

AGREEMENT

Between:

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

(Hereinafter referred to as HPCSA)

A statutory body established in terms of section 2 of the Health Professions Act, 1974 (Act

Nr. 56 of 1974)

duly presented by:

Dr. M.A. KWINDA

(in his capacity as the Acting Registrar/CEO of the HPCSA)

Address: 553 Madiba Street, Arcadia, 0083 Pretoria

and

(Pty) Ltd

(Hereinafter referred to as the Service Provider)

A company registered in terms of the Company laws of the Republic of South Africa with

registration number:

duly represented by:

Mr. / Ms.

(in his/her capacity as the ... of the Service Provider)

Address:

For: ... **Services (Tender / RFQ Ref: HPCSA --/20--)**

1. INTERPRETATION AND DEFINITIONS

- 1.1 The **head notes** to the clauses in this Agreement are for reference purposes only and shall not affect the interpretation of any part hereof.
- 1.2 Unless inconsistent with the context, any **gender** includes the other genders; a natural **person** includes an artificial person and vice versa; the **singular** shall include the **plural** and vice versa.
- 1.3 When any number of **days** are prescribed by the Agreement, same shall be reckoned exclusive of the first and inclusive of the last day, save that if the last day falls on a day other than a **working day**, the last day for the action shall be the next working day. See definition of Day below.
- 1.4 In the event of any provisions contained in the Agreement being declared **invalid or unenforceable** by a Court of law, the validity and enforcement of the remaining provisions contained herein shall not, in any way, be affected or impaired thereby.
- 1.5 This Agreement is **governed** by South African law and should be interpreted and enforced in terms thereof.
- 1.6 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings -

“Agreement” shall mean this Agreement between the Service Provider and the HPCSA, including any annexures hereto;

“Day” shall mean a **working day**, which is not a Saturday, Sunday or public holiday in the Republic of South Africa, recognised as such under the Public Holidays Act, 1994 (Act Nr. 36 of 1994);

“Force Majeure” a French term, shall mean an unforeseeable, inevitable or uncontrollable event or accident, beyond the control of the parties; also known as **Cas Fortuit** (French), **Casus Fortuitus** (Latin) or **Vis Major**

(Latin);

“Good Industry Practice”

shall mean the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a skilled and experienced company within the Service Provider’s industry or business sector, under the same or similar circumstances;

“HPCSA”

shall mean the Health Professions Council of South Africa, a statutory body established in terms of section 2 of the Health Professions Act, 1974 (Act Nr. 56 of 1974);

“IPR”

shall mean Intellectual Property Rights: any and all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“Office Hours”

shall mean from 08h00 to 16h30, read with the meaning of “Day” above;

“Parties”

shall mean the HPCSA and the Service Provider collectively;

“Party”

shall mean any of the Parties as the context may indicate;

“Personal Information”

shall mean information relating to an identifiable, living, natural person, including but not limited to

information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language, birth or any information that is particular to the person;

“Service Provider” shall mean ... (Pty) Ltd;

“Services” shall mean the services referred to in clause 2 of the Agreement, read with Annexure A (Scope Of Work);

“VAT” shall mean Value Added Tax and any similar additional sales tax.

2. SERVICE AGREEMENT

The HPCSA and the Service Provider agree that the Service Provider shall provide ... Services, as detailed in Annexure A (Scope Of Work).

3. CONTRACT PRICE, FEES AND PAYMENT THEREOF

3.1 The HPCSA shall pay the Service Provider a total of R (excluding VAT) **VAT RULE: “If no mention of VAT is made then the quoted price is deemed to include VAT at the applicable rate if the vendor is registered (or liable to be registered). If he is not registered / liable for registration he is not entitled to add VAT to his prices.”** over a period of ---- months payable in the monthly payments of R ... excluding VAT. [in accordance with the amounts reflected in Annexure B, the Pricing Schedule.]

3.2 Unless otherwise agreed in writing, the HPCSA shall make such payment by EFT (Electronic Fund Transfer) within 30 days of receipt of a valid and accurate tax invoice.

4. DURATION

The Parties hereby agree to enter into a thirty six (36) months Agreement commencing on the date this Agreement is signed by a Party signing last. Should the HPCSA wish to extend the Agreement, it shall notify the Service Provider in

writing of its intention to extend the Agreement three months before the expiry of the Agreement.

