

**(COMPANY LETTERHEAD)**

## **SERVICE LEVEL AGREEMENT**

**entered into and between the parties;**

*Insert name, address, and company registration number of Service Provider here*

**Hereinafter referred to as the Service Provider**

**and**

*Insert name, address, and company registration number of Client here*

**Hereinafter referred to as the Client**

**Introduction:**

The Service Provider becomes engaged for justifiable reasons in contracts for the supply of temporary employees to its Client for the rendering of temporary services and/or assisting with the completion of assignments and / or projects/or tasks.

The Client, to ensure that its business strategy is supported, requires the services of a Service Provider to ensure that a sufficient number of temporary employees with the necessary skills and experience are made available to the Client for purposes of completing such contracts and /or assignments for an agreed period and /or projects/or tasks.

**Now therefore it is agreed:**

**1. Interpretations and Definitions**

- 1.1 The "Service Provider" means \_\_\_\_\_, which is registered according to statute, and carries on business as a Temporary Employment Service procuring as the primary Employer, temporary employees for the Client requiring such employees to render services for temporary periods, fixed term periods, and/or projects. The Service Provider operates according to best practice and therefore is a registered and fully compliant member of the Constructional Engineering Association Temporary Employment Services Division;
- 1.2 The "Client" means \_\_\_\_\_, for which the Service Provider procures temporary employees to render services for temporary periods, fixed term periods, and/or projects;
- 1.3 The "temporary employee" shall mean the employee provided by the Service Provider as stipulated in Section 198 of the LRA as amended from time to time;
- 1.4 The singular shall import and include the plural and vice versa;
- 1.5 Words referring to any gender shall include the other gender;
- 1.6 References to a natural person shall include a juristic person;
- 1.7 The headings in this Agreement are used for the sake of convenience only and shall not govern the interpretation hereof;
- 1.8 Any reference in this Agreement to the Service Provider includes, where appropriate, a reference to the employees and agents of the Service Provider;
- 1.9 "Agreement" – the Agreement contained in this document and any and all annexures hereto, which annexures shall form an integral part hereof and to which the provisions, stipulations and conditions of the Agreement shall apply mutatis mutandis. Where there is conflict between any of the provisions, stipulations and conditions of the Agreement and that of any Assignment, the provisions, stipulations and conditions of the Agreement, except for those contained in the special conditions of such annexures, shall take precedence;
- 1.10 "Services" – the services to be rendered by the Service Provider to the Client as more fully defined in the introduction above;
- 1.11 "Site" – the physical address(es), where the Service Provider may be required to render the services in terms of this Agreement;
- 1.12 "Duration" – this Agreement is valid from date of signature to \_\_\_\_\_ (date), alternatively the completion of \_\_\_\_\_(project);

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- 1.13 “Confidential information” shall include, but is not limited to:
- 1.13.1 any information in respect of know-how, formula, processes, systems, business met marketing methods, commercial plans, financial models, inventions, model portfolio’s, long-term plans and any other information;
  - 1.13.2 all internal control systems, billing models, web content and design;
  - 1.13.3 details of financial structures and operating results;
  - 1.13.4 the contractual and financial agreements between the parties and their clients with whom they have business arrangements of whatsoever nature;
  - 1.13.5 all other matters which relate to respective parties, which are of a confidential nature and which is not in the public domain;
- 1.14 "BCEA" – shall mean Basic Conditions of Employment Amendment Act No. 20 of 2013, as amended from time to time;
- 1.15 "LRA" – shall mean Labour Relations Amendment Act No. 6 of 2014, as amended from time to time;
- 1.16 “EEA” – shall mean the Employment Equity Amendment Act No. 47 of 2013, as amended from time to time;
- 1.17 “ESA” – shall mean the Employment Services No. 4 of 2014, as amended from time to time;
- 1.18 “SDA” – shall mean the Skills Development Amendment Act No. 26 of 2011;
- 1.19 “SDLA” – shall mean the Skills Development Levies Act No 9 of 1999;
- 1.20 “Intellectual Property” - shall mean all inventions, improvements, designs, trademarks, know how, specialized technical information or expertise, notwithstanding the manner in which it is recorded or created by the Service Provider, or the Service Provider’s temporary employees, during the performance of the Service Provider, or Service Provider’s Service or the Service Provider’s temporary employees in terms of this Agreement;
- 1.21 “non-standard or a-typical employment” – shall mean temporary employment as defined in Section 198(4) of the LRA;
- 1.22 “Deeming” – shall mean to treat as; with particular regard to alleged unfair dismissal, organisational rights, and wages and benefit structures;
- 1.23 “Notice period” – shall mean the statutory notice period, as defined in Labour Legislation;
- 1.24 “Justifiable reason” – shall mean any acceptable reason for temporary employment, as per Section 198B(3) of LRA;
- 1.25 “POPI” means the Protection of Personal Information Act No. 4 of 2013;
- 1.26 UIF – shall mean the Unemployment Insurance Fund Act No. 63 of 2001, as amended;
- 1.27 COIDA – shall mean the Compensation for Occupational Injury and Diseases Act No. 130 of 1993, as amended in terms of Act No 61 of 1997;
- 1.28 TES – the temporary service provider shall mean as defined in the LRA;

