

PROJECT SERVICES AGREEMENT

entered into by and between

QUANTUM SOLUTIONS

a Globus T24 service provider company, herein represented by Mr Jakes van den Berg, in his capacity as Partner (Research, Technology and Planning) and duly authorized

(Hereinafter referred to as “**Quantum Solutions**”)

and

xxx

A private company with limited liability, incorporated and existing under the laws of South Africa, herein represented by **xxx** in his/her capacity as **xxx** and s/he being duly authorized thereto

(registration number: **nnnnn**)

(herein referred to as “CLIENT”)

1. PREAMBLE

- 1.1 CLIENT wishes to research the Field.
- 1.2 QUANTUM SOLUTIONS has the skill and expertise to conduct such research in the Field.
- 1.3 CLIENT agrees to engage QUANTUM SOLUTIONS to conduct the research and QUANTUM SOLUTIONS agrees to conduct the research under the terms and conditions of this Agreement.

2. DEFINITIONS

In this Agreement unless inconsistent with the context the following expressions words bear the meanings set out below and derivative expressions and words will have a corresponding meaning:

- 2.1 “**Agreement**” means these terms and the Annexures hereto.
- 2.2 “**Background Intellectual Property**” means all present Intellectual Property rights that each Party brings to the Project and any other Intellectual Property rights that may in future be based thereon, including but not limited to patents, trademarks, designs and copyright insofar as such future Intellectual Property rights are not dealt with in this Agreement.
- 2.3 “**CLIENT Representative**” means the person nominated in Annexure A or otherwise in writing by CLIENT from time to time.
- 2.4 “**Deliverables**” means the tangible results or outputs provided by QUANTUM SOLUTIONS to CLIENT, and are IP.
- 2.5 “**Field**” means the area of research described under “The Field” in Annexure A.
- 2.6 “**Final Deliverable**”, as described in Annexure A, means the last and final deliverable from a Project provided by QUANTUM SOLUTIONS to CLIENT, for example, a final report.
- 2.7 “**Foreground Intellectual Property**” means such IP as may be created or developed by a Party or the Parties in the course of the Project.
- 2.8 “**Intellectual Property**” or “**IP**” means intellectual capital embodied in any and all technical and commercial information, including, but not limited to chemical structures, biological or chemical information, manufacturing techniques and designs, specifications and formulae, know-how, data, systems and processes, production methods, methodologies, trade secrets, undisclosed inventions, financial and marketing information, as well as registered and unregistered intellectual property in the form of patents, trade marks, designs and plant breeders’ rights (whether granted, registered or applied for, and copyright in any works including literary works or computer software programs).
- 2.9 “**Parties**” means both QUANTUM SOLUTIONS and CLIENT and “**Party**” means either one of them.
- 2.10 “**Project**” means research conducted as set out in Annexure A of this Agreement.
- 2.11 “**QUANTUM SOLUTIONS Representative**” means the person nominated in Annexure A or otherwise in writing by QUANTUM SOLUTIONS from time to time who oversees the research.

3. RULES OF INTERPRETATION

- 3.1 Clause headings are for convenience and will not be used in the interpretation of this Agreement.

- 3.2 Unless the context indicates a contrary intention an expression which denotes:
- 3.2.1 Any gender will include the other genders;
 - 3.2.2 A natural person will include a juristic person and vice versa;
 - 3.2.3 The singular will include the plural and vice versa; and
 - 3.2.4 References to clauses, schedules, parts and sections are, unless otherwise provided, references to clauses, schedules, parts and sections of this Agreement.

4. APPOINTMENT

CLIENT appoints QUANTUM SOLUTIONS and QUANTUM SOLUTIONS accepts the appointment to carry out the Project on the terms and conditions set out herein and for the fees set out in Annexure A.

5. TERM

The Start Date of this Agreement is specified in Annexure A and, subject to the further provisions of this Agreement, continues until completion of the Project but no later than the End Date specified in Annexure A.

