



COMMISSION OF INQUIRY INTO STATE CAPTURE
Hillside House, 3rd Floor, 17 Empire Road, Parktown, Johannesburg, 2193
www.sastatecapture.org.za

AGREEMENT

entered into between

JUDICIAL COMMISSION OF INQUIRY INTO STATE CAPTURE

herein represented by the Secretary of the Commission

("Commission")

and

TERENCE MNCEDISI NOMBEMBE

("Head of Investigations" herein after referred to as "Investigator")

Identity number: 6109305694088

WHEREBY IT IS AGREED AS FOLLOWS:

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1. APPOINTMENT

The **Commission** appoints the **Investigator** to provide the services, as set out in paragraph 3 below, and the **Investigator** accepts such appointment on the terms of this agreement. In rendering the services, the **Investigator** shall report to the **Chairman** of the **Commission**, or any other person designated by the **Commission**.

2. DURATION

- 2.1. This agreement shall commence on the effective date of **1st February 2019** and shall continue from the date of appointment for the stipulated period of the **Commission**.
- 2.2. Notwithstanding the date of signature hereof, this Agreement shall be subject to the securing of the TOP SECRET security clearance, The **Commission** will initiate the process of Security Clearance of the **Investigator** and this agreement may be terminated should there be a major impediment preventing the **Investigator** in securing the security clearance. The **Commission** shall use its discretion should the security clearance be denied.
- 2.3. The Parties agree that the **Investigator** shall take the Oath or Affirmation to confirm their commitment to the confidentiality and upholding the Constitution of the Republic of South Africa.
- 2.4. The parties specifically agree that should the **Investigator** fail to deliver the required quality services, to the satisfaction of the **Chairman of the Commission**, or fail to complete the programme/tasks within the implementation plan in time, or within any other extended period agreed to by the parties in writing, the **Investigator** shall complete the programme during a further extended period at no extra cost to the **Commission**.

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2.5. If, however, extra costs are incurred as a result of the **Commission's** actions or omissions, or any actions or omissions not directly attributable to the **Investigator**, the **Investigator** shall bill the **Commission**.

3. THE SERVICES

3.1. The services to be rendered in terms of this agreement will be set out in more elaborate detail in the following documents:

3.1.1. the implementation plan which the **Investigator** will also be involved in formulating and implementing.

3.1.2. the job description which outlines the competencies and deliverables expected of the **Investigator** and which the **Investigator** will also be involved in formulating.

3.2. The **Investigator** may be required to render other services incidental to the services in the implementation plan and job at no extra charge to **Commission**.

TERMINATION

4.1. The **Commission** shall be entitled to terminate this agreement if one or more of the following occur:

4.1.1. the **Investigator's** conduct justifies termination in terms of the law;

4.1.2. the **Investigator's** conduct brings or is likely to bring the **Commission** into disrepute;

4.1.3. the **Investigator** breaches any term of this agreement and fails to remedy such breach within a time determined by the **Commission**, taking into consideration the nature of the breach and the consequences thereof.

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4.2. The **Commission** shall furthermore be entitled to immediately terminate this agreement if any one or more of the following occur:

4.2.1. the **Investigator** is provisionally or finally liquidated, making it impossible for the **Investigator** to perform his/her functions in terms of this agreement;

4.2.2. the **Investigator** enters into settlement arrangements with his/her creditors;

4.2.3. the **Investigator** commits an act of insolvency.

4.3. Notwithstanding the provisions above, either party may terminate this agreement by giving the other party 1 (one) calendar months' notice to that effect.

5. FEES

5.1. The **Investigator** will be paid for hours worked in servicing the **Commission**, at the highest Auditor-General rate of R ~~2 876.00~~ ^{2 378.00} per hour. This rate will be used as a temporary arrangement, pending the outcome of a request being considered at the date of signing of this agreement, to determine the most appropriate rate for the Head of Investigations at the Commission. While at this stage, there is no certainty on how this request can be accommodated, discussions on the issue to try and see how it can be accommodated will continue. If an acceptable way of accommodating this request is found, a new arrangement in terms of the hourly rate or remuneration will be concluded.

5.2. The **Investigator** shall bill the **Commission** on a monthly basis for hours worked as recorded in a timesheet.

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- 5.3. The **Commission** undertakes to certify the timesheet and invoice submitted by the **Investigator**, no later than the 25th day of each month.
- 5.4. The payment due shall be made to the **Investigator** by the last day of each month. Payment shall be made into the **Investigator's** chosen bank account only after the approval of the invoice.
- 5.5. Should the **Commission** not be satisfied with the work done by the **Investigator**, the **Commission** will request the **Investigator** to rectify or improve the work done at no cost to the **Commission** and, to the extent feasible, without affecting the progress of the programme as a whole.
- 5.6. In assessing the quality of work presented by the **Investigator**, the **Commission** may enlist the assistance of independent third parties (experts). The selection of such independent third parties (experts) shall be in the absolute discretion of the **Commission** and the parties shall abide by such selection.

6. TAX LIABILITY

- 6.1. The **Commission** shall withhold a certain portion of fees for income tax purposes unless the **Investigator** provides the **Commission** with a tax directive in terms of the tax laws of the Republic of South Africa.
- 6.2. The **Investigator** shall annually furnish the **Commission** with an Income Tax Clearance Certificate confirming that the tax status of the **Investigator** is up to date.

