INDEPENDENT CONTRACTOR AGREEMENT

FOR PROGRAMMING SERVICES

This Independent Contractor Agreement for Programming Services (hereinafter referred to as the **"Agreement"**) is made and effective the [DATE].

**BETWEEN: [ASSIGNOR NAME]** (hereinafter referred to as the **"Assignor"**), a company organised and existing under the laws of South Africa, with its head office located at:

 [INSERT ADDRESS]

**AND: [ASSIGNEE NAME]** (hereinafter referred to as the **"Assignee"**), a company organised and existing under the laws of South Africa, with its head office located at:

 [INSERT ADDRESS]

**RECITALS**

**WHEREAS**, the company has conceptualised a website Designer Package, as described in Schedule “A” attached hereto (the “Website”) and desires to hire the Programmer, who is engaged in the business of website development, to design such package in schedule “A”.

**WHEREAS,** Company has the needs from time to time to retain the services of programmer to create certain functional components to be integrated into the overall website design.

**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Designer (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

# TERM

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

# INDEPENDENT CONTRACTOR RELATIONSHIP

## The Programmer is an independent contractor of Company and, except to the extent specified in this Agreement, Company may not control or direct the details and means by which Independent Contractor performs his duties under this Agreement. This Agreement shall not create the relationship of employer and employee, a partnership or a joint venture. Neither the Programmer nor Company shall be deemed an agent of the other on account of this Agreement or the performance of any of their obligations hereunder. Programmer has no authority (and shall not hold himself out as having authority) to bind the Company and Programmer shall not make any agreements or representations on the Company’s behalf.

## Programmer will not be eligible to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits or any other fringe benefits or benefit plans offered by the Company to its employees, and the Company will not be responsible for withholding or paying any income, payroll, Social Security or other state or local taxes, making any insurance contributions, including unemployment or disability, or obtaining worker's compensation insurance on Programmer’s behalf. Programmer shall be responsible for, and shall indemnify and hold Company harmless against, all such taxes and contributions, including penalties and interest.

# PROGRAMMING SERVICES

##  Engagement and Services

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

##  Deliverables; Specifications

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

## Reasonable diligence

 Programmer shall use reasonable diligence to promptly perform the services described herein and to meet any delivery dates or project deadlines agreed to by the parties and to provide services that are in compliance with agreed specifications and project parameters. All services shall be provided in a professional and workmanlike manner and in compliance with standard industry standards and by qualified and experienced personnel secured by the Programmer. Programmer represents and warrants that it has no current commitments or obligations that will conflict with or otherwise interfere with or impede the performance of the services called for under this Agreement.

## Work progress

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

# FEES AND COMPENSATION

## Company agrees to pay Programmer the amounts and in accordance with the payment terms set forth on the attached Schedule B to this Agreement. If there is a dispute with regard to whether work was actually completed or whether an invoice is properly payable, the amount of the invoice in dispute shall not be due until the dispute is resolved.

## Payment of Compensation

Compensation relative to each work order shall be set forth in the relevant work order. The work order shall also include a payment schedule.

Programmer shall be entitled to compensation for performing those tasks and duties related to the Scope of Work as follows:

 [DESCRIBE]

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

 [DESCRIBE]

## Expenses

Company shall not be responsible for any expenses in addition to the compensation set forth in any work order unless specifically agreed in such work order.

## Deposit/Balance

The Client shall deposit the sum of ZAR\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ upon engaging the Programmer for the design package appearing in schedule A

The Balance shall be paid upon completion of the design package

# OWNERSHIP AND USE OF PROPRIETARY PROPERTY

## Proprietary rights acknowledgment

Programmer expressly acknowledges and agrees that any and all proprietary materials created by Programmer in the scope of providing service hereunder shall be created as “works made for hire” as defined in **South Africa Copyright Act 1978** and its various amendments acts, as administered by the **Companies and Intellectual Property Commission** in **the Department of Trade and Industry,** and that company shall be the true and lawful owner of all copyrights and other proprietary rights in and to such items and shall be considered to be the sole and exclusive author of such materials within the meaning of the Copyright Act. These items shall include, but shall not necessarily be limited to any and all deliverables resulting from the Programmer’s services or contemplated by this Agreement, all tangible results and proceeds of the Programmer’s services, work in progress, records, diagrams, notes, drawings, specifications, schematics, documents, designs, improvements, inventions, discoveries, developments, trademarks, trade secrets, customer lists, databases, software, programs, middleware, applications, solutions, (collectively referred to as "Proprietary Products") conceived, made or discovered by Programmer, solely or in collaboration with others, during the period of this Agreement.

Furthermore, Programmer agrees to execute any and all documents and take all other actions necessary to vest full rights and ownership of such materials and the copyrights, patents, or other proprietary rights therefore in the company, including but not limited to executing confirmations of the work for hire status of the Programmer, executing copyright assignments irrevocably and fully assigning all copyrights to the Company. Programmer hereby waives any other rights in and to such Proprietary Products that may attach or arise under any federal, state, local, international laws or the laws of any other country or jurisdiction, including but not limited to so-called "moral rights."

