



INDEPENDENT CONTRACTOR AGREEMENT

between

FOSKOR PROPRIETARY LIMITED

(Registration No. 1951/002918/07)

(the "**Company**")

and

[Insert Name]

(Identity Number: [●])

(the "**Consultant**")

Table of Contents

	Page No
1. Interpretation	2
2. Definitions	2
3. Appointment of the Consultant.....	5
4. Duration.....	5
5. Status of the Consultant.....	6
6. Services.....	6
7. Fees	8
8. Tax Affairs	8
9. Representations and Disclosure of Conflict of Interest.....	9
10. Professional membership and costs	10
11. Professional Insurance	10
12. Professional Indemnity.....	11
13. Restraint	11
14. Confidentiality	13
15. Intellectual Property	14
16. Interception and monitoring of electronic communications and systems ...	16
17. Non-disparagement	17
18. Personal Information.....	17
19. Breach	18
20. Termination.....	19
21. Return of property.....	20
22. Dispute resolution	20
23. Urgent relief	21
24. Continued performance	21
25. Criminal and background checks	22
26. Sub-contracting	22
27. <i>Domicilium citandi et executandi</i>	22
28. Stipulation for the benefit of a third party.....	23
29. Independent advice	23
30. General.....	23
Annexe A Services.....	25

1. Interpretation

- 1.1 The headings of the clauses in this Agreement are for the purpose of convenience and reference only, and shall not be used in the interpretation of, or modify or amplify, the terms of this Agreement, or any clause hereof.
- 1.2 In this Agreement, unless a contrary intention clearly appears, words importing:
- 1.2.1 any one gender includes the other two genders;
 - 1.2.2 the singular includes the plural and *vice versa*; and
 - 1.2.3 natural persons include legal persons and *vice versa*.

2. Definitions

In this Agreement (if not inconsistent with the subject or context) the words and expressions set out in the first column below shall bear the meanings set opposite them respectively.

2.1	"the/this Agreement"	means the Independent Contractor Agreement set out in this document and any addenda or annexes hereto;
2.2	"Board"	means the board of directors of any company within the Group;
2.3	"Business"	means the business conducted by the Company;
2.4	"Business Day"	any day other than a Saturday, Sunday or official South African public holiday;
2.5	"Company"	means Foskor Proprietary Limited, registration number 1951/002918/07, a private company incorporated in accordance with the company laws of South Africa;
2.6	"Confidential Information"	means in respect of the Company and/or any Group Company, confidential information relating directly or indirectly to the Business and/or any Group Company and other proprietary information (including Personal Information and Intellectual Property) not in the public domain and not readily available in the ordinary course of business to a competitor or competitors, including without limitation:

2.6.1		the Group's Intellectual Property;
2.6.2		any Personal Information learned, accessed or Processed by the Consultant in the course and scope of their engagement by the Group;
2.6.3		the Group's trade secrets;
2.6.4		technical know-how, specialised processes, techniques, methods, designs, financial models and organisational and other structures employed in the Business and/or any Group Company;
2.6.5		the contractual and financial arrangements between the Group and its suppliers, customers, clients and other business associates;
2.6.6		the financial details of the Group including its results and details of the remuneration paid to its employees;
2.6.7		details of the prospective and existing associates, beneficiaries and/or clients of the Group;
2.6.8		the business strategy or strategies of the Group; and
2.6.9		all information relating to the Business, the operations, affairs, assets and liabilities of the Group;
2.7	"Consultant"	means [●], identity number [●] / registration number [●];
2.8	"Effective Date"	means [●] notwithstanding date of signature;
2.9	"Expiry Date"	means [●] months from the Effective Date;

2.10	"Group"	means and includes the Company and any other affiliated, associated and subsidiary companies from time to time of the Company and/or its holding company;
2.11	"Group Companies"	means and includes any companies comprised in the Group;
2.12	"Income Tax Act"	the Income Tax Act, 58 of 1962, as amended or replaced from time to time;
2.13	"Intellectual Property"	means all intellectual property rights, whether registered or unregistered, whether created using artificial intelligence or not, arising anywhere in the world, together with all rights, interests or licences in or to any of those rights including, without limitation, inventions (whether patentable or not), whether or not reduced to practise, improvements thereto, patent applications and registrations, together with all revisions, extensions and re-examinations thereof, design rights, design applications and registrations, trade marks (applications, registrations and unregistered), trade dress, trade names and corporate names, domain names, internet and intranet names, addresses, icons and other designations useful to identify or locate the Company and/or any Group Company 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, all rights of copyright and related rights (such as associated Moral Rights and copyright vesting in software, programming algorithms, methodologies, models, processes, techniques, analyses, research and findings), object code, source code, database rights, Confidential Information, trade secrets and business information (including ideas, research and development, know-how, technical data, designs, specifications), and all other proprietary rights which

