

# Acuity Consultants

## STANDARD TERMS AND CONDITIONS

### IT IS AGREED AS FOLLOWS:-

#### 1. INTERPRETATION

1.1. In this Agreement, unless the context clearly indicates a contrary intention, the following words will have the following meanings and cognate expressions will have corresponding meanings:

- 1.1.1. "Acuity" means Acuity Consultants (Proprietary) Limited, Registration Number 2009/006204/07;
- 1.1.2. "Agreement" means these standard terms and conditions and all annexures and addenda thereto;
- 1.1.3. "Candidate" means any person(s) introduced by Acuity to the Client for the purpose of rendering the Services to the Client;
- 1.1.4. "Client" means the person who makes use of the placement services provided by Acuity;
- 1.1.5. "ITA Agreement" means the Information Technology Association Standard Agreement entered into or about to be entered into between Acuity and the Client whereby Acuity shall provide the Candidate to the Client in order for the Candidate to render the Services to the Client on an independent contractual basis;
- 1.1.6. "Parties" means Acuity and the Client collectively or where the context so indicates, either one of them and "Party" shall have a like meaning;
- 1.1.7. "Services" means the work to be performed by the Candidate to the Client relating mainly to, *inter alia*, information technology;
- 1.1.8. "VAT" means value-added tax payable in terms of the Value-Added Tax Act, No 89 of 1991, as amended.

1.2. Clause and paragraph headings are for purposes of reference only and will not be used in interpretation.

1.3. Unless the context clearly indicates a contrary intention, any word denoting any gender includes the other gender, the singular includes the plural and *vice versa*, natural persons includes artificial persons and *vice versa* and insolvency includes provisional or final sequestration, liquidation or judicial management.

1.4. References to a statutory provision include any subordinate legislation made from time to time under that provision and include the provision as modified or re-enacted from time to time.

1.5. Where figures are referred to in numerals and in words and there is any conflict between the numerals and words, the numerals will prevail.

1.6. The terms of this Agreement have been negotiated. Accordingly, the *contra proferentem* rule in terms of which an agreement will be interpreted against the party responsible for the drafting and preparation of an agreement will not apply in the interpretation of this Agreement.

1.7. The *eiusdem generis* rule (being a legal rule of interpretation that when a word or phrase follows two or more other words or phrases, it is construed to be of the same type as the words or phrases which precede it) will not apply and whenever the term "including" is followed by specific examples, such examples will not be construed so as to limit the meaning of that term.

#### 2. THE PLACEMENT SERVICES

Acuity shall provide the service of introducing the Candidate to the Client in order for the Candidate to render the Services to or take up employment with the Client, and the Client accepts the provision of such services provided by Acuity as the Client may from time to time require on the terms and conditions as set out herein.

#### 3. PLACEMENTS

##### 3.1. Permanent Placements:

Should Acuity introduce a Candidate to the Client and the Client employs such Candidate on a permanent basis, the following shall apply:

3.1.1. the Client shall pay to Acuity a once-off permanent placement fee which shall be an amount equal to 20% (twenty percent) of the Candidate's total annual cost to company package ("Permanent Placement Fee");

3.1.2. the Permanent Placement Fee shall be payable by the Client to Acuity on the presentation of an invoice by Acuity

to the Client within 7 (seven) days of the presentation of such invoice;

3.1.3. subject to the payment by the Client to Acuity of the Permanent Placement Fee in terms of clause 3.1.2 above, Acuity shall provide the Client with a 90 (ninety) day guarantee on such permanent placement of the Candidate, which shall commence on the Candidate's first day of employment with the Client ("Guarantee Period");

3.1.4. in terms of the aforesaid guarantee, should a Candidate appointed in terms of clause 3.1 above, leave the Client's employ during the Guarantee Period, for any reason whatsoever, save for retrenchment, death, disablement or unfair dismissal of the Candidate by the Client, or the Client's workplace being or becoming intolerable for any reason whatsoever, Acuity shall, at the discretion of the Client, either:

3.1.4.1. replace the Candidate at no cost up and until the value of the original Permanent Placement Fee;  
or

3.1.4.2. refund part of the Permanent Placement Fee based upon a sliding scale in accordance with the following, in an amount equal to:

3.1.4.2.1. 75% (seventy five percent) of the Permanent Placement Fee should the Candidate leave within 30 (thirty) days of commencement of the Candidate's employment with the Client; or

3.1.4.2.2. 50% (fifty percent) of the Permanent Placement Fee should the Candidate leave within 60 (sixty) days of the Candidate's commencement of employment with the Client; or

