MASTER EMPLOYER OF RECORD SERVICES AGREEMENT ENTERED INTO BETWEEN:

Entered into on INSERT DATE (**"Commencement Date"**) by and between:

Flink SA (Pty) Limited t/a Spanly ("Spanly")	
Registration Number	
Physical Address	
Contact Person	
Email Address	
Telephone Number	

INSERT PARTY ("Client")	
Registration Number	
Physical Address	
Contact Person	
Email Address	
Telephone Number	

(Hereinafter collectively referred to as **"the Parties"**)

1. INTRODUCTION

1.1. Spanly provides Employment of Record (**"EOR"**) services ("**Services**") by employing skilled and qualified professionals (**"Talent"**) in South Africa.

1.2. The Client wishes to engage Talent in South Africa.

1.3. The Parties now wish to enter into this Agreement to regulate the terms and conditions upon which Spanly are to provide the Services, including the EOR Services, to the Client from time to time.

2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement the following words and expressions shall have the following meanings unless the context requires otherwise:

2.1.1. **"Affiliate"** means all other persons or entities which directly or indirectly control or are controlled by or are under common control of a Party or its successors in title from time to time.

2.1.2. **"Agreement"** means these terms and conditions and any schedule and addendum, including any Engagement Schedule, entered by the Parties pursuant to these terms and conditions.

2.1.3. **"Applicable Law"** means all and any of the following: (i) statutes and subordinate legislation; (ii) common law; (iii) regulations; (iv) ordinances and by-laws; (v) directives, codes of practice, circulars and guidance notices; (vi) judgments; and (vii) other similar provisions, from time to time, compliance with which is mandatory in South Africa.

2.1.4. **"BCEA"** means the Basic Conditions of Employment Act 75 of 1997, as amended from time to time.

2.1.5. **"Business Day"** means any day which is not a Saturday, Sunday or public holiday in South Africa.

2.1.6. **"Charges"** means the charges payable by the Client to Spanly for the Services as set out in this Agreement and further in the applicable Engagement Schedule.

2.1.7. **"Client Location"** means the jurisdiction(s) in which the Client is incorporated, has its principal place of business or in which it operates; it being recorded that the Client may be located outside South Africa.

2.1.8. **"Commencement Date"** means the date on which this Agreement comes into effect, that being the date on set out above.

2.1.9. **"Data Protection Legislation"** means all Applicable Laws, statutes, regulations and legally binding codes of practice relating to the Protection of Personal Information Act 4 of 2013 and the General Data Protection Regulation (EU) 2016/679.

2.1.10. **"Employment Date"** means the date on which the Talent is employed by Spanly and renders services to the Client.

2.1.11. **"Engagement Schedule"** means the written document annexed to this Agreement from time to time titled "Engagement Schedule" which sets out, amongst others, the Talent required by the Client and to be provided and employed by Spanly, and includes the details of the Talent, the Charges, specific job specifications and employment regulations.

2.1.12. **"Confidential Information"** means any information, whether in written or any other form, which has been or may be disclosed to a Party ("**Receiving Party**") by or on behalf of the other Party ("**Disclosing Party**") in the course of the discussions leading up to or the entering into or performance of this Agreement and which is identified as confidential or is clearly by its nature confidential or ought reasonably to be considered confidential including but not limited to trade secrets, non-public information related to the Disclosing Party's know-how, technology, customers, financial and business affairs and operations (including that of any member of its Affiliates) and any third party information that the Disclosing Party is under an obligation to keep confidential.

2.1.13. **"Insolvency Event"** means the occurrence of any of the following events or circumstances (or any analogous event or circumstance in a jurisdiction other than South Africa) in relation to the relevant entity: (i) being deemed unable to pay its debts; (ii) proposing a voluntary arrangement; (iii) steps being taken for a receiver, administrator or manager to be appointed over the whole or a substantial material part of its business or assets; (iv) an order being made, a resolution passed or other steps being taken for its winding up (except for the purpose of a bona fide solvent reorganisation), bankruptcy or dissolution; (v) otherwise proposing or entering into any composition or arrangement with its creditors or any class of them; or (vi) ceasing to carry on business or claiming the benefit of any statutory moratorium.

2.1.14. **"Labour Legislation"** means all applicable laws, statutes, regulations, codes of good practice, sectoral determinations, collective agreements, bargaining council agreements and other subordinate legislation in force from time to time in South Africa relating to employment, labour, industrial relations, workplace rights and obligations, including but not limited to the LRA, BCEA, Employment Equity Act 55 of 1998, Occupational Health and Safety Act 85 of 1993, Unemployment Insurance Act 63 of 2001, Skills Development Act 97 of 1998 and any applicable determinations, rulings, guidelines or codes issued by the Department of Labour as amended from time to time.

2.1.15. **"LRA"** means the Labour Relations Act 66 of 1995, as amended from time to time.

2.1.16. **"Services"** means the EOR Services provided by Spanly to the Client in accordance with the terms set out in this Agreement and each Engagement Schedule.

2.1.17. **"Talent"** means a person or persons engaged (and, where applicable, subsequently employed) by Spanly for purposes of rendering employment services to the Client.

2.1.18. **"VAT"** means Value Added Tax in terms of the Value Added Tax Act, 1994.

2.2. In this Agreement (unless the context requires otherwise):

2.2.1. Headings are for convenience only and shall not affect the interpretation; reference to any statute or statutory provision is a reference to that statute or statutory provision and include all regulations or other subordinate legislation, as amended and in force or re-enacted from time to time; where a word or expression is given a particular meaning, its grammatical forms have a corresponding meaning; if any provision in a definition confers rights or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement; the words "including" and "in particular" are without limitation; and words importing (i) any gender includes the other genders; (ii) the singular includes the plural and vice versa; and (iii) natural persons include juristic persons and vice versa.

