PATENTS EXAMINATION BOARD

PRACTICAL LEGAL PROBLEMS

EXAMINATION: JULY 2018

PAPER 2

EXAMINERS: R BAGNALL
             D DOHMEN

MODERATOR: C.E. PUCKRIN S.C.

DURATION: READING TIME: 30 MINUTES
           EXAMINATION TIME: 3 HOURS
           TOTAL EXAM TIME: 3 HOURS, 30 MINUTES

NOTES TO CANDIDATES:

1. Attached to the paper are copies of the following documents:

   (i) A copy of the Patents Act No. 57 of 1978;

   (ii) A copy of the Patent Regulations 1978; and

   (iii) A copy of the Uniform Rules of the High Court under the Superior Courts Act 10 of 2013 (Rules 6, 14, 17, 18, 19, 21, 22, 23, 24, 25, 30, 35, 36, 37 and 63).

2. Each candidate is also allowed access to (1) one dictionary during the exam.

3. This paper comprises 20 pages - Questions 1 to 4 (100 marks) (Pages 2 to 10), Document A (Pages 11 to 12) and Document B (Pages 13 to 20).

4. Where appropriate reference should be made to case law.
QUESTION 1: (30 marks)

Your client, Ace Pharmaceuticals (Pty) Limited ("Ace"), is the patentee of South African Patent No. ZA 2009/0111. ZA2009/0111 is due to expire at the end of October 2019. The patent covers a pharmaceutical composition which is extremely effective for the treatment of Alzheimer’s disease.

Ace advises you that it has become aware that a competitor, Multi Pharmaceuticals (Pty) Limited ("Multi"), has obtained marketing approval from the Medicines Control Council for a pharmaceutical composition for the treatment of Alzheimer’s disease.

Ace has obtained a copy of the package insert and has confirmed that the pharmaceutical composition falls within the scope of claim 1 of ZA 2009/0111 (the only independent claim of the patent).

Ace has also received reliable information that, since Multi have now received the marketing approval, they intend to launch their product very soon.

Ace reminds you of an opinion you gave to them some time ago regarding the validity of the South African patent. In short, you provided an opinion that the claims appeared to be novel in light of the prior art of which you were aware at the time. However, there was some doubt about whether or not the claims would withstand an attack on its validity based on lack of inventive step. It was concluded at the time that claim 1 was arguably valid but this could probably only be resolved by a Court with the benefit of expert evidence, tested under cross-examination.

Ace also advises you that, since the opinion was given, patents in Australia, the EPO and the USA have been granted, all of which were subjected to substantive examination. The claims that were allowed by the Examiner in Australia are identical to those which were granted in South Africa. However, the Examiner in the USA and the EPO objected to the validity of the same claims based on lack of inventive step. The Examiner was not persuaded by
the arguments submitted and, accordingly, in order to obtain grant of a patent in the USA and the EPO it became necessary to limit the scope of the pharmaceutical composition to a very specific dosage of between 15mg and 20mg.

Ace informs you that the product that Multi intends to sell is provided in a 12mg dosage form.

Ace's product is sold in the private and public sectors. In the public sector, a fixed term tender is awarded to the successful party every three years. Your client was awarded a tender for the supply of its product in the public sector two years ago and the next tender award will only take place after the patent has expired.

Ace's product is sold at a price of R2,900 per monthly treatment and the agreed tender price in the public sector is R850 per monthly treatment.

Alzheimer's disease is categorised as a chronic condition, and accordingly, almost all medical aid companies are required to reimburse in full for the prescription of this product. Some medical aid companies require the patients to make a nominal co-payment of R150 per month.

Ace has been reliably informed that Multi will be sold at a price of approximately R1,300 per monthly treatment. Ace’s representative who deals with medical reimbursement schemes has advised you that this will inevitably result in the medical aid schemes lowering the amount allowed for reimbursement to the price of Multi's product (the reference price) and any patient wishing to continue to use Ace's product will be required to make a much larger co-payment to address the difference in price.

Multi is a well-established company in South Africa with a significant annual turnover in excess of R800 million per year. Furthermore, an investigation into the assets of the company revealed that they are the owners of warehouse
facilities in Port Elizabeth and Cape Town valued at least R50 million each. There are no bonds registered over these properties.

