# TEMPORARY EMPLOYMENT SERVICE LEVEL AGREEMENT

1. AMT PLACEMENT SERVICES (PTY) LTD

2. THE CLIENT

INITIAL

# INDEX


1. PARTIES ..... 3

2. DEFINITIONS ..... 3

3. INTRODUCTION ..... 5

4. AGREEMENT ..... 5

5. DURATION ..... 6

6. INDEPENDENT CONTRACTOR ..... 6

7. PAYMENT ..... 6

8. PRE-REQUISITES ..... 7

9. ADMISSION TO THE CLIENT'S PREMISES ..... 8

10. WARRANTIES ..... 8

11. CONFIDENTIALITY ..... 8

12. CESSION AND DELEGATION ..... 9

13. LIMITATION ..... 9

15. DISPUTE RESOLUTION ..... 10

16 NOTICES AND DOMICILIA ..... 11

17. GOVERNING LAW ..... 12

18. WAIVER ..... 12

19. WHOLE AGREEMENT ..... 13

20. SEVERABILITY ..... 13

21. GENERAL LEGAL PROVISIONS ..... 13

SCHEDULE I – PART 1 ..... 15

PART 2 – SCHEDULE II INFORMATION ..... 16

SCHEDULE II ..... 24

ANNEXURE B ..... 26


INITIAL

# TEMPORARY EMPLOYMENT SERVICE LEVEL AGREEMENT

entered into by and between :

## 1. PARTIES

1.1 **AMT PLACEMENT SERVICES (PTY) LTD**
**Registration number: 2000/022443/07**
herein represented by ALBERTO TAVARES
in his capacity as CHIEF EXECUTIVE OFFICER
duly authorised thereto in terms of a Resolution
("AMT")

1.2 _____
**Registration Number:** _____
herein represented by _____
in his capacity as _____
duly authorised thereto in terms of a Resolution
("THE CLIENT")

1.3 The parties agree as set out below.

## 2. DEFINITIONS

In this agreement and in the annexures to this agreement:-

2.1 clause headings are for convenience and are not to be used in its interpretation;

2.2 unless the context indicates otherwise, an expression which denotes:

INITIAL

2.2.1 any gender includes the other gender;

2.2.2 a natural person includes a juristic person and *vice versa*; and

2.2.2 the singular includes the plural and *vice versa*;

2.3 in this agreement, the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings;

2.3.1 **"agreement"** means this Agreement and the Schedules thereto;

2.3.2 **"business day"** means any other day than a Saturday, Sunday or official public holiday in South Africa;

2.3.3 **"effective date"** means the date referred to in Schedule 1;

2.3.4 **"premises"** means THE CLIENT's premises, wherever located;

2.3.5 **"service"** means the service to be rendered by AMT to THE CLIENT as set out in Annexure A – Part 3 of the agreement;

2.3.6 **"schedule"** means the Schedules and Annexures attached to the agreement, which form an integral part of the agreement;

2.3.7 **"signature date"** means the date of signature of the Agreement by the party signing last in time;

2.3.8 **"South Africa"** means the Republic of South Africa;

2.3.9 **"VAT"** means value added tax in terms of the Value Added Tax Act 89 of 1999 as amended;

2.3.10 Any notice or consent for purposes of this agreement shall:

2.3.10.1 be in writing;

2.3.10.2 be sent by registered post or delivered;

2.3.10.3 be addressed to the respective party at *Domicilium Citandi et Executandi* referred to in clause 16 of this agreement; and

2.3.10.4 be deemed to have been received by the party to whom it is addressed at the time of delivery thereof on the 5th day, following the posting thereof in the South Africa, as the case may be.

## 3. INTRODUCTION

3.1 THE CLIENT wishes to appoint AMT to render the service;

3.2 AMT is willing and able to render the service;

3.3 The parties have agreed to record the agreement in writing;

## 4. AGREEMENT

4.1 THE CLIENT appoints AMT on an exclusive basis to provide the service as from the effective date and AMT hereby accepts the appointment.