- relate to the business of the Company and/or any Group Company;
- 2.14 **"Moral Rights"** means the right of the author of a copyright work to claim authorship of the copyright work and to object to any distortion, mutilation or other modification of the copyright work which would be prejudicial to their reputation;
- 2.15 **"Party/Parties"** means the parties to this Agreement, being the Company and the Consultant;
- 2.16 **"Personal Information"** means personal information as defined in POPI;
- 2.17 **"POPI"** means the Protection of Personal Information Act, 4 of 2013 as amended or replaced from time to time;
- 2.18 **"Processing"** shall have the meaning ascribed to it in POPI, and **"Process"** and **"Processed"** shall have corresponding meanings;
- 2.19 **"SARS"** means the South African Revenue Service;
- 2.20 **"Termination Date"** means the date on which this Agreement is terminated for any reason whatsoever including, inter alia, the Expiry Date as well as the circumstances set out in clauses 14 and 20 below.

3. **Appointment of the Consultant**

- 3.1 With effect from the Effective Date the Company appoints the Consultant as a [●] on the terms set out in this Agreement, and the Consultant freely and voluntarily hereby accepts their appointment on the terms set out in this Agreement.
- 3.2 This Agreement shall supersede and replace any other agreement, written or unwritten, regulating the Consultant's engagement with the Company, and the provisions contained herein shall be the sole record of the Consultant's terms and conditions of engagement with the Company with effect from the Effective Date.

4. **Duration**

- 4.1 This Agreement shall commence on the Effective Date and will automatically terminate on the Expiry Date. No notice is required to be given upon the Expiry Date.

- 4.2 This Agreement may be terminated prior to the Expiry Date in accordance with clause 20 below.

5. Status of the Consultant

- 5.1 The Parties agree that the Consultant is an independent contractor carrying on an independent trade. At no stage whatsoever during the currency of this Agreement shall an employment relationship arise between the Consultant and the Company. As such, the Consultant:

- 5.1.1 shall not be registered as an employee of the Company with the Department of Employment and Labour and shall not be a contributor as defined by section 2 of the Unemployment Insurance Act 63 of 2001, as amended, in respect of the Company. Under no circumstances will the Company be obliged to secure registration of the Consultant in any such statutory mechanisms; and

- 5.1.2 shall not be entitled to any benefits or incentives available to employees of the Company including, *inter alia*, annual leave, pay for annual leave, sick leave, family responsibility leave, medical aid membership or contributions to a medical aid scheme, membership of a pension fund or pension benefits, membership of a provident fund or provident fund benefits, disability insurance, group life benefits, bonus entitlement, or severance pay and the Company encourages the Consultant to make private arrangements in regard to these matters.

- 5.2 The Parties agree that this Agreement is non-exclusive and that either Party may enter into similar agreements with other persons or entities so long as the terms of such agreements do not result in a breach of this Agreement in accordance with clause 14 below.

6. Services

- 6.1 The Consultant is aware of the standards and quality of service required by the Company and agrees and undertakes to ensure that the Services are performed in compliance with the Company's standards and quality requirements.

- 6.2 The Consultant agrees and undertakes:

- 6.2.1 to perform the Services set out in Annexe A for [●] Business Days per week and for the duration of this Agreement;

