## **Template Consulting Framework Agreement**

*This Consulting Framework Agreement (for ongoing services, hereinafter the „Agreement“) is made by and between*

*Company A, a division of Company Y , a company with offices at ------- (hereinafter Company Y );*

*and*

*Dr XYZ (hereinafter the “Consultant”; Company Y and Consultant collectively the “Parties”).*

1. **Article 1: Scope of services**

1.1 *Consultant shall use best efforts to:*

*a) provide services to Company Y as set out in this Agreement and in any agreed work order;*

*b) provide Company Y with such reports, specifications, drawings, models, and the like, as are expressly agreed upon or appropriate to the nature of the services to be performed hereunder; and*

*c) keep detailed and reviewable records of work performed with a break down of time spent thereon, and of those expenses which are eligible for reimbursement by Company Y -and to make all such records available to Company Y upon request.*

*1.2 Company Y shall be entitled to place specific work orders in the context of this Agreement. The details of the services to be rendered will then be further discussed between the Parties and subsequently set out in the applicable work order, all in accordance with the procedure set out under Article 1.3 below.*

*1.3. Any and all work orders will be defined in accordance with the following procedure:*

* *Company Y will provide Consultant with a description of the envisaged project, specifying amongst other things and whenever applicable: the nature of the services to be provided, practical work arrangements, end-goals, status reporting methods, deliverables, completion dates.*
* *Consultant will submit an offer on the basis of the Company Y project description.*
* *If Company Y accepts the offer submitted by Consultant, a work order will be entered into. An example of such a work order is attached hereto as Annex 1.*
* *Company Y will issue a purchase order number for the work order.*

*Only after completion of all of the above steps, will there be a full agreement between Parties with respect to the relevant work order.*

*1.4 All of the documents set forth in Article 1.3 above will form an integral part of this Agreement with respect to the relevant work order. In case of any inconsistencies or contradictions between these documents, the following order of descending precedence shall apply:*

*1. the work order;*

*2. the project description made by Company Y*

*3. the present Agreement;*

1. *the offer made by Consultant.*

*1.5 An affiliate of Company Y can also execute one or more work orders for the Consultant’s services relating to this Agreement and, for the purposes of such work order(s), references in this Agreement to Company Y shall be deemed to mean such affiliate and only such affiliate shall have the rights attributable to Company Y under such work order(s) or under this Agreement as it applies to such work order(s). In order to fall under the terms and conditions of this Agreement, such a work order needs to (i) clearly refer to this Agreement and (ii) be executed by an authorised representative of the affiliate of Company Y and by the Consultant. Each such properly executed work order shall be deemed, upon its full execution, to be incorporated into this Agreement. For the purpose hereof, “affiliate” means, with respect to a given company, any company which directly or indirectly owns or controls at least fifty per cent (50 %) of the voting stock of such given company, or any other company at least fifty per cent (50 %) of whose voting stock is directly or indirectly owned or controlled by such owning or controlling company or by the given company.*

1. **Article 2: Remuneration**
   1. *In consideration of the Consultant performing the services as set forth in* ***Annex 1****,* Company Y AFFILIATE or its appointed agent *shall pay to the Consultant, within 7 days of the activity date. The Company Y AFFILIATE or its appointed agent shall pay to the Consultant, upon receipt of the invoice, a service fee in the net amount as specified in Annex 1. Additionally, Company Y Affiliate or its appointed agent* *shall reimburse the Consultant for any reasonable and documented out-of-pocket expenses incurred by Consultant in connection with the contracted consulting service, provided that such out of pocket expenses are consistent with the applicable reimbursement policy of Company Y which will be made available to the Consultant. Payments shall be made by bank transfer and only to a bank account held in the name of Consultant in his country of residence.*

