CONSULTANCY AGREEMENT

Entered into between

CAPE PENINSULA UNIVERSITY OF TECHNOLOGY

A Public Higher Education Institution constituted in terms of the South African Higher Education Act 101 of 1997 and the Statute of the Cape Peninsula University of Technology, promulgated under Government Notice No 33202 of 17 May 2010. Herein represented by DR NKONGWANE STOFFEL NHLAPO in his capacity as Vice Chancellor (Acting) and being duly authorized hereto.

(Hereinafter referred to as CPUT)

&

A company duly incorporated and registered in accordance with the laws of the Republic of South Africa, with registration number: .................

Herein represented by .................in his capacity as director and being duly authorized hereto.

(Hereinafter referred to as the Consultant)
PREAMBLE

Whereas Cape Peninsula University of Technology (CPUT) has entered into an agreement with the Consultant to provide the consulting services described in this Agreement.

And whereas, the Consultant has the requisite knowledge, experience and capacity to provide the services as contemplated in this agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 Agreement means the Agreement contained in this document and all annexures attached to this Agreement.

1.2 Business Day means a day which is not a Saturday, Sunday or South African Public Holiday or University Holiday.

1.3 Confidential Information includes any information whether in writing, electronic form or verbal and includes but is not limited to information relating to CPUT’s trade secrets, Intellectual Property, information relating to CPUT’s financial methods, policies and philosophies, marketing methods, research methods, incentive schemes, formulae, processes, systems, business methods, inventions, specialized knowledge of training material and training programs, staff welfare, internal control systems, policies and strategies, salary and wage policies, security methods, contractual arrangements and financing techniques, personnel, strategic plans, any software and/or database information or other electronically stored information, and other matters which relate to the business of CPUT in respect of
which information is not readily available in the ordinary course of business to a member of the general public. Without limiting the generality of the foregoing “Confidential Information” includes any information that falls within the definition of Personal Information as defined in POPIA; Company duly incorporated and registered in accordance with the laws of South Africa.

1.4 **Contract Material**

means “All material brought or required to be brought into existence as part of, or for the purpose of performing the Services, including but not limited to documents, equipment, information and data stored by any means”

1.5 **Contract Data**

means specific data, which together with these General Conditions of Contract, collectively describe the risks, liability, rights and obligations of the contracting Parties and procedures for the administration of the Contract.

1.6 **Contract Price**

means the price to be paid for the performance of the Services in accordance with the Pricing Data.

1.7 **Day**

means a calendar day.

1.8 **Defect**

means a part of the services, as performed, which does not comply with the requirements of the Agreement.

1.9 **Deliverable**

means anything in writing or otherwise (whether in hard copy or electronic format) created or prepared by the Consultant for the CPUT as part of Services.

1.10 **Employer**

means Cape Peninsula University of Technology (CPUT), a Public Higher Education Institution constituted in terms of the South African Higher Education Act 101 of 1997 and the Statute of the Cape Peninsula University of Technology, promulgated under Government Notice No 33202 of 17 May 2010.
1.11 Letter of Appointment means the letter of appointment issued by the CPUT to the Consultant in terms whereof inter alia the CPUT appoints the Consultant to render the Services to CPUT, on the terms and conditions therein contained.

1.12 Others means persons or organizations who are not the Principal, the Consultant or any employee, Subcontractor, or supplier of the Consultant.

1.13 Parties means the Cape Peninsula University of Technology and ……………….

1.14 Penalty means the stipulated amount per calendar day as detailed in the Contract Data payable by the consultant to the employer where the date or the revised date for practical completion, whichever is the later, has not been met.

1.15 Personnel means persons hired by the Consultant as employees and assigned to the performance of the Services or any part thereof.

1.16 Personnel Schedule means a schedule naming all Personnel and Key persons.

1.17 Principal means “Cape Peninsula University of Technology”

1.18 Principal Consultant means the Consultant appointed to be in charge of other lead Consultants

1.19 Project shall mean the project named in the Contract Data.

1.20 Services shall mean the work to be performed by the Consultant pursuant to the Contract as described in the Scope of Services.

1.21 Subcontractor shall mean a person or company body corporate who enters into a subcontract with the Consultant to perform part of the Services.
1.22 Value-Added Tax means value-added tax payable in terms of the VAT Act; and “VAT Act” means the Value Added Tax Act No. 89 of 1991, as amended;

2. INTERPRETATION

2.1 Unless inconsistent with the context, an expression which denotes;
   (a) Any gender includes other gender
   (b) A natural person includes a juristic person and vice versa;
   (c) The singular includes the plural and vice versa.