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- 1.29 The calculation of any time period for the purpose of this Agreement shall exclude the first day in the period and include the last day of the period. Days that fall over weekends and public holidays shall be included in the calculation of any period. In the event that the last day falls on a Saturday, Sunday or public holiday, the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

## 2. Provision of Services

- 2.1 The Client hereby engages the Services of the Service Provider for the duration of the service period or duration as set out above.
- 2.2 The Service Provider shall provide the Client with suitably qualified and experienced temporary employees to render services at the premises, offices and/or sites of the Client in accordance with the needs stipulated by the Client, in writing.
- 2.3 Upon receipt of a request for the supply of temporary employees, the Service Provider shall make available to the Client upon request, the relevant and sufficient details of a particular competency, where required, of all temporary employees.
- 2.4 The Client shall be entitled to conduct interviews with prospective temporary employees to ascertain their suitability, and shall not be liable in any way for the rejection of any potential temporary employee, nor any costs incurred by any party in attending interviews.
- 2.5 The Service Provider shall not be liable in any way should the temporary employee, after the interview process, prove to be unsuitable to the Client's needs. After the interview process, should the temporary employee prove to be unsuitable in terms of the Client's needs, the Service Provider reserves the right to provide a replacement within 7 (seven) days of written notification.
- 2.6 Further to the above, the Service Provider shall provide the following services under this agreement:
- 2.6.1 Engage in screening and assessment practices that are commensurate with the position being sourced for and/or in accordance with the detailed and documented requirements of the Client. As a minimum service, the Service Provider will conduct credit, criminal, education and license verification checks;
- 2.6.2 Provide a full payroll administration process, including the payment of statutory payments to the required institutions and the issuing of IRP5's;
- 2.6.3 Fund the payroll within the conditions set under the Payment terms section (clause 5) hereunder;
- 2.6.4 Maintain complete and accurate records of employment and in respect of statutory compliance reporting under the various Acts, including but not limited to the LRA, the EEA, the SDA, the SDLA, the BCEA, and the like;
- 2.6.5 Address all labour relations and related matters as the primary responsible party, irrespective of the duration of employment of the individual in question;
- 2.6.6 Management reports to the Client that is reasonable in relation to the services being provided and requested within reasonable time frames;
- 2.6.7 Manage the full human resource of the individuals provided to the client notwithstanding any deeming provisions in legislation;
- 2.6.8 This agreement is built on an operational model developed in the Client's business.

