

Business & Legal Documents

Ready-to-Use Agreements, Forms & Letters
for everyday business needs

Second Edition Revised

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HOW THESE DOCUMENTS WILL HELP YOU

Fellow Executives,

Like you, I run a business, and I want to run it efficiently and profitably. In the past I attempted to write my own business agreements only to find they were of no legal standing. That's when I decided to publish ***Business & Legal Documents'***.

Today, I can write a legally correct letter of appointment or dismissal or draw up an acknowledgement of debt in five minutes. A lease, restraint of trade or partnership agreement may sound complicated. But now none of these presents a problem for me even though I don't have a legal background.

'Business & Legal Documents', which never leaves my office, instantly supplies me with ready-to-use legally correct documents, and I don't have to pay a lawyer to prepare them. In fact, a practising Johannesburg attorney has carefully prepared all of them; and their value would be hundreds of thousands of rands if he drafted them individually.

Since its first edition in 2018 thousands of entrepreneurs and corporate executives of small, medium and large businesses have saved money, had their rights protected and avoided tax, employee and other problems using this file of convenient business documents.

Now in its second edition revised, ***Business & Legal Documents'*** has been updated and expanded to meet today's requirements, and remains the key to increased profits, productivity and protection for your business.

Improve efficiency: Time is money. These ready-to-use documents can be easily and quickly completed, dramatically saving valuable time in handling paperwork and correspondence.

Save money on legal fees: Your routine business transactions won't require an attorney with these documents on your desktop. Not only will you save in legal fees, but of greater importance, these documents can prevent legal problems later. Even if your attorney reviews the completed forms, you'll save considerable money.

Communicate effectively: With the total set of documents in this file you will always clearly and unambiguously communicate your intentions and business needs. This can eliminate confusion and disputes.

Safeguard your business: Strict laws in many areas from employment matters to spamming to wills prescribe what your communications must – or must not – say. Incorporating the right terminology, these documents will not only help you avoid needless liability, but you’ll have terms and conditions to protect and benefit you.

Increase profits: by building sales, slashing bad debt losses, improving collections, reducing costs, and buying goods and services at better prices and terms.

Enforce your legal rights: There’s no substitute for the old adage “get it in writing”. Many contracts cannot be enforced unless in writing. In fact, documentation is required to enforce your rights in all business dealings. Fortunately it’s so easy to get organised with documents on hand, and they can be your first line of defense if you’re challenged.

Comprehensive in coverage: This file provides all the common documents you can safely use as you deal with suppliers, customers, creditors, landlords, tenants, employees, bankers, government agencies and just about anyone with whom you’ll do business. Documents for virtually every purpose have been included and will be ready at your fingertips.

Easy to use: Not only will this file help you operate your business with greater efficiency, but you’ll find it exceptionally easy to use. Unlike documents written by lawyers for lawyers, ***Business & Legal Documents***’ uses concise, easy to understand language. Simply find the appropriate document, complete it and it’s ready to sign and work for you. Within a few minutes your transaction is properly documented. Can there be an easier way to obtain the protection you need?

A word about your attorney

No book can take the place of an attorney where legal representation is required. ***Business & Legal Documents***’ is no exception. The documents in this file have been carefully considered for appropriateness for self-completion. Nevertheless, as with any legal matter, common sense should dictate when it’s time to use an attorney rather than rely on a document, from this or any other source.

Consult your attorney to draft, or at least check, your complex agreements or for any transaction involving substantial amounts of money, or for any matter where you don’t understand the proper use of a form or if you have any doubts about its adequacy to protect you on a particular transaction.

A WORD FROM OUR AUTHOR

FOR THE SECOND EDITION

The significant changes that have taken place in our legal system have necessitated a new edition of these documents. Accordingly, every section has been updated and brought into line with recent legislative changes.

Since the inception of this publication in 2018, it has been my intention to provide clear and user-friendly documents for the use of business people in South Africa. Naturally, when agreements of a complex nature are required, the services of an attorney are essential. It is impossible to pinpoint every area where legal difficulties may be encountered. Some typical situations which could give rise to complex documentation are partnerships, shareholder relationships, franchise agreements, sales of companies and of land, etc. A wide range of basic precedents is covered in this publication, but if in doubt as to the complexity of the agreement or if dealing with substantial amounts of money, always consult your attorney. The current issue contains a new and valuable section on Information Technology / Cyber Law which will ensure the legality of e-business practices. The ever important Labour / Employment section has been expanded to include summaries of the Basic Conditions of Employment Act, the Employment Equity Act, and the Occupational Health and Safety Act, all of which must always be available at the workplace. In addition, guidelines are included for employment equity and workplace skills plans. Special help is at hand for the entrepreneur in the new *My Business* section. Various forms and guidelines are provided to assist with black economic empowerment compliance and with setting up and marketing a business.

PREFACE TO THE REVISED SECOND EDITION

As a result of the profound effects of the new National Credit Act 34 of 2005 which came into operation on 1st June 2007 and the new Consumer Protection Act 68 of 2008 which came into operation partially on 24th April 2010 (Sections 60 and 61) and fully into operation on 1st April 2011 and the new Companies Act 71 of 2008 and its Amendment Act which came into operation in March 2011, it became necessary to revise the relevant sections and forms of the Second Edition to comply with these new enactments.

March 2019

LEGAL GLOSSARY

ab initio: From the beginning.

beneficium de duobus vel pluribus reis debendi: The benefit of being sued together and of division.

beneficium divisionis: The benefit of division. Defence raised by two or more sureties of the same debt that they each be liable only for their proportionate share.

beneficium ordinis seu excussionis: The benefit of order or of excussion. Defence raised by a surety when sued by the creditor that the principal debtor be claimed from first.

bona fide: Good faith.

curator ad personam: A person appointed by the Master of the High Court to take care of the personal needs of an incapable patient such as maintenance and residence, and medical treatment.

curator bonis: A person appointed by the Master of the High Court to take charge of the property and affairs of an incapable patient.

curriculum vitae: Personal and employment history.

domicilium citandi et executandi: Domicile for the purpose of serving summons and levying execution.

error calculi: Defence which can be raised by a debtor relating to errors of calculation.

ex officio: From office.

exceptio non causa debiti: Defence used by a debtor that there is no reason or cause for the obligation.

exceptio non numeratae pecuniae: Defence used by a debtor that the money has not been paid to him/her.

fiduciary: Limited ownership.

force majeure: Incorporates "Act of God" and includes natural disasters, war, sabotage, labour disputes, government control and unforeseen or unavoidable events.

in loco: In the proper place.

in rem suam: In his own interest. It has been held that in some instances an agent acting with authority plus an interest in the matter, acts with irrevocable authority.

in securitatem debiti: In security of a debt.

in solidum: For the full amount.

incidentalia: Referring to conditions of sale, time and manner of delivery and payment of purchase price.

inter alia: Amongst other things.

inter vivos: Between living persons.

imposts: a tax or similar compulsory payments.

ipso facto: By the fact itself.

mortis causa: By cause of death.

mutatis mutandis: Subject to the necessary alterations / amendments.

non causa debiti: No cause of debt.

non numeratae pecuniae: The money has not been paid over.

prima facie: At first glance.

revision of accounts: A defence which can be raised by a debtor relating to an amendment of an account. This is relevant where the obligation relates to the settlement of account.

rouwkoop: Money forfeited if the Agreement of Sale is not proceeded with.

servitudes: Right of access.

usufruct: Right of use and fruits of property.

vis-à-vis: Facing one another: opposite / in relation to.

voetstoots: As it stands, with all its faults. The defence will not protect a seller if he fails to disclose a defect of which he is aware.

GUIDE TO COMPLETING THE DOCUMENTS

1. The documents are arranged by subject in sections 1 to 10 as listed on the Contents pages starting on page 9. For your convenience the documents are also listed in the Alphabetical Index starting on page 13 to help you locate specific documents quickly.
2. Every section is introduced by a series of explanations relating to each document. They should be studied carefully to identify the document/s most suitable for a particular transaction.
3. Once you have made your choice make a copy, on your letterhead if required, and return the original to the file for future use. Customise your copy of the document for your particular needs.
4. Many of the documents have specific instructions. They are there for your protection so follow them carefully. Make quite certain that all blank spaces (i.e. dates, amounts and names) are filled in correctly, or deleted if not required.
5. If a document includes unnecessary terms, be sure to delete them and add those required, either to the existing document or in the form of an annexure. All parties should initial any such addition or change, as well as all attached pages. In the case of companies, the necessary resolution must be provided with the authorised signature.
6. A company should retain all documents for a minimum period of three years. Generally, legal action in respect of claims must be taken in this time or such claims will become unenforceable. Tax requirements, however, oblige a business to maintain its records for five years.
7. Ensure that revenue stamps are affixed to the forms requiring stamping as indicated on each form. The amount of stamp duty is subject to change from time to time and the relevant forms have been marked in accordance with the Tariff of the Stamp Duties Act 77 of 1968 as amended. If in doubt about the amount of revenue stamps to be used, the office of the Receiver of Revenue will assist in assessing the stamp duty. There is usually an official at each Revenue office whose task it is to assess the stamp duty.

In order to avoid penalties accruing, the stamping should be attended to on signature of the relevant form and the revenue stamp cancelled by the parties initialling and dating it, or by having the Receiver of Revenue cancel the revenue stamp. An attorney should be consulted if this procedure cannot be complied with.

8. Where an agreement does not specify the manner in which written communications between parties are to be despatched, it is advisable to send important communications by registered post to provide proof of despatch and receipt.
9. When in doubt about the precise meaning of legal terms, refer to the Legal Glossary on page 6.
10. If you are dealing with substantial amounts of money, or a complex agreement, it is advisable to ask your attorney to check your completed document.

ABBREVIATIONS USED

ADRAlternative Dispute Resolution	EEA Employment Equity Act	QSEQualifying Small Enterprise
AFSAArbitration Foundation of South Africa	EMEExempted Micro Enterprise	RA Retirement Annuity
ANCAntenuptial Contract	HIVHuman Immune Virus	RICARegulation of Interception of Communications & Provision of Communication-Related Information Act
ATR Annual Training Report	IMSSA Independent Mediation Service of Southern Africa	SARS South African Revenue Service
BCEA Basic Conditions of Employment Act	IP Internet Protocol	SDA Skills Development Act
BEE Black Economic Empowerment	IPO Initial Public Option	SED Socio Economic Development
CCMA Commission for Conciliation, Mediation & Arbitration	IT Information Technology	SETA Sector Education & Training Authority
CIPRO Companies and Intellectual Property Registration Office	LRA Labour Relations Act	SITE Standard Income Tax on Employees
CPA Consumer Protection Act	MICP Married in Community of Property	SWOT Strengths, Weaknesses, Opportunities & Threats
CVCurriculum Vitae (Personal & employment history)	MOU Memorandum of Understanding	UIFUnemployment Insurance Fund
DTI/dti Department of Trade and Industry	NCA National Credit Act	VAT Value Added Tax
ECTA Electronic Communications & Transaction Act	NEDLAC ... National Economic Development & Labour Council	WSP Workplace Skills Plan
EEEmployment Equity	OCP Out of Community of Property	
	OHSA Occupational Health and Safety Act	
	PPPFA Preferential Procurement Policy Framework Act	
	PAYE Pay As You Earn (tax)	

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Software Licence Agreement	8.8	Weekly Priority Agenda	9.21
Special Power of Attorney - Limited Use	1.20	Weekly Time Sheet / Overtime	9.23
Special Power of Attorney - Tax Objection / Appeal	3.13	Will of Married Person: Individual Will	10.10
Special Power of Attorney to Purchase Immovable Property	6.14	Will of Married Persons: Mutual Will	10.9
Special Power of Attorney to Sell Immovable Property	6.15	Will of Unmarried Person	10.8
Specific Waiver	1.29	Will, Amendment / Revocation of Living (2 pgs)	10.13
Standard Form (8 columns)	9.71	Will, Living (3 pgs)	10.12
Standard Form (9 columns)	9.70	Written Confirmation of Orally Varied Terms	1.14
Start-up Business, Business Plan for a (Guideline) (5 pgs)	9.2	Y Year Chart	9.25
Statement A4	9.38	Year Planner	9.26
Statement A5	9.43		
Statement, Employer's Conciliation (2 pgs)	2.52		
Statement, Projected Cash Flow	3.3		
Stock Notification, Out of	9.54		

GENERAL AGREEMENTS

SECTION

1

GENERAL AGREEMENTS

Section

1

This section deals with general forms and agreements which are regularly encountered by people in business.

- Form 1.1** **Important General Clauses for an Agreement** (3 pages)
These are clauses which are pertinent to most agreements and should be included in them.
- Form 1.2** **Acknowledgement of Debt (Repayment by Instalments)** (2 pages)
Stipulates that the debt is to be paid in instalments at weekly or monthly intervals. This is subject to the National Credit Act. If in default of the acknowledgement of debt a notice must be sent in terms of Section 129 (1). See form 4.18.
- Form 1.3** **Acknowledgement of Debt (Single Payment Required)** (2 pages)
Requires a debtor to acknowledge the debt and to undertake to pay it by a specific date.
- Form 1.4** **Affidavit**
Provides the framework for an affidavit. If any annexures are attached to the affidavit they too must be initialled by the deponent, i.e. the person signing the affidavit, as well as the Commissioner of Oaths.
- Form 1.5** **Affirmation**
For persons not prepared to make an oath. In other respects similar to an Affidavit.
- Form 1.6** **Agreement to Build** (3 pages)
A simple agreement for alterations or additions. It makes no provision for escalation. Substantial specimen agreements are made available by the building industry which should be used for extensive works. The drawings and specifications are to be provided by the builder and signed by the parties and annexed to the agreement.
- Form 1.7** **Warranty by a Contractor**
This is a warranty against malperformance which could be incorporated in the Agreement to Build (see above) if required.
- Form 1.8** **Notice of Defective Service**
This is a formal letter putting the service provider on terms to rectify a malperformance prior to the commencement of proceedings. A reasonable time period within which to rectify the malperformance should be given.
- Form 1.9** **Agreement to Distribute** (2 pages)
An agreement between a supplier and a distributor which defines their rights and obligations relating to the distribution of the supplier's products. Reference should be made to the Maintenance and Promotion of Competition Act 96 of 1979 which enables the Minister of Trade and Industry to prevent restrictions of competition, e.g. by fixing prices, through publication of a notice in the Government Gazette. The Competition Board makes an initial report to the Minister who responds thereto. A franchising agreement also amounts to a distribution of products but it more properly refers to the licensing of a business system by a franchiser to a franchisee. It often involves the licensing of trademarks, copyright and patents, etc, and you are advised to consult an attorney since the drafting involved would differ in each instance and is beyond the scope of this publication.

- Form 1.10 Agent's Commission Agreement** *(4 pages)*
The important general clauses for an agreement as set out in Form 1.1 should, where applicable, be added to this agreement.
- Form 1.11 Agreement to Extend Performance Date**
Can be used where agreement of the stipulated date of performance or completion is extended.
- Form 1.12 Settlement Agreement**
The important general clauses for an agreement as set out in Form 1.1 should, where applicable, be added to this agreement.
- Form 1.13 Confirmation of Verbal Agreement to Cancel Agreement**
Must be used with the consent of all relevant parties and authorises the termination of a contract.
- Form 1.14 Written Confirmation of Orally Varied Terms**
Most useful to have on occasions after disputes have arisen.
- Form 1.15 Indemnity**
Used when a party is required to indemnify another.
- Form 1.16 Pledge of Movable Property** *(2 pages)*
Used for the pledging of movable property. When a creditor has a claim against a debtor, he may wish to secure the debt by way of a pledge. Only movable property, as opposed to immovable property, can be pledged, because the pledgor must transfer possession to the pledgee. Immovable property is secured by means of a mortgage bond.
- Form 1.17 Pledge of Shares** *(2 pages)*
To be used when shares are pledged as security for a loan or debt.
- Form 1.18 Demand to Pledgor**
Demands the shortfall after the sale of pledged property.
- Form 1.19 Notice of Realisation of Pledge**
Notifies the pledgor of the pending sale of pledged property and gives the pledgor an opportunity to redeem the pledged property before it is sold.
- Form 1.20 Special Power of Attorney - Limited Use**
Used to perform certain specific acts on behalf of the party giving the Power of Attorney. If a general Power of Attorney is required, it is suggested that a stationer be approached where comprehensive general Powers of Attorney tend to be stock-in-trade. A conveyancer should be consulted for the preparation of a Power of Attorney to transfer immovable property.
- Form 1.21 Irrevocable Proxy**
Similar to Form 1.22 except that here the proxy is irrevocable until a specified date.

Form 1.22 Revocable Proxy

A revocable proxy is used when a shareholder wishes to appoint a particular person as a proxy to vote on his behalf at a meeting of shareholders.

Form 1.23 Suretyship (6 pages)

Used when a third party undertakes to pay a debt if the debtor defaults. Our law attaches special significance to such documents and requires that they must be in writing and must be complete in all respects (e.g. the full name of the Debtor must be inserted) at the time it is signed, otherwise it is invalid. Section 6 of the General Law Amendment Act 50 of 1956 deals with formalities in respect of a suretyship. It states that no contract of suretyship entered into after the commencement of this Act shall be valid unless the terms thereof are embodied in a written document signed by or on behalf of the surety. **The signing of a suretyship leaving blank spaces for later completion does not constitute compliance with said Section 6.** This is a point regularly and successfully taken by evasive sureties to invalidate their obligations. Suspicious suretyships should be re-submitted for proper signature and completion. The full designation of juristic persons must be given e.g. (Pty) Ltd or cc.

Form 1.24 Renunciation of Suretyship

A letter by a surety to a creditor to renounce the surety's liability for the debtor's future obligations. The renunciation may only be made when the suretyship does not specify a maximum amount of the obligation secured, i.e. where it is for a continuing obligation. It will also depend on the wording of the suretyship whether the surety can renounce his/her liability to the creditor.

Form 1.25 Demand on Surety

A letter demanding payment from the surety.

Form 1.26 General Waiver

Used where one party intends to release the other party from all its obligations.

Form 1.27 Lien Waiver

Used by a contractor to waive his/her lien over property in respect of which he/she has provided material and/or labour.

Form 1.28 Mutual Waiver

Used where there is a mutual waiver of obligations towards each party.

Form 1.29 Specific Waiver

Used by a creditor to waive specific obligations between the creditor and his debtor

IMPORTANT GENERAL CLAUSES FOR AN AGREEMENT

Definitions

These should be arranged alphabetically and be at the beginning of the agreement.

Interpretation

In this agreement, unless expressly stated otherwise or where the context indicates otherwise, words in the singular shall also mean the plural and vice versa. Words in the masculine also mean the feminine and the neuter (neither masculine nor feminine, e.g. a company). Words referring to a natural person shall include a reference to a body corporate and vice versa.

The clause headings in this agreement have been inserted for convenience only and will not be taken into consideration in its interpretation.

Precedence

In the event of conflict concerning the interpretation or implementation of any provisions contained in the main document and those contained in any of the annexures / schedules attached hereto, the provisions contained in the main document shall prevail.

Communications

Each communication or notice that this agreement requires shall be communicated in a form that can be read, copied and recorded, and shall be in the language of this agreement.

Notice shall be

- Personally delivered to the *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) as stated in the agreement; or
- Sent by prepaid registered mail to the said domicile as stated in this agreement.

A notice required by this agreement will be communicated separately from other communications.

Day-to-day communications may also be sent by fax or e-mail.

Cession Delegation and Assignment

No rights may be ceded, no duties delegated and no portion of the agreement or the whole assigned, without the prior written permission of the other party to this agreement.

Waiver or Relaxation of Terms

No relaxation or indulgences that one party may afford to the other shall in any way prejudice the rights of the first-mentioned party nor shall such a party be stopped from exercising its rights by reason thereto.

Ambiguities

A party shall notify the other as soon as it becomes aware of an ambiguity or inconsistency in or between the documents that form part of this agreement.

A party shall notify the other as soon as it becomes aware that the agreement requires him/her to do anything that is illegal or impossible, in which event the parties shall agree to change the agreement and its execution appropriately.

Force Majeure (An Unforeseen and Unavoidable Event)

1. Neither party shall be liable for any failure to fulfill any of its obligations hereunder insofar as such failure is due to an unforeseen and unavoidable event or "Act of God" (collectively referred to as "*Force Majeure*").
2. For the purposes of this clause, *force majeure* shall include events beyond the control of the party claiming *force majeure* that cannot be foreseen, or if foreseeable, cannot be avoided, and which occur after the date of entry into force of this agreement.
3. Such events shall prevent or hinder the carrying out of the obligations of the party claiming *force majeure*, and shall mean war, rebellion, insurrection, acts of public enemy or terrorism, quarantine restriction, sabotage, government control or act, embargo, labour dispute, fire, accident, earthquake, storm, flood, epidemic, drought or other natural disaster.
4. The party affected by a *force majeure* shall promptly notify the unaffected party of any incident it deems to be a *force majeure*, and will also promptly notify the unaffected party of the cessation of such incident.
5. If the affected party is only partially hindered in the performance of its obligations hereunder, then it shall remain liable for the remainder of its obligations.
6. If any *force majeure* continues for a period in excess of three (3) months, then both parties will have the right to negotiate the termination of the particular Annexure to which the *force majeure* applies.

Applicable Law

This agreement is governed by the law of South Africa. (Second option can be the United Kingdom but avoid USA which changes from state to state.)

Jurisdiction of the Magistrate's Court

Each party consents in terms of Section 45 of the Magistrate's Court Act of 1944, to the jurisdiction of the Magistrate's Court in respect of any proceedings pursuant to this agreement.

Dispute Resolution

In the event of a dispute arising between the parties in respect of this agreement, the aggrieved party shall notify the other of the existence of the dispute within 7 (seven) days of the matter arising. Thereafter the parties shall negotiate in good faith to settle the dispute as expeditiously as possible but in any event within a period of ... days of the matter being referred to them. Should the parties be unsuccessful, the parties may agree that the matter be solved through a process of arbitration in accordance with the rules and procedures of AFSA (The Arbitration Foundation of South Africa).

The arbitrator's decision may, upon application by any party to a court of competent jurisdiction, be made an order of court.

This clause is severable from the rest of the agreement and shall remain in effect should the rest of this agreement be terminated or cancelled for any reason.

Costs

The costs of and incidental to this agreement, including stamp duty, shall be borne by the parties in equal shares / by one party only.

Amendment

This agreement, together with this clause, may only be amended or cancelled if the amendment or cancellation is in writing and signed by the parties hereto.

Whole Agreement

This agreement contains the entire agreement between the parties and supercedes any previous agreement between the parties, whether tacit (implied), oral or written.

Neither party will have any right or remedy arising from any undertaking, warranty or representation not included in this document.

Breach of Contract

In the event of any party committing breach of contract, the aggrieved party shall be entitled, without prejudice to any other rights which it may have in terms of this agreement or in law, to:

- 1.1 Claim specific performance of the terms of the agreement as well as damages which it may have suffered; or
- 1.2 Cancel this agreement immediately and claim damages; or
- 1.3 Keep this agreement in force and recover such damages as it may have suffered as a result of such breach.

**ACKNOWLEDGEMENT OF DEBT
(REPAYMENT BY INSTALMENTS)**

I/We, the undersigned,

hereby acknowledge that I am / we are jointly and severally liable to

(hereinafter referred to as "the Creditor") in the sum of R _____
(hereinafter referred to as "the Capital"), and I/we jointly and severally undertake to pay to the
order of the Creditor the Capital, together with interest thereon, at the rate of _____ % per
annum from the _____ day of _____ year _____ on the reducing
balance, subject to the following terms and conditions:

1.

Payment shall be made by way of equal monthly instalments in the sum of R _____
payable on the _____ day of each month, commencing on the _____ day of
_____ year _____.

2.

All payments will first be appropriated to interest and costs and thereafter to Capital. Interest
shall be calculated and capitalised on the same day of each month, in arrears, on the outstanding
balance until the total amount due has been paid.

3.

Should any payment not be made on due date, the full balance then outstanding will immediately
become due, owing and payable. Any indulgence by the Creditor in accepting a late payment will
not be construed as a waiver of the rights of the Creditor herein.

4.

In the event of default, the undersigned shall be liable, jointly and severally, for all legal costs
incurred in the collection of the outstanding balance on the scale as between attorney and client
including collection commission on Capital, interest and costs, plus interest as aforesaid.

5.

All payments shall be made to the Creditor at _____
or to such address as the Creditor may indicate from time to time in writing.

6.

I/We hereby choose as my/our *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) for all purposes hereof the following address / addresses:

Name _____ Address _____

Name _____ Address _____

7.

The Creditor will be entitled to increase the interest rate from time to time to the maximum rate allowed by law.

8.

I/We hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction over me/our persons in connection with all legal proceedings arising herefrom.

9.

I/We renounce the benefits of the legal exceptions *non numeratae pecuniae* (the money has not been paid over), *non causa debiti* (no cause of debt), *error calculi* (errors of calculation), division and revision of accounts. I/we acknowledge that I am/we are fully aware of the meaning and effect of such renunciations.

10.

The Debtor/s may pay any portion of the capital plus interest before the due date without derogating from any right he/she/they may have in terms hereof.

11.

The Creditor may cede or pledge its rights herein without the consent of the debtor/s.

12.

The Capital plus interest will become due and payable immediately on a provisional order of insolvency of the debtor/s.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____ DEBTOR

2. _____ DEBTOR

**ACKNOWLEDGEMENT OF DEBT
(SINGLE PAYMENT REQUIRED)**

I/We, the undersigned,

hereby acknowledge that I am / we are jointly and severally liable to

(hereinafter referred to as "the Creditor") in the sum of R _____ (hereinafter referred to as "the Capital") and I/we jointly and severally undertake to pay to the order of the Creditor the Capital together with interest at the rate of _____ % per annum from the _____ day of _____ year _____ to the _____ day of _____ year _____ subject to the following terms and conditions:

1.

The full Capital together with the interest as aforesaid shall be due, owing and payable to the Creditor on the _____ day of _____ year _____ at _____ free of bank charges and commission.

2.

In the event of default, the undersigned shall be liable jointly and severally for all legal costs incurred in the collection of the outstanding balance on the scale as between attorney and own client including collection commission on Capital, interest and costs, plus interest at the rate of _____ % per annum. Interest shall be calculated and capitalised on the same day of each month, in arrears, on the outstanding balance until the total amount due has been paid.

3.

I/We hereby choose as my/our *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) for all purposes hereof, the following address / addresses:

Name _____ Address _____

Name _____ Address _____

4.

The Creditor will be entitled to increase the interest rate from time to time to the maximum rate allowed by law.

5.

I/We hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction over my/our person/s in connection with all legal proceedings arising herefrom.

6.

I/We renounce the benefits of the legal exceptions *non numeratae pecuniae* (the money has not been paid over), *non causa debiti* (no cause of debt), *error calculi* (errors of calculation), division and revision of accounts. I/we acknowledge that I am/we are fully aware of the meaning and effect of such renunciations.

7.

The Creditor may cede or pledge its rights herein without the consent of the Debtor/s.

8.

The Debtor/s may pay any portion of the Capital plus interest before the due date without derogating from any right he/she/they may have in terms hereof.

9.

The Capital plus interest will become due and payable immediately on a provisional order of insolvency of the Debtor/s.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

DEBTOR

2. _____

DEBTOR

AFFIDAVIT

I, the undersigned (full names)

hereby make oath and state that:

1.

The facts herein contained are to the best of my knowledge and belief, true and correct.

2.

(contents) _____

DEPONENT

I certify that the deponent acknowledged that he/she knew and understood the contents hereof and that I duly administered the oath as prescribed in Regulation No. R1258 of 21 July 1972, and that the deponent in my presence signed this affidavit at _____ on this _____ day of _____ year _____.

Before me,

COMMISSIONER OF OATHS

Full name of Commissioner _____

Area for which appointment held _____

Office held if appointment held *ex officio* (from office) _____

Business Address _____

Designation _____

AFFIRMATION

I, the undersigned (full names) _____

hereby solemnly affirm and state that:

1.

The facts herein contained are to the best of my knowledge and belief, true and correct.

2.

(contents) _____

DEPONENT

I certify that the deponent acknowledged that he/she knew and understood the contents of the above declaration, that he/she objected to taking an oath which he/she did not consider to be binding on his/her conscience, and that I duly administered the affirmation as prescribed by Regulation No. R1258 of 21 July 1972, and that thereafter the deponent in my presence signed this declaration at _____
on this _____ day of _____ year _____.

Before me,

COMMISSIONER OF OATHS

Full name of Commissioner _____

Area for which appointment held _____

Office held if appointment held *ex officio* (from office) _____

Business Address _____

Designation _____

AGREEMENT TO BUILD

Made and entered into by and between:

(hereinafter referred to as "the Owner")

and

(hereinafter referred to as "the Builder")

WHEREAS the parties agree that the Builder will do various alterations for the Owner on the Owner's property situated at (hereinafter referred to as "the premises"):

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1.

Contract Price and Works: In consideration of the sum of R _____
(_____) (hereinafter referred to as "the contract price"), which the Owner hereby agrees to pay to the Builder within _____ after the Builder has completed the works hereinafter referred to, and in the manner hereinafter described, and has handed the same over to the Owner, the Builder hereby undertakes to execute and complete in a thorough and workmanlike manner, and with materials as amplified in the specification, all the works set out or described in the drawings and specification hereto annexed, and signed by the Owner and the Builder, and all work incidental to the proper execution and completion of the said works, and to hand over to the Owner the said works duly executed and completed. The work will commence on _____. The Owner will not be obliged to pay the Builder any payments in advance of work done or materials supplied.

2.

Advances to Builder: Any advances of money by the Owner to the Builder during the execution of the works shall be deducted from the said contract price when the latter becomes payable. Such advances will be made solely on the advice and determination of _____ based on work done and materials supplied from week to week, following a weekly site meeting between the Builder and _____ each _____ at _____ pm/am or at any other time as determined by _____.

3.

Damages for non-completion: If the Builder fails to complete as aforesaid and hand over to the Owner the works by the time fixed in this agreement for completion, unless such failure be due to the default of the Owner, the Owner may deduct from the said contract price or the balance of the same then unpaid, the sum of R _____ for every day that shall elapse between the day fixed for completion and the actual completion and handing over of the works.

4.

Termination of contract on breach by Builder: If the Owner shall at any time during the progress of the works be dissatisfied with the rate of progress, the quality of the materials used or the workmanship, he/she may appoint an architect (or a quantity surveyor or site engineer) to inspect the works, and should such person certify in writing that the rate of progress, the materials used or the workmanship, or any or all of these, is or are unsatisfactory or not in accordance with this contract, the Owner may immediately terminate this agreement by notice in writing to the Builder at his usual place of business. The Owner may then enter upon the said works and call in another Builder to complete the same, and may pay such Builder the cost of such completion out of the contract price payable under this agreement, or the balance of that sum if advances have been made to the Builder, and if such cost be more than such sum or the balance of such sum, then the difference between it and such sum or balance shall be a debt due from the Builder to the Owner.

5.

Disputes: If any dispute arises herefrom between the parties, either party may apply to _____ to decide the same and the said _____ after making such investigation as he/she may consider proper, may by his/her certificate in writing, decide such dispute and declare what payment or deduction (if any) is to be made in respect of the subject matter of the same and such decision and declaration shall be conclusive and binding upon both the Owner and the Builder.

6.

Retention: Notwithstanding anything herein contained to the contrary, all payments herein will be subject to a retention by the owner of 10% (ten percent). The retention money is payable 3 months after delivery of the Builder's final statement.

7.

The Owner will be entitled to select his/her own materials and any price difference will be added to or subtracted from the contract price. The contract price will include the materials as specified in the specifications, which have been calculated at current prices of standard materials at date of signature hereof.

8.

Rubble will be removed from the pavement or premises by the Builder at his sole cost on a weekly basis or within 24 hours on request by the Owner or local authority.

9.

This agreement constitutes the entire agreement between the parties and no other terms will be binding unless reduced to writing and signed by both parties. Additional charges occasioned by alterations to the drawings will only be incurred if the parties sign a written addendum describing the work to be done and cost thereof before such work is commenced.

10.

The parties consent to the jurisdiction of the Magistrate's Court in the event of disputes arising herefrom, which cannot be resolved in terms of the said agreement.

11.

Other conditions _____

12.

The *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) of each of the parties is as follows:

OWNER The premises at _____

BUILDER _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

OWNER

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

BUILDER

WARRANTY BY A CONTRACTOR

- (a) The Contractor warrants that the works shall substantially conform to its specifications and other appropriate documentation as provided at the date of delivery for the first year from delivery. The Contractor does not warrant that the operation of the works will be uninterrupted or error-free.
- (b) The Contractor further warrants that the services to be provided under this Agreement will be of a professional quality conforming to generally accepted industry standards.
- (c) If the contractor receives written notice from the Client of any breach of the foregoing warranties during the warranty period, the Contractor shall use reasonable endeavours on a best effort basis, and within a reasonable time after receiving such notice to remedy the defect or error in question.
- (d) Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, expressed or implied, written or oral, statutory or otherwise, as to the condition, description, quality, performance, merchantability, durability or fitness for purpose of the works or documentation and/or any services provided by the Contractor hereunder is given or assumed by the Contractor and all such warranties, conditions, undertakings and terms are hereby excluded to the extent permitted by law.

"REGISTERED MAIL"

Date _____

Dear

RE: DEFECTIVE SERVICE

We refer to the following work or service carried out by you during the period from _____
to _____ at the property situated at _____
_____ consisting of _____
_____.

We hereby notify you that the work (or service) carried out by you is defective and not in accordance with our instructions in the following respects:

Accordingly, we call upon you to rectify the defects referred to above, to our reasonable satisfaction, within _____ days from date of this letter, failing which we shall, without further notice to you, exercise our rights in law either to:

- (a) Have the defective work repaired by another contractor and recover the costs thereof from you; and/or
- (b) Take such other action, including a claim for damages against you, as we consider appropriate. In such event you may become liable for the legal costs involved.

Should you not respond within the time period stipulated above, we shall have no alternative but to enforce our legal rights referred to above.

Yours faithfully

AGREEMENT TO DISTRIBUTE

Made and entered into by and between:

and

IT IS AGREED AS FOLLOWS:

1. This agreement will commence on the _____ day of _____ year _____ and terminate on _____, unless renewed by both parties in writing.
2. The Company will, on receipt of the Distributor's order, supply to the Distributor from its range of products listed in the annexure hereto marked "A" (hereinafter referred to as "the products"), which will be sold by the Distributor at the prevailing prices per the Company's price list, as amended by the Company from time to time.
3. The Company will grant the Distributor a discount of _____ percent of the full list price as referred to in Clause 2 hereof. A further discount of _____ percent will be granted to the Distributor _____

(state conditions).
4. The terms of payment by the Distributor to the Company will be within _____ days of receipt of statement. Overdue accounts will be subject to _____ percent interest per annum.
5. The Company will despatch its products to the Distributor by rail / motor transport*, at the expense and risk of the Company / Distributor. *(delete where applicable)
6. It is agreed that the Distributor may sell the products to persons carrying on trade as _____, in which event the products may be sold at a price less _____ percent discount. This is subject to the proviso that such persons sell the products at prices no less than those stated in Clause 2 above. The Distributor undertakes not to sell without the Company's consent to any person whom it has reasonable cause to believe has sold or will sell the goods at reduced prices.
7. The Distributor will sell the products as products manufactured by the Company and will not alter the names, marks, numbers* on the products or in any way tamper with the products. *(delete where applicable)

8. The Distributor may/may not (delete where applicable) represent itself as an agent of the Company. (If not an agent, the Distributor may refer to itself as an "authorised dealer").
9. The Distributor waives its right to any claim against the Company arising from loss occurring to the Distributor because of delay by the Company in transit or delivery or delay by the Company occasioned by shortage of products, or delays caused by civil commotion and unrest.
10. The Distributor may not cede or assign this agreement without the written consent of the Company.
11. Either party may terminate this agreement by giving the other party _____ months' written notice.
12. The Company may summarily terminate this agreement if the Distributor is in breach of any of the terms of this agreement or commits any act of insolvency / liquidation.
13. Should the Company cease to carry on business as a manufacturer of the products, it may at any time terminate this agreement by giving the Distributor _____ months' notice in writing.
14. The Distributor shall at all times maintain a supply of all the products in good order for display and demonstration purposes.
15. The *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) of each of the parties is as follows:

The Company _____
The Distributor _____
16. This agreement constitutes the entire agreement between the parties and no other agreement will be binding on the parties unless reduced to writing.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF
OF THE COMPANY

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF
OF THE DISTRIBUTOR

AGENT'S COMMISSION AGREEMENT

Made and entered into by and between:

(hereinafter referred to as "the Principal")

and

(hereinafter referred to as "the Agent")

WHEREAS

The Principal wishes to appoint the Agent to obtain orders for the products of the Principal;

and

The Agent accepts the appointment as agent of the Principal in respect of the sale of the products of the Principal.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. APPOINTMENT

1.1 The Principal appoints the Agent with effect from the Commencement Date (specified in the Schedule) to obtain orders on behalf of the Principal in the Territory (specified in the Schedule) in respect of the Products manufactured / supplied by the Principal (as detailed more fully in the Schedule).

1.2 The Agent shall use its best endeavours to develop a market and promote the sale of the Products in the Territory, and the Agent shall not, without the prior consent of the Principal, buy, sell or deal in any way with any merchandise which competes with the Principal in any manner.

2. TERRITORY / AREA

The appointment of the Agent shall be only in respect of customers situated in the Territory and not otherwise unless varied in writing by the Principal.

3. COMMISSIONS

The Principal shall pay the Agent a commission calculated in accordance with the provisions of clause 4 below in respect of all payments received by the Principal in respect of orders placed by the Agent in the Territory.

4. **RATE OF COMMISSION**

The rate of commission payable to the Agent is _____% calculated on the net invoiced amount for each order paid by the customer. In case of a cheque, payment to the Principal shall mean the date of clearance of such cheque.

5. **PAYMENT OF COMMISSION**

The Principal shall make payment to the Agent of the Agent's commission on or before the 7th day of the month following the month in which the Principal has received payment from customers in respect of orders placed by the Agent in the Territory.

6. **NON-EXECUTION OF ORDERS**

6.1 Should the Principal have reason to believe that it will not receive payment from any customer, the Principal will be entitled to refuse to execute such orders unless payment is made in advance by the customer.

6.2 The Agent shall not, without prior written consent of the Principal, offer for sale the Products, other than those agreed to by the Principal.

6.3 The Principal shall have the right to refuse to execute any order obtained by the Agent, and the Agent shall not be entitled to any commission in respect of such refused order.

7. **ORDERS DIRECT FROM CUSTOMERS**

In cases where the Agent has been the effective cause of an order given directly to the Principal by a customer, the Agent shall notify the Principal thereof in which event the Agent shall be entitled to receive commission pursuant to the provisions of clause 5 above.

8. **COMMISSION ON SUBSEQUENT ORDERS**

The Agent shall be entitled to receive its usual commission on the net invoiced amount of all orders placed by the customer after the initial order being placed by the Agent on behalf of such customer (or placed by the customer directly with the Principal as set out in clause 7 above) until termination of this agreement.

9. **TERMINATION**

9.1 Either party may terminate this agreement upon 1 (one) calendar month's written notice thereof to the other.

9.2 Notwithstanding the above, the Principal shall have the right to terminate the Agent's appointment immediately upon written notice to the Agent if the Agent commits any act which the Principal believes to be prejudicial to its interests.

9.3 The Agent is not an employee of the Principal.

10. **EXCLUSIVITY OF AREA**

The appointment of the Agent by the Principal shall not confer upon the Agent the exclusive right to act as the Principal's sole Agent in the Territory.

11. **DOMICILIUM CITANDI ET EXECUTANDI** (Domicile for the purpose of serving summons and levying execution)

The domicile for the purpose of serving summons and levying execution of the parties is as follows:

11.1 The Principal

11.2 The Agent

12. **ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties and no other terms will be binding unless submitted to writing and signed by both parties.

Signed at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

THE PRINCIPAL

2. _____

Signed at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

THE AGENT

2. _____

SCHEDULE

1. Commencement Date: _____

2. Territory _____

3. Products

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

AGREEMENT TO EXTEND PERFORMANCE DATE

Made and entered into by and between:

_____ (hereinafter referred to as "A")

and

_____ (hereinafter referred to as "B")

IT IS AGREED AS FOLLOWS:

1.

It is recorded that the parties entered into an agreement on the _____ day of _____ year _____, which terminates on _____ year _____. A copy of the said agreement is annexed hereto as Annexure "A".

2.

The parties are desirous of extending and continuing the agreement and hereby agree that the agreement shall be extended for an additional term of _____ days / months / years from the date of termination of the original term of the agreement.

3.

This extension shall be subject to the same terms and conditions as contained in the aforesaid agreement.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

_____ A

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

_____ B

SETTLEMENT AGREEMENT

Made and entered into by and between:

_____ (name of one party)

Of _____
(hereinafter referred to as "the First Party")

and

_____ (name of the other party)

Of _____
(hereinafter referred to as "the Second Party")

WHEREAS

A dispute has arisen between the First Party and the Second Party relating to:

And the parties have agreed to settle the dispute on the terms and conditions as set out in this agreement.

IT IS AGREED AS FOLLOWS:

1. The First Party shall pay the Second Party the sum of R _____
(_____) which amount shall be paid in cash upon execution of this Agreement.
2. In consideration of such payment, the parties acknowledge and agree that neither of them shall have any further claims against the other party and each party hereby releases the other in respect of all debts and/or claims existing between them.

SIGNED at _____ on this _____ day of _____ year _____.

AS WITNESSES:

1. _____

(Signature of the First Party)

2. _____

(Full name of the First Party)

SIGNED at _____ on this _____ day of _____ year _____.

AS WITNESSES:

1. _____

(Signature of Second Party)

2. _____

(Full name of the Second Party)

“REGISTERED MAIL”

Date _____

Dear

CONFIRMATION OF VERBAL AGREEMENT TO CANCEL AGREEMENT

This letter serves to confirm our verbal agreement of the _____ day of _____
year _____ to cancel and terminate the agreement between us dated
_____, a copy of which is annexed hereto marked “A”, and that neither
party shall have any further claim against the other.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

WRITTEN CONFIRMATION OF ORALLY VARIED TERMS

We refer to the contract / order no _____ dated _____.

This letter serves to confirm our agreement that the terms thereof have been varied in the following manner:

Unless we hear from you to the contrary within _____ days of date hereof we shall assume that this letter correctly reflects the agreement between us.

Yours faithfully

INDEMNITY

I/We _____

(hereinafter referred to as "the Indemnifier/s")

hereby indemnify and hold harmless _____

(hereinafter referred to as "the Indemnified")

from any claim arising from the following: _____

In the event of this indemnity being by more than one party, then each Indemnifier's liability hereto will be joint and several.

In the event of any claim being made against the Indemnified, the Indemnified shall immediately advise the Indemnifier/s of the same and assist the Indemnifier/s in every respect with the defence of such claim.

The Indemnifier/s choose/s as its/their *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) for all purposes hereof the following address / addresses:

The Indemnifier/s hereby consents / consent to the jurisdiction of the Magistrate's Court having jurisdiction over his/her/their person/s in connection with all legal proceedings arising herefrom.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

INDEMNIFIER

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

INDEMNIFIED

PLEDGE OF MOVABLE PROPERTY

I/We, the undersigned,

_____ (hereinafter referred to as "the Debtor/s")

of (physical address) _____

do hereby acknowledge that I am/we are lawfully indebted to

_____ (hereinafter referred to as "the Creditor") in the sum of R _____ in respect of (cause of debt) _____ plus interest thereon at the rate of _____% per annum from the _____ day of _____ year _____ to date of repayment.

*We acknowledge that our aforesaid liability is joint and several. * (Delete if not applicable)

I/We undertake to repay my/our aforesaid liability in terms hereof in full to the Creditor, his heirs, executors, administrators or assigns on or by (date) _____ at (place) _____ free of bank charges and commission.

I/We renounce the legal exceptions *non numeratae pecuniae* (the money has not been paid over), and *beneficium divisionis* (the benefit of division, a defence that each party be liable only for their proportionate share), the meaning of which I/we declare myself / ourselves to be acquainted.

As security for my/our said liability I/we pledge all my/our right/s to the movable property as set out in the annexure hereto marked "A" (hereinafter referred to as "the property"). The property has been delivered to the Creditor for the purpose of being kept as security for my/our liability in terms hereof. In the event of my/our failure to discharge my/our liability in terms hereof, I/we hereby irrevocably authorise the Creditor or his/her agent to sell the property in such manner as he/she may deem fit and to recover from the proceeds of the sale all amounts which may be due to him/her, plus legally incurred expenses and to pay the balance to me/us.

I/We hereby agree to the jurisdiction of the Magistrate's Court having jurisdiction over my/our person/s in any action arising from this pledge.

For the purpose of this pledge I/we choose the above-mentioned address / addresses as my/ our *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution).

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____ DEBTOR

2. _____ DEBTOR

I, the Creditor, hereby acknowledge receipt of the aforesaid property.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____ CREDITOR

PLEDGE OF SHARES

I/We, the undersigned,

_____ (hereinafter referred to as "the Pledgor/s")

of (physical address) _____

do hereby acknowledge myself / ourselves to be truly and lawfully indebted to _____

_____ (hereinafter referred to as "the Creditor") in the sum of

R _____ in respect of (cause of debt) _____

_____ plus interest

thereon at the rate of _____ % per annum from the _____ day of _____ year _____

to date of repayment. I/We undertake to repay my/our aforesaid liability in terms hereof in full to

the creditor, his heirs, executors, trustees or assigns on or by (date) _____

at (place) _____ free of bank charges and commission.

* We acknowledge that our aforesaid liability is joint and several. * (Delete if not applicable)

I/We renounce the legal exceptions *non numeratae pecuniae* (the money has not been paid over), and *beneficium divisionis* (the benefit of division, a defence that each party be liable only for their proportionate share), the meaning of which I/we declare myself / ourselves to be acquainted.

As security for my/our said liability I/we pledge all my/our rights to: (describe shares by reference to share certificates and numbers of shares) _____

_____ (hereinafter referred to as "the shares"). The shares have been delivered to the Creditor for the purpose of being kept as security for my/our liability in terms hereof.

In the event of my/our failure to discharge my/our liability in terms hereof, I/we irrevocably authorise the Creditor or his/her agent to sell and dispose of the aforesaid pledged shares in such manner as he/it may think best and to recover out of the proceeds of such sale all amounts which may be due to him/it including any expenses which may have been legally incurred on an attorney and client scale and to account to me/us for the balance.

I/We hereby agree to the jurisdiction of the Magistrate's Court having jurisdiction over my/our person/s in any action arising from this pledge.

For the purpose of this pledge I/we hereby choose the above-mentioned address / addresses as my/our *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution).

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____
PLEDGOR

2. _____
PLEDGOR

I, the Creditor, hereby acknowledge receipt of the aforesaid shares.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____
CREDITOR

2. _____

“REGISTERED MAIL”

Date _____

Dear

DEMAND TO PLEDGOR

We wish to advise that the sale of the pledged property realised R _____
leaving a balance outstanding of R _____.

You are requested to effect payment of such balance within seven days of date hereof, failing which proceedings will be instituted for payment of the said sum without further delay.

Yours faithfully

PLEDGEE

“REGISTERED MAIL”

Date _____

Dear

NOTICE OF REALISATION OF PLEDGE

You are informed that you have failed to discharge your undertaking in terms of your Contract of Pledge dated _____ in favour of us.

Accordingly, you are hereby given notice that the property pledged by you to us in terms of the said Pledge shall be sold after 10 days of date hereof.

Should you require to redeem your pledged property, we require payment of the full outstanding balance of R _____ together with interest thereon, within ten days of date hereof.

You are of course also liable for any shortfall between the amount due and the proceeds of the sale.

Yours faithfully

SPECIAL POWER OF ATTORNEY - LIMITED USE

I/We the undersigned,

(Grantor/s)

hereby grant to _____

(Grantee)

the Power of Attorney to act on my/our behalf and in my/our place to:

1. _____

2. _____

3. _____

(the specific duties)

and to do all things lawfully necessary in connection with the foregoing.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

GRANTOR

2. _____

GRANTOR

IRREVOCABLE PROXY

I, the undersigned, _____
(Shareholder)

being the registered owner of _____
(number and type of shares)

in _____
(name of company)

hereby appoint _____
(name of proxy)

as my proxy to vote on my behalf in respect of such shares at any future shareholders' meeting of the company and such proxy shall be entitled to attend such meeting on my behalf.

This proxy shall be irrevocable and shall remain in effect until _____
when all rights hereunder shall terminate.

SIGNED at _____ this _____ day of _____ year _____.

SHAREHOLDER

REVOCABLE PROXY

I, the undersigned, _____
(Shareholder)

being the registered owner of _____
(number and type of shares)

in _____
(name of company)

hereby appoint _____
(name of proxy)

as my proxy to vote on my behalf in respect of such shares at any future shareholders' meeting of the company and such proxy shall be entitled to attend such meeting on my behalf.

This proxy shall be revocable at the instance of the undersigned at any time prior to the casting of the vote at the meeting by my proxy by notice in writing.

SIGNED at _____ this _____ day of _____ year _____.

SHAREHOLDER

SURETYSHIP

I/We the undersigned, (hereinafter referred to collectively as "**the Surety**")

1. _____
Title Full Names and Surname ID Number
(Mr/Mrs/etc)

of (precise physical address)

Code _____

2. _____
Title Full Names and Surname ID Number
(Mr/Mrs/etc)

of (precise physical address)

Code _____

3. _____
Title Full Names and Surname ID Number
(Mr/Mrs/etc)

of (precise physical address)

Code _____

Do hereby bind myself / ourselves *in solidum* (for the full amount) as surety / sureties to and co-principal debtor(s) with:

(Full registered name of concern)

(hereinafter referred to as "**the Debtor**")

(Please state (Pty) Ltd or cc with registration number, or full name of partnership or sole trader, whatever is applicable).

for all and every obligation to:

(Full registered name of concern)

(hereinafter referred to as "**the Creditor**")

(please state (Pty) Ltd or cc with registration number, or full name of partnership or sole trader, whatever is applicable)

which is now owed by the Debtor to the Creditor or which may in future become owing from whatsoever cause arising without any limitation whatsoever.

1. The Surety hereby undertakes to pay any amount which he/she may be lawfully required to pay hereunder to the Creditor within 7 (seven) days of being called upon so to do.
2. The Surety also undertakes to pay all legal costs incurred by the Creditor in any proceedings instituted against him/her hereunder on an Attorney and own client scale together with interest on the capital sum at the maximum rate allowed by law from time to time plus collection commission.
3. For the purpose of this Suretyship the Surety hereby chooses the abovementioned address as his/her *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution). The Surety consents to the jurisdiction of the Magistrate's Court in any proceedings herefrom against him/her.
4. The Surety waives his/her/its rights to rely upon prescription of either any principal obligation or any accessory obligation created by this deed.
5. **Entire Agreement**
 - 5.1 No variation, relaxation, waiver of, addition to, deletion from or consensual cancellation of this Suretyship or any of the terms thereof (including this clause) shall be of any force or effect unless reduced to writing and signed by the Surety and confirmed by the Creditor in writing.
 - 5.2 It is agreed that:
 - 5.2.1 This Suretyship constitutes the whole of the agreement between the Surety and the Creditor;
 - 5.2.2 There are no conditions suspending its operation which may terminate the liability of the Surety;
 - 5.2.3 No warranties, promises, representations or inducements of whatsoever nature have been made or given by the Creditor or any other person including the Debtor to the Surety to enter into this Suretyship or to bind the Surety to the terms thereof.
6. **Suretyship remains in force**

This Suretyship shall remain in force and effect notwithstanding any interim or final settlement of accounts and the subsequent incurring of any new obligation by the Debtor and notwithstanding the death or other legal disability of the Surety.
7. **Release**
 - 7.1 It is agreed that the Surety may only be released from this Suretyship by written notice from the Creditor releasing the Surety. Any such release shall be restrictively interpreted to apply only to the Creditor giving the release, the Surety receiving the release and the Debtor in respect of which the release is given.
 - 7.2 Should this Surety be terminated by any aforesaid notice or for any other reason, the Surety shall be and remain liable for all obligations of the Debtor as at the date of termination of the Suretyship.
8. **Proof**
 - 8.1 Any obligation of the Debtor and/or the amount of the indebtedness of the Debtor and of the Surety hereunder to the Creditor at any time (including interest, the rate of interest and the method of calculation thereof) shall be determined and conclusively proven by a certificate under the signature of any one Director of the Creditor.

8.2 It shall not be necessary to prove the appointment or signature of the person signing any such certificate.

8.3 Such certificate shall be:

8.3.1 conclusive proof of the obligation and/or amount of the Surety's indebtedness hereunder including conclusive proof of an amount which would otherwise be illiquid; and

8.3.2 valid against the Surety in any competent court for the purpose of obtaining summary judgement against the Surety thereon; and

8.3.3 conclusively deemed to be sufficient particularly for the purpose of pleading or trial in any action instituted by the Creditor against the Surety under this Suretyship.

9. **Disability of Debtor**

9.1 If the Debtor:

9.1.1 is placed under liquidation or judicial management or sequestration (whether provisionally, finally, compulsory or voluntarily); or

9.1.2 suffers any other legal disability; or

9.1.3 becomes subject to:

9.1.3.1 the provision of any law for the assistance or benefit of Debtors; or

9.1.3.2 a compromise, composition or other arrangement with any Creditor of the Debtor,

the Creditor shall be entitled to prove against the estate of the Debtor for the full amount of any indebtedness due to it, whether actual or contingent, and to accept any dividend on account and in reduction of the indebtedness without prejudice to the rights of the Creditor against the Surety.

9.2 The Surety further acknowledges that:

9.2.1 In any of such events and for as long as any of the obligations of the Debtor remain undischarged, the Surety shall not be entitled to prove any claim against the Debtor without the prior written authority of the Creditor;

9.2.2 Should the Debtor be placed under judicial management, whether provisional or final, then in which event the obligations of the Surety under this Suretyship shall cover all debts incurred by the Debtor to the Creditor whilst under judicial judgement.

10. **Waiver of presentment**

The Surety hereby waives presentment, notice of dishonour and protest of any promissory note, bill of exchange, cheque or other negotiable instrument made, drawn, accepted, endorsed or discounted by the Debtor, the Surety or any other surety, or to be so made, drawn, accepted, endorsed or discounted by the Debtor, the Surety or any other surety, hereby agreeing and admitting that the liability of the Surety hereunder in respect of any such instrument shall not be in any way affected by any failure to present, give notice of dishonour or protest.

11. Obligation to pay

11.1 If any dispute arises between the Debtor and the Creditor and the Debtor contends that the debt is not due and owing, then the Surety:

11.1.1 will accept the written contention of the Creditor that such debt is due and owing; and

11.1.2 hereby waives any defence or contention which the Debtor may raise; and

11.1.3 will pay the amount claimed forthwith.

12. Waiver of Benefits

12.1 The Surety waives and renounces:

12.1.1 Any right to claim an accounting from the Creditor;

12.1.2 Any benefits which the Surety as Surety is entitled to in law, without detracting from the generality of the foregoing, including the benefits of:

12.1.2.1 Excussion;

12.1.2.2 Division;

12.1.2.3 Cession of Action;

12.1.2.4 *De duobus vel pluribus reis debendi* (the benefit of being sued together and of division)

12.2. The Surety acknowledges that it knows and understands the meaning and full force and effect of such benefits.

13. Election for action

If there are two or more Sureties the Creditor shall be entitled to sue any Surety it elects and no other surety may join in such action without the consent in writing of the Creditor.

14. Severability

14.1. It is agreed that each Surety given, each paragraph, each clause and each subclause in this Surety is severable, the one from the other.

14.2. If any Surety, paragraph, clause or subclause is found to be defective or unenforceable for any reason by any competent court, the remaining clauses, Sureties, paragraphs, and subparagraphs shall be and shall continue to be of full force and effect.

15. Formalities complied with

15.1. This Suretyship was completed in all respects when the Surety signed it;

15.2. The rights and obligations of the various Creditors, Debtors and Sureties have been incorporated into one document for convenience only and the failure of any Surety or Debtor:

15.2.1. to execute this Suretyship notwithstanding that such Surety or Debtor is reflected herein as a party;

15.2.2. to be bound by this Suretyship for any reason after execution shall not detract from, diminish or affect the obligations of any other Surety or the rights of the Creditor, it being agreed that the liability of the Surety is not dependent, wholly or in part on the liability of any other surety or intended surety.

16. **Warranties by individuals signing on behalf of companies**

16.1. Every natural person signing on behalf of any juristic person personally warrants that:

16.1.1. The giving of the Surety by the juristic person concerned:

16.1.1.1 Is within the scope of its powers, objects and authority;

16.1.1.2. Does not contravene any provisions of the Companies Act 71 of 2008 in particular, but without limitation, section 45 thereof, or the Close Corporations Act, 1984.

16.1.2. All necessary steps have been taken by the juristic person to give the signatory the power to execute this Suretyship on behalf of the juristic person and in particular, but without limitations, the directors (or members in the case of a close corporation) have approved the giving of this Suretyship in specific terms.

16.2. If any juristic person is not bound by this Suretyship for any reason whatsoever including but not limited to a breach of any warranty contained in 16.1, then the person shall be bound as Surety in the place of such juristic person and he/she shall be conclusively deemed to have signed this Suretyship in his/her personal capacity.

17. ***Domicilium citandi et executandi*** (domicile for the purpose of serving summons and levying execution)

The Surety elects the physical address given above as his/her domicile for the purpose of serving summons and levying execution.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

Surety Number 1

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

Surety Number 2

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

Surety Number 3

Certificate

(By person signing on behalf of juristic person)

I, the undersigned

Full name and surname

Residential Address

do hereby certify that before executing this Deed of Suretyship for and on behalf of

Name of juristic person

I had my attention drawn to read clause 16 which I understand and have accepted.

(Signature)

(Full name printed)

“REGISTERED MAIL”

Date _____

Dear

RENUNCIATION OF SURETYSHIP

We wish to refer to a certain suretyship dated _____, copy annexed, in terms of which we bound ourselves as surety and co-principal debtor for the continuing obligations of _____ (Debtor) to you.

Please take notice that as from receipt of this letter we shall not be liable in terms of the suretyship for any future or further obligations arising between you/your company and _____ (Debtor) in view of the following circumstances:

Please return the original suretyship to us immediately.

Yours faithfully

Date _____

Dear

DEMAND ON SURETY

We are the holders of a suretyship, copy annexed, in terms of which you have bound yourself as surety and co-principal debtor for the indebtedness of _____ to us.

We wish to advise that _____ is in default with its obligations to us and accordingly we hereby call upon you to immediately make full payment of the outstanding debt in the amount of R _____.

Yours faithfully

GENERAL WAIVER

I, the undersigned _____ (the Creditor)
hereby waive and abandon all past, present and future claims, obligations, and duties due to me
by _____ (the Debtor).

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

THE CREDITOR

2. _____

LIEN WAIVER

I/We, the undersigned,

(Creditor/s)

hereby waive and abandon all liens, which I/we may have over

(the Property)

in respect of material and/or labour provided thereto by me/us.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

CREDITOR

2. _____

CREDITOR

MUTUAL WAIVER

We, the undersigned,

mutually and reciprocally waive all past, present and future claims, liabilities or obligations, which we have against each other.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

- 1. _____
- 2. _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

- 1. _____
- 2. _____

SPECIFIC WAIVER

I/We, the undersigned

(Creditor/s)

hereby waive and abandon my/our claim against

(Debtor)

arising from: _____

(describe source of claim)

This waiver applies only in respect of the foregoing claim and is not to be construed as a waiver of any other debt, obligation, liability or duty or claim owed to me/us by the said Debtor.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

CREDITOR

2. _____

CREDITOR

LABOUR / EMPLOYMENT

SECTION

2

LABOUR / EMPLOYMENT

Section

2

Due to the prevailing complex mix of economic, social and political forces the Labour Relations Act 66 of 1995 (the LRA) came into existence. This was followed by a series of new statutes being the Basic Conditions of Employment Act 75 of 1997 (BCEA) and the Employment Equity Act 55 of 1998 (EEA) and finally the Skills Development Act 97 of 1998 (SDA). Organised, labour represented by COSATU, has played a major role in the struggle against apartheid and the electoral success of the African National Congress (ANC). It therefore beheld the ANC to revise the country's labour laws in terms of its pre-election commitment. The new labour legislation inevitably sided with the demands from Unions. The South African common law of employment is based on Roman law supplemented by the Roman Dutch law of master and servant where an employer may hire and fire at will. This has been changed by the LRA, which stipulates that a dismissal must be for a fair reason and in accordance with a fair procedure. An employee may be fairly dismissed for permissible reasons i.e. misconduct, poor work performance, incapacity and operational requirements. There are various automatically unfair dismissals such as dismissals on grounds of pregnancy, discrimination, race, age and religion. The government obtained parliamentary ratification of International Labour Organisation (ILO) conventions and in compliance with chapter 3 of the Constitution of South Africa, which deals with a Bill of Rights, and in accordance with labour practices it was inevitable that the new LRA would come into existence. The LRA is well drafted and easy to read although it sets ambitious goals. The Commission for Conciliation, Mediation and Arbitration (CCMA) enjoys high levels of legitimacy in the eyes of workers although employers do not view it with any confidence. The quality of arbitrators as well as their independence, difficulty in getting legal representation and the waiting time for arbitration are criticisms often leveled against the CCMA. It has been suggested that new legislation be introduced to replace the law of dismissals.

The most intrusive of all the new labour statutes is probably the EEA, which seeks to correct demographic imbalances in the workplace. The least contentious of the new statutes is the SDA.

Despite much criticism of our labour legislation the Department of Labour considers that the fundamentals of its labour market policy are sound and correct in spite of the areas having negative consequences.

As a result of the apartheid government black people were prevented from taking part in the main stream economy. This resulted in an imbalance. The employment of free-market principles of employment has not redressed the situation. The unemployment rate in South Africa is reported to be about 37%. There has been an urgent call from black people for transformation. Government has restrained from a straightforward redistribution but has nevertheless assisted black people's participation in the economy through showing a preference when transacting with businesses that contribute to the objectives of Black Economic Empowerment. As a result two important pieces of legislation have emerged.

The first is the Broad-Based Black Economic Empowerment Act 53 of 2003, which provides that government entities must show preference to entities that contribute to BEE. The Act provides for Codes of Good Practice, which determine a BEE score. The Codes of Good Practice incorporate 2 codes. A set of Codes for general business, known as Generic Codes and a set of Codes for small business, known as QSE codes (qualifying small enterprises). A QSE is any business with an annual turnover of R35 Million or less. An Exempted Micro Enterprise (EME) is a business that has an annual turnover of less than R5 Million. An EME is not obliged to contribute to BEE.

The second enactment is the Preferential Procurement Policy Framework Act of 2000 (PPPPFA), which determines how BEE is to be implemented when buying goods and services from preferred suppliers. The order of preference is measured by the suppliers' BEE status. The intended consequence of BEE is to see black people being integrated into the economy but an unfortunate consequence of this is the exodus of young bright whites from South Africa and the early retirement of white managers. A further unfortunate consequence is the mushrooming of many who would not deserve on grounds of merit to hold the positions that they now hold. BEE is dealt with in detail in Section 9 "My Business".

IMPORTANT LABOUR LEGISLATION EXPLAINED

- Form 2.1** **Comment on the Labour Relations Act (LRA) 66 of 1995** (2 pages)
- Form 2.2** **Comment on the Basic Conditions of Employment Act (BCEA) 75 of 1997**
(2 pages)
- Form 2.3** **Comment on the Employment Equity Act (EEA) 55 of 1998, plus a Guide to
the Employment Equity Plan** (6 pages)
- Form 2.4** **Comment on the Skills Development Acts, plus a Guide to the Workplace
Skills Plan** (2 pages)
- The Black Economic Empowerment (BEE) Act 53 of 2003 is commented on in
Section 9, My Business, Form 9.9**

CODES OF GOOD PRACTICE

- Form 2.5** **Dismissal, LRA Schedule 8** (3 pages)
- Form 2.6** **Dismissals for Operational Requirements**

WALL CHARTS

- Form 2.7** **Basic Conditions of Employment Act (BCEA) Summary** (4 pages)
- Form 2.8** **Employment Equity Act (EEA) Summary** (2 pages)
- Form 2.9** **Occupational Health & Safety Act (OHSA)** (16 pages)

IMPORTANT CONTACTS

- Form 2.10** **Sector Education and Training Authorities (SETA) Offices** (2 pages)
- Form 2.11** **Commission for Conciliation, Mediation and Arbitration (CCMA) Offices**

IMPORTANT EMPLOYEE DOCUMENTATION

Form 2.12 **Recruitment Advertisement**

A careful recruitment and selection process is crucial to the success of any organisation. It ensures the right people are in the right jobs, reducing the time and trouble you spend sorting out poor performers. A job advertisement should be targeted to draw suitably qualified applicants and exclude unsuitable ones by listing the correct requirements and appearing in the right media. This form provides all the standard elements of a recruitment advertisement. Use only what is pertinent, and avoid discriminatory preferences and misleading information about the position being offered. Should an employment equity candidate be sought, this should be mentioned.

Form 2.13 **Application for Position as Advertised**

Letter to prospective employer requesting an appointment and enclosing a Curriculum Vitae (personal and employment history).

- Form 2.14 Curriculum Vitae (Personal & Employment History) (3 pages)**
This is a summary of your life's experiences relevant to a prospective employer. It should be accurately and neatly presented and highlight your achievements.
- Form 2.15 Application for Employment Form (4 pages)**
This form is provided by the employer and is completed by the employee prior to the interview.
- Form 2.16 Job Applicant Interview & Rating**
This form should be completed by the interviewer at the time of the interview to assist the interviewer in evaluating and comparing job applicants. To assist in this process the job applicant may be given the form to complete a self evaluation.
- Form 2.17 Request for Employment Reference**
Contains a written request for a prospective employee's reference. By approaching a past employer in this manner, a verbal reference may be avoided. Written references are generally an advantage, as they will tend to be more explicit.
- Form 2.18 Employee Job Reference Form**
Used as an alternative to the request above, this form provides the past employer with a convenient list of items on which to rate the employee's performance, alternatively it provides a prompt when recording a verbal reference.
- Form 2.19 Non-Employment Advice**
Informs a prospective employee that his/her application for employment has been unsuccessful.
- Form 2.20 Pre-Employment Checklist**
Should be used as a means of verification, when an employment application is being processed.
- Employment Interviews
Medical testing is dealt with in section 7 of the Employment Equity Act (EEA). See summary, Form 2.8.
It provides as follows:
- (1) Medical testing of an employee is prohibited, unless:
 - (a) Legislation permits or requires the testing; or
 - (b) It is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job.
 - (2) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of Section 50 (4) of this Act.
- Psychological testing is dealt with in Section 8 of the Act. It provides as follows:
- (1) Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used:
 - (a) Has been scientifically shown to be valid and reasonable;
 - (b) Can be applied fairly to all employees; and
 - (c) Is not biased against any employee or group.
- Form 2.21 Employee Personal Details**
This form is for staff records.
- Form 2.22 Letter of Appointment (2 pages)**
The full name and address of the employer must appear on the letterhead. Applicable to a person employed in a junior capacity, e.g. a typist. The Basic

Conditions of Employment Act (BCEA) requires an employer to provide each employee with a written statement of his/her particular conditions of employment at the commencement thereof. This document must be revised if and when the conditions themselves are revised. The Amendment to Agreement of Employment Form 2.32 may be used for this purpose. Form 2.7 is a summary of the BCEA, which Employers are expected to display at the workplace.

Form 2.23 Agreement of Employment (5 pages)

With the development of socially responsible legislation and collective agreements negotiated between management and trade unions on behalf of the workforce, the content of the individual contract of employment is becoming less important, save in the case of more senior managerial and other professional employees.

It is illegal to contract for less than the minimum terms and conditions provided for in statutory instruments such as the BCEA, or a binding bargaining council agreement or wage determinations, or (usually) private collective agreements entered into between employer and trade union. The most important aspect of the employment contract is its existence, for this determines whether the worker concerned is indeed an 'employee' and hence covered by the aforesaid labour legislation, or merely an 'independent contractor' who is not so covered. The determining factor is the degree of control exercised by the employer over the manner in which the employee is required to perform his/her work.

The content of the contract becomes important where what is required to be regulated in the relationship concerns matters outside the concern of minimum condition legislation, such as restraint of trade, confidentiality and employee invention agreements, which are typically of application to the more senior type of employee. Suitable restraint of trade documents are Forms 2.27 or 2.28 described below and Forms 7.8 and 7.9 (see Section 7, Immaterial Property) for confidentiality and employee invention agreements respectively. Form 8.1 is a suitable document for E-mail and Internet Usage Policy for Employees.

It may be helpful to refer to the Agent's Commission Agreement, Form 1.10 in the General Agreements Section, and the Commission Claim, Form 9.67 in My Business Section, when formulating terms for commission earners in clause 10 of this agreement. Whether the best tax advantage for the employee is to be gained through having a company car with all expenses paid, or through receiving a travelling allowance depends on a complicated calculation which deals with such matters as the income of the employee and distance travelled by him/her for business purposes. A chartered accountant should be consulted in this regard. It is suggested that a tax expert be consulted in order to derive the best tax advantage should the employer consider granting the employee further fringe benefits such as free accommodation, housing or education assistance. This is a comprehensive agreement and certain of the clauses may be inappropriate and accordingly they should be deleted where necessary and initialled by both parties.

Form 2.24 Agreement of Fixed Term Employment (4 pages)

With changing patterns of work and the need for temporary workers it may be advantageous for the employer to define the period of employment. This will make the termination of employment fair and certain and avoid the swamp of dismissal or retrenchment procedures. Unless otherwise agreed, a fixed-term contract cannot be terminated during its currency without good reason. The employer must give adequate notice of the termination of a fixed-term contract. If a fixed term contract is habitually renewed this may lead to "a reasonable expectation of renewal". In this instance an employee acquires the same rights to job securities as those of permanent employees.

Form 2.25 Agreement of Employment with Domestic Worker (3 pages)

Domestic workers are subject to the BCEA, and it is advisable to enter into this type

of agreement in the interests of certainty and dispute prevention. It is in any event a requirement of the BCEA to provide all employees with written particulars of their terms and conditions of employment at the commencement thereof. It also provides for maternity leave and three days' family responsibility leave during each leave cycle.

Form 2.26 Agreement of Overtime (2 pages)

The BCEA (see summary Form 2.7) stipulates that specific agreement must be reached between the parties with reference to certain times of work. All overtime is voluntary. It requires the prior approval of the employee before it can be enforced. This may be through an individual agreement with the employee or through a collective agreement binding on all employees who are members of that trade union or who fall within that bargaining unit. Employees may be required to work overtime in terms of an agreement but according to Section 6 of the BCEA not all categories of employees have to be paid for their overtime work. These categories include: senior managerial employees, sales staff who regulate their own hours of work and employees who earn more than R12 478 per month (this amount can be changed by the minister from time to time). Despite what the BCEA says, if the employer agrees to pay for overtime worked by such an employee, the employer will be bound by the agreement.

Form 2.27 General Restraint of Trade Agreement

A safeguard for an employer against competitive activity by an employee during and after termination of the employment period. With regard to the agreements to which this form and 2.28 relate, the restraint imposed should be reasonable in all respects, particularly in relation to the duration and the area to which the restraint applies. If the restraint is found to be unreasonable, the courts will not enforce the agreement. Each agreement will be judged according to its own circumstances and if you are in doubt about the degree of the restriction, an attorney should be consulted.

Form 2.28 Restraint of Trade Agreement (Specific Customers)

Similar to Form 2.27, but the restraint is limited to customers with whom the employee dealt during the course of his/her employment. The comments to Form 2.27 apply to this form too.

Form 2.29 Job Description (2 pages)

The purpose of a job description can be twofold, either to identify the role of a current employee and to form the basis of a performance evaluation, or to be used for recruitment of a new employee. It sets out the core responsibilities and functions of the employee and the skill and educational requirements and experience needed to be able to do the job competently. This is a very useful document to ensure that all positions within a company are well-defined and the employees are aware of the scope of their positions.

Form 2.30 Performance Evaluation (Comprehensive) (7 pages)

Employee evaluations should occur at regular intervals, normally annually. The performance evaluation can influence decisions on salary increases and promotions. It is also effective in gauging the contribution and ability of an employee. Although performance evaluations can be carried out in a number of ways, this form allows for an interactive evaluation. The employee is given the form and evaluates himself / herself, following which the supervisor can provide an evaluation of the employee. The results of the evaluation, problems encountered and new objectives can then be discussed.

Form 2.31 Performance Evaluation (Shortened) (2 pages)

This is an abridged version of the above form.

Form 2.32 **Amendment to Agreement of Employment** (2 pages)

An amended agreement could be construed as a termination of the old agreement. In order to avoid a claim from the employee for undue influence or unlawful dismissal or constructive dismissal, an amended agreement should be entered into with caution.

Form 2.33 **Acknowledgement of Debt by Employee**

It is now necessary for employees to consent to deductions being made from their remuneration.

Form 2.34 **Application for Leave**

Should be completed by an employee when applying for leave.

Form 2.35 **Resignation**

A Letter of Resignation from the employee to the employer. In the absence of an agreement between employee and employer, the provisions of Section 37 of the BCEA (See summary Form 2.7) must be complied with.

Section 37 states: "Notice of termination of employment -
Subject to section 38, a contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than -
one week, if the employee has been employed for four weeks or less;
two weeks, if the employee has been employed for more than six months but not more than one year; four weeks, if the employee -
(i) has been employed for one year or more; or
(ii) is a farm worker or domestic worker who has been employed for more than four weeks".

Section 38 states: "Payment instead of notice -
(1) Instead of giving an employee notice in terms of Section 37, an employer may pay the employee the remuneration the employee would have received, if the employee had worked during the notice period.
(2) If an employee gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the remuneration referred to in subsection (1), unless the employer and employee agree otherwise".

Form 2.36 **Acknowledgement of Resignation**

Serves to accept an employee's resignation.

Form 2.37 **Certificate of Service**

In terms of the Basic Conditions of Employment Act, on termination of employment, the employee is entitled to a certificate of service.

Form 2.38 **Consent to Release Employment Information**

A protective measure for the employer and an indication of the extent to which it can comment on the employee's performance, if called upon to do so.

Form 2.39 **Notification of Grievance**

Gives an employee or group of employees an opportunity to note a grievance and suggest their own solution. An informal investigation takes place with the right to lead evidence and cross-examine. No victimisation of a complainant is tolerated.

Form 2.40 **Grievance Outcome**

Gives management an opportunity to respond to an employee's grievance. Most companies have internal grievance procedures and it is suggested that an employer adopt the procedures as set out below and that the employees resort to the procedure before applying for satisfactory relief. If the grievance is not resolved within two clear working days of the formal grievance being lodged the complainant

may approach the section head to resolve the matter. If it is still not resolved after two clear working days the complainant may approach the department head to resolve the matter. If it is still not resolved after three clear working days the complainant may refer the matter to a meeting to be attended by his/her representative and a senior company official. If it is not resolved after five clear working days either the employer or complainant may pursue any other lawful action. In the event of strike action, it is suggested that the parties approach a labour attorney because of the serious implications of a strike.

Form 2.41 Counseling Record

The Labour Relations Act (LRA) requires employers to keep records of each employee's disciplinary history during employment. This form is especially useful for recording occasions when the employer uses 'informal advice and correction', as encouraged by the LRA, to deal with an employee's unsatisfactory performance and minor violations of work discipline.

Form 2.42 Notice to Attend a Disciplinary Meeting / Enquiry

This is a request to an employee to attend a disciplinary meeting. At least 48 hours notice should be given. The notice should inform the accused employee, with sufficient particularity, of the nature of the complaint leveled against him/her, as well as the nature of the employer's case he/she will be expected to meet at the enquiry. Copies of all documents upon which the employer intends to rely at the enquiry should be supplied to the employee beforehand. Sufficient time should be given to the employee to be able to prepare properly for the hearing with his/her chosen representative, once in possession of the necessary particulars of the complaint(s) and documents. An employee must be notified of his/her right to be represented at the enquiry by a co-employee or shop steward of his/her choice. Where the employee facing disciplinary action is him/herself a shop steward, the right to representation extends to an official of a trade union of which such employee is a member. The enquiry should be instituted within a reasonable period after the occurrence of the alleged transgression. The enquiry should not be conducted by a person involved in the transgression. An interpreter should be used during the proceedings to allow the employee to use the language of his/her choice. All notices should be interpreted for the employee. During the proceedings the employee or his/her representative should be given an opportunity to state his/her case, cross-examine witnesses called by the employer and call his/her own witnesses. The employee should be informed of the outcome of the proceedings together with the reasons for the decision. He/she should be given the opportunity to say what disciplinary action, if any, should be taken if it is held that he/she acted in a manner that warrants disciplinary action.

It is usual to have a neutral Chairman. Since the Labour Relations Act (LRA) (See Form 2.5) places the burden upon the employer of proving the existence of a valid and fair reason for the dismissal as well as the fact that a proper procedure was followed, it is advisable to keep detailed minutes of any disciplinary enquiry.

Form 2.43 Disciplinary Meeting Finding

This is the record of the finding, which should be signed by the chairman and permanently filed. It forms the substance of the notification that is handed to the employee.

Form 2.44 Notification of Disciplinary Meeting Finding to Employee (Warning)

This is the formal notification of the outcome of the Disciplinary Meeting, which should be handed to the employee personally and explained to him/her. This is also construed as a formal warning to the employee. Verbal warnings can be issued for less serious offences and can be recorded as a minute of a meeting. A first or subsequent written warning is issued only after an enquiry and is valid for a period of six months. A final written warning is valid for a minimum period of six months and a maximum period of 12 months. The Chairman of the Disciplinary Hearing

determines the period. If after a final written warning is issued, the employee commits a further serious offence, a further disciplinary hearing should be held whereafter the offender can be dismissed without notice or pay in lieu of notice.

Form 2.45 Appeal against Disciplinary Action Decision

Employers allow an appeal by employees to a higher level of management. The employee must lodge an appeal within three working days after service on him/her of the notification of the finding. No actual hearing need be conducted and the appeal can take the form of a review of the record of the disciplinary hearing. If the appeal is against dismissal, a hearing must be held if the employee requests it. An objective Chairman must be appointed. The parties can introduce further evidence if it was not lead at the disciplinary hearing. The Chairman of the appeal must give his decision within 15 working days after the completion of the review or hearing. The employee, if still dissatisfied, can then take the matter to the CCMA or Labour Court. The 3 and 15 working days referred to in this paragraph are not prescribed in the legislation. They may be prescribed in an internal collective agreement or disciplinary code. In the absence of such documents the appeal and outcome ought to be held within a “reasonable” period.

Form 2.46 Warning of Unsatisfactory Performance

Warnings have become an important part of the procedure whereby an employee’s deficient performance is addressed. In line with the currently prevailing philosophy that such discipline should be corrective rather than punitive, warnings serve to draw the employee’s attention to the area requiring improvement, suggest methods of improvement and to allow for a suitable period of time within which the necessary improvements can be achieved. Warnings also constitute an alternative and lesser form of punishment. Of these the least severe is the verbal warning and the most drastic the final written warning.

Form 2.47 Final Warning before Termination

Leaves the employee in no doubt as to the employer’s views on his/her performance and places the employee fairly on terms “to make the necessary improvement or face dismissal”. In cases of dismissal on grounds of incompatibility, warnings are inappropriate, because an employee would seldom change his/her nature or be able to do so; similarly in the case of ill health. But it is generally accepted that an employee should be warned if there is a possibility of him/her losing his/her job on grounds of misconduct or incompetence. The object of a warning is to give the employee the opportunity to improve his/her performance or to look for another job in the case of retrenchment. It is common practice for disciplinary codes to provide for a progression of warnings from oral to written, culminating in a final written warning. The courts do not give much weight to oral warnings. The court will consider the number of warnings given and the seriousness of the offence on each occasion to determine where appropriate whether an employee has been fairly dismissed.