2.2.2. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day shall be the next succeeding Business Day.

2.2.3. If any provision of this Agreement is unclear or ambiguous, it shall not be interpreted against the Party that drafted this Agreement.

2.2.4. Schedules and/or annexures, including each Engagement Schedule, shall be deemed to be incorporated into, and form part of, this Agreement and words and expressions defined in this Agreement will bear, unless the context indicates otherwise, the same meaning in such Schedules and/or annexures.

2.2.5. Any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the Commencement Date of this Agreement, and as amended or replaced from time to time.

2.2.6. Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, amended, supplemented or replaced from time to time.

2.2.7. A reference to a Party includes that Party's successors-in-title and permitted assigns.

2.2.8. A time of day is a reference to South African Standard Time.

2.2.9. The termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

2.2.10. If a term is defined in a specific clause of this Agreement, the definition will apply throughout the Agreement, unless it is clear from the clause in question that the definition was intended only to apply to that clause.

3. DURATION

This Agreement shall come into force on the Commencement Date and shall continue in full force until terminated in accordance with this Agreement.

4. APPOINTMENT AND FRAMEWORK

4.1. With effect from the Commencement Date, the Client hereby appoints Spanly to provide the Services to the Client as set in accordance with this Agreement and each Engagement Schedule, and Spanly agrees to provide such Services.

4.2. This Agreement constitutes a master services agreement between the Parties and sets out the general terms and conditions governing all services to be provided by Spanly to the Client. Each Engagement Schedule executed by the Parties from time to time shall:

4.2.1. be deemed to form part of this Agreement; and

4.2.2. be read together with this Agreement as a single, indivisible agreement.

4.3. To the extent that there is a conflict between the provisions of this Agreement and the terms set forth in any annexure or schedule, including an Engagement Schedule, this Agreement shall, to the extent of the conflict, be read in the following order of priority (unless expressly stated otherwise in this Agreement: (i) an Engagement Schedule (ii) this Agreement; and (iii) any other schedules and/or annexures.

4.4. Each Engagement Schedule is independent and severable from all other Engagement Schedules entered into under this Agreement. The termination, expiry, cancellation or suspension of:

4.4.1. This Agreement shall not, unless expressly stated otherwise by Spanly, affect any Engagement Schedule already in force, which shall continue to be governed by the terms of this Agreement; and

4.4.2. any Engagement Schedule shall not:

4.4.2.1. terminate this Agreement; or

4.5. affect the validity, enforceability or continuation of any other Engagement Schedule.

5. **AD-HOC PLACEMENT FEE**

Should the Client wish to consider an alternative to the Employer of Record service model, Spanly also offers ad-hoc placement services. This option allows the Client to engage Spanly for once-off recruitment and placement support, where Spanly sources, screens, and presents suitable candidates for direct employment by the Client, subject to the applicable placement fees and terms set out in this Agreement.

5.1 For permanent positions:

5.1.1 If the Client procures the Services from Spanly, the Client shall be charged a placement fee equal to **<u>20% (twenty percent)</u>** of the Candidate's total annual cost to company (**"CTC"**) package.

5.2 The total CTC includes all fixed and guaranteed earnings and benefits, including but not limited to basic salary, guaranteed bonuses, housing subsidies, allowances, commissions, car benefits, profit shares, company medical aid contributions, pension, retirement, and provident fund contributions. For commission-based positions with no basic salary, the full target earnings inclusive of benefits will be considered as the total CTC.

5.3 The placement fee is contingency-based and shall only be invoiced to the Client upon the Candidate's acceptance of the offer.

5.4 All placement fees and charges shall be quoted exclusive of Value-Added Tax (**"VAT"**). The Client acknowledges and agrees that VAT, at the prevailing statutory rate as determined by applicable tax legislation, shall be added to all invoices and is payable by the Client in addition to the placement fees.

6 GUARANTEE PERIOD

6.1 Should the placed candidate voluntarily resign or have his or her employment terminated by the Client for performance-related reasons within a period of 3 (three) months from the Candidate's official commencement date with the Client (**"Guarantee Period"**), Spanly undertakes to replace the candidate (**"the Guarantee"**) provided that:

6.1.1 The Client shall provide Spanly with written notification, including relevant details and evidence where applicable, of the Candidate's voluntary resignation or performance-related termination within 7 seven calendar days following the Client's confirmation or knowledge of such event. Such written notification must include the Candidate's last working date, reason for resignation or termination, and any performance documentation, if applicable.

6.1.2 Upon receipt of such notification, Spanly shall be granted exclusive rights to source and present a replacement Candidate for the same role under the Guarantee.

6.1.3 Spanly shall be obligated to replace the Candidate only once under the Guarantee. No further Guarantee shall be extended in respect of any replacement Candidate placed under this clause 4.

6.2 The Guarantee applies exclusively to cases where:

6.2.1 The Candidate voluntarily resigns within the Guarantee Period; or

6.2.2 The Candidate's employment is terminated due to documented performance issues, defined as a failure to meet reasonable and agreed performance standards necessary for the role, as evidenced and communicated by the Client in the written notification.

6.3 The Guarantee shall not apply in the following circumstances:

6.3.1 Termination due to retrenchment, redundancy, restructuring or other operational reasons beyond the control of the Candidate;

6.3.2 Termination initiated by the Client that is compliant with applicable employment legislation and is unrelated to the Candidate's performance or voluntary resignation;

6.3.3 Termination resulting from misconduct, dishonesty, or gross negligence on the part of the Candidate; or

6.3.4 Any other instances where the termination is not directly attributable to the Candidate's voluntary resignation or performance issues as described in clause 4.2.