Ace Pharmaceuticals is predominantly a South African company and it conducts all of its research and development through a research centre in South Africa. Your client is able to demonstrate that it incurred costs of approximately R400 million developing the pharmaceutical composition that is the subject matter of ZA2009/0111. It took approximately 7 years to develop the product.

Your client incurred a significant amount of these costs in isolating and testing approximately 20 candidate compositions. However, once the testing was completed only one composition (the patented composition) was considered suitable.

Ace Pharmaceuticals is a niche pharmaceutical company i.e. it does not produce and sell a broad range of pharmaceutical products. It specialises in the treatment of specific neurological disorders, such as Alzheimer’s disease. As a result, it only has three important products which it sells, and the patented product makes up approximately 70% of its sales annually in South Africa.

Multi sells pharmaceutical products across a large number of therapeutic areas and its market share for treating Alzheimer’s disease is approximately 15% of its total market share in Rand value.

Although Ace’s product is one of the preferred treatments for Alzheimer disease, the pharmaceutical composition is classified into a group which contains eight other “therapeutic equivalents” on the market. Thus, each of these products are interchangeably prescribed by doctors depending on a number of factors.

Ace’s marketing director explains to you that if Multi’s product was brought onto the market it would not be easy to determine whether or not Ace’s losses would be entirely attributed to the introduction of that product or other factors such as
the marketing efforts and/or price changes that could occur in relation to the other products.

Furthermore, Ace would be faced with a difficult situation were Multi Pharmaceuticals to launch their product in that it would need to consider whether or not to reduce its price to mitigate any loss in the market while the any proceedings were being decided.

In due of the above circumstances, please advise Ace comprehensively on the approach that should be followed in this matter. In doing so, please deal with the relevant legal requirements and provide Ace with an overview of the prospects of success and all the options available to it in light of facts set out above.

**QUESTION 2:**

(25 marks)

You receive the below letter from your client:

"Dear Patent Attorney

I am the patent manager of Intime Innovations Inc. we are a relatively new US based start-up company in the field of research and production of solar panels.

One of our first solar panels innovations was ground breaking and we spent a small fortune on protecting the idea in a large number of countries around the world. It all started with a US patent application in September 2012 and an international (PCT) patent application in 2013.

In 2015 we extended our patent rights to South Africa and South African Patent Application No. ZA2015/05544 was entered on our behalf. Since we were in the process of dealing with some prior art objections in the US and Europe, we elected to delay acceptance of the South African application, first to March 2016 and then again to December 2016."
Once we had filed voluntary amendments in South Africa in November 2016 to address the prior art which was a concern to us, the South African application was allowed to proceed to acceptance and grant in April 2017.

At the time when we filed the South African national phase entry of ZA2015/05544 in March 2015 our current managing director, Mr John Patrick Allen handled all aspects regarding the filing of the patent application and instructed our South African patent agent directly. Since he had already appointed World Patent Annuity Payment Services ("WPAPS") to attend to the payment of all future annuity payments in respect of the patent family, Mr Allen, at the time instructed our South African patent agents that they do not need to provide any annuity payment services in respect of the South African application since these will be dealt with by a third party (WPAPS).

On receipt of the South African filing particulars, Mr Allen provided the filing details to WPAPS who logged the application details on their systems. Since the patent is a valuable asset of Intime Innovations and South Africa is an important solar energy market, Mr Allen instructed WPAS to automatically pay the renewals and report to us.

I joined the company earlier this year and at the end of April 2018, during a review of the status of the patent families, I noted that no renewals had been paid to date for ZA2015/05544. I immediately contacted WPAPS for clarification. Two days ago, I received information from WPAPS that unfortunately the annual renewal payments for ZA2015/05544 had not been paid and that ZA2015/05544 had lapsed.

We are extremely concerned by this turn of events as we, at all times, wanted the patent to remain in force. As we understand from WPAPS, a capturing error occurred on their part and instead of using the international filing date (14 September 2013) as the date from which annual renewal dates are calculated, they used the grant date (27 April 2017).
We understand that it may be possible to bring a restoration application for ZA 2015/05544 and we kindly request your urgent assistance in this regard.

Yours faithfully
Peter Smith"

A copy of an extract from the South African patents register of the form P2 for ZA2015/05544 is attached as Document A.

Please draft the necessary affidavit(s) for filing in support of a restoration application based on the above facts. You may omit the closing section relating to the authentication of the document(s).