4.2 It is specifically agreed that AMT will be entitled to suspend the service should any payment in terms of this agreement not be made timeously or in full, as contemplated in clause 7.4 below.

INITIAL

## 5. DURATION

5.1 The agreement shall commence on the effective date and shall continue for the period referred to in Annexure A – Part 1, unless it is cancelled by agreement between the parties or in terms of clause 14 below.

5.2 In the event that the agreement is terminated by THE CLIENT prior to the expiry date (unless the termination is agreed between the parties, in writing) and THE CLIENT retains, directly or indirectly, any of the employees supplied by AMT in terms of this agreement, in any capacity whatsoever, THE CLIENT shall be liable to pay a permanent placing fee to AMT as set out in clause 4.7.17 of Annexure A – Part 3.

5.3 For the sake of clarity, it is recorded that this permanent placing fee shall be payable in addition to any damages which AMT may suffer as a result of the early termination of the agreement by THE CLIENT.

## 6. INDEPENDENT CONTRACTOR

6.1 Nothing in this agreement shall be deemed to appoint AMT or any of its employees or agents to be the agent, representative or employee of THE CLIENT.

6.2 No provision of this agreement shall be construed as to create a partnership or employment relationship between THE CLIENT and AMT and/or AMT's employees.

## 7. PAYMENT

7.1 THE CLIENT shall pay to AMT the amounts as more fully set out in the Rates Schedule attached to the Agreement.

7.2 It is recorded that the rates as set out in the Rates Schedule will be revised during the time period stipulated in Annexure A – Part 1 each year, and amended according to the annual increase as prescribed by the applicable authorities.

7.3 It is recorded that the amounts set out in the Rates Schedule exclude VAT.

7.4 All payments due to AMT shall be made without deduction or set-off, failing which THE CLIENT shall be deemed to be in material breach of the agreement and in which event AMT may elect, after due notice has been given in terms of clause 14 below, to suspend the service, until such time that all amounts due to it have been paid in full.

7.5 All late payments shall be subject to the payment of interest, as set out in clause 4.7.10 of Annexure A - Part 3 and clause 3 of the Part of Rates Schedule.

7.6 It is agreed that THE CLIENT will be entitled to query the correctness of AMT's statements for a period of 90 (ninety) days from the date of statement, failing which it shall be deemed that the statement is correct and AMT shall not be obliged to entertain any further enquiries regarding such statements and shall be entitled to retain all monies paid by THE CLIENT in respect of such statements.

## 8. PRE-REQUISITES

8.1 *Permits and licences*

AMT shall, at its own cost, procure all permits, certificates and licences required by any competent authority necessary for the execution of its obligations in terms of this agreement.

8.2 *Statutory requirements*

AMT shall, at all relevant times, comply with all relevant statutory requirements, which include, but is not limited to the requirements referred to in the Schedules annexed to the Agreement.

INITIAL

## 9. ADMISSION TO THE CLIENT'S PREMISES

The right of admission of AMT, its employees and sub-contractors to the CLIENT's premises shall, at all times, be subject to:

9.1 the requirements as determined and applied by THE CLIENT's external security and Protection Services Department

9.2 strict compliance with THE CLIENT's work, safety, security and health rules.

## 10. WARRANTIES

AMT gives the warranties as set out in the Schedule and no other or further warranties are given.

## 11. CONFIDENTIALITY

11.1 All information obtained by AMT in the course of the execution of its obligations in terms of this agreement, shall be held in confidence by AMT and all documents furnished by THE CLIENT and/or copies thereof, shall be dealt with in accordance with THE CLIENT's instructions.

11.2 AMT shall not during the subsistence of the agreement or after termination thereof, make any press release or otherwise publish information which could directly or indirectly, cause press releases or information to be published, relating to the execution of its duties in terms of the agreement, or the operation of THE CLIENT, or relating to the relationship between THE CLIENT and AMT, without first obtaining the written approval of THE CLIENT.

11.3 The provisions of this clause 11 will apply mutatis mutandis in respect of any information and documents furnished by AMT to THE CLIENT.

