

# **SERVICES AGREEMENT**

ENTERED INTO BETWEEN

**[Full Company Name]**

(Registration Number: **[Company Registration Number]**)

**("the Company")**

AND

**[Full Company Name]**

(Registration Number: **[Company Registration Number]**)

(hereinafter referred to as **"the Service Provider"**)

## 1. INTERPRETATION AND DEFINITIONS

- 1.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the following and corresponding meanings assigned to them:
- 1.1.1. **“Agreement”** means this agreement including the annexures hereto being **Annexure A** (Scope of Work), **Annexure B** (Services Fees), **Annexure C** (Company and Service Provider Representative), **Annexure D** (Company Property), and each addenda hereto (if any);
  - 1.1.2. **“Business Day”** means any day other than a Saturday, Sunday or official public holiday as gazetted and/or observed pursuant to the laws of the Country;
  - 1.1.3. **“Company”** means [insert], a private company with limited liability incorporated and registered under the laws of the [insert], whose registered office is [insert address]
  - 1.1.4. **“Company Representative”** means the person appointed by Company to liaise with the Service Provider on a day to day basis in respect of services provided by Company to the Service Provider in terms of this Agreement, and set out in **Annexure C**;
  - 1.1.5. **“Country”** means the [insert per country]
  - 1.1.6. **“Currency”** means the official legal tender of the Country;
  - 1.1.7. **“Data Protection Law”** means all data privacy and protection legislation and regulations applicable in the Country including the General Data Protection Regulation 2016/679 where applicable;
  - 1.1.8. **“Duration”** means the period commencing on the **Effective Date** and ending on the Termination Date or upon on an earlier date as provided for in this Agreement;
  - 1.1.9. **“Effective Date”** means notwithstanding the signature date, the date when this Agreement shall be deemed to have commenced, namely [insert the date]
  - 1.1.10. **“Employees”** means the Service Provider’s permanent and/or casual and/or part-time employees employed or otherwise retained by the Service Provider in connection with the Services to be rendered by the Service Provider to the Company and in terms of this Agreement;
  - 1.1.11. **“Intellectual Property”** means all intellectual property rights, whether protectable by statute, at common law or contract including any computer software, literary work, material, name, concept, training material, training instruments, copyright in documents, patentable or non-patentable inventions, discoveries and improvements, patent, trade-mark, trade name, drawings, designs, operational analysis, technology and know-how or other intellectual property without limitation;

- 1.1.12. **“Parties”** means collectively the Parties to this Agreement being the Company and the Service Provider and **“Party”** means **either** the Company or the Service Provider as the case may be;
  - 1.1.13. **“Services”** means the services to be provided by the Service Provider to Company and as described in this Agreement and set out in **Annexure A**;
  - 1.1.14. **“Service Fees”** means the prices that are quoted in **Annexure B** for the rendering of the Services and are inclusive of Value Added Tax and other levies, charges and taxes (if applicable) levied in relation to the provision of the Services;
  - 1.1.15. **“Service Provider”** means [insert company name], [insert type of company] company with limited liability incorporated and registered under the laws of the [insert per Country of incorporation] under **registration** number [insert registration number], whose registered office is [insert company address];
  - 1.1.16. **“Service Provider Representative”** means the person appointed by the Service Provider to liaise with Company on a day to day basis in respect of services provided by the Service Provider to Company in terms of this Agreement and set out in **Annexure C**;
  - 1.1.17. **“Tax Invoice”** means an invoice as defined and/or required by the **law** of the Country, as amended;
- 1.2. The headings and sub-headings of the clauses in this Agreement are for purpose of convenience and reference and shall not be used to interpret such Agreement, unless the context clearly indicates a contrary intention.
  - 1.3. Any expression which denotes any gender includes the other gender.
  - 1.4. Unless the context clearly requires a different interpretation, any reference to:
    - 1.4.1 the singular includes the plural and vice versa; and
    - 1.4.2 natural persons includes juristic persons and vice versa.
  - 1.5. Where appropriate, meanings ascribed to defined words and expressions in clause 1.1 of this Agreement shall impose substantive obligations on the Parties.
  - 1.6. Words and phrases defined in the main body of this Agreement shall bear the same meanings in the annexes to this Agreement where such words or phrases are not specifically defined.
  - 1.7. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

- 1.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.9. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1.10. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.11. The use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule (i.e. the rule that a general word or clause is restricted in meaning to the same class as the specific words which precede it) shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.12. Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Effective Date, and as amended or substituted from time to time.
- 1.13. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.14. The rule of construction that the Agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.