Form 2.48 Notice of Suspension from Duty

An employee is entitled to a hearing before being suspended whether the suspension is with or without pay because the suspension has adverse effects on the career prospects and reputation of the employee. A full-scale enquiry is not expected but the employee must be given an opportunity to state his/her case. If the employee can prove there is no merit in the suspension it may be unfair to suspend him/her. A suspension is considered unfair if it is used to punish the employee or if there is no serious misconduct or it is unduly protracted or if the employee’s pay is wrongfully withheld. Employees are usually suspended to enable the employer to commence a disciplinary action when there is suspicion on the employee and rumours abound.

Form 2.49 Termination of Employment

The law of unfair dismissal is codified by Schedule 8 of the LRA , Code of Good

Practice: Dismissal (Form 2.5) which is to be followed in cases of dismissal. The LRA uses a wide definition of the term “dismissal” which expressly recognises devices such as the failure to renew a fixed term contract where the employee has a “reasonable expectation” of such renewal, as falling within the definition of a dismissal. So too are “constructive dismissals” – making the working environment intolerable for an employee causing such employee to leave; and failing to offer a woman her job back after maternity leave.

The Act distinguishes between two types of dismissals: automatically unfair dismissals and other dismissals. An automatically unfair dismissal is one where the reason can essentially be categorised as discrimination, victimisation for trade union activity, or some other breach of fundamental employee rights conferred by the LRA. In such cases, the maximum compensation which an employer may be ordered to pay such a dismissed employee by the Labour Court (in those cases where reinstatement is not appropriate) is double the maximum amount which a court can award for other unfair dismissals – two years’ wages, as opposed to one year’s wages for other unfair dismissals. Reinstatement is intended to be the normal rule and compensation the exception under the Act.

The Act states in clear terms that it is for the employer to prove both the fairness of the reason for the dismissal as well as the procedure which was followed in reaching such decision.

Valid reasons for dismissal are to be found in one of three categories: misconduct, incapacity (illness or poor work performance) and operational reasons (retrenchment).

What precisely amounts to misconduct, as well as when its gravity is such to warrant dismissal, depends, in the first instance, on the nature of the job performed by the accused employee. Thus an employer must first be in a position to show that the disciplinary standards set for his employees are clear and easily understood; reasonable in their application to the dictates of the job; clearly communicated to all employees so that they know what is required of them; and consistently applied. The code of good practice (see Form 2.5) states: “Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the property of the employer, wilful endangering of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination...” “When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct, consider factors such as the employee’s circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.”

In the case of both capacity and operational reasons, dismissal is only appropriate after all reasonable alternatives, short of dismissal, have been jointly investigated between employer and employee and found to be wanting in resolving the particular problem faced by the employer. Hence in the latter two instances, procedural fairness will take the form of joint, *bona fide* (good faith) consultation between the parties. In the case of alleged misconduct, the aim of the exercise is to investigate and test the facts relevant to the conduct complained of and give the accused employee an opportunity to state his/her case both in regard to the question of guilt and sanction.

Form 2.50 **Retrenchment Notice** (2 pages)

The LRA permits dismissals based on the employer’s operational requirements provided they are for a fair reason and in accordance with a fair procedure. Operational requirements are requirements based on the economic, technological or similar needs of an employer. (Refer to Form 2.6 Code of Good Practice:

Dismissals for Operational Requirements.) The employer's mere words to the employee that he/she is being retrenched due to operational requirements are insufficient to justify the retrenchment. There is a thin line between a dismissal for operational reasons and for other reasons. Basically a retrenchment refers to a dismissal because an employee's needs have become superfluous for reasons related to the needs of a business. Section 189 of the LRA deals with operational requirements and compels the employer to consult with the employee or his / her representative body in a meaningful joint consensus-seeking process and attempt to reach consensus or appropriate measures *inter alia* (amongst other things) to avoid dismissals or to mitigate the adverse effects of dismissals and on the severance pay. A written notice must be served on the affected employee inviting him/her to consult with the employer. The notice should disclose all relevant information as set out in section 189 (3) plus any other relevant information. During the consultation the employer must permit the employee to make his/her representations and respond to them and give reasons if the employer disagrees. Consultation must be exhaustive and not merely sporadic, superficial or a sham. The targeted employees must be selected on criteria that are fair and objective. Employees on fixed-term contracts that have not expired may not be retrenched. Section 189 does not apply to employees who are dismissed for reasons other than operational requirements, for example incapacity or poor work performance. A retrenchment could be unfair if the employer failed to prove it could not have placed the employee in an alternative position. The retrenchment must be procedurally and substantively fair. It has been held that a mechanical checklist approach by which an employer is examined as to whether it has complied with each and every one of the procedural steps as set out in Section 189 (2) must be avoided. The court will rather consider whether the totality of the employer's efforts was aimed at avoiding retrenchment. The retrenchment must be shown to be justifiable and rational. An employer need not prove there will be financial ruin if it does not retrench. Employers are entitled to make a profit and in doing so restructure their business.

Form 2.51 Employer's Pre-Conciliation Meeting Checklist

This is an employer's checklist before proceeding to conciliation.

Form 2.52 Employer's Conciliation Statement (2 pages)

This is a specimen statement by an employer at the conciliation meeting. This precedes the arbitration at the CCMA.

COMMENT ON THE LABOUR RELATIONS ACT (LRA) 66 OF 1995

The Labour Relations Act (LRA) came into operation on 11 November 1996. It is a milestone of legislation, covering virtually all employees, in both the public and private sectors. The only exceptions are members of the South African National Defence Force and the Intelligence and Secret Services. Even prospective candidates for employment are covered by the Act's provisions, which makes it an unfair labour practice to apply discriminatory criteria when selecting new candidates for employment.

The collective purpose of the LRA is to create a balance of power between the employer and the employee. It institutionalises the resolution of disputes. This does not necessarily lead to industrial peace, since matters such as the recognition of trade unions is now a matter for strike action, rather than adjudication in the Industrial Court as it was in the old system. On the individual level, the Act continues with providing job security for employees, which is also a cardinal feature of the legislation. Indeed, it is this feature that attracts most of the negative comments from employers and investors. Unlike its predecessor, the new LRA contains an enormous investment in the creation of a resolution infrastructure and dispute prevention. This has been done in two principal ways:

DISPUTE RESOLUTION

This Act's principal institution is the Commission for Conciliation, Mediation and Arbitration (CCMA), overseen and augmented by the Labour Courts. The Labour Court is approached for interdicts, declaratory orders, mandamuses, and for reviews of CCMA decisions. It is the responsibility of the CCMA to provide professional intervention in labour disputes which are not regulated by industry (Bargaining Council) or private collective agreement. These agreements may provide for an alternative dispute resolution procedure (for instance that resolution take place through an accredited agency such as the Independent Mediation Service of Southern Africa (IMSSA)). The CCMA is the exclusive adjudicating body in respect of disputes over the interpretation or application of a collective agreement. It can impose a process upon parties to a dispute but it cannot impose a result of that bargaining process which remains a matter for voluntary negotiation. The way to secure the CCMA's intervention is simply to fill in a form "referring" the dispute to that body.

The form, consisting of 8 pages, can be obtained from any of the CCMA offices. A list of all provincial CCMA offices, with their addresses and telephone numbers is given on Form 2.11. Dismissal disputes must be referred to the CCMA within 30 days of the date of the dismissal, although it is possible to obtain condonation for a late referral if there is a satisfactory explanation for the delay and the grievant can show that his/her case is of some merit.

Once referred, the CCMA will appoint a Commissioner who will attempt to mediate the dispute between the parties. If the dispute remains unresolved after a period of 30 days after its referral to the CCMA, it may be resolved in one of three ways, depending on the type of dispute involved:

1. Arbitration under the auspices of the CCMA – This includes disputes over dismissals for misconduct or capacity, constructive dismissals and cases where the employee does not know the reason for dismissal. Also covered are other unfair labour practices which include conduct of the employer relating to promotion / demotion, training, the provision of benefits, unfair suspension, as well as the failure to reinstate or re-employ any employee in terms of any agreement. A party may be represented at the CCMA only by a legal practitioner (advocate or attorney), a co-employee or by a member, office-bearer or official of that party's trade union or employer's organisation. Legal representation is permitted at the discretion of the Commissioner in dismissal disputes where the reason for the dismissal falls into the category of misconduct or incapacity. In all other cases, legal representation is permitted as a right.
2. Trial in the Labour Court – This covers cases of "automatically" unfair dismissals (i.e. those that are alleged to be discriminatory or otherwise infringe fundamental labour rights), retrenchments, dismissals for operational requirements as well as strike and closed shop disputes. The Labour Court is of equivalent jurisdiction to the High Court and if faced with litigation in that forum it would clearly be prudent to engage the services of an attorney.

3. Strike action – This is a legitimate means of resolving all remaining disputes, that is all those that fall outside the jurisdiction of the CCMA or Labour Court to resolve. At least 48 hours notice must be given to the employer (7 days if the employer is the State) if any impending strike action is to be “protected”, that is to say the strikers are protected from dismissal.

DISPUTE PREVENTION

In theory, the scheme of the Act in this sphere is one of voluntarism, it no longer being an unfair labour practice for an employer to refuse to bargain with its employees. However, it is underlined by coercive elements to encourage employee participation in the decision making process of the employer which impacts on the working conditions of its employees. This makes it more important than ever to treat collective employment relations as a specialist field requiring the assistance of a qualified professional in order to advise and recommend appropriate bargaining structures which may be created or joined. Key institutions in this sphere include:

1. Bargaining councils – These are voluntary associations of employers’ organisations and trade unions which have the power to conclude minimum standards agreements in respect

of wages and other benefits and conditions of employment, as well as dispute resolution procedures outside of those provided by the LRA. Their provisions can be made binding (with the same force as an Act of Parliament) on all employers and employees in the industry, regardless of whether they have joined the Bargaining council or not. Parties who remain outside an established Bargaining council therefore run the risk of having these standards imposed upon them.

2. Workplace forums – These are optional structures in any workplace but can be compelled by a majority trade union in a workplace of more than 100 employees. They serve as a consultative forum over matters of mutual interest to the parties in an employment relationship other than wages and actual benefits of employment. Of cardinal importance is that an employer is compelled to make disclosure to a workplace forum of “all relevant information that will allow the workplace forum to engage effectively in consultation and joint decision making”.
3. Any non-statutory bargaining forums established between an employer and its employees are usually represented by a majority trade union in terms of a collective agreement entered into between them. ■

COMMENT ON THE BASIC CONDITIONS OF EMPLOYMENT ACT (BCEA) 75 OF 1997

MINIMUM STANDARDS LEGISLATION

The other major piece of legislation which affects virtually all types of employees is the Basic Conditions of Employment Act 75 of 1997 (BCEA) which has totally repealed the Basic Conditions of Employment Act 3 of 1983. Like the LRA of 1995, the new BCEA covers all employees, whether in the private or public sectors. Persons employed in the defence and security establishments are again excluded from its scope of operation, as are volunteers who work for a charitable organisation. The purpose of the BCEA is to prescribe minimum statutory terms and conditions of employment, which are automatically made a part of every employee's contract of employment. It is not possible to contract out of the Act's minimum standards (save through a bargaining council agreement – see above). It is of course permissible to contract for better conditions than those the BCEA prescribes. These statutory minimum standards are not applicable to senior managerial employees. It is compulsory to display a summary of the terms of the BCEA at the workplace. Refer to Form 2.7 for a summary of the Act.

The current minimum standards prescribed by the Act are:

- **Hours of work**

This amounts to a maximum of 45 hours per week; 9 hours per day for those who work a five day week; and 8 hours per day for those employees who work more than a five day week. The 45 hour working week is being phased in for farm workers, mineworkers and security guards over a 12 month period. The ultimate aim (after negotiation between employer and employee) is for all employees to work a 40 hour week and 8 hour day, in the future.

- **Overtime**

Overtime is only permitted by agreement with an employee which must be reviewed annually. The maximum permissible overtime allowed is 3 hours per day and 10 hours per week. Payment therefore is prescribed at one and a half times the ordinary rate. An employee may agree to forego this payment for the ordinary rate of payment plus 30 minutes paid leave, or no payment in exchange for 90 minutes paid leave per hour of overtime worked. This leave must be granted within one month of the entitlement accruing,

which may be extended to a year by agreement.

- **Sundays and Public holidays**

This is regarded as ordinary overtime for those who normally work on a Sunday. For those who do not normally work on a Sunday, it is paid at double the normal rate. As with the overtime, an employee can agree to be paid less in return for paid time off.

- **Night work**

This is also only permissible by agreement with the employee. Overtime may only be implemented if transportation is available for the employee required to work overtime and if accompanied by the payment of an allowance.

- **Annual leave**

At least 21 calendar days per year, or by agreement, 1 day per 17 working days or 1 hour per 17 working hours paid leave must be granted to all employees. Annual leave must be granted within six months of the entitlement accruing to the employee. The practice of paying an employee in return for the employee not taking leave is prohibited.

- **Sick leave**

An employee is ordinarily entitled to 6 working weeks of paid sick leave in a cycle of 36 months. During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

- **Maternity leave**

An employee is entitled to at least 4 consecutive months of maternity leave. Payment is made by the unemployment insurance fund at a rate equivalent to 45% of the employee's ordinary salary.

- **Family Responsibility leave**

An employee is entitled to 3 days compassionate leave per annual leave cycle. This includes the bereavement of a spouse or life partner, parent, adoptive parent, grandparent, child, or adoptive child, grandchild or sibling.

- **Notice required to terminate the contract of employment**

During the first 4 weeks of employment, the notice period is 1 week on both sides; between the first

4 weeks and the first year of employment, the notice period is 2 weeks on both sides; thereafter the notice period is 4 weeks on both sides. Farm and domestic workers are entitled to 4 weeks notice after their first 4 weeks of employment. On termination of employment an employer must pay an employee all outstanding amounts owed including leave pay and accrued overtime.

The Act prohibits forced labour and the employment of children under the age of 15 years of age or the minimum school leaving age. An important feature of the new BCEA, which represents a complete overhaul of the preceding legislation, is its method of enforcement. Previously this was done through the criminal justice system. It proved to be slow and difficult to enforce because of the criminal requirement of proof beyond reasonable doubt. The new BCEA greatly simplifies this procedure by empowering Labour inspectors to investigate complaints (armed with wide powers to question employers, to inspect and, if necessary, remove documents) about infringements

of the Act's provisions. If the complaint is found to be justified, the inspector will, as a first step, require the employer to give a written undertaking stating by when the defect will be put right. If the employer refuses to give such an undertaking or breaches it, the inspector will serve a "compliance order" on the recalcitrant employer. Such orders are enforceable in the Labour Court.

The BCEA also allows the Minister of Labour to set minimum wages and other benefits of employment for those employed in industries where no collective bargaining structures provided for in terms of the LRA have been created by the parties. This will be done in consultation with the Employment Conditions Commission, to be constituted of persons nominated by the Minister on the advice of the National Economic Development and Labour Council (NEDLAC), as well as from persons nominated by the voting members of NEDLAC itself. ■

COMMENT ON THE EMPLOYMENT EQUITY ACT, 55 of 1998 (EEA)

This is legislation aimed at eradicating all forms of arbitrary and prejudice-based discrimination in the workplace and, through affirmative action, redressing the imbalances in the racial, gender and disability make-up of South African workplaces. The act commenced on 9 August 1999.

As with the other labour legislation discussed in the introduction to this Section (page 2 (i)), the EEA applies to all categories of employee, in both the public and private sectors. Again, only the defence and intelligence services are excluded. The EEA consists of two main sections. The first refines the prohibition in unfair discrimination. The second imposes a duty on employers to adopt affirmative action programmes.

PROHIBITION AGAINST UNFAIR DISCRIMINATION

In the first instance the EEA prohibits all forms of discriminatory employment policies or practices in the workplace. The grounds of discrimination specifically outlawed in the draft legislation include race, gender, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language and birth. Expressly included within the ambit of the prohibition on unfair discrimination are applicants for employment. Also outlawed is testing of an employee for any medical condition, unless "it is justifiable to do so in the light of the medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of the job."

The method of enforcement of this part of the legislation is through the referral of complaints to the CCMA by employees or trade union representatives. (See Dispute Resolution on Form 2.1a). A CCMA commissioner will then attempt to conciliate the dispute between the parties. If the dispute remains unresolved 30 days after it was referred to the CCMA, the matter may be taken to the Labour Court for final adjudication by either party. If both parties consent, the dispute may be resolved by arbitration at the CCMA.

The Labour Court and the CCMA have wide powers to remedy unfair discriminatory policies or practices including the award of compensation, punitive damages, disqualifying those guilty of such practices from qualifying to tender for State projects and ordering employers to take specific steps to remove or remedy such offending practices within a specified time period. Failure to do so will be treated as contempt of court. In cases where the offending practices lead to an employee's dismissal, the court must order the reinstatement of the affected employee unless the employer can show that a continued employment relationship is intolerable. In such cases the court must order compensation equivalent to punitive damages.

AFFIRMATIVE ACTION

This is a term avoided in the legislation and is used here for convenience. The EEA speaks of encouraging positive measures "to ensure that people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of the designated employer." The "designated groups" who are the intended beneficiaries of the legislation are black people, women and the disabled. The "designated employers" upon whom these duties are imposed are those employing 50 or more employees.

Those duties envisage an ongoing consultative process with the workforce's representatives or in their absence representatives nominated by the workplace for this purpose. This consultation would take place at a workplace forum if established. (See dispute prevention on Form 2.1b). In order to inform the process, the employer is required to make disclosure

of all relevant information to the employee representatives that will allow those parties to consult effectively. The steps envisaged in the process are the following:

- Analysis – The employer is required to identify any of its employment policies and practices which create employment barriers to employees from the designated groups. In addition, an analysis must be undertaken of the composition of each occupational category within the employer's organisation, in order to identify the degree of under-representation of people from the designated groups in each category.
- Employment equity plan – An employer is then required to produce an employment equity plan which may not be shorter than 1 year or longer than 5 years' duration, aimed at redressing the barriers and imbalances identified during the analysis. The plan must set out the expected achievements of the plan on an annual basis, including "the numerical goals to achieve the equitable representation of people from designated groups within each occupational category and level in the workforce, and the strategies intended to achieve those goals."
- Annual reports – Beginning 18 months after the Act commenced (9 August 1999) is passed into law and annually on or before 1 October thereafter, an employer must submit a report to the director-general of Labour, detailing the progress made with the duties imposed by the legislation in the previous year. Public companies must include the report in their annual financial report. All employers must provide their employees with copies of the report.
- Appointment of senior manager – Each designated employer must appoint one or more senior managers from amongst its staff to take responsibility for the implementation of the employment equity plan.

Importantly, in order to achieve its objectives, the Act does not envisage the creation of other barriers to the employment opportunities of those not from the designated groups; or the appointment, training or promotion of a fixed number of persons from designated groups, or the compromising of employment standards.

The method of enforcement of this part of the legislation's objectives is in the same manner as that created under the Basic Conditions of Employment Act (See Minimum Standards Legislation on Form 2.2a.) The inspectorate of the department of Labour is given wide powers to investigate complaints which may be laid with them, either directly by an employee or trade union representative, or by the director-general's staff as a result of an unsatisfactory equity plan or subsequent report, or by not submitting such documents at all. The inspector will, initially, request undertakings to rectify the complaint from the designated employer. If these are not forthcoming, or are breached, the inspector will then issue an order requiring the employer to take certain remedial steps within a specific time period. Ultimately, recalcitrant employers will be brought before the Labour Court (in the person of the responsible manager) where they will be ordered to comply under penalty of fines, compensation, damages and ultimately imprisonment for contempt of court.

EMPLOYMENT EQUITY PLAN: STEP-BY-STEP GUIDE

The Employment Equity Act 55 of 1998 (see the introduction to this section for a comment on the Act) states in Section 20(1) that “A designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer’s workforce”.

The Act outlines the key components of the plan as being:

- Yearly objectives, with a timetable;
- Affirmative action, focusing on numeric goals, training and preferential treatment;
- An analysis of the workforce, with numeric goals and a strategy to achieve employment equity;
- A method for monitoring the progress of the plan;
- Company procedures to deal with conflicts as a result of implementation or interpretation of the plan.

The Act applies to “designated employers” for the benefit of “designated groups”. The Employment Equity Plan is therefore developed, implemented and monitored by designated employers for the benefit of the designated groups.

A “designated employer” is defined by the Act as an employer with more than 50 employees, or an employer with fewer than 50 employees, but an annual turnover above a certain threshold, depending on sector¹; a municipality; an organ of state as defined by Section 239 of the Constitution, but excluding local spheres of Government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; or an employer that is appointed a designated employer.

“Designated groups” are black people, which includes Africans, Indians and Coloureds; women; and people with disabilities.

It is necessary for employers to comply with the Employment Equity Act as, in order for a business to either supply or provide a service to an organ of state, a designated employer must eliminate unfair discrimination and implement “affirmative action” through an employment equity plan. For an undesignated employer, it is only necessary to eliminate unfair discrimination. In addition, an employer must provide evidence of compliance, either by requesting a letter from the Minister that states that the company complies, or by the employer declaring that it complies, which can be verified with the Director-General.

The plan can be divided into two main sections, where the first section contains an analysis of the current demographics of the workforce, with reasons explaining the current situation exists. The second section should be a response to the current situation and include solutions that will result in employment equity.

The process to achieve employment equity via a plan occurs in three phases: the planning and development phase, the implementation phase and the final phase of monitoring and evaluation.

The Department of Labour provides a number of forms (normally EEA forms) on their website (www.labour.gov.za) which are helpful in guiding the employer in terms of the information required for the plan.

STEP-BY-STEP GUIDE

STEP 1:

The first step in creating an Employment Equity Plan is to allocate the responsibility of development and implementation to an employee. Section 24 of the Act stipulates that the person/s responsible must be a senior manager, who should be given the necessary authority and resources by the employer, and measures should be taken to ensure that the manager/s successfully implement employment equity, such as a performance clause in the contract. However, the employer is still ultimately responsible for employment equity.

STEPS 2 – 4: THE PLANNING PHASE

STEP 2: CONSULTATION

The development and planning phase needs to be carried out in consultation with employee representatives who will either be nominated by the trade union or elected by the employees. It is important that everyone is involved in the process. It is important that the interests of all employees in all categories at all levels are communicated and considered, and that the employees are aware of the process. The employees need to know:

- The content and relevance of the Act to the employees, so that the employees can make a contribution to the planning process;
- The employer’s plans for transforming the company;
- The advantages to them for participating in the process.

To facilitate consultation, a consultative forum should be established, where both the employees’ and the employer’s interests are represented. The employer should be represented by one or more senior managers. This forum

¹ Annual turnover threshold by sector:

Agriculture – R20m
Manufacturing – R10m
Retail and Motor Trade and Repair Services – R15m
Finance and Business Services – R10m
Accommodation and other Trade – R5m
Electricity, Gas and Water – R10m

Wholesale Trade, Commercial Agents & Allied Services – R25m
Mining and Quarrying – R7.5m
Construction – R5m
Transport, Storage and Communications – R10m
Catering, Community, Special and Personal Services – R5m

should meet regularly to allow management to report back to employees and for information to be requested and communicated in an unhurried manner. At the forum, the employer should disclose information on the current situation, including:

- The specific environment and circumstances of the employer;
- Sector / industry-specific information;
- Demographic information relating to the local, regional and national economically active population;
- The expected effects of employment equity on the size of the employer's workforce;
- The employee turnover in the company;
- The internal or external suitably qualified people from the designated groups that are available for promotion or appointment;
- The degree of representation of designated employees in each work category and level in the current workforce;
- The employer's employment policies and practices.

In addition, the forum should consider all proposals seriously. It is important to highlight the role that the previously advantaged can play. Managers should be advised of the role that they will fulfil, such as mentoring, and be trained accordingly. The focus should be on effective use of resources and the positive improvements to the workforce.

If there is non co-operation in the consultation process on the part of the employee representatives (either a representative body or trade union), this should be recorded in writing and a copy given to the relevant party.

STEP 3: ANALYSIS OF POLICIES AND PROCEDURES

A qualitative and legal analysis is conducted on current policies, practices and procedures, in accordance with Section 19(1) of the Act. The important focal areas of this analysis include:

- Existing barriers to utilisation or representation of employees from the designated groups;
- Barriers to diversity;
- Other existing conditions that may affect designated groups;
- Positive promotion of employment equity.

A statistical analysis involving data processing should be used to determine the degree of under-representation of the designated groups in the various categories at the various levels. Employment policies, procedures, practices and the working environment should also be reviewed. This includes reviewing:

- Recruitment, selection, pre-employment testing and induction that may be biased, inappropriate or not promote employment equity;
- Career advancement planning, promotion and transfer of employees and how designated groups benefit;
- Job responsibilities of designated groups and whether or not they make a significant contribution;
- The current training and development strategy and whether designated groups have access to training;
- The current remuneration structure and whether equal work is rewarded with equal pay;
- Access for all groups to employee benefits including pension and medical aid;
- Disciplinary procedures and their fair implementation across all groups;
- Work conditions, and how accommodating they are to religious and cultural differences;
- The number and nature of dismissals, resignations and retrenchments of employees from the designated groups and if these indicate any employment-equity issues;
- The corporate culture of the company and if it is inclusive of everyone;
- The management of HIV/Aids in the workplace, and any associated discrimination;
- Any other practices.

All policies and procedures should also be assessed in terms of cross-cultural and gender fairness. The possibility of indirect discrimination, such as exclusion from certain positions based on stereotypes such as pregnancy, family responsibility and religious belief, should also be considered.

STEP 4: ANALYSIS OF WORKFORCE PROFILE

Section 19(2) of the Act requires that the analysis be done with regards to demographics and skills of the current workforce. In particular, a profile of each employee in each job category at each level needs to be conducted.

In order to determine demographics of employees, employees can either fill out a declaration or an existing source such as an employment application form. Employees can request changes to existing information. The current workforce profile should be compared to general demographic data. This will give an indication of the representation of the workforce. Forms EEA 2 & EEA 8 which are provided by the Department of Labour contain such demographic information and may be found at: www.labour.gov.za.

Recruitment of designated groups is affected by the availability of suitably qualified people in the geographic area that an employer recruits from. When determining if a candidate is "suitably qualified" for a job, formal qualifications, prior learning, relevant experience or the ability to learn the job within a reasonable time period should be considered. A lack of relevant experience may not be used against someone. There needs to be more against a candidate than just a lack of experience. By reviewing the candidate in terms of the above factors, and whether the candidate is able to do the job as a result of one or more of the above factors, the employer can determine if the candidate is suitably qualified. The position being advertised will determine the size of the recruitment area. A position that requires more responsibility should have a greater recruitment area as additional skills and specialisations are required from the applicants. These should be reviewed as well as the skills profiles of current employees within the designated groups.

The workforce needs also to be analysed in terms of representation of the designated groups within the different occupational categories. Form EEA 10, from the Department of Labour, should be used as a guideline for determining occupational categories.² Form EEA 9 gives professional grading systems which can be used to determine occupational levels.³ Occupational levels indicate the worth or value of a job within an organisation. The profile of the workforce can be done in a table, as in form EEA 2 which is submitted for the Employment Equity Report. The table below illustrates.

Occupational Categories	Male			Female				White Male	Foreign Nationals		TOTAL
	African	Coloured	Indian	African	Coloured	Indian	White		Male	Female	
Legislators, senior officials & managers											
Professionals											
Technicians & associate professionals											
Clerks											
Service & sales workers											
Skilled agricultural & fishery workers											
Craft & related trade workers											
Plant & machine operators & assemblers											
Elementary occupations											
TOTAL PERMANENT											
Non-permanent employees											
GRAND TOTAL											

² Occupational categories include: Legislators, Senior Officials and managers; Professionals; Technicians and Associate Professionals; Clerks; Service and Sales Workers; Skilled Agricultural and Fishery Workers; Craft and Related Trade Workers; Plant and Machine Operators and Assemblers; Elementary Occupations. Form EEA 10 should be consulted for a more in-depth description of each category.

³ Occupational levels are defined according to the semantic scale as follows: Top management; Senior management; Professionally qualified, experienced specialists and mid-management; Skilled technical and academically qualified workers, junior management, supervisors, foremen, superintendents; Semi-skilled and discretionary decision making; Unskilled and defined decision making. Additional grading systems can be found on form EEA 9.

The workforce is broken down into male and female, with each gender divided by race (Africans, Coloureds, Indians and Whites). White males are in a separate column. Foreign nationals currently employed are also listed, divided by gender. For occupational category two tables are required, where the first table gives the entire workforce by occupational category, while the second lists only employees with disabilities. In the second table, white males are not put in their own column. The same should also be done for occupational levels.

Form EEA 2 then also distinguishes core functions from support functions, where core functions are jobs that generate revenue and relate to core business, such as sales and production, while support functions provide infrastructure and allow the core business to be conducted, such as human resources and administration. Only one table is needed, for all employees, to illustrate the demographics of employees at each occupational level that are involved in core functions. Similarly for support functions.

The same kind of analysis of the workforce by occupational levels, race and gender can be done for new recruits, recent promotions and terminations, with a distinction between all employees and those with disabilities. A further two tables (all employees and disabled) are required for terminations to indicate the nature of the termination: resignation, non-renewal of contract, dismissal – operational requirements (retrenchment), dismissal – misconduct, dismissal – incapacity, other.

This will then give a comprehensive workforce profile for occupational categories and levels, core or support functions, and recent changes in the workforce.

STEPS 5 – 13: THE DEVELOPMENT AND IMPLEMENTATION PHASE

According to the Code of Good Practice, the plan does not have to conform to a strict structure. There is a degree of flexibility in the way it is laid out. It need not necessarily be a stand alone document, but could form part of a business plan. The plan can be structured according to personal preference, with steps 3 to 13 included.

STEP 5: DURATION OF THE PLAN

The employer should make reasonable progress to employment equity and should choose a timeframe that will allow for such progress. The Act specifies that the timeframe must be at least one year, and not more than five. Once a plan is nearing its end date, a new plan needs to be developed, with updated goals and strategies that will continue to further the employer's employment equity.

STEP 6: BROAD OBJECTIVES OF THE PLAN

The analyses in steps 3 and 4 provide the basis from which employment equity goals will be set. The aim of the plan is to have sufficient representation from the designated groups at all levels and in all categories. The specific goals should be set according to a timetable and the employment equity plan should be aligned with the employer's broader strategy.

STEP 7: AFFIRMATIVE ACTION MEASURES

Section 15(1) of the Employment Equity Act defines affirmative action as "measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer".

The aims of affirmative action, as it applies to the designated groups (as per Section 15(2) and (3)), are to:

- Remove employment obstacles such as discrimination;
- Promote diversity and mutual respect amongst the staff;
- Accommodate the designated groups to allow for equal opportunities and representation in the workforce.

Affirmative action measures that can be taken to achieve employment equity include:

- The appointment of employees from designated groups, using transparent recruitment strategies and targeted advertising;
- Increasing potential candidates through community investment and bridging programmes;
- Providing training and development for people from the designated groups through structured training and development programmes such as learnerships and internships, on the job mentoring and training for new employees;
- The promotion of members of designated groups as a result of appropriate career / succession planning and training;
- Retaining people from designated groups by promoting a diverse organisation, communication and feedback, and an analysis of turnover in the workforce (see step 4);
- Being accommodating to people from designated groups who are disabled, have family responsibilities, etc. such as by providing easy access to buildings and flexible working hours;
- Ensuring that members of designated groups are appointed to positions where they can make a meaningful contribution to the decision-making process (avoid tokenism);
- Eliminating barriers that affect designated groups as identified in the analysis.

The employer is not required to prevent certain groups from holding certain positions, e.g. not promoting white males.

STEP 8: NUMERIC GOALS

Specific numeric goals are needed to attain employment equity. The goals are needed to set right the representation of the designated group within the categories and levels of the workforce, and require a timetable and strategy.

Specifically, the purpose of these goals is to:

- Appoint and promote employees from the designated groups;
- Increase representation in all categories and levels to be reflective of the country's demographics.

Considerations when developing the numeric goals, which are based on the earlier analysis, include:

- The degree of under-representation of employees from the designated group in all work categories and levels;
- Present and planned vacancies;
- The demographics of the provincial and national economically active population (see form EEA 8);
- The pool of suitably qualified persons from which the employer can recruit the designated groups;
- Present and anticipated economic and financial factors within the industry;
- The employer's economic and financial circumstances;
- Growth or reduction in the workforce for the duration of the plan;
- The turnover of employees for the duration of the plan;
- Labour turnover trends and reasons.

STEP 9: CONSENSUS

The parties that are consulted for the development of the plan, in the consultative forum, should agree on the objectives set out in the plan and the planned process for the length of the plan.

STEP 10: RESOURCES

Sufficient resources should be allocated to ensure the successful implementation of the plan.

STEP 11: ASSIGNMENT OF RESPONSIBILITY

The plan should confirm in writing who will be responsible for the implementation and monitoring of the plan, i.e. which senior manager/s, as decided in step 1.

STEP 12: DISPUTE RESOLUTION

There should be agreement on the internal procedures for dealing with disputes arising from this plan. The use of existing procedures should be encouraged, although they may have to be adapted to be suitable for employment equity. An alternative would be to establish a system with employer and employee representatives to deal with disputes.

STEP 13: COMMUNICATION

The employment equity plan, once it has been developed, must be communicated to employees, as well as the person/s responsible for the implementation of the plan, and what dispute resolution procedures exist. The plan should be available to all employees.

STEP 14: MONITORING AND EVALUATING THE PLAN

Good records of employment should be kept to allow for monitoring and evaluating of the employment equity plan. In order to assess progress of the plan, mechanisms and benchmarks should be set. At this stage, the consultative forums should still be meeting regularly to receive progress reports on the success of the plan. If necessary, the plan can be reviewed and revised through consultation, prior to the expiry of the plan.

STEP 15: REPORTING

As part of the monitoring of the plan, designated employers are required to submit a report to the Director-General of the Department of Labour. The number of employees determines the frequency with which reports are submitted.

If an employer has fewer than 150 employees, then:

- The first report must be submitted within 12 months of becoming an employer;
- Thereafter a report must be submitted once every two years on the first working day of October.

If an employer has 150 employees or more, then:

- The first report must be submitted within six months of becoming a designated employer;
- Thereafter a report must be submitted annually on the first working day of October.

In both of the above cases, if an employer submits its first report in the 12-month period preceding the first day of October, the following report should only be submitted on the first working day of October in the following year.

The format to be used for the report can be found in form EEA 2, which pertains to the Employment Equity Report. If an employer has different divisions in different locations, or separate units, workplaces or industries, it can submit either a consolidated report or a separate report for each location, industry, etc. This is at the employer's discretion. The report must cover the current employment equity plan, including what goals have been reached, and what still needs to be done within the remaining time. The report needs to be signed by the CEO and contain ALL the necessary information. If an employer is not able to produce a report on time, the Director-General must be notified in writing, and given a reasonable explanation. More useful information is obtainable at: www.labour.gov.za ■

COMMENT ON THE SKILLS DEVELOPMENT ACTS AND A GUIDE TO THE WORKPLACE SKILLS PLAN

Skills development is an important aspect to any organisation. With the implementation of Black Economic Empowerment, it has become a prerogative for companies to provide skills development and training to the “designated groups”, including blacks, women and the disabled. In addition, in an emerging economy, new skills are being required by the workforce all the time and by those wanting to join the workforce. Two important Acts have been passed, relating to skills development. The Skills Development Act 97 of 1998 laid the foundation for skills development programmes and the establishment of the National Skills Authority, the National Skills Fund, Learnerships and the Sector Education and Training Authorities. The Skills Development Levies Act of 1999 was formulated to deal with the monetary side, including the imposition, payment and distribution of levies.

National Skills Planning

Skills planning happens on a number of levels. At the highest level, the National Skills Authority, as established by section 4 of the Skills Development Act 97 of 1998, advises the Minister of Labour on national skills policies and strategies and their implementation, liaises with SETAs regarding these strategies and reports on the progress of the national strategy.

The National Skills Development Strategy (NSDS) 2005-2010 provides a five-year focus for skills development. The objectives of the NSDS include identifying critical skills for economic growth, promoting training for all employees, using skills development to increase employability and sustainability, assisting designated groups to get skills through the workplace which allow them to improve their current situation (enter the labour market and self-employment) and improving provision for the economy.

Sector Education and Training Authorities

On an intermediate level are the Sector Education and Training Authorities (SETAs), established in terms of section 9 of the Skills Development Act. The sectors which the economy is divided into share similar products, services or technologies. The South African economy has 23 SETAs for all the different sectors.

Section 10 of the Act defines the functions of the SETAs, and these include, among others, developing and implementing a sector skills plan that is aligned with the national strategy. The sector skills plan is

then implemented through learnerships, workplace skills plans, grants and monitoring of actual education and training. In addition, SETAs are most often responsible for collecting skills development levies.

The sector skills plan is a five-year plan with five main components. The sector profile is an in-depth look at the sector in terms of current and future change, occupational profiles, innovators in the sector and specific strategies relating to the sector. The demand for skills in the sector should also be analysed. Recruitment trends indicate which positions are in greater demand than others. New developments in the sector will also often result in new skill requirements. The supply of skills is another important factor and is determined by looking at the current education or qualification levels of the population. Are the available skills sufficient for the requirements of a particular sector or is further training required? The identification of scarce and critical skills is also essential. Scarce skills refer to a lack of people with the necessary qualifications and critical skills refer to a skill that is required for a certain position. Finally, new opportunities within the sector need to be identified, particularly for small businesses, that will allow for the unemployed to gain access to the sector. These small businesses need to be given financial support until they are self-sustainable.

The Workplace Skills Plan and the Annual Training Report

Finally, the employer is responsible for skills development. A Workplace Skills Plan (WSP) is required to outline the training priorities for the year in terms of what skills are most needed to improve the organisation, and the people who will be benefiting from the training. Every organisation should have at least one designated Skills Development Facilitator who liaises with SETA regarding skills development for that specific organisation

TIME FRAME

All WSPs are for one financial year, which is from 1 April to 31 March. The deadline for the WSP to be submitted to the relevant SETA is 30 June, for the year in which it is being implemented. The Annual Training Report (ATR) for the previous year should also be submitted with the WSP. The ATR is a follow-up to the WSP, indicating what of the planned training actually occurred, and who benefited.

SKILLS DEVELOPMENT LEVIES

In terms of section 3(1) of the Skills Development Levies Act every employer must pay a skills development levy of 1% of the “leviable amount”, where the “leviable amount” is essentially the remuneration paid to employees. Section 7 of the Act requires that the levy must be paid not more than seven days after the end of the month in which the levy is payable.

MANDATORY GRANTS

An employer can receive a portion of this levy back, in the form of a mandatory grant. In order for the employer to be eligible for such a grant, both the Workplace Skills Plan and the Annual Training Report need to be submitted to the relevant SETA by 30 June, completed. The employer will then receive a grant of 50% of the Skills Development levies it paid for its employees. If the documents are not submitted correctly or on time, it will forfeit the grant.

THE WORKPLACE SKILLS PLAN

Each SETA provides its own guidelines for the Workplace Skills Plan. Every employer should contact their SETA for the guidelines for the WSP and the ATR. The websites of the relevant SETA may be consulted, although there is no guarantee that the information will always be up-to-date. Contact details for the SETAs have been provided.

Given that each SETA has specific requirements for the WSP and the ATR, what follows will be a guide and an indication of what the WSP usually contains, although the particulars will differ between particular SETAs. However, the process through which a WSP is devised should be similar regardless of sector. The WSP should be devised in consultation with the employees, and through liaising with the SETA. Organisations with 50 or more employees are required to have a Skills Development Committee.

PART 1: CONTACT DETAILS

This Section of the WSP contains company contact and banking details, as well as the skills development facilitator’s details.

PART 2: TRAINING COMMITTEE

Companies that are of a certain size are required to have training committees, the details of which should be given here.

PART 3: WORKFORCE PROFILES

The workforce profile consists of the provincial profile, which details the number of employees working in each province, as well as the current employee profile. The current employee profile has

a detailed description of the workforce according to occupational category, race, gender and disability. Disabled employees are included in the counting by gender and then are also separated out under a separate column.

Profiles can also be included of the workforce based on age and educational qualifications (i.e. highest educational level attained). In each case, gender and race should also be included. Education levels are broken down into three major categories: General Education and Training (GET – up to Grade 9), Further Education and Training (FET – Grade 10-12, and other courses following from Grade 9) and Higher Education and Training (HET – tertiary education including post-matric courses, diplomas, university degrees.). In some WSP templates, this will come in a later section.

PART 4: WORKPLACE SKILLS PLAN

Planned training for your organisation

This is the crux of this document and details what skills are needed for the company to achieve growth, specifically what additional skills are required by the employees. It describes what training will be given, how this will be done (outsourced, in-house, etc.) and what the learning targets are.

Scarce and Critical Skills

Scarce and critical skills within the company should be identified, i.e. the scarcity of qualified people in specific occupations. Scarce skills refer to the limited number of people within the specific industry who have certain vital skills, In contrast, critical skills refer to the skills, or lack thereof, among the people currently employed in the company. These people should be given training in these critical skills.

PART 5: PROCESS

This section details the manner in which the WSP was drawn and should detail the consultation (and other) processes followed.

PART 6: ANNUAL TRAINING REPORT

The annual training report, which is essentially a report back on the previous year’s WSP, should be included. This should show training given, beneficiaries of the training, cost to company, etc.

PART 7: AUTHORISATION

The authorisation form certifies the accuracy of the information presented in the WSP and that the company is up-to-date with Skills Development Levy (SDL) payments. ■

CODE OF GOOD PRACTICE: DISMISSAL

LABOUR RELATIONS ACT NO. 66 OF 1995, AS AMENDED, SCHEDULE 8

1. INTRODUCTION

1. This code of good practice deals with some of the key aspects of dismissals for reasons related to conduct and capacity. It is intentionally general. Each case is unique, and departures from the norms established by this Code may be justified in proper circumstances. For example, the number of employees employed in an establishment may warrant a different approach.
2. This Act emphasises the primacy of collective agreements. This Code is not intended as a substitute for disciplinary codes and procedures where these are the subject of collective agreements, or the outcome of joint decision making by an employer and a workplace forum.
3. The key principle in this Code is that employers and employees should treat one another with mutual respect. A premium is placed on both employment justice and the efficient operation of business. While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

2. FAIR REASONS FOR DISMISSAL

1. A dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even if it complies with any notice period in a contract of employment or in legislation governing employment. Whether or not a dismissal is for a fair reason is determined by the facts of the case, and the appropriateness of dismissal as a penalty. Whether or not the procedure is fair is determined by referring to the guidelines set out below.
2. This Act recognises three grounds on which a termination of employment might be legitimate. These are: the conduct of the employee; the capacity of the employee; and the operational requirements of the employer's business.
3. This Act provides that a dismissal is automatically unfair if the reason for the dismissal is one that amounts to an infringement of the fundamental rights of the employees and trade unions, or if the reason is one of those listed in Section 187. The reasons include: participation in a lawful strike; intended or actual pregnancy and acts of discrimination.
4. In cases where the dismissal is not automatically unfair, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was effected in accordance with a fair procedure, the dismissal is unfair.

3. DISCIPLINARY MEASURES SHORT OF DISMISSAL

Disciplinary procedures prior to dismissal:

1. All employers should adopt disciplinary rules that establish the standard of conduct required of their employees. The form and content of disciplinary rules will obviously vary according to the size and nature of the employer's business. In general, a larger business will require a more formal approach to discipline. An employer's rules must create certainty and consistency in the application of discipline. This requires that the standards of conduct are clear and made available to employees in a manner that is easily understood. Some rules or standards may be so well established and known that it is not necessary to communicate them.
2. The courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct employees' behaviour through a system of graduated disciplinary measures, such as counselling and warnings.
3. Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline. Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for final warning, or other action short of dismissal. Dismissal should be reserved for cases of serious misconduct or repeated offence.

Dismissals for misconduct:

4. Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the property of the employer, wilful endangering of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements of Section 188.
5. When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct, consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.
6. The employer should apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under consideration.

4. FAIR PROCEDURE

1. Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations, using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.
2. Discipline against a trade union representative or an employee who is an office-bearer or official of a trade union should not be instituted without first informing and consulting the trade union.
3. If the employee is dismissed, the employee should be given the reason for dismissal and reminded of any rights to refer the matter to a council with jurisdiction or to the Commission or to any dispute resolution procedures established in terms of a collective agreement.
4. In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.

5. DISCIPLINARY RECORDS

Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions.

6. DISMISSALS AND INDUSTRIAL ACTION

1. Participation in a strike that does not comply with the provisions of Chapter IV of the Labour Relations Act is misconduct. Whether or not the provisions for a lawful strike have been complied with is a technical matter and it is recommended that the services of a labour lawyer be obtained in order to arrive at such conclusions. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including:
 - (a) the seriousness of the contravention of this Act;
 - (b) attempts made to comply with this Act; and
 - (c) whether or not the strike was in response to unjustified conduct by the employer.
2. Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employee should be allowed sufficient time to reflect on the ultimatum and respond

to it, either by complying with it or rejecting it. If the employer cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them.

7. GUIDELINES IN CASES OF DISMISSAL FOR MISCONDUCT

Any person who is determining whether a dismissal for misconduct is unfair should consider:

- (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- (b) if a rule or standard was contravened, whether or not:
 - (i) the rule was a valid or reasonable rule or standard;
 - (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - (iii) the rule or standard has been consistently applied by the employer; and
 - (iv) dismissal was an appropriate sanction for the contravention of the rule or standard.

8. PROBATION

1.
 - (a) An employer may require a newly-hired employee to serve a period of probation before the appointment of the employee is confirmed.
 - (b) The purpose of probation is to give the employer an opportunity to evaluate the employee's performance before confirming the appointment.
 - (c) Probation should not be used for purposes not contemplated by this Code to deprive employees of the status of permanent employment. For example, a practice of dismissing employees who complete their probation periods and replacing them with newly-hired employees, is not consistent with the purpose of probation and constitutes an unfair labour practice.
 - (d) The period of probation should be determined in advance and be of reasonable duration. The length of the probationary period should be determined with reference to the nature of the job and the time it takes to determine the employee's suitability for continued employment.
 - (e) During the probationary period, the employee's performance should be assessed. An employer should give an employee reasonable evaluation, instruction, training, guidance or counselling in order to allow the employee to render a satisfactory service.
 - (f) If the employer determines that the employee's performance is below standard, the employer should advise the employee of any aspects in which the employer considers the employee to be failing to meet the required performance standards. If the employer believes that the

employee is incompetent, the employer should advise the employee of the respects in which the employee is not competent. The employer may either extend the probationary period or dismiss the employee after complying with subitems (g) or (h), as the case may be.

- (g) The period of probation may only be extended for a reason that relates to the purpose of probation. The period of extension should not be disproportionate to the legitimate purpose that the employer seeks to achieve.
- (h) An employer may only decide to dismiss an employee or extend the probationary period after the employer has invited the employee to make representations and has considered any representations made. A trade union representative or fellow employee may make the representations on behalf of the employee.
- (i) If the employer decides to dismiss the employee or to extend the probationary period, the employer should advise the employee of his or her rights to refer the matter to a council having jurisdiction, or to the Commission.
- (j) Any person making a decision about the fairness of a dismissal of an employee for poor work performance during or on expiry of the probationary period ought to accept reasons for dismissal that may be less compelling than would be the case in dismissals effected after the completion of the probationary period.

2. After probation, an employee should not be dismissed for unsatisfactory performance unless the employer has:

- (a) given the employee appropriate evaluation, instruction, training, guidance or counselling; and
- (b) after a reasonable period of time for improvement, the employee continues to perform unsatisfactorily.

3. The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.

4. In the process, the employee should have the right to be heard and to be assisted by a trade union representative or a fellow employee.

9. GUIDELINES IN CASES OF DISMISSAL FOR POOR WORK PERFORMANCE

Any person determining whether a dismissal for poor work performance is unfair should consider:

- (a) whether or not the employee failed to meet a performance standard; and
- (b) if the employee did not meet a required performance standard whether or not:

- (i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard; and
- (ii) the employee was given a fair opportunity to meet the required performance standard; and
- (iii) dismissal was an appropriate sanction for not meeting the required performance standard.

10. INCAPACITY: ILL HEALTH OR INJURY

1. Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include: the nature of the job; the period of absence; the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.
2. In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response, and to be assisted by a trade union representative or fellow employee.
3. The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.
4. Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

11. GUIDELINES IN CASES OF DISMISSAL ARISING FROM ILL HEALTH OR INJURY

Any person determining whether a dismissal arising from ill health or injury is unfair should consider:

- (a) whether or not the employee is capable of performing the work; and
- (b) if the employee is not capable:
 - (i) the extent to which the employee is able to perform the work;
 - (ii) the extent to which the employee's work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee's duties might be adapted and
 - (iii) the availability of any suitable alternative work. ■

CODE OF GOOD PRACTICE: DISMISSALS FOR OPERATIONAL REQUIREMENTS

General Notice 1517 in GG 20254 of 16 July 1999

- (1) The Labour Relations Act, 1995 (Act 66 of 1995) ('the Act') defines a dismissal based on the operational requirements of an employer as one that is based on the economic, technological structural or similar needs of the employer. It is difficult to define all the circumstances that might legitimately form the basis of a dismissal for this reason. As a general rule, economic reasons are those that relate to the financial management of the enterprise. Technological reasons refer to the introduction of new technology which affects work relationships either by making existing jobs redundant or by requiring employees to adapt to the new technology or a consequential restructuring of the workplace. Structural reasons relate to the redundancy of posts consequent to a restructuring of the employer's enterprise.
 - (2) Dismissals for operational requirements have been categorised as 'no fault' dismissals. In other words, it is not the employee who is responsible for the termination of employment. Because retrenchment is a 'no fault' dismissal and because of its human cost, the Act places particular obligations on an employer, most of which are directed toward ensuring that all possible alternatives to dismissal are explored and that the employees to be dismissed are treated fairly.
 - (3) The obligations placed on an employer are both procedural and substantive. The purpose of consultation is to enable the parties, in the form of a joint problem-solving exercise, to strive for consensus if that is possible. The matters on which consultation is necessary are listed in section 189 (2). This section requires the parties to attempt to reach consensus on, amongst other things, appropriate measures to avoid dismissals. In order for this to be effective, the consultation process must commence as soon as a reduction of the workforce through retrenchments or redundancies, is contemplated by the employer, so that possible alternatives can be explored. The employer should in all good faith keep an open mind throughout and seriously consider proposals put forward.
 - (4) The Act also provides for the disclosure by the employer of information on matters relevant to the consultation. Although the matters on which information for the purposes of consultation is required are specified in section 189 (3), the list in that section is not a closed one. If considerations other than those that are listed are relevant to the proposed dismissal or the development of alternative proposals, they should be disclosed to the consulting party. In the event of a disagreement about what information is to be disclosed any party may refer the dispute to the CCMA in terms of section 16 (6) of The Act.
 - (5) The period over which consultation should extend is not defined in the Act. The circumstances surrounding the consultation process are relevant to a determination of a reasonable period. Proper consultation will include:
 - (a) The opportunity to meet and report back to employees;
 - (b) The opportunity to meet with the employer; and
 - (c) The request, receipt and consideration of information.
 - (6) The more urgent the need by the business to respond to the factors giving rise to any contemplated termination of employment, the more truncated the consultation process might be. Urgency may not, however, be induced by the failure to commence the consultation process as soon as a reduction of the workforce was likely.
- On the other hand, the parties who are entitled to be consulted must meet, as soon, and as frequently, as may be reasonably practicable during the consultation process.
- (7) If one or more employees are to be selected for dismissal from a number of employees, the Act requires that the criteria for their selection must be either agreed with the consulting parties or, if no criteria have been agreed, be fair and objective criteria.
 - (8) Criteria that infringe a fundamental right protected by the Act when they are applied can never be fair. These include selection on the basis of union membership or activity, pregnancy, or some other unfair discriminatory ground. Criteria that are neutral on the face of it should be carefully examined to ensure that when they are applied, they do not have a discriminatory effect. For example, to select only part-time workers for retrenchment might discriminate against women, since women are predominantly employed in part-time work.
 - (9) Selection criteria that are generally accepted to be fair include length of service, skills and qualifications. Generally the test for fair and objective criteria will be satisfied by the use of the 'last in, first out' (LIFO) principle. There may be instances where the LIFO principle or other criteria need to be adapted. The LIFO principle, for example, should not operate so as to undermine an agreed affirmative action program. Exceptions may also include the retention of employees based on criteria mentioned above which are fundamental to the successful operation of the business. These exceptions should however, be treated with caution.
 - (10) Employees dismissed for reasons based on the employer's operational requirements are entitled to severance pay of at least one week's remuneration for each completed year of continuous service with the employer, unless the employer is exempted from the provisions of section 196. This minimum requirement does not relieve an employer from attempting to reach consensus on severance pay during the period of consultation. The right of the trade union, through collective bargaining, to seek an improvement on the statutory minimum severance pay is not limited or reduced in any way.
 - (11) If an employee either accepted or unreasonably refused to accept an offer of alternative employment, the employee's right to severance pay is forfeited. Reasonableness is determined by a consideration of the reasonableness of the offer of alternative employment and the reasonableness of the employee's refusal. In the first case, objective factors such as remuneration, status and job security are relevant. In the second case, the employee's personal circumstances play a greater role.
 - (12) (1) Employees dismissed for reasons based on the employer's operational requirements should be given preference if the employer again hires employees with comparable qualifications, subject to:
 - (a) The employee after having been asked by the employer, having expressed within a reasonable time from the date of dismissal a desire to be rehired.
 - (b) A time limit on preferential rehiring. The time limit must be reasonable and must be the subject of consultation.(2) If the above conditions are met, the employer must take reasonable steps to inform the employee, including notification to the representative trade union, of the offer of re-employment. ■

SUMMARY OF THE BASIC CONDITIONS OF EMPLOYMENT ACT (BCEA)

75 of 1997 to be displayed at the workplace in terms of Section 30

The following is a summary of the provisions of the most important sections of the Basic Conditions of Employment Act, 1997, as amended.

1. APPLICATION OF THE ACT : SECTION 3

The Act applies to all employees and employers except members of the National Defence Force, National Intelligence Agency, South African Secret Service and unpaid volunteers working for an organisation with a charitable purpose.

The basic conditions of employment contained in the Act form part of the contract of employment of employees covered by the Act. Some, but not all, basic conditions of employment may be varied by individual or collective agreements in accordance with the provisions of the Act. (see paragraph 7 below).

2. REGULATION OF WORKING TIME : CHAPTER TWO**2.1 Application**

This chapter does not apply to senior managerial employees, employees engaged as sales staff who travel and employees who work less than 24 hours a month.

2.2 Ordinary hours of work : Section 9

No employer shall require or permit an employee to work more than –

- (a) 45 hours in any week;
- (b) nine hours in any day if an employee works for five days or less in a week; or
- (c) eight hours in any day if an employee works on more than five days in a week.

2.3 Overtime : Section 10

2.3.1 An employer may not require or permit an employee –

- (a) to work overtime except by an agreement;
- (b) to work more than ten hours' overtime a week.

2.3.2 An agreement may not require or permit an employee to work more than 12 hours on any day.

2.3.3 A collective agreement may increase overtime to fifteen hours per week for up to two months in any period of 12 months.

2.3.4 Overtime must be paid at 1.5 times the employee's normal wage or an employee may agree to receive paid time off.

2.4 Compressed working week : Section 11

2.4.1 An employee may agree in writing to work up to 12 hours in a day without receiving overtime pay.

2.4.2 This agreement may not require or permit an employee to work –

- (a) more than 45 ordinary hours in any week;
- (b) more than ten hours' overtime in any week; or
- (c) more than five days in any week.

2.5 Averaging of hours of work : Section 12

2.5.1 A collective agreement may permit the hours of work to be averaged over a period of up to four months.

2.5.2 An employee who is bound by such a collective agreement may not work more than –

- (a) an average of 45 ordinary hours in a week over the agreed period;
- (b) an average of five hours' overtime in a week over the agreed period.

2.6 Meal intervals : Section 14

2.6.1 An employee must have a meal interval of 60 minutes after five hours work.

2.6.2 A written agreement may –

- (a) reduce the meal interval to 30 minutes;
- (b) dispense with the meal interval for employees who work fewer than six hours on a day.

2.7 Daily and weekly rest period : Section 15

An employee must have a daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which, unless otherwise agreed, must include Sunday.

2.8 Pay for work on Sundays : Section 16

2.8.1 An employee who occasionally works on a Sunday must receive double pay.

2.8.2 An employee who ordinarily works on a Sunday must be paid at 1.5 times the normal wage.

2.8.3 Paid time off in return for working on a Sunday may be agreed upon.

2.9 Night work : Section 17

- 2.9.1 Employees who work at night between 18h00 and 06h00 must be compensated by payment of an allowance or by a reduction of working hours and transport must be available.
- 2.9.2 Employees who work regularly after 23:00 and before 06:00 the next day must be informed –
- (a) of any health and safety hazards; and
 - (b) the right to undergo a medical examination.

2.10 Public holidays : Section 18

- 2.10.1 Employees must be paid their ordinary pay for any public holiday that falls on a working day.
- 2.10.2 Work on a public holiday is by agreement and paid at double the rate.
- 2.10.3 A public holiday may be exchanged with another day by agreement.

3. LEAVE : CHAPTER THREE

3.1 Application

The chapter on leave does not apply to an employee who works less than 24 hours a month for an employer and to leave granted in excess of the leave entitlement under this chapter.

3.2 Annual leave : Sections 20 & 21

- 3.2.1 Employees are entitled to 21 consecutive days' annual leave or by agreement, one day for every 17 days worked or one hour for every 17 hours worked.
- 3.2.2 Leave must be granted not later than six months after the end of the annual leave cycle.
- 3.2.3 An employer must not pay an employee instead of granting leave except on termination of employment.

3.3 Sick leave : Sections 22 – 24

- 3.3.1 An employee is entitled to six weeks' paid sick leave in a period of 36 months.
- 3.3.2 During the first six months an employee is entitled to one day's paid sick leave for every 26 days worked.
- 3.3.3 An employer may require a medical certificate before paying an employee who is absent for more than two consecutive days or who is frequently absent.

3.4 Maternity leave : Sections 25 & 26

- 3.4.1 A pregnant employee is entitled to four consecutive months' maternity leave.
- 3.4.2 A pregnant employee or employee nursing her child is not allowed to perform work that is hazardous to her or her child.

3.5 Family responsibility leave : Section 27

- 3.5.1 Full time employees are entitled to three days paid family responsibility leave per year, on request, when the employee's child is born or sick, or in the event of the death of the employee's spouse or life partner, or the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- 3.5.2 An employer may require reasonable proof.

4. PARTICULARS OF EMPLOYMENT AND REMUNERATION : CHAPTER FOUR

4.1 Application

This chapter does not apply to an employee who works less than 24 hours a month for an employer.

4.2 Written particulars of employment : Section 29

- 4.2.1 An employer must supply an employee when the employee commences employment, with the following particulars in writing:
- (a) full name and address of the employer;
 - (b) name and occupation of the employee, or a brief description of the work ;
 - (c) various places of work;
 - (d) date of employment;
 - (e) ordinary hours of work and days of work;
 - (f) wage or the rate and method of calculating;
 - (g) rate for overtime work;
 - (h) any other cash payments;
 - (i) any payment in kind and the value thereof;
 - (j) frequency of remuneration;
 - (k) any deductions;
 - (l) leave entitlement;
 - (m) period of notice or period of contract;
 - (n) description of any council or sectoral determination which covers the employer's business;
 - (o) period of employment with a previous employer that counts towards the period of employment;
 - (p) list of any other documents that form part of the contract, indicating a place where a copy of each may be obtained.

4.2.2 Particulars must be revised if the terms of employment change.

4.3 Informing employees of their rights : Section 30

A statement of employees' rights must be displayed at the workplace in official languages used at the workplace.

4.4 Keeping of records : Section 31

Every employer must keep a record containing the following information:

- (a) employee's name and occupation;
- (b) time worked;
- (c) remuneration paid;
- (d) date of birth if under 18 years of age; and
- (e) any other prescribed information.

4.5 Information about remuneration : Section 33

The following information must be given in writing when the employee is paid:

- (a) employer's name and address;
- (b) employee's name and occupation;
- (c) period of payment;
- (d) remuneration in money;
- (e) any deduction made from the remuneration;
- (f) the actual amount paid; and
- (g) if relevant to the calculation of that employee's remuneration-
 - (i) employee's rate of remuneration and overtime rate;
 - (ii) number of ordinary and overtime hours worked during the period of payment;
 - (i) number of hours worked on a Sunday or public holiday during that period; and
 - (ii) if an agreement to average working time has been concluded, the total number of ordinary and overtime hours worked in the period of averaging.

4.6 Deductions and other acts concerning remuneration : Sections 34 and 34A

4.6.1 An employer may not deduct money from an employee's remuneration unless –

- (a) The employee agrees in writing to the deduction of a specific debt;
- (b) The deduction is made in terms of a collective agreement, law, court order or arbitration award

4.6.2 A deduction in respect of damage or loss caused by the employee may only be made with agreement and after the employer has followed a fair procedure

4.6.3 Employers must pay deductions and employer contributions to benefit funds to the fund within seven days.

4.7 Calculation of remuneration and wages : Section 35

4.7.1 Wages are calculated by the number of hours ordinarily worked.

4.7.2 Monthly remuneration or wage is four and one-third times the weekly wage.

4.7.3 If calculated on a basis other than time, or if the employee's remuneration or wage fluctuates significantly from period to period, any payment must be calculated by reference to remuneration or wage during –
(a) the preceding 13 weeks; or
(b) if employed for a shorter period, that period.

4.7.4 Employers and employees should consult a schedule published in the Government Gazette to determine whether a particular category of payment forms part of an employee's remuneration for the purpose of calculations made in terms of this Act.

5. TERMINATION OF EMPLOYMENT : CHAPTER FIVE

5.1 Application

This chapter does not apply to an employee who works less than 24 hours in a month for an employer.

5.2 Notice of termination of employment : Section 37

5.2.1 A contract of employment may be terminated on notice of not less than –

- (a) one week, if the employee has been employed for six months or less;
- (b) two weeks, if the employee has been employed for more than six months but not more than one year;
- (c) four weeks, if the employee has been employed for one year or more, or if a farm worker or domestic worker has been employed for more than six months.

5.2.2 A collective agreement may shorten the four weeks notice period to not less than two weeks.

5.2.3 Notice must be given in writing except when it is given by an illiterate employee.

5.2.4 The notice on termination of employment by an employer in terms of the Act does not prevent the employee challenging the fairness or lawfulness of the dismissal in terms of the Labour Relations Act, 1995 or any other law.

5.3 Severance pay : Section 41

An employee dismissed for operational requirements or whose contract of employment is terminated in terms of section 38 of the Insolvency Act, 1936 is entitled to one week's severance pay for every year of service.

5.4 Certificate of Service : Section 42

On termination of employment an employee is entitled to a certificate of service.

6. PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR : SECTIONS 43 – 48

- 6.1 It is a criminal offence to employ a child under 15 years of age.
- 6.2 Children under 18 may not be employed to do work inappropriate for their age or that places them at risk.
- 6.3 Causing, demanding or requiring forced labour is a criminal offence.

7. VARIATION OF BASIC CONDITIONS OF EMPLOYMENT : SECTIONS 49 – 50

- 7.1 A collective agreement concluded by a bargaining council may replace or exclude any basic condition of employment except the following:
 - (a) the duty to arrange working time with regard to the health and safety and family responsibility of employees (S.7,9 and 13);
 - (b) reduce the protection afforded to employees who perform night work (S. 17(3) and (4));
 - (c) reduce annual leave to less than two weeks (S. 20);
 - (d) reduce entitlement to maternity leave (S 25);
 - (e) reduce entitlement to sick leave to the extent permitted (S. 22-24); and
 - (f) prohibition of child and forced labour (S.48).
- 7.2 Collective agreements and individual agreements may only replace or exclude basic conditions of employment to the extent permitted by the Act or a sectoral determination (S.49).
- 7.3 The Minister of Labour may make a determination to vary or exclude a basic condition of employment. This can also be done on application by an employer or employer organisation (S. 50).
- 7.4 A determination may not be granted unless a trade union representing the employees has consented to the variation or has had the opportunity to make representations to the Minister. A copy of any determination must be displayed by the employer at the work place and must be made available to employee's (S.50).

8. SECTORAL DETERMINATIONS : SECTION 51

Sectoral determinations may be made to establish basic conditions for employees in a sector and area.

9. MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS : SECTIONS 63 - 81

- 9.1 Labour inspectors must advise employees and employers on their rights and obligations in terms of employment laws. They conduct inspections, investigate complaints and may question persons and inspect, copy and remove records and other relevant documents (S. 64 – 66).
- 9.2 An inspector may serve a compliance order on an employer who is not complying with a provision of the Act. The employer may object against the order to the Director-General: Labour, who after receiving representations, may confirm, modify or set aside an order. This decision is subject to appeal to the Labour Court (S. 68 – 73).
- 9.3 Employees may not be discriminated against for exercising their rights in terms of the Act (S. 78 – 81).

10. PRESUMPTION AS TO WHO IS AN EMPLOYEE : SECTION 83A

- 10.1 A person who works for, or provides services to, another person is presumed to be an employee if –
 - (a) his or her manner or hours of work are subject to control or direction;
 - (b) he or she forms part of the employer's organisation;
 - (c) he or she has worked for the other person for at least 40 hours per month over the previous three months;
 - (d) he or she is economically dependant on the other person;
 - (e) he or she is provided with his or her tools or work equipment; or
 - (f) he or she only works for, or renders service to, one person.
- 10.2 If one of these factors is present, the person is presumed to be an employee until the employer proves that he or she is not.

11. GENERAL

- It is an offence to –
- (a) obstruct or attempt to influence improperly a person who is performing a function in terms of the Act;
 - (b) obtain or attempt to obtain any prescribed document by means of fraud, false pretences, or by presenting or submitting a false or forged document;
 - (c) pretend to be a labour inspector or any other person performing a function in terms of the Act;
 - (d) refuse or fail to answer fully any lawful question put by a labour inspector or any other person performing a function in terms of the Act;
 - (e) refuse or fail to comply with any lawful request of, or lawful order by, a labour inspector or any other person performing a function in terms of the Act;
 - (f) hinder or obstruct a labour inspector or any other person performing a function in terms of the Act. (S. 92) ■

SUMMARY OF THE EMPLOYMENT EQUITY ACT (EEA)

55 of 1998 to be displayed at the workplace in terms of Section 25(1)

1. Chapter 1 – Definitions, purpose, interpretation and application**1.1 Purpose of the Act: Section 2**

The purpose of the Act is to achieve equity in the workplace, by

- a. promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- b. implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational categories and levels in the workforce.

1.2 Application of the Act: Section 4

- a. Chapter II (sections 5 – 11) applies to all employers and employees.
- b. Chapter III (sections 12 – 27) applies to designated employers.
- c. A designated employer means an employer who employs 50 or more employees, or has a total annual turnover as reflected in Schedule 4 of the Act, municipalities and organs of state. Employers can also volunteer to become designated employers.
- d. A designated group means black people, women, or people with disabilities.
- e. The South African National Defence Force, National Intelligence Agency, and South African Secret Services are excluded from this Act.

2. Chapter 2 - Prohibition of Unfair Discrimination

2.1 No person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice, on one or more grounds including race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, and birth.

2.2 It is not unfair discrimination to promote affirmative action consistent with the Act or to prefer or exclude any person on the basis of an inherent job requirement.

2.3 Medical Testing: Section 7

- a. Medical testing of an employee is permissible only when legislation requires testing or when this is justifiable for various reasons.
- b. HIV testing is prohibited unless such testing is determined to be justifiable by the Labour Court.

2.4 Psychological Testing: Section 8

Psychological testing and similar assessments are prohibited, unless the test is scientifically valid and reliable, can be applied fairly to all employees, and is not biased against any employee or group.

2.5 Disputes concerning this Chapter: Section 10

- a. An employee, or applicant for employment, may refer a dispute concerning alleged unfair discrimination (or medical or psychological testing) to the CCMA for conciliation. This must be done within six months of the alleged discrimination (or testing).
- b. If a dispute is not resolved at conciliation, a party may refer it to the Labour Court for adjudication. The parties to a dispute may also agree to refer the dispute to arbitration.
- c. Unfair dismissal disputes in which unfair discrimination is alleged must be dealt with in terms of the Labour Relations Act. The dismissal must be referred to the CCMA within 30 days.

3. Chapter 3 – Affirmative Action**3.1 Duties of a Designated Employer: Section 13**

- a. A designated employer must implement affirmative action measures for designated groups to achieve employment equity.
- b. In order to implement affirmative action measures, a designated employer must:
 - consult with employees;
 - conduct an analysis;
 - prepare an employment equity plan; and
 - report to the Director-General on progress made in the implementation of the plan.

3.2 Affirmative Action measures: Section 15

- a. Affirmative action measures are measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunity and are equitably represented in all occupational categories and levels of the workforce.
- b. Such measures must include:
 - identification and elimination of barriers with an adverse impact on designated groups;
 - measures which promote diversity;
 - making reasonable accommodation for people from designated groups;
 - retention, development and training of designated groups (including skills development); and
 - preferential treatment and numerical goals to ensure equitable representation. This excludes quotas.
- c. Designated employers are not required to take any decision regarding an employment policy or practice that would establish an absolute barrier to prospective or continued employment or advancement of people not from designated groups.

3.3 Consultation: Sections 16 and 17

A designated employer must take reasonable steps to consult with representatives of employees representing the diverse interests of the workforce on the conducting of an analysis, preparation and implementation of a plan, and on reporting to the Director-General.

3.4 Disclosure of Information: Section 18

To ensure meaningful consultation, the employer must disclose relevant information to the consulting parties, subject to section 16 of the Labour Relations Act 66 of 1995.

3.5 Analysis: Section 19

A designated employer must conduct an analysis of employment policies, practices, procedures, and working environment so as to identify employment barriers that adversely affect members of designated groups. The analysis must also include the development of a workforce profile to determine to what extent designated groups are under-represented in the workplace.

3.6 Employment Equity Plan: Section 20

- a. A designated employer must prepare and implement a plan to achieve employment equity, which must:
 - have objectives for each year of the plan;
 - include affirmative action measures;
 - have numerical goals for achieving equitable representation;
 - have a timetable for each year;
 - have internal monitoring and evaluation procedures, including internal dispute resolution mechanisms; and
 - identify persons, including senior managers, to monitor and implement the plan.

3.7 Report: Section 21

- a. An employer who employs fewer than 150 employees must submit its first report to the Director-General within 12 months after the commencement of the Act, and thereafter every 2 years on the first working day of October.
- b. An employer who employs 150 or more employees, must submit its first report 6 months after the commencement of the Act, and thereafter every year on the first working day of October.

3.8 Designated employer must assign a manager: Section 24

A designated employer must assign one or more senior managers to ensure implementation and monitoring of the employment equity plan and must make available necessary resources for this purpose.

3.9 Income Differentials: Section 27

A statement of remuneration and benefits received in each occupational category and level of the workforce must be submitted by a designated employer to the Employment Conditions Commission (ECC).

Where there are disproportionate income differentials, a designated employer must take measures to reduce it progressively. Such measures may include collective bargaining, compliance with sectoral determinations (section 51 of the Basic Conditions of Employment Act); the application of

norms and benchmarks recommended by the ECC, relevant measures contained in skills development legislation, and any other appropriate steps.

4. Chapter V – Monitoring, Enforcement and Legal Proceedings

4.1 Monitoring: Section 34

Employee or trade union representatives can monitor contraventions of the Act and report to relevant bodies.

4.2 Powers of the Labour Inspector: Section 35

Labour Inspectors are authorised to conduct an inspection as provided for in sections 65 and 66 of the Basic Conditions of Employment Act.

4.3 Undertaking to Comply: Section 36

If the inspector has reasonable grounds to believe that a designated employer has failed to comply with its obligations in terms of the Act, the inspector will obtain a written undertaking to comply within a specified period.

4.4 Compliance Order: Section 37

If the designated employer refuses to comply with the written undertaking, the inspector will issue an order to comply.

4.5 Review by Director-General: Section 43

The Director-General may conduct a review to determine whether an employer is complying with the Act. On completion of the review, the Director-General may make recommendations for compliance within certain time frames.

4.6 Powers of the Labour Court: Section 50

The Labour Court has the powers to make any appropriate orders, award compensation, or impose fines.

4.7 Protection of Employee Rights: Section 51

The Act protects employees who exercise their rights and obligations under the Act against victimisation, obstruction and undue influence.

5. Chapter VI – General Provisions

5.1 State contracts: Section 53

Designated employers and employers who voluntarily comply with Chapter III, who seek to do business with any organ of state, will have to apply for a certificate from the Minister confirming their compliance with Chapters II and III of the Act. Non-designated employers' compliance certificates will pertain to Chapter II.

5.2 Liability of Employers: Section 60

Should employees contravene any provision of this Act, while performing their duties, the employer will be liable unless the employer can prove that it did everything in its power to prevent the undesired act. ■

OCCUPATIONAL HEALTH AND SAFETY ACT (OHSA)85 of 1993: as amended by *Occupational Health and Safety Amendment Act 181 of 1993*

In terms of this Act all businesses with 5 or more employees are required to make this Act available to employees at the workplace and implement a health and safety structure to sustain employee wellbeing and create a healthy and safe working environment.

ACT

To provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; to establish an advisory council for occupational health and safety; and to provide for matters connected therewith.

(English Text Signed By The State President)
(Assented To 23 June, 1993)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment of Advisory Council for Occupational Health and Safety
3. Functions of Council
4. Constitution of Council
5. Period of office and remuneration of members of Council
6. Establishment of technical committees of Council
7. Health and safety policy
8. General duties of employers to their employees
9. General duties of employers and self-employed persons to persons other than their employees
10. General duties of manufacturers and others regarding articles and substances for use at work
11. Listed work
12. General duties of employers regarding listed work
13. Duty to inform
14. General duties of employees at work
15. Duty not to interfere with, damage or misuse things
16. Chief executive officer charged with certain duties
17. Health and safety representatives
18. Functions of health and safety representatives
19. Health and safety committees
20. Functions of health and safety committees
21. General prohibitions
22. Sale of certain articles prohibited
23. Certain deductions prohibited
24. Report to inspector regarding certain incidents
25. Report to chief inspector regarding occupational disease
26. Victimization forbidden
27. Designation and functions of chief inspector
28. Designation of inspectors by Minister
29. Functions of inspectors
30. Special powers of inspectors
31. Investigations
32. Formal inquiries
33. Joint inquiries
34. Obstruction of investigation or inquiry or presiding inspector or failure to render assistance
35. Appeal against decision of inspector
36. Disclosure of information
37. Acts or omissions by employees or mandataries
38. Offences, penalties and special orders of court
39. Proof of certain facts
40. Exemptions
41. This Act not affected by agreements
42. Delegation and assignment of functions
43. Regulations
44. Incorporation of health and safety standards in regulations
45. Serving of notices
46. Jurisdiction of magistrates' courts
47. State bound
48. Conflict of provisions
49. Repeal of laws
50. Short title and commencement

Definitions

- (1) In this Act, unless the context otherwise indicates—"accident" means an accident arising out of and in the course of an employee's employment and resulting in a personal injury, illness or the death of the employee;(xxiv)

"approved inspection authority" means an inspection authority approved by the chief inspector: Provided that an inspection authority approved by the chief inspector with respect to any particular service shall be an approved inspection authority with respect to that service only;

"biological monitoring" means a planned programme of periodic collection and analysis of body fluid, tissues, excreta or exhaled air in order to detect and quantify the exposure to or absorption of any substance or organism by persons;

"building" includes-

- (a) any structure attached to the soil;
- (b) any building or such structure or part thereof which is in the process of being erected; or
- (c) any prefabricated building or structure not attached to the soil;

"chief executive officer", in relation to a body corporate or an enterprise conducted by the State, means the person who is responsible for the overall management and control of the business of such body corporate or enterprise;

"chief inspector" means the officer designated under section 27 as chief inspector, and includes any officer acting as chief inspector;

"Council" means the Advisory Council for Occupational Health and Safety established by section 2;

"danger" means anything which may cause injury or damage to persons or property;

"Department" means the Department of Manpower;

"employee" means, subject to the provisions of subsection (2), any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration or who works under the direction or supervision of an employer or any other person;

"employer" means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that person or expressly or impliedly undertakes to remunerate him, but excludes a labour broker as defined in section 1 (1) of the Labour Relations Act, 1956 (Act No. 28 of 1956);

"employers' organisation" means an employers' organisation as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);

“**employment**” or “employed” means employment or employed as an employee;

“**explosives**” means any substance or article as listed in Class 1: Explosives in the South African Bureau of Standards Code of Practice for the Identification and Classification of Dangerous Substances and Goods, SABS 0228;

“**hazard**” means a source of or exposure to danger;

“**health and safety committee**” means a committee established under section 19;

“**health and safety equipment**” means any article or part thereof which is manufactured, provided or installed in the interest of the health or safety of any person;

“**health and safety representative**” means a person designated in terms of section 17 (1);

“**health and safety standard**” means any standard, irrespective of whether or not it has the force of law, which, if applied for the purposes of this Act, will in the opinion of the Minister promote the attainment of an object of this Act;

“**healthy**” means free from illness or injury attributable to occupational causes;

“**incident**” means an incident as contemplated in section 24 (1);

“**industrial court**” means the industrial court referred to in section 17 of the Labour Relations Act, 1956 (Act No. 28 of 1956);

“**inspection authority**” means any person who with the aid of specialized knowledge or equipment or after such investigations, tests, sampling or analyses as he may consider necessary, and whether for reward or otherwise, renders a service by making special findings, purporting to be objective findings, as to-

- (a) the health of any person;
- (b) the safety or risk to health of any work, article, substance, plant or machinery, or of any condition prevalent on or in any premises; or
- (c) the question of whether any particular standard has been or is being complied with, with respect to any work, article, substance, plant or machinery, or with respect to work or a condition prevalent on or in any premises, or with respect to any other matter, and by issuing a certificate, stating such findings, to the person to whom the service is rendered;

“**inspector**” means a person designated under section 28;

“**listed work**” means any work declared to be listed work under section II;

“**local authority**” means-

- (a) any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No. 32 of 1961);
- (b) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);
- (c) any other institution or body or the holder of any office declared by the Minister by notice in the Gazette to be a local authority for the purposes of this Act;

“**machinery**” means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to performing work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy;

“**major hazard installation**” means an installation-

- (a) where more than the prescribed quantity of any substance is or may be kept, whether permanently or temporarily; or
- (b) where any substance is produced, processed, used, handled or stored in such a form and quantity that it has the potential to cause a major incident;

“**major incident**” means an occurrence of catastrophic proportions, resulting from the use of plant or machinery, or from activities at a workplace;

“**mandatary**” includes an agent, a contractor or a subcontractor for work, but without derogating from his status in his own right as an employer or a user;

“**medical surveillance**” means a planned programme or periodic examination (which may include clinical examinations, biological monitoring or medical tests) of employees by an occupational health practitioner or, in prescribed cases, by an occupational medicine practitioner;

“**Minister**” means the Minister of Manpower;

“**occupational health**” includes occupational hygiene, occupational medicine and biological monitoring;

“**occupational health practitioner**” means an occupational medicine practitioner or a person who holds a qualification in occupational health recognized as such by the South African Medical and Dental Council as referred to in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), or the South African Nursing Council as referred to in the Nursing Act, 1978 (Act No. 50 of 1978);

“**occupational hygiene**” means the anticipation, recognition, evaluation and control of conditions arising in or from the workplace, which may cause illness or adverse health effects to persons;

“**occupational medicine**” means the prevention, diagnosis and treatment of illness, injury and adverse health effects associated with a particular type of work;

“**occupational medicine practitioner**” means a medical practitioner as defined in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), who holds a qualification in occupational medicine or an equivalent qualification which qualification or equivalent is recognized as such by the South African Medical and Dental Council referred to in the said Act;

“**office**” means an office as defined in section 1 (1) of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);

“**officer**” means an officer or employee as defined in section 1 (1) of the Public Service Act, 1984 (Act No. 111 of 1984);

“**organism**” means any biological entity which is capable of causing illness to persons;

“**plant**” includes fixtures, fittings, implements, equipment, tools and appliances, and anything which is used for any purpose in connection with such plant;

“**premises**” includes any building, vehicle, vessel, train or aircraft;

“**prescribed**” means prescribed by regulation;

“**properly used**” means used with reasonable care, and with due regard to any information, instruction or advice supplied by the designer, manufacturer, importer, seller or supplier;

“**reasonably practicable**” means practicable having regard to-

- (a) the severity and scope of the hazard or risk concerned;
- (b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;
- (c) the availability and suitability of means to remove or mitigate that hazard or risk; and
- (d) the cost of removing or mitigating that hazard or risk in relation to the benefits deriving therefrom;

“**regulation**” means a regulation made under section 43;

“**remuneration**” means any payment in money or in kind or both in money and in kind, made or owing to any person in pursuance of such person’s employment;

“**risk**” means the probability that injury or damage will occur;

“**safe**” means free from any hazard;

“**sell**” includes-

- (a) offer or display for sale or import into the Republic for sale; or
- (b) exchange, donate, lease or offer or display for leasing;

“**shop**” means a shop as defined in section I (1) of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);

“**standard**” means any provision occurring-

- (a) in a specification, compulsory specification, code of practice or standard method as defined in section I of the Standards Act, 1993 (Act No. 29 of 1993); or
- (b) in any specification, code or any other directive having standardization as its aim and issued by an institution or organisation inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardization;

“**substance**” includes any solid, liquid, vapour, gas or aerosol, or combination thereof;

“**this Act**” includes any regulation;

“**trade union**” means a trade union as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);

“**user**”, in relation to plant or machinery, means the person who uses plant or machinery for his own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of, or any person employed in connection with, that plant or machinery;

“**work**” means work as an employee or as a self-employed person, and for such purpose an employee is deemed to be at work during the time that he is in the course of his employment, and a self-employed person is deemed to be at work during such time as he devotes to work as a self-employed person;

“**workplace**” means any premises or place where a person performs work in the course of his employment.

