

# Standard Conditions of Contract

## MEMORANDUM OF AGREEMENT

between

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and

CEENEX (PTY) LTD

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Title

## MEMORANDUM OF AGREEMENT

This Agreement is between

\_\_\_\_\_ herein represented by \_\_\_\_\_ in his capacity as Executive Director, duly authorized in terms of a Executive Committee Resolution dated \_\_\_\_ , attached hereto marked " Appendix A"

(Hereinafter referred to as the Client)

And

CEENEX (PTY) LTD. herein represented by JOHAN C. WAGNER in his capacity as Managing Director.

(Hereinafter referred to as the Consultant)

Whereas the Client requires the Consultant to 'assist with the development of offerings, project management support services and general management and technology consulting services' (hereinafter referred to as the Services) as fully described in terms of the Scope of Work attached hereto marked Appendix "B" and initialled by all the Parties for identification purposes;

Therefore the Client and Consultant (hereinafter referred to as the Parties) hereto agree as follows:

1. The Client and the Consultant shall abide by the Conditions of Agreement.
2. The Consultant shall provide the Services in accordance with the Conditions of Agreement, as read with the Scope of Work.
3. The Client shall pay the Consultant the fees, disbursements and expenses provided for in the Conditions of Agreement.
4. Any notice, instruction or request required or permitted to be given or made under this Agreement shall be in writing. Such notice, instruction or request shall be deemed to be duly given or made when it shall have been delivered by hand, mail, or facsimile at the domicilium citandi et executandi of the Party concerned as specified below. Any facsimile must be followed up by the original document.
5. The Parties choose as their respective domicilium citandi et executandi the following addresses:
  - 5.1 The Client: \_\_\_\_\_ Facsimile:  
(\_\_\_\_\_)
  - 5.2 The Consultant: P.O. Box 12241 Hatfield 0028 Facsimile (012-362 3053)
6. The effective date of this Agreement is \_\_\_\_\_.

SIGNED IN THE PRESENCE OF THE SUBSCRIBING WITNESSES AT \_\_\_\_\_ ON \_\_\_\_\_ 200\_\_

.....  
(Executive Director)  
for and on behalf of the Client

As witnesses: 1. ....  
2. ....

SIGNED IN THE PRESENCE OF THE SUBSCRIBING WITNESSES AT \_\_\_\_\_ ON \_\_\_\_\_ 20\_\_

.....  
JOHAN C. WAGNER  
(Managing Director)  
for and on behalf of the Consultant

As witnesses: 1. ....  
2. ....

## 1. GENERAL PROVISIONS

### 1.1 Relationship between the Parties

This Agreement shall not be construed as establishing or creating a relationship of master and servant or principal and agent between the Parties.

### 1.2 Interpretation

Unless inconsistent with the context, an expression which denotes:

- 1.2.1 any gender includes the other gender;
- 1.2.2 a natural person includes a juristic person and vice versa;
- 1.2.3 the singular includes the plural and vice versa;
- 1.2.4 the word "days" denotes calendar days.

### 1.3 Headings

No heading shall limit, alter or affect the meaning of this Agreement.

## 2. DURATION AND MODIFICATION OF AGREEMENT

### 2.1 Effective Date

This Agreement shall be effective from the date specified in Clause 6 of the Memorandum of Agreement and shall remain in force until such time as the Services are completed or it is terminated.

### 2.2 Suspension

The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of the obligations under this Agreement, provided that such notice of suspension:

- 2.2.1 shall specify the nature of the failure, and
- 2.2.2 shall request the Consultant to remedy such failure within a period of not exceeding thirty (30) working days after receipt of such notice.

### 2.3 Termination

#### 2.3.1 By the Client

The Client may, by not less than sixty working days` written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in paragraphs (a) to (c) of this Clause 2.3.1, terminate this Agreement:

- (a) if the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.2 herein above, within thirty working days after receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing;

- (b) if the Consultant becomes bankrupt or is liquidated or enters into any Agreements with its creditors for the relief of debt;
- (c) if the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 8 hereof.