6. CLIENT RESPONSIBILITIES

CLIENT will:

- 6.1 Designate CLIENT Representative. CLIENT may from time to time and on written notice designate another person to act as its representative. This representative will liaise with QUANTUM SOLUTIONS as often as required for the efficient implementation of the Project and is authorised to transmit instructions from CLIENT to QUANTUM SOLUTIONS, and to receive information from QUANTUM SOLUTIONS;
- 6.2 Either directly, or through CLIENT Representative, instruct QUANTUM SOLUTIONS regarding CLIENT's requirements in connection with the Project. CLIENT Representative is authorised to define and interpret CLIENT's requirements to the QUANTUM SOLUTIONS regarding the use of research time and expertise and convey decisions pursuant to the Project to QUANTUM SOLUTIONS and to receive information from QUANTUM SOLUTIONS on behalf of CLIENT;
- 6.3 Provide QUANTUM SOLUTIONS with such access as may be necessary to enable QUANTUM SOLUTIONS to perform the services required of QUANTUM SOLUTIONS for the purposes of the Project and make available all information as may be necessary to enable QUANTUM SOLUTIONS to fulfil its obligations under this Agreement;
- 6.4 Give prompt written notice to QUANTUM SOLUTIONS if and whenever it becomes aware of any deficiencies in the services provided hereunder. QUANTUM SOLUTIONS undertakes to acknowledge such notice in writing within 30 days; and
- 6.5 Pay QUANTUM SOLUTIONS as provided for in clause 13 of this Agreement.

7. QUANTUM SOLUTIONS RESPONSIBILITIES

QUANTUM SOLUTIONS will:

- 7.1 Designate the QUANTUM SOLUTIONS Representative. QUANTUM SOLUTIONS may from time to time and on written notice designate other persons to act as its above-mentioned Representatives. These Representatives will liaise with CLIENT as often as required for the efficient implementation of the Project and they are authorised to transmit instructions from QUANTUM SOLUTIONS to CLIENT, and to receive information from CLIENT;

- 7.2 Submit to CLIENT the following:
- 7.2.1 Reports as appropriate, which may include partial reports released from time to time at dates as may be designated in Annexure A hereof; and
 - 7.2.2 Research information and analyses as described in Annexure A;
- 7.3 Exercise such skill, care and diligence as may be reasonably expected from experts in the particular field whilst providing the services required from it in terms of this Agreement; and
- 7.4 Give prompt written notice to CLIENT if and whenever it becomes aware of any deficiencies in performing its obligations hereunder. CLIENT undertakes to acknowledge such notice in writing within 30 days.

8. INTELLECTUAL PROPERTY

- 8.1 Subject to the provisions of clause 8.3, the ownership of Background Intellectual Property existing prior to the commencement of the Agreement will be and remains unaffected hereby.
- 8.2 The rights of ownership of Foreground Intellectual Property arising from the Project will be retained by the Party generating the IP. CLIENT will own IP made solely by employees of CLIENT and QUANTUM SOLUTIONS will own IP made solely by staff, students and contractors of QUANTUM SOLUTIONS. CLIENT and QUANTUM SOLUTIONS will own jointly the IP made jointly by employees of CLIENT and staff, students and contractors of QUANTUM SOLUTIONS. Each Party will promptly disclose to the other Party, under the conditions of confidentiality of clause 9, any IP arising from the Project.
- 8.3 CLIENT will have the first right of refusal to commercially exploit any IP generated by QUANTUM SOLUTIONS, subject to the signing of a benefit sharing agreement between CLIENT and QUANTUM SOLUTIONS.
- 8.4 Subject to the terms of this Agreement, QUANTUM SOLUTIONS will have a royalty-free right to use all the IP made during the Project in connection with its research and teaching programmes, unless the right would prejudice CLIENT's commercial exploitation of the IP or its commercial and technological position, in which case QUANTUM SOLUTIONS will not exercise such right for 6 months from the end of the Project.

9. CONFIDENTIALITY

- 9.1 For the purpose of this clause, "**confidential information**" means specifications, drawings, circuit diagrams, tapes, discs and other computer-readable media, documents, information, technical and commercial data, techniques and know-how.
- 9.2 The Parties hereto recognise that information, agreed or noted by the Parties to be confidential, may be passed from one Party to another for the purpose of the Project, and that confidential information may arise from the Project.
- 9.3 All information not designated in writing as confidential is not confidential. If either Party requires information to be designated as confidential information, it will be marked clearly as such, or if disclosed orally, it will be identified as confidential at the time of disclosure.
- 9.4 The Parties hereto undertake to use all reasonable endeavours to keep confidential any confidential information unless disclosure of such confidential information to another party is specifically approved in writing by the owner of the confidential information.
- 9.5 No confidential information arising from the Project may be disclosed unless both Parties agree in writing to such disclosure.
- 9.6 The obligation of confidentiality of clause 9.4 will not apply to information which:

- 9.6.1 becomes known by third parties through no fault of the Parties hereto;
 - 9.6.2 is or becomes published otherwise than by unauthorised publication in breach of this Agreement;
 - 9.6.3 is independently developed by an employee of the recipient who has not had access to any of the confidential information disclosed to the recipient by the other Party;
 - 9.6.4 is in the public domain;
 - 9.6.5 can reasonably be demonstrated to be known to the Parties prior to disclosure under this Agreement;
 - 9.6.6 is disclosed to the Party or Parties by another party entitled to disclose the information;
 - 9.6.7 the Parties hereto agree to release; or
 - 9.6.8 is required to be disclosed by law.
- 9.7 The Parties hereto will take due precautions to ensure that their staff, students and contractors, who have a need to know confidential information, undertake the above obligations of confidentiality.
- 9.8 Each Party may not divulge, and will procure that any of its employees or agents do not divulge, to any person, other than the duly authorised representatives of the other Party and its own staff, and only if this is necessary for the proper rendering of the services under this Agreement, any confidential information arising out of the performance of, related to or discovered in the course of the performance of the services required under this Agreement, without the prior written authority of the other Party.
- 9.9 It is intended that the results of the Project should be published in accordance with normal academic practice. In order to protect the confidential information and any proprietary rights, neither Party will publish or publicly disclose the results of the Project or any confidential information as described in clause 9.2, without the prior written consent of the other.
- 9.10 The Party who wishes to publish as described in clause 9.9 will submit to the other Party a copy of the proposed publication at least 30 days in advance of the submission of the publication to a third party. If the non-publishing Party determines that the proposed publication discloses confidential or proprietary information that requires protection, that Party will notify the other of this determination within 30 days of receipt of the proposed publication. The non-publishing Party can require a delay of the publication, which delay will not normally exceed 3 months, or editing of the proposed publication, such editing not being deemed unreasonable by the Parties hereto.
- 9.11 If the Party, to whom a proposed publication has been submitted according to clause 9.10, fails to notify the submitting Party within 30 days of receipt of the publication, then the submitting Party is free to submit or present the publication.
- 9.12 Subject to clause 10, QUANTUM SOLUTIONS and CLIENT will not, during or for a 5 year period after the conclusion of the Project and during this Agreement, disclose to other parties any of the above confidential information, without the prior written consent given as prescribed hereunder.
- 9.13 The Party who has received confidential information from the disclosing Party undertakes to promptly return or destroy such confidential information on request from the disclosing Party and promptly confirm in writing to the disclosing Party that such action has been taken.
- 9.14 The confidentiality terms in this clause 9 replace in their entirety any previous confidentiality agreements signed between the parties relating to the subject matter hereof and such confidentiality agreements are hereby deemed terminated.

10. THESES, DISSERTATIONS AND PROJECT REPORTS

- 10.1 Nothing in this Agreement will prevent a registered student of QUANTUM SOLUTIONS from submitting for a degree of QUANTUM SOLUTIONS a thesis, dissertation or Project report based

on the results from the Project. CLIENT may see the draft material during the writing up period and may, within 30 days of receipt, request the exclusion of confidential or sensitive information, or to correct any errors of fact. CLIENT may remove any CLIENT, brand or product names from the thesis, dissertation or Project report.

10.2 The thesis or dissertation will be examined by examiners appointed by QUANTUM SOLUTIONS under an agreement of confidentiality between QUANTUM SOLUTIONS and the examiners, and a successful thesis or dissertation deposited in QUANTUM SOLUTIONS Library in accordance with QUANTUM SOLUTIONS regulations.

10.3 CLIENT may request that access to a thesis, dissertation or Project report be restricted for a period up to 2 years. Such a request by CLIENT will not be unreasonably denied.

11. CANCELLATION

11.1 If the Project is cancelled or abandoned for whatever reason, CLIENT will pay QUANTUM SOLUTIONS:

11.1.1 a pro-rated amount for the work, including both labour and deliverables, duly completed by it in accordance with the provisions of this Agreement, as at the date of cancellation or abandonment;

11.1.2 costs and expenses incurred and/or reasonably and necessarily committed to by QUANTUM SOLUTIONS in respect of the Project; and

11.1.3 any amounts committed by QUANTUM SOLUTIONS at the date of termination in any applicable research studentship which would be compromised financially by such early termination where such research studentship would have run its normal course.