2.2 The clause headings shall not limit, alter or affect the meaning of the Contract

2.3 If there is any conflict between the provisions of this Agreement and the Contract Data, the provisions of the Contract Data shall prevail

3. SCOPE OF SERVICES

   The Consultant shall perform the consulting services as defined in the Contract Data attached to this Agreement as Annexure……..

4. CONSULTANT OBLIGATIONS

4.1 The Consultant shall perform the Services to that standard of care and skill to be expected of a Consultant who regularly acts in the capacity in which the Consultant is appointed and who possesses the knowledge, skill and experience of a Consultant qualified to act in that capacity.

4.2 The Consultant shall not make any material alteration, or addition to, or omission from approved design, budget or programme without the written consent of CPUT and/or the Principal Consultant except when required to do so by any applicable law or when arising from an emergency. In such circumstances, the Consultant shall notify CPUT in writing, Principal Consultant and other Consultants involved as soon as practicable of the action taken.

4.3 If the Consultant considers that information, documents and other particulars made available to it by CPUT are inadequate or contain errors or ambiguities, the Consultant shall give written notice within 7 (seven) working days after the receipt of such information to CPUT detailing the errors or ambiguities.
4.4 The Consultant shall submit to CPUT Project Manager a program or plan for the performance and completion of the Services within 7 (seven) days after the signing of this Agreement.

4.5 In the event that CPUT appoints other professionals/ Service Providers in the same project the Consultant must liaise, co-operate and confer with the appointed professionals/service providers as provided in the Contract Data.

5. CPUT OBLIGATIONS

5.1 CPUT shall pay the Consultant the Consideration due to it on the terms and conditions set out in this Agreement and in accordance with the provisions in the Contract Data.

5.2 CPUT shall provide the Consultant with reasonable access to the CPUT campuses, sites and or premises for the duration of this Agreement.

5.3 CPUT shall assist the Consultant in obtaining all the information in CPUT’s possession which is reasonably required to perform the Services as contemplated in this Agreement.

6. CONSULTANT FEES.

6.1 CPUT shall pay the Consultant fees as stated in the Contract Data in respect of the service rendered.

6.2 The Consultant fees shall include all disbursements and be VAT inclusive.

6.3 The CPUT and the Consultant acknowledge and agree that the Consultant fees are based on the following non exhaustive parameters;

6.3.1 Scope of project
6.3.2 Scope of services
6.3.3 Services
6.3.4 Project program
6.3.5 The cost of the works
6.3.6 The cost of the project
6.3.7 Appointments of other consultants
6.3.8 Appointments of other contractors.

7. **PAYMENT TERMS.**

7.1 CPUT undertakes to pay valid signed invoices in full within 30 (thirty) calendar days from statement date provided that these invoices contain all the relevant information as prescribed and determined by CPUT and are approved by the relevant CPUT representative and/or authority.

7.2 No payment will be made by CPUT where the Consultant has not submitted a valid signed tax invoice, delivery note (if applicable) and a statement of account to the CPUT’s relevant authority at CPUT’s finance department.

7.3 Any invoices reflecting increased prices not agreed to by CPUT, shall not be paid by CPUT and it is expressly agreed that CPUT shall only make payment in respect of invoices reflecting agreed prices between the Parties.

7.4 Should any dispute arise relating to the amount to which the Consultant is entitled, such dispute shall be determined with the dispute resolution Clause provided for in clause 13 of this Agreement.

7.5 Payments to the Consultant will be made electronically according to the banking details furnished by the Consultant. Any change in such banking details must be communicated in writing to the project manager timeously.

8. **PAYMENT SCHEDULE.**

CPUT shall pay the Consultant in accordance with the completed milestones, deliverables or stages. See Clause…… in “Annexure A”.

9. **REPORTING.**

Notwithstanding any other requirements as listed elsewhere, the Consultant shall submit weekly/ monthly report to CPUT Project Manager indicating
progress of the Services. The Consultant shall report and make submissions to CPUT’s Project Manager in accordance to the data in “Annexure B”.

