

# **APPENDIX A TO TERMS OF REFERENCE**

## **DESCRIPTION OF APPENDIX A:**

**DRAFT SERVICE LEVEL AGREEMENT FOR PROFESSIONAL WORK (SPW) BETWEEN AGRÉMENT SOUTH AFRICA AND REGISTERED BUILT ENVIRONMENT EXPERTS FOR THE ASSEMENT OR EVALUATION OF INNOVATIVE AND NON-STANDARDIZED PRODUCTS/SYSTEMS FOR AGREMENT CERTIFICATION AS FIT-FOR-PURPOSE**

**DRAFT**

## SERVICE LEVEL AGREEMENT FOR PROFESSIONAL WORK

### Entered into by and between

#### AGRÉMENT SOUTH AFRICA

Agrément South Africa is the statutory body established in terms of the Agrément South Africa Act  
(No. 11 of 2015)  
(Hereinafter referred to as ‘Agrément South Africa’)

Herein represented by ..... Chief Executive Officer,  
and she/he being duly authorized thereto,

And

.....  
ID NO. ....

Herein represented by.....to make available the services of

.....  
(Hereinafter referred to as the “Service Provider)

**PREAMBLE**

**WHEREAS:**

Agrément South Africa (Agrément South Africa), located in Pretoria, is a statutory body established in terms of the Agrément South Africa Act (No. 11 of 2015). It is an independent agency for the technical assessment and certification of fitness-for-purpose of innovative building and construction products/systems.

**WHEREAS:**

Agrément South Africa is bound by its mandate to support and promote the process of integrated socio-economic development in South Africa as it relates to the construction industry by facilitating the introduction, application and utilisation of satisfactory innovation and technology development.

**WHEREAS:**

Agrément South Africa complies with procurement regulation by appointing registered built environment professionals on Agrément South Africa's database as expert assessors of innovative and non-standardized products/systems for Agrément certification as fit for purpose; thereby ensuring a consistent, fair, equitable, transparent, competitive, cost-effective and efficient procurement system.

**WHEREAS:**

.....an expert in .....discipline has been selected for Agrément South Africa's database as an expert to assess innovative and non-standardized products and systems for Agrément certification as fit for purpose

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. PREAMBLE:**

The preamble shall form an integral part of the “AGREEMENT” between the parties.

**2. DEFINITIONS**

In this agreement, unless the context clearly indicates otherwise, the following words and/or phrases shall have the following meaning:

Acronym	Definition
THE AGREEMENT	Shall mean this agreement and any/all annexure(s) attached thereto.
THE PARTIES	Shall mean ..... and Agrément South Africa respectively.
EFFECTIVE DATE	Shall be the date of the signature of the AGREEMENT by the PARTIES.
ASA	Agrément South Africa.
Agrément South Africa ACT	Shall mean Agrément South Africa Act (No. 11 of 2015).
THE EXPERT	Is the (to be defined per contract).

**3. STATUS AND THE DURATION OF THE AGREEMENT:**

THE AGREEMENT shall operate as from the “EFFECTIVE DATE “and shall exist until the .....

**4. DELIVERABLES, STIPEND AND SUBSISTENCE (Also refer to Terms of Reference)**

- 4.1 The expert takes full responsibility for the deliverables as per the scope of work and specifically the quality of work delivered. The expert assessor will apply sound project management in the execution of the work with due consideration to the terms of the main agreement which inter alia includes the work scope, time, resources, quality, communication, financials, risk, environmental aspects etc..
- 4.2 All invoices submitted by the Service Provider shall be signed by the Service Provider. The Service Provider shall invoice Agrément South Africa for work already done and Agrément South

Africa shall settle that specific account within 30 days after date of receipt of the invoice and all relevant documentation required, subject to the submission and approval of deliverables as defined in the Terms of Reference.

- 4.3 All payments made by the Agrément South Africa to the Service Provider shall be in compliance/subject to the Agrément South Africa policies and procedures including any applicable legislation and/or regulations.

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## **5. GENERAL DUTIES AND RESPONSIBILITIES OF THE EXPERT ASSESSOR**

5.1 For the purpose of this agreement, the general duties and responsibilities of the expert are as set out below:

- 5.1.1 Identify the relevant assessment criteria and in the absence of such criteria established performance criteria appropriate to the properties and use of the product;
- 5.1.2 Identify/establish suitable test methods or methods of assessment which may be applied in the measurement of performance;
- 5.1.3 Establish the actual performance of the product in accordance with the methods established above; and
- 5.1.4 Provide expert opinion/judgement of acceptability of the product in the light of the measured or assessed performance against the appropriate performance criteria and make recommendations to the Agreement South Africa TECO to approve the product/system as fit for purpose, impose limitations or conditions on the use of the product/system or recommend that approval be withheld.

