



SADCAS Ref. No:									
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**INDEPENDENT CONTRACTOR AGREEMENT**  
**BETWEEN**  
**SADCAS AND ASSESSOR/ TECHNICAL EXPERT**

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**1. PARTIES**

This Agreement is made and entered between THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY ACCREDITATION SERVICE, situated at Plot 50676, First Floor, Block B, BIFM/Fairgrounds Office Park, Gaborone, Botswana Hereinafter referred to as SADCAS and represented by

Mr/Mrs/Ms \_\_\_\_\_

In his/her duly authorized designation as Technical Manager of SADCAS

**AND**

\_\_\_\_\_  
(Full Names and Surname of Assessor/ Technical Expert acting in personal capacity)

\_\_\_\_\_  
(I.D. number)

\_\_\_\_\_  
(Name and Registration Number of Company, Closed Corporation or other entity)

\_\_\_\_\_  
(Title, Full Name and Surname of duly Authorized **or** Person signing in personal capacity)

\_\_\_\_\_  
(I.D. number)

\_\_\_\_\_  
(Address)

**(hereinafter the “Assessor/Technical Expert”)**

## **2. INTRODUCTION**

### **WHEREAS:**

- 2.1 The core functions of SADCAS are to assess its Customers against relevant national and international guides and/ or standards including where appropriate, regulatory requirements, and to recognize that they are competent to carry out specific technical tasks and procedures through a formal procedure of accreditation.
- 2.2 The Assessor/Technical Expert has the necessary expertise, and is willing and able to accept professional assignments from SADCAS as an independent contractor during the process of accreditation, assessment or related activities, of SADCAS' Customers.

### **THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:**

## **3. INTERPRETATION AND DEFINITIONS**

### **3.1 Interpretation**

- 3.1.1 The headings to the clauses of this Agreement are inserted for reference purposes only and they shall not be taken into consideration in the interpretation of this Agreement.
- 3.1.2 Words in the singular include the plural and vice versa, any gender includes the other genders and any natural person includes a juristic person.
- 3.1.3 This Agreement sets out the whole of the agreement between the parties and there are no other agreements, guarantees or representations, either verbal or in writing upon which any party is relying in concluding this agreement. No other agreement between the parties will have the effect of varying any provisions of this agreement unless it is recorded in writing and signed by each of the parties.
- 3.1.4 Unless inconsistent with the context, the expressions set forth in this Agreement shall bear the following:

### **3.2 Definitions**

- 3.2.1 **“Accreditation assessment”** means a procedure used by SADCAS, with the assistance of Assessors/Technical Experts, to determine, directly or indirectly, that the relevant requirements in technical regulations, standards, or any other relevant and validated documentation have been fulfilled by the Customer of SADCAS.
- 3.2.2 **“Agreement”** means an independent contractor agreement in terms of which the Assessor/Technical Expert will accept assignments from SADCAS as an independent contractor and not as an employee and the relationship thus created will not be regulated by any of the Botswana labour laws, including but not limited to the Employment Act, Employment of Non Citizens Act and Workers Compensation Act.
- 3.2.3 **“Assessor/Technical Expert”** means a person who acts as technical expert, technical assessor, team leader or in any other capacity and who accepts assignments from SADCAS to assist with accreditation assessment or related activities of its Customers at a fixed rate of remuneration as will be determined from time to time by SADCAS.

- 3.2.4 “**Assignment**” means any specific task allocated to the Assessor/Technical Expert by an authorized member of SADCAS whether it is part of accreditation assessment or related activities or not.
- 3.2.5 “**Confidential information**” means all information obtained or created through the accreditation process, and without limiting the generality of the term, it includes:
- Technical, scientific, commercial, financial or market information, know-how and trade secrets;
  - Information about business relationships, plans, designs, drawings and machines and processes;
  - All information in whatever form, whether or not protected by common law or statutory law relating to registered or unregistered copyright, patent and trademarks;
  - All information peculiar to the business of the divulging party which is not readily available to a competitor of the divulging party; and
  - All information, which is disclosed in circumstances of confidence or would be understood by the parties, exercising reasonable business judgment, to be confidential.
- 3.2.6 “**Customer**” means a laboratory, inspection body, certification body, verification agency or any other person or institution requesting SADCAS to provide accreditation assessment or related activities to it.
- 3.2.7 “**Party**” means either SADCAS or the Assessor/Technical Expert as the case may be.