- (2) The Minister may by notice in the Gazette declare that a person belonging to a category of persons specified in the notice shall for the purposes of this Act or any provision thereof be deemed to be an employee, and thereupon any person vested and charged with the control and supervision of the said person shall for the said purposes be deemed to be the employer of such person.
- (3) This Act shall not apply in respect of-
 - (a) a mine, a mining area or any works as defined in the Minerals Act, 1991 (Act No. 50 of 1991), except in so far as that Act provides otherwise;
 - (b) any load line ship (including a ship holding a load line exemption certificate), fishing boat, sealing boat and whaling boat as defined in section 2 (1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), or any floating crane, whether or not such ship, boat or crane is in or out of the water within any harbour in the Republic or within the territorial waters thereof, (Date of commencement of para. (b) to be proclaimed.) or in respect of any person present on or in any such mine, mining area, works, ship, boat or crane.

2. Establishment of Advisory Council for Occupational Health and Safety

There is hereby established an Advisory Council for Occupational Health and Safety.

3. Functions of Council

- (1) The Council shall-
 - (a) advise the Minister with regard to-
 - (i) matters of policy arising out of or in connection with the application of the provisions of this Act;
 - (ii) any matter relating to occupational health & safety;
 - (b) perform the functions assigned to it by this Act or referred to it by the Minister.
- (2) The Council may-
 - (a) with a view to the performance of its functions, do such research and conduct such investigations as it may deem necessary;
 - (b) make rules relating to the calling of meetings of the Council, the determining of a quorum for and the procedure at such meetings, and generally relating to all matters which may be necessary for the effective performance of the functions of the Council or, subject to section 6, of a technical committee;
 - (c) advise the Department concerning-
 - (i) the formulation and publication of standards, specifications or other forms of guidance for the purpose of assisting employers, employees and users to maintain

appropriate standards of occupational health and safety;

- (ii) the promotion of education and training in occupational health and safety; and
- (iii) the collection and dissemination of information on occupational health and safety.

- (3) The Council may for the purposes of the performance of any of its functions, with the approval of the Minister, and with the concurrence of the Minister of State Expenditure, enter into an agreement for the performance of a particular act or particular work or for the rendering of a particular service, on such conditions and at such remuneration as may be agreed upon, with anybody who in the opinion of the Council is fit to perform such act or work or to render such service.
- (4) Subject to the laws governing the Public Service, the Minister shall provide the Council with such personnel as he may deem necessary for the effective performance of the functions of the Council, and such persons shall perform their functions subject to the control and directions of the chief inspector.

4. Constitution of Council

- (1) The Council shall consist of 20 members, namely-
 - (a) the chief inspector, *ex officio* (from office), who shall be the chairman;
 - (b) one officer serving in the Department;
 - (c) the Compensation Commissioner, or his nominee;
 - (d) one person nominated by the Minister for National Health and Welfare;
 - (e) one person nominated by the Minister of Mineral and Energy Affairs; six persons to represent the interests of employers from a list of the names of persons nominated by employers' organisations or federations of employers' organisations;
 - (f) *[Substituted by s. 2 of Act No. 181 of 1993]*
 - (g) six persons to represent the interests of employees from a list of the names of persons nominated by trade unions or federations of trade unions; *[Para. (g) substituted by s. 2 of Act No. 181 of 1993.]*
 - (h) one person who in the opinion of the Minister has knowledge of occupational safety matters;
 - (i) one person who in the opinion of the Minister has knowledge of occupational medicine and who was recommended by the Minister for National Health and Welfare;
 - (j) one person who in the opinion of the Minister has knowledge of occupational hygiene.

- (2) The members referred to in subsection (1) (b) up to and including (j) shall be appointed by the Minister.

5. Period of office and remuneration of members of Council

- (1) The members of the Council referred to in section 4 (2) shall be appointed for a period of three years, and on such conditions as the Minister may determine with the concurrence of the Minister of State Expenditure.

- (2) Any person whose period of office as a member of the Council has expired shall be eligible for reappointment.
- (3) A member referred to in section 4 (1) (f), (g), (h), (i) or (j) who is not an officer may be paid from money appropriated for such purpose by Parliament such allowances as the Minister may determine with the concurrence of the Minister of State Expenditure.

6. Establishment of technical committees of Council

- (1) The Council may with the approval of the Minister establish one or more technical committees to advise the Council on any matter regarding the performance by the Council of its functions.
- (2) A member of a technical committee shall be appointed by the Council by reason of his knowledge of the matter for which the committee is established, and such a member need not be a member of the Council.
- (3) A meeting of a technical committee shall be held at such time and place as may be determined by the chairman of the Council, and in accordance with rules approved by the Council.
- (4) A member of a technical committee who is not an officer may be paid from money appropriated for such purpose by Parliament such allowances as the Minister may determine with the concurrence of the Minister of State Expenditure.

7. Health and safety policy

- (1) The chief inspector may direct-
 - (a) any employer in writing; and
 - (b) any category of employers by notice in the Gazette, to prepare a written policy concerning the protection of the health and safety of his employees at work, including a description of his organisation and the arrangements for carrying out and reviewing that policy.
- (2) Any direction under subsection (1) shall be accompanied by guidelines concerning the contents of the policy concerned.
- (3) An employer shall prominently display a copy of the policy referred to in subsection (1), signed by the chief executive officer, in the workplace where his employees normally report for service.

8. General duties of employers to their employees

- (1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.
- (2) Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include in particular-
 - (a) the provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health;
 - (b) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;
 - (c) making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;

- (d) establishing, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far as is reasonably practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;
- (e) providing such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees;
- (f) as far as is reasonably practicable, not permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;
- (g) taking all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on premises under his control where plant or machinery is used;
- (h) enforcing such measures as may be necessary in the interest of health and safety;
- (i) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and
- (j) causing all employees to be informed regarding the scope of their authority as contemplated in section 37 (1) (b).

9. General duties of employers and self-employed persons to persons other than their employees

- (1) Every employer shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practicable, that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.
- (2) Every self-employed person shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practicable, that he and other persons who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.

10. General duties of manufacturers and others regarding articles and substances for use at work

- (1) Any person who designs, manufactures, imports, sells or supplies any article for use at work shall ensure, as far as is reasonably practicable, that the article is safe and without risks to health when properly used and that it complies with all prescribed requirements.
- (2) Any person who erects or installs any article for use at work on or in any premises shall ensure, as far as is reasonably practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health when properly used.
- (3) Any person who manufactures, imports, sells or supplies any substance for use at work shall-

- (a) ensure, as far as is reasonably practicable, that the substance is safe and without risks to health when properly used; and
 - (b) take such steps as may be necessary to ensure that information is available with regard to the use of the substance at work, the risks to health and safety associated with such substance, the conditions necessary to ensure that the substance will be safe and without risks to health when properly used and the procedures to be followed in the case of an accident involving such substance.
- (4) Where a person designs, manufactures, imports, sells or supplies an article or substance for or to another person and that other person undertakes in writing to take specified steps sufficient to ensure, as far as is reasonably practicable, that the article or substance will comply with all prescribed requirements and will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the firstmentioned person from the duty imposed upon him by this section to such an extent as may be reasonable having regard to the terms of the undertaking.

11. Listed work

- (1) The Minister may, subject to the provisions of subsections (2) and (3), by notice in the Gazette declare any work, under the conditions or circumstances specified in the notice, to be listed work.
- (2) (a) Before the Minister declares any work to be listed work, he shall cause to be published in the Gazette a draft of his proposed notice and at the same time invite interested persons to submit to him in writing within a specified period, comments and representations in connection with the proposed notice.

(b) A period of not less than three months shall elapse between the publication of the draft notice and the notice under subsection (1).
- (3) The provisions of subsection (2) shall not apply-

(a) if the Minister in pursuance of comments and representations received in terms of subsection (2) (a), decides to publish the notice referred to in subsection (1) in an amended form; and

(b) to any declaration in terms of subsection (1) in respect of which the Minister is of the opinion that the public interest requires that it be made without delay.
- (4) A notice under subsection (1) may at any time be amended or withdrawn by like notice.

12. General duties of employers regarding listed work

- (1) Subject to such arrangements as may be prescribed, every employer whose employees undertake listed work or are liable to be exposed to the hazards emanating from listed work, shall, after consultation with the health and safety committee established for that workplace-

(a) identify the hazards and evaluate the risks associated with such work constituting a hazard to the health of such employees, and the steps that need to be taken to comply with the provisions of this Act;

(b) as far as is reasonably practicable, prevent the exposure of such employees to the hazards concerned or, where prevention is not reasonably practicable, minimize such exposure; and

(c) having regard to the nature of the risks associated with such work and the level of exposure of such employees to the hazards, carry out an occupational hygiene programme and biological monitoring, and subject such employees to medical surveillance.

- (2) Every employer contemplated in subsection (1) shall keep the health and safety representatives designated for their workplaces or sections of the workplaces, informed of the actions taken under subsection (1) in their respective workplaces or sections thereof and of the results of such actions: Provided that individual results of biological monitoring and medical surveillance relating to the work of the employee, shall only with the written consent of such employee be made available to any person other than an inspector, the employer or the employee concerned.

13. Duty to inform

Without derogating from any specific duty imposed on an employer by this Act, every employer shall-

- (a) as far as is reasonably practicable, cause every employee to be made conversant with the hazards to his health and safety attached to any work which he has to perform, any article or substance which he has to produce, process, use, handle, store or transport and any plant or machinery which he is required or permitted to use, as well as with the precautionary measures which should be taken and observed with respect to those hazards;
- (b) inform the health and safety representatives concerned beforehand of inspections, investigations or formal inquiries of which he has been notified by an inspector, and of any application for exemption made by him in terms of section 40; and
- (c) inform a health and safety representative as soon as reasonably practicable of the occurrence of an incident in the workplace or section of the workplace for which such representative has been designated.

14. General duties of employees at work

Every employee shall at work-

- (a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions;
- (b) as regards any duty or requirement imposed on his employer or any other person by this Act, co-operate with such employer or person to enable that duty or requirement to be performed or complied with;
- (c) carry out any lawful order given to him, and obey the health and safety rules and procedures laid down by his employer or by anyone authorized thereto by his employer, in the interest of health or safety;
- (d) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer; and
- (e) if he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer or to anyone authorized thereto by the employer, or to his health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident

occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he shall report the incident as soon as practicable thereafter.

15. Duty not to interfere with, damage or misuse things

No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health or safety. [S. 15 substituted by s. 3 of Act No. 181 of 1993.]

16. Chief executive officer charged with certain duties

- (1) Every chief executive officer shall as far as is reasonably practicable ensure that the duties of his employer as contemplated in this Act, are properly discharged.
- (2) Without derogating from his responsibility or liability in terms of subsection (1), a chief executive officer may assign any duty contemplated in the said subsection, to any person under his control, which person shall act subject to the control and directions of the chief executive officer.
- (3) The provisions of subsection (1) shall not, subject to the provisions of section 37, relieve an employer of any responsibility or liability under this Act.
- (4) For the purpose of subsection (1), the head of department of any department of State shall be deemed to be the chief executive officer of that department.

17. Health and safety representatives

- (1) Subject to the provisions of subsection (2), every employer who has more than 20 employees in his employment at any workplace, shall, within four months after the commencement of this Act or after commencing business, or from such time as the number of employees exceeds 20, as the case may be, designate in writing for a specified period health and safety representatives for such workplace, or for different sections thereof.
- (2) An employer and the representatives of his employees recognized by him or, where there are no such representatives, the employees shall consult in good faith regarding the arrangements and procedures for the nomination or election, period of office and subsequent designation of health and safety representatives in terms of subsection (1): Provided that if such consultation fails, the matter shall be referred for arbitration to a person mutually agreed upon, whose decision shall be final: Provided further that if the parties do not agree within 14 days on an arbitrator, the employer shall give notice to this effect in writing to the President of the Industrial Court, who shall in consultation with the chief inspector designate an arbitrator, whose decision shall be final. [Sub-s. (2) substituted by s. 4 of Act No. 181 of 1993.]
- (3) Arbitration in terms of subsection (2) shall not be subject to the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), and a failure of the consultation contemplated in that subsection shall not be deemed to be a dispute in terms of the Labour Relations Act, 1956 (Act No. 28 of 1956): Provided that the Minister may prescribe the manner of arbitration and the remuneration of the arbitrator designated by the President of the Industrial Court. [Sub-s. (3) substituted by s. 4 of Act No. 181 of 1993.]
- (4) Only those employees employed in a full-time capacity at a specific workplace and who are acquainted with conditions and activities at that workplace or section thereof, as the case may be, shall be eligible for designation as health and safety representatives for that workplace or section.

- (5) The number of health and safety representatives for a workplace or section thereof shall in the case of shops and offices be at least one health and safety representative for every 100 employees or part thereof, and in the case of all other workplaces at least one health and safety representative for every 50 employees or part thereof: Provided that those employees performing work at a workplace other than that where they ordinarily report for duty, shall be deemed to be working at the workplace where they so report for duty.
- (6) If an inspector is of the opinion that the number of health and safety representatives for any workplace or section thereof, including a workplace or section with 20 or fewer employees, is inadequate, he may by notice in writing direct the employer to designate such number of employees as the inspector may determine as health and safety representatives for that workplace or section thereof in accordance with the arrangements and procedures referred to in subsection (2).
- (7) All activities in connection with the designation, functions and training of health and safety representatives shall be performed during ordinary working hours, and any time reasonably spent by any employee in this regard shall for all purposes be deemed to be time spent by him in the carrying out of his duties as an employee.

18. Functions of health and safety representatives

- (1) A health and safety representative may perform the following functions in respect of the workplace or section of the workplace for which he has been designated, namely-
 - (a) review the effectiveness of health and safety measures;
 - (b) identify potential hazards and potential major incidents at the workplace;
 - (c) in collaboration with his employer, examine the causes of incidents at the workplace;
 - (d) investigate complaints by any employee relating to that employee's health or safety at work;
 - (e) make representations to the employer or a health and safety committee on matters arising from paragraphs (a), (b), (c) or (d), or where such representations are unsuccessful, to an inspector;
 - (f) make representations to the employer on general matters affecting the health or safety of the employees at the workplace;
 - (g) inspect the workplace, including any article, substance, plant, machinery or health and safety equipment at that workplace with a view to, the health and safety of employees, at such intervals as may be agreed upon with the employer: Provided that the health and safety representative shall give reasonable notice of his intention to carry out such an inspection to the employer, who may be present during the inspection;
 - (h) participate in consultations with inspectors at the workplace and accompany inspectors on inspections of the workplace;
 - (i) receive information from inspectors as contemplated in section 36; and
 - (j) in his capacity as a health and safety representative attend meetings of the health and safety committee of which he is a member, in connection with any of the above functions.

- (2) A health and safety representative shall, in respect of the workplace or section of the workplace for which he has been designated be entitled to-
 - (a) visit the site of an incident at all reasonable times and attend any inspection in loco;
 - (b) attend any investigation or formal inquiry held in terms of this Act;
 - (c) in so far as it is reasonably necessary for performing his functions, inspect any document which the employer is required to keep in terms of this Act;
 - (d) accompany an inspector on any inspection;
 - (e) with the approval of the employer (which approval shall not be unreasonably withheld), be accompanied by a technical adviser, on any inspection; and
 - (f) participate in any internal health or safety audit. *[Sub-s. (2) substituted by s. 5 of Act No. 181 of 1993.]*
- (3) An employer shall provide such facilities, assistance and training as a health and safety representative may reasonably require and as have been agreed upon for the carrying out of his functions.
- (4) A health and safety representative shall not incur any civil liability by reason of the fact only that he failed to do anything which he may do or is required to do in terms of this Act.

19. Health and safety committees

- (1) An employer shall in respect of each workplace where two or more health and safety representatives have been designated, establish one or more health and safety committees and, at every meeting of such a committee as contemplated in subsection (4), consult with the committee with a view to initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of his employees at work.
- (2) A health and safety committee shall consist of such number of members as the employer may from time to time determine: Provided that-
 - (a) if one health and safety committee has been established in respect of a workplace, all the health and safety representatives for that workplace shall be members of the committee;
 - (b) if two or more health and safety committees have been established in respect of a workplace, each health and safety representative for that workplace shall be a member of at least one of those committees; and
 - (c) the number of persons nominated by an employer on any health and safety committee established in terms of this section shall not exceed the number of health and safety representatives on that committee.
- (3) The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by him, while the health and safety representatives shall be members of the committee for the period of their designation in terms of section 17 (1).
- (4) A health and safety committee shall hold meetings as often as may be necessary, but at least once every three months, at a time and place determined by the committee: Provided

that an inspector may by notice in writing direct the members of a health and safety committee to hold a meeting at a time and place determined by him: Provided further that, if more than 10 per cent of the employees at a specific workplace has handed a written request to an inspector, the inspector may by written notice direct that such a meeting be held.

- (5) The procedure at meetings of a health and safety committee shall be determined by the committee.
- (6) (a) A health and safety committee may co-opt one or more persons by reason of his or their particular knowledge of health or safety matters as an advisory member or as advisory members of the committee.

(b) An advisory member shall not be entitled to vote on any matter before the committee.
- (7) If an inspector is of the opinion that the number of health and safety committees established for any particular workplace is inadequate, he may in writing direct the employer to establish for such workplace such number of health and safety committees as the inspector may determine.

20. Functions of health and safety committees

- (1) A health and safety committee-
 - (a) may make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the workplace or any section thereof for which such committee has been established;
 - (b) shall discuss any incident at the workplace or section thereof in which or in consequence of which any person was injured, became ill or died, and may in writing report on the incident to an inspector; and
 - (c) shall perform such other functions as may be prescribed.
- (2) A health and safety committee shall keep record of each recommendation made to an employer in terms of subsection (1) (a) and of any report made to an inspector in terms of subsection (1) (b).
- (3) A health and safety committee or a member thereof shall not incur any civil liability by reason of the fact only that it or he failed to do anything which it or he may or is required to do in terms of this Act.
- (4) An employer shall take the prescribed steps to ensure that a health and safety committee complies with the provisions of section 19 (4) and performs the duties assigned to it by subsections (1) and (2).

21. General prohibitions

- (1) The Minister may by notice in the Gazette declare-
 - (a) that no employer shall require or permit any employee belonging to a category of employees specified in the notice to perform work on or in any premises on or in which an activity specified in the notice is carried out which in the opinion of the Minister is an activity which threatens or is likely to threaten the health or safety of an employee belonging to that category of employees, or that no employer shall require or permit any such employee to perform any work on or in such premises otherwise than on the conditions specified in the notice;
 - (b) that no employer shall require or permit any employee to perform any work in connection with the carrying out

of a process specified in the notice which in the opinion of the Minister is a process which threatens or is likely to threaten the health or safety of an employee, or that no employer shall require or permit an employee to perform any work in connection with the carrying out of such a process otherwise than on the conditions specified in the notice; and

- (c) that no employer shall require or permit any employee, otherwise than on the conditions specified in the notice, to perform any work on or in any premises where an article or substance specified in the notice is produced, processed, used, handled, stored or transported which in the opinion of the Minister is an article or substance which threatens or is likely to threaten the health or safety of an employee.
- (2)
 - (a) The Minister shall, before he publishes a notice under subsection (1), cause a draft of his proposed notice to be published in the Gazette and at the same time invite interested persons to submit to him in writing, within a specified period, comments and representations in connection with the proposed notice.

(b) The provisions of paragraph (a) shall not apply if the Minister, in pursuance of comments and representations received, decides to publish the notice referred to in subsection (1) in an amended form.
 - (3) A notice under subsection (1) may at any time be amended or withdrawn by like notice.
 - (4) A notice shall not be issued under subsection (1) or (3) unless the Minister for National Health and Welfare and the Council have been consulted.
 - (5) A notice issued or deemed to have been issued under section 13 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), and which was in force immediately prior to the commencement of this Act, shall be deemed to have been issued under this section.

22. Sale of certain articles prohibited

Subject to the provisions of section 10 (4), if any requirement (including any health and safety standard) in respect of any article, substance, plant, machinery or health and safety equipment or for the use or application thereof has been prescribed, no person shall sell or market in any manner whatsoever such article, substance, plant, machinery or health and safety equipment unless it complies with that requirement.

23. Certain deductions prohibited

No employer shall in respect of anything which he is in terms of this Act required to provide or to do in the interest of the health or safety of an employee, make any deduction from any employee's remuneration or require or permit any employee to make any payment to him or any other person. [S. 23 substituted by s. 6 of Act No. 181 of 1993.]

24. Report to inspector regarding certain incidents

- (1) Each incident occurring at work or arising out of or in connection with the activities of persons at work, or in connection with the use of plant or machinery, in which, or in consequence of which-
 - (a) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that he is likely either to die

or to suffer a permanent physical defect or likely to be unable for a period of at least 14 days either to work or to continue with the activity for which he was employed or is usually employed;

- (b) a major incident occurred; or
- (c) the health or safety of any person was endangered and where-
 - (i) a dangerous substance was spilled;
 - (ii) the uncontrolled release of any substance under pressure took place;
 - (iii) machinery or any part thereof fractured or failed resulting in flying, falling or uncontrolled moving objects; or
 - (iv) machinery ran out of control, shall, within the prescribed period and in the prescribed manner, be reported to an inspector by the employer or the user of the plant or machinery concerned, as the case may be.

(2) In the event of an incident in which a person died, or was injured to such an extent that he is likely to die, or suffered the loss of a limb or part of a limb, no person shall without the consent of an inspector disturb the site at which the incident occurred or remove any article or substance involved in the incident therefrom: Provided that such action may be taken as is necessary to prevent a further incident, to remove the injured or dead, or to rescue persons from danger.

(3) The provisions of subsections (1) and (2) shall not apply in respect of-

- (a) a traffic accident on a public road;
- (b) an incident occurring in a private household, provided the householder forthwith reports the incident to the South African Police; or
- (c) any accident which is to be investigated under section 12 of the Aviation Act, 1962 (Act No. 74 of 1962).

(4) A member of the South African Police to whom an incident was reported in terms of subsection (3) (b), shall forthwith notify an inspector thereof.

25. Report to chief inspector regarding occupational disease

Any medical practitioner who examines or treats a person for a disease described in the Second Schedule to the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or any other disease which he believes arose out of that person's employment, shall within the prescribed period and in the prescribed manner report the case to the person's employer and to the chief inspector, and inform that person accordingly. [S. 25 substituted by s. 7 of Act No. 181 of 1993.]

26. Victimization forbidden

(1) No employer shall dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by that employer to his disadvantage, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that that employee has given information to the Minister or to any other person charged with the administration of a provision of this Act which in terms of this Act he is required to give or which relates to the

terms, conditions or circumstances of his employment or to those of any other employee of his employer, or has complied with a lawful prohibition, requirement, request or direction of an inspector, or has given evidence before a court of law or the industrial court, or has done anything which he may or is required to do in terms of this Act or has refused to do anything which he is prohibited from doing in terms of this Act.

(2) No employer shall unfairly dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by that employer to his disadvantage, by reason of the information that the employer has obtained regarding the results contemplated in section 12 (2) or by reason of a report made to the employer in terms of section 25. [Sub-s. (2) added by s. 8 of Act No. 181 of 1993.]

27. Designation and functions of chief inspector

(1) The Minister shall designate an officer serving in the Department as chief inspector for the purposes of this Act.

(2) The chief inspector shall perform his functions subject to the control and supervision of the Director-General of the Department and may perform any function assigned to an inspector by this Act.

(3) (a) The chief inspector may delegate any power conferred upon him by this Act, excluding a power referred to in section 35 (1) or delegated to him under section 42, to any other officer or authorize any such officer to perform any duty assigned to him by this Act.

(b) No delegation of a power under paragraph (a) shall prevent the exercise of such power by the chief inspector himself.

(4) Whenever the chief inspector is absent or unable to perform his functions as chief inspector or whenever the designation of a chief inspector is pending, the Minister may designate any other officer serving in the Department to act as chief inspector during the chief inspector's absence or incapacity or until a chief inspector is designated.

(5) Any person who immediately prior to the commencement of this Act was designated as chief inspector under section 19 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), shall be deemed to have been designated as chief inspector under subsection (1) of this section.

28. Designation of inspectors by Minister

(1) The Minister may designate any person as an inspector to perform, subject to the control and directions of the chief inspector, any or all of the functions assigned to an inspector by this Act.

(2) Each inspector designated under subsection (1) shall be furnished with a certificate signed by or on behalf of the Minister and stating that he has been designated as an inspector: Provided that if his designation as inspector is limited to any particular function or functions, his certificate shall state such limitation.

(3) Whenever an inspector designated under subsection (1) performs a function under this Act in the presence of any person affected thereby the inspector shall on demand by such person produce to him the certificate referred to in subsection (2).

- (4) Any officer who immediately prior to the commencement of this Act was designated as an inspector under section 20 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), shall be deemed to have been designated as an inspector under subsection (1) of this section.

29. Functions of inspectors

- (1) An inspector may, for the purposes of this Act-
- (a) without previous notice, at all reasonable times, enter any premises which are occupied or used by an employer or on or in which an employee performs any work or any plant or machinery is used, or which he suspects to be such premises;
 - (b) question any person who is or was on or in such premises, either alone or in the presence of any other person, on any matter to which this Act relates;
 - (c) require from any person who has control over or custody of a book, record or other document on or in those premises, to produce to him forthwith, or at such time and place as may be determined by him, such book, record or other document;
 - (d) examine any such book, record or other document or make a copy thereof or an extract therefrom;
 - (e) require from such a person an explanation of any entry in such book, record or other document;
 - (f) inspect any article, substance, plant or machinery which is or was on or in those premises, or any work performed on or in those premises or any condition prevalent on or in those premises or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
 - (g) seize any such book, record or other document or any such article, substance, plant or machinery or a part or sample thereof which in his opinion may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the employer or user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;
 - (h) direct any employer, employee or user, including any former employer, employee or user, to appear before him at such time and place as may be determined by him and question such employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;
 - (i) perform any other function as may be prescribed.
- (2) (a) An interpreter, a member of the South African Police or any other assistant may, when required by an inspector, accompany him when he performs his functions under this Act.
- (b) For the purposes of this Act an inspector's assistant shall, while he acts under the instructions of an inspector, be deemed to be an inspector.
- (3) When an inspector enters any premises under subsection (1) the employer occupying or using those premises and each employee performing any work thereon or therein and any user of plant or machinery thereon or therein, shall at all times provide such facilities as are reasonably required by the inspector to enable him and his assistant (if any) to perform effectively and safely his or their functions under this

Act.

- (4) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (1) (f) or (g), he shall issue a receipt to the owner or person in control thereof.

30. Special powers of inspectors

- (1) (a) Whenever an employer performs an act or requires or permits an act to be performed, or proposes to perform an act or to require or permit an act to be performed, which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person, the inspector may in writing prohibit that employer from continuing or commencing with the performance of that act or from requiring or permitting that act to be continued or commenced with, as the case may be.
- (b) Whenever a user of plant or machinery uses or proposes to use any plant or machinery, in a manner or in circumstances which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person who works with such plant or machinery or who is or may come within the vicinity thereof, the inspector may in writing prohibit that user from continuing or commencing with the use of such plant or machinery or in that manner or those circumstances, as the case may be.
- (c) An inspector may in writing prohibit an employer from requiring or permitting an employee or any employee belonging to a category of employees specified in the prohibition to be exposed in the course of his employment for a longer period than a period specified in the prohibition, to any article, substance, organism or condition which in the opinion of an inspector threatens or is likely to threaten the health or safety of that employee or the employee belonging to that category of employees, as the case may be.
- (d) A prohibition imposed under paragraph (a), (b) or (c) may at any time be revoked by an inspector in writing if arrangements to the satisfaction of the inspector have been made to dispose of the threat which gave rise to the imposition of the prohibition.
- (2) In order to enforce a prohibition imposed under subsection (1) (a) or (b), an inspector may block, bar, barricade or fence off that part of the workplace, plant or machinery to which the prohibition applies, and no person shall interfere with or remove such blocking, bar, barricade or fence.
- (3) Whenever an inspector is of the opinion that the health or safety of any person at a workplace or in the course of his employment or in connection with the use of plant or machinery is threatened on account of the refusal or failure of an employer or a user, as the case may be, to take reasonable steps in the interest of such person's health or safety, the inspector may in writing direct that employer or user to take such steps as are specified in the direction within a specified period.
- (4) Whenever an inspector is of the opinion that an employer or a user has failed to comply with a provision of a regulation applicable to him, the inspector may in writing direct that employer or user to take within a period specified in the direction such steps as in the inspector's opinion are necessary to comply with the said provision, and are specified in the direction.
- (5) A period contemplated in subsection (3) or (4) may at any time be extended by an inspector by notice in writing to the person concerned.

- (6) An employer shall forthwith bring the contents of a prohibition, direction or notice under this section to the attention of the health and safety representatives and employees concerned.

31. Investigations

- (1) An inspector may investigate the circumstances of any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of any person in order to determine whether it is necessary to hold a formal investigation in terms of section 32.
- (2) After completing the investigation in terms of subsection (1) the inspector shall submit a written report thereon, together with all relevant statements, documents and information gathered by him, to the attorney-general within whose area of jurisdiction such incident occurred and he shall at the same time submit a copy of the report, statements and documents to the chief inspector.
- (3) Upon receipt of a report referred to in subsection (2), the attorney-general shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959), or the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the case may be.
- (4) An inspector holding an investigation shall not incur any civil liability by virtue of anything contained in the report referred to in subsection (2).

32. Formal inquiries

- (1) The chief inspector may, and he shall when so requested by a person producing *prima facie* (at first glance) evidence of an offence, direct an inspector to conduct a formal inquiry into any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the chief inspector could have resulted, in the injury, illness or death of any person.
- (2) For the purposes of an inquiry referred to in subsection (1) an inspector may subpoena any person to appear before him on a day and at a place specified in the subpoena and to give evidence or to produce any book, document or thing which in the opinion of the inspector has a bearing on the subject of the inquiry.
- (3) Save as is otherwise provided in this section, the law governing criminal trials in magistrates' courts shall *mutatis mutandis* (subject to the necessary alterations / amendments) apply to obtaining the attendance of witnesses at an inquiry under this section, the administering of an oath or affirmation to them, their examination, the payment of witness fees to them and the production by them of books, documents and things.
- (4) Any inquiry under this section shall be held in public: Provided that the presiding inspector may exclude from the place where the inquiry is held, any person whose presence is, in his opinion, undesirable or not in the public interest.
- (5) (a) The presiding inspector may designate any person to lead evidence and to examine any witness giving evidence at a formal inquiry.
- (b) Any person who has an interest in the issue of the formal inquiry may personally or by representative, advocate or attorney put such questions to a witness at the inquiry to such extent as the presiding inspector may allow.

- (c) The following persons shall have an interest as referred to in paragraph (b), namely-

- (i) any person who was injured or suffered damage as a result of the incident forming the subject of the inquiry;
- (ii) the employer or user, as the case may be, involved in the incident;
- (iii) any person in respect of whom in the opinion of the presiding inspector it can reasonably be inferred from the evidence that he could be held responsible for the incident;
- (iv) a trade union recognized by the employer concerned or any trade union of which a person referred to in subparagraph (i) or (iii) is a member;
- (v) any owner or occupier of any premises where the said incident occurred;
- (vi) any other person who, at the discretion of the presiding inspector, can prove such interest.

- (6) (a) An inquiry may, if it is necessary or expedient, be adjourned at any time by the presiding inspector.
- (b) An inquiry adjourned under paragraph (a) may at any stage be continued by an inspector other than the inspector before whom the inquiry commenced, and may after an adjournment again be continued by the inspector before whom the inquiry commenced.
- (7) An affidavit made by any person in connection with the incident in respect of which the inquiry is held, shall at the discretion of the presiding inspector upon production be admissible as proof of the facts stated therein, and the presiding inspector may, at his discretion, subpoena the person who made such an affidavit to give oral evidence at the inquiry or may submit written interrogatories to him for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence at the inquiry: Provided that the presiding inspector shall afford any person present at the inquiry the opportunity to refute the facts stated in such document, evidence or reply.
- (8) (a) Whenever in the course of any inquiry it appears to the presiding inspector that the examination of a witness is necessary and that the attendance of such witness cannot be procured without a measure of delay, expense or inconvenience which in the circumstances would be unreasonable, the presiding inspector may dispense with such attendance and may appoint a person to be a commissioner to take the evidence of such witness, whether within or outside the Republic, in regard to such matters or facts as the presiding inspector may indicate.
- (b) Any person referred to in subsection (5) (b) may in person or through a representative, advocate or attorney appear before such commissioner in order to examine the said witness.
- (c) The evidence recorded in terms of this subsection shall be admissible in evidence at the inquiry.
- (9) At the conclusion of an inquiry under this section, the presiding inspector shall compile a written report thereon.
- (10) The evidence given at any inquiry under this section shall be recorded and a copy thereof shall be submitted by the presiding inspector together with his report to the chief inspector, and in the case of an incident in which or as a result

of which any person died or was seriously injured or became ill, the inspector shall submit a copy of the said evidence and the report to the attorney-general within whose area of jurisdiction such incident occurred.

- (11) Nothing contained in this section shall be construed as preventing the institution of criminal proceedings against any person or as preventing any person authorized thereto from issuing a warrant for the arrest of or arresting any person, whether or not an inquiry has already commenced.
- (12) Upon receipt of a report referred to in subsection (10), the attorney-general shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959), or the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the case may be.
- (13) An inspector presiding at any formal inquiry shall not incur any civil liability by virtue of anything contained in the report compiled in terms of subsection (9).

33. Joint inquiries

- (1) The provisions of section 32 shall not affect the provisions of any law requiring and regulating inquests or other inquiries in case of death resulting from other than natural causes, and in respect of each incident referred to in that section in which or in consequence of which any person has died there shall be held, in addition to an inquiry under the said section, such inquest or inquiry as is required by any such law, but an inquiry under the said section and an inquest held by a judicial officer under the Inquests Act, 1959 (Act No. 58 of 1959), may be held jointly.
- (2) At such a joint inquiry and inquest the judicial officer shall preside and thereupon the provisions of the Inquests Act, 1959, shall apply, but the inspector and the judicial officer shall each make the report required of them by section 32 (9) and that Act, respectively.

34. Obstruction of investigation or inquiry or presiding inspector or failure to render assistance

- (1) No person shall, in relation to any investigation or inquiry held in terms of section 31 or 32-
 - (a) without reasonable justification fail to comply with any lawful direction, subpoena, request or order issued or given by the presiding inspector;
 - (b) refuse or fail to answer to the best of his knowledge any question lawfully put to him by or with the concurrence of the presiding inspector: Provided that no person shall be obliged to answer any question whereby he may incriminate himself;
 - (c) in any manner whatsoever advise, encourage, incite, order or persuade any person who has been directed, subpoenaed, requested or ordered to do something by the presiding inspector, not to comply with such direction, subpoena, request or order or in any manner prevent him from doing so;
 - (d) refuse or fail, when required thereto by the presiding inspector, to furnish him with the means or to render him the necessary assistance for holding such inquiry;
 - (e) refuse or fail, when required thereto by the presiding inspector, to attend an inquiry; or
 - (f) intentionally insult the presiding inspector or his assistant or intentionally interrupt the proceedings thereof.

35. Appeal against decision of inspector

- (1) Any person aggrieved by any decision taken by an inspector under a provision of this Act may appeal against such decision to the chief inspector, and the chief inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm, set aside or vary the decision or substitute for such decision any other decision which the inspector in the chief inspector's opinion ought to have taken.
- (2) Any person who wishes to appeal in terms of subsection (1), shall within 60 days after the inspector's decision was made known, lodge such an appeal with the chief inspector in writing, setting out the grounds on which it is made.
- (3) Any person aggrieved by a decision taken by the chief inspector under subsection (1) or in the exercise of any power under this Act, may appeal against such decision to the industrial court, and the industrial court shall inquire into and consider the matter forming the subject of the appeal and confirm, set aside or vary the decision or substitute for such decision any other decision which the chief inspector in the opinion of the industrial court ought to have taken.
- (4) Any person who wishes to appeal in terms of subsection (3), shall within 60 days after the chief inspector's decision was given, lodge such appeal with the registrar of the industrial court in accordance with the rules of the industrial court.
- (5) An appeal under subsection (1) or (3) in connection with a prohibition imposed under section 30 (1) (a) or (b) shall not suspend the operation of such prohibition.

36. Disclosure of information

No person shall disclose any information concerning the affairs of any other person obtained by him in carrying out his functions in terms of this Act, except-

- (a) to the extent to which it may be necessary for the proper administration of a provision of this Act;
- (b) for the purposes of the administration of justice; or
- (c) at the request of a health and safety representative or a health and safety committee entitled thereto.

37. Acts or omissions by employees or mandataries

- (1) Whenever an employee does or omits to do any act which it would be an offence in terms of this Act for the employer of such employee or a user to do or omit to do, then, unless it is proved that-
 - (a) in doing or omitting to do that act the employee was acting without the connivance or permission of the employer or any such user;
 - (b) it was not under any condition or in any circumstance within the scope of the authority of the employee to do or omit to do an act, whether lawful or unlawful, of the character of the act or omission charged; and
 - (c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question, the employer or any such user himself shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect hereof; and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

- (2) The provisions of subsection (1) shall *mutatis mutandis* (subject to the necessary alterations / amendments) apply in the case of a mandatary of any employer or user, except if the parties have agreed in writing to the arrangements and procedures between them to ensure compliance by the mandatary with the provisions of this Act.
- (3) Whenever any employee or mandatary of any employer or user does or omits to do an act which it would be an offence in terms of this Act for the employer or any such user to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the employer or user.
- (4) Whenever any employee or mandatary of the State commits or omits to do an act which would be an offence in terms of this Act, had he been the employee or mandatary of an employer other than the State and had such employer committed or omitted to do that act, he shall be liable to be convicted and sentenced in respect thereof as if he were such an employer.
- (5) Any employee or mandatary referred to in subsection (3) may be so convicted and sentenced in addition to the employer or user.
- (6) Whenever the employee or mandatary of an employer is convicted of an offence consisting of a contravention of section 23, the court shall, when making an order under section 38 (4), make such an order against the employer and not against such employee or mandatary.
- (k) having been called under section 32, without sufficient cause (the onus of proof whereof shall rest upon him)-
- (i) refuses to appear before the inspector;
 - (ii) refuses to be sworn or to make affirmation as a witness after he has been directed to do so;
 - (iii) refuses to answer, or fails to answer to the best of his knowledge and belief, any question put to him; or
 - (iv) refuses to comply with a requirement to produce a book, document or thing specified in the subpoena or which he has with him;
- (l) tampers with or discourages, threatens, deceives or in any way unduly influences any person with regard to evidence to be given or with regard to a book, document or thing to be produced by such a person before an inspector under section 32;
- (m) prejudices, influences or anticipates the proceedings or findings of an inquiry under section 32 or 33;
- (n) tampers with or misuses any safety equipment installed or provided to any person by an employer or user;
- (o) fails to use any safety equipment at a workplace or in the course of his employment or in connection with the use of plant or machinery, which was provided to him by an employer or such a user;

38. Offences, penalties and special orders of court

- (1) Any person who-
- (a) contravenes or fails to comply with a provision of section 7, 8, 9, 10 (1), (2) or (3), 12, 13, 14, 15, 16 (1) or (2), 17 (1), (2) or (5), 18 (3), 19 (1), 20 (2) or (4), 22, 23, 24 (1) or (2), 25, 26, 29 (3), 30 (2) or (6), 34 or 36;
 - (b) contravenes or fails to comply with a direction or notice under section 17 (6), 19 (4) or (7), 21 (1) or 30 (1) (a), (b) or (c) or (3), (4) or (6);
 - (c) contravenes or fails to comply with a condition of an exemption under section 40 (1);
 - (d) in any record, application, statement or other document referred to in this Act wilfully furnishes information or makes a statement which is false in any material respect;
 - (e) hinders or obstructs an inspector in the performance of his functions; refuses or fails to comply to the best of his ability with any requirement or request made by an inspector in the performance of his functions;
 - (f) deleted
 - (g) refuses or fails to answer to the best of his ability any question which an inspector in the performance of his functions has put to him;
 - (h) wilfully furnishes to an inspector information which is false or misleading;
 - (i) gives himself out as an inspector;
 - (j) having been subpoenaed under section 32 to appear before an inspector, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend on the day and at the place specified in the subpoena, or fails to remain in attendance until the inspector has excused him from further attendance;
- (2) Any employer who does or omits to do an act, thereby causing any person to be injured at a workplace, or, in the case of a person employed by him, to be injured at any place in the course of his employment, or any user who does or omits to do an act in connection with the use of plant or machinery, thereby causing any person to be injured, shall be guilty of an offence if that employer or user, as the case may be, would in respect of that act or omission have been guilty of the offence of culpable homicide had that act or omission caused the death of the said person, irrespective of whether or not the injury could have led to the death of such person, and on conviction be liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (3) Whenever a person is convicted of an offence consisting of a failure to comply with a provision of this Act or of any direction or notice issued thereunder, the court convicting him may, in addition to any punishment imposed on him in respect of that offence, issue an order requiring him to comply with the said provision within a period determined by the court.
- (4) Whenever an employer is convicted of an offence consisting of a contravention of a provision of section 23, the court convicting him shall inquire into and determine the amount which contrary to the said provision was deducted from the remuneration of the employee concerned or recovered from him and shall then act with respect to the said amount *mutatis mutandis* (subject to the necessary alterations / amendments) in accordance with sections 28 and 29 of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983), as if such amount is an amount underpaid within the meaning of those sections.

39. Proof of certain facts

- (1) Whenever in any legal proceedings in terms of this Act it is proved that any person was present on or in any premises, that person shall, unless the contrary is proved, be presumed to be an employee.
- (2) In the absence of satisfactory proof of age, the age of any person shall, in any legal proceedings in terms of this Act, be presumed to be that stated by an inspector to be in his opinion the probable age of the person; but any person having an interest who is dissatisfied with that statement of opinion may, at his own expense, require that the person whose age is in question appear before and be examined by a district surgeon, and a statement contained in a certificate by a district surgeon who examined that person as to what in his opinion is the probable age of that person shall, but only for the purpose of the said proceedings, be conclusive proof of the age of that person.
- (3) In any legal proceedings in terms of this Act, any statement or entry contained in any book or document kept by any employer or user or by his employee or mandatary, or found on or in any premises occupied or used by that employer or user, and any copy or reproduction of any such statement or entry, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by that employer or user or by any employee or mandatary of that employer or user within the scope of his authority.
- (4) Whenever in any legal proceedings in terms of this Act it is proved that any untrue statement or entry is contained in any record kept by any person, he shall be presumed, until the contrary is proved, wilfully to have falsified that record.
- (5) (a) Whenever at the trial of any person charged with a contravention of section 22 it is proved that the accused sold or marketed any article, substance, plant, machinery or health and safety equipment contemplated in that section, it shall be presumed, until the contrary is proved, that such article, substance, plant, machinery or health and safety equipment did not at the time of the sale or marketing thereof comply with the said requirements.
(b) At any trial any document purporting to be a certificate or statement by an approved inspection authority and in which it is alleged that the article, substance, plant, machinery or health and safety equipment forming the subject of the charge complies with the requirements prescribed in respect thereof or with any particular standard, shall on its mere production at that trial by or on behalf of the accused be accepted as *prima facie* (at first glance) proof of the facts stated therein.
- (6) Notwithstanding the provisions of section 31 (3) of the Standards Act, 1993 (Act No. 29 of 1993), whenever in any legal proceedings in terms of this Act the question arises whether any document contains the text of a health and safety standard incorporated in the regulations under section 44, any document purporting to be a statement by a person who in that statement alleges that he is an inspector and that a particular document contains the said text, shall on its mere production at those proceedings by any person be *prima facie* (at first glance) proof of the facts stated therein.
- (7) The records to be kept by a health and safety committee in terms of section 20 (2), including any document purporting to be certified by an inspector as a true extract from any such records, shall on their mere production at any legal proceedings by any person be admissible as evidence of the fact that a recommendation or report recorded in such records was made by a health and safety committee to an employer or inspector concerned.

40. Exemptions

- (1) The Minister may, for such period and on such conditions as may be determined by him, exempt any employer or user or any category of employers or users, generally or with respect to any particular employee or category of employees or users or with respect to any matter, from any of or all the provisions of this Act or the provisions of a notice or direction issued under this Act.
- (2) The period for which exemption may be granted under subsection (1) may commence on a date earlier than the date on which exemption is granted, but not earlier than the date on which application for such exemption was made to the Minister.
- (3) An exemption under subsection (1) shall-
 - (a) in the case of the exemption of a particular employer or user, be granted by issuing to such employer or user a certificate of exemption in which his name and the scope, period and conditions of the exemption are specified;
 - (b) in the case of the exemption of a category of employers or of a category of such users, be granted by the publication in the Gazette of a notice in which that category of employers or users is described and the scope, period and conditions of the exemption are specified: Provided that the Minister may grant exemption-
 - (i) to an organisation of employers or an organisation of users in accordance with the requirements of either paragraph (a) or paragraph (b);
 - (ii) from any health and safety standard incorporated in the regulations under section 44, in any manner which he may deem expedient.
- (4) A certificate of exemption contemplated in subsection (3) (a) and a notice contemplated in subsection (3) (b) may at any time be amended or withdrawn by the Minister.
- (5) An exemption under subsection (1) shall lapse-
 - (a) upon termination of the period for which it was granted;
 - (b) upon withdrawal of the relevant certificate or notice under subsection (4).
- (6) Any exemption granted under section 32 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), to the extent to which it grants exemption from the operation of a provision similar to a provision in respect of which exemption may be granted under subsection (1) of this section, which exemption has at the commencement of this Act not lapsed as contemplated in subsection (5) of the said section 32, shall be deemed to have been granted under this section.

41. This Act not affected by agreements

Subject to the provisions of sections 10 (4) and 37 (2), a provision of this Act or a condition specified in any notice or direction issued thereunder or subject to which exemption was granted to any person under section 40, shall not be affected by any condition of any agreement, whether such agreement was entered into before or after the commencement of this Act or before or after the imposition of any such condition, as the case may be.

42. Delegation and assignment of functions

- (1) The Minister may delegate any power conferred upon him by or under this Act, except the power contemplated in section 43, to an officer.
- (2) A delegation under subsection (1) shall not prevent the exercise of the relevant power by the Minister himself.
- (3) The Minister may authorize any provincial administration or local authority to perform any function referred to in this Act.
- (4) An authorization under subsection (3) shall not prevent the performance of the relevant function by the Minister, the chief inspector or an inspector, as the case may be.

43. Regulations

- (1) The Minister may make regulations-

- (a) as to any matter which in terms of this Act shall or may be prescribed;
- (b) which in the opinion of the Minister are necessary or expedient in the interest of the health and safety of persons at work or the health and safety of persons in connection with the use of plant or machinery, or the protection of persons other than persons at work against risks to health and safety arising from or connected with the activities of persons at work, including regulations as to-
 - (i) the planning, layout, construction, use, alteration, repair, maintenance or demolition of buildings;
 - (ii) the design, manufacture, construction, installation, operation, use, handling, alteration, repair, maintenance or conveyance of plant, machinery or health and safety equipment;
 - (iii) the training, safety equipment or facilities to be provided by employers or users, the persons to whom and the circumstances in which they are to be provided and the application thereof;
 - (iv) the health or safety measures to be taken by employers or users;
 - (v) the occupational hygiene measures to be taken by employers or users;
 - (vi) any matter regarding the biological monitoring or medical surveillance of employees;
 - (vii) the production, processing, use, handling, storage or transport of, and the exposure of employees and other persons to, hazardous articles, substances or organisms or potentially hazardous articles, substances or organisms, including specific limits, thresholds or indices of or for such exposure;
 - (viii) the performance of work in hazardous or potentially hazardous conditions or circumstances;
 - (ix) the emergency equipment and medicine to be held available by employers and users, the places where such equipment and medicine are to be held, the requirements with which such equipment and medicine shall comply, the inspection of such equipment and medicine, the application of first-aid and the qualifications which persons applying first-aid shall possess;

- (x) the compilation by employers of health and safety directives in respect of a workplace, the matters to be dealt with in such directives and the manner in which such directives shall be brought to the attention of employees and other persons at such a workplace;
- (xi) the registration of persons performing hazardous work or using or handling plant or machinery, the qualifications which such persons shall possess and the fees payable to the State in respect of such registration;
- (xii) the accreditation, functions, duties and activities of approved inspection authorities;
- (xiii) the consultations between an employer and employees on matters of health and safety;
- (xiv) subject to section 36, the provision of information by an employer or user to employees or the public on any matter to which this Act relates;
- (xv) the conditions under which any employer is prohibited from permitting any person to partake of food or to smoke on or in any premises where a specified activity is carried out;
- (xvi) the conditions under which the manufacture of explosives and activities incidental thereto may take place;
- (c) as to the preventive and protective measures for major hazard installations with a view to the protection of employees and the public against the risk of major incidents;
- (d) as to the registration of premises where employees perform any work or where plant or machinery is used and the fee payable to the State in respect of such registration;
- (e) whereby provision is made for the continuation of any registration under this Act;
- (f) as to the registration of plant and machinery and the fee payable to the State in respect of such registration;
- (g) as to the establishment of one or more committees for the administration of a provision of the regulations, the constitution of such committees, the functions of such committees, the procedure to be followed at meetings of such committees, the allowances which may be paid to members of such committees from money appropriated by Parliament for such purpose and the person by whom such allowances shall be fixed;
- (h) prescribing the records to be kept and the returns to be rendered by employers and users and the person or persons to whom such returns shall be rendered;
- (i) as to the designation and functions of health and safety representatives and health and safety committees and the training of health and safety representatives;

- (j) as to the activities of self-employed persons; and
- (k) as to any other matter the regulation of which is in the opinion of the Minister necessary or desirable for the effective carrying out of the provisions of this Act.

- (2) No regulation shall be made by the Minister except after consultation with the Council, and no regulation relating to State income or expenditure or to any health matter shall be made by the Minister except after consultation also with the Minister of State Expenditure and the Minister for National Health and Welfare, respectively.
- (3) In making regulations the Minister may apply any method of differentiation that he may deem advisable: Provided that no differentiation on the basis of race or colour shall be made.
- (4) A regulation may in respect of any contravention thereof or failure to comply therewith prescribe a penalty of a fine, or imprisonment for a period not exceeding 12 months, and, in the case of a continuous offence, not exceeding an additional fine of R200 or additional imprisonment of one day for each day on which the offence continues: Provided that the period of such additional imprisonment shall not exceed 90 days.
- (5) A regulation made under section 35 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), which was in force immediately prior to the commencement of this Act and which could have been made under this section, shall be deemed to have been made under this section.

44. Incorporation of health and safety standards in regulations

- (1) The Minister may by notice in the Gazette incorporate in the regulations any health and safety standard or part thereof, without stating the text thereof, by mere reference to the number, title and year of issue of that health and safety standard or to any other particulars by which that health and safety standard is sufficiently identified.
- (2) No health and safety standard shall be incorporated in the regulations except after consultation with the Council.
- (3) Any health and safety standard incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not repugnant to any regulation made under section 43, be deemed to be a regulation, but not before the expiry of two months from the date of incorporation thereof.
- (4) Whenever any health and safety standard is at any time after the incorporation thereof as aforesaid, amended or substituted by the competent authority, the notice incorporating that health and safety standard shall, unless otherwise stated therein, be deemed to refer to that health and safety standard as so amended or substituted, as the case may be.
- (5) The chief inspector shall keep a register of particulars of every publication in which a health and safety standard incorporated in the regulations under subsection (1), and every amendment or substitution of any such health and

safety standard, was published, and also of the place in the Republic where such publication is obtainable or otherwise available for inspection, and he shall make that register or an extract therefrom available free of charge to persons having an interest, for inspection

- (6) The provisions of section 31 of the Standards Act, 1993 (Act No. 29 of 1993), shall not apply to any incorporation of a health and safety standard or of any amendment or substitution of a health and safety standard under this section.
- (7) Any safety standard which was immediately prior to the commencement of this Act incorporated under section 36 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), in the regulations made under that Act, shall be deemed to be a health and safety standard incorporated under this section.

45. Serving of notices

Unless another method is prescribed, a notice under this Act shall be served-

- (a) by delivering a copy thereof to the person upon whom it is to be served;
- (b) by leaving such a copy at the usual or last known place of residence or business of such a person; or
- (c) by sending such a copy by registered post to the usual or last known place of residence or business of such a person.

46. Jurisdiction of magistrates' courts

Notwithstanding anything to the contrary contained in any law-

- (a) a magistrate's court shall have jurisdiction to impose any penalty or to make any order provided for in this Act;
- (b) no magistrate's court shall be competent to pronounce upon the validity of any regulation made under this Act.

47. State bound

This Act shall bind the State.

48. Conflict of provisions

In so far as any provision of the Explosives Act, 1956 (Act No. 26 of 1956), is repugnant to a provision of this Act the provisions of this Act shall apply.

49. Repeal of laws

The Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), the Machinery and Occupational Safety Amendment Act, 1989 (Act No. 40 of 1989), and the Machinery and Occupational Safety Amendment Act, 1991 (Act No. 97 of 1991), are hereby repealed.

50. Short title and commencement

- (1) This Act shall be called the Occupational Health and Safety Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.
- (2) Different dates may be so fixed in respect of different provisions of this Act. ■

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Website: <http://www.ceta.org.za>

Chemical Industries Education and Training Authority (CHIETA)

Street Address: 2 Clamart Road, Richmond
Johannesburg, 2092
Postal Address: PO Box 961, Auckland Park, 2006
Telephone: (011) 628-7000
Facsimile (CEO): (011) 726-7777
Facsimile (Skills): (011) 726-7777
Call Centre: 0860 244 382
E-mail: headoffice@chieta.org.za
Website: <http://www.chieta.org.za>

Clothing, Textiles, Footwear and Leather SETA (CTFL)

Street Address: 3rd Floor, Umdoni Centre, 28 Crompton
Street, Pinetown, 3610
Postal Address: PO Box 935, Pinetown, 3610
Telephone: (031) 702-4482
Facsimile: (031) 702-4113
E-mail: info@ctflseta.org.za
Website: <http://www.ctflseta.org.za>

Culture, Arts, Tourism, Hospitality and Sport Education and Training Authority (CATHSSETA)

Street Address: 3rd Floor, Block E, Sandhurst Office Park,
Cnr Katherine & Rivonia Rds, Sandton
Postal Address: PO Box 1329, Rivonia, 2128
Call Centre: 0860 100 221
Telephone: (011) 217-0600
Facsimile: (011) 783-7745
E-mail: info@cathsseta.org.za
Website: <http://www.cathsseta.org.za>

Energy and Water Sector Education and Training Authority (ESETA)

Street Address: Sunnyside Office Park, MPF House,
2nd & 3rd Floors, 32 Princess of Wales
Terrace, Parktown, Johannesburg
Postal Address: PO Box 5983, Johannesburg, 2000
Telephone: (011) 274-4700
Facsimile: (011) 484-8953/1078
E-mail: info@eseta.org.za
Website: <http://www.eseta.org.za>

Education Training and Development Practices (ETDP)

Street Address: 24 Johnson Road, Riverwoods Office
Park, Bedfordview, Johannesburg
Postal Address: Private Bag X105, Melville, 2109
Telephone: (011) 372-3300
Facsimile: (011) 453-5379
Toll Free: 0800 383 773
E-mail: enquiries@etdpseta.org.za
Website: <http://www.etdpseta.org.za>

Financial and Accounting Services Sector Education and Training Authority (FASSET)

Street Address: Building 3, Ground Floor, 299 Pendering
Road, Blackheath, Randburg
Postal Address: PO Box 6801, Cresta, 2118
Telephone: (011) 476-8570
Facsimile: (011) 476-5756
Call Centre: 086 101 0001
E-mail: fassetcallcentre@fasset.org.za
Website: <http://www.fasset.org.za>

Processing & Manufacturing Sector Education and Training Authority (FP&M SETA)

Street Address: Tuscany Office Park, Building 2, Coombe
Place, Rivonia
Postal Address: PO Box 199, Rivonia, 2128
Telephone: (011) 234-2311
Facsimile: (011) 234-2350
E-mail: info@fpmseta.org.za
Website: <http://www.fpmseta.org.za>

Forest Industries Education Training Authority (FIETA)

Street Address: Forum Two, 4th Floor, Braampark
33 Hoofd St, Parktown, 2193
Johannesburg
Telephone: (011) 712-0600/1
Facsimile: (011) 339-1166
E-mail: mail@fieta.org.za
Website: <http://www.fieta.org.za>

Food and Beverages Manufacturing Industry Sector Education and Training Authority (FOODBEV)

Street Address: 13 Autumn Street, Cnr Rivonia &
Witkoppen, Rivonia, Johannesburg
Postal Address: PO Box 245, Gallo Manor, 2052
Telephone: (011) 253-7300
Facsimile: (011) 253-7333
E-mail: info@foodbev.co.za
Website: <http://www.foodbev.co.za>

Health and Welfare Sector Education and Training Authority (HWSETA)

Street Address: 2 Bradford Road, Cnr Bradford Road &
Smith Street, Bedfordview, Johannesburg
Postal Address: Private Bag X15, Gardenview, 2047
Telephone: (011) 607-6900
Facsimile: (011) 616-8939
E-mail: hwseta@hwseta.org.za
Website: <http://www.hwseta.org.za>

Insurance Sector Education and Training Authority (INSETA)

Street Address: Oakhurst, North Wing, Ground Floor
11 St Andrews Road, Parktown,
Johannesburg, 2193
Postal Address: PO Box 32035, Braamfontein, 2017
Telephone: (011) 544-2000
Facsimile: (011) 484-0862
E-mail: info@inseta.org.za
Website: <http://www.inseta.org.za>

Local Government Sector Education Training Authority (LGSETA)**WESTERN CAPE**

Street Address: 2nd Floor, Forrest House, Belmont Office Park, Belmont Road, Rondebosch
 Postal Address: PO Box 24662, Landsdowne, 7779
 Telephone: (021) 686-7081/2
 Facsimile: (021) 686-7083
 Website: <http://www.lgseta.co.za>

KWAZULU-NATAL

Street Address: Office 2301, 23rd Floor, Embassy Building, 199 Smith Street
 Postal Address: PO Box 3314, Durban, 4001
 Telephone: (031) 337-9085
 Facsimile: (031) 337-9281
 Website: <http://www.lgseta.co.za>

EASTERN CAPE

Street Address: 11 Tecoma Street, Berea, East London
 Postal Address: PO Box 7163, East London, 5200
 Telephone: (043) 726-2404
 Facsimile: (043) 726-1775
 Website: <http://www.lgseta.co.za>

PRETORIA (Mpumalanga and Limpopo)

Street Address: 536 Schoeman Street, Building Block A, 3rd Floor, Arcadia
 Postal Address: PO Box 12192, The Tramshed, Pretoria
 Telephone: (012) 323-0505
 Facsimile: (012) 323-0428
 Website: <http://www.lgseta.co.za>

FREE STATE

Street Address: 74 President Reitz, Westdene, 9304
 Postal Address: PO Box 2448, Bloemfontein, 9301
 Telephone: (051) 448-2481
 Facsimile: (051) 448-2218
 Website: <http://www.lgseta.co.za>

JOHANNESBURG (Gauteng and North West)

Street Address: 4/6 Corporate Park Building, Skeen Boulevard, Bedfordview, 2007
 Postal Address: PO Box 1964, Bedfordview, 2008
 Telephone: (011) 456-8579
 Facsimile: (011) 450-4948
 Website: <http://www.lgseta.co.za>

Media, Advertising, Information & Communication Technologies Sector Education & Training Authority (MICT)

Street Address: Block 2, Level 3 West, Gallagher House, Gallagher Estates, 19 Richards Drive, Midrand
 Postal Address: PO Box 5585, Halfway House, 1685
 Telephone: (011) 207-2600
 Facsimile: (011) 805-6833
 Website: <http://www.isett.org.za>

Media, Advertising, Publishing, Printing and Packaging SETA (MAPPP-SETA)**JOHANNESBURG**

Street Address: Tuscany Office Park, Building 2, Coombe Place, Rivonia, Sandton
 Postal Address: PO Box 199, Rivonia, 2128
 Telephone: (011) 234-2311
 Facsimile: (011) 234-2350
 Website: <http://www.mapppp-seta.co.za>

CAPE TOWN

Street Address: 301 Premier Centre, 451 Main Road, Observatory, Cape Town
 Postal Address: PO Box 351, Woodstock, 7915
 Telephone: (021) 447-3373
 Facsimile: (021) 447-3365
 Website: <http://www.mapppp-seta.co.za>

DURBAN

Street Address: 11 Speedwell Drive, Morningside, Durban
 Postal Address: PO Box 4009, The Square, 4021
 Telephone: (031) 303-6001
 Facsimile: (031) 303-6057
 Website: <http://www.mapppp-seta.co.za>

Manufacturing, Engineering and Related Services Sector Education and Training Authority (MERSETA)

Street Address: merSETA House, 95 7th Avenue, Cnr Rustenburg Road, Melville
 Johannesburg
 Postal Address: PO Box 61826, Marshalltown, 2107
 Telephone: (010) 219-3000
 Facsimile: (011) 484-5499
 E-mail: info@merseta.org.za
 Website: <http://www.merseta.org.za>

Mining Qualifications Authority (MQA)

Street Address: 4th Floor, Union Corporation Building 74-78 Marshall Street, Marshalltown
 Johannesburg
 Postal Address: Private Bag X118, Marshalltown, 2107
 Telephone: (011) 630-3500 (Switchboard)
 Facsimile: (011) 832-1027
 E-mail: info@mqa.org.za
 Website: <http://www.mqa.org.za>

Public Service Sector Education and Training Authority (PSETA)

Street Address: 420 Festival Road, Hatfield, Pretoria
 Postal Address: PO Box 11303, Hatfield, 0028
 Telephone: (012) 423-5700
 Facsimile: (012) 633-2878
 Website: <http://www.pseta.gov.za>

Safety and Security Sector Education & Training Authority (SASSETA)

Street Address: 3rd Level, Gallagher House, Richards Dr, Gallagher Estate, Midrand, 1685
 Postal Address: PO Box 7612, Halfway House, 1685
 Telephone: 086 110 2477 / (011) 347-0200
 Facsimile: (011) 805-6630
 E-mail: callcentre@sasseta.org.za
 Website: <http://www.sasseta.org.za>

Services Sector Education and Training Authority (SERVICES)

Street Address: Ristone Office Block South, 15 Sherborne Road, Parktown
 Postal Address: PO Box 3322, Houghton, 2041
 Telephone: (011) 276-9600
 Facsimile: (011) 276-9623
 Website: <http://www.serviceseta.org.za>

Transport Education Training Authority (TETA)

Street Address: 2nd Floor Sonsono Building, 344 Pretoria Avenue, Randburg
 Postal Address: Private Bag X10016, Randburg, 2125
 Telephone: (011) 781-1280
 Facsimile: (011) 886-2502
 E-mail: webadministrator@teta.org.za
 Website: <http://www.teta.org.za>

Wholesale and Retail SETA (W&RSETA)

Street Address: Riverside Office Park, Hennops House, 1303 Cnr Lenchen South and Heuwel Avenue, Centurion, Pretoria
 Postal Address: PO Box 9809, Centurion, 0046
 Telephone: (012) 622-9500
 Facsimile: (012) 665-2559
 E-mail: wrseta@wrseta.org.za
 Website: <http://www.wrseta.org.za>

SETA details are sometimes updated on the individual SETA websites and on www.dhet.gov.za

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION (CCMA) CONTACT DETAILS

MAIN CALL CENTRE NUMBER FOR ALL CCMA QUERIES 0861 16 16 16

CCMA NATIONAL HEAD OFFICE 28 Harrison Street, Johannesburg 2001, Private Bag X94, Marshalltown 2107
Tel: (011) 377-6650 / 6600 Fax: (011) 834-7351 Email: info@ccma.org.za

CCMA PROVINCIAL OFFICES

EASTERN CAPE (EAST LONDON)

Cnr Church & Oxford Street, East London 5201
Private Bag X9068, East London 5200
Tel: (043) 711-5400 Fax: (043) 743-0810
Email: el@ccma.org.za

EASTERN CAPE (PORT ELIZABETH)

107 Govan Mbeki Avenue, Port Elizabeth 6001
Private Bag X22500, Port Elizabeth 6000
Tel: (041) 505-4300 Fax: (041) 586-4410 / 4585
Email: pe@ccma.org.za

FREE STATE (BLOEMFONTEIN)

CCMA House, Cnr Elizabeth & West-Burger Streets,
Bloemfontein 9301
Private Bag X20705, Bloemfontein 9300
Tel: (051) 411-1700 Fax: (051) 448-4468 / 9
Email: blm@ccma.org.za

GAUTENG (EKURHULENI)

CCMA Place, Cnr Woburn & Rothsay Street,
Benoni 1500, Private Bag X23, Benoni 1500
Tel: (011) 845-9000 Fax: (011) 421-4723/48
Email: ekurhuleni@ccma.org.za

GAUTENG (JOHANNESBURG)

127 Fox Street (Cnr Eloff), Johannesburg 2001
Private Bag X96, Marshalltown 2107
Tel: (011) 220-5000
Fax: (011) 220-5101 / 2 / 3 / 4 / 5 / 0861 392 262
Email: johannesburg@ccma.org.za

GAUTENG (TSHWANE)

Metro Park Building, 351 Schoeman Street,
Pretoria 0001, Private Bag X176, Pretoria 0001
Tel: (012) 317-7800
Fax: (012) 392-9702 / 320 4633 / 04
Email: pta@ccma.org.za

KWAZULU-NATAL (DURBAN)

Embassy House, 6th & 7th Floors,
199 Anton Lembede (Smith Street), Durban 4001
Private Bag X54363, Durban 4000
Tel: (031) 362-2300 Fax: (031) 368-7387 / 7407
Email: kzn@ccma.org.za

KWAZULU-NATAL (PIETERMARITZBURG)

3rd Floor Gallwey House, Gallwey Lane,
Pietermaritzburg 3201
PO Box 72, Pietermaritzburg, 3200
Tel: (033) 328-5000 Fax: (033) 345-9790
Email: kzn@ccma.org.za

KWAZULU-NATAL (PORT SHEPSTONE)

The Chambers, 68 Nelson Mandela Drive, Port
Shepstone 4240
Private Bag X849, Port Shepstone 4240
Tel: (039) 688-3700 / 3702 Fax: (039) 684-1771
Email: kzn@ccma.org.za

KWAZULU-NATAL (NEWCASTLE)

71 Scott Street, Newcastle 2940
Private Bag X6622, Newcastle 2940
Tel: (034) 328-2400 Fax: (034) 312-5964
Email: kzn@ccma.org.za

KWAZULU-NATAL (PORT SHEPSTONE)

1st Floor Absa Building, Lakeview Terrace,
7 Trinidad Parking Area, Richards Bay 3901
Private Bag X1026, Richards Bay 3900
Tel: (035) 799-3300 Fax: (035) 789-7148
Email: kzn@ccma.org.za

LIMPOPO (POLOKWANE)

104 Hans Van Rensburg Street, Polokwane 0699
Private Bag X9512, Polokwane 0700
Tel: (015) 287-7400 Fax: (015) 297-1649
Email: ptb@ccma.org.za

MPUMALANGA

CCMA House Diedericks Street, Witbank 1035
Private Bag X7290, Witbank 1035
Tel: (013) 656-2800 Fax: (013) 656-2885 / 6
Email: wtb@ccma.org.za

NORTHERN CAPE (KIMBERLEY)

CCMA House, 5 - 13 Compound Street, Kimberley
8301, Private Bag X6100, Kimberley 8300
Tel: (053) 836-7300 Fax: (053) 831-5947 / 8
Email: kmb@ccma.org.za

NORTH WEST (KLERKSDORP)

47-51 Siddle Street, Klerksdorp 2570
Private Bag X5004, Klerksdorp 2571
Tel: (018) 464-0700 Fax: (018) 462-4126 / 4053
Email: kdb@ccma.org.za

NORTH WEST (RUSTENBURG)

1st Floor, Sanlam Centre, 43-45 Boom Street,
Old Sanlam Building, Rustenburg
Private Bag X82104 Rustenburg
Tel: (014) 591-6400 Fax: (014) 592-5236
Email: kdb@ccma.org.za

WESTERN CAPE (CAPE TOWN)

CCMA House, 78 Darling Street, Cape Town 8001
Private Bag X9167, Cape Town 8000
Tel: (021) 469-0111
Fax: (021) 465-7193 / 97 / 87 / 462-5006
Email: ctn@ccma.org.za

WESTERN CAPE (GEORGE)

62 Cathedral Street, Cathedral Square 2, George,
6529, Private Bag X6650, George, 6530
Tel: (044) 805-7700 Fax: (044) 873-2906
Email: ctn@ccma.org.za

DETAILS ARE SOMETIMES UPDATED ON THE WEBSITES
www.ccma.org.za and www.labour.gov.za

RECRUITMENT ADVERTISEMENT

Person required for the following position:

To start: _____ Place of work: _____

Main duties and responsibilities:

1. _____
2. _____
3. _____
4. _____

Ordinary hours of work and days of work: _____

Job level: junior / middle / senior. Job grade: _____, Department _____

The position is Permanent / Temporary / Fixed term / Part time

Desired credentials:

Education: _____

Skills: _____

Experience: _____

Personal qualities: _____

Any special considerations for any special operational requirements of the position: e.g. own car required, working overtime _____

The successful candidate will receive:

Remuneration: _____

Fringe benefits: _____

Other applicable terms e.g. Probation, training, etc: _____

Information about the organisation, the department, and work environment of the position:

Suitably qualified applicants may apply in writing with CV and contactable references, marked

Ref _____, for Attention: _____ by fax: _____

or e-mail _____ before date: _____

Enquiries: Call _____ Tel _____ (All applications are treated confidentially)

Date _____

Dear

**APPLICATION FOR THE POSITION OF _____
AS ADVERTISED**

In response to your advertisement in the _____ newspaper
on the _____ day of _____ year _____, I wish to make application
for this position.

I am enclosing a copy of my Curriculum Vitae and would be pleased if you would contact me for
an appointment.

Yours faithfully

CURRICULUM VITAE

PERSONAL DATA

Surname	First names
Date of birth*	Gender M <input type="checkbox"/> / F <input type="checkbox"/>
Place of birth	Nationality
Identity No / Passport No	Work permit Yes <input type="checkbox"/> / No <input type="checkbox"/>
Home address	Tel ()
Postal address	Code
Work address	Tel ()
E-mail	Cell no
Marital status* and number and age of dependants*	
Driver's licence* Yes <input type="checkbox"/> / No <input type="checkbox"/>	If yes, Code
Home language	Other languages
Health	

EDUCATION

Last school attended				
Location		Dates attended		
Highest standard passed				
Subjects and grades				
Leadership roles				
Extramural activities				
College / University attended	Dates	Full-time <input type="checkbox"/>	Part-time <input type="checkbox"/>	Correspondence <input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Diplomas / Degrees obtained				Year
Subjects and grades				
Leadership roles				
Extramural activities				
Further training / courses				

* This information is, in terms of the Labour Relations Act, no longer obligatory on the CV. A prospective employer cannot demand the information, although the prospective employee may of course still volunteer the information.

EMPLOYMENT HISTORY

Current or most recent employment

Company _____

Address _____ Code _____

Type of company _____

Position / Type of work _____

Dates employed: from _____ to _____ (Total years _____ months _____)

Main job functions _____

Remuneration and fringe benefits _____

Reason for leaving _____

Second most recent employment

Company _____

Address _____ Code _____

Type of company _____

Position / Type of work _____

Dates employed: from _____ to _____ (Total years _____ months _____)

Main job functions _____

Remuneration and fringe benefits _____

Reason for leaving _____

Third most recent employment

Company _____

Address _____ Code _____

Type of company _____

Position / Type of work _____

Dates employed: from _____ to _____ (Total years _____ months _____)

Main job functions _____

Remuneration and fringe benefits _____

Reason for leaving _____

EMPLOYMENT HISTORY continued

Fourth most recent employment

Company

Address

Code

Type of company

Position / Type of work

Dates employed: from to (Total years months)

Main job functions

Remuneration and fringe benefits

Reason for leaving

GENERAL

Present outside interests

Membership of professional organisations, clubs or societies

Achievements in life

Short and long term goals

REFERENCES

1.

2.

3.

APPLICATION FOR EMPLOYMENT FORM

STRICTLY CONFIDENTIAL

Ref. No: _____

PLEASE PRINT

No enquiries will be made of your past or present employers without your consent. Should you be in possession of a typewritten CV, fill in only the first page and other pertinent questions not covered in your CV. In your own interest, please answer the questions carefully.

Date	Position applied for
Other positions of interest	
Have you applied here before? Yes <input type="checkbox"/> / No <input type="checkbox"/> If so, give details	
How did you hear about this vacancy?	
Name friends or relatives in our company	

PERSONAL DATA

Title	Surname	Maiden name
First names (in full)	Sex M <input type="checkbox"/> / F <input type="checkbox"/>	
Residential address	Since	
Postal address (if different from above)	Code	
Tel No: Home ()	Business ()	Cell
Date of birth	Place of birth	
Nationality* At present	At birth	
ID No / Passport No*		
If not a SA citizen, do you have a work permit? Yes <input type="checkbox"/> / No <input type="checkbox"/> If yes, since		
Marital status*	Single <input type="checkbox"/> Engaged <input type="checkbox"/> Married <input type="checkbox"/> Living together <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Date of marriage (if applicable)	
Spouse's name	Occupation	
Spouse's employer	Tel ()	Since
Nature of residence (e.g. house, flat, commune, etc.)	Rent <input type="checkbox"/> / Own <input type="checkbox"/>	
No and ages of children / dependants*		
Will you serve anywhere in the country?		
Which areas do you prefer?		
Does / Did your present / previous company provide a car? Yes <input type="checkbox"/> / No <input type="checkbox"/> Make / Year		
Do you own a car? Yes <input type="checkbox"/> / No <input type="checkbox"/> Make / Year		
Do you hold a valid driver's licence? Yes <input type="checkbox"/> / No <input type="checkbox"/>	Code	
Home language	Other languages (state proficiency in both reading and writing)	

Details of all criminal convictions, civil judgements, insolvencies, liquidations, etc. involving you.

What is the present state of your health?	
Do you smoke? Yes <input type="checkbox"/> / No <input type="checkbox"/> If yes, how many a day?	
How many days of sick leave have you taken in the last year? And the year before?	
Do you suffer from any disability or disease? If so, describe	
Are you employed now? Yes <input type="checkbox"/> / No <input type="checkbox"/> If no, how long have you been unemployed?	
If yes, what notice is required to present employer?	
If appointed will you, if required, sign the company's standard restraint of trade, confidentiality and invention agreements? Yes <input type="checkbox"/> / No <input type="checkbox"/>	
Salary requested	Date available to start work
When and where can we telephone you?	

*In terms of the Labour Relations Act a prospective employer may not demand this information but the prospective employee may still volunteer it.

EDUCATION AND TRAINING

Please list in chronological order, the last school, and any colleges, universities and other places of education and training you have attended. Include technical, professional, management, marketing and sales training, etc. State if full-time (FT), part-time (PT) or correspondence (C) and if passed (P)

Name and location	Dates		Details of courses
	From	To	

List relevant equipment, computers, hardware and software and professional aids, etc. of which you have experience and state degree of competency from 1 to 5 (1 = very high; 5 = very low)

LEISURE AND INTERESTS

What publications do you read regularly?

How do you spend your leisure time?

Membership of clubs, institutes and societies (indicate any office held)

WORKING HISTORY Please commence with your most recent position

1. Name of employer

Address _____ Tel () _____

Position _____ Employed from (m/y) _____ to (m/y) _____

Duties _____

Starting salary _____ Leaving salary _____ Fringe benefits _____

Reason for leaving _____

Superior _____ Designation _____

2. Name of employer

Address _____ Tel () _____

Position _____ Employed from (m/y) _____ to (m/y) _____

Duties _____

Starting salary _____ Leaving salary _____ Fringe benefits _____

Reason for leaving _____

Superior _____ Designation _____

3. Name of employer

Address _____ Tel () _____

Position _____ Employed from (m/y) _____ to (m/y) _____

Duties _____

Starting salary _____ Leaving salary _____ Fringe benefits _____

Reason for leaving _____

Superior _____ Designation _____

4. Name of employer

Address _____ Tel () _____

Position _____ Employed from (m/y) _____ to (m/y) _____

Duties _____

Starting salary _____ Leaving salary _____ Fringe benefits _____

Reason for leaving _____

Superior _____ Designation _____

May we contact your current and past employers for references at this stage? State yes or no in each case.

1.	2.	3.	4.
----	----	----	----

PRESENT OR LAST EMPLOYMENT

1. Describe your place in the organisational structure of your company – using a chart if appropriate

2. State the areas of activity which you supervised

3. State the number of internal and / or external staff whom you controlled

4. List the products or services involved and your responsibility with regard to them

5. Did you sign a restraint of trade or confidentiality agreement with a previous employer?

Yes / No If yes give details

ADDITIONAL INFORMATION

1. What do you consider have been your most important achievements in your professional career?

2. Please write about yourself here, giving any information which may be helpful in considering your application – for example, what are your long term plans, your strong points, what affects your attitude to certain types of work and what influenced you to make this application.

REFERENCES List three persons other than former employers or relatives, not previously listed, who have known you for at least two years.

Name	Address	Occupation	Telephone Number

As attested by my signature, I hereby certify that the answers to the aforesaid questions (and the details contained in my CV and other documents, if any, submitted with this application) are correct to the best of my knowledge and belief and I understand that the company will rely upon such information in its consideration of this application. I understand that misrepresentation or omission of facts called for is cause for dismissal. I further understand that if employed, my employment will be at will, permitting me to resign or to be discharged at any time, subject to the Basic Conditions of Employment Act or any other relevant legislation or agreement entered into by me and the employer.

