

PATENTS EXAMINATION BOARD

PRACTICAL LEGAL PROBLEMS

EXAMINATION: JULY 2022

PAPER 2

EXAMINERS: J WHITTAKER
D DOHMEN

MODERATOR: R. BAGNALL

DURATION: READING TIME – 30 MINUTES
EXAMINATION TIME – 3 HRS
TOTAL: 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 of Questions 1 to 4 (100 marks and 10 pages) as well as attached Documents Q.2 (2 pages) and Q.3 (7 pages). (20 pages in total).
4. Where appropriate, reference should be made to case law.

QUESTION 1:**(35 marks)**

Your client, RSA Healthcare (Pty) Ltd (“RSA”), informs you that it has obtained patent protection for a safety syringe/needle assembly. The patent was applied for in 2014 and the patented and claimed assembly includes a sheath mechanism that covers the needlepoint on being retracted from the skin of a patient thereby automatically rendering the needlepoint blunt after use. This avoids inadvertent needle pricks after insertion into a patient in the clinical environment.

Because of various regulatory and manufacturing delays, RSA was only able to introduce its product onto the South African market during 2018 and has, since its introduction, spent over R5 million on marketing and advertising. The uptake of the product was slow in the first eighteen months but, after that, sales volumes started to increase steadily. RSA has advised you that the demand for the product is high and it is currently close to being considered the gold standard in the industry. RSA expects to have sales volumes of approximately R5 m in 2022 and projects that this will grow to at least R15 m by the end of 2023.

Last week RSA became aware that a competitor, Sharp Practice (Pty) Ltd (“Sharp Practice”), has imported 100 000 of its safety catheter units into South Africa from China. It is anticipated that Sharp Practice will start selling these products within the next few weeks.

RSA advises you that it sells its product to private hospitals in South Africa at R12.00 per assembly and it is expected that Sharp Practice’s product will be sold at a price of R2.50 per assembly to private hospitals.

You have considered the patent and its validity and you have advised RSA that there is a strong likelihood that a Court will find that the sale of Sharp Practice’s product will amount to an infringement of at least one of the claims of the patent. Furthermore, you have conducted a thorough validity investigation and, in your opinion, the claims are very likely to be considered novel in light of the prior art of which you are aware. There is a possible argument that the claims may lack inventive step in light of the

prior art, but this argument is not compelling enough for you to advise your client that they are at considerable risk of a finding of invalidity.

Sharp Practice has multiple product ranges in the medical devices field, and it is anticipated that the safety catheter in question is likely to only constitute about 10% of its total sales volumes per annum. On the other hand, the safety catheter of RSA constitutes 70% of its annual turnover.

RSA employs 20 permanent staff members the majority of which have been employed in light of the substantial growth in the safety catheter market (partly as a result of increased demand caused by the Covid-19 pandemic). Sharp Practice has a very mobile sales force the numbers of which are unclear but it has been established that they work independently on short-term contracts, and on a commission basis.

Furthermore, a search has revealed that Sharp Practice does not own any fixed property in South Africa. All of its computers, vehicles, etc. are leased from external suppliers. At any given time, the only substantial asset that Sharp Practice own is the current stock on hand.

It is expected that the 100 000 units will be supplied into the market very quickly within the next two weeks and, thereafter, it is anticipated that they have plans to import approximately 50 000 units per month in light of the demand for the product.

Although RSA's product is the gold standard in the market, there are many other safety catheters that compete with their product (approximately 8 products) all at differing prices. Although the market share is steadily increasing, it is constantly changing because on some occasions RSA increases its market share by taking sales from the other 8 competitors but, from time to time, it does lose sales to one or more of these competitors.

30% of RSA's total sales take place in public hospitals, with the remaining 70% being made to the private hospitals. RSA draws your attention to an article that was written recently where a concern was expressed about the high cost of its product, the strain it places on the Covid-19 health budgets of hospitals and as a result thereof, the

perceived barrier to access to RSA's product for many healthcare professionals in the public sector. As a result, approximately six months ago, RSA Healthcare took a decision to substantially reduce its product price to the public sector. Its adjusted public sector price is approximately 10% higher than the anticipated price of Sharp Practice's product. The more expensive product that is supplied to private hospitals is covered, in the majority of cases, by the patients' medical aid hospital plans.

