not apply to any information which: (a) was known to or in the possession of the Receiving Party before such information was imparted by the Disclosing Party; (b) is legitimately in or subsequently comes into the public domain other than by breach by the Receiving Party of its obligations hereunder or under any other agreement on confidentiality between the Parties or any of their Affiliates; (c) is received in good faith by the Receiving Party from a third party who has no obligations of confidence to the Disclosing Party in respect of it and who imposes no obligations of confidence upon the Receiving Party; (d) is approved for release or use by written authorisation of the Disclosing Party; (e) is developed by the Receiving Party independently without reference to the Confidential Information, as demonstrated by relevant evidence; or (f) is required to be disclosed by legal or regulatory obligation.

- 9.5 All Confidential Information is and shall remain the property of the Disclosing Party; provided however that the Consultant shall have an irrevocable, perpetual, non-exclusive right to use and reproduce the Principal's Confidential Information in any Deliverable, subject always to Article 9.1.
- 9.6 Within thirty (30) days from the date of termination or expiration of the Agreement, the Receiving Party shall cease to use the Confidential Information and shall promptly return or destroy all Confidential Information, together with any copies or extracts thereof, as so requested by the Disclosing Party.
- 9.7 With respect to archival storage, the Principal agrees that the Consultant may retain the Principal's Confidential Information in its archive for the period required by its quality and assurance processes or by applicable law.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 For the purpose of this Article **Consultant's IPR** means any and all Intellectual Property Rights of the Consultant in any tools, methodologies, services, documents and techniques of any nature whatsoever, which have been created or acquired by the Consultant before or otherwise than in the performance of the Agreement and which are used by the Consultant in connection with or to perform the Services or otherwise are necessary for exploitation of the Services, as well as all Intellectual Property Rights in and to all (new) documents, tools, methodologies, services and techniques of any nature whatsoever which are generated by or for the Consultant in the performance of the Agreement. The Principal will execute such documents and/or take such other steps as may reasonably be necessary to vest Consultant's IPR in the Consultant or its nominee.
- 10.2 For the purpose of this Article **Principal's IPR** means all Intellectual Property Rights of the Principal whether provided directly or indirectly by the Principal to the Consultant for the purpose of the Agreement.
- 10.3 The Principal acknowledges that all Consultant's IPR and any developments, modifications, or enhancements to the Consultant's IPR are and will at all times remain vested in the Consultant.
- 10.4 The Consultant hereby grants to the Principal, upon full and final payment by the Principal of all amounts owing to the Consultant, a royalty-free, world-wide, non-exclusive, non-transferable right to use the Consultant's IPR in and to the Services, the Deliverables or output for the purpose of the Agreement ONLY and conditionally upon compliance with the Terms. The Principal shall not, without the prior written consent of the Consultant, alter or make any addition to the Consultant's IPR. The Principal shall not alter, deface or remove any reference to the Consultant as being the rightful owner of the Consultant's IPR. If the Principal commits a breach of any material term or condition of the Agreement, the Consultant may withdraw the right of use set forth in this Article.
- 10.5 The Consultant warrants, exclusively to the Principal, that the Deliverables produced in relation to the Services will be the original work of the Consultant, its employees or Subcontractors, unless a Deliverable indicates otherwise, and that the Deliverables to the best of Consultant's knowledge will not infringe or misappropriate the Intellectual Property Rights of any third Party.
- 10.6 The Consultant will indemnify and hold harmless the Principal against all reasonably incurred claims, losses, damages, costs (including reasonable legal fees), expenses and liabilities

suffered or incurred by the Principal as a result of any claim that any Services or Deliverables provided in the performance of the Agreement infringe the Intellectual Property Rights of any third party.

10.7 The Principal shall, within forty-eight (48) hours of receipt of an infringement claim by a third party, notify the Consultant in writing, by registered mail with acknowledgement of receipt.

10.8 The warranty and indemnity set forth in Articles 10.5 and 10.6 shall not apply to an infringement claim: (a) resulting from the Consultant's compliance with specific written instructions of the Principal directing a change in the specifications for the Deliverables or directing a manner of performance of the Services or requiring the use of specifications not normally used by the Consultant; (b) resulting from additions to or changes in any Services or Deliverables or any part thereof furnished under the Agreement if the Principal or another person acting under the direction of the Principal made such changes; (c) directly or indirectly caused by Consultant's reliance on any information provided to the Consultant by the Principal (or another person acting under the direction of the Principal); or (d) not notified to the Consultant by the Principal in accordance with Article 10.7 hereof.