## Previously created work

In the event that Programmer intends or plans to integrate any work that was previously created by the Programmer into any work product to be created in furtherance of the performance of services hereunder, the Programmer shall first provide written notice to the Company and seek Company’s written approval of the incorporation of such items. In the event that Company consents, in its reasonable discretion, to the incorporation of such items into the work product to be created for the Company, the Company is hereby granted a worldwide, royalty free, perpetual, irrevocable licence to use, distribute, modify, publish, and otherwise exploit the incorporated items in connection with the work product that is developed for the Company.

## Infringement

Programmer shall be the original author of all Deliverables and shall not provide any Deliverables or any portion of any Deliverable that infringes upon the intellectual property rights (copyright, patent, trademark, moral rights, privacy rights, trade secrets, or any other right) of any other party. Programmer hereby indemnifies and holds Company harmless from and against any alleged, threatened or actual infringement asserted by any third party, which indemnification shall include ongoing payment of costs and attorney fees of defending or otherwise addressing any such claimed infringement related to Programmer’s Deliverables.

## Representation and warranties

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

##  Bug fixing

Programmer shall promptly fix any and all “bugs” or other defects in the Deliverables upon notice thereof from the Company. This obligation shall survive the termination of this Agreement and the delivery and acceptance of any Deliverables.

# CONFIDENTIAL INFORMATION

##  Nondisclosure

Programmer will not, during or subsequent to the term of this Agreement, use Company's or any Company’s Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of Company or disclose Company's Confidential Information to any third party, without the advanced written authorization of the Company and/or the relevant Company. Programmer further agrees to take all reasonable precautions to prevent any unauthorised disclosure of such Confidential Information including, but not limited to, limiting access to such information to individuals within its organisation that have a *bona fide* need to know of such information, having each employee of Programmer, if any, with access to any Confidential Information execute a nondisclosure agreement containing provisions and restrictions substantially similar to those contained in this Agreement.

Programmer agrees not to disclose or communicate, in any manner, either during or after Programmer’s agreement with Company, information about Company, its operations, clientele, or any other information, that relate to the business of Company including, but not limited to, the names of its customers, its marketing strategies, operations, or any other information of any kind which would be deemed confidential, a trade secret, a customer list, or other form of proprietary information of Company. Programmer acknowledges that the above information is material and confidential and that it affects the profitability of Company.

## Breach of confidentiality is a breach of this Agreement

Programmer understands that any breach of this provision, or that of any other Confidentiality and Non-Disclosure Agreement, is a material breach of this Agreement. To the extent Programmer feels they need to disclose confidential information, they may do so only after obtaining written authorization from [an officer] of the Company.

## Advertising

Programmer shall not be permitted to make any press releases or disclose to any other party, in any marketing or advertising material or any other means of communication, the existence of the relationship between Company and Programmer or the existence or any terms of conditions of this Agreement or that work is being performed relative to any Company.

## Definitions

For purposes of this Agreement, the term "Confidential Information" means and includes, any and all proprietary information of any nature or kind, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas. technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed by Company either directly or indirectly in writing or orally. Confidential Information does not include information which (i) is known to Programmer at the time of disclosure to Programmer by Company or any Company as evidenced by written records of Programmer, (ii) has become publicly known and made generally available through no wrongful act of Programmer or (iii) has been rightfully received by Programmer from a third party who is authorised to make such disclosure.

# NOTICE CONCERNING WITHHOLDING OF TAXES

Programmer recognises and understands that it will receive an [SPECIFY TAX] statement and related tax statements, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable State law. Programmer hereby promises and agrees to indemnify the Company for any damages or expenses, including attorney's fees, and legal expenses, incurred by the Company as a result of independent contractor's failure to make such required payments.

# AGREEMENT TO WAIVE RIGHTS TO BENEFITS

Programmer hereby waives and foregoes the right to receive any benefits given by Company to its regular employees, including, but not limited to, health benefits, vacation and sick leave benefits, profit sharing plans, etc. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the Programmer by virtue of their services to Company, and is effective for the entire duration of Programmer’s agreement with Company. This waiver is effective independently of Programmer’s employment status as adjudged for taxation purposes or for any other purpose. Neither this Agreement, nor any duties or obligations under this Agreement may be assigned by either party without the consent of the other.

# TERMINATION

This Agreement may be terminated prior to the completion or achievement of the Scope of Work by either party giving 30 days written notice. Such termination shall not prejudice any other remedy to which the terminating party may be entitled, either by law, in equity, or under this Agreement.

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

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

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# NON-SOLICITATION

Programmers shall not, during the Agreement and for a period of one year immediately following termination of this Agreement, either directly or indirectly, call on, solicit, or take away, or attempt to call on, solicit, or take away, any of the customers or clients of the Company on whom Programmer called or became acquainted with during the terms of this Agreement, either for their own benefit, or for the benefit of any other person, firm, company or organization.