Date

Signature

JOB APPLICANT INTERVIEW & RATING

NAME		Interview Date		POSITION APPLIED FOR		
Age	Race	Gender	Interviewer		JOB DESCRIPTION Main purpose, key duties and responsibilities: <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> Required skills, education, experience and qualities: <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	
Reference checks and remarks						General information Possible knockout factors / dis-qualifiers for employment, (Delete if not applicable) e.g. BEE, unrealistic salary or career expectations; unexplained gaps in CV, unexplained contradictions in information from applicant and references; poor work references; high work absenteeism; tardiness; job hopping; private side-line work; looking for stop-gap work; under restraint of trade; CCMA / legal case pending; criminal record; evidence of illicit activity or dishonesty; age; race; gender; disability; chronic illness; addictions; personal debt; intrusive home circumstances or personal problems; pregnancy / family plans; negative attitudes or personality traits; unmannered; too talkative; irresponsible; other knockout factors: _____ <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
SUITABILITY RATING 1Bad, 2Needs improvement, 3Competent, 4Very good, 5Exceptional		Rating by Applicant	Rating by Interviewer	Interviewer's Comments		
Technical skills <i>Job knowledge, problem solving, effective use of resources</i>						
Quality of work <i>Accurate, thorough, reliable, follows-up, consistent</i>						
Quantity / speed of work <i>Prioritises, meets deadlines, completes all given tasks, does extra work</i>						
Communication skills <i>Written, verbal, listening skills, shares information</i>						
Interpersonal skills <i>Team worker, resolves conflict, client skills, effective networking</i>						
Policies & procedures <i>Knows and complies with the letter and spirit of house rules</i>						
Attitude / approach to work <i>Dedicated, enthusiastic, takes initiative, improves own skills</i>						
Time keeping / attendance <i>Healthy, punctual for work, seldom absent, organised</i>						
Leadership <i>Well respected, accountable, plans budgets, promotes development of staff, crisis skills</i>						
Added value <i>Brings more to the job than expected, enhances the role</i>						
SCORE OUT OF 50						
Interviewer's overall assessment _____ _____ _____						
Assessment based on: <input type="checkbox"/> cv, <input type="checkbox"/> job interview, <input type="checkbox"/> work references, <input type="checkbox"/> education / training records, <input type="checkbox"/> job description, <input type="checkbox"/> inhouse testing, <input type="checkbox"/> recommendation, <input type="checkbox"/> self-evaluation by applicant, <input type="checkbox"/> other: _____						
<input type="checkbox"/> Recommended for position <input type="checkbox"/> Not recommended <input type="checkbox"/> Training required: _____ <input type="checkbox"/> Recommended for another position _____ <input type="checkbox"/> Further interview / referee checks to be done _____ <input type="checkbox"/> Other _____						

Date _____

Dear

REQUEST FOR EMPLOYMENT REFERENCE

_____ (Applicant) has applied for a position with our company in the capacity of _____. He/she has informed us that he/she was previously employed by your company.

We would be grateful to receive a reference for him/her by _____ (date) and your opinion as to the suitability of the applicant for the position sought with our company. Please advise us of the period of time he/she was employed with you, and the reasons for termination.

It is our policy to treat references as strictly confidential.

Yours faithfully

Date _____

Private & Confidential

Dear _____

Request for Employment Reference

Mr/Ms _____ has applied for a position with us and has listed you as a reference. We rely heavily on references in our recruitment decisions and therefore we ask if you will please provide a job reference on him/her. For your convenience you may use the form below. Please return this letter, duly completed, before _____.

It is our policy to treat employee job references as strictly confidential.

Thank you very much,

Yours faithfully

Mr/Ms _____ Organisation _____

Tel _____ Fax _____ E-mail _____

EMPLOYEE JOB REFERENCE FORM (Confidential)

This is to certify that Mr/Ms _____ was employed by us from _____ to _____ (____ years, ____ months) He/She was employed in the position of _____ to do the following type of work _____

His/Her gross remuneration at the date of termination of employment was R _____ pm/pa plus benefits: _____

The employee has consented to us providing the reason for termination of employment which is: _____

We would / We would not re-employ him/her.

Work performance rating - please circle: 1 Bad, 2 Needs improvement, 3 Competent, 4 Very good, 5 Exceptional

Technical Skills Job knowledge, problem solving, effective use of resources	1	2	3	4	5
Quality of work Accurate, thorough, reliable, follows-up, consistent	1	2	3	4	5
Quantity / speed of work Completes all given tasks, does extra work, prioritises, meets deadlines	1	2	3	4	5
Communication Skills Written, verbal, listening skills, shares information	1	2	3	4	5
Interpersonal skills Team worker, resolves conflict, client skills, effective networking	1	2	3	4	5
Policies & procedures Knows and complies with the letter and the spirit of the house rules	1	2	3	4	5
Attitude / approach to work Dedicated, enthusiastic, takes initiative, improves own skills	1	2	3	4	5
Time keeping / attendance / health Punctual for work, doesn't take time off unnecessarily, organised	1	2	3	4	5
Leadership Well respected, accountable, plans, budgets, promotes development of staff	1	2	3	4	5
Added value Brings more to the job than expected, enhances the role	1	2	3	4	5

Comments _____

Your name _____ Position _____

Organisation _____ Tel _____ Date _____

Thank you for your assistance.

Date _____

Dear

NON-EMPLOYMENT ADVICE

We refer to your application to our company for employment in the capacity of _____
_____ and regret to advise that such position has been filled.

There are no other suitable positions available in our company at this time, but we will keep your application on file for future reference should a suitable opening arise.

Yours faithfully

PRE-EMPLOYMENT CHECKLIST

Date _____

Applicant _____

Position _____

References requested

Date received / Checked

Interviewed by

Approved by

Education verified _____

Medical examination _____

Starting salary _____

Fringe benefits (list) _____

Effective starting date _____

Remarks

EMPLOYEE PERSONAL DETAILS

(STRICTLY CONFIDENTIAL – FOR HUMAN RESOURCE DEPARTMENT RECORDS ONLY)

Name	ID no.	Age:
Date of birth	Place of birth	Gender M <input type="checkbox"/> / F <input type="checkbox"/>
Nationality	If not South African, Passport No.	
Permanent Resident Yes <input type="checkbox"/> / No <input type="checkbox"/> ; Work Permit Yes <input type="checkbox"/> / No <input type="checkbox"/> , if yes, expiry date:		
Residential address		Code
Postal address (if different from above)		Code
Tel Home ()	Cell	E-mail
Marital Status: Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Disabilities:		
For BEE purposes, Race: African <input type="checkbox"/> */ Coloured <input type="checkbox"/> */ Indian <input type="checkbox"/> */ White <input type="checkbox"/> / Non South African <input type="checkbox"/>		
*Did you obtain South African citizenship prior to 1994? Yes <input type="checkbox"/> / No <input type="checkbox"/>		
Do you have a valid driver's licence? Yes <input type="checkbox"/> / No <input type="checkbox"/>		Code Expiry date

List spouse / life partner, children, adoptive children, grandchildren, siblings, parents, adoptive parents, and grandparents, for Family Responsibility Leave, in terms of the Basic Conditions of Employment Act.

Full Name	Relationship	Living with you?

(Attach an extra sheet if required)

Medical aid _____ No. _____ Principal Member _____

Would you like to join the company medical aid / hospital plan? Yes / No

Date of last medical examination _____ GP Dr _____ Tel _____

In case of emergency contact:

1. Mr/Ms _____ Relationship _____

Cell _____ Tel work _____ Tel home _____

2. Mr/Ms _____ Relationship _____

Cell _____ Tel work _____ Tel home _____

BANKING DETAILS FOR PAYMENT OF SALARY

Bank _____ Branch _____ Branch Code _____

Account Name _____ Type _____ Account no _____

Income Tax no. _____

I undertake to keep these details up-to-date by advising management in writing when any of the details change.

Signed _____ this _____ day of _____ year _____ .

Date _____

Dear _____

LETTER OF APPOINTMENT

We are pleased to advise that your application for employment by this company in the capacity of _____ has been successful and we take this opportunity of welcoming you to _____ (the company).

Your employment will continue indefinitely, subject to one month's written notice by either side. You will report directly to _____ and will commence employment with us on the _____ day of _____ year _____.

Your place of work, which is subject to change, will be at _____.

- Your gross salary shall be R _____ per month reviewable annually or at the company's discretion. Bonuses are paid on merit and at the company's discretion.
- Your gross salary will be at the rate of R _____ per hour, calculated by the number of hours worked per month.
- Your remuneration will be based on a basic salary of R _____ per month plus a commission payable monthly calculated as follows:

- Travelling allowance payable monthly at the rate of R _____ per kilometre for distance actually travelled on business.

* (Delete as applicable)

Your hours of work will be from _____ to _____, with a one-hour lunch break from _____ to _____ from Monday to Friday, and on Saturdays your hours will be from _____ to _____.

If you are not already a member of a medical aid, you will be expected to become a member of the company's medical aid. You will also be expected to become a member of the company's pension fund. All obligatory deductions will be made such as PAYE and UIF as applicable.

* The Bargaining Council Agreement that applies to you is _____
_____. * (Delete if not applicable)

The rate of pay for overtime work will be as stipulated in the Basic Conditions of Employment Act from time to time.

Your leave entitlement shall be _____ days per each completed 12 months of service, to be taken at the convenience of the company, plus all public holidays.

Please confirm that this letter sets forth our understanding by signing the copy hereof and returning it to us.

Yours faithfully

FOR AND ON BEHALF OF
THE EMPLOYER

EMPLOYEE

AGREEMENT OF EMPLOYMENT

Made and entered into by and between:

(hereinafter referred to as "the Company")

and

(hereinafter referred to as "the Employee")

WHEREAS the Company agrees to employ the Employee on the terms and conditions as set out below

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1.

The Employee shall commence his/her duties on the _____ day of _____ year _____.

The Employee's previous employment from _____ to _____ with
_____ counts towards the Employee's period of Employment.

2.

The Employee is employed in the capacity of _____
and will be expected to perform *inter alia* (amongst other things) the following duties:

3.

This agreement is entered into on the basis that the Employee has the requisite skills and experience to perform the above duties. In the above position the Employee will report to _____.

4.

The Employee's place of work will ordinarily be _____
and may also include _____.

5.

The Employee's days and hours of work will ordinarily be _____.

From time to time it may be necessary to work overtime.

6.

* Initially the Employee's employment will be a 1-month's fixed term contract, renewable monthly for 3 months after which the Employee may become a full time employee if the appropriate permanent position is available.

Alternatively,

* There will be a probationary period of three months from commencement date during which time the ability of the Employee will be assessed. Guidance and training will be provided as appropriate. The Employee may be dismissed during this period if his/her performance is unsatisfactory to the Company. In that event the Employee will be given an opportunity to state his/her case and to receive assistance to do so. Either party may give one week's notice if they wish to terminate the employment during the probation period.

*(Delete and initial where not applicable)

7.

The Employee shall devote his/her full time and attention to his/her employment, obey and comply with all lawful orders and directions given to him/her from time to time by the Company, and shall use his/her best endeavours to promote and maintain the success and reputation of the Company and its interests. The Employee shall not without the Company's consent engage directly or indirectly in any other business or occupation or employment.

8.

The Company shall pay to the Employee monthly in arrears a gross salary of R _____ per month, such salary to be reviewable annually or at the Company's discretion.

9.

The Employee's remuneration is confidential and the Employee is expressly forbidden to disclose or discuss it with other staff members.

10.

The Employee will earn commission calculated on the following terms (reviewable from time to time):

and payable as follows: _____

Leave pay: The Commission Structure includes provision for unearned commission while the Employee is on leave.

11.

* The Employee will provide a private car available for business use for which he/she will be paid a fixed payment of R _____ per month / will be reimbursed monthly at the rate of _____ cents per kilometre for distance actually travelled on business / will be entitled to a petrol allowance of R _____ per month on the Company's petrol account. The Employee will keep their car in good condition and running order.

Alternatively,

* The Employee will be provided with a company car, all expenses of which will be borne by the Company. The Employee's tax will be deducted on the taxable benefit calculated in accordance with the table prescribed by the Commissioner for Inland Revenue. The Employee will keep the car in good condition and running order.

*(Delete and initial where not applicable)

12.

The Employee will be entitled to an entertainment allowance of R _____ per month in recognition that he/she will on occasion entertain privately for business purposes. This will be declared for tax purposes. The Employee will keep a record of any expenses so incurred to submit any deduction he/she may claim.

13.

The Employee will be entitled to join any pension fund or medical aid scheme, which the Company may have or will have in place.

14.

All obligatory deductions will be made from the Employee's gross salary as applicable, such as PAYE; UIF; the Company Pension Fund and the Company Medical Aid. In addition, the Company may at any time deduct from any monies due by it to the Employee, such monies as the Employee may be liable to pay the Company.

15.

The Employee will be entitled to 15 working days' of annual leave, at the convenience of the Company, for each completed 12 months of service, plus all public holidays but subject to any agreement relating to the substitution of public holidays for other days. Religious holidays should be applied for and, if granted, will form part of the Employee's normal annual leave entitlement. Leave must be applied for at least _____ days in advance.

16.

- 16.1 The Employee will be entitled to one day's paid sick leave for every 26 days worked during the initial six months of service. If this contract survives longer than six months then the Employee is entitled to an amount of sick leave equal to the number of days he/she would normally work during a six-week period during each cycle of 36 months of employment.
- 16.2 The Employee is only entitled to sick leave for injury or sickness which justifies his/her absence from work.
- 16.3 The Employee is obliged to furnish a doctor's certificate for sick leave taken in excess of two consecutive days or more than two separate occasions in an eight week period.
- 16.4 The Company may deduct from the Employee's normal leave entitlement or salary for sick leave taken without the required doctor's certificate, or for sick leave taken over his/her entitlement.
- 16.5 Should the Employee be absent from work, for any reason, he/she or someone on his/her behalf must phone the Company as soon as possible and inform management personally what the situation is.

17.

The following documents form part of this agreement and are annexed hereto or a copy of each document is obtainable from the Company at the _____ department and the Employee undertakes to familiarise himself / herself with each document.

- * a) Restraint of Trade Agreement; (*Form 2.27 or 2.28*)
- * b) Confidential Information Agreement; (*Form 7.9*)
- * c) Employee Invention Agreement; (*Form 7.8*)
- * d) The Company's grievance and disciplinary code.
- * e) E-mail and Internet Usage Policy for Employees (*Form 8.1*)
- * f) _____
- * (Delete and initial where not applicable)

18.

The Employee may use the Company telephone, e-mail, internet, fax, copier, printer, computer systems and other Company resources as required strictly for business purposes only. Unauthorised private use is forbidden. The Employee will maintain equipment and manage his/her electronic data responsibly. All electronic software and data on the Company's systems, whether of a business nature or not, are and will remain the property of the Company. The Employee will

be required to reveal to authorised staff any and all passwords that he/she uses in operating any of the Company's systems.

The Employee is prohibited from storing or disseminating any private or offensive, unethical or illegal material or e-mailing large attachments. Any communication on the company systems may be monitored e.g. telephone calls, e-mails, and internet usage, for both training and management purposes, and the Employee waives any action based on invasion of privacy through such monitoring.

Misuse or abuse of the Company's communication systems and resources will lead to the limiting of rights to their use and to disciplinary action including termination.

19.

The Employee's employment shall continue indefinitely, subject to written notice by either side, and subject to paragraphs 6, 20 and 21.

20.

- 20.1 This agreement may be terminated for any reason sufficient in law and after a lawful procedure has been followed.
- 20.2 This agreement will automatically terminate upon the Employee reaching retirement age at _____ years.
- 20.3 This agreement may be terminated after an appropriate procedure has been followed in the following circumstances but not only limited to them:
 - 20.3.1 If the Employee commits an act or omission, which at law would entitle the Company to dismiss the Employee.
 - 20.3.2 If the Employer is provisionally sequestrated.
 - 20.3.3 If the Employee is unable to carry out his/her obligations due to inability following certification of having an unsound mind or is incapable of handling his/her affairs.

21.

- 21.1 Following termination by the Company the notice period will be as follows:
 - 21.1.1 If termination occurs within the first six months, one week's notice.
 - 21.1.2 If termination is lawful and summary, no notice.
 - 21.1.3 If termination is after the first six months but before one year of continuous service, two weeks' notice.
 - 21.1.4 If termination is after one year's continuous service, 30 days' notice.
- 21.2 Following termination by the Employee the above notice periods will be adhered to. Notice must be in writing and delivered on or before the 15th day of the month or the last calendar day of the month.
- 21.3 Should the employee contravene the notice period, the employer may withhold salary or leave pay in lieu of notice.
- 21.4 Should the Employee resign or be lawfully dismissed within _____ months of being employed, the Employee is liable for the refund to the Company of half of the cost paid by the Company to an employment agency for the Employee's appointment.
- 21.5 Should the Employee resign or be lawfully dismissed within _____ months of receipt of training by the Company or any courses the Employee is sent on by the Company, the Company reserves the right to recover from the Employee the actual disbursements thereby expended on the Employee by the Company.
- 21.6 Bonuses are paid on merit and at the Company's discretion and are primarily related to the profitability of the Company. Should the Employee resign or be lawfully dismissed

within _____ months of receipt of a bonus, the Company reserves the right to claim back the bonus.

22.

In the event of any labour dispute remaining unresolved the CCMA or appropriate Bargaining Council will have jurisdiction.

23.

The Company is covered and bound by the following collective agreement, Bargaining Council or sectoral determination: _____

24.

This agreement is governed by the prevailing Laws of South Africa.

25.

On termination of this agreement the Employee will return to the Company all property of the Company in the Employee's possession including security cards, car keys and computer equipment and cellular telephone equipment.

26.

The *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) of the Company is _____

And of the Employee is _____

27.

The Employee and the Company acknowledge that this agreement constitutes the entire contract between them and that there shall be no variation of the terms and conditions thereof unless reduced to writing and signed by the parties.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF
OF THE COMPANY

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYEE

AGREEMENT OF FIXED TERM EMPLOYMENT

Made and entered into by and between:

(hereinafter referred to as “the Company”)

and

(hereinafter referred to as “the Employee”)

IT IS AGREED AS FOLLOWS:

The Company agrees to employ the Employee on the following terms and conditions:

1.

The Employee shall commence his/her duties on the _____ day of _____ year _____.

2.

The Employee is employed in the capacity of _____
and will be expected to perform *inter alia* (amongst other things) the following duties:

3.

The Employee will render services to the Company for a fixed period until _____.
The place of work will be _____
or any other place as reasonably determined by the Company. Notwithstanding the above the work may with good reason and at the discretion of the Company involve short-term lay offs in workload or last until completion of the specific work as detailed above, in which event the contract may be terminated before its expiry date all of which is acceptable to the Employee. The Employee accepts that on expiry of this agreement as aforesaid it will be the end of the agreement and not construed as dismissal or retrenchment.

4.

In lieu of leave the Company will on termination of this agreement pay to the Employee one day for every 17 days he/she has worked.

5.

- 5.1 The Employee will be entitled to one day's paid sick leave for every 26 days worked during the initial six months of service. If this contract survives longer than six months then the Employee is entitled to an amount of sick leave equal to the number of days he/she would normally work during a six-week period during each cycle of 36 months of employment.
- 5.2 The Employee is only entitled to sick leave for injury or sickness which justifies his/her absence from work.
- 5.3 The Employee is obliged to furnish a doctor's certificate for sick leave taken in excess of two consecutive days.

6.

The Employee and the Company acknowledge that this agreement constitutes the entire contract between them and that there shall be no variation of the terms and conditions thereof unless reduced to writing and signed by the parties.

7.

The following documents form part of this agreement and are annexed hereto or a copy of each document is obtainable from the Company at the _____ department and the Employee undertakes to familiarise himself / herself with each document.

- * a) Restraint of Trade Agreement; (*Form 2.27 or 2.28*)
- * b) Confidential Information Agreement; (*Form 7.9*)
- * c) Employee Invention Agreement; (*Form 7.8*)
- * d) The Company's grievance and disciplinary code;
- * e) E-mail and Internet Usage Policy for Employees; (*Form 8.1*)
- * f) _____
- * (Delete and initial where not applicable)

8.

- 8.1 This agreement may be terminated for any reason sufficient in law and after a lawful procedure has been followed.
- 8.2 This agreement will automatically terminate upon the Employee reaching retirement age at _____ years.
- 8.3 This agreement may be terminated after an appropriate procedure has been followed in the following circumstances but not only limited to them:

- 8.3.1 If the Employee commits an act or omission which at law would entitle the Company to dismiss the Employee.
- 8.3.2 If the Employer is provisionally sequestrated.
- 8.3.3 If the Employee is unable to carry out his/her obligations due to inability following certification of having an unsound mind or lawfully incapable of handling his/her affairs.
- 8.4 Following the termination by the Company the notice period will be as follows:
 - 8.4.1 If termination occurs within the first six months, one week's notice.
 - 8.4.2 If termination is lawful and summary, no notice.
 - 8.4.3 If termination is after the first six months but before one year of continuous service, two weeks' notice.
 - 8.4.4 If termination is after one year's continuous service, 30 days' notice.
- 8.5 Following termination by the Employer the above notice periods will be adhered to. Notice must be in writing and delivered on or before the 15th day of the month or the last calendar day of the month.

9.

In the event of any labour dispute remaining unresolved the CCMA or appropriate Bargaining Council will have jurisdiction.

10.

This agreement is governed by the Laws of South Africa.

11.

On termination of this agreement the Employee will return to the Company all property of the Company in the Employee's possession including security cards, car keys, computer equipment, cellular telephone equipment and tools.

12.

The *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) of the Company is _____

And of the Employee is _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF
OF THE COMPANY

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYEE

AGREEMENT OF EMPLOYMENT WITH DOMESTIC WORKER

Made and entered into by and between:

_____ (hereinafter referred to as "the Employer")

and

_____ (hereinafter referred to as "the Employee")

IT IS AGREED AS FOLLOWS:

The Employer agrees to employ the Employee on the following terms and conditions:

1.

1.1 The Employee shall commence his/her duties on the _____ day of _____ year _____.

1.2 If either party hereto wishes to terminate this agreement during the first four weeks of service, one week's notice shall be given on either side. After the first four weeks service but less than one year, two weeks' notice shall be given. After one year's service, four weeks' notice shall be given. Notice shall be given in writing unless the Employee is illiterate in which case notice will be verbal.

2.

The Employee is employed in the capacity of a domestic worker and he/she will be expected to perform the duties as set out in Annexure "A".

3.

The wage will be paid in cash on the last working day of every week / month and will be reviewed annually and will be R _____

The Employee shall be entitled to the following allowances / payments in kind:

- Weekly / monthly accommodation to the value of R _____
- Weekly / monthly transport allowance to the value of R _____
- Weekly / monthly meals to the value of R _____

Total _____
=====

* (Delete where not applicable)

The Employer may not deduct any monies from the Employee's wages unless the Employee agrees thereto in writing on each occasion.

4.

The normal working hours will be from _____ to _____ from Mondays to Fridays and from _____ to _____ on Saturdays. Overtime will be worked if agreed upon between the parties. The Employee will be paid overtime at the rate of one and half times his/her total wage as set out in paragraph 4 above.

5.

In the case of a char the normal working hours will be from _____ to _____.

6.

The breaks from work will be: Lunch from: _____ to: _____
Tea (am) from: _____ to: _____
Tea (pm) from: _____ to: _____

7.

Any Sunday work will be by agreement. The wage therefore will be double time for each hour worked. The Employee is entitled to all official public holidays at full pay. If the Employee works on a public holiday he/she will be paid double time.

8.

The Employee will be provided with accommodation for as long as the Employee is in the service of the Employer. This will form part of his/her remuneration package. The accommodation may only be occupied by the Employee unless the Employer agrees otherwise. Prior permission for any overnight stay of a non-family person must be sought from the Employer.

9.

Sets of uniforms supplied by the Employer to the Employee will remain the property of the Employer.

10.

During the first six months of employment the Employee will be entitled to one day's paid sick leave for every 26 days worked. Thereafter the Employee is entitled to an amount of paid sick leave equal to the number of days the Employee would normally work during a period of six weeks, such sick leave to be calculated on cycles of 36 months.

11.

The Employee will be entitled to 3 weeks paid leave on completion of 12 months service. Leave is to be taken at times convenient to the Employer. In addition the Employee is entitled to three days family responsibility leave during each leave cycle. Should the Employee be absent from work for any reason he/she will contact the Employer as soon as possible.

12.

This agreement constitutes the entire agreement between the parties and no other agreement will be binding unless reduced to writing and signed by both parties. The provisions of the Basic Conditions of Employment Act 75 of 1997, as amended, will apply in respect of all other matters not dealt with herein and will prevail if any of the provisions herein conflict with it.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYER

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYEE

AGREEMENT OF OVERTIME

Made and entered into by and between:

(hereinafter referred to as "the Employer")

and

(hereinafter referred to as "the Employee")

OVERTIME

1.

The Employee agrees to work overtime if in accordance with the operational requirements of the Employer.

2.

The Employer agrees to pay the Employee for overtime worked in accordance with the provisions of the Basic Conditions of Employment Act 75 of 1997 (hereinafter referred to as "the Act") or to grant the Employee time off within 12 months of the Employee becoming entitled to it.

3.

This agreement will lapse after _____ months but may be renewed for a further period of _____ months.

NIGHTWORK

4.

The Employee agrees to work if in accordance with the Employer's operational requirements between 18:00 and 06:00 the next day subject to the following conditions:

4.1 The Employee will be compensated by an allowance of R _____ per shift worked or by a reduction of _____ working hours per shift worked;

4.2 Transportation is available to the Employee between his/her residence and workplace at the commencement and conclusion of the shift.

SUNDAYS

5.

The Employee agrees to work if in accordance with the Employer's operational requirements on a Sunday provided he/she is compensated in accordance with the terms of the Act.

PUBLIC HOLIDAYS

6.

The parties agree, in terms of Section 2(2) of the Public Holidays Act 36 of 1994, that any public holiday may for reasons of compliance with the Employer's operational requirements, be exchanged for any other day as agreed upon.

7.

The Employee accepts that the terms and conditions of this agreement constitute material terms of employment and that failure to comply therewith may result in termination of the contract of employment. This agreement has been entered into freely and voluntarily.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF
OF THE EMPLOYER

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYEE

GENERAL RESTRAINT OF TRADE AGREEMENT

I, the undersigned

agree that during my employment with _____

and for a period of _____ years after termination thereof I shall not directly or indirectly engage or be concerned or interested in any other business of any other kind whatsoever within the magisterial jurisdiction of _____ (or within a radius of _____ kilometres of _____), which is engaged in a business similar to that of _____.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYEE

RESTRAINT OF TRADE AGREEMENT
(Specific customers)

I, the undersigned,

an employee of _____ (hereinafter referred to as "the Company") agree that I shall not, for the period of _____ years after termination of employment with the Company directly or indirectly, on my own behalf or on behalf of others, undertake or assist in the solicitation of customers with whom I dealt during the course of my employment with the Company, including in particular (list specific customers):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____
2. _____

EMPLOYEE

JOB DESCRIPTION

Job title _____

Division / Department _____

Reports to (Job title/s) _____

Supervises (Job title/s) _____

Co-operating departments _____

Salary grade / band _____

Permanent Temporary Contract

Full-time Part-time

Normal working hours and days _____

Normal place of work _____

Last revision date _____

MAIN PURPOSE, KEY DUTIES AND RESPONSIBILITIES (The applicant / employee should be able to perform most, if not all, of these duties. Be very thorough and cover all possible key duties.)

ADDITIONAL FUNCTIONS (The applicant / employee should be able to carry out these functions, but it is not essential in order to apply for the position / be employed in the position). It is expected that the applicant / employee master these functions.

SKILL AND BACKGROUND REQUIREMENTS (To be included here are job specific skills such as sales techniques, computer literacy required and previous experience.)

QUALIFICATIONS (Educational requirements)

SPECIAL REQUIREMENTS (Working overtime, excessive travel, high-noise environment, etc)

ACKNOWLEDGEMENT (Signature of supervisor / manager and employee. Signature indicates that the employee has seen and fully understands the job description.)

I, the undersigned employee, have seen and fully understand the above job description.

EMPLOYEE

DATE

SUPERVISOR

DATE

PERFORMANCE EVALUATION

DATE: _____

A. EMPLOYEE INFORMATION

First name	Surname
Department	Place of work
Date originally employed	Unbroken service since
Current position	In current position since
Permanent <input type="checkbox"/> Contract <input type="checkbox"/> Temporary <input type="checkbox"/>	Full-time <input type="checkbox"/> Part-time <input type="checkbox"/>
Normal work hours	Date of last increase
Evaluation period*	Reports to

Date of previous performance evaluation

First appraisal

Courses attended and training given during evaluation period

What is your general state of health? Mention any chronic illnesses.

Number of days absent from work due to:

Annual leave		Training	
Illness		Family responsibility	
Unpaid leave		Other	

Comments

Periods of overtime worked and reasons:

This form has been structured so that it can be distributed to the employee prior to the evaluation, for self evaluation. Management will then provide an evaluation of the employee, either prior to or during the meeting, to be discussed with the employee during the meeting. Management should stipulate the evaluation period. Evaluations are normally linked to a salary review.

*The evaluation period is determined by the employer. An evaluation is usually carried out over a set period, either annually, every quarter, etc.

B. BRIEF JOB DESCRIPTION (Attach a completed job description form or in the absence of a formal job description, state what you understand the key purpose, responsibilities and duties of your job to be.)

Is your salary commensurable with your abilities / performance? Yes / No

Why? _____

C. RATING

	RATING	CRITERIA
1.	Bad	This work performance is not adequate and requires serious attention to meet the standards set for this position; needs a lot of supervision.
2.	Needs Improvement	This work performance does not always meet the standards set for this position; requires more supervision than should be necessary.
3.	Competent	This work performance consistently meets the requirements for the position.
4.	Very Good	This work performance is generally above the standard required for the job, and at times exceeds expectations.
5.	Exceptional	This work performance is consistently superior to the required standard, and at times, sets the standard.
NA	Not Applicable	This is not a requirement of the employee's job.

1. Previous objectives and performance

1.1 What objectives were communicated to you during the evaluation period and/or set out at the previous evaluation? Have these objectives been achieved? Rate your success with regard to these objectives.

OBJECTIVES	RATING 1 – 5 by:	
	EMPLOYEE	SUPERVISOR

1.2 What affected your performance?

1.3 Your suggestions to improve your performance

1.4 Your suggestions to improve the organisation

2. The employee should now be rated by the employee and then the supervisor, with respect to the following eight sections:

2.1 JOB / TECHNICAL SKILLS

	RATING 1 – 5 by:	
	EMPLOYEE	SUPERVISOR
Job knowledge – necessary skills and knowledge to complete tasks effectively		
Problem-solving – identify problems and find feasible solutions		
Effective use of available resources, e.g. budget		
Working under pressure		
Dealing with criticism		
Average		

Employee's comments

Supervisor's comments

2.2 QUALITY OF WORK

	RATING 1 – 5 by:	
	EMPLOYEE	SUPERVISOR
Accuracy – correct own errors; meet the requirements; do a task correctly first time		
Thoroughness and reliability – ensure consistency in final product; follow up on work in progress; follow through; ensure all work is done to the same standard		
Client service – responsiveness to clients' requests; speed and accuracy at which requests are answered		
Judgement / Decision-making – make key decisions when necessary; judge accurately the demands of the project regarding constraints such as time and budget		
Average		

Employee's comments

Supervisor's comments

2.3 QUANTITY OF WORK

RATING 1 – 5 by:

	EMPLOYEE	SUPERVISOR
--	----------	------------

Effective prioritising of work – doing the most important work first		
--	--	--

Deadlines – meeting deadlines / submitting work prior to deadlines		
--	--	--

Amount – complete all given tasks; take on additional work		
--	--	--

Average		
---------	--	--

Employee's comments

Supervisor's comments

2.4 COMMUNICATION

RATING 1 – 5 by:

	EMPLOYEE	SUPERVISOR
--	----------	------------

Written expression / literacy skills – ability to read and write		
--	--	--

Verbal skills – communicate clearly one-to-one or in presentations		
--	--	--

Listening skills		
------------------	--	--

Shares information willingly		
------------------------------	--	--

Responds efficiently and suitably to communications, e.g. e-mails, telephone messages		
---	--	--

Average		
---------	--	--

Employee's comments

Supervisor's comments

2.5 INTERPERSONAL SKILLS	RATING 1 – 5 by:	
	EMPLOYEE	SUPERVISOR
Networking – productive working relationships with people within the industry		
Team participation and contributions		
Co-workers – conflict resolution, persuasion, motivation and leadership		
Client interactions		
Average		

Employee's comments

Supervisor's comments

2.6 POLICIES AND PROCEDURES	RATING 1 – 5 by:	
	EMPLOYEE	SUPERVISOR
Knowledge of company's policies and procedures		
Willingness to comply with reasonable company rules		
Follows correct safety procedures in the workplace		
Average		

Employee's comments

Supervisor's comments

2.7 ATTITUDE / APPROACH TO WORK	RATING 1 – 5 by:	
	EMPLOYEE	SUPERVISOR
Seeks to improve efficiency and excellence; sets new standards		
Open to new ideas and improving the product		
Takes initiative		
Organised		
Constantly improving skills and knowledge base – willingness to learn		
Attendance – doesn't take off work unnecessarily		
Punctuality – arrives at work/for meetings on time		
Average		

Employee's comments

Supervisor's comments

2.8 LEADERSHIP SKILLS (MANAGEMENT LEVEL ONLY)

RATING 1 – 5 by:
EMPLOYEE SUPERVISOR

Supports BEE and gender equity		
Promotes training and development of staff		
Takes responsibility for decisions made		
Provides regular staff evaluations		
Crisis management skills		
Budgeting: maximum use of resources		
Supports new opportunities and innovations		
Takes pride in service, performance and quality		
Assesses effectiveness of employees by the goals of the organisation		
Sets improvement goals and productivity targets		
Average		

Employee's comments

Supervisor's comments

Now the points for each section can be averaged out, to give an overall impression for every section, and of the employee as a whole. This will highlight both strengths and weaknesses.

RATING SUMMARY AVERAGES

	BY EMPLOYEE					BY SUPERVISOR				
	1	2	3	4	5	1	2	3	4	5
2.1 Technical skills										
2.2 Quality of work										
2.3 Quantity of work										
2.4 Communication										
2.5 Interpersonal skills										
2.6 Policies and procedures										
2.7 Attitudes / approach to work										
2.8 Leadership skills										
OVERALL EVALUATION										

Employee's comments

Supervisor's comments

D. ACTION PLAN

1. What additional training / development would be helpful in your job?

2. What work goals do you want to set for the following year?

The following objectives were agreed to at the evaluation meeting on _____

Employee's comments / response

EMPLOYEE'S SIGNATURE _____ DATE _____

SUPERVISOR'S SIGNATURE _____ DATE _____

FOR OFFICE USE ONLY

Total cost of employee to company R _____

Since (date) _____ Current monthly salary R _____, Average Com. R _____

Benefits _____

Previous monthly salary R _____, Average Com. R _____

Benefits _____

Supervisor's recommendations and motivation for salary review / status review / training and development _____

PERFORMANCE EVALUATION

Date _____

Name	Position
Department	Place of work
Date originally employed	Unbroken service since
Full-time <input type="checkbox"/> Part-time <input type="checkbox"/> Permanent <input type="checkbox"/>	Contract <input type="checkbox"/> Temporary <input type="checkbox"/>
Normal work hours	Date of last increase
Evaluation period	Supervisor
Area of responsibilities (short job description)	

No of working days _____, Days worked _____, Days absent _____ due to:

Annual leave _____ Sick leave _____

Training _____ Unpaid leave _____

Family responsibility _____ No valid reason / other _____

Overtime worked _____ days / hours.

Training received during evaluation period _____

Work performance rating <i>1 Bad, 2 Needs improvement, 3 Competent, 4 Very good, 5 Exceptional</i>	Rating by Employee	Rating by Supervisor
Technical Skills Job knowledge, problem solving, effective use of resources		
Quality of work Accurate, thorough, reliable, follows-up, consistent		
Quantity / speed of work Completes all given tasks, does extra work, prioritises, meets deadlines		
Communication Skills Written, verbal, listening skills, shares information		
Interpersonal skills Team worker, resolves conflict, client skills, effective networking		
Policies & procedures Knows and complies with the letter and the spirit of the house rules		
Attitude / approach to work Dedicated, enthusiastic, takes initiative, improves own skills		
Time keeping / attendance / health Punctual for work, doesn't take time off unnecessarily, organised		
Leadership Well respected, accountable, plans, budgets, promotes development of staff		
Added value Brings more to the job than expected, enhances the role		

What affected your performance?

EMPLOYEE'S COMMENTS	SUPERVISOR'S COMMENTS

Suggestions to improve work flow in your area of responsibility

EMPLOYEE'S COMMENTS	SUPERVISOR'S COMMENTS
_____	_____
_____	_____
_____	_____
_____	_____

Comment on objectives achieved since last evaluation, and new goals

EMPLOYEE'S COMMENTS	SUPERVISOR'S COMMENTS
_____	_____
_____	_____
_____	_____
_____	_____

Comment on career development aspirations and opportunities

EMPLOYEE'S COMMENTS	SUPERVISOR'S COMMENTS
_____	_____
_____	_____
_____	_____
_____	_____

Do you think your salary is commensurate with your abilities / performance? Yes / No
Why?

EMPLOYEE

DATE

SUPERVISOR

DATE

<p>FOR OFFICE USE ONLY</p> <p>Total cost of employee to company R _____</p> <p>Since (date) _____ Current monthly salary R _____, Average Com. R _____</p> <p>Benefits _____</p> <p>Previous monthly salary R _____, Average Com. R _____</p> <p>Benefits _____</p> <p>Supervisor's recommendations and motivation for salary review / status review / training and development _____</p> <p>_____</p> <p>_____</p> <p>_____</p>
--

AMENDMENT TO AGREEMENT OF EMPLOYMENT

Made and entered into by and between:

(hereinafter referred to as "the Company")

and

(hereinafter referred to as "the Employee")

Whereas the parties wish to amend the original agreement of employment between them dated _____ (hereinafter referred to as "the agreement")

Now therefore IT IS AGREED AS FOLLOWS:

1.

The amendments will take effect from the _____ day of _____ year _____.

2.

This amendment (together with original agreement of employment and written amendments) constitutes the entire agreement between the employer and employee.

3.

The Employee's status is unchanged / has changed as follows:

to temporary / permanent / part-time / full-time / other: _____

to Grade _____ to Department _____

to Job title _____,

4.

The Employee's place of work is unchanged / has changed as follows: _____

5.

The Employee's salary / fringe benefits are unchanged / have changed as follows: _____

6.

The Employee's duties and responsibilities are unchanged / have changed in respect of

new duties and responsibilities, / excluding old duties and responsibilities, /

changed performance standards for current duties and responsibilities,

as indicated here:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

7.

The Employee's terms and conditions of employment are altered in the following respects:

- 1. _____
- 2. _____
- 3. _____

The Employee and the Company acknowledge that this agreement, with written amendments and the original employment letter / agreement constitute the entire contract between them and that there shall be no variation of the terms and conditions thereof unless reduced to writing and signed by the parties.

SIGNED at _____ this _____ day of _____
year _____.

AS WITNESSES:

- 1. _____
- 2. _____

FOR AND ON BEHALF
OF THE COMPANY

SIGNED at _____ this _____ day of _____
year _____.

AS WITNESSES:

- 1. _____
- 2. _____

EMPLOYEE

ACKNOWLEDGEMENT OF DEBT BY EMPLOYEE

To _____
of _____
("the Company")

I _____
of _____
("the Employee")

acknowledge that I am indebted to the Company in the sum of R _____ ("the Capital Sum") being in respect of monies lent and advanced to me on _____ ("Interest Date").

I agree that the Capital Sum will bear interest at the prime rate quoted by _____
_____ Bank.

I irrevocably authorise the Company to deduct from my wages / salary every week / month an amount of R _____ being the agreed repayment instalment by me in liquidation of the Capital Sum and Interest ("the Debt"), until the Debt is fully repaid.

If I should leave the Company for any reason whatsoever before the Debt is fully repaid:

- (a) The balance of the Debt shall immediately become due and payable; and
- (b) The Company shall be entitled to apply any other amounts owing to me by the Company towards liquidation of the Debt; and
- (c) I shall keep the Company advised of my new address together with any details relating thereto.

Signed at _____ on this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYEE

APPLICATION FOR LEAVE

Date _____

In terms of Company Policy and where applicable Government Legislation, every employee must complete at least 12 months of service before being entitled to take leave.

Should you require leave before the end of the 12-month period, and have accumulated sufficient days, we may in exceptional circumstances, by way of concession only, allow you to take leave.

If you require leave of absence but have not accumulated sufficient leave, management may in its discretion, consent to your taking unpaid leave.

However we do not grant leave retrospectively whilst you are in absence.

I, _____ of _____ Department,
wish to apply for _____ days of my annual leave from _____ to
_____ inclusive.

The balance of leave presently due to me is _____ days.

If my request is granted, the balance of my leave today will be _____ days.

EMPLOYEE

MANAGEMENT

Application granted / Not granted

Date _____

Date _____

Dear

RESIGNATION

I hereby tender my resignation from my employment with you. My last day will be _____ (date), as per our agreement. I have appreciated the opportunities and experiences that have been provided to me during my employment with you.

Yours faithfully

Date _____

Dear

ACKNOWLEDGEMENT OF RESIGNATION

We acknowledge receipt of your letter of resignation of the _____ day of _____
year _____ and hereby accept your resignation from the Company with effect from the
_____ day of _____ year .

Yours faithfully

CERTIFICATE OF SERVICE

Date _____

We hereby certify that _____

(Full name of Employee)

was employed by us from _____ to _____.

He/She was employed to do the following type of work:

His/Her gross remuneration at the date of termination of employment was R _____ per week / month.

The employee has consented to us providing the reason for termination of employment which is:

FOR AND ON BEHALF OF

CONSENT TO RELEASE EMPLOYMENT INFORMATION

Date _____

I, the undersigned,

employee of _____ (company) hereby
agree that my employer shall be entitled to divulge, on request and at his discretion, any
information relating to my employment.

EMPLOYEE

NOTIFICATION OF GRIEVANCE

Complainant / Employee _____ Shop Steward _____

Department _____

Complainant / Employee's Supervisor / Manager _____

Details of Grievance

Proposed Solution

Signature of Complainant / Employee _____

Date _____

Signature of Complainant / Employee's Representative _____

Date _____

Signature of Complainant / Employee's Supervisor/Manager _____

Date Received _____

Note: In the event of a group grievance the Complainant / Employee's name stated above will be deemed to represent the names of all persons included in the group. A list of names of the persons in the group and their signatures will be attached to this Grievance Notification.

GRIEVANCE OUTCOME

Complainant / Employee _____ Shop Steward _____

Date of this minute _____

Date of grievance meeting _____

Present at meeting _____

Outcome of Meeting

Signature of Employer _____ Date _____

Designation _____

Complainant / Employee's Response

1. Are you satisfied with Management's response? Yes / No
2. Employee's comments _____

Signature of Employee _____ Date _____

Signature of Employee's Representative _____ Date _____

COUNSELING RECORD

Employee _____

Position _____

Date of Counseling _____

Reason for Counseling _____

Corrective action agreed upon _____

1st follow up date _____

Employer's assessment of results:

1. Performance has improved to the desired level.
2. Performance has improved, but not to the desired level.
3. Performance has not improved.

Advise employee of assessment and in the event of 2 or 3 above investigate reasons and consult with employee and agree on next steps to be taken:

- Repeat coaching / training
- Ask someone else to explain and demonstrate.
- Hold enquiry / hearing
- State other action to be taken _____

2nd follow up date _____

Employer's assessment of results:

1. Performance has improved to the desired level.
2. Performance has improved, but not to the desired level.
3. Performance has not improved.

Advise employee of assessment and in the event of 2 or 3 above investigate reasons and consult with employee and agree on next steps to be taken:

- Repeat coaching / training
- Ask someone else to explain and demonstrate.
- Hold enquiry / hearing
- State other action to be taken _____

NOTICE TO ATTEND A DISCIPLINARY MEETING / ENQUIRY

Name of Employee _____

Date of meeting / enquiry _____

Place of meeting / enquiry _____

Time _____

Note: An employee is entitled to be represented by either a co-worker or a shop steward of his/her trade union or to such other representation as agreed upon. Where the employee facing disciplinary action is himself / herself a shop steward, the right to representation extends to an official of a trade union of which such employee is a member. An employee may call witnesses and submit evidence in support of his/her case and ask for an interpreter. It is an employee's responsibility to ensure these persons are present. If an employee fails to attend a hearing it may be held in his/her absence.

Alleged Misconduct

Signature of Supervisor handing
notification to Employee

Time Served: _____

Date Served: _____

Signature of Employee

DISCIPLINARY MEETING FINDING

Date _____ Time _____

Place _____

Name of Employee _____

Chairman _____

Employee's Representative _____

Human Resources Representative _____

Management Representative _____

Other _____

Alleged Misconduct

Decision after Enquiry

Signature of Chairman _____ Date _____

Signature of Supervisor / Manager _____ Date _____

Signature of Employee's Representative _____ Date _____

Signature of Employee _____ Date _____

Signature of Human Resources Representative _____ Date _____

**NOTIFICATION OF DISCIPLINARY MEETING FINDING TO EMPLOYEE
(WARNING)**

Date _____

Name of Employee _____

It is hereby confirmed that on _____ you were found on a balance of probabilities to be guilty of the following offence/s.

1. _____
2. _____
3. _____
4. _____

The notification serves to inform you that the following action will be taken against you:

In respect of offence 1: _____
(this is a first / second / third or final warning)

In respect of offence 2: _____
(this is a first / second / third or final warning)

In respect of offence 3: _____
(this is a first / second / third or final warning)

In respect of offence 4: _____
(this is a first / second / third or final warning)

Signature of Chairman _____

I acknowledge receipt of this notification which has been explained to me.

Signature of Employee _____ Date _____

Signature of Employer/'s representative serving this notice _____

Date _____ Time _____

APPEAL AGAINST DISCIPLINARY ACTION DECISION

Name of Employee _____

Name of Employee's Representative _____

Disciplinary Findings / Measures Appealed Against

- 1. _____

- 2. _____

- 3. _____

Reasons for Appeal

- 1. _____

- 2. _____

- 3. _____

Signature of Employee _____ Date _____

Signature of Employee's Representative _____ Date _____

Appeal Submitted to _____

Signature of Manager / Supervisor _____ Date Received _____

Date _____

Dear

WARNING OF UNSATISFACTORY PERFORMANCE

During our meeting on the _____ day of _____ year _____ when aspects of your performance, unacceptable to this Company, were discussed, it was stated that a marked improvement must be shown in the following areas:

(a) _____ by date _____

Suggested methods of improvement: _____

(b) _____ by date _____

Suggested methods of improvement: _____

(c) _____ by date _____

Suggested methods of improvement: _____

We are confident in your ability to achieve this target, and trust that you will do so.

Yours sincerely

SIGNED

EMPLOYEE

DESIGNATION

Date _____

Dear

FINAL WARNING BEFORE TERMINATION

The problem of your poor performance in certain areas, of which you were previously warned, appears to continue.

In accordance with the high standards demanded of employees by this Company, I have no alternative but to inform you that if there is not a substantial improvement in the immediate future, further action will have to be taken which could include termination of your services.

The suggested methods of improvement are as follows: _____

Yours faithfully

For and on behalf of the Employer

DESIGNATION

Received original hereof this _____ day of _____ year _____.

EMPLOYEE / WITNESS

Date _____

Dear

NOTICE OF SUSPENSION FROM DUTY

You are hereby notified that as of _____ you are placed on suspension with full benefits / without full benefits.

Please be advised that while on suspension you are not permitted to be on the premises of the company or to use the company resources.

You will be expected to hand in all relevant keys and you may not remove or utilise any company data, documentation, car, cell phone, laptop, or other company property.

During your suspension you may not conduct any of your work duties, neither may you contact any member of staff. Should you wish to contact the company during your suspension, kindly contact: _____ on tel _____.

You will be contacted in due course.

Reasons for suspension

Yours faithfully

For and on behalf of the Employer

DESIGNATION

Received original hereof this _____ day of _____ year _____.

EMPLOYEE / WITNESS

Date _____

Dear

TERMINATION OF EMPLOYMENT

We regret to advise you that your employment with the Company shall terminate on the _____ day of _____ year _____.

This action has been necessitated for the following reasons:

Please arrange for the return of any Company property or documents in your possession.

Should you feel that you have been unfairly dismissed, we remind you that you are entitled to refer this matter to the Bargaining Council for the _____ Industry / the Commission for Conciliation, Mediation and Arbitration, within 30 days of the date of this letter.

Yours faithfully

For and on behalf of the Employer

DESIGNATION

Received original hereof this _____ day of _____ year _____.

EMPLOYEE / WITNESS

RETRENCHMENT NOTICE

Date: _____

Notice in terms of Section 189 of the Labour Relations Act of proposed termination of your services due to operational requirements with effect from the ____ day of _____ year _____.

To: _____

You with any representative are requested to attend a meeting at _____ on the _____ day of _____ year _____ at _____ am/pm to engage in a meaningful consensus-seeking process and attempt to reach consensus on:

- A) Appropriate measures
 - 1. to avoid your dismissal;
 - 2. to minimise the number of dismissals;
 - 3. to change the timing of the dismissal;
 - 4. to mitigate the adverse effects of the dismissal.
- B) The method of selecting the employees to be dismissed, and
- C) The severance pay for dismissed employees

RELEVANT INFORMATION CONCERNING YOUR PROPOSED DISMISSAL

1. The reasons for the proposed dismissal:

2. The alternatives that the employer considered before proposing the dismissal:

3. The reasons for rejecting each of those alternatives:

4. The number of employees likely to be affected:

5. The job categories in which they are employed:

6. The proposed method for selecting which employees to dismiss:

7. The time when or the period during which the dismissal is likely to take effect:

8. The severance pay proposal:

9. Any assistance that the employer proposes to offer the employees likely to be dismissed:

10. The possibility of your future re-employment:

11. The number of employees employed by the employer:

12. The number of employees that the employer has dismissed for reasons based on its operational requirements in the preceding 12 months:

13. The possibility of voluntary retrenchment and package.

14. Other relevant information:

FOR EMPLOYER

Received copy hereof at _____ this ____ day of _____ year _____.

EMPLOYEE

EMPLOYER'S PRE-CONCILIATION MEETING CHECKLIST

- Decide on your team.
- Agree on ground rules for your team.
- Decide who will be your spokesperson.
- Introduce your spokesperson and put your opening statement succinctly.
- Consider asking questions of clarity after applicant has put his opening statement.
- Take relevant documents.
- Don't hand over original documents to the conciliator.
- Consider options for settlement before going.
- Obtain a flexible mandate.
- Be cautious about putting firm offers in joint session.
- Consider asking to speak to the commissioner in a side-meeting, on the basis that your discussion will be confidential and without prejudice, to explore options for settlement.
- Ensure that if you reach agreement you do not leave without committing it to writing and obtaining a signed copy of the agreement and certificate.
- In the event of no settlement, ask the commissioner to at least narrow the issues for arbitration.
- Never use patronising language or language which could be construed as racist.

EMPLOYER'S CONCILIATION STATEMENT

(To be read at the conciliation hearing)

1. INTRODUCTION

We welcome this opportunity to settle the matter between (employer) and (employee).

We would like to introduce our team: _____

2. BACKGROUND

(employer) employed (employee) on (date) as a (occupation). In this capacity he/she reported to (supervisor). He/She was paid a monthly wage and lived on the property free of charge as part of his/her wage.

On (date) he/she was charged with misconduct in that he/she refused to obey the instructions of his/her supervisor, he/she did not work according to the work roster, he/she did not keep to his/her scheduled working hours and he/she did not work efficiently and with reasonable diligence and speed.

He/She was dismissed on the (date) following a disciplinary hearing held on that day.

When he/she was notified of his/her dismissal he/she was informed that he/she could choose to either:

- Work his/her notice period, (month) and stay on the premises until the end of (month), or
- Leave immediately in which case he/she would be paid out his/her notice and would have to vacate the room.

The employee chose to work his/her notice period and stay on the premises. He/She vacated the premises on (date) and was paid for the month of (month), his/her notice month, as well as his/her leave pay. He/She was also handed his/her UIF card. We are satisfied that we have paid him/her all monies owing to him/her in terms of the Basic Conditions of Employment Act.

3. SUBSTANTIVE FAIRNESS

We are satisfied that (the employee's) dismissal was substantively fair. We say this for the following reasons:

SPECIMEN ONLY

- The requirements of his/her job, the work roster, and his/her working hours were made known to him/her on a number of occasions (dates) and are well known to him/her; he/she had also received disciplinary warnings in the past for the failure to take reasonable instructions from (the supervisor) and he/she knew that a rule existed to this effect;
- These rules are legitimate and applied to him/her and other employees on a consistent basis;
- He/She was found guilty of the alleged misconduct in a fair hearing;
- The sanction of dismissal was arrived at after careful consideration of the mitigation which he/she led and the aggravating factors, in particular his/her previous record (many warnings and three disciplinary meetings).

4. PROCEDURAL FAIRNESS

We are satisfied that the disciplinary procedure was also procedurally fair. We say this for the following reasons:

- (The employee) was given advance notice of the charges and adequate time to prepare his/her response;
- He/She was given the opportunity of bringing a representative and we informed him/her that in the event that he/she required the assistance of an interpreter one would be provided;
- The charges were put to him/her at the hearing and he/she was given an opportunity to respond;
- He/She was given an opportunity to cross-examine our witnesses and he/she was given an opportunity to bring his/her own witnesses;
- When he/she was found guilty of misconduct he/she was given an opportunity to present evidence and argument in mitigation of sanction;
- He/She was informed in writing of the decision to dismiss him/her and the reasons for this decision;
- He/She was informed of his/her rights to appeal the decision and/or refer the matter to the CCMA.

5. OUTCOME SOUGHT

We believe that our decision to dismiss (the employee) was both substantively and procedurally fair and that our decision should stand. We know that conciliation provides us with an opportunity to settle the matter and to avoid arbitration and we would be prepared to consider a reasonable settlement; we are not prepared to reinstate (the employee).

FINANCIAL STATEMENTS / INCOME TAX / BANKING

SECTION

3

FINANCIAL STATEMENTS

Section

3

Financial statements, both for firms and individuals, are an indispensable means of revealing a financial situation. Used internally, they are a means for gauging strengths and weaknesses and for planning. Used externally, they are a means to market the concern they represent. It is often mandatory for such parties as the Receiver of Revenue, banks, purchasers of firms and employers to disclose financial statements.

Form 3.1 Balance Sheet (2 pages)

Contains the basic categories relating to the assets and liabilities of an individual or a firm.

Form 3.2 Analysis of Income and Assets

Assists an individual to determine his income and the value of his assets. Estate and investment planning can flow from this analysis.

Form 3.3 Projected Cash Flow Statement

In order to maintain an even flow of liquidity, it is essential to forecast cash receipts and payments.

Form 3.4 Income and Expenditure

This account is for individuals.

INCOME TAX

The Receiver of Revenue is usually amenable to reasonable requests and correspondence submitted to him timeously often has the desired effect. It is legal to avoid, as opposed to evade, paying tax and if you object to an assessment or to decisions of the Receiver, a procedure for objecting and appealing has to be followed. Depending on the complexity of the matter, it is sometimes advisable to consult with an attorney or tax consultant. Various SARS forms can be downloaded from the SARS website at: <http://www.sars.co.za>

**Form 3.5 Application for extension of time to render Income Tax Return
(Form IT12 for the tax year)**

**Form 3.6 Application for extension of time to render Income Tax Return
(Form IRP6 for the First Provisional Return)**

**Form 3.7 Application for extension of time to render Income Tax Return
(Form IRP6 for the Second Provisional Return)**

Form 3.8 Application to pay off Assessment in Instalments

Form 3.9 Application for extension to pay off the First Provisional Payment

Form 3.10 Application for extension to pay off the Second Provisional Payment

Form 3.11 Notice of Objection to Assessment

An objection to an assessment must be made in writing and must reach the Receiver within 30 days after the date stipulated for payment by the assessment notice or within 30 days after the date that reasons were furnished by the Receiver. The time limit is strictly adhered to by the Commissioner for Inland Revenue. If no objection is lodged, the assessment becomes final against the taxpayer. This letter encloses form ADR1 being the Notice of Objection.

Form 3.12 Notice of Appeal

To the Special Court for hearing Income Tax Appeals: If you are dissatisfied with the decision of the Commissioner regarding the Notice of Objection, an appeal must be lodged to the Income Tax Special Court within 30 days of the date of the Notice of Disallowance. This time limit is likewise strictly enforced. It is suggested that an attorney or tax expert be consulted with regard to the appeal although the taxpayer may save costs by appearing himself. The Receiver may extend the 30-day period where he is satisfied that reasonable grounds exist. The extension is probably limited to 3 years from the date of the assessment according to a recent budget proposal.

Form 3.13 Special Power of Attorney – Tax Objection / Appeal

This enables a taxpayer to delegate the task to someone else for bringing an appeal on his behalf. He is usually obliged to appear in person in Alternative Dispute Resolution (ADR), proceedings with or without a representative.

Form 3.14 Flowchart - Dispute Resolution with SARS

This is a flowchart relating to possible procedures available to a taxpayer after receipt of an objectionable assessment, including the Alternative Dispute Resolution (ADR).

Form 3.15 Time Periods in Dispute Resolution with SARS

This is a schedule summarising the relevant time periods once action is taken by a taxpayer against an objectionable assessment. Rules came into effect from 1 April 2003 in terms of Section 107A of the Income Tax Act prescribing the procedures to be observed in lodging objections and noting appeals against assessments and for ADR and hearing of appeals before a tax court.

Form 3.16 SARS Travel Logbook

All taxpayers who receive a travel allowance are entitled to claim a deduction from SARS, should they be using their own private vehicle for business use. It is essential to have certain information to be able to claim any deductions. A logbook is useful to keep track of odometer readings and total kilometres travelled for each tax year. There are 2 ways in which to claim: Using deeming provisions, the first 18 000km are considered private use and anything after that may be claimed up to a limit of 14 000km. With a logbook, accurate calculations of personal and business usage can be made and with these figures at hand, there is no limit to the claim provided you can justify it with your records. Logbooks should be retained for a minimum of 3 years should SARS require you to submit them for verification. For further clarification consult the SARS office.

BANKING

In view of the fact that the bank has specialised forms for completion for most of its functions, usually the only way to deal with each administrative matter is to personally visit the bank. In cases of emergency, e.g. stop payment of a lost cheque, an initial telephonic instruction will suffice, providing it is followed by the completion of the bank's individual form.

Form 3.17 Letter requesting indication of financial soundness of banker's client

Often the bank will respond telephonically.

Form 3.18 Notice of Dishonoured Cheque

Informs a debtor of a dishonoured cheque. In the event of a bill of exchange or promissory note being dishonoured, it is suggested that an attorney be consulted immediately to ensure compliance with the stringent requirements of Notice of Dishonour, as imposed by the Bills of Exchange Act 34 of 1964.

Form 3.19 Notice to Bank to Stop Payment on Cheque

Used when a drawer wishes to stop payment on a cheque. In addition, it is advisable to telephone the bank immediately with verbal instructions.

Form 3.20 Cancellation of Stop Payment Order

Cancels Form 3.19, permitting payment of the cheque.

ASSETS

Previous year	<u>IMMOVABLE PROPERTY (Registered in my name)</u>	Rand																														
	Give particulars of each property separately, stating whether Freehold, Leasehold, etc., and state if affected by any Servitudes (right of access), Usufruct (right of use and fruits of property) or Fiduciary (limited ownership) Interests.																															
	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Name of Farm or Plot no.</th> <th style="width: 10%;">Size</th> <th style="width: 15%;">District</th> <th style="width: 20%;">Date purchased and price paid</th> <th style="width: 30%;">*Est. Market Value or * Municipal / Sworn Valuation</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> </tbody> </table>	Name of Farm or Plot no.	Size	District	Date purchased and price paid	*Est. Market Value or * Municipal / Sworn Valuation	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
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_____	_____	_____	_____	_____																												
_____	_____	_____	_____	_____																												
	<u>MOVABLE PROPERTY</u>																															
	Machinery, Plant, etc. (specify important items only)																															

	Vehicles, Implements (specify important items only)																															

	Furniture and Fittings																															

	<u>INVESTMENTS</u>																															
	Loans																															
	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">By whom due</th> <th style="width: 20%;">Rate of interest</th> <th style="width: 20%;">Date payable</th> <th style="width: 35%;">Amount</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> </tbody> </table>	By whom due	Rate of interest	Date payable	Amount	_____	_____	_____	_____	_____	_____	_____	_____																			
By whom due	Rate of interest	Date payable	Amount																													
_____	_____	_____	_____																													
_____	_____	_____	_____																													
	Life Policies (payable to me and not to any third party)																															
	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Date issued</th> <th style="width: 15%;">Company</th> <th style="width: 15%;">Number</th> <th style="width: 15%;">Maturity date</th> <th style="width: 15%;">Amount</th> <th style="width: 20%;">Surrender Value Less loans</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> </tbody> </table>	Date issued	Company	Number	Maturity date	Amount	Surrender Value Less loans	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____													
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_____	_____	_____	_____	_____	_____																											
_____	_____	_____	_____	_____	_____																											
	Shares / Unit Trusts																															
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Number held	Company	Market value																														
_____	_____	_____																														
_____	_____	_____																														
	Inventory _____																															
	Trade and other receivables _____																															
	Bills Receivable (not discounted) _____																															
	Cash _____																															
	Cash Equivalents _____																															
	Intangible assets (specify) _____																															

NB. State if any assets are encumbered.

LIABILITIES

Previous year	<u>Bonds and/or amounts owing under Deeds of Sale</u>	Rand																								
	<table border="0" style="width: 100%;"> <thead> <tr> <th style="width: 25%;">Name of Farm or Plot no.</th> <th style="width: 10%;">Size</th> <th style="width: 15%;">District</th> <th style="width: 25%;">Date purchased and price paid</th> <th style="width: 25%;">Maturity Date</th> </tr> </thead> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </table>	Name of Farm or Plot no.	Size	District	Date purchased and price paid	Maturity Date	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Name of Farm or Plot no.	Size	District	Date purchased and price paid	Maturity Date																						
_____	_____	_____	_____	_____																						
_____	_____	_____	_____	_____																						
_____	_____	_____	_____	_____																						
_____	_____	_____	_____	_____																						

		Due to banks (Specify briefly security given)																				
	Owing under instalment sale transaction and leasing transaction agreements																					
		Movable Encumbered	To whom	Instalment Payable	Amount still owing		--------------------	---------	--------------------	--------------------		_____	_____	_____	_____		_____	_____	_____	_____		
	Bills Payable																					
	Trade and other payables																					
	Loans (including Insurance Companies)																					
		To whom	Interest rate	When payable	Amount		---------	---------------	--------------	--------		_____	_____	_____	_____		_____	_____	_____	_____		
	Other Liabilities (specify)																					
	Note: State if any of the above liabilities is covered by a Notarial Bond																					
	Liability for Income Tax (Date to which assessment paid) Surplus (balance in my favour)																					
	Specify here Contingent Liabilities as Guarantor, Surety or otherwise.																					

PROJECTED CASH FLOW STATEMENT

NAME OF COMPANY _____ For period _____ to _____ Date prepared _____

MONTH													
A. BALANCE (OVERDRAFT) AT BEGINNING OF MONTH													
B. CASH RECEIPTS													
Cash sales													
Collections from debtors													
Draws on loans other than overdraft													
Discounts													
TOTAL OF CASH RECEIPTS													
C. CASH PAYMENTS													
Fixed overheads													
Variable expenses													
Payments to suppliers													
Loan repayments													
Purchases of Fixed assets													
Tax payments													
Dividends													
Other													
TOTAL OF CASH PAYMENTS													
D. SURPLUS / SHORTFALL													
Surplus (B-C) or													
Shortfall (C-B)													
E. BALANCE (OVERDRAFT) AT END OF MONTH													

INCOME AND EXPENDITURE

<u>Monthly Income</u>	<u>Expenditure</u>	<u>Income</u>
Salary		
Commissions		
Investment		
Other		
<u>Monthly Expenditure</u>		
Rent / Bond payments		
Hire Purchase Instalments		
Lease Agreements		
Credit Card Accounts		
Insurance Premiums		
Taxation		
Transport		
Children's Clothing / Education		
Loan repayments		
Donations		
Entertainment		
Budgeted Savings		
Alimony / Maintenance		
Water and electricity		
Food		
Medical		
Chemist		
Other		
Total Expenditure / Income		
Surplus / Shortage	R	R

The Receiver of Revenue

Date _____

Ref: Income tax number

Dear

APPLICATION FOR EXTENSION OF TIME TO RENDER INCOME TAX RETURN
(FORM IT12 FOR THE TAX YEAR) ENDING FEBRUARY, YEAR _____

You are requested to grant an extension of time herein until the _____ day of _____
year _____.

The reason for this request is as follows:

Your granting this request will be very much appreciated.

I await to hear from you.

Yours faithfully

The Receiver of Revenue

Date _____

Ref: Income tax number

Dear

APPLICATION FOR EXTENSION OF TIME TO RENDER INCOME TAX RETURN
(FORM IRP6 FOR THE **FIRST** PROVISIONAL RETURN) DUE ON THE 31st
AUGUST, YEAR _____

You are requested to grant an extension of time herein until the _____ day of _____
year _____.

The reason for this request is as follows:

Your granting this request will be very much appreciated.

I await to hear from you.

Yours faithfully

The Receiver of Revenue

Date _____

Ref: Income tax number

Dear

APPLICATION FOR EXTENSION OF TIME TO RENDER INCOME TAX RETURN
(FORM IRP6 FOR THE **SECOND** PROVISIONAL RETURN) DUE ON THE 28th
FEBRUARY, YEAR _____

You are requested to grant an extension of time herein until the _____ day of _____
year _____.

The reason for this request is as follows:

Your granting this request will be very much appreciated.

I await to hear from you.

Yours faithfully

The Receiver of Revenue

Date _____

Ref: Income tax number

Dear

APPLICATION TO PAY OFF MY ASSESSMENT FOR THE YEAR ENDED
FEBRUARY, YEAR _____ IN INSTALMENTS

I regret to advise that I am not in a position to let you have an immediate payment of R _____ as stated in your assessment by the _____ day of _____ year _____.

My proposal is that I pay off the said sum of R _____ in equal monthly instalments of R _____ commencing on the _____ day of _____ year _____.

The reason for this request is as follows:

Your granting this request will be very much appreciated.

I await to hear from you.

Yours faithfully

The Receiver of Revenue

Date _____

Ref: Income tax number

Dear

APPLICATION FOR EXTENSION TO PAY OFF THE **FIRST PROVISIONAL PAYMENT
DUE ON THE 31st AUGUST, YEAR _____**

I regret to advise that I am not in a position to let you have an immediate payment of R _____ as stated in your assessment by the _____ day of _____ year _____.

My proposal is that I pay off the said sum of R _____ in equal monthly instalments of R _____ commencing on the _____ day of _____ year _____.

The reason for this request is as follows:

Your granting this request will be very much appreciated.

I await to hear from you.

Yours faithfully

The Receiver of Revenue

Date _____

Ref: Income tax number

Dear

APPLICATION FOR EXTENSION TO PAY OFF THE **SECOND** PROVISIONAL
PAYMENT DUE ON THE 28th FEBRUARY, YEAR _____

I regret to advise that I am not in a position to let you have an immediate payment of
R _____ as stated in your assessment by the _____ day of
_____ year _____.

My proposal is that I pay off the said sum of R _____ in equal monthly
instalments of R _____ commencing on the _____ day of
_____ year _____.

The reason for this request is as follows:

Your granting this request will be very much appreciated.

I await to hear from you.

Yours faithfully

The Receiver of Revenue

“REGISTERED MAIL”

Date _____

Ref: Income tax number

Dear

NOTICE OF OBJECTION TO ASSESSMENT FOR YEAR ENDING
FEBRUARY, YEAR _____

You are hereby informed that I object against the assessment for year ending February _____
for the reasons as stated in the attached Notice of Objection ADR1.

Please acknowledge receipt and let me have your decision within 90 days.

Yours faithfully

The Receiver of Revenue

“REGISTERED MAIL”

Date _____

Ref: Income tax number

Dear

NOTICE OF APPEAL

I hereby acknowledge receipt of your letter dated _____ relating to my notice of objection. You are informed that I hereby appeal against your decision in terms of Section 83(1) of the Income Tax Act to the Special Court for Hearing Income Tax Appeals.

I attach hereto a Notice of Appeal ADR2 duly completed.

- Please acknowledge receipt and advise me of the time and place for the hearing of the appeal.
- I elect that the dispute be referred for Alternative Dispute Resolution (ADR). Please advise me of the details of the facilitator and the date of the ADR.
- (Delete where not applicable).

Yours faithfully

SPECIAL POWER OF ATTORNEY – TAX OBJECTION / APPEAL

I, the undersigned _____ in my capacity as _____ hereby nominate, constitute and appoint _____ to be my attorney and/or agent with full power and authority to act for me in respect of lodging and pursuing an objection against the assessment issued against _____ in respect of the _____ year/s of assessment, and to note an appeal to the Tax Board or Tax Court and to institute, prosecute and oppose any action / or to sign the necessary documents and affidavits in pursuance of such an appeal, including appearing on my behalf before the Tax Board, the Tax Court or any other Court.

THUS DONE, EXECUTED at _____

on this _____ day of _____ year _____ .

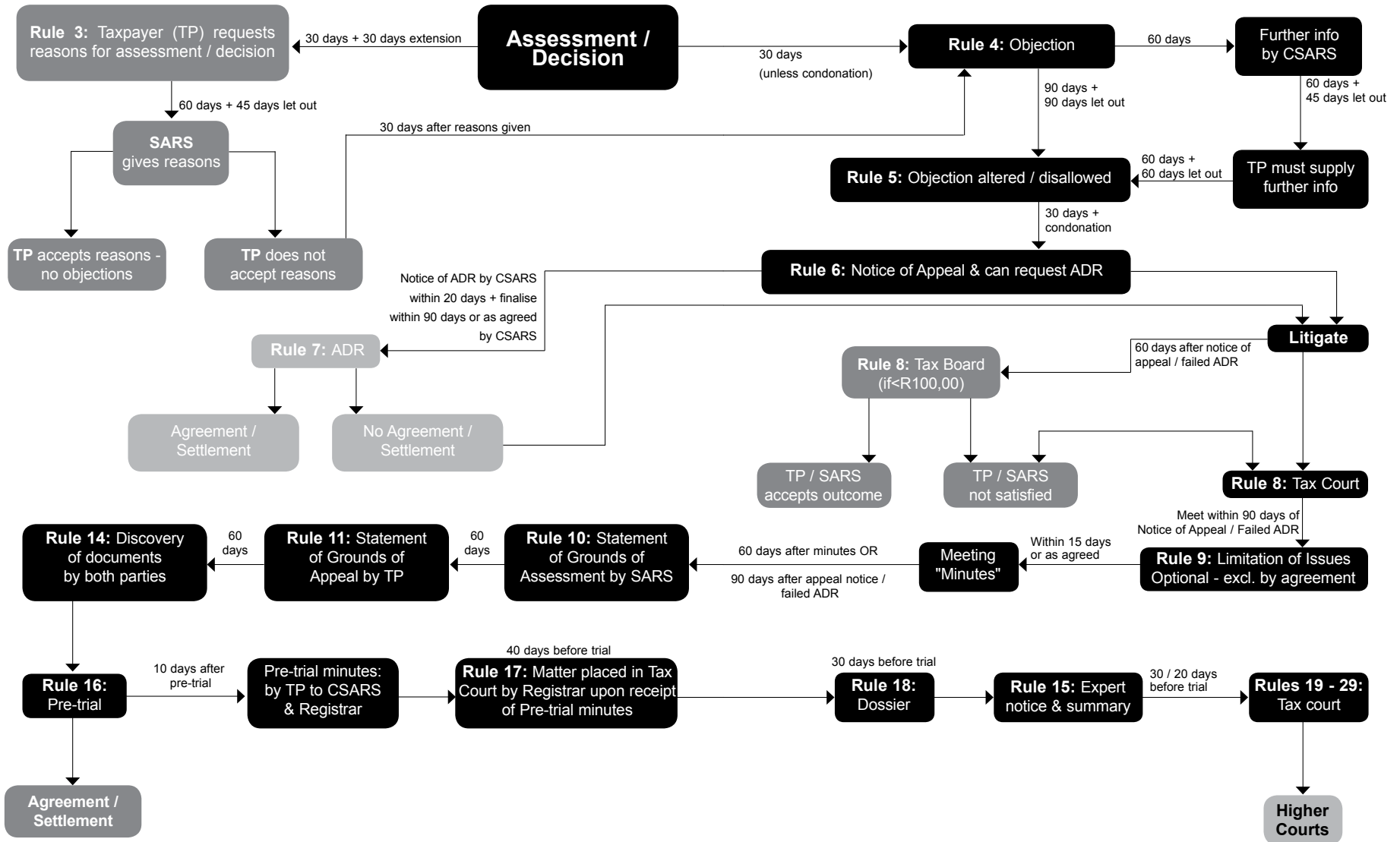
(Signature)

AS WITNESSES:

1. _____ (Full Name: _____)

2. _____ (Full Name: _____)

FLOWCHART - DISPUTE RESOLUTION WITH SARS



Time Periods in Dispute Resolution with SARS

Process	Time Period	Extension	Rule	Act
REASONS				
Request by TP	30	30	3(1)	-
SARS Notice: Reasons already provided	30	-	3(2)	-
Reasons by SARS	60	45	3(3)	-
OBJECTION				
Lodging by TP	30	*unlimited	4(e)	S 81(2)
SARS Notice: Invalid objection	60	By agreement/Tax Court	5(1)(a) & 26	-
Amended objection by TP	10	By agreement/Tax Court	5(1)(b)	-
Request for further information by SARS	60	By agreement/Tax Court	5(2)(a)	-
Provision of requested information by TP	60	30+By agreement/Tax Court	5(2)(b) & 26	-
SARS decision on objection: After further info	60	60+By agreement/Tax Court	5(3)-(4) & 26	S 81(4)
SARS decision on objection: After lodging of objection	90	90+By agreement/Tax Court	5(3)-(4) & 26	S 81(4)
Appeal - Notice by TP	30	*unlimited	6(2)	S 83(1A)
ALTERNATIVE DISPUTE RESOLUTION (ADR)				
Initiated by TP in ADR2: Notice by SARS matter appropriate	20	By agreement	7(1)(a)	-
Initiated by SARS: Notice by SARS seeking consent by TP	10	By agreement	7(1)(a)	-
Period: ADR finalised (after notice of appeal)	90	By agreement	7(3)(c)	-
Assessment by SARS after successful ADR	60	By agreement	7(7)(c)	-
TAX BOARD				
Notice of set down by SARS: after ADR / notice appeal	40	By agreement / Tax Court	8(2) & 26	-
Days before hearing (within which notice of set down be given)	30	By agreement / Tax Court	8(2) & 26	83A(7)(b)
Period within which Chairperson must give decision after hearing to clerk	30	By agreement / Tax Court	8(3)(a) & 26	83A(10)(b)
Period within which clerk of Board must notify TP & SARS of decision	10	By agreement / Tax Court	8(3)(b) & 26	83A(10)(b)
Period within which TP or SARS must give notice of dissatisfaction with Chairperson's decision	30	-	-	83A(13)
TAX COURT				
Limitation Meeting (after ADR2 / ADR / Tax Board)	90	By agreement / Tax Court	9(1)	-
Minutes of Limitation meeting by SARS (after meeting concluded)	15	By agreement / Tax Court	9(2) & 26	-
Statement: Grounds of assessment (after minutes of Limitation Meeting)	60	60+By agreement / Tax Court	10(1)(a) & 26	-
Statement: Grounds of assessment (after appeal notice / ADR / Board Notice)	90	90+By agreement / Tax Court	10(1)(b) & 26	-
Statement Grounds of appeal (by TP)	60	By agreement / Tax Court	11(1) & 26	-
DISCOVERY				
Notice to discover (after delivery statement of grounds of appeal)	20	By agreement / Tax Court	14(1) & 26	-
Discovery by party requested to discover	40	By agreement / Tax Court	14(2) & 26	-
Notice: further discovery (after making discovery)	10	By agreement / Tax Court	14(3) & 26	-
PRE-TRIAL				
Meeting (after final discovery or statement grounds of appeal where no discovery)	60	By agreement / Tax Court	16(1) & 26	-
Minutes of pre-trial (by SARS)	10	By agreement / Tax Court	16(4) & 26	-
PLACING OF APPEAL & DOSSIER & EXPERT WITNESSES				
By SARS after delivery of pre-trial minutes	-	-	17(1)	-
Notice by Registrar of time & place of hearing - period before hearing	40	By agreement / Tax Court	17(2) & 26	-
Dossier by SARS - period before hearing	30	By agreement / Tax Court	18 & 26	-
Notice of expert witness to other party - period before hearing	30	By agreement / Tax Court	15 & 26	-
Summary of expert witness' opinion to other party - period before hearing	20	By agreement / Tax Court	15 & 26	-

*Although the period for which such extension may be granted is unlimited, SARS will require motivation for the period requested by the taxpayer

SARS TRAVEL LOGBOOK

Date	Opening kms	Closing kms	Total kms	Private kms	Business kms	Business Travel details (where, reason for visit)	Actual fuel & oil costs (R)	Actual repairs & maintenance costs (R)
Total								

The Manager

Date _____

Dear

REQUEST FOR INDICATION OF FINANCIAL SOUNDNESS OF CLIENT

Your client, _____, has given your company as a reference.

We would appreciate your indication as to whether your said client would be good for meeting invoices totalling R _____ per month over the next _____ months.

We await your response.

Yours faithfully

"REGISTERED MAIL"

Date _____

Dear

NOTICE OF DISHONOURED CHEQUE

We wish to advise that your cheque in the sum of R _____ dated
_____ has been dishonoured by your bank.

Unless we receive payment of the aforesaid sum within _____ days of date hereof, we
shall have no alternative but to institute legal proceedings for recovery thereof.

Yours faithfully

The Accountant

Date _____

Dear

NOTICE TO BANK TO STOP PAYMENT ON CHEQUE

You are hereby instructed to place a stop payment order and refuse payment upon presentation of the following cheque:

Name of Payee _____

Date of Cheque _____

Amount _____

Cheque Number _____

Account Number _____

Account in name of _____

This stop order shall remain in effect until further written notice.

Yours faithfully

The Accountant

Date _____

Dear

CANCELLATION OF STOP PAYMENT ORDER

Kindly cancel stop payment order on:

Name of Payee _____
Date of Cheque _____
Amount _____
Cheque Number _____
Account Number _____
Account in name of _____

You may now honour the cheque upon presentation.

Yours faithfully

DEBTOR / CREDITOR

SECTION

4

DEBTOR / CREDITOR

Section

4

Debtor / creditor relationships are not only the most common, but generally they are also the most important relationships for business people. Proper formulation of such relationships is essential to sound and efficient business practice.

Good credit control, which is an integral part of business practice, requires efficient screening of credit applicants, systematic checking, prompt action when an account is overdue and a constant effort to reduce debtors.

In order to safeguard a creditor against a debtor's failure to pay, a creditor frequently demands some form of security. This can take the form of suretyship, where some other person undertakes to pay the debt if the debtor defaults. Alternatively, the debtor can pledge or mortgage certain property to the creditor until the debt is paid.

The forms in this section are designed to assist business people in their debtor / creditor relationships. Specimen forms for the securing of debts can be found in Section 1, General Agreements.

The National Credit Act No 34 of 2005 became fully operative on 1 June 2007. It replaced both the Usury Act No 73 of 1968 and the Credit Agreements Act No 75 of 1980. Apart from protecting consumers its purposes are to advance the economic welfare of South Africans and to promote an effective credit market and industry. The Act aims to prevent reckless credit granting and to assist debtors who are over committed. It applies to credit agreements regardless of the amount of credit involved, and to every Credit Agreement between parties dealing at arm's length made within or having an effect in South Africa unless the exceptions as listed in Section 41 apply e.g. a large agreement in which the consumer is a juristic person or the credit provider is located outside South Africa. A consumer includes a juristic person with an annual turnover or asset value of less than R1 million. For the purposes of the Act, a juristic person includes a partnership, association of persons or a trust with more than three trustees. Nevertheless the Act has limited application where the juristic person is a consumer (Section 6).

