

**STANDARD TERMS AND CONDITIONS FOR PROJECT SERVICES**

In relation to the proposal or quote (the "Proposal") for project services (the "Project") given to the Client by the Nelson Mandela University (the "University") (both the Client and the University are referred to as the "Parties"), the Client accepts the Proposal and the following terms and conditions (the "Agreement"):

**1. DESCRIPTION OF WORK**

The University shall undertake the Project as outlined in the Proposal, which forms part of this Agreement.

**2. ALTERATIONS / ADDITIONS TO WORK**

Neither party may affect any change of whatever nature to the scope of the Project outlined in the Proposal without the prior written approval of the other party.

**3. DURATION OF WORK**

3.1 The duration of the work is as outlined in the Proposal.

3.2 Should the University envisage that it will be unable, for whatever reason, to complete the mandate by the completion date, and then the University shall give written notice to that effect to the Client at least two weeks prior to the completion date and apply to the Client for an extension of the completion date.

3.3 On receipt of such notice / application for extension, the Client shall not unreasonably withhold approval of such application provided that the University shows good cause in support of its application.

**4. PAYMENT**

4.1 If the Proposal stipulates an advance payment, the University will not commence work as set out in the Proposal until the advance payment has been received by the University. Any delay occasioned by a late payment, shall be added to the contract period.

4.2 All other payments will be strictly net within 30 (THIRTY) days of the date of invoice, or the date on which payment is due to the University, in terms of the Proposal. Any amount not paid on due date shall bear interest at a rate of 2% above the prime overdraft rate charged by Standard Bank to its preferred corporate clients, calculated and compounded daily in advance as from the due date.

**5. GOOD FAITH**

The parties shall act with the utmost good faith between each other in all matters concerning this Agreement and the parties shall use their best endeavours to ensure that the objectives of this Agreement are met and realised.

**6. CANCELLATION**

6.1 If this Agreement is cancelled or abandoned for whatever reason, the Client will pay the University:

6.1.1 a pro-rated amount for the Project, including both labour and deliverables, duly completed by it in accordance with the provisions of this Agreement, as at the date of cancellation or abandonment;

6.1.2 costs and expenses incurred and/or reasonably and necessarily committed to by the University in respect of the Project; and

6.1.3 any amounts committed by the University at the date of termination in any applicable research studentship which would be compromised financially by such early termination where such research studentship would have run its normal course.

**7. FORCE MAJEURE**

7.1 The University will not be liable for any delay in performing, or any failure to perform any obligation under this Agreement due to any cause beyond its reasonable control including, but without being limited to, any of the following:

7.1.1 the services of the University staff member no longer being available for any reason;

7.1.2 strikes, lock-outs or other industrial action;

- 7.1.3 sabotage, terrorism, civil commotion, riot, political riot or disturbance, invasion, war, threat or preparation for war;
  - 7.1.4 fire, explosion, storm, flood, epidemic or natural physical disaster;
  - 7.1.5 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and
  - 7.1.6 any act of any state or Government or other authority having jurisdiction over either Party.
- 7.2 Upon the occurrence of any delay or failure referred to in clause 13.1, the provisions of this Agreement affected will be suspended for as long as the cause in question continues to operate, provided that if that cause has not ceased to operate within 6 months from when it arose, this Agreement may be terminated by either Party.

## 8. INDEMNIFICATION

Notwithstanding any provisions in this Agreement and whilst the University warrants that it shall use its best endeavours to ensure that the work is of the highest standard, no warranty can be given by the University in respect of the work and accordingly the Client hereby agrees to waive all claims for any harm or loss, including consequential losses, which it may substantially have against the University, its employees, agents, mandataries and other persons connected in some way to such work, such claims having arisen from any cause whatsoever.