6.4 The Client understands and acknowledges that:

6.4.1 Failure to provide written notification within the specified time frame shall void the Client's right to claim a replacement under the Guarantee.

6.4.2 The Client shall afford Spanly sole and exclusive rights to replace the Candidate under the Guarantee and shall not engage any third party to source replacement candidates during this period.

6.4.3 The replacement Guarantee applies strictly once per original placement and does not extend to subsequent replacements.

6.5 If Spanly cannot fill the vacancy within 30 (thirty) days under the Guarantee Period, a refund will be handled as per the following sliding scale based on the Candidate's length of service:

Length of Service (Days)	Refund % of Invoice
1 to 30	50%
31 to 60	25%
61 to 90	10%

7 PAYMENT TERMS

7.1 The Client shall make payment of the placement fee to Spanly, without deduction or set off, within 14 (fourteen) calendar days from the date of receipt of the invoice or upon the commencement date of the candidate, whichever comes first.

8. GENERAL OBLIGATIONS OF THE PARTIES

8.1. Spanly undertakes to**:**

8.1.1. ensure that all personnel performing the Services are competent and suitable to perform the Services (whether as to experience, training, qualifications or otherwise).

8.1.2. procure the availability of Talent to provide the EOR Services during the term of this Agreement.

8.1.3. employ the Talent under a compliant South African employment contract.

8.1.4. promptly inform the Client of the absence (or anticipated absence) of any Talent and, if the Client requires, provide a suitably qualified replacement in case of incapacity of Talent.

8.1.5. ensure that all Talent provided to the Client for the purpose of carrying out its obligations under this Agreement shall at all times be and be deemed to be employees of Spanly as an Employer of Record on behalf of the Client.

8.1.6. manage onboarding, equipment, payroll, taxes, benefits and terminations of employment of the Talent.

8.1.7. ensure that the Services will be provided in accordance with all Applicable Law from time to time in force, and will inform the Client as soon as it becomes aware of any changes in law that impacts or is likely to impact the Services.

8.1.8. invoice the Client for the Services rendered.

8.2. The Client shall:

8.2.1. provide day-to-day instructions, training, work assignments and operational supervision to the Talent once they have been employed.

8.2.2. not represent or act as the legal employer of the Talent.

8.2.3. make payment of the Charges to Spanly in accordance with the provisions of this Agreement.

8.2.4. be responsible for providing all necessary software programs, and any training that the Talent will require in relation to onboarding of client specific systems, in collaboration with Spanly.

8.2.5. assist Spanly in implementing and maintaining fair labour practices with regards to contract termination, all infractions, dismissal and related labour relations activities. The Client undertakes to supply to Spanly upon its request, all information, witness details and/or statements and the like that may be necessary in assisting Spanly to implement such fair labour practices as required for conducting a fair disciplinary hearing and/or as required in the course of any labour litigation arising therefrom.

8.2.6. timeously notify Spanly in the event that it receives notice from the Talen of an intention to terminate the service supply to the Client.

8.2.7. comply with the mandatory compensation provisions, including without limitation any severance pay that may be due, and other procedures as prescribed in Labour Legislation, in the event that the Client wishes to terminate the Talent/s contract due to operational requirements as defined in Labour Legislation.

8.2.8. Comply with any directives and/or judgments handed down by an applicable tribunal, court of law or governing body, including without limitation in respect of any compensation directives and/or findings.

8.2.9. in the event that Spanly is lawfully directed and required to make any additional payments not referred to herein in respect of any Talent, such additional payment shall be borne on the Client and made payable to Spanly.

8.2.10. adhere to the relevant provisions of Labour Legislation, including without limitation, the BCEA and the LRA.

8.2.11. not approach any Talent/s (including any candidate/s referred to or introduced to the Client by Spanly) directly or indirectly to request any rendering of services (whether temporary, permanent or otherwise).

8.2.12. promptly notify Spanly in writing of any mandatory laws in the Client Location that may materially affect the Services. The Parties shall cooperate in good faith to agree any operational changes and additional costs required. If the Parties cannot agree such changes within a reasonable period, Spanly may terminate the affected Engagement Schedule on written notice without liability (other than to refund any pre-paid Charges for Services not performed). Notwithstanding the foregoing, the Client is solely responsible, at its own cost, for identifying and complying with all laws, regulations, regulatory requirements and industry standards applicable to it, its Affiliates, its business operations, its systems, its customers and its use of the Services in any jurisdiction.

9. EMPLOYMENT REQUIREMENTS

9.1. The Parties understand and acknowledge that based on the nature of the employment relationship in South Africa, the employees (i.e., Talent) are subject to the statutory employment laws of South Africa, and the Parties hereby agree and acknowledge the stipulations of the BCEA as well as the LRA.

9.2. The Client acknowledges and agrees that all Talent are employed under South African law and that any termination or employment-related dispute in respect of the Talent shall be dealt with in accordance with Labour Legislation and the dispute resolution mechanisms set out in this Agreement.

9.3. The Client understands and acknowledges that there are specific procedures that need to be followed when a bona fide reason for termination of employment exists and shall adhere thereto.

9.4. The Parties further acknowledges that there are certain notice periods and procedural requirements in line with Labour Legislation and that these notice periods need to be adhered to subsequent to the conclusion of the required termination procedure.

9.5. The Client agrees to provide the necessary support to Spanly in its undertaking to comply with legislative requirements in line with Labour Legislation to safeguard both Parties from any possible liability or disputes.

