

Addendum to the

CLIENT/CONSULTANT PROFESSIONAL SERVICES AGREEMENT PREPARED BY THE PROFESSIONAL CONSULTANTS SERVICES AGREEMENT COMMITTEE ("PROCSA") (Edition 4.0 October 2017)
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entered into by and between

UNIVERSITY OF JOHANNESBURG

(A juristic person which exists and functions in terms of the Constitution of the Republic of South Africa, 1996, the Higher Education Act 101 of 1997, as well as the Statute and Rules of the University and applicable law, herein represented by:

Full names of representative	
Capacity	

duly authorised thereto)

hereinafter referred to as the "**Client**"

and

Please tick () one of the following below and complete where indicated:

- Company incorporated in terms of the Companies Laws of South Africa with

Registration number	
---------------------	--

- Close Corporation incorporated in terms of the Close Corporations Act of 1984 with

Registration number	
---------------------	--

- Trust functioning in terms of the requirements of the Trust Property Control Act 57 of 1988 with

Trust number	
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- Natural person and South African Citizen with

Identity number	
-----------------	--

- Other business entity

Description of entity	
Identification number	

herein represented by:

Full names of representative	
Capacity	

duly authorised thereto

hereinafter referred to as "**the Consultant**"

The Client and Consultant hereinafter collectively referred to as "**the Parties**"

1 INTRODUCTION

- 1.1 The contractual relationship between the parties is governed by a Client/ Consultant Professional Services Agreement prepared by the Professional Consultants Services Agreement Committee (the **agreement**), which makes provision for amendments thereof in the form of variations, additions, cancellations and deletions contained in the **addendum** (1.8 of the **agreement** and A.20 of Annexure A (the **schedule**)).
- 1.2 This **addendum** records the amendments of the terms of the **agreement** to which it relates in respect of variations, additions, cancellations and deletions.
- 1.3 Additions are underlined and deletions are struck through with reference to the standard terms and conditions of the **agreement**.

2. DEFINITIONS AND INTERPRETATION

- 2.1 This **addendum** is incorporated as part of A.20 of Annexure A (the **schedule**) of the **agreement** to which it relates and, as such, the expressions or words contained herein shall bear the same meanings as defined and utilised in the **agreement** unless a contrary definition is created or intended herein. It should not be inferred from this **addendum** that further amendments and/or special conditions may not be inserted into the **agreement** as part of Clause A.20 or any other.
- 2.2 Should any provision of this **addendum** contradict or be in conflict with any provision of the **agreement**, or any annexure thereto and such contradiction or conflict not being reconcilable, then the provisions of this **addendum** shall take precedence and supersede the **agreement**.
- 2.3 All other terms and conditions and annexures of the **agreement** not specifically amended herein will remain unchanged and shall be applicable to this **addendum**.

3 AMENDMENTS

- 3.1 The **agreement** is hereby amended by the variations, additions, cancellations and deletions as set out in clause 4 (four) of this addendum.
- 3.2 Notwithstanding the signature date of this **addendum**, this **addendum** will take effect on the same date as the **agreement**.

4 VARIATIONS, ADDITIONS, CANCELLATIONS AND DELETIONS

- 4.1 Add the following Clause 1.1A to the agreement:

“1.1A **ADDENDUM:** the amendments to the agreement contained in this document representing variations, additions, cancellations or additions of the agreement in terms of 1.8 and an incorporation into A.20 of the **schedule.**”

4.2 Add the following Clause 1.1B to the agreement:

“1.1B **BEST INDUSTRY PRACTICE:** In relation to the manner in which the **project** is to be carried out and the works performed, or in relation to the **consultant’s** obligations in terms of 6 or as the case may be, exercising that degree of skill, care, diligence, prudence and foresight and what is reasonably and ordinarily required and expected in respect of standards, practice, scope, quality and level from a qualified, knowledgeable, skilled and experienced person who conducts the profession or discipline of the **consultant**, seeing in good faith to comply with its contractual obligations under this **agreement.**”

4.3 Add expressions to Clause 1.1.13 so that the amended Clause 1.1.13 reads as follows:

“1.1.13 **OTHER CONSULTANTS:** Entities or third parties acting on behalf of the **client** to provide specialist services on any aspect of the **project** in terms of a direct contract between them and the **client** or a third party, and which excludes consultants who render specialist services on any aspect of the **project** in terms of a direct contract between them and the **consultant**, notwithstanding any other provision of the **agreement**, including the listing of consultants excluded from this definition in A.6.”