## 9. CONFIDENTIALITY

- 9.1 For the purpose of this clause, "confidential information" means specifications, drawings, circuit diagrams, tapes, discs and other computer-readable media, documents, information, technical and commercial data, techniques and know-how.
- 9.2 The Parties recognise that information, agreed or noted by the Parties to be confidential, may be passed from one Party to another for the purpose of the Project, and that confidential information may arise from the Project.
- 9.3 All information not designated in writing as confidential is not confidential. If either Party requires information to be designated as confidential information, it will be marked clearly as such, or if disclosed orally, it will be identified as confidential at the time of disclosure.
- 9.4 The Parties undertake to use all reasonable endeavours to keep confidential any confidential information unless disclosure of such confidential information to another party is specifically approved in writing by the owner of the confidential information.
- 9.5 No confidential information arising from the Project may be disclosed unless both Parties agree in writing to such disclosure.
- 9.6 The obligation of confidentiality of clause 9.4 will not apply to information which:
- 9.6.1 becomes known by third parties through no fault of the Parties hereto;
  - 9.6.2 is or becomes published otherwise than by unauthorised publication in breach of this Agreement;
  - 9.6.3 is independently developed by an employee of either Party who has not had access to any of the confidential information disclosed by the other Party;
  - 9.6.4 is in the public domain;
  - 9.6.5 can reasonably be demonstrated to be known to the Parties prior to disclosure under this Agreement;
  - 9.6.6 is disclosed to the Party or Parties by another party entitled to disclose the information;
  - 9.6.7 the Parties hereto agree to release; or
  - 9.6.8 is required to be disclosed by law.
- 9.7 The Parties hereto will take due precautions to ensure that their staff, students and contractors, who have a need to know confidential information, undertake the above obligations of confidentiality.
- 9.8 The results of the Project may be published in accordance with normal academic practice. In order to protect the confidential information and any proprietary rights, neither Party will publish or publicly disclose the results of the Project or any confidential information as described in clause 9.2 without the prior written consent of the other.

- 9.9 The Party who wishes to publish as described in clause 9.8 will submit to the other Party a copy of the proposed publication at least 30 days in advance of the submission of the publication to a third party. If the non-publishing Party determines that the proposed publication discloses confidential or proprietary information that requires protection, that Party will notify the other of this determination within 30 days of receipt of the proposed publication. The non-publishing Party can require a delay of the publication, which delay will not normally exceed 3 months, or editing of the proposed publication, such editing not being deemed unreasonable by the Parties hereto.
- 9.10 If the Party, to whom a proposed publication has been submitted according to clause 9.9, fails to notify the submitting Party within 30 days of receipt of the publication, then the submitting Party is free to submit or present the publication.

## **10. INTELLECTUAL PROPERTY**

All copyright, title and interest in any document produced or process designed or devised by the University in the course of this Agreement shall remain vested in the University.

## **11. VARIATIONS / AMENDMENTS**

No variation or amendment of the terms and provisions of this Agreement shall have any force or effect unless same are reduced to writing and such amending document is signed by the parties.

## **12. BREACH**

Should either party be in breach of any provision of this Agreement the aggrieved party shall by written notice give the offending party 14 working days in which to remedy the cause for complaint failing which the aggrieved party shall have the right to:

- 12.1 Grant the offending party further time to remedy the cause for complaint;
- 12.2 Apply to the Court for an order demanding specific performance with or without damages;
- 12.3 Cancel this Agreement and sue for damages.

## **13. ARBITRATION AND JURISDICTION**

13.1 Any dispute, question or difference arising at any time between the parties with regard to:

- 13.1.1 Any matter arising out of;
- 13.1.2 The rights and obligations of either party under;
- 13.1.3 The interpretation of;
- 13.1.4 The termination or cancellation of;
- 13.1.5 Any matter arising out of the termination or cancellation of; or
- 13.1.6 The rectification of;

this agreement between the Parties must be submitted to and decided by arbitration on notice given by either party to the other.