12. FORCE MAJEURE

12.1 Neither Party will be liable for any delay in performing, or any failure to perform any obligation under this Agreement due to any cause beyond its reasonable control including, but without being limited to, any of the following:

12.1.1 the services of the QUANTUM SOLUTIONS Representative no longer being available for any reason;

12.1.2 strikes, lock-outs or other industrial action;

12.1.3 sabotage, terrorism, civil commotion, riot, political riot or disturbance, invasion, war, threat or preparation for war;

12.1.4 fire, explosion, storm, flood, epidemic or natural physical disaster;

12.1.5 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and

12.1.6 any act of any state or Government or other authority having jurisdiction over either Party.

12.2 Upon the occurrence of any delay or failure referred to in clause 12.1, the provisions of this Agreement affected will be suspended for as long as the cause in question continues to operate, provided that if that cause has not ceased to operate within 6 months from when it arose, this Agreement may be terminated by either Party.

13. CHARGES AND PAYMENT

13.1 QUANTUM SOLUTIONS will submit to CLIENT an invoice for the services and any additional charges which may apply as set out in Annexure A.

- 13.2 If any governmental authority imposes a duty, tax, levy, or fee on any transaction under this Agreement, then CLIENT agrees to pay that amount as specified in an invoice or supply exemption documentation.
- 13.3 CLIENT will pay to QUANTUM SOLUTIONS the amounts specified in the invoice within 30 days of CLIENT receiving the invoice referred to in clause 13.1.
- 13.4 If payment is not made within 30 days from the date of the invoice, CLIENT may be charged interest on any overdue amounts. Such interest will accrue daily from the date payment must have been received by QUANTUM SOLUTIONS, and will be calculated on the ruling prime rate of ABSA Bank Limited on any outstanding payment, and is payable on date of invoice.
- 13.5 Payment is deemed to have been made only when QUANTUM SOLUTIONS's relevant account has been credited by its authorised bankers.

14. BREACH

- 14.1 An event of breach will occur should:
- 14.1.1 either Party breach any of the material terms or conditions of this Agreement and fail to remedy that breach within a period of 14 days of being called upon in writing to do so; or
 - 14.1.2 either Party be placed in liquidation, whether provisionally or finally, or under judicial management.
- 14.2 Upon the occurrence of an event of breach the Party not in breach will be entitled, in addition to any other rights which it may have in law, to cancel this Agreement on written notice to the Party in breach and to claim from the Party in breach such damages as the other Party may suffer.

15. GENERAL CONDITIONS

- 15.1 Neither Party may bind the other in any way.
- 15.2 Neither Party may assign or cede any benefit, obligation or interest it may have in the contract to any other person without the prior written consent of the other Party.
- 15.3 This Agreement constitutes the whole agreement between the Parties relating to the subject matter thereof and save as otherwise provided, no amendment, alteration, addition or variation hereof will be of any force and effect unless reduced to writing and signed by both parties. In the event of any conflict between these terms and the terms of the Annexures hereto, these terms will prevail over the terms of the Annexures to the extent of such conflict.
- 15.4 Neither Party is regarded as having waived, or is precluded in any way from exercising any right under or arising out of this Agreement by reason of such Party having at any time granted any extension of time for, or having shown any indulgency to, the other Party with reference to any performance of any obligation under this Agreement, or having failed to enforce, or delayed in enforcing any right of action against the other Party.
- 15.5 In the event of any clause of this Agreement or any part thereof being found to be invalid for any reason whatsoever, such clause or part thereof will be severable from the remainder of this Agreement and will not affect the validity of such remainder.
- 15.6 Neither Party grants the other the right to use its trademarks, trade names, logos or other such designations in any promotion or publication without prior written consent.
- 15.7 CLIENT agrees to provide QUANTUM SOLUTIONS with sufficient, free, and safe access to its facilities and systems for QUANTUM SOLUTIONS to fulfil its obligations. QUANTUM SOLUTIONS agrees to comply with any reasonable security requirements of CLIENT.

15.8 Once signed, any reproduction of this Agreement or part thereof made by reliable means (for example, photocopy, facsimile or electronic copy) is considered an original.