4.4 Add the following definition as Clause 1.1.20A:

“1.1.20A **SCHEDULING PARTY:** The consultant responsible for the scheduling process for the **project** as indicated in Clause A.21 of the **schedule** added in terms of Clause 4.23 of the **addendum.**”

4.5 Add expressions to Clause 1.1.21 so that the amended Clause 1.1.21 provides as follows:

“1.1. **SERVICES:** The duties and functions of the **consultant** set out in Annexure B₁ which duties and functions must be carried out in accordance with **best industry practices.**”

4.6 Add expressions to Clause 1.2 to the **agreement** to provide as follows:

1.2 The addresses for delivery of notices arising out of this **agreement** and the service of legal processes in respect thereof [~~shall be~~] are the physical addresses stated in the **schedule**, which are chosen as *domicilia citandi et executandi* by the respective **parties**. Either **party** may by notice to the other change its physical address provided that such new physical address shall be in the same country as stated in the **schedule.**”

4.7 Add the following Clause 1.3A to the **agreement**:

“1.3A If any definition contains a substantive provision conferring rights or imposing obligations on any **party**, notwithstanding that it is only in the definition (or such other clause), effect shall be given to it as if it were a substantive provision in the body of the **agreement**.”

4.8 Add expressions to Clause 1.10 to the **agreement** and add Clause 1.10A to provide as follows:

“1.10 Subject to 1.10A [T]this **agreement** constitutes the entire agreement between the parties and no representations, terms, conditions or warranties not contained in this **agreement** shall be binding on the parties. No agreement or addendum varying, adding to, cancelling or deleting from this agreement shall be effective unless reduced to writing and signed by both **parties**. No signature on behalf of the **client** shall be of any force and effect unless effected by an official duly authorised thereto in terms of the **client**'s Policy on Authorisation and Delegation.

1.10A Any undertaking, promise, term, condition, duty, obligation, representation or warranty or the like included by the **consultant** in a submission to the **client** during the latter's procurement process (for example in a response to a request for a tender, a request for information, a request for a proposal, or in a quotation) becomes legally binding on the consultant if an agreement arises from the procurement process, notwithstanding 1.10 and its non-incorporation into a subsequent written agreement, unless same is in clear and express terms and in writing excluded or varied by a subsequent agreement.”

4.9 Add an expression to Clause 6.1 to the **agreement** to provide as follows:

“6.1 The consultant shall provide the **services** required in relation to the **applicable work** in the **schedule** in accordance with best industry practice.”

4.10 Add Clause 6.6 to the **agreement** to provide as follows:

“6.6 The **consultant** must provide the client with an organogram of those of its personnel who are responsible for carrying out the **services**, including a *curriculum vitae* of each of those individuals. The **consultant** shall not be entitled to remove or replace the individuals who are responsible for carrying out the **services** on its behalf, or alter the organogram, without the **client**'s written consent.”

4.11 Add Clause 6.7 to the **agreement** to provide as follows:

“6.7 Time is of the essence for the **consultant**'s performance of the **services**. With this in mind, the **consultant** must, in consultation with the **client** and (if the **consultant** is not the **scheduling party**) the **scheduling party**, submit a time schedule in terms of which its **services** are required to be completed. The **consultant** is obliged to perform its **services** diligently and continuously, and to undertake all necessary measures to participate in the scheduling process for the **project**, so as not to delay the commencement, progress, or completion of the whole or any part of the **project**, or any of the **services**.”

4.12 Add an expression to Clause 7.1 so that the amended Clause 7.1 provides as follows:

“7.1 Notwithstanding 6.0 but provided that the liability does not arise from the **consultant** not carrying out its duties and functions in accordance with **best industry practice**, the consultant shall specifically not be liable for the following:”

4.13 Add Clause 7.3A to the **agreement** to provide as follows:

“7.3A When a claim against the **consultant** has lapsed in terms of 7.3, the **client** will nevertheless be entitled to enforce a debt against the **consultant** which has not become prescribed in terms of the Prescription Act 68 of 1969.”

4.14 Add a sentence to Clause 9.1 so that the amended Clause 9.1 provides as follows:

“9.1 The **client** agrees to pay the **consultant** such professional fees as stated and apportioned in the **schedule** for the **services** rendered in respect of the **applicable work**. The **consultant** shall not be entitled to any professional fees over and above those included in the **schedule** on any ground whatsoever unless specifically agreed by the **client** in advance of services rendered.”

4.15 Add an expression to Clause 11.1 so that the amended Clause 11.1 provides as follows:

“11.1 Unless otherwise stated in the **schedule**, the **client** shall, in addition to the professional fees payable, reimburse the consultant for the following expenses reasonably and properly incurred for the **project**:”

4.16 Add Clause 11.3 to the agreement to provide as follows:

“11.3 The **consultant** shall not be entitled to any disbursements over and above those contemplated in 11.1.1 to 11.1.4 on any ground whatsoever unless specifically agreed to by the **client** in advance of the disbursements being incurred.”

4.17 Add Clause 11.4 to the **agreement** to provide as follows:

“11.4 The **client** has the right during the execution of the **agreement** to impose a financial cap on certain disbursements, which will require the **consultant** to

obtain authorisation from the **client** to incur disbursements exceeding those caps. The **client** will not withhold authorisation unreasonably.”