## **2. INTRODUCTION AND RECORDAL**

- 2.1. It is recorded that the Company requires the Services and wishes to appoint the Service Provider, to render the Services to the Company subject to the terms and conditions set out in this Agreement.

2.2. The Parties wish to formalise their business relationship by concluding the Agreement which regulates all aspects of their business and working relationship.

### 3. **APPOINTMENT AND RELATIONSHIP OF THE PARTIES**

3.1. Company hereby appoints the Service Provider who accepts such appointment to provide the Services, subject to the terms and conditions set out in this Agreement.

3.2. The relationship between the Parties shall be that of independent contractors and nothing in this Agreement shall be interpreted as constituting a partnership, employment, joint venture or any agency relationship between the Parties. Each Party confirms that that there is no material financial interest in the other Party.

3.3. The Service Provider warrants that it has sufficient knowledge and expertise in all aspects of the Services and has the level of skill and experience to perform the Services as set out in **Annexure A**. The Service Provider shall use its best endeavours, care and skill in performing all its obligations in terms of this Agreement.

### 4. **DURATION**

4.1. Notwithstanding the date of signature by the Parties, this Agreement shall commence on the Effective Date, and shall remain in force for a period of [insert the date] (“the **Initial Period**”) and shall terminate on [insert the date].

4.2. Provided this Agreement shall have remained in existence throughout the initial Period, the Company shall have an option (“the Option”) to renew this Agreement following the expiry date.

4.3. The Parties may on the expiry of the Term, extend the Agreement on such terms and conditions as are mutually agreed to between the Parties in writing.

### 5. **SCOPE OF SERVICE**

5.1. The Service Provider shall provide the Services as set out in **Annexure A** subject to the terms and conditions of this Agreement and any specifications, guidelines or instructions provided by the Company in writing from time to time.

## 6. SERVICE PROVIDER OBLIGATIONS, COMPLIANCE WITH STATUTES AND THE SAFETY RULES

- 6.1. The Service Provider is obligated to comply with the labour laws, statutes, data privacy laws of the Country, including the General Data Protection Regulation (GDPR);
- 6.2. The Service Provider shall work according to the deliverables and services specified in **Annexure A**.

### 6.3. **Conduct**

- 6.3.1. The Parties will at all times comply with and adhere to the Company's anti-bribery and corruption policy and [Business Partner Code of Conduct](#) (as revised from time to time).
- 6.3.2. The Service Provider further acknowledges that breach of this clause would be a material breach incapable of remedy. Therefore, in addition to any other rights that the Company may have under this Agreement or at law, the Company may terminate this Agreement immediately if it reasonably considers that the Service Provider is in breach of any of the terms of this clause.

## 7. REVIEW AND AUDIT

- 7.1. The terms of this Agreement and the performance of the Service Provider in terms of this Agreement shall be subject to review by the Company.
- 7.2. Either Party shall be entitled to audit and review the other upon the request of either of them;
- 7.3. The Parties shall permit an auditor to be appointed by mutual agreement and such auditor shall upon reasonable notice during normal business hours be permitted to access, take copies of records and any other information held and to meet with a Party's personnel to conduct such audit. The auditor shall give feedback and shall report the results of the audit to both Parties. The Party under audit shall give all necessary assistance to conduct such audits during the term of this Agreement and for a period of three years after termination of this Agreement;

## 8. SERVICE FEES AND REMUNERATION

### 8.1. Payment

- 8.1.1. Any and all payments required to be made in terms of this Agreement shall be made in accordance with the rates set out below in **Annexure B**.