*All travel arrangements for air, lodging and car rental will be directly organised by Company Y Affiliate in accordance with the applicable Company Y travel policy.* *Invoices should, as a minimum requirement, contain the following items: (a) full name and address of party issuing the invoice; (b) where applicable tax number of party issuing the invoice; (c) full name and address of the Company Y* or its appointed agent*; (d) place and date of invoice; (e) brief description of services invoiced with date of service rendered; and (f) where value added tax (VAT) is applicable, statement of net amounts invoiced, VAT amount and gross amounts.* Company Y will inform speaker in case the invoice needs to be addressed to its appointed agent instead of to Company Y AFFILIATE.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *Service fees (in local currency)* | | | | |
| *Per hour* | *Per half day (4 hours)* | | *Per full day (8 hours)* | |
| *R* |  | *Consulting*  *Preparation*  *Total per half day* |  | *Consulting*  *Preparation*  *Total per full day* |
| ***For a maximum of 3 (Three) days per annum (inclusive of preparation time, as indicated above)*** | | | | |

Note that a deduction of 25% of the rate will apply in respect of PAYE, in cases where consultants are not VAT registered. If VAT registered, no PAYE deduction will apply.

*2.2. Where the service provided pursuant to Article 1 of this Agreement is subject to value added tax (VAT), the above net amount (Article 2.1 and Annex 1) shall be grossed up to include applicable VAT, provided however, that the invoice must properly state the VAT amount due. Consultant shall be responsible for proper treatment and declaration of direct taxes with regard to invoiced and paid amounts.*

*2.3 The Parties acknowledge and agree that the above remuneration and compensation represents the fair market value for all services related to the contracted consulting service, has not been determined in a manner that takes into account the volume or value of any business otherwise generated between Company Y and Consultant, and shall not obligate Consultant to purchase, use, recommend, or arrange for the use of any product of Company Y or its affiliates.*

*To facilitate all payments in respect of this Contract please provide the following bank details:*

*Account Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Account Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Bank Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Bank Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*IBAN Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*SWIFT Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **Article 3: Term and termination**

*3.1 This Agreement shall commence on date and, unless sooner terminated as provided hereunder, shall continue in full force until date.*

*3.2 This Agreement can be renewed but shall require the express consent, and where applicable third party approval, of the Parties as to conditions and duration of extension.*

*3.3 In the event that a Party materially fails to fulfill or breaches any material term or condition of this Agreement, and in case such failure or breach should not be remedied by the Party concerned within ninety (90) days of written notice of such breach given by another Party, said other Party may terminate this Agreement with a further ten (10) days’ written notice.*

1. **Article 4: Confidentiality/Return of Documents**

*4.1 In view of Consultant rendering his services, Company Y may provide Consultant with information concerning Company Y including, without limitation, information regarding existing or contemplated Company Y products, processes, techniques, or know-how, that is confidential or proprietary and the disclosure of which would cause irreparable injury to Company Y (collectively, the "Confidential Information"). Consultant as receiving party (hereinafter a “Receiving Party”) agrees not to disclose the Confidential Information to any person unless Receiving Party has received prior written authorization from Company Y. Additionally, upon termination or expiration of this Agreement for any reason or upon the request of Company Y Receiving Party shall promptly return to Company Y all originals and copies of documents or other materials constituting or containing Confidential Information. Receiving Parties` obligations regarding the Confidential Information shall survive termination or expiration of this Agreement.*

*4.2 Where Company Y has provided Consultant with documents related to or necessary for the performance under this Agreement, Consultant undertakes to properly store such documents and not to allow third parties to access such documents. Consultant shall return such documents to Company Y upon expiry of this Agreement.*

*4.3 Consultant shall not disclose to Company Y or induce Company Y to use, any confidential information belonging to others, including any other clients or former employers of Consultant.*

