

# **NOSMESA** LEGAL

## CLIENT: INFORMATION UPDATE

COMPANY NAME: \_\_\_\_\_

VAT NUMBER: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

PHYSICAL ADDRESS: \_\_\_\_\_

\_\_\_\_\_ POSTAL CODE: \_\_\_\_\_

OWNER OF COMPANY: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_

CONTACT NUMBER: \_\_\_\_\_

HR CONTACT PERSON: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_

CONTACT NUMBER: \_\_\_\_\_

FINANCIAL CONTACT PERSON: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_

CONTACT NUMBER: \_\_\_\_\_

NUMBER OF EMPLOYEES CURRENTLY EMPLOYED BY THE COMPANY: \_\_\_\_\_

## ADDITIONAL SERVICE

**Do you need information or a quotation on the following additional service?**

POPI Compliance	<input type="checkbox"/>
Employment Equity Act	<input type="checkbox"/>
Skills Development Act	<input type="checkbox"/>
Occupational Health and Safety Act	<input type="checkbox"/>
Facilitates meetings, mediation between employers and employees	<input type="checkbox"/>
Other legal services	<input type="checkbox"/>
Recruitment	<input type="checkbox"/>

Signed at: \_\_\_\_\_ On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Client: \_\_\_\_\_

**NOSMESA LEGAL (PTY) LTD** \_\_\_\_\_

☎ 086 166 76372 ✉ legal@nosmesa.co.za 🌐 www.nosmesa.co.za

📍 36 Monaco Street, Uitzicht, Durbanville, 7550

**REG No:** 2014/006458/07 | **VAT No:** 4480300419

**Director:** M Louwrens



## **TERMS AND CONDITIONS:**

### **1. INTERPRETATION**

- 1.1. Unless a contrary intention is made clear, word importing:
  - 1.1.1. Any one gender includes other genders;
  - 1.1.2. Singular includes plural and vice versa;
  - 1.1.3. Natural persons include entities and vice versa.
- 1.2. In this Agreement, headings are for convenience only and are not intended to be used to interpret the Agreement.
- 1.3. If the Agreement refers to a party who is liquidated or sequestrated (or has been through a comparable process under a different legal system), then the Agreement will also be applicable to, and binding on, that party's liquidator or trustee.
- 1.4. Where this Agreement specifies any number of days, the number of days excludes the first day and includes the last day, unless the last day falls on a Saturday, Sunday or gazetted public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or gazetted public holiday in the Republic of South Africa. References to a "day" are references to typical business days.
- 1.5. Any reference to time shall be based upon South African Standard Time.
- 1.6. All annexures, addenda and amendments to this Agreement form an integral part of this Agreement and, therefore, the Service Provider's contract with the Client.
- 1.7. The words and phrases in the definitions sections below bear the meanings assigned to them and related expressions bear corresponding meanings.
- 1.8. The words "shall" and "will" and "must" used in the context of any obligation or restriction in this Agreement imposed on a Party have the same meaning.
- 1.9. If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.10. If amounts or figures are specified in numerals and in words in this Agreement and if there is any discrepancy between the numerals and the words, then the words shall apply.
- 1.11. "Writing" (or words of similar meaning) means legible writing and in English and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No. 25 of 2002, and "written" or "writing" shall have a corresponding meaning.

### **2. DEFINITIONS**

- 2.1. "Applicable law" means, from time to time, any law (including statutory, common or customary law) statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, other legislative measure, or any directive, requirement, request or guideline (whether or not having the force of law

but, if not having the force of law, is generally complied with by the person to whom it is addressed or applied) of any government, supranational, local government, statutory, regulatory, or similar body authority or court as it may be amended, replace, re-enacted, restated or reinterpreted including but not limited to the National Credit Act;