13.2 That arbitration must be held in Port Elizabeth under the auspices of and subject to the rules and procedures of the Arbitration Foundation of South Africa ("AFSA"), except that :

- 13.2.1 The arbitration must be informal and must be conducted in the most expeditious and inexpensive manner possible; and
- 13.2.2 The arbitrator will have the fullest and freest discretion to determine the procedure to be adopted, subject only to clause 13.2.1 and to the rules of natural justice;

it being the agreed intention that the arbitration must be held and concluded within twenty-one (21) business days after it has been demanded.

13.3 The arbitrator must be:

- 13.3.1 An independent chartered accountant of not less than ten (10) years' standing agreed upon between the parties, if the question in dispute is primarily an accounting matter;
- 13.3.2 A practising advocate or attorney of not less than ten (10) years' standing agreed upon between the parties, if the question in dispute is primarily a legal matter;
- 13.3.3 An independent and suitably qualified person agreed upon between the parties, in the case of any other matter.

- 13.4 If the parties are unable to reach agreement as contemplated in clause 13.3 above within three (3) business days after the arbitration has been demanded, then the senior executive officer for the time being of AFSA must determine the nature of the dispute and appoint an arbitrator within seven (7) business days after the parties have failed to reach agreement, with the intention that the arbitration be held and concluded within the twenty-one (21) day period referred to in clause 13.2.
- 13.5 This clause 13.5 will constitute each party's irrevocable consent to the arbitration proceedings, and neither party will be entitled to withdraw from the provisions of this clause or to claim at such arbitration proceedings that such party is not bound by this clause.
- 13.6 Each of the parties irrevocably agrees that the decision of the arbitrator (including any costs award):
  - 13.6.1 Will be final and binding on each of them;
  - 13.6.2 Will be carried into effect; and
  - 13.6.3 May be made an order of court on application by either party.
- 13.7 Nothing contained or implied in this agreement will preclude either party from applying to court for a temporary interdict or any other relief of an urgent and temporary nature, pending the decision or award of the arbitrator.
- 13.8 The provisions of this clause 13 are separate and severable from the rest of this agreement and will remain in effect despite the termination, cancellation or invalidity for any reason of this agreement.

#### **14. LIMITATION OF LIABILITY**

- 14.1 In circumstances where the Client is entitled to recover damages from the University (including fundamental breach, negligence, misrepresentation, or other contractual or delictual claim), The University is liable for no more than the amount of actual, direct damages up to the total of the amounts paid by the Client under this Agreement.
- 14.2 Neither Party will be liable for any indirect or consequential damages or losses of whatsoever nature.
- 14.3 Information provided by the University to the Client during the Project will be for the Client's use only. The University will not be liable for any loss suffered by any third party who is supplied with such information contrary to this provision and relies on it.
- 14.4 The Parties agree that the Universities obligations will cease upon delivery of the last agreed deliverable, and that no direct or indirect liability will rest upon it for the effects of any product or process that may be produced by the Client and any other party, notwithstanding that the formulation of such product or process may be based on the results of the Project.

#### **15. GENERAL CONDITIONS**

- 15.1 Neither Party may bind the other in any way.
- 15.2 Neither Party may assign or cede any benefit, obligation or interest it may have in the contact to any other person without the prior written consent of the other Party.
- 15.3 Neither Party is regarded as having waived, or is precluded in any way from exercising any right under or arising out of this Agreement by reason of such Party having at any time granted any extension of time for, or having shown any indulgency to, the other Party with reference to any performance of any obligation under this Agreement, or having failed to enforce, or delayed in enforcing any right of action against the other Party.
- 15.4 In the event of any clause of this Agreement or any part thereof being found to be invalid for any reason whatsoever, such clause or part thereof will be severable from the remainder of this Agreement and will not affect the validity of such remainder.
- 15.5 Neither Party grants the other the right to use its trademarks, trade names, logos or other such designations in any promotion or publication without prior written consent.
- 15.6 Once signed, any reproduction of this Agreement or part thereof made by reliable means (for example, photocopy, facsimile or electronic copy) is considered an original.