9.6. The Client acknowledges and agrees that it is jointly and severally liable with Spanly for the Talent in terms of any claims that may arise related to working conditions, labour disputes and the like.

9.7. The Client agrees to proactively include Spanly in all and any disputes that arise in the employment relationship between the Client and the Talent, including performance and discipline related matters, to ensure that the legally correct processes are followed and concluded.

9.8. The Client acknowledges and agrees that the final selection of and decision whether or not to engage any particular Talent shall lie solely with and shall be the sole responsibility of the Client.

9.9. The Talent, once placed with the Client, will be under the direct control and supervision of the Client. Spanly does not accept any responsibility whatsoever for any liability which may arise, directly or indirectly, as a result of any action whatsoever of the Talent. The Client hereby indemnifies and holds Spanly harmless against any claim of whatsoever nature and howsoever arising, the cause of which arose from or consequent upon any action of the Talent.

9.10. It is hereby acknowledged that the ownership, management, and maintenance of the provided hardware shall remain with Spanly.

10. CHARGES AND PAYMENT

10.1. In consideration of the provision of the Services, the Client shall pay the Charges, including any once-off or additional charges, to Spanly as further outlined in the applicable Engagement Schedule.

10.2. Any once-off or additional fees shall be paid by the Client within seven (7) days from the date of invoice or the date on which the Talent starts employment, whichever comes first.

10.3. The Client shall pay the Charges in advance of the payroll run each month and no later than the fifteenth (15th) of the month following receipt of an invoice from Spanly.

10.4. All sums invoiced to or paid by the Client under this Agreement shall be invoiced and paid in South African Rands (ZAR).

10.5. All sums payable under this Agreement are exclusive of VAT or any other applicable tax which shall be payable at the rate and in the manner prevailing at the relevant tax point subject to the delivery of valid tax invoice, and the Client shall be liable for such applicable taxes.

10.6. The Client shall be liable for all bank charges accrued by the transfer of funds.

10.7. In the event of late payments by the Client of any invoice, Spanly shall be entitled, without prejudice to its further rights, charge an interest fee of the prime lending rate charged at Spanly's principal Bank plus 2% (two percent) per annum, calculated daily and compounded monthly in arrear, from the due date until the date of actual payment. For the avoidance of doubt, if the Client has not paid their invoice, the Talent will be unable to be paid until the Client account is up to date.

11. DIRECT EMPLOYMENT

11.1. The Client shall not, either directly or indirectly, solicit, offer employment to, or otherwise engage in any hired Talent assigned to it by or through Spanly for a period of 24 (twenty-four) months from the Talent's initial Employment Date under this Agreement (**"Restricted Period"**).

11.2. Following the expiry of the Restricted Period, the Client may elect to directly employ the Talent, provided that:

11.2.1. the Client delivers written notice of such intent to Spanly at least 60 (sixty) days in advance of the proposed transfer;

11.2.2. the Client pays the Spanly a transfer fee equal to 30% (thirty percent) of the Talent's costs set out in the applicable Engagement Schedule, calculated based on the rate applicable as of the date of the notice referred to above (**"Transfer Fee"**);

11.2.3. the Client furnishes satisfactory evidence, at Spanly's sole satisfaction, that it has complied with all applicable legal and regulatory requirements for the lawful employment of the Talent in South Africa, including but not limited to registration with the relevant statutory authorities and the implementation of locally compliant employment contracts. For avoidance of doubt, Spanly's confirmation of satisfaction under this clause shall not be construed as legal advice, a warranty of compliance or an assumption of liability for the Client's obligations under South African law. The Client acknowledges that it remains solely responsible for ensuring that its employment of the Talent complies with all Applicable Laws, and agrees that it shall not hold Spanly liable for any claim, cost, penalty or liability arising from or related to such employment.

11.3. Upon receipt of the full Transfer Fee, the Talent shall be transferred to the Client's employment and Spanly shall be deemed to have fully discharged any and all obligations, responsibilities, or liabilities in respect of the Talent from the date of such transfer.

11.4. Should the Client wish to employ any hired Talent assigned to it by or through Spanly before the expiration of the Restricted Period, an applicable fee may be discussed and agreed by the Parties in writing. If no such fee is agreed in writing, the Restricted Period shall be strictly enforceable.

Any breach by the Client of this clause 8 shall render it liable to pay Spanly, as pre-estimated liquidated damages and not as penalty, a fee of £10,000 plus outstanding Charges at the time of such Direct Employment and any reasonable legal fees or enforcement costs incurred. For avoidance of doubt, a breach by the Client of this Direct Employment clause in respect of any one Talent shall entitle Spanly to exercise its rights under this Agreement, including termination in accordance with this Agreement, and to apply the liquidated damages contemplated in this clause in respect of all Talent assigned to the Client, not only the Talent directly approached and/or employed.

12. NON-SOLICITATION, NON-INDUCEMENT AND NON-CIRCUMVENTION

12.1. Except as expressly permitted under clause 8, the Client undertakes that it shall not, and shall procure that its Affiliates, contractors, agents or representatives (including without limitation employees, officers and shareholders) shall not, directly or indirectly, during the term of this Agreement and for a period of 24 (twenty-four) months following the termination of the Talent's employment with Spanly:

12.1.1. Solicit, approach, recruit, employ, engage or otherwise induce or attempt to induce the Talent to terminate their employment or engagement with Spanly in order to take up employment or any other form of engagement with the Client, its Affiliates or a third party; or engage the services of the Talent in any capacity whatsoever, whether directly or indirectly, including through any consultancy, agency, labour broker or third party service provider, any company, close corporation or other corporate vehicle controlled by, associated with or used by the Talent to provide services, or any other intermediary through which the Talent provides services; or receive, make use of, or otherwise benefit from the Talent's services, whether provided personally by the Talent or through a third-party intermediary; or assist or encourage any third party to take any action that would contravene this clause where the Client knows or ought reasonably to have known that such third party action would constitute a breach of this Agreement if undertaken by the Client.

