

MEMORANDUM OF AGREEMENT

1. THE PARTIES

This agreement is entered into by and between:

- 1.1. StaffAtAClick (Pty) Ltd, a private company with limited liability duly registered in accordance with the company laws of the Republic of South Africa with registration number 2005/039997/07, herein represented by the undersigned, who warrants that he/she is duly authorised to enter into this Agreement (hereinafter referred to as "**SAAC**")
- 1.2. _____, a company with limited liability duly incorporated in accordance with the company laws of the Republic of South Africa with registration number _____, herein represented by the undersigned, who warrants that he/she is duly authorised to enter into this agreement (hereinafter referred to as "**the CLIENT**")

2. INTRODUCTION

- 2.1. SAAC is a Temporary Employment Service in terms of section 198 of the Labour Relations Act ("the LRA") and section 82(1) of the Basic Conditions of Employment Act ("the BCEA").
- 2.2. SAAC shall in terms hereof provide to the CLIENT, for reward:
 - 2.2.1 a person or persons who shall perform work for the CLIENT as a temporary service for a period not exceeding three months, or as a substitute for an employee of the CLIENT who is temporarily absent, or in a category of work and for any period of time which is determined to be a temporary service by a collective agreement concluded in a bargaining council, a sectoral determination or a notice published by the Minister of Labour, as contemplated and described in section 198A(1) of the LRA (hereinafter referred to as "**TEMPORARY STAFF**");
 - 2.2.2 and/or a person or persons who shall perform work for the CLIENT on an indefinite basis as contemplated and described in section 198A(3)(b) of the LRA (hereinafter referred to as "**INDEFINITE STAFF**");
 - 2.2.3 and/or a person or persons who shall perform work for the CLIENT in a fixed term contract as contemplated and described in section 198B(1) of the LRA (hereinafter referred to as "**FIXED TERM STAFF**");
 - 2.2.4 and/or a person or persons who shall perform work for the CLIENT on a part-time basis as contemplated and described in section 198C(1) of the LRA (hereinafter referred to as "**PART-TIME STAFF**");
 - 2.2.5 and/or a person or persons who shall perform work for the CLIENT but who are excluded from the above categories by virtue of earning in excess of the threshold prescribed by the Minister in terms of section 6(3) of the BCEA.

(all the categories set out in 2.2.1 to 2.2.5 above are hereinafter collectively referred to as "**STAFF**").
- 2.3. SAAC shall in terms of the LRA be the employer of the TEMPORARY STAFF and of the person or persons described in clause 2.2.5 above and the CLIENT shall be deemed to be the employer of the INDEFINITE STAFF for the purposes of the LRA. The CLIENT shall moreover for the purposes of the LRA be deemed to be the employer of any FIXED TERM STAFF and PART-TIME STAFF who may perform work for the CLIENT for a period exceeding three months and who are not substitutes for existing employees of the CLIENT who are temporarily absent.
- 2.4. The parties hereby give express recognition to the interests of STAFF and in particular the right and expectation of STAFF to receive their Wages when it becomes due and SAAC hereby undertakes

to make payment of the agreed Wages to STAFF fully and timeously. The CLIENT, in turn, hereby gives express recognition of its obligation to make payment to SAAC of the agreed remuneration (clause 6) timeously in order to provide SAAC with the means to make payment of Wages to STAFF and the CLIENT therefore recognizes SAAC's peril in the event of the agreed remuneration not being paid timeously.

- 2.5. The CLIENT hereby assumes all liability, in favour of SAAC and in favour of STAFF (in the latter instance as a *stipulatio alteri*), to provide for payment of Wages when they become due, notwithstanding any dispute the CLIENT may have with SAAC, of whatsoever nature. Unless the CLIENT has made payment to SAAC of the agreed remuneration, the CLIENT hereby indemnifies and holds SAAC harmless against any and all Wage claims of STAFF, whether such claims arise from STAFF's contract of employment with SAAC or from statute.
- 2.6. The CLIENT wishes to engage SAAC to perform the SERVICE and subject to the provisions of this agreement, SAAC agrees to perform the SERVICE to the CLIENT.
- 2.7. This Agreement replaces and substitutes any and all previous agreements between SAAC and the CLIENT and which previous agreements shall terminate automatically when the parties enter into this agreement.

