



1 BASIS OF APPOINTMENT

Any appointment of Digby Wells and Associates (South Africa) (Pty) Limited ("the Consultant") by a party ("the Client") contracting Digby Wells to undertake a defined Scope of Work will be subject to the following Standard Terms and Conditions.

2 PAYMENT

- 2.1 Subject to the satisfactory completion of the contracted services as detailed in the attached proposal, the Client shall pay the Consultant the amount agreed in the Contract of Engagement in respect of fees, excluding VAT and reasonable disbursements incurred.
- 2.2 Wherever possible receipts will be provided for disbursements claimed.
- 2.3 The Client will make the above payments within 30 days of submission of each written invoice or upon receipt of the final report or other deliverable, as the case may be and receipt of a written invoice from the Consultant, subject to:
 - 2.3.1 All work having been completed to a satisfactory professional standard, in accordance with the Scope of Work and approved by the Consultant and by the Client; and
 - 2.3.2 All requested amendments or additions having been made to the work.
- 2.4 Should the Client not have paid any invoice within thirty (30) days of receipt thereof, the Client shall be liable for interest for late payment. Such interest shall be calculated and payable at a rate of two (2) percentage points above the rate of interest applicable from time to time to prime borrowers at the Consultant's bank from the due date for payment.
- 2.5 Should the Client dispute any aspect of an invoice submitted by the Consultant, the Client shall give notice with reasons before the due date for payment and shall not delay payment of the undisputed amount.
- 2.6 Should the Client allege a claim against the Consultant or any third party, such claim shall be dealt with on its own merits. The Client is not entitled to withhold payment to the Consultant on this account.
- 2.7 The Client shall make payment without any set-off and hereby waives all rights to any such set-off.

3 LIMITATION OF LIABILITY

- 3.1 The maximum amount of compensation payable by the Consultant to the Client in respect of any liability, whether from failure to perform or from any negligence, is limited to an amount of twice the fees payable by the Client to the Consultant in terms of Clause 2.
- 3.2 The Client waives all claims against the Consultant so far as the aggregate of compensation which might otherwise be payable, exceeds the aforesaid maximum amount of compensation payable.
- 3.3 All claims against the Consultant shall lapse after a liability period of three (3) years, which period shall commence on the earlier of:
 - 3.3.1 practical or other equivalent completion of the works;
 - 3.3.2 completion by the Consultant of his services;
 - 3.3.3 suspension, postponement, expiry, cancellation or termination of all the contracts;
 - 3.3.4 cancellation or termination of this agreement.
- 3.4 The Client hereby indemnifies the Consultant against all claims by third parties which arise out of or in connection with services rendered under this agreement:
 - 3.4.1 which exceed the maximum amount of compensation in terms of 5.1, and
 - 3.4.2 for the full amount of any such claims after the period stated in 5.3.



4 SELF-EMPLOYED STATUS, TAXATION AND INSURANCE

- 4.1 The agreement between the Client and the Consultant shall not be construed as initiating, creating or establishing a permanent employment relationship. It is agreed that the Consultant provides the services set out in section 1 as an independent contractor.
- 4.2 The Consultant will ensure that it and its employees are fully covered by insurance, including professional indemnity, personal accident, travel and medical insurance in respect of the Scope of Work which it is to execute in terms of the agreement.

5 PROFESSIONAL CONDUCT

- 5.1 The Consultant shall represent the Client in a professional, efficient and ethical manner that will not diminish the good name and reputation of the Client. The Consultant will not engage directly or indirectly in any activities that are likely to be in conflict with the Client's interests in the project.
- 5.2 The Consultant will observe all reasonable instructions given by the Client's management.
- 5.3 The Client undertakes in favour of the Consultant that it shall not either as principal, partner, shareholder, consultant, advisor, employee or in any other like capacity, and whether alone or jointly with or as agent for any other person –
 - 5.3.1 employ or offer employment to or cause employment to be offered to any person who was employed by the Consultant as at the date of conclusion of this Agreement or at any time within 12 months immediately preceding that date; and
 - 5.3.2 whether for its own benefit or that of others make use or attempt to make any use of or avail itself of or derive profit or other benefit from any information or knowledge which specifically relates to the affairs of the Consultant or any of its clients which it may have acquired by reason of this Agreement.