12.2. The Client shall not, and shall ensure that its Affiliates and representatives do not:

12.2.1. Take any action (including offering higher remuneration, improved terms or promises of future opportunities) with the intent or foreseeable effect of enticing or encouraging any Talent to resign or terminate their engagement with Spanly;

12.2.2. Engage in any conduct that circumvents, or attempts to circumvent, the restrictions set out in this Agreement, including but not limited to engaging the Talent through intermediaries, referrals, third-party arrangements or entities established for the purpose of avoiding compliance with this clause 9.

12.3. If the Client becomes aware of any approach, contact, discussion or indication that a Talent may seek, consider or be considered for any form of employment or engagement (directly or indirectly) with the Client, its Affiliate or any third party, the Client shall notify Spanly within 3 (three) business days in writing, and shall cooperate in good faith to ensure compliance with this Agreement.

12.4. Spanly may, on reasonable written notice, be entitled to conduct any audit of the Client's communications and/or records for the purpose of verifying compliance with this clause 9.

12.5. In the event of any breach of this clause 9, the Client shall, without prejudice to any further rights or remedies available to Spanly:

12.5.1. Immediately pay Spanly, as liquidated damages, a sum equal to 50% (fifty percent) of the costs set out in the applicable Engagement Schedule, calculated as of the date of the breach; and

12.5.2. Reimburse Spanly for any reasonable legal fees or enforcement costs incurred in connection with the breach or attempted circumvention of this clause 9.

12.6. The Client acknowledges that the restrictions contained in this clause 9 are reasonable and necessary to protect the legitimate business interests, goodwill, and proprietary rights of Spanly. The Client further agrees that monetary damages alone may be an insufficient remedy and that Spanly shall be entitled to seek injunctive relief or other equitable remedies for actual or threatened breaches of this clause 9.

12.7. The Parties acknowledge and agree that any act or omission by the Client (or its Affiliates, contractors, agents or representatives) in respect of a particular Talent may, on the same facts, constitute a breach of both clause 8 (Direct Employment) and this clause 9 (non-solicitation, non-circumvention and non-inducement). In such circumstances, Spanly may at their sole discretion, be entitled to elect which liquidated damages remedy to enforce in respect of the breach, it being recorded that Spanly may elect to enforce the higher of the liquidated damages.

12.8. For avoidance of doubt, nothing in this clause 9 shall restrict or limit the Client's right to directly employ a Talent in accordance with the Direct Employment clause after expiry of the Restricted Period and payment of the applicable Transfer Fee.

12.9. The provisions of this clause 9 shall survive the termination or cancellation of this Agreement.

13. CONFIDENTIALITY

13.1. Each of the Parties shall keep confidential and shall not disclose to any person any information, whether in written or any other form, which has been or may be disclosed to it ("**Receiving Party**") by or on behalf of the other Party ("**Disclosing Party**") in the course of the discussions leading up to or the entering into or performance of this Agreement and which is identified as confidential or is clearly by its nature confidential or ought reasonably to be considered confidential including but not limited to trade secrets, non-public information related to the Disclosing Party's know-how, technology, customers, financial and business affairs and operations (including that of any member of its Affiliates) and any third party information that the Disclosing Party is under an obligation to keep confidential ("**Confidential Information**") except in so far as Confidential Information:

13.1.1. is required by a person employed or engaged by the Receiving Party in connection with the proper performance of the Agreement; or

13.1.2. is required to disclose by law or the rules of any governmental organisation by which the Receiving Party is bound provided that if the Receiving Party is required to make such disclosure, it shall (save where it is prohibited from doing by law) give the Disclosing Party as much prior notice as is reasonably practicable so that the Disclosing Party may seek such protective orders or other confidentiality protection as the Disclosing Party, in its sole discretion, may elect and shall reasonably co-operate with the Disclosing Party in protecting the Confidential Information which is to be so disclosed.

13.2. Any disclosure of Confidential Information permitted under Confidentiality clause shall be in confidence, shall only be to the extent that any persons to whom the information is disclosed need to know the same for the performance of their duties and the Receiving Party shall be obliged to procure that all such persons are aware of the obligation of confidentiality and undertake to comply with it. The Receiving Party shall remain fully responsible and liable for any breach of the terms of this Confidentiality clause by any person to whom the Receiving Party discloses Confidential Information.

13.3. Each Party hereby undertakes to the others to use Confidential Information disclosed to it by or on behalf of the Disclosing Party solely in connection with the performance of this Agreement and not otherwise for its own benefit or the benefit of any third party.

13.4. Confidential Information does not include information which:

13.4.1. is or becomes generally available to the public otherwise than as a direct or indirect result of disclosure by the Receiving Party or a person employed or engaged by the Receiving Party contrary to their respective obligations of confidentiality.

13.4.2. is or was made available to the Receiving Party otherwise that pursuant to this Agreement and free of any restrictions as to its use or disclosure; or

13.4.3. can be shown by reference to a written document to have been independently developed by or on behalf of the Receiving Party without access to or use of the Confidential Information.

