

*Consilium Legal Services
(Pty) Limited*

GENERAL TERMS AND CONDITIONS

Consilium

General Terms and Conditions

This document sets out the terms and conditions (“**Agreement**”) on which you engage with **Consilium Legal Services (Pty) Limited, Company Registration Number: 2011/146285/07 (“Consilium”)**. **THESE TERMS SHALL COMMENCE FROM THE TIME OF ENGAGEMENT** and shall continue indefinitely. Should you disagree with this Agreement, you must refrain from using the services of Consilium.

1. OUR RELATIONSHIP WITH YOU

- 1.1. It is Consilium’s practice to provide clients with an effective legal and advisory service (the Services).
- 1.2. We will perform the Services using professional skill and care.
- 1.3. We shall act as independent contractors and not as your agent, partner or joint venturer. Neither you nor we have any right, power or authority to bind the other in any way whatsoever.
- 1.4. We may subcontract portions of the Services to other professionals, should we deem it necessary, who may deal with you directly.
- 1.5. It is your obligation to ensure that implementation of our Services is performed in the manner advised by us. We will not assume any management responsibilities in connection with the Services. We will not be held liable for failure on your part to take cognisance of advice provided to you by us.

2. TERM AND TERMINATION

- 2.1. These terms apply to all engagements with us and/or Services performed by us, hereinafter referred to as the Agreement.
- 2.2. We may terminate any Services being provided to you as well as all resultant obligations on our part, immediately upon written notice to you if we reasonably determine that we can no longer provide the Services in accordance with applicable law or professional obligations.
- 2.3. We also reserve the right to terminate/suspend our Services should you fail to make timeous payment of your account.
- 2.4. You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement. Payment is due within 7 (seven) days following the date of our invoice.

3. YOUR RESPONSIBILITIES

- 3.1. You are responsible for all management decisions relating to the Services, the use or implementation of the output of the Services and for determining whether the Services are appropriate for your purposes.
- 3.2. You shall promptly provide to us, or cause others to promptly provide to us, the information, resources and assistance (including access to records, systems, premises and people) that we request and reasonably require in order to perform the Services.
- 3.3. To the best of your knowledge, all information provided by you or on your behalf ("Client Information") will be accurate and complete in all material respects. The provision of Client Information to us will not infringe any copyright or other third-party rights and is subject to obligations of confidentiality and data protection.
- 3.4. We will not be held responsible for providing advice based on incorrect information provided by you.
- 3.5. We will rely on Client Information made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate or verify it.
- 3.6. Both Parties shall be responsible for their personnel's compliance with its obligations under this Agreement.

4. OUR PROFESSIONAL SERVICES

- 4.1. Any information, advice, recommendations, agreements, policies or other content of any reports, presentations or other communications we provide under this Agreement ("Advice"), other than Client Information, are our intellectual property.
- 4.2. You may not reproduce our Advice (or any portion or summary thereof) or pass it off as your own.
- 4.3. You may incorporate into your internal documents any summaries, calculations or tables based on Client Information contained in the Advice.
- 4.4. You may not rely on any draft/interim Advice, and we will not be held liable for any reliance on such draft/interim Advice.

5. LIMITATIONS

- 5.1. You (and any others for whom Services are provided) may not recover from us, in contract or delict, under statute or otherwise, any amount with respect to loss of profit, data or goodwill, or any consequential, incidental, indirect or special damages in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.