10. PERFORMANCE MANAGEMENT

10.1 The Consultant shall apply professional skills and due diligence in the execution of the duties stipulated in this Agreement which shall include inter alia the following;

10.1.1 Although the Consultant documents may be scrutinized by CPUT, this shall in no way relieve the Consultant of his professional responsibility for the proper and prompt execution of his duties.

10.1.2 CPUT shall also be entitled to have any documentation or calculations verified by other professionals.

10.1.3 In the event of mal-performance, default or negligence, CPUT shall have the right to claim compensation or damages or specific performance and set off such against any amount payable.

10.2 During assessment of the existing facilities, which have a direct bearing on the Project, the Consultant shall determine deficiencies with such facilities in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), the SANS 10400, etc. and recommend measures to rectify those during the project execution phase.

10.3 The CPUT’s project manager shall be notified in writing by the Consultant and his personnel of any transgression of inter alia the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and environmental legislation during the Consultant’s operation pertaining to the Contract regardless of who may be involved.

10.4 Local content; it is the request of CPUT to give preference to materials and equipment of South African manufacture. The Consultant shall ensure that,
wherever feasible, designs are based on locally manufactured equipment and materials which can meet requirements at competitive prices and provides CPUT with the report indicating effort made to that effect.

10.5. Final disposal of documents; upon approval and finalization of the final account of projects requiring a security clearance, it is a requirement that the Consultant forward to the CPUT all documents relating to this service. The same may also be requested on projects not requiring a security clearance.

10.6. All submissions of reports, deliverables and invoices shall only be signed off as complete once they have been satisfactorily reviewed by CPUT’s Project Manager which shall not be unduly delayed.

10.7. If CPUT is dissatisfied with any aspect of the service provided, it will file a complaint with the managing director of the Service Provider. The Service Provider’s Managing Director undertakes to investigate any complaint regarding the services and within 3 (three) days and file a report with the CPUT’s Project Manager on steps taken to resolve the issue. If CPUT remains dissatisfied, it may terminate the agreement upon written notice. CPUT would only be liable for the costs in respect of the services rendered to date.

11. PENALTY

11.1. If due to Service Provider’s negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, CPUT shall without prejudice to its other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for performance, or an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.

11.2. If CPUT has become entitled to the maximum penalty amount referred to in 11.1, CPUT may after giving notice to the Service Provider:
a) terminate the Contract

b) complete the Services at the Service Provider’s cost.

12. **NATURE OF RELATIONSHIP**

12.1 It is specifically recorded that the Consultant will perform an independent Service. It is accordingly recorded that the Consultant and its Employees are not Employees of CPUT for the purposes of the Labour Relations Act, No 66 of 1995(LRA), the Basic Conditions of Employment Act, No 75 of 1997( BCEA), the Unemployment Insurance Act, No 63 of 2001(UIA), the Employment Equity Act, No 55 of 1998(EEA), the Compensation for Occupational Injuries and Diseases Act No.130 of 1993 ("COID Act") and/or any other relevant legislation that may normally be applicable to an employer/employee relationship.

12.2 It is furthermore specifically recorded that the Consultant and its Employees shall not be entitled to be a member of CPUT’s provident, retirement or medical aid schemes as may be in existence from time to time. They shall also not be entitled to any other allowances or benefits, including leave pay or sick leave entitlements that would normally be provided to CPUT's Employees and that might be expected in an employer/employee relationship.

12.3 CPUT will also not carry or be responsible for any workman’s compensation insurance or any health or accident insurance to cover the Consultant and/or its Employees.

12.4 Notwithstanding the contents of this Agreement, should South African Revenue Services(SARS) claim any additional tax or amounts from CPUT, CPUT shall be entitled to recover same from the Consultant, alternatively, set-off such amounts against any monies due and owing to the Consultant by CPUT from time to time.
12.5 It is specifically recorded that the Consultant shall be solely responsible for the payment of income tax on behalf of its Employees.

12.6 Any dispute of whatsoever nature between the Consultant and its Employees will not be CPUT’s responsibility or affect CPUT in any way.

13. TERMINATION OF CONTRACT

13.1 CPUT has a right to terminate this agreement if the Consultant does not meet deliverables in the agreed timelines and/or delivers a milestone that is not to the satisfaction of CPUT’s Project Manager.

13.2 Termination referred to above in clause 13.1 shall be effected in terms of Clause 14 below.

13.3 Termination by CPUT other than for Default by the Consultant;

13.3.1 CPUT may terminate the whole or any part of the performance of the Services at any time, by written notice addressed to the Consultant.