- 6.2.2 to perform the Services in a diligent and professional manner;
- 6.2.3 to compile and maintain complete, accurate and written records of the Services performed;
- 6.2.4 not, during the period of this Agreement to accept work or business from other persons or entities which will unreasonably hamper or impede the Consultant's ability to perform the Services or conflict with the Consultant's obligation to produce the Services or constitute a breach of the terms of this Agreement;
- 6.2.5 to perform the Services that the Company requires of them from time to time, in accordance with the Company's needs, exigencies and specifications;
- 6.2.6 be solely responsible for the administration of their business affairs;
- 6.2.7 to perform the Services competently and with the utmost good faith towards the Company in all respects; and
- 6.2.8 to provide their own tools and equipment to perform the Services, unless otherwise agreed to in writing by the Parties.
- 6.3 The Consultant agrees that the Services to be rendered may be amended, in writing, from time to time.
- 6.4 The Consultant warrants that:
 - 6.4.1 [He/it] has the capability, experience, management expertise, financial resources, equipment, and other facilities necessarily required to render the Services in a competent and expeditious manner and otherwise in accordance with this Agreement; and
 - 6.4.2 the Services shall be executed timeously.
- 6.5 In the performance of Services under this Agreement, the Consultant agrees that he/it will comply with all applicable laws, statutes and regulations relating to providing the Services, environmental laws, employment laws, health and safety regulations, securities laws and regulations, competition laws, intellectual property laws and any other applicable laws, statutes or regulations and to conduct themselves in keeping with high ethical standards. The Consultant further agrees that they will comply with all applicable safety and security regulations and policies and all other policies of the Company and will use their

best efforts to preserve the business of the Company and the good will of all employees, customers, suppliers and other persons having business relations with the Company. In accordance with the law, the Consultant shall not make any payment prohibited by the law to any party for the purpose of securing business.

- 6.6 The Consultant shall render the Services at the Company's premises for [●] Business Days a week. The Company's premises may be changed from time to time. The offices of the Company are currently situated at [●]. The Consultant acknowledges that they may be required to work at the Company's premises or remotely permanently. If the Company relocates, the Consultant will be required to provide the Services at such new location.

7. Fees

- 7.1 Subject to clause 7.2 below, the Company shall pay the Consultant an hourly fee of R[●]. The payment of the said fee shall be effected upon receipt of a valid tax invoice from the Consultant for the delivery of the specified agreed service.
- 7.2 The Consultant is obliged to furnish the Company with the aforesaid valid tax invoice on or before the 20th day of each month.
- 7.3 The Consultant's monthly fee shall be paid into a bank account nominated by the Consultant on their valid tax invoice.
- 7.4 The Consultant's fees shall be paid to the Consultant within 30 (thirty) calendar days after receipt of the Consultant's statement.
- 7.5 The Consultant shall not be entitled to any overtime pay given the nature of the relationship between the parties as set out in clause 5.1 above.

8. Tax Affairs

- 8.1 Without derogating from the provisions of clause 7 above, the Consultant undertakes and agrees to:
- 8.1.1 comply with the provisions of any and all applicable taxation legislation, including the Income Tax Act 58 of 1962 and the Value Added Tax Act 89 of 1991, as amended;
- 8.1.2 remain responsible for all income tax, value-added tax ("**VAT**") or Pay-As-You-Earn ("**PAYE**") liabilities arising from the payment of the fees in terms of this Agreement;

- 8.1.3 indemnify the Company against all demands for all income taxes, VAT or PAYE, penalties and/or interest imposed by SARS in respect of the Services rendered by the Consultant in terms of this Agreement and/or against the costs incurred by the Company in defending such demands; and
- 8.1.4 the Consultant warrants they will ensure that all taxes pertaining to the Consultant are paid over to SARS properly and in a timely manner, and in this regard the Consultant indemnifies and holds the Company harmless in respect of any such taxes and any penalties, interest, forfeitures or the like, pertaining to such taxes.
- 8.2 The obligations imposed by this clause 8 will endure beyond the termination of this Agreement.
- 8.3 In the event that SARS finds that the Consultant is an employee of the Company, the Consultant agrees that the Company may deduct such amounts as it may be required to withhold and/or deduct in law from the Consultant's fees. For the avoidance of doubt, the Consultant specifically agrees that the Company shall withhold, deduct and pay over to SARS any PAYE as may be due from the Consultant's fees. Furthermore, the Consultant agrees that the only reason for withholding, deducting and paying over PAYE tax to SARS is so as for the Company to comply with SARS's requirements and in no way whatsoever confers any employment and/or similar rights and/or claims on the Consultant.
- 8.4 The Consultant hereby undertakes to co-operate fully with both the Company and/or SARS, as the case might be, in relation to either the Company's and/or SARS's requirements. The Company is entitled to request, and the Consultant is required to produce, a Tax Clearance Certificate or a Tax Compliance Status obtained from SARS as proof of tax compliance. Without derogating from the above, the Consultant shall obtain and/or provide the Company with any requested documentation in relation to the Consultant's tax affairs at any time during the currency of this Agreement.
- 8.5 The Consultant agrees that the fees payable by the Company in terms of clause 7 may be amended, in writing, from time to time.