- 5.2. You, and any others for whom Services are provided, may not recover from us, in contract or delict, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the Services.
- 5.3. With the exception of liability for death or personal injury, or loss resulting from our willful misconduct, or any other liability for which restriction or exclusion is prohibited by law, our liability for the aggregate of all claims arising out of or in connection with this engagement in respect of breach of contract or breach of duty or fault or negligence or otherwise (collectively referred to herein as “fault”) shall be no more than that proportion of the loss or damage (including interest and costs) suffered by you, which is directly ascribed to us by a Court of competent jurisdiction or Arbitrator allocating a proportionate responsibility to us having regard to the contribution to the loss or damage in question by you or any other person based upon relative degrees of fault.
- 5.4. If both you and us are negligent or otherwise at fault or strictly liable without fault, then the obligations of indemnification under this clause shall continue, but Consilium shall be liable only for the percentage of responsibility or the damage or injuries attributable to Consilium.
- 5.5. In the event that you have failed to mitigate your loss by excluding liability for consequential, incidental, indirect, punitive or special damages of any kind with any third party customers or service providers or indemnitees, you shall not be entitled to pass on any such damage to Consilium and Consilium shall in turn not be liable for such damages suffered by such customer(s), service providers or indemnitees, resulting from your failure to deliver your products or services to your customers.
- 5.6. You shall make any claim relating to the Services or otherwise under this Agreement no later than twelve months after you become aware (or ought reasonably to have become aware) of the facts that give rise to the claim, and in any event, regardless of the knowledge, by no later than three years after the date of any alleged breach of contract, delictual act or other act or omission giving rise to a cause of action. This expressly overrides any statutory provision that would otherwise apply.
- 5.7. You shall not, during the currency of this Agreement, or after the termination hereof, use, utter, publish or cause to be published in any medium any comments likely to discredit or damage the reputation of Consilium or any of our products or services.

6. DISCLAIMER OF IMPLIED WARRANTIES

Except as specifically provided in this Agreement, and to the extent permitted by applicable Law, there are no warranties by Consilium, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.

The logo for Consilium, featuring the word "Consilium" in a stylized, cursive script font.

7. FEES AND EXPENSES GENERALLY

- 7.1. You shall pay our professional fees and specific expenses in respect of the Services. Our fees are exclusive of taxes, VAT or similar charges, as well as, customs, duties or tariffs imposed in respect of the Services, all of which you shall pay (other tax taxes imposed on our income generally).
- 7.2. All such fees and charges shall be paid by you to us within 7 (seven) days from date of invoice.
- 7.3. In the event of you failing to timeously effect payment of any amount due to us in terms of this Agreement, we shall be entitled to suspend the provision of the Services for any period in which payment remains outstanding and charge interest thereon at a rate of 2% per month, or part thereof, calculated daily in arrears and compounded monthly.
- 7.4. You agree that you shall pay all Consilium's expenses in recovering any amounts you owe Consilium, including legal costs on the attorney and client scale, collection charges and tracing fees, and VAT thereon.
- 7.5. In respect of any monies owed to Consilium, you shall not be entitled to withhold, defer, and make any deduction from, obtain deferment of judgment for, or set off against, any payment due to Consilium in terms of this Agreement unless specifically agreed to in writing by Consilium.

8. FEES – HOURLY RATE

- 8.1. Services are billed at our hourly rate or part thereof for time spent on a matter. This includes, but is not limited to, the time spent performing research (where necessary), drafting agreements, opinions, reports and annexures, time spent drafting letters, emails and time spent on telephone calls.
- 8.2. A project fee or fixed fee for a specific piece of work may be negotiated.
- 8.3. Should a project fee be agreed upon, we require a 50% engagement payment before Services commence, a 25% milestone payment (milestone to be agreed), and the balance on final delivery.
- 8.4. You agree that should we agree on a project fee, as set out in clause 8.3 above, and receive no engagement/sign off from you for a period of 30 (thirty) days or more, we hold the right to render an invoice for the balance of the project fee, which invoice is payable within 7 (seven) days from date of invoice.
- 8.5. We reserve the right to charge a higher hourly rate or request a higher engagement payment for work commissioned on an urgent basis.
- 8.6. A quote may be provided on request. Quotes are estimates based on the information at hand and are not final and binding. The final account will reflect the hours actually spent.

- 8.7. We will also bill you for disbursements incurred in dealing with your instruction. Disbursements may include, but are not limited to, messenger fees, travelling costs and payments to external parties for the purposes of providing the Services in your matter.
- 8.8. Please note that our professional rates increase annually, on the first day of March of each year, in accordance with market related increases and charge out rates.
- 8.9. We will render interim accounts on a monthly basis. On completion of the matter we will render a final account.
- 8.10. Unless otherwise specifically instructed, we will address and send our bills to the person who instructed us.
- 8.11. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, on your behalf, unless we are a party to the proceeding or the subject of the investigation.