- 8.1.2. It is recorded that should the Service Provider and the Company mutually agree that a change in the structure or nature of the Services is required during the Term that results in a variation in the Service Fees or costs of the Services, then the Parties shall agree such variation to the Service Fees or costs in writing and record variation as an addendum to this Agreement.
- 8.1.3. The payment for the Services shall be denominated in the Currency of the Country.
- 8.1.4. The Company is entitled to deduct or set off from any amount payable to the Service Provider, any amount due by the Service Provider to Company for any reason whatsoever.
- 8.1.5. The Service Provider shall submit an invoice together with all supporting documents to the Company. The Company shall pay the Service Provider within 30 (thirty) days of receipt of a Tax Invoice to Company from the Service Provider requesting such payment.
- 8.1.6. The Company shall make payments of the full invoiced amount into the following bank account or such bank account as the Service Provider may notify in writing at least 60 (sixty) days in advance:
  - Account name:
  - Bank:
  - Branch Code:
  - Account Number:

## **9. TERMINATION, CANCELLATION AND BREACH OF AGREEMENT**

- 9.1. This Agreement will commence on the Effective Date and remain in full force and effect for the duration of the Agreement subject to the Parties' right of termination as provided for in this clause 9.
- 9.2. Either Party may terminate this Agreement by giving 30 (thirty) calendar days' notice to the other, provided that nothing shall preclude either Party from terminating this Agreement summarily for any cause.
- 9.3. Either Party may summarily terminate this Agreement if the other is liquidated, whether provisionally or finally; has an execution levied against its assets; is investigated or found guilty by any official prosecution/investigative authority in regards to fraud or dishonesty or any criminal act and/or civil liability.

- 9.4. Company may, by 24 (twenty-four) hours written notice of termination to the Service Provider, terminate this Agreement and claim damages or elect to enforce this Agreement if, in Company's sole discretion, the Service Provider:
- 9.4.1. has abandoned this Agreement or breached a material term or condition of this Agreement;
  - 9.4.2. has breached any other term of condition of this Agreement and has failed to remedy the breach within a period of 7 (seven) days after receiving written notice of the breach from Company;
  - 9.4.3. has persistently or flagrantly neglected to carry out its obligations under this Agreement;
  - 9.4.4. has committed an act of gross negligence or wilful misconduct or;
  - 9.4.5. has assigned this Agreement or any part thereof without the consent in writing of Company.
- 9.5. Should this Agreement be terminated by mutual agreement between Company and the Service Provider, the obligations of Company shall be limited to the payment of such amounts of work done by the Service Provider, and failing such agreement shall not exceed such amounts as may be due and payable for Services rendered in compliance with this Agreement, up to the date that this Agreement is terminated.
- 9.6. Company's termination of this Agreement or any claim of immediate, specific performance of all of the Service Provider's obligations under this Agreement shall be without prejudice to Company's right to claim damages or cancel the Agreement.

**9.2. Cancellation, Sub-standard Services Penalties**

- 9.2.1. In the event that the Service Provider should determine to cancel its Services for any reason other than Force Majeure, and/or Company should determine that the Services are not in accordance with the conduct and standards as agreed to with the Service Provider, the Service Provider agrees that the damages the Company would suffer as a result of those costs and the loss of Services and/or other ancillary revenue would be substantial. Accordingly, on such determination, Company will provide a written notice of the determined Services to the Service Provider, who shall within 5



(five) Business Days, or any period as determined by Company, re-provide the Services at no cost to Company and to the satisfaction of Company. Any re-provision of Services shall be without prejudice to Company's rights to any claim of immediate, specific performance of all of the Service Provider's obligations as per this Agreement, to claim damages, or to terminate this Agreement.

## **10. CONFIDENTIALITY**

- 10.1. Each Party undertakes in favour of the other that during the and following the termination or expiry of the Agreement (as the case may be), it shall keep confidential any information (in whatsoever format) which a Party makes available to the other Party ("Receiving Party") regarding the Disclosing Party's customers, its business, or products, and any financial, technical, and operational information, strategical objectives and planning, know-how, concepts, designs, inventions, trade secrets; and any other information of a confidential nature that the Receiving Party obtains, receives or has access to as a result of the discussions had, and communications exchanged leading up to and the entry into this Agreement, including the existence and content of this Agreement, will remain the utmost secrecy in respect of all such information.