5. CONFIDENTIALITY & POPIA

5.1 Each Party ('the receiving Party') shall treat and hold as secret and confidential all information which it may receive from the other Party ('the disclosing Party') or which it becomes aware of during the course of this Agreement, including but not limited to all information concerning the disclosing Party's business activities, products, services, customers, and clients.

5.2 The receiving Party undertakes and agrees that in order to protect the proprietary interests of the disclosing Party in and to its confidential information:

5.2.1 the receiving Party will disseminate the confidential information of the disclosing Party to its employees, agents, and contractors only when necessary for the implementation of this Agreement and the receiving Party will initiate internal security measures reasonably acceptable to the disclosing Party to prevent unauthorised disclosure; and

5.2.2 the receiving Party will not at any time, whether during the currency of this Agreement or thereafter, either use any confidential information of the disclosing Party or directly or indirectly divulge or disclose any confidential information to any other third Parties.

5.3 Upon termination, cancellation or expiry of this Agreement, the receiving Party will deliver to the disclosing Party or, at the disclosing Party's discretion, destroy all originals and copies of confidential information in its possession.

5.4 The afore-going obligations shall not apply to any information which:

5.4.1 is lawfully in the public domain at the time of disclosure to the receiving Party;

5.4.2 subsequently becomes lawfully part of the public domain by publication or otherwise;

5.4.3 subsequently becomes available to the receiving Party from a source other than the disclosing Party which is lawfully entitled (without any

restriction on disclosure) to disclose such confidential information to the receiving Party; or

5.4.4 is disclosed pursuant to a requirement or request by operation of law or court order.

5.5 In performing its obligations under this agreement, the Service Provider shall act in accordance with, and comply with the Protection of Personal Information Act, Act 4 of 2013 (POPIA).

5.6 HPCSA shall not acquire any right, title or interest in or to any IPR of the Service Provider or its licensors, including the IPR relating to the Service Provider Systems or Services and any IPR that is owned by or licensed to the Service Provider which is or has been developed independently of this Agreement (whether prior to the commencement date or otherwise).

5.7 The Service Provider shall not acquire any right, title or interest in or to any IPR of the HPCSA or its licensors.

5.8 This clause is severable from the rest of this Agreement and shall remain valid and binding on the Parties for a period of five years notwithstanding the termination of this Agreement.

6. BREACH OF AGREEMENT

6.1 In the event of either Party committing any breach of this Agreement, the Aggrieved Party shall be entitled to give the Defaulting Party written notice to rectify the stipulated breach within seven (7) days after such notice was hand delivered to the Defaulting Party or sent to such Party by prepaid registered post or e-mail to the chosen domicilium citandi et executandi addresses as chosen and indicated by the Parties in this Agreement, provided that same is capable of remedy.

6.2 A Party (“the Defaulting Party”) shall be deemed to be in breach if, inter alia: -

- 6.2.1 it fails to comply with any of its obligations contained in this Agreement;
- 6.2.2 it is provisionally or finally liquidated or placed under business rescue (pka judicial management); or
- 6.2.3 it ceases to carry on business, enters into any compromise or arrangement with its creditors or has a judgment granted against it, which remains unsatisfied for a period of 7 (seven) days after the granting thereof.

- 6.2.4 it commits an act of insolvency;
 - 6.2.5 any representation, warranty or statement made by a Party in the Agreement is incorrect in any material respect as at the date on which it is made, alternatively should any representation, warranty, undertaking or statement which is repeated under this Agreement cease to be correct in any material respect on any date during the term of this Agreement; and
 - 6.2.6 the Service Provider has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 6.3 The exercise of the Aggrieved (non-defaulting) Party of the rights referred to above, shall be without prejudice to any other rights which that Party may have in terms of this Agreement or at law.
- 6.4 In the event that HPCSA terminates the Agreement in whole or in part, pursuant to a breach of this Agreement committed by the Service Provider, the HPCSA may procure, upon such terms and in such manner as it deems appropriate services similar to those undelivered by the Service Provider, and the Service Provider shall be liable to the HPCSA for any excess costs for such similar services. However, the Service Provider shall continue performance of the Agreement to the extent not terminated.
- 6.5 In the event of a Defaulting Party failing to comply with the notice referred to in 6.1, and without prejudice to any other rights or remedies the Aggrieved Party may have, the Aggrieved Party shall be entitled to:
- 6.5.1 cancel this Agreement and / or;
 - 6.5.2 immediately remove the Defaulting Party and all persons in its employ from the premises and recover possession and occupation of the premises without prejudice to any of the other claims it may have against the Defaulting Party;
 - 6.5.3 recover such damages suffered and all legal costs incurred; and / or
 - 6.5.4 enforce any of its rights in terms of this Agreement.