3.1.4.2.3. 25% (twenty five percent) of the Permanent Placement Fee should the Candidate leave within 90 (ninety) days of the Candidate's commencement of employment with the Client;

3.1.5. should:

3.1.5.1. Acuity provide the Client with options for a replacement Candidate during the Guarantee Period and none of such options for a replacement Candidate prove to be suitable for employment by the Client; or

3.1.5.2. no suitable Candidate be available; or

3.1.5.3. the Client no longer require such a replacement Candidate,

Acuity shall provide a full refund to the Client, in terms of the guarantee referred to in clause 3.1.3 above, within 30 (thirty) days of the Client's written notification in terms of either clause 3.1.5.1, 3.1.5.2 or 3.1.5.3 above, as the case may be.

### 3.2. **Fixed Term Contract Placements:**

Should Acuity introduce a Candidate to the Client and the Client employs such Candidate on a fixed term contractual basis, the following shall apply:

3.2.1. the Client shall pay to Acuity, at the discretion of Acuity:

3.2.1.1. in consideration for the entire fixed term contract period, a once-off fixed term contract placement fee, which shall be equal to 25% (twenty five percent) of the Candidate's gross contract cost to Client package; or

3.2.1.2. a monthly fee which shall be equal to 25% (twenty five percent) of the Candidate's monthly gross cost to Client, based upon an average of 160 (one hundred and sixty) hours of work by the Candidate to the Client per month;

("Fixed Term Placement Fee");

3.2.2. the Fixed Term Placement Fee shall be paid by the Client to Acuity on the presentation of an invoice by Acuity to the Client, which shall be payable by the Client to Acuity within 7 (seven) days of the presentation of such invoice;

3.2.3. should the Client decide to convert a Candidate's fixed term placement as envisaged in terms of this clause 3.2 to a permanent placement appointment in terms of clause 3.1 above, then a Permanent Placement Fee shall become due and payable by the Client to Acuity in addition to the Fixed Term Placement Fee in accordance with clause 3.1.1 above and the remainder of the provisions of clause 3.1 above shall apply accordingly.

### 3.3. **Independent Contract Placements:**

Without detracting from, and in amplification of, the terms and conditions as set out in the ITA Agreement or any other written agreement on similar terms and conditions to the ITA Agreement entered into or to be entered into between the Parties, should Acuity introduce a Candidate to the Client and the Client appoints such Candidate on an independent contractual basis, the following shall apply:

- 3.3.1. fees shall be paid by the Client to Acuity only for the time worked by the Candidate in rendering the Services and the Candidate shall be charged out by Acuity to the Client (on terms and conditions as agreed between Acuity and the Client) at an hourly or daily rate which shall be determined between the Parties from time to time;
- 3.3.2. any other charges relating to overtime, weekend, public holiday work, travel, and/or board and lodging, will be as agreed in writing between the Parties, failing which, such charges shall be in accordance with Acuity's standard charges determined from time to time;
- 3.3.3. during the period over which the Candidate is providing independent contractual services to the Client, the Candidate will be, for all intents and purposes, under the direct control and supervision of the Client, and it shall be the responsibility of the Client to ensure that the Candidate complies with all the requirements and instructions given by the Client to the Candidate;
- 3.3.4. in the event that the Candidate is offered and accepts any further independent contractual work whatsoever from the Client within a period of 12 (twelve) months following the completion of the Candidate's initial appointment by the Client on an independent contractual basis in terms of this clause 3.3, Acuity shall be entitled to charge the Client a fee for each additional independent contractual appointment of the Candidate by the Client at an amount equal to 25% (twenty five percent) of the Candidate's gross independent contract cost to Client package;
- 3.3.5. in the event that the Candidate is offered and accepts a permanent position with the Client, the Client shall, in addition to any other charges payable by the Client to Acuity in terms of this clause 3.3, be charged a permanent placement fee which shall be equal to 25% (twenty five percent) of the Candidate's gross annual cost to Client package;
- 3.3.6. An invoice for the fees due to Acuity in terms of clauses 3.3.1 and 3.3.2 above will be rendered to the Client on a monthly basis, and such fees and/or any other fees chargeable in terms of this clause 3.3, shall be payable by the Client to Acuity on presentation of an invoice by Acuity to the Client within 7 (seven) days of the presentation of such invoice.

#### 4. PAYMENT OF PLACEMENT FEES

- 4.1. Unless otherwise stated, all amounts payable by the Client to Acuity are exclusive of VAT, and the Client shall be liable to pay VAT

at the ruling rate to Acuity in respect of any such amount payable on representation of a VAT invoice by Acuity to the Client.

