



Contract No: C14/08/16

**SERVICE LEVEL AGREEMENT**

between

**[INSERT NAME]**

Registration Number: **[INSERT]**

("the Service Provider")

and

**INDUSTRIAL DEVELOPMENT CORPORATION OF SOUTH AFRICA LIMITED**

a corporation established under Section 2 of the Industrial Development Corporation

Act 1940 (Act No. 22 of 1940) a self- financing development institution

("IDC")

## 1. INTERPRETATION

1.1 In this Agreement:

1.2 clause headings are for convenience and shall not be used in its interpretation;

1.3 unless the context clearly indicates a contrary intention;

1.3.1 an expression which denotes:

1.3.1.1 any gender includes the other genders;

1.3.1.2 a natural person includes any artificial person and vice versa;

1.3.1.3 the singular includes the plural and vice versa;

1.3.2 the following expressions shall bear the meanings as assigned to them below and cognate expressions bear corresponding meanings:

1.3.2.1 "*Agreement*" means this Service Level Agreement which outlines the terms and conditions, the TOR, any annexures hereto and amendments reduced to writing and signed by both parties;

1.3.2.2 "*Contract Fee*" means the fee stipulated in clause 3.1 of this Agreement;

1.3.2.3 "*Parties*" means the Service Provider and IDC; as they are described on the first page of the Agreement and conducting business at the address set out in 18 below; and

1.3.2.4 "*Scope of Work or Service/s*" means the work to be performed by the Service Provider, which is set out in detail in Annexure "A";

1.3.2.5 "*RSA*" means Republic of South Africa;

- 1.3.2.6 "Signature Date" means the date on which this Agreement is last signed by the Parties.
- 1.3.2.7 "ToR" means the Terms of Reference as contained in the Request for Proposal or Quotation, as advertised.
- 1.3.2.8 "VAT" means the Value Added Tax in terms of the Vat Act No. 89 of 1991;
- 1.3.2.9 "VAT Act" means the Value Added Tax No. 89 of 1991.
- 1.3.3 Words and expressions defined in the body of this Agreement and not in 1.3.2 shall bear the meanings assigned to them in such definition throughout this Agreement.
- 1.3.4 When a number of days are prescribed in this Agreement, such number shall be reckoned exclusively of the last day. Unless the last day falls on a Saturday, Sunday or public holiday in the RSA, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

## 2. DELIVERY OF SERVICE AND LIABILITY

- 2.1 The Service Provider shall exercise all reasonable skill, care and diligence in the execution of the Services and shall carry out all its obligations in accordance with international professional standards. The Service Provider shall in all professional matters act as a faithful advisor to the IDC and, in so far as any of its duties are discretionary, act fairly between the IDC and third parties.
- 2.2 The Service Provider hereby accepts liability for and indemnifies the IDC against all claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses, or other liabilities, caused by the negligence of the Service Provider and/or its employees of their duties and obligations under this Agreement, in delict for breach of statutory duty or otherwise.

- 2.3 The IDC shall not be liable for any losses, damages, costs, claims and demands which the Service Provider may incur or sustain whilst carrying out or providing the Services contemplated in this Agreement.
- 2.4 Neither Party shall be liable to the Other Party in respect of any claim for loss or damage arising from acts of war or terrorism, nuclear or radioactive emissions, any incidence of toxic mould, or from or related to asbestos
- 2.5 The Service Provider hereby indemnifies the IDC from any liability arising or alleged to arise out of any failure of the goods and/or Services to conform to any laws, orders, regulations, requirements or standards. The Service Provider shall bear any cost of inspection of the goods and/or Services if so required by any law and/or regulation.
- 2.6 Unless otherwise provided in any further written Agreement, neither Party shall be liable to the other for any indirect, consequential, special, incidental or punitive damages, including without limitation, loss of use or lost business, revenue, profits, anticipated savings, reputation or goodwill arising in connection with the contracted work.
- 2.7 Nothing in these Terms and Conditions shall restrict either Party's liability for:
- 2.7.1 Fraud; or
  - 2.7.2 Death or personal injury caused by its negligence or intentional or wilful act;
  - 2.7.3 Damage to real or tangible personal property caused by its negligence or intentional or wilful misconduct; or
  - 2.7.4 Any breach of obligations under these Terms and Conditions in respect of confidentiality and intellectual property; or
  - 2.7.5 Any other liability that cannot be excluded by law.