7. OBLIGATIONS OF THE INVESTIGATOR

The **Investigator** shall:

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- 7.1. perform the duties and functions in terms of this agreement faithfully, diligently, honestly and with reasonable care and skill. The services should be of the quality required by the **Commission**;
- 7.2. timeously submit to the **Commission** such information and reports as may be required in connection with the rendering of services;
- 7.3. perform the services in a professional manner, with due and proper care and in accordance with the professional standards required by the **Commission**;
- 7.4. use the assets of the **Commission** with the utmost care and only for the purposes of rendering the services;
- 7.5. comply with all laws, regulations, policies, procedures and guidelines applicable to the **Commission** to uphold good governance and accountability, and to preserve the secrecy of the investigative work of the **Commission**;
- 7.6. disclose to the **Commission** all acts or omissions which may constitute a breach by the **Investigator** of its obligations to the **Commission**;
- 7.7. perform any other function reasonably required for or incidental to the services rendered in terms of this agreement;
- 7.8. provide the services after business hours and on weekends, when required by the **Commission**;
- 7.9. be true and faithful to the **Commission** in all dealings and transactions whatsoever relating to the **Commission's** business and interests; and
- 7.10. refrain from anything that could bring the **Commission** as a whole, into disrepute.

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The **Commission** shall:

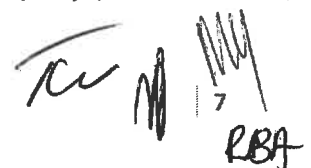
- 8.1. co-operate and assist the **Investigator** in performing its obligations in terms of this agreement;
- 8.2. furnish the **Investigator** with all required tools, information, documentation, instructions and approvals in its possession to enable the **Investigator** to render the services in terms of this agreement.
- 8.3. provide the **Investigator** with sufficient security, as may be determined from time to time, through an independent assessment of the South African Police Service-Crime Intelligence Unit. Such security may entail, but not limited to, the provision of a suitably secure motor vehicle with protectors, secure work environment, secure home environment.

9. DISPUTE RESOLUTION

- 9.1. The **parties** shall endeavour to find a solution between themselves through negotiations should a dispute arise out of this contract.
- 9.2. Should the **parties** fail to resolve the dispute within 5 (five) working days, the parties will refer their dispute to an accredited dispute resolution body to assist in resolving the matter expeditiously.
- 9.3. The parties will ensure that the dispute does not in any way affect the functionality of the **Commission**.

10. INDEMNITY

The **Commission** shall not be liable for any act or omission on the part of the **Investigator** in the rendering of the services under this agreement (whether negligent or otherwise) which causes injury, loss or damage to any employee or officer of the **Commission** and or any third party (whether direct,

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indirect or consequential) and the **Investigator** hereby indemnifies and holds the **Commission** not liable for any claims whatsoever nature in this regard.

11. THIRD PARTY WORK

This agreement shall in no way limit the **Investigator** the right to conduct any business with and/or for any third parties and to enter into contracts of any nature with any third parties, provided:

- 11.1. Firstly, that the **Investigator's** obligations in terms of this agreement shall always be timeously and satisfactorily fulfilled, and
- 11.2. Secondly that the **Investigator** shall not conduct any business with and/or for any third party whose interests may conflict with the **Commission's** interests.

The **Investigator** shall therefore not conduct any business with a third party which conflicts with or has the potential to conflict with his/her work on behalf of the **Commission**.

12. INTELLECTUAL PROPERTY

The ownership of all material, created pursuant to this agreement, which qualifies for protection under the intellectual property laws of the Republic of South Africa, including both statutory and common law, and all copies thereof, shall be the sole property of the **Commission**. Upon termination or cancellation of this agreement, all such material shall be forwarded to the **Commission**.

13. CONFIDENTIALITY

Reports are produced for the **Commission** and both parties undertake not to divulge directly or indirectly to any other third parties, save in respect of their professional advisers or disclosures required by law, any information whatsoever in connection with this agreement and the contents hereof, unless the **Chairman** of the **Commission** has given permission in writing.

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14. NO CESSION OR ASSIGNMENT

The **Investigator** shall not cede or assign any of its rights and obligations in terms of this agreement to any third party without prior written consent of the **Commission**.

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15. WARRANTIES

15.1. The **Investigator** warrants that it is able to provide the services contained herein and that:

15.1.1. the services shall comply in all respects with the requirements of this agreement;

15.1.2. the **Investigator** is capable of performing its obligations hereunder; and

15.1.3. the **Investigator** possess and has knowledge and sufficient expertise required to enable him/her to provide the services in terms of this agreement; and

15.1.4. the **Investigator** will comply with all applicable laws.

15.2. The **Investigator** further warrants that:

15.2.1. he/she has authority to enter into this agreement; and



15.2.2. he/she will perform a conflict check before commencing with any assignment from the **Commission** as more fully described in the Implementation Plan that will be agreed upon.

16. IMPLEMENTATION



The parties undertake to do all such things, perform all such acts, take all such steps and do all such things, the performance of all such acts, and the taking of all such steps, as may be necessary to give effect to the terms and conditions under the import of this agreement.


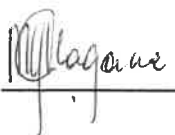
17. NON-VARIATION CLAUSE

No addition to, variation, or agreed cancellation of this agreement or any of the annexures or schedules hereto shall be of any force or effect unless reduced to writing and signed by or on behalf of all the parties.

 
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SIGNED by the parties and witnessed on the following dates and at the following places respectively:

DATE:	PLACE:	WITNESS:	SIGNATURE:
<u>1 FEBRUARY 2019</u>	<u>PARKTOWN.</u>	1. <u></u>	 For: THE COMMISSION
		2. <u>BAKED</u>	<u>Peter Redman.</u>

DATE:	PLACE:	WITNESS:	SIGNATURE:
<u>1st FEBRUARY 2019</u>	<u>PARKTOWN</u>	1. <u>BAKED</u>	 For: INVESTIGATOR
		2. <u></u>	<u>TERENCE NOMBEMBE</u>