**QUESTION 3:**

You receive the below letter from your client:

"Dear Patent Attorney

As you know we conduct research on medicinal properties of indigenous Southern African plants and develop new products through benefit sharing arrangements with local communities.

I attach hereto a draft employment contract for the new head of our research and development team which we have recently recruited (attached as Document B).

We want to ensure that all company information, trade secrets, know-how, inventions and intellectual property generally disclosed to her and developed by her and her team are fully protected and remain exclusively the property of the company.

We also want to include all legally permissible protections for the company in the event that she leaves our employment and wish to move to one of our
competitors or set up business in competition with us. Although our research extends across Southern African it is unlikely that any competitor outside of South Africa would be able to successfully compete with us.

Please review the agreement and let us have alternative clauses for those clauses which you consider inappropriate or insufficient. We also welcome any suggestions of additional protection provisions which you may have.

Yours sincerely
Sue Williams*

Please advise your client accordingly.

**QUESTION 4:**

Please advise your client on each of the below separate questions.

4.1 Your client, ABC Packaging, employed a plastics engineer approximately eight months ago immediately after he resigned from a competitor, Tight Packaging. During a recent product presentation by the research department, the plastics engineer explained the development of a new packaging film for sealing fresh fruit (a specialist cellulose fibre product) which was developed in ABC Packaging’s film coating division. The results looked promising and, accordingly, ABC Packaging filed a provisional patent application covering the wrapping material.

Yesterday, you received a non-threatening letter from Tight Packaging explaining that they hold a patent for a base tray used in packaging and your employee is named as the sole inventor of the invention described in the patent.

Tight Packaging’s primary line of business is the manufacturing of the rigid structures used in packaging such as base trays’ films and the like, which it supplies to commercial packers.

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ABC Packaging has started a new subsidiary company that has a production line for packaging fruit. This new area of business is proving to be extremely lucrative and it would be valuable to the company to package fruit using the base tray and new packaging film in combination.

Please advise your client on what options are available to it and what the best course of action would be in the circumstances.

(5 marks)

4.2 Your client has filed a patent application in South Africa that includes the following claims:

1. A compound of Formula A.
2. Use of the compound of Formula A as claimed in claim 1 for the treatment of anxiety.

After the filing of the application your client advises you that, following the examination of corresponding applications in examining countries, it has emerged that the compound of Formula A does not form part of the state of the art prior to the priority date of your client’s patent application. In the circumstances, please advise your client what amendments to the claims, if any, would be advisable prior to the grant of the South African patent application.

(5 marks)

4.3 Your client files a patent application in South Africa, on 1 June 2016, claiming priority from a previously filed South African provisional application, dated 2 June 2015. Assume that the claim to priority is a valid one. The specification includes a single claim, namely, "An oral dosage composition comprising in combination compound A and compound B". Your client advises you that it has recently become aware of a South African patent which bears a priority date of 1 May 2014. This patent was granted and became open to public inspection on 29 May 2015. The prior filed South African patent application disclosures a general formula which includes compound A and compound B as well as
one example with an oral dosage formulation comprising Compound A only and another example with an oral dosage formulation comprising Compound B only. Please advise your client what impact this disclosure may have on the novelty and inventiveness of its claim.

(5 marks)

4.4 Your client advises you that their biggest client has received a Letter of Demand from a competitor ABC Products (Pty) Ltd. In the letter ABC Products makes claims that your client’s product infringes ABC Products’ ZA patent. The ZA patent is clearly identified in the letter.

The customer is not interested in getting involved in any patent disputes and is in the process of cancelling all pending and future orders from your client. They will in future only order from ABC Products.

Your client is very concerned and requires your advice on what it can do to address the situation. Please advise on options available to your client and provide practical advice to your client.

(5 marks)

4.5 Your client advises you as follows:

"I confirm that I have received the final version of my replying affidavit in the pending patent revocation application brought by SA Litigator (Pty) Ltd against your client SA Patentee (Pty) Ltd. As you know I live in Germany and will have to sign the affidavit here in Germany and courier it back to you. Please confirm how I should go about in order to have the affidavit correctly signed."

Please respond to your client and explain your reasons for the response.

How would you answer differ if the witness lived in South Africa and had to sign the affidavit in South Africa?