13.3.2 The Consultant must, after receipt of a notice under Clause 13.3.1

13.3.2.1 Cease work on the terminated Services by the date specified in the Notice; and

13.3.2.2 Comply with any reasonable directive given in the Notice by CPUT in relation to performance of the Agreement.

13.3.2.3 As soon as practicable within 7 (seven) days after ceasing work under Clause 13.3.2, the Consultant must submit to CPUT a statement of the amount of the Fee (and any approved reimbursable expenses) claimed by the Consultant to be payable for Services performed.
13.4 Termination by CPUT for Default by the Consultant;

13.4.1 If the Consultant becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors;

13.4.2 fails to carry out the Services with due diligence and competence;

13.4.3 Without reasonable cause suspends the carrying out of the Services; or

13.4.4 commits a substantial breach of this Agreement, CPUT may:

13.4.4.1 In the case of the default specified in Clause 13.4.1, forthwith terminate this Agreement by written notice addressed to the Consultant; and

13.4.4.2 In the case of any other specified default, terminate this Agreement by written Notice addressed to the Consultant if the Consultant fails to remedy the default within 14 (fourteen) days from the date of service of a notice by CPUT on the Consultant specifying the relevant default.

13.5 Termination by the Consultant;

13.5.1 If CPUT fails to pay the Consultant any amount in accordance with this Agreement which is not in dispute, or commits a fundamental breach of the Agreement, the Consultant may give written notice requiring CPUT to remedy the default within 14 (fourteen) Business Days after receiving the notice.

13.5.2 If CPUT fails to remedy the default or to propose steps reasonably acceptable to the Consultant to do so within the time specified in Clause 13.5.1, the Consultant may issue a Notice terminating the Agreement.
13.6 Consultant's Continuing Liability

Termination by CPUT or Consultant shall not release the Consultant from liability in respect of any breach, or non-performance of any obligation pursuant to this Agreement.

13.7 Effect of Termination

Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of each party.

13.8 Adjustment of the Fee on Termination

13.8.1 If any of the Services are terminated pursuant to Clause 13.3, CPUT shall pay the Consultant a reasonable amount for the Services performed by the Consultant up to the date of termination, as adjusted by any additions or deductions in accordance with this Agreement.

13.8.2 If this Agreement is terminated pursuant to Clause 13.4, CPUT shall pay the Consultant a reasonable amount for the Services performed by the Consultant up to the date of termination, adjusted to take into account loss or damage suffered, or reasonably likely to be suffered, by CPUT as a consequence of breach by the Consultant. CPUT may recover any short-fall from the Consultant as a debt due and payable.

13.8.3 If this Agreement is terminated pursuant to Clause 13.5, CPUT shall pay the Consultant:
13.8.3.1 A reasonable amount for the Services performed by the Consultant up to the date of termination, as adjusted by any additions or deductions in accordance with this Agreement.

13.9 CPUT shall not be liable for any consequential loss resulting from the termination of this Agreement

14. DISPUTE RESOLUTION

14.1.1 Prior to the initiation of formal arbitration procedures, the Parties shall, within 5 (five) Business days after the raise of any dispute, first attempt to resolve the dispute informally, by way of negotiation. Each party shall appoint a single designated representative, who shall have the authority of the party they represent to settle the dispute;

14.1.2 Negotiation will commence by one of the Parties requesting the other in writing to meet and to attend to resolve the dispute;

14.1.3 If the dispute has not been resolved by negotiations within ten (10) business days of the commencement thereof, then the parties shall submit the dispute for arbitration;

14.2 Without detracting from either party’s right to institute action or motion proceedings in a Court of competent jurisdiction in respect of any dispute that may arise out of or in connection with this Agreement, the parties may, by mutual consent, follow the arbitration procedure as set out in this clause. Should any dispute arise between the parties in the widest sense in connection with;

14.2.1 The formation or existence of;
14.2.2 The carrying into effect of;
14.2.3 The interpretation or application of the provisions of;
14.2.4 The parties’ respective rights and obligations in terms of or arising out of;
14.2.5 The validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;
14.2.6 any documents furnished by the parties pursuant to the provisions of this agreement or which relates in any way to any matter affecting the interests of the parties in terms of this agreement, that dispute shall, unless resolved by the parties, be referred to and be determined by arbitration in terms of this clause, provided that a party to the dispute has demanded the arbitration by written notice to the other party.

