

MEMBERS SERVICE AGREEMENT

Entered into between:

GENERAL NON LINEAR POST CC
("General Post")

And

(Full name).....

(Identity number).....

(Hereinafter "the member")

1. **INTERPRETATION AND DEFINITIONS**

The headings in this instrument are used for ease of reference only and will have no bearing on the interpretation of the terms of this Agreement. Such headings shall not be deemed to govern, limit, modify, or affect the scope, meaning or intent of the provisions of this Agreement or any part of it; nor shall such headings otherwise be given any legal effect.

- 1.1 "Employment": shall include employment, consultancy, contract worker, freelance worker, agent and any other service arrangement between the member and the client.
- 1.2 "Member": shall accordingly include a reference, where appropriate, to the representative entity, *mutatis mutandis*. In this regard, It is common practice in the industry for persons to render services through a close corporation, company, trust or another representative entity (hereinafter referred to as the "representative entity"). Therefore by his signature hereto, the member binds the representative entity through which he may render the services to the client, as a party to this agreement. In the event of any service agreement whatever its nature may be, being concluded between the representative entity and the client, the member shall nevertheless remain personally liable to General Post under this agreement, as if he had entered into the agreement with the client personally. In such an instance the member and the representative entity shall be liable to General Post, jointly and severally the one paying the other to be absolved.
- 1.3 "Prescribed Client": means any persons and/or entity that is or was a client of General Post as at the effective date of the agreement and during the currency of the agreement, whom services were rendered by General Post within the period of 12 (TWELVE) months preceding the termination of the agreement.

2. PURPOSE

It is the intention of the member to engage General Post's professional services to secure freelance work for the member in the _____ industry in general, and also more specifically, the services set out in the members information form attached hereto marked Annexure "A".

Any other services which may be executed through General Post's introduction or to any entity which was a client of General Post at any time during the term of this agreement, whether such services are rendered (for instance, through a representative entity) directly or indirectly, even although not referred to in annex "A", shall form part of this agreement.

This agreement in no way constitutes an employment agreement between the parties and the relationship between the parties is not one of employer and employee.

3. RIGHTS AND OBLIGATIONS

3.1 THE MEMBER'S RIGHTS/GENERAL POST'S OBLIGATIONS

- 3.1.1 The member engages General Post to provide the services on a non-exclusive/exclusive basis and General Post accepts such engagement:
- 3.1.2 General Post will endeavour to use all reasonable and professional resources available within the industry to procure and secure freelance work on behalf of the member with General Post's clients. General Post makes no representations or furnishes no guarantees of any kind that employment will be secured on behalf of the member.
- 3.1.3 Subject to clauses 4 and 6, the term of this contract shall be for an initial period of 1 (one) year and shall thereafter continue on a monthly basis until such time as the contract is cancelled by way of one (1) one months written notice.
- 3.1.4 So long as General Post receives commissions from the member, General Post shall be obliged to perform the obligations of this contract with respect to the services of the member on which such commissions are based.
- 3.1.5 General Post agrees to maintain telephone service and an open office during reasonable business hours (emergencies such as sudden illness or death excepted), throughout the term of this agreement and that some representative of General Post will be present at such office during such business hours.

- 3.1.6 Payment will be made to the member within 30 (THIRTY) days of delivery of invoice to the client provided the client has paid General Post.

3.2 GENERAL POST'S RIGHTS/THE MEMBER'S OBLIGATIONS

- 3.2.1 The member agrees to pay to General Post as commission a sum equal to fifteen (15) percent (plus Vat) of his remuneration due to him, whether directly or indirectly, from the client, due to any placement with General Post's clients at any time, whether or after the term specified in clause 3.1.3. "Remuneration" shall include salary, wages, all monies due by the client or on behalf of the client to the member or the representative entity, as well as any other perk or benefit of whatsoever nature. In this regard the member (including any representative entity as aforesaid):-

3.2.1.1. shall disclose full details of the employment/contract and of remuneration package;

3.2.1.2. hereby authorises and instructs the client to disclose to General Post full and precise details of any employment/contract including details of the remuneration package, between itself and the member / representative entity;

3.2.1.3. hereby cedes and assigns all of the member's / representative entity's right title and interest in and to that portion of his remuneration package as is equivalent to the commission referred to above (whether owing in terms of a freelance contract, permanent employment or any other basis)) from any remuneration which may be due by the client to the member / representative entity..