For the purposes of this Act, an agreement constitutes a Credit Agreement if it is a credit facility or credit transaction or credit guarantee or any combination thereof. However, an agreement is not a Credit Agreement if it is a lease of immovable property (Section 82(b)). The Act will not apply to cash on delivery (COD) transactions but it will apply when interest is raised for the deferment of payment of an account, for example an Acknowledgement of Debt.

It is beyond the scope of this introductory discussion to provide more than a broad outline to this complex and lengthy Act and its Regulations. Of necessity attention is given to those forms affected by the Act and also to give the reader a general background of the Act.

A supplier who supplies goods and charges interest on overdue accounts is not a credit provider in terms of the Act. Examples of credit providers are a lessor under a lease of movable property, a bank under a mortgage agreement or a party who supplies goods under a discount transaction. An Acknowledgement of Debt is a credit transaction in terms of Section 8(4)(f).

A credit provider is obliged, in terms of Section 14, to register with the National Credit Regulator only if it is a credit provider under at least 100 credit agreements or the principal debt owed to it under all outstanding credit agreements exceeds R500 000-00.

The duties of a credit provider are onerous.

A credit provider, who is defined under Section 1 of the Act, must:

- be registered as a credit provider and must make a credit assessment of the consumer;
- furnish the consumer with a pre-agreement statement and quotation prior to a conclusion of an agreement;

- furnish the consumer with the copy of the agreement and with periodic statements of account;
- protect the confidentiality of any information pertaining to a consumer;
- report to the National Credit Register or to a Credit Bureau details of a credit agreement that he has entered into. When a consumer is in default the credit provider may propose that he seek advice to resolve any dispute. He must maintain a record of the credit application.

If a credit agreement is reckless by virtue of the credit provider failing to conduct an assessment, or entering into a credit agreement despite the fact that the consumer did not generally understand the risks, or the consumer is over indebted, the court may declare that the credit agreement is reckless. The court may then make an order setting aside all or part of the consumer's rights and obligations or suspend the force and effect of the credit agreement.

If a consumer is in default under a credit agreement, the credit provider is obliged to send a notice in terms of Section 129 (1) to the consumer before commencing any legal proceedings.

Form 4.1 Business Credit Application

Should be used when screening a business applicant. This is an opportunity to have directors / members of a company / close corporation / partnership sign a suretyship and accept liability for the conditions of business. The National Credit Act requires a credit provider to register with the National Credit Regulator if it provides credit for at least 100 credit agreements, or the total debts owed to it under all outstanding credit agreements exceeds R500 000.

Form 4.2 Personal Credit Application

Aids the creditor to screen a consumer applicant.

Form 4.3 Receipt on Account

Provides a receipt for payment on account, i.e. where less than the full amount of the debt is tendered.

Form 4.4 Payment in Full

Used to terminate obligation/s.

Form 4.5 Offer of Settlement

An offer of settlement from a debtor to a creditor on a disputed account. The form gives reasons for the dispute, but these may be omitted if desired.

Form 4.6 Offer of Settlement by Instalments

Similar to Form 4.5 but proposes instalment payments.

Form 4.7 Advice of Credit Rejection

Used for instances when the granting of credit presents a real risk of non-payment.

Form 4.8 Credit Report

Enables a firm to record a credit history and thus to regulate the account.

Form 4.9 Letter of Credit Limit

Warns a customer that he/she is either approaching, or has reached his/her credit limit. It is advisable to have credit limits sharply defined and to keep customers fully informed as to their limit.

Form 4.10 Request for Payment of Outstanding Account

A polite request for settlement of account.

Form 4.11 Letter of Overdue Account (1st Letter)

Requests payment of an overdue account. The first letter of this nature should be couched in friendly terms.

- Form 4.12 Second Letter of Overdue Account (2nd Letter)**
Provides a letter, which should follow Form 4.11.
- Form 4.13 Overdue Account (3rd Letter)**
Inquires into a customer's failure to resolve his account and requests payment for the third time. The letter invites the customer to propose a settlement plan and seeks to retain the goodwill of the customer.
- Form 4.14 Payment by Instalments**
Similar to Form 4.6 but is from the creditor to the debtor.
- Form 4.15 Letter of Demand**
A formal letter of demand prior to legal proceedings being instituted against the debtor.
- Form 4.16 Hand-Over Advice to Attorney**
A letter of instruction to an attorney to collect an overdue account. The attorney will require all invoices and documentation pertaining to the account before he can act effectively. Legal costs can be avoided by approaching the Clerk of the Small Claims Court (which is situated at many Magistrates' Courts). This facility is available to natural persons only and for money claims up to R7 000.00.
- Form 4.17 Request to Attorney for Report on Collections**
A brief request, which is all that is required. Usually a telephone call elicits a speedier and more comprehensive response.
- Form 4.18 Letter of Demand in terms of the National Credit Act**
It is obligatory for a credit provider to send a notice in terms of Section 129 (1)(a) prior to the institution of proceedings. A credit provider is defined as follows:
a) the party who supplies goods or services under a discount transaction, incidental credit agreement or instalment agreement;
b) the party who advances money or credit under a pawn transaction;
c) the party who extends credit under a credit facility;
d) the mortgagee under a mortgage agreement;
e) the lender under a secured loan;
f) the lessor under a lease;
g) the party to whom an assurance or promise is made under a credit guarantee;
h) the party who advances money or credit under any other credit agreement;
i) any person who acquires the rights of a credit provider under a credit agreement.

BUSINESS CREDIT APPLICATION

Date _____

Business Name		(Reg. No _____)	
Sole Tradership / Partnership / Close Corporation / Proprietary Limited / Limited			
Address			
Owner / Managing Director / Senior Partner			
Tel	Fax	How long in business?	
Trade References			
Name		Tel (_____)	
Name		Tel (_____)	
Name		Tel (_____)	
Name		Tel (_____)	
Bank References			
Bank	Branch	A/c no	Type of A/c
Bank	Branch	A/c no	Type of A/c
Name of Auditor		Tel (_____)	
Name of Attorney		Tel (_____)	
Credit requested			
Pending legal proceedings against the firm			
Judgements			
Has the business ever made a compromise with its creditors or been provisionally or finally liquidated or placed into judicial management? If so, please provide details:			

I/We acknowledge that any credit facility that may be granted may be withdrawn at any time.

I/We agree to be bound by the conditions of business of the supplier, a copy of which we acknowledge receipt of, if credit facilities are granted.

NAME	SIGNED FOR AND ON BEHALF OF ABOVE-MENTIONED BUSINESS
------	--

SURETYSHIP

I/We, the undersigned, hereby bind ourselves as surety/ies and co-principal debtor/s of the above-named business for all obligations due by it to _____ (the creditor)

I/We undertake not to renounce this suretyship unless released by the creditor.

DATED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____	NAME OF SURETY 1	SIGNATURE
2. _____	NAME OF SURETY 2	SIGNATURE

PERSONAL CREDIT APPLICATION

Name	Date	
Residential address	Tel ()	
Period of residence	Owner or Tenant	
Employer	Address	
	Tel ()	
Position	Period of Employment	
Net Salary	No of Dependants	
Type car owned	Year	Reg no
Name and address of employer of spouse		
Married in or out of community of property		
Parent's name	Address	
	Tel ()	
Details of immovable property		
Bond Holder		
Total monthly income		
Outstanding debts		
Total monthly expenditure		
Pending legal proceedings		
Judgements		
Have you ever been provisionally or finally sequestrated?		
Provide details		
Credit references		
Name	A/c no	Tel ()
Name	A/c no	Tel ()
Name	A/c no	Tel ()
Bank references		
Current A/c	Bank	Branch Code
Savings A/c	Bank	Branch Code
Other A/c	Bank	Branch Code
Credit Cards	Bank	Branch Code

The information I have supplied above is, to the best of my knowledge, true and correct. I undertake to pay the credit provider as and when required.

SIGNED

Date _____

Dear

RECEIPT ON ACCOUNT

We thank you for your payment in the sum of R _____ which has been accepted on account of your indebtedness to us in the amount of R _____.

Please let us have payment of the balance.

Yours faithfully

Date _____

Dear

PAYMENT IN FULL

We enclose our cheque in your favour for R _____ in full and final settlement arising from the following transactions:

Yours faithfully

Date _____

Without Prejudice

Dear

OFFER OF SETTLEMENT

Your statements indicate a balance due to you of R _____.

We deny that we are liable in the amount stated for the following reasons:

However, with a view to resolving the matter amicably and without prejudice to our rights, we enclose our cheque in the amount of R _____ in full and final settlement.

Yours faithfully

Date _____

Without Prejudice

Dear

OFFER OF SETTLEMENT BY INSTALMENTS

Your statements indicate a balance due to you of R _____. We deny that we are liable in the amount stated for the following reasons:

However, with a view to resolving the matter amicably, we are prepared, without prejudice, to make payment in full and final settlement of the amount of R _____ by means of equal monthly instalments together with interest on the outstanding balance from time to time at the rate of _____% per annum.

Payments shall be payable on the _____ day of each month commencing on the _____ day of _____ year _____.

Should any one payment not be met on due date, then the full balance then outstanding will become immediately due, owing and payable.

We await your acceptance of this offer.

Yours faithfully

Date _____

Dear

ADVICE OF CREDIT REJECTION

We regret to advise that your recent application for credit was not approved.

We would, however, welcome your patronage on a cash basis.

Yours faithfully

CREDIT REPORT

Date _____

Name of Account _____

Address _____

Status of account	Current	R	_____
	30 days	R	_____
	60 days	R	_____
	90 days and over	R	_____
	Total	R	_____

Comments _____

Recommended action

- Extend credit period
- Stop credit and accept payment plan
- Stop credit and hand over for collection

CREDIT DEPARTMENT

Date _____

Dear

LETTER OF CREDIT LIMIT

A review of your account reflects a balance owing of R _____.

Your credit limit of R _____ was only established after careful consideration and after fairly balancing our respective interests.

Since you are at or near your credit limit, we can only deal with you on a cash basis until your balance has been reduced to R _____.

Should you require an increased credit limit, you will find us always willing to discuss the matter.

Yours faithfully

Date _____

Dear

REQUEST FOR PAYMENT OF OUTSTANDING ACCOUNT R _____

You will appreciate how difficult it is to write for payment of account without causing offence. There is no doubt a very good reason why our account has not been paid, and also why we have not heard from you.

If you are unable to agree to our account or there is another reason for payment being withheld, why not drop us a line? We shall be pleased to help you.

Since the account is a monthly one, we trust that if you have no query your payment is on its way, and in anticipation of this, we thank you for your co-operation.

Yours faithfully

Date _____

Dear

LETTER OF OVERDUE ACCOUNT

We have not received payment of the amount of R _____ due to us on _____ in respect of _____.

Copies of invoice and statement attached.

We are confident that this is an oversight and we look forward to receiving your payment without delay.

Yours faithfully

Date _____

Dear

SECOND LETTER OF OVERDUE ACCOUNT

We note that despite our previous request dated _____ for payment of your overdue account in the amount of R _____, such payment has still not been received.

Please give this matter your immediate attention.

Yours faithfully

Date _____

Dear

OVERDUE ACCOUNT

Our credit department has called to my notice that there is an unpaid balance of R _____ on your account despite repeated reminders.

Because we value you as a customer, we are concerned to know why payment has not been made.

If you are unable to make full payment, we suggest that you submit a proposal for instalment payments.

We urgently await to hear from you.

Yours faithfully

Date _____

Dear

PAYMENT BY INSTALMENTS

We are pleased to inform you that we are prepared to resolve the question of your outstanding balance amicably. Your offer to pay the outstanding balance of R _____ by means of monthly payments is acceptable subject to the following conditions:

1. Payment shall be made on the _____ day of each month commencing on the _____ (day and month), and each instalment will be in the sum of R _____.
2. The outstanding balance from time to time shall bear interest at the rate of _____% per annum.
3. Should any one payment not be met on due date, the full balance then outstanding will immediately become due and payable.

We now await your first payment and look forward to a continued business relationship with you.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

LETTER OF DEMAND

According to our records there is an amount of R _____ due and payable to us in respect of _____

Despite repeated requests, you have failed to make payment and accordingly we hereby call upon you to make payment of the above amount within seven days of date hereof, failing which, your account will be handed over to our attorneys. You will be liable for the legal costs incurred.

Yours faithfully

Date _____

Dear

HAND-OVER ADVICE TO ATTORNEY

We enclose the relevant documentation in relation to the following unpaid accounts and instruct you to collect the same.

Debtor	Amount outstanding	Action (Letter of Demand in terms of National Credit Act / thereafter Summons)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Please acknowledge receipt and keep us advised of developments.

Yours faithfully

Date _____

Dear

REQUEST TO ATTORNEY FOR REPORT ON COLLECTIONS

Kindly let us have a report on your collections for the following debtors handed over to you:

Yours faithfully

"REGISTERED MAIL"

Date _____

Dear

**NOTICE IN TERMS OF SECTION 129(1)(a) OF THE NATIONAL CREDIT ACT
No 34 OF 2005**

According to our records there is an amount of R _____ due and payable
to us in respect of _____

Despite repeated requests, you have failed to make payment and accordingly we hereby call
upon you to make payment of the above amount within 10 days of date hereof, failing which, your
account will be handed over to our attorneys. You will be liable for the legal costs incurred.

Kindly note further that in terms of Section 129(1) of the National Credit Act 34 of 2005 you may
seek assistance from a Debt Counsellor, an Alternative Dispute Resolution Agent, the Consumer
Court or an Ombudsman with jurisdiction, with the intent to resolve any dispute under the
agreement or develop and agree on a plan to bring the payments up to date.

In the event that you refer the matter to a Debt Counsellor, you shall be liable to pay an Application
fee to the Debt Counsellor, as prescribed by Schedule 2 of the Regulations to the National Credit
Act 34 of 2005.

Yours faithfully

PURCHASE AND SALE OF GOODS

SECTION

5

PURCHASE AND SALE OF GOODS

Section

5

Most buyers and sellers are aware of the necessity of recording their transactions. However, sometimes the mere inconvenience of documentation may cause one party to be careless and to find itself unable to claim rights hitherto taken for granted. These forms will facilitate the monitoring and documentation of purchase and sale of goods, so that the parties' rights are preserved. You are also referred to the forms in Section 9, My Business.

The new Consumer Protection Act No 68 of 2008 ("CPA") came into law on 29 October 2010. It is like a Bill of Rights for long-suffering South African consumers. The Act applies to most transactions in South Africa with two important exclusions, namely, transactions where the consumer is a juristic person (e.g. company or close corporation) whose asset value or annual turnover exceeds R2 million and transactions that constitute a credit agreement under the National Credit Act ("NCA"), but goods or services that are the subject of a credit agreement are not excluded from the ambit of the CPA. "Transaction" means in respect of a person acting in the ordinary course of business and this applies to the supplier of goods and services. Once-off transactions are not transactions in the ordinary course of business. The CPA would therefore not apply to a private person selling his motor vehicle. The CPA does not apply to a sale or lease agreement between persons who do not sell or let in the ordinary course of their business. The explanatory notes to the forms refer to the CPA where applicable.

Form 5.1 Agreement of Sale

A general agreement of sale to be used when the property is sold "voetstoots" (as it stands, with all its faults). It is important to note that a "voetstoots" clause does not protect the seller if he is aware of any defects in the goods sold and fails to make such disclosure to the purchaser before the sale is concluded.

A private seller is still entitled to include a voetstoots clause but in terms of Section 48(1)(c) of the CPA a supplier in the ordinary course of his business may not use a voetstoots clause. Sections 55 to 61 of the CPA deal with the consumer's rights to safe and good quality goods. The distributor and retailer each warrant that the goods comply with the standards of good quality within six months after the delivery of any goods to a consumer. A consumer may return the goods to the supplier, without penalty, and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in Section 55. The supplier is obliged to repair or replace the defective goods or refund to the consumer the price paid. Section 61 imposes strict liability on a producer, distributor or retailer of any goods for any harm caused as a consequence of supplying unsafe goods, or a defect in any goods or inadequate instructions or warnings to the consumer pertaining to any hazard arising from the use of any goods, irrespective of whether the hazard resulted from any negligence on the part of such producer, importer, distributor or retailer.

Form 5.2 Agreement of Sale of Motor Vehicle

Documents the sale of a motor vehicle. It is important to note that a "voetstoots" (as it stands, with all its faults) clause does not protect the seller if he is aware of any defects in the goods sold and fails to make such disclosure to the purchaser before the sale is concluded.

Form 5.3 Consignment Sales Agreement (2 pages)

Contains the normal terms of such an agreement.

Form 5.4 Request for Quotation

A letter requesting a quotation from the seller.

Form 5.5 Acceptance of Order C.O.D.

Stipulates that goods must be paid for by cash on delivery and requires purchaser's confirmation thereof.

- Form 5.6 Confirmation of Verbal Order**
Confirms a verbal order, attached to which should be the verbally agreed purchase or sales order.
- Form 5.7 Qualified Acceptance of Order**
Confirms a verbal order subject to variations. The order should not be executed until the purchaser has accepted the variations because no agreement will have been concluded until then.
- Form 5.8 Order Acceptance: Delivery in Lots**
Provides for the occasion when a supplier is unable to deliver an entire order at once, but will ship the goods in lots. The buyer must be notified of the supplier's intention.
- Form 5.9 Sale-On-Approval Acknowledgement**
Agrees to ship goods on a sale-on-approval basis. The customer is given the right to refuse, within a specified period, any delivery found to be unsatisfactory.
- Form 5.10 Acknowledgement of Sale on Consignment**
Documents the conditions of sale when goods are sold on a consignment basis. The goods remain the property of the consignor until sold.
- Form 5.11 Return of Goods Sold on Approval**
Evidences the return of goods, sold on approval, within the agreed time limit.
- Form 5.12 Warranty by a Supplier**
This is a warranty against defects with relief subject to conditions. Section 56(1) of the CPA is relevant since it relates to implied warranties of quality. It states as follows:
56(1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in Section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control of the producer or importer, a distributor or the retailer, as the case may be.
56(2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in Section 55 and the supplier must, at the discretion of the consumer, either-
(a) repair or replace the failed, unsafe or defective goods; or
(b) refund to the consumer the price paid by the consumer, for the goods.
The section will not apply if the warranty relates to a once-off transaction by a non-trader.
- Form 5.13 Demand for Delivery Instructions**
A demand by supplier for delivery instructions.
- Form 5.14 Despatch Notice**
To be used to notify a customer of the mode and date of despatch of goods.
- Form 5.15 Notice of Withholding Delivery**
Informs a prospective buyer that the delivery requested is to be withheld for a specified reason.
- Form 5.16 Demand for Delivery**
A letter from the purchaser to the supplier requesting delivery in accordance with an order.
- Form 5.17 Demand for Confirmation of Despatch Dates**
A demand for despatch arrangements to be furnished, failing which the contract will be cancelled.

- Form 5.18 Notice to Stop Goods in Transit**
A notification to the carrier to stop delivery and return goods to sender.
- Form 5.19 Notice of Cancellation of Order**
Used when the purchaser cancels the order as a result of the supplier's failure to deliver the goods within the agreed period.
- Form 5.20 Cancellation of Undelivered Order**
Informs the supplier of the cancellation of the balance of undelivered goods. Whether the purchaser can cancel as such, depends on the circumstances, e.g. agreement and trade custom.
- Form 5.21 Receipt of Goods**
Acknowledges receipt of goods purchased and declares whether the goods have been inspected or not.
- Form 5.22 Notice of Rejection of Goods**
A notification by the purchaser to the supplier, of the rejection of goods and contains a list of possible reasons for such rejection. If goods received are found to be defective or non-conforming (i.e. they differ from those ordered), a buyer can elect either to reject the defective or non-conforming goods, or to accept the defective or non-conforming goods and claim a reduction in purchase price from the seller.
- The purchaser's rights to good quality goods is set out in Section 55 of the CPA. The purchaser has a claim to repair or replace the goods or for a refund within six months.
- Form 5.23 Notice to Elect to Accept Defective Goods**
Notifies the supplier of defective or non-conforming goods that the purchaser is willing to accept the goods at a reduced price. While the purchaser is entitled to a reduction in the purchase price, it is always preferable to negotiate the amount of such reduction by way of agreement between the purchaser and seller.
- Form 5.24 Acceptance of Repudiated Order**
Protects the seller's rights when the buyer has either failed to accept delivery, or has prevented performance by the seller after acceptance by the seller of the order.
- Form 5.25 Notice to Suppliers Restraining Gifts to Employees**
This notice curtails the chance of bribery.
- Form 5.26 Notice of Defective Goods**
A notification to the supplier of a contingent claim by the seller. Rights are further entrenched by Section 55 of the CPA although the drastic contents of Section 61 may not grant any protection to the purchaser since both the seller and the purchaser could be liable to the customer jointly and severally in terms of Section 61(3).
- Form 5.27 Notice of Disputed Balance**
A notification to the supplier of a disputed balance, giving reasons and requesting adjustment of the account.
- Form 5.28 Payment of Specific Accounts**
A form used to make payment of specific invoices or charges, thereby ensuring that only the invoices in dispute remain unpaid.

AGREEMENT OF SALE

Made and entered into by and between:

(hereinafter referred to as "the Seller")

and

(hereinafter referred to as "the Purchaser")

IT IS AGREED AS FOLLOWS:

1. In consideration for the payment of the sum of R _____ the Seller hereby sells to the Purchaser the following: _____
(hereinafter referred to as "the goods").
2. The Seller warrants that the Seller has good title to the goods and full authority to sell the goods.
3. The goods are sold *voetstoots* (as they stand, with all their faults) and free of all liens, claims and encumbrances.
4. Payment of the said sum of R _____ will be made by the Purchaser free of bank charges and commission at _____ on the _____ day of _____ year _____ (alternatively on signature hereof by the Purchaser).
5. All risk on the goods and ownership of the goods will pass to the Purchaser on signature hereof.
6. The *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) of each of the parties is as follows:
The Seller _____
The Purchaser _____
7. The parties consent to the jurisdiction of the Magistrate's Court in the event of any legal proceedings arising from this agreement.
8. This agreement constitutes the entire agreement between the parties and no other term will be binding unless reduced to writing and signed by the parties.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

SELLER

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

PURCHASER

AGREEMENT OF SALE OF MOTOR VEHICLE

Made and entered into by and between:

(hereinafter referred to as "the Seller")

and

(hereinafter referred to as "the Purchaser")

IT IS AGREED AS FOLLOWS:

1. The Seller hereby sells and transfers to the Purchaser the following motor vehicle:
Make _____ Model _____
Year _____ Registration no _____
(hereinafter referred to as "the vehicle")
2. The Seller warrants that the Seller has the full right and authority to sell and transfer the vehicle and hereby indemnifies the Purchaser against ejection.
3. The Seller warrants that the vehicle is sold free of liens and encumbrances.
4. The vehicle is sold *voetstoots* (as it stands, with all its faults).
5. The purchase price is R _____ and is payable on signature hereof. The purchase price is inclusive of VAT at _____ %, should the same be applicable.
6. The Seller undertakes on signature hereof to provide the Purchaser with a change of ownership of motor vehicle form, duly completed and signed by the Seller.
7. The Seller undertakes to put the vehicle through a roadworthy test and to obtain a roadworthy certificate for the Purchaser and to be responsible for all costs, including the costs of repairs, should such be necessary, to obtain a roadworthy certificate.
8. This agreement constitutes the entire agreement between the parties and no other terms will be binding unless reduced to writing and signed by both parties.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

SELLER

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

PURCHASER

CONSIGNMENT SALES AGREEMENT

Made and entered into by and between:

(hereinafter referred to as "the Consignor")

and

(hereinafter referred to as "the Consignee")

IT IS AGREED AS FOLLOWS:

1.

The Consignee acknowledges receipt of goods described in the attached schedule and it is recorded that such goods shall remain the property of the Consignor until sold.

2.

The Consignee at its own cost and expense, agrees to store the articles and agrees on demand to return any of the unsold goods in good order and condition.

3.

The Consignee agrees to use its best endeavours to sell the goods for the Consignor's account on such terms as shall be determined from time to time by the Consignor.

4.

The Consignee agrees to keep the proceeds of the sales separate and apart from its own funds and to deliver such proceeds, less commission and any charges, to the Consignor together with an accounting within _____ days of the date of sale.

5.

Commission payable by the Consignor to the Consignee shall be _____ % of gross sales price excluding VAT.

6.

The Consignor shall be entitled to enter the premises at all reasonable times to examine and inspect the goods.

7.

The Consignee will be responsible for the risk of the goods whilst they are in his/her possession and until they are returned to the business premises of the Consignor or to a duly authorised representative of the Consignor.

8.

Other conditions _____

9.

The *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) of each of the parties is as follows:

The Consignor _____

The Consignee _____

10.

This agreement constitutes the entire agreement between the parties and no further terms will be binding unless reduced to writing and signed by both parties.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

CONSIGNOR

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

CONSIGNEE

Date _____

Dear

REQUEST FOR QUOTATION

Please let us have your firm quotation for the following goods:

Units	Description	Unit Price
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The prices should include delivery to our place of business and you should also indicate the expiry date for such quotation.

Yours faithfully

Date _____

Dear

ACCEPTANCE OF ORDER C.O.D.

We thank you for your order no _____ dated _____ as
per the attached copy but we can only accept your order on C.O.D. terms.

Kindly advise us by return mail whether we should forward the goods to you on C.O.D. terms.

Yours faithfully

Date _____

Dear

CONFIRMATION OF VERBAL ORDER

This letter serves to confirm your acceptance of our verbal order to you on _____.

A copy of our order no _____ dated _____ confirming the orally agreed terms is attached. Unless advised to the contrary within _____ days of despatch of this letter, we shall consider the order confirmed on the stated terms and we shall expect receipt of the ordered goods on the indicated delivery date.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

QUALIFIED ACCEPTANCE OF ORDER

We thank you for your order no _____ dated _____.

We confirm acceptance of the order subject to the following variations:

You are requested to confirm in writing within seven days of date hereof that you are agreeable to the variations.

Yours faithfully

Date _____

Dear

ORDER ACCEPTANCE: DELIVERY IN LOTS

We accept your order no _____ dated _____ for which we thank you. The goods will be despatched to you according to the following lots and delivery schedule:

Payment will become due as each lot is received.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

SALE-ON-APPROVAL ACKNOWLEDGEMENT

We have pleasure in despatching the goods mentioned in the attached invoice / order no _____ dated _____ on a sale-on-approval basis.

If you are not satisfied with the goods you are requested to return them, at our expense, within _____ days of receipt. We will issue a full credit or refund if the amount has already been paid.

As agreed, goods which are not returned within that time shall be deemed to have been accepted by you.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

ACKNOWLEDGEMENT OF SALE ON CONSIGNMENT

This letter serves to confirm that the goods described on the attached invoice / order no _____ dated _____ are being despatched to you on a consignment basis. Please note that the goods remain our property until paid for in full.

Any goods which you are unable to sell, must be returned to us at your expense.

We reserve the right to claim any goods unsold after _____.

Yours faithfully

Date _____

Dear

RETURN OF GOODS SOLD ON APPROVAL

We hereby return to you the goods purchased from you on approval on _____,
and received by us on _____.

The goods in question are listed below:

Please acknowledge receipt.

Yours faithfully

WARRANTY BY A SUPPLIER

_____ ("the Seller") warrants to the buyer ("the Purchaser") that the product specified in the Schedule below shall be free of any defect in workmanship or materials for a period of _____ months calculated from the date of purchase of the product ("Warranty Product").

In the event of any defect in and to the Product during the Warranty Period, the Seller shall at its discretion, either repair or replace the Product free of charge to the Purchaser, subject to the following terms and conditions:

1. The product must be returned to the Seller (at the Purchaser's expense) with the original invoice or other acceptable proof of purchase, prior to expiration of the Warranty Period;
2. The defect shall, in the opinion of the Seller, not have been caused by misuse, neglect or other improper treatment or use of the Product;
3. The Product shall at all times have been serviced by the Seller or an approved agent of the Seller;
4. Any spare parts or accessories used in the Product after the purchase date must have the approval of the Seller or be permissible in accordance with the instructions of the Product; and
5. The Product has at all times been used for the purposes intended and in accordance with the instructions relating to the Product.

6. **LIMITATION OF LIABILITY**

6.1 In all cases the Seller's liability to the purchaser regarding the sale of the Goods and the supply of any services in connection herewith shall be limited to, at the Seller's discretion but in each case at the Seller's own cost:

- 6.1.1 the replacement of the Goods with equivalent goods; or
- 6.1.2 the repair of the Goods; or
- 6.1.3 payment of the cost of the Purchaser of either 6.1.1 or 6.1.2.

6.2 The Seller shall under no circumstances be liable for any consequential loss or damage to any party arising from the sale of the Goods and the supply of any services in connection therewith.

SCHEDULE

Product	Serial Number	Date Purchased
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

“REGISTERED MAIL”

Date _____

Dear

DEMAND FOR DELIVERY INSTRUCTIONS

We have not received from you the instructions which we require to make delivery of the goods specified in our contract no _____ dated _____.

You are requested to let us have these instructions within seven days of date hereof.

Yours faithfully

Date _____

Dear

DESPATCH NOTICE

This serves to advise you that the goods ordered by you on your order no _____
dated _____ will be forwarded to you on _____.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

NOTICE OF WITHHOLDING DELIVERY

We refer to the contract / order no _____ dated _____.

We are withholding delivery for the reasons marked below:

- We have not received payment.
- You have repudiated or withdrawn from the contract to purchase.
- We lack the necessary delivery instructions.
- Other:

Yours faithfully

Date _____

Dear

DEMAND FOR DELIVERY

Full payment having been made in the sum of R _____ for all the goods to be despatched in accordance with our order no _____ dated _____, kindly let us have delivery of the goods in accordance with the order.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

DEMAND FOR CONFIRMATION OF DESPATCH DATES

Please let us have details of the despatch arrangements relating to our order no _____ dated _____ and confirm that you will meet these despatch arrangements.

If notification of such arrangements and confirmation of compliance therewith is not received from you within ten days of date hereof, we will construe such failure to communicate as your repudiation of your obligations arising from our said order and you may regard any agreement which has arisen from such order to be rescinded, in which event you may be liable for any damages incurred by such repudiation.

Yours faithfully

Date _____

Dear

NOTICE TO STOP GOODS IN TRANSIT

You are in receipt of certain goods in transit despatched by us and scheduled for delivery to:

Copies of relevant despatch documents are enclosed.

You are hereby instructed to stop transit of said goods, not make delivery to the consignee, and return said goods to us. We agree to pay return freight charges.

No negotiable bill of lading or document of title has been delivered to our customer (consignee).

Yours faithfully

Copy to: Customer

“REGISTERED MAIL”

Date _____

Dear

NOTICE OF CANCELLATION OF ORDER

We refer to our order no _____ dated _____,
a copy of which is enclosed.

As a result of your failure to deliver the goods referred to therein within the agreed time, we hereby
cancel the order without prejudice to any other rights that we may have.

Yours faithfully

Date _____

Dear

CANCELLATION OF UNDELIVERED ORDER

We refer to our order no _____ dated _____,
a copy of which is attached.

We have only received a partial delivery.

Please cancel our order for the undelivered goods and adjust your invoice to conform only to goods received by us.

Yours faithfully

Date _____

Dear

RECEIPT OF GOODS

The undersigned hereby acknowledges receipt and delivery of the goods described on the annexed schedule and states that the goods have been inspected and are not defective / have not been inspected for defects (delete what is not applicable).

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

NOTICE OF REJECTION OF GOODS

We acknowledge receipt of goods from you in accordance with our order no _____ dated _____. We hereby reject the goods for the reasons marked below:

- The goods do not conform to specification in the respects set forth in the annexure attached hereto.
- The goods were not delivered timeously.
- The goods were defective in the respects set forth in the annexure hereto.
- Notice of acceptance of our order was not received as required and the goods were ordered from other sources.
- The prices of the goods do not conform to the quote, catalogue or order.
- Goods represent only a partial shipment.
- Other:

Kindly adjust our account with the appropriate credits or refunds and forward your instructions for return of the goods at your expense.

Rejection of the goods is without prejudice to any other claim which we may have as a result of the breach of the contract.

Yours faithfully

“REGISTERED MAIL”

Date _____

Without Prejudice

Dear

NOTICE TO ELECT TO ACCEPT DEFECTIVE GOODS

We have received defective or non-conforming goods on our order no _____
dated _____. The details of the goods, their defects or non-conformity
are set forth below:

Without prejudice we are prepared to accept the goods provided we are allowed a price reduction of
R _____.

We await to hear from you urgently.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

ACCEPTANCE OF REPUDIATED ORDER

We refer to your order no _____ dated _____,
a copy of which is attached.

You have in breach of our agreement refused to accept delivery of the goods despatched by us to you in terms of the said order and/or prevented performance by us taking place. You have therefore repudiated the contract.

We accept such repudiation and reserve our right to claim damages arising from such unlawful repudiation.

Yours faithfully

NOTICE TO SUPPLIERS

FAVOURS FROM SUPPLIERS FOR GOODS SUPPLIED OR SERVICES RENDERED

It is the policy of this Company that employees should not accept gifts, hospitality or any other favours from suppliers of goods supplied or services rendered. However, acceptance of the following would not be considered contrary to such policy:

1. Advertising matter of no commercial value which is intended for use in an office;
2. Occasional business entertainment such as lunches, cocktail parties or dinners; and
3. Occasional personal hospitality such as tickets to local sporting events or theatres, provided that the cost of transport and any accommodation is borne by the recipient.

We shall be grateful if you co-operate within the limits of these guidelines.

Yours faithfully

“REGISTERED MAIL”

Date _____

Dear

NOTICE OF DEFECTIVE GOODS

We have purchased a product sold or manufactured by you described as:

One of our customers has advised us of a product defect in the following particulars:

Name of customer: _____

Approximate date of purchase: _____

Nature of defect: _____

Damages claimed: _____

We shall hold you liable for any damages which we suffer as a result of any claim brought against us by the customer.

Yours faithfully

Date _____

Dear

NOTICE OF DISPUTED BALANCE

We acknowledge receipt of your statement dated _____
indicating an outstanding balance of R _____.

We dispute the balance owing for the reasons marked below:

- We have been billed for goods not received.
- Prices are in excess of agreed prices.
- Prior payment of R _____ dated _____ is not reflected.
- We did not order the goods.
- Goods were defective or non-conforming as per prior notice to you.
- Other:

Kindly adjust our account accordingly.

Yours faithfully

Date _____

Dear

PAYMENT OF SPECIFIC ACCOUNTS

We enclose our cheque in the amount of R _____, for the credit of the following charges or invoices only:

Invoice / Charge	Amount
_____	_____
_____	_____
_____	_____
_____	_____

Yours faithfully

IMMOVABLE PROPERTY / LEASES

SECTION

6

IMMOVABLE PROPERTY / LEASES

Section

6

Often simple agreements of lease are concluded by the parties themselves, without reducing the agreements to writing. It is advisable, however, for ease of proof for enforcement, always to reduce the terms of the lease to writing, rather than having to rely on oral representations. A lease is no longer simple when it has the effect of running for ten years or more - such leases are governed by the formalities relating to the Leases of Land Act 18 of 1969. If a lease of such a period is contemplated, one should consult one's attorney to ensure that the formalities are complied with. Due to the drastic increase in stamp duties since 1 January 2005, long term leases are less attractive.

It should also be noted that leases relating to residential premises are subject to the Rental Housing Act 50 of 1999. The Rent Control Act 80 of 1976 was repealed by the Rental Housing Act 50 of 1999. The Rental Housing Act creates mechanisms to promote the provision of rental housing property. It provides for the establishment of rental housing tribunals and facilitates sound relations between tenants and landlords. It deals with complaints from tenants or landlords concerning unfair practices. For instance, it will determine matters of rentals payable by a tenant taking cognizance of economic conditions of supply and demand and the need for a realistic return on investment for investors. The Act covers only leases of dwellings for housing purposes. The Act makes it obligatory that, when advertising a dwelling for purposes of leasing, a landlord may not unfairly discriminate against prospective tenants on grounds such as race, gender, sex, pregnancy, sexual orientation or religion. If requested a landlord must reduce the lease to writing. A written lease must set out such information as the lease period, the rental, the deposit, the description of the dwelling and the names of the tenant and landlord. Furthermore, a list of defects must be attached as an annexure to the lease and a copy of any house rules applicable to the dwelling must also be attached as an annexure to the lease.

Written communications between landlord and tenant should be delivered strictly in accordance with the lease. If the lease is silent thereon, it is suggested that the said communications be sent by registered post in order to facilitate proof of despatch. The Stamp Duties Act 77 of 1968 was repealed by the Revenue Laws Amendment Act 60 of 2008. However, Stamp Duty is still chargeable on leases longer than five years. Directions on the rate and manner of payment can be obtained from SARS. There are penalties for late payments.

Form 6.1 Agreement of Lease (3 pages)

Contains the basic standard terms found in most agreements of this type. Section 14 of the Consumer Protection Act deals with the expiry and renewal of fixed-term agreements. The Section does not refer to transactions between juristic persons regardless of their annual turnover or asset value. The Minister may by notice in the Gazette prescribe the maximum duration for fixed term consumer agreements or for specified categories of such agreements. A lease may not exceed 24 months unless agreed to by the parties. The tenant may cancel the lease at any time by giving the landlord 20 days written notice. A cancellation penalty may be imposed. The penalty must be reasonable taking into account all the circumstances. On the other hand, the landlord must notify the tenant of the expiry date and the notice must not be more than 80 nor less than 40 business days before expiry. The notice must include the material changes that would apply if the lease is renewed. On expiry of the lease it will continue on a month to month basis subject to any new terms in the notice.

The landlord may cancel the lease 20 business days after written notice to the tenant if there is a material failure, unless the tenant has rectified the failure within that time.

Pre-existing lease agreements will be subject to the above provisions if the parties to the agreement are bound for a fixed term which ends on or after 24 April 2013. If the landlord is a dealer in property then paragraph 11 must be amended by deleting the words "7 days" and substituting therefore "20 business days".

Form 6.2 Agreement to Amend Lease

Can be used when variations and amendments to an existing lease are to be recorded. All parties to initial Annexure "A".

- Form 6.3 Agreement of Extension of Lease**
Provides for the extension of the lease beyond the original period. All parties to initial Annexure "A".
- Form 6.4 Cession and Assignment of Lease**
Evidences a cession of the rights and obligations of the old tenant to a new tenant. The old tenant terminates his relationship with the landlord and the new tenant steps into his place in relation to the landlord. In many cases, instead of such a session, the new tenant may wish to negotiate a fresh lease directly with the landlord. Issues such as increased rent, stamp duty and legal costs may not justify a fresh lease. All parties to initial Annexure "A".
- Form 6.5 Agreement to Cancel Lease**
Records the cancellation of the lease between the landlord and tenant. All parties to initial Annexure "A".
- Form 6.6 Notice to Exercise Lease Option**
May be used by a tenant wishing to exercise an option to extend or renew a lease. The option must be exercised within the times stipulated in the lease. All parties to initial Annexure "A".
- Form 6.7 Notification to Landlord of Property Not Owned by the Tenant**
This is a notification by a tenant to a landlord protecting assets on the property not owned by the tenant from attachment by the landlord. Such notification is normally requested by the Hire Purchase owner of goods.
- Form 6.8 Non-payment of Rent in Respect of Lease**
The tenant is given seven days, notice to comply, failing which the lease will be cancelled and the premises repossessed. If the CPA is applicable, e.g. if the landlord is a property dealer then please replace "seven days" with "20 business days".
- Form 6.9 Warning for Failure to Perform in Respect of Lease**
The tenant is given seven days grace to comply, failing which the lease will be cancelled and the premises repossessed. Instances relate to non-compliance with other obligations of the tenant. The period of grace is determined by the lease. If the CPA is applicable e.g. if the landlord is a property dealer then please replace "seven days" with "20 business days".
- Form 6.10 Cancellation of Lease and Notice to Vacate in Respect of Lease**
Terminates the lease and demands that the tenant vacate the premises. This form can only be used if the lease provides that termination may occur without notice to the lessee. If the CPA is applicable then the landlord is obliged to give 20 business days notice before cancelling the lease.
- Form 6.11 Termination of Tenancy**
A notice to terminate tenancy by a tenant. Delivery of the notice and notice period must be strictly in accordance with the lease.
- Form 6.12 Offer to Purchase Immovable Property (6 pages)**
This offer is similar to the forms produced by Estate Agents but is intended for use when no estate agent is involved. Meticulous care should be taken in completing the form and if in doubt about any of its provisions or about the gaps to be completed, the conveyancer attending to the transfer should be consulted, particularly with regard to the certificates as set out in paragraph 20 since the locality will determine what certificates are required. As transferring conveyancer his/her advice should be free of charge. Caution must be exercised when VAT is involved.

Once-off transactions do not fall within the Consumer Protection Act. The sale of immovable property by an individual who occasionally sells property will not fall within the provisions of the Consumer Protection Act unless the individual sells the property in

the ordinary course of business e.g. a property developer. The private seller of a house would not be prevented from including a *voetstoots* (as it stands, with all its faults) clause in an Offer to purchase agreement. Depending on the locality of the property not all the certificates of compliance as mentioned in paragraph 20 are necessary.

In terms of Section 48 of the Consumer Protection Act a supplier must not through the imposition of a *rouwkoop* (money forfeited if the agreement of sale is not proceeded with) or forfeiture provision require a consumer to assume any obligation on terms that are unfair or unjust such that its application is excessively one sided or inequitable to the supplier.

Form 6.13 Offer to Purchase Sectional Title Unit (9 pages)

This offer is also similar to forms produced by Estate Agents. Please refer to the comments to form 6.12 above relating to the CPA. Depending on the locality of the property not all the certificates of compliance as mentioned in paragraph 19 are necessary. Particularly with regard to the certificates as set out in paragraph 20 since the locality will determine what certificates are required.

In terms of Section 48 of the Consumer Protection Act a supplier must not through the imposition of a *rouwkoop* or forfeiture provision require a consumer to assume any obligation on terms that are unfair or unjust such that its application is excessively one sided or inequitable to the supplier.

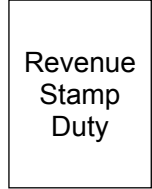
Form 6.14 Special Power of Attorney to Purchase Immovable Property

This enables an agent to purchase a specific property on behalf of a purchaser.

Form 6.15 Special Power of Attorney to Sell Immovable Property

This Power of Attorney is most useful to have if the seller is soon to become incapacitated. It is not to be attempted by anyone except a conveyancer, and like the antinuptial specimens in section 10, Personal, its publication is merely for illustrative purposes. All persons irrespective of their marital status can avail themselves of its benefits. Conveyancers themselves are often unaware of its existence, and should be consulted to draw up the Power of Attorney in good time in order to avoid a curatorship being imposed on the incapacitated property owner.

AGREEMENT OF LEASE



Made and entered into by and between:

(hereinafter referred to as "the Landlord")

and

(hereinafter referred to as "the Tenant")

IT IS AGREED AS FOLLOWS:

1.

The Landlord agrees to let and the Tenant agrees to hire certain property situate at _____

_____ (hereinafter referred to as "the premises") for the purpose of _____

_____ and for no other purpose on the following terms and conditions:

2.

The Lease shall commence on the _____ day of _____ year _____ and continue for a period of _____. The Tenant shall have an option to renew the lease upon terms as agreed upon by the parties, provided such option is exercised in writing at least _____ months before the termination hereof.

3.

The Tenant shall pay to the Landlord as rent for the premises the sum of R _____ per month payable, without deductions, monthly in advance starting on the _____ day of _____ year _____, and on the _____ day of every subsequent month at _____ or such other place as the Landlord may in writing from time to time appoint. The rent will be increased by _____ % at the conclusion of each 12-month period.

4.

The Landlord shall pay all rates and taxes due, or to become due, in respect of the premises. The Tenant shall be responsible for the payment of all electric current, water and other charges in respect of the premises.

5.

The Landlord shall keep all main walls and roofs in order, but does not hold himself responsible for damage by leakage. The Landlord shall maintain the exterior of any buildings on the premises in good order and condition.

6.

The Tenant shall be responsible for the inside of the premises together with all locks, keys, fastenings and conveniences, and for plate and other glass, and acknowledges to have received the same in good order and condition, and undertakes to maintain and deliver up the same at the expiration or sooner determination of this Lease, in the like good order and condition, reasonable wear and tear and damage by fire only excepted. The Tenant also undertakes to allow the Landlord or his Agents to inspect the premises at all reasonable times. No alterations or additions shall be made on the premises without the written consent of the Landlord having been first obtained. The Tenant acknowledges the defects on Schedule "A" hereto and accepts the premises subject to these defects.

7.

The Tenant shall keep the premises clean and in a tidy condition and free from all rubbish, to the satisfaction of the Municipal authorities. The Tenant shall not make any alteration or addition to the premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld if such alteration or addition is necessary to enable the Tenant to use the premises for the purpose as set out in paragraph 1 above.

8.

In the event of the destruction of, or damage to, the premises to an extent which prevents the Tenant from having substantial beneficial occupation of the premises, the Tenant shall be entitled to a total or partial remission of his rent according to the period for which he is deprived of the beneficial occupation of the premises, but the Tenant shall not have any claim upon the Landlord for damages in consequence of any such deprivation.

The Tenant binds himself / herself not to use any apparatus or carry on any trade or process, nor keep any combustibles or hazardous goods on the premises, which would in any way, render faulty the Landlord's fire policy.

9.

The Tenant shall not cede or assign this Lease, nor sublet the premises or any portion thereof, nor part with possession of the premises or any portion thereof, nor place any person in occupation of the premises or any portion thereof, without the consent in writing of the Landlord.

10.

Upon signature of this agreement the Tenant shall pay to the Landlord an amount of R _____ by way of a deposit against charges to be levied by the Landlord against and payable by the Tenant for electric current and other charges which may be payable by the Tenant during the Tenant's lease and occupation of the premises and against any damages which the Tenant may cause the Landlord to sustain during the Tenant's occupation of the premises.

11.

Should the Tenant fail to make payment on due date of any monthly rental or fail to make payment of any other amount due or commit a breach of any of the terms and conditions of this agreement, and fail to make such payment or remedy such breach within seven days after despatch by the Landlord of a written notice to the Tenant of such non-payment or breach, the Landlord shall

have the right to cancel this Lease and to re-enter and take possession of the said premises and dispose thereof as he may think fit anything to the contrary herein contained notwithstanding and without prejudice to any claim on the Landlord's part for arrears of rent, damages, or otherwise.

12.

The parties hereto hereby choose as their *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) and for all purposes hereof the following addresses:

Landlord _____

Tenant _____

13.

The parties consent to the jurisdiction of the Magistrate's Court having jurisdiction over their persons in connection with all legal proceedings arising herefrom.

14.

This constitutes the entire agreement between the parties and no other terms will be binding unless reduced to writing and signed by both parties.

15.

Additional terms _____

THUS DONE and SIGNED at _____ this _____
day of _____ year _____.

AS WITNESSES:

1. _____

LANDLORD

2. _____

SIGNED at _____ this _____ day of _____
year _____.

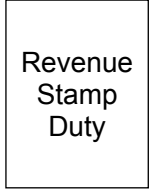
AS WITNESSES:

1. _____

TENANT

2. _____

AGREEMENT TO AMEND LEASE



Made and entered into by and between:

_____ (hereinafter referred to as "the Landlord")

and

_____ (hereinafter referred to as "the Tenant")

WHEREAS the Landlord and Tenant have entered into an agreement of lease on the ____ day of _____ year _____, a copy of which is annexed hereto and marked "A" (hereinafter referred to as "the lease")

AND WHEREAS the parties desire to amend the lease

NOW THEREFORE IT IS AGREED AS FOLLOWS:

(Amend the terms and conditions)

THUS DONE and SIGNED at _____ this ____ day of _____ year _____.

AS WITNESSES:

1. _____ LANDLORD

2. _____

SIGNED at _____ this ____ day of _____ year _____.

AS WITNESSES:

1. _____ TENANT

2. _____

AGREEMENT OF EXTENSION OF LEASE

Made and entered into by and between:

Revenue
Stamp
Duty

(hereinafter referred to as "the Landlord")

and

(hereinafter referred to as "the Tenant")

WHEREAS the Landlord and Tenant have entered into an agreement of lease on the _____ day of _____ year _____, a copy of which is annexed hereto marked "A" (hereinafter referred to as "the lease")

AND WHEREAS the parties desire to extend the period of the lease

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1.

The Landlord and Tenant agree to extend the term of the lease for a period of _____ months / years commencing on the _____ day of _____ year _____, and terminating on the _____ day of _____ year _____.

2.

The rental payable during the period of extension shall be R _____ per month.

3.

All other terms of the lease shall apply unaltered during the extended period as if incorporated herein.

THUS DONE and SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

LANDLORD

2. _____

THUS DONE and SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

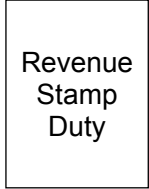
1. _____

TENANT

2. _____

CESSION AND ASSIGNMENT OF LEASE

Made and entered into by and between:



(hereinafter referred to as "the Landlord")

and

(hereinafter referred to as "the Tenant")

WHEREAS the Landlord and the Tenant entered into an agreement of lease on the _____ day of _____ year _____, a copy of which is annexed hereto marked "A" (hereinafter referred to as "the lease")

AND WHEREAS the Tenant desires to cede his rights and assign his obligations to the lease to _____ (hereinafter referred to as "the New Tenant") who wishes to accept such cession and assignment.

IT IS HEREBY RECORDED AS FOLLOWS:

1. The Tenant hereby cedes all his/her rights under the lease and assigns all obligations thereunder to the New Tenant with effect from the _____ day of _____ year _____ (hereinafter referred to as "the effective date").
2. The New Tenant hereby accepts such cession and agrees to the assignment.
3. The Landlord hereby consents to the aforesaid cession and assignment.
4. The provisions of the lease will apply to the Landlord and New Tenant *mutatis mutandis* (subject to the necessary alterations / amendments) from the effective date.

THUS DONE and SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

TENANT

THUS DONE and SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

NEW TENANT

THUS DONE and SIGNED at _____ this _____ day of _____ year _____.

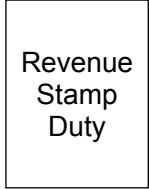
AS WITNESSES:

1. _____

2. _____

LANDLORD

AGREEMENT TO CANCEL LEASE



Made and entered into by and between:

_____ (hereinafter referred to as "the Landlord")

and

_____ (hereinafter referred to as "the Tenant")

WHEREAS the Landlord and Tenant entered into an agreement of lease on the _____ day of _____ year _____, a copy of which is annexed hereto marked "A" (hereinafter referred to as "the lease")

AND WHEREAS the parties desire to terminate the lease

NOW THEREFORE IT IS AGREED AS FOLLOWS:

The parties do hereby agree to terminate and cancel the said lease with effect from the _____ day of _____ year _____ subject to the parties' rights and obligations accruing prior to the termination.

THUS DONE and SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____ LANDLORD

2. _____

THUS DONE and SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____ TENANT

2. _____

Delivery hereof to be in
accordance with the lease.

Date _____

Dear

NOTICE TO EXERCISE LEASE OPTION

Be pleased to take notice that the undersigned, as Tenant under a certain lease dated the _____ day of _____ year _____, a copy of which is annexed hereto marked "A", hereby exercises his/her option to extend or renew the said lease for the next option period commencing the _____ day of _____ year _____.

Yours faithfully

TENANT

Delivery hereof to be in accordance with the lease.

Date _____

Dear

NOTIFICATION TO LANDLORD OF PROPERTY NOT OWNED BY THE TENANT

You are hereby informed that the following items on the leased premises are not the property of the tenant and may therefore not be attached:

Yours faithfully

TENANT

Delivery hereof to be in accordance with the lease.

Date _____

Dear

NON-PAYMENT OF RENT IN RESPECT OF LEASE

over premises at: _____

You have failed to pay the rental for the period _____ which was due on the _____ day of _____ year _____ in the sum of R _____.

Unless your payment of the said sum of R _____ is received within seven days of date hereof, the said lease will be cancelled, the premises repossessed from you and all goods in the premises will be made subject to the landlord's right of retention and sold. You will, in addition, be held liable for any other damages incurred.

Yours faithfully

Delivery hereof to be in accordance with the lease.

Date _____

Dear

WARNING FOR FAILURE TO PERFORM IN RESPECT OF LEASE

over premises at: _____

In terms of paragraph _____ of the lease you are in breach thereof by virtue of the following:

Unless you remedy your aforesaid breach within seven days of date hereof the lease will be cancelled and the premises will be repossessed and the goods on the premises be made subject to the landlord's right of retention. In addition, you will be liable for any further damages incurred.

Yours faithfully

Delivery hereof to be in accordance with the lease.

Date _____

Dear

CANCELLATION OF LEASE AND NOTICE TO VACATE IN RESPECT OF LEASE
over premises at: _____

As you have failed to pay the rental for the period _____ on due date in respect of the above-mentioned premises, we hereby cancel the lease as we are legally entitled to do and call upon you to vacate the premises by _____ am/pm on the _____ day of _____ year _____.

Yours faithfully

Delivery hereof to be in accordance with the lease.

Date _____

Dear

TERMINATION OF TENANCY

over premises at: _____

We hereby give notice of our intention to terminate our tenancy of the above-mentioned premises with effect from the ____ day of _____ year _____, on which date we shall also vacate the premises. Please forward the refund of our deposit to _____.

Yours faithfully

OFFER TO PURCHASE IMMOVABLE PROPERTY

TO THE OWNER _____
(hereinafter referred to as "The Seller")

OF (address) _____

I/We, _____
(hereinafter referred to as "Purchaser")

hereby offer to purchase:

STAND NO. FREEHOLD _____

STREET NO. _____
(the property) on the following terms and conditions:

1.

The property is sold subject to all conditions and servitudes relating thereto and in the condition and to the extent such as it now lies, *voetstoots* (as it stands, with all its faults). If the property has been erroneously described herein, such an error shall not bind the seller. The description or extent of the property asset as set out in the Title Deed shall be deemed to have been inserted in lieu of such erroneous description or extent.

2.

The purchase price is R _____ payable as follows:

- (a) Cash on acceptance of this offer in the amount of R _____ to be deposited with the Seller's conveyancer by _____ and held by him/her in trust, pending registration of transfer.
- (b) The balance of R _____ to be paid in cash against transfer into the name of the Purchaser, to be secured by bankers' or other approved guarantees to be delivered within _____ days of acceptance of this Offer (the last of those days herein called the specified date).

3.

On registration of transfer of the property, the risk of ownership thereof shall pass to the Purchaser, from which date the Purchaser shall receive all benefits from, and be responsible for, all rates and taxes levied upon the property. The Seller will provide the Purchaser with a valid electrical certificate of compliance prior to lodgement.

4.

Occupation of the property shall be given to the Purchaser on the _____. If the date of occupation does not coincide with the date of registration of transfer, the party enjoying occupation of the property while registered in the name of the other party shall, in consideration thereof and for the period of such occupation, pay to the other party a rental of R _____ per month, payable from date of occupation, monthly in advance, directly to the Conveyancer. The Seller may refuse to grant occupation to the Purchaser until the guarantee is received. The Purchaser shall not be entitled to make alterations to the property, of whatsoever nature until registration of transfer, unless authorised by the Seller in writing. If this agreement is cancelled the Purchaser shall immediately vacate the property and restore it to the Seller. In that event it is agreed that no rental agreement or tenancy was concluded.

5.

Transfer shall be effected by the Seller's conveyancers.

6.

The Purchaser shall on demand pay transfer costs, transfer duty, and all charges incidental thereto and sign all transfer documents.

7.

This Offer is made subject to the condition that a Bond or Bonds totalling R _____ at prevailing Bank or Building Society rates and conditions be arranged for the Purchaser by the Seller or the Purchaser. Should it be a term of granting of such Bond or Bonds that the Purchaser's spouse is to sign as guarantor, then this condition will be deemed to have been fulfilled. In the event of the Bond not being granted by the specified date as above, there will be an automatic extension of a further 21 days in order to obtain the said Bond and to deliver the guarantees referred to in clause 2(b) above.

8.

The property includes the following: All fixtures and fittings of a permanent nature, electric light fittings, stove, _____

9.

In the event of the Purchaser committing a breach of any of the provisions hereof the Seller shall notwithstanding the provisions of clause 16 have the right to either:

- (a) cancel this agreement and claim damages, or
- (b) sue for the full purchase price;
- (c) retain the deposit paid in terms of clause 2(a) as *rouwkoop* (money forfeited if the Agreement of Sale is not proceeded with), without prejudice to any other rights which the Seller may have as a result of the breach.

10.

In the event of there being more than one Purchaser, their liability shall be joint and several.

11.

The parties warrant that all written consents required by the Matrimonial Property Act 88 of 1984 in respect of this agreement or any matter arising from or in terms hereof, have been or will be given. This agreement constitutes the entire agreement between the parties and no other terms or variations will be of any force unless reduced to writing and signed by both parties.

12.

- (a) If this agreement is being entered into by anyone acting as agent or trustee or in any other manner on behalf of a company, close corporation or trust to be formed, that person shall in this clause be referred to as "the Trustee".

- (b) The company, close corporation or trust for which the Trustee acts, shall be registered within 7 days after the Bond mentioned in Clause 7 is granted or if no Bond is provided for then the company, close corporation or trust shall be registered within 21 days of the acceptance of this offer. The company, close corporation or trust shall within 7 days of its registration adopt and ratify this agreement without modification and shall within a further 7 days thereafter advise the Seller in writing thereof of its registration number and deliver to it a certified copy of the appropriate resolution.
- (c) If any of the provisions of clause 12(b) are not complied with, the Trustee personally shall be deemed to be the Purchaser.
- (d) Upon compliance with the provisions of clause 12(b) above, the company, close corporation or trust shall be deemed to be the Purchaser and the Trustee, by his/her signature hereto, shall be deemed to be bound as surety for and co-principal debtor with the Purchaser, for the due and punctual compliance by the Purchaser with all its obligations hereunder and for the payment by it of all damages for which it may become liable as a result of a breach and cancellation hereof. The Trustee undertakes to bind himself / herself as surety for the obligations of the Purchaser to the person granting the loan contemplated in clause 7 of this offer.

13.

If the property is owned by a company, close corporation or trust, the person signing this agreement as Seller shall be deemed in so doing to have been acting on behalf of such company, close corporation or trust.

14.

If the Seller is or is deemed to be a company, close corporation or trust, the person signing this agreement on behalf of the Seller warrants that he/she is duly authorised hereto, and that the directors or members of the close corporation or trustees have approved or will ratify this agreement without amendment and that there is no impediment of whatsoever nature that may prevent the Purchaser from purchasing the shares or member's interests.

Other conditions

- (a) _____
- (b) _____
- (c) _____
- (d) _____

15.

The parties choose as their *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) and for the delivery of all notices and pleadings and/or processes arising herefrom at the following addresses:

The Purchaser _____

The Seller _____

16.

Any dispute of whatsoever nature arising out of this contract concerning any of the rights and / or obligations of any party thereto, either during the currency of the contract or after the completion thereof, including any dispute as to the validity of the contract, may be referred to the arbitration and final decision of a single arbitrator and the parties agree to accept his/her award as final and binding upon them.

The arbitrator shall be:

- Selected by agreement between the parties, or failing such agreement,
- Appointed at the request of either party by the Chairman for the time being of the Association of Arbitrators.

The cancellation of this contract by either party for whatever reason shall not affect the validity of this clause.

17.

In the event that the property forms part of a cluster complex, it is noted that it is subject to the rules and regulations governing a Homeowners' Association. The Purchaser hereby undertakes to join the Association, prior to registration of transfer and undertakes to sign all such documents and make such payment as may be necessary to give effect thereto and binds himself / herself / themselves to the rules and regulations of the Association.

18.

Special Levy

If after registration of transfer the Homeowners' Association (if applicable) imposes a special levy to meet expenses which have been underestimated for any period up to the date of registration of transfer, the Seller shall refund to the Purchaser such amount when it becomes payable by the Purchaser. If after acceptance hereof but before transfer is effected, the Homeowners' Association passes any resolution imposing a special levy to cater for any future improvements to the scheme the Purchaser shall be liable for the payment thereof. The Seller warrants that he/she is not aware of any pending resolution.

19.

19.1 Purchaser's cooling-off right. Section 29A of the Alienation of Land Act 68 of 1981 applies to this agreement only if the purchase price is R250 000.00 or less. Should the Act apply, the Purchaser has the right to revoke this offer or terminate this agreement by delivering a written notice of his/her decision to revoke the offer or to terminate the agreement to the Seller or his/her authorised Agent within a 5 (five) day period.

19.2 Such notice will have no effect unless:

19.2.1 It is signed by the Purchaser or his/her Agent acting on his/her authority; and

19.2.2 It specifically refers to this offer or agreement as the offer or agreement that is being revoked or terminated as the case may be; and

19.2.3 It is unconditional; and

19.2.4 The said offer was made by a natural person.

20.

The Seller undertakes to obtain and bear the cost of an Electrical Compliance Certificate / Gas Certificate of Conformity / Inspection Certificate by a qualified expert excluding the infestation of *Hylotrupes Bajulus* or *Oxypleuris Nodieri* Beetles from the residential premises on the property / Inspection Certificate by a registered inspector of the South African Pest Control Association excluding the infestation of wood-destroying beetles or termites for the said property prior to occupation or registration of transfer, whichever is the earlier. Such Certificate is to be forwarded to the transferring attorney. Compliance with recommendations in each such certificate will be carried out in full at the expense of the Seller prior to occupation by the Purchaser.

21.

If the purchase price is more than Two Million Rand, the Seller hereby warrants that * he is / is not a resident of the Republic of South Africa upon a proper interpretation of the terms of the Income Tax Act 58 of 1962 ("the Act" in this clause). If the Seller is a non-resident as contemplated by the Act, the Seller and Purchaser hereby record that they are aware of an obligation on the part of the Purchaser to withhold a prescribed portion of the purchase price from the Seller, and pay such withheld portion to the South African Revenue Service ("SARS") in terms of Section 35A of the Act.

The parties agree that the Purchaser shall request the conveyancers to fulfil this obligation on the Purchaser's behalf and on registration to withhold the prescribed percentage from the balance of the purchase price and pay it over to SARS as stipulated in the Act.

* (Delete whichever is not applicable)

This offer is irrevocable and expires at ____ pm/am on the ____ day of _____ year _____. Acceptance hereof by the Seller shall be binding without the Purchaser having been notified of the Seller's acceptance hereof.

SIGNED at _____ this ____ day of _____ year _____

PURCHASER

Duly assisted by Purchaser's spouse in so far as need be.

ACCEPTED this _____ day of _____ year _____.

SELLER

Duly assisted by Seller's spouse in so far as need be.

THE FOLLOWING INFORMATION IS REQUIRED FOR THE PURPOSE OF TRANSFER AND / OR BANK OR BUILDING SOCIETY LOAN APPLICATION:

PURCHASER

Full names _____
 ID No _____
 Spouse's full names _____ ID No _____
 How married (in community of property / out of community of property / married outside the Republic of SA) or widowed, single, divorced, etc. _____ Date of marriage _____
 Date of birth _____ Place of birth _____
 Present address _____
 Tel. Business _____ Home _____ Fax _____ Email _____
 Place of business or employment _____
 Period of employment _____
 Occupation _____

Monthly income	Purchaser	Spouse	Combined
Salary	R _____	R _____	R _____
Bonus	R _____	R _____	R _____
Company car	R _____	R _____	R _____
Other	R _____	R _____	R _____
TOTAL	R _____	R _____	R _____

I certify that the above information is correct.

 PURCHASER

SELLER

Full names _____
 ID No _____
 Spouse's full names _____ ID No _____
 How married (in community of property / out of community of property / married outside the Republic of SA) or widowed, single, divorced, etc. _____ Date of marriage _____
 Date of birth _____ Place of birth _____
 Present address _____
 Tel. Business _____ Home _____ Fax _____ Email _____
 Conveyancer's name _____
 Present First Mortgage Bondholder _____
 A/c no _____ Approximate Amount _____

OFFER TO PURCHASE SECTIONAL TITLE UNIT

TO THE OWNER of the under-mentioned Property

_____ (hereinafter referred to as "the Seller")
of _____
(physical address)

I/We, the undersigned

_____ (hereinafter referred to as "the Purchaser")
of _____
(physical address)

hereby offer to purchase:

Section No: _____ being Flat / Townhouse No: _____
in the building or buildings in the Sectional Title Scheme known as _____ as
shown and more fully described in the Registered Sectional Plan thereof, and an undivided share in
the common property in the land situate at: _____,
and building or buildings as shown and more fully described in the said Sectional Plan, apportioned
to the said Section in accordance with its participation quota specified in the appropriate Schedule
endorsed on the said Sectional Plan, and

the right to the exclusive use and occupation of the following area/s of the said common property
allocated to the Unit in terms of the Rules for the control and management of the Sectional Title
Scheme:

- Parking bay no _____;
- Utility or servant's room no _____;
- the private garden area attached to the said Section.
- (Delete if not applicable)

(hereinafter referred to as "the Property")

Subject to all conditions mentioned or referred to in the current and/or prior Certificates of the
Registered Sectional Title or Deeds of Transfer to the Property and in the condition and to the
extent as it now lies, *voetstoots* (as it stands, with all its faults) and upon the following terms:

1. PURCHASE PRICE

1.1 The purchase price is the sum of R _____ (_____
_____) payable, free of bank exchange, as follows:

1.1.1 In cash within _____ days of the date of acceptance of this offer, R _____
(_____) to be
deposited with the transferring attorney which amount will be held in an interest
bearing account for the Purchaser's benefit pending registration.

1.1.2 Balance of R _____ (_____) in
cash against transfer into the name of the Purchaser, to be secured by acceptable
guarantees delivered to the transferring attorney within _____ days from the
date of acceptance of this offer, subject to clause 12.

2. TRANSFER

Transfer of the property shall be effected by _____ within a reasonable time after the Purchaser has complied with the terms of clause 1 hereof and made payment to the said transferring attorney of transfer duty, stamp duty and all other costs of transfer and matters incidental thereto, for all of which the Purchaser shall be liable and obliged to make provision on demand.

3. POSSESSION

Possession of the property shall be given to the Purchaser on date of registration of transfer. From such date all benefits and risks of ownership in respect of the property shall pass to the Purchaser including the liability for any levies and other *imposts* (tax or similar compulsory payments) levied thereupon. Any levies and other imposts paid out prior to the said date of possession for any period subsequent thereto, shall be refunded proportionately in accordance with the above.

4. OCCUPATION

*4.1 The Purchaser is hereby notified and acknowledges that the property is let to tenant/s and that the purchase is made subject to the tenant/s' rights under an Agreement of Tenancy and the law and regulations protecting and relating to the tenant/s and that if the Purchaser requires occupation of the property, it will be necessary for the Purchaser to make arrangements with the tenant/s. The Seller gives no warranty that the Purchaser will obtain actual occupation of the property on the date provided herein. The Purchaser acknowledges being fully aware of the protection afforded to tenant/s under the Rents Act 43 of 1950 and any amendments thereof insofar as same may be applicable to the above-mentioned tenant/s.

*4.2 The Seller and all other occupants of the property shall be bound and obliged to vacate the property on _____, upon which date the Purchaser shall take occupation of the property.

4.3 If so requested by the Seller, the Purchaser shall be obliged to vacate the property immediately upon cancellation of the sale for any reason whatsoever, it being agreed that no tenancy shall be created by any such prior occupation.

4.4 The Purchaser shall not be entitled to make any alterations to the property before transfer without the prior written consent of the Seller, which consent shall be at the Seller's sole and absolute discretion.

* (Delete if not applicable)

5. OCCUPATIONAL RENT

5.1 Notwithstanding the provisions of clause 3, if the Purchaser takes occupation of the property before registration of transfer, then the Purchaser shall pay to the Seller R _____ (_____) which INCLUDES THE MONTHLY LEVY from date of occupation to the date of transfer, payable monthly in advance to the transferring attorney.

5.2 If the Seller remains in occupation of the property after registration of transfer, then the Seller shall pay to the Purchaser R _____ (_____) which INCLUDES THE MONTHLY LEVY from date of registration of transfer to date of termination of occupation, payable monthly in advance to the transferring attorney.

6. DEFAULT OF PURCHASER

- 6.1 In the event of the Purchaser failing to remedy any breach of the terms hereof, including failure to pay any deposit or furnish any guarantees within the time specified, within 10 (ten) days of the date of despatch by pre-paid registered post of written notice requiring the Purchaser to do so, the Seller shall be entitled at the Seller's sole option and without prejudice to all other rights in law:
- 6.1.1. To cancel the Agreement of Sale concluded by acceptance hereof, and thereupon nonetheless to retain the deposit paid under clause 1.1 above, as well as all other amounts paid by the Purchaser, either as *rouwkoop* (money forfeited if the Agreement of Sale is not proceeded with) or by way of penalty, or as liquidated damages, or as a payment in respect of the prejudice agreed upon as being suffered by the Seller as a result of the Purchaser's breach aforementioned; or
- 6.1.2. To recover such damages as the Seller may be able to prove the Seller has sustained in lieu of the amount provided for in clause 6.1.1 above, in which event the Seller shall be entitled to have the deposit and payments referred to in clause 6.1.1 above retained in trust until the actual amount of damages has been determined by a Court and thereupon set off such damages against the aforesaid amounts in trust; or
- 6.1.3. To enforce performance of the terms hereof including payment of the full balance of the Purchase price owing at the date of the Purchaser's breach aforementioned.

7. VARIATIONS

- 7.1 Any latitude or extension of time which may be allowed by the Seller to the Purchaser in respect of any payment provided for herein, or any matter or thing which the Purchaser is bound to perform or observe in terms hereof, shall not in any circumstances be deemed to be a waiver of the Seller's right, at any time, to require strict and punctual compliance with each and every provision or term hereof.
- 7.2 Any agreement between the Purchaser and the Seller to cancel, alter or add to this agreement shall not be binding and shall be of no force nor effect unless reduced to writing, and signed by the parties hereto before witnesses.

8. FIXTURES AND FITTINGS

The property is sold together with any buildings and other improvements thereon and if there are such buildings and other improvements, stoves, built-in heaters, electric fittings, fitted TV aerials, pelmets, door keys, fitted carpets, curtain fittings, blinds therein, pumps, engines, fences, trees and shrubs, pool equipment and fittings thereto, including automatic pool equipment, if any, these shall be deemed to be included in this sale.

9. WARRANTIES

No representations or warranties as to the measurement of the property have been given or made by the Seller or on the Seller's behalf. The Seller shall not profit by any excess nor be answerable for any deficiency in the extent of the property. If the property has been erroneously described herein, such mistake or error shall not be binding on the Seller but the description of the property as set out in the Seller's Title Deed shall apply and in such event, the parties agree to the rectification hereof to conform thereto.

10. DOMICILIUM

The parties hereby choose the *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) and for the delivery of notices and/or processes arising herefrom at the addresses set out by them in the preamble hereto.

11. PURCHASER'S CAPACITY AND RESPONSIBILITY

- 11.1 The parties warrant that all written consents required by the Matrimonial Property Act 88 of 1984 in respect of this sale or any matter arising from or in terms hereof have been or will be given.
- 11.2 Should there be a plurality of purchasers in terms of this agreement, their obligations arising from this agreement shall be joint and several.
- 11.3 The Purchaser shall be entitled, subject to the qualifications hereunder, to nominate either:
- a company or a close corporation to be formed to be the Purchaser and transferee hereunder, in which event the Purchaser shall be deemed to have purchased in the capacity as trustee or agent for such company or close corporation to be formed and shall be deemed to have been so described from the beginning and throughout this agreement; or
 - an existing company, close corporation, person, partnership, firm, trust or any legal persons or group legally capable of purchasing and taking transfer to be the Purchaser and transferee hereunder, in which event the Purchaser shall be deemed to have purchased for himself or his nominee and the Purchaser shall be deemed to have been so described, with the adjunct “or nominee” from the beginning and throughout this agreement.
- 11.3.1 The exercise by the Purchaser of his rights in terms of clause 11.3 above shall be by written nomination signed by the Purchaser and the nominee (if not a company still to be formed) and delivered to the transferring conveyancers at any time prior to preparation by them of the documents of transfer, but not thereafter, and provided that the Purchaser's exercise of his said rights does not unduly delay the fulfilment of any condition to which this agreement is subject nor the registration of transfer, nor unduly prejudice the Seller; the onus of proof in each case resting on the Purchaser.
- 11.3.2 The Purchaser is and shall remain the Purchaser hereunder in his personal capacity unless and until he exercises his rights in terms of clause 11.3 above (and if a company yet to be formed is nominated, such company is formed and properly ratifies and adopts this contract as Purchaser) whereupon and simultaneously with extinction of his rights as Purchaser hereunder, he shall, and by his signature hereunder does hereby, interpose and bind himself as surety for and co-principal debtor with his nominee for the due and proper discharge by such nominee of all the nominee's obligations arising herefrom; and further undertakes to sign all documents of suretyship, co-principal debtorship or otherwise which may be required by any mortgagees contemplated in this agreement so as to ensure the fulfilment of any conditions to which this agreement may be subject.
- 11.4 In this agreement and its annexures, unless contrary to the subject or context, the following shall apply:
- Words signifying the singular number shall include the plural and vice versa;
 - Reference to the masculine gender shall include the feminine and vice versa;

- Reference to a person shall include reference to a company, close corporation or an association of persons.

12. BOND FINANCE

- 12.1 This agreement of sale shall be subject to the suspensive condition that the Purchaser (or the Seller on the Purchaser's behalf) is able to raise a loan upon the security of a first mortgage bond to be passed over the property for the sum of not less than R _____ (_____) at prevailing Bank rates and conditions within _____ days after the date of acceptance of this offer (which time may be extended by the Seller at the Seller's sole option for a further period not exceeding _____ days). Should such loan not be procured as aforesaid, this sale shall be automatically cancelled and have no further force nor effect. The Purchaser undertakes properly and expeditiously to do all things and sign all documents reasonably necessary to fulfil this condition as soon as possible and shall forthwith (and subsequently if required), duly, properly and fully, make application to a financial institution as may be recommended by the Seller.
- 12.2 The condition shall lapse and the sale become unconditional upon the date that formal, written notice is given by the relevant financial institution of the grant of the above-mentioned bond provided that such notice is given within the time period specified in clause 12.1 above.

* 13. SALE OF PURCHASER'S PROPERTY (SOLD)

- *13.1 It is recorded that the Purchaser is the registered owner of certain property Lot _____ (hereinafter referred to as "the Second Property") which property has been sold to another.
- *13.1.1 This offer is subject to:
Any suspensive conditions in the agreement of sale of the Second Property being fulfilled by not later than _____ year _____.
- *13.1.2 Transfer of the Second Property being registered into the name of its purchaser by not later than _____ year _____.
- *13.1.3 Upon fulfilment of this condition, the transfer of both properties (being the Property and the Second Property) shall, insofar as may be necessary, be linked in the conveyancing and financing processes; and the Purchaser hereby irrevocably instructs his transferring attorney to collaborate with the Seller's transferring attorney, and to establish guarantees and/or undertakings and/or to make trust payments as may customarily and reasonably be required by the Seller's transferring attorney in respect of the Purchaser's obligations to the Seller, relating to the Purchase Price under this agreement, with the transfers, guarantees and payments being linked as simultaneous transactions.
- *13.1.4 The dates referred to in clauses 13.1.1 and 13.1.2 above may be extended by the transferring attorney in his sole discretion for further reasonable periods of time.
* (Delete if not applicable)

* 14. PURCHASER'S PROPERTY (TO BE SOLD)

- *14.1 This agreement is subject to the suspensive condition that, within _____ days, the Purchaser receives an offer to purchase certain property Lot _____ (hereinafter referred to as "the Second Property") of which he is the registered owner, for

not less than R _____ (_____
_____) on terms which are approved by the transferring attorney which he considers will enable the Purchaser to comply with his obligations to the Seller in respect of the purchase price under this agreement, as amplified hereunder.

- *14.2 The Purchaser undertakes to immediately commence marketing the Second Property and to do all reasonable things and to take all reasonable steps to ensure the efficient, timeous and proper fulfilment of this condition. The Purchaser generally undertakes to co-operate with the transferring attorney in its endeavours to market and sell the Second Property and timeously fulfil this condition.
- *14.3 Any sale of the Second Property within the time period specified in 14.1 above, shall constitute fulfilment of this condition.
- *14.4 Upon fulfilment of this condition, the transfer of both properties (being the Property and the Second Property) shall, insofar as may be necessary, be linked in the conveyancing and financing processes; and the Purchaser hereby irrevocably instructs his transferring attorney to collaborate with the Seller's transferring attorney, and to establish guarantees and/or undertakings and/or make trust payments as may customarily and reasonably be required by the Seller's transferring attorney in respect of the Purchaser's obligations to the Seller, relating to the Purchase Price under this agreement, with the transfers, guarantees and payments being linked as simultaneous transactions.
- *14.5 Pending fulfilment of this condition, the Seller shall be entitled to continue to market the Property, and should, prior to fulfilment of this condition, an offer made in good faith (hereinafter referred to as "the Competing Offer") for the Property be received which but for this agreement, the Seller wishes to accept, the Seller may do so subject to the following:
- 14.5.1 A copy of "the Competing Offer" shall be delivered to the Purchaser, who shall be given an option for 48 (forty-eight) hours from delivery to waive this condition;
- 14.5.2 Exercise of this option by the Purchaser shall be exclusively by written notice delivered timeously to the transferring attorney;
- 14.5.3 Should the Purchaser not timeously exercise the option as aforesaid, the Seller shall be entitled to accept "the Competing Offer" and, on acceptance thereof, this Agreement between the Seller and the Purchaser shall thereupon immediately and automatically become cancelled.
- * (Delete if not applicable)

15. IRREVOCABILITY OF OFFER

This offer shall be irrevocable until midnight on _____.

To this end:

- 15.1 The Purchaser (as Offeror) undertakes not to withdraw this offer during such period.
- 15.2 This undertaking shall not be extinguished by rejection or counter-offer or otherwise, and the offer shall remain open for acceptance until lapse of the said period.

16. ACCEPTANCE

The Seller shall signify his acceptance of this offer by signing same as Seller where indicated below whereupon a contract shall forthwith thereupon be constituted in terms hereof without the necessity

of communicating such acceptance to the Purchaser as Offeror.

17. CONDITIONS

- 17.1 Notwithstanding the suspensive nature of any condition, the parties shall discharge all obligations which are required to be discharged prior to the fulfilment of such condition.
- 17.2 The parties agree that should any condition in this agreement be for the benefit of one party only, the time limit stipulated for the fulfilment of the condition is, however, for the benefit of both parties. Accordingly, any waiver of such benefit must take place within the stipulated time limit, on the expiry of which this agreement shall lapse entirely and no rights or benefits shall thereafter exist for exercise or waiver.

18. PURCHASER'S COOLING-OFF RIGHT

- 18.1 Section 29A of the Alienation of Land Act 68 of 1981 applies to this agreement only if the purchase price is R250 000.00 or less. Should the Act apply, the Purchaser has the right to revoke this offer or terminate this agreement by:
- 18.1.1 Delivering written notice of his/her decision to revoke the offer or terminate the agreement to the Seller or his/her authorised agent within a five-day period.
- 18.2 Such notice will have no effect unless it:
- 18.2.1 Is signed by the Purchaser or his/her Agent acting on his/her authority;
- 18.2.2 Specifically refers to this offer or agreement as the offer or agreement that is being revoked or terminated as the case may be; and
- 18.2.2.1 Is unconditional; and
- 18.2.2.2 The said offer was made by a natural person.

19. COMPLIANCE CERTIFICATE

The Seller undertakes to obtain and bear the cost of an Electrical Compliance Certificate / Gas Certificate of Conformity / Inspection Certificate by a qualified expert excluding the infestation of *Hylotrupes Bajulus* or *Oxypleuris Nodieri* Beetles from the residential premises on the property / Inspection Certificate by a registered inspector of the South African Pest Control Association excluding the infestation of wood-destroying beetles or termites for the said property prior to occupation or registration of transfer, whichever is the earlier. Such Certificate is to be forwarded to the transferring attorney. Compliance with recommendations in each such certificate will be carried out in full at the expense of the Seller prior to occupation by the Purchaser.