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- 2.7 Once agreement is confirmed, whether verbal or in writing, regarding the selected temporary employee it shall become an official order from the Client and shall be governed by this Agreement, at (clause 2.9 to 2.12).
- 2.8 The Service Provider shall enter into an employment agreement with the selected temporary employee, which should be of a fixed term nature.
- 2.9 This Agreement is based on an operational model developed in the Client's business. It acknowledges the historical differences in pay between employees and introduces a remuneration structure based on minimum rates of pay. It is necessary to do this to ensure the survival of the various business units that have lost large numbers of jobs due to the inability to compete on a cost competitive basis.
- (Or) -
- This Agreement is built on an operational model developed in the Client's business and required manpower flexibility. This is to ensure the survival of the business as it cannot guarantee (100%) permanency due to the operations of the Client.
- (Or) -
- This Agreement is built on a training pool model, where placed employees will be engaged on a fixed term training contract for a period of \_\_\_ months and be eligible for permanent employment on condition that a vacancy exists and that the job and training criteria have been met by such employee
- (Or) -
- This Agreement is built on an operational model developed in the Client's business which acknowledges the historical differences in pay. Freezes the permanent categories of workers at \_\_\_\_\_ level and only engages with the TES Service Provider to supply non-standard employment at a particular level from date of this Agreement.
- (Or) -
- This Agreement is based on an outsourced/functional category model whereby a category/level/entire section of a workforce has been outsourced and will be supplied by the Service Provider.
- (Or) -
- The operational economic model looks at a 12 (twelve) month business view and determines the number of flexible employees needed in each 12 (twelve) month cycle. This exact level is impossible to predict and in uncertain economic cycles this could endure for a number of years. Client's historical operational requirements indicate that even in good economic cycles these do end and hence the need to determine flexible employment levels to accommodate these cycles. The operations are attempting to have a model that ensures the maximum viability of permanent employees and the maximum flexibility of flexible employees to ensure competitiveness.
- (Or) -
- The training pool model is aimed at the development of Placed Employees to ensure they are able to meet the criteria of the job. Should they be successful they will qualify for possible permanent vacancies.
- (Or) -
- The models are built on the decision to outsource the entire workforce/the \_\_\_\_\_ category/categories of employees.
- 2.10 The operational economic model looks at a 12 (twelve) month business view and determines the number of flexible employees needed in each 12 (twelve) month cycle. This exact level is impossible to predict and in uncertain economic cycles this could endure for a number of years. The Client's historical operational requirements indicate that even in good economic cycles these do end and hence the need to determine flexible employment levels to accommodate these cycles. The operations are attempting to have a model that ensures the maximum viability of permanent employees and the maximum flexibility of flexible employees to ensure competitiveness.

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- 2.11 The flexible components model will be made up of a variety of different fixed term contracts based on as far as possible the future 12 (twelve) months view of the client's operational requirements.
- 2.12 The remuneration model of atypical employees recognizes that they are atypical employees and ensures that they are remunerated at the minimum rate of pay per grade. Client has taken a decision not to reduce historical anomalies within a grade but phase such out through a process of natural attrition.

### 3. **Working Hours and remuneration and notice periods**

- 3.1 The temporary employee's ordinary hours of work and payment thereof shall be as determined by the Client and shall not exceed the hours as statutorily prescribed.
- 3.2 Overtime and work on public holidays and Sundays shall only be undertaken on request by the Client and shall be pre-approved by the Client, and shall comply with all statutory requirements.
- 3.3 The Client shall take cognisance that the BCEA or collective agreement prescribes that where temporary employees earn below the current annual threshold determined by the Minister of Labour, preferential rates of remuneration will apply in respect of overtime and work on Sundays.
- 3.4 These rates shall be as agreed with the Client and stipulated in the annexure/rate schedule as amended from time to time.
- 3.5 Wage increases will take place and be enforced as per applicable collective agreements as and when such occurs.
- 3.6 Unless reasonable notice is given by the Client, the Client will be held liable for payment of 4 hours to the temporary employees of the Service Provider in instances where circumstances beyond the control of the parties render the ability of the temporary employees to work impossible, including but not limited to force majeure, load shedding, and inclement weather.
- 3.7 The Client shall advise the Service Provider timeously of any change in circumstances which may impact on a temporary employee's services in terms of this agreement. This includes, but is not limited to, any amendment to the Services to be supplied and the location where the services are to be supplied.
- 3.8 The temporary employment of the temporary employees may be terminated by any of the parties giving to the other written notification as per the relevant statutory regulations.

### 4. **Duration**

- 4.1 This Service Agreement shall commence on date of last signature by the parties and shall remain in force until terminated in accordance with the provisions of the Agreement relating to termination, (Clause 7).

### 5. **Payment**

- 5.1 Payment to the Service Provider shall be effected on a weekly/fortnightly/monthly basis.
- 5.2 Such payments shall be calculated on the basis of a rate per hour for all hours worked by the temporary employee during a specific period. The rate per hour shall be as stipulated in the annexure/rate schedule.