#### **4. COMMENCEMENT OF CONTRACT**

- 4.1 Provided the Assessor/Technical Expert complies strictly with all standards and requirements determined by SADCAS, this agreement shall commence on the date of signature of this agreement and shall remain in force for a period of five (5) years save in the event of an earlier termination thereof as provided for in this agreement.
- 4.2 This agreement shall be automatically renewed for a period of five (5) years, unless either party gives the other at least two months written notice of the intention to terminate this agreement, at the end of the then current term of the agreement, in which event this agreement shall terminate at the end of the then current term without further notice.
- 4.3 At any time, but subject to the availability of the Assessor/Technical Expert, SADCAS may assign the Assessor/Technical Expert to visit the premises of SADCAS, or the premises of one of SADCAS’ Customers, in order to render accreditation assessment or related activities as part of the accreditation assessment.
- 4.4 It is specifically recorded that the frequency of allocation of assignments to the Assessor/Technical Expert during the currency of this agreement falls within the sole discretion of SADCAS. The parties also agree that the conclusion of this agreement does not imply, or create the impression, that the Assessor/Technical Expert will be offered another contract after the termination of this agreement.
- 4.5 The signature of this agreement replaces and revokes any other independent contractor agreements between the parties, concluded before the signature of this agreement, in relation to accreditation assessment or related activities of any of SADCAS’ Customers.

**5. NATURE OF THE AGREEMENT**

- 5.1 The parties specifically agree that this contract does not constitute a contract of employment and that the Assessor/Technical Expert, in his/her capacity as independent contractor, will at no stage be deemed to be an employee, partner, authorized agent, or director of SADCAS.
- 5.2 The Assessor/Technical Expert does not render services to SADCAS on a continuous basis and SADCAS does not prescribe fixed office hours to the Assessor/Technical Expert. In addition hereto, SADCAS does not normally provide capital goods such as an office, telephones or vehicles to the Assessor/Technical Expert. The Assessor/Technical Expert is being remunerated for an end result, namely the completion of a particular assignment, and not for the rendering of services.
- 5.3 Due to the nature of the agreement, and the fact that the Assessor/Technical Expert is not an employee of SADCAS, the Assessor/Technical Expert is not entitled to claim vacation leave, sick leave, maternity leave, family responsibility leave, unemployment insurance benefits or any other employee related benefits from SADCAS.
- 5.4 The Assessor/Technical Expert acts as an independent contractor and has no authority to bind SADCAS contractually with third parties.

**6. OBLIGATIONS OF ASSESSOR/TECHNICAL EXPERT**

- 6.1 The Assessor/Technical Expert undertakes to:
  - 6.1.1 Carry out all agreed upon assignments between the parties that will be specified in writing by an authorized SADCAS staff member;
  - 6.1.2 Render expert and professional services without public criticism of SADCAS, in order to promote the best interests of SADCAS and to protect its good name;
  - 6.1.3 Make it possible and allow SADCAS or anyone appointed by SADCAS to monitor or undertake inspections of any work done by the Assessor/Technical Expert under this Agreement;
  - 6.1.4 Provide required materials, equipment, machines and own transport to meet and carry out the obligations in terms of this Agreement unless the parties have reached another agreement in this regard prior to the acceptance of an assignment;
  - 6.1.5 Comply with the general rules, regulations and safety measures of each one of the different Customers that applies to such Customer's employees and that may be visited by the Assessor/Technical Expert;
  - 6.1.6 Comply with all applicable policies, procedures and specify timelines, and implement processes as defined by SADCAS at all times.
  - 6.1.7 Refrain from marketing any consulting services, which includes a statement in relation to work being done by SADCAS Assessor/Technical Expert, and refrain from making any statements (or bringing anyone under the impression) which may have the effect that accreditation would be easier to obtain should their services be used or that the two activities are linked;
  - 6.1.8 Send to SADCAS an updated CV at least every three year or as it is updated, and indicating the date it was updated;

- 6.1.9 Identify any potential sources of conflict between the organization employing him/her and the organization to be assessed and notify SADCAS of any existing, prior or foreseeable relationship which may compromise impartiality, such potential conflict well in advance of any work being performed; and
- 6.1.10 Ensure, if appointed as Team Leader, that the assignments are properly managed and that all necessary forms and documents are correctly completed within the agreed time scales.
- 6.2 The Assessor/Technical Expert shall submit within 30 (thirty) working days after the completion of the site visit and after completion of all documentation to which the invoice refers, a detailed invoice for that assignment.
- 6.3 It is specifically recorded that a failure to comply with clause 6.1 and its sub-clauses will constitute a material breach of this Agreement.

