**Please note that this contract is an example and should be tailored to reflect the Training Office’s training programme and terms and conditions of employment.**

**In tailoring the contract please take note of the requirements of Accreditation Criterion A2, in Annexure 2 of the SAICA Training Regulations.**

**FIXED TERM EMPLOYMENT AGREEMENT**

**between**

 **[●] (PTY) LTD**

and

**[●]**

1. PARTIES
	1. The Parties to this Agreement are –
		1. [●]; and
		2. [●].
	2. The Parties agree as set out below.
2. INTERPRETATION
	1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
		1. "**Agreement**" means the agreement contained in this document, including all annexures hereto;
		2. "**Annual Leave Cycle**" means the shorter of the Employment Period, or each consecutive 12-month period during the Employment Period commencing on the Effective Date;
		3. "**BCEA**" means the Basic Conditions of Employment Act, No 75 of 1997;
		4. "**Conditions Precedent**" means the suspensive conditions contained in clauses 3.1.1 to 3.1.5;
		5. "**Companies Act**" means the Companies Act, No 71 of 2008;
		6. "**Confidential Information**" means any information or data relating to the Employer and/or any of its Related Companies (even if not marked as being confidential, restricted, secret, proprietary or any similar designation), in whatever format and whether recorded or not (and if recorded, whether recorded in writing, on any electronic medium or otherwise), which –
			1. by its nature or content is identifiable as confidential and/or proprietary to the Employer and/or any Related Company; or
			2. is intended or by its nature or content could reasonably be expected to be confidential and/or proprietary to the Employer and/or any Related Company;
		7. "**CTA**" means Certificate in the Theory of Accountancy;
		8. "**Employee**" means **[●],** with identity number **[●]**;
		9. "**Employer**" means **[●]** Limited, registration number **[●]**, a limited liability public company duly incorporated in the Republic of South Africa, represented herein by **[●]**, being duly authorised;
		10. "**Employment Period**" means the period commencing on the Effective Date and ending on the date of termination of this Agreement;
		11. **"Effective Date"** means **[Insert date]**;
		12. "**LRA**" means the Labour Relations Act, No 66 of 1995
		13. "**Parties**" means the parties to this Agreement;
		14. "**POPI**" means the Protection of Personal Information Act, No 4 of 2013;
		15. "**Related Company**" means any company or other entity that is related to the Employer, as such concept is defined in the Companies Act;
		16. "**SAICA**" means the South African Institute of Chartered Accountants, a body corporate not for gain, established in terms of its own Constitution and incorporated in accordance with the laws of the Republic of South Africa;
		17. "**Signature** **Date**"means the date of signature of this Agreement by the Party last signing;
		18. "**Trainee Accountant**" means an individual who is employed by an accredited training office and who is serving under a SAICA training contract;
		19. "**Training Contract**" means a contract, entered into and registered by SAICA, whereby a Trainee Accountant is duly bound to serve at a training office for a specified period and is entitled to receive experience in the prescribed competencies and which meets the requirements for a learnership agreement in terms of the Skills Development Act, 1998; and
		20. "**Training Office**" means an organisation, accredited by SAICA in terms of the criteria set out in the Training Regulations, whether within or outside the borders of South Africa, and which have been approved by and registered with SAICA as an accredited organisation where prospective CAs(SA) and AGAs(SA) may be trained.
3. CONDITIONs precedent
	1. Save for clauses 1 to 3, and clauses 6, 16, 17 and 25 to 28 all of which will become effective immediately, this Agreement is subject to the fulfilment of the Conditions Precedent that –
		1. the Employee satisfies the Employer's pre-employment screening procedures; and
		2. the Employee must currently hold a CTA or equivalent from a university recognised by SAICA for this purpose; OR
		3. the Employee must be a graduate currently registered for a CTA or equivalent at a university recognised by SAICA for this purpose; OR
		4. the Employee must currently be registered by an education institution for an accredited undergraduate degree or accredited bridging programme; OR
		5. the Employee will be accepted for registration by an education institution, at the commencement of the academic year immediately following the effective date of appointment as a Trainee Accountant, for an accredited undergraduate degree or accredited bridging programme.
	2. The Parties shall use reasonable endeavours to procure the fulfilment of the Conditions Precedent contained in clauses 3.1.1 to 3.1.5 as soon as reasonably possible after the Signature Date and shall to the extent that such Conditions Precedent have been fulfilled, prior to the expiry of the relevant time periods set out in those clauses, furnish to the other Party documents evidencing the fulfilment of such Conditions Precedent to such other Party's satisfaction.
	3. Unless the Conditions Precedent are fulfilled or waived by the Employer in writing, this Agreement shall be null and void *ab initio* (save in respect of the clauses that have immediate effect in terms of clause 3.1) and, in such event  -
		1. no Party shall then have any claims against any other Party for anything done or arising in terms of this Agreement, save in respect of a breach of any of the clauses that have immediate effect, including but not limited to clause 3.2; and
		2. to the extent that this Agreement may have been partially implemented, the Parties shall, as far as possible, be restored to their respective positions prior to the execution of this Agreement.
4. APPOINTMENT
	1. With effect from the Effective Date, and for the Employment Period, the Employer hereby appoints the Employee, who accepts such appointment, in the capacity of Trainee Accountant.

The Employee is appointed in the position indicated in clause 4.1, for the specific purpose of acquiring training and/or experience while/after having completed his studies.

1. duration

This Agreement shall continue until the end of the Training Contract, as contemplated in clause 9.4 below subject to any earlier termination in terms of clause 23.

The termination of this Agreement through effluxion of time, will not give rise to a dismissal, for operational reasons or otherwise, and as such no severance pay or notice pay will be payable to the Employee, except to the extent provided for in the LRA and the BCEA.

* 1. It is specifically recorded that the Employer has made no promises or representation(s) ("**Promise**") to the Employee, regarding the renewal of this Agreement, or the prospects of future employment agreement(s) being entered into with the Employee. Acceptable performance of the Employee's obligations in terms of this Agreement will not create any right or expectation to a continuation of an employment relationship between the Parties after its termination. A promise made during the Employment Period shall have no force or effect unless reduced to writing and signed by or on behalf of the parties.
	2. Until such time as the Employee is advised in writing that a further fixed term, or permanent, contract of employment will be offered to him, the Employee shall have no guarantee, implied or tacit, that this Agreement will be renewed for a further period or that permanent or alternative employment will be offered to him, and no legitimate or reasonable expectation of further employment can be said to exist.
1. probation
	1. The Employee's appointment shall be subject to a [●] month probation period, during which period the Employee's suitability for continued employment will be assessed by the Employer.

During the probation period the Employer shall have an opportunity to evaluate the Employee's performance. If the Employee fails to meet the Employer's performance standards during or at conclusion of the probation period, the Employer may, in its sole discretion, dismiss the Employee. The reasons for dismissal during or at conclusion of the probation period may be less compelling than would be the case in respect of dismissals after conclusion of the probation period.

1. Warranties by the Employee
	1. The Employee hereby warrants that –
		1. by entering into this Agreement, he will not be in breach of any express or implied terms of any contract or of any other obligation binding upon her;
		2. he is suitably qualified for the post and all information supplied to the Employer detailing his experience and qualifications and all representations made by him as contained in his Curriculum Vitae and/or during any interviews conducted with the Employer and its representatives are true and accurate;
		3. he does not have a criminal record and no investigations or proceedings with regard to any crime, offence or misconduct are pending against her;
		4. he is free of any conflict of interest between the duties he will owe to the Employer and his private interests and will ensure that this will not change in the future;
		5. he has disclosed to the Employer all information that could be considered to be material to the Employer in considering his appointment;
		6. he has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that he has either taken such independent advice or has dispensed with the necessity of doing so; and
		7. the Employer has not made any promise, representation or inducement or been a party to any conduct material to the Employee entering into this Agreement other than as set out herein.
	2. Each warranty will –
		1. be a separate warranty and will in no way be limited or restricted by reference to or inference from the terms of any other warranty or by any words in this Agreement;
		2. be given as at the Signature Date and the Effective Date; and
		3. be deemed to be material and to be a material representation inducing the Employer to enter into this Agreement.
	3. The Employee acknowledges that in the event that it is found that he has made any misrepresentation or withheld any information which could reasonably be expected to be material to the Employer in considering his appointment, the Agreement at the election of the Employer may be declared null and void.
2. THE EMPLOYEE'S OBLIGATIONS
	1. The Employee shall –
		1. perform such duties and exercise such powers and functions as may from time to time be reasonably assigned to or vested in him by the Employer;
		2. observe and comply with all lawful and reasonable requests, instructions, resolutions and regulations of the Employer and give the Employer such explanations, information and assistance as it may reasonably require;
		3. devote the whole of his time and attention and the full benefit of his knowledge, expertise and skills in the proper performance of his duties under this Agreement;
		4. carry out his duties in a proper, loyal and efficient manner to the best of his ability and at all times act in good faith and use his best endeavours to properly conduct, improve, extend, develop, promote, protect and preserve the business interests, reputation and goodwill of the Employer [and of its Related Companies] and not do anything or engage in any activity which is or may become harmful or contrary to such interests;
		5. foster and maintain a professional relationship with all customers, suppliers and trade connections of the Employer with a view to maintaining and improving the Employer's operations, reputation and goodwill;
		6. be based at the Employer's offices at and perform his duties at such place or places in the Republic of South Africa or elsewhere as the Employer shall decide; and
		7. work such hours and travel within and outside the Republic of South Africa as may reasonably be required for the proper performance of his duties.
	2. The Employee's ordinary hours of work will be at least the business hours, from 8h00 to 17h00 Monday to Friday. The Employee shall however be required to work such additional hours as may be required to give effect to and meet the demands of the Employer, from time to time. The Employee acknowledges and agrees that he may be required to work more than 45 hours in a week.
	3. While the Employee is employed by the Employer, the Employee shall not without the prior written consent of his/her Training Officer, be engaged or interested either directly or indirectly in any capacity, whether as director, shareholder, principal, consultant, agent, partner or employee in any trade, business or occupation whatsoever other than the business of the Employer.
	4. The Employee shall promptly disclose to the Employer any direct or indirect interest he or any person related to him (as that term is defined in the Companies Act) has or acquires in any trade, business or occupation which is similar to or in competition with the business of the Employer, whether or not such trade, business or occupation is conducted for his profit or personal gain or that of any related person.
	5. The Employee shall not make copies of any document, memoranda, correspondence, computer disk, video tape or any similar matter (including in any electronic format) or remove any such items from the premises of the Employer and/or any Related Company other than in the proper performance of his duties under this Agreement, except with the written authority of the Employer (which authority will apply in that instance only). All such document, memoranda, correspondence, computer disk, video tape or any similar matter shall be the property of the Employer.
	6. The Employee shall not make any adverse public statement (whether written or oral) to the media or otherwise relating to the affairs of the Employer.
3. LEARNERSHIP AGREEMENT/TRAINING CONTRACT
	1. On commencing employment with the Employer, the Employee will be required to enter into a learnership agreement/Training Contract with the Employer. The contract will be registered with The South African Institute of Chartered Accountants (SAICA), which will then be able to prescribe and regulate the effectiveness of the learning opportunities available to the Employee, the trainee, in terms of such regulations as SAICA may prescribe.
	2. This Agreement and the learnership agreement/Training Contract will run concurrently for a period as prescribed by SAICA.
	3. Should this Agreement be terminated for whatever reason, the learnership agreement/Training Contract will be deemed to have been cancelled on the same date.
	4. This Agreement is for the duration of the learnership agreement/Training Contract and will terminate on completion of the learnership agreement/Training Contract. This term may change due to remission or extension as provided for in the SAICA Training Regulations.
4. REMUNERATION package

The Employee will be entitled to a monthly remuneration package of R[●] per month on the basis that this constitutes his total cost to the Employer.

* 1. The Employee's remuneration is subject to annual review on or before the anniversary of the Effective Date.
	2. The Employee agrees that the Employer may deduct from his remuneration any amounts due in relation to PAYE, UIF or as required by any other law, court order or written agreement applicable from time to time.
	3. If, at any time, the Employee owes any amounts to the Employer which are not in dispute, he hereby authorises the Employer to deduct such amounts from, or set off such amounts against, any amount owed to the Employee by the Employer.
	4. The monthly cash component of the remuneration, after deductions, shall be paid into such bank account in South Africa as shall be designated by the Employee from time to time, on or before [●], in arrears.
1. annual leave

The Employee shall be entitled to 15 business days' annual leave on full pay in respect of each Annual Leave Cycle. All annual leave taken must comply with the Employer's policy for the taking, and approval, of annual leave.

* 1. In addition to annual leave, the Employee is entitled to all statutory public holidays in the Republic of South Africa.
	2. All annual leave shall be taken on dates agreed to or determined by the Employer and within 6 months of the expiry of the Annual Leave Cycle.
	3. The Employee shall not be paid any monies in lieu of any leave except on termination of the Employee's employment and as required by the law.
	4. The Employee may not take annual leave once he has tendered a notice of termination of employment.
1. OTHER leave AND ACADEMIC PROGRESS
	1. Please refer to the relevant policies for the details relating to other leave (including study leave) and academic progress.
2. Absence, Illness and Incapacity
	1. If at any time the Employee is prevented by reason of ill-health, accident or other incapacity from properly performing his duties he shall promptly furnish to the Employer evidence of such incapacity in a form satisfactory to the Employer, and in accordance with the Employer's policy for the taking, and approval, of such leave.

The Employee shall be entitled to paid sick leave in accordance with the provisions of the BCEA. The payment of any remuneration during a period of sick leave will be subject to the production of satisfactory evidence from a registered medical practitioner, of the reason for the absence, if any period of absence is in excess of 2 days in any 8-week period.

* 1. At the request and expense of the Employer, the Employee will from time to time submit herself to a medical examination by a doctor of the Employer's choice.
1. confidentiality obligations

The Employer has a material interest in protecting its Confidential Information and it may suffer irreparable harm or substantial economic and other loss if the Employee disclosed or used such Confidential Information unlawfully. In order to protect the Employer's legitimate interest in its Confidential Information, the Employee must familiarise himself/herself, and comply, with the Employer's policy on protection of Confidential Information. The obligations contained in the confidentiality policy will survive the termination of the Employee's employment for any reason.

1. consent to use personal information
	1. In order to secure and maintain the Employee's employment, as well as all aspects relating to such employment, it will be necessary for the Employer to process some of the Employee's personal information as well as special personal information. The Employee should familiarise himself/herself with what the terms "process", "personal information" and "special personal information" mean, as these terms are set out in the POPI. The Employee should further be aware the processing includes (but is not limited to) collection, retention, use, storage or distribution of personal information. The Employee hereby gives permission to the Employer that his/her personal information may be shared with or, obtained from, companies falling in the same group of companies as the Employer or external business partners who provide a service to the Employer, such as health care providers, retirement benefit administrators, successors in title of the Employer as well as other third parties who may have a justifiable interest in obtaining the information, such as a professional body with authority over the Employee or the Employer, or the Employee's subsequent potential employers. The Employee must make available to the Employer all necessary personal information reasonably required by it for the purpose of securing and further facilitating the Employee's employment with it.
	2. Without derogating from the generality of the aforestated, the Employee consents to the Employer's Processing of personal information pursuant to clause 20 insofar as personal information of the Employee is contained in relevant electronic communications.
	3. The Employee is hereby notified of the purpose and reason for the collection and processing of such personal information.The Employee undertakes to make available to the Employer all necessary personal information required by the Employer for the purpose of securing and further facilitating the Employee's employment with the Employer.
	4. Without limiting the generality of the aforestated, the Employee absolves the Employer from any liability in terms of POPI for failing to obtain the Employee's consent or to notify the Employee of the reason for the processing of any of the Employee's personal information.
2. REGISTRATION FEES
	1. The Employer shall pay on behalf of the Employee all registration fees of professional bodies to which the Employee is required by the Employer or by law to belong subject to the following conditions:
		1. the Employer may require an Employee whose Training Contract has been cancelled to reimburse the Employer in respect of disbursements actually made by the Employer to SAICA in terms of SAICA By-law 4.1.9.
		2. the disbursements referred to in 18.1 relate only to those for the original cancelled Training Contract period and only to those for which the Employer has not received a credit from SAICA.
		3. it is a contravention of SAICA’s By-laws, and may be deemed to be unprofessional conduct, for an Employer to require an Employee to reimburse the Employer in respect of any disbursements not referred to in 18.1.
3. Computer systems

During the Employee's employment by the Employer, the Employee will be supplied with a computer and with access to the Employer's network, computer systems and software. The Employer may at all times specify the manner in which these facilities may be used and the Employee hereby agrees to be bound by any information technology policy of the Employer in force from time to time. Without derogating from the generality of the aforegoing, the Employee shall –

* 1. utilise the computer and access the Employer's network, laptops, computer systems and software (including email and internet) solely in pursuance of the Employer's business activities;
	2. not copy any software whatsoever, for whatever purpose, from 1 computer to another unless both the applicable software licence and the Employer permits it; and
	3. not load onto the computer, or the Employer's network, laptops or computer systems, any software, nor attach any hardware, without prior approval in writing from the Employer.
1. INTERCEPTION AND MONITORING OF ELECTRONIC COMMUNICATIONS

The Employee acknowledges, accepts and agrees that –

* 1. he consents to the interception and monitoring of any communication that he may send or receive using the equipment of the Employer or during the course and scope of his employment by the Employer and waives the protections afforded to him in this regard in terms of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, No 70 of 2002 as well as POPI; and
	2. the Employer shall be permitted to check, record and review telephone calls, computer files, records and e-mails and any other compliance, security or risk analysis checks the Employer considers reasonably necessary.
1. codes, procedures, PRACTICES, rules and regulations
	1. The Employee undertakes to acquaint and familiarise herself with the terms of any codes, policies, work practices, procedures, rules and regulations (**"Internal Policies"**) which have been, or may be, introduced or promulgated by the Employer from time to time.
	2. The Employer reserves the right to amend any of the Internal Policies from time to time, including but not limited to Internal Policies in terms whereof the Employer's employees are expected to comply with work practices and/or provided with benefits of employment as referred to in section 186(2)(a) of the LRA, subject to the notice period set out in clause 32.3.2, or 1 months' notice, whichever is the longer period, to the Employee. Copies of Internal Policies shall be made available to the Employee at the Employer's premises on request.
	3. The Employer's disciplinary and grievance procedures shall not form part of this Agreement and are intended to serve only as a guideline.
	4. The failure by the Employer to provide the Employee with an opportunity to be heard prior to terminating his employment shall not constitute a breach of this Agreement.
2. SECURITY AND SAFETY
	1. The Parties acknowledge and record that security, integrity and discipline are at the heart of the employment relationship between them, and that it is further necessary in order to protect the Employer's legitimate business interests that security and integrity must be maintained. The Employee therefore consents to the following –
		1. a search of his person or any of his possessions which are on the Employer's property (including but not limited to any motor vehicle which the Employee may be using at the time computer files, desks and office);
		2. random drug and alcohol testing;
		3. undergoing a lie detector and/or voice stress analysis test at the discretion of the Employer.
		4. .
3. TERMINATION
	1. Notwithstanding clause 5.1, the Employer may terminate the Employee's employment on any grounds recognized in law including but not limited for reasons related to misconduct, incapacity or operational requirements (retrenchment).
	2. Except where a summary dismissal is legally competent, or by agreement, the Parties shall provide each other with 1 month's written notice of termination of this agreement.
	3. Notwithstanding anything to the contrary stated herein, disputes relating to increases in remuneration or benefits may not be referred to arbitration or any other form of adjudication unless agreed to in writing by both Parties.
	4. Notwithstanding the above, the duration of this fixed term contract is dependent on the existence of the employees Training Contract. Should the Training Contract end for whatever reason, this fixed term employment is deemed to be terminated.
4. Notices and Domicilia

The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following email addresses —

|  |  |  |
| --- | --- | --- |
| **Name** | **Physical Address** | **Email Address** |
| [●] | [●]  | [●]  |
|  | [●]  |  |
|  | [●]  |  |
|  |  |  |
| Marked for the attention of: [●]  |
|  |  |  |
| **Name** | **Physical Address** | **Email Address** |
| [●] | [●]  | [●]  |
|  | [●]  |  |
|  | [●]  |  |
|  |  |  |
| Marked for the attention of: [●]  |

provided that a Party may change its *domicilium* to another physical address [in the Republic of South Africa] (provided that such physical address is not a post office box or *poste restante*), or may change its address for the purposes of notices to any other physical address or email address by written notice to the other Parties to that effect. Such change of address will be effective 5 business days after receipt of the notice of the change.

1. applicable law

This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

1. GENERAL
	1. This Agreement (with any annexures) constitutes the whole of the agreement between the Parties relating to the matters dealt with in it. Changes to this Agreement will only be valid if agreed to in writing by both Parties.
	2. The provisions of the BCEA will be complied with in respect of any matter not expressly provided for in this contract of employment.
	3. This Agreement constitutes the sole record of the agreement reached between the Parties relating to the subject matter hereof. The Parties shall not be bound by any representation, warranty, promise or the like not recorded herein.
	4. No addition to, variation, amendment or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
2. SIGNATURE
	1. This Agreement is signed by the Parties on the dates and at the places indicated below.
	2. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
	3. The persons signing this Agreement in a representative capacity warrant their authority to do so.
	4. The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|

|  |
| --- |
| SIGNED at on 202020 |
|  | For and on behalf of**[COMPANY] PROPRIETARY LIMITED** |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Signatory |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Designation of Signatory |

 |
| SIGNED at on 2020 |
|  |  |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**[NATURAL PERSON]** |