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- 5.3 The Service Provider/temporary employee shall be required to keep accurate records of hours worked (clocking) on time sheets which shall be verified and approved by the Client for invoicing purposes and shall constitute proof of time worked in the event of a dispute.
- 5.4 The Service Provider shall submit statements of account as well as VAT inclusive invoices to the Client in respect of service provision by the Service Provider on a weekly/fortnightly/monthly basis.
- 5.5 Invoices submitted to the Client shall, if the Client so requires, be accompanied by copies of timesheets, duly authorised, and any other relevant approved documentation in support thereof.
- 5.6 Payment of invoices submitted to the Client shall be effected within the time period agreed and stipulated in the (quote/rate schedule/any other applicable documentation as agreed upon).

**6. The temporary employment relationship**

- 6.1 By virtue of the Service Provider's relationship and its designation as a TES, and by virtue of the fact that the Service Provider is an employer as referred to in the LRA, or other applicable legislation, the Service Provider is entitled to discipline and manage the performance of temporary employees in accordance with its own policies. In so far as the Client may also be deemed to be the employer of the temporary employees, the Client confirms that the Service Provider shall remain the primary employer and that all disciplinary action or performance management will be undertaken by the Service Provider.
- 6.2 The Client acknowledges that to ensure that the Service Provider is able effectively to carry out the aforesaid functions, the Client shall timeously alert the Service Provider to any transgressions or unsatisfactory performance by the temporary employee/s and allow the Service Provider a reasonable opportunity to address the temporary employee's conduct or performance, and shall provide the Service Provider with reasonable assistance and all relevant information and/or evidence.
- 6.3 In the event that the Client gives notice of termination of the use of the temporary employee's services prior to the Assignment Completion Date, or for any reason requires the Service Provider to remove the temporary employee from its premises and/or operations and/or any site, and the Client is unable or is unwilling to assist the Service Provider to fairly dismiss the temporary employee for reasons related to misconduct, incapacity or operational requirements, the Client hereby unconditionally indemnifies the Service Provider against the following costs/liability:
  - 6.3.1 all statutory retrenchment costs (if applicable)
  - 6.3.2 all costs associated with any notice pay;
  - 6.3.3 any other damages/compensation/back pay that may be awarded and made payable by the Service Provider to the temporary employee in respect of and in any way related to the early termination of a temporary employee's services prior to the Assignment Completion Date, in terms of the LRA or otherwise; and
  - 6.3.4 any associated legal costs including any order for costs, calculated on the scale of attorney and own client.
- 6.4 In the event that the Client extends a permanent offer to a temporary employee or utilises the services of a temporary employee in any way, whether directly or indirectly, through another service provider, within 6 (six) months after the temporary employee ceased to provide services to the Client through the Service Provider, a permanent placement fee will be applicable as per the fee structure set out in "Permanent Placement Conditions and Fees".

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## 7. Obligations of the parties

7.1 The Service Provider shall undertake to:

- 7.1.1 comply with all its statutory obligations and including the POPI Act as the employer of the temporary employee and shall provide the Client with acceptable proof thereof on request;
- 7.1.2 warrant that all statutory registrations and relevant documentation shall remain valid and current for the duration of this agreement;
- 7.1.3 as far as reasonably practicable, ensure compliance by the Service Provider with all applicable laws, rules and regulations, with due regard to the provisions of the relevant applicable labour legislation and/or collective agreements;
- 7.1.4 discipline the temporary employees in terms of relevant Labour Legislation, as the primary employer, and shall request the Client, the secondary employer, to assist in the process by reasonably agreeing to provide relevant witnesses in the disciplinary enquiry;
- 7.1.5 take all reasonable steps to ensure that the temporary employee's agreed billable time is utilised with due attention to the business and interests of the Client;
- 7.1.6 ensure that it and its temporary employee, upon any reasonable request by an officer of the Client furnishes an explicit and faithful account of any services rendered to the Client;
- 7.1.7 ensure that the temporary employee complies with all reasonable and/or lawful instructions given from time to time by the Client;
- 7.1.8 undergo regular and fair assessments of the quality of service to the Client, by the Client;
- 7.1.9 contractually bind itself as the employer of record as far as is legally, reasonably and practically possible as follows:
  - 7.1.9.1 under the LRA for the first 3 (three) months of assignment to the Client;
  - 7.1.9.2 under the LRA, post the 3 (three) month assignment insofar as the Service Provider will require and direct assignees to understand and accept that all labour relations matters of any nature shall first be directed to the Service Provider in terms of the Service Provider's policies, procedures, practices and processes and only if these Service Provider-facilitated processes fail to resolve the matter(s) raised, may the temporary employee involve the Client where this is allowed in terms of Labour Legislation;
  - 7.1.9.3 under the LRA, the provisions linked to joint and several liability of the parties will be applicable;
- 7.1.10 under the LRA and the EEA, to work with the Client on solutions in addressing the equal treatment and equal pay for work of equal value provisions and to implement a plan of action in this regard;
- 7.1.11 under the UI Act and COID Act, to be the employer of record and to take responsibility for the processing of any claims against either of these funds.

