

## **ANNEXURE "E"**

### **UIF FUNDING TERMS AND CONDITIONS – JOB CREATION**

#### **PREAMBLE**

- 1.1 The general Terms and Conditions set out below shall be applicable to and form part of the Agreement concluded between the UIF and the Partner.
- 1.2 The definitions contained in the Agreement shall be applicable to the terms of this Annexure.
- 1.3 If there is any conflict between the terms of the Agreement and the terms of this Annexure or schedule attached hereto, the terms of the Agreement shall prevail and apply.

#### **1. INTERPRETATION AND DEFINITIONS**

- 1.4 The headnotes to the clauses in this Agreement are for reference purposes only and shall not affect the interpretation of any part hereof.
- 1.5 Unless inconsistent with the context, any gender includes the other genders; a natural person includes a legal person and vice versa; the singular shall include the plural and vice versa.
- 1.6 When any number of days are prescribed for the doing of anything in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, save that if the last day does not fall on a Business Day, the last day shall be the next succeeding Business Day.
- 1.7 In the event of any provisions contained in the Agreement being declared invalid or unenforceable by a Court of law, the validity and enforceability of

the remaining provisions contained herein shall not, in any way, be affected or impaired thereby.

- 1.8 All provisions of these terms and conditions are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other.
- 1.9 Any provision of these terms and conditions which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of these terms and conditions shall remain in full force with legal effect.
- 1.10 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided. The provisions will operate after any such expiration or termination. Same is true of provisions which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for such.
- 1.11 The rule of construction that, in the event of ambiguity this Agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.
- 1.12 The Annexures to this Agreement will form an integral part of the Agreement
- 1.13 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail;
- 1.14 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings –

|                                            |                                                                                                                                                                                                                      |
|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Agreement"</b>                         | means this Agreement between the UIF and the Partner and any Schedules/Annexures thereto;                                                                                                                            |
| <b>"Agreement's Terms and Conditions:"</b> | means the general terms and conditions of this Agreement herein which are binding to the signatories and include and incorporate those at <b>Annexure E</b> ,                                                        |
| <b>"Attendance Register"</b>               | means a register (including any electronic register) provided herein as must be utilized by the Partner to record the attendance by the beneficiaries of all the activities comprised of the Job Creation Programme; |
| <b>"BCEA"</b>                              | means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), as amended;                                                                                                                                 |
| <b>"Beneficiaries"</b>                     | means the beneficiaries herein and in accordance with the <b>Annexures A and B</b> ;                                                                                                                                 |
| <b>"Close-Out Documents"</b>               | means the Close-Out Report, outlining compliance with clause 6.3.6 of the terms and conditions herein which must be provided by the Partner to the UIF within 1(one) month from the date on which                    |

Programme concludes as reflected on the Implementation Plan;

**“COIDA”**

means the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993) as amended;

**“Commencement date”**

means the last signature date by the delegated person authorised to sign the Agreement on behalf of a Party;

**“Commissioner”**

means the Unemployment Insurance Commissioner, designated as such under section 43 of the Unemployment Insurance Act, (Act No. 63 of 2001) and shall include any official /person appointed in an acting capacity in that position;

**“Commitment Letter(s)  
(Annexure C)”**

means the undertaking by the Partner confirming that they will train, support and employers therein shall employ the beneficiaries post the Programme duration;

**“Confidential Information” /  
“Confidentiality”**

means any information or data which by its nature or content is identifiable as Confidential or proprietary to the disclosing Party and / or any Third Party, or which is provided or disclosed in confidence; and which the disclosing Party or any person acting on its behalf may disclose or provide to the receiving

**“Contributor”**

Party or which may come to the knowledge of the receiving Party;  
means a natural person-

- (a) who is or was employed;
- (b) to whom the Unemployment Insurance Act, in terms of section 3, applies; and
- (c) who can satisfy the Commissioner that he or she has made contributions for purposes of the Unemployment Insurance Act;
- (d) who is deemed as such by the Commissioner in terms of the UI Act.

This can only be confirmed by the Department of Employment and Labour/UIF against its records, no other.

**“Corrupt Activity”**

means corrupt activity as defined in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), as amended;

**“Data Protection Legislation”**

means any and all applicable law relating to the protection of data or of Personal Information, including the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (POPI Act);

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| <b>“Day”</b>                              | means a day, which is not a Saturday, Sunday or public holiday in the Republic of South Africa;                                                                    |
| <b>“Department”</b>                       | means the Department of Employment and Labour;                                                                                                                     |
| <b>“Director-General”</b>                 | means the Director-General of the Department, including any person acting in that position;                                                                        |
| <b>“Disclosing Party”</b>                 | means, the Party disclosing Personal Information, in terms of the Provisions of this Agreement;                                                                    |
| <b>“Employment Laws”</b>                  | means the laws defined as such in the BCEA and shall, for this purpose include the UI Act, the UIC Act and COIDA;                                                  |
| <b>“ Programme/Programme”</b>             | means the Programme to be implemented by the Partner as reflected in the approval letter in <b>Annexure A</b> and the plan in <b>Annexure B</b> to this Agreement. |
| <b>“ESSA”</b>                             | means Employment Services System South Africa;                                                                                                                     |
| <b>“Implementation Plan (Annexure B)”</b> | means the Programme implementation plan in relation to timelines, milestones and outputs for the Programme, of which such                                          |



implementation plan is **Annexure B** to this Agreement;

**"Party"** means any of the Parties as the context may indicate;

**"PES"** means Public Employment Services, a branch within the Department;

**"PFMA"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999), as amended;

**"Progress Reports"** means the Reports referred to in, non-exhaustively, clauses 3.4.8 and 6.1 to be provided by the Partner to the UIF;

**"Public Service Act"** means the Public Service Act, 1994 (Act No. 103 of 1994), as amended;

**"Receiving Party"** means, for the purpose of clause 33 hereof, the Party receiving and/or Processing Personal Information in terms of the provisions of this Agreement;

**"Records"** means reports mentioned in this Agreement which will include but not limited to documents, receipts, ledgers, invoices, information, and data stored by any means and all copies and extracts of the same;

**“Stipend Tranche”**

means the total amount equivalent to 1 (one) month per beneficiary of the stipend payable to a beneficiaries;

**“Stipend”**

means the monthly stipend amount as per **Annexure A** payable to the beneficiaries for full attendance of the Programme;

**“the Partner”**

means the company in the appointment letter hereto and/or the agreement to which this is an annexure;

**“UI Act”**

means the Unemployment Insurance Act, 2001 (Act No. 63 of 2001) as amended;

**“UIC Act”**

means the Unemployment Insurance Contributions Act, 2002 (Act No.4 of 2002);

**“UIF”**

means the Unemployment Insurance Fund established in terms of section 4(1) of the UI Act;

**2. SELECTION OF BENEFICIARIES**

- 2.1 The beneficiaries selected for the Programme as reflected in the approval letter, **Annexure A** to the Agreement, must at first instance, primarily be sourced from ESSA through the PES process.

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- 2.2 Should the required number of beneficiaries not be found on ESSA, the Partner may source the beneficiaries from any other database provided that a fair process is applied in the selection of the beneficiaries sourced from any other database.
- 2.