

## LICENCE TERMS AND CONDITIONS DURING EQUITY PRO FREE TRIAL PERIOD

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### 1. DEFINITIONS

The following definitions shall apply to this Agreement:

**“Client Administrator”** means the person employed by the Licensee, entrusted by the Licensee to have full access rights the Product, including importing and exporting data, setting and signing off EE Goals and targets, and imported data, and adding “Read-Only” users.

**“Commencement Date”** means the date that the relevant Modules’ ID Numbers, Usernames and Passwords is emailed to the Licensee’s nominated representative for purposes of commencing the Free Trial.

**‘email address’** shall be the address to be used by the Licensee in addressing any communication to the Licensor and shall be [jan@eess.co.za](mailto:jan@eess.co.za) unless otherwise provided herein

**“Free Trial Period”** means the period for which the Licensee has free usage of the Equity Pro Module made available to it, and shall extend for a period of 30 Calendar Days from the Commencement Date or such further period as the Licensor may agree to.

**“Licensee”** means a party that has signed up for the free trial.

**“Licensor”** means Equity Pro (Pty) Ltd t/a **EES-SIYAKHA**

**“Module”** means the **Equity Pro** Modules made available to the Licensee during the Free Trial Period.

**"Product"** means the Equity Pro Software program, including all updates, upgrades, improvements thereto and new releases as stipulated herein as described in Schedule A hereto.

**"Use"** means accessing and utilizing the functionalities of the Module made available to the Licensee during the Free Trial Period on the Web.

### 2. THE PREMISE OF THE AGREEMENT

- A. The Licensor has developed an Employment Equity (‘EE’) computer software program called Equity Pro more particularly described in Schedule A attached hereto (the "Product") and wishes to grant the Licensee a Licence to use the **Equity Pro** Module of the Product during the Free Trial Period
- B. The Licensee wishes to use the Modules of the Product for its benefit under the conditions set forth in this Agreement during the Free Trial Period.

### 3. APPLICABILITY OF THE TERMS AND CONDITIONS

These Terms and Conditions are made, and effective for, the duration of the Free Trial Period

### 4. SOFTWARE LICENCE

This Licence, in respect of the Modules below, shall be granted to the Licensee for the duration of the Free Trial Period upon receipt by it of a request therefore during the Free Trial Period and this signed agreement, by furnishing the Licensee with Module Identity Numbers, User names and Passwords of the relevant modules.

### 5. NO LICENCE FEE PAYABLE

There shall be no Licence Fee payable to the Licensor during the Free Trial Period.

## 6. LICENSEE'S RIGHTS AND OBLIGATIONS

The Product and Documentation are protected by South African copyright and patent laws and international treaties, Patent No 2012/06523. The Licensee must treat the Software and Documentation like any other copyrighted material; for example, a book. The Licensee may not:

- A. Furnish the ID Number, Username and password furnished to the Licensee by the Licensor to a third party as to enable that 3<sup>rd</sup> party to access the any **Equity Pro** module
- B. Copy the Documentation.
- C. Copy the Product.
- D. Modify or adapt the Product or merge it into another program.
- E. Reverse engineer, disassemble, decompile or make any attempt to discover the source code of the Product.
- F. Sub-license, rent, lease or lend any portion of the Product or Documentation

## 7. RIGHT OF REFUSAL OR TERMINATION OF ACCESS BY THE LICENSOR

The Licensor shall have the right to refuse or terminate access to any **Equity Pro** Modules by the Licensee in the event of it being of the opinion that there is a prospect of Clause 6 being breached or that it has been breached..

## 8. REPRESENTATIONS AND WARRANTIES

The Licensor hereby represents and warrants to the Licensee that:

- A. The Licensor is the lawful holder of the Product, and has the authority to enter into this Agreement.
- B. The Licensor has not granted any rights or licences to the Licensed Materials that would conflict with Licensor's obligations under this Agreement.
- C. The Licensor will not enter into any agreement with any third party which would affect the Licensee's rights under this Agreement, or bind the Licensee to any third party, without the Licensee's prior written consent.
- D. The Licensee's use of the Licensed Materials as authorized by this Agreement will not infringe any existing copyright, trade secret, patent or trademark rights of any third party.