3. DEFINITIONS

In these Standard Terms and Conditions:

- 3.1. Clause headings are for reference purposes only and shall not affect its interpretation.
- 3.2. Where reference is made to "days", it shall consist only of business days (i.e. days other than Sundays and Public Holidays) and shall be reckoned exclusively of the first and inclusively of the last day.
- 3.3. If figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two.
- 3.4. The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 3.5. The rule of interpretation against SAAC being responsible for the drafting of this Agreement shall not be applicable.
- 3.6. Unless inconsistent with, or otherwise indicated by the context, the following expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:
 - 3.6.1. References to natural persons shall include bodies corporate and other legal personae and vice versa;
 - 3.6.2. References to the singular shall include the plural and vice versa;
 - 3.6.3. "**Annual Earnings**", for purposes of clause 10.2, means the basic rate per hour agreed on as per the rate card and signed off by the CLIENT multiplied by 195 hours to illustrate a basic monthly rate and this basic monthly rate then multiplied by 12 (Twelve) months to illustrate annual earnings in terms of his/her contract of employment with SAAC;
 - 3.6.4. "**Agreed remuneration**" means as set out in clause 6.1 together with any other amounts the CLIENT has in terms hereof undertaken to pay on demand, including but not limited to those set out in clause 6.2 and clause 8.9 to 8.12;
 - 3.6.5. "**the CLIENT**" means the person or other entity described in clause 1.2 above;
 - 3.6.6. "**Direct employment**", for purposes of clause 10.1.1, means where the CLIENT directly, or indirectly in the guise of another entity that is controlled by the CLIENT or who controls

the CLIENT or who is affiliated to the CLIENT, concludes a contract of employment with any member or former member of STAFF (as the case may be) such that SAAC is excluded as Temporary Employment Service;

- 3.6.7. **"Party"** means either SAAC or the CLIENT, as the context may require, and "parties" mean both;
 - 3.6.8. **"Property"** means all the property and not limited to fixed property, movable assets, goods, or any other form of equipment of the CLIENT;
 - 3.6.9. **"Replacement STAFF"** means the individual/s or groups who will at the instance of SAAC perform duties for the CLIENT in the place and stead of such member/s of STAFF who may become indisposed and/or unavailable to perform such work and duties for any reason whatsoever;
 - 3.6.10. **"STAFF"** means the person or persons described in clause 2.2.1 to 2.2.5 above and "Member of STAFF" shall bear a corresponding meaning.
 - 3.6.11. **"The Service"** means the service SAAC shall render to the CLIENT as herein described;
 - 3.6.12. **"Wage"** means all remuneration and benefits payable to a member of STAFF in respect of any payment interval, including salaries, together with any costs and awards referred to in clause 6.2 and 8.9 to 8.12 below and the like, including remuneration and benefits arising from the contract of employment between SAAC and such member of STAFF and from statute; and **Wages** shall have a corresponding meaning.
 - 3.6.13. **"Working hours"** means the period from commencement of a daily work shift up to conclusion of such work shift.
 - 3.6.14. **"PPE"** – means Personal Protective Equipment relating towards uniforms and safety equipment that is issued to the employees of SAAC.
 - 3.6.15. **"stipulatio alteri"** means a contract for the benefit of a third party.
 - 3.6.16. **"eiusdem generis"** means of the same kind.
 - 3.6.17. **"prima facie"** means based on the first impression; accepted as correct until proved otherwise.
 - 3.6.18. **"domicilia citandi et executandi"** meaning the physical address where all notices and processes of court will be delivered.
 - 3.6.19. **"estoppel"** is the principle which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person or by a previous pertinent judicial determination.
- 3.7. 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 definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.

4. DURATION

- 4.1. This Agreement will commence on the _____ being the "Effective Date".
- 4.2. Notwithstanding any other term or provision to the contrary, but without derogating from the provisions of clause 6.5 below, either party may terminate this Agreement by giving notice of termination linked to employment contract notice period applicable of longest serving employee prior written notice to the other party but without thereby derogating from obligations set out in this Agreement (and in particular the provisions of clause 8.11 below).

5. **SUPERVISION OF STAFF**

The parties acknowledge and agree that all members of STAFF shall be deemed to be under the control and supervision of the CLIENT when such member of STAFF commences performing work for the CLIENT, notwithstanding that a manager or supervisor is tasked by SAAC in terms of the Service.