13.5. Without prejudice to any other rights and remedies that the Disclosing Party may have, the Receiving Party acknowledges and agrees that the Disclosing Party shall, without proof of special damage, be entitled to seek an injunction, specific performance, or other equitable relief for any threatened or actual breach of the provisions of this Agreement, in addition to any damages or other remedy to which it may be entitled.

13.6. Neither Party shall make any announcement relating to this Agreement or its subject matter without the prior written approval of the other Party except as required by law or any legal or regulatory authority.

13.7. On termination of this Agreement for any reason each Party shall immediately return to the other Party (or destroy if so directed) all Confidential Information of the other Party, in whatever form, which is in their possession, custody or control and, if requested by the other Party, shall provide a certificate signed by an authorised confirming the provisions of this clause have been fully complied with (save that each Party may retain copies of Confidential Information of the other Party strictly to the extent necessary to comply with any applicable law, regulation or regulatory authority to which they are subject provided that such Party shall continue to be bound by the terms and conditions of this Agreement with respect to any such Confidential Information so retained).Spanly shall ensure that the Talent is directed to destroy all Confidential Information of the Client, in whatever form, which is in his or her possession, custody or control and, where requested, provide a written undertaking that he or she has done so.

13.8. This clause shall continue in force without limit in time notwithstanding the termination or expiry of this Agreement howsoever caused.

14. DATA PROTECTION

14.1. If at any time during the course of providing Services under this Agreement, Spanly receives or processes any personal data for which the Client is data controller ("**the Client Data**"), Spanly shall only process that data in accordance with applicable Data Protection Legislation.

14.2. For purposes of the Data Protection Legislation, the Parties agree that the Client will generally act as the responsible party/controller and Spanly as the operator/processor in respect of personal data processed on the Client's behalf in connection with the Services. Where Spanly acts as a responsible party/controller, it will do so in accordance with the Data Protection Legislation.

14.3. The Client agrees that in connection with the Services and the EOR Services, Spanly may collect, use, process and transfer the Client Data, as necessary and appropriate, for the following and similar purposes: (i) administration, regulatory and management purposes including assessment of performance obligations under this Agreement; (ii) evaluating and revising the structure of the organisation; (iii) such other legitimate business needs (including know-your-business screening) as are required to administer the organisation in the ordinary course of business. The Client further agrees that, when necessary for these purposes or as required by law, Spanly may make such data available to (i) its partners; (ii) parties providing products and/or services to Spanly; (iii) regulatory authorities; (iv) any advisors or potential purchasers of Spanly or its business; (iv) Talent; or (v) Affiliates to the extent necessary to administer the Parties' relationship or for other enumerated reasons herein, to the extent allowable by applicable law, even if such companies are outside the jurisdiction where the Client resides.

14.4. The Client is solely responsible, at its own cost, for identifying and complying with all data protection and privacy laws applicable to it in the Client Location or any other jurisdiction applicable to it, its Affiliates, its business operations, its instructions to Spanly and its use of the Services in any jurisdiction (**"Client Data Protection Laws"**). The Client shall promptly notify Spanly in writing of any mandatory Client Data Protection Laws that may affect the Services or Spanly's processing of personal data, including any operational, technical, organisational, contractual or security measures that Spanly is required to implement. The Client shall provide sufficient written detail regarding the relevant Client Data Protection Laws and the additional measures that are reasonably required, and the Parties shall engage in good faith to ensure compliance by Spanly.

14.5. Spanly shall not be in breach of this Agreement, nor liable for any failure to comply with any Client Data Protection Laws, to the extent such failure results from the Client not having notified Spanly in writing in accordance with clause 11.4 or from the Client's failure to provide sufficiently clear or complete information. The Client indemnifies and holds harmless Spanly, its directors, officers, employees and agents from and against all losses, fines, penalties, damages, claims, costs and expenses (including reasonable legal costs on an attorney-client basis) arising from or in connection with the Client's failure to notify Spanly in writing of any Client Data Protection Laws, or from any material inaccuracy or omission in the information provided under this clause, in each case to the extent that such loss could have been avoided or materially reduced had the Client complied with clause 11.4.

14.6. The Client further acknowledges that it has read, understand and agree to the; PAIA Manual and Privacy Policy accessible on the Spanly site.

15. TERMINATION

15.1. Either Party ("**Non-Defaulting Party**") may terminate this Agreement (without prejudice to its other rights and remedies) with immediate effect by written notice to the other Parties ("**Defaulting Party**") if:

15.1.1. the Defaulting Party commits a material or persistent breach of any of its obligations under this Agreement and, if the breach is capable of remedy, fails to remedy it during the period of thirty (30) days starting on the date of receipt of notice from the Non-Defaulting Party which specifies the breach in reasonable detail and requires it to be remedied; or

15.1.2. the Defaulting Party suffers an Insolvency Event.

15.2. The Client shall be entitled to terminate this Agreement by providing a minimum written notice period to Spanly as follows:

15.2.1. within the first 3 (three) months following the Commencement Date, the Client may terminate on not less than of 1 (one) week's written notice; and

15.2.2. after the expiry of the first 3 (three) months, the Client may terminate on not less than 1 (one) month's written notice,

provided always that the Client shall adhere to the principles and provisions outlined in the Labour Legislation, including without limitation the BCEA and the LRA concerning notice periods, severance packages and grounds and procedures for termination.

15.3. Notwithstanding anything to the contrary in this Agreement, each Party acknowledges and agrees to adhere to Labour Legislation, including without limitation the BCEA regarding grounds and procedures for termination. It is mutually understood that compliance with the relevant provisions of Labour Legislation is essential to avoid any liability on either of the Parties.