## 12. CESSION AND DELEGATION

AMT shall not be entitled to cede or assign any of its rights or obligations in terms of this agreement without first obtaining the written consent of THE CLIENT, which consent shall not be unreasonably withheld.

## 13. LIMITATION

13.1 Neither party shall be liable for any indirect, special or consequential damages suffered by the other party, whether as a consequence of breach of contract or delict arising directly or indirectly from or due to this Agreement.

13.2 It is agreed that neither AMT nor an employee will be responsible for physical loss or damage to, or loss of use of, machinery, equipment, materials, or other property while in the care, custody or control of an employee of AMT.

## 14. BREACH

Should either party fail to comply with its obligations in terms of the agreement, the innocent party shall be obliged to give 7 (seven) days' written notice to comply (if the breach is capable of rectification), failing which the innocent party shall be entitled to:

14.1 Cancel the agreement, and subject to the provisions of clause 13 above, claim damages, on condition that THE CLIENT's damages shall be limited to a maximum of AMT's fee for the preceding month, excluding VAT; or

14.2 In the alternative claim specific performance by enforcing the terms and conditions of the agreement.

INITIAL

## 15. DISPUTE RESOLUTION

15.1 In the event of any dispute between the parties arising from the agreement, there shall be an obligation on the parties to negotiate in good faith in an attempt to resolve a dispute.

15.2 In the event of the parties not being able to resolve the dispute by means of negotiations in good faith, either party may, by written notice served upon the other, within 14 (fourteen) days of the date of declaring a dispute, require that the dispute or difference arising out of this agreement, be referred to arbitration.

15.3 Such arbitration shall be conducted in accordance with the provisions of the Arbitration Act (Act No. 42 of 1965, as amended from time to time), provided that:

15.3.1 the arbitration proceedings shall take place within the Gauteng province;

15.3.2 it shall not be compulsory to apply the requirements of the law of procedure or the usual rules of evidence, strictly;

15.3.3 the arbitrator shall be an advocate with at least 10 (ten) years practical experience as appointed by the Chairperson of the Johannesburg Bar Council;

15.3.4 the arbitrator shall be entitled to call for the assistance and/or evidence or specialists and/or professionals as in his opinion may be required in view of the essential nature of the dispute or any particular facet thereof; and

15.3.5 the decision of the arbitrator shall be final and binding on both parties and may be made an order of a competent court.

INITIAL

## 16 NOTICES AND DOMICILIA

16.1 AMT selects as its domicilia citandi et executandi for the purpose of any legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this agreement, the following address:

| | | |
|---|---|---|
| 16.1.1 | Physical address | 14 Hertz Boulevard<br>VANDERBIJLPARK<br>1911 |
| 16.1.2 | Postal address | P.O. Box 4115<br>VANDERBIJLPARK<br>1900 |
| 16.1.3 | Telefacsimilee | (016) 933-4639 |

16.2 THE CLIENT:
SEE SCHEDULE 1

or such other address or telefacsimilee number as may be substituted by notice given as required. Each of the parties will be entitled, from time to time, to vary its/his domicilium notice to the other, to any other address within the Republic of South Africa which is not a post office box or poste restante.

16.3 Any notice addressed to a party at its physical or postal address will be sent by prepaid registered post, or delivered by hand, or sent by telefacsimilee.

16.4 A notice will be presumed, unless the contrary is proved, to have been received:

INITIAL

16.4.1 if posted by prepaid registered post, seven days after the date of posting thereof;

16.4.2 if hand-delivered during business hours on a business day, on the date of the delivery;

16.4.3 if sent by telefacsimilee on the first business day following the date of sending such telefacsimilee.

## 17. *FORCE MAJEURE*

17.1 The failure of a party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of, or default under this Agreement, provided such inability arises from an event of *Force Majeure*, and that the party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Agreement, and has informed the other party as soon as possible about the occurrence of such an event.