14.3 The arbitration shall be held –

14.3.1 at Cape Town;
14.3.2 With only the representatives and legal representatives of the parties to the dispute present thereat;
14.3.3 otherwise in terms of the Arbitration Act, No 42 of 1965, it being the intention that the arbitration shall be held and completed within 21 (twenty one) days after it was demanded.

14.4 The arbitrator shall be, if the matter in dispute is principally –

14.4.1 A legal matter, a practicing advocate or attorney of Cape Town of at least 15 (fifteen) years' standing;
14.4.2 An accounting matter, a practicing chartered accountant of Cape Town of at least 15 (fifteen) years' standing;
14.4.3 Any other matter, any independent person, agreed upon between the parties to the dispute.

14.5 Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
14.6 Should the parties to the dispute fail to agree on an arbitrator within 7 (seven) days after the expiry of the period referred to in 9.4, the arbitrator shall be appointed at the request of any party to the dispute by the President for the time being of the Cape Law Society.

14.7 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of any competent court at the instance of any of the parties to the dispute.

14.8 The parties hereby consent to the jurisdiction of the High Court of South Africa (Cape of Good Hope Provincial Division) in respect of any proceedings arising out of this agreement not subject to arbitration in terms of this clause.

14.9 The provisions of this clause –

14.9.1 Constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

14.9.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

14.10 This clause will remain in force notwithstanding the termination of this Agreement which it forms part;

15. BREACH
15.1 In the event of any of the parties ("defaulting party") committing a breach of any of the terms of this agreement and failing to remedy such breach within a period of 14 (fourteen) days after receipt of a written notice from another party ("aggrieved party") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this agreement or to cancel this agreement forthwith and without further notice, claim and recover damages from the defaulting party.

15.2 Without limiting the generality of 15.1 above, the CPUT shall be entitled to terminate this agreement summarily if, in the CPUT’s opinion, the Consultant breaches any of the provisions of this agreement. Such termination shall be effected by the CPUT serving a written notice on the Consultant.

16. NO SUBCONTRACTING

The Consultant may not subcontract the provision of Services contemplated in this Agreement without the prior written consent and approval of CPUT which shall not be unreasonably withheld. Despite any consent and approval granted by CPUT in terms of this clause, the Consultant remains solely liable for the performance of its obligations under this Agreement.

17. ASSIGNMENT
No party may assign, transfer, sub-contract or otherwise part with this agreement or any part thereof or any right or obligation under it, without obtaining the other party’s prior written consent thereto.

18. WARRANTIES AND UNDERTAKINGS

18.1 The Consultant hereby warrants and undertakes to and in favor of CPUT on (unless otherwise stipulated) the following basis:
18.1.1 the warranties shall be deemed to be representations and undertakings by the Consultant;
18.1.2 each warranty shall be deemed to be a representation of fact inducing the CPUT to enter into this agreement;
18.1.3 each warranty shall be presumed to be material;
18.1.4 insofar as any warranty is promissory or relates to a future event, it shall be deemed to have been given as at the due date for fulfilment of the promise or the happening of the event, as the case may be;
18.1.5 each warranty shall be a separate warranty and in no way limited or restricted by reference to or inference from the terms of any other warranty, and
18.1.6 Each warranty is given as at the signature date and as at the effective date.

18.2 The Consultant hereby warrants and undertakes, without limiting the generality of 18.1 above, to and in favour of the CPUT that:

18.2.1 He/ she possesses the appropriate level of experience and expertise in relation to the Services of which he/ she has been appointed and that he/she has the necessary capacity, resources, experience to provide the Services in respect of which he/ she has been appointed.

18.2.2 It is expected that the Consultant shall, at all times, provide the Services diligently, in a professional manner and in compliance with all Prevailing Legislation and that the Consultant shall amongst others:

18.2.1 Comply with the professional and ethical rules applicable to the Consultant’s profession;
18.2.2 Ensure that the interests of CPUT are protected at all times; and
18.2.3 Ensure that the Services are aligned to best practice.
18.2.4 No litigation, arbitration or administrative proceedings are pending or threatened against the Consultant which would have an adverse effect upon his/ her financial condition or business, or her ability to perform his/ her obligations under this Agreement.

18.2.5 The execution of this Agreement by the Consultant and the performance by him/ her or his/ her obligations hereunder have been duly authorized.