# NON-RECRUIT

Programmer shall not, during this Agreement and for a period of one year immediately following termination of this agreement, either directly or indirectly, recruit any of Company’s employees for the purpose of any outside business.

# RETURN OF PROPERTY

On termination of this Agreement, or whenever requested by the parties, each party shall immediately deliver to the other party all property in its possession, or under its care and control, belonging to the other party to them, including but not limited to, proprietary information, customer lists, trade secrets, intellectual property, computers, equipment, tools, documents, plans, recordings, software, and all related records or accounting ledgers.

# EXPENSE ACCOUNTS

Programmer and the Company agree to maintain separate accounts *in re*gards to all expenses related to performing the Scope of Work. Programmer is solely responsible for payment of expenses incurred pursuant to this Agreement unless provided otherwise in writing by [AN OFFICER] of the company. Programmer agrees to execute and deliver any agreements and documents prepared by Company and to do all other lawful acts required to establish document and protect such rights.

# WORKS FOR HIRE

Programmer agrees that the Scope of Work, all tasks, duties, results, inventions and intellectual property developed or performed pursuant to this Agreement are considered “works for hire” and that the results of said work is by virtue of this Agreement assigned to the Company and shall be the sole property of Company for all purposes, including, but not limited to, copyright, trademark, service mark, patent, and trade secret laws.

# LEGAL COMPLIANCE

Programmer is encouraged to treat all company employees, customers, clients, business partners and other affiliates with respect and responsibility. Programmer is required to comply with all laws, ethical codes and company policies, procedures, rules or regulations, including those forbidding sex harassment, discrimination, and unfair business practices.

# PERSONS HIRED BY INDEPENDENT CONTRACTOR

All persons hired by Programmer to assist in performing the tasks and duties necessary to complete the Scope of Work shall be the employees of Programmer unless specifically indicated otherwise in an agreement signed by all parties. Programmer shall immediately provide proof of Workers’ Compensation insurance and General Liability insurance covering said employees, upon request of the Company.

# NOTICES

Any notice to be given hereunder by any party to the other may be affected either by personal delivery in writing, or by mail, registered or certified, postage pre-paid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraphs of this Agreement, but each party may change their address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of 7 days after mailing. Programmer agrees to keep Company current as to their business and mailing addresses, as well as telephone, facsimile, email and pager numbers.

# MEDIATION AND ARBITRATION

In the event of any dispute or differences arising out of or relating to this agreement, the parties shall use their best endeavours to settle such disputes or differences amicably to this effect, they shall consult and negotiate with each other in good faith and understanding or their mutual interests to reach an equitable solution satisfactory to both parties.

Where the parties did not settle their disputes by mediation, any and all disputes or claims between the programmer and the Company shall be resolved by binding arbitration in accordance with South African Arbitration laws.

# INDEMNIFICATION

Programmer shall defend, indemnify, and hold the company harmless from any and all damages, expenses or liability resulting from or arising out of, any negligence or misconduct on Programmer's part, or from any breach or default of this Agreement which is caused or occasioned by the acts of Programmer. Programmer shall insure that its employees and affiliates take all actions necessary to comply with the terms and conditions set forth in this Agreement. Programmer shall name Company as an additional insured on all related insurance policies including workers compensation, and general liability.

# PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

# MODIFICATION OF AGREEMENT

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

# GOVERNING LAW

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

# SEVERABILITY

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

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

CLIENT DESIGNER

Authorized Signature Authorized Signature

Print Name and Title Print Name and Title

**APPENDIX A**

**Designing Packages and Finish Timeframe**

1. Professional 2 language website \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Social Media Profiles creating and designing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Unlimited business emails \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Device Responsive Website \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. Hosting \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
6. Maintenance \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
7. Website Maintenance \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
8. Professional Animation Promoting Video \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
9. RQ Code for Brand \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
10. Professionally Designed Email Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
11. Adding Business Location to Google Maps \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
12. Badges Design \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
13. Professionally Designed Receipt and Invoice for your Brand \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
14. Electronic Customer Survey for Increase the Quality \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX B**

**Design Milestone/ Schedule**

The Development /Design Schedule timeline and procedures are as follows:

(1) Designer’s delivery of an initial prototype of the design package is; \_\_\_\_\_\_\_\_\_\_\_

(2) Time period for Owner to review the initial prototype; \_\_\_\_\_\_\_\_\_\_

(3) Time periods for Programmer to revise the design, for re-review by Owner, and for additional

 revisions; \_\_\_\_\_\_\_\_\_\_\_\_\_

(4) Time period for delivery of a final Website design package; \_\_\_\_\_\_\_\_\_\_\_\_

(5) Time period for Owner to review the final Website design package; \_\_\_\_\_\_\_\_\_\_\_\_

(6) Time periods for Programmer to revise the final Website design package, for re-review by Owner,

 and for additional revisions; \_\_\_\_\_\_\_\_\_\_\_\_\_\_

(7) Time periods for acceptance of final Website design package by Owner and uploading of the final

 Website on the hosted server. \_\_\_\_\_\_\_\_\_\_\_\_\_