

## SERVICE LEVEL AGREEMENT

Made and entered into by and between

### UNIVERSITY OF KWAZULU-NATAL

A public higher education institution in terms of the Higher Education Act No.101 of 1997, as amended.

Herein represented by  \_\_\_\_\_ in his/her capacity as \_\_\_\_\_, duly authorised hereto.

**(“UKZN”)**

**And**



\_\_\_\_\_  
Herein represented by \_\_\_\_\_, in his capacity as \_\_\_\_\_, duly authorised.

**(“the Service Provider”)**

**(Hereinafter collectively referred to as “Parties” and individually referred to as “Party.”)**

## **1. PREAMBLE**

**WHEREAS** the UKZN required a service provider for XXX

**WHEREAS** the service provider submitted a proposal to supply such services to UKZN;

**WHEREAS** UKZN is desirous of appointing the Service Provider.

**AND WHEREAS** it is specifically agreed by the Parties that this Agreement shall in no manner or form give rise to and/ or constitute any Party to be the agent to the other or create a partnership, or similar relationship between the Parties other than for purposes as set out in this Agreement.

### **SCHEDULES ATTACHED TO THIS AGREEMENT:**

- "A" - Scope of Work
- "B" - Fees

### **NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:-**

#### **1. APPOINTMENT OF SERVICE PROVIDER**

1.1 UKZN hereby appoints the Service Provider (hereinafter referred to as the "services"), in accordance with the terms and conditions set out in this Agreement and of the nature and extent described in the schedules marked "A" and "B" hereto;

1.2 The Service provider accepts this appointment.

#### **2. RELATIONSHIP BETWEEN THE PARTIES**

2.1 The Service Provider is not an employee, agent nor partner of UKZN;

- 2.2 The Service Provider is an independent contractor with no rights to act on behalf of or bind the UKZN in any way whatsoever save in terms of this Agreement;
- 2.3 The Service Provider acknowledges that it has no expectation whatsoever that it shall be engaged as a contractor in the future, for any term that exceeds the fixed term of this Agreement.

### **3. DURATION AND TERMINATION OF AGREEMENT**

- 3.1 Notwithstanding the date of signature hereof, this Agreement will commence on XXX and shall terminate on XXX, unless terminated earlier as provided for herein.
- 3.2 This Agreement may be terminated summarily by UKZN without notice, should the Service Provider be placed under business rescue/liquidated or enter into a compromise with its creditors.

### **4. NON-EXCLUSIVE ENGAGEMENT**

- 4.1 The appointment of the Service Provider to render the services referred to in schedule A and shall not be exclusive.
- 4.2 The Service Provider will be entitled to render services to any other third parties or to engage in its own business activities provided that the Service Provider: -
- 4.2.1 satisfactorily performs its obligations in accordance with this Agreement;
- 4.2.2 does not use the premises, grounds, facilities and/or other resource utilities or avenues of UKZN for such purpose or any other purpose save for its obligations in terms of this Agreement.

## **5. THE SERVICES**

- 5.1 The Service Provider will provide the Services specified in “A”;
- 5.2 The Service Provider shall ensure that the services comply with the Standard Specifications as per “A” and any applicable laws;
- 5.3 The Service Provider shall not make any material alteration, or addition to, or omission from the approved services and / or budget without the consent of the UKZN.

## **6. FEE PAYABLE TO THE SERVICE PROVIDER**

- 6.1 In return for the Services and the Service Provider’s compliance with its obligations in terms of this agreement, UKZN will pay the Service Provider:
  - 6.1.1 As per the fees stipulated in “B” for the services;
  - 6.1.2 the Service Provider shall submit value added tax (VAT) invoices clearly indicating both parties’ VAT Registration numbers, and where applicable, detailed statements of accounts to UKZN. Notwithstanding the submission of the detailed statement of account and tax invoice, the UKZN reserves the right to inspect the services and request the Service Provider to provide proof that the fee requested was indeed actually earned;

## **7. GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

- 7.1 In consideration for the payment by UKZN to the Service Provider of the fee, the Service Provider shall perform its duties efficiently and timeously and shall comply with the reasonable administrative requirements of UKZN.
- 7.2 The Service Provider may not pledge the credit of UKZN, nor bind UKZN to any contract, undertaking, warranty or other form of agreement or stipulation without the prior written agreement of UKZN being obtained from a duly authorized representative of UKZN.
- 7.3 The Service provider may not sub-contract any of its obligations in terms of this agreement to any other person without UKZN's prior written consent. In the event that permission is obtained from UKZN to subcontract, the Service Provider must ensure that any guarantees or other undertakings given by its subcontractors are transferable to UKZN and warrants that such guarantees / undertakings will be transferred to UKZN. The Service provider must ensure that all its subcontractors abide by the provisions of this agreement.
- 7.4 The Service Provider will advise UKZN when required to do so on questions relating to the rendering of the services and the required specifications as stated in schedule "A" to this Agreement.