- 2.2. "Confidential Information" refers to the definition as described in the confidential information clause below.
- 2.3. "Intellectual Property" refers to the definition as described in the clause below.
- 2.4. "Notice" shall mean a written document addressed by one Party to the other and either delivered by hand; sent per registered post or telefaxed to the addresses as indicated in above.
- 2.5. "Ordinary course of business" means, with reference to the relevant entity in respect of any transaction involving such entity, in the ordinary and normal course of such entity's business in accordance with past conduct, Good Industry Practice and undertaken by such entity in good faith and not for the purposes of evading or avoiding any covenant, restriction or undertaking in this agreement.
- 2.6. "Parties" means the Service Provider/Nosmesa, including its agents and representatives and the Client. ("Party" shall have a corresponding meaning).
- 2.7. "Personal Information" means any information that falls within the definition of 'Personal Information' as defined in the Protection of Personal Information Act, No 4 of 2013 ("POPIA").
- 2.8. "Service Provider" means Nosmesa Legal (PTY) Ltd.
- 2.9. "Service Provider's Associates" means the Service Provider's safety officers, servants, agents, contractors, or other persons in respect of whose actions the Service Provider may be held to be vicariously liable.
- 2.10. "Service Variation" means a material change in the Services, at the reasonable discretion of the Service Provider, the process of which is set out below.
- 2.11. "Services" mean Services provided by the Service Provider to the Client as set out below.
- 2.12. "Signature Date" means the date on which this Agreement is signed by the Party signing last in time.
- 2.13. "Term" means the duration of this Agreement as defined herein.
- 2.14. "Termination Date" means the date upon which this Agreement is legally and lawfully terminated.
- 2.15. "Quotation" means a formal statement setting out the estimated cost for a particular job or service.
- 2.16. "VAT" means Value-Added Tax payable in terms of the Value-Added Tax Act 1991, as amended.

### **3. DURATION OF AGREEMENT**

- 3.1. The Term of this Agreement shall begin on the commencement date and will automatically terminate after 1 (one) year unless renewed and membership fees paid.

#### **4. PAYMENT**

- 4.1. The parties agree that the service provider will invoice the client as per the quote annexed hereto.
- 4.2. If client pays a yearly membership fee, it shall be due and payable as soon as the invoice is sent out. No services will be provided until such time as payment has been made.
- 4.3. If client pays on a monthly basis, it shall be due and payable by the 30<sup>th</sup> day of each month. No services will be provided until such time as payment has been made.

#### **5. NATURE AND PROVISION OF SERVICES**

- 5.1. The Service Provider agrees to provide services to the client in accordance with the provisions of this agreement, and the client hereby accepts such services.
- 5.2. The Service Provider guarantees that the provision of services will be carried out in a proper and professional manner.
- 5.3. Services provided as per this agreement are:
  - 5.3.1. Drawing up employment contracts and revising existing contracts to comply with the conditions of Section 29 of the Basic Conditions of Employment Act, Sectorial Determination, or Bargaining Council Agreement.
  - 5.3.2. Representation in the workplace regarding all Labour problems.
  - 5.3.3. Representation at the C.C.M.A. and Bargaining Council.
  - 5.3.4. Chairing of an average of 4 disciplinary hearings per month. This will be averaged over a period of 6 months. A disciplinary hearing is calculated at 60min per hearing.
  - 5.3.5. Collective bargaining (Union negotiations) concerning all benefits and conditions of employment.
  - 5.3.6. Assistance with recognition agreements.
  - 5.3.7. Assistance with retrenchments.
  - 5.3.8. Setting up a code of good Labour practice in the workplace.
  - 5.3.9. Implementing the Basic Conditions of Employment in the workplace.
  - 5.3.10. Updating employers with regard to amendments to Labour laws.
  - 5.3.11. Counselling between employer and employee regarding disputes in the workplace.
  - 5.3.12. Professional advice and representation at strikes and lockouts.
  - 5.3.13. Supply all required disciplinary documents.
- 5.4. After hours service at an additional cost of R950.00 per hour.
- 5.5. Should a consult not be cancelled 24 hours before the time, a 50% penalty fee will be charged.
- 5.6. Should a consultant arrive at the premises and the hearing be cancelled, the full fee will be charged as well as travelling costs calculated at the AA rate.