7. TERMINATION AND CANCELLATION

- 7.1 The Agreement may be terminated by either Party giving to the other 30 days written notice by prepaid registered post, hand-delivery or e-mail to the chosen *domicilium citandi et executandi* address as chosen and indicated by the Parties in this Agreement.
- 7.2 Should the HPCSA be of the opinion that the Service Provider does not deliver services of an acceptable standard, and has twice previously notified the Service Provider in terms of clause 6.1 above, yet the Service Provider has failed to maintain acceptable standard, the HPCSA may, immediately, cancel the Agreement in terms of this clause and the Service Provider shall have no recourse thereafter.
- 7.3 During the initial duration/period of this Agreement, either Party may terminate this Agreement with three (3) months prior written notice to the other Party, for any reason and at any time and no Party shall have a claim of any nature whatsoever against the other Party pursuant to such termination or otherwise.

8. DISPUTE RESOLUTION

- 8.1 A dispute that arises under this Agreement between the Parties must first be referred for informal resolution between each Party's nominated representative responsible for managing and implementing this Agreement. If the dispute cannot be resolved within seven (7) days of such dispute being referred to these persons, it shall be referred for determination by the respective chief executive officers or accounting officers of the Parties, or their nominated representatives for joint determination and if the dispute cannot be resolved amongst them within seven (7) days of such dispute being referred to them, then it shall be referred for determination in accordance with clause 8.2
- 8.2 Any dispute arising from or in connection with this Agreement and not resolved in accordance with the provisions of clause 8.1 shall be finally resolved in Pretoria, Gauteng in accordance with the rules of Arbitration Foundation of South Africa (AFSA) (known as such or by any other name) by a single Arbitrator appointed by Agreement between the Parties. If the Parties cannot agree on an Arbitrator within ten (10) days after it was referred to them in terms of clause 8.1, the Arbitrator shall be appointed by the Secretariat of

AFSA. Each Party to this Agreement expressly consents to arbitration in terms hereof being conducted as a matter of urgency and irrevocably authorises the other Party to apply to the Secretariat of AFSA in terms of Article 23(1) of AFSA's rules for the arbitration to be conducted on an urgent basis. The decision or award resulting from the arbitration shall be final and binding on the Parties. Nothing in this clause shall however prevent a Party from approaching a court of competent jurisdiction in the Republic of South Africa for urgent or interlocutory relief.

9. NON-WAIVER

No latitude and / or indulgence and / or extension of time which either Party may allow to the other in respect of any matter provided herein or for any other matter which either Party was requested to observe or perform in consequence hereof, shall under any circumstances be deemed to be a waiver of the aggrieved Party's rights to require strict and punctual compliance with every provision of the Agreement.

10. CESSION & SUBCONTRACTING

- 10.1 Neither of the Parties shall cede, assign, or transfer any of its rights or obligations under this Agreement without prior written consent of the other Party, which consent may not be withheld unreasonably.
- 10.2 The Service Provider shall notify HPCSA in writing of all subcontracts awarded under this contract if not already specified. Such notification, at whatever stage, shall not relieve the Service Provider from any liability or obligation under the contract.
- 10.3 The Service Provider shall take reasonable measures to ensure that any subcontractors or agents it uses to perform the services are contractually bound to the same standards of service delivery as specified in this Agreement.

11. ENTIRE AGREEMENT

- 11.1 This Agreement together with all appendices, annexures and correspondences initialled by both Parties and attached hereto shall constitute the entire Agreement between the Parties while the Agreement is of full force and effect.
- 11.2 No variation, novation or modification in any way whatsoever, to any part of the Agreement, shall be of any force or effect unless reduced to writing and signed by both Parties.

