

TERMS OF SERVICE



(hereinafter referred to as “the Service Provider” or “Consultants”)

1. Agreement of service
 - 1.1 The Service Provider and the Client have reached an agreement whereas:
 - i) The Client appointed the Service Provider to represent and advise the Client, in matters relating to the Human Resources and / or Industrial Relations (for the services as per the election of the registration form) of the Client in the capacity of advisor, representative, consultant or other, and;
 - ii) The Service Provider wishes to accept such appointment as mentioned in the above clause 1.1 i); and
 - iii) The terms and conditions contained herein would govern their relationship.
2. Introduction
 - 2.1 The Client by signature to the Service Providers engagement document have accepted the terms and conditions contained herein.
 - 2.2 If any term herein conflicts with any existing or future law or any part of legislation, such law / legislation shall be binding in respect of the said term only and all other terms herein shall remain valid and binding.
 - 2.3 The date of signature to the engagement letter would be the confirmed date for service commencement.
 - 2.4 The Service Provider shall be responsible to render the services as reflected in Annexure “A” at the election made as per the registration form signed by the client.
 - 2.5 The Client expects of the Service Provider to render the required service as reflected in Annexure “A” at the premises of the Client as and when possible, but with due understanding that certain aspects of the service may be rendered from other remote locations. It is specifically noted that if the Service Provider enters the premises of the Client he / she will be required to comply with the rules of the said entity always.
3. Payment
 - 3.1 The Client will remunerate the Service Provider for services to be rendered, in advance when applicable as defined in clause 3.3 below, within seven (7) calendar days from date and / or service of invoice and report indicating services rendered, subject to the Service Provider having served, by mail or electronic mail, the tax invoice, on the Client.
 - 3.2 The month end, for reasons related to finances, would be on the twenty fifth (25th) calendar day of every month, or if such a day is a public holiday, Saturday or Sunday, the month end in respect of that month would be on the last working day before such Saturday, Sunday or Public Holiday.
 - 3.3 The fee(s) the Service Provider may invoice to the Client, as per the election of the client and as per the registration form, is as follows:
 - a.) A once-off HR Audit fee to the value of R7 000,00 (Excl VAT) payable in advance, in respect of review, amendment and drafting of employment agreements, policies and other employment operational documents, along with reporting on short comings and potential risks.
 - b.) An hourly rate of R850,00 (VAT Excl), which amount will be increased with CPIX +2% annually on 01 March, which fees will become due and payable for services rendered upon service of an invoice with an appropriate timesheet if applicable. Failure to make payment, at the election of the Consultants, may result in suspension of service until reinstatement, or cancellation of this agreement, safe to state that the termination clauses herein would apply.

- c.) A fee for travelling expenses calculated from time to time, (currently R4,50 p/km), *This fee would be applicable for any travelling done in execution of the Service Providers duties in terms of this agreement, for the duration of the agreement, and would include travelling from the office of the Service Provider to the Client for any meeting to be held or in the execution of the Service Providers duties to other locations.*
 - d.) Fixed fees in respect of "Ad Hoc Services" to be rendered from time to time on reporting and other matters alike.
 - e.) Training to be conducted at a rate as agreed to from time to time depending on the service providers obtained for such training.
 - f.) When the need arises for recruitment services, a fee of twelve percent (12%) of the annual cost to company salary of the successful candidate subject to the Service Provider given the instruction two (2) weeks prior to other service providers for recruitment, and if not the general fifteen percent (15%) of the annual Cost to Company package of the successful candidate would apply.
 - g.) A fee for any other reasonable expenses to enable the successful execution of the Service Providers duties. *Any reasonable expense as defined in this clause would have to be accompanied with written approval obtained from the Client, whether such approval is in the form of Electronic Mail, Mail, Facsimile or hand delivered.*
 - h.) A rate prescribed, as per the registration form, for payroll services, and as per the terms of the payroll services herein, with due cognizance that the fees would increase once per annum at a rate of CPIX +2% on 01 March of each year.
- 3.4 The Client will not deduct any statutory fees from the payment made to the Service Provider as the Service Provider is responsible for its own taxation and indemnifies the Client from any claim of whatsoever nature relating to the payment of taxes from the Client, on behalf of the Service Provider to the South African Revenue Services.
- 3.5 The fees of the service provider will levy and invoice to the client in respect of services will be increased by CPIX +2% each year effective 01 March.
- 3.6 All fees prescribed herein are Exclusive of Value Added Tax and this need to be added to the amounts specified herein when applicable.