## **11. COMPANY PROPERTY**

- 11.1. It is recorded that the company property was handed over to the Service Provider, as set out in **Annexure D**.
- 11.2. It is recorded that upon termination of this Agreement, the Service Provider shall return to Company all property belonging to Company, in the same condition. The Service Provider shall not be permitted to dispose any of the Company Property. Ownership of the company property shall at all times vest in the Company.
- 11.3. Each Party shall be entitled to audit and recover any property provided to the other in terms of this clause.

## **12. INTELLECTUAL PROPERTY**

- 12.1. Each Party will remain the owner of all Intellectual Property (IP) that it owns as of the Effective Date of this Agreement.

- 12.2. Parties shall ensure that no infringements of whatsoever nature are made on the Intellectual Property rights and privileges of each other as relied on in this Agreement.
- 12.3. Each party warrants that its IP shall not infringe any IP rights of any third party.

### **13. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY**

- 13.1. The Service Provider shall exercise all reasonable skill, care and diligence in the execution of the Services and shall carry out all its obligations in accordance with international professional standards.
- 13.2. The Service Provider hereby accepts liability for and indemnifies and holds Company harmless against all claims, demands, fines, penalties, actions, proceedings, judgments, damages, losses, costs, expenses, or other liabilities, caused whether negligently or otherwise, by the non-compliance of the Service Provider and/or its employees of their duties and obligations under this Agreement, in delict for breach of statutory duty or otherwise.
- 13.3. Company shall not be liable for any losses, damages, costs, claims and demands which the Service Provider may incur or sustain whilst carrying out or providing the tasks contemplated in this Agreement.

### **14. REPORTING**

- 14.1. The Service Provider shall provide regularly reports at the time and intervals as set out in **Annexure A**.

### **15. FORCE MAJEURE**

- 15.1. If any Party is prevented or delayed in performing any obligation under this Agreement for any reason beyond the reasonable control of that Party, then that Party shall be excused from performing or timeously performing that particular obligation for the duration of that prevention or delay.
- 15.2. Any Party so prevented or delayed s we hall inform the other in writing of that prevention or delay immediately after the circumstances causing such prevention or delay has arisen.
- 15.3. The Parties shall do everything reasonably possible to prevent, avoid or limit the duration or effects of any such prevention or delay. Upon termination of the circumstances giving rise to any such prevention or delay, the Party so prevented or delayed shall forthwith give written notice to the other Party.

- 15.4. While any such prevention or delay continues, the Parties shall continue to comply with their obligations under this Agreement which are not affected by it, to the extent that they are able lawfully to do so, subject to the right of the other Party not prevented from continuing with all its obligations under this Agreement to cancel this Agreement by giving written notice of such termination to the other Party.
- 15.5. For the purpose of this Agreement “Force Majeure” shall mean any circumstances beyond the reasonable control of the Party concerned and shall include but not be limited to:
- 15.5.1. war, revolution, riots, mob violence, sabotage, epidemic, pandemic, accident;
  - 15.5.2. Industrial Action by workers, agents or employees; earthquakes, floods, fires or other natural physical disasters.

## **16. DISPUTE RESOLUTION**

- 16.1. In the event of any dispute or difference arising between the Parties out of, or in relation to, or in connection with this Agreement, or the interpretation thereof, or its termination, both while in force and after its termination, the Party claiming such dispute or difference shall, subject to any of its rights as per clause 9, forthwith advise the other in writing thereof. The dispute shall be referred to the management of the Service Provider and Company who shall within 14 (fourteen) days of receipt of such notice, meet and negotiate in good faith in order to resolve such dispute or difference.
- 16.2. If the dispute is not resolved by the Parties within 14 (fourteen) days of their first meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa (AFSA).
- 16.3. Any Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.
- 16.4. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 16.5. The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the rules of AFSA should any Party by written notice given to the others require the arbitration to be held on an urgent basis. In such

event the Parties agree to apply jointly to the AFSA Secretariat as required in terms of the said rules to facilitate such urgent arbitration.

16.6. The Parties agree that the arbitration shall be held:

16.6.1. In [insert per jurisdiction] and in the English language

16.6.2. Immediately in an informal manner on such basis as the arbitrator may determine with a view to it being completed within 90 (ninety) days after it is demanded.