9. Representations and Disclosure of Conflict of Interest

- 9.1 Without derogating from any of the Consultant's obligations in terms of this Agreement, the Consultant confirms that they have disclosed everything which,

if disclosed, would or may have been material to the Company's decision to contract with the Consultant and/or the Company's ability to perform in terms of this Agreement.

9.2 The Consultant undertakes and is required, during the course of this Agreement, to disclose any new information or facts arising that may affect their relationship with the Company and/or their ability or suitability to perform the services in terms of this Agreement, or any interests which may possibly conflict with the interests of the Company. Without derogating from the Company's right to summarily terminate this Agreement as a result of such a conflict, the Consultant agrees to take any reasonable steps as Healthforce may require for eliminating or otherwise resolving any such conflicts.

9.3 Failure to disclose any such information will constitute a material breach of this Agreement.

10. Professional membership and costs

The Consultant will be required to maintain all relevant designations, accreditations and professional memberships and ensure that these remain in good standing throughout the duration of the Agreement. The Consultant will carry and maintain the cost of professional memberships and other related professional fees and costs of the Consultant that are and remain relevant to the business of the Company.

11. Professional Insurance

11.1 For purposes of this Agreement, "Personal Risk Insurance" shall mean personal insurance cover which includes cover for death, disability and medical costs with a limit of indemnity of not less than R[amount] for each and every loss.

11.2 For the purposes of this agreement, "Professional Indemnity Insurance" shall mean insurance that covers financial loss, personal injury and property damage resulting from the Consultants negligent act, error or omission while carrying out the Consultant's professional duties, with a limit of indemnity of not less than R[amount] for each and every loss.

11.3 The Consultant shall ensure that they purchase Personal Risk Insurance and Professional Indemnity Insurance from reputable insurers. The Consultant shall on request supply to the Company copies of such insurance policies and evidence that the relevant premiums have been paid.

- 11.4 The Consultant shall comply with all terms and conditions of the Insurance Policy at all times.
- 11.5 Notwithstanding the foregoing, the Consultant shall effect and maintain at their own cost and expense for their employed personnel such employer's liability/worker compensation insurance as required by law.
- 11.6 Where required, the Consultant shall ensure that they are registered as an employer as required by the Compensation for Occupational Injuries and Disease Act 130 of 1993 ("**COIDA**") and shall furnish proof of such registration to the Company upon request.
- 11.7 In the event that the Consultant has failed to register for COIDA, the Company may pay the COIDA assessments on the Consultant's behalf without prior notice to the Consultant and shall recoup the fees and assessments paid directly from the Consultant.

12. **Professional Indemnity**

The Consultant hereby indemnifies and holds the Company harmless against any and all claims, demands, fines, taxes, penalties, interest, actions, proceedings, judgements, damages, losses, costs, expenses, compensation, or other liabilities caused whether negligently or otherwise by the Consultant or suffered by the Company, arising out of or as a result of the non-observance or non-compliance by the Consultant of their duties and obligations under this Agreement and/or in respect of any law.

13. **Restraint**

- 13.1 The Consultant hereby undertakes to each of the companies in the Group that whilst they are engaged by the Company in the capacity of an independent contractor, and for a period of 12 (twelve) months after the Termination Date ("**Restraint Period**"), the Consultant will not, whether directly or indirectly:
 - 13.1.1 compete with the Group or become interested in any business which competes with any Business carried on by the Group at any time from the Effective Date, and within any of the areas of restraint set out in clause 13.2 (a "**Competing Business**").
 - 13.1.2 attempt to solicit any business from, or entice away from the Group, any customer or supplier who was a customer or supplier within the previous 12 (twelve) months preceding the Termination Date;