6. **REMUNERATION AND PAYMENT**

- 6.1. Subject to clause 6.2, the CLIENT undertakes to make payment to SAAC of agreed remuneration in accordance with the rates set out in *Annexure A* hereto. Such agreed remuneration comprises (i) Wages payable to STAFF as on the Effective Date in terms of the contract of employment between SAAC and STAFF, expressed in Annexure "A" as an hourly rate (but nett of the costs and awards referred to in clause 8.9 to 8.12) and (ii) SAAC's agreed hourly fee (referred to in Annexure "A" as "administration fee") to provide the Service.
- 6.2. The Parties agree that the agreed remuneration is subject to variation and/or increase after the Effective Date as a consequence of any legislative enactment and/or amendment to a collective agreement which may be applicable to the industry within which the Client conducts business. Without limiting the foregoing, the Client shall be liable to make payment of any such subsequent increase resulting from:
- 6.2.1. Any wage increase related to statutory requirements;
- 6.2.2. Any increase of the minimum prescribed wage as dictated by any relevant statutory body or legislation and / or amendments to a collective agreement in such specific industry as the Client's business may be bound by of which the result is to increase the Wages
- 6.3. The CLIENT shall make payment to SAAC within _____ after date of SAAC rendering its invoice in order to allow SAAC sufficient opportunity to clear such payment with its bank before payment of Wages is made to STAFF.
- 6.4. Payment of such aforesaid invoice shall be made free of any deductions or retention and the CLIENT shall not be entitled to apply any set-off of whatsoever nature.
- 6.5. In the event that the Client is bound by a sectoral determination or collective agreement stipulating a minimum wage and the Client for financial reasons not being able to provide for the applicable minimum wages, the Client undertakes to apply for an exemption in the manner stipulated by law, failing which SAAC is entitled to terminate this Agreement immediately with written notice to the CLIENT and without limiting any rights or remedies SAAC may have in law or otherwise.
- 6.6. Notwithstanding any provision to the contrary contained in this Agreement, the CLIENT shall be liable to provide for Wages equal to at least 4 (four) hours work per member of STAFF per day, excluding lunch- or other breaks, when such member or members of STAFF attends to work for CLIENT in terms of the Service, notwithstanding that such member or members of STAFF may have worked less than 4 hours on any particular day (and SAAC's administration fee in such instance shall similarly be equal to 4 hours at the agreed rate).
- 6.7. If any invoice is not paid for whatever reason within _____ after issuing, the CLIENT shall, without derogating from the rights of SAAC in terms of any other provision in this Agreement, become liable for payment of interest on any outstanding balance at a rate equal to the prime lending rate of First National Bank Limited from time to time, plus 1 (one) percent.
- 6.8. It shall be deemed that this Agreement had been amended to incorporate the Wage variations contemplated in clause 6.2 above in the event that SAAC notifies the CLIENT of such variations and the CLIENT subsequently provides for any part of such Wage variations and/or increases in its payment of the agreed remuneration to SAAC, notwithstanding that such Wage variations had not been reduced to writing and signed by the parties.

7. ADDITIONAL OBLIGATIONS OF SAAC

SAAC shall:

- 7.1. Enter into contracts of employment with STAFF and provide STAFF to perform work and duties for and on behalf of the CLIENT;
- 7.2. ensure that STAFF holds the necessary prescribed certificate and/or license and/or permit that may be required to perform the work and the duties;
- 7.3. administer and pay the Wages of members of STAFF's and attend to all queries relating thereto;
- 7.4. administer all other statutory payments in respect of STAFF's Wages (to be provided for by the CLIENT);
- 7.5. provide Replacement STAFF if and when necessary;
- 7.6. obtain criminal record clearances on the request of the CLIENT;
- 7.7. administer Compensation Commissioner claims (to be provided for by the CLIENT);
- 7.8. keep employee files in respect of STAFF;
- 7.9. Except where otherwise agreed in writing, SAAC will issue STAFF with basic PPE, being a two-piece overall and safety shoes. The supply of all other PPE requirements is the responsibility of the CLIENT;
- 7.10. Administer all disciplinary proceedings as set out in clause 9 below and any subsequent disciplinary actions against STAFF.