(5 marks)

******

TOTAL: 100 marks
### Document A

**REPUBLIC OF SOUTH AFRICA**

**REGISTER OF PATENTS**

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<td>72  ANDREW, Keith</td>
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**PRIORITY CLAIMED BY PCT**

**INTERNATIONAL APPLICATION**

PCT/ZA2013/01111 FILED 14 September 2013 (WO2014/058431)

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**N.B.**

Use International Abbreviation for country (See Schedule 4)

**TITLE OF INVENTION**

Solar Panel

**ADDRESS OF APPLICANT(S)/PATENTEE(S)**

7 Willow Creek, Houston, Texas, USA

**ADDRESS FOR SERVICE**

A & A REF: P1000ZA00

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### AMENDMENTS AND RECTIFICATIONS, ETC.

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### LICENCES, ATTACHMENTS AND HYPOTHECATIONS

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**REMARKS: (FOR OFFICE USE ONLY)**
Document B

CONTRACT OF EMPLOYMENT
MADE AND ENTERED INTO BY AND BETWEEN

R&D SA (PTY) LTD
(hereinafter referred to as the “the Employer”)

AND

Nthabiseng Kumalo
(hereinafter referred to as “the Employee”).

1. INTERPRETATION

1.1 In this contract, unless the context indicates otherwise:

1.1.1 the male shall import the female and vice versa;

1.1.2 the singular shall include the plural and vice versa;

1.1.3 the headings in this contract are for convenience only and shall not affect the interpretation of this contract; and

1.1.4 the term “total cost package” is defined as the amount payable to an Employee by the Employer before any deductions (including any medical aid deductions) and/or Tax structuring has taken place.

2. APPOINTMENT

2.1 The Employee undertakes to enter the employment of the Employer in the position of Head of Department: Research and development and new product innovation with effect from 1 August 2018 (“the date of engagement”) and to serve at such a place and in such capacity, and perform such duties, as the Employer may from time to time reasonably require.

2.2 The Employee’s major job functions and performance requirements will be duly agreed to by the Employee and his/her immediate manager. The Employee agrees however that the contents of the job as agreed with his/her immediate manager, shall not be a checklist of his/her duties and that he/she may be expected to fulfil other duties and responsibilities reasonably related to the contents of the job.

2.3 The Employee further undertakes to keep up to date with the latest changes and technological advances as far as his/her job is concerned.

2.4 The Employee warrants that he/she has declared any medical or other condition which may affect his/her ability to comply with the performance requirements of the job or which may affect his/her insurability as may from time to time be required for the purposes of, or in connection with the Employee’s employment. The Employee further acknowledges that a failure to disclose any relevant information, in terms of this paragraph 2.4, is a material breach of this contract.

2.5 The Employee warrants that all information contained in any application or curriculum vitae of the Employee submitted to the Employer in support of the Employee’s application for the position of employment at the Employer is true and correct at the time of signing this contract. The Employee further acknowledges that a breach of this paragraph 2.5, is a material breach of this contract.
3. **TRAINING PERIOD**

The Employee shall be required to work a training period of three (3) months from the date of engagement, and during such period the Employee’s performance, skill, conduct, compatibility, knowledge and health shall be evaluated by the Employer, and any failure to comply with or meet the above conditions or standards during the conclusion of the training period shall be sufficient reason for the Employer to terminate the Employee’s services.

4. **POLICY AND PROCEDURE**

4.1 The Employee undertakes to comply with all policies, regulations, guidelines and procedures of the Employer, as amended from time to time, however presented or conveyed or wherever contained, as are applicable to his/her or to his/her duties.

4.2 The Employee agrees at all times to obey all legitimate, fair orders and instructions and duly to account for all monies and documents which may come into his/her possession as an employee of the Employer, and he/she further agrees to conduct his/herself in such a manner so as not to adversely affect the reputation of the Employer.

4.3 The Employee acknowledges that he/she will be bound to the terms of the Employer’s disciplinary code and grievance procedure (if any), as amended from time to time.

5. **CONFIDENTIALITY**

5.1 The Employee undertakes not to use, directly or indirectly, for own benefit or that of another person, any Confidential Information of the Employer or of the customers of the Employer during the course of his/her employment with the Employer.

5.2 “Confidential Information” shall be deemed to include but not be limited to the Employer’s trade secrets, names of suppliers and customers.