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7.2 The Client shall undertake to:

- 7.2.1 take cognisance of and comply with the POPI Act and the provision of all statutory labour regulations and the BCEA and the LRA in its dealings with the temporary employee;
- 7.2.2 act in a supervisory and/or monitoring capacity only in its dealings with the temporary employee and at no time allow, construe or suggest an employer/employee relationship to exist;
- 7.2.3 avoid entering into discussions and/or negotiations in respect of rates, increases or direct payments of any nature with the temporary employee without the knowledge and consent of the Service Provider;
- 7.2.4 notify the Service Provider of any contraventions, infractions or misdemeanours of any kind by the temporary employee within 24 (twenty four) hours of the event, to enable the Service Provider to initiate disciplinary procedures. The Client further undertake to assist in terms of providing witnesses and/or evidence;
- 7.2.5 ensure that the temporary employee accepts instructions only from authorised officers or personnel of the Client and furthermore acknowledges that only such authorised personnel of the Client are entitled to sign correspondence for and on behalf of the officers or personnel of the Client;
- 7.2.6 provide the Service Provider with a clearly defined and detailed job profile indicating:
  - 7.2.6.1 the reason for the service requirement as defined in terms of time and/or project or task
  - 7.2.6.2 the position,
  - 7.2.6.3 the key performance areas,
  - 7.2.6.4 the required competencies,
  - 7.2.6.5 the remuneration parameters,
  - 7.2.6.6 the nature and extent of verification checks that need to be performed by the Service Provider.
- 7.2.7 notify the Service Provider of any change in regard to any of the above factors as soon as it becomes aware thereof and thereafter to afford the Service Provider a reasonable timeframe to comply with the change legally and effectively;
- 7.2.8 specify requirements in terms of the nature and extent of the Service Provider's compliance requirements relating to confidentiality and propriety information;
- 7.2.9 assign and specify personnel accountable and responsible for liaison with the Service Provider on all matters contained in this Agreement;
- 7.2.10 provide the appropriate infrastructure, resources, training, training venue and training records and material as appropriate and applicable;
- 7.2.11 allow the designated Service Provider personnel access to the Client's site(s) as well as with the necessary and appropriate documentation and resources in order to fulfil the Service Provider's obligations in terms of this agreement and/or to deal with employment relations matters pertaining to a temporary employee;
- 7.2.12 contact the Service Provider immediately and/or timeously in the case of any matters pertaining to human resources and labour relations with respect to one or more of the temporary employees;

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- 7.2.13 allow the Service Provider to comply with the agreed disciplinary, grievance and incapacity codes and procedures and to assist the Service Provider as far as is reasonable, necessary and appropriate to maintain, manage and nurture healthy employment relations;
- 7.2.14 ensure compliance to all relevant legislation;
- 7.2.15 request the removal of a temporary employee off site or project only for a reason that complies with Labour Legislation for misconduct, incapacity, operational requirements or the end of the temporary employee's project;
- 7.2.16 comply with the payment terms set out herein;
- 7.2.17 use and employ the temporary employee only in terms of this Agreement and/or as specified by the Client from time to time;
- 7.2.18 notify the Service Provider of an intention to employ the temporary employee of the Service Provider in a manner where the employment relationship between the Service Provider and the temporary employee is terminated and continued by the Client or any of its associated companies, subsidiaries, contractors, Service Providers and partners, in which event a placement fee shall become due and payable;
- 7.2.19 the Service Provider retains the sole rights and obligations to discipline, performance manage and retrench employees notwithstanding the deeming provision for employees under the threshold as determined by Section 198 of the LRA;
- 7.2.20 where the Client is also deemed to be the employer in terms of the LRA, Client mandates the Service Provider to take action as the primary employer and undertakes to provide reasonable assistance which includes timeous notification to the Service Provider of misconduct, incapacity or operational requirements;
- 7.2.21 the Service Provider's temporary employee's services can only be terminated for reasons that in law result in a fair dismissal. Should this be the case the Service Provider indemnifies Client of liability beyond three months provided Client supplies the Service Provider with fair dismissal reasons for misconduct, incapacity or operational requirements in terms of the requirements of the LRA. Should this not be the case, Client retains liability;
- 7.2.22 contact the Service Provider immediately in the event that there arises any human resource or labour relations issues with respect to a temporary employee. The Client acknowledges that in so far as temporary employees may in law also be considered to be employed by the Client, the Service Provider remains the primary employer of the temporary employees and that the Service Provider will remain solely responsible for action taken against a temporary employee for conduct, capacity and operational requirements, up to dismissal;
- 7.2.23 provide the Service Provider with reasonable assistance where the Service Provider is required to take action against a temporary employee to conduct, capacity or operational requirements; and
- 7.2.24 request the removal of a temporary employee off site or project only for a reason that in law justifies dismissal.