4. Terms and Conditions – Payroll

- 4.1 Payroll would be rendered at the rate prescribed in the registration form, safe to state annual increases, or alternatively included in a fixed monthly fee for each employee, as defined in clause 3.3, payable monthly in arrears, within seven (7) days from invoice.
- 4.2 The client is responsible to ensure that the service provider receives the necessary payroll information via electronic mail and in electronic format (excel format and not PDF) at least five (5) days in advance for capturing and uploading of the payroll system.
- 4.3 The payroll system and information thereon would remain the property of the Consultants, and the consultants may elect which ever format and / or software available to conduct its payroll from.
- 4.4 The service provider would supply to the client payslips electronically on the date that the payroll system runs and the client remains liable to print and hand out the payslips to individual staff members.
- 4.5 The Client would receive a payroll summary prior the submission of an EFT file which need to be approved electronically (email confirmation) which would enable the release of the EFT file and payslips.
- 4.6 The client remains responsible to ensure that the financial institution upload system is adjusted according to the file sent from the consultants.
- 4.7 Monthly, on or before the fifth calendar day of a month the consultants would supply to the client a compliance file in respect of returns payable such as UIF, PAYE.
- 4.8 The client remains responsible for the submissions of its EMP201, EMP501 and other statutory submissions.

5. Terms and Conditions – Recruitment

a.) *Definitions*

- i.) The “Agency” meaning **Advius (Pty) Ltd**, or any of its appointed subsidiaries or agents, that renders the appropriate service
- ii.) The “Agreement” meaning this agreement containing the terms of service rendering recruitment offering to the client.
- iii.) The “Client” meaning a client of the Service Provider partaking in the service offering or the prospective employer, individual, department or division that wish to employ a candidate through the services of **Advius (Pty) Ltd**.
- iv.) The “Candidate” meaning the prospective employee introduced to the Client by the Agency. Any Candidate introduced to the Client by the Agency shall remain the Agency’s Candidate for a period of twelve months from the date of introduction of the Candidate to the Client or termination of the Candidate’s employment with the client.
- v.) “Employment” meaning all or any services or offer thereof in exchange for remuneration in goodness or in kind, of whatsoever nature of description undertaken and carried out by a Candidate on behalf of a Client. In respect to permanent, contract or temporary employment, a Candidate will be deemed to be permanently or temporarily employed from the first day of physical commencement.
- vi.) The “Introduction” meaning the forwarding of Candidates CV to the Client, at the Clients request. Arranging of an interview between the Candidate and Client.
- vii.) “The Placement” meaning the offer of employment, assignment or engagement of the Candidate by the Client and is accepted accordingly.

b.) *Placement Fee*

- i.) “Remuneration” meaning the basic salary, guaranteed bonus or anticipated bonus and commission earnings, incentives, company benefits (Medical Aid, Provident Fund, Pension, Car Allowance, Cell phone Allowance, Travel Allowance, etc.)
- ii.) “Placement Fee” will be calculated on the total Cost to Company of the Candidate for a period of twelve months. Should the Candidates employment continue after the intended fixed term period, the Agency would become entitled to that portion of uncalculated placement fees.
- iii.) All placements to be calculated at a fee of 12% of annual, or Cost to Company Salary, with due cognizance to the requirements of payment as reflected in this agreement:
- iv.) The above fee structure is not inclusive of Value Added Tax (VAT)
- v.) Should the Client introduce the Candidate or provide the Candidate’s information to a sister company or any other third party which results in employment, the Client will be liable for the full placement fee to be paid to the Agency unless the employing company agrees to the placement fee.
- vi.) The placement fee will become payable on the date of invoice, but payable within 7 days from invoice which total placement fee would be billed to the client.