15.4. Spanly may without prejudice to any other rights and remedies it may have under this Agreement, or the law generally terminate this Agreement at any time by giving not less than one months' notice in writing to the Client for any reason, including non-payment of Charges, reputational damage or threat of reputational damage, suspicion of or identification of fraud, harassment, unfair, deceptive or illegal acts or practices by the Client or anyone associated with the Client.

15.5. Termination of this Agreement would consequently result in the termination of the joint employment relationship between Spanly, the Client and the Talent.

16. LIABILITY AND INDEMNITY

16.1. Nothing in this Agreement shall limit either Party's liability for death or personal injury resulting from its negligence or for fraud.

16.2. In no event will Spanly's liability arising out of or related to this Agreement, whether in contract or under any other theory of liability, exceed the amounts paid and/or payable by the Client to Spanly in the 12 (twelve) months preceding the incident that gave rise to the claim.

16.3. Neither Party shall be liable (in contract, tort (including negligence) or for breach of statutory duty or in any other way) for any indirect or consequential losses. This exclusion and limitation of liability does not apply to any liability arising under the indemnities below.

16.4. Each Party shall indemnify in full and on demand and hold the other Party and its Affiliates (each an "**Indemnified Party**") harmless from all claims and all direct liabilities awarded against, or incurred or paid by, an Indemnified Party as a result of any breach of clauses 10 (Confidentiality) or 11 (Data Protection) provided that:

16.4.1. the Indemnifying Party's liability under this clause shall be reduced proportionally to the extent that any act or omission of the other Party, or its employees or agents contributed to such liability.

16.4.2. the Indemnifying Party provided the other Party with prompt written notice of the event giving rise to the indemnifying obligation, providing reasonable cooperation and assistance in the defence or settlement of any claim and granting the Indemnifying Party control over the defence and settlement of such claim.

16.5. Subject to clause 13.6, the Client indemnifies and holds harmless Spanly, its directors, employees and agents from and against any losses, liabilities, damages, costs and expenses (including legal costs on an attorney and own client scale) arising from:

16.5.1. any award, order or determination of any court, tribunal or statutory body to the extent arising from or relating to (i) the Client's failure to comply with any law applicable to it; (ii) any instruction or direction given by the Client; (iii) the Client's workplace practices, supervision or control of personnel; (iv) any allegation that the Talent are, in law, employees or agents of the Client in any jurisdiction other than South Africa; or (v) any breach by the Client of this Agreement or Applicable Legislation; and

16.5.2. any amounts which Spanly is obliged to pay to any Talent in terms of Labour Legislation where such obligation arises as a result of the Client's failure to make payment to Spanly when due.

16.6. The indemnity in clause 13.5 shall not apply to the extent that the relevant loss or liability arises from the gross negligence or wilful misconduct of Spanly.

17. WARRANTIES

17.1. Each Party hereto warrants that:

17.1.1. it has the authority necessary to enter into this Agreement, and that such authority has validly been provided to the signatory, to bind such Party to this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement.

17.1.2. the signatory to this Agreement warrants and undertakes that he or she has the necessary authority to bind the Client to this Agreement.

18. FORCE MAJEURE

18.1. In this Agreement, "force majeure" shall mean any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented including, without limitation, to the extent that these are beyond such control, nuclear accident or acts of God, war or terrorist activity, riot, civil commotion, pandemic, fire, flood or storm except that:

18.1.1. neither lack of funds nor a default or misconduct by any third party employed or engaged as an agent or independent contractor by the Party claiming force majeure shall be a cause beyond the reasonable control of that Party unless caused by events or circumstances which are themselves force majeure; and

18.1.2. mere shortage of labour, materials, equipment or supplies shall not constitute force majeure unless caused by events or circumstances which are themselves force majeure.

18.2. If either Party is prevented from performance of any of its obligations under this Agreement by force majeure, that Party ("**Claiming Party**") shall as soon as reasonably possible serve notice in writing on the other Parties specifying the nature and extent of the circumstances giving rise to force majeure, and shall subject to service of such notice have no liability in respect of any delay in performance or any non-performance of any such obligation (and the time for performance shall be extended accordingly) to the extent that the delay or non-performance is due to force majeure provided that:

18.2.1. the Claiming Party could not have avoided the effect of the force majeure by taking precautions which, having regard to all matters known to it before the occurrence of the force majeure and all relevant factors, it ought reasonably to have taken but did not take; and

18.2.2. the Claiming Party has used reasonable endeavours to mitigate the effect of the force majeure and to carry out its obligations under this Agreement in any other way that is reasonably practicable.

18.3. If either Party is prevented from performance of substantially all of its obligations by force majeure for a period of more than 30 (thirty) days, the other Parties may terminate this Agreement immediately on service of written notice upon the Party so prevented, in which case neither Party shall have liability to the other except:

18.3.1. rights and liabilities which accrued prior to such termination shall continue to subsist; or

18.3.2. where such rights, obligations and liabilities arise from the BCEA.

19. NOTICES

19.1. Any notice given under this Agreement shall be in writing and in English and signed by or on behalf of the Party giving it and shall be served by hand delivering it or sending it by registered mail or by email to the address and for the attention of the relevant Party set out in on page 1. For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by email unless positive confirmation of receipt is received, or the email notice is confirmed by a follow up hard copy being delivered in accordance with this clause.

19.2. A notice shall be deemed to have been received at the time of delivery provided that if deemed receipt occurs before 08:00 on a Business Day the notice shall be deemed to have been received at 08:00 on that day and if deemed receipt occurs after 17:00 on a Business Day or on any day which is not a Business Day the notice shall be deemed to have been received at 08:00 on the next Business Day. References to any time shall be to South African Standard Time.

