

ZA-SGAcsl12

## **IT consultancy contract: client version**

This agreement is dated [date] :

[ABC] Limited, a company incorporated in the Republic of South Africa [under company registration [number] and] [ ] (“ ”);

and

[AMD] Consultants Ltd, a company incorporated in the Republic of South Africa [under company registration [number] and] [ ], (“ ”).

### Background:

The Consultant has wide experience in the field of management of cash flow issues, re-modelling of business plan and corporate restructuring and the

Accordingly, it is now agreed as follows:

## 1. Definitions

“Assignment” means a piece of work to be undertaken by the Consultant under the terms of this agreement the first of which is fully described as to terms and scope in [the schedule to this agreement] / [ ]

.]

“Confidential Information” means all information about the Company, including: any information which may give a commercially competitive advantage to any other . :

information about staff, their performance and ,

data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer ,

|                          |   |
|--------------------------|---|
|                          | <p>;</p> <p>information about the Intellectual Property, the Know-how and all</p> <p>;</p> <p>information created or arising from this agreement;</p> <p>information owned by a third party and in respect of which the Company</p> <p>- .</p> <p>information, comment or implication published on</p> <p>.</p> <p>It does not include information that it is reasonably necessary to disclose to a customer or other person in the usual course</p> <p>.</p> |
| “Detailed Specification” | <p>means a specification of work to be</p> <p>.</p>   |
| “Intellectual Property”  | <p>means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights,</p> <p>,</p> <p>,</p> <p>- ,</p> <p>,</p> <p>.</p>   |
| “Know-how”               | <p>means scientific or technical information, and other procedures and ways of working and organising which are</p> <p>.</p>  |
| “New IP”                 | <p>means any Intellectual Property:</p> <p>written, discovered or arising from an Assignment or from the activity</p>   |

including not only new developments but also improvements to and

whether or not created by the Consultant;

whether after specific consideration or by accident;

even if created by the Consultant outside of the paid

“Software” means new or changed software which is created or edited by the Consultant in

## 2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted
- 2.2. a reference to a person includes a human individual, a corporate entity and any organisation
- 2.3. the headings to the paragraphs to this agreement are inserted for convenience
- 2.4. any agreement by any party not to do or omit to do something includes an obligation not to allow some
- 2.5. a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information,
- 2.6. the words “without limitation” shall be deemed to follow any use of the words “ ” “ ”

- 2.7. a reference to an act or regulation includes new law of substantially the same .
- 2.8. in any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified , [ [ 000 ] ].
- 2.9. all money sums mentioned in this agreement are calculated [net / inclusive] of VAT, .
- 2.10. these terms and conditions apply to all services. They prevail over .
- 2.11. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or , .

### 3. Entire agreement

- 3.1. The Consultant shall complete the Assignment.
- 3.2. This agreement contains the entire agreement between the parties and supersedes all .
- 3.3. Each party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty, information .
- 3.4. If the act or omission of any person would be actionable by the Company but for that act or omission having taken place outside the scope of the employment of some one or more people, the Consultant agrees that .
- 3.5. Conditions, warranties or other terms implied by statute or common law in any country, are excluded .
- 3.6. As an exception to the last previous sub paragraphs, the parties do rely :

*[Enter list of other docs and dates*

*]*

- 3.7. This agreement has been drawn with reference to a single Assignment. However, the parties intend, and now agree that all the terms shall apply so far as reasonably possible to any
- 3.8. If the Company offers and the Consultant agrees to take on new work after today, that work shall be an Assignment,

#### **4. Warranties for authority**

- 4.1. Each of the parties warrants that it has power to enter into this agreement [and ].
- 4.2. The Consultant warrants and undertakes that it is not aware of anything within its reasonable control which might or will
- 4.3. The Company warrants that it is not insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or to petition for

#### **5. Conflicts of interest**

- 5.1. The Consultant confirms that:
- 5.1.1 neither it nor any of its employees, agents or contractors is under any pre-existing obligation to a third ;
- 5.1.2 it does not now perform or intend to perform, during the term of this agreement, consulting or other services for, or engage in or intend to engage in an employment relationship with, any business which would be competitive with any business

- 5.1.3 its performance of the Assignment will not breach any agreement to keep in  
;
- 5.1.4 it has the right to disclose and/or use all ideas, processes, techniques and other intellectual property which it now intends  
;
- 5.1.5 it has not granted and will not grant any right or license to any intellectual property or technology  
.
- 5.2. Despite the foregoing confirmation, the Consultant agrees that it will not incorporate into any process, system or software provided to the Company in performance of the Assignment, any physical or  
,

## 6. Consultant's status

- 6.1. Consultant is not an agent of the Company and does not have authority to enter  
.
- 6.2. The Consultant shall alone be responsible for:
  - 6.2.1 payment of all taxes due on  
;
  - 6.2.2 payment of all taxes applicable  
;
  - 6.2.3 compliance with all applicable labour and employment requirements with respect to Consultant's self-employment, sole proprietorship or other  
.
- 6.3. The Consultant agrees to indemnify the Company against any cost or liability,

## 7. Representative liaison

7.1. With effect from today the Consultant and the Company

:

7.1.1 organising monthly meetings

;

7.1.2 providing all information and documentation

.