The provisions hereof shall apply in respect of any remuneration which a member / representative entity may receive, whether directly or indirectly, from a client of General Post, for the duration of this agreement and for a period of one year from the termination hereof, irrespective of whether the services were rendered during the period hereof or thereafter, and will also apply to any services rendered by the member / representative entity as a result of an agreement concluded directly between the member / representative entity and the client.

- 3.2.2 All payments due to the member arising from any employment with General Post's clients shall be made by the said client directly to General Post, unless otherwise agreed to in writing. General Post shall within 30 days of receiving payment from the said client and after deducting the commission due to it, pay the member the difference.
- 3.2.3 Should the member take up permanent employment with any of General Post's clients, during the term specified in [clause 3.1.3](#) or at any time within one year after the termination of the said period, General post shall be entitled to seventy (70) percent commission (plus Vat) on the value of the member's first month's remuneration package (as defined in clause 3.2.1)
- 3.2.4 The commission set out in clause 3.2.3 above shall be payable within thirty days of the member taking up permanent employment with General Post's client, and shall be payable by the member, alternatively the client, alternatively the member and the client jointly and severally the one paying the other to be absolved, in General Post's discretion.
- 3.2.5 Where the member does not actually render his/her services for which he/she has been employed but nevertheless is compensated therefore, the same shall be considered as employment hereunder.
- 3.2.6 Notwithstanding the above, no commissions shall be payable on any of the following:
- 3.2.6.1. Separate amounts paid to the member not as compensation but for travel or living expenses incurred by the member;
 - 3.2.6.2. Separate amounts paid to the member not as compensation but as reimbursement for necessary expenditure actually incurred by the member in connection with the member's employment.
- 3.2.7 Any moneys, remuneration, benefit or other consideration of whatsoever nature received by the member, or by anyone for or on his/her behalf, in connection with any services, contract, employment or any termination thereof by virtue of which General Post is entitled to receive commission, or in connection with the settlement or compromise of any such aforesaid contract, or any litigation arising out of any such aforesaid contract, shall be taken into account as being part of the member's

remuneration, on which General Post shall be entitled to commission.

3.2.8. The member undertakes to fully and timorously comply with all of the client's conditions of contract.

3.2.9 General Post may represent other persons who render services in the industry.

4. VOLUNTARY TERMINATION OF THE AGREEMENT

4.1 Each party hereto may terminate this Agreement by giving one (1) calendar month's advance written notice to the other.

4.2 No termination hereof shall deprive General Post of the right to receive commission or compensation on remuneration earned or received, whether directly or indirectly, by the member after the termination date from any entity which was a client of General Post at any time during the term of this agreement for a period of one year after the termination hereof as provided for in clause 3.2.

5. INDEMNITY

The member hereby indemnifies General Post and holds it harmless from any harm, loss or damages or any nature, whether bodily harm, trauma or damages to property to any claim of whatsoever nature, from the employment of the member by a client of General Post.

6. RESTRAINT

6.1 The member hereby undertakes to General Post that neither he/she nor any Company, Close Corporation, firm, undertaking pr concern in which he/she is directly or indirectly interested (and/or by which he/she is employed) will, either alone or jointly for a period of 12 (TWELVE) months be interested or engaged, directly or indirectly, in any capacity (including but not limited advisor, agent, consultant, director, employee, financier, manager, member of a Close Corporation, member of voluntary association, partner, proprietor, shareholder, trustee) in any competitive activity in the province of Gauteng.