20. WITHHOLDING TAX OBLIGATION

If the purchase price is more than Two Million Rand, the Seller hereby warrants that * he is / is not a resident of the Republic of South Africa upon a proper interpretation of the terms of the Income Tax Act 58 of 1962 ("the Act" in this clause). If the Seller is a non-resident as contemplated by the Act, the Seller and Purchaser hereby record that they are aware of an obligation on the part of the Purchaser to withhold a prescribed portion of the purchase price from the Seller, and pay such withheld portion to the South African Revenue Service ("SARS") in terms of Section 35A of the Act. The parties agree that the Purchaser shall request the conveyancers to fulfil this obligation on the Purchaser's behalf and on registration to withhold the prescribed percentage from the balance of the purchase price and pay it over to SARS as stipulated in the Act.

* (Delete whichever is not applicable)

SIGNED by the PURCHASER at _____ this _____ day of _____

year _____.

AS WITNESSES:

1. _____

PURCHASER

2. _____

(Purchaser's Spouse if
married in Community
of Property)

ACCEPTED by the SELLER at _____ this _____ day of _____
year _____ at _____ am/pm

AS WITNESSES:

1. _____

SELLER

2. _____

(Seller's Spouse if
married in Community
of Property)

INFORMATION FOR TRANSFER / LOAN APPLICATION PURPOSE

SELLER		PURCHASER	
Surname		Surname	
First Names		First Names	
Maiden Name		Maiden Name	
Spouse's Names		Spouse's Names	
Marital Status (M.I.C.P./A.N.C.)		Marital Status (M.I.C.P./A.N.C.)	
Identity No.	His	Identity No.	His
	Hers		Hers
Place of Birth	His	Place of Birth	His
	Hers		Hers
Residential Tel	His	Residential Tel	His
	Hers		Hers
Business Tel	His	Business Tel	His
	Hers		Hers
Cell	His	Cell	His
	Hers		Hers
Email	His	Email	His
	Hers		Hers
Present Postal Address		Present Postal Address	
Forwarding Address		Forwarding Address	
Effective Dates		Effective Dates	
Transferring Attorney		Occupation	His
Managing Agents			Hers
Bond at	Branch	Employer	His
Approx. Bal. R			Hers
A/c no		Income	His R
Any other entailments over property			Hers R
		Gross Monthly Income R	
		PURCHASER _____	
		The above information is hereby certified to be correct.	

SPECIAL POWER OF ATTORNEY TO PURCHASE IMMOVABLE PROPERTY

I the undersigned, _____
(Full name)

Identity Number: _____

(if a foreigner with no ID then "Born on _____")

do hereby nominate, constitute and appoint _____
(Full Name)

with power of substitution to be my lawful Attorney and Agent in my name and place and stead,
to sign all documentation which is necessary in order for me to:

Purchase and/or to take transfer into my name in the relevant Deeds Registries Office

for a price of / for not more than *R _____

*Delete if not applicable

(_____)

In respect of

Erf: _____

Registration Division _____

The Province of _____

And generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually, for all intents and purposes, as I might or could do if personally present and acting herein hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorney shall lawfully do, or cause to be done, by virtue of these present.

SIGNED at _____ this _____ day of _____ year _____.

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

AS WITNESSES:

1. _____

2. _____

SPECIAL POWER OF ATTORNEY TO SELL IMMOVABLE PROPERTY

I the undersigned, IAN BELL
(Full name)

Identity Number: 290401 5076 087

Marital status: Married out of community of property

herein authorise PETER BELL
(Full name)

Identity number: 431007 5074 087

To sell on my behalf my property known as

Erf: 205 in the township of Saxonwold

Registration Division: I R in the Province of Gauteng

Measuring 2023 (two thousand and twenty three) square metres

for a price not less than R3 000 000.00 (three million rand)

after deduction of commission due to an estate agent, and further subject to such conditions as the said Peter Bell may agree upon and to sign all documents that may be required to pass transfer of the property to the purchaser.

THUS DONE AND SIGNED at JOHANNESBURG on this 31st day of March year 2008 .

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

AS WITNESSES:

1. _____

2. _____

SPECIMEN ONLY
VALID ONLY IF DRAWN UP BY A CONVEYANCER

I BELL

CESSIONS AND ASSIGNMENTS / IMMATERIAL PROPERTY

SECTION

7

CESSIONS & ASSIGNMENTS

Section

7

This section provides a means of documenting routine cessions and assignments. It is important to realise that a cession only transfers personal rights or claims from the cedent to the cessionary. An assignment transfers both rights and obligations under a contract. Forms relating to cessions, assignments and agreements of lease are also to be found in Section 6, Immovable Property / Leases.

Form 7.1 General Cession

Contains the terms for any cession. The cedent is the person who cedes or transfers the right and the cessionary is the person who receives the right. For cessions of notarial or mortgage bonds or rights to immaterial property, e.g. trademark, copyright or patent, it is suggested you consult an attorney.

Form 7.2 Assignment

This is the cession and assignment of an agreement. The document transfers both rights and obligations under the agreement.

Form 7.3 Assignment of Trademarks (3 pages)

This is the cession and assignment of registered trademarks.

Form 7.4 Notice by Cedent of Cession of Claim

Notifies a debtor of cession of a claim. After receipt of such notice, payment to the cedent does not extinguish the obligation.

Form 7.5 Cession of Copyright

A cession of copyright in various works, such as literary and artistic works (including drawings and technical drawings).

IMMATERIAL PROPERTY

Immaterial or intangible or incorporeal property are terms used to refer to copyright, trade secrets, technical knowledge, inventions and trademarks. Such property is often a valuable asset of a business. The existence of such property and the need for its proper protection is, however, not always recognised by businessmen.

The proper protection of incorporeal property requires the services of attorneys and other professionals who specialise in these fields of law. This is one area where the businessman cannot and should not attempt to do things himself. Having said that, however, there are in business certain situations involving incorporeal property for which standardised forms can safely be used. A selection of such forms is contained in this section.

Form 7.6 Authorisation to Publish

Permits the use of a particular quotation or picture. The authorisation may be exclusive or non-exclusive and the form provides for both contingencies. In addition, it may well be of use to a company wishing to launch a promotional campaign for a product or a service.

Form 7.7 Copyright Licence

To be used when a copyright holder wishes to license the use of copyright material. It is illegal and a criminal offence knowingly to infringe copyright. "Credit line" refers to an acknowledgement to the copyright holder.

Form 7.8 Employee Invention Agreement

Should be signed by all employees of a company dealing with immaterial property. It has the effect of ceding to the company any rights to inventions, discoveries, improvements, developments or designs, of which the employee may conceive.

Form 7.9 Confidential Information Agreement: Company and Employee

Made between an employee and the company and relates to the utilisation or disclosure of any trade secrets of the company. It is advisable to define as accurately as possible the material that the company considers to be trade secrets. The agreement prevents an employee, during or after his employment with the company, from utilising the company's trade secrets.

Form 7.10 Confidentiality Agreement: Company and Investigator (2 pages)

Made between a company and an outsider (investigator, etc.) whose assignment will bring him into close contact with confidential information of the company. The agreement prevents the disclosure by the outsider of such information.

Form 7.11: Confidentiality Agreement: Purchaser and Seller of a Business (5 pages)

Made between a potential purchaser and a target company. The interests of the purchaser are protected and the agreement is more than that in Form 7.10 above.

GENERAL CESSION

I/We, the undersigned,

_____ (Cedent)

hereby cede and transfer to

_____ (Cessionary)

all my/our rights, title and interest in and to the following:

_____ (describe fully)

I/We, the undersigned,

_____ (Cessionary)

hereby accept such cession and transfer.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____ CEDENT

2. _____ CEDENT

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____ CESSIONARY

2. _____ CESSIONARY

ASSIGNMENT

I, the undersigned,

(Assignor)

hereby cede, assign and transfer to

(Assignee)

all my rights, title and interest in and to the agreement described below:

(hereinafter referred to as "the agreement")

The Assignor warrants and represents that the agreement is in full force and effect and fully assignable.

The Assignee hereby assumes and agrees to perform all the obligations of the Assignor under the agreement and indemnifies the Assignor against any claim arising therefrom.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

ASSIGNOR

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

ASSIGNEE

ASSIGNMENT OF TRADEMARKS

Made and entered into by and between:

(Name of person or company assigning trademarks)
(hereinafter referred to as "the Assignor")

and

(hereinafter referred to as "the Assignee")

WHEREAS the Assignor is the registered owner of the trademarks specified in the Schedule attached marked Annexure "A" which trademarks are registered in the Companies and Intellectual Property Registration Office (hereinafter referred to as "the trademarks");

And the Assignor has agreed to cede and assign all right, title and interest in and to the trademarks to the Assignee upon the terms and conditions set out below.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1.

In consideration of the payment of the sum of R _____ by the Assignee to the Assignor, the Assignor hereby cedes and assigns all the Assignor's right, title and interest in and to the trademarks to the Assignee upon the terms and conditions set out below.

2.

Payment of the said sum of R _____ (amount) shall be made by the Assignee to the Assignor as follows:

- 2.1 R _____ upon execution of this deed;
- 2.2 The balance of R _____ to be paid by the Assignee to the Assignor in equal weekly / monthly instalments of R _____ commencing on the _____ day of _____ year _____ and payable thereafter on the _____ day of each and every month until the said balance has been paid in full;
- 2.3 If any payment is not paid timeously the full amount outstanding will immediately become due and payable.

3.

The Assignor shall, upon execution of this deed, or as soon as possible thereafter, execute in favour of the Assignee or its nominee, all forms and other documents necessary to enable the Assignee or its nominee to obtain registration of the trademarks in its or its nominee's name.

4.

Any stamp duty or other duty imposed by law payable pursuant to this deed shall be borne and paid for by the Assignee.

5.

The Assignee hereby accepts the aforesaid assignment.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

(Signature of Assignor)

2. _____

(Full name of Assignor)

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

(Signature of Assignee)

2. _____

(Full name of Assignee)

SCHEDULE

LIST OF TRADEMARKS

	Registration	Mark	Class
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____

“REGISTERED MAIL”

Date _____

Dear

NOTICE BY CEDENT OF CESSION OF CLAIM

You are hereby informed that _____ (Cedent)
has ceded to _____ (Cessionary)
all its rights to its claim against you in the amount of R _____ .

You are further informed that all future payments must, with immediate effect, be made direct to
_____ (Cessionary)
at _____ (address)
and that should any payments be received by _____
(Cedent) subsequent to five days of date hereof, such payments will not be credited against your
said indebtedness.

Yours faithfully

CESSION OF COPYRIGHT

I, the undersigned

(Cedent)

hereby cede to _____

(Cessionary)

all my rights, title and interest in and to the copyright in the following:

(describe fully)

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

CEDENT

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

CESSIONARY

AUTHORISATION TO PUBLISH

I/We, the undersigned

of _____

irrevocably authorise _____

its successors and assigns, to use, publish or reprint in whole or in part the following statement,
picture, endorsement or quotation:

(describe fully and/or attach)

This authorisation shall / shall not (delete not applicable) be an exclusive authorisation in relation to such statement, picture, endorsement or quotation and shall be valid only for the following circumstances:

(State duration, place and manner if applicable.)

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

COPYRIGHT LICENCE

I/We, the undersigned

as copyright holder do hereby grant to _____

a non-exclusive licence to reprint, publish and use for world distribution the following material:

(describe fully and/or attach)

This licence shall only extend to the use of the material in the following manner, or publication:

A credit line to acknowledge use of the material is / is not (delete not applicable) required.

If required the credit line shall read as follows:

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYEE INVENTION AGREEMENT

Made and entered into by and between:

(hereinafter referred to as "the Employer")

and

(hereinafter referred to as "the Employee")

IT IS AGREED AS FOLLOWS:

1.

The Employee shall promptly disclose to the Employer, in writing, all inventions, discoveries, improvements, developments or designs including any models or drawings relating thereto, conceived in whole or in part by the Employee or with his/her assistance and whether during working hours or not, and whether related in any manner to the business of the company or not which have occurred during the period of employment between the parties.

2.

The Employee hereby assigns to the Employer, its successors or assigns, all right, title and interest in and to any such inventions, discoveries, improvements, developments or designs and the copyright in any drawings relating thereto and the Employer hereby accepts such assignment.

3.

The Employee shall execute all documents and do all such acts as are required to enable any such discoveries, improvements, developments, innovations or technical designs to be protected by way of patent registered design or copyright either in the Republic of South Africa or elsewhere. This provision shall remain of force and effect even after termination of the Employee's employment.

4.

The Employer shall not be obliged to compensate or remunerate the Employee for such assignment but may do so in its sole discretion.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYER

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

EMPLOYEE

CONFIDENTIAL INFORMATION AGREEMENT: COMPANY AND EMPLOYEE

Made and entered into by and between:

(hereinafter referred to as "the Company")

and

(hereinafter referred to as "the Employee")

IT IS AGREED AS FOLLOWS:

1.

It is recorded that during the course of the Employee's employment with the Company there will be disclosed to him/her certain trade secrets of the Company consisting of, *inter alia* (amongst other things), one or more of the following:

- (a) Technical information, methods, processes, formulae, compositions, inventions, machines, systems, computer programmes and research projects;
- (b) Business information, customer lists, pricing information, suppliers and marketing or merchandising systems and plans.

2.

The Employee shall not, during or at any time after termination of employment with the Company, utilise or disclose to others any trade secrets or confidential information imparted to the Employee during the course of his/her employment.

3.

Upon termination of his/her employment, the Employee undertakes to return all documents, drawings, reports, manuals, correspondence, customer lists, computer programmes and all other materials and all copies thereof acquired by the Employee during the course of his/her employment.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

FOR AND ON BEHALF OF
THE COMPANY

2. _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

EMPLOYEE

2. _____

CONFIDENTIALITY AGREEMENT: COMPANY AND INVESTIGATOR

Made and entered into by and between:

(hereinafter referred to as "the Company")

and

(hereinafter referred to as "the Investigator")

WHEREAS, the Company agrees to furnish the investigator with certain confidential information relating to the affairs of the Company for purposes of:

AND WHEREAS the Investigator agrees to review, examine, inspect or obtain such information only for the purposes described above, and to otherwise hold such information confidential in accordance with the terms of this agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. The Company has furnished or shall furnish to the Investigator certain confidential information, as set forth on the attached list, and may further allow the Investigator the right to inspect the business of the Company and/or interview employees or representatives of the Company, all on the following conditions:
 - 1.1 The Investigator agrees to hold all confidential or proprietary information or trade secrets (hereinafter referred to as "the information") in trust and confidence and agrees that it shall be used only for the contemplated purpose and shall not be used for any other purpose or disclosed to any third party.
 - 1.2 No copies will be made or retained of any written information supplied.
 - 1.3 Once the purposes of the Investigator have been achieved, or upon demand by the Company, all information, including written notes, photographs, memoranda, or notes taken by the Investigator shall be returned to the Company.
 - 1.4 The information shall not be disclosed to any employee or consultant unless they agree to execute and be bound by the terms of this agreement.

2. This agreement constitutes the entire agreement between the parties with reference to confidential information and no other terms will be binding on the parties unless reduced to writing and signed by the parties.

- 3 The *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) of each of the parties is as follows:

The Company _____

The Investigator _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

THE COMPANY

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

THE INVESTIGATOR

CONFIDENTIALITY AGREEMENT: PURCHASER AND SELLER OF A BUSINESS

Made and entered into by and between:

(hereinafter referred to as "the Purchaser")

and

(hereinafter referred to as "the Seller")

WHEREAS, the Purchaser is interested in receiving certain information concerning the business of the Seller with a view to making an offer to purchase the Seller;

AND WHEREAS the Purchaser may during its negotiations with the Seller disclose its own business information to the Seller;

AND WHEREAS in consideration of the Purchaser disclosing its information to the Seller, the Seller agrees and undertakes to treat such information as confidential.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

Definitions

1. Information: In this Agreement, "Information" shall mean and include:
 - (i) All information of whatever nature relating to the Purchaser or any of its subsidiary companies disclosed to the Seller by the Purchaser or on its behalf or otherwise learnt by the Seller from whatever source, (save for information already in the public domain than by reason of a breach of this Agreement).
 - (ii) All other information of whatever nature relating to the business of the Purchaser and that of other members of the group of companies of which the Purchaser is a member which might be disclosed to or otherwise learnt by the Seller during the course of the Purchaser disclosing the information relating to the business.
 - (iii) All notes, reports, analyses and reviews of the same by the Purchaser or on its behalf.

Seller's Obligations

2. The Seller's obligations of confidence shall be without limit in time but where any of the Information:
 - (i) Is already commonly known or subsequently becomes commonly known in the trade except through breach by the Seller of its obligations to the Purchaser

hereunder and the Seller can show the same to be the case from written or other reasonable evidence, or

- ii) Is already known to the Seller or subsequently becomes known to it from a third party who (to the best of the Seller's knowledge upon reasonable enquiry in each circumstance) owes no obligation of confidence to the Purchaser, then the foregoing obligations on the Seller's part shall not apply or shall cease to apply (as the case may be) to such information.

Confidentiality

3. The Seller will keep the Information confidential and will keep in safe custody all documentation and other papers and all discs, tapes or other recordings and will not, without the Purchaser's previous written consent, divulge the Information to any other person, firm or company or make any use of it, and in particular will not use the Information to solicit or entice away any customer or employee of the Purchaser or its subsidiary companies.
4. The Seller will ensure that access to the Information will be restricted to those of its directors, officers, senior employees and professional advisers actively and necessarily engaged in conducting the said negotiations (the "Authorised Representatives") and shall ensure that the Authorised Representatives are made fully aware of the Seller's obligations or confidence to the Purchaser and that each of them is under a similar personal obligation to the Purchaser.
5. The Seller shall ensure that each member of the group of companies of which it is a member, including its ultimate holding company, shall comply with all the undertakings and obligations the Seller has given and entered into herein.
6. The Seller will not seek Information from or discuss Information with:
 - (i) Any of the Purchaser's professional advisers (save for those nominated in writing by the Purchaser for such purpose), or
 - (ii) Any employee of the Purchaser (save those nominated by the Purchaser in writing for this purpose), or
 - (iii) Any of the customers of or suppliers of the Purchaser or its subsidiary companies.
7. The Seller will not disclose to any person other than the Authorised Representatives:
 - (i) The fact that the Purchaser is considering making an offer to purchase the Seller.
 - (ii) The Purchaser is evaluating the Information, or
 - (iii) The existence of or the contents or nature of this Agreement.

Copies and Notes

8. The Seller will not, and shall ensure that the Authorised Representatives will not take or make copies of the Information or any of it, or authorise any other person to do so, other than for purposes of negotiating the purchase for the Seller.
9. In the event that the Purchaser does not commence or discontinues negotiations with the Seller or if the Purchaser by written notice to the Seller requires the Seller to do so at any given time and for any reason (which need not be given), then the Seller will forthwith return to the Purchaser all Information in the possession or control of the Seller and the Authorised Representatives or any other third party, insofar as the same shall be in tangible form, including all copies thereof.
10. Upon notice as referred to in paragraph 9 the Seller shall destroy all notes, analyses and reviews made by the Seller, the Authorised Representatives or any third party in connection with any of the information. The Seller shall upon request procure that an authorised officer certifies to the Purchaser that they have personally supervised such destruction.

Disclosure

11. In the event of a legal requirement to disclose any Information being imposed by any third party, the disclosure of such Information shall not be a breach of the terms of this Agreement provided that:
 - (i) The Seller notifies the Purchaser immediately by facsimile or e-mail to the Purchaser's registered office (at the number specified in the Purchaser's most recent Annual Report, and marked for the attention of the Company Secretary) of such legal requirement, specifying the Information so disclosed or required to be disclosed, and
 - (ii) The Seller shall use its best endeavours not to disclose the Information until the Purchaser has had a reasonable opportunity to formally oppose and resist the said legal requirement.
12. In the event of the Purchaser becoming aware of or suspecting any disclosure of all or part of the Information in breach of this Agreement, the Purchaser shall forthwith notify the Seller as provided in paragraph 11(i), and the Seller shall take all reasonable action and co-operate with the Purchaser in taking any action to limit and remedy the breach. Any such action taken by the Purchaser under this paragraph or under paragraph 11 shall be without prejudice to the Purchaser's other rights hereunder.

Warranties

14. The Seller is acting as principal and not as agent or broker for any other person.

15. The Seller accepts that the Purchaser is not purchasing the Seller and that the Purchaser may terminate negotiations and withhold further information from the Seller at any time without giving any reason.
16. Notwithstanding that the Purchaser may in its discretion supply all information that the Seller may reasonably require to evaluate the Purchaser, the Seller accepts that the Purchaser gives no warranty or representation that the information is accurate or complete, and the Purchaser shall have no liability to the Seller in respect of information supplied and that the Seller relies upon its own judgement and enquiries in accepting any offer by the Purchaser for the Seller, and that the Purchaser's only liability to the Seller (if any) shall be exclusively under the terms of any written sale agreement between the Seller and the Purchaser.

Employees

17. The Seller will not, directly or indirectly, alone or through or with any other person or persons, in any manner, for a period of two years after the date hereof:
 - (i) Solicit or entice away from the Purchaser any person who at the date hereof is an officer, manager or employee of the Purchaser or its subsidiary companies named or specifically referred to in the Information whether or not such person would commit a breach of contract by reason of leaving the service of the Purchaser or transferring business; or
 - (ii) Employ or otherwise engage the services of any such officer or employee.

Remedies

18. Without prejudice to any other rights and remedies the Purchaser may have, the Seller agrees that the information is valuable and that damages may not be an adequate remedy for any breach by the Seller of this Agreement. Accordingly the Seller agrees that the Purchaser shall be entitled without proof of special damage to the remedies of an injunction and other equitable relief for any actual or threatened breach by the Seller of this Agreement.
19. The Seller accepts that any non-exercise or forbearance of the Purchaser's rights hereunder shall not be a waiver of those or any other rights unless expressly stated as such in writing by the Purchaser.

General

20. Except to the extent that they relate to information described in paragraph 1(ii), 3, 4, 5 and 17 of this Agreement, the undertakings on the part of the Seller set out in this Agreement shall cease to have effect if and when the Purchaser directly or indirectly acquires the Seller.
21. If any provision of this Agreement shall be held to be illegal or unenforceable, it shall be amended to such extent necessary to avoid such illegality or unenforceability, and if such

amendment is not possible the enforceability of the remainder of this Agreement shall not be affected.

22. This Agreement shall be governed by and construed in accordance with the laws of South Africa and the Seller hereby submits to the non-exclusive jurisdiction of the South African Courts.

23. The rights of the Purchaser under this Agreement may be assigned in whole or in part to any third party which may acquire a direct or indirect interest in the Purchaser and such third party shall upon such assignment be entitled to enforce this Agreement to the same extent and in the same manner as the Purchaser.

DATED at _____ this _____ day of _____ year _____ .

SIGNED at _____ this _____ day of _____ year _____ .

WITNESSES:

1. _____

2. _____

THE PURCHASER

SIGNED at _____ this _____ day of _____ year _____ .

WITNESSES:

1. _____

2. _____

THE SELLER

INFORMATION TECHNOLOGY / CYBER LAW

SECTION

8

INFORMATION TECHNOLOGY / CYBER LAW

Section

8

Although South Africa is still in the pioneering phase of information and communication technology, the internet has secured its place in the global digital village. It is inconceivable to see a business functioning properly without the use of e-mail or the internet. Internet advertising through websites is expected to become the dominant pattern for all mass marketing in the 21st century. Internet advertisements that appear on a South African website will also appear around the world wherever there are internet links. It is the duty of the advertiser to be aware that the laws of a foreign jurisdiction could differ radically from those in South Africa in important aspects making it undesirable to transact from such jurisdictions. It follows that websites need to be protected as far as possible by disclaimers against transactions arising from undesirable jurisdictions. (See Form 8.6 which deals with a jurisdiction disclaimer.)

The Electronic Communications and Transactions Act No. 25 of 2002 (ECTA), which came into operation on 30 August 2002, deals exclusively with internet and computer law. In terms of Section 43(1) of ECTA a supplier offering goods or services for sale, hire or exchange by way of an electronic transaction must make detailed information available to consumers on the website where the goods or services are offered including:

- a) its full name and legal status;
- b) its physical address and telephone number;
- c) its website address and e-mail address;
- d) membership of any self-regulatory or accreditation bodies to which that supplier belongs or subscribes and the contact details of that body;
- e) any code of conduct to which the supplier subscribes and how the code of conduct may be accessed electronically by the consumer;
- f) in the case of a legal person, such as a company or close corporation, its registration number, the names of its office bearers and its place of registration;
- g) the physical address where the supplier will receive legal service of documents;
- h) a sufficient description of the main characteristics of the goods or services offered by that supplier to enable a consumer to make an informed decision on the proposed electronic transaction;
- i) the full price of the goods or services, including transport costs, taxes and any other fees or costs;
- j) the manner of payment;
- k) any terms of agreement, including any guarantees, that will apply to the transaction and how those terms may be accessed, stored and reproduced electronically by consumers;
- l) the time within which the goods will be dispatched or delivered or within which the services will be rendered;
- m) the manner and period within which consumers can access and maintain a full record of the transaction;
- n) the return, exchange and refund policy of the supplier;
- o) any alternative dispute resolution code to which the supplier subscribes and how the wording of that code may be accessed electronically by the consumer;
- p) the security procedures and privacy policy of the supplier in respect of payment, payment information, and personal information;
- q) where appropriate, the minimum duration of the agreement in the case of agreements for the supply of products or services to be performed on an ongoing basis or recurrently; and
- r) the rights of consumers in terms of Section 44, where applicable.

In terms of section 43 (2) of ECTA, the supplier must provide a consumer with an opportunity-

- a) to review the entire electronic transaction;
- b) to correct any mistakes; and
- c) to withdraw from the transaction, before finally placing any order.

According to Section 43 (3) if a supplier fails to comply with the provisions of subsection (1) or (2), the consumer may cancel the transaction within 14 days of receiving the goods or services under the transaction.

Section 43 (4) states that if a transaction is cancelled in terms of subsection (3)-

- a) the consumer must return the performance of the supplier or, where applicable, cease using the services performed; and
- b) the supplier must refund all payments made by the consumer minus the direct cost of returning the goods.

Section 43 (5) states that the supplier must utilise a payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned.

In terms of section 43 (6) the supplier is liable for any damage suffered by a consumer due to a failure by the supplier to comply with subsection (5).

ECTA does not however deal with labour issues such as privacy of e-mails sent and received by an employee. This topic is dealt with by the controversial Regulation of Interception of Communications and Provision of Communication-Related Information Act No. 70 of 2002 (RICA), which came into operation in September 2005, and which states that on pain of a maximum fine of R2 million or imprisonment of a maximum period for 10 years, an electronic communication cannot be intercepted except in the following three circumstances: -

1. A party to the communication has consented to the other intercepting it;
2. The interceptor is a party to the communication;
3. A court order.

However, Section 6 of RICA provides that any person (including an employer) may in the course of carrying on any business intercept any indirect communication relating to that business if:

1. The interception is effected with the consent of the system controller; and
2. The telecommunication system concerned is provided for use in connection with that business; and
3. The system controller has made reasonable efforts to inform in advance the person concerned, that indirect communications may be intercepted with the express or implied consent of that person.

The interception may be made only for the purposes of:

1. Keeping a record for investigation of the unauthorised use of the system or to establish existing facts; or for
2. Monitoring indirect communications made to a confidential support service.

(Form 8.1 deals *inter alia* (amongst other things) with the interception of e-mails for employees and abuse by them of the internet.)

Section 51 of ECTA deals with the collection and dissemination of personal information of a data subject and provides that such information can only be collected with the written permission of the data subject. The data controller, i.e. the person or entity that electronically requests or collates the personal information must subscribe to all of the principles outlined in Section 51 if the parties enter into such an agreement. The rights and obligations of the parties are governed by the agreement entered into between them. However, Section 50 states it is not obligatory for the parties to have such an agreement. It follows that the provisions of Section 51 are not compulsory upon website operators. They are therefore of limited value. Whilst privacy rights of Europeans are protected in the EU Data Protection Directive and the privacy rights of the British by the Data Protection Act in the UK, the USA favours self-regulation of privacy rights in the Internet industry.

It is prudent that a website informs site visitors that it uses a cookie which is a potential invader of the privacy of a visitor to a website. A cookie is a computer storage data programme which enables a website server to record a visitor's activities from the visitor's computer hard drive. The information in the cookie is then available to the website server and is used by it to analyse the viewing habits of the visitor. The cookie facilitates interaction between the visitor and the server. It does not scan the visitor's hard drive and extract such information as credit card details or passwords.

Rather it obtains such information as the visitor's internet protocol (IP) address i.e. the website numerical address, his operating system, web pages visited on the site, length of visit, the expiry date of the cookie, the date when it was created and the visitor's browsing habits. There are two types of cookies: Memory cookies and persistent cookies. The memory cookie exists only in the internet user's computer memory and disappears when the user closes his web browser. The persistent cookie has an expiration date and is stored by the website server in the internet user's hard disk without the latter's consent until that date. Unless the website server links the visitor's details with personal identifiable information, it is considered that monitoring website activity is not a violation of the visitor's right to privacy, or at the most, not a serious violation. The website server will also fall foul of the unfair Business Practices Act 71 of 1988 if it uses persistent cookies

to compile user preferences and combines such information with personal identifiable information such as a postal address or e-mail address without the visitor's consent.

It is a growing trend for website owners to post privacy policies on their websites, stating what kind of information will be collected and how it will be used e.g. non-disclosure of personal information to third parties. It is important to display the policy at the beginning of the website to ensure the visitor sees it and reads it and to ensure compliance with Section 6 of RICA.

In the European Union the Directive on Privacy and Electronic Communications came into force on 31 July 2002. With regard to cookies it provides that cookies be used by website operators provided that:

1. The internet user is provided with clear and comprehensive information about the purpose for which the cookie will be used; and
2. The internet user is given the opportunity to refuse the acceptance of a cookie.

In any event, Section 14 of the Constitution of South Africa states that "Everyone has the right to privacy, which includes the right not to have ... (d) the privacy of their communications infringed". Consumer protection is dealt with in Chapter 7 of ECTA but it does not extend to privacy protection. Internet users place a high premium on their online privacy.

Where persistent cookies are employed it is suggested that a privacy policy be displayed on the website operator's home page.

From the viewpoint of the visitor, the following methods of self-help measures against the infiltration of cookies are available: -

1. Click on the opt-out option (if any) provided by the website operator;
2. Adjusting the computer to reject cookies, if possible;
3. Installing anti-cookie software;
4. Adjusting the hard drive files.

(Form 8.2 sets out a privacy policy dealing with cookies for display on the website.)

Spamming is defined as unsolicited bulk and/or commercial electronic communications. Even a single unsolicited commercial communication is regarded as spam. In terms of the Electronic Communications and Transactions Act No. 25 of 2002 (ECTA) spam excludes unsolicited telephone calls, post and faxes but includes e-mail and SMS.

In terms of Section 45(1) of ECTA: "Any person who sends unsolicited commercial communications to consumers, must provide the consumer:

- a) with the option to cancel his or her subscription to the mailing list of that person; and
- b) with the identifying particulars of the source from which that person obtained the consumer's personal information, on request of the consumer."

ECTA therefore does not outlaw spamming but it does provide the consumer with opt-out rights that may be enforced against the sender. The spammer should provide a link from the e-mail message to an opt-out page on the spammer's website.

A spammer could be liable to a fine or imprisonment for up to 12 months in terms of Section 89(1) of ECTA for failure to provide the recipient with the requested information in terms of Section 45(1). The recipient may initiate civil or criminal proceedings if his/her personal information was obtained through illegal or unconstitutional means.

Form 8.1 E-mail and Internet Usage Policy for Employees (2 pages)

E-mail is fast replacing the telephone. Cyberslacking describes the phenomenon of employees surfing the internet or indulging in social e-mailing. It is important to create a Company Policy of e-mail and other telecommunication system use regarding such aspects as privacy, employer monitoring, offensive e-mail, surfing the internet and security risks.

Form 8.2 Privacy Policy

In order to ensure compliance with Section 6 of RICA regarding the use of a persistent cookie, it is advisable to display a privacy policy which should be displayed at the commencement of a website on the home page.

Form 8.3 E-mail Disclaimer

This is a confidentiality provision for insertion at the conclusion of e-mails.

Form 8.4 Opt-Out

This form is obligatory for unsolicited commercial communications or “spam” sent via the e-mail and gives the recipient the opportunity to opt-out from future communications. Social pressures and industry regulation have little effect on “spam”. The main reason is that these rules and guidelines lack enforcement mechanisms. Certain countries have anti-spam bills but not all. In terms of Section 45(1) of ECTA spamming is not outlawed but the consumer is provided with rights enforceable against a spammer. A spammer must provide a recipient with an opt-out option. The Act does not state how this should be done. An opt-out page on a spammer’s website will be sufficient. If the recipient enforces his option and the spamming continues, the spammer is guilty of an offence. In terms of ECTA spamming excludes unsolicited telephone calls, post and faxes but includes e-mails and SMS’s.

Form 8.5 Confidentiality Caution

This is a confidentiality caution relating to emails, and requests that the transmitter be notified if the transmission goes to the incorrect address.

Form 8.6 Website Jurisdictional Disclaimer

This is for use when a stipulation as to the choice of law or of the court (forum) to hear any dispute may not be enforceable by the country from whence the customer comes. This disclaimer should be clearly displayed and at the top of page 1 of the website. A further disincentive would be to omit quoting prices in the currencies of the excluded jurisdictions.

Form 8.7 Website General Disclaimer

Contains a disclaimer against liability against damages from reliance on information on a website. This must be displayed prominently at the beginning of a website.

Form 8.8 Software Licence Agreement

This agreement provides for the payment of licence fees to a software provider who retains ownership of the software he provides. The clauses can be used in a more comprehensive agreement or the important general clauses of an agreement (see Form 1.1) could be added to complement this agreement.

Form 8.9 Information Technology Agreement (17 pages)

This is a specimen information technology (IT) back-to-back agreement between

1) a contractor:

- a) who designs software systems for telecommunication operators and sells hardware; and
- b) who has already entered into a contract with a telecommunications client that operates in various African countries south of the Sahara (who is not a contracting party to this agreement); and

2) a sub-contractor

- a) who specialises in developing the type of software required by the client; and
- b) will provide all the necessary hardware for the client.

Certain of the contents of the agreement should be useful for adaption in other IT agreements since each agreement will differ from the next. Due to the complex nature of an IT agreement it is most advisable to consult with an attorney before finalising it.

E-MAIL AND INTERNET USAGE POLICY FOR EMPLOYEES

1. On the express or implied consent of the chief executive officer or system controller, which is hereby given, the Company may in the course of carrying out its business intercept any indirect communications by means of which a transaction is entered into in the course of the Company business or which relates to that business or which otherwise takes place in the course of the carrying on of that business in the course of its transmission over a telecommunication system which includes e-mails, internet, telephone, cell phone or fax.
2. The interception will only be effected for the purposes of investigating or detecting the unauthorised use of that telecommunication of the system or to ensure the effective operation of the system to monitor indirect communications to a free charge service which may be of an anonymous nature.
3. The interception will only be effected on a system which is used wholly or partly in connection with the Company's business.
4. By virtue of his/her signature below the employee accepts the terms of the above policy and hereby permits the interception and monitoring of his/her communications as set out above.
5. An employee already employed may not be discharged for failure to consent to this policy document.
6. An employee will receive privacy in his/her private telecommunication at the workplace.
7. The employee is prohibited from engaging in illegal or unprofessional or inappropriate telecommunications relating to the business of the Company.
8. The employee may not abuse the internet during working hours by sending personal e-mails and may only use it for the business of the Company. Use of the internet to gain access to pornography websites could lead to dismissal.
9. The employee may not send e-mails which have a racial, sexual or other unconstitutional content or amount to an unfair discrimination in violation of the provisions of the Employment Equity Act. Transmission of these could result in disciplinary action or dismissal.
10. The e-mails sent must comply with the provisions of Section 32(4) of the Companies Act 71 of 2008 by containing the statutory information as set out on the Company letterhead.

11. The employee may not infringe the Company's intellectual property rights or disclose trade secrets or confidential information or engage in hacking. Contravention of these provisions could lead to dismissal.
12. The employee may lodge a grievance complaint arising from the provisions of this policy.
13. The employee will at all times appropriately implement as instructed by the Company the security guidelines made available by it from time to time, such as passwords, pin numbers, anti-virus programs, firewalls, electronic signatures, encryption (scrambling), tokens (smart cards), biometrics (finger prints), digital signatures, digital identification and authentication. He/She will familiarize himself / herself with the techniques needed to implement the same. The employee will keep such security technology strictly confidential. Violation of the Company Information Security Policy could lead to dismissal and may also lead to civil or criminal liability.
14. The Company reserves its right to claim damages against an employee for defamatory statements made by him/her using the Company's internet e-mail system or any other system.

I _____
have read and understand the contents of this regulation. I understand that the Company may monitor all electronic communications sent by or received by me over Company electronic communications equipment. I understand that disciplinary action will follow any violation of this usage policy.

SIGNED at _____ on this _____ day of _____ year _____.

EMPLOYEE

PRIVACY POLICY

1. Please note that on visiting this website your hard drive will automatically receive from it a persistent cookie which will expire automatically after one year from date of your last visit. It will be used to facilitate your future visits and log on procedures but it will not infringe your privacy or obtain your password or your credit card information.
2. The information collected by the cookie from your visit will consist of the following:
 - Log in time
 - Your internet protocol address (i.e. the IP number)
 - The banners clicked on by you and
 - The duration of your visit
3. The cookie will be used for statistical purposes in gauging the market attraction of goods and services advertised but also to record your on-line preferences. The cookie will not combine your preferences with any identifiable personal information such as your postal address or e-mail information without your consent. Should the cookie contain any personally identifiable information we undertake not to sell or disseminate it to third parties. However if you consent to such linking you are requested to double click where indicated below.
4. The information in the cookie will be disclosed only to this website where it will be kept in the strictest confidence.
5. Where with your consent your personal information is linked to identifiable information e.g. your browser habits, you may request this website to provide you with the information so collected and to correct it if necessary.
6. Should you wish to opt-out and reject the cookie you are requested to double click where indicated below. The consequences of so doing are that time saving facilities and certain inherent features of the website will not be available to you.

E-MAIL DISCLAIMER

The information in this e-mail is confidential and may be legally privileged. It is intended solely for the addressee and access to this e-mail by anyone else is unauthorised. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

8.3

OPT-OUT

This communication has been sent to you in good faith and we apologise if it is not relevant or of no interest to you. If you do not wish to receive further marketing communications from _____, you can unsubscribe by replying to this e-mail with the word "REMOVE" in the subject line.

8.4

CONFIDENTIALITY CAUTION

This message is intended only for the use of the individual or entity to which it is addressed and it may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited.

8.5

WEBSITE JURISDICTIONAL DISCLAIMER

The content on this website is not provided for or intended for the use of customers or users residing in or operating from the following countries:

The Company disclaims any liability whatsoever which may be attributable to any persons residing in the above countries who make use of or refer to or rely on the information for services provided on this website.

8.6

WEBSITE GENERAL DISCLAIMER

The Company disclaims any liability for any damage or loss whatsoever which may be attributed to the use or reliance upon information or services provided on this website.

The content is given as general information and no guarantee is given as to completeness or accuracy. The content does not constitute professional advice.

8.7

SOFTWARE LICENCE AGREEMENT

Made and entered into by and between:

(hereinafter referred to as "the Client")
and

(hereinafter referred to as "the Provider")

Whereas the Provider has provided software to the Client

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. In consideration of the payment by the Client of licence fees to the Provider in terms of this Agreement, the Provider, which warrants that it is empowered to do so, hereby grants to the Client a right and licence to receive copies of the software for use at any one or more of the locations of the Client.
2. The Provisions of this Agreement will apply to each copy of the software provided by the Provider to the Client.
3. All licence fees will be based on the licence fees detailed in the schedule attached hereto.
4. In respect of each installation site the Provider will levy licence fees based on the size of the computer forming part of the hardware in use in the installation site. The size of the computer will be determined by:
 - 4.1 The notional capacity of the computer as evidence by the MIPS-rating of the computer; and
 - 4.2 The number of ports available on the computer.
5. Payment of licence fees is due by the Client in respect of each module making up an application system.

SIGNED at _____ on this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

CLIENT

SIGNED at _____ on this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

PROVIDER

INFORMATION TECHNOLOGY AGREEMENT

Made and entered into by and between:

CONTRACTOR (PTY) LTD

Of _____

(Registration Number: _____)

A company incorporated in accordance with the laws of the Republic of South Africa, and the nominees, assigns and successors in title of the company (hereinafter referred to as "the Contractor"). The company is represented herein by

(ID no. _____)

who has been duly authorised to enter into this agreement in terms of a resolution of the company which is effective as of the commencement date.

and

SUB-CONTRACTOR (PTY) LTD

Of _____

(Registration Number: _____)

A company incorporated in accordance with the laws of the Republic of South Africa, (hereinafter referred to as "the Sub-Contractor"). The company is represented herein by

(ID no. _____)

who is duly authorised to enter into this agreement in terms of a resolution of the company, which is effective as of the commencement date.

WHEREAS the Contractor has contracted with _____ (Name of Client) (hereinafter referred to as "the Client") to provide a system for recording data on all calls made on the telecommunications system operated by the Client within the boundaries of all African countries south of the Sahara as detailed in Annexure 1;

AND WHEREAS the Contractor intends to enter into an agreement with the Sub-Contractor to develop the type of software required by the Client and to provide all the hardware equipment necessary for the system and to deliver the software and hardware as set out in the agreement; AND WHEREAS the Contractor will pay for the system as set out in clause 13 of the agreement;

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. Interpretation:

1.1 Any reference to the singular includes the plural and vice versa.

- 1.2 Any reference to natural persons includes legal persons and vice versa.
- 1.3 Any reference to a gender includes the other gender.
- 1.4 The clause headings in this agreement have been inserted for convenience only and will not be taken into consideration in its interpretation.
- 1.5 Words and expressions defined in any sub-clause will, for the purpose of the clause of which that sub-clause forms a part, bear the meaning assigned to the words and expressions in that sub-clause.

2. **Definitions:**

In this agreement unless inconsistent with or otherwise indicated by the context, the following terms will have the meanings assigned to them in this clause.

- 2.1 Agreement: This agreement between the Contractor and the Sub-Contractor, including the contents of the documents referred to in the annexures attached to this agreement as set out below and which are incorporated herein by reference.

The system specifications issued by the Contractor which the Sub-Contractor agrees, set out the requirements of the Contractor in sufficient detail to enable the Sub-Contractor, using generally accepted business and accounting practices, to develop the software to meet the requirements of the Contractor and which system specification is attached hereto as Annexure 3;

A development schedule agreed to between the Contractor and the Sub-Contractor, which sets out a timetable in terms of which the software will be supplied, developed, tested, accepted and installed, which is attached hereto as Annexure 4;

The Sub-Contractor's schedule of charges in respect of licensing, modifying, installing, supporting and maintaining the software, as currently agreed upon between the parties, the charges relating to the work to be carried out in terms of the development schedule (Annexure 4) and any conversion of existing data of the Client. The Sub-Contractor's schedule of charges is attached hereto as Annexure 5, which is in two parts:

Annexure 5.1 is a fixed price quote, the terms and prices of which will not be varied for the term of this agreement without the prior written consent of the Contractor;

Annexure 5.2 is the current Sub-Contractor schedule of charges in respect of the maintenance and support charges, which the Sub-Contractor will be entitled to vary on two months' notice to the Contractor;

The Application System Documentation Proposal is attached hereto as Annexure 6. It describes the system documentation to be supplied by the Sub-Contractor as part of the work to be done in terms of this agreement.

The definition of the scope of conversion work to be undertaken by the Sub-Contractor in terms of this agreement is attached hereto as Annexure 7;

The companies in the Client Group are set out in Annexures 8 and 9;

The programs included in the system are set out in Annexure 10, being the source library.

The parties may vary the contents of Annexures 3, 4, 5.2, 6, 7, 8, 9 and 10 by written agreement in accordance with the provisions of this agreement.

2.2 Application System:

A part of the system, which may be constituted by one or more modules of the software with or without modification, and which is intended to address one or more interrelated business functions of the Client and the companies to which it is related in a specific area of the business of a company. Non-limiting examples of such Application systems are set out in Annexure 5 under the heading "System".

2.3 Developed Software:

Software to be developed by the Sub-Contractor in terms of this agreement, as defined in clause 5.

2.4 Group:

The Client Group of companies is a group of companies owned, controlled or managed by the Client by virtue of shareholding, control or management. The companies form part of the same administration structure within the Client. The companies forming part of the Client Group of companies on the commencement date are listed in Annexures 8 and 9 and the Contractor or the Client will be entitled to vary the contents of Annexures 8 and 9 upon notice to the Sub-Contractor.

2.5 Hardware:

Computers, peripheral devices and operating system software on which the software will be used.

2.6 Location:

Any one or more of an installation site confined to the boundaries of countries as listed in Annexure 1.

An installation site means a physical location within all African countries south of the Sahara as set out in Annexure 1 hereto, where the hardware will be located and where the software will be installed.

2.7 Module:

The software as supplied, developed and installed in discrete modules, all designated as such by the Sub-Contractor, the modules being logically or functionally separable from one another.

2.8 Project:

The development of the software and the system as well as the supervision and administration involved in the implementation of the system and the training of the Client personnel at the first location.

2.9 Requirements of the Client:

The software requirements of the Contractor as detailed in Annexures 3 (system specifications) and 4 (development schedule).

2.10 Software:

All software to be supplied to the Contractor developed for the Contractor by the Sub-Contractor, and installed at a location as directed by the Contractor in terms of this agreement, and the application system documentation set out in Annexure 6. The software comprises:

2.10.1 Packaged software in the form of the Sub-Contractor developer packaged software; and

2.10.2 Developed software in the form of software which is to be originally developed and written by the Sub-Contractor; as well as modifications of the Sub-Contractor developer packaged software, which modifications will be carried out by the Sub-Contractor, in accordance with this agreement.

2.11 **System:**

The system as set out in clause 7.

2.12 **Sub-Contractor developer software / Sub-Contractor developer packaged software:**

A utilities and development program, generally known as the “Sub-Contractor developer” (trademark of the Sub-Contractor), developed by and proprietary to the Sub-Contractor, which the Sub-Contractor disposes of as packaged software and which it will use in the development of the software by modifying or adapting modules of the Sub-Contractor developer packaged software to derive modules of the software.

2.13 **Sub-Contractor Developer Module:**

An unmodified module of the Sub-Contractor developer software as disposed of by the Sub-Contractor, as packaged software, which the Sub-Contractor will use in the development of the software by modifying or adapting the Sub-Contractor developer module to derive a module of the software.

3. **Commencement and Term:**

3.1 The commencement date on which this agreement will come into force, notwithstanding the dates of signature hereof, will be the date on which the conclusion of this agreement is agreed to and formally ratified by the board of directors of the Contractor.

3.2 In the event that the Contractor board does not ratify this agreement in accordance with clause 3.1 within 30 (thirty) days of the date of last signature of this agreement, then this agreement will automatically be void and no obligations or liabilities on the part of either party will arise or will be deemed to have come into existence.

3.3 After the commencement date this agreement will continue in force indefinitely unless it is cancelled in the manner provided for herein.

3.4 In the event of a second sub-contractor being appointed by any of the governments involved where the Client operates, the Contractor may terminate this agreement by giving 20 (twenty) days’ written notice to the Sub-Contractor. Thereafter the Contractor may enter into any agreement with the second sub-contractor for the delivery of the application system, developed software, hardware or software.

4. **Hardware:**

4.1 The Sub-Contractor will provide the computer and peripheral devices suitable for the development of the system by the Sub-Contractor which will be referred to as “the development hardware”, as set out in schedule 1.

4.2 The Sub-Contractor will supply and install the necessary hardware, details of which are set out in schedule 1 hereto, to the Client at the location as specified by the Contractor in schedule 1 within 4 (four) months from the commencement date hereof.

- 4.3 In respect of all software supplied to the Contractor in terms of this clause (4) the Contractor will acquaint itself with the licence terms imposed on the Contractor in obtaining use of the software and the Contractor will use its best endeavours to ensure these terms are not breached by itself or the Client or any of its officers or employees.
- 4.4 All costs and charges in respect of the provision, installation, insurance and use of the hardware and software will be paid by the Contractor, with the exception of any maintenance agreements which will be paid by the Client.
- 4.5
- 4.5.1 Ownership of the application system, developed software, hardware, modules and software should pass to the Contractor on delivery of such items to the Contractor. Delivery will be constituted by formal acceptance by the Contractor or the Client to the Sub-Contractor.
- 4.5.2 Copyright. The Sub-Contractor hereby assigns, transfers and makes over to the Contractor its rights of copyright relating to the items as listed in clause 4.5.1 and relating to plans, specifications, designs and ideas of the Sub-Contractor for the consideration as listed in Annexure 2 for a term of 10 (ten) years.
- 4.5.3 The Contractor should be entitled to use such rights to copyright for any other of its clients, worldwide, for a term of 10 (ten) years.

5. Development Software:

- 5.1 The Sub-Contractor agrees to develop the software in accordance with the requirements of the Contractor as set out in schedule 1 and to deliver and install the software at the location as specified by the Contractor in schedule 1 under the direction of the Contractor, all within 4 (four) months of the commencement date hereof.
- 5.2 Ownership of all rights including intellectual property rights in and to the software will be vested in the Contractor.
- 5.3 The Sub-Contractor may only offer the software developed in terms of this agreement to the Contractor.

6. Obligations of the Sub-Contractor:

- 6.1 The Sub-Contractor undertakes to install the hardware, which is suitable in respect of each installation site, for the workload envisaged at the particular site.
- 6.2 The Sub-Contractor will ensure that the hardware and software is fully compatible.
- 6.3 The Sub-Contractor undertakes to carry out the work required of it in terms of this agreement to the best of its ability using competent, fully trained staff.
- 6.4 In this regard the Sub-Contractor undertakes to make _____, representing the project team involved in installation and development of the software, available to the Contractor, to assist in the installation and development of the software.

- 6.5 The Sub-Contractor undertakes to train a maximum of 4 (four) people per application system at each location from personnel specified by the Contractor, in the operation of the software and the hardware to a standard commensurate with good business practice.
- 6.6 In respect of each application system accepted by the Contractor, the Sub-Contractor will endeavour to ensure that the software will be error-free and the Sub-Contractor undertakes to support and maintain the software as follows:
- 6.6.1 The Sub-Contractor undertakes to support and maintain the software for a period of 12 months free of charge, (the “guarantee period”), the period of 12 months being calculated from the date of issue of an acceptance certificate in respect of a first successful live operation of the application system in the installation site.
- 6.6.2 Upon expiry of the guarantee period referred to in clause 6.6.1 above the application system will be maintained in accordance with the maintenance provisions of this agreement.
- 6.6.3 In the event that the Contractor requires the Sub-Contractor to make modifications to the software, the Sub-Contractor will be entitled to charge the Contractor in accordance with the Sub-Contractor schedule of charges current at the time, provided that the charges are fair and reasonable.
- 6.6.4 The Sub-Contractor will provide to the Client a continuing maintenance and support service in accordance with the terms of this agreement and any separate maintenance agreements which the parties may enter into, provided that, in the event of a conflict between this agreement and any such separate maintenance agreement, the terms and conditions of this agreement will govern and take precedence.
- 6.6.5 The Sub-Contractor will provide the Contractor with the documentation set out in Annexure 6 within the times set out in Annexure 6.

7. System:

- 7.1 The hardware and the software will be grouped or connected in a system intended to function as a whole.
- 7.2 The system will include the hardware, and development hardware, the software and all connecting communications, power supply and monitoring equipment and any utility software necessary to run in conjunction with the software.
- 7.3 The Sub-Contractor will endeavour to understand the requirements of the Client and the Contractor and to ensure that the system will fulfil the requirements of the Contractor.

8. Implementation:

- 8.1 Immediately upon conclusion hereof, the parties will arrange an implementation meeting or meetings for the purpose of:
- 8.1.1 The preparation of the acceptance tests which will be used to determine whether the software and the hardware conform to the specifications;

and

- 8.1.2 The preparation of an implementation plan specifying:
 - 8.1.2.1 The hardware and the software;
 - 8.1.2.2 The phases in which the hardware and the software will be developed, delivered, installed and commissioned;
 - 8.1.2.3 The delivery dates, installation dates and commissioning dates in respect of each phase;
 - 8.1.2.4 The products, including hardware and software documentation and services, including training, maintenance, support and assistance by the Sub-Contractor which are to be delivered, installed and provided in each phase; and
 - 8.1.2.5 The acceptance tests to be conducted in respect of each such phase, item of hardware or item of software.
- 8.2 The implementation plan decided upon will form part of this agreement as a variation to the development schedule (Annexure 4) and will be subject to variation upon the written agreement of both parties.
- 8.3 The parties hereto acknowledge that the documents set out in Annexures 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 contain outlines of the system required to satisfy the requirements of the Contractor. Such specifications and any changes to the system, will be developed by the parties at the implementation meeting or meetings, whereupon the specifications will become part of this agreement as variations to Annexure 3.
 - 8.3.1 In the event that the Contractor wishes to introduce changes of substance, that is, software not detailed in the development schedule (Annexure 4), the Contractor will issue a written request for such additions supported by explanatory documentation sufficient to enable the Sub-Contractor to formulate a response, which will, if necessary, include an indication of the adjustments to the development schedule (Annexure 4) that may be necessary.
 - 8.3.2 The Sub-Contractor will provide a written quotation for carrying out the work relating to the charges in substance in accordance with the payment provisions of this agreement.
 - 8.3.3 The Contractor will accept or refuse each quotation in writing and upon acceptance the Sub-Contractor will carry out the modifications within the time limits agreed upon between the parties.
 - 8.3.4 If the Contractor accepts the response of the Sub-Contractor, this response will be incorporated into this agreement as a variation hereof.
- 8.4 During the periods stipulated in Annexure 4 the Sub-Contractor will install the hardware and the software.

- 8.5 During the period stipulated in Annexure 4 which will not be longer than 4 (four) months from date of signature hereof, the Sub-Contractor will jointly conduct the acceptance tests on the software and hardware.
- 8.6 In all acceptance tests, responsibility for ensuring that they are correctly carried out will rest primarily on the Sub-Contractor.
- 8.7 Successful completion of the acceptance tests in respect of any particular item of equipment or software will constitute acceptance that the software and the hardware comply with the specifications and that fact will be recorded on acceptance notices signed by or on behalf of the parties.
- 8.8 Practical completion of the project will be deemed to be that stage of the project at which acceptance notices have been issued and signed by both parties in respect of all the phases of the system under development (as set out in Annexure 4), notwithstanding any minor omissions or defects which may have to be rectified but which in the opinion of the Contractor, will not prevent the system being used for the purpose for which it was intended as set out in the system specifications (Annexure 3).
- 8.9 Implementation and acceptance of a part of the system or a subsystem will not imply acceptance of the new system, that is, the total pre-existing system with the new subsystem added thereto, until acceptance tests in respect of the totality of the pre-existing system and the new subsystem have been agreed upon and carried out to the satisfaction of the Contractor.
- 8.10 In respect of the system specifications issued by the Contractor (schedule 3), it is recorded that the Sub-Contractor has formally accepted the specifications and the Sub-Contractor has stated by way of entries in the development schedule (Annexure 4), which the Sub-Contractor developer modules are required to meet each specification.
- 8.10.1 The Sub-Contractor has issued fixed price quotes, which are currently valid, listed and quantified in the Sub-Contractor schedule of charges (Annexure 5.1).
- 8.10.2 The Sub-Contractor has confirmed that its fixed price quote as stated in the Sub-Contractor's proposal (Annexure 2) is still current and valid or that it has provided a new quotation in the event that the scope of work has changed, the revised quotation having been agreed to by the Contractor and forming part of the Sub-Contractor schedule of charges (Annexure 5.1).
- 8.10.3 The Contractor undertakes to provide a project manager, at senior management level within the Contractor, for the duration of the project. The project manager will be the authorised representative of the Contractor.
- 8.10.4 The Sub-Contractor will provide a project manager, at senior management level within the Sub-Contractor, for the duration of the project. The project manager will be the authorised representative of the Sub-Contractor.
- 8.10.5 The Sub-Contractor will establish and maintain a detailed schedule of the work to be done in terms of this agreement and it will provide the Contractor with regular reports in respect of the project.

8.10.6 The project managers of the Sub-Contractor and the Contractor will meet on a weekly basis and the Sub-Contractor project manager will report progress against the development schedule (Annexure 4) in a written report detailing at least the following points:

- Progress against the development schedule (Annexure 4);
- The major activities of the Sub-Contractor in respect of the project in the period under review;
- All factors affecting progress against the development schedule (Annexure 4) whether favourable or adverse;
- Development problems in respect of the project, whether recent or anticipated, as well as progress made or suggestions for resolution of such problems.

9. Implementation Assistance:

9.1 It is recorded that the Sub-Contractor has examined the telecommunications system in use by the Client prior to the commencement date and has agreed on the scope of the conversion of existing data to be undertaken by the Sub-Contractor, which conversion work is set out in Annexure 7. The charges in respect of the conversion work are fully included in Annexure 5.1.

9.2 The Sub-Contractor will be responsible for and will undertake the transfer at its own risk of application systems from the site of development hardware to the locations for installation at the designated installation site.

9.2.1 The Sub-Contractor will be responsible for and undertake the loading of converted data at the particular installation site.

9.2.2 The Sub-Contractor will develop such additional facilities as are necessary to provide a working installation on which production processing may be commenced and continued at each installation site.

9.3 The Sub-Contractor will be responsible for and undertake the training of personnel as set out below:

9.3.1 The training will be conducted on an application system basis and the Contractor will be entitled to nominate no more than 4 (four) personnel members of the Client for training at each location as the parties may agree upon in writing.

9.3.2 Training will cover the operation of each application system in detail and will involve practical use of the system.

9.3.3 The Sub-Contractor undertakes to provide operator training in respect of the day-to-day operation and housekeeping on the system.

10. Acceptance Procedures:

10.1 The software and the documentation set out in Annexure 6 will be accepted in the manner and in accordance with the terms and acceptance tests set out in the development schedule (Annexure 4) as varied from time to time in the implementation meetings held in terms of clause 9.1.

- 10.2 Acceptance testing will be carried out by the Sub-Contractor on the development hardware using test data developed by the Sub-Contractor and in the presence of the Contractor, provided that the Sub-Contractor will be entitled to continue with the acceptance testing if the Contractor fails to attend at the time and place agreed upon between the parties.
- 10.3 Acceptance testing will be conducted at application system level for the purposes of determining the compliance of the software with the requirements of the Contractor.
- 10.4 Following each test session, the Contractor will provide the Sub-Contractor with a list of defects to be rectified in respect of each application system.
- 10.5 The Sub-Contractor will rectify such defects within 7 (seven) days of such notification and will notify the Contractor of the time and place when the acceptance tests may be reconducted.
- 10.6 The acceptance testing procedure will be repeated until the Contractor is satisfied that the software, which is the subject of the acceptance test, complies with the requirements of the Contractor and issues an acceptance certificate to this effect.
- 10.7 Failure of the software to meet the requirements of the Contractor will constitute a material breach of this agreement.
- 10.8 Within 7 (seven) days of the satisfactory completion of the acceptance testing of an application system, the Contractor will issue an acceptance certificate, which will not be delayed due to minor omissions or minor defects in the software being tested, provided that the Sub-Contractor undertakes, in each case, to rectify such omissions or defects in terms of 10.5 above.
- 10.9 Practical completion of the project will be deemed to be that stage of the project at which acceptance certificates have been issued in respect of all application systems under development (as set out in Annexure 4), notwithstanding any minor omissions or defects which may have to be rectified but which the Contractor, in its sole discretion, decides will not prevent the system being used for the purpose for which it was intended.
- 10.10 The date of practical completion is set out in the development schedule (Annexure 4), as varied from time to time upon written agreement between the parties.

11. **System Support:**

- 11.1 Following implementation of an application system, the Sub-Contractor will provide the Contractor, for use by the Client, in respect of the application system, with maintenance and support services covering problem identification in respect of the system including that application system and the rectification and correction of inadvertent programming errors (software bugs) and programming faults and defects in that application system, as follows:
 - 11.1.1 The Contractor will be under no obligation to enter into such maintenance agreement with the Sub-Contractor at the second and subsequent installation site.
 - 11.1.2 Prior to lapsing of the maintenance and support provisions of this agreement in respect of any application system, the Sub-Contractor will not make modifications of any nature to the source programs and files that constitute the application system without prior written consent of the Contractor.

12. **Locations:**

- 12.1 While the system which is the subject of this agreement will be developed and tested in respect of a single installation site, the parties record that it is the intention of the Contractor to install the system at more than one installation site occupied by the Client at any of the sub-Saharan countries as listed in Annexure 1 providing that the system meets the requirements of the Contractor.
- 12.2 In the event that the Contractor instructs the Sub-Contractor to install the system at more than one installation site, the Contractor will nominate one of the installation sites as the prime site.
- 12.3 The Sub-Contractor will provide support and maintenance services at the prime site in terms of the maintenance and support provisions of this agreement and any separate maintenance agreements which the parties may enter into.

13. **Payment Provisions:**

13.1 The schedule of charges of the Sub-Contractor relates to:

- Installation and set-up charges;
- Maintenance charges (rectification or correction of inadvertent programming errors (software bugs) or program faults and defects); and
- Modification charges (development of software and changes to substance).

Installation and Set-up Charges:

- 13.2 The Contractor will pay to the Sub-Contractor an installation and set-up charge for each site in respect of which the Sub-Contractor assists the Contractor in implementing the system in respect of that site.
- 13.3 The installation set-up charges are set out in Annexure 5.1 of the Sub-Contractor schedule of charges and payment will be made in respect of each Sub-Contractor developer module making up an application system installed for that site.

Modification Changes:

- 13.4 In respect of all modifications of the software carried out by the Sub-Contractor, and which constitute modifications required to arrive at the developed software, the Contractor will pay the Sub-Contractor in accordance with Annexure 5.1 of the Sub-Contractor schedule of charges.

Maintenance Charges:

- 13.5 The Sub-Contractor will submit its account for maintenance charges to the Client who will be solely responsible therefor. In respect of each Sub-Contractor developer module in use at the prime site, the Sub-Contractor will charge monthly in arrears, for a period of 6 (six) months after expiry of the guarantee period in respect of the application system concerned, the charges set out in the Sub-Contractor schedule of charges current at the time.
- 13.6 In respect of each Sub-Contractor developer module in use at the second and subsequent installation sites, the Sub-Contractor will charge monthly arrears, for a period of 3 (three) months after expiry of the guarantee period in respect of the application system concerned, the charges set out in the Sub-Contractor schedule of charges current at the time.

Time for Payment:

13.7 The Contractor will pay the Sub-Contractor for each item of equipment delivered within 30 (thirty) days of receipt of the Sub-Contractor's monthly statement. In the event of the Contractor failing to make payment as aforesaid to the Sub-Contractor, notwithstanding the rights of the Sub-Contractor herein contained relating to breach, the Sub-Contractor will demand payment from the Client before enforcing its rights against the Contractor and hold the Client liable jointly and severally with the Contractor.

14. **Delivery:**

14.1 The Sub-Contractor will meet the project timetable as laid down in Annexure 4, and complete all work to the satisfaction of the Contractor within 4 (four) months of the commencement date.

14.2 In the event that the Sub-Contractor is unable to meet the requirements of the Contractor particularly as set out in the specifications forming part of Annexures 1, 2 and 3 and any specifications developed by the parties in terms of this agreement, either wholly or partly, and the Contractor is unwilling to change the specification, which decision will rest entirely in the discretion of the Contractor, then the Contractor will be entitled to consider the failure of the Sub-Contractor in this regard to constitute a material breach of this agreement justifying immediate termination of this agreement.

14.3 In the event of such termination the Contractor will, in addition to any legal remedies available to it by common or statute law, be entitled to full restitution to it of all money paid to the Sub-Contractor in terms of this agreement.

15. **Breach:**

15.1 Should either party ("the defaulting party") breach any of the provisions of this agreement and the breach is irremediable or the defaulting party fails to remedy that breach within 10 (ten) days after receipt of a written notice from the non-defaulting party requiring it to remedy that breach, the non-defaulting party will be entitled, without prejudice to any remedies which it may otherwise have in terms of this agreement or at law, to cancel this agreement on further notice to the defaulting party.

15.2 If the breach is not reasonably capable of being remedied within that period, the defaulting party will be afforded such extended period as the non-defaulting party may consider reasonable in the circumstances.

15.3 The Contractor will have the right to cancel this agreement forthwith (but without affecting its accrued rights) should the Contractor learn, or believe upon reasonable grounds, that any of the following events has occurred, or is likely to occur, with reference to the Sub-Contractor:

15.3.1 If the Sub-Contractor makes any arrangements in contemplation of insolvency or is declared insolvent or is liquidated;

15.3.2 If the Sub-Contractor ceases to carry on business as a going concern;

15.3.3 If the Sub-Contractor ceases to be in a position to fulfill its obligations in terms of this agreement;

15.3.4 If there is any change in the control or a material change in the shareholding, control or management of the Sub-Contractor which the Contractor, in its sole discretion, might consider to be detrimental to the Contractor. For the purposes of this clause “control” will, without limitation, include the power or ability of any proprietor, partner, shareholder, director or employee of the Sub-Contractor, whether exercising such power by voting rights or pursuant to any agreement or arrangement, materially to influence any decision or act taken or to be taken by or on behalf of the Sub-Contractor; and “management” will, without limitation, include any person who is a director, quasi-director, shadow director, partner or a senior member of management of the Sub-Contractor.

15.4 The Sub-Contractor acknowledges that:

15.4.1 The system is indispensable in the operations of the Client and that any delay or interruption in the development of the system will substantially prejudice the Client and the Contractor.

15.4.2 Time is accordingly of the essence in this agreement.

16. **Fitness for purpose:**

16.1 The Sub-Contractor warrants and guarantees that the work which is the subject of this agreement will be carried out in a proper and professional manner by properly qualified personnel and that the resultant Application System will fulfil the requirements of the Contractor and the purpose for which they were proposed by the Sub-Contractor in response to the Contractor’s request for proposal (Annexure 1) as amended by the proposal submitted by the Sub-Contractor (Annexure 2) and the system specifications issued by the Contractor (Annexure 3).

16.2 Furthermore, the Sub-Contractor warrants and guarantees that any faults or defects in the system discovered by the Contractor rendering the system unsuitable for the purpose for which it is acquired by the Contractor from the Sub-Contractor, whether in whole or in part, will be rectified by the Sub-Contractor at no charge to the Contractor within a reasonable time and in an expedient manner.

16.3 The terms of this clause (clause 16) will apply, notwithstanding the fact that the Contractor may have accepted all or part of the system and notwithstanding that payment in respect of any one or more parts of the system may already have been effected by the Contractor.

17. **Settlement of Disputes:**

17.1 Should any dispute arise between the parties in connection with the interpretation or application of the provisions of this agreement or its breach or termination or the validity of any documents furnished by the parties pursuant to the provisions of this agreement, that dispute will, unless resolved amongst the parties, be referred to and be determined by arbitration in terms of this clause.

17.2 Any party to this agreement may demand that the dispute be determined in terms of this clause by written notice given to the other party.

17.3 This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

- 17.4 The arbitration will be held:
- 17.4.1 In _____ (place).
- 17.4.2 With only the legal and other representatives of the parties to the dispute present.
- 17.4.3 In accordance with the formalities and procedures of The Arbitration Foundation of South Africa, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleading and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible.
- 17.5 The arbitrator will be acceptable to both parties and, if the matter in dispute is principally:
- 17.5.1 A legal matter, a practising Advocate or Attorney of at least 10 (ten) years standing;
- 17.5.2 An accounting matter, a practising Chartered Accountant of at least 10 (ten) years standing;
- 17.5.3 Any other matter, any independent person.
- 17.6 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 will be deemed as a legal matter.
- 17.7 Should the parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 17.2, the arbitrator will be appointed at the request of any party to the dispute by the Chairman for the time being of the Johannesburg Bar Council according to the provisions of clause 17.5 and 17.6.
- 17.8 The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of the High Court of South Africa (Witwatersrand Local Division).
- 17.9 The arbitrator will be entitled to make such award, including an award for special performance, an interdict, damages or a penalty or otherwise as he/she in his/her sole discretion may deem fit and appropriate and to deal as he/she deems fit with the questions of costs, including if applicable, costs on the Attorney and Client scale and his/her own fees.
- 17.10 The provisions of this clause:
- 17.10.1 Constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceeding that it is not bound by such provisions;
- 17.10.2 Are severable from the rest of this agreement and will remain in effect despite the termination of or invalidity for any reason of this agreement.

18. **Conditions of sale:**

- 18.1 **Validity** – If any provision of this agreement is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same object as the invalid provision, to adopt such means by way of variation of this agreement.
- 18.2 **Severability** – In the event that any of the terms of this agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.
 - 18.2.1 If any invalid term is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.
- 18.3 **Variation** – No variation of or addition to this agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the parties.
- 18.4 **Waiver** – No waiver on the part of the Contractor of any rights arising from a breach of any provision of this agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.
- 18.5 **Supersession of any prior arrangements** – This agreement supersedes all prior agreements, undertakings, understandings and arrangements between the parties whether implied, oral, written or otherwise.
- 18.6 **Force majeure** (unforeseen and unavoidable events) - In the event that the Sub-Contractor is unable to perform any obligation hereunder due to any circumstances beyond its control, including the action, intervention, or decree of any government, and such circumstances are not caused by the fault of the Sub-Contractor and continue for a period of at least 25 (twenty-five) days, the Contractor may terminate this agreement by means of written notice to the Sub-Contractor. The agreement will be suspended during the period of the unforeseen and avoidable event.
- 18.7 **Assignment** – The Contractor will be entitled to assign, cede or transfer any rights or obligations acquired in terms of this agreement subject to the prior written approval of the Sub-Contractor, which will not be withheld unreasonably.
- 18.8 **Governing Law** – This agreement and the interpretation thereof will be governed by the laws of the Republic of South Africa.
- 18.9 **Notices** – The parties choose the following addresses as their respective *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) and for service of any notices:

The Contractor at:

The Sub-Contractor at:

Physical Address:

Physical Address:

Postal Address:

Postal Address:

Facsimile:

Facsimile:

E-mail:

E-mail:

18.9.1 Any notice to be given by either party to the other party in terms of this agreement will be delivered by hand between 08:30 and 16:30 during business days Monday to Friday.

18.9.2 Any notice delivered by hand will be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery.

18.9.3 Any notice delivered by facsimile or e-mail will be deemed to have been delivered on proof of a computerised transmission slip.

18.10 Passing of the risk:

18.10.1 Until delivery of the goods and equipment sold by the Sub-Contractor to the Contractor as set out in this agreement and notwithstanding damage caused through accidental damage to the goods of whatsoever nature prior to delivery of the said goods and equipment, the risk will remain with the Sub-Contractor until the Contractor has formally acknowledged receipt of delivery.

18.10.2 The Sub-Contractor guarantees that it will insure the goods against all possible damage or loss until the risk passes to the Contractor.

18.11 Co-operation – The parties undertake to co-operate and consult with one another in good faith with regard to the alleviation of any hardship which may be occasioned to either party as a result of unforeseen circumstances arising after the date of execution of this agreement; and supporting each other in the performance of all such actions and the taking of all such steps as may be open to them and necessary for the maintenance of the import of this agreement.

18.12 Guarantee – Notwithstanding anything herein contained to the contrary, the Sub-Contractor guarantees that the goods supplied by it as listed in clause 4.5 are free of any defects and that the application system and all such goods will be in good working order and will remain in good working for 18 (eighteen) months from date of installation.

18.13 Duty to co-operate – The Sub-Contractor will at all times co-operate with the Client or the Contractor or any other of the sub-contractors of the Contractor.

18.14 Site safety – The Sub-Contractor accepts full responsibility for the safety of its personnel on site and waives any claim against the Contractor or the Client for any injury sustained by its personnel or damages to its personnel's property, howsoever arising.

18.15 Whole agreement – This agreement constitutes the entire agreement between the parties and no other terms will be binding unless submitted in writing and signed by the Contractor and the Sub-Contractor. If there is any conflict between the Annexures to the main agreement and the main agreement, the provisions of the main agreement will prevail.

18.16 Costs – The Contractor and Sub-Contractor will be liable in equal shares for all costs incidental to the preparation and execution of this agreement.

SIGNED at _____ on this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

For and on behalf of the Contractor

SIGNED at _____ on this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

For and on behalf of the Sub-Contractor

MY BUSINESS

SECTION

9

MY BUSINESS

Section

9

The documents contained in this section provide the entrepreneur with forms and guidelines for setting up a new business, buying and selling an existing one, drafting business plans for a start-up business and an established one, achieving BEE compliance, and marketing and promoting your business.

In addition, there are over 50 ready-to-use office stationery forms to keep your day-to-day administration running smoothly.

The advent of the new Companies Act No 71 of 2008, which came into effect on 9th April 2009 and the Amendment Act thereto, which was adapted by Parliament in March 2011, which corrected many errors and ambiguities in the Act, should be borne in mind when starting a new business. The new Act severed the umbilical cord with British/European Company Law influences and much of our Case Law of the last 150 years. The new foreign influence now present is from Company Law as practised in the small American state of Delaware (where 60% of American companies are registered due to its light regulatory approach) and in Canada. The amended Act was implemented on 1st May 2011. The regulations became available on 28th April 2011. New concepts and rules, hitherto unknown in South Africa, have been created, and will need to be applied and tested in practice. Our customary Memorandum of Association and Articles of Association have been replaced by one central document, the Memorandum of Incorporation which is of cardinal importance. The governance system of a company which has hitherto been the Articles of Association has now been replaced by the Act itself. Existing companies have two years from 1st May 2011 to adapt their Memorandum and Articles of Association and Shareholders Agreement to the new Memorandum of Incorporation and to the Act. If this is not done these documents will only be valid to the extent that they are compatible with the new Act. It is probably better to adopt a Memorandum of Incorporation than to patch up the existing Memorandum and Articles of Association. The shareholders of a company may enter into any agreement with one another concerning a new matter relating to the company but such agreement must be consistent with the Act and the Company's Memorandum of Incorporation. Any inconsistent provision is void. In particular, Shareholders' Agreements regulating the exercise of voting rights may not fall foul of the Act. Under the new Act a public company need have only one member and a private company can have an unlimited number of members. The company finances are to be regulated on a capital maintenance regime based on solvency and liquidity. The concept of par value and nominal value shares is abolished. It is no longer possible to register Close Corporations nor to convert a company to a Close Corporation. A Close Corporation may be converted to a company. Close Corporations will no longer have to disclose the names of members on their business letters as Section 41 is repealed. The Business Rescue Plan of the Companies Act now applies to Close Corporations as well.

Form 9.1 **Legal Considerations when forming a Business** (2 pages)

At the outset choose the best legal structure for operating your business – a sole proprietorship, partnership, or company. Each one carries a different personal risk and liability for the owner/s. Some accounting, registration, trading and other legal formalities are applicable to all businesses.

Where you personally lack the relevant expertise consult professionals, such as a lawyer, an accountant and a bank manager, to help steer you through the complexities of the business environment and avoid the pitfalls.

Form 9.2 **Business Plan for a Start-up Business (Guideline)** (5 pages)

A business plan is an essential business tool for both the start-up and the established business. See Form 9.3 below for a Business Plan for an Established Business. A business plan can have a number of different functions and should be focused accordingly.

For the majority of start-up businesses, a business plan is used to approach potential investors, such as venture capitalists or affluent individuals who are interested in investing in projects. The business plan should focus on the calibre of the entrepreneurs and the unique quality of the idea, with reference to the funds required.

It should be an easy-to-read and exciting document, usually a maximum of 50 pages in length, including all appendices. The headings can be shuffled as appropriate, with additional headings used if required. All elements included in the business plan should be relevant to your unique business. The Executive Summary must contain the most important information, as this is generally the selling point in the business plan.

Run-on-text can be quite cumbersome, so it is advisable to make use of charts and tables where possible, as these facilitate understanding and quick interpretation. A business plan should be neat, simple and realistic, conveying a sense of professionalism.

Form 9.3 Business Plan for an Established Business (Guideline) (5 pages)

An established business may need a business plan to set new objectives and strategies, streamline management, expand or explore franchise opportunities, etc. It should focus on the company's past successes and the contributing factors and provide financial documents in support of expansion or new business ideas and opportunities.

Once again, the headings can be shuffled as required, with additional headings used if need be. All elements included in the business plan should be relevant to your unique business. The Executive Summary must contain the most important information, as this is generally the selling point in the business plan.

The business plan should be easy-to-read and exciting, usually a maximum of 50 pages in length, including all appendices. Make use of charts and tables to facilitate quick interpretation and avoid excessive run-on text.

Form 9.4 Letter of Intent to Purchase a Business (2 pages)

A letter of intent is used when one company is offering to buy the business of another. It is intended to be a preamble or lead-in to the conclusive agreement. Again, it is advisable to consult an attorney when you prepare a letter of intent to purchase a business. It is less formal than a Memorandum of Understanding, see Form 9.5 below, and could be used to precede the latter, depending on the circumstances.

A Confidentiality Agreement between a Purchaser and Seller can be found in Section 7, Immaterial Property, Form 7.11.

Form 9.5 Memorandum of Understanding (3 pages)

This is drawn up at a time when the parties are at a planning stage and where they may or may not wish to commit to one another loosely before final details are agreed upon in a contract. It outlines the mutual understanding of the negotiators about their intention for the subsequent agreement without finally binding them into an irreversible relationship. If the parties wish to avoid all chance of a loose binding agreement being created, all correspondence should include the sentence saying:

"This Memorandum of Understanding (MOU) is subject to a final contract signed by both parties and it has no binding effect".

If the MOU does create contractual obligations then depending on the wording of the MOU, two possibilities arise:

- a) The MOU will be supplemented by additional terms once agreed upon, or
- b) The MOU will be substituted by new terms once agreed upon.

The danger of a MOU is that it could be construed as an innominate contract if the court detects consensus between the parties. A clumsily worded letter embodying certain terms could be construed by the court as a commercial document with a clear intention that it should have commercial operation. The court will not lightly render an understanding ineffective.

Instances of use of a MOU are as a prelude to a shareholders' agreement or to purchase a business.

Form 9.6 Sale of Business Agreement (9 pages)

A sale of business agreement is necessary when a business is sold. Once again, it is advisable to consult an attorney when you are preparing a sale of business agreement.

In terms of Section 48 of the Consumer Protection Act a supplier must not through the imposition of a *rouwkoop* or forfeiture provision require a consumer to assume any obligation on terms that are unfair or unjust such that its application is excessively one sided or inequitable to the supplier.

Form 9.7 Agreement of Partnership (2 pages)

Partnerships are businesses that consist of between 2 and 20 partners, who jointly own a business. A partnership agreement deals with issues relating to the assets

of the business, how the profits are split between the partners and the procedure involved in termination or change of partners. A new partnership agreement may have to be signed each time a new partner is admitted. A basic guideline is provided to draw up partnership agreements. Once again, it is advisable to consult an attorney when preparing a partnership agreement.

Form 9.8 Company Resolution

The format used for a resolution of a meeting of a Board of Directors.

In terms of the new Companies Act a notice convening a meeting of shareholders to consider a proposal either by ordinary or special resolution must be expressed with sufficient clarity and be specific and must be accompanied by sufficient information to enable a shareholder to decide whether to participate in the meeting. If a shareholder or director believes that the form of the resolution does not satisfy these requirements he may apply to court for an order restraining the company from putting the proposed resolution to a vote until the requirements are satisfied. If the resolution is passed it cannot be challenged purely on the grounds that these requirements were not complied with.

Form 9.9 Comment on the Black Economic Empowerment (BEE) Act 53 of 2003, the DTI's generic scorecard and the BEE-Status and Procurement Recognition Levels (4 pages)

Form 9.10 BEE Exemption Affidavit / Declaration for the Exempted Micro Enterprise (EME)

Acceptable proof that an entity is an exempted micro enterprise would be a letter from an auditor or accounting officer confirming the annual turnover of less than R5 million or a certificate from a verification agency confirming that the entity is indeed an exempted micro enterprise.