- 5.7. Should a Service Variation exist due to unforeseen circumstances, it shall be determined as soon as reasonably possible and communicated to the client and the reasons, therefore.

5.7.1. In the above regard, the Service Provider shall obtain the written consent of the Client to effect any adjustment in Fees in terms of the Service Variation.

5.7.2. To the extent that the Client does not consent to the change in Fees, the Service Provider shall not be required to continue with the Services as per the Service Variation.

5.7.3. Should the Client request a Service Variation, including but not limited to additional Services required from the Service Provider, such request shall be in writing and the cost and time impact thereof shall be agreed between the Parties in writing prior to the implementation or performance of the Service Variation.

#### **6. GENERAL DUTIES OF SERVICE PROVIDER**

- 6.1. The Service Provider will ensure that he/she attends to all queries and concerns of the client as reasonably soon as possible, but within 24 hours of the query being raised.
- 6.2. To provide a written outcome of disciplinary hearings chaired within 2 to 3 business days after the hearing has been heard.
- 6.3. Comply with all laws, by-laws and regulations, and shall obtain whatever permits and licenses necessary to fulfil his/her obligations in terms of this agreement at his/her own cost, in particular, remaining an employers' organization.

#### **7. GENERAL DUTIES OF CLIENT**

- 7.1. When client receives a notification from the CCMA it is their responsibility to forward to [legal@nosmesa.co.za](mailto:legal@nosmesa.co.za) as soon as possible.
- 7.2. If a client schedules a hearing or meeting and needs to cancel, it must be done at least 3 hours before the time. Should it not be additional fees will be incurred.

#### **8. WARRANTIES BY SERVICE PROVIDER**

- 8.1. The Service Provider guarantees that the provision of services will be carried out in a proper and professional manner.
- 8.2. The Service Provider specifically undertakes, for the duration of this agreement, to act in good faith towards the client.

#### **9. CONFIDENTIALITY AND NON-DISCLOSURE**

- 9.1. The client acknowledges that the unauthorised use or disclosure of Confidential Information will lead to the service providers business suffering substantial and irreversible damages. It is furthermore recorded and agreed that the Confidential Information is proprietary and valuable to the service provider.