c.) *Guarantee*

- i.) If the Candidate leaves the employ of the Client within a period of ninety days from the date of the position’s commencement, the Agency, subject to below, shall supply the Client with a replacement Candidate at the Agency’s sole expense. The Agency shall not be obliged to supply a replacement Candidate to the Client where the Candidate’s employment is terminated for reasons beyond the control of the Candidates such as Restructuring, Company Closure, Retrenchment, Redundancy, Disablement, Death, Unfair dismissal, Unfair Labour Practices or Client breaches of employment agreement with the Candidate which causes the Candidate to resign. In such circumstances, the full placement fee is due.
- ii.) The Client must determine via the correct legal channels that the Candidate is unable to perform the required duties or render the required services of the job for which he or she was employed. Should this process not be follow, the guarantee is then not applicable.
- iii.) In the event that the employment of the Candidate with the Client is terminated for any reason, (within 90 days of the appointment), save for the reasons referred to in above, and a suitably qualified replacement

- Candidate cannot be found by the Agency within a reasonable time period, then the Agency subject to clause below, shall refund to the Client: 50% of the placement fee paid by the Client to the Agency during the first month, 20% of the placement fee paid by the Client to the Agency during the second month and 10% of the placement fee paid by the Client to the Agency during the third month (Final Month).
- iv.) The abovementioned guarantee by the Agency shall only come into effect provided that the Client has made payment of the placement fee due, within seven calendar days of date of invoice. Should the Client have failed to make payment on the due date, the Agency shall be under no obligation to replace any Candidate or refund any sum whatsoever.
 - v.) If there is a salary difference between the first Candidate and the replacement Candidate, the original invoice will be credited and a new invoice, based on the salary package of the replacement Candidate, will be charged.
- d.) *Waiver*
- i.) The Agency will take all reasonable measures to introduce Candidates who meet the Clients requirements. The final decisions to employ a candidate however, rest with the Client. The Agency will not be held responsible, or liable, for any damages caused either directly or indirectly by a Candidate introduced by the Agency. The Agency does not accept liability for any information and / or representation, express or implied, made by a Candidate introduced by the Agency, which subsequently proves to be untrue, unfounded or inaccurate.
- e.) *General*
- i.) Both the Agency and the Client agree to comply with all South African employment legislation when conducting their recruitment process and hereby indemnify one against any issues arising out of noncompliance with the aforesaid legislations.
 - ii.) The Client undertakes that the information pertaining to all Candidates is confidential and that any Candidate's past, current or present employers may not be contacted unless written permission from the Agency and Candidate is presented to the Client.

6. Confidentiality

- 6.1 The Service Provider and Client acknowledges that during the engagement they will have access to and become acquainted with various trade secrets, inventions, innovations, processes, information, records and specifications owned or licensed by the Service Provider / Client and used by them about the operation of their business including, without limitation, the Client / Service Providers' business and product processes, methods, accounts and procedures.
- 6.2 The Service Provider / Client agrees that they will not disclose any of the aforesaid to third parties, directly or indirectly, either during the term of this Agreement or at any time thereafter.
- 6.3 It is however explicitly agreed between the parties that both parties may disclose the content of the services rendered, and the terms of this agreement to any third party in either enforcement of this agreement or to the extent of execution of the services. The party disclosing the information may be requested by the other party to provide reasons for disclosing the content of this agreement for execution of this agreement and / or services.

7. Acquiring information for execution of service

- 7.1 It is required that the Service Provider is granted access or at its election served with documentation, information, processes, timesheets or other as advised from time to time, without which it would not be possible for the service provider to render the required services.
- 7.2 The Client remains responsible for ensuring that instructions reaches the service provider for submission of reports, payroll related queries, workmen compensation fund queries or returns, or any other matter that may be associated with a deadline.
- 7.3 In the event, and only if the Service Provider elects, it may request information from the client on or before specific dates or events to enable the service provider to render its required service, and failure to submit such information, or in the event of a failure to instruct the service provider to render a specific service, the

Service provider would not accept any responsibility for any claim of damages and / or losses whatsoever suffered by the client.

