

1. Clause 1 - Scope of Business

- 1.1 In carrying out the Services as more detailed in Annexure B, Excellerate Services ("ES") shall exercise the reasonable care and skill to be expected of a competent provider of services similar in scope, nature and complexity to the Services and in accordance with best industry practice. No other warranty or representation, express or implied, shall apply under and/or in connection with this Agreement.

2. Clause 2 - Fees and Expenses

- 2.1 All fees for performance of the Services shall be calculated in accordance with the fee structure set out in Annexure A and shall be exclusive of value added tax which, where applicable, shall be charged to the Client at the prevailing rate.
- 2.2 Fees shall escalate annually on 1 March in accordance with increases as determined by the Bargaining Council. In the event that no increase is determined by the Bargaining Council then, the Fees shall escalate in accordance with CPI.

3. Clause 3 – Payment Terms

- 3.1 Invoices are payable by the Client within 14 days upon presentation of invoice. All payments due to be made to ES shall be made without set-off or counterclaim and free of and without deduction for any taxes, levies, or duties of any description.
- 3.2 ES may charge the Client interest (both before and after any judgment) on the balance of any unpaid invoice, at the rate of 3 % per annum over the prime interest rate charged by ES's bankers from time to time. Such interest shall run from the due date for settlement of the invoice until the date payment of the balance is received.

4. Clause 4 – The Parties' Obligations**Client's Obligations**

- 4.1 The Client shall pay to ES all fees, expenses and value added tax, as required. ES may suspend and/or cease further work on behalf of the Client in the event of none, partial or late payment of any ES invoice.
- 4.2 The Client shall do all thing necessary to enable ES to perform the Services and shall provide free storage facilities, for consumables and (if applicable) Equipment.
- 4.3 The Client shall provide water, lights, and electricity for use by ES to render the Services as well as rest rooms for ES's employees.
- 4.4 The Client shall comply with the Occupational Health and Safety Act 1993 (as amended) and with all regulations promulgated thereunder.

ES's Obligations

- 4.5 ES shall render the Services with due care and diligence at the Client's Delivery Address in an efficient, expert, and responsible way whilst observing all applicable laws, regulations, and instructions. These responsibilities shall include, amongst other items (inter alia), the following:
- 4.5.1 ensuring that all personnel are suitably qualified, experienced, trained and registered with any applicable statutory bodies (if applicable) to render the Services,
- 4.5.2 ensuring compliance with relevant industry bodies and organisations,
- 4.5.3 will submit invoicing at the end of each calendar month, together with any supporting documentation as may be required by the Client,
- 4.5.4 submit reports as requested by Client, within certain time frames,
- 4.5.5 ensure compliance with agreed bill of quantities.

5. Clause 5 - Intellectual Property

- 5.1 ES is the beneficial owner of all Intellectual Property Rights arising out of or in connection with the provision of the Services to the Client.

6. Clause 6 - Confidentiality

- 6.1 ES shall keep confidential and not disclose to any other person (whether before or after termination or expiry of the engagement) any information in respect of the Client's business activities which comes into its possession as a consequence of ES providing the Services and which is not publicly available.

7. Clause 7 – Data Protection

- 7.1 ES agrees to process any Personal Information of the Client in accordance with the mandatory data protection principles set out in the Protection of Personal Information Act No. 4 of 2013 ("POPIA") and any regulations promulgated in terms thereof.

8. Clause 8 - Limitation of Liability

- 8.1 Nothing in this Agreement will limit or exclude either Party' liability for:
- (a) death or personal injury caused by its negligence,
- (b) fraud or fraudulent misrepresentation, or
- (c) any other liability which cannot be limited or excluded by applicable Law.
- 8.2 Subject to Clause 8.1, ES will not have any liability, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, to the Client or any third party for any loss of profit, whether direct or indirect, or for any indirect or consequential loss arising under or in connection with this Agreement.

8.3 To the extent permitted by law, ES' liability for any claim arising out of the engagement or the provision of the Services shall be limited to the greater of either the extent to which ES is indemnified under any insurance policy to be maintained by it for the duration of the engagement or to an amount equal to the total aggregate of the Fees paid or payable under this Agreement.

8.4 This Clause 8 will survive termination of this Agreement.

9. **Clause 9 – Force Majeure**

9.1 Neither Party shall be deemed to be in default or liable to the other Party for any delays in performance or from failure to perform or to comply with this Agreement to any cause beyond that Party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce).

9.2 Each Party agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event.

10. **Clause 10 – Breach and Termination**

10.1 Without prejudice to any other rights or remedies a Party may possess, if either party commits a breach of the this Agreement and fails to remedy such breach within a period of 7 (seven) days after a written notice has been dispatched to the that party setting out such breach (any such failure being hereinafter referred to as "the event of default"), the aggrieved party shall be entitled but not obliged, without prejudice to any of its other rights, whether to cancel this Agreement and to claim damages.

10.2 ES may terminate this Agreement by notice immediately if the Client has failed to pay an invoice within 30 days of the final date for payment of that invoice.

10.3 Either Party may terminate this Agreement by giving not less than 30 days written notice to the other. In such event ES shall be entitled to payment of fees for the Services it has performed, and payment of the expenses it has properly incurred, up to the date of termination.

11. **Clause 11 – Entire Agreement**

11.1 This Agreement as recorded herein constitutes the entire agreement and understanding of the Parties as to the subject matter recorded herein and no variation of this Agreement shall be binding unless agreed in writing.

12. **Clause 12 – Notices**

12.1 Any notice or other information to be given by either Party to the other under the Engagement shall be given by:

12.1.1 Delivering the same by hand,

12.1.2 Sending the same by pre-paid registered post, or

12.1.3 Sending the same by email or comparable means of communication,

to the other Party at the address given in the Schedule.

13. **Clause 13 - Dispute Resolution and Governing Law**

13.1 Any dispute arising from or in connection with this Agreement and the cancellation thereof shall in the first instance be referred to the respective chief executive officers of the Parties, failing whom, their respective equivalents or nominees ("CEO's"). Should the CEOs be unable to resolve the dispute within 5 (five) business days after the referral of the dispute to them, the dispute shall, at the request of any party to the dispute, be dealt with as provided in clause 13.2.

13.2 Any dispute arising from or in connection with this Agreement or the cancellation thereof, which has not been resolved pursuant to clause 20.1, shall, if so requested by any party to the dispute, be finally resolved in accordance with the rules of the Arbitration foundation of Southern Africa ("AFSA") by an arbitrator (who shall be an advocate of not less than 10 (ten) years standing as such) agreed to between the Parties.

13.3 Notwithstanding anything to the contrary contained in this clause 20, no party shall be precluded from instituting any proceedings whether for injunctive relieve or otherwise in any appropriate court of competent jurisdiction and, if successful, being granted appropriate relief.

13.4 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.