- 13.1.3 attempt to solicit any business from, or entice away from the Group, any prospective customer or supplier of the Group whom the Company had approached to do business at any time within the previous 12 (twelve) months preceding the Termination Date; or
- 13.1.4 persuade, induce, encourage or procure any employee or consultant of the Group, or any person who was an employee or consultant of the Group at any time during the previous 12 (twelve) months preceding the Termination Date, to become employed by or interested in any Competing Business, or to terminate their employment and/or engagement with the Group.
- 13.2 The area of restraint referred to in this clause shall be every province of South Africa and every other territory in which the Group carries on Business as at the Termination Date and any other territory which the Board has resolved that the Group should enter as at the Termination Date.
- 13.3 The Consultant acknowledges that:
 - 13.3.1 the customers and suppliers of the Group are or could be drawn from all of the areas in which the restraint is to be operative;
 - 13.3.2 the Group would suffer substantial damage if any person restrained by this clause 13 were to breach any provision of this clause; and
 - 13.3.3 the restraint is the minimum restraint required by the Group to provide protection against unfair competition and that in the circumstances it is fair and reasonable, and necessary for the protection of the interests of the Group that the Consultant should be restrained in the manner set out in this clause 13. Should the reasonableness of any provision contained in this clause 13 be disputed, the onus of proving that the provision is unreasonable will, to the extent permitted by law, rest on the person alleging the unreasonableness.
- 13.4 Notwithstanding the manner in which the restraints in this clause 13 and the area of restraint in clause 13.2 have been grouped together or described geographically, each of them constitutes a separate and independent restraint, divisible and severable from each of the other restraints and separately enforceable, in regard to all aspects thereof including:
 - 13.4.1 each month of the Restraint Period;

- 13.4.2 each province, division or council area, municipal area, magisterial district, town and locality falling within the areas of restraint;
 - 13.4.3 the categories and identities of persons who are customers or prospective customers or suppliers or prospective suppliers;
 - 13.4.4 the categories and identities of persons who are employees and consultants;
 - 13.4.5 the categories of and specific services falling within the definition of Competing Business;
 - 13.4.6 each capacity in relation to the Competing Business which the Consultant is prohibited from undertaking in terms of this Agreement; and
 - 13.4.7 no restraint or combination of restraints shall be limited by reference to or inference from any other restraint or combination of restraints, provided however that the invalidity or unenforceability of any one or combination of restraints contained in this Agreement shall not affect the validity and enforceability of the other restraints contained in this Agreement or any combination of such restraints.
- 13.5 Insofar as the restraints are considered by the parties to be reasonable in all the circumstances, they agree that if the restraints, taken together, are adjudged to go beyond what is reasonable in all the circumstances but would be adjudged reasonable if part or parts of the wording of the restraints were deleted, the restraints shall apply with such words deleted.
- 13.6 The restraints contained in this clause will be capable of being enforced by the Group and/or the Company, individually or collectively by any number of them. The provisions of this clause constitute a stipulation for the benefit of every Group Company, capable of acceptance by all or any of them at any time.

14. Confidentiality

- 14.1 The Consultant acknowledges that by virtue of their engagement with the Company they will gain access to Confidential Information. The Consultant acknowledges that the Confidential Information has considerable value to the Company and each of the Group Companies and that the Company and the Group have a legitimate business interest in keeping such Confidential Information confidential.

- 14.2 The Consultant shall not, directly or indirectly, use for their own benefit or the benefit of any other person (other than the Group), and shall keep confidential and not disclose, any Confidential Information other than to those persons who have, or are required to have, access to such Confidential Information.
- 14.3 If the Consultant is uncertain as to whether any information is Confidential Information, the Consultant shall treat such information as confidential.
- 14.4 In the event that the Consultant is required to disclose information relating to the Company or any member of the Group by order of law, the Consultant shall:
- 14.4.1 advise the Company thereof prior to disclosure, if possible;
 - 14.4.2 take such steps to limit the disclosure to the extent that the Consultant lawfully and reasonably can;
 - 14.4.3 afford the Company a reasonable opportunity, if possible, to intervene in the proceedings; and
 - 14.4.4 comply with the Company's reasonable requests as to the manner and terms of any such disclosure.
- 14.5 The obligations in this clause 14 shall survive the Expiry Date or the Termination Date as applicable but shall not apply to any confidential information which was in the public domain prior to its disclosure by the Consultant.

15. Intellectual Property

- 15.1 All Intellectual Property created, developed, discovered or invented by the Consultant in the course and scope of their engagement with the Company in connection with or in any way affecting or relating to the Company and/or any Group Company or capable of being used or adapted for use by the Company and/or any Group Company or in connection with the Company and/or any Group Company as well as any Intellectual Property created, discovered, developed, improved, compiled, devised or brought into being by the Consultant while engaged by the Company and/or any Group Company that is outside the course and scope of the Consultant's engagement but which is nevertheless relevant to the business of the Company and/or any Group Company shall be disclosed to the Company and shall belong to and be the absolute property of the Company or any other company nominated by it with effect from the date of creation or inception.