- 4.2. If any amount is not paid within an agreed time period the Client shall be liable for interest at the maximum rate permitted in terms of Section 105(1) of the National Credit Act, No 34 of 2005. Such interest shall be calculated and paid monthly in advance, provided that if the interest is not paid as aforesaid, the interest shall be added to the principal sum and the whole amount shall form the principal debt which shall bear interest as aforesaid.
- 4.3. All payments made by the Client to Acuity shall be made in cash, without deduction or set-off into the bank account nominated by Acuity in writing from time to time.
- 4.4. The Client shall not be entitled to withhold or defer any payment to Acuity for any reason whatsoever except as may be contemplated in terms of this Agreement.
- 4.5. A certificate signed by Acuity specifying the amount due and payable by the Client shall be full and sufficient proof of the amount due and payable to Acuity in terms of this Agreement.
- 4.6. In the event of Acuity instructing attorneys to collect from the Client an amount owing to Acuity, the Client agrees to pay all costs on the scale as between attorney-and-own-client, including collection charges.

#### 5. NO WARRANTY AND INDEMNITY

- 5.1. **Acuity accepts in good faith that details and information supplied by the Candidate to it are true and correct and therefore does not warrant or represent that the Candidate is fit for the specific purpose for which the Client has appointed the Candidate, and Acuity shall not be responsible for any errors, omission or misrepresentations on behalf of the Candidate.**
- 5.2. **Acuity has sourced the Candidate based upon the specifications required and given by the Client to Acuity and the Candidate's particular experience and suitability for the services required by the Client have been independently assessed by the Client who have satisfied themselves in respect thereof and have accepted the Candidate on that basis.**
- 5.3. **In light of clause 5.2 above, and whilst Acuity shall endeavour to do everything reasonably possible to ensure that Candidates are of the highest calibre, the Client indemnifies and holds Acuity harmless against any loss, damage, liability, claim, expense or penalty whatsoever sustained by the Client arising directly or indirectly from any act or omission, whether negligent or otherwise, by any Candidate placed at the Client.**

## 6. ARBITRATION

- 6.1. Should any dispute arise between the Parties to this Agreement in regard to:
- 6.1.1. the interpretation of; or
  - 6.1.2. the carrying into effect of; or
  - 6.1.3. any of the Parties rights and obligations in terms of this Agreement; or
  - 6.1.4. the termination of or arising from the termination of; or
  - 6.1.5. the rectification of this Agreement,
- then the dispute shall be submitted to and decided by arbitration.
- 6.2. The arbitration shall be held:
- 6.2.1. in Cape Town;
  - 6.2.2. with only the Parties and their representatives present thereat;
  - 6.2.3. otherwise in terms of the Arbitration Act, No. 42 of 1965, it being the intention of that the arbitration shall, where possible, be held and concluded within 21 (twenty one) working days after it has been demanded.
- 6.3. The arbitrator shall be, if the matter in dispute is principally:
- 6.3.1. a legal matter, a practicing advocate of not less than 10 (ten) years standing;
  - 6.3.2. an accounting matter, a practicing chartered account of not less than 10 (ten) years standing;
  - 6.3.3. any other matter, any independent person agreed to between the Parties.
- 6.4. Should the Parties fail to agree on an arbitrator within 5 (five) days after the arbitration has been demanded then the arbitrator shall be nominated by the President for the time being of the Cape Law Society.
- 6.5. Should the Parties fail to agree whether dispute is of a legal, accounting or other nature within 7 (seven) days after the arbitration has been demanded then it shall be considered a matter as referred to in clause 6.3.3 above.
- 6.6. The arbitrator shall have the fullest and freest discretion with regard to the proceedings and his award shall be final and binding on the Parties to the dispute. Furthermore, the arbitrator:
- 6.6.1. may dispense wholly, or in part, with formal submissions or pleadings;
  - 6.6.2. shall determine the applicable procedure;

6.6.3. shall not be bound by strict rules or evidence;

6.6.4. shall take into account the practicality or otherwise of ordering the continuance of illegal relationship between the Parties; and

6.6.5. shall include such order as to costs as he deems just and the Parties shall be entitled to have the award made an order of any court of competent jurisdiction.