8. ADDITIONAL OBLIGATIONS AND RESPONSIBILITIES OF CLIENT

- 8.1. The CLIENT admits that SAAC does not have any control over or free access to the premises where the STAFF will perform the work and duties for and on behalf of the CLIENT.
- 8.2. The CLIENT shall provide all additional PPE not provided as described in 7.9. and all safety training.
- 8.3. The CLIENT shall bear the cost and expense of any and all STAFF training it may direct to be given, including pre-training sessions of the STAFF and the Replacement STAFF;
- 8.4. The CLIENT shall supervise, manage, direct and control the performance by the STAFF of the work and duties the CLIENT may require and will at all times provide the STAFF a fair opportunity to perform the work and duties;
- 8.5. The CLIENT shall monitor and assess the work performance of STAFF in order to furnish SAAC with performance reports when required by the latter;
- 8.6. Immediately after becoming aware of misconduct of STAFF, the CLIENT shall in writing notify SAAC of such misconduct and provide evidence, proof and all required supporting documents thereto;
- 8.7. The CLIENT shall ensure that all time-sheets, attendance registers and other relevant documents are completed accurately and properly and are timeously and punctually submitted to SAAC for processing;
- 8.8. The CLIENT shall ensure that all STAFF are made aware of all health and safety regulations pertaining to the CLIENT's workplace and that all STAFF are kept safe at the workplace whilst performing the work and duties for the CLIENT;
- 8.9. The CLIENT indemnifies and holds SAAC harmless against any and all claims arising from injuries sustained by STAFF at the CLIENT's workplace whilst performing the work and duties for and on behalf of the CLIENT and, in particular, against claims exceeding any compensation for which the Workmen's' Compensation Commissioner is liable and for which the CLIENT hereby undertakes to provide for on demand;
- 8.10. The CLIENT indemnifies and holds SAAC harmless against any and all claims of third parties arising from the performance by STAFF of their work and duties for and on behalf of the CLIENT and the

CLIENT hereby assumes vicarious liability for all such acts and omissions of STAFF in the course and scope of their work and duties for the CLIENT;

- 8.11. In the event that any member of STAFF is to be retrenched at the instance of the CLIENT, the CLIENT accepts liability in respect thereof and undertakes to provide for all such retrenchment costs, relevant notice period costs and any other statutory costs due to such member of STAFF on demand;
- 8.12. In the event where the CLIENT's conduct, directly or indirectly, results in an award by the CCMA, Bargaining Council, Labour Court or any other statutory bodies in favour of a member of STAFF (including penalties due to unfair conduct), or as a result of any other unfair labour practices of the CLIENT, the CLIENT accepts liability for all costs in respect thereof, including but not limited to legal costs, and undertakes to provide for and make payment of all such costs on demand.

9. CLIENT'S DISCIPLINARY CODES AND PROCEDURES

- 9.1. The CLIENT shall provide SAAC with copies of all disciplinary- and other rules and procedures which are applicable at the workplace where STAFF will perform the work and duties;
- 9.2. SAAC shall instruct and mandate STAFF subject to any training programs in respect of the disciplinary codes and procedures that may be required by the CLIENT in writing;
- 9.3. SAAC shall, on the strength of a written report and complaint by the CLIENT, administer all disciplinary enquiries and disciplinary measures in respect of any member of STAFF if and when necessary;
- 9.4. In the event that any STAFF member is found guilty of any serious contravention of the disciplinary codes and regulations of the CLIENT, SAAC shall, if so requested by the CLIENT in writing, remove such member of STAFF from the CLIENT's workplace and provide suitable Replacement STAFF within a reasonable time;
- 9.5. Without in any way assuming liability or responsibility for the misconduct of STAFF, in the event that such misconduct has resulted in direct and proven quantifiable financial loss to the CLIENT, SAAC shall endeavour to recover such loss from the Wages of such member of STAFF (but subject to any applicable statutory provisions) and pay to CLIENT on behalf of STAFF any amount so recovered;
- 9.6. Either Party shall have the right to require the suspension of any member of STAFF from the CLIENT's premises during any investigation into allegations of misconduct, provided that if the Client elects to exercise such a right, it shall continue to provide for all Wages to SAAC in respect of such member of STAFF for the period of such member's suspension, as if such member of STAFF had not been suspended.

10. RESTRAINT

- 10.1. During the currency of this Agreement and for a period of 12 (twelve) months after termination of this Agreement, the CLIENT shall not:
 - 10.1.1 give direct employment and/or appoint as agent or contractor and/or offer direct employment to any member or former member of STAFF (as the case may be);
 - 10.1.2 accept work from any member of STAFF through the agency of another Temporary Employment Service or any other intermediary.
- 10.2. In the event that the CLIENT breaches the provisions of either clause 10.1.1 or 10.1.2 above, the CLIENT admits and acknowledges that SAAC shall have suffered damage as a result and SAAC shall, without derogating from any other remedies it may have acquired in terms hereof or in terms of the common law, be entitled to damages as a result of such breach in an amount equal to 20% of the Annual Earnings of such member of STAFF (or former member of STAFF as the case may be) and which amount the parties agree shall constitute pre-estimated liquidated damages.