5.3 The Employee acknowledges that he/she will be required to use, and shall obtain possession of or access to, software and other material, which is owned or leased or licensed to the Employer. The Employee shall not remove any such software or material from the premises of the Employer, nor retain any copies, reproductions, or extracts thereof or disclose same to any other party or use the aforementioned for any purpose other than for complying with his/her employment obligations.

6. **INTELLECTUAL PROPERTY RIGHTS**

The Employee undertakes to assign all rights to products developed by the Employee, whether alone or in conjunction with others, during the course and scope of his/her employment ("the Work") to the Employer and undertakes, at the Employer’s cost, to lend to the Employer such assistance and to sign all documentation which may be necessary to perfect the Employer’s title to the Work.

7. **WORKING HOURS**

7.1 The Employee shall be obliged to work _____________ hours per week and the Employee shall work between at least the following hours:

Monday to Friday: ______ to ________.

7.2 The Employer reserves the right to amend the working hours from time to time in accordance with the operational requirements of the business.

7.3 The Employer may require the Employee to work overtime depending on operational requirements and additional remuneration (if any) for such overtime work shall be agreed to between the parties from time to time.
7.4 The Employee undertakes to devote all time and attention during the hours outlined in paragraph 7.1 above, and such additional time and attention as the exigencies of the business may reasonably require, to duties under this contract.

7.5 The Employee shall be entitled to take a lunch interval of one hour during a working day which lunch our shall not be counted as part of the Employee's working hours.

8. **RENUMERATION**

8.1 The Employer undertakes to pay a total cost package for services rendered at a rate of R_______,00 per month, payable monthly in arrears on the 25th day of the month. Included in the total cost package is a travelling allowance of R_______,00 per month. Further structuring of the total cost package may be agreed between the parties from time to time.

8.2 The Employee shall be paid a 13th cheque equal to his/her total cost package for the preceding month on his/her date of birth. If the Employee has not completed a full year of employment with the Employer, then the 13th cheque shall be calculated on a pro-rata basis according to the period that the Employee has worked. No 13th cheque or part thereof shall be paid if the Employee's services are terminated prior to his/her date of birth.

8.3 The Employer undertakes to review the Employee's remuneration package from time to time.

8.4 The Employer shall refund the Employee for any petrol and cellular phone expenses incurred by the Employee during the course and scope of his/her employment at the Employer against presentation of proof of payment.

9. **ANNUAL BONUS**

The Employer shall at its sole discretion pay the Employee an annual bonus at the end of each calendar year, subject to the Employer's financial standing and the Employee's conduct of his/her duties during the relevant year. If the Employee has not completed a full year of employment with the Employer, then the bonus (if any) shall be calculated on a pro-rata basis according to the period that the Employee has worked. No bonus or part thereof shall be paid if the Employee's services are terminated prior to the end of the calendar year. All bonuses shall be paid at the discretion of the Employer, thus the payment of a bonus shall not be seen as a right.

10. **DEDUCTIONS**

The following deductions will be made from the Employee's total cost package:

10.1 Employee's tax – PAYE and SITE;

10.2 Unemployment fund contribution (UIF) (if applicable);

10.3 Retirement Annuity Fund contribution (if applicable); and

10.4 Any other deductions which may be stipulated by law.

11. **LEAVE**

11.1 **ANNUAL LEAVE DURING THE FIRST FIVE YEARS OF EMPLOYMENT**

11.1.1 The Employee shall be entitled to __________ working days leave per year, which leave shall accrue monthly from the commencement date of his/her employment.

11.1.2 The Employee shall avail of at least 10 working days leave (of which 5 working days have to be consecutive) within a period of 6 months after the end of each 12 month period of employment. The remaining 5 working days may be taken from time to time as occasional leave subject to management consent.
11.1.3 The Employee may accumulate any working days leave not taken in terms of paragraph 11.1.1 or 11.1.2 provided that the accumulated leave days do not exceed 20 working days. Should the accumulated leave days exceed 20 working days, the Employee will be obliged to avail of his/her full leave entitlement as set out in paragraph 11.1.1 within a period of 6 months after the date whereon the accumulated leave exceeds 20 working days. Any leave not taken within the 6-month period will be forfeited and no compensation will be paid.