20. ASSIGNMENT AND SUB-CONTRACTING

20.1. Save for its Affiliates, Spanly shall not sub-contract, assign, delegate, transfer, charge or otherwise dispose of all or any of its rights and obligations under this Agreement without the express prior written consent of the Client.

20.2. The Client shall not sub-contract, assign, delegate, transfer, charge or otherwise dispose of all or any of its rights and obligations under this Agreement without the prior written consent of Spanly.

21. DISPUTE RESOLUTION

21.1. The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to this Agreement and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

21.2. Not earlier than 14 (fourteen) Business Days after having advised the other Party, in terms of clause 18.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator, by written notice to the other Party (**"Mediation Notice"**). The mediator shall be selected by agreement between the Parties. Should the Parties be unable to agree on a mediator within 10 (ten) Business Days of receipt of the Mediation Notice, the Parties hereby agree to proceed to arbitration as set out hereunder. The costs of the mediation shall be borne equally by the Parties.

21.3. In the event of the failure of negotiation and/or mediation proceedings between the Parties, as above indicated, the Parties hereby agree to refer the dispute to the Arbitration Foundation of South Africa (AFSA) for arbitration.

21.4. The seat of arbitration shall be Johannesburg, South Africa. The arbitration proceedings shall be conducted in English.

21.5. The tribunal shall consist of a single arbitrator appointed in accordance with the AFSA rules, unless the Parties agree otherwise in writing.

21.6. The arbitrator's award shall be final and binding on the Parties. The Parties irrevocably agree that judgment upon the award may be entered and enforced in any court of competent jurisdiction, including in terms of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and each Party irrevocably submits to such enforcement.

21.7. Pending the final determination of the dispute, the Parties shall continue to perform their respective obligations under this Agreement to the extent reasonably possible.

21.8. Nothing in this clause shall prevent either Party from seeking urgent or interim relief from any court of competent jurisdiction.

21.9. Any amounts payable in terms of this clause 18 may be awarded in any arbitration or, where applicable, court, in South Africa, in South African Rands and shall be recoverable in any jurisdiction in which the Client or its assets are located in the currency of the Client's principal place of business, converted at the spot exchange rate on the date of judgment.

21.10. This clause 18 shall survive the termination of this Agreement.

22. GOVERNING LAW

22.1. Notwithstanding anything to the contrary in this Agreement, this Agreement shall at all times, and any obligations arising out of or in connection with this Agreement, be governed and construed in accordance with the laws of South Africa, irrespective of the domicile, place of business or residence of the Client and irrespective of the place where the Services are performed or any Talent located.

22.2. Subject to clause 18, the courts of South Africa shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement, unless otherwise expressly determined by Spanly, and the Parties hereby submit to the jurisdiction of such courts.

23. GENERAL

23.1. This Agreement and the documents referred to in it constitute the entire agreement and understanding of the Parties relating to the subject matter of this Agreement and supersedes any previous agreement or understanding between the Parties in relation to such subject matter.

23.2. In no event will any delay, failure or omission (in whole or in part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or rising under this Agreement or by law, be deemed to be or be construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time.

23.3. The rights and remedies provided by this Agreement are cumulative and (unless otherwise provided in this Agreement) do not exclude any other rights or remedies in law.

23.4. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

23.5. No modification or variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties to this Agreement. For the avoidance of doubt, no modification or variation of this Agreement shall be valid if made by e-mail.

23.6. Except in so far as this Agreement expressly provides that a third party may in its own right enforce a term of this Agreement, a person who is not a party to this Agreement has no right to rely upon or enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

23.7. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties or to authorise any Party to act as agent for the other and no Party shall have authority to act in the name of or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability or the exercise of any right or power).

23.8. This Agreement, and any schedule and annexure by whatever means accepted, including electronic signature, will be treated in all manner and respects as an original agreement and will be considered to have the same binding legal effect as if it were an original signed version delivered in person. Neither Party may argue that an agreement was not formed hereunder based on either (i) the electronic means to indicate acceptance of the terms of this Agreement or (ii) the fact that any signature of this Agreement was transmitted or effected through electronic means.

23.9. This Agreement may be executed in one or more counterparts, all of which shall be collectively considered as one and the same Agreement.

THIS AGREEMENT has been executed by or on behalf of the Parties:

Signed on behalf of **THE CLIENT** by:

Name:	
Title/Capacity:	
Signature:	
Date:	

Signed on behalf of **SPANLY** by:

Name:	
Title/Capacity:	
Signature:	
Date:	

TALENT ENGAGEMENT SCHEDULE

1. TALENT DETAILS

Candidate Name	
Role Description	
Equipment Required	

2. EOR REQUIREMENTS

Department	
Reporting to	
Working Hours	
Holidays (Foreign or SA)	
Targets	
Commission	
Employment Type	Fixed term / Permanent
Start Date	
End Date (if fixed term)	
Software	Our set-up includes the basic Microsoft package and licensing, any additional software requirements to be set-up by client

3. CHARGES FOR TALENT

Cost (Salary and EOR Management Fee) (as at Commencement Date)	
Once-Off Set-up Fee (as at Commencement Date)	Includes laptop, high end power inverter, Mouse, Headset, Courier fees, IT set up:

Laptop Tier	Specification:	Cost

THIS ENGAGEMENT SCHEDULE has been executed by or on behalf of the Parties:

Signed on behalf of **THE CLIENT** by:

Name:	
Title/Capacity:	
Signature:	
Date:	

Signed on behalf of **SPANLY** by:

Name:	
Title/Capacity:	
Signature:	

Date:	