- 9.2. The Receiving Party undertakes and agrees:
- 9.2.1. to use the Disclosing Party 's Confidential Information only to give effect to the Disclosing Purpose;
  - 9.2.2. to hold in strict confidence and not to publish or disclose to any unauthorised third parties any of the Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party;
  - 9.2.3. to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own information of like kind;
  - 9.2.4. to limit any disclosure of such Confidential Information only to those of its employees and professional advisors who have a specific need –to know to access such Confidential Information and either entered into a written agreement which impose, or are otherwise bound by the same restrictions as those imposed upon it by virtue of this agreement;
  - 9.2.5. not to disclose or reveal to any third party, whomsoever, either the fact that discussions or negotiations are taking, or have taken, place between the Parties; the content of any such discussions, or other facts relating to the Disclosing Purpose;
  - 9.2.6. on termination of this agreement, to act with the Disclosing Party's Confidential Information in accordance with a Notice delivered to it by the Disclosing Party, and if no such Notice is delivered to the Recipient, to destroy the Disclosing Party's Confidential Information in a similar manner to which it would destroy its own Confidential Information.
- 9.3. EXCLUSIONS:
- 9.3.1. The Receiving Party recognises that this agreement is not intended to restrict use or disclosure of any portion of the Disclosing Party's Confidential Information which:
    - 9.3.2. is as at the Effective Date, or later, made known to the public or otherwise enters the public domain through no default by the Receiving Party of its obligations under this Agreement;
    - 9.3.3. it can show was in its possession prior to the earliest disclosure by the Disclosing Party, as evidenced by written documents in its files;
    - 9.3.4. is rightfully received by it from a third party having no obligation of confidentiality to the Disclosing Party;
    - 9.3.5. is independently developed by the Receiving Party by a person(s) who did not have access to the Confidential Information of the Disclosing Party.
    - 9.3.6. is disclosed by the Receiving Party after receipt of written permission from the Disclosing Party; or
    - 9.3.7. it is requested or required by subpoena, court order, or similar process to disclose, provided that, in such an event, it will provide the Disclosing Party with prompt written notice of such request(s) so that the latter may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this agreement.
- 9.4. The Parties' obligations concerning non-disclosure of Confidential Information contained in the above clauses shall commence on the Effective Date and shall continue for five (5) years from the date of each disclosure, unless otherwise agreed between the parties in writing, where after such obligations shall forthwith terminate.
- 9.5. Each party represents that its compliance with the provisions of this agreement will not violate any duty which such party may have towards any third party, including obligations concerning the provision of services to others, confidentiality of information and assignment of inventions, ideas, patents, or copyright.
- 10. INTELLECTUAL PROPERTY**
- 10.1. Insofar as is allowed for in law, it is specifically recorded that the client waives any and all Legal Rights pertaining to the intellectual property developed/created/drawn up during the subsistence of this agreement.
  - 10.2. All rights, titles and/or interests attached to or related to Intellectual Property shall remain vested in the service provider.
  - 10.3. All right, titles and/or interest attached to or related to Intellectual Property as produced by the Service Provider in the course and scope of providing the Services to the Client shall remain vested in the Service Provider. Reference to the foresaid approbation will relate to any copying, scanning reproduction of any work whether documentary of nature or not which falls under the definition of intellectual property.
- 11. BREACH AND TERMINATION**
- 11.1. Without prejudice to any other rights or remedies which either of the Parties may otherwise have in terms of the Agreement or at law, either of the Parties shall be entitled to terminate the Agreement by written Notice to the other, in the event that:

- 11.1.1. either of the Parties are finally liquidated;
- 11.1.2. the controlling interest or ownership in either of the Parties becomes vested in a competitor of either of the Parties. For the purpose of this clause, the party who makes this allegation shall carry the burden to prove same;
- 11.1.3. In general, if either of the Parties commits a breach of the terms and conditions of the Agreement and fails to remedy such breach within 7 (seven) calendar days after receiving Notice from the other party to the Agreement.

11.2. In the event that this Agreement is terminated prior to the anticipated termination date as set out above, it is agreed that the client shall not have any claim whatsoever for additional services, unless paid for.

11.3. The termination of the Agreement, for whatever reason, shall not affect the rights of either of the Parties:

- 11.3.1. that may have accrued before the termination of the Agreement; or
- 11.3.2. which specifically or by their nature survives the termination of the Agreement.

## 12. LIMITATION OF LIABILITY

12.1. To the extent allowed by law, the client agrees to indemnify the Service Provider, and the Service Provider will not be liable for any and all damages or losses (be they direct, indirect, consequential special or exemplary) suffered by the Client in connection with any claim by anyone that arises out of the Service Providers acts, omissions or misrepresentations under this Agreement, regardless of the form of action thereof.

12.2. In the instance where the Service Provider is liable to the client, the cumulative maximum liability for all claims, actions, demands and proceedings of whatever nature and however arising (including, without limitation, for breach of contract, in delict, for all acts and omissions, and for negligence) shall in total be limited to the total value of payments actually made to the Service Provider by the Client in terms of this Agreement.

