INDEPENDENT PROGRAMMER AGREEMENT

THIS INDEPENDENT PROGRAMMER AGREEMENT (the "Agreement") dated this \_\_\_\_\_\_

 day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[MONTH], \_\_\_\_\_\_\_\_\_\_[YEAR]

BETWEEN:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(the "Developer")

- AND -

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(the "Programmer")

**BACKGROUND:**

1. The Developer is of the opinion that the Programmer has the necessary qualifications, experience and abilities to assist and benefit the Developer in its business.
2. The Developer desires to employ the Programmer and the Programmer has agreed to accept and enter such employment upon the terms and conditions set out in this Agreement.

**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

 **TERM**

This Agreement shall be effective commencing \_\_\_\_\_\_\_\_\_\_\_[DATE] and shall continue until terminated at the completion of the Scope of Work which shall occur no later than \_\_\_\_\_\_\_\_\_\_\_\_\_[DATE] or by either party as otherwise provided herein.

# CAPACITY/INDEPENDENT PROGRAMMER

In providing the Services under this Agreement, it is expressly agreed that the Programmer is acting as an independent Programmer and not as a Programmer. The Programmer and the Developer acknowledge that this Agreement does not create a joint venture between them, and is exclusively a contract for service. The Developer is not required to pay, or make any contributions to Municipal, Provincial or National tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other Programmer benefit for the Programmer during the Term. The Programmer is responsible for paying, and complying with reporting requirements for, all local, state and federal taxes related to payments made to the Programmer under this Agreement.

# PROGRAMMING SERVICES

##  **Engagement and Services**

Developer hereby engages Programmer, and Programmer accepts such engagement, subject to the terms and conditions contained herein, to perform for Developer the services described in Attachment A (the "Services").

## **Scope of Work**

The parties intend that this Agreement shall act as a “master” agreement and that the terms hereof shall govern all services that are performed by the Programmer for the Developer unless of course the parties specifically agree that this Agreement shall not apply in a separate written agreement signed by authorised representative of both parties. The precise activities to be performed in each assigned task shall be included in separate “work orders” that shall be signed by both parties. Unless the work orders specify otherwise, the work orders shall be subject to the terms and conditions of this Agreement. Each work order shall be successively numbered. Each work order shall set forth a description and specifications of the work to be performed and the compensation to be paid to the Programmer for such services.

## Deliverables; Specifications

## Programmer shall use its best efforts to meet any delivery dates for Deliverables set forth in the work order(s) and to deliver Deliverables to Developer that conforms to any project specifications set forth in such Attachment(s). Programmer warrants that the Services will be performed promptly, diligently and in accordance with all reasonable professional standards for similar services, by the individual executing this Agreement. Deliverables shall include all computer programming code (in both object and source code form), scripts, all documentation and other written material relative thereto, and all other materials, items, media called for by the specifications or any work order.

## Reasonable diligence

## Programmer shall use reasonable diligence to promptly perform the services described herein and to meet any delivery dates or project deadlines agreed to by the parties and to provide services that are in compliance with agreed specifications and project parameters. All services shall be provided in a professional and workmanlike manner and in compliance with standard industry standards and by qualified and experienced personnel secured by the Programmer.

Programmer represents and warrants that it has no current commitments or obligations that will conflict with or otherwise interfere with or impede the performance of the services called for under this Agreement.

## Work progress

Programmer shall continually communicate with the Developer regarding progress made by the Programmer in performing the services. Upon request from the Developer, Programmer shall prepare and deliver to the Developer, written reports summarising progress in providing the services called for in this Agreement.

## Exclusivity

Programmer agrees that Programmer shall be prohibited from direct contact with any Developer without the advanced written consent of the Developer, it is the intent and desire of the parties that the Developer act as the sole liaison with the Developer.

# COMPENSATION

The Developer will pay Programmer a flat fee of [AMOUNT] for the Services (the "Compensation").