6.2 The member undertakes that neither he/she nor any entity in which he/she is directly or indirectly interested or engaged in any capacity within 12 (TWELVE) months of termination of the agreement directly or indirectly without the specific written consent of a duly authorised director of General Post encourage or entice or persuade any employee of General Post to terminate his or her employment with General Post; or

- 6.3 furnish any information or advice to any employee then employed by General Post or to any prospective employer of such employee or use any other means which are directly or indirectly designed to result in any employee terminating his or her employment with General Post, and or becoming employed by or directly or indirectly in any way interested in or associated with any entity; or
- 6.4 The member undertakes that neither he or she or any entity in which he or she is directly or indirectly interested or engaged in any capacity during the duration of the agreement and for a period of 12 (TWELVE) months after termination of the agreement directly or indirectly
- 6.4.1 solicit business from prescribed client;
- 6.4.2 canvas business in respect of prescribed clients;
- 6.4.3 induce any prescribed clients doing business with the General Post, to discontinue its relationship with General Post or to reduce the scope and extent of such relationship.

7. CONFIDENTIALITY

The member shall not during the currency of the this agreement or at any time after its agreement:

- 7.1 disclose to any person or persons (except to those authorised by General Post to know), any private, confidential or secret information of General Post (including without limitation financial information, methods, computer programs, lists of details of clients of General Post or relating to the working of any process or invention carried on or used by General Post) or which the member obtained by virtue of this agreement or in respect of which General Post is bound by an obligation of confidence to a third party or Client of General Post.

8. BREACH OF AGREEMENT

Should either party ("the defaulting party") commit a breach of any of the provisions of this agreement, then the aggrieved party shall be obliged to give the defaulting party 7 (SEVEN) days written notice to remedy the breach. If the defaulting party fails to comply with such notice, then the aggrieved party shall be entitled to cancel this agreement or to claim specific performance by the defaulting party of all of its obligations, and in either instance to claim damages.

9. **ARBITRATION**

- 9.1. Should any dispute arise between the parties in regard to-
- 9.1.1. The interpretation of; or
 - 9.1.2. The carrying into effect of; or
 - 9.1.2.1. Any of the parties rights and obligations arising from; or
 - 9.1.2.2. The termination of or arising from the termination of; or
- The rectification of; or
- The provisions of-
- Any clause of this agreement, then that dispute shall in General Post's discretion be submitted to and decided by arbitration.
- 9.2 Such arbitration will be held at Sandton with only the parties and their legal representatives present, in accordance with the appropriate laws and rules of the arbitration foundation of South Africa, subject where possible to the arbitration being held and concluded within twenty working days after it has been demanded.
- 9.3 The arbitrator will be, if the matter in dispute is principally-
- 9.3.1. A legal matter, a practising advocate or practising attorney of not less than fifteen years standing;
 - 9.3.2. An accounting matter, a practising chartered accountant of not less than fifteen years standing;
 - 9.3.3. Any other matter, an independent person agreed upon between the parties;
- 9.4. Should the parties fail to agree whether the dispute is of a legal, account or other nature within seven days after the arbitration has been demanded, then the arbitrator will be nominated by the President for the time of the controlling body governing practicing attorneys within South Africa.
- 9.5. Should the parties fail to agree whether the dispute is of a legal accounting or other nature within 7 (seven) days after the arbitration has been demanded, then it will be considered to be a matter referred to in clause 9.3.1.
- 9.6. The arbitrator will 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-
- May dispense wholly or in part with formal submissions or pleadings;
- will determine the applicable procedure, taking into account the fact that it is intended that the dispute will be determined as quickly as

possible shall not be bound by strict rules of evidence and shall be entitled to take equity into account;

Will include such orders as to costs as he deems just.

The successful party will be entitled to have the award made an Order of Court of competent jurisdiction.

The parties, by signing this agreement, consent to any dispute arising between being determined by way of arbitration.

Nothing herein shall preclude either party from instituting an interdict.