17.2 During the subsistence of *Force Majeure*, the performance of both parties under the Agreement shall be suspended, on condition that either party may elect to cancel the Agreement should the event of *Force Majeure* continues for more than 14 (fourteen) days by giving written notice to the other party.

## 18. GOVERNING LAW

This Agreement shall be construed by and interpreted in accordance with the laws of the Republic of South Africa.

## 19. WAIVER

No waiver of any of the terms and conditions of this agreement will be binding for any purpose unless expressed in writing and signed by the party giving the same, and any

such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party in exercising any right, power or privilege will operate as a waiver, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any right, power or privilege.

## 20. WHOLE AGREEMENT

20.1 This agreement constitutes the whole of the agreement between the parties relating to the subject matter thereof, and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties.

20.2 The parties agree that no other terms or conditions, whether oral or written, and whether express or implied, apply.

20.3 The parties agree that no warranties and representations, save those expressly given or made in this agreement, have been given or made, whether express or implied.

## 21. SEVERABILITY

All the provisions of this agreement shall be severable and no provision shall be affected by the invalidity of any other provision of this agreement.

## 22. GENERAL LEGAL PROVISIONS

22.1 This Agreement is signed by the parties on the dates and places indicated opposite their respective names.

22.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

INITIAL

22.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

22.4 Any rule of construction that this contract shall be interpreted against the party responsible for drafting or preparation of the contract shall not apply.

THUS DONE and SIGNED at _____ on this the _____ day of _____ 20___ in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ _____

for and on behalf of AMT

2. _____

THUS DONE and SIGNED at _____ on this the _____ day of_____ 20___ in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ _____

for and on behalf of THE CLIENT

2. _____

INITIAL

## ANNEXURE A – PART 1

GENERAL INFORMATION

1. Effective date (see clause 2.3.3): _____

2. Duration (see clause 5): _____

3. The annual revision of rates will take place during _____ of each year / or on _____ **[*DELETE IF NOT APPLICABLE]** (see clause 7.2).

4. THE CLIENT's domicilium citandi et executandi (see clause 16):

   4.1 Physical address:

   _____
   _____
   _____
   _____

   4.2 Postal address:

   _____
   _____
   _____
   _____

   4.3 Telefacsimilee:

   _____

INITIAL

## PART 2 –INFORMATION

The rates are valid until: _____ (see 'Part of Rates Schedule', clause 1).

INITIAL

## ANNEXURE A – PART 3

THE SERVICE AND RELATED MATTERS

1 In this Schedule the following words will have the following meanings:

1.1 **"written labour request"** – means the order issued by the CLIENT's representative accepting THE CONTRACTOR's tender or any part thereof;

1.2 **"candidate"** – means AMT's employees to be made available to THE CLIENT in terms of the agreement from time to time;

2 AMT undertakes to supply THE CLIENT, from time to time, with temporary employees in accordance with THE CLIENT's written labour requests against payment of the amounts set out in the Rates Schedule.

3 THE CLIENT may, from time to time and when it requires employees for specific dates, request AMT to respond to THE CLIENT's written labour request. On acceptance of the request, AMT will provide the required employees, on condition that AMT will not be obliged to accept the written labour request, nor shall it be obliged to furnish reasons for its inability or unwillingness to provide employees in terms of a particular labour request.

4. Once a written labour request has been issued and accepted by AMT, AMT shall:

4.1 provide THE CLIENT with possible candidates in accordance with the written labour request, and use its best endeavors to secure for THE CLIENT such numbers of workers in the categories and in accordance with THE CLIENT's stated requirements for the duration required by THE CLIENT from time to time;

4.2 conclude written agreements of employment with each successful candidate in terms of which it shall be clear that the candidate is employed by AMT and not by THE CLIENT and which agreement of employment shall comply with all

INITIAL

relevant legislation, including, but not limited to the requirements of any applicable bargaining Council,

4.3 remunerate each candidate at a rate not less than the minimum rate stipulated in any applicable legislation, law or collective agreement and THE CLIENT shall not be required to make any payment of whatsoever nature directly to any of the worker's,

4.4 remunerate each candidate in terms of the employment agreement between the particular candidate and AMT on condition that AMT shall be entitled to deduct such amounts from the worker's remuneration as it may be allowed to in terms of any applicable law, including, but not limited to the Income Tax Act, as amended.