## **7. OBLIGATION OF SADCAS**

SADCAS undertakes to:

- 7.1 Accept responsibility for acquiring work from Customers within the ambit of its legislative mandate and to receive clear instructions from such Customers regarding the precise ambit and nature of the accreditation assessment or related activities that has to be performed (and the time limits within which the assignment has to be completed) and to provide the Assessor/Technical Expert with written instructions and guidelines regarding every assignment;
- 7.2 Provide the Assessor/Technical Expert with access to the relevant up-to-date documented policies and procedures referred to in 6.1.6.
- 7.3 When appropriate, protect the good name of the Assessor/Technical Expert and at all times not to publicly criticize the Assessor/Technical Expert; and
- 7.4 Remunerate the Assessor/Technical Expert in accordance with the following provisions:
  - 7.4.1 Assessors/Technical Experts will be remunerated according to published assessor/technical expert rates, of which from time to time, the rate of remuneration in consideration of assignments contemplated under this Agreement will be reviewed;
  - 7.4.2 SADCAS will cover an Assessor's/Technical Expert's travel and accommodation expenses only if such an agreement has been reached prior to the acceptance of an assignment;
  - 7.4.3 If and when any legislation requires it, SADCAS shall be entitled to deduct any amounts from the gross invoice amount before payment is made to the Assessor/Technical Expert and in the event of the non-deduction by SADCAS for whatever reason, such amounts may be recovered or set off from the Assessor's/Technical Expert's invoice amounts at a later stage;
  - 7.4.4 Payment to the Assessor/Technical Expert in terms of this Agreement will be made to the expert/appointing authority and will be effected within 30 (thirty) working days of receipt of the original specified invoice for assignments completed and, if applicable, the submission of appropriate assessment documentation; and
  - 7.4.5 In the event that SADCAS has queries regarding the Assessor's/Technical Expert's invoices, SADCAS will only pay the claim (minus taxes) once the query has been resolved.

- 7.5 It is specifically recorded that a failure to comply with clauses 7.3 and 7.4 and its sub-clauses will constitute a material breach of this Agreement.

**8. DISCLOSURE OF GENERAL INFORMATION**

- 8.1 The Assessor/Technical Expert agrees to maintain as confidential and not to use or disclose to any third party, any information derived from any of SADCAS' Customers in connection with accreditation assessment or related activities without the written consent of the Customer and SADCAS, except:
- 8.1.1 To any person who of necessity requires it for the performance of his/her duties in terms of this Agreement;
- 8.1.2 If such information is required in terms of any law or as evidence in any court of law;
- 8.1.3 To any competent authority, which requires it for the institution, or an investigation with the view to the institution, or any criminal prosecution;
- 8.1.4 By or on authority of the Chairperson of the SADCAS Board or the Chief Executive Officer of SADCAS; or
- 8.1.5 Any information which was in the possession of SADCAS prior to its disclosure by the Customer.
- 8.2 It is specifically recorded that a failure to comply with clause 8 and its sub-clauses will constitute a material breach of this Agreement.

**9. CONFIDENTIAL INFORMATION**

- 9.1 Despite the generality of clause 8, and without derogating from its binding effect, all confidential information in relation to SADCAS and all general and confidential information in relation to a Customer, whether it was gained by the Assessor/Technical Expert prior to, during or after an assignment, will be treated by the Assessor/Technical Expert as confidential and will not be reproduced or disclosed to any person or organization. The Assessor/Technical Expert shall restrict the use of such information exclusively for purposes directed by SADCAS. Permission to disclose any such information about a Customer or SADCAS may be deemed to have been granted once the Assessor/Technical Expert has obtained unambiguous written permission from SADCAS' Chief Executive Officer to do so. In addition to this Agreement, the Assessor/Technical Expert agrees to sign a Nondisclosure/Confidentiality Statement – Assessors/Technical Experts F 45 (a) for purposes of each assignment involving accreditation assessment or related activities.
- 9.2 In the event of SADCAS requiring the Assessor/Technical Expert to obtain special security clearance, the Assessor/Technical Expert agrees to cooperate fully with SADCAS and the issuing agency in obtaining such clearance.
- 9.3 It is specifically recorded that a failure to comply with clause 9 and its sub-clauses will constitute a material breach of this Agreement.

**10. CONFLICT OF INTEREST, COMPETITION AND PRIVATE WORK**

10.1 The Assessor/Technical Expert undertakes for the duration of this Agreement to act in the best interest of SADCAS and at all times not to publicly criticize SADCAS and to protect the good name of SADCAS. In order to ensure that there is no conflict of interest between the Assessor/Technical Expert and SADCAS, the following information will be disclosed to SADCAS in writing prior to the acceptance of an assignment:

10.1.1 Full details of any benefit or money that the Assessor/Technical Expert may receive from any third party, including a Customer of SADCAS, in relation to the obligations of the Assessor/Technical Expert under this Agreement. This disclosure must be made before the benefit or money is received by the Assessor/Technical Expert.