12. DOMICILIUM CITANDI ET EXECUTANDI

- 12.1 The Parties choose as their *domicilium citandi et executandi* (“*domicilium*”) for all purposes relating to this Agreement, including giving any notice, the serving of any process and for any other purposes arising out of this Agreement the addresses referred to in this Agreement or at such address in South Africa of which the Party concerned may notify the other in writing.
- 12.2 Any Party shall be entitled, from time to time by written notice to the other Party, to vary its *domicilium* to any other address within the Republic of South Africa, one of which should always be a physical address and to vary its facsimile *domicilium* to any other facsimile number.
- 12.3 Any notice given by a Party to the other Party (“addressee”) which is hand delivered between the hours of 08:00 and 16:30 on any Business Day to the addressee’s physical *domicilium* for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery.
- 12.4 Any notice by a Party to the addressee which is posted by prepaid registered post from an address within the Republic of South Africa, at the addressee’s *domicilium* for the time being, shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee, on the 7th (seventh) day after the date of posting.
- 12.5 Where, in terms of this Agreement, any communication is required to be in writing, the term “writing” shall include communication by facsimile or e-mail.

Communications by facsimile or e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 24 (twenty-four) hours after the time of transmission.

12.6 The parties' respective addresses and contact details shall be:

HPCSA: 553 Madiba Street, Arcadia, 0083 Pretoria; tenders@hpcsa.co.za;
Tel: 012 3389300

Service Provider:

13. ATTORNEY COSTS

In the event of either Party instructing its Attorneys to take measures for the enforcement of any of its rights under this Agreement, or instructing its collection agents to collect any amount due in terms of this Agreement, the defaulting Party shall pay to the non-defaulting Party such tracing fees, collecting charges, and other legal costs on Attorney and client scale.

14. WARRANTY OF AUTHORITY

14.1 Each Party warrants to the other Party that it has the power, authority, and legal right to sign and perform this Agreement and that this Agreement constitutes valid and binding obligations on it. Each person signing this Agreement for and on behalf of a Party warrants in his or her personal capacity that he / she is authorized by such Party to do so.

14.2 Should any Party to this Agreement be subject to the provisions of any regulatory legislation, including but not limited to the Public Finance Management Act, 1999 (Act Nr. 1 of 1991) or Local Government Municipal Finance Management Act, 2003 (Act Nr. 56 of 2003), such Party unconditionally warrants, undertakes, and guarantees that it has taken and caused to be taken all necessary steps to ensure compliance with the said legislation, specifically towards ensuring that this Agreement and any of its provisions are entirely valid and enforceable as against such Party.

15. WARRANTIES

The Service Provider warrants that –

- 15.1 to the best of its knowledge, information, and belief it is not a party to any current legal proceedings / which have to do with the Services it will be rendering to HPCSA;
- 15.2 the Services it will provide in terms of this Agreement conform to general industry standards and that the Services are suitable for HPCSA; and
- 15.3 the Services will be available to the HPCSA for a period of no less than the contract period.

16. PENALTIES

HPCSA shall impose the following penalties in the event of non-satisfactory or delayed service, or in the event of non-adherence to agreed timeframes by the Service Provider:

- 16.1 withholding 5% of the fee due to the Service Provider for the first instance;
- 16.2 withholding 15% of the fee due to the Service Provider for the second instance;
- 16.3 withholding 25% of the fee due to the Service Provider for the third instance;
- 16.4 withholding 50% of the fee due to the Service Provider for the fourth instance;
- 16.5 withholding the total fee due to the Service Provider for the fifth and subsequent instance.

17. FORCE MAJEURE

The Service Provider shall not be liable for any delay or inability to perform Services caused by acts of God, fire, flood or storm, pandemic, government actions, labour unrest, riots, terrorist acts, unusual traffic delays or other causes beyond its control. If such inability persists for a continuous period of more than 30 days, either party may terminate this Agreement by notice in writing to the other.

18. PERFORMANCE MANAGEMENT

HPCSA will monitor Contract Performance **monthly/quarterly** in line with the Service Provider Performance Measurement Certificate attached, as Annexure ...

THUS DONE AND ENTERED INTO AT PRETORIA FOR JURISDICTIONAL PURPOSES ON
THIS THE _____ DAY OF _____ 2021

SIGNATURE FOR HPCSA **NAME**
who warrants that he/she is duly authorised hereto
CONFIRMED BY THE UNDERSIGNED WITNESSES:

1.

WITNESS

2.

WITNESS

THUS DONE AND ENTERED INTO AT _____ ON THIS

THE _____ DAY OF _____ 2021

SERVICE PROVIDER SIGNATURE **NAME**
who warrants that he/she is duly authorised hereto
IN THE PRESENCE OF / CONFIRMED BY THE UNDERSIGNED WITNESSES:

1.

WITNESS

2.

WITNESS