#### 2.3.2 By the Consultant

The Consultant may, by not less than sixty (60) working days` written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) to (c) of this Clause 2.3.2 terminate this Agreement:

- (a) if the Client fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 8 hereof within thirty (30) days after receipt of a written notice from the Consultant that such payment is overdue;
- (b) if the Client is in material breach of its obligations pursuant to this Agreement and has not remedied same within thirty (30) working days (or such longer period as the Consultant may subsequently have agreed to in writing) following the receipt by the Client of the Consultants` notice specifying such breach;
- (c) if the Client fails to comply with a final decision reached as a result of arbitration pursuant to Clause 8 hereof.

#### 2.3.3 Rights, claims and liabilities

Termination of this Agreement, for whatever reason, shall not prejudice or affect the accrued rights, claims or liabilities of either Party to the Agreement.

#### 2.3.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.3.1 or 2.3.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall process as provided for in Clauses 3.6 and 3.7 hereof respectively.

#### 2.3.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.3.1 or 2.3.2 hereof, the Client shall make the following payment to the Consultant:

- (i) Remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the effective date of termination;
- (ii) Reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the effective date of termination; and
- (iii) Except in the case of termination pursuant to paragraph (a) through (c) of Clause 2.3.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the contract.

#### 2.3.6 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraph (a) to (c) of Clause 2.3.1 or in Clause 2.3.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 8 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitration award.

#### 2.3.7 By the Consultant

The Consultant shall promptly notify the Client, in writing, of any situation or event arising from circumstances beyond its control and which it could not reasonably have foreseen, which makes it impossible for the Consultant to carry out in whole or in part its obligations under this Agreement. Upon the occurrence of such a situation or event the Services shall be deemed to be postponed for a period of time equal to that caused by such circumstances and a reasonable period not exceeding three (3) months to remobilize the continuation of the Services. Upon receipt of such notice, the Client may come to an Agreement with the Consultant on the costs related to the continuation of the Services in the future.

#### 2.4 Termination and Modification

Termination of this agreement for reasons not elsewhere specified herein, or the modification of the terms and conditions thereof, including any modification on the Scope of Work, may only be made by written Agreement between the Parties. Each Party shall give due consideration to any proposals for modification made by the other Party.

#### 2.5 Assignment

Neither the Consultant nor the Client shall without the written consent of the other Party, in any way assign the benefits, other than the assignment of any monies due or to become due, under this Agreement.

The Consultant shall not, without the written consent of the Client, in any way assign or transfer the obligation of this Agreement or any part thereof.

### 3. THE RESPONSIBILITIES OF THE CONSULTANT

3.1 The Consultant shall provide the Services as described in the Scope of Work in accordance with the conditions of Agreement. The Client reserves the right to alter the Scope of Work in consultation with the Consultant.

3.2 The Consultant shall exercise all reasonable skill, care and diligence in the provision of the Services and shall carry out all its responsibilities in accordance with recognized professional standards.

3.3 The Consultant shall in all professional matters act as a faithful adviser to the Client and in so far as any of its duties are discretionary, act fairly between the Client and third Parties.

3.4 The Consultant shall provide or contract suitably qualified staff and facilities to carry out the Services.

- 3.5 The Consultant shall provide all expert technical advice and skills that are normally required for the Services for which it is engaged.
- 3.6 When so requested in writing, the Consultant shall report progress as specified in the Scope of Work, with the monthly submitted financial account (refer to Clause 6.5). This report shall list the individual project activities and indicate agreed planned progress as well as actual progress up to the financial account date.
- 3.7 All plans, drawings, specifications, design documents, reports, data, calculations, computer software and other documents exclusively prepared and developed by the Consultant in performing the Services, shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this Agreement, deliver all such documents to the Clients, together with a detailed inventory thereof. The Consultant may retain a copy of such documents for record purposes but shall not use them for purposes unrelated to this Agreement without the prior written approval of the Client.
- 3.8 Equipment and materials made available to the Consultant by the Client, or purchased by the Consultant with funds provided or reimbursed by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall make available to the Client an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Client's instructions.
- 3.9 The Consultant, its sub-Consultants and the personnel of either of them shall not, either during the term or after the expiration of this Agreement, disclose any confidential information relating to the Services, this Agreement or the Client's operations without the prior written consent of the Client.
- 3.10 The Consultant will ensure that Johan C. Wagner, or any other suitably qualified person, and approved by the Client, is available for the specific contract periods as specified in this contract.