The following information would be required in order to obtain such certification:

- Affidavit / declaration that the entity is either a start-up business and/ or does not anticipate exceeding the R5 million threshold during the period of the validity of the certificate.
- Proof of turnover: financial statement / management account or even bank statements.
- Proof of BEE status: share certificate for a private company, CK1 or 2 documents for a close corporation, tax returns for a sole proprietor.

It is the duty of the verification agency to ensure that one large entity is not broken up into a number of smaller legal entities to try to circumvent the Codes.

A certified EME is automatically awarded a level 4 BEE-compliance status, and if the EME is more than 50% black owned it is automatically moved up one level to a level 3 status.

Form 9.11 BEE-Compliance Requirements for the Qualifying Small Entity (QSE) (3 pages)

The QSE (a business with a turnover of between R5 million and R35 million) is assessed on its choice of any four of the seven elements on the BEE scorecard each with a 25-point weighting. This form lists the details related to each element that the QSE must submit in order to obtain BEE-compliance. See Form 9.9 for a brief explanation of the elements. Specialist assistance from a verification agency will be required for verification.

Form 9.12 Marketing Plan (Guideline)

A marketing plan is a written statement of your marketing strategy and how long you estimate it will take to implement it. It can be produced as a stand-alone document, or as an integral part of a business plan. Refer to Forms 9.2 and 9.3 for guidelines to compiling detailed business plans for start-up and established businesses respectively.

Form 9.13 Competitive Advantages and Disadvantages Table

This table will assist you in assessing your competitive advantages and disadvantages *vis-à-vis* (in relation to) the competition and help you define your unique corner of the market. It will also provide a useful reference for your marketing strategy.

Form 9.14 Marketing Campaign Organiser (4 pages)

Designed to help you define and implement your marketing campaign, track its progress and review the results.

- Form 9.15 Organisational Profile** (2 pages)
This is a useful document to accompany a presentation, proposal or letter of introduction, or in response to a request from a client or prospective client to provide background information about your organisation. It would also be appropriate to include similar details about your organisation on your website.
- Form 9.16 Letter of Introduction to Prospective Client**
This may be used to introduce your organisation or specific products or services to someone with whom you have not yet dealt. It opens the door to making further contact. Address the appropriate person by name if possible in preference to using 'Dear Sir / Madam'.
- Form 9.17 Letter to Introduce a New Product or Service**
Such a letter may be sent to any client who has used your products / services in the past. Again, address the appropriate person by name if possible. Produce the letter on your organisation's letterhead. This form letter indicates the items you might enclose, but do not clutter your letter with unnecessary or irrelevant additions.
- Form 9.18 Promotional Event Organiser** (4 pages)
Handy checklist for the numerous details you cannot afford to overlook, adaptable for any size or type of event.
- Form 9.19 Basic Advertisement Checklist**
Checklist to help ensure your advertisement is effective.

BUSINESS ADMINISTRATION

These 53 office forms are designed for your convenience to help you get organised. Photocopy them onto your letterhead or print them from your PC for a more professional look, and adapt them to your specific needs by adding or deleting where appropriate.

PLANNERS

- Form 9.20 Priority Agenda**
Form 9.21 Weekly Priority Agenda
Form 9.22 Daily Time Sheet / Overtime
Form 9.23 Weekly Time Sheet / Overtime
Form 9.24 Monthly Chart
Form 9.25 Year Chart
Form 9.26 Year Planner

- Form 9.45**
Form 9.46
Form 9.47
Form 9.48
Form 9.49
Form 9.50
Form 9.51
Form 9.52
Form 9.53

- Credit Note A5**
Quotation Request
Quotation
Job Estimate
Job Card
Telephone Order
Counter Sale
Acknowledgement of Order
Notification of Despatch of Goods
Out of Stock Notification
Complaint: Non-delivery
Cheque Requisition / EFT Request
Petty Cash Request
Remittance Advice
Receipt

COMMUNICATIONS

- Form 9.27 Problem Solver**
An analysis of a problem prompting a solution.
Form 9.28 Memorandum A5
Form 9.29 Memorandum A4
Form 9.30 Fax Disclaimer / Cover Note A5
Form 9.31 Fax Disclaimer / Cover Sheet A4
Form 9.32 Agenda
Form 9.33 Minutes of Meeting
Form 9.34 Telephone Message
Form 9.35 Circulation Chit

- Form 9.54**
Form 9.55
Form 9.56
Form 9.57
Form 9.58
Form 9.59

SALES

- Form 9.60 Sales Prospects**
Form 9.61 Business Card Record
Form 9.62 New Customer Information
Form 9.63 Client Progress Report
Form 9.64 Sales Call Summary
Form 9.65 Salary Advice
Form 9.66 Expenses Claim
Form 9.67 Commission Claim

ACCOUNTING FORMS

- Form 9.36 Order A4**
Form 9.37 Tax Invoice A4
Form 9.38 Statement A4
Form 9.39 Delivery Note A4
Form 9.40 Credit Note A4
Form 9.41 Order A5
Form 9.42 Tax Invoice A5
Form 9.43 Statement A5
Form 9.44 Delivery Note A5

SPECIALISED PAPER

- Form 9.68 Graph Paper**
Form 9.69 Graph Paper (fine)
Form 9.70 Standard Form (9 columns)
Form 9.71 Standard Form (8 columns)
Form 9.72 Ruled Sheet

LEGAL CONSIDERATIONS WHEN FORMING A BUSINESS

There are various legal structures to choose from when forming a business. These include sole proprietorship (single owner), partnership, close corporation (cc) or company. Each type of business entity is subject to particular laws.

It is essential for the entrepreneur to be familiar with the legal requirements of his/her proposed entity as these will determine how the business will operate. Particular types of businesses may have special requirements which need to be incorporated, i.e. financial organisations must comply with the Bank Act 94 of 1990. There are also certain legalities which apply to all business operations, however they may be constituted.

Liability

In a sole proprietorship the owner takes full personal risk for all business commitments. Partners are jointly and severally liable for the debts of a partnership. The members of a close corporation or directors of a company, on the other hand, are not personally liable for the debts of their entities unless they have signed sureties or infringe ever tightening legislative stipulations on the conduct of business.

Accounting requirements

Requirements relating to accounting and auditing vary, depending on the type of business involved. It is advisable to obtain specialised advice from an accountant.

Registration of a business

It is not an automatic prerequisite to register a business before you commence operations. The owner of a sole proprietorship simply begins operating, and a partnership is not registered but is constituted by a partnership agreement (which may be verbal, written or implied). Companies or close corporations must register with the Registrar of Companies or of Close Corporations prior to the commencement of a new business or the taking over of an established one.

Compulsory registrations:

- The South African Revenue Services (SARS) requires registration for:
 - income tax related to the business;
 - Pay As You Earn (PAYE) and Standard Income Tax on Employees (SITE) to be deducted from the income of employees and paid over to SARS;
 - Value Added Tax (VAT), including allocation of a VAT number, if the turnover of the business is large enough to necessitate this.
- The Department of Labour requires registration for payments of unemployment insurance and workmen's compensation.

Trading licence

A trading licence is required only for businesses or hawkers that sell or supply meals or perishable foods or provide certain types of health facilities or entertainment. A trading licence is obtained from the local municipal authority where the business operates.

/...

Other requirements

- Medical and provident / pension fund contributions for employees;
- Determination of acceptable rate for depreciating assets in the books of the business;
- Publicising the business – companies and close corporations require the following:
 - full name displayed outside the business premises;
 - full name used on order forms, delivery notes, invoices, receipts, letterheads, cheques, letters of credit and all notices or official publications.

Electronic trading

The Electronic Communications and Transactions Act 25 of 2002 requires detailed information about the supplier to be made available to consumers on the website where the goods or services are offered for sale, hire or exchange. (Refer to Section 8, Information Technology & Cyber Law for the requirements.)

Agreements that may be required

There are other useful documents you may need when you start a business, like an agreement of partnership, or a shareholder's agreement or an association agreement. These are lengthy and complicated documents.

- A **partnership agreement** is signed by all partners in the partnership, and a new agreement should be signed by all the partners each time a new partner joins the company. The agreement deals with assets, profits, and selling your interest in the partnership when you leave it. A basic guideline is provided in Form 9.7, but it is advisable to consult with your attorney before finalising it.
- A **shareholder's agreement** is concluded by the proprietors of a company during the formation of the company. The agreement covers issues such as the number of directors, their appointment and the number of votes each has. It also deals with the protection of minority shareholders and outlines mechanisms to resolve any deadlocks. It is an agreement that needs to be reviewed on a regular basis. An attorney should be consulted to prepare a shareholders' agreement.
- An **association agreement** is signed between a cc and its members. It is not compulsory but can be useful in maintaining clarity should there be more than one member. Issues dealt with include management policies as well as insurance policies on each member's life. Again it is advisable to consult an attorney when you are preparing an association agreement.

Black Economic Empowerment (BEE)

The Broad-Based Black Economic Empowerment Act 53 of 2003 is arguably the most significant piece of legislation affecting business today. Government is relying on big and small companies for the black economic empowerment transformation that it expects will grow and sustain the country's economy. Although compliance with the Act is not compulsory, the implications of the Act are extremely important. Non-compliance can limit business opportunities, particularly with government and public entities or companies that conduct business with such entities. For BEE-compliance guidelines refer to Forms 9.9, 9.10 and 9.11.

Labour / Employment

The business owner who disregards labour legislation does so at his/her peril. Only with a thorough knowledge of your rights and obligations can you hope to implement effective labour practices and be legally protected. Important matters include dispute resolution and prevention, dismissal, working conditions, employment equity and skills development. Guidelines on these and other employment matters will be found in Section 2, Labour / Employment. ■

BUSINESS PLAN FOR A START-UP BUSINESS

A business plan is a detailed description of your proposed business with financial projections and goals for at least one year. The value of preparing a business plan lies in all the research you will need to do to reach the final product. During the research process, you will be forced to think about your business systematically and thoroughly, thereby reviewing your ideas critically and possibly avoiding costly mistakes in the future.

GUIDELINE FOR LAYOUT OF YOUR BUSINESS PLAN

1. Cover Page

The cover page should contain the following information: your business name, the owner's / owners' name/s, telephone number, fax number, physical address, postal address and e-mail address.

2. Executive Summary

This should be written last, after all your research work has been completed. It should be a summary of your business highlighting the most important aspects.

Include:

- The type of business e.g. retail, manufacturing, service, etc.
- Your product / service and what is unique about it.
- Who the managers of your business are.
- The funds you require and how you will make your business profitable.

Make sure your executive summary does not exceed two pages and is professional, clear and concise. It must sell your business idea to potential investors.

3. Table of Contents

A table of contents is essential for making your business plan easy to follow and navigate, allowing prospective investors or bankers to access particular sections as required.

4. Business Overview / General Description

- Mission – what is your business's reason for being and what are your core principles?
- Goals and objectives – clearly define your business's goals and objectives.
- Business philosophy – what is important to you and your business?
- Market – briefly state your target market as this will be covered in detail in the marketing plan section of the business plan.
- Industry – note any growth and long-term / short-term changes you may need to face and how you will deal with these challenges.
- Strengths – what strengths do you have that will lead your business to success and what are your competitive advantages?
- Form of enterprise – state why you choose to be a sole proprietorship, partnership, close corporation or company.
- Broad Based Black Economic Empowerment – BEE will need to be addressed and a strategy formed so that BEE status can be achieved and maintained.

5. Products or Services

- Describe your product / service in depth.
- Describe your competitive advantages / innovative features.
- Briefly state your pricing, fee or leasing structures.

6. Marketing Plan

A large part of the success of your business is dependent on effective marketing. A marketing plan is a written statement of your marketing strategy and how long you estimate it will take to implement it. The marketing plan can be extremely useful to ensure that you are pitching your product correctly and that you remain focused. Extensive market research is necessary in order to compile a precise and concise marketing plan. Both primary and secondary research should be done, paying particular attention to areas such as statistics, numbers and your sources. Your marketing plan can also be a useful tool for preparing sales projections.

A marketing plan can be a stand-alone document, as well as part of a business plan. Refer to Form 9.12 for a guideline to writing a detailed marketing plan and Form 9.13 for an easy-to-use competitor analysis.

The full marketing plan and competitor analysis as indicated in Form 9.13 is highly recommended as a useful addition to your business plan.

It may be advisable to utilise the services of a marketing analyst or specialist to develop your marketing plan and strategy and to help you plan and budget just what you will be spending.

7. Operational Plan

The operational plan covers details concerning the daily running of your business and the operating processes.

- **Production & Technology:**

- Production techniques and costs
- Quality control
- Customer service
- Inventory control
- Product development

- **Location – Describe the type of location you will have. Comment on:**

- Space
- Building type
- Zoning
- Power / Utilities
- Access - Is it convenient for transport, suppliers and customers? Will you attract walk-in clientele?
- Costs including rent / maintenance / utilities
- Business hours
- Include a drawing / layout plan if it is important
- Construction costs. It is advisable not to waste start-up capital on building new premises.

- **Legalities:**

- Licensing and bond
- Permits
- Health and environmental regulations
- Regulations that apply specifically to your industry
- Zoning / building code
- Insurance coverage
- Trademarks and patents - existing, purchasing or pending

- **Personnel:**

- Employees – how many?
- Labour – skilled / unskilled / professional?
- Where will you find staff?
- Payment structure
- Training and requirements
- Written procedures and schedules
- Job descriptions for all positions – these facilitate internal communication
- Contract workers – will you need contract workers for any of your work?

- **Inventory**

- Type – raw materials, supplies, finished product
- Value of available stock
- Turnover rate in comparison to the industry average
- Seasonal build-up
- Ordering lead-time

- **Suppliers:**

- List your main suppliers – names and contact details, their reliability, what they supply and how much they charge
- Credit and delivery policies
- Should you have a back-up supplier for emergencies?
- Do you expect any problems with shortages or deliveries?
- Are supply costs steady? If not, how do you plan to deal with fluctuations?

- **Credit:**

- Policies on credit – how much will you allocate per customer, bearing in mind the impact this will have on your cash flow? How will you determine creditworthiness of customers? Do you anticipate handling this internally or using the services of professional credit bureaux? What will your payment terms be? Will you offer prompt payment discounts, and what will these be?
- Extending credit will affect your pricing. The cost of borrowing money needs to be offset against the price you will charge. Calculate how much this will affect your costs.
- List your plans to keep strict control of money tied up in credit given to customers and in dealing with slow payers by using a monthly age analysis, e.g.

Total	Current	30 days	60 days	90 days	Over 90 days

- Draw up your policies to deal with slow payers, e.g. When will you call them? When will you send a letter of demand? When do you hand over to an attorney?
- Outline how you will keep strict control of money you owe suppliers and when it is due to be paid. It is a good idea to use a table, listing each supplier. This helps plan your finances better.
- Find out if your suppliers offer prompt payment discounts or payment terms. The savings can be considerable.

8. Management and Organisation

- Who will be running the business? What is his/her qualification / experience? How will you cope if that person is lost or incapacitated?

- Create an organisational chart if you will have more than 10 employees, giving detailed position descriptions. This will clarify the management hierarchy and everyone's specific functions in your organisation.
- Include CVs of key personnel and the owners if you are looking for loans.
- Business support – list any other support you will have in the organisation, e.g. board of directors, management advisory board, attorney, accountant, insurance agent, banker, consultants, mentors and key advisors.

9. Personal Financial Statement

A personal financial statement should be included for each owner and major stockholder in your organisation. Assets and liabilities outside of the business and personal net worth must be shown as personal assets. Personal assets are often used to finance a business and bankers will therefore require this information when approving loans. The owners are generally required to personally guarantee their business loans. Include one spreadsheet per principal member detailing notes, securities, contracts, etc.

10. Start-up Expenses and Capitalisation

- You will need to estimate your needs as accurately as possible and have a plan as to where the money will come from.
- Make allowances for surprise expenses. This can be done in two ways:
 1. Add a little extra on each item in your budget (this option is not very accurate).
 2. Include a separate item in your budget called 'contingencies' and budget 20% of your total capital for unforeseeable expenses.
- Explain all your research: sources, amounts, terms of proposed loans, percentages of contributions from investors, etc.

11. Financial Plan

The financial plan consists of a 12-month profit and loss projection, a 4/5-year profit and loss projection (optional, but highly recommended), a cash flow projection, a projected balance sheet and a breakeven calculation. Together these documents make up an estimate of your business's financial future. It is strongly recommended that you enlist the help of your accountant or auditor to assist you with this section.

- **12 Month profit and loss projection** – this is the core of your financial plan and gives an idea of what it will take to make a profit and to be successful. A sales forecast will give you projections for sales, cost of goods sold, expenses and profits month-by-month for a year. You should write a paragraph explaining how you arrived at the estimated figures of your income and expenses.
- **4/5-Year profit and loss projection** – this is optional (but is highly recommended) if you would like to extend your forecast beyond your first year of business.
- **Cash flow projection** – this is a plan of your preliminary expenses, operating budget and reserves. You will need to work out when you can expect to receive cash and when you will need to pay accounts, and track this information carefully. If your projected cash flow goes into negative amounts, then more start-up capital is required. Note any irregular payments or expenses that may affect cash flow, e.g. tax, maintenance, repairs, etc. Also, it is a good idea to factor in items that don't usually show on cash flow statements, such as loan payments, equipment, owners' draws and depreciation.
- **Projected balance sheet** – this lists your assets and liabilities. When liabilities are subtracted from assets, what is left over is known as owner's equity. This is a rough estimate of where you think your company will be financially in the first year of business and is often useful information when you are looking for investors.

- **Breakeven calculation** – your breakeven calculation predicts the sales volume (at a given price) that you will need to recover your total costs. The breakeven point occurs when total revenue equals total costs.

12. Appendices

All necessary and accompanying documents, references and sources should be included. These should be kept as brief as possible. They include:

- SWOT analysis (strengths, weaknesses, opportunities, threats)
- Brochures / advertising materials
- Industry studies
- Blueprints / plans
- Maps / photos of your location
- Magazine / newspaper articles
- Lists of equipment you intend to purchase or already own
- Leases, contracts, licences, patents, trademarks
- Letters of support from your customers
- Market research studies
- List of assets available for collateral when applying for a loan

13. Perfecting your plan

Your business plan needs to be customised to suit your unique business needs and to appeal to the people whose attention you are trying to attract. The following are some areas that should be considered when perfecting and finalising your business plan:

• **Raising Capital**

Generally you will be appealing to either bankers or investors. Bankers look for information that will assure them of regular repayment, whereas investors look for information that predicts growth and therefore profits and a share in the rewards. For the bankers, you need to state the amount of the loan you are looking for, how the money will be used and how it will help your business, as well as your proposed repayment terms and what collateral you are able to offer. Investors will be interested in how you intend to use your funds, both in the short term and long term, and how this will promote growth and a return on their investment. Cover exit strategies, ownership percentages, financial reports and the extent of investor involvement.

• **Business Type: Manufacturing / Service / High Technology / Retail**

Different points can be covered in each type of business to highlight specific needs.

Manufacturing: List your planned production levels, costs, pricing, profit margins, production / plant limitations, equipment, purchase and inventory management, new products, etc.

Service: Competitive factors, pricing and pricing strategies, product management, quality control, labour productivity, subcontracting and profits, credit and payment policies.

High Technology: Economics, information systems for price, costing, market, research and development, protecting intellectual property, retaining personnel, retaining the cutting edge and being competitive within your market.

Retail: Image, pricing, inventory, customer service policies, location (convenience and exposure), promotion and credit policies.

When your research is completed and all the figures have been compiled, you are in a position to compose your business plan and finalise it into a detailed, precise and professional document that is easily navigated and can be easily understood by prospective bankers and investors.

BUSINESS PLAN FOR AN ESTABLISHED BUSINESS

A business plan is a detailed description of your business together with financial reports, past successes and failures, projections and goals for the future. The value of preparing a business plan lies in all the research you will need to do to reach the final product. In the research process, you will be forced to think about your business systematically and thoroughly, thereby reviewing your ideas critically and possibly avoiding costly mistakes in the future.

GUIDELINE FOR LAYOUT OF YOUR BUSINESS PLAN

1. Cover Page

Your cover page should contain the following information: your business name, the owner's / owners' name/s, telephone number, fax number, physical address, postal address and e-mail address, registration numbers, etc.

2. Executive Summary

This should be written last, after all your research work has been completed. It should be a summary of your business, highlighting the most important aspects.

Include:

- The type of business, e.g. retail, manufacturing, service, etc.
- Your product / service and what is unique about it.
- Who the managers of your business are.
- The funds you require and what these funds will be used for, as well as how you propose making your business more profitable.

Make sure your executive summary does not exceed two pages and is professional, clear and concise. It must sell your business / expansion idea to potential investors.

3. Table of Contents

A table of contents is essential for making your business plan easy to follow and navigate, allowing prospective investors or bankers to refer to specific sections if necessary.

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- Business philosophy – what is important to you and your business?
- Market – briefly state your target market as this will be covered in detail in the marketing plan section of the business plan.
- Industry – note any growth and long-term / short-term changes you may need to face and how you will deal with these challenges. Briefly list your immediate competitors.
- Strengths – what strengths do you have that will lead your business to success and what are your competitive advantages?
- Form of enterprise – state why you choose to be a sole proprietorship, partnership, close corporation or company.
- Broad Based Black Economic Empowerment – What is your BEE rating and strategy for achieving and/or maintaining compliance?
- History – describe previous successes and failures, sales and profits and any factors that contributed to success or failure in these cases.
- Long-term plans – growth strategies, production, diversification, sale of business.

5. Products or Services

- Describe your product / service in depth and state whether you want to develop new products / services and why.
- Describe your competitive advantages / innovative features.
- Briefly state your pricing, fee or leasing structures.

6. Marketing Plan

A large part of the success of your business is dependent on effective marketing. A marketing plan is a written statement of your marketing strategy and how long you estimate it will take to implement it. The marketing plan can be extremely useful to ensure that you are pitching your product correctly and that you remain focused. Extensive market research is necessary to compile a precise and concise marketing plan. Both primary and secondary research should be done, paying particular attention to areas such as statistics, numbers and your sources. Your marketing plan can also be a useful tool for preparing sales projections.

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It may be advisable to utilise the services of a marketing analyst or specialist to develop your marketing plan and strategy and to help you plan and budget just what you will be spending.

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The operational plan covers details concerning the daily running of your business and the operating processes.

- **Production & Technology:**
 - Production techniques and costs
 - Quality control
 - Customer service
 - Inventory control
 - Product development
- **Location** – Describe your location or the buildings you currently occupy.
 - Do you lease or own the premises?
 - Access - is it convenient for transport, suppliers and customers? Do you attract walk-in clientele?
 - Costs including rent / maintenance / utilities
 - Business hours
 - Include a drawing / layout plan if you intend to expand your premises to illustrate the new additions to the premises when you apply for an expansion loan.
- **Legalities:**
 - Licensing and bond
 - Permits
 - Health and environmental regulations
 - Regulations that apply specifically to your industry
 - Zoning / building code
 - Insurance coverage
 - Trademarks and patents - existing, purchasing or pending.

- **Personnel:**
 - Employees – how many?
 - Labour – skilled / unskilled / professional
 - Where do you find new staff?
 - Payment structure
 - Training and requirements
 - Written procedures and schedules
 - Job descriptions for all positions – these facilitate internal communication
 - Contract workers – do you use contract workers for any of your work?
- **Inventory**
 - Type - raw materials, supplies, finished product
 - Value of available stock
 - Turnover rate in comparison to the industry average
 - Seasonal build-up
 - Ordering lead-time
- **Suppliers:**
 - List your main suppliers – names and contact details, their reliability, what they supply and how much they charge
 - Credit and delivery policies
 - Do you have alternate suppliers and a back-up supplier for emergencies?
 - Do you anticipate any problems with shortages or deliveries?
 - Are supply costs steady? If not, how do you propose dealing with fluctuations?
- **Credit:**
 - Will you sell on credit? Do others in your industry do so? Is it necessary?
 - Policies on credit - how much will you allocate per customer, bearing in mind the impact this will have on your cash flow? How will you determine creditworthiness of customers? Do you anticipate handling this internally or using the services of professional credit bureaux? What will your payment terms be? Will you offer prompt payment discounts, and what will these be?
 - Extending credit will affect your pricing. The cost of borrowing money needs to be offset against the price you will charge. Calculate how much this will affect your costs.
 - List your plans to keep strict control of money tied up in credit given to customers and in dealing with slow payers by using a monthly age analysis e.g.

Total	Current	30 days	60 days	90 days	Over 90 days

- Draw up your policies to deal with slow payers, e.g. When will you call them? When will you send a letter of demand? When do you hand over to an attorney?
- Outline how you will keep strict control of money you owe suppliers and when it is due to be paid. It is a good idea to use a table, listing each supplier. This helps plan your finances better.
- Find out if your suppliers offer prompt payment discounts or payment terms. The savings can be considerable

8. Management and Organisation

- Who runs the business? What is his/her qualification / experience? Draw up a provisional plan on how you propose to cope if the key person running the organisation is lost or incapacitated?
- Create an organisational chart if you will have more than 10 employees, giving detailed position

descriptions. This will clarify the management hierarchy and everyone's specific functions in your organisation.

- Include CVs of key personnel and the owners if you are looking for loans.
- Business support - list any other support you have in the organisation, e.g. board of directors, management advisory board, attorney, accountant, insurance agent, banker, consultants, mentors and key advisors.

9. Personal Financial Statement

A personal financial statement should be included for each owner and major stockholder in your organisation. Assets and liabilities outside of the business and personal net worth must be shown as personal assets. Personal assets are often used to finance a business and bankers will therefore require this information when approving loans. The owners are generally required to personally guarantee their business loans. Include one spreadsheet per principal member detailing notes, securities, contracts, etc.

10. Financial History and Analysis

- You need to analyse the past trends and fluctuations in your business before making an accurate forecast for the future of your business. It is strongly recommended that you enlist the help of your accountant or auditor to assist you with this section.
- You will need to include information covering the past three years of your business's financial history: year-end balance sheets, operating statements and income tax returns.
- The most recent balance sheet and operating statement is also of extreme importance.
- Include a debt schedule for each note payable on your balance sheet, e.g.

To whom	Original Amount	Original Date	Present Balance	Rate of Interest	Maturity Date	Monthly Payment	Security	Current / Past Due

11. Financial Plan

Give an overview of your company for the past three to five years, including audited annual financial statements, income statements, balance sheets, debtors and creditors age analysis. Only a summary should be included in the body of the document. The complete documents must be attached with the other appendices.

Accompanying documentation required: audited annual financial statements, income statements, balance sheets, debtors and creditors age analysis.

12. Risk Assessment

- Potential for growth, profitability, capital appreciation
- How will the risk factors be addressed?
- Are the risks outweighed by the potential rewards?

13. Exit Strategies

What potential exit scenarios are there for the investors? An investor may want to divest at a certain stage. Financial institutions usually require an exit strategy, according to which their interest (or percentage shareholding) decreases with time as the loan is reduced. You may also wish to gain autonomy as the business grows. Possible scenarios include sale of the company, merger or acquisition and initial public option (IPO), which means going public.

14. Appendices

All necessary and accompanying documents, references and sources should be included. These should not be too large. They include:

- SWOT analysis (strengths, weaknesses, opportunities, threats)
- Brochures / advertising materials
- Industry studies / competitor studies
- Blueprints / plans
- Maps / photos of your location
- Magazine / newspaper articles
- Lists of equipment you intend to purchase or already own
- Leases, contracts, licences, patents, trademarks
- Letters of support from your customers
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• **Raising Capital**

Generally you will be appealing to either bankers or investors. Bankers look for information that will assure them of regular repayment, whereas investors look for information that predicts growth and therefore profits and a share in the rewards. For the bankers, you will need to state the amount of the loan you are looking for, how the money will be used and how it will help your business. Also important are your proposed repayment terms and what collateral you are able to offer. Investors will be interested in how you intend to use your funds, both in the short term and long term, and how this will promote growth and a return on their investment. Cover exit strategies, ownership percentages, financial reports and the extent of investor involvement.

• **Business Type: Manufacturing / Service / High Technology / Retail**

Manufacturing: List your planned production levels, costs, pricing, profit margins, production / plant limitations, equipment, purchase and inventory management, new products, etc.

Service: Competitive factors, pricing and pricing strategies, product management, quality control, labour productivity, subcontracting and profits, credit and payment policies.

High Technology: Economics, information systems to be used for pricing, costing, marketing, research and development, protection of intellectual property, retaining of personnel, retaining the cutting edge and being competitive within your market.

Retail: Image, pricing, inventory, customer service policies, location (convenience and exposure) promotion and credit policies.

When your research is completed and all your figures have been compiled, you are in a position to compose your business plan and finalise it into a detailed, precise and professional document that is easily navigated and can be easily understood by prospective bankers and investors.

Date: _____

Dear

**LETTER OF INTENT TO PURCHASE A BUSINESS:
NEGOTIATIONS FOR SALE OF _____**

This letter confirms our mutual intentions with respect to the potential sale described herein between _____ (“the Purchaser”) and _____ (“the Seller”).

1. Principal Terms

We envisage the principal terms of the proposed transaction to be as follows:

(a) Business Purchased and Liabilities Assumed

We would purchase substantially all the assets of the Seller including intellectual property and goodwill. We would take over all debt of the Seller.

(b) Purchase Price

The purchase price would be R _____
(_____ rands)
providing that the assets less liabilities of the business to be purchased equals or exceeds R _____
(_____ rands)
as shown on a closing date balance sheet prepared in accordance with generally accepted accounting principles.

(c) Due Diligence Review

The Seller will promptly allow the Purchaser to complete a due diligence examination of all financial, accounting, business records and contracts and other legal documents. All information obtained by the Purchaser will be maintained in the strictest confidence in terms of a confidentiality agreement to be entered into between the Purchaser and Seller.

(d) Sale of Business Agreement

All of the terms and conditions of the proposed transaction are to be set out in a Sale of Business Agreement and no other terms will be binding on the parties.

(e) The Seller’s Employees

The Purchaser will offer employment to substantially all of the Seller’s employees.

(f) **Timing**

The parties will use all efforts to complete the Sale of Business Agreement on or before _____.

2. Public Announcements

Prior to the signature of the Sale of Business Agreement neither party will make any announcement of the proposed transaction contemplated by this letter of intent. Notwithstanding the above, either party may in the strictest confidence divulge necessary information contained to necessary parties such as Directors, Employees, Professional Advisers, and parties whose consent is required in connection with the transaction contemplated by this letter of intent.

3. Broker's Fees

We confirm that no brokers have been employed by either party who would be entitled to a fee by reason of the transaction contemplated by this letter of intent.

4. Exclusive Negotiating Rights

The Seller, its Directors and Employees and Agents undertake not to initiate or solicit or encourage, directly or indirectly negotiations with any other potential Purchaser.

5. Interpretation

This letter shall be construed according to its fair meaning and not strictly for or against either party. This letter is not intended to impose any binding obligations on the parties except as regards the matters of confidentiality and due diligence as set out above.

Please sign and return a copy of this letter if its terms and conditions are acceptable to enable us to proceed with negotiations.

Yours faithfully

For and on behalf of the Purchaser, he/she being duly authorised

Title: _____

Accepted and agreed:

For and on behalf of the Seller, he/she being duly authorised.

Title: _____

**MEMORANDUM OF UNDERSTANDING
PURCHASE / SALE OF BUSINESS**

Made and entered into by and between:

Registration number _____
herein represented by _____
in his/her capacity as _____
duly authorised thereto by a resolution of the directors of the Seller
(hereinafter referred to as "the Seller")

and

Registration number _____
herein represented by _____
in his/her capacity as _____
duly authorised thereto by a resolution of the directors of the Purchaser
(hereinafter referred to as "the Purchaser")

WHEREAS the parties are considering entering into an agreement for the sale of the shares of _____ to the Purchaser;

AND WHEREAS the parties are desirous in this memorandum of understanding to initially record certain of their intentions relating to their negotiations and to an agreement which they intend entering into;

AND WHEREAS the parties intend / do not intend that the foregoing terms will / will not be binding on the parties.

Now therefore it is recorded as follows:

1. The parties are desirous of entering into a written agreement for the sale of the shares of _____ to the Purchaser.
2. All parties hereby wish to record that this memorandum of understanding:
 - 2.1 does not constitute a partnership agreement between the parties;
 - 2.2 does not in any way constitute an agreement through which the current identity of the parties is changed or affected;

2.3 does not constitute a valid and binding agreement regarding future joint ventures between the parties beyond the scope of this memorandum.

- 3 Negotiations between the parties will be conducted in a spirit of goodwill and co-operation and communications between the parties will be responded to promptly.
4. All information disclosed by either party during the negotiations will be treated as confidential by the other party. The parties are desirous of entering into a written agreement of confidentiality.
5. The Seller will not solicit any employee or officer of _____ for a period of _____ years after the agreement of sale is signed.
6. The Seller undertakes to provide to the purchaser accurate information in response to the Purchaser's requests therefor.
7. Either party may terminate negotiations after notice to the other party. It is not incumbent on either party to provide reasons for the termination of the negotiations.
8. Communications between the parties are to be in strict confidence and may be by any of the channels of communication as displayed on the letterhead of either party to such address or number so provided or to the cell number of the representative and directed only to the representative of either party or his/her nominee.
- 9.1 In the event of a dispute arising between the parties in respect of any matter contained in this agreement, the aggrieved party shall notify the other party in writing about the existence and nature of the dispute within a reasonable time of the dispute arising. The parties shall thereafter negotiate in good faith to settle the dispute in question as expeditiously as possible. Should the parties be unsuccessful in settling such dispute the parties will refer the dispute to the Arbitration Foundation of South Africa (hereinafter referred to as "AFSA") who shall resolve the dispute by a process of arbitration, drawing upon the services of an arbitrator agreed upon by both parties. Where the parties cannot reach an agreement of the identity of the arbitrator, AFSA shall appoint an arbitrator in this matter.
- 9.2 The determination by the arbitrator shall be final. Each party shall bear its own costs for arbitration unless an order of costs is made by the arbitrator, to which the parties consent and shall adhere.
- 10.1 This memorandum shall constitute the entire understanding between the parties, until substituted by a subsequent formal agreement.
- 10.2 No amendment, cancellation, variation of, or addition to this memorandum, including this clause, shall be any force or effect unless reduced to writing and signed by both parties
- 10.3 No party shall be bound to any representation, waiver, condonation, warranty or promise not contained in this memorandum.
- 10.4 The law of the Republic of South Africa shall apply to this memorandum of understanding and all matters relating thereto.

11. The *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) of the parties is as follows:

The Seller

The Purchaser

Signed at _____ this _____ day of _____ year _____.

As Witnesses

1. _____

2. _____

SELLER

Signed at _____ this _____ day of _____ year _____.

As Witnesses

1. _____

2. _____

PURCHASER

SALE OF BUSINESS AGREEMENT

1. The parties

1.1 The Seller is _____

1.2 The Purchaser is _____
("the Parties")

2. Definitions

In this Agreement unless the context clearly indicates otherwise:

2.1 "this Agreement" means the Agreement together with the annexures attached herein and initialled by the Parties;

2.2 "the Auditors" means _____
or their successors;

2.3 "the Business" means the business which is operated at _____

2.4 "the Claims" means 100% (ONE HUNDRED PERCENT) of the Seller's claims on the loan accounts against the Company as at the Effective Date, if any;

2.5 "the Company" means the business

2.6 "the Delivery Date" means a date not more than 30 (thirty) days calculated from the date of signature of this Agreement by the Parties;

2.7 "the Effective Date" shall notwithstanding the date of signature of this Agreement be deemed to be the _____ day of _____ year _____;

2.8 "the Shares" means ordinary shares of R _____ (_____
_____ rand) in the Company comprising 100% (ONE HUNDRED percent) of the entire issued share capital of the Company;

2.9 "Tax" means any Tax, duty, VAT or levy (including any penalty or interest imposed by any law administered by the Commissioner of Inland Revenue);

2.10 Each reference to: -

2.9.1 The singular includes a reference to the plural and vice versa;

2.9.2 Any one gender includes a reference to the other gender;

2.9.3 The Parties is a reference to the persons defined as such separately and individually;

2.9.4 The Purchaser is a reference to each party defined as such separately and individually, and the Purchaser's liability to the Seller shall be both joint and several.

3. Recital

The parties have agreed to the purchase and sale of the Shares and the Claims in terms of this Agreement.

4. Purchase and Sale

4.1 The Purchaser hereby purchases from the Seller who sells to the Purchaser, the Shares and the Claims as one indivisible transaction.

4.2 The purchase price payable by the Purchaser to the Seller is the sum of R _____ (_____ rand).

5. Payment of the Purchase Price

5.1 The purchase price shall be payable by the Purchaser to the Seller in cash, in instalments, by payment of the sum of:

5.1.1 R _____ (_____ rand)
on signature of this Agreement.

5.1.2 R _____ (_____ rand)
on the _____ day of _____ year _____.

5.1.3 R _____ (_____ rand)
on the _____ day of _____ year _____.

5.1.4 R _____ (_____ rand)
payable on the 30th day of the next succeeding 5 (five) calendar months.

5.1.5 R _____ (_____ rand)
on the _____ day of _____ year _____.

5.1.6 R _____ (_____ rand)
on the _____ day of _____ year _____.

5.1.7 R _____ (_____ rand)
on the _____ day of _____ year _____.

5.1.8 R _____ (_____ rand)
on the _____ day of _____ year _____.

5.1.9 R _____ (_____ rand)
payable on the 30th day of the next succeeding 21 calendar months.

5.2 On the date of signature of this Agreement the Purchaser shall deliver to the Seller _____ post-dated cheques in negotiable form in respect of the balance of the purchase price referred to in clause 5.1:

5.2.1 Drawn by the Purchaser;

5.2.2 Payable to _____; and

5.2.3 Each cheque endorsed on the reverse side thereof as follows:

“This cheque is one of a series numbered 1 to _____ inclusive and in the event of one being dishonoured on the due date thereof by non-payment, then unless the cheque is honoured within 7 (seven) days of receiving notice of this default the remaining cheques in the series will immediately become due and payable.”

5.3 The purchase price shall be paid free of exchange in _____ (place).

6. Delivery

6.1 On the Delivery Date the Seller undertakes to deliver to the Auditors:

6.1.1 A certificate in respect of the Shares, together with the transfer deeds relating thereto, duly executed by the registered holders thereof in negotiable form;

6.1.2 A written and signed Deed of Cession by the Seller in favour of the Purchaser of the Claims, if any;

6.1.3 The actual or certified copy of the Resolutions passed by the Board of Directors of the Company

6.1.3.1. authorising the transfer of the Shares to the Purchaser;

6.1.3.2. appointing the Purchaser's nominees as Directors of the Company,

6.2 The Parties hereby irrevocably and *in rem suam* (in their own interest) authorise and empower the Auditors of the Company to do all such things as they in their sole discretion deem necessary in order to give effect to the registration of the share transfers in terms of this Agreement.

7. Security

7.1 As security for the payment of the purchase price by the Purchaser to the Seller, the Purchaser hereby:

7.1.1 Cedes to the Seller *in securitatem debiti* (in security of a debt) all its right, title and interest in and to its claim for the re-purchase of the Claims; and

7.1.2 Agrees to pledge the Shares to be registered in his name in terms of the Agreement, undertaking to the Seller to do all reasonable things and sign all such documents that may be necessary to give due and proper effect to such cession of the Claims and pledge of the Shares.

7.2. Immediately the Shares have been registered in the Purchaser's name, the Purchaser shall deliver to the Auditors, the latter as agents for and on behalf of the Seller, the relevant share certificates in respect of the Shares, with transfer deeds in respect thereof executed in negotiable form, whereupon all the Shares shall *ipso facto* (by the fact itself) be pledged to the Seller as security for the Purchaser's obligations in terms of this Agreement, in terms of Annexure "A" attached hereto and initialled by the Parties for identification purposes.

8. Warranties

The Seller hereby gives to the Purchaser the warranties contained in Annexure "B" attached herein and initialled by the Parties for identification purposes.

9. Exclusion of Warranties

Save for the warranties expressly given by the Seller to the Purchaser in this Agreement, the Purchaser acknowledges that:

9.1 No warranties have been or are given by the Seller to the Purchaser in relation to the Shares and/or anything which could or might be material to or concerned with this Agreement;

9.2 He has not been induced to purchase the Shares for the consideration and/or on the terms set out herein by any representation whatsoever made by or on behalf of the Seller, save only insofar as such representation may be expressly repeated as a warranty in this Agreement;

9.3 He has been given access to books of account, financial statements and the minute book of the Company and has satisfied himself that they correctly reflect the affairs of the Company.

10. Default

10.1 In the event of the Purchaser defaulting with the performance of any one or more of his obligations in terms of or arising from this Agreement, then after the Seller will have given to the Purchaser written notice calling upon him to remedy such default within 14 days of the receipt of such notice then notwithstanding any prior waiver and without prejudice to any other remedy which the Seller may have under the circumstances, he shall be entitled to:

10.1.1 Forthwith cancel this Agreement, in which event any monies paid by the Purchaser to the Seller shall be retained by the Seller as *rouwkoop* (money forfeited if the Agreement of Sale is not proceeded with) or a genuine pre-estimate of damages, the Purchaser acknowledging that this amount is a fair and reasonable sum of money to pay the Seller by virtue of the breach of the conditions of this Agreement; or

10.1.2 Cancel this Agreement and claim and recover from the Purchaser such damages as he may have suffered under the circumstances and pending the determination thereof to retain all amounts that will have been paid by the Purchaser to the Seller in terms of this Agreement and set off the same against such damages as and when he will have been liquidated; or

10.1.3 Declare the full balance of the purchase price owed by the Purchaser to the Seller in terms of this Agreement to be due and owing.

10.2 In the event of the Seller defaulting with the performance of any one or more of his obligations in terms of or arising from this agreement, then after the Purchaser will have given him written notice calling upon him to remedy such default within 14 days of the receipt of such notice, then notwithstanding any prior waiver and without prejudice to any other remedy which the Purchaser may have under the circumstances he shall be entitled to:

10.2.1 Cancel this Agreement and claim or recover such damages as he will have suffered under the circumstances; or

10.2.2 Enforce specific performance and claim such damages as he may have suffered under the circumstances.

11. Risk and Benefit

Notwithstanding anything to the contrary herein contained, the risk in and benefit of the Shares shall be deemed to have passed to the Purchaser on the Effective Date.

12. Non-Variation

No alteration or variation of this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties hereto.

13. Non-Waiver

No latitude or extension of time which may be given or granted by any of the Parties to any other or others of them shall operate or be construed as a waiver of such party's rights in terms of or arising from this Agreement.

14. Severability

Each clause in this Agreement is severable the one from the other and if any clause is found to be defective or unenforceable for any reason by any competent Court, the remaining clauses shall be of full force and effect and continue to be of full force and effect.

15. Implementation

The Parties undertake to perform all such acts and to sign all such documents as may from time to time be required to give effect to what is intended in this Agreement.

16. Costs

- 16.1 Any stamp duty payable on the transfer of the Shares shall be borne and paid by the Purchaser.
- 16.2. The Purchaser and the Seller shall each be liable for 50% of the costs of Attorney _____ incidental to the negotiations / drawing / drafting and preparation of this Agreement.

17. Clause Headings

The headings of the clauses in this Agreement are intended for convenience only and shall in no way affect the construction of this Agreement.

18. Domicilia and Notices

18.1 Any notices given by any party to the other shall be deemed to be received by the addressee:

18.1.1. On the date on which the same is delivered at the addressee's *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution) if delivered by hand; or

18.1.2. On the 5th day after the posting thereof if sent by prepaid registered post to the addressee at his said domicile.

18.2 The Seller hereby chooses domicile for the purpose of serving summons and levying execution for all purposes in terms of this Agreement at:

18.3 The Purchaser hereby chooses domicile for the purpose of serving summons and levying execution for all purposes in terms of this Agreement at:

19. Releases

The Purchaser hereby agrees to procure within 24 hours of signature of this Agreement, that _____ is released from any sureties and/or guarantees signed by him in favour of the Company, and more particularly in respect of:

19.1 The lease in respect of the premises occupied by the Business at _____, and the Purchaser hereby indemnifies _____ against any claims made by the landlord in terms of the said surety;

19.2 The surety in favour of _____ in respect of the Company's banking facilities, and the Purchaser hereby agrees to do whatever is necessary to procure the said release of surety including paying up the overdraft, if necessary.

20. Employment

The Purchaser hereby agrees to procure that the terms and conditions at date of signature hereof under which the employees of the Seller are employed will be continued by the Company and/or the Purchaser, and/or any of the Purchaser's other companies.

21. Adjustment of the Purchase Price

Notwithstanding anything to the contrary herein contained the Parties have agreed to instruct the Auditors to prepare a certificate as at midnight on the _____ day of _____ year _____, showing all amounts owing to the Company. The purchase price will be adjusted by the difference, if any, between the amounts due to the Company and the amounts owing by the Company. Should there be a surplus the purchase price will be increased by that amount, and should there be a deficit the purchase price will be decreased by that amount. Such adjustment will be made in the last instalment/s made in respect of the purchase price.

22. Value Added Tax

22.1. The Seller is sold as a going concern. The Purchaser warrants that it is a vendor at all relevant dates. The Purchaser will be liable for Value Added Tax (VAT) if applicable.

22.2. A tax invoice containing the particulars specified in Section 20 of the Value Added Tax Act 89 of 1991 will be provided to the Purchaser if so requested.

THUS DONE and SIGNED at _____ on this the _____ day of _____ year _____, in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ Name: _____
Capacity: _____
2. _____ For the Seller who by his/her signature warrants that he is duly authorised.

THUS DONE and SIGNED at _____ on this the _____ day of _____ year _____, in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ Name: _____
Capacity: _____
2. _____ For the Purchaser who by his/her signature warrants that he is duly authorised.

Annexure "A"

This is the Annexure referred to in paragraph 7 of the Agreement to which this is attached.

Terms of Pledge

_____ ("the Pledgor") agrees that the share certificates and transfer deeds shall remain in the possession of the pledgee or his order until such time as the pledgee will have agreed in writing to release the Pledgor from his pledge and that the pledgee may use the said certificates and transfer deeds for the purpose of passing transfer of the Shares upon and in the event of the pledgee realising the same in terms hereof.

The Pledgor further agrees that in the event of his defaulting in any payment which may be secured by this pledge, the pledgee shall be entitled, but not obliged, without prejudice to any other remedy he may have against the Pledgor under the circumstances, to levy private execution against the Shares pledged by realising the same in such manner, by such means, for such price/s and on such terms as the pledgee may in his absolute and unhindered discretion deem fit, and to convey valid title of the said Shares and claims to any purchaser/s to whom he may dispose thereof, and to apply the net proceeds of such realisation, after deducting therefrom all costs and expenses to which the pledgee may have been put in or about such realisation and in or about the exercise of any of his other rights against the Pledgor, reduction or, as the case may be, satisfaction of the Pledgor's indebtedness to the pledgee hereby secured, without prejudice to his right to recover from the Pledgor any balance of such indebtedness which may thereafter remain outstanding, provided that should the nett proceeds of such realisation exceed the total amount of the indebtedness, the pledgee shall thereupon pay the amount of such excess to the Pledgor.

Nothing hereinbefore contained shall be read as precluding the pledgee from choosing not to exercise the pledgee's right of private execution and instead causing judicial execution to be levied against the Shares pledged.

The Pledgor hereby constitutes the pledgee irrevocably and *in rem suam* (acting in his/her own interest), with power of substitution, as his agent to execute all such documents and to do all such other things as may in the pledgee's discretion be necessary to give due and proper effect to the terms hereof.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____
2. _____
_____ Pledgor

SELLER'S WARRANTY

This Annexure is the annexure referred to in paragraph 8 of the Agreement. The Seller warrants to the Purchaser that on the Delivery Date:

1. The authorised share capital of the Company will be R _____
(_____ rand) divided into _____
shares of R _____ (_____ rand) each;
2. The issued share capital of the Company will be R _____
(_____ rand) divided into _____
shares of R _____ (_____ rand) each;
3. No one will have any right to claim in respect of the Shares in the capital of the Company, whether issued or unissued;
4. Neither the Company nor its Directors will have passed or have agreed to pass any Resolution for the increase or reduction of the authorised, issued and / or paid up share capital, or the creation or issue of Debentures;
5. The Company will have complied with all requirements of law affecting it and it will have made all final or provisional tax payments which it had or will have to make and will not be liable to pay any interest or penalty in connection with any claim for tax and that all necessary information, notices and returns have been correctly and timeously submitted;
6. There will be no dividends outstanding and still to be paid by the Company;
7. There will be no material contracts of any nature in existence between the Company and any third party, save for the beneficial trading contracts as listed in Annexure "C" and the lease in respect of _____, and the service contract between the Company and _____;
8. There will be no Director's fees outstanding and still to be paid by the Company;
9. The Company will not be bound by any guarantees or suretyships;
10. The Company will have complied in every respect with all government, provincial and local authority Rules and Regulations affecting or relating to it;
11. The Seller will be the beneficial owner of the Shares and the Claims;
12. No legal or arbitral proceedings will be pending or threatened by or against the Company and the Seller knows of no facts or circumstances which are likely to give rise to any of such proceedings in the future;
13. The Company will be the owner of office furniture and equipment, which is fully paid for, as per the schedule attached hereto and marked Annexure "D" and initialled by the Parties for identification purposes;
14. The only assets of the Company will be:
 - 14.1. The Business;
 - 14.2. All amounts pre-paid by the Company in respect of expenses in connection with, or arising out of the business, insurance premiums, and other recurring amounts in respect of any period subsequent to the Effective Date; and
 - 14.3. The office furniture and equipment as listed in Annexure "D".

Annexure "C"
Beneficial Trading Contracts

This Annexure "C" is a list of the contracted principals of the Company at the Effective Date, which contracts have been examined by the Purchaser and which the Purchaser acknowledges as having been examined by him.

Contracts / Agreements held by the Seller

1. _____
2. _____
3. _____
4. _____
5. _____

Annexure "D"
Office Furniture and Fittings

1. _____
2. _____
3. _____
4. _____
5. _____

AGREEMENT OF PARTNERSHIP

Made and entered into by and between:

(hereinafter referred to as "A")

and

(hereinafter referred to as "B")

WHEREAS A and B desire to enter into a partnership with the object of carrying on business as

(type of business)

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. The name of the Partnership is _____
(hereinafter referred to as "the Partnership") and it will carry on business at _____

2. The Partnership will commence on _____ and will
continue for a period of _____ years. The Partnership will continue for a further _____
years at the termination date unless either partner gives _____ months prior
notice of his/her intention to terminate the Partnership.

3. The contribution towards the Partnership by each of the partners will be as follows:

A (Amount of money and/or type of asset introduced and value thereof and/or service to be
performed.) _____

B (Amount of money and/or type of asset introduced and value thereof and/or service to
be performed.) _____

4. Profits and losses of the Partnership will be borne by the partners in equal shares.

5. The bankers of the Partnership will be _____

6. The bookkeeper of the Partnership will be _____

The auditor of the Partnership will be _____
(i.e. if the partners require an auditor).

7. Partnership cheques *may be signed by either A or B / must be signed by A and B and Partnership cheques may be drawn only in connection with the Partnership business or for the purpose of drawing profits legally due to each partner.
* (Delete where applicable)
8. The partners may each draw a monthly sum, which is not to exceed R _____ per month.
9. The year-end of the Partnership will be the last day of _____ (month) whereafter a balance sheet will be drawn up and profits and losses will be shared equally.
10. Each partner is required to devote his/her whole time and attention to the affairs of the Partnership. No partner may be directly or indirectly connected with any other business without the written consent of the other partner.
11. In the event of either of the partners dying during the period of the Partnership, the surviving partner will have the right to take over the Partnership on payment of the net value of the deceased's share of the assets of the Partnership, excluding goodwill. If the surviving partner fails within three months to make such payment, the assets of the Partnership will be sold and the proceeds divided equally between the surviving partner and the estate of the deceased partner.
12. If the Partnership is terminated otherwise than by death, either interested partner may carry on the Partnership by paying to the other, half of the value of the Partnership assets *including / excluding goodwill. If neither partner is desirous of continuing the Partnership it will be sold in such manner as may be most advantageous and the proceeds divided between the partners equally.
* (Delete where applicable)

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

A

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

2. _____

B

COMPANY RESOLUTION

RESOLUTION of a meeting of the Board of Directors / Trustees of _____

held at _____ this _____ day of _____ year _____.

PRESENT:

TITLE:

1. _____

2. _____

3. _____

RESOLVED:

1. _____

2. _____

3. _____

(The specific resolutions)

ATTENDANCE REGISTER:

1. _____

2. _____

3. _____

(Signatures)

CHAIRMAN / DIRECTOR / SECRETARY / TRUSTEE

COMMENT ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT (BEE)

The BEE Act 53 of 2003, the DTI's scorecards and BEE-Status and Procurement Recognition Levels

Although compliance with the BEE Act is not compulsory, the implications of the Act are extremely important to any business. Non-compliance can severely limit business opportunities, particularly with government and public entities or companies that conduct business with such entities. What follows is a brief introduction to the principles and procedures of this complex subject in order for the business owner to gain some insight into the requirements for achieving ongoing BEE-compliance for their business.

Broad-Based Black Economic Empowerment is designed to enable the meaningful participation of black people in the economy in order to achieve sustainable development and general prosperity. 'Black' refers to Africans, Coloureds, Indians and Chinese who achieved South African citizenship prior to 1994.

The responsibility for realising government's black economic empowerment transformation and the country's economic growth was focused solely on big business until 2006. Then late in 2006 the Department of Trade and Industry (DTI) issued a separate scorecard and set of codes for Qualifying Small Enterprises (QSEs) which lays that responsibility at the door of small companies as well.

The BEE Act provides for the issue of Codes of Good Practice and the publication of sector specific transformation charters. It also establishes a Black Economic Empowerment Advisory Council whose function it is to advise the government on issues relating to BEE. The DTI began drafting the Codes in 2004 and the final product, after having gone through a number of public commentary phases, was released in February 2007.

The Codes are intended to guide industry in applying the principles of Broad-Based BEE. Together with the scorecards (see below) they provide a standardised means of measuring to what level a particular business entity has achieved transformation. The original narrow-based BEE focused almost exclusively on the ownership and management elements, but these now constitute only 30% of the broad-based generic scorecard. The remaining 70% of the points are allocated for indirect empowerment initiatives.

The Codes allow for three categories of businesses: Exempted Micro Enterprises (EMEs), Qualifying Small Enterprises (QSEs), and Large Enterprises.

- **The Exempted Micro Enterprise (EME)**

The Exempted Micro Enterprise (EME) is an entity whose turnover is below R5m per annum or which is in its first year of trading. Form 9.10 is the required exemption document for the EME. The EME is exempted from being scored on the BEE scorecard and is automatically awarded a level 4 status (see BEE-status Levels Table 2 below), alternatively an EME with over 50% black ownership is moved up one level to level 3. From a procurement point of view any spending with an EME will be recognised as BEE compliant at 100% (for a level 4 status EME) or 110% (for level 3 status EME). An EME is allowed to be measured on the QSE scorecard should it wish to maximise its points and move to the next procurement recognition level.

- **The Qualifying Small Entity (QSE)**

The Qualifying Small Entity (QSE) is a business with an annual turnover of between R5m and R35m. The QSE is assessed on its choice of any four of the seven elements on the BEE scorecard each with a 25-point weighting to total 100 points. (See QSE scorecard below.) Form 9.11 may be used to record your company details for submission on each of the elements. Specialist assistance is required for verification.

- **The Large Enterprise**

The Large Enterprise is an enterprise with an annual turnover exceeding R35m or a start-up enterprise that tenders for a contract worth more than R35m. The Large Enterprise is scored on all seven elements of the DTI's generic scorecard. The distribution of the weightings among the elements is such that the enterprise is still scored out of 100 points. Specialist assistance will be required to prepare for verification of BEE-compliance.

Table 1: THE BEE SCORECARDS (EMEs are exempted from being scored)

THE 7 BEE ELEMENTS	Qualifying Small Enterprises (QSEs)	Large Enterprises
	Scored on their choice of any 4 of the 7 elements. Total = 100 points THE QSE SCORECARD	Scored on all 7 elements Total = 100 points THE GENERIC SCORECARD
1. OWNERSHIP	25 POINTS	20 POINTS
2. MANAGEMENT CONTROL	25 POINTS	10 POINTS
3. EMPLOYMENT EQUITY (EE)	25 POINTS	15 POINTS
4. SKILLS DEVELOPMENT	25 POINTS	15 POINTS
5. PREFERENTIAL PROCUREMENT	25 POINTS	20 POINTS
6. ENTERPRISE DEVELOPMENT	25 POINTS	15 POINTS
7. SOCIO-ECONOMIC DEVELOPMENT	25 POINTS	5 POINTS
The company is scored out of a total:	100 POINTS	100 POINTS

THE 7 BEE ELEMENTS

Below is a brief description of the seven elements of the BEE scorecard and a sampling of the supporting documentation / evidence that will typically be reviewed by a verification agency during the ratings process.

1. OWNERSHIP

Ownership measures the entitlement of black people to voting rights, and thus their opportunity to contribute towards strategic, financial and operational policies of the entity, as well as the economic interest, which results in their accumulation of wealth. The list of evidence to be reviewed will include the equity ownership structure, equity equivalent details, etc. This is an extremely complex matter, requiring specialist assistance.

2. MANAGEMENT CONTROL

This assesses black representation at board level and top management level only. The measurement is based on the level of control of black people within the organisation and their power to influence policies and the direction of economic activities and resources of the entity. Double counting within the Management element is permissible, for example a black CEO who is also an executive director will be counted twice under Code 200. Depending on the classification of the enterprise according to the Companies Act, some of the supporting evidence that will be reviewed during the verification process is Form COR39 which provides directorship information, and the Memorandum of Incorporation which details the percentage spread of voting rights among the board members.

/...

3. EMPLOYMENT EQUITY (EE)

EE measures the representation of black people within an enterprise at different occupational levels based on standard definitions provided by Statistics SA in the collation and analysis of Census data. A common misunderstanding is for companies to include their senior management who have been accounted for in the EE element under Management Control, i.e. double counting between Codes 200 and 300 is not permissible.

4. SKILLS DEVELOPMENT

This refers to the development of core competencies of black people to promote and encourage their interaction in the mainstream of the economy. Skills development and employment equity go hand-in-hand, and together they are broadly classified under Human Resources development. Among the evidence that will be reviewed are learnership contracts, certificates from training providers, invoices from training providers, etc.

5. PREFERENTIAL PROCUREMENT

This element shifts the focus away from the company's internal structure and assesses their suppliers. This element aims to widen market access for BEE enterprises, thereby integrating them into the mainstream of the economy. The measured entity is required to spend a certain percentage (depending on whether it is being scored on the generic or QSE scorecard) of its overall procurement spend on BEE-compliant enterprises. The Exempted Micro Enterprise (EME) is automatically recognised as BEE-compliant. Procurement from an EME is recognised at 100% (level 4), or at 110% (level 3) if the EME supplier is more than 50% black-owned. Some of the evidence that needs to be examined for verification purposes includes invoices from suppliers, proof of turnover, proof of ownership (black, black woman-owned), EME certificates, etc.

6. ENTERPRISE DEVELOPMENT

Enterprise Development aims at assisting and accelerating the development, sustainability and ultimate financial and operational independence of qualifying BEE enterprises. Enterprise Development, in essence, refers to what is being done to enhance the financial capacity of the beneficiary enterprise and what is being done to enhance the operational capacity of the beneficiary enterprise. If the beneficiaries of your Enterprise Development contributions are your suppliers, this will have a positive effect on their capacity and their resultant ability to deliver. On the generic scorecard, this overlap results in the opportunity to achieve bonus points. However, the beneficiaries of your support also have to be BEE-compliant. Amongst the evidence to be reviewed are the following documents: beneficiary's BEE / EME certificate, proof or receipt of the contribution, loan agreements and statements, etc.

7. SOCIO-ECONOMIC DEVELOPMENT (SED)

SED measures a company's level of social responsibility and investment in people, organisations or communities that are not directly related to the work of the company. Socio-economic development contributions provide a BEE conduit for reaching black people who live below the poverty line. The Codes require a certain percentage, depending on which scorecard you are being marked on, to be spent in a number of development areas, such as education, HIV, skills training, the environment, sport and arts and culture. At least 75% of the benefits must accrue to natural persons who are black and preferably those in rural communities or part of the government's rural development and urban renewal programmes. Amongst the evidence to be reviewed are the following documents: proof of percentage of black beneficiaries, proof or percentage flow of benefits to black beneficiaries, etc.

/...

Table 2: BEE-STATUS & PROCUREMENT RECOGNITION LEVELS

QUALIFICATION	BEE-COMPLIANCE STATUS	BEE procurement recognition level
≥100 POINTS on the BEE Scorecards	LEVEL ONE CONTRIBUTOR	135%
≥85 BUT <100 POINTS on the BEE Scorecards	LEVEL TWO CONTRIBUTOR	125%
≥75 BUT <85 POINTS on the BEE Scorecards or Exempted Micro Enterprise (EME) that is more than 50% Black-owned	LEVEL THREE CONTRIBUTOR	110%
≥65 BUT <75 POINTS on the BEE Scorecards or Exempted Micro Enterprise (EME) that is 50% or less Black-owned	LEVEL FOUR CONTRIBUTOR	100%
≥55 BUT <65 POINTS on the BEE Scorecards	LEVEL FIVE CONTRIBUTOR	80%
≥45 BUT <55 POINTS on the BEE Scorecards	LEVEL SIX CONTRIBUTOR	60%
≥40 BUT <45 POINTS on the BEE Scorecards	LEVEL SEVEN CONTRIBUTOR	50%
≥30 BUT <40 POINTS on the BEE Scorecards	LEVEL EIGHT CONTRIBUTOR	10%
<30 POINTS on the BEE Scorecards	Non-Complaint Contributor	0%

VERIFICATION

To ensure the reliability of the scoring the DTI encourages verification by a third party such as an accredited BEE verification agency.

On submission of the required documentation, a verification agency, using either the QSE or generic scorecard, as appropriate, will measure the company's progress in achieving compliance. Agencies must use the verification manual published in Gov. gaz. no 31255 of 18 July 2008 when performing BEE verification. If BEE-compliant, the agency will award the company with a certificate valid for one year.

The certificate will indicate the level of BEE-compliance, from level 1, highest, to level 8, lowest (see Table 2 above). The higher the level the more desirable the company becomes as a supplier, as procurement from a high-level supplier will in turn improve the buyer's BEE score on the preferential procurement element of their scorecard.

Further information will be found on the website, www.dti.gov.za ■

EXEMPTED MICRO ENTERPRISE (EME)

EXEMPTION AFFIDAVIT / DECLARATION

I, the undersigned, (full name) _____

ID no. _____ in my capacity as _____

at (Entity name) _____

Registration no _____ Registered Address _____

State under oath / solemnly declare:

- 1) I am an adult male / female and a director / shareholder / member of _____
- 2) A copy of my Identity Document is attached hereto marked 'Annexure _____'
- 3) a)* The Entity listed above started trading in the past 12 months.

Alternatively

b)* The projected annual turnover for the current year of operation has been calculated as R _____ which is less than the current EME threshold of five million rand turnover pa.

*(Delete as applicable)

- 4) I agree to notify the verification agency if / when the annual turnover is greater than the threshold mentioned in point 3 above.
- 5) I agree and accept that an accounting officer or verification agency may wish to verify the correctness of that stated above at any stage after signature of this affidavit / declaration by verifying this information with the Companies and Intellectual Property Registration Office (CIPRO) or such other entity as may be in position to be of assistance in such verification process.
- 6) I declare that information supplied in this affidavit / declaration is true and correct. I understand that providing false information or failing to provide the information required constitutes misrepresentation.
- 7) I know and understand the contents of this statement. I have / have no objection to taking the prescribed oath. I consider / do not consider the prescribed oath to be binding on my conscience.

Signed at _____ on the _____ day of _____ year _____

Full names _____ Signature _____

Signed and sworn before me at _____ on the _____ day of _____ year _____.
The deponent has acknowledged that he/ she knows and understands the contents of this declaration and has no objection to making it. This declaration was affirmed / sworn to before me and the deponent's signature placed thereon in my presence.

COMMISSIONER OF OATHS

Full names _____ Signature _____

Address _____

QUALIFYING SMALL ENTITY (QSE)

BEE-COMPLIANCE REQUIREMENTS

For BEE compliance the QSE (i.e. a business with an annual turnover of between R5m and R35m) may choose to be assessed on any four of the seven elements on the DTI's generic scorecard as set out in the tables below. Each element has a 25-point weighting, and the overall score out of 100 determines the status or level of BEE compliance. Refer to Table 2 in Form 9.9 for scoring. A verification agency can issue a certificate of compliance, valid for one year.

1. Ownership: Target – 25% black ownership

Individual Shareholder's Name	Percentage Holding %	Gender M/F	Population Group A/C/I/W/NSA*

In the case of other entities owning shares in your company, provide the share certificates, ID copies of black shareholders, and any agreements between shareholders that may affect the net value calculation.

2. Management Control: Target – 50% representation

Directors / Members / Top Managers	Job Title	Gender M/F	Population Group A/C/I/W/NSA*

This must correspond with the CM29 or CK1 or 2 documents, excluding Non-Executive Directors. Top managers means employees who serve on the board, undertake the day-to-day management, have overall responsibility for the overall financial management and are actively involved in developing and implementing strategy.

*A-African, C-Coloured, I-Indian, W-White, NSA-Non South African

3. Employment Equity: Target – 60% representation in 5 yrs, and 70% in 10 yrs

Occupational Level	No. of Male Employees						No. of Female Employees						Total
	African	Coloured	Indian	White	Non SA	Sub-Total	African	Coloured	Indian	White	Non SA	Sub-Total	
Top management - excluding non - executive Directors													
Senior management													
Professionally qualified and experienced specialists and mid-management													
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents													
Semi-skilled and discretionary decision making													
Unskilled and defined decision making													
TOTALS													

Consult the Employment Equity Act for definitions of the occupation levels, if the entity does not submit the Employment Equity Report.

It is advisable to keep training records for black women, as it becomes a requirement once the entity's turnover exceeds R35 million.

4. Skills Development: Target – 2% of Leviable Payroll

Name of Training Course	ABET Programme? Yes / No	No. of people trained	No. of Black people trained	Costs	
				Course Fees	Other costs
TOTAL TRAINING COSTS					

Keep invoices as proof of the training that occurred, and attendance registers.

5. Preferential Procurement: Target – 40% BEE suppliers in 5 yrs, and 50% in 10 yrs

Supplier Name	Level Contribution Status	Supplier a Value-Adding Supplier?	Recipient of Enterprise Development Contributions?	Total Procurement Spend - Last Financial Year
	(1 to 8)	Yes / No	Yes / No	R '000
TOTAL PREFERENTIAL PROCUREMENT SPEND				

Ensure that you have BEE certificates from the suppliers claimed throughout the year.

6. Enterprise Development: Target – 2% of NPAT

Name of Beneficiary	Nature of support provided	Beneficiary Category (A* or B*)	Value of contribution
TOTAL ENTERPRISE DEVELOPMENT CONTRIBUTIONS			

*Category A Beneficiaries are black owned Exempted Micro Enterprises (EMEs) and Qualifying Small Entities (QSEs).
 *Category B Beneficiaries are 50% black-owned entities with levels 1 – 8, and 25% black-owned with levels 1 – 6.

7. Socio-Economic Development: Target – 1% of NPAT

Name of Beneficiary	Nature of support provided	% Benefits going towards Black People	Value of contribution
TOTAL SOCIO-ECONOMIC CONTRIBUTIONS			

Beneficiaries need to be at least 75% black in order to be awarded the full amount contributed; anything less than that will be accepted on a pro-rata basis.

MARKETING PLAN

A large part of the success of your business is dependent on effective marketing. The marketing plan will help to ensure that you are pitching your product correctly and that you remain focused. It will also be a useful tool for preparing sales projections. Extensive market research is necessary in order to compile a precise and concise marketing plan. Both primary and secondary research should be done, paying particular attention to areas such as statistics, numbers and your sources. Be sure to file all the research, references and sources you have gathered in the preparation of your marketing plan as these may be useful for future reference.

The following areas should be outlined in your marketing plan.

ECONOMICS

The following aspects need to be considered:

- Industry information (specific to your company)
- Market size
- Percentage share of the market
- Demand in target market
- Trends in the market: growth, consumer preferences, product development
- Potential for growth
- Barriers you face entering the market, e.g. high capital / production / marketing costs; brand recognition; training / skills; technology and patents; unions; tariff barriers / quotas
- How you would overcome changes in the economy, government regulations of your industry.

PRODUCT

List the features and benefits of your product, i.e. any selling points / benefits to your customer. Note the difference between features and benefits: your product's features help sell the benefits. Will you offer after-sales services? Warranties, delivery, refund policies, etc?

CUSTOMERS

Thorough research is essential in this regard.

- Identify your target market(s) – create a demographic profile.
- Demographic profiles include information relating to: age, gender, location, income, social class, occupation, education, industry specific factors.
- Business demographics may include: industry, size, location, quality and technology, price preferences.
- Will you be selling to businesses or directly to the public? If you sell a consumer product through distributors / wholesalers / retailers, you need to consider the demographics of intermediaries as well as the end customer.

COMPETITION

Detailed answers to the following questions will provide you with the information you require.

- Who? What? – Which companies or products compete with you? List their names and relevant contact details.
- How? - Do they compete with only certain products or only in certain locations? Do you have indirect competition?

Compare your products / services with the competition. A comparative analysis table (*See Form 9.13*) provides useful information to assist you in drawing up an honest assessment of your strengths and weaknesses.

Using the information you have gleaned from the comparative analysis table, write a concise analysis on your competitive advantages and disadvantages.

NICHE

From the information you have gathered so far it should be clear to you where your company fits into the market, i.e. your unique corner of the market.

MARKETING STRATEGY

Advertising & Promotion

Assess the following aspects:

- What type of media would you use to market your product?
- Why does this type of media suit your specific product / service?
- How frequently will you advertise?

In order to get the most out of your promotional budget, consider the following ideas as well:

- Other methods of promotion - Will you use trade shows, expos, catalogues, dealer incentives, websites, word of mouth (how will you spread the word)?
- Image – How do you want your customer to see you?
- Graphic corporate identity – Do you need a logo, business cards, brochures or signage?

Promotional Budget

How much will you need to budget before start-up as well as for ongoing promotional campaigns?

Pricing

- Do you have a system or strategy for determining price?
- How do your prices compare with the average prices in your industry?
- How do your prices compare with your competition?
- Is price a very important factor?
- What are your customer service and credit policies?

Location

- Will your location affect your customers?
- Will your location help you to market your product better?
- Does the location of your competition affect you?

Distribution Channels

How will you sell your product / service? Consider the following avenues: retail, direct mail, wholesale, sales representatives, agents, independent representatives, contract representatives.

SALES FORECAST

Your sales forecast will include the figures for your marketing plan. A month-by-month projection should be prepared, based on factors such as historical sales, marketing strategy, market research and industry data. It is advisable to prepare two sales forecasts: one that is the Best Case Scenario of what you expect and one that is a Worst Case Scenario with the lowest estimate of figures that you can definitely reach. In this way you can prepare for all eventualities.

COMPETITIVE ADVANTAGES & DISADVANTAGES

Before you complete the table, give some honest thought to the various factors:

- “My Business” requires you to respond honestly about the way you stack up against competitors.
- “Strengths” and “Weaknesses” ask you to assess yourself in relation to a specific factor.
Is this factor a “pro” or a “con” for you?
- “Competitor A” and “Competitor B” involves an analysis of how your competitors fare against you.
- “Importance to customer” indicates your understanding of the relative importance of each factor to your customers. Rate them. :
1 = critically important, 2 = very important, 3 = must be considered, 4 = not important, 5 = totally insignificant
- The completed table should reveal your competitive advantages and disadvantages and your unique corner of the market.

Factor	My Business	Strengths	Weaknesses	Competitor A	Competitor B	Importance to Customer
Products						
Price						
Quality						
Selection						
Service						
Reliability						
Stability						
Expertise						
Company Reputation						
Location						
Appearance						
Sales Method						
Credit Policies						
Advertising						
Image						

MARKETING CAMPAIGN ORGANISER

BRIEF

Date of brief _____

Marketing team leader _____ Reporting to: _____

Marketing team _____

Marketing / advertising / PR agency _____

Product / Service to be marketed _____

Size and profile of the target market _____

Marketing campaign concept / message _____

Proposed dates: Campaign starts _____ Results in by: _____

Campaign budget	Total Planned Revenue	R	
	Total Planned Costs	R	
	Total Planned Profit	R	

OBJECTIVES & EXPECTED RESULTS

To sell current products / services to existing clients

To sell current products / services to new clients

To launch / market new products or services

To create / recreate a brand and design advertising

To grow the brand

To grow market share in current market

To open up new markets

To improve leads-to-sales conversion ratios

To reduce cost of sales

To increase revenue from:

higher volume of sales, higher average value of sales

To improve / test impact of **MARKETING** through:

endorsements, new brand, online, PR, press coverage, BEE contributions,

product launches / promotional events, sponsorships, branding, charities,

home marketing, competitions, hand out flyers, street vendors, other

To improve / test impact of **ADVERTISING** through:

newspapers, magazines, radio, tv, internet, e-mail, cds, sms,

brochures, billboards, buses, hot air balloons, other

To improve / test impact of **DIRECT MARKETING** for sales and leads through:

e-mails and sms's, fax broadcasts, mailshots, other

To improve / test impact of **SELLING** through:

sales reps / franchisees / agents, instore, telesales (incoming & outgoing), other

To promote / maintain goodwill and reputation of the product / service / organisation

Other

SALES & MARKETING ACTIVITIES to achieve objectives & expected results	Person responsible	Start & end dates	Costs	Revenue
<input type="checkbox"/> Review results of previous marketing to use lessons learned				
<input type="checkbox"/> Do additional market research as required and agree on target market areas				
<input type="checkbox"/> Agree on product range, pricing, special offers, free gifts, package deals, discounts for early bird, bulk discounts, agents discounts, payment terms, delivery options and charges				
<input type="checkbox"/> Obtain endorsements				
<input type="checkbox"/> Create / recreate brand / design and produce advertising for print, radio, tv, electronic media, in line with marketing campaign concept / message				
<input type="checkbox"/> Update website and get it listed upfront on popular / appropriate search engines (e.g. Google, Ananzi)				
<input type="checkbox"/> Public relations				
<input type="checkbox"/> Media / press coverage: print, radio, tv, online				
<input type="checkbox"/> Publicise BEE-Enterprise Development initiatives and Socio-Economic Development contributions that are made in line with marketing strategy				
<input type="checkbox"/> Product launches / promotional events				
<input type="checkbox"/> Sponsorships				
<input type="checkbox"/> Branding				
Advertising: <input type="checkbox"/> online on own website and other popular / appropriate websites (Facebook, Kalahari.net, Bidorbuy) <input type="checkbox"/> e-mails and sms's <input type="checkbox"/> newspapers, magazines, radio, tv <input type="checkbox"/> instore / indoors - signage, banners, displays, coupons, brochures <input type="checkbox"/> outdoors - signage, displays, banners, flyers <input type="checkbox"/> other				
Direct marketing: <input type="checkbox"/> e-mails and sms's <input type="checkbox"/> fax broadcasting <input type="checkbox"/> mailshots, letters, cds, brochures <input type="checkbox"/> other				

SALES & MARKETING ACTIVITIES to achieve objectives & expected results, <i>continued</i>	Person responsible	Start & end dates	Costs	Revenue
<input type="checkbox"/> Telesales - incoming & outgoing				
<input type="checkbox"/> Selling by sales reps				
<input type="checkbox"/> Selling instore / instore promotions				
<input type="checkbox"/> Set up new sales outlet points				
<input type="checkbox"/> Network marketing				
<input type="checkbox"/> Co-ordinate and integrate activities with related departments and suppliers to ensure results e.g. Staffing levels, incentivising and skills training for PR, cold calling, instore sales, telesales, incoming sales enquiries, follow-up, admin back-up, product quality control, stock levels, despatch, aftersales service, etc. – to promote happy customers, repeat sales, bigger orders.				
<input type="checkbox"/> Other				

REGULARLY TRACK & REVIEW EACH REVENUE-GENERATING ACTIVITY AGAINST FORECASTS

Adjust the marketing mix timeously, as required, to optimise results. Take corrective action in weaker areas (fix or withdraw) and maximise on strong areas, using budget and resources optimally, and re-forecast up and down accordingly. Submit campaign interim results and report on adjustments made to activities and budgets.

Marketing Activity 1: _____

Week / Month		1	2	3	4	5	6
Sales forecast	R						
Sales actual	R						
Sales re-forecast	R						
Costs forecast	R						
Costs actual	R						
Costs re-forecast	R						

Marketing Activity 2: _____

Week / Month		1	2	3	4	5	6
Sales forecast	R						
Sales actual	R						
Sales re-forecast	R						
Costs forecast	R						
Costs actual	R						
Costs re-forecast	R						

REVIEW FINAL OUTCOMES OF THE CAMPAIGN

Total campaign financial results against budget

Marketing Activity		1 _____	2 _____	3 _____	4 _____	Other	Total
Sales forecast	R						
Sales actual	R						
Difference	R						
Costs forecast	R						
Costs actual	R						
Difference	R						
Profit (loss)							

List successes of the campaign and all factors responsible

List failures and all factors responsible

List lessons learned to note for future campaigns

ORGANISATIONAL PROFILE

Trading name: _____

Year established: _____ Registration no. (if applicable): _____

VAT no. (if applicable): _____ BEE compliance score: _____

Industry / main line of business: _____

Manufacturer Wholesaler Distributor Retailer Importer Exporter Services

Current product range / services / areas of speciality:

Current geographical areas of operation:

Current target market / main clients / partnerships / endorsements:

Brief history – from when it started until now:

Vision / Mission:

P.T.O.

Special plans for the future:

Directors / Members / Managers (names and positions):

Branches / Tel:

Size of organisation by number of staff / turnover / other:

Membership of any self regulatory or accreditation bodies, and any code of conduct subscribed to:

Head office: physical address: _____

Postal address: _____

Main tel: _____ Main fax: _____

Main e-mail: _____ Website: _____

Date: _____

Date _____

Dear

LETTER OF INTRODUCTION

Please allow me to introduce myself. My name is _____
and I represent _____

I would like to give you a brief outline of the services / products we can offer you.

I believe of special interest to you will be:

The benefits to you will include:

For your interest I enclose my business card for easy reference, our organisational profile,
 my proposal, brochure/s, endorsements, our BEE certificate,

In order for me to better understand your needs and to give you an opportunity to consider the real benefits of dealing with us, I will be in touch again soon. In the meantime please do not hesitate to contact me by e-mail, fax or telephone regarding any services you might require.

I look forward to being of service to you.

Yours faithfully,

Date _____

Dear

INTRODUCING _____

We have been privileged to have you as one of our valued clients. Now, please allow me to introduce to you an exciting new product / service.

I believe of special interest to you will be:

The benefits to you will include:

For your interest I enclose my business card for easy reference, our updated organisational profile, my proposal, brochure/s, endorsements, price lists and delivery details, product specifications, _____

In order for us to best cater for your needs, and to give you an opportunity to consider the extra benefits of our new offering, I will be in touch again soon. In the meantime please do not hesitate to contact me by e-mail, fax or telephone regarding this or any other aspect of our service.

I look forward to strengthening our business dealings with you.