## **8. WARRANTY BY THE SERVICE PROVIDER**

- 8.1 The Service Provider warrants that:

8.1.1 it is fully qualified and experienced to render the services required by UKZN and undertakes to exercise proper care and attention to the rendering of such services and shall comply with all applicable laws;

8.1.2 it has examined and understood the Specifications of the Services required and will in all respects comply with it;

8.1.3 the quality of the services shall be of the highest standard. The services defined above will be conducted in full accordance with all applicable laws;

8.1.4 Failure by the Service Provider to render services with reasonable, proper skill and of a standard and quality acceptable to the UKZN will constitute a breach of this clause and UKZN shall be entitled to terminate this Agreement.

## **9. INDEMNITY**

9.1 The service provider indemnifies UKZN against any claims made against UKZN or any of its directors, officers, employees, agents, subcontractors or any other of its personnel, by any third party, arising out of or in connection with this agreement or the Services.

9.2 Such indemnity will apply during the period in which this SLA is in force and subsequently thereto, if liability should arise at a later time.

## **10. FORCE MAJEURE**

10.1 Neither party is liable for any failure to meet any of its obligations in terms of this agreement, or any delay in meeting them, to the extent to which the failure or delay is caused by force majeure;

- 10.2 Force Majeure means any exceptional even or circumstance beyond a party's control, or which circumstance a party could not reasonably have foreseen or avoided;
- 10.3 The affected party must give notice to the other party immediately upon the occurrence of any event of Force Majeure and must resume performance of its obligations as soon as the cause preventing performance has ceased;
- 10.4 Should Force Majeure prevent a party from performing any of its obligations for a continuous period of 30 days, the other party shall be entitled to terminate this agreement with immediate effect.

## **11. CONFIDENTIALITY**

- 11.1. Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 11.2. Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 11.3. The obligations set out in this clause shall not apply to Confidential Information that the receiving party can demonstrate:
- 11.3.1 is or has become publicly known other than through breach of this Clause 11; or
  - 11.3.2 was in the possession of the receiving party prior to disclosure by the other party;

11.3.3 was received by the receiving party from an independent third party who has full right of disclosure;

11.3.4 was independently developed by the receiving party; or

11.3.5 was required to be disclosed by a governmental authority, provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement.

11.4. This clause is severable from the rest of this agreement and shall remain valid and binding on the parties for a period of 5 (five) years after termination of this agreement.

## **12. BREACH**

12.1. Should either Party hereto breach or fail to comply with any term or condition of this Agreement, then the non-defaulting Party shall be entitled:-

12.1.1. to enforce specific performance of the provisions of this Agreement; or

12.1.2. to cancel this Agreement (either as an alternative to a claim for specific performance or upon the abandonment of such a claim),

provided the non-defaulting party has first given the defaulting Party written notice to rectify such breach or failure within 7 (seven) days after receipt of such notice, and the defaulting Party has failed to comply therewith. Written notice of any such cancellation shall be given to the defaulting Party and such cancellation shall take effect on the giving of such notice.



12.2. The exercising by any Party hereto of any right conferred by the foregoing provisions of this clause shall be without prejudice to any claims of such Party hereunder then accrued or to any other right or remedy of such Party.

### **13. SETTLEMENT OF DISPUTES: ARBITRATION**

13.1 Any dispute arising out of or in connection with this Agreement, its interpretation, application, termination or cancellation or the subject matter of this Agreement, including claims in delict or for rectification or performance of the Agreement, shall be decided by arbitration in terms of this clause, notwithstanding that the rest of the Agreement may have been terminated or been cancelled.

13.2 The Arbitrator shall be agreed between the Parties to the dispute but, failing agreement within 10 days after notice requiring the dispute to be referred to arbitration is given, the Arbitrator shall be a person nominated at the request of either Party by the Arbitration Foundation of South Africa.

13.3 The arbitration will be held in Durban and the Parties will endeavor to ensure that it is completed within 90 days after notice requiring the dispute to be referred to arbitration is given.

13.4 Save to the extent varied by this clause, the arbitration shall be governed by the Arbitration Act 1965 or any replacement Act or regulations which may be applicable.

13.5 The Arbitrator's terms of reference are to resolve the dispute as quickly, cheaply and as fairly as possible in the circumstances by making an appropriate determination including any award for costs.

- 13.6 The procedure (including the venue and times of hearing) relating to such arbitration shall be determined by the Arbitrator in his/her sole discretion.
- 13.7 The decision of the Arbitrator, including any costs award, shall be final and binding on the Parties.
- 13.8 If the Arbitrator's charges and any other costs have to be paid before the Arbitrator has made his award in respect of costs, the Parties shall pay the costs in equal shares, and if a Party fails to pay that Party's share, the Arbitrator may make his/her award in respect of the claim and costs in the absence of that Party.
- 13.9 It is recorded that the Parties intend that the substantially successful Party be awarded a full indemnity for all the costs reasonably incurred by that Party and not merely the costs on the High Court or any other scale.
- 13.10 The fact that there is a dispute, the proceedings in the arbitration and the Arbitrator's award shall as far as practicable, be kept confidential.
- 13.11 The provisions of this clause shall not preclude the Parties from obtaining urgent interim relief from any court of competent jurisdiction.