- 15.2 All Intellectual Property which is created, compiled, devised or brought into being by the Consultant, or which comes into the Consultant's possession, during the course of their engagement with the Company, and all copies thereof, shall at all times remain the property of the Company and, upon the termination of this Agreement or whenever requested by the Company, such Intellectual Property and all copies thereof shall be returned to the Company. Under no circumstances may the Consultant retain any such Intellectual Property (or copies thereof).
- 15.3 The Consultant shall, if and when required by the Company, assist the Company in applying for the protection of the Intellectual Property in any part of the world, provide all reasonable information, materials, co-operation and/or assistance to the Company to enable the Company to prove the subsistence of the Intellectual Property before any court or wherever such proof may reasonably be required, and shall at the expense of the Company execute all instruments and do all things necessary for vesting the Intellectual Property in the name of the Company as sole beneficial owner or in the name of such other company as the Company may nominate.
- 15.4 Insofar as the Consultant creates, develops, discovers, innovates, compiles, devises or brings into being Intellectual Property which is not owned by the Company by operation of law, the Consultant hereby cedes, assigns, transfers and makes over to the Company and the Company hereby accepts, all rights, title and interest in and to any such Intellectual Property with effect from the date of first creation of such Intellectual Property. No consideration shall be payable by the Company to the Consultant in respect of this cession, assignment, and transfer and making over, it being recorded that the remuneration received by the Consultant in terms of this Agreement shall constitute sufficient consideration.
- 15.5 The Consultant warrants that the Intellectual Property made, created, conceived invented, discovered, or delivered to the Company in the course and scope of their engagement with the Company shall not infringe the intellectual property rights of any third parties.
- 15.6 The Consultant agrees that it shall not give permission to any third party to use any of the Intellectual Property during this Agreement or after termination of this Agreement.

- 15.7 The Consultant agrees that it shall not make any unauthorised use of any third parties' Intellectual Property during the course and scope of their engagement with the Company.
- 15.8 For the avoidance of doubt, all Intellectual Property, reports, manuals, financial statements, budgets, indices, research papers, letters or other similar forms of Confidential Information or 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 Consultant or come into the Consultants' possession during the course and scope of their engagement with the Company and all copies thereof will be the property of the Company and, on the Termination Date or earlier if required by the Company, such documents and all copies shall be returned to the Company and the Consultant shall not make any further use of the Intellectual Property.
- 15.9 The Consultant waives, in favour of the Company or any successor-in-title, any Moral Rights which may vest in it in relation to the Intellectual Property rights and agrees not to assert any rights of design or invention against Company in relation to the Intellectual Property as having been made or acquired by the Consultant prior to the Consultant's engagement with the Company. For the avoidance of doubt, the Company shall further be entitled in its sole discretion to change or alter the form or substance of the Intellectual Property as it deems fit, which shall include but not be limited to an entitlement to publish, store or distribute any works in any manner or form, including, but not limited to, publishing or otherwise disseminating the Intellectual Property on any web site or in any other electronic form or media.
- 15.10 The rights and obligations under this clause 15 shall continue in force after the termination of this Agreement and shall be binding upon the heirs, successors, assigns and personal representatives of the Consultant.

16. Interception and monitoring of electronic communications and systems

- 16.1 From time to time or on a continuous basis, the Company, and/or any other third party so authorised by the Company, may intercept, monitor and record the use, duration and content of the Company's telecommunications, data and other systems by the Consultant, including but not limited to the Consultant's emails, data and equipment use and internet activity.

- 16.2 The Consultant hereby confirms their agreement to any such interception and monitoring and that they understand that they will have no expectation with regard to privacy in their use of such systems.

17. Non-disparagement

- 17.1 The Consultant undertakes that for the duration of this Agreement and in perpetuity thereafter:

17.1.1 they shall not damage the good name and reputation of the Company or any member of the Group or that of any of their directors, officers, employees, agents or shareholders in the market place or to any third party, which includes an undertaking not to disparage, criticize, compromise, deride or otherwise discredit, by means of public statements or in any other manner, any member of the Group or any of their directors, officers, employees, agents or shareholders; and

17.1.2 they shall not make any statements, whether publicly or privately, in which the working methods, capabilities, competence or abilities of the Company or the Group and/or any of their directors, officers, employees, agents or shareholders are disparaged, criticized, compromised, derided or otherwise discredited.