11.1.4 Leave will be granted in accordance with the operational requirements of the business of the Employer.

11.1.5 No leave may be taken during any notice period in terms of paragraph 22.1.

11.2 SICK LEAVE

11.2.1 The employee shall be entitled to 30 days sick leave per 3-year cycle starting on the date of engagement.

11.2.2 During the first 6 months of the Employee’s employment, the Employee shall be granted paid sick leave at the rate of 1 working day for every 26 working days.

11.2.3 The Employee undertakes to produce a valid medical certificate if the Employee has been absent from work for 2 consecutive working days or if the Employee’s absenteeism falls on a Monday, Friday or a day preceding or following a public holiday or long weekend. The Employer shall, at its own cost, be entitled to refer the Employee to an independent medical professional of the Employer’s choice for a second opinion as to the Employee’s medical condition.

11.3 MATERNITY LEAVE (where applicable)

11.3.1 The Employee (if the Employee is female) is entitled to 4 consecutive months of unpaid maternity leave.

11.3.2 The Employee must commence maternity leave at least 2 weeks prior to the expected date of birth, unless otherwise agreed or unless a medical practitioner or a midwife certifies that it is necessary for the health of the Employee or that of the unborn child to commence maternity leave on a particular earlier date.

11.3.3 The Employee may not work during the period of 6 weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

11.3.4 The Employee must notify the Employer in writing of the date on which the Employee intends to commence maternity leave and of the date on which she intends to return to work. Such notice must be given at least 6 weeks prior to the commencement of the maternity leave period.

11.4 FAMILY RESPONSIBILITY LEAVE

11.4.1 The Employee will be entitled to be paid family responsibility leave of 3 days per 12 month period of employment in event of the birth (except if maternity leave is applicable) or illness of the Employee’s child. The Employee undertakes to provide a medical certificate to substantiate the absence.

11.4.2 The leave mentioned in paragraph 11.5.1 may also be taken in the event of the death of the Employee’s spouse or life partner, natural or adoptive parent, grandparent, natural or adoptive child, grandchild or sibling.

11.5 LAPSEING

11.5.1 Any unused leave entitlement lapses at the end of the leave cycle in which it occurs.
12. **ABSENTEEISM**

The Employee is required to phone in by 8:00 on the first day of any unscheduled absence and advise a member of management personally of such absence. Failure to comply with this provision may result in the absence being treated as unpaid leave.

13. **PENSION**

The Employee shall be regarded as non-pensionable and no pension deductions will be effected, unless the parties agree to the contrary.

14. **MEDICAL AID**

The Employee shall be entitled to a medical aid contribution from the Employer in accordance with the Employer's medical aid rules (if any) which may be amended at any time by the Employer at its sole discretion and the Employee shall only be entitled to the contribution after the expiry of the training period.

15. **TRANSFERS**

The Employer may at its discretion, and subject to operational requirements, transfer the Employee to any other position or business operation of the Employer in any temporary or permanent position basis, subject to reasonable notice to the Employee. Any refusal by the Employee to such transfer without an acceptable reason shall be a breach of this contract.

16. **RULES AND REGULATIONS**

The Employee shall observe and obey all the rules, regulations and procedures which have been or which may have been drawn up the Employer, who shall endeavour to ensure that the Employee is made familiar with such rules, regulations and procedures. The Employee shall ensure that he/she knows and understands, all the relevant rules, regulations and procedures of the Employer and any breach of such, whether deliberate or through ignorance, shall render the Employee liable to disciplinary action.

17. **INDUSTRIAL ACTION**

The Employee agrees not to participate in or incite any other person to participate in any action, which may adversely affect any of the Employer's operations. Such actions may include, but are not limited to illegal strikes, go slows, work to rule, boycott, stay aways or any similar action which may obstruct, prevent or disregard the work of the other employees or the operations of the Employer.

18. **SAFETY AND SECURITY**

18.1 The Employer agrees to provide a safe and healthy working environment where this is possible and in terms of the provisions of the Machinery and Occupational Safety Act.

18.2 The Employee agrees to observe and obey all the safety rules and regulations as prescribed by the Employer.

18.3 The Employee declares that he/she has never been convicted of a Schedule One Criminal Offence as contained in the Criminal Procedure Act No. 51/77, such offences being theft, fraud, assault, rape, arson etc..

18.4 The Employer agrees that should the above statement prove to be false, or should the Employee fail to declare a future Schedule One Offence, the Employer shall be entitled to summarily terminate the Employee's services.
18.5 The Employee agrees the Employer may, from time to time, conduct searches of the Employee’s person or personal possessions for security and safety reasons. Such searches may include any vehicle of the Employee, which may enter the premises of the Employer.