7.2. Each month the Consultant will prepare a progress report on the

[ ]

.

## 8. Work management procedure

8.1. The Company will provide for the

,

[ ]:

*[List facilities, or delete]*

8.2. In working on the Assignment and

,

:

8.2.1 the Detailed Specification;

8.2.2 all relevant commonly accepted ,

∴;

8.2.3 *[other compliances and standards . . .]*



## 9. Consultant's obligations

9.1. The Consultant agrees to provide

9.2. Each Assignment will be completed

9.3. The Consultant agrees that whilst engaged

9.3.1 all laws and regulations relating to work;

9.3.2 the specific regulations of the Company.

## 10. Consultant's fees and expenses

10.1. The Consultant shall at all times maintain accurate and up-to-date records of the time

15 -

10.2. The Company will pay the Consultant at the rate of [ 000 ]

[ 000 ]

10.3. After the end of each month the Consultant will send an

10.4. Each invoice submitted to the Company for

10.5. The invoice shall include whatever reasonable expenses the Consultant has incurred [

][ ]

OR

10.6. The Consultant will personally bear

10.7. Payment of the sum specified in the  
[ 14 ]

10.8. The Consultant shall be entitled after [28] days notice to the Company  
and [ 12 ]

10.9. Banking charges by the receiving bank on payments to the Consultant

10.10. Any details given by the Company

## 11. Use of sub-contractors

If the Consultant wishes to perform any or

11.1. the Consultant must first obtain the

OR

11.2. the Consultant must first obtain the written consent

11.3. the Consultant

11.4. the Consultant agrees to indemnify the Company against any

OR

11.5. [This contract /  
[ ] .

OR

11.6. So far as work under this -  
, [ ].

OR

11.7. The Consultant shall not sub-  
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## 12. Consultant's other work

The Consultant will not  
:

12.1. The other work is  
.

12.2. The other work is such that the  
.

## 13. No competition

13.1. In this paragraph, "Termination Date" means the date three  
,  
,  
.

13.2. The Consultant agrees that he will not within three years of the  
Termination Date by any means and neither for itself nor for any other  
, , , ,  
.

13.3. The Consultant agrees that he will not within three years of the  
Termination Date neither for the itself  
, , , ,

13.4. The Consultant agrees that he will not within three years of the Termination Date by any means and neither for

13.5. The Consultant agrees that the provisions

## 14. Confidentiality

14.1. The Consultant is aware that in the course of the performance of the Assignment he will

14.1.1 except as provided in this agreement, not divulge to any person , (

14.1.2 not use the Confidential Information in any way for itself ,

14.1.3 not store, copy, or use the Confidential

14.1.4 keep all records of ;

14.1.5 keep all records only at the address (

);

14.1.6 use its best endeavours to keep confidential ( )

14.1.7 make all relevant employees agents and sub-contractors aware of the confidentiality of

14.2. The Consultant now undertakes to the Company that for the period of twelve months following completion of

14.3. The Consultant agrees that during its engagement with the Company, it will not use,

14.4. The Consultant now accepts a duty of care and a duty to comply with the terms of any agreement

14.5. The Consultant agrees that before it permits any employee or contractor or other person to

## 15. Intellectual Property

The Consultant acknowledges that

15.1. watch out for any infringement of the Intellectual

15.2. take such reasonable action as the Company

;

15.3. not use any name or mark

;

15.4. on the expiry or termination of this

;

15.5. not use [the Trade Name]

[ ]

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The Consultant's obligations set

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## 16. New Intellectual Property

16.1. In the course of work

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16.2.

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16.3.

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16.4.

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16.5.

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17.1. This agreement shall continue until terminated:

### 17.1.1

17.1.2 [ 28 ]

[ 30 ]  
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17.1.6

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17.1.7

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17.2.

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17.3.

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## 18. Data protection

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## 19. Assignment of this agreement

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19.1.

,

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19.2.

## 20. Mutual indemnities

20.1.

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:  
20.1.1 ,  
;

20.1.2 ;

20.1.3 ;

20.1.4 .

20.2.

[ 000 ] .