4.5 ensure all employees are registered for purposes of sectorial determinations or council contributions and that contributions are correctly and promptly made, unless AMT can prove to the satisfaction of THE CLIENT that such employees are exempted,

4.6 ensure that SITE/P.A.Y.E are deducted and paid to SARS,

4.6.1 ensure that all statutory required registrations are up to date; and

4.6.2 ensure that skills levy contributions are correctly calculated and paid to SARS.

4.7 THE CLIENT shall:

4.7.1 keep record of all the hours worked by each employee and shall provide AMT with timesheets at the end of each week, fortnight or month as the case may be, in time to meet the monthly / fortnightly / weekly payroll processing deadline. Timesheets form the basis of billing,

INITIAL

4.7.2 comply (and allow AMT to comply) in general with all applicable legislation, collective agreements and binding arbitration awards,

4.7.3 ensure compliance with the provisions of the Occupational Health and Safety Act, including but not limited to the provisions regarding protective clothing,

4.7.4 comply with and ensure compliance with THE CLIENT'S safety rules as prescribed by legislation,

4.7.5 ensure that employees comply with lawful instructions issued by THE CLIENT and/or AMT and not by any third party,

4.7.6 ensure that THE CLIENT's property and the property of its customers and/or suppliers to which AMT and the employees have access to, shall not be damaged and be used in a proper and careful manner solely for the purposes for which it was made available to AMT and/or the employees,

4.7.7 report to the ATM's designated representative any accident involving any of the employees or any incident in terms of which any property of THE CLIENT has been damaged,

4.7.8 shall be obliged to provide AMT the opportunity to act in accordance with the applicable legislation and to provide AMT with the necessary documentation, witnesses and evidence in respect of disciplinary matters,

4.7.9 when it has determined that an employee is not performing as contemplated in clause 5.5 below, ensure that a poor performance

counseling is embarked upon and to assist with this process as far as reasonably possible,

4.7.10 promptly pay all invoices received from AMT within 30 (thirty) days from the month-end to which the invoice relates in accordance with the time sheets prepared by THE CLIENT, which shall serve at its authorization for payment in accordance with the time sheets. Should THE CLIENT fail to pay any amount due within the time period stipulated in this clause 4.7.10, THE CLIENT shall pay interest at a rate of 15,5% per annum from the date on which the amount becomes due, until date of payment, both days included,

4.7.11 supervise the employee in relation to his duties at THE CLIENT and accordingly ensure that the employee is aware of his duties and THE CLIENT's expectations in respect of such employee,

4.7.12 furnish AMT with a suitable space at its premises to provide the service and to comply with all its obligations in terms of the agreement,

4.7.13 accept full responsibility for all bodily injury (or death), property damage, fire, theft, collisions, or public liability claims arising from the performance of the employee during his employment and/or arising from the use of a motor vehicle or any powered industrial vehicle provided by THE CLIENT to the employee,

4.7.14 notify AMT in writing of any changes in the duties and responsibilities of an employee,

4.7.15 indemnify and hold AMT harmless against any claims arising from the injuries to or death of employees, agents and/or third parties during the course of the delivery of the service and from losses resulting from work performed by employees, agents and/or third parties,

INITIAL

4.7.16 not entrust an employee with unattended premises, or any part thereof, or the care, custody or control of cash or other valuables without first obtaining the prior written consent of AMT,

4.7.17 pay a permanent placing fee equal to _____% of the employee's gross annual remuneration.

5. THE CLIENT retains the right to:

5.1 audit any aspect of AMT's service, as contemplated in this agreement, with reasonable prior notice to AMT.