18.6 The Employee agrees to allow herself to be interviewed, tested or questioned, by any person authorized by the Employer and to provide statements or information, whether written or otherwise, in regard to any investigation undertaken by the Employer, relating to the Employee’s employment by the Employer.

19. TRAINING

19.1 The Employer may require the Employee to attend, from time to time, training courses or development programmes in order to improve the Employee’s skills, knowledge and experience.

19.2 Attendance of these course or programmes will be at the discretion and expense of the Employer.

20. DEDUCTIONS

The Employee authorises the Employer to deduct from his/her earnings, any monies owing to the Employer for whatever reason.

21. ABSCONDMENT

The Employee acknowledges that the Employer shall be entitled to treat the Employee as having absconded or deserted after 3 consecutive days of unauthorised absence, and this contract shall then be regarded as terminated from the last working day that the Employee presented herself for duty.

22. TERMINATION

22.1 Each party may terminate this contract as follows by giving not less than 1 working day’s written notice during the first 4 weeks of employment, or not less than 1 week’s written notice during the training period or not less than 2 month’s written notice thereafter.

22.2 Termination without notice may occur for any cause recognised by law as sufficient.

22.3. Any notice in terms of this contract may be given by leaving such notice at or sending such notice by prepaid registered post to the address specified by either party in writing.

22.4 The Employee hereby signifies the following address as the address at which he/she will accept notice in terms of this contract:

92 5th Avenue, Innovation Park, Pretoria; and

Fax No. 011 432 1234.

22.5 The Employer hereby signifies the following address as the address at which it will accept notice in terms of this contract:

____________________________________________________

____________________________________________________

22.6 These addresses may be amended on notice by the relevant party.

23. EXTERNAL EMPLOYMENT OR CONTRACT WORK

The Employee may only undertake any external employment or contract work with the Employer’s prior written consent.
24. **TERMINATION OF CONTRACT**

24.1 Discipline

The Employer may terminate the Employee's services whenever a breach or breaches of the Employer's disciplinary code have occurred and for which breach or breaches dismissal is the prescribed penalty. No dismissal will be effected unless an enquiry has been held in terms of a disciplinary procedure.

31.2 Retrenchment/Redundancy

The Employer reserves the right to retrench the Employee should this become necessary for financial or other reasons should the Employee's position become redundant.

25. **SET OFF**

In the event of the termination of this contract, the Employee agrees that the Employer shall have the right to apply set off in respect of all monies owed to the Employer by retaining any salary, notice pay, leave pay or other remuneration owed by the Employer to the Employee. The Employer shall not be able to retain more than the amount owing to it.

26. **RESTRAINT**

26.1 The Employee agrees and undertakes in favour of the Employer that he/she shall not during the existence of this contract, and worldwide for a period of 24 (twenty four) months after the termination of the Employee's employment with the Employer for whatsoever reason be associated or concerned with, interested or engaged in any business which carries on a business or activity similar to the business carried on by the Employer on the date of termination of employment.

26.2 The Employee, in order to protect the Confidential Information, Intellectual Property, Work, goodwill of the business and the interests of the Employer in the Confidential Information, Intellectual Property, Work and goodwill of the business, agrees and undertakes in favour of the Employer that he/she shall not during the existence of this contract and for a period of 12 (twelve) months after the termination of the Employee's employment with the Employer for whatsoever reason indirectly or directly contact, approach or solicit any one of the Employee's current or potential clients for employment or for the offering of any services which are similar to those offered by the Employee.

27. **ALTERATION OR AMENDMENT**

This contract may only be amended in writing and such amendment must be signed by the parties.

28. **INDULGENCES**

No indulgences granted by a party shall constitute a waiver of his/her rights under this contract.

29. **GOVERNING LAW**

This contract shall be governed and construed in accordance with the laws of the Republic of South Africa.

30. **PRIMACY OF THIS CONTRACT**

The parties agree that this contract replaces any prior contract of employment concluded between the parties, where applicable and that no warranty, promise, undertaking, representation or the like made by any party prior to this contract shall be of any force or effect unless included in this contract.
31. **SEVERABILITY**

In the event that any of the provisions of this contract are found to be invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

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