18.3 All the applicable legislation, which do not specifically allow discretion in respect of compliance by the State, shall be followed exactly as intended by such legislation regardless of any instructions, verbal or in writing, to the contrary. (Refer inter alia to Section 41 of the Occupational Health and Safety Act, 1993 (Act 85 of 1993)).

18.4 Should any applicable legislation allow discretion in respect of compliance by the State, it shall be followed exactly as intended by the relevant legislation as if no discretion is allowed until such time as specific instructions in writing are issued to the appointed professional team by the departmental project manager.

18.5 The Consultant undertakes to ensure that his actions and outcome thereof including, but not limited to, the facilities to be affected by the Service shall be in accordance with all relevant legislation and upon delivery, will function as required by said relevant legislation.

18.6 The Consultant undertakes that its actions and the outcome thereof will in no way be detrimental to the health and safety of the occupants or persons present therein or in the vicinity thereof. Similarly it must not be
detrimental to any aspects of the environment in its structure or operation if operated as specified in operation manual(s).

18.7 This adherence to legal prescripts shall be a continuous process throughout the appointment, which shall manifest itself during the following phases:

18.7.1 Development of plans and documentation;
18.7.2 Ensuring compliance of the end product;
18.7.4 Compiling and issuing of Instruction/Operational Manuals indicating inter alia what the legal and safety requirements entail for the user(s)/operator(s) of the facilities;
18.7.5 Providing instruction to the intended users/operators.

18.8 The Consultant accepts full and complete responsibility (both contractually and/or in delict) regarding compliance with the Occupational Health and Safety Act, 1993 (Act 85 of 1993) for his acts and omissions as well as those of his employees and indemnifies CPUT against any legal action in this regard.

18.9 The Consultant undertakes to ensure that the requirements of the Occupational Health and Safety Act, 1993 will similarly apply to the agreement with any sub-Consultant inclusive of indemnifying CPUT against any legal action regarding the actions and/or omissions by them.

18.10 The Consultant undertakes and warrants that it has registered with the SARS as an independent tax payer and accordingly indemnifies and holds CPUT harmless in respect of any claim for tax of any nature that may be successfully levied against CPUT.
18.11 Notwithstanding the contents of this Agreement, should SARS claim any additional tax or amounts from CPUT, the CPUT shall be entitled to recover same from the Consultant, alternatively, set-off such amounts against any monies due and owing to the Consultant by the CPUT from time to time.

18.12 The Consultant hereby undertakes to supply CPUT with updated tax clearance certificates for the duration of this Agreement.

18.13 The Consultant warrants that he or she complies with his/ her commitments in terms of his black economic empowerment and development programme.

18.14 Any breach of any of the above warranties or any failure to observe the undertakings given shall constitute a material breach for the purposes of clause 15 above.

18.15 The Consultant undertakes to protect and keep safe and secure all materials and documentation provided by CPUT to the Consultant and upon discharge of this Agreement by performance or termination, the Consultant shall return within 14 (fourteen) days to CPUT those materials and documentation.

18.16 The warranties in this clause take effect from the Commencement Date.

19. **INDEMNITY**

19.1 The Consultant hereby indemnifies and holds CPUT harmless in respect of all and any claims, payments, compensation awarded, any damages, any losses and/or costs, including legal fees, which—
19.1.1 Any of its Employees may have or institute against CPUT of whatsoever nature;

19.1.2 any third party, may have, acquire or institute against the Consultant or CPUT related or arising from the Services or a breach of the Services; and / or

19.1.3 any third party may have, acquire or institute against the Consultant or CPUT related to or arising from any litigation and/or pending litigation between such third party and the Consultant, including any claims arising from contract, delict, fairness, operation of statute or otherwise including any claim for unfair dismissal, unfair labor practices, discrimination, damages, fines, penalization, back-pay, contributions, health and safety, reinstatement, re-employment, remuneration, notice pay, severance pay, Unemployment Insurance Fund (UIF) contributions, any minimum standard legislation, employment benefits and the like.

20. INSURANCE

The Parties agree that the Insurance requirements for contracts with a value below R50 million on;

20.1 Contract Works

20.1.1 With regards to contract works claims, the contractor/consultant is responsible for a deductible (excess) of R250 000.