- 17.2 The Parties agree that this constitutes a material term of this Agreement.

18. Personal Information

- 18.1 The Consultant specifically agrees and undertakes that:

18.1.1 the Company, or anyone acting on its behalf, shall be entitled to collect, process and further process the Consultant's Personal Information including, special Personal Information (such as health, racial, or ethnic information) for the purposes of securing and facilitating the Consultant's engagement with the Company, including conducting criminal and/or civil record checks and/or other checks (such as reference, qualification, or credit checks) from time to time, at its discretion;

18.1.2 the Company, or anyone acting on its behalf, shall be entitled to retain and use the Consultant's Personal Information, including special Personal Information, as the Company may from time to time require for its legitimate business purposes; and

- 18.1.3 the Company, or anyone acting on its behalf, may transfer the Consultant's Personal Information to any associated company or any other person, anywhere in the world, in accordance with the provisions of POPI.
- 18.2 The Consultant is hereby notified that the Company collects and processes the Consultant's Personal Information for the purposes set out in clause 18.1 above.
- 18.3 The Consultant undertakes to provide the Company with all Personal Information that the Company may reasonably require for the purposes set out in clause 18.1 above.
- 18.4 To the maximum extent possible, the Consultant absolves the Company from any liability in terms of POPI for failing to obtain the Consultant's consent or to notify the Consultant of the reason for the processing of any of the Consultant's Personal Information.
- 18.5 By signing this Agreement, the Consultant consents to the holding and processing of any personal information relating to them, and in particular to the processing of any "sensitive personal information" (including, for example, information relating to their health or racial or ethnic origin) and to the transfer of all or any part of the information that the Company holds relating to them within and outside South Africa.
- 18.6 The Consultant shall comply with the Company's data protection policy when handling Personal Information in the course of employment including Personal Information relating to any employee, worker, contractor, customer, client, supplier or agent of the Company.

19. **Breach**

- 19.1 Should either Party commit a breach of any of the provisions of this Agreement, which breach is capable of being remedied, the other Party may provide such Party with 5 (five) Business Days' written notice to remedy such breach.
- 19.2 Should the Party in default fail to timely comply with such notice requiring a remedy of breach, or in circumstances where such breach is incapable of being remedied, the other Party shall be entitled to cancel this Agreement or to demand specific performance by the defaulting Party of all obligations in terms of this Agreement. In such event there shall be no prejudice occasioned to

either the Consultant or the Company, as the case may be, to claim whatever damages may have been sustained by it following the default of the other Party.

- 19.3 The foregoing is without prejudice to any other rights that the Company may have at law including but not limited to immediate termination of this Agreement without notice should the Consultant commit a material breach of this Agreement.

20. Termination

- 20.1 Either Party may terminate this Agreement, for any reason whatsoever on 1 (one) calendar months' written notice to the other Party.
- 20.2 Notwithstanding the provision of clause 20.1, the Parties may immediately terminate this Agreement in the following circumstances:
- 20.2.1 by mutual agreement which must be reduced to writing;
 - 20.2.2 if either Party has been placed in liquidation, whether provisional or final, or under judicial management;
 - 20.2.3 if either Party has a judgment of any competent court entered against it and fails to satisfy such judgment or fails to make the necessary arrangements to have same set aside within 10 (ten) Business Days of the judgment coming to the notice of the other Party;
 - 20.2.4 if either Party attempts to compromise with its creditors or commits any act of insolvency which in the ordinary course would entitle any creditor to bring an application for its winding-up; or
 - 20.2.5 if the Consultant fails and/or refuses to provide the Services at a location nominated by the Company.
- 20.3 Notwithstanding anything contained in this Agreement, the Company may immediately terminate the Agreement without notice at any time, under the following circumstances:
- 20.3.1 if, in the opinion of the Company, the Consultant has brought the name of the Company into disrepute; and/or
 - 20.3.2 if the Consultant is found to be guilty of any serious, unacceptable act or deliberate negligence in the discharge of the Services.

- 20.4 In the event of early termination, no further fees shall be payable to the Consultant from the date of early termination.