## 14. NOTICES AND ADDRESSES

14.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in on the first page of this Agreement above, or at such other address in the Republic of South Africa of which

the Party concerned may notify the others in writing provided that no street address shall be changed to a post office box, for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

14.2. The Parties also elect the following addresses which notices and other communications may be delivered for the purposes of this Agreement:

14.2.1. The Service Provider by email to the address [legal@nosmesa.co.za](mailto:legal@nosmesa.co.za).

14.2.2. The client by email to the address as provided by the client and used to communicate with the client.

14.3. Any notice given in terms of this Agreement shall be in writing and shall:-

14.3.1. if delivered by hand be presumed to have been duly received by the addressee on the date of delivery;

14.3.2. if transmitted by electronic means be presumed to have been received by the addressee on the day following the date of dispatch.

14.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another shall be adequate written notice or communication to such Party.

14.5. In the event where any of the above contact details change, it is the duty of the relevant party to notify the other of such a change. Up until the time where a notice of such a change has been received, the other party may rely upon the addresses as stipulated in this Agreement.

## 15. GOVERNING LAW & JURISDICTION

15.1. This Agreement and any matter arising from it shall be subject to the exclusive jurisdiction of the South African court to hear any dispute arising therefrom which the parties are unable to settle amicably.

15.2. For the purposes of clause above the Parties herewith submit to the jurisdiction of the Court referred in clause

above and appoint as their domicilia for those purposes their respective addresses as set out above

15.3. This Agreement shall be subject to and shall be governed by the laws of South Africa.

## 16. PROTECTION OF PERSONAL INFORMATION

16.1. The Party(ies) undertake(s) to comply with the provisions of POPIA as well as all applicable legislation as amended or substituted from time to time;

16.1.1. treat all Personal Information strictly as defined within the parameters of POPIA;

16.1.2. process Personal Information only in accordance with the consent it was obtained for, for the purpose agreed, any lawful and reasonable written instructions received from the applicable Responsible Party and as permitted by law;

16.1.3. process Personal Information in compliance with the requirements of all applicable laws;

16.1.4. secure the integrity and confidentiality of any Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss, damage, unauthorised destruction, access, use, disclosure or any other unlawful processing of Personal Information;

16.1.5. not transfer any Personal Information to any third party in a foreign country unless such transfer complies with the relevant provisions of POPIA regarding transborder information flows; and

16.1.6. not retain any Personal Information for longer than is necessary for achieving the purpose in terms of this Agreement or in fulfilment of any other lawful requirement.

16.2. The Party(ies) undertake(s) to ensure that all reasonable measures are taken to:

16.2.1. identify reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;

16.2.2. establish and maintain appropriate security safeguards against the identified risks;

16.2.3. regularly verify that the security safeguards are effectively implemented;

16.2.4. ensure that the security safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;

16.2.5. provide immediate notification to the Responsible Party if a breach in information

security or any other applicable security safeguard occurs; provide immediate notification to the Responsible Party where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person;

16.2.6. remedy any breach of a security safeguard in the shortest reasonable time and provide the Responsible Party with the details of the breach and, if applicable, the reasonable measures implemented to address the security safeguard breach;

16.2.7. provide immediate notification to the Responsible Party where either party has, or reasonably suspects that, Personal Information has been processed outside of the purpose agreed to or consented to;

16.2.8. provide the Responsible Party, upon request, with all information of any nature whatsoever relating to the processing of the Personal Information for the purpose in terms of this Agreement and any applicable law;

## 17. GENERAL

17.1. The expiration, cancellation or other termination of the agreement contained in this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation, or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.

17.2. No addition to or variation, consensual cancellation or novation of this Agreement, or of this clause in particular, and no waiver of any right arising from this Agreement, or its breach or termination shall be of any force or effect unless reduced to writing and signed by the parties.

17.3. No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and

punctual compliance with each and every provision or term hereof.

- 17.4. This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained or referred to in this Agreement.
- 17.5. Save as herein expressly otherwise provided, neither this Agreement nor any part, share or interest therein nor any rights or obligations thereunder may be ceded, assigned, or otherwise transferred without the prior written consent of the other Party.
- 17.6. In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.