Such compensation shall become due and payable to Programmer in the following time, place, and manner:

 [DESCRIBE]

# OWNERSHIP OF INTELLECTUAL PROPERTY

## All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Agreement, is a "work made for hire" and will be the sole property of the Developer. The use of the Intellectual Property by the Developer will not be restricted in any manner.

## The Programmer may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Developer. The Programmer will be responsible for any and all damages resulting from the unauthorised use of the Intellectual Property.

# REPRESENTATION AND WARRANTIES

## Programmer represents and warrants that it shall be the sole and exclusive author of all Deliverables and that no other party shall have any rights or claims thereto. Programmer shall not subcontract any work provided hereunder to any independent Programmer. All work must be performed by the Programmer and its *bona fide* employees.

# CONFIDENTIALITY

## Confidential information (the "Confidential Information") refers to any data or information relating to the Developer, whether business or personal, which would reasonably be considered to be private or proprietary to the Developer and that is not generally known and where the release of that Confidential Information could reasonably be expected to cause harm to the Developer.

## he Programmer agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any confidential information which the Programmer has obtained, except as authorised by the Developer or as required by law. The obligations of confidentiality will apply during the term of this Agreement and will survive 2 years upon termination of this Agreement.

## All written and oral information and material disclosed or provided by the Developer to the Programmer under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Programmer.

# WAIVER

## No waiver of any right hereunder by either party shall operate as a waiver of any other rights, or of the same right with respect to any subsequent occasion for its exercise, or of any right to damages. No waiver of either party or any breach of this agreement shall be held to constitute a waiver of any other breach or of a continuation of the same breach. All remedies provided by this agreement are in addition to all other remedies provided by law. The agreement may not be amended except by a writing signed by each of the Parties.

# TERMINATION

## This Agreement may be terminated prior to the completion or achievement of the Scope of Work by either party giving \_\_\_\_\_\_\_\_\_\_\_\_[NUMBER] days written notice. Such termination shall not prejudice any other remedy to which the terminating party may be entitled, either by law, in equity, or under this Agreement.

## Developer may terminate this Agreement immediately upon written notice to the Programmer in the event that the Programmer substantially breaches or defaults under any of Programmer’s obligations contained in this Agreement or if the Programmer is unable to or refuses to perform services hereunder.

## Upon the effective date of any termination of this Agreement, all legal obligation, rights and duties arising out of this Agreement shall terminate except that: (i) Developer shall remain obligated to pay any balance due to the Programmer for services provided hereunder: (ii) the Confidentiality Restrictions, Ownership of Proprietary Rights Provisions, and Programmer provisions of this Agreement shall continue to apply and shall survive the termination of this Agreement as ongoing covenants between the parties; (iii) Programmer shall have the continuing obligation to return to the Developer all tangible and intangible property of the customer and all versions of any Proprietary Products of the customer or developed for the Developer during the effectiveness of this Agreement; and (iv) Programmer shall have the ongoing duty and obligation to confirm in writing and take all reasonable steps to secure proprietary right in the Proprietary Products developed pursuant to this Agreement in the name and exclusive ownership of the Developer.

# MODIFICATION OF AGREEMENT

## Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorised representative of each Party.

# REPRESENTATION

## Each party of this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party hereto, or anyone acting on behalf of any party hereto, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed and dated by all parties hereto.

# ENTIRE AGREEMENT

It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

# INDEMNIFICATION

Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, Programmers, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, Programmers, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

# NOTICES

Any notice to be given hereunder by any party to the other may be affected either by personal delivery in writing, or by mail, registered or certified, postage pre-paid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraphs of this Agreement, but each party may change their address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of [NUMBER] days after mailing. Programmer agrees to keep Developer current as to their business and mailing addresses, as well as telephone, facsimile, email and pager numbers.

# GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of South Africa.

# SEVERABILITY

In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_[MONTH] 2018.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Client) (Contractor)