RSA is very concerned about these recent developments to the extent that it may need to consider drastically reducing its price in the private sector to protect its business. If it does so it will obviously see a dramatic drop off in sales volumes which will be concerning because of the considerable costs spent in advertising and marketing in order to develop the market for the product. RSA is also concerned that, should it decide to reduce its product price, it would be very difficult in the future to increase the product price.

Taking into consideration all of the above, please advise RSA on what appropriate legal steps should be taken to prevent Sharp Practice from selling its product in South Africa. In doing so, please focus on the requirements for such legal proceedings and provide RSA with an overview of its prospects of success with specific reference to the facts that have been provided to you in this case.

QUESTION 2:

(25 marks)

You receive the below letter from your client.

“Dear Patent Attorney

As you know, our company designs, manufactures and sells mining equipment to South African mines.

In 2017, one of our developers saw a rail cart for the transportation of ore which had a sideways tipping bucket (“a hopper”) at the bi-annual Canadian Mine Expo in Toronto, Canada. The hopper had a relatively simple but effective mechanism for tipping the bucket and which locks the bucket in place using an offset cam arrangement. We thought the hopper design would find application in the South African mining environment and in early 2020 we decided to design, build and test a similar hopper for sale to our South African clients.

We designed and built 10 hoppers which were tested at 2 mines in late 2021 and early 2022. The hoppers worked very well, and we have already received orders for 70 of the new hoppers from the two mines. We expect the new hopper to become one of our leading products and accordingly we have made various upgrades to our manufacturing and assembly plant in order to build the hoppers at scale.

We have also appointed a new sales representative to market the new hoppers on a full-time basis, prepared marketing material and have placed a number of advertisements in mining magazines and on mining equipment websites.

Yesterday, one of the sales representatives of a Canadian corporation called Canadian Hoppers Inc. called our sales representatives and informed him that Canadian Hoppers holds patent rights over the new hopper design and that Canadian Hoppers will definitely sue us and our customers in South Africa for patent infringement. Apparently the Canadian Hoppers’s sales representative has also called the two mines where we tested the new hoppers and also made similar threats to the

mines. The mine procurement officers at both mines are apparently very concerned about the matter and are considering cancelling the orders for the new hoppers.

This state of affairs came as quite a shock as we were not aware of any patent rights which we could infringe. The Canadian Hoppers representative mentioned a Canadian patent which we found on the internet.

*Based on the Canadian patent information we conducted our own searches at the South African Patent Office and found a corresponding South African Patent No. 2016/07932. The South African patent is identical to the Canadian patent, and I attach as **Document Q.2** a copy of the form P2 which we took from the South African Patents Register. As we understand, the South African patent has lapsed.*

The new hopper project is of critical importance to us, and we have already spent about R2,3 million on the development and testing of the new hopper, more than R4,1 million on the upgrades to our manufacturing and assembly plant and R450 000,00 on marketing materials, videos and advertisements. Although our new sales representative is partly paid on a sales commission basis, we also pay him a base salary of R20 000,00 per month and cover his travel and client entertainment expenses, which on average amounts to about R10 000,00 per month.

Given our investments to date in the new hopper project and the threat to our customers, we remain concerned that Canadian Hoppers might carry through the patent infringement threats which were made. In this regard, we require your advice on our legal position, what we can and can't do regarding our new hopper and the South African patent, how we can protect our clients and what our risks are. We would thus appreciate recommendations on what we should do in this matter.

We await your advice."

Advice your client fully.

QUESTION 3:

(20 marks)

You receive the below letter from your client:

“Dear Patent Attorney

As you know we conduct research on enzymes and bacteria for use in the extraction of minerals from mined ore.

*I attach hereto a draft employment contract for the new head of our research and development team which we have recently recruited (**Document Q.3**).*

We want to ensure that all company information, trade secrets, know-how, inventions and intellectual property generally disclosed to him and developed by him and his 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 he leaves our employment and wishes to move to one of our competitors or set up business in competition with us. Although our research extends to ore bodies 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”

Please advise your client accordingly.

QUESTION 4:

(20 marks)

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

1. A compound of Formula X.
2. A method of treating a patient in need thereof for skin inflammation by applying the compound of claim 1 to the effected skin.
3. The method of claim 2 where the skin inflammation is an allergic reaction.

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 X forms part of the state of the art prior to the priority date of your client's patent application. Furthermore, it was also known prior to the priority date of your client's patent application that the compound of Formula X was used as a hair conditioner.