6 CONFIDENTIALITY AND COPYRIGHT

- 6.1 Certain Confidential Information will be exchanged between the parties in the performance of the Scope of Work and they accordingly agree to the following terms and conditions in regard to the Confidential Information:
- 6.2 For the purpose of this agreement "Confidential Information" means and includes:
 - 6.2.1 all currently available and all future information of whatsoever nature relating to any of the affairs or activities of the Client or the Consultant; or relating to the identity, affairs or activities of any of their clients; or arising out of the implementation or preparation of work for any of the Consultant's clients; howsoever such information may be disclosed or communicated
 - 6.2.2 analyses, products, compilations, studies, layouts, formats, plans and other documents which contain or otherwise reflect or are generated from any such information as is specified above, including all copies, photographs, facsimiles, duplicates or other reproductions of such documents;but shall exclude any information which:
 - 6.2.3 is or falls within the public domain or is or otherwise becomes public knowledge by any means other than by breach by the parties or any of the parties' agents, advisers or employees of any obligation contained herein; or
 - 6.2.4 is released from the provisions of this agreement by written consent given by the other party.
- 6.3 With regard to the Confidential Information, the parties confirm and agree that, the party receiving the Confidential Information shall at all times whether or not the Scope of Work has been completed:
 - 6.3.1 keep and safeguard the Confidential Information as private and confidential and not disclose it to any other person;
 - 6.3.2 not make any use of it nor at any time permit any other unauthorised person to use it;



- 6.3.3 only be entitled to disclose the Confidential Information to the receiving party's responsible officers, employees and advisers only in the event that, and to the extent that, such disclosure is reasonably necessary;
- 6.3.4 inform every person to whom disclosure of any of the Confidential Information is permitted by section 7, prior to making such disclosure, of the confidential nature of the information and of the terms imposed by this agreement, and require them to abide by the same.
- 6.4 The Client shall have no claim against the Consultant for any liability, loss or damages suffered either, directly or indirectly, or for any reason whatsoever where the Consultant utilised incorrect Confidential Information supplied by the Client.
- 6.5 The party receiving Confidential Information shall, within seven (7) calendar days of any request by the other to do so, or on the termination of the relationship between the parties, deliver to the disclosing party all Confidential Information obtained from the other; provided that the receiving party shall be entitled to hold a copy of the Confidential Information for its own records, but strictly subject to the same duty of confidentiality.
- 6.6 Copyright in any work which is eligible for Copyright and which is produced by the Consultant in accordance with the Scope of Work, shall only pass to the Client when all payments in terms of this Agreement have been made in full. The Consultant shall not be liable in any way for the use of any of the information other than as originally intended for the Project and the Client hereby indemnifies the Consultant against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

7 BREACH

- 7.1 If a Party (the Defaulting Party has breached any of the material provisions of the Agreement, the other Party (the Innocent Party) may (without prejudice to any of its other legal rights):
- 7.1.1 request the Defaulting Party in writing to remedy such breach within 7 (seven) days;
- 7.1.2 If the Defaulting Party remains in breach, claim and insist on full compliance and specific performance by the Defaulting Party and claim damages and/or other relief from the Defaulting Party; or cancel the Agreement forthwith by giving the Defaulting Party written notice and claim damages and/or relief from the Defaulting Party
- 7.2 Should either party be prevented by a cause beyond its control from performing its obligations in terms of this agreement, it may cancel or suspend this agreement without prejudice to the accrued rights the parties have against one another.

8 WHOLE AGREEMENT AND APPLICABLE LAWS

The terms and conditions of this agreement constitute the whole agreement and may only be amended by agreement in writing signed by the parties and shall be governed and construed in all respects in accordance with the laws of South Africa. Both parties submit to the exclusive jurisdiction of the South African courts in respect thereof.

9 SETTLEMENT OF DISPUTES

In the event of any dispute arising in regard to the interpretation of this agreement, or the performance of any of its terms, or in regard to any claims then the parties shall attempt to resolve such dispute by negotiation with their respective chief executive officers, assisted if necessary by mediation, and if the dispute can still not be resolved, it shall be referred to arbitration in accordance with the provisions of the Arbitration Act of 1965, read with the rules of the Arbitration Foundation of Southern Africa current at the date the Arbitrator is appointed. An Arbitrator shall be appointed by agreement between the parties to resolve such dispute, and in the event of the parties not being able to agree on an arbitrator within 15 days of the dispute arising, then the appointment of an Arbitrator shall be made by the Chairman of the Arbitration Foundation of Southern Africa. The Arbitrator's decision shall be binding upon the parties.