5.2 interview and test all possible candidates to be employed for the purposes of this agreement and to refuse or to accept them,

5.3 verify all qualifications and trade certificates applicable to each candidate,

5.4 require and allow any disciplinary proceedings to be instituted against any employee,

5.5 request AMT to take appropriate steps when an employee is not delivering the expected services in accordance with the expected performance standards and stated requirements set by THE CLIENT, subject to compliance with clause 4.7.8 above,

5.6 request AMT to obtain criminal & credit checks and supply the reports thereon to THE CLIENT within a reasonable time frame of THE CLIENT having made such request in writing at additional costs to be paid by THE CLIENT, such costs to be agreed upon unless it is included in the Rates Schedule.

INITIAL

6. THE CLIENT's additional rights:

Notwithstanding any other provision in the agreement and in addition to any rights which THE CLIENT may have in terms of this agreement, it will be entitled to determine the hours and shifts which each of the employees shall work, provided that such determination shall not be in contravention of any legislation and shall be communicated in writing to AMT.

7. AMT warrants as follows:

7.1 It is an independent contractor and not a personal service provider as contemplated in the Income Tax Act, as amended, and THE CLIENT will not be obliged to deduct or withhold any PAYE on behalf of AMT or any of its employees.

7.2 It is registered as an employer in terms of:

7.2.1 Income Tax Act with SARS for PAYE,

7.2.2 Compensation for Occupational Injuries and Diseases Act no. 130 of 1993, as amended,

8. AMT herewith supplies THE CLIENT with the under-mentioned information and undertakes to furnish THE CLIENT with copies of such certificates and proof of registration, which THE CLIENT may require on reasonable written request.

8.1 Letter of Good Standing issued by the Compensation Commissioner;

8.2 VAT Registration No. 4180190995

8.3 Notice of Registration in terms of Skills Development Levy;

8.4 Unemployment Insurance Fund reference number 0605096/1

P.A.Y.E reference Number 701/07/3763/5

8.5 Registration with the Metal and Engineering Industries Bargaining Council;

INITIAL

| | |
|---|---|
| Income Tax reference number | 9463118142 |
| SARS office where registered as a taxpayer | Vereeniging |

9. Permanent Placements

In the event of THE CLIENT wishing to employ any of the employees on a permanent basis, a fee will be payable as stipulated in the Permanent Placement Agreement enclosed (Annexure “B”).

INITIAL

## PART OF RATES SCHEDULE

1. In consideration for rendering the services as set out in Annexure A – Part 3, AMT shall be entitled to payment in accordance with the rates as set out in the Rates Schedule. The rates are valid for the time period set out in Annexure A – Part 2, until the yearly increases are implemented. It is agreed that AMT shall be entitled to increase the agreed billing rate, should it later become aware of a collective agreement or sectorial determination and/or due to a change in any legislation or the amendment of a current collective agreement or sectorial determination.

   AMT will inform THE CLIENT of any increase due to new or amended legislation or bargaining council agreements. AMT will then increase the agreed billing rate by amount equal to the increase indicated in the new or amended legislation or bargaining council agreement.

2. The rates as set out in the Rates Schedule include all taxes as contemplated in the Income Tax Act and/or any Government regulation promulgated in terms thereof, and profit, but excludes VAT which shall be payable by THE CLIENT in addition to the rates. **(Payment of any notice periods which are not worked, as well as payment of any arbitration awards which may be issued, are excluded and will be payable by THE CLIENT in addition to any other payment in terms of this agreement.)**

3. AMT shall be paid within 30 DAYS of submitting a VAT invoice (which complies with the relevant legislation) to THE CLIENT substantiated by client approved records submitted by THE CLIENT setting out the hours actually worked by each employee for the particular period for which the VAT invoice is submitted. THE CLIENT agrees to promptly pay all approved invoices issued in respect of services provided in accordance with the time sheets signed by THE CLIENT, failing which interest shall be payable as contemplated in clause 4.7.10 of Annexure A – Part 3.

INITIAL

## RATES SCHEDULE

RATES SCHEDULE ATTACHED

INITIAL

## ANNEXURE B

## PERMANENT PLACEMENT AGREEMENT

INITIAL