

Rejection of proposed unilateral change to employment agreement and response thereto.

This response to the proposed "Confidentiality Agreement" and accompanying "Disciplinary Code and Procedure" as furnished to (employee name) is furnished without prejudice.

It shall be noted and placed on record that (employee name), hereby rejects the proposed documentation in its entirety and recognises same as being unilateral changes, to the employment agreement as exists and is, in essence *contra bonos mores* and shall as such not be binding, in any manner or to any extent whatsoever, under any circumstances on herself. The contract, nor any *proviso* therein contained, shall be deemed to have been accepted or conceded.

It is also recorded that (employee name), unequivocally and absolutely rejects the *essentialia negotii* of the proposed contract and as such shall not be deemed by implication or otherwise to have agreed to be bound by any contents of said contract under any circumstances.

Herewith specific reference to sections of the proposed unilateral amendment to the employment agreement:

Confidentiality Agreement:

It is recognised that the document which purports to be a confidentiality agreement is, in essence, a thinly veiled attempt to conceal a restraint of trade, as well as a competition agreement, to which (employee name), will, under no circumstances be subjected. The nature of this document is seen *abusus non et usus* of labour and contract law and is again stated to be *contra bonos mores* and as such shall not be binding on the person.

Furthermore, the proposed contract's contents require that the person concede certain stipulations, *inter alia*, the admission of damages and proprietary, with regards to damages which, in terms of the law of Delict, shall be proven in a court of law.

1.3 This clause is rejected in its entirety and any claims of propriety or consequential detriment is dismissed;

1.4 The clause is rejected in its entirety and no warranty as described shall be granted. Furthermore, (employee name) rejects, explicitly, any and all *proviso* contained in this clause and any subsections and recognises same as representing an admission of guilt and consequent liability *ex ante*;

2. There shall be no commencement date of the proposed unilateral agreement as the agreement is rejected in its entirety.

2.2 With specific reference to this subsection, the employee shall not incur any obligation, explicitly, nor implicitly of whatever nature whatsoever and shall not be bound by any *proviso* of this contract;

3. This paragraph and all its subsections as well as any content therein is unequivocally rejected and shall under no circumstances be binding on the employee or accepted by the employee;

3.2 The definition of confidential information is, in its entirety, rejected and it is stated for the record that no part of any document, contract, agreement or consensus, written, verbal or otherwise, shall be retrospectively applicable and none such retrospective application or attempt at such application shall be binding, implicitly or otherwise, on the person of (employee name) under any circumstances and without limitation, exclusion or exception.

The employee shall, under no circumstances accept, concede or agree, or deemed to have done any of the aforesaid, to any part of this subsection;

3.2.1.1 The subsection is rejected in its entirety and all claims relating to specialised knowledge, plans, intentions (which is a vague term and seen as intended to be abused for the benefit of the employer wherever same is deemed fit by the employer), product information, know-how, ideas, formulae, composition of products, method and nature of research and rendering of service and the manufacture, sale and distribution of the company's products (sic), design rights, trade secrets (the claim for which is rejected in terms of generally established principles of case law as applicable to qualification of trade secrets, which is not existent), patents, trademarks, software and applications, market opportunities (which is rejected on the premise that this cannot be owned in a democratic and free society and is thus contrary to the spirit of the Constitution of the Republic), clients (rejected on former premise), potential clients and business affairs (rejected on former premise), analyses, training research information (which is rejected on the premise that the employee did not receive training of any kind whatsoever from the business, nor its management, employees, principals, agents or any other party so affiliated with the business. The training necessary for the execution of the duties of the employee was acquired through the engagement in academic activities through a recognised university in the Republic and from experience in the profession. No claim that the employer provided any training which can or may be deemed to be proprietary shall be conceded or entertained by the employee) and information prepared by the company, is rejected in its entirety without exception or exclusion;

3.2.1.4 In particular, the employee rejects the claim that there exists any proprietary or trade secrets and recognises the pre-emptive and abusive tactic employed (throughout the contract) of the employer to establish this as a statement of fact by attempting to solicit agreement to this extent using this contract;

4. The employee does not agree and shall not, for any reason, by any means or under any circumstances whatsoever be bound by any obligation imposed by this contract, any document annexed thereto, any accompanying document, agreement or contract, written or verbal under any condition or for any reason. This paragraph and all subsections are unequivocally rejected;

4.1 The employee shall NOT, under any circumstances whatsoever, undertake or be deemed to have undertaken any assertion made by the employer;

4.2 The onus of proof shall not be established by the employer but *actor incumbit probatio* as established by law, shall prevail.