1. ***Article 5: Copyright/Publications/Inventions***
   1. *Consultant hereby grants Company Y a non-exclusive worldwide and in time unlimited right to use in all possible forms and media all copyrightable documents or products which are created by Consultant in the course of performance of this Agreement (hereinafter the “Work”), including, without limitation the right to use, adapt, edit, chose a title for the Work, translate, input and/or combine into (conventional, electronic, digital) database, reproduce (regardless of media of reproduction and of number of reproduced copies), publish, make available online (including in intranets and in the internet), sell, lease, give away for free, exhibit, record, film, and broadcast the Work, in its entirety or in part, in all forms of media, whether in printed or recorded form (analogous or digital), and regardless of whether in writing, as sound and/or as image, and regardless of whether for commercial or charitable purpose (“Right of Use”). The remuneration of Consultant pursuant to Article 2 above shall serve as sufficient consideration for granting of the Right of Use.*
   2. *The Right of Use shall survive the termination of this Agreement. Company Y shall be entitled to assign or to sublicense in part of in full said Right of Use.*
   3. *Consultant shall hold Company Y harmless against third party claims for infringement of copyrights related to the Right of Use granted to Company Y, and shall assist Company Y in defending against such third party claims.*

*5.4 Any inventions, improvements, or ideas made or conceived by Consultant in connection with or during the performance of this Agreement (hereinafter “Service Inventions”) shall, either directly or by way of assignment by Consultant to Company Y be the property of Company Y. Consultant, without charge to Company Y other than reasonable payment for time involved in the event this Agreement shall have terminated, but at Company Y expense, shall execute, acknowledge, and deliver to Company Y all further papers, including applications for patents, as may be necessary to enable Company Y to publish or protect Service Inventions by patent or otherwise in all countries and to vest title to such Service Inventions in Company Y or its nominees, their successors or assigns. Consultant shall render assistance as Company Y may require in any Patent Office proceeding or litigation involving Service Inventions. Consultant, as part of the services to be performed below, shall keep written notebook records of his/her work, properly witnessed for use as invention records, and shall submit such records to Company Y when requested or at the termination of the work. Where assignment by Consultant of rights of Service Inventions to Company Y is necessary in order for said Service Inventions to be the property of Company Y, Consultant undertakes to use his best efforts to obtain any and all necessary approvals, including, but without limitation, approvals of his employer.*

*The remuneration of Consultant pursuant to Article 2 above shall serve as sufficient consideration for granting respectively assigning the Service Inventions to Company Y.*

1. **Article 6: General Provisions**
   1. *The relationship under this Agreement of Company Y and Consultant shall be that of independent contractors. Neither this Agreement nor the services performed hereunder shall be construed to create the relation of principal and agent or joint venture between Company Y and Consultant and neither Company Y nor Consultant shall have the right to make any commitment for, or create any obligation on behalf of the other party.*
   2. *This Agreement and all of the documents referred to in Article 1.4 constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any promise, agreement or consent on the subject matter hereof made between the Parties hereto by officers or employees of the Parties before the execution of this Agreement. No modification of this Agreement shall be binding upon either Party, unless approved in writing by authorized representatives of each of the Parties.*
   3. *Where the provision of the consulting services pursuant to Article 1 by Consultant is subject to professional and/or employment rules requiring approval by professional organisation and/or employer, Consultant warrants that he shall obtain such approval prior to delivering said consulting services. Upon request by Company Y Affiliate, Consultant shall provide without delay written evidence of the relevant approval(s). Furthermore, Consultant agrees that Company Y Affiliate may disclose the existence and content of this Agreement to the relevant professional organization and/or employer and/or relevant institution or government entities where the Consultant is active.*
   4. *If permitted by local laws, regulations and Consultant’s contractual obligations, Consultant shall notify Company Y AFFILIATE if Consultant attains a position to influence purchasing decisions of a government entity or a health-care-related institution owned or substantially controlled by a government or public body. Such purchasing decisions may relate, for instance, to tenders issued by health authorities or decisions of formulary committees of public hospitals. In case of such notification by Consultant, Company Y AFFILIATE has the right to terminate this Agreement with immediate effect by written notice. Where such notification to Company Y AFFILIATE is not permitted by local laws, regulations or Consultant’s contractual obligations, Consultant shall notify the purchase decision-maker in said government entity, institution or hospital of Consultant’s financial relationship with Company Y AFFILIATE before any purchasing decision is made.*