## **6. GENERAL DUTIES AND RESPONSIBILITIES OF AGREEMENT SOUTH AFRICA**

6.1 For the purpose of this agreement, the general duties and responsibilities of Agrément South Africa are as set out below:

- 6.1.1 Peer review of the evaluation report by TECO of Agrément Board

## **7. BREACH AND TERMINATION**

- 7.1 In the event of any of THE PARTIES committing a material breach of any of the terms and conditions of THE AGREEMENT and remaining in default for a period of fourteen (14) days after receipt by it of written notice from the other party calling for such breach to be remedied, the party delivering such notice shall be entitled, without prejudice to any other rights it may have in terms of THE AGREEMENT or in law, to terminate THE AGREEMENT by written notice to that effect given to the other party and claim damages if any or exercise any other right it has in law to rectify the breach.
- 7.2 THE AGREEMENT may at any time be terminated by mutual written consent between THE PARTIES with 30 days' notice.
- 7.3 Agrément South Africa reserves the right to cancel the agreement with immediate effect if the deliverables stated in clause 4.1 are not met by the Service Provider and to exercise any right it has in law to rectify the breach.
- 7.4 Termination of THE AGREEMENT for whatever reason shall not absolve THE PARTIES from the obligation to observe the confidentiality measures and other restraints as set out herein.

## **8. CONFIDENTIALITY**

- 8.1 THE PARTIES undertake not to disclose, without consent of the other, any information designated as confidential, to any person, company, publication or news medium.

## **9. INTELLECTUAL PROPERTY (IP)**

- 9.1 Unless stated otherwise in the main agreement between Agrément South Africa and the Expert assessor, the Intellectual Property (IP) generated from the project remains the property of the Applicant of the Agrément certification.
- 9.2 IP is defined as all intellectual property, including patents, patent applications, inventions, discoveries and improvements, copyrighting the documents, computer software, drawings, designs, operational analysis, technology and know-how, reports generated by mentors/assessors.
- 9.3 All IP in the possession of Agrément South Africa, prior to the signing of the main agreement, shall remain the sole property of the party that discovered and/or created such intellectual property and who shall have sole rights to such intellectual property.

## **10. FINANCIAL PROCESS**

- 10.1 Only claims for fees or reimbursable costs budgeted for on the project will be processed for payment. Claims must be substantiated by copies of deliverables, signed travel and disbursement forms etc.
- 10.2 All direct expenses to be incurred on a project must be negotiated before execution of the project by the Parties concerned.
- 10.3 All expenses (e.g. flight tickets, accommodation etc.) are at all times to be budgeted for and approved by the project leader, before any payments/advances are made by Agrément South Africa.
- 10.4 No assets will be purchased, leased or directly paid for by Agrément South Africa.
- 10.5 Agrément South Africa reserves the right to utilise all funds available on the project to first address deficits of any nature on the project before available funds is utilised to address claims for payment.
- 10.6 Claims for final payment will be processed once Agrément South Africa accepted/approved the work done.
- 10.7 Only original receipts will be considered for reimbursements.

## **11. GOVERNING LAW AND DISPUTE RESOLUTION**

- 11.1 THE AGREEMENT shall be governed by and construed to be in accordance with the laws of the Republic of South Africa.
- 11.2 In the event of any dispute arising from THIS AGREEMENT, the dispute must be mediated by the executive management of Agrément South Africa and Service Provider and every effort must be made to settle such dispute in an amicable way.
- 11.3 Should the dispute still remain unresolved, The PARTIES are at liberty to cancel the agreement with immediate effect and seek any legal remedy.

## **12. GENERAL**

- 12.1 This document hereto contain the entire AGREEMENT between THE PARTIES and neither Party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto as provided herein.
- 12.2 THE PARTIES shall do all acts and sign all such documents as may be required from time to time in order to implement and carry out the terms and conditions of THE AGREEMENT.



- 12.3 No alteration, variation, addition or agreed cancellation of THE AGREEMENT shall be of any force or effect unless reduced to writing as an addendum to THE AGREEMENT and signed by THE PARTIES or their duly authorized signatories.
- 12.4 No failure or delay on the part of THE PARTIES in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies, which THE PARTIES would otherwise have.
- 12.5 The headings appearing in THE AGREEMENT have been used for reference purposes only and shall not affect the interpretation of THE AGREEMENT.
- 12.6 If any clause or term of THE AGREEMENT should be invalid, unenforceable or illegal, then the remaining terms and provisions of THE AGREEMENT shall be deemed to be severable and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of THE AGREEMENT.
- 12.7 THE AGREEMENT shall be for the benefit of THE PARTIES and may not be ceded or assigned in whole or in part by either Party without the prior consent of the other Party, except that a Party's interest shall be assigned without the consent of the other in pursuance of any merger, consolidation or reorganization or voluntary sale or transfer of all or substantially all the assigning Party's assets to the merged or consolidated entity.

**13. DOMICILIA AND NOTICES**

13.1 THE PARTIES hereby choose *domicilium citandi et executandi* for all purposes in terms hereof as follows:

.....	<b>Agrément South Africa</b>
.....	Building 2A, CSIR,
.....	Meiring Naude Road, Brummeria
.....	Pretoria
.....	0001
Tel: .....	Tell: (012) .....
Cell: .....	Fax No: (012) .....
Email: .....	

13.2 Any party shall be entitled to change its *domicilium citandi et executandi* by giving written notice thereof to the other, provided that such change shall not take effect until receipt by such other party of such notice.

13.3 All notices to be given by hand by THE PARTIES to each other in terms hereof shall be given to the aforesaid addresses by delivery thereto, or if by posting by prepaid registered mail.

SIGNED AT ..... PRETORIA ..... THIS..... DAY OF .....2018.

AS WITNESS:

1. ....  
 2. ....  
 Chief Executive Officer

SIGNED AT ..... PRETORIA ..... THIS..... DAY OF .....2018.

AS WITNESS:

1. ....  
 2. ....  
 ID: .....