Yours faithfully,

PROMOTIONAL EVENT ORGANISER

Date of brief:

Purpose of event / main message

Event owner, contact person, communications manager

Target audience

No. of delegates

Proposed dates, duration of event

Venues

Type of event: Conference, dinner, etc

Theme

Programme of events

Status update method

TOTAL BUDGET

SOURCES OF REVENUE

ACTION		RESPONSIBLE PERSON	DUE DATE
INVITATIONS	Guest list composition		
	Customers		
	Shareholders		
	Staff		
	Government / Key accounts		
	Press		
	Book diaries (Chairman, CEO)		
	Invitation distribution		
	RSVP		
	Confirmation letters		
	BUDGET		
PRINTING	Invitations		
	Menu cards		
	RSVP sheets / cards		
	Placecards		
	Nametags		
	Programmes		
	Thank you cards		
	Maps / Route map		
	Brochures		
	Indemnity forms		
	Price cards		
	BUDGET		

ACTION		RESPONSIBLE PERSON	DUE DATE
TRAVEL	Flights		
	Company plane / Charter		
	Travel advances		
	Accommodation		
	Staff accommodation & transport		
	Vehicle hire		
	Parking / Executive carport		
	Tollgates		
	Transfers e.g. airport		
	Drivers & requirements		
	Coaches		
	Hostesses (airport / coach)		
	Luggage handling		
	Excess luggage voucher		
	Cross border travel		
	BUDGET		
VENUE	Hire / Booking		
	Book set-up days		
	Directional map		
	Final numbers		
	Parking (no. of bays)		
	Dress up of venue		
	Ramps required		
	Door measurements		
	Flag poles available		
	Ceiling to hang items		
	Registration area		
	Registration table		
	Seating arrangements		
	Stage / Dance floor		
	Exhibition / Display area		
	Business centre		
	Breakaway / Meeting rooms		
	Storage facilities		
	Restrooms / Toilets		
	Security		
	BUDGET		
TABLE DÉCOR	Table décor		
	Table / Chair hire		
	Chair covers / Table cloths / Overlays		
	Table numbers / Flowers / Candles		
		BUDGET	

ACTION		RESPONSIBLE PERSON	DUE DATE
CATERING	Menu selection		
	Fruit platter		
	Special dietary requirements		
	Refreshments		
	Lunch packs		
	Bar / Wine selection		
	Waiters / Dress		
	BUDGET		
PROMOTIONAL	Sponsorships		
	Advertising		
	Flags / Banners		
	Notepads & pens		
	Promotional keyrings, caps, etc		
	Gifts & gift wrapping		
	Branding		
	Lapel badges		
	Uniforms		
	Directional signage		
	Corporate signage		
	Umbrellas		
	Display material		
BUDGET			
PRESS LAUNCH	Media communication		
	Press kits, CD Roms		
	Route		
	BUDGET		
PRODUCTION	Presentation		
	Equipment		
	Entertainment / Music		
	MC / Guest speakers		
	Script		
	Technical support		
	BUDGET		
EXHIBITION	Stand design / Layout		
	Stand cleaning		
	Key Management / Spare keys		
	Duty roster		
	Entry tickets		
	BUDGET		

ACTION		RESPONSIBLE PERSON	DUE DATE
VIP	Security / Protection		
	VIP parking		
	Protocol		
	Emergency plan		
	Evacuation plan		
	BUDGET		
CONFERENCE	Facility's equipment		
	Equipment requirements		
	Panel table		
	Mints / Cordials		
	Technical support		
	BUDGET		
GENERAL	Inform communications department		
	Clipboards		
	Contact numbers list		
	Emergency numbers		
	Pre-conference meeting		
	Rehearsal / Dry run		
	De-brief		
	Staff info packs		
	Background music		
	TV crew		
	Photography		
	Medical assist / First aid kit		
	Packing / Shopping list		
	Events / Time sheet		
	Partner's program requirements		
	Group activities		
	Thank you letters		
	BUDGET		

NOTES

EVENT REVIEW

BASIC ADVERTISEMENT CHECKLIST

Minimum standards every ad should meet:

Check your proposition for maximum appeal

Yes / No

- Item or event right for your target audience?
- Excellent value on popular merchandise?
- All possible name appeal?
- Would additional items expand appeal?
- Proposition clear, easily grasped?

Check your headline for attention value

Yes / No

- Best selling idea in headline?
- Use of 5 great proven headline ingredients?
 - Promise benefits?
 - Use of news?
 - Pertinent appeal to curiosity?
 - Favourable product mention?
 - Mention prospect and/or prospect's interest?

Check your body copy for interest and persuasion

Yes / No

- Immediately enlarge on headline promise?
- Benefits clearly presented?
- Benefits supported by product points?
- Exclusive and only features presented?
- Popularity claimed and demonstrated?
- Confidence built with assurances, proof?
- Value conveyed positively, definitely?
- Excuses, reasons for buying included?
- Choosing, buying made easy?
- Sell your product / company alone?
- Bid for action? Urgency? Special Offer?
- Headline idea repeated at least twice?
- All questions and objections answered?
- All vital facts included?
- Language simple, uncomplicated?
- Honest, factual, service-rendering?
- If read to a prospect would it sell?
- Would an enquiry coupon help?

Check your layout and art for clear communication qualities

Yes / No

- Illustrations attract favourable attention?
- Illustrations aid perception?
- Logos / Branding?
- Layout simple, uncluttered?
- Elements in logical sequence?
- Simple borders, type styles?
- Type large enough, not too wide or narrow?
- All copy easily legible and not obstructed?
- Long copy broken with crossheads?
- Entire ad easy and inviting to read?
- Headline, subheads, illustrations tell a story?
- In character with your company?
- Proofread?

WEEKLY PRIORITY AGENDA

Name

For the week from:

to:

Still to Do	Job number	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total

DAILY TIME SHEET / **OVERTIME**

Name		Date	Department	Place
Time	Job	Comments		
06:00				
07:00				
08:00				
09:00				
10:00				
11:00				
12:00				
01:00				
02:00				
03:00				
04:00				
05:00				
06:00				
07:00				

Signed _____ Approved _____

WEEKLY TIME SHEET / **OVERTIME**

Name			Date		Department		Place
Time	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
06:00							
07:00							
08:00							
09:00							
10:00							
11:00							
12:00							
01:00							
02:00							
03:00							
04:00							
05:00							
06:00							
07:00							

Signed _____ Approved _____

Monthly Chart

Subject

Year

Month

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

YEAR CHART

Topic

Day	January	February	March	April	May	June	July	August	September	October	November	December
1												
2												
3												
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17												
18												
19												
20												
21												
22												
23												
24												
25												
26												
27												
28												
29												
30												
31												

YEAR PLANNER FOR _____	
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

PROBLEM SOLVER

1. What is the problem?

2. What are the causes of the problem?

2.1 _____

2.2 _____

2.3 _____

2.4 _____

2.5 _____

2.6 _____

3. What are the possible solutions?

3.1 _____

3.2 _____

3.3 _____

3.4 _____

3.5 _____

3.6 _____

4. What is the best possible solution?

5. What action is being taken?

MEMORANDUM	Date
To	From
Signed	

MEMORANDUM	Date
To	From
Signed	

FAX COVER NOTE

To: Fax: Tel:

Company: Your Ref:

From: Fax: Tel:

Company: My Ref:

Urgent Please Reply For Review Please Comment Please Recycle

Subject

Message

Time: Date: No of pages: (Incl this one)

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FAX COVER NOTE

To: Fax: Tel:

Company: Your Ref:

From: Fax: Tel:

Company: My Ref:

Urgent Please Reply For Review Please Comment Please Recycle

Subject

Message

Time: Date: No of pages: (Incl this one)

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FAX COVER SHEET

To: Fax: Tel:

Company: Your Ref:

From: Fax: Tel:

Company: My Ref:

Urgent Please Reply For Review Please Comment Please Recycle

Subject:

MESSAGE

[Multiple horizontal lines for message content]

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AGENDA

MEETING

Time	To be present
Date	
Venue	
Subject	
1. Welcome	Time Allocation
2. Attendance and apologies	
3. Confirmation of the minutes of the previous meeting	_____
4. Matters arising	
a. _____	
b. _____	
c. _____	
d. _____	
5. Topics for action	
a. _____	
b. _____	
c. _____	
d. _____	
e. _____	
f. _____	
g. _____	
h. _____	
6. General _____	

7. Next meeting: time, date, venue	
8. Closing	

MINUTES OF MEETING

MINUTES OF THE _____ MEETING

Time _____ Date _____ Venue _____

Present

Apologies

	Action
1. Welcome	
2. Attendance and apologies	
3. Confirmation of the minutes of the previous meeting	
4. Matters arising	
a. _____	
b. _____	
c. _____	
d. _____	
5. Topics for action	
a. _____	
b. _____	
c. _____	
d. _____	
e. _____	
f. _____	
g. _____	
h. _____	
6. General _____	

7. Next meeting: time, date, venue	
8. Closing	

TELEPHONE MESSAGE		Date
For		Time
Mr/Ms		
of		
Tel		
	Telephoned	Please call
	Returned your call	Called to see you
	Will call again	Visited your office
	Wants to see you	URGENT
Message		
Message taken by		

TELEPHONE MESSAGE		Date
For		Time
Mr/Ms		
of		
Tel		
	Telephoned	Please call
	Returned your call	Called to see you
	Will call again	Visited your office
	Wants to see you	URGENT
Message		
Message taken by		

TELEPHONE MESSAGE		Date
For		Time
Mr/Ms		
of		
Tel		
	Telephoned	Please call
	Returned your call	Called to see you
	Will call again	Visited your office
	Wants to see you	URGENT
Message		
Message taken by		

TELEPHONE MESSAGE		Date
For		Time
Mr/Ms		
of		
Tel		
	Telephoned	Please call
	Returned your call	Called to see you
	Will call again	Visited your office
	Wants to see you	URGENT
Message		
Message taken by		

CIRCULATION CHIT		Date	
From			
To	Initial	Date	
Action required			
	Read	Return	
	Handle	Keep / Discard	
	Approve	See me	
	Forward		

CIRCULATION CHIT		Date	
From			
To	Initial	Date	
Action required			
	Read	Return	
	Handle	Keep / Discard	
	Approve	See me	
	Forward		

CIRCULATION CHIT		Date	
From			
To	Initial	Date	
Action required			
	Read	Return	
	Handle	Keep / Discard	
	Approve	See me	
	Forward		

CIRCULATION CHIT		Date	
From			
To	Initial	Date	
Action required			
	Read	Return	
	Handle	Keep / Discard	
	Approve	See me	
	Forward		

DELIVERY NOTE

To _____ Delivery address _____

Purchaser VAT no. _____

Supplier VAT no. _____ Tel _____

Your order number	Goods sent per	Date sent	Invoice date	Invoice number
Quantity	Description			

Goods received in good condition Date _____

Name _____ Signature _____

STATEMENT					Date	
From:						
VAT No.		Contact		Tel		
To:						
VAT No.		Contact		Tel		
Account no			Terms	Credit limit		Page no
Your ref						
Date	Details / Invoice no		Debit	Credit		Balance
	Balance brought forward					
120 Days	90 Days	60 Days	30 Days	Current		Now due

STATEMENT					Date	
From:						
VAT No.		Contact		Tel		
To:						
VAT No.		Contact		Tel		
Account no			Terms	Credit limit		Page no
Your ref						
Date	Details / Invoice no		Debit	Credit		Balance
	Balance brought forward					
120 Days	90 Days	60 Days	30 Days	Current		Now due

DELIVERY NOTE		Date
		No
From	Contact	
Tel/Fax	E-mail	
Invoice no.	Supplier VAT no.	
To	Att	
Delivery address		
Tel/Fax	E-mail	
Order no.	Purchaser VAT no.	
Goods sent per	Date	
Ref	Quantity	Description
Parcels	Received in good condition	<u>Date</u> <u>Time</u>
	Name _____	
	Designation _____	
		Signature _____

DELIVERY NOTE		Date
		No
From	Contact	
Tel/Fax	E-mail	
Invoice no.	Supplier VAT no.	
To	Att	
Delivery address		
Tel/Fax	E-mail	
Order no.	Purchaser VAT no.	
Goods sent per	Date	
Ref	Quantity	Description
Parcels	Received in good condition	<u>Date</u> <u>Time</u>
	Name _____	
	Designation _____	
		Signature _____

CREDIT NOTE		Date	
		No	
From	Contact		
Tel/Fax	E-mail		
Invoice no.	Supplier VAT no.		
To	Att		
Tel/Fax	E-mail		
Order no.	Purchaser VAT no.		
Description	Amount		
Credit in respect of			
VAT @	%		
Total Credit			

CREDIT NOTE		Date	
		No	
From	Contact		
Tel/Fax	E-mail		
Invoice no.	Supplier VAT no.		
To	Att		
Tel/Fax	E-mail		
Order no.	Purchaser VAT no.		
Description	Amount		
Credit in respect of			
VAT @	%		
Total Credit			

JOB ESTIMATE

Client					Estimate no				
Address					Date of estimate				
Contact name					Valid for				
Cell					Prepared by				
Tel		Fax			Start date		Complete date		
E-mail									
Job description									
	Materials	Qty	@	Total cost		Labour	Hrs	Rate	Total cost
1					1				
2					2				
3					3				
4					4				
5					5				
6					6				
7					7				
8					8				
9					9				
10					10				
11					11				
12					12				
13					13				
14					14				
15					15				
16					Total amount				
17									
18									
19					Miscellaneous				Total cost
20					1				
21					2				
22					3				
23					4				
24					5				
25					Total amount				
26									
27					Fixed Costs				
28					Total Materials				
Total amount					Total Labour				
					Total Miscellaneous				
					Total Costs				
					Mark-up @ %				
					VAT @ %				
					Cost to client				
Approved by									

JOB CARD			No	
Customer's Name			Date received	
Address			Instructions taken by	
Contact	Cell		Date required	
Tel	Fax			
			Parts / materials	Labour
			Amount	Amount
Work done by	Time started	Time finished	Total parts	Total labour

JOB CARD			No	
Customer's Name			Date received	
Address			Instructions taken by	
Contact	Cell		Date required	
Tel	Fax			
			Parts / materials	Labour
			Amount	Amount
Work done by	Time started	Time finished	Total parts	Total labour

TELEPHONE ORDER				Date	
Order taken by				Time	
Order placed by		Designation			
Company					
Postal Address					
Tel			Fax		
E-mail			VAT No.		
	C.O.D.	Order no	Acc no	Ref	
Credit card no		Type		Exp. date	
Quantity	Description of goods			Amount	
			Sub total		
			VAT @ %		
			TOTAL		
Delivery address					
Delivery date					
Action taken					

TELEPHONE ORDER				Date	
Order taken by				Time	
Order placed by		Designation			
Company					
Postal Address					
Tel			Fax		
E-mail			VAT No.		
	C.O.D.	Order no	Acc no	Ref	
Credit card no		Type		Exp. date	
Quantity	Description of goods			Amount	
			Sub total		
			VAT @ %		
			TOTAL		
Delivery address					
Delivery date					
Action taken					

COUNTER SALE		Date	Time
		Taken by	
Order placed by		Designation	
Company			
Postal Address			
Tel		Fax	
E-mail		VAT No.	
<input type="checkbox"/> C.O.D	<input type="checkbox"/> Cash	Acc no	Order no
Credit card no		Type	Exp date
Quantity		Amount	
		VAT @	%
		TOTAL	
Delivery address			
Delivery date			
Action taken <input type="checkbox"/> Paid <input type="checkbox"/> To be paid			
Goods			
<input type="checkbox"/> Received	<input type="checkbox"/> To collect	<input type="checkbox"/> To deliver	Signature

COUNTER SALE		Date	Time
		Taken by	
Order placed by		Designation	
Company			
Postal Address			
Tel		Fax	
E-mail		VAT No.	
<input type="checkbox"/> C.O.D	<input type="checkbox"/> Cash	Acc no	Order no
Credit card no		Type	Exp date
Quantity		Amount	
		VAT @	%
		TOTAL	
Delivery address			
Delivery date			
Action taken <input type="checkbox"/> Paid <input type="checkbox"/> To be paid			
Goods			
<input type="checkbox"/> Received	<input type="checkbox"/> To collect	<input type="checkbox"/> To deliver	Signature

ACKNOWLEDGEMENT OF ORDER

To		From
Date	Your order no	Date of order
Expected delivery date	Goods to be sent by Road / Rail / Mail / Air / Sea	Our invoice no
Remarks		

ACKNOWLEDGEMENT OF ORDER

To		From
Date	Your order no	Date of order
Expected delivery date	Goods to be sent by Road / Rail / Mail / Air / Sea	Our invoice no
Remarks		

ACKNOWLEDGEMENT OF ORDER

To		From
Date	Your order no	Date of order
Expected delivery date	Goods to be sent by Road / Rail / Mail / Air / Sea	Our invoice no
Remarks		

NOTIFICATION OF DESPATCH OF GOODS

To

From

Your order has now been despatched. Please advise if the goods are not received soon.

Date	Your order no	Date of enquiry if made
Date order despatched	Goods sent by Road / Rail / Mail / Air / Sea	Our invoice no

Remarks

NOTIFICATION OF DESPATCH OF GOODS

To

From

Your order has now been despatched. Please advise if the goods are not received soon.

Date	Your order no	Date of enquiry if made
Date order despatched	Goods sent by Road / Rail / Mail / Air / Sea	Our invoice no

Remarks

NOTIFICATION OF DESPATCH OF GOODS

To

From

Your order has now been despatched. Please advise if the goods are not received soon.

Date	Your order no	Date of enquiry if made
Date order despatched	Goods sent by Road / Rail / Mail / Air / Sea	Our invoice no

Remarks

OUT OF STOCK NOTIFICATION

We regret we are temporarily out of stock of the item(s) listed below.
We expect to make delivery as stated below unless we hear from you immediately.

To		From	
Date	Your order no	Date of order	Expected date of despatch

Out of stock items:

OUT OF STOCK NOTIFICATION

We regret we are temporarily out of stock of the item(s) listed below.
We expect to make delivery as stated below unless we hear from you immediately.

To		From	
Date	Your order no	Date of order	Expected date of despatch

Out of stock items:

OUT OF STOCK NOTIFICATION

We regret we are temporarily out of stock of the item(s) listed below.
We expect to make delivery as stated below unless we hear from you immediately.

To		From	
Date	Your order no	Date of order	Expected date of despatch

Out of stock items:

COMPLAINT: NON DELIVERY

To

From

We have not yet received the goods listed below and need them urgently. Please expedite delivery or inform us immediately if you are unable to do so.

Date	Date of our order	Our order number
------	-------------------	------------------

Goods not delivered

COMPLAINT: NON DELIVERY

To

From

We have not yet received the goods listed below and need them urgently. Please expedite delivery or inform us immediately if you are unable to do so.

Date	Date of our order	Our order number
------	-------------------	------------------

Goods not delivered

COMPLAINT: NON DELIVERY

To

From

We have not yet received the goods listed below and need them urgently. Please expedite delivery or inform us immediately if you are unable to do so.

Date	Date of our order	Our order number
------	-------------------	------------------

Goods not delivered

CHEQUE REQUISITION / EFT REQUEST

Date	Requested by	Department	Account to be debited
Payee		Amount	
A/c no.	Branch	A/c type	
Reason for payment			
Passed by	Signature	Cheque no / EFT ref	Cash book ref

CHEQUE REQUISITION / EFT REQUEST

Date	Requested by	Department	Account to be debited
Payee		Amount	
A/c no.	Branch	A/c type	
Reason for payment			
Passed by	Signature	Cheque no / EFT ref	Cash book ref

CHEQUE REQUISITION / EFT REQUEST

Date	Requested by	Department	Account to be debited
Payee		Amount	
A/c no.	Branch	A/c type	
Reason for payment			
Passed by	Signature	Cheque no / EFT ref	Cash book ref

RECEIPT

Date _____

Received from _____

the sum of R _____ (cash / cheque / postal order) _____

Rand

cents

for _____

without prejudice to rights.

WITH THANKS

RECEIPT

Date _____

Received from _____

the sum of R _____ (cash / cheque / postal order) _____

Rand

cents

for _____

without prejudice to rights.

WITH THANKS

RECEIPT

Date _____

Received from _____

the sum of R _____ (cash / cheque / postal order) _____

Rand

cents

for _____

without prejudice to rights.

WITH THANKS

SALES PROSPECTS

Name

Sales area

Sales code

Company

Address

Tel

Fax

Website

Contact 1

Contact 2

Lead from

Remarks

Action

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Quote
Visit
Presentation

Company

Address

Tel

Fax

Website

Contact 1

Contact 2

Lead from

Remarks

Action

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Quote
Visit
Presentation

Company

Address

Tel

Fax

Website

Contact 1

Contact 2

Lead from

Remarks

Action

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Quote
Visit
Presentation

Company

Address

Tel

Fax

Website

Contact 1

Contact 2

Lead from

Remarks

Action

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Quote
Visit
Presentation

Company

Address

Tel

Fax

Website

Contact 1

Contact 2

Lead from

Remarks

Action

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Quote
Visit
Presentation

Company

Address

Tel

Fax

Website

Contact 1

Contact 2

Lead from

Remarks

Action

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Quote
Visit
Presentation

BUSINESS CARD RECORD

**AFFIX
BUSINESS CARD
HERE**

When and where met

Remarks

BUSINESS CARD RECORD

**AFFIX
BUSINESS CARD
HERE**

When and where met

Remarks

BUSINESS CARD RECORD

**AFFIX
BUSINESS CARD
HERE**

When and where met

Remarks

BUSINESS CARD RECORD

**AFFIX
BUSINESS CARD
HERE**

When and where met

Remarks

NEW CUSTOMER INFORMATION

Customer's name	Date	
Physical address		
Delivery address		
Postal address		
Tel	Fax	
E-mail	Website	
Type of business		
Contact person (name and title)		
Bank	Tel	
Bank address		
Bank account no		
Auditor		
REFERENCES Company name	Contact	Tel
1.		
2.		
3.		
4.		
Enquiry into references done by		
Date of enquiries		
Results of enquiries		
Date credit application completed by customer		
Date surety signed		
Remarks	Our salesperson	

CLIENT PROGRESS REPORT

Company name		Contact 1	
Physical address		Cell	
Postal address		E-mail	
		Contact 2	
		Cell	
		E-mail	
Tel	Fax	Salesperson	Sales code
Date	Remarks		Follow-up date

CLIENT PROGRESS REPORT

Company name		Contact 1	
Physical address		Cell	
Postal address		E-mail	
		Contact 2	
		Cell	
		E-mail	
Tel	Fax	Salesperson	Sales code
Date	Remarks		Follow-up date

SALES CALL SUMMARY

Salesperson

Area

Sales Manager

Week ending

Date Contacted	Customer	Contact	Cell/Tel	Fax	E-mail
Comments					
Comments					
Comments					
Comments					
Comments					
Comments					
Comments					
Comments					
Comments					

SALARY ADVICE		Employer's Name and Address	
Employee's Name			
Employee's Occupation			
Department			
Week / Month Ending	PAYE Code	Amount	
Salary / Wages Rate / Hour _____ x _____ Hours Worked			
Bonus			
Commission			
Car Allowance			
Overtime Rate / Hour _____ x _____ Hours Worked			
GROSS TOTAL			
Deductions	PAYE		
	UIF		
	Pension		
	Provident Fund		
	Medical Aid		
	Other		
TOTAL DEDUCTIONS			
NET PAY			
Paid by <input type="checkbox"/> Cash <input type="checkbox"/> Cheque No <input type="checkbox"/> Bank Transfer			
Remarks			

SALARY ADVICE		Employer's Name and Address	
Employee's Name			
Employee's Occupation			
Department			
Week / Month Ending	PAYE Code	Amount	
Salary / Wages Rate / Hour _____ x _____ Hours Worked			
Bonus			
Commission			
Car Allowance			
Overtime Rate / Hour _____ x _____ Hours Worked			
GROSS TOTAL			
Deductions	PAYE		
	UIF		
	Pension		
	Provident Fund		
	Medical Aid		
	Other		
TOTAL DEDUCTIONS			
NET PAY			
Paid by <input type="checkbox"/> Cash <input type="checkbox"/> Cheque No <input type="checkbox"/> Bank Transfer			
Remarks			

COMMISSION CLAIM

Name _____

Period from _____ to _____

Division _____

Date submitted _____

		Amount
1.	COMMISSION	
A.	REVENUE	
(i)	Current month	Amount
	Target	_____
	Achievement	_____
	Excess (shortfall)	_____
	Revenue in excess of target _____ X _____ % _____ =	=
	(ii) Prior month's adjustments	
	Revenue _____ =	=
B.	VOLUME	Units
(i)	Current Month	_____
	Target	_____
	Achievement	_____
	Excess (shortfall)	_____
	Achievement of volume target _____ =	=
	(ii) Prior month's adjustments	
	Volume _____ =	=
2.	OTHER CLAIMS	

	_____ =	=
	TOTALS FOR THE MONTH =	=

Signature of claimant _____

Date _____

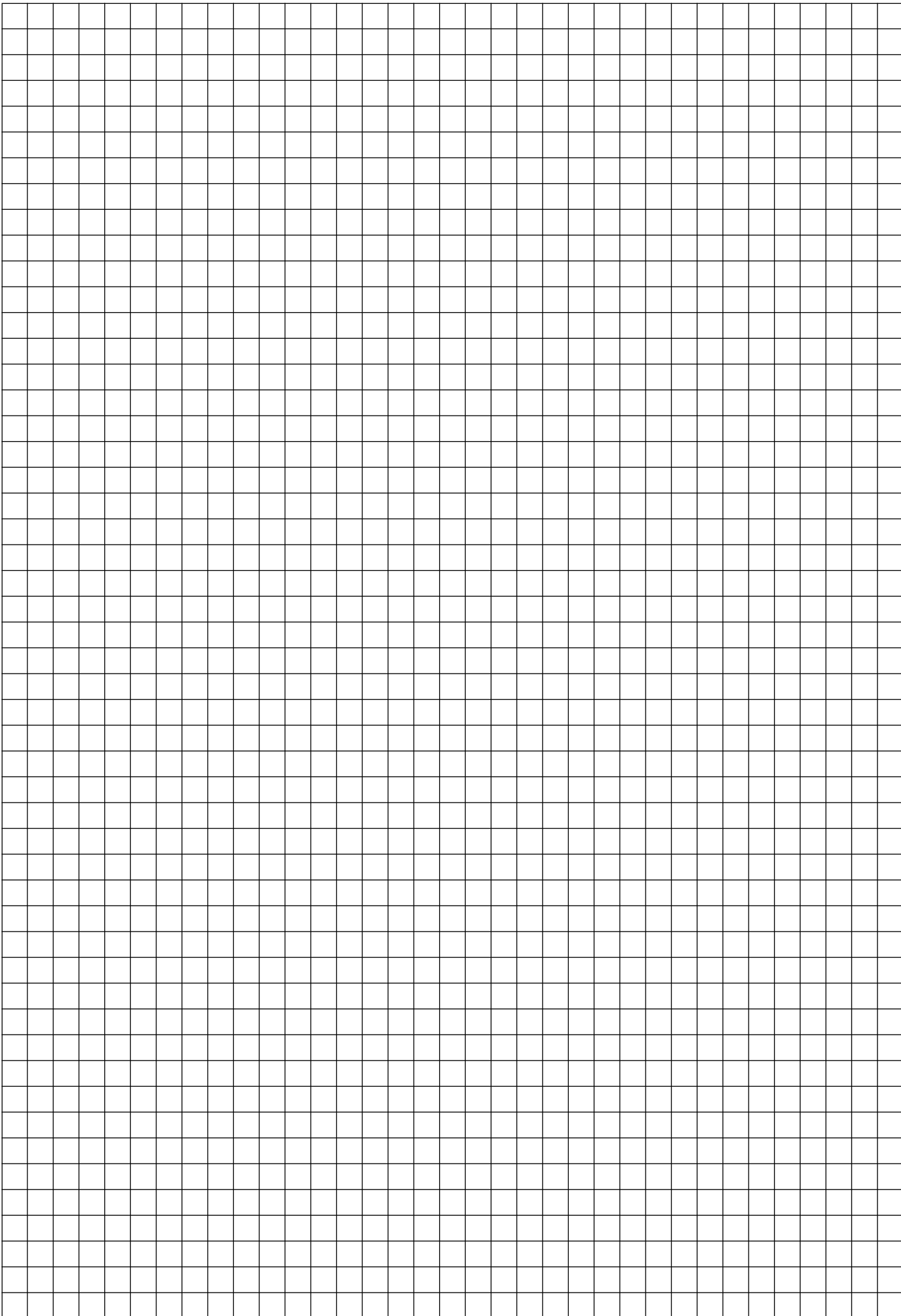
Signature of accountant _____

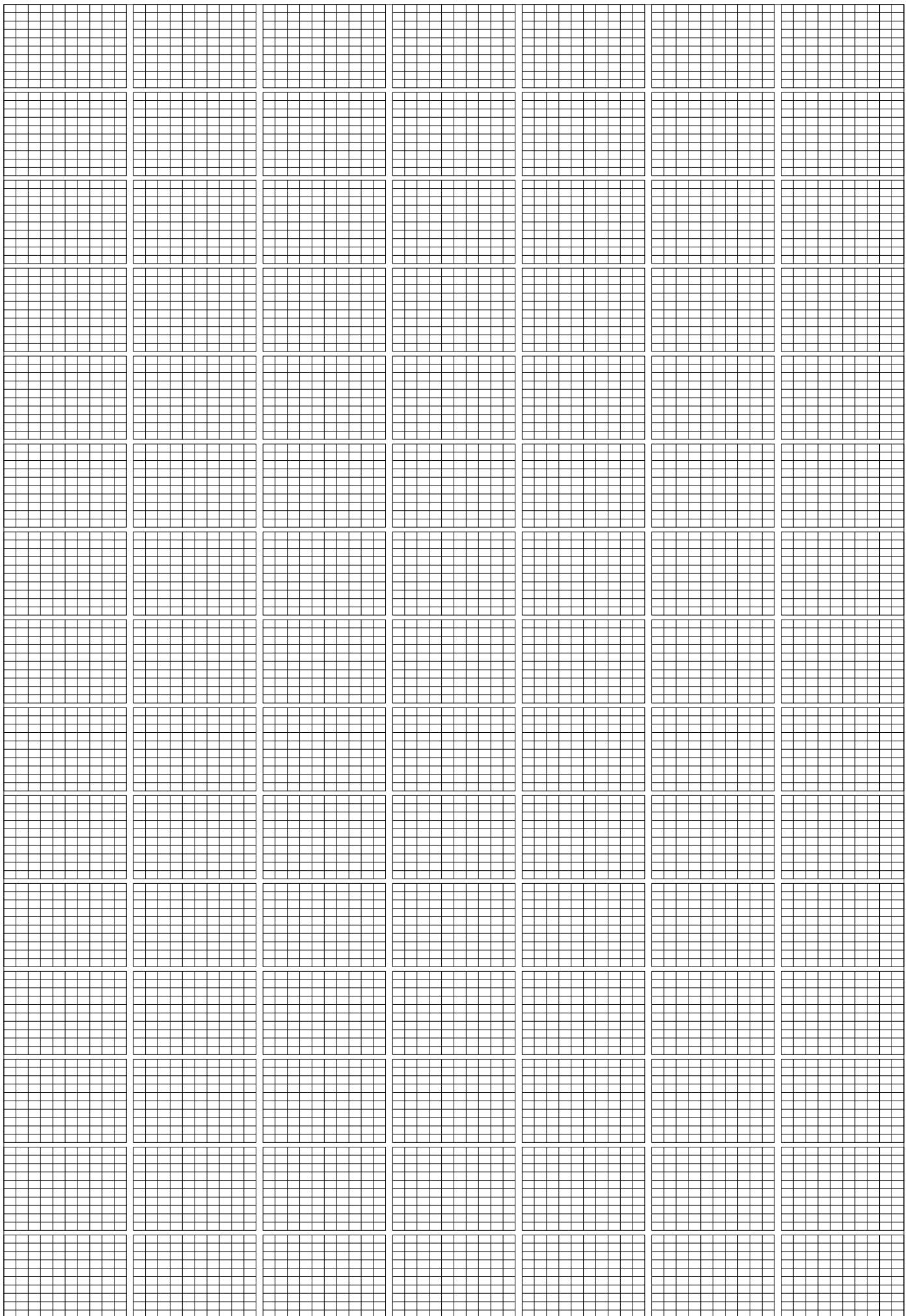
Date _____

Approved by _____

Date _____

All payments are subject to the company's standard terms and conditions.





PERSONAL

SECTION

10

PERSONAL

Section 10

These forms affect the individual in his/her relationships, both social and legal, with other individuals.

In matters of defamation, a letter of apology is usually the reparation best sought by the offended party. If, however, more than pride is hurt, e.g. damages have been incurred through loss of income, then the services of an attorney should be considered.

Similarly, the services of an attorney should be considered for purposes of estate planning if there is a substantial estate involved or if special provisions are required to be inserted, e.g. usufruct (right of use), bequest or an elaborate trust. There are strict formalities required for the signing of a will. No beneficiary, executor or trustee may sign as a witness. A witness must be over 14 years of age and capable of giving evidence in Court. All parties must sign each page in full (i.e. initialling is not allowed) in the presence of each other.

Form 10.1 **Deed of Trust** (4 pages)

An *inter vivos* (between living persons) trust is created when a settlor or donor, during his/her lifetime, hands over his/her assets to a trustee who controls them for the benefit of a beneficiary. It is distinguishable from a trust *mortis causa* (by cause of death), which is created in a will by a testator which only comes into existence after the death of the testator and which is subject to the terms of the will. The Trust Property Control Act 57 of 1988, stipulates that a trustee must be authorised in writing to act as a trustee by the Master of the High Court. Tax benefits and the shielding of one's assets from creditors are major reasons for the creation of an *inter vivos* (between living persons) trust. Usually the beneficiary in his/her personal capacity, as opposed to the trustee (who is decreed by the Income Tax Act to be a "representative taxpayer" since a trust does not have a legal personality), is taxed on income from the trust. This occurs when all the income accrues to the beneficiary. The most common type of trust is a family trust, which is the trust contained in the precedent. Other types of trusts encountered are educational, ecclesiastical and charitable trusts. Tax free donations of up to R100 000 per annum are now allowed. This could benefit a family trust.

The trust deed must be lodged with the Master of the High Court for registration purposes together with his fee of R100,00. A trust can also be created in a will, known as a testamentary or will trust. For setting up an international offshore trust it is suggested that an expert be consulted.

Form 10.2 **Household / Office Contents Inventory for Insurance** (2 pages)

This form can be very useful to help you establish correct figures to obtain adequate insurance coverage for the proper value of your assets. Should an unforeseen disaster occur like a fire or robbery, it is necessary to know the accurate replacement value for your possessions. It is advisable to include sales receipts, serial numbers, photographs or even a video along with your household / office inventory list. For safety it is recommended that your inventory list be kept off your premises in a safe place. A sworn valuation is necessary to prevent your insurer from making a deduction due to an under-valuation. This is particularly important for jewellery and immovable property. Insurance companies provide their own assessed valuations of the contents.

Form 10.3 **Antenuptial Contract: Application of the Accrual System** (2 pages)

If parties marry in South Africa without an antenuptial contract, they are married in

community of property (MICP) whereby their estates become one and they share profits and losses. On dissolution of the marriage by death or divorce each party is entitled to an equal share of the net estate. The opposite result can be agreed to by entering into a pre-marriage or antenuptial contract. Certain requirements must be complied with in entering into an antenuptial contract. It can only be entered into before a Notary Public before the marriage and it must thereafter be registered in a deeds registry by the Notary Public within three months after its execution. The Notary Public will provide the appropriate contract after consulting with the parties. There are two types of antenuptial contract. Section 2 of the Matrimonial Property Act 88 of 1984 provides that every antenuptial contract entered into after 1 November 1984 is subject to the accrual system except in so far as that system is expressly excluded by the antenuptial contract. The accrual system amounts to a deferred community of gains. On dissolution of the marriage the net increases of each estate are added up and divided equally. There is therefore a pooling of accruals. The form provided is a simple contract which can be expanded upon by the parties in consultation with the Notary Public.

Form 10.4 Antenuptial Contract: Excluding the Accrual System (2 pages)

This is a simple antenuptial contract providing for no community of profit and loss. It also excludes the accrual system and it deals with donations between spouses.

Form 10.5 Divorce Settlement (5 pages)

This is a comprehensive settlement which a husband and wife sign after summons has been served. Naturally, some of the provisions may not be applicable or suitable and if you cannot adapt the settlement suitably, an attorney should be consulted. Nonetheless, it contains the most usual types of provisions. It is advisable to do your divorce through an attorney. The draft settlement will hopefully assuage the anxieties before an attorney is consulted and prepare you for your negotiations at the correct time after summons. The court is not prepared to sanction a divorce settlement if it has been signed before service of summons. There is nothing preventing the parties from agreeing in principle to the settlement provisions prior to service of summons. The formal settlement agreement will confirm the earlier negotiations.

Form 10.6 Defamation – Demand

This letter, with its apology annexed, is a demand to the defamer which should be sent by registered post. An attorney should be consulted if damages involving more than infringement of dignity are involved.

Form 10.7 Defamation Apology

The apology must accompany the letter to the defamer. You are to ensure that the wording of the apology gives satisfaction to you. The specimen enclosed should be sufficient in most instances.

Form 10.8 Will of Unmarried Person

This is a simple will. There are strict formalities required for the signing of a will. No beneficiary, executor or trustee may sign as a witness. A witness must be over 14 years of age and capable of giving evidence in Court. All parties must sign each page in full (i.e. initialling is not allowed) in the presence of each other.

Form 10.9 Will of Married Persons: Mutual Will

This is a simple will for married persons. The formalities as stated in the Introduction must be strictly adhered to.

Form 10.10 Will of Married Person: Individual Will

This is a simple will. The formalities as stated in the Introduction must be strictly adhered to. The will is made separately by one of the spouses.

Form 10.11 Codicil (alteration to a will in a separate document)

The formalities as stated in the Introduction must be strictly adhered to. Paragraph 2 contains a typical amendment. Any other amendment should be clearly set out in paragraph 2.

Form 10.12 Living Will (3 pages)

This will exonerates caregivers or medical personnel from liability arising from failure to use, or their decision to terminate, any life-sustaining system. This must be signed in full on each page in the presence of each of the witnesses by the testor and the witnesses. The formalities for a will apply to this document. This will should be filed with your ordinary will and your general practitioner. The naming of this will is a misnomer since in reality it is likely to curtail life.

Form 10.13 Amendment / Revocation of Living Will (2 pages)

This amounts to a codicil.

Form 10.14 Enduring Power of Attorney for Health Care (5 pages)

This power of attorney appoints a health care agent and an alternative agent. It becomes operative when a panel of two doctors determines that the grantor is unable to make his/her own health care decisions. The living will should be an annexure to this power of attorney. The power of attorney eliminates the necessity of the court appointment of a *curator ad personam* (a person appointed by the High Court to take care of the personal needs of an incapable patient such as maintenance and residence, and medical treatment). The grantor and health care agent/s and witnesses must sign in full at the bottom of each page. In the absence in the power of attorney of any provision for a fee for the agent, it is suggested that the agent be a family member or a close friend.

Form 10.15 Enduring Power of Attorney for Finance and Property (5 pages)

This power of attorney appoints an agent to manage all of the grantor's patrimonial or property affairs. It becomes operative when a panel of two doctors determines that the grantor is unable to make his/her own decisions. The power of attorney eliminates the necessity of the court appointment of a *curator bonis* (a person appointed by the High Court to take charge of the property and affairs of an incapable patient). The grantor and agent must sign in full at the bottom of each page. In the absence in the power of attorney of any provision for a fee for the agent, it is suggested that the agent be a family member or close friend. If immovable property is involved it is safer to have a special power of Attorney drafted by a conveyancer along the lines of Form 6.15 in the section dealing with immovable property.

DEED OF TRUST

Made and entered into by and between:

_____ (ID No _____)
(hereinafter referred to as "the Settlor")

and

_____ (ID No _____)
_____ (ID No _____)
_____ (ID No _____)
(hereinafter referred to as "the Trustees")

WHEREAS the Settlor is desirous of creating a trust for the benefit of the beneficiaries:

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. The Settlor hereby settles upon and donates to the Trustees:

1.1 An amount of R _____ (_____)
_____)
and

1.2 _____
and

1.3 any further property, movable or immovable, investments or cash which the Settlor may in the future wish to donate to this trust which, without the need of creating further trusts, shall be considered as additions to this trust.
(hereinafter referred to as "the trust property")

2. The trust shall be called _____
(hereinafter referred to as "the Trust")

3. The control of the trust property settled on the Trust shall vest in the trustees in their fiduciary (trustee) capacities. The Settlor shall expeditiously after signature hereof, transfer the trust property to the Trust, and the Settlor / the Trust shall be liable for all costs involved in the transfer, including transfer duty and donations tax. The Trustees may, in their sole discretion, hold any of the trust property in any name.

4. The Beneficiaries of the trust shall be:

4.1 _____ (ID No _____)
(Hereinafter referred to as "the Wife")

- 4.2 All the lawful offspring of the Settlor, whether presently born or to be born
- 4.3 _____ (ID No _____)
 a minor, duly represented by
 _____ (ID No _____)
 in his capacity as father and legal guardian of the aforesaid minor.
 (hereinafter referred to as "the Beneficiaries")
5. The Trust will terminate on the death of the wife or on the youngest offspring of the Settlor attaining the age of 21 years, whichever occurs last. On termination of the Trust, the trust property plus any other property of the Trust, will vest in the Beneficiaries (excluding the Wife's estate) in equal shares. If any Beneficiary (excluding the Wife's estate) has died prior to the termination of the Trust, such share shall be paid to such Beneficiary's issue by representation in equal shares. If such Beneficiary has no lawful issue then such share will be divided equally amongst the remaining Beneficiaries.
6. The Trustees shall, at the cost of the Trust, expeditiously register this Trust with the Master of the High Court of South Africa in terms of the Trust Property Control Act 57 of 1988, as amended.
7. The Settlor may during his/her lifetime effect such alterations to this Trust, as he/she may think fit, relating to the disposal of the assets in the Trust and to their administration.
8. Any Trustee shall lose his/her office if he/she shall become disqualified in terms of the Companies Act, as amended, to act as a director.
9. The Settlor has the power during his/her lifetime to appoint new trustees. After his/her death the Trustees have the power to appoint any person as trustee and to vary any appointment.
10. During the existence of this Trust:
- 10.1 The income and capital of the Trust shall be utilised for the benefit of the Beneficiaries. The Trustees have a sole and absolute discretion as to the quantum of payment to any Beneficiary (without any obligation to maintain equality) and the method of payment, whether by cash or transfer of assets. The value placed on the Trust assets by the Trustees will be binding on all parties affected.
- 10.2 Notwithstanding the foregoing the Trustees shall, on termination of the Trust, make payment to the beneficiaries as follows:
- 10.2.1 To the Settlor's daughter _____
 the holiday cottage at _____
 being erf _____, free of all mortgage
 bonds and incumbrances.
- 10.2.2 To the Settlor's son _____
 the house at _____
 being erf _____, free of all mortgage
 bonds and incumbrances.

- 10.3 On the termination of the Trust, after payment to the Beneficiaries as set out in paragraph 10.2 above, and after payment of all the liabilities of the Trust, including the Trustees' remuneration, the Trustees shall pay the Beneficiaries subject to the valuation provisions as set out in paragraph 10.1 above, the residue of the Trust in equal shares.
11. Any benefit devolving from this Trust shall be excluded from the legal effects of any marriage in community of property or accrual system contracted by the Beneficiary, of such benefit, and, in the case of a female Beneficiary, shall be free from the marital power of her husband, her receipt alone being a sufficient acquittance for the Trustees.
12. Neither the first nor subsequent Trustees shall be required to lodge security with the Master of the High Court of South Africa or any other official in terms of any law at any time.
13. The Trustees shall have all such powers to enable them to administer the Trust in such manner as they, in their sole opinion, consider to be most advantageous to the Beneficiaries, and particularly to have the power to institute and defend legal proceedings, to buy and sell movable or immovable property, to let for any rental or hypothecate immovable property, to carry on any business, to employ any professional or tradespersons and to pay their charges, to operate a banking account, to engage any secretarial service for the administration of the Trust and pay for such service out of the Trust, to invest any of the Trust monies in such unit trusts or shares as quoted on any stock exchange or securities of financial institutions as the Trustees in their sole and absolute discretion may deem fit, to carry on any business and accept any offer and to pay themselves for expenses incurred.
14. The Trustees' remuneration shall be 10% per annum of all income accruing to the Trust. On termination of the Trust the Trustees shall be entitled to a fee of 2% of the total value of the Trust assets distributed to the Beneficiaries. The aforesaid remuneration will be shared equally between the Trustees.
15. The Trustees are indemnified against any damages or loss sustained by the Trust apart from that arising from their dishonesty. They will not be liable for losses arising from Trust monies lent and advanced.
16. The duties of the Trustees shall entail, *inter alia* (amongst other things), the keeping of accounting records which shall be audited by an auditor appointed by the Trustees, the production of annual accounts, meeting at times as they think fit to despatch business.
17. In the event of any disagreement between the Trustees, the opinion of the majority will prevail in making a decision and failing a majority opinion, the Settlor's opinion will prevail, and failing the Settlor due to his/her death or incapacity, the senior partner of a mutually agreeable firm of attorneys.

18. 18.1 In the event of the estate of any Beneficiary being placed under sequestration, the Trustees shall be entitled, in their sole and absolute discretion, to pay over the whole or any portion of the capital or income of the Trust to the insolvent and/or his/her spouse and/or his/her children during such insolvent Beneficiary's lifetime for his/her/their maintenance, support, education (including tertiary education), travelling, advancement, reasonable pleasures and general welfare.
- 18.2 No portion of the Trust or of the income or profits thereof shall be liable for or be taken or seized or sold in execution for or in respect of any debts, liabilities or obligations contracted at any time by any Beneficiary. Should any such attempt be made, such inheritance will be dealt with as set out in paragraph 18.1 above, *mutatis mutandis* (subject to the necessary alterations / amendments).
- 18.3 No Beneficiary shall be entitled to anticipate any benefits conferred by virtue of this Trust or any rights accruing hereunder, nor shall he or she be entitled to cede, assign or pledge the same, and the Trustees shall not recognise or act in accordance with any such purported cession, assignment or pledge. In the event of any Beneficiary acting contrary to the provisions hereof all benefits accruing to such Beneficiary shall immediately cease and shall thereupon be dealt with as though the Beneficiary had died on the date of the cession, assignment or pledge of the benefits to which he or she is entitled under this Trust. Such benefits will then be dealt with as set out in paragraph 18.1 above, subject to the sole discretion of the Trustees.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

 SETTLOR

2. _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

 TRUSTEE

2. _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

 TRUSTEE

2. _____

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

1. _____

 TRUSTEE

2. _____

HOUSEHOLD / OFFICE CONTENTS INVENTORY

RECORD OF CURRENT REPLACEMENT COSTS

	Bedroom 1	Bedroom 2	Bedroom 3	Bedroom 4	Lounge	Family Room / Bar	Dining room	Entrance / Passage	Office / Study	Other Rooms
Audio and video equipment.....R										
Books.....R										
Clothing and footwear.....R										
Computer equipment.....R										
Curtains and loose carpets.....R										
Cutlery, crockery and glassware.....R										
Firearms and binoculars.....R										
Furniture.....R										
Heaters, aircons, electrical appliances.....R										
Jewellery and watches.....R										
Linen.....R										
Luggage.....R										
Mirrors.....R										
Paintings and ornaments.....R										
Photographic equipment.....R										
Reading lamps.....R										
Sewing and knitting equipment.....R										
Sporting equipment.....R										
Telephone / fax.....R										
Toys and games.....R										
Other:.....R										
.....R										
.....R										
.....R										
SUBTOTAL:.....R										

RECORD OF CURRENT REPLACEMENT COSTS	Kitchen	Laundry	Bathroom	Workroom / Garage	Staff Quarters	Outbuildings	General	Record of make, serial no. if photo is available, etc. for identification purposes
Braai Equipment.....R								Cellular phones.....
Curtains and loose carpets.....R							
Dishwasher.....R								Computers / Laptops.....
Electrical appliances.....R							
Freezer / Fridge and contentsR								Fax machines.....
Furniture and mirrorsR							
Garden furnitureR								Microwave ovens.....
Garden implements and equipmentR							
Groceries and toiletries.....R								Playstation / Wii / Xbox.....
Hand tools - and power tools.....R							
Heaters and airconsR								Printers and scanners.....
Hot tray and tea trolley appliancesR							
Iron / Ironing boardR								Telephones / Switchboard.....
Linen.....R							
Paintings and ornaments.....R								Television sets.....
Reading lamps.....R							
Stove and microwave ovenR								Videocassette Recorders / DVD.....
Swimming pool equipmentR							
Utensils.....R								Other.....
Vacuum and polisherR							
Washing machine / TumbledryerR							
Other:.....R							
.....R							
SUBTOTAL:.....R							
Items over R1000 taken out of the house from time to time or as required								TOTAL REPLACEMENT VALUE OF CONTENTS
Bicycles.....Qt.....R			Sports equipment.....Qt.....R					R.....
Cellular Phones.....Qt.....R			Other.....Qt.....R					(date).....
Contact lenses / prescription glasses.....Qt.....R		Qt.....R					Insured for R.....
Portable computer equipment.....Qt.....R		Qt.....R					(date).....
.....Qt.....R		Qt.....R				

**ANTENUPTIAL CONTRACT:
APPLICATION OF THE ACCRUAL SYSTEM**

Be it hereby made known

THAT on this _____ day of _____ year _____ ,

before me _____

Notary Public, practising at _____

in the Province of _____

appeared _____ (“the intended husband”)

(Identity Number _____)

And _____ (“the intended wife”)

(Identity Number _____)

And the Appearers hereby agree in respect of their marriage which is shortly to take place as follows:

1. There shall be no community of property or profit and loss.
2. The marriage shall be subject to the accrual system in terms of the provisions of Chapter 1 of the Matrimonial Property Act No. 88 of 1984.
3. The nett value of the respective estates of the Appearers at the commencement of their intended marriage is as follows:

The intended husband:

R _____ (_____)

consisting of

The intended wife:

R _____ (_____)

consisting of

In addition, donations between spouses before and during the intended marriage shall be taken into account as part of the estate of the donee.

4. The following assets and all liabilities presently associated therewith or any other asset acquired by such party by virtue of his possession or former possession of such asset will not be taken into account as part of such party's estate at either the commencement or dissolution of the intended marriage.

The intended husband:

Assets of the intended wife to be excluded:

THUS DONE AND EXECUTED at _____ aforesaid, on this ____ day of _____ year, ____ aforewritten in the presence of the undersigned witnesses.

AS WITNESSES

1. _____

INTENDED HUSBAND

2. _____

INTENDED WIFE

QUOD ATTESTOR

NOTARY PUBLIC

**ANTENUPTIAL CONTRACT
EXCLUDING THE ACCRUAL SYSTEM**

Be it hereby made known

THAT on this _____ day of _____ year _____,

before me _____

Notary Public, practising at _____

in the Province of _____

appeared _____ (“the intended husband”)

(Identity Number _____)

and _____ (“the intended wife”)

(Identity Number _____)

And the Appearers hereby agree in respect of their marriage which is shortly to take place as follows:

1. There shall be no community of property or profit and loss.
2. The marriage shall not be subject to the Accrual System in terms of the provisions of Chapter 1 of the Matrimonial Property Act No. 88 of 1984.
3. In consideration of the intended marriage, the intended husband hereby donates to the intended wife:

3.1 A policy of life insurance number _____ for the sum of R _____ (_____ Rand) plus profits effected on his life in _____.

Assurance Limited together with all sums of money which may at any time become due and recoverable by virtue thereof and the intended husband undertakes to cede the said policy to the intended wife and to cause such cession to be registered in the books of the said Assurance Society and to pay the premiums of the said policy from time to time as they become due;

3.2 His interest in all wedding gifts presented to them.

3.3 If, however, the intended wife shall die before the intended husband the aforesaid donations will revert to and become the absolute property of the intended

husband. The rights of the intended wife to enforce against the intended husband his obligations hereunder, shall not be capable of being ceded or assigned by her or being attached or sold in execution by any of her creditors and no creditor or other person shall be entitled to enforce the fulfilment of his obligations hereunder by the intended husband.

The intended wife gratefully accepts the aforesaid donations under the conditions abovementioned.

THUS DONE AND EXECUTED at _____ aforesaid, on this _____

day of _____ year _____, aforewritten in the presence of the undersigned witnesses.

AS WITNESSES

1. _____

INTENDED HUSBAND

2. _____

INTENDED WIFE

QUOD ATTESTOR

NOTARY PUBLIC

DIVORCE SETTLEMENT

Case No:

IN THE HIGH COURT OF SOUTH AFRICA
(_____ **PROVINCIAL DIVISION**)

In the matter between:

_____ Plaintiff

and

_____ Defendant

DEED OF SETTLEMENT

WHEREAS the Plaintiff has issued a summons in the above-mentioned Honourable Court against the Defendant in an action in which she claims as follows:

- a) A decree of divorce;
- b) Custody of the minor children of the marriage;
- c) Maintenance for the minor children of the marriage in the sum of R _____ per month per child;
- d) Maintenance for the Plaintiff in the sum of R _____ per month / annum;
- e) Forfeiture of the benefits of the marriage as set out in paragraph _____ of the Particulars of Claim;
- f) Costs of the suit;
- g) Further and/or alternative relief.

AND WHEREAS the Defendant has indicated that there is no prospect of the restoration of a normal relationship with the Plaintiff and that he regards the marriage as having irretrievably broken down;

AND WHEREAS the parties have reached agreement in regard to maintenance and other ancillary matters.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

DEFINITION

For the sake of convenience the Plaintiff is hereinafter referred to as “the Wife” and the Defendant as “the Husband”.

**SECTION A
PROVISIONS REGARDING THE CHILDREN**

1. CUSTODY AND CONTROL OVER THE CHILDREN

The Custody and Control of the minor children born of the marriage between the parties is awarded to the Wife, subject to the following conditions:

1.1 Reasonable Access

The Husband may have reasonable access to the minor children at reasonable times but subject to making arrangements with the Wife timeously. Whilst they are babies this access will not interfere with their routine and eating and sleeping habits;

1.2 Holidays

The Husband is entitled to have the children with him for alternate school holidays;

1.3 Weekends

The Husband is entitled to have the children with him on alternate Sundays until each child is 7 years of age and thereafter alternate weekends from Friday at 17:00 until Sunday at 18:00, provided that the right of access over weekends and any other time shall be exercised in such a way that it shall not detrimentally affect the scholastic, religious and other social activities of the minor children;

1.4 Foreign Travel

Neither party will remove the children from the Republic of South Africa without the prior written consent of the other party being obtained. Such consent will not be withheld unreasonably.

2. MAINTENANCE IN RESPECT OF THE CHILDREN

The Husband shall pay maintenance to the Wife in respect of the above-mentioned children as follows:

2.1 R _____ per month per child;

2.2 The maintenance shall be paid by Stop Order on or before the first day of every month from the first day of _____ year _____ and into the Wife's bank account number _____ at _____ bank _____ branch or into such other account as the Wife will from time to time advise the Husband;

2.3 The aforementioned maintenance shall be payable in respect of each child until that child becomes self-supporting;

2.4 The said maintenance will increase annually by 12 percent compounded or such lesser percentage, which is equivalent to the percentage increase of the Husband's annual gross income. In the event of the Husband's annual gross income being less than the 12 percent then the increase will be equivalent to the lesser percentage increase. The first increase will take effect on _____ and thereafter on the first day of _____ each and every succeeding year;

- 2.5 Apart from the maintenance he pays, the Husband shall, in respect of each child, be responsible for all medical, dental, hospital, ophthalmic, orthodontic and prescribed pharmaceutical expenses;
- 2.6 Should the Husband be a member of a Medical Aid Society or should he be entitled to join a Medical Aid Society, then he shall either maintain his existing membership or extend it so as to include the children, or acquire membership of a Medical Aid Society in order to include the children so that they may enjoy the benefits of such membership;
- 2.7 The maintenance payable in respect of the children shall continue during the periods of holidays when the children are not under the direct care and control of the custodial parent;
- 2.8 The Husband will be liable for nursery school fees and primary and secondary school fees plus equipment, books and uniforms relating thereto;
- 2.9 The Husband will be liable for the costs of the tertiary education of each child at any place of learning in the Republic of South Africa provided the Husband can afford such costs and the child warrants such education and passes each year of study. The onus will be on the Husband to prove his inability to pay such costs should a dispute arise.

SECTION B

PROVISIONS REGARDING THE WIFE

1. **MAINTENANCE FOR THE WIFE**

Maintenance shall be payable to the wife at the rate of R _____ per annum subject to the same conditions as set out in paragraphs 2.2 and 2.4 above;

2. **LUMP SUM PAYMENT**

The Husband will pay the Wife a lump sum payment of R _____ (_____) by the _____ day of _____ year _____.

3. **COSTS OF SUIT**

The Husband shall pay a sum of R _____ (_____) which amount will be payable in payments of R _____ (_____) per month from the _____ day of _____ year _____ and thereafter monthly on or before the same day until the full amount is paid, directly to the Wife's Attorneys, Messrs _____ at _____ . If any payment is not made punctually the total balance outstanding will immediately become due and payable.

SECTION C
DIVISION OF ASSETS

1. AWARD OF MOVABLE ASSETS

Except for the assets mentioned below which assets are awarded to the Husband as his sole and absolute property, all movable assets in the common home are awarded to the Wife as her sole and absolute property.

Husband's assets: _____

2. IMMOVABLE PROPERTY

The immovable property situated at _____
will be dealt with as follows:

- 2.1 The Wife may reside in the common home until such stage as all the said children are self-supporting, or until the Wife's remarriage, or until the Wife decides that she no longer wishes to live in the common home (whichever event occurs first);
- 2.2 Whilst the Wife resides in the common home (as set out above) the Husband will, in addition to his other obligations herein contained, pay the bond payments directly as well as a contribution of R _____ (_____) per month to the City Council for water and electricity and assessment rates, etc. from the _____ day of _____ year _____ ;
- 2.3 When the Wife ceases to reside in the common home (as determined in paragraph 2.1 above), the property will be sold for a price acceptable to both parties as soon as possible, and the net proceeds will be equally divided between the parties;
- 2.4 After the date of signing hereof, the Husband will not, without the written consent of the Wife, further encumber the property by an increase of the current bond or encumber the property with a further mortgage. The Husband undertakes to pay the monthly bond payments timeously;
- 2.5 The Wife is entitled to register an Interdict in the Deed's Office against the said property at her own cost, in terms of which this Deed of Settlement will be an Interdict against the property, and the Registrar of Deeds will be requested to note this Interdict against the property accordingly. The parties confirm that the Interdict may be registered and uplifted on their joint written notice to Messrs _____, Attorneys and the Registrar of Deeds. It will not be necessary for the Husband or the Wife to bring a substantial application to the above Honourable Court for uplifting of the registration of such Interdict;
- 2.6 The parties will be equally responsible for the structural maintenance and improvement of the property. The Wife undertakes to maintain the property. Before the Wife may effect any structural improvement she will first obtain the Husband's permission thereto before he will be responsible for his share of the costs of such improvement;

- 2.7 If the Wife decides to cease residing in the property, she will give written notice to the Husband three months prior to evacuation;
- 2.8 The parties may agree to rent the property subject to such terms as they may agree upon;
- 2.9 The transfer of the property shall be attended to by Messrs _____, Attorneys.

**SECTION D
LIABILITIES OF THE COMMON ESTATE**

All liabilities of the parties at date hereof will be dealt with as follows:

- 1. The Wife will be solely responsible for the payment of the following creditors:

- 2. The Husband will be solely responsible for the payment of the following creditors:

- 3. Each party will be liable for his or her own debts contracted after the date of signature hereof by such party.
- 4. The obligations assumed by the Husband in terms of this agreement shall be binding on his estate, his heirs, executors and assigns.
- 5. This agreement is in full and final settlement of all the obligations between the parties, but this paragraph will have no effect on the parties' right from time to time to apply for an amendment to the maintenance provisions hereof.

SIGNED at _____ this _____ day of _____ year _____.

AS WITNESSES:

- 1. _____ PLAINTIFF
- 2. _____ DEFENDANT

“REGISTERED MAIL”

Date _____

PRIVATE & CONFIDENTIAL

Dear

DEFAMATION – DEMAND

I record that on or about the _____ day of _____ year _____
at _____ you deeply distressed me by uttering the
following words in the presence of a third party: “ _____

_____.”

Unless within seven days of date hereof I receive from you the attached apology, duly signed by you, you may assume that proceedings will be instituted against you for damages.

Yours faithfully

DEFAMATION APOLOGY

I, the undersigned,

hereby state that:

1.

I retract all defamatory statements made by me concerning Mr/Ms _____ as amplified in the letter to me from Mr/Ms _____ dated the _____ day of _____ year _____, which were made by me at _____ on or about the _____ day of _____ year _____.

2.

The said statements made by me are untrue and without foundation.

3.

I apologise to Mr/Ms _____ for having made such statements.

SIGNED at _____ this _____ day of _____ year _____.

WILL OF UNMARRIED PERSON

I, the undersigned, _____
hereby revoke all wills and codicils signed by me and declare the following to be my last will.

1.

I hereby nominate _____
as the executor of my estate and trustee of any trust created in terms hereof, with power of assumption, and I direct that my said executor and trustee shall not be required to furnish security in either capacity. My executor and trustee shall not be liable for any loss to my estate through failing to make any investment and my trustee shall not be liable for any loss to my trust from any investment or purchase made in good faith.

2.

I bequeath to _____ the sum of R _____
(_____). In the event of such beneficiary dying before me, then this bequest will lapse and form part of the residue of my estate.

3.

I appoint _____ as sole heir of the residue of my entire estate.

4.

No benefit shall be paid or handed over to any beneficiary before he or she has attained the age of 21 years, and if any beneficiary has not attained this age, any benefit devolving upon such beneficiary shall be held in trust by my trustee, with the power, in his/her sole discretion, to invest such benefit and any income therefrom, to realise and transpose investments, to buy, sell, let, rent or hypothecate immovable properties and to carry on any business.

5.

My said trustee shall be entitled, in his/her sole discretion, to use the whole or any part of such benefit and the income therefrom for the maintenance, education and general advantages of such beneficiary thereof.

6.

Any benefit devolving from my estate shall be excluded from the legal effects of any marriage in community of property or accrual system contracted by the beneficiary from such benefit, and, in the case of a female beneficiary, shall be free from the marital power of her husband, her receipt alone being sufficient acquittance for my executor and trustee.

SIGNED at _____ this _____ day of _____ year _____
in the presence of the subscribing witnesses, who, in my presence and in the presence of each other have hereunto set their names.

AS WITNESSES:

1. _____

2. _____

TESTATOR / TESTATRIX

WILL OF MARRIED PERSONS: MUTUAL WILL

We, the undersigned, _____
and _____
hereby revoke all wills and codicils previously signed by us and declare the following to be our last will.

1. We hereby nominate the survivor of the two of us as the executor of our separate estates and trustee of any trust created in terms hereof with power of assumption and we direct that the said survivor shall not be required to furnish security in either capacity. Our executor and trustee shall not be liable for any loss to our estate through failing to make any investment and our trustee shall not be liable for any loss to our trust from any investment or purchase made in good faith.
 - 1.1 We hereby authorise our executor and our trustee to sell, by public auction, public tender or private treaty, any property in our estate or held in trust whether movable or immovable.
2. We appoint the survivor of the two of us as sole heir or heiress of the estate of the first-dying, provided that:
 - 2.1 should we die simultaneously or within 30 days of each other, then we each appoint our children as heirs in equal shares of our estates; and _____ as executor and trustee;
 - 2.2 should any child of ours pre-decease either or both of us or die before the termination of any trust created in favour of such child in terms hereof, then we direct that any benefits which would otherwise devolve upon such child shall devolve upon such child's descendants by representation or failing descendants equally upon our remaining children or their descendants by representation.
3. No benefit will be paid or handed over to any beneficiary before he or she has attained the age of 21 years, and, if any beneficiary has not attained this age, any benefit devolving upon such beneficiary shall be held in trust by our trustee, with the power, in his or her sole discretion, to invest such benefit and any income therefrom to realise and transpose investments, to buy, sell, let, rent, or hypothecate immovable property and to carry on any business.
4. Our trustee is hereby indemnified against any loss arising from the exercise of any or all of the above powers or from depreciation of capital from the retention of any assets or from the investment or re-investment of funds in accordance with the above.
5. Our said trustee shall be entitled, in his or her sole discretion, to use the whole or any part of such benefit and the income therefrom for the maintenance, education and general material advantages of such beneficiary thereof.
6. Any benefit devolving from our estates shall be excluded from the legal effects of any marriage in community of property or accrual system contracted by the beneficiary of such benefit, and, in the case of the female beneficiary, shall be free from the marital power of her husband, her receipt alone being a sufficient acquittance for our executor and trustee.

SIGNED at _____ this _____ day of _____
year _____ in the presence of the subscribing witnesses, who in our presence and in the presence of each other have hereunto set their names.

AS WITNESSES:

1. _____ TESTATOR

2. _____ TESTATRIX

WILL OF MARRIED PERSON: INDIVIDUAL WILL

I, the undersigned, _____
married to _____
hereby revoke all wills and codicils previously signed by me and declare the following to be my last will.

- 1. I hereby nominate _____ as the executor of my estate and trustee of any trust created in terms hereof, with power of assumption, and I direct that my said executor and trustee shall not be required to furnish security in either capacity. My executor and trustee shall not be liable for any loss to my estate through failing to make any investment and my trustee shall not be liable for any loss to my trust from any investment or purchase made in good faith.
- 2. I hereby authorise my executor and my trustee to sell by public auction, public tender or private treaty, any property in my estate or held in trust, whether movable or immovable.
- 3. I appoint my said spouse as sole heir of my entire estate, provided that:
 - 3.1 should my said spouse pre-decease me, or should my said spouse not survive me by more than 30 days, or should we die simultaneously, I appoint my children as sole heirs, in equal shares, of my entire estate;
 - 3.2 should any child of mine pre-decease me or die before the termination of any trust created in favour of such child in terms hereof, any benefit which would otherwise have devolved upon such child, shall devolve upon such child's descendants by representation, or, failing descendants, equally upon my other children or their descendants by representation.
- 4. No benefit shall be paid or handed over to any beneficiary before he or she has attained the age of 21 years, and if any beneficiary has not attained this age, any benefit devolving upon such beneficiary shall be held in trust by my trustee, with the power, in his/her sole discretion, to invest such benefit and any income therefrom, to realise and transpose investments, to buy, sell, let, rent or hypothecate immovable properties and to carry on any business.
- 5. My trustee is hereby indemnified against any loss arising from the exercise of any or all of the above powers or from depreciation of capital from the retention of any assets or from the investment or re-investment of funds in accordance with the above.
- 6. My said trustee shall be entitled, in his/her sole discretion, to use the whole or any part of such benefit and the income therefrom for the maintenance, education and general material advantages of such beneficiary thereof.
- 7. Any benefit devolving from my estate shall be excluded from the legal effects of any marriage in community of property or accrual system contracted by the beneficiary from such benefit, and, in the case of a female beneficiary, shall be free from the marital power of her husband, her receipt alone being a sufficient acquittance for my executor and trustee.

SIGNED at _____ this _____ day of _____
year _____, in the presence of the subscribing witnesses, who, in my presence and in the presence of each other have hereunto set their names.

AS WITNESSES:

- 1. _____
- 2. _____

TESTATOR / TESTATRIX

CODICIL

I, the undersigned, _____
of _____ hereby declare this to be a codicil to
my last will dated the _____ day of _____ year _____.

I substitute _____ in the place of _____
to be the executor of my will and trustee of any trust created therein. He/she will not be required
to furnish security in either capacity.

In all other respects I confirm my said last will.

SIGNED at _____ this _____ day of _____
year _____, in the presence of the undersigned witnesses, all being present at the same time
and signing in the presence of each other.

AS WITNESSES:

1. _____

2. _____

TESTATOR / TESTATRIX

LIVING WILL

I, the undersigned,

Full name _____

Identity Number _____

Full Address _____

being of sound mind, and after careful consideration, do hereby voluntarily declare that this is my living will and state that I am not acting under any undue influence, duress or threat.

This is my decision and my decision alone and I hereby revoke and annul all previous living wills.

I make this advance directive now to my family, my doctor/s other medical personnel or any one else to whom it is relevant, concerning my medical care, for such time when I may:

- be physically or mentally incapacitated;
- become irreversibly unconscious;
- be in a persistent vegetative state;
- be unable to make my own decisions or views known;
- become terminally ill;
- require treatment which provides for a mere prolongation of my existence even if it means that my life may be shortened.

My care by the doctor/s, medical personnel or any one else involved in my care shall be fully exonerated and exempt from all blame or liability arising from their use of, or their failure to use, or their decision to terminate the use of any mechanical or artificial means such as life support or life-sustaining systems.

This does not preclude temporary modes of treatment that may be applied to see me over a crisis.

The provision of intensive care to me is to be allowed only on condition that reliable reasons exist for the possibility that such treatment will have a better result than merely temporary prolongation of life.

In the event that a treatment with prospect of recovery has been started but proves to be futile, it has to be discontinued immediately.

I may not be able to change my mind in the future when I am no longer able to speak for myself, and I accept the risk that in view of this directive now made my life may be curtailed due to future medical technology with its offer of increased hope.

As witnesses

1. _____

TESTATOR / TESTATRIX

2. _____

I would rather face death than endure unwanted treatment, deterioration, degradation, the loss of dignity and dependence.

I ask my medical attendants to bear this in mind when considering what my intentions would be in any uncertain situation.

This advance directive is to be honoured as the expression of my legal right to consent or refuse medical treatment.

I request medical and palliative care, nursing care and whatever quantity of drugs and intravenous fluids or any other measures are necessary to alleviate pain or other distressing symptoms, in order to keep me more comfortable, even if such measures may result in my life being at risk.

Should any medical practitioner or health authority refuse to give effect to this directive and it becomes necessary to apply for a court order to ensure compliance, my signature to this living will shall be my consent and support to such application.

I list some of the situations, both mental and physical but not exhaustively, which could give rise to the directions of this living will being brought into effect:

- Advanced dementia (Alzheimer's)
- Non-resuscitation
- Cancer that has spread considerably (no chemotherapy shall be applied)
- Severe immune deficiency syndrome (Aids)
- Advanced degenerative disease of the nervous system (advanced Parkinson's)
- Severe and lasting brain damage (due to senility, injury, stroke or other)
- Multiple sclerosis
- Motor neuron disease
- Any other condition of comparable gravity.

I reserve the right to amend or revoke this living will by adding my signature to this document in the simultaneous presence of two competent witnesses, subject to the condition that at time of signature I am of sound mind and not acting under any undue influence, duress or menace.

Certified photostat copies of this living will shall have the same legal effect as this original provided that this document has been duly signed by all concerned.

As witnesses

1. _____

TESTATOR / TESTATRIX

2. _____

SIGNED at _____ on this _____ day of _____ year _____.

As witnesses

1. _____

TESTATOR / TESTATRIX

2. _____

We declare that the above named has signed this document in our presence.

He/she has declared this to be his/her living will, is in full mental and physical capacity and fully understands the contents and meaning hereof.

We believe it to be a firm and competent statement of his/her wishes.

As far as we are aware, no pressure has been brought to bear on him/her to sign this document and we believe it to be his/her free and considered wish.

As far as we are aware we do not stand to gain from his/her death.

We are not related to him/her.

1. Full names _____

Full address _____

Identity number _____

Telephone Number _____

Date _____

Signature _____

2. Full names _____

Full address _____

Identity number _____

Telephone Number _____

Dated _____

Signature _____

AMENDMENT / REVOCATION OF LIVING WILL
(DELETE WORD NOT APPLICABLE)

I, the testator / testatrix hereby amend / revoke my living will dated _____ day of _____ year _____ .
in the following respects:

Signature _____

Date _____

Witnesses:

We declare that this living will has been amended or revoked in our presence. (Delete word not applicable.)

He/she declared it to be his/her revocation or amendment of this his/her living will.

He/she is in full capacity and fully understands the meaning and consequences of revoking or amending his/her living will.

We believe it to be a firm and competent statement of his/her wishes.

As far as we are aware no pressure has been brought to bear on him/her to sign this revocation or amendment and we believe it to be his/her free and considered wish to revoke or amend his/her living will.

We are not related to him/her.

1. Full names _____

Full address _____

Identity Number _____

Telephone Number _____

Date _____

Signature _____

(This page should only be signed if and when the living will is amended or revoked and not before.)

2. Full names _____

Full address _____

Identity Number _____

Telephone Number _____

Date _____

Signature _____

(This page should only be signed if and when the living will is amended or revoked and not before.)

**ENDURING POWER OF ATTORNEY
FOR HEALTH CARE**

I, the undersigned

Full Name _____

Identity Number _____

Full Address _____

am an adult of sound mind. I understand the importance of this document and I voluntarily appoint
as my Health Care Agent:

Full Name _____

Identity Number _____

Full Address _____

Telephone Number _____

(hereinafter referred to as "my agent") with general authority to act on my behalf in relation to my
care, custody and medical treatment decisions in the event that I become unable to participate in
any medical treatment decisions.

The general authority of my agent becomes effective when a panel of two qualified medical
doctors, appointed by my agent, determines that I have become mentally and physically incapable
of making my own health care decisions.

As witnesses

1. _____

2. _____

Grantor

Health Care Agent

Substitute Health Care Agent

My agent shall make health care decisions in my best interests in terms of all the stipulations set out in any living will which I may have made. If such will has been made, I attach it hereto marked "Annexure A" which forms part of this power of attorney. In the situation where my wishes are unknown, my agent shall make decisions based on what he/she considers in my best interests and in keeping with my known personal values. My agent has authority to consent to or refuse treatment on my behalf, and to arrange medical services for me, including admission to a hospital or nursing care facility, and to pay for such service and treatment with my funds. My agent shall have access to any of my medical records, to review the same and to consent to the disclosure of my medical records.

ANY SPECIAL WISHES

(Consult with your medical or legal practitioner regarding any special wishes and list them.)

As witnesses

1. _____

2. _____

Grantor

Health Care Agent

Substitute Health Care Agent

I may change my mind any time by communicating in writing with my health care agent advising my health care agent that this power of attorney is revoked or no longer reflects my wishes. It is my intent that my family, the medical facility, doctors, nurses and other medical personnel involved in my care shall have no civil or criminal liability for honouring my wishes as expressed in this power of attorney for implementing the decisions of my health care agent. Should my mental and physical condition require the appointment for me of a Guardian of my person, I nominate my agent to be appointed as my guardian. I sign this document after careful consideration, fully understanding its meaning and accepting its consequences.

SUBSTITUTE HEALTH CARE AGENT

Should my appointed agent at any time be unable or unwilling to act as my agent, I then appoint the following person as my substitute agent to act in the same position and subject to the same terms and conditions as if my substitute agent was originally appointed as my agent:

Full Name _____

Identity Number _____

Full Address _____

SIGNED at _____ on this _____ day of _____ year _____
in the presence of the undersigned witnesses.

As witnesses

1. _____

2. _____

Grantor

Health Care Agent

Substitute Health Care Agent

DECLARATION BY WITNESSES

We declare that the above named signed this document in our presence.

He/she has declared it to be his/her enduring power of attorney for health care and is in full capacity and fully understands the meaning of it.

We believe it to be a firm and competent statement of his/her wishes.

As far as we are aware, no pressure has been brought to bear on him/her to sign this document and we believe it to be his/her free and considered wish.

As far as we are aware we do not stand to gain from his/her death and we are not related to him/her.

1. Full Name _____

Identity Number _____

Street Address _____

Date _____

Signature _____

2. Full Name _____

Identity Number _____

Street Address _____

Date _____

Signature _____

ACCEPTANCE BY HEALTH CARE AGENT

I understand the above conditions.

I accept the duties and powers contained therein and I undertake to act as Health Care Agent for the grantor.

Health Care Agent

Date _____

ACCEPTANCE BY SUBSTITUTE HEALTH CARE AGENT

I understand the above conditions.

I accept the duties and powers contained therein and I undertake to act as Substitute Health Care Agent for the grantor.

Substitute Health Care Agent

Date _____

**ENDURING POWER OF ATTORNEY
FOR FINANCE AND PROPERTY**

I, the undersigned

Full Name _____

Identity Number _____

Full Address _____

am an adult of sound mind and I voluntarily appoint as my Finance and Property Agent:

Full Name _____

Identity Number _____

Full Address _____

(hereinafter referred to as "my agent")

This Power of Attorney and authority shall only become effective when a panel of two doctors duly appointed by my agent, determines that I am disabled or mentally incapable and unable to make my own decisions. When this power of attorney becomes effective my agent is lawfully authorised to act for me under this power of attorney and shall exercise all powers in my best interests and benefit.

As witnesses

1. _____

2. _____

Grantor

My agent shall have the full power and authority to manage and conduct all of my affairs, and to exercise all my legal right and powers, including those rights and powers that I may acquire in the future including the following:

- To sue, submit and recover any debts or claims on my behalf;
- To operate my existing bank and financial institutions account/s, safe deposit boxes, arrange loans and transact any matters directly or indirectly affecting my bank account/s including full signing powers;
- To purchase, improve, maintain, mortgage, alter and/or sell immovable property and in any way deal with my real or personal property with full signing powers;
- To lease or sublet, or cancel any lease on my property and to manage, collect and receive rentals and to eject any tenant;
- To invest, alter investments and/or borrow money;
- To commence, prosecute, compound and abandon and/or defend legal action before any court;
- To attend and vote at meetings of creditors or trustees in insolvency matters;
- To purchase and sell shares in a public company and sign transfer documents;
- To prepare, sign and file any SARS Tax forms including claims and refunds;
- To choose the *domicilium citandi et executandi* (domicile for the purpose of serving summons and levying execution);
- To receive reasonable compensation for services rendered as agent under this power of attorney and refund of any disbursements;
- To engage and dismiss agents, counsel and employees in connection with any matter, on conditions that my agent may determine;
- To assume the fiduciary (trustee) and other legal responsibilities of an agent similar to the responsibilities of an appointed curator;
- To attend to any type of insurance and annuity transactions, retirement plans, pay premiums, receive payment on maturity and generally deal with any insurance matters;
- To hire professional services, agents, workmen or; remove or replace them;
- To perform any other matter my agent my deem proper in such matter.

As witnesses

1. _____

2. _____

Grantor

Should my appointed agent at any time be unable or unwilling to act as my agent, I then appoint a substitute under the same stipulations as my agent:

Full Name _____

Identity Number _____

Full Address _____

The following restrictions on the power of my agent or substituted agent shall be applicable, regardless of the above numerated powers.

My Agent / Substitute Agent may not:

execute a will or codicil on my behalf;

change the beneficiary on any life insurance policy owned by me or in my name;

make gifts on my behalf;

transfer any of the properties registered in my name or controlled by me into his name or a Trust in which my agent has any interest;

contravene any conditions of my health care power of attorney which I may have executed.

I nominate my agent or failing him/her my substitute agent as Guardian of my person, should such an appointment be required.

I hereby revoke all previous Powers of Attorney over my Finance and Property. I reserve the right to revoke or amend this power of attorney at any time while I am mentally capable.

As witnesses

1. _____

2. _____

Grantor

ANY FURTHER PROHIBITONS OR RIGHTS

(Should there be nothing added here, please rule through the above space and sign in full with witnesses.) And generally to do or execute any act or matters whatsoever as my agent may deem necessary or expedient.

SIGNED at _____ on this _____ day of _____ year _____.

Grantor

DECLARATION BY WITNESSES:

We declare that the above named signed this enduring power of attorney in our presence. He/she has declared it to be his/her Enduring Power of Attorney, is in full capacity and fully understands the meaning of it.

We believe it to be a firm and competent statement of his/her wishes.

As far as we are aware, no pressure has been brought to bear on him/her to sign this document and we believe it to be his/her free and considered wish. As far as we know, we do not stand to gain from his/her death and we are not related to him/her.

1. Full Name _____

Identity Number _____

Full Address _____

Date signed _____

Witness

2. Full Name _____

Identity Number _____

Full Address _____

Date signed _____

Witness

ACCEPTANCE BY AGENT

I, the undersigned

Full name _____

the appointed Agent, do hereby agree and undertake to act in terms of the Enduring Power of Attorney Finance and Property.

I further declare that:

I have given this document careful consideration, understanding its meaning and accept its consequences;

I assume my fiduciary (trustee) and other legal responsibilities;

I accept my legal duty to act solely in the best interest of my principal and to avoid conflicts;

I hereby accept the appointment as agent and understand my mandate.

Agent

Witnesses

1. Full Name _____

Full Address _____

Identity Number _____

Date _____

Witness

2. Full Name _____

Full Address _____

Identity Number _____

Date _____

Witness