2.8 Subject to clause 2.7, the overall cumulative liabilities of each Party in respect of direct losses arising under or in connection with this Agreement shall not exceed twice the Estimated Contract Fee.

2.9 The Service Provider undertakes to take up third party liability insurance cover, which includes cover for the Services to be undertaken under this Agreement.

### 3. PAYMENT OF CONTRACT FEE

3.1 IDC shall pay the Service Provider the Contract Fee, which fee shall be based on the provisions of **Annexure "B"** hereto, after the delivery of the services.

3.2 All tax invoices of the Service Provider shall contain the IDC's VAT number, the Service Provider's VAT number, if applicable, and the address of both Parties.

3.3 Payment shall be made within 30 (thirty) days upon receipt of an original tax invoice(s) furnished by the Service Provider, in accordance with the delivery and approval of services rendered in line with the provisions of **Annexure "A"**.

3.4 All money due to the Service Provider shall be paid into the Service Provider's bank account, which bank account details shall be confirmed by the relevant bank and submitted to the IDC, on the bank's letterhead or with a bank's stamp.

3.5 The Service Provider shall endeavor to register for VAT, if not registered on the Commencement Date, within 6 months from the Signature Date.

### 4. CHANGE IN SCOPE OF WORK

If any circumstances arise during the currency of this Agreement, which necessitate the rendering of additional services to those recorded in **Annexure "A"**, then the scope of services can be varied by written agreement of the Parties, as follows:-

4.1 The Service Provider will submit pricing and a schedule impact for the proposed variations.

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- 4.2 Unless agreed by the parties, the Service Provider shall not be required to commence additional work until receiving written approval from IDC.

## 5. **INTELLECTUAL PROPERTY**

All the intellectual property developed for and associated including any templates, electronic programmes, methodology or other items, created by the Service Provider while rendering Services in terms of Annexure “A”, shall become the property of IDC, unless such property was owned by the Service Provider prior to conclusion of this Agreement.

## 6. **CONFIDENTIALITY**

- 6.1 All information, however communicated or recorded and whatever form it takes, provided by the IDC to the Service Provider in connection with this Agreement shall be for the Service Provider’s exclusive use and may not be divulged by the Service Provider to any natural or legal person (save as may be required under this Agreement or by the nature of the concept), in which case either party shall ensure that such person undertakes to be bound by the terms similar to this clause. Such action shall not be taken without the prior written consent of IDC, which consent shall not be unreasonably withheld.

- 6.2 The restrictions referred to in clause 6.1 shall not apply to information which:

- 6.2.1 is now in or hereafter enters the public domain other than as a result of a breach by one party of its obligations in terms of this clause 6;

- 6.2.2 is known to one party prior to disclosure by the other to it or independently developed by it; and

- 6.2.3 is disclosed in good faith to it by a third party legally entitled to disclose same.

## 7. **COMMENCEMENT AND TERMINATION**

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- 7.1 Notwithstanding the date of signature of this Agreement, it shall be deemed to have commenced on the Commencement Date set out in **Annexure “C”** and shall also come to an end on the Termination Date set out in **Annexure “C”**.
- 7.2 This Agreement may be terminated by either party, on giving of 30 (thirty) days written notice, terminating this agreement.
- 7.3 Unless terminated in terms of clause 7.2, Termination Date of this agreement shall not excuse/absolve any party of their obligations of arising out of this Agreement, which will remain due to the relevant party, unless the Parties agree otherwise. The Service Provider shall remain liable for delivery of the services recorded in **Annexure “A”**, despite termination of this Agreement, until such services have been delivered to the satisfaction of IDC or the Parties agree otherwise.
- 7.4 Within 30 (thirty) days of receipt of any notice of cancellation/termination of this Agreement by any of the parties, the Service Provider shall deliver to IDC all reports and other related documentation.