11. CONFIDENTIALITY

- 11.1. Without the prior written consent of the other party, a party shall keep confidential and shall not disclose to any other person:
 - 11.1.1.1. Information relating to the business or the operations and the affairs of the other party, which by its nature is considered confidential;
 - 11.1.1.2. Information relating to the STAFF, which by its nature is considered confidential. (collectively "the confidential information")
- 11.2. The parties agree to keep the confidential information confidential and to disclose it only to their officers, directors, employees, consultants and professional advisers who:
 - 11.2.1. have a need to know;
 - 11.2.2. are aware that the confidential information should be kept confidential;
 - 11.2.3. are aware of the party's undertaking in relation to such information in terms hereof;
 - 11.2.4. have been directed by the party to keep the confidential information confidential and have undertaken to keep the confidential information confidential.

12. BREACH

- 12.1. If a party is in breach of any of the terms or conditions hereof and fail to remedy such breach within 5 (five) days of receipt of written notice from the other party, then the other party shall be entitled at such party's option to institute proceedings immediately for enforcement of the terms of this Agreement or alternatively and without further notice, to terminate this Agreement and claim damages.
- 12.2. Notwithstanding the preceding clause, SAAC is entitled to terminate this Agreement immediately with written notice to the CLIENT in the event that the CLIENT fails to make payment of any amounts payable in terms hereof on the due date and which failure of the CLIENT shall be deemed to constitute a repudiation of this Agreement.
- 12.3. A certificate or certificates signed by a director of SAAC shall constitute *prima facie* proof of any Wages payable to any member of STAFF and any such member of STAFF shall be entitled, as plaintiff or applicant, to claim such Wages from the CLIENT without joining SAAC in the legal proceedings instituted for that purpose. The parties agree that this clause constitutes a *stipulatio alteri* in favour of the STAFF.
- 12.4. Nothing in the preceding clause shall be construed to exclude the right of SAAC (as plaintiff or applicant) to elect to claim from the CLIENT only such amount that is certified as Wages, and without thereby derogating from SAAC's right to claim any other portion of the agreed remuneration in a separate action and/or application.

13. DOMICILIUM

- 13.1. SAAC chooses No 9, Seventh Avenue, Edenvale as its *domicilia citandi et executandi*.
- 13.2. The CLIENT's *domicilia citandi et executandi* will be the registered address as per CIPC unless another address is supplied to SAAC in writing.

14. NOTICES

- 14.1. Any notice given may:
 - 14.1.1. be delivered by hand at a party's chosen *domicilium citandi*; or
 - 14.1.2. be sent by prepaid registered post; or
 - 14.1.3. be sent by telefax; or
 - 14.1.4. be sent by e-mail
- 14.2. A notice given as set out above shall be deemed to have been duly given:

- 14.2.1. if delivered by hand, on the date of delivery;
- 14.2.2. if sent by registered post, 7 days after posting;
- 14.2.3. if sent by telefax, on the day that the telefax is transmitted;
- 14.2.4. if sent by e-mail, on the day that the e-mail is transmitted

15. GENERAL

- 15.1. It is expressly agreed that any indulgence shown, extension given or right waived, whether relating to payment due hereunder or any other matter or thing, shall in no way operate as an *estoppel* against SAAC nor in any manner limit SAAC's rights hereunder or modify or alter same and SAAC shall be entitled at any time to exercise their rights hereunder as though no indulgence was shown, extension given or right waived.
- 15.2. Notwithstanding any clause to the contrary, the absence of the CLIENT's signature to this Deed shall not render the Agreement herein set out invalid or unenforceable and it shall be deemed that the CLIENT had accepted the terms of this Agreement and had intended to be bound by such terms if a copy of this Deed, signed on behalf of SAAC, is delivered at the chosen domicile of the CLIENT and the CLIENT fails to object to its terms within 30 (thirty) days after delivery.
- 15.3. This Memorandum incorporates the entire agreement between the parties and, subject to clause 6.8 above, no amendment or variation of this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties.

THUS agreed, done and signed at _____ on this the _____ day of _____ in the presence of the undersigned witness:

Description	Full Names	ID Number	Capacity	Signature
For SAAC				
SAAC Witness				
For Client				
Client Witness				