- 7.4 The service provider and client may agree on specific rules regulating the timeframe of delivery of specific information, documentation, processes or other from time to time to give effect to requirement of service.

8. Conflicts of Interest; Non-hire Provision.

- 8.1 The Service Provider is expressly free to perform / render services to and / or on behalf of other parties while performing services for the Client.
- 8.2 The Client agrees that only the Consultants, and no other entity / person, whether legal or natural, will render any service that the Consultants render in terms of this agreement.

9. Termination

- 9.1 This agreement is valid for a period of twelve (12) months from the engagement date.
- 9.2 This agreement may be terminated by either party, in writing, by affording the other party at least two (2) calendar months written notice and served on the other party by hand delivery, electronic mail, facsimile or postage.
- 9.3 The parties may agree on a shorter period of notice, in writing, if the need arises.
- 9.4 The parties agree that in the event of clause 8.2 being affected the reason for termination need not be addressed.
- 9.5 In the event of clause 8.2, the Service Provider will serve on the Client a final invoice for payment and said payment will be paid within seven (7) calendar days from the date of invoice.
- 9.6 Should this agreement enter month ten (10) of the period referred to in clause 8.1, it would automatically be expected between the parties that this agreement would continue for an additional twelve (12) month period from the anniversary date.

10. Indemnity.

- 10.1 The Client unconditionally indemnifies the Service Provider from any claims of any nature, and waives any right to claim any damages and / or losses from the Service Provider, its Directors, Shareholders, Employees', associates or other.
- 10.2 The Service Provider is not attorneys, nor does it portray to be any legal practice, and is also in no means a financial broker or other. The service provider is considered a human resources consulting business

11. Assignment

The Client shall not assign any of its rights under this Agreement, or delegate the performance of any of its duties hereunder, without the prior written consent of the Service Provider. The Service Provider may however assign, delegate and distribute its responsibility herein between its subsidiaries and other entities associated and / or linked to the Service Provider, or partially or in full sell its service offering to another suitable service provider for performance herein.

12. Non-Solicitation

The client undertakes not to offer employment, or arrange such employment, or to affect any conflict between the Service Provider and its staff, and to under no circumstance solicit the custom or good will of any employee, associate, contractor, supplier or other of the Service Provider, without the prior written consent of the Service Provider, whereas such person / entity be required to perform services of any nature, outside the terms of this agreement, for goodness or in kind.

13. Modification or Amendment

No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

14. Unenforceability of Provisions

If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

This document and any Annexure or Schedule attached constitute the entire understanding and agreement of the parties, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

Annexure A

This services list is made with specific reference to Human Resources and Industrial Relations. The services mentioned below are the services rendered by the Consultants to the Client.

Services List

HR Audit Fee

- Review, Amendments and drafting of contracts of employment
- Review, amending and drafting of policies and procedures
- Investigations into future requirements in respect of policies and contracts of employment.
- Legal requirements and compliance to employment legislation (i.e. BCEA / LRA)

Monthly Retainer / Ad hoc service Fee

- Disciplinary proceedings.
- Strike Management
- Warnings
- Restructuring proceedings
- Employee relations.
- Wage negotiations
- Performance Improvement procedures
- Incapacity proceedings for both ill health and performance
- Consulting and advisory services.
- Drafting of specific documentation related to CCMA proceedings
- Exemption applications from bargaining councils

Ad Hoc Services (to be invoiced on approval)

- Employment Equity Compliance
- Workmen Compensation Return of Earnings
- skills development and training consulting
- Submission of workplace skills plans and annual training reports
- Employment Equity Consulting
- Employment Equity reporting submissions.
- Recruitment and Selection
- Training
- Payroll Administration
- Any other reasonable HR / IR Service required as agreed to between the client and service provider from time to time.

Representation

- Representation at CCMA and Bargaining Councils are arranged through association and subject to the client joining an Employers Organisation of the Service Providers Election, which fees for such membership is to the account of the client and in no means part of the fees paid by the client to the Service provider.