In the circumstances, please advise your client on what amendments to the claims would be advisable prior to the grant of the South African patent application.

(5 marks)

4.2 You received the below email from your client. Please advise your client.

"Our biggest client in South Africa has just received a Letter of Demand from our competitor ABC Products (Pty) Ltd. In the letter ABC makes false claims that our product infringes their European patent. ABC also claims that they have a South African patent on their own competing product and has a patent number on their product.

Over the years we have done numerous searches at the South African Patent Office and know for a fact that ABC's European patent was never extended to South Africa and that they have no patent rights in South Africa on their own product.

Our customer is not interested in getting involved in any patent disputes and is in the process of cancelling all our pending and future orders. As we understand they will in future only order from ABC.

We are very concerned and require your advice on what we can do to stop ABC from competing in this underhand manner and to recover any damages we may suffer.”

(5 marks)

4.3 You received the below email from your client. Please advise your client.

“We are in the process of appointing a number of distributors in the Western Cape to market and sell our trellis systems for grapes which incorporates a wire connector which we have patented. We would like to include terms dealing with the following aspects in the distribution agreements. Would there be any legal concerns if we do so and do you have any alternative proposals:

- a. that the distributor assigns any improvements to the trellis system which it or its employees make to us;*
- b. that the distributor makes certain minimum sales of the trellis systems per year;*
- c. that the distributor undertakes not to dispute our patent rights and the validity of our patent in the wire connector;*
- d. that the distributor purchases all spare parts for the trellis system such as hangers, stays, poles, wire and wire connectors from us;*
- e. That the distributor sells the trellis systems and wire connectors at a specific recommended retail sales price.”*

(5 marks)

4.4 You received the below email from your client. Please advise your client.

“We have developed a new and innovative tamper proof security bag to seal courier packages. In order to test the new bag we provided the design and

specification for the new bag under confidentiality conditions to our bag manufacturer so that the manufacturer can make a batch of the new bags for testing. The manufacturer delivered the new bags today and informed us that they have made certain improvements to our design and have applied for a provisional patent in respect of the improved bag. Our intention was to file a patent application for our new bag if the tests were successful. The manufacturer's actions have now affected our plans. What are our options under the current situation and what do you recommend we do?"

(5 marks)

TOTAL: 100 marks

“Document Q.2”

FORM P.2

REPUBLIC OF SOUTH AFRICA			REGISTER OF PATENTS			PATENTS ACT, 1978		
OFFICIAL APPLICATION NO.			LODGING DATE: PROVISIONAL			ACCEPTANCE DATE		
22	01	2016/07932	22		47	4 MAY 2017		
INTERNATIONAL CLASSIFICATION			LODGING DATE: National Entry Date			GRANTED DATE		
	B61D			30 August 2016			27 JULY 2017	
FULL NAME(S) OF APPLICANT(S)/PATENTEE(S)								
71	CANADIAN HOPPERS INC.							
APPLICANTS SUBSTITUTED:						DATE REGISTERED		
71								
ASSIGNEE(S)						DATE REGISTERED		
71								
FULL NAME(S) OF INVENTOR(S)								
72	JOHN C. STANKUS and JOHN G. OLDSEN							
PRIORITY CLAIMED AND PCT INTERNATIONAL APPLICATION			COUNTRY		NUMBER		DATE	
<i>N.B. Use International Abbreviation for country (See Schedule 4)</i>			33	PCT CA	31	PCT/CA2015/016543 10/687,960	32	1 March 2015 1 March 2014
TITLE OF INVENTION								
54	HOPPERS							
ADDRESS OF APPLICANT(S)/PATENTEE(S)				6 Tip Street, Toronto, Canada				
ADDRESS FOR SERVICE						A & A REF:		PA0000ZA00
74	SA PATENT INC., Pretoria							
PATENT OF ADDITION TO NO.			DATE OF ANY CHANGE					
61								
FRESH APPLICATION BASED ON			DATE OF ANY CHANGE					

“Document Q.3”

CONTRACT OF EMPLOYMENT

MADE AND ENTERED INTO BY AND BETWEEN

R&D SA (PTY) LTD

(hereinafter referred to as the **“the Employer”**)

AND

Kenneth 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 2022** (“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. REMUNERATION

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 LAPSING

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.