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## 8. Termination

8.1 This Agreement may be terminated:

8.1.1 by written notice given by one party to the other if the party to whom such notice has been given has committed a material breach of this Agreement and fails to rectify such a breach within 7 (seven) days after the receipt of such written notice, requiring the defaulting party to remedy such breach in terms of the scope of this Agreement.

8.2 In addition to a party's right to terminate this Agreement as a result of material breach, they shall be entitled to terminate this Agreement without notice should any of the following event's arise:

8.2.1 the other party is sequestered (whether provisionally or finally);

8.2.2 the other party has any judgement in excess of R100 000 (One Hundred Thousand Rand) taken against it and fails to satisfy such judgement within ten 10 (ten) days thereof, or to rescind the judgment within the period of time prescribed in the relevant rules of court;

8.2.3 one party commits any act which in the reasonable opinion of the other party adversely affects or is likely to affect the goodwill, reputation, business, or professional standing of that party.

8.3 One party's right to terminate this Agreement may be exercised without prejudice to any other rights which they may have against the other, whether in terms of this Agreement or in law.

## 9. Confidentiality and Restraint

9.1 The parties to this agreement shall, for the duration of this Agreement and after its termination, be required to keep confidential the terms of this Agreement together with the Confirmation of Assignment(s) hereto and the subject matter thereof.

9.2 The parties further agree to keep confidential the parties' information regarding its business, including but not limited to confidential documentation, software, records, correspondence, marketing and / or financial information, and may not reveal to any person or institution other than persons or institutions employed and/or authorised by both parties, and who are required to know such information for the purpose of their employment and/or association with the business, such information, both during the continuance of the involvement between the parties hereunder or at any time thereafter.

9.3 The Client shall not, for the duration of this Agreement or the Confirmation of Assignment(s) hereto, and for a period of 3 (three) months after termination, directly or indirectly employ, or enter into an employment contract with a temporary employee supplied by the Service Provider without the written consent of the Service Provider.

9.4 Should the Client wish to make an offer of employment either directly or indirectly, on a temporary or permanent basis to the Service Provider within the time referred to in Clause 8.3, the Client shall be required to obtain the written consent of the Service Provider, whereupon the Service Provider shall be entitled to charge a fee equal to \_\_\_\_\_ percent of the annual salary offered to the temporary employee, payable on presentation of invoice.

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## 10. **Indemnity and Limitation of Liability**

10.1 In terms of this Agreement, and provided the Client complies with the terms of the Agreement, the Service Provider indemnifies and holds the Client harmless against all loss, damage, costs, charges and expenses or other liabilities as a result of the Service Provider failing or having failed to comply with the provisions of any applicable Labour Legislation.

## 11. **Disputes**

11.1 Should any dispute between the parties arise in respect of:

11.1.1 the interpretation of, or the effect of;

11.1.2 the parties' respective rights and liabilities in terms of;

11.1.3 any matter arising out of the termination of this Agreement or any order placed by the Client for the provision of services, such dispute shall be subjected to and settled by arbitration in terms of the provisions of the Arbitration Act of 1965.

11.2 The arbitration proceedings shall be finalised at the discretion of the arbitrator and without unnecessary delay or unnecessary accumulation of costs.

11.3 The decision of the arbitration shall be binding and final and, should one of the parties so request, the others shall agree that such a decision be made an order of court. The costs of the arbitration proceedings shall be at the discretion of the arbitrator.