21. Return of property

Within 7 (seven) Business Days of the Termination Date and/or the Expiry Date, whichever first occurs, the Consultant shall immediately deliver to the Company all assets, including but not restricted to the following: computer hardware, access cards, records, documents, manuals, accounts, letters, notes, memoranda, stationery, computer discs, customer lists, other work products obtained or developed by the Consultant under this Agreement and papers of every description within their possession or under their control relating to the affairs and business of the Company and its customers, whether or not they were originally supplied by the Company.

22. Dispute resolution

22.1 separate, divisible agreement

This clause is a separate, divisible agreement from the rest of this Agreement and shall:

22.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause; and

22.1.2 remain in effect even if the Agreement expires or terminates for any reason whatsoever.

22.2 disputes subject to arbitration

22.2.1 Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement shall be decided by arbitration as set out in clause 22.2.1.

22.3 appointment of arbitrator

22.3.1 The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("**AFSA**"). If agreement is not reached within 10 (ten) days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

22.3.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other Party who may, within 5 (five) days, submit written comments on the request to the addressor of the request.

22.4 **venue and period for completion of arbitration**

22.4.1 The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within [90] days after notice requiring the claim to be referred to arbitration is given.

22.5 **Arbitration Act - rules**

22.5.1 The arbitration shall be held in English and governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

22.6 **arbitrator's decision**

22.6.1 The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the Parties and shall not be subject to appeal unless otherwise agreed in writing between the Parties.

22.6.2 The arbitrator's decision may be made an order of court at the instance of any Party to the arbitration.

23. **Urgent relief**

Proceedings in terms of this clause 23 shall not be construed to prevent the Parties from instituting formal proceedings in any court of competent jurisdiction to obtain timely interim or urgent relief and/or for judgment in relation to a liquidated claim.

24. **Continued performance**

Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved.

25. Criminal and background checks

25.1 The Consultant acknowledges that the Company shall at the commencement of this Agreement, and from time to time on a continuous basis, conduct criminal and background checks on the Consultant during the course of this Agreement.

25.2 The Consultant hereby confirms their agreement to any such criminal and background checks and agrees that this consent shall be used by the Company to conduct such checks.

26. Sub-contracting

The Consultant shall not be entitled to sub-contract any or all of their obligations in terms of this Agreement to any third Party without the prior written consent of the Company.

27. *Domicilium citandi et executandi*

27.1 The Parties hereby choose their *domicilium citandi et executandi* for all purposes hereunder, including the giving of notice and/or serving of all legal process as follows:

27.1.1 the Company:

Hertford Office Park Building K
2nd Floor
90 Bekker Road
Vorna Valley
Midrand
Gauteng

email: roganim@foskor.co.za

and marked for the attention of Ms Rogani Moodley (Vice President – Legal, Risk and Compliance)

27.1.2 the Consultant:

[insert address]
[insert email address]

27.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only in writing.

27.3 Either Party may by notice to the other Party change its *domicilium citandi et executandi* to another physical address in South Africa or elsewhere, provided

that the change will become effective on the seventh day after receipt of the notice.

- 27.4 Any notice to a Party contained in a correctly addressed envelope and –
- 27.4.1 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi*; or
- 27.4.2 by email during ordinary business hours to the email addresses in clauses 27.1.1 and 27.1.2 above,
- shall be deemed to have been received, on the day of delivery, provided such day is a business day or otherwise on the next following Business Day.
- 27.5 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 sent to or delivered at its chosen *domicilium*.

28. Stipulation for the benefit of a third party

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

29. Independent advice

Each of the Parties hereby respectively agrees and acknowledges that:

- 29.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- 29.2 each provision of this Agreement (and each provision of the Annex) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

30. General

- 30.1 This Agreement constitutes the whole Agreement between the Parties and no warranties, representations, terms or conditions not contained in this Agreement shall be binding upon the Parties.

- 30.2 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.
- 30.3 No cancellation or amendment of, alteration to, variation to or deletion from this Agreement shall be binding on the Parties unless reduced to writing and signed by the Parties.
- 30.4 This Agreement may be signed in counterparts, the two signed copies constituting the Agreement between the Parties.
- 30.5 This Agreement shall be construed and take effect in accordance with the laws of the Republic of South Africa.

Signed at _____ on _____ 2025

Witness _____ for **FOSKOR PROPRIETARY LIMITED**

.....

.....
duly authorised and warranting such
authority

Signed at _____ on _____ 2025

Witness _____ **[INSERT CONSULTANT'S NAME]**

.....

.....

Services

The Consultant's services will include:

[•]