#### 4. LIABILITY OF THE CONSULTANT

- 4.1 Notwithstanding anything to the contrary set out in this Agreement, the Client agrees that the total amount of the Consultant's liability to the Client in any way arising out of the provision of the Services, whether for or against any or all claims, damages, expenses or costs (including those asserted by third Parties directly or indirectly related to the Services), in delict, for breach of statutory duty or otherwise, shall be an amount not exceeding the amount of the Consultant's professional fees for the Services, excluding reimbursement and expenses, regardless of the number of claims allegedly arising in respect of such Services. This monetary limitation shall continue and apply to any action between the Client and the Consultant in respect of the Services notwithstanding the termination of this Agreement or the completion of the Services.

Notwithstanding anything herein contained to the contrary, the Client shall indemnify and hold harmless the Consultant for and against any or all claims, damages, expenses or costs (including those asserted by third Parties) directly or indirectly related to the Services to the extent that such claims, damages, expenses and costs exceed, twice the amount of the Consultant's fees.

The Client indemnifies the Consultant and any sub-Consultant engaged in connection with the Services from liability for any damage, loss of use of facilities, loss of profit or any action by a third Party, which arises as a result of the Services supplied under this Agreement.

This indemnification and holding harmless of the Consultant by the Client shall not apply in cases where such claims, damages and expenses arise from gross negligence or criminal action from the Consultant.

- 4.2 The Consultant shall be liable for any violation of legal provisions or rights of third Parties in respect of patent and/or copyrights introduced into documents prepared by him.
- 4.3 The Consultant bears no liability whatsoever for any damage resulting from any act of the Client, which is not covered in this Agreement.

## 5. OBLIGATIONS OF THE CLIENT

- 5.1 The Client shall furnish without charge and within a reasonable time all pertinent data and information available to him and shall give such assistance as shall reasonably be required by the Consultant for carrying out of its responsibilities under this Agreement. The Consultant shall be entitled to rely upon the accuracy and completeness of such information and data furnished by or through the Client, including information and data originating with the Client's other Consultants, whether such Consultants are engaged at the request of the Consultant or otherwise. Where such information or data originates either with the Client or with its Consultants, then the Consultant shall not be responsible to the Client for the consequences of any error or omission contained therein. The Client shall give its decision on all reports, recommendations and other matters properly referred to him for decision by the Consultant in such reasonable time as not to delay or disrupt the performance by the Consultant of its Services under this Agreement.
- 5.2 The Client shall facilitate the timely granting to the Consultant and any of its personnel of unobstructed access to all sites and locations involved in carrying out the Services.
- 5.3 The Client may authorize the Consultant to act as its agent when necessary for such purposes as may be necessary for the performance by the Consultant of Services in terms of this Agreement.
- 5.4 The Client shall inform the Consultant in writing of changes in the procedures relating to claims or rendering of accounts by the Consultant.

## 6. PAYMENTS TO THE CONSULTANT

### 6.1 Basis of remuneration

Based on the agreement between the Parties, the total remuneration payable to the Consultant, excluding disbursements and excluding VAT, in respect of the Consulting Services rendered in terms of this Agreement shall be as follows:

#### 6.1.1 For the first \_\_\_\_\_ months or part thereof

Up to an amount, but not exceeding R\_\_\_\_\_ (excluding VAT) of the extent and inputs thereof will be managed by the Client.