*6.5 This Agreement shall be governed by South African law and the Parties hereto hereby submit to the jurisdiction of the competent courts of South Africa.*

*6.6 Consultant shall comply with all applicable laws and regulations (****including applicable anti- corruption laws*** *as stipulated in* ***Annex 2****) in providing its services under this Agreement.*

6.7 *If any provision of this Agreement is held to be invalid, illegal or unenforceable under applicable law the remaining provisions shall continue to be in full force and effect. The Parties undertake to replace the invalid provision or parts thereof by a new provision, which will approximate as closely as possible the economic result intended by the Parties.*

*6.8 “In order to fulfil the purpose of this Agreement, Company Y might need to share your personal data with any third parties providing that support, such as travel agencies, hotels, event organisers, etc.*

*This might involve transferring your data to third countries where those third parties might be located, as well as to other affiliates of ours located in those countries, where data protection standards might vary from those in your country.*

*Your personal data will be processed by Company Y, its affiliates and the third parties providing support for the services defined in this Agreement with the adequate privacy safeguards to protect the personal data you provide and only for the purposes of this Agreement.”*

*Signed:*

*For Company Y Consultant:*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Title: Title:*

*Date: Date:*

*HCP: Dr XYZ*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

***ANNEX 1***

***Scope of Consulting Services/Fees for Consulting Services***

*In view of proper compliance with relevant Health Care Compliance Laws and Guidelines, it is imperative that you carefully prepare this Annex 1.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***WORK ORDER N° XX***  *to the CONSULTING FRAMEWORK AGREEMENT between Company Y (hereinafter Company Y) and Dr. XYZ (hereinafter the “Consultant”), signed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter “the WORK ORDER”*  SERVICES **Task Description**  |  | | --- | | *Consulting Agreement (ongoing)*   * Local on-site surgeon visitations. * Local off-site surgeon visitations where Dr XYZ will attend theatre cases in other surgeon’s theatres to give support in specific procedures. * Form part of a faculty and/or train surgeons in a Workshop/Cadaver lab environment. | | *Speaker: Educational Speaker Agreement for ongoing services*   * Present talks to invited HCP’s in various settings. |   Geographical location of the consulting services  *Various major centres in South Africa.*  Company Y’s project assignment manager  *Company Y project assignment manager for the purposes of managing the relationship with Consultant and supervising the services described in this WORK ORDER pursuant to the Agreement shall be the Regional Sales Manager for the relevant territory.* Time schedule *The performance of the WORK ORDER shall commence on* ………….. *and shall be completed on ………………*  Invoicing  Invoices referenced with Company Y WORK ORDER number shall be sent to Company Y , for attention Ms relevant person (e –mail ). Invoices must be submitted to Company Y within seven days of the activity date.  Executed on\_\_\_\_\_\_\_\_ in duplicate, each Party acknowledging receipt of one copy.   |  |  | | --- | --- | | Company Y  *Date :*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *Dr D XYZ*  *Date :*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | |

***ANNEX 2***

**Compliance with Anti-Corruption Laws**

*Notwithstanding anything to the contrary in the Agreement Dr XYZ* *hereby agrees that:*

*(i) Dr XYZ* *shall not perform any actions that are prohibited by local and other anti-corruption laws that may be applicable to one or both parties to the Agreement;*

*(ii) Dr XYZ shall not, directly or indirectly, make any payment, or offer or transfer anything of value, or agree or promise to make any payment or offer or transfer anything of value, to a government official or government employee, to any political party or any candidate for political office or to any other third party related to the transaction with the purpose of influencing decisions related to Company Y and/or its business in a manner that would violate Anti-Corruption Laws;*