20.1.2 Contractors / consultants may re-insure the deductible
20.2 Public Liability

20.2.1 In the event of a claim against the contractor / consultant for 3rd party property damage the contractor / consultant will be responsible for a deductible (excess) of R275 000

20.2.2 In the event of a claim against the contractor / consultant for removal of lateral support, the contractor / consultant will be responsible for a deductible (excess) of R500 000

20.2.3 Contractors / consultants may re-insure the deductibles

19.3 Professional Indemnity

20.3.1 All consultants are responsible for Professional Indemnity (PI) cover of R5million

20.3.2 Contractors who have a material design element, excluding typical P & G related work, as part of their scope, are responsible for Professional Indemnity cover of R5million

20.3.3 In the event of a claim above R5million, the CPUT PI cover will kick in for the amount in excess of R5m.

19.4 Part 1: Notes to Schedule:

20.4.1 The provision of insurance by the CPUT does not limit the obligations, liabilities or responsibilities of the Contractor/Consultant under this contract in any way whatsoever (including but not limited to any requirement for the provision by the Contractor/Consultant of any other insurances).
20.4.2 This Insurance Schedule is a generic term sheet generally applicable to the CPUT's projects which in the circumstances;

20.4.2.1 If this Insurance Schedule reflects the amount of any cover provided by the CPUT to be higher than the amount required in the Contract Data, the CPUT's obligation under this Contract is limited to the lower amount; and

20.4.2.2 If this Insurance Schedule provides for any cover which is not stated to be provided by the CPUT in the Contract Data, the CPUT's obligation under this Contract is limited to the cover stated in the Contract Data.

21. NOTICES AND DOMICILIA

The parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

21.1 For purposes of this agreement the parties' respective addresses shall be –

21.1.1 The CPUT at Director Legal Services
            Administration Building,
            Cape Peninsula University of Technology,
            Cape Town Campus,
21.1.2 For the Consultant; As provided in the Contract Data.

21.1.3 Or at such other address in the Republic of South Africa of which the party concerned may notify the other in writing provided that no street address mentioned in this sub clause shall be changed to a post office box or poste restante.

21.2 Any notice given in terms of this agreement shall be in writing and shall

21.2.1 If delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

21.2.2 If posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;

21.2.3 If transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

21.3 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

22. RELAXATION
No latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this agreement, and no single or partial exercise of any right by any party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

23 VARIATION /AMENDMENTS

23.1 No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorized representatives.

23.2 CPUT may instruct variations in writing and the Consultant must comply with the instructions, provided the variations are generally consistent with or of a similar nature to the Services.

23.3 The Consultant must take all reasonable steps to minimize the effects variations on the time to complete the Services.

23.4 When requested by CPUT, the Consultant must, within the time specified in the request, advise CPUT of its price (including any delay costs) for a
proposed variation and the effect on the time to complete the Services, or on any other matter specified in the request

23.5 Unless CPUT instructs the Consultant to proceed, the Consultant must not begin to carry out a variation until the parties have agreed on the price and time implications (including any delay costs).

23.6 If the parties agree that a variation applies they must agree in writing on its price and its effect on the time to complete the Services and such variation must be authorized by CPUT’s Project Manager.

24. CONFIDENTIALITY

24.1 The Parties shall treat all confidential information as strictly confidential. The receiving party shall not directly or indirectly use the disclosing party’s confidential information for its own benefit nor for the benefit of any other person nor for any purpose other than carrying out its obligations in accordance with and upon the terms of this Agreement.

24.2 The receiving party shall not disclose confidential information to any person whomsoever other than the receiving party’s staff who are directly involved in carrying out the receiving party’s obligations in terms of this Agreement and only on a need-to-know basis. Before revealing any confidential information to them, the receiving party shall ensure that staff are made aware of the confidential nature of the confidential information being made available to them and that staff who are-
24.2.1 Employees, have each signed an undertaking with like obligations of confidentiality; and

24.2.2 Sub-contractors, independent contractors, other representatives or agents, have each signed a separate undertaking with like obligations of confidentiality.

24.3 The duty of confidentiality shall not apply to any confidential information disclosed by the disclosing party which, through no act or failure on the part of the receiving party:

24.3.1 Is or becomes public information,

24.3.2 is in its possession at the time of disclosure by the disclosing party,

24.3.3 Is furnished to the receiving party by a third party without restriction or disclosure,

24.3.4 Is developed by or for the receiving party outside the scope of this Contract, or

24.3.5 Is obliged to disclose under law, provided the disclosing party is given a reasonable opportunity to review the planned disclosure and discuss the need for such disclosure.