#### **14. MISCELLANEOUS LEGAL PROVISIONS**

##### 14.1 Domicilium:


The Parties choose for the purpose of this Agreement their *domicilia citandi et executandi* at the following address: -

14.1.1 in the case of the **UKZN** at:

physical address: Office of the Registrar  
University of KwaZulu-Natal  
University Road  
Chiltern Hills  
Westville 3629  
telefax no: (031) 260 3581  
Tel: (031) 260 1257  
Email: [legalservices@ukzn.ac.za](mailto:legalservices@ukzn.ac.za)

and shall be marked for the attention of:  
The Director, Legal Services

14.1.2 in the case of the **Service Provider** to:

physical address  \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax no: \_\_\_\_\_  
Tel. \_\_\_\_\_  
Email: \_\_\_\_\_

and shall be marked for the attention of:  
\_\_\_\_\_

14.2 A notice or legal process shall be deemed to have been duly given:

14.2.1 seven (7) days after posting, if posted by registered post to the party's address in terms of this sub-clause;

- 14.2.2 on delivery, if delivered to the party's physical address in terms of either this sub-clause or the next sub-clause dealing with service of legal documents;
- 14.2.3 on dispatch, if sent to the party's then telefax number or electronic mail address and confirmed by registered letter.
- 14.3 A Party may change that Party's address for this purpose, by notice in writing to the other Party.
- 14.4 Notwithstanding anything to the contrary herein contained, a written notice or communication which has been actually received by a Party will be regarded as sufficient notice, irrespective of the fact that it has not been dispatched to the appointed *domicilium* or delivered to such *domicilium*.
- 14.5 **Whole Agreement:**  
This is the entire Agreement between the Parties.
- This Agreement and Schedules "A" and "B" thereto contain all the express provisions agreed on by the Parties with regard to the subject matter hereof and the Parties waive the right to rely on any alleged express provision not contained herein.
- 14.6 **No representations:**  
Neither Party relies in entering into this Agreement on any warranties, undertakings, representations, disclosures of any nature whatsoever which have not been incorporated into this Agreement as warranties or undertakings.
- 14.7 **No Variations:**  
No amendment, variation or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties.

**14.8 Non-waiver:**

Neither Party shall be regarded as having waived, or be precluded in any way from exercising any right under or arising from this Agreement by reason of such Party having at any time granted any extension of time for, or having shown any indulgence to, the other Party with reference to any performance hereunder, or having failed to enforce, or delayed in the enforcement, any right of action against the other Party.

**14.9 Cession:**

Neither Party may cede that Party's rights or delegate that Party's obligations without the prior written consent of the other Party.

**14.10 Applicable Law:**

This Agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.

**14.12 Costs:**

Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

**14.13 For the purposes of this agreement:**

14.13.1 The headings of the clauses of this agreement are inserted for reference purposes only and will in no way govern or affect the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof.

14.13.2 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it

is only in the definitions clause, effect will be given to it as if it were a substantive provision of this agreement.

- 14.13.3 Unless inconsistent with the context, an expression which denotes Any one gender includes the other gender. A natural person includes a legal person and *vice versa*. The singular includes the plural and *vice versa*.
- 14.13.4 The annexures to this agreement form an integral part hereof and words and expressions defined in this agreement will bear, unless the context otherwise requires, the same meaning in such annexures.
- 14.13.5 When any number of days is prescribed in this agreement, same will be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day will be the day immediately following business day.
- 14.13.6 If the day for payment of any amount due in terms of this agreement falls on a day which is not a business day, the relevant date will be the preceding business day.
- 14.13.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.
- 14.13.8 Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, will bear the same meaning ascribed to it for all purposes in terms of this agreement,

notwithstanding that, that term has not been defined in this interpretation clause.

14.13.9 Any reference to an enactment in this agreement is to that enactment as at the signature date and as amended or re-enacted from time to time.

14.13.10 The expiry or termination of this agreement will not affect such of the provisions of this agreement as expressly provided that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

Signed at ..... for **UKZN** on this .....day of .....20

.....  
**FOR THE UNIVERSITY:**

Witness 1. ....

**Name:**

Witness 2. ....

**Designation:**

Signed at .....for the **Service Provider** on this..... day of  
.....20 .

.....

For and on behalf of the Service  
Provider, the signatory warranting  
his/her authority to sign.

Witness 1. ....

Witness 2. ....

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**SCHEDULE A – SCOPE OF SERVICES**



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**ANNEXURE B – SERVICES FEES**



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