10. DOMICILIUM FOR SERVICE AND PROCESS

10.1. Each of the parties chooses *domicilium citandi et executandi* ("*domicilium*") for the purposes of the giving of any notice, the serving of any process and for any purposes arising from this agreement at their respective addresses set forth hereunder:

10.1.1. **GENERAL POST**
 Block C Stonewedge Office Park
 1 Wedgewoodlink Road,
 Bryanston
 Fax: 011 706 7949
 Email: kirsty@generalpost.co.za

10.1.2. **THE MEMBER**

 Fax: _____
 Email: _____

10.2. Each of the parties shall be entitled from time to time, by written notice to the other to vary its *domicilium* to any other address which is not a post office box.

10.3. Any notice (which includes a fax or email) given and any payment made by a party to any of the others ("the addressee") which:-

10.3.1. 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 delivery;

- 10.3.2. Is posted by prepaid registered post to 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 tenth day after the date of posting;
- 10.3.3. is telefaxed or emailed to the addressee's telefax number or email provided above, shall be presumed, unless the contrary is proved by the addressee, to have been received on the day of transmission.
- 10.4. Notwithstanding the foregoing, notice shall be deemed to have been properly given if the addressor is able to prove that the addressee received the notice albeit through some means other than as specifically provide for above.

11. CONSENT TO SECURITY CHECK

The member gives his permission for a security and background check to be done. He also approves this information to be disseminated to prospective clients or any third party that General Post deems necessary in the course and scope of its duties. All work reference will be checked. By signing this contract the member agrees to General Post conducting a reference check.

12. GOVERNING LAW

This agreement and all amendments hereto shall be governed by and construed under and in accordance with the laws of South Africa and the appropriate court with jurisdiction, where applicable, shall be the courts of South Africa.

13. SEVERABILITY

Any provision in this agreement which is or may become illegal, invalid or unenforceable, shall be treated as never having been written and severed from the balance of the agreement, without invalidating the remaining provisions or affecting their validity or enforceability. Furthermore, should any term herein be ruled to be unreasonable, unenforceable or excessive, the appropriate tribunal seized of the matter is hereby authorised to limit and amend any such offending term or terms, to bring them within the bounds of reasonableness, which will thereupon be binding upon the parties.

14. SUPPORT AND CO-OPERATION

The parties undertake at all times to do all such things, perform all such actions and take all such steps, and to procure the doing of all such things, the performance of all such actions, and the taking of all such steps, as may be open to them and necessary or desirable for or incidental to the putting into effect or maintenance of the terms, conditions, import and interest of this agreement, and in particular, but without limiting the generality of the a foregoing, shall make available (where applicable) all such documentation and titles in their possession or under their control, and shall be required or necessary to give full force and effect hereto.

15. ALTERATIONS

No alteration, consensual cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by the parties.

16. ENTIRE AGREEMENT

This document contains the entire agreement between the parties regarding the matters contained herein and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

17. NO INDULGENCES

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

18. COSTS

- 18.1. Each party shall pay its own legal costs in connection with the drafting, preparation and execution of this agreement, including all drafts thereof, together with all consultations and attendances in connection therewith.
- 18.2. All and any costs, including costs on the attorney and client scale, payable as a result of a party breaching any term of this agreement, shall be payable by the party against whom a costs order is made.

19. GOOD FAITH

The parties shall in all their dealings with one another demonstrate a duty of utmost good faith and shall in addition utilise their respective reasonable best endeavours to co-operate with one another in order to give practical effect to the ambit and meaning of this agreement.

20. SUCCESSORS

This agreement shall be binding upon the parties' successors in title and executors and heirs.

SIGNATORY

Thus done and signed at _____ on this the _____ day of _____ 2018, in the presence of the undersigned witnesses.

For and on behalf of:
GENERAL NON LINEAR POST CC

1. _____
Witness
Name: _____

2. _____
Witness
Name: _____

Thus done and signed at _____ on this the _____
day of _____ 2018, in the presence of the
undersigned witnesses.

THE MEMBER

1. _____
Witness
Name: _____

2. _____
Witness
Name: _____