## 8. **SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unfavorable for any reason, such provision shall be deemed to be *pro non-scripto* but without affecting, injuring or invalidating any of the remaining provisions of this Agreement which shall continue to be of full force and effect.

## 9. **ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the parties in regard to the subject hereof. It is expressly agreed that the ToR is included in this Agreement.

## 10. **AMENDMENTS**

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No addition to, variation or consensual cancellation of this Agreement shall be of any force or effect unless in writing and signed by the parties.

#### 11. **ASSIGNMENT**

The rights and obligations under this Agreement are personal to each of the parties and, save as provided in this Agreement, may not, without the prior written consent of the other party be assigned to any other person.

#### 12. **GOVERNING LAW**

All matters arising from or in connection with this Agreement, its validity, existence or termination shall be determined in accordance with the laws of the Republic of South Africa.

#### 13. **ARBITRATION**

At the option of either party, any dispute arising out of this Agreement shall be submitted to and determined by arbitration under the rules of Arbitration Foundation of South Africa. The venue for arbitration will be Johannesburg, South Africa.

#### 14. **FORCE MAJEURE**

14.1 If any party fails to perform its obligations in terms of this Agreement because of an event beyond its reasonable control, that party will not be liable, subject to the terms of this clause, for any loss or damage resulting from its non-performance. Events beyond a party's reasonable control will include one or more of the following:

14.1.1 events recognized as casus fortuitis acts of God;

14.1.2 epidemic, flood, earthquake or like natural disaster;

14.1.3 To avoid liability for non-performance, the defaulting party must notify the other parties of the nature of the event and the commencement date thereof within 14 (fourteen) days of the event coming to the knowledge of the defaulting party.

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The defaulting party must also notify the other parties within 14 (fourteen) days of the event ending.

- 14.1.4 If the event of the force majeure subsists for more than 90 (ninety) consecutive days, any party will have the right to terminate this Agreement. The remaining parties or party, as the case may be, will be entitled to complete the Scope of Work exclusive of the terminating party or parties with no obligation to such terminating party or parties. If the Scope is preceded with, the terminating party or parties will make all reasonable efforts to assign to the remaining party all its rights, titles and interests in and to the Scope of Work, including any contracts with third parties related to the Scope of Work.

## 15. **BREACH**

Should any party breach any provision of this Agreement ("the defaulting party") and fail to remedy such breach within 14 (fourteen) days of receiving written notice from the other party ("the aggrieved party") requiring it to do so, then the aggrieved party shall be entitled, without prejudice to any other rights that it may have, whether under this Agreement or at law, to cancel this Agreement without notice or to claim immediately specific performance, in either event, without prejudice to the aggrieved party's right to claim damages.

## 16. **OBLIGATIONS OF THE SERVICE PROVIDER**

The Service Provider shall submit a statement of all outstanding payments credit notes issued and payments made. Such statements shall also contain the order number, the details and the date of the transaction, the invoice number remittance number and credit note details.

## 17. **NON EXCLUSIVITY**

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It is recorded, for the avoidance of doubt that this Agreement does not purport to create an exclusive relationship between the parties. In the circumstances both parties shall be free to embark on potential terms of reference with other parties.