### 6.2 Time basis and special fees:

#### 6.2.1 Labor Categories

<b>Consultant Name</b>	<b>Level</b>	<b>Initial Fee (R/h)</b>
_____	Managing Director	R
_____	Executive Director	R
_____	Director	R
_____	Senior Consultant	R
_____	Consultant	R
_____	Assistant Consultant	R

#### 6.2.2 Taxes

Value added tax and any other statutory form of tax introduced during the currency of this Agreement will be for the Client's account.

#### 6.3 Disbursements

##### 6.3.1 Time spent in traveling

A charge on a time basis shall be reimbursed for all time spent in traveling by members of the Consultant's list of approved personnel.

##### 6.3.2 Expenses

The Client shall reimburse the Consultant at cost all disbursements and expenses actually and necessarily incurred by it in connection with the Services in respect of

- (i) traveling costs reasonably incurred at tariffs laid down by the Automobile Association of South Africa (AA) as published from time to time;
- (ii) acquiring, copying, capturing and transmitting data, documents, drawings, maps, photographs and the like;
- (iii) typing and printing of final reports, drawings, maps and the like;
- (iv) all courier Services, overseas telephone calls, overseas telexes, overseas facsimiles and similar communication;
- (v) use of computer and peripherals for technical work, at rates to be agreed;
- (vi) laboratory analyses and tests at standard rates or rates to be agreed;
- (vii) special equipment and supplies purchased on behalf and with the approval of the Client; and
- (viii) all other costs necessarily, appropriately and reasonably incurred in relation to the execution of the Services, subject to prior approval by the Client.

#### 6.4 Records of time and cost

The Consultant shall keep proper records showing time spent and disbursement incurred in connection with work done under this Agreement. The Client shall have access to these records at any time mutually agreed upon by the Parties.

## 6.5 Accounts

Payment of fees and disbursements may be claimed on a monthly basis, provided that progress reports have been submitted, unless otherwise agreed. The Consultant will submit regular accounts, detailing each claim.

Accounts to the Client shall show a clear distinction between professional fees, administrative fees and disbursements. Details shall be included of the specific professional/technical project team members active on the project during the invoicing period, the number of chargeable hours spent by each individual and the current approved charge out rate for each individual.

Disbursement shall be itemized to allow convenient identification of specific expense items. The Consultant shall supply original receipts or copies thereof certified by the Project Leader as proof of payment of disbursements.

If accounts are not paid within 30 days by the Client, after receipt of the relevant invoice, interest shall be charged at the prime interest rate at the Consultant's bank compounded monthly.

## 7. CO-ORDINATION OF THE SERVICES

The Client shall appoint a Project Manager, who shall have authority to administer this Agreement on behalf of the Client and who shall be the channel of communication between the Consultant and the Client. The Project Manager may in consultation with the Consultant, amend, curtail or extend the Services as set out in the Scope of Work.

The Consultant shall appoint a Project Leader who shall have authority to administer the Agreement on its behalf.

The Client may appoint a steering committee if required, consisting of representatives of the Client, the Consultant and other interested bodies invited by the Client. The steering committee shall advise the Client on the co-ordination and supervision of the Services.

Regular progress and report-back meeting may be held at times and at venues convenient to the Parties. The Project Manager shall act as convenor of such meetings.

## 8. SETTLEMENT OF DISPUTES

Any dispute or claim arising out of or in relation to this Agreement, or the breach, termination or validity thereof shall be settled by arbitration. Either Party may refer the dispute to arbitration by a single Arbitrator to be agreed upon between the Parties. Failing such Agreement, on the application of either Party, the President of a representative professional body of the profession concerned, such as the South African Association of Consulting Engineers, in the case of engineering disputes, shall nominate an Arbitrator. The Arbitrator shall, with the Agreement of the Parties, establish the rules and procedure for the arbitration, or, failing such Agreement, the arbitration shall be conducted in terms of the Arbitration Act, 1965 (Act 42 of 1965). The Arbitrator's decision shall be final and binding on all the Parties. Any claim or dispute shall be made in writing within one year of the date of termination of this Agreement.