10.9 The Consultant shall, at its request, have sole control over the defence of any infringement claim and over all negotiations in respect of such a claim and the Principal shall not accept any liability in relation to such a claim without Consultant's prior written consent. Furthermore, the Principal shall provide all such documents, information and assistance and do all such acts and things as the Consultant may reasonably require in relation to such infringement claims.

10.10 Neither Party will use or reference any trade names or trademarks of or used by the other Party or any of its Affiliates except as authorised by the other Party.

11. DEFECTS

11.1 A defect shall be deemed to exist in relation to the Services or the Deliverables if the Services or the Deliverables are not in material conformity with Article 4.2 hereof.

11.2 Upon completion of the Services or delivery of the Deliverables, the Principal shall evaluate the Services and Deliverables, and will report any defects to the Consultant within thirty (30) days of completion of the Services or delivery of the Deliverables.

11.3 In the event of a defect attributable to the Consultant its employees or Subcontractors, the liability of the Consultant, shall be limited to one or more of the following: (a) in the event the defect is capable of remedy, to perform (repair) Services as may be reasonably required to correct any defects in or to complete the Services and/or the Deliverables, at its own expense; or (b) in the event the defect is not capable of remedy or not remedied within thirty (30) days of notice of the defect being received by the Consultant, to refund any Fees paid by the Principal for the defective Services and/or Deliverables.

12. LIABILITY & INSURANCE

12.1 In no event shall the Consultant's cumulative overall liability for any and all claims, demands, causes of action, suits, proceedings, remedies, fines, penalties, taxes, losses, judgments, liens, liabilities, indemnities, costs, awards, damages (including any punitive and/or exemplary damages) or expenses of any kind and character

(including reasonable attorney's fees and other legal-related expenses) (Claims) arising out of, relating to or in connection with the Agreement exceed the amount of Fees paid by Principal in respect of the Services that gave rise to such Claim. Further, in no event shall the Consultant or any of its directors, officers, employees, advisors, Subcontractors, or Affiliates be liable under the Agreement to the Principal or any third party for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, or lost profits, revenues or business opportunities, diminution in value or damage to reputation and/or goodwill, arising out of, relating to, or in connection with the Agreement, regardless of (a) whether such damages were foreseeable; (b) whether or not the Principal was advised of the possibility of such damages; and (c) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based.

- 12.2 The Principal shall indemnify, hold harmless, and, upon the Consultant's written request, defend the Consultant and any of its directors, officers, employees, advisors, Subcontractors, or Affiliates from and against any and all Claims by any third party (including but not limited to the directors, officers, employees, advisors, Subcontractors, subsidiaries or Affiliates of the Principal) arising out of, relating to or in connection with the Agreement to the extent that the aggregate of any such Claims exceeds Consultant's cumulative overall liability set forth in Article 12.1.
- 12.3 Any representative of the Consultant or any of its directors, officers, employees, advisors, Subcontractors, or Affiliates shall have the benefit of the limitations, exclusions and indemnities set forth in this Article 12.
- 12.4 The Principal shall be prohibited from bringing legal action following the expiry of three (3)

months from the day upon which the Principal became aware of the Claim. In any event, Claims shall be time-barred by the expiration of six (6) months after the event causing the damage.

- 12.5 The Articles 12.1, 12.2, 12.3, 12.5 and 12.8 shall apply irrespective of cause and notwithstanding the Consultant's negligence or breach of duty (whether statutory or otherwise) and irrespective of, whether such Claims are based or claimed to be based on negligence (including sole, joint, concurrent or otherwise), breach of any warranty, condition or term (statutory or otherwise), breach of agreement, statute, strict liability or otherwise and irrespective of any Claim in tort, under contract or otherwise at law. 11.7.
- 12.6 The Articles 12.1, 12.2, 12.3 and 12.5 shall not apply if the Consultant or any of its directors or senior managers has acted fraudulently or its acts or omissions constitute wilful concealment, wilful intent, gross negligence or wilful recklessness. In addition, nothing in this Article 12, is intended or will limit or exclude the Consultant's liability to the extent such liability cannot be limited or excluded by the applicable law.
- 12.7 The Fees paid by the Principal and the other provisions of the Agreement reflect the allocations of risk between the parties. The provisions of this Article 12 are an essential element of the basis of this Agreement.
- 12.8 Each party shall use all reasonable endeavours to mitigate any Claims arising out, relating to or in connection with the Agreement.
- 12.9 Provided it has complied with the provisions of this Article 12.9, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by a Force Majeure Event (the Affected Party), the Affected Party shall not be in breach of the Agreement or otherwise liable

for any such failure or delay in the performance of such obligations. The Affected Party shall (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than sixty (60) days, the Party not affected by the Force Majeure Event may terminate the Agreement by giving thirty (30) days written notice to the Affected Party whereupon the provisions of Article 13.4 shall apply.