- 4.18 Delete the second sentence of Clause 13.1 to the **agreement** and add a different sentence:

13.1 The **consultant** shall be entitled to render invoices monthly, taking cognisance of the apportionment of fees in the schedule. ~~[Such invoices shall be due and payable by the client on receipt thereof.]~~ Such invoices shall be due and payable by the client within (thirty (30) days of receipt thereof and subject to the invoices being in accordance with the **client**'s requirements for invoicing.”

- 4.19 Delete the second sentence of Clause 13.2 of the **agreement** and add a different sentence providing as follows:

“13.2 Should the client not have paid any invoice with thirty (30) **days** of receipt, the **client** shall be liable for interest for late payment. ~~[Such interest shall be calculated and payable at a rate of two (2) percentage points above the rate of interest applicable from time to time to prime borrowers at the consultant's bank from the due date for payment.]~~ Such interest shall be calculated and payable at the prime rate of interest of First National Bank on the first working day of the month that any such payment becomes due and unpaid.”

- 4.20 Delete the last expression of Clause 13.3 to the **agreement** to provide as follows:

“13.3 Should the **client** dispute any aspect of an invoice submitted by the **consultant**, the **client** shall give notice with reasons within thirty (30) days and shall not delay payment of ~~the undisputed amounts contained in the invoice.~~ The **client** may require the **consultant** to submit an invoice in respect of the undisputed amounts to enable the **client** to effect payment in compliance with its financial practices and policies. The submission of the invoice in respect of the undisputed amounts does not in any way constitute a waiver or abandonment of the **consultant**'s claims in respect of the disputed amounts.”

- 4.21 Delete Clause 13.5 of the **agreement**.

~~13.5 The **client** shall make payment without any set-off and herewith waives all rights to any such set-off.”~~

- 4.22 Delete Clauses 14.0 and 14.1 and add the following clauses in their place to provide as follows:

~~“14.0~~ **ASSIGNMENT**

~~14.1 Neither the **client** nor the **consultant** shall cede or delegate any rights or obligations under this **agreement** without the written consent of the other **party**, which consent shall not be unreasonably withheld.~~

“14.0 CESSION, ASSIGNMENT AND SUB-CONTRACTING

14.1 The **consultant** is not entitled, without the prior written consent of the **client**, to cede all or any part of its rights in terms of the **agreement** to any person, assign all or any part of its obligations in terms of the **agreement** to any person, or subcontract with any other person to perform all or any part of the **services** to be rendered in terms of the **agreement**. The **consultant** remains liable for the **services** subcontracted to another person and all acts and omissions of the subcontractor shall be deemed to be acts or omissions of the **consultant** vis-à-vis the **client** for purposes of the **agreement**. The **client** is entitled, without the consent of the **consultant**, to cede all or any part of its rights in terms of the **agreement** to any person or assign all or any part of its obligations in terms of the **agreement** to any person. The **client** shall inform the **consultant** prior to the cession or assignment, or otherwise as soon as is practicable thereafter, of the cession or assignment.”

4.23 Delete Clause 17.4 (including Clauses 17.4.1 and 17.4.3):

~~17.4 Without prejudice to the rights to terminate, the **consultant** may suspend the whole or part of the services in the event where:~~

~~17.4.1 The **client** has failed to pay an invoice of the consultant on due date and the **consultant** has given the **client** notice in terms of 17.1,~~

~~17.4.2 **Services** have been suspended and the period of suspension has exceeded six (6) months; or~~

~~17.4.3 the **consultant** has given the **client** notice of a material breach in terms of clause 17.1.”~~

4.24 Add Clause 1.21 to the **schedule** to provide as follows:

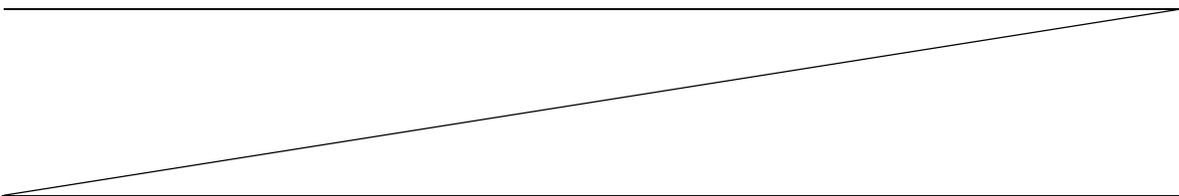
“A.21 SCHEDULING PARTY

Nominated by:
Postal address

Tel
E-mail

”

Postal code	



5 SIGNATORIES OF THE CONTRACTING PARTIES

Thus done and signed on at

Name of signatory

Capacity of signatory

For and on behalf of the **client** who, by signature hereof, warrants authorisation

Signed as witness

Details of witness:

Name of witness:

Physical address:
Cnr University and Kingsway Roads
Auckland Park
Johannesburg
2006

Thus done and signed on at

Name of signatory

Capacity of signatory

For and on behalf of the **consultant** who, by signature hereof, warrants authorisation

Signed as witness

Details of witness:

Name of witness:

Physical address: