



SADCAS Ref. No:							
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INDEPENDENT CONTRACTOR AGREEMENT

BETWEEN

SADCAS AND ASSESSOR/ TECHNICAL EXPERT/ACCREDITATION APPROVAL COMMITTEE MEMBER

1. PARTIES

This Agreement is made and entered between THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY ACCREDITATION SERVICE, situated at Plot 50369, Unit 3A Second Floor, Tholo 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/Accreditation Approval Committee (AAC) Member 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/ AAC Member")

2. INTRODUCTION

WHEREAS:

- 2.1 The core functions of SADCAS are to assess its applicant and accredited assessment conformity bodies (CABs) against relevant national and international guides and/or standards, applicable normative documents and any ILAC/IAF/AFRAC/SADCA guidance or interpretations thereof, including where appropriate, regulatory requirements, and to recognize the competence of CABs in performing specified conformity assessment activities through a formal procedure of accreditation.
- 2.2 The Assessor/Technical Expert/AAC Member has the appropriate knowledge and skills relevant to the accreditation schemes, and is willing and able to accept assignments from SADCAS as an independent contractor during the process of accreditation, assessment or related activities, of SADCAS' CABs.

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 meanings:

3.2 Definitions

- 3.2.1 **“Accreditation assessment”** means a process undertaken by SADCAS, with the assistance of Team Leader/Assessors/Technical Experts, to determine the competence of a CAB, based on standard(s) or other normative documents for a defined scope of accreditation.
- 3.2.2 **“Agreement”** means an independent contractor agreement in terms of which the Assessor/Technical Expert/AAC Member 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”** means a person assigned by SADCAS to perform, alone or as part of an assessment team, an assessment of a CAB or related activities, and who accepts such assignment from SADCAS at a fixed rate of remuneration as will be determined from time to time by SADCAS.

- 3.2.4 **“Accreditation Approval Committee Member”** means a person who makes decisions on the granting, maintaining, extending, reducing, suspending and withdrawal of accreditation.
- 3.2.5 **“Assignment”** means any form of accreditation function allocated to the Assessor/Technical Expert/ AAC Member by an authorized SADCAS staff member.
- 3.2.6 **“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.
- 3.2.7 **“Conformity Assessment Body”** means a body that performs conformity assessment activities and that can be the object of accreditation. In the context of this document, a CAB includes, but is not limited to an applicant or accredited calibration/testing/medical laboratory, inspection body, certification body, legal metrology body, proficiency testing provider, producer of reference materials, validation and verification body requesting SADCAS to provide accreditation services to it.
- 3.2.8 **“Impartiality:** means presence of objectivity.
- 3.2.9 **“Objectivity”** means that conflicts of interest do not exist, or are resolved so as not to adversely influence subsequent activities of SADCAS.
- 3.2.10 **“Party”** means either SADCAS or the Assessor/Technical Expert/ AAC Member as the case may be.
- 3.2.11 **“Team Leader”** means an assessor who is given the overall responsibility for the management of an assessment.
- 3.2.12 **“Technical Expert”** means a person assigned by SADCAS, working under the responsibility of qualified Assessor, who provides specific knowledge or expertise with respect to the scope of accreditation to be assessed and does not assess independently.
Note: A technical expert is not expected to have assessor qualifications and training.
- 3.2.13 **“Transparency”** implies openness, communication, and accountability

4. COMMENCEMENT OF CONTRACT

- 4.1 Provided the Assessor/Technical Expert/ AAC Member complies strictly with all the required competence criteria, standards and requirements determined by SADCAS, this agreement shall commence on the date of signature of this agreement and shall remain in force until termination thereof as provided for in this agreement.
- 4.2 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 a CAB, , in order to conduct an assessment or related activities as part of the accreditation assessment.

- 4.3 It is specifically recorded that the frequency of allocation of assignments to the Assessor/Technical Expert/ AAC Member falls within the sole discretion of SADCAS.
- 4.4 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' CABs.

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/ AAC Member, 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/ AAC Member does not render services to SADCAS on a continuous basis and SADCAS does not prescribe fixed office hours to the Assessor/Technical Expert/ AAC Member. In addition, hereto, SADCAS does not provide capital goods such as an office, telephones or vehicles to the Assessor/Technical Expert. The Assessor/Technical Expert/ AAC Member 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/ AAC Member is not an employee of SADCAS, the Assessor/Technical Expert/ AAC Member 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/ AAC Member acts as an independent contractor and has no authority to bind SADCAS contractually with third parties.

6. OBLIGATIONS OF ASSESSOR/TECHNICAL EXPERT/AAC MEMBER

- 6.1 The Assessor/Technical Expert/ AAC Member undertakes to:
 - 6.1.1 Carry out all agreed upon assignments between the parties in an impartial, transparent and objective manner;
 - 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/ AAC Member 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 CABs that applies to such CAB's employees and that may be visited by the Assessor/Technical Expert;
 - 6.1.6 Comply with all applicable policies, procedures and specified 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/ AAC Member, 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 Refrain from offering advice or assistance in the handling of non-conformities raised during the assessment of which the Assessor/Technical Expert was part of the assessment team.
- 6.1.9 Send to SADCAS an updated CV at least every three year or as it is updated, and indicating the date it was updated and changes made;
- 6.1.10 Ensure that SADCAS is provided with accurate information regarding the competencies (knowledge and skills) for which the Assessor / Technical Expert is able to assess, and not to accept assignments in any scope in which the Assessor /Technical Expert does not have the required competencies.
- 6.1.11 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, and notify SADCAS of such potential threat to impartiality well in advance of any assignment being accepted or performed;
- 6.1.12 Declare any actual or perceived commercial, financial, political or other pressure/s that could compromise impartiality, influence a decision, recommendation, the business of SADCAS and/or may be to the Assessor /Technical Expert / AAC Member's personal gain.
- 6.1.13 Act in an impartial manner irrespective of the race, gender, religion, ethnicity etc. of the person being assessed;
- 6.1.14 Conduct assessments in a manner that allows gathering of objective evidence fairly and remain true to a conclusion despite any pressures to change that is not based on objective evidence.
- 6.1.15 Behave with objectivity and without any influence from commercial or financial pressure or other type of pressure which could compromise impartiality, and commit to operate with competence, prudence, diligence, transparency, objectivity and confidentiality.
- 6.1.16 Adapt to any changes in accreditation requirements, assessment techniques or processes, as informed by SADCAS;
- 6.1.17 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 timeframes.
- 6.1.18 Attend assessor conclaves and where required, training and workshops presented by SADCAS.
- 6.2 Submit within 30 (thirty) working days after the completion of the assignment, a detailed SADCAS F58 – Assessor/AAC Member Claim Form. Prior to submitting the claim, the Assessor/Technical Expert shall ensure that all assessment documentation (e.g., assessment pack and/or checklists) have been completed and submitted to SADCAS or the appointed Team Leader. AAC Members shall ensure that duly completed AAC review forms are submitted to SADCAS prior to submitting the claim.
- 6.3 Ensure, if appointed as AAC Member, that requirements of SADCAS AP 14 – Accreditation Decision Making Process are met.
- 6.4 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:

- 7.1.1 Accept responsibility for acquiring work from CABs within the ambit of its mandate and to perform its functions in line with the scope of accreditation for which the CAB has applied.
- 7.1.2 Ensure that the nature of the assessment or related activities that have to be performed (and the time limits within which the assignment has to be completed) are provided to the Assessor /Technical Expert with written notification regarding every assignment;
- 7.2 Provide the Assessor/Technical Expert/AAC Member with access to the relevant up-to-date documented policies and procedures referred to in 6.1.6.
- 7.3 Monitor the performance of the Assessor/Technical Expert/AAC Member at least once every three (3) years.
- 7.4 When appropriate, protect the good name of the Assessor/Technical Expert/ AAC Member and at all times not to publicly criticize the Assessor/Technical Expert/ AAC Member; and
- 7.5 Remunerate the Assessor/Technical Expert in accordance with the following provisions:
 - 7.5.1 Assessors/Technical Experts/ AAC Member will be remunerated according to published SADCAS rates, of which from time to time, the rate of remuneration in consideration of assignments contemplated under this Agreement will be reviewed;
 - 7.5.2 SADCAS will cover an Assessor's/Technical Expert's travel, accommodation and allowable subsistence expenses for assignments performed on behalf of SADCAS;
 - 7.5.3 If and when any legislation requires it, SADCAS shall be entitled to deduct any amounts from the gross claim amount before payment is made to the Assessor/Technical Expert/ AAC Member 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/ AAC Member claim amounts at a later stage;
 - 7.5.4 Payment to the Assessor/Technical Expert/ AAC Member 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 completed F 58 "Assessor/Technical Expert/AAC Member Claim form" for assignments completed and, if applicable, the submission of appropriate assessment documentation or completed assessment pack evaluation forms; and
 - 7.5.5 In the event that SADCAS has queries regarding the Assessor's/Technical Expert's/ AAC Member's claims, SADCAS will only pay the claim (minus taxes) once the query has been resolved.

8. DISCLOSURE OF GENERAL INFORMATION

- 8.1 The Assessor/Technical Expert/ AAC Member agrees to maintain as confidential and not to use or disclose to any third party, any information derived from any of SADCAS' CABs in connection with accreditation assessment or related activities without the written consent of the CAB 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 CAB.
- 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 CAB, whether it was gained by the Assessor/Technical Expert/ AAC Member prior to, during or after an assignment, will be treated by the Assessor/Technical Expert/ AAC Member as confidential and will not be reproduced or disclosed to any person or organization.
- 9.2 The Assessor/Technical Expert/ AAC Member shall restrict the use of such information exclusively for purposes directed by SADCAS. Permission to disclose any such information about a CAB or SADCAS may be deemed to have been granted once the Assessor/Technical Expert/ AAC Member has obtained unambiguous written permission from SADCAS' Chief Executive Officer to do so. In addition to this Agreement, the Assessor/Technical Expert/AAC Member agrees to sign a Nondisclosure/Confidentiality Statement – Assessors/Technical Experts F 45 (a)/F77/F75 for purposes of each assignment involving accreditation assessment, evaluation of assessment packs or related activities, as applicable.
- 9.3 In the event of SADCAS requiring the Assessor/Technical Expert/ AAC Member to obtain special security clearance, the Assessor/Technical Expert/AAC Member agrees to cooperate fully with SADCAS and the issuing agency in obtaining such clearance.
- 9.4 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/ AAC Member 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.
- 10.2 In order to ensure that there is no conflict of interest between the Assessor/Technical Expert/AAC Member and SADCAS, the following information will be disclosed to SADCAS in writing prior to the acceptance of an assignment:
 - 10.2.1 Full details of any benefit or money that the Assessor/Technical Expert/ AAC Member may receive from any third party, including a CAB of SADCAS, in relation to the obligations of the

Assessor/Technical Expert/AAC Member under this Agreement. This disclosure must be made before the benefit or money is received by the Assessor/Technical Expert/AAC Member.

- 10.2.2 Full details of any information that may be relevant to ensuring that there is no conflict of interest between Assessor/Technical Expert/ AAC Member and SADCAS. This information must be disclosed as soon as the Assessor/Technical Expert/ AAC Member becomes aware of it. If the Assessor/Technical Expert/ AAC Member is unsure what is relevant, the Assessor/ Technical Expert/ AAC Member must disclose it and SADCAS Technical Manager will inform the Assessor/Technical Expert/AAC Member whether it is relevant or not.
- 10.3 The Assessor/Technical Expert/ AAC Member undertakes to notify SADCAS of any work or consultancy done with a CAB within 2 years prior to a request from SADCAS for the Assessor/Technical Expert/ AAC Member to perform any accreditation assessment, evaluation of assessment packs or related activities with the respective Customer.
- 10.4 Whenever the Assessor/Technical Expert/ AAC Member does private work for any third party, including any of SADCAS' CABs, that is not in relation to accreditation assessment or related activities in terms of this Agreement, the Assessor/Technical Expert/ AAC Member shall not make any representations or imply that such third party will:
- 10.4.1 Receive any benefit from, or be treated more favourably by SADCAS on the round of the relationship between SADCAS and such Assessor/ Technical Expert/ AAC Member; or
- 10.4.2 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/ AAC Member.
- 10.4.3 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 not 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/ AAC Member 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/ AAC Member.
- 11.4 Any breach of the clauses of this agreement, may lead to termination of the contract.

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 SADCAS shall not pay for vaccinations and any prophylactic treatments for Assessors. SADCAS provides travel insurance for Assessors/Technical Experts. In the event of an incident, excess payouts and hospital excess payments are to the cost of the Assessor/Technical Expert.
- 12.3 Despite the above, SADCAS undertakes to take out a professional indemnity policy with the intention to protect SADCAS and the Assessor/Technical Expert/ AAC Member against their legal liability to pay compensatory damages in respect of claims made against SADCAS and/or the Assessor/Technical Expert/ AAC Member by a CAB arising out of the performance of accreditation assessment or related activities.
- 12.4 For purposes of professional indemnity insurance mentioned in clause 12.2 above, the Assessor/Technical Expert/ AAC Member 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/ AAC Member.
- 12.5 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 as well as the rules, regulations and safety standards of each one of the CABs.
- 12.6 The Assessor/Technical Expert agrees to inform SADCAS as soon as it becomes apparent that the premises of a CAB is a dangerous or unsafe place to perform an accreditation assessment or related activities. Once informed, SADCAS undertakes to take the matter concerning the unsafe working conditions up with the CAB, and if the CAB does not rectify the situation, to withdraw the Assessor/Technical Expert from such CAB's premises.
- 12.7 In performing any accreditation assessment or related activities, neither SADCAS nor any of its Employees shall be liable to the Assessors/Technical Experts/ AAC Member for any loss of present or future income, damage or personal injury incurred during the process of accreditation assessment or related activities.
- 12.8 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/ AAC Member 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/ AAC Member
- 2. _____