10.1.2 Full details of any information that may be relevant to ensuring that there is no conflict of interest between Assessor/Technical Expert and SADCAS. This information must be disclosed as soon as the Assessor/Technical Expert becomes aware of it. If the Assessor/Technical Expert is unsure what is relevant, the Assessor/ Technical Expert must disclose it and SADCAS Chief Executive Officer will inform the Assessor/Technical Expert whether it is relevant or not.

10.2 The Assessor/Technical Expert undertakes to notify SADCAS of any work or consultancy done with a Customer within 2 years prior to a request from SADCAS for the Assessor/Technical Expert to perform any accreditation assessment or related activities with the respective Customer.

10.3 Whenever the Assessor/Technical Expert does private work for any third party, including any of SADCAS' Customers, that is not in relation to accreditation assessment or related activities in terms of this Agreement, the Assessor/Technical Expert shall not make any representations or imply that such third party will:

10.3.1 Receive any benefit from, or be treated more favourably by SADCAS on the round of the relationship between SADCAS and such Assessor/ Technical Expert; or

10.3.2 Be treated in a less objective way by SADCAS when compared with any other of SADCAS' Customers on the ground of the relationship between the Assessor/Technical Expert.

10.4 It is specifically recorded that a failure to comply with clause 10 and its sub-clauses will constitute a material breach of this Agreement.

**11. TERMINATION OF CONTRACT**

11.1 Either party shall be entitled to terminate this Agreement on or less than 2 (two) months' written notice, to the other party at any time during the duration of this Agreement.

11.2 Either party will be entitled to terminate this Agreement without notice at any time should the other party to the Agreement commit a material breach of this Agreement.

11.3 Apart from payment for assignments already completed, it is specifically recorded that SADCAS shall have no further obligations of whatsoever nature to the Assessor/Technical Expert if it terminates this Agreement by giving 2 (two) months' written notice or if it terminates this Agreement without notice due to a material breach of the Agreement to the party of the Assessor/Technical Expert.



**12. INDEMNITY**

- 12.1 No person is liable for anything done or omitted in good faith when performing such a function that falls within the ambit of the assignment.
- 12.2 Despite the above, SADCAS undertakes to take out a professional indemnity policy with the intention to protect SADCAS and the Assessor/Technical Expert against their legal liability to pay compensatory damages in respect of claims made against SADCAS and/or the Assessor/Technical Expert by a Customer arising out of the performance of accreditation assessment or related activities by SADCAS anywhere in the Southern African Development Community countries.
- 12.3 For purposes of professional indemnity insurance mentioned in clause 12.1 above, the Assessor/Technical Expert agrees not to admit liability in connection with any occurrence that could lead to legal liability, and also to give written notice to SADCAS as soon as possible after the occurrence of any such event that may give rise to a claim relating to professional liability of the Assessor/Technical Expert.
- 12.4 While performing accreditation assessment or related activities, the Assessor/Technical Expert agrees to always act with reasonable care and in accordance with Occupational Health and Safety legislation of respective SADC countries as well as the rules, regulations and safety standards of each one of the Customers.
- 12.4 The Assessor/Technical Expert agrees to inform SADCAS as soon as it becomes apparent that the premises of a Customer is a dangerous or unsafe place to do an accreditation assessment or related activities. Once informed, SADCAS undertakes to take the matter concerning the unsafe working conditions up with the Customer, and if the Customer does not rectify the situation, to withdraw the Assessor/Technical Expert from such Customer's premises.
- 12.5 In performing any accreditation assessment or related activities, neither SADCAS nor any of its Employees shall be liable to the Assessors/Technical Experts for any loss of present or future income, damage or personal injury incurred during the process of accreditation assessment or related activities.
- 12.6 It is specifically recorded that a failure to comply with clause 12 will constitute a material breach of this Agreement.

**13. FORCE MAJEURE**

Any failure or delay in performance by either party of its obligation hereunder shall not be a breach of this Agreement if such failure or delay results from an act of God or any other circumstance reasonably beyond the control of the defaulting party.

**14. DISPUTE RESOLUTION**

Any dispute arising out of or incidental to this Agreement between SADCAS and the Assessor/Technical Expert shall be resolved in accordance with the procedures provided for in SADCAS AP 08 – Customer Feedback Handling Procedure.





Thus done and signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

AS WITNESSES:

- 1. \_\_\_\_\_  
\_\_\_\_\_ SADCAS
- 2. \_\_\_\_\_

Thus done and signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

AS WITNESSES:

- 1. \_\_\_\_\_  
\_\_\_\_\_ Assessor/ Technical Expert
- 2. \_\_\_\_\_