11.4 The arbitrator shall be an independent person acceptable to both parties.

11.5 Should the parties not be able to agree on a specific arbitrator within seven 7 (seven) days after arbitration was requested, the President of the South African Law Society shall within seven 7 (seven) days thereafter, designate an arbitrator in order that arbitration may commence as soon as possible.

## 12. **Copyright and assignment**

12.1 The Service Provider assigns, cedes and makes over to the Client any interest in and to Intellectual Property created by temporary staff by virtue of services rendered to the Client or its clients during the duration of this Agreement and the Schedule to the Services Agreement, and waives all claims of ownership in respect thereof, unless expressly agreed to the contrary in writing by the parties.

12.2 The Client furthermore has the right to assign, sell or give over to any third party any of the material or part of the material referred to as Intellectual Property in terms of this Agreement.

## 13 **Insolvency**

13.1 Should either party become insolvent or have a receiving order made against it or compound with its creditors or being a corporation to be wound up, not being a member's voluntary winding up for the purposes of reconstruction or amalgamation, or carry on its business under a receiver for the benefits of its creditors or any of them, the other party shall be at liberty to terminate this agreement forthwith by notice in writing to the party or to the receiver or liquidator or to any person in whom this agreement may become vested or to give such receiver, liquidator or other person the option of carrying out this agreement subject to providing a guarantee for the due and faithful performance of this agreement up to an amount agreed upon.

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**14. Contract Variation**

- 14.1 No amendment of, alteration to, addition to, or deletion from this Agreement, or any consensual cancellation of this Agreement or any part of this Agreement, shall be binding on the parties unless reduced to writing and signed by both parties.
- 14.2 No indulgence granted by either party shall constitute a waiver of any of that party's rights under this Agreement. Accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen or may arise.
- 14.3 No addition to, variation, or agreed cancellation of this Agreement or any annexures hereto shall be of any force or effect unless in writing and signed by or on behalf of the parties.

**15. Transfer of rights and obligations**

- 15.1 The Parties shall not be entitled to cede, assign, transfer or make over their rights and obligations in terms of this agreement without the prior written consent of the other Party to this agreement, which consent shall not unreasonably be withheld.

**16. Force Majeure**

- 16.2.1 If fulfillment of either parties' obligations under this agreement or any assignment is prevented by unforeseen circumstances beyond their control, such as any act of God, major industrial disputes, war, requisitions, rebellions or riots, or defects and delays in deliveries from a supplier and/or service provider due to any of the aforementioned circumstances, this shall constitute a ground for discharge from liability for delays in approval or delivery and for relevant liquidated damages and other damages.
- 16.1.2 party loses its right to claim relief for force majeure if it does not without undue delay after it realises or should have realised that a case of force majeure exists notify the other party in writing specifying the nature and extent of the circumstances giving rise to the event of force majeure. After the case of force majeure has ceased, the other party shall be notified thereof, and be informed of when measures that were delayed by the event of force majeure will be performed.

**17. Domicilium**

- 17.1 The parties choose *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement, at their respective addresses set out in this Agreement, or in the Confirmation of Assignment.
- 17.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other physical address within the Republic of South Africa and/or its facsimile number.
- 17.3 Any notice given and any payment made by any party to the other which -
  - 17.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be rebuttably presumed to have been received by the addressee at the time of delivery;
  - 17.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be rebuttably presumed to have been received by the addressee on the seventh day after the date of posting.

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17.4 Any notice given by any party to the other party which is transmitted by facsimile for the time being shall be rebuttably presumed to have been received by the addressee on the date of successful transmission thereof.

**18. General**

18.1 This Agreement, constitute the sole record of Agreement between the parties in regard to the subject matter thereof.

18.2 Neither party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded herein or reduced to writing and signed by the parties or their representatives.

18.3 No latitude, extension of time or other indulgence which may be given or allowed by any party to the other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement shall under any circumstances be construed to be an implied consent by such party or operate as a waiver of, or otherwise affect any of that party's rights in terms of this Agreement.

18.4 This Agreement shall supercede all contracts previously entered into by the parties being the signatories hereof.

**19. Signatures**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed by:

Witnessed by:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Signature:

For and on behalf of the Service Provider, being duly authorised thereto

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed by:

Witnessed by:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Signature:

For and on behalf of the Client, being duly authorised thereto