## 18. DOMICILIUM

18.1 For the purpose of this Agreement, the parties choose domicilium citandi et executandi as follows: -

18.1.1 The Service Provider shall provide its address and, telephone number and fax number in Annexure “C”; and

18.1.2 IDC at 19 Fredman Drive, Sandown, 2196, South Africa.

18.2 All notices to be given in terms of this Agreement shall be presumed to be received, until proved to the contrary.

18.3 Each party may, by notice in writing to the other party, alter its addresses set out in this Agreement.

## 19. CONFLICT OF INTEREST AND CORRUPTION

19.1 The Service Provider warrants that, to the best of its knowledge, it does not, and is not likely to have any conflict of interest in the performance of this Agreement. If a conflict or risk of conflict of interest arises (without limitation, because of work undertaken for any person other than IDC), the Service Provider shall immediately give written notice of the conflict of interest, or the risk of it, to IDC.

19.2 The Service Provider shall take all reasonable measures to ensure that its employees do not engage in any activity or obtain any interest that is in conflict with providing Services to IDC fairly and independently. The Service Provider shall immediately give written notice of any conflict of interest relating to the activities of interest of any of its employees, agents or subcontractors to IDC.

- 19.3 If the IDC is given notice of a conflict of interest as required above or the Service Provider breaches any provision of this clause 19, the IDC may, at its own discretion, terminate this Agreement by giving the Service Providers 30 (thirty) days or less, written notice to that effect.
- 19.4 No Party to this Agreement shall, directly or indirectly, undertake nor cause nor permit to be undertaken any activity that is illegal under any applicable laws or regulations.
- 19.5 No Party shall give, offer, promise, or authorize, directly or indirectly, anything of value to:
- 19.5.1 an official, officer, employee or any other person acting in an official capacity for or on behalf of the IDC, state-owned enterprise or any subdivisions/subsidiary thereof, agents or advisors thereto, whether paid or unpaid (any such person referred to collectively as "Official");
- 19.5.2 any person(s) or party(s) while knowing or having reason to know that such thing of value is to be given, offered or promised to an Official in order to:
- 19.5.3 influence any official act or decision, or;
- 19.5.4 induce an Official to do or omit to do any act in violation of his or her lawful duty, or;
- 19.5.5 induce an Official to use his or her influence to affect or influence a decision or act of the IDC, or;
- 19.5.6 assist the Parties hereto or any other person in obtaining or retaining business for or with, or in directing business to the Parties or any other person, or;
- 19.5.7 to obtain or secure an unfair or improper advantage for the Parties in any respect.

19.6 In connection with this Agreement, no Party shall make a contribution or give, offer, promise or authorize, directly or indirectly, anything of value to any political party, official of a political party or candidate for office on behalf of or associated with the Parties or in connection with the purpose of this Agreement.

19.7 In connection with this Agreement, no Party shall engage in any acts of bribery, kickback or other improper inducement, including bribery of a person in the private sector. Without limiting the generality of the foregoing, no Party shall give, offer, promise or authorize, either directly or indirectly, a financial or other advantage to any person to induce a person to perform improperly a relevant function or activity or to reward such improper performance or where the Party knows or believes that the acceptance of the advantage in itself constitutes the improper performance of a relevant function or activity.

## 20. BEE STATUS

20.1 In instances where the Service Provider's B-BBEE levels are higher than a Level 4 with Empowering Supplier Status it shall endeavour to maintain its current B-BBEE level. In instances where a decrease in the B-BBEE levels is envisaged, such a decrease should not be lower than a B-BBEE Level 4 with Empowering Supplier Status.

20.2 The IDC shall also further reserve the right to, at any time, review the minimum levels and the Service Provider shall agree to a B-BBEEE commitment plan to ensure that the requisite B-BBEE levels are met and/or maintained during the tenure of this Agreement.

20.3 In instances where a lapse below a B-BBEE Level 4 occurs, the Service Provider will identify the gaps and provide a commitment plan linked to specified timelines to achieve the minimum levels or to improve thereon.

## 21. REPRESENTATION

21.1 The IDC has assigned a Representative, in **Annexure "A"**, to co-ordinate and provide overall guidance in terms of strategy, policy standards and priorities as

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deemed appropriate for the provision of the Services by the Service Provider and as a single point of contact.