25. INTELLECTUAL PROPERTY

25.1 CPUT shall become the owner of the information, documents, programs and reports compiled by the Consultant in the execution of the Services in terms of this Agreement.

25.2 The copyright of all documents, programs and reports compiled by the Consultant in the execution of the services in terms of this Agreement, shall vest in CPUT.
26. **WAIVER**

Any failure by a party to insist at any time upon the performance of any of the terms, provisions or undertakings of the defaulting party, contained in the agreement, or to exercise any rights thereunder, shall not constitute or be construed as a waiver thereof or a relinquishment of the party’s rights to require the future performance of any such term, provision or undertaking, but the obligation of the defaulting party with regard to the same shall continue in full force and effect.

27. **WHOLE AGREEMENT**

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.

28. **AGENCY**

The parties agree that this agreement does not constitute as the agent, employee, servant or legal representative of CPUT for any purpose whatsoever and van der Walt is not authorized to assume or create any obligations or responsibilities, whether express or implied, on behalf of or in the name of CPUT unless he is so authorized to do in writing by CPUT.

29. **FORCE MAJEURE**

29.1 To the extent that it becomes impossible for the Consultant to perform any obligation in terms of this Agreement because of an event or
circumstance that was neither foreseen nor reasonably foreseeable when the Agreement was entered into or which, if the event have been foreseen at that time, cannot be guarded against or avoided by reasonable care or the reasonable acts of the Consultant, the Consultant may;

29.1.1 Notify CPUT within 2 (two) days of the nature, extent, effect and likely duration of the vent or circumstances;

29.1.2 Take all commercially reasonable action to remedy or minimize the consequences (and report to CPUT); and

29.1.3 Immediately resume performance of its obligations under this Agreement and notify CPUT when performance of the obligation again becomes possible.

29.2 Performance of any such obligation is suspended for as long as the event or circumstance continue to make the performance possible.

29.3 If the event or circumstance continues for a period exceeding 5 (five) days CPUT may cancel this Agreement on written notice to the Consultant provided that the obligation which the Consultant is unable to perform is a material obligation under this Agreement.

30. **STUDENT UNREST.**

In the event of student unrest which resulted in the consultant’s inability to fulfil its obligations in terms of this Agreement then CPUT shall not be held liable for any costs incurred by the Consultant for the duration of the unrest period in which the Consultant was unable to fulfil any of its obligations.
31. CHANGE OF MANAGEMENT AND OWNERSHIP

31.1 The Consultant shall not be entitled to change its management or to appoint or remove directors from its board of directors, without first informing CPUT thereof in writing.

31.2 The Consultant shall not be entitled to sell or otherwise dispose of its business or part thereof whether as a going concern or otherwise, and the Consultant shall procure that its members do not dispose of their interest in the Consultant, without first informing CPUT thereof in writing.

31.3 No change in the management or the ownership of the business or shares in the Consultancy shall have any effect on the continued validity and enforceability of this Agreement.

32. APPLICABLE LAW

This Agreement is governed by South African law.

33. JURISDICTION

33.1 The Parties unconditionally consent and submit to the jurisdiction of the Magistrates Court, District of Cape Town in regard to all matters arising from this Agreement.

33.2 The Courts of the Republic of South Africa shall have exclusive jurisdiction in all questions and matters relating to this Agreement or arising out of it.

34. SEVERABILITY

If any provision of this Agreement (excluding only those provisions which are essential in law for a valid and binding Agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/ or unenforceable then, notwithstanding such invalidity and/ or unenforceability, the remaining provisions of this Agreement shall be and remain in full force and effect. Each and every provision of this Agreement (excluding those provisions which are essential in law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this Agreement.
35. **SIGNATURE**

35.1 This Agreement is signed by the parties on the dates and at the places indicated opposite their respective names.

35.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

**SIGNED**

at……………………………on this………………day of ………………..2018. On behalf of CPUT;

.................................................................................................
Vice Chancellor Signature

As Witnesses;

1. .................................................................
Print names Signature

2. .................................................................
Print names Signature

**SIGNED**

at……………………………on this………………day………………….2018. On behalf of ….................................

.................................................................................................
Duly authorized representative

As Witnesses;

1. ………………………………… …………………………………
   Print names	Signature

2. ………………………………… …………………………………
   Print names	Signature