12.10 Both Parties shall take out adequate insurance policies at their own expense so as to sufficiently cover their respective liabilities under the Agreement, and shall, upon written request of the other Party, provide written evidence of the existence of such policies.

13. DURATION & TERMINATION

13.1 For the purpose of this Article **Termination Event** means any of the following: (a) a Party commits a breach of any material term or condition of the Agreement, the effect of which breach is or may be substantial; (b) in case of theft, wilful misconduct, gross negligence, fraud or fraudulent misrepresentation by a Party when performing its obligation in connection with the Agreement; (c) the affected Party stops or suspends, or threatens to stop or suspend payment of all or a material part of its debts or is unable to pay its debts as

they fall due; or (d) any step is taken with a view to the administration, winding up or bankruptcy or any similar proceedings in the Jurisdiction of the affected Party.

13.2 The Agreement shall commence on the Effective Date and shall, unless terminated earlier in terms of the Agreement, automatically terminate once the Services have been rendered by the Consultant and all Fees, Expenses and VAT have been paid by the Principal (the **Term of the Agreement**).

13.3 Upon the occurrence of a Termination Event or thereafter, the Party not experiencing the Termination Event may: (a) in the case of a Termination Event which is not capable of remedy, terminate the Agreement forthwith by written notice; and (b) in the case of any other Termination Event, serve notice to the other Party specifying the Termination Event and requiring it to be remedied within thirty (30) days, and if the affected Party fails to remedy the Termination Event in accordance with the Agreement within such thirty day period, the other Party may terminate the Agreement forthwith by written notice.

13.4 Upon termination of the Agreement for any cause, the Principal shall pay to the Consultant, within five (5) business days of the date of termination, all Fees and any Expenses and VAT payable under the Agreement for the Services performed up to the termination. Termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties which have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

14. MISCELLANEOUS

- 14.1 If there is a conflict or inconsistency between the provisions of the Letter and these Terms, the provisions of the Letter will prevail to the extent required to resolve such conflict or inconsistency.
- 14.2 The Agreement (including these Terms) constitutes the entire agreement between the Consultant and the Principal relating to the Services and supersedes any other agreement, document or pre-contractual statement relating to the same subject matter.
- 14.3 Termination or expiration of the Agreement will not affect the continuing rights and obligations of the Consultant or the Principal under any provision which is expressed or intended to survive such completion, termination or expiration or which is required to give effect to such termination or expiration. Without limiting the foregoing, the provisions contained in these Terms that the Parties intend to survive, including but not limited to those in relation to payment, confidentiality, intellectual property rights, warranties, indemnities, limitations of liability, dispute resolution and obligations related to termination, all survive termination and expiry of the Agreement for the benefit of the Party to whom they are given.
- 14.4 The Parties agree that the rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting of the Agreement, shall not apply.
- 14.5 A Party's waiver of any breach of the other Party's obligations will not be binding unless the waiver is in writing, signed by a duly authorised representative of the waiving Party, and no waiver will limit or affect the waiving Party's rights with respect to any other or future breach.
- 14.6 If any provision of the Agreement should be invalid, illegal or unenforceable in any respect or in any circumstance, the validity, legality or enforceability of such provision in any other respect or circumstance will not in any way be affected or impaired thereby and the Parties will endeavour to replace the invalid, illegal or unenforceable provision with a similar provision and the validity, legality or enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired thereby.
- 14.7 The Parties will from time to time and at all times do all such further acts and execute and deliver all such further deeds and documents as reasonably required in order for the Parties to fully perform and carry out their obligations in accordance with the Agreement.

15. DISPUTE RESOLUTION VENUE, APPLICABLE LAW AND (EXTRA) JUDICIAL COSTS

- 15.1 The Parties shall endeavour to settle amicably any conflicts arising from or relating to the Agreement. In case with regard to such conflicts, no amicable settlement is reached, all disputes which may arise between the Consultant and the Principal shall be settled by the competent court in the Jurisdiction.
- 15.2 The Agreement between the Consultant and the Principal will be exclusively governed by and construed in accordance with the laws of the Jurisdiction.