- 21.2 The Service Provider shall appoint a Representative, from the Commencement Date and provide contact details of such Representative within 7 days therefrom, who shall have overall responsibility for managing and coordinating the performance of the Service Provider's obligations under this Agreement and who will have the authority to act for and on behalf of the Service Provider in respect of all matters relating to this Agreement.

## 22. PUBLIC STATEMENTS

The Service Provider is prohibited from making any presentations, representations, public comment, publication or advertisement that mentions the IDC's relationship to the Service provider, without the prior written approval of IDC and shall not use any of IDC's logos or trade marks on its own publications or anywhere without the IDC's prior written approval.

## 23. SUBCONTRACTING

The Service Provider shall not subcontract all or any portion of the Service set out in **Annexure "A"**, without IDC's prior written consent, which shall not be unreasonably withheld.

## 24. COMPLIANCE WITH APPLICABLE LAWS

The Service Provider shall comply with all relevant laws, which may change from time to time, and the requirements of any statutory authority in performing Services set out in **Annexure "A"**. The Service Provider undertakes to provide IDC with a valid South African Revenue Services tax clearance certificate throughout the duration of this Agreement.

## 25. RIGHT TO AUDIT

- 25.1 The Service Provider shall establish and maintain a reasonable accounting system that enables the IDC to readily identify the Service Provider's assets, expenses, costs of goods, and use of funds in relation to the Service.
- 25.2 The IDC and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Service Provider, including, but not limited to those kept by the Service Provider, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled cheques; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance certificates (and, if permitted by the Services Provider's insurers at the time, suitable documents) ; payroll documents; timesheets; memoranda; and correspondence.
- 25.3 The Service Provider shall, at all times during the term of this Agreement and for a period of 5 (five) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials.
- 25.4 The Service Provider shall at any time requested by the IDC, whether during or after completion of this Agreement, and at the Service Provider's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the IDC. Such records shall be made available to the IDC during normal business hours at the Service Provider's office or place of business and subject to a three day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the IDC.
- 25.5 The Service Provider shall ensure that the IDC has these rights with the Service Provider's employees, agents, assigns, successors, and subcontractors, and the

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obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Service Provider and any subcontractors to the extent that those subcontracts or Agreements relate to fulfillment of the Service Provider's obligations to the IDC.

- 25.6 Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the IDC unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Service Provider to the IDC in excess of one-half of one percent (.5%) of the total contract billings, the Service Provider shall reimburse the IDC for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the IDC may recoup the costs of the audit work from the Service Provider. Any adjustments and/or payments that must be made as a result of any such auditor inspection of the Service Provider's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the IDC's findings to the Service Provider.



SIGNED at

on

2016

For:

**SERVICE PROVIDER**

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**MEMBER/DIRECTOR**

who warrants that he/she is duly authorised thereto

SIGNED at

on

2016

For:

**INDUSTRIAL DEVELOPMENT CORPORATION  
OF SOUTH AFRICA LIMITED**

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who warrant that they are duly authorised thereto

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**ANNEXURE "A"****THE SCOPE OF WORK****(As per the tender document)**

*The IDC shall be entitled to request the bidder to perform ad hoc services which does not form directly part of the Scope of Work.*

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**ANNEXURE "B"**

COST PROPOSAL

In line with the accepted Cost Proposal

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## ANNEXURE "C"

**DETAILS OF SERVICE PROVIDER**

Physical Address:		
Postal Address:		
Telephone Number:		
Email:		
Contact Person:		
Facsimile Number:		
Bank Details:	Bank:	
	Account Holder:	
	Account Number:	
	Branch:	
	Branch Code:	
Commencement Date:		
Termination Date:		
Estimated Contract Fee		
BBB-EE Status		

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**ANNEXURE "D"**

**Company Resolution Authorising a Company Signatory**

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