## 9. THE PRODUCT

The Product shall perform the functions advertised of the Licensor's website.

## 10. ACCESS TO MODULES

- A. The Licensor shall make available to the Licensee either an Equity Pro **Group** or **Lite** Module depending on the Licensee's size and needs.
- B. The Licensor shall also make available to the Licensee a Demonstration Module on a Read-Only basis so as enable it to access a 'Live' Module with data imported into it over a period of time.

## 11. OPERATING ENVIRONMENT

The Product shall be accessible to the Licensor through the following Web Browsers:

- Google Chrome

- Firefox
- Safari

## 12. NO PAYMENT OBLIGATION BY LICENSEE

Participation in the Licensor's Free Trial shall not impose any obligation on the Licensee to acquire an **Equity Pro** Licence from the Licensor and no payment shall be made by the Licensee to the Licensor for usage of the **Equity Pro** modules made available to the Licensee during the Free Trial Period.

## 13. UNLIMITED NUMBER OF USERS PER MODULE AND INCREASE IN SUB-POOLS

Each Module of Equity Pro is programmed:

- So that a Client Administrator can have access to all its functionalities.
- So that an unlimited number of other designated users can access each module using the User Name allocated to each user by the selected Client Administrator and their personal secret password.
- With four Sub-Pools

## 14. ONLINE SUPPORT

- The Licensor shall provide the following online support free of any charge upon request of the Licensee to it during the Free Trial Period:
  - E-Mail support
  - Telephonic support
  - Zoom meetings using the 'Share Screen' functionality
- Whilst the Licensor shall assist the Licensee with such aspects as accessing its Module, adding users, importing data and to navigate its way around all **Equity Pro's** functionalities, including the Setting of EE Goals, the facilitation of the setting of EE Goals is not included in the free support. Proposals for such support shall however be furnished upon request to the Licensee.

## 15. PRODUCT MAINTENANCE

- The Licensor shall maintain the Product and ensure that it functions smoothly and correctly.
- In the unlikely event of any apparent malfunctioning by the Product, the Free Trial Period shall be extended by the period that the product so malfunctioned.
- The Licensee shall, in the event of it discovering any apparent malfunctioning by the Product, in addition to any telephonic advices thereof, immediately notify the Licensor thereof by setting out the details of such alleged malfunctioning in writing and sending it to the Licensor's above e-mail address.
- The Licensor shall immediately attend to such notification, and within 24 working hours of receipt thereof respond to the Licensee in writing, advising it:
  - What it has established the problem is; and
  - Whether it has been resolved, and if not, when it is expected to be resolved.
- The Licensor shall, in the event of it confirming that there is a malfunction, and it has not been resolved within the above 24 hours, keep the Licensee updated on at least a daily basis on the progress made in fixing such malfunction.

## **16. TERMINATION OF FREE TRIAL ACCESS TO THE PRODUCT BY THE LICENSEE**

The Licensor shall be entitled to terminate the Licensee's access to the Product upon:

- A. The expiry of the Free Trial Period.
- B. The Licensee being in material breach of its obligations in terms of this agreement.