16. GOVERNING LAW

Should there be a dispute in regard to the interpretation of the terms of this Agreement or the standards to be achieved in respect of the project as a whole or in relation to a part thereof, the parties shall agree on the selection of an Arbitrator who shall have the appropriate qualifications to tend to such dispute and:

16.1 Both parties shall draw up their contentions in respect of the dispute and shall forward same to the Arbitrator within 7 days of the Arbitrator's selection by the parties.

16.2 The Arbitrator may call upon the representatives of the parties either singly or together to elicit further information to assist the Arbitrator in making his / her decision.

16.3 The Arbitrator's decision shall be final.

16.4 Such arbitration proceedings shall not be subject to the Arbitrations Act 1965.

16.5 The party least favoured by the Arbitrator's decision shall be liable for the entire costs of the arbitration proceedings.

16.6 Should the parties be unable to agree on the selection of the sole Arbitrator to attend to the dispute, the matter shall be referred to the attorneys Joubert, Galpin and Searle Inc. which attorneys shall select an Arbitrator of their choice to arbitrate and the attorneys' decision in this regard shall be final.

17. DOMICILIUM CITANDI ET EXECUTANDI

17.1 The parties select, as their respective domicilia citandi et executandi for purposes of serving notices in terms of this Agreement the physical addresses, telefacsimile numbers and e-mail addresses specified under "CLIENT Details" and "QUANTUM SOLUTIONS Details" respectively in Annexure A.

17.2 Every notice in terms of this Agreement will be in writing and will be deemed, unless the contrary is proved:

17.2.1 If delivered by hand to the other Party, to have been given on the first business day following the signature of such delivery having been received;

17.2.2 If transmitted by telefacsimile to the other Party, to have been given on the first business day following the day of transmission thereof, provided confirmation of such successful transmission is available or;

17.2.3 If sent by electronic mail, to have been received by the other Party on the first business day following the date of successful transmission thereof.

17.3 Notwithstanding anything to the contrary herein contained, a written notice actually received by any Party from the other Party, will be deemed to have been delivered to such Party's domicilia citandi et executandi on the date when such notice was received

18. LIMITATION OF LIABILITY

18.1 In circumstances where CLIENT is entitled to recover damages from QUANTUM SOLUTIONS (including fundamental breach, negligence, misrepresentation, or other contractual or delictual claim), QUANTUM SOLUTIONS is liable for no more than the amount of actual, direct damages up to the total of the amounts paid by CLIENT under this Agreement.

18.2 Neither Party will be liable for any indirect or consequential damages or losses of whatsoever nature.

18.3 Information provided by QUANTUM SOLUTIONS to CLIENT during the provision of services pursuant to this Agreement will be for CLIENT's use only. QUANTUM SOLUTIONS will not be liable for any loss suffered by any third party who is supplied with such information contrary to this provision and relies on it.

18.4 The Parties agree that QUANTUM SOLUTIONS's obligations will cease upon delivery of the Final Deliverable, and that no direct or indirect liability will rest upon it for the effects of any product or process that may be produced by CLIENT and any other party, notwithstanding that the formulation of such product or process may be based on the results of the Project.

Accepted for and on behalf of

XXX

and duly authorised

Signature: _____

Name: _____

Designation: _____

Date: _____

Place: _____

Accepted for and on behalf of

QUANTUM SOLUTIONS

and duly authorised

Signature: _____

Name: Jakes van den Berg

Designation: _____

Date: _____

Place: _____

ANNEXURE A – Statement of Work**1. Project Information**

Project Name:	
Field:	
Project Description:	
Start Date:	
End Date:	
Final Deliverable:	

2. CLIENT Details

Contact Name:	
Physical Address:	
Phone:	
Cell:	
Fax:	
E-mail:	
VAT Registration No:	

3. QUANTUM SOLUTIONS Details

Physical Address:	5 Loop street, Ladybrand, South Africa
QUANTUM SOLUTIONS Representative:	Jakes van den Berg Buddy van den Berg
Phone:	051 924 2220
Fax:	051 924 2777
Web:	www.t24quantum.com
E-mail:	sales@t24quantum.com

4. Technical details**(a) Introduction****(b) Scope of Services****(c) Resources required****(d) Project Team****(e) References****5. Deliverables**

The Deliverables and estimated completion dates are:

1.