16.6.3. The Parties irrevocably agree that the decision in arbitration proceedings:

16.6.4. shall be final and binding upon the Parties;  
shall be carried into effect; and

16.6.5. may be made an order of any court of competent jurisdiction.

16.7. This clause is severable from the rest of this Agreement and will remain valid and binding on the Parties notwithstanding any termination of this Agreement.

16.8. The Parties hereby consent to the jurisdiction of a court competent to hear the matter.

## 17. **DOMICILIA CITANDI ET EXECUTANDI**

17.1. The Parties choose as their *domicile* for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following addresses:

<b>COMPANY</b>	<b>SERVICE PROVIDER</b>
<b>Physical address:</b> [insert physical address] <b>Postal address:</b> [insert postal address] <b>Telephone:</b> [insert telephone number] <b>Email:</b> [insert email] <b>za.legal@macmillaneducation.co.za</b>	<b>Physical address:</b> [insert physical address] <b>Postal address:</b> [insert postal address] <b>Telephone:</b> [insert telephone number] <b>Email:</b> [insert email]

- 17.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing. It shall be competent to give such notice by facsimile, if applicable.
- 17.3. Either Party may give notice to the other Party to change the physical address chosen as its domicile to another physical address in South Africa, provided that such change shall become effective on the 7th (seventh) day from the deemed receipt of the notice by the other Party.
- 17.4. Any notice sent by email stipulated in the domicile, shall be deemed to have been received on the date of dispatch (unless the contrary is proved). Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the domicile, shall be deemed to have been received on the 7th (seventh) Business Day after posting, unless the contrary is proved.
- 17.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered to the address chosen as the *domicile*.

## 18. **GENERAL**

- 18.1. No remedy conferred by this Agreement is intended to be exclusive of any other remedy, which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder now or hereafter existing to law by statute or otherwise. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.
- 18.2. Each of the provisions of this Agreement shall be considered as separate terms and conditions and in the event that, this Agreement is affected by legislation or any amendment thereto, or if the provision herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, than any such provisions shall be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part thereof.
- 18.3. Each Party to this Agreement shall bear and pay its own costs in respect of, and incidental to, preparation the negotiation and execution of this Agreement.

18.4. This Agreement constitutes the entire agreement between the Parties with regard to the matters dealt with in this Agreement and no representations, terms, conditions or warranties not contained in this Agreement will be binding on the Parties.

18.5. No agreement varying, adding to, or deleting from or cancelling this Agreement will be effective unless reduced to writing and signed by or on behalf of the Parties.

No indulgences granted by Company shall constitute a waiver of any of its rights under this Agreement. Accordingly, Company will not be precluded as a consequence of having granted such indulgence, from exercising any rights against the Service Provider which may have arisen in the past or which may arise in the future.

18.6. Each of the Parties undertakes with each of the others to do all things reasonably within its power, which are necessary or desirable to give effect to the spirit and intent of this Agreement.

18.7. Notwithstanding the place of signature, this Agreement will be construed, executed and delivered in accordance with the laws prevailing in the Republic of [Country].

18.8. The Service Provider shall not be entitled to cede, assign, delegate, transfer, alienate its rights and obligations in terms of this Agreement without the written consent of Company.

18.9. The original of this Agreement has been drafted and executed in the English language. This Agreement may be translated into any other language, but only this Agreement in the English language version shall be deemed the original document. If any conflict arises between the English version and any version in any other language into which this Agreement has been translated, the English language version shall have the controlling authority.

18.10. This Agreement may be executed in counterparts, each of which will be an original and which together constitute the same Agreement.

**For the Company:**  
**Macmillan South Africa (Pty) Ltd.**  
Designation: (Complete Designation)

\_\_\_\_\_

Date:

\_\_\_\_\_  
Who warrants that he/she is duly authorized hereto

**IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:**

Witness 1 \_\_\_\_\_

**For the Service Provider:**

\_\_\_\_\_  
Mr/Mrs: (Complete full Names)  
Designation: (Complete Designation)

\_\_\_\_\_

Date:

\_\_\_\_\_  
Who warrants that he/she is duly authorized hereto

**IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:**

Witness 1 \_\_\_\_\_