## **17. CONFIDENTIALITY**

- A. The Product and Software trade secrets and proprietary know-how that effectively belongs to the Licensor and it is being made available to the Licensee and its employees in strict confidence.
- B. The Product has been patented. It is unlawful for any person, juristic or natural, to develop a competing software application that contains any of its functionalities.
- C. The Licensee accepts that during the course and scope of training and usage of the product, it, and its employees and/or agents and/or their employees will obtain confidential information and intrinsic knowledge of the Product.
- D. Neither the Licensee, its employees, its duly appointed agents and/or their employees, shall not be entitled to use any of the material, software, ideas, inventions, copyright, trademark or programs, upgrades, amendments, any program or other information whatsoever related to the Product to develop, or to assist a third party to develop, a software or other application that is in any way competes with, or is intended to compete with, or replace, the Product.
- E. The Licensor shall be entitled to obtain an interdict should a breach of the preceding Clause by the Licensee, or any of its employees, duly appointed agents and/or their employees, comes to its knowledge.
- F. Any request by either party to the other party for the return of Confidential Information shall be complied with.
- G. The Parties agrees that Confidential information furnished hereunder to the other party shall remain the property of the party furnishing such information.

## **18. LICENSOR'S PROPRIETARY NOTICES**

The Licensee agrees that any copies of the Product or Documentation that it makes pursuant to this Agreement shall bear all copyright, trademark and other proprietary notices included therein by Licensor and, except as expressly authorized herein the Licensee shall not distribute same to any third party without Licensor's prior written consent.

## **19. JURISDICTION**

- A. If a dispute arises between the parties, the parties shall be entitled to institute any proceedings whether for urgent interim relief or otherwise in connection with this agreement in the High Court of South Africa, Johannesburg, subject to the terms of clause 23.
- B. In the event of Court proceedings, the successful party shall be entitled to costs on an attorney and client scale which is to be awarded by the Court.

## **20. DOMICILIUM CITANDI ET EXECUTANDI**

- A. The *domicilium citandi et executandi* for all purposes under this agreement, whether in respect of court process notices or other documents or communications of whatsoever nature shall be their respective street addresses that appear from their web pages, failing which the address at which their respective Head Offices are situated at the time of the serving of the applicable notice or other document.

- B. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice only by hand delivery or by courier or by telefax.
- C. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its *domicilium citandi et executandi*.

#### **21. ATTORNEY FEES**

If any legal action is necessary to enforce this Licence, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which it may be entitled.

#### **22. LIMITED LIABILITY**

Unless otherwise expressly stated herein, neither party shall be liable to the other for any consequential damages arising out of either party's breach of this Agreement.

#### **23. SEVERABILITY**

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

#### **24. NO WAIVER**

The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

#### **25. COMPLETE AGREEMENT**

This Agreement sets forth the entire understanding of the parties as to its subject matter and may not be modified except in a writing executed by both parties.

## **SCHEDULE A**

### **COMPUTER PROGRAM, ITS SPECIFICATIONS AND RELATED DOCUMENTATION**

#### **DESCRIPTION**

**Equity Pro** is a web-based software application, with different modules for different levels and sizes of organisations, that facilitates:

- The setting of realistic and achievable EE Goals in line with BEE Targets and the requirements of the EE Act;
- Management and ownership of EE across groups of companies, divisions and business units; and
- Workforce planning and talent preparation.

**Equity Pro**'s benefits and features are set out in Appendix A, and its different Modules, and their different functionalities, are set out in Appendix B to the Main Agreement

#### **HARDWARE REQUIREMENTS**

Computer with Internet access to [www.equitypro.co.za](http://www.equitypro.co.za)

Security settings must allow for pop-ups and JavaScript from this site

Recommended minimum screen size: 1024x768

#### **SOFTWARE REQUIREMENTS**

Browser: Mozilla Firefox 3.6 or later

Google Chrome v8 or above

Apple Safari v5 or later

**Note:** Internet Explorer is not supported at this time.

#### **ACCESS**

Through one of the above Browsers, using a Module Identity Number, User name and Password, provide by the Licensor

#### **SYSTEM INFORMATION**

Hosted on a dedicated LINUX server by HETZNER with the following features:

- Dedicated IP address
- Multiple backups – including offsite
- 99.8% uptime guaranteed by Service Level Agreement
- Virtually unlimited bandwidth

#### **DOCUMENTATION**

An **Equity Pro** User Manual will be provided to all Users