9. CONFIDENTIALITY

- 9.1. Each Party acknowledges and agrees that all material and information which has or will come into its possession or knowledge in connection with the Services contemplated under these terms, consists of confidential and proprietary information, whose disclosure to or use by third parties will be damaging to the other of them.
- 9.2. Both Parties, therefore, agree to hold such material and information in strictest confidence, not to make use thereof or disclose same other than for the performance of the services contemplated herein, to release it only to employees or subcontractors reasonably requiring such information and who are bound by confidentiality obligations no less stringent than those contained in these terms prior to such release, and not to release or disclose it to any other party, unless so required by law or with the prior written consent of the other Party.
- 9.3. Confidential and proprietary information does not include any information which, at the time of disclosure, is generally known by the public. By means other than by failure of the receiving Party to comply with Clause 9.2, or was in possession of the receiving Party before these confidentiality obligations came into effect, or was lawfully obtained from a third party who is free to disclose the same.
- 9.4. Neither Party shall use the Intellectual Property, whether registered or not, of the other Party in publicity releases or advertising or in any other manner, without having secured the prior written approval of the other Party, Consilium may however utilize your.

- 9.5. Both Parties shall, upon termination of the services, return to each other all documents and anything related thereto which constitutes property of that Party and shall furthermore not retain any copies thereof.
- 9.6. The Parties' obligations of confidentiality under this Agreement will survive the termination of these terms for any reason.

10. FORCE MAJEURE

Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by a force majeure event. For the purpose of these terms a Force Majeure Event means any fire, flood, earthquake, act of God, war, governmental act (other than a change of Law), riot, civil disorder, rebellion or revolution, in each case which is beyond a Party's reasonable control, or any other event of a similar nature beyond a Party's reasonable control and to which it did not contribute which, for the avoidance of doubt, shall not include any industrial dispute.

11. PROTECTION OF PERSONAL INFORMATION ACT ("POPI"):

- 11.1. Consilium will only Process (as defined in POPI) or disclose Personal Data (as defined in POPI) in accordance with applicable laws, and as set out in our privacy policy located on our website.

12. THE WEB-SITE

12.1. Usage

- 12.1.1. Consilium's website is the registered property of Consilium.
- 12.1.2. Any persons accessing and/or using Consilium's Website for any reason whatsoever subjects themselves to and agrees to this Agreement and our privacy policy located on our website when accessing the Website as set out below.
- 12.1.3. Consilium expressly reserves the right, in its sole and absolute discretion, to alter and/or amend any criteria or information set out in the Website without prior notice.
- 12.1.4. Nothing on the Website shall be construed as an offer by Consilium to you, the user, but merely an invitation to do business.
- 12.1.5. You may send content and other communications to and/or via this Website provided that the content is not illegal, obscene, objectionable, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam." You may not use a false email address, impersonate any person or entity, or otherwise mislead as to the origin of a communication. Consilium reserves the right to remove or edit such content in its sole discretion.

The logo for Consilium, featuring the word "Consilium" in a stylized, cursive, orange-brown font.

- 12.1.6. You hereby represent and warrant that you own or otherwise control all the rights to the content that you send via this Website; that the content is accurate; that use of the content you supply does not violate this policy and will not cause injury to any person or entity; and that you indemnify Consilium or its affiliates from all and any claims resulting from content you supply to Consilium. Consilium shall not be held responsible or liable for any content sent via Consilium's Website.