6 and 6.3 (employee name), shall, under no circumstances or conditions, whatsoever, be subject to any form of restraint of trade agreement or any other agreement which explicitly, or by implication, attempts to limit her right to economic freedom and to pursue any endeavour or business in any field, industry or place whatsoever. She shall not accept any attempt to limit her ability to earn an income in any industry, area or place, in any capacity whatsoever. Her objection in this regard is further supported by the fact that she has an established business in the education field, which was existent before the proposition of this contract and she shall not, by any means, agreement, contract, stipulation or provision of any kind, be restricted by any person or entity, from continuing her business. Furthermore, she shall, under no circumstances and by no means be restricted by any person, entity, agreement or other, from providing services to any person or persons, entities or any other being. She shall retain her full economic freedom and capacity and shall not be limited by the company or any other party from commencing, taking part in, or any other action relating to her profession or economic activities.

9. Except for the rejection of the document in its entirety, (employee name) states the following for the record:

No materials, including but not limited to, documents, intellectual property, trademark/s, creations, presentations, inventions, formulae or any other item developed, conceived, created or otherwise brought into being, by her, shall become the property of the company under any circumstances. Given the attempted expropriation of rights to above mentioned, (employee name) hereby unconditionally revokes all authorisation for any of her documents, intellectual property, trademark/s, creations, presentations, inventions, formulae or any other item developed, conceived, created or otherwise brought into being, by her, to be used by the company. This explicitly includes any document or item bearing her own company trademark or logo ((employee company name) or any derivative thereof) or marked "copyright" by her. The above mentioned shall not, under any circumstances become the property of the company and the full rights to said items shall vest solely in her and the co-authors or creators and no right, ownership, title, right of use or any other form or type of right whatsoever shall be conferred to the company or any entity or person affiliated with, or acting in whatever capacity in favour of, or for the benefit of the company. Any and all rights to any of the aforementioned shall remain vested in (employee name) and shall be returned to her and all copies thereof destroyed upon request. Any authorisation for the use of any of the aforementioned, shall be at her own discretion and may be revoked, unconditionally, at any time. It is stated for the record that no proprietary item of whatever nature or kind, was developed under the name of the company, nor was same developed using the resources or any other means provided by the company and as such no proprietary title or ownership shall transfer, explicitly or implicitly to the employer. It is stated that the material and other items aforementioned was developed by her, using her own resources, materials, technology, means and knowledge, acquired by formal education and experience, not relating to her employment with the employer and as such there shall be no proprietary claim against any of the aforementioned items by the employer and no proprietary title or ownership shall be granted. Any attempts to expropriate or otherwise obtain title or ownership of, including, but not limited to patents, intellectual protection or any other form of action, which may be interpreted as, or implying ownership or title to aforementioned, shall be grounds for action as deemed appropriate in order to protect her rights.

10. The employee rejects this entire agreement and shall not be bound by any part thereof under any circumstances. The employee further states, for the record, that an agreement shall not be valid where a party EXPLICITLY disagrees with the *essentialia* or *incidentalialia* or, as in this case both. This agreement is, in its entirety thus declared to be null and void and shall have no bearing on the person of (employee name) whatsoever. She shall not, as is suggested by the contract, accept the *provisio* or any part of this agreement by implication and shall not be bound by any part of it.

Furthermore, it bears mentioning that, where a contract is contrary to any law in the Republic, the law shall prevail. (employee name) retains all the rights granted under any and all laws and conventions and shall not waive any right for any reason or under any condition. This includes, but is not limited to her right to refuse to enter into an agreement and be bound by such agreement as well as to accept a unilateral change to an employment agreement as governed by the applicable labour legislation and case law.

Disciplinary code and procedure:

This document is rejected in its entirety due thereto that it represents a unilateral change to the employment agreement. This document is also rejected on the grounds thereof that the

annexure/s referred to in the document is not attached and has not been made available. The *essentialia negotii* is thus absent and a valid agreement cannot be entered into.

The abovementioned statements and declarations and rejection of the documents were made in the presence of a witness as indicated below.

Signed at Pretoria on this 15th day of January of 2018.

(Employee name)

Witness: (Legal council for employee)