## 7. ADDRESS FOR SERVICE OF LEGAL NOTICES AND DOCUMENTS

7.1. Each of the Parties chooses the address for the service of legal notices and documents ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement at their following respective addresses set out below:

7.1.1. Acuity at 46 Main Rd, Claremont, 7700, Telefax Number +27 (0) 86-215 3521, Email Address: \_\_\_\_\_;

7.1.2. Client at \_\_\_\_\_, Telefax Number +27 (0) \_\_-\_\_\_\_\_, Email Address; \_\_\_\_\_.

7.2. Each of the Parties shall be entitled from time to time, by written notice to the others to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or *poste restante* (a notation written on a letter indicating that the letter should be held at the post office until claimed by the addressee).

7.3. Any notice given and any payment made by a Party to any of the others ("the addressee") which:

7.3.1. is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of the delivery;

7.3.2. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the 4<sup>th</sup> (fourth) day after the date of posting;

7.3.3. is transmitted by telefax during normal business hours of the addressee shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee within 1 (one) hour after receipt of transmission;

7.3.4. is transmitted by email during normal business hours of the addressee shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee within 1 (one) hour after receipt of transmission.

7.4. Notwithstanding the provisions of clause 7.3, in the event that a written notice or any process is actually received by a Party, such receipt shall be valid for all purposes under this Agreement notwithstanding that it was not received at a Party's chosen domicile.

## 8. JURISDICTION

The Client consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act, No 32 of 1944 having jurisdiction under Section 28 of the said Act, notwithstanding that the claim by Acuity exceeds the normal jurisdiction of the Magistrate's Court as to amount. Acuity shall, in its discretion, be entitled to proceed against the Client in any other court of competent jurisdiction, notwithstanding the foregoing.

## 9. ASSIGNMENT

Neither the Client nor Acuity shall have the right to assign, cede or make over this Agreement or any portion thereof without the written consent of the other Party.

## 10. BREACH

If any Party ("the Defaulting Party") commits a breach of this Agreement and/or fails to comply with any of the provisions hereof, then the other Party shall be entitled to give the Defaulting Party 7 (seven) days notice in writing to remedy such breach and/or failure and if the Defaulting Party fails to comply with such notice, then the other Party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the other Party may have in law or in terms of this Agreement, including the right to claim damages:

10.1. to cancel this Agreement; or

10.2. to claim immediate performance and/or payment of all the Defaulting Party's obligations in terms hereof.

## 11. GENERAL PROVISIONS

11.1. Circumstances beyond the control of Acuity shall be sufficient excuse for any delay or suspension in the providing of services by Acuity to the Client.

11.2. Any document prepared by Acuity remains its exclusive property and any information relating to any Candidate shall remain confidential and shall not be passed on to a third party.

11.3. In the event of the Client forwarding details of the Candidate to any other company, subsidiary, associate company or third party,

within 12 (twelve) months after being introduced by Acuity to the Client, who in turn employs the Candidate in any way whatsoever, the Client shall be liable for an applicable placement fee as if the Client himself had employed the Candidate.

11.4. If the Client employs an employee or former employee, who commences employment with the Client within 3 (three) months of leaving the employ of Acuity for any reason, of Acuity, the Client shall pay Acuity a fee equal to 30% (thirty percent) of the employee's gross annual remuneration package received from Acuity.

11.5. Subject to clauses 3.3.4 and 3.3.5 above, in the event of a Candidate being offered and accepting any work from the Client within a period of 12 (twelve) months of being introduced to the Client by Acuity, then Acuity will charge a placement fee at its standard fees from time to time.

11.6. No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.

**11.7. This document contains the entire Agreement between the Parties and no Party shall be bound by any undertakings representations, warranties, promises or the like not recorded in this Agreement.**

11.8. No indulgence, leniency or extension of time which any Party may grant or show to any other Party, shall in any way prejudice or preclude the Party granting any such indulgence, leniency or extension of time from exercising any of its rights in the future.

11.9. All terms and provisions of this Agreement are deemed to be independent of each other and accordingly, if any term is found to be invalid, unlawful or unenforceable, such term or provision shall be deemed to be pro non scripto and the remainder of the Agreement shall continue to be of full force and effect.

DATED at \_\_\_\_\_ on this \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_

AS WITNESSES:-

For and on behalf of:-

1.

\_\_\_\_\_

2.

\_\_\_\_\_

\_\_\_\_\_, who warrants that he is duly authorised  
hereto

DATED at \_\_\_\_\_ on this \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_

AS WITNESSES:-

For and on behalf of:-

**ACUITY CONSULTANTS (PROPRIETARY) LIMITED**

1.

\_\_\_\_\_

2.

\_\_\_\_\_

\_\_\_\_\_  
Director, who warrants that he is duly authorised hereto