13. LICENSES AND WEB SITE ACCESS

- 13.1. Consilium hereby grants you a limited license to access and make personal use of the Website provided that in making use of the Website you do not download any content, other than for page caching purposes, except where the facility to download is expressly provided or express written consent to do so is otherwise given by Consilium. You are expressly prohibited from modifying any portion of this Website, whether in part or whole, except with the express written consent of Consilium.
- 13.2. This license does not include any right of resale or commercial use of this Website or its contents. For the purposes of this clause 13, any collection and/or use of any listings and/or descriptions; any derivative use of this Website or its contents; any downloading or copying of account information for the benefit of another merchant; or any use of data mining, robots, or similar data gathering and extraction tools for any commercial purpose is expressly prohibited unless stated otherwise.
- 13.3. It is expressly prohibited to frame or utilize framing techniques to enclose and/or mask any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Consilium and/or our affiliates without its express written consent.
- 13.4. It is expressly prohibited to use any meta tags or any other "hidden text" utilizing Consilium's name or trademarks without the express written consent of Consilium.
- 13.5. Any unauthorized use of this Website, its content or applications terminates the permission or license granted by Consilium. You are granted a limited, revocable, and non-exclusive right to create a hyperlink to the home page of Consilium provided the link does not portray Consilium, its affiliates, or their products or services in a false, misleading, derogatory, or otherwise offensive manner.
- 13.6. You may not use any Consilium logo or other proprietary graphic, trademark, or material as part of the link without express written permission from Consilium.

14. DISCLOSURES REQUIRED BY SECTION 43 OF THE SOUTH AFRICAN ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT (ECTA):

- 14.1. The full name and legal status of the web site owner is: CONSILIUM LEGAL SERVICES (PTY) LTD (Registration Number 2011/146285/07).



- 14.2. The full address of the web site owner is: <http://www.consiliumlegal.com/>
- 14.3. Directors: Lucy Phillips and Natalie Laurencik
- 14.4. Physical address for receipt of Services: Office 105, Deisgn Quarter, Cnr. Leslie Avenue and William Nicol.

15. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY:

Subject to the provisions of sections 43(5) and 43(6) of the Electronic Communications and Transactions Act, Consilium shall not be liable for any damage, loss or liability of whatsoever nature arising from the use or inability to use this web site or the services or content provided from and through this Website. Furthermore, Consilium makes no representations or warranties, implied or otherwise, that, amongst others, the content and technology available from this Website are free from errors or omissions or that the service will be 100% uninterrupted and error free.

16. GOVERNING LAW AND DISPUTE RESOLUTION

- 16.1. This Agreement, and any non-contractual obligations arising out of this Agreement or the Services, shall be governed by, and construed in accordance with the laws of South Africa.
- 16.2. Any dispute relating to this Agreement or the Services shall be subject to the exclusive jurisdiction of the South African courts, to which each of us agrees to submit for these purposes. The parties may by agreement refer any dispute hereunder to arbitration in accordance with the Arbitration Act 42 of 1965.

17. MISCELLANEOUS

- 17.1. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.
- 17.2. You agree that we may, subject to professional obligations, act for other clients, including your competitors.
- 17.3. Neither of us may assign any of our rights, obligations or claims under this Agreement.
- 17.4. No relaxation, forbearance, delay or negligence by Consilium in enforcing any of this Agreement or the granting of time shall prejudice, affect or restrict the rights and powers of that Party
- 17.5. We may use your name and logo publically to identify you as a client, but we may refer to you in connection with the Services only if it is a matter of public knowledge that we are providing or have provided Services.



- 17.6. No waiver of rights under any Contract shall be effective unless made in writing and signed by an authorized representative of the Party against which enforcement of the waiver is sought. The waiver of any breach of any terms and conditions of any Contract shall not be construed as a waiver of any subsequent breach of any term or condition of any Contract whether of the same or different nature. Except where otherwise explicitly agreed, all remedies in a Contract are cumulative and not exclusive of any other remedy or right in such Contract or at Law.
- 17.7. If any provision of this Agreement is held by a court to be invalid, void or unenforceable by a court of competent jurisdiction, such provision will be deemed modified to the least degree necessary to remedy such invalidity (as long as such modification does not materially adversely affect either Party's rights or obligations under this Agreement), the remainder of the Agreement will not be impaired or affected thereby, and each other term, provision and part will continue in full force and effect, and will be valid and enforceable to the fullest extent permitted by Law.

ACCEPTANCE OF THIS AGREEMENT BY YOU SHALL BE DEEMED TO HAVE TAKEN PLACE ONCE YOU ENGAGE CONSILIUM. EVERY INSTANCE OF THE SERVICES AND/OR USE OF OUR WEBSITE SHALL BE SUBJECT TO THE ABOVE TERMS.



Consilium