20.3.

, ,  
:  
20.3.1 , , ;

20.3.2 ;

20.4. (

)

, , , .

## 21. Uncontrollable events

21.1.

[ , ] ,  
, .

AND/OR

21.2.

, [ ] .

OR

21.3.

[ ], .  
[ 7 ]  
, .

21.4.

- .

21.5.

, [ . . . .  
];

21.6.

;

21.7.

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## 22. Publicity / Announcements

22.1.

OR

22.2. Neither party shall:

22.2.1 make any public announcement; or

22.2.2 disclose any information; or

22.2.3 ,  
;

22.3.

OR

22.4.

[ 1 ],

## 23. Miscellaneous matters

23.1.

23.2.

23.3.

23.4.

23.5.

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23.6.

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23.7.

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23.8.

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23.9.

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23.10.

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It shall be deemed to have been delivered:

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72

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- : 24

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23.11.

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23.12.

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23.13.

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23.14.

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23.15.

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23.16.

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Signed by [personal name] on behalf of [Consultant name], its representative who personally accepts liability for the proper authorisation by [Consultant name] to enter into this agreement.

Signed by [personal name] on behalf of [Company name] its representative who personally accepts liability for the proper authorisation by [Company name] to enter into this agreement.

# Explanatory Notes

## IT consultancy contract: client version

### Paragraph specific notes

Notes following the numbered paragraphs

#### 1. Definitions

You may wish to use a word like “project” instead of “assignment”. You may refer differently to your detailed specification,

You should first decide on the contents of the document, then return to check what definitions are needed and whether they really

#### 2. Interpretation

Leave these items in place unless there is a good reason to edit or remove. These items are not “lawyer’s blurb”. Every item has been carefully considered in the context of this agreement and has been included for

#### 3. Entire agreement

This paragraph prevents a party from later saying he was relying on some other document or web site or what was said. If other documents are to be relied on, let them be listed here, so that both parties know the basis of the

The cunning provision at 3.4 makes the consultant liable for actions of his staff outside their employment, for example if they do something unlawful, or use a

#### 4. Warranties for authority

If you are dealing with a company and do not know who has authority to do what, leave this paragraph in place. If you are dealing with an individual, you may be better protected by making sure he has a sound indemnity insurance policy in place. If your loss

5. **Conflicts of interest**

Good protection for you. Leave in place. It is drawn primarily to protect you from a claim by a third party that you are unknowingly in breach of their copyright or patent, or whatever. It will also draw out of your consultant anything he is doing or would like to do, in advance of signing.

6. **Consultant's status**

Sets up the self employed status of an individual and covers you against unforeseen tax liabilities or contravention of employment law.

7. **Representative liaison**

Consultancy contracts are notoriously difficult to specify in a way that facilitates measurement of results. The usual way of minimising conflict is to maintain close contact between the consultant and the client. That requires just one person from each side to accept responsibility

8. **Work management procedure**

Simple, basic provisions.

9. **Consultant's obligations**

If the consultant's staffs work in your premises they must avoid creating problems by transgressing your rules and

If some aspects of your contract or of the detailed specification, are particularly important, you could enter them here instead of in the detailed

10. **Consultant's fees and expenses**

This paragraph is flexible and should be completed with the specific terms agreed. This might

You should consider carefully the provisions relating to completion and payment. It is important that

We have provided for payment for work

#### **11. Use of sub-contractors**

Choices for you to edit as you decide.

#### **12. Consultant's other work**

Entirely a matter for your choice. Edit as you require. However, it is helpful if both sides are aware of

#### **13. No competition**

Basic provisions to prevent competition (similar to what you might find in a director's service contract). Leave the last sub paragraph in place. It prevents a claim by the

#### **14. Confidentiality**

This paragraph is very strong indeed. The

We have included this paragraph because a business has so many secrets which could easily be stolen that some

#### **15. Intellectual Property**

It is unlikely that you will have dispute about



## 16. New Intellectual Property

New IP is a defined term. The definition is comprehensive so as to avoid complicating this paragraph.

1 ,

This concept is inconvenient for you when you pay someone specifically to write code, draft maps or produce ideas. Different countries have taken different approaches to the subject. In the USA,

”

1976 ,

“

”

## 17. Duration and termination

We have provided alternatives. Edit

## 18. Data protection

Covers a legal

## 19. Assignment of this agreement

Consider carefully and edit as you require.

## 20. Mutual indemnities

Although we describe this as “ ”,

## 21. Uncontrollable events

Used to be referred to as “force majeure”.

## **22.   Publicity / Announcements**

This may

## **23.   Miscellaneous matters**

A number of special points. We have identified each of these as

**End of notes**