*(iii) Dr XYZ shall not retain any government official or government employee in the performance of the Agreement unless it has been approved by Company Y and, if necessary, by the competent authority or authorities and such government official's or employee's employer. Furthermore, Dr XYZ shall immediately advise Company Y in writing in the event Dr XYZ becomes aware that any person engaged in the performance of the Agreement becomes a government official or employee, a political party official or a candidate for political office. The requirements of this subsection shall not apply with respect to employees of a Dr XYZ that is a government owned entity;*

*(iv) Dr XYZ shall be available or when appropriate designate an individual within its organization to receive training from Company Y on Anti-Corruption Laws, as well as applicable rules on interactions with health care professionals,] as mutually agreed to by the parties. Such designated individual shall then provide such training on Anti-Corruption Laws, using applicable training materials to be provided by CompanyY, on at least an annual basis to all persons employed by Dr XYZ who perform work for Company XYZ and interact with government officials or health care professionals] in the normal course of their responsibilities. Upon Company Y and Dr XYZ mutual agreement, such training may also be provided directly by Dr XYZ to such employees of Dr XYZ. Dr XYZ shall also provide such training or training materials to any subcontractors it uses in the performance of the Agreement (to the extent the use of such subcontractors by Intermediary is permitted under the Agreement.) Any training and materials provided by Company Y does not relieve Dr XYZ of any obligations it has independent of the Agreement and Dr XYZ shall not rely on CompanyY training and materials for any such obligations;*

*(v) Dr XYZ shall certify on an annual basis in a format to be provided by Company Y that:*

* 1. *training and training materials on Anti-Corruption Laws, as well as applicable rules on interactions with health care professionals,] have been provided to all persons employed by Dr XYZ who perform work for Company Y and   
     interact with government officials or health care professionals] in the normal course of their responsibilities and that it has provided the Company Y training and training materials to subcontractors used by Dr XYZ in the performance of the Agreement;*
  2. *to the best of Dr XYZ’s knowledge, there have been no violations of Anti-Corruption Laws by Dr XYZ or persons employed by or subcontractors used by Dr XYZ in the performance of the Agreement;*
  3. *personnel of Dr XYZ who may be designated as "Key Personnel" by mutual agreement of Company Y and Dr XYZ have not changed, except as noted in a schedule attached to the certification provided by Dr XYZ*
  4. *Dr XYZ has made no changes in its use of subcontractors to perform the services for Company Y under the Agreement, except as (1) permitted under the Agreement and (2) noted in a schedule attached to the certification provided by Dr XYZ ; and*
  5. *Dr XYZ has maintained true and accurate records necessary to demonstrate compliance with the requirements of this agreement.*

*(vi) Dr XYZ shall maintain and provide Company Y and its auditors and other representatives with access to records (financial and otherwise) and supporting documentation related to the subject matter of the Agreement as may be requested by Company Y in order to document or verify compliance with the provisions of this agreement; and*

*(vii) if Dr XYZ fails to comply with any of the provisions of this agreement, such failure shall be deemed to be a material breach of the Agreement and, upon any such failure, Company Y shall have the right to terminate the Agreement with immediate effect upon written notice to Dr XYZ without penalty or liability of any nature whatsoever.*

If the consultant is not **acting as intermediary with HCPs or government officials in the normal course of performing their services while acting on behalf of Company Y and/or its affiliates** (eg HCP agreements such as speaker agreements, advisory board agreements, etc) the above can be deleted and the following text should be used instead:

*Neither party shall perform any actions that are prohibited by local and other anti-corruption laws (collectively “Anti-Corruption Laws”) that may be applicable to one or both parties to the Agreement. Without limiting the foregoing, neither party shall make any payments, or offer or transfer anything of value, to any government official or government employee, to any political party official or candidate for political office or to any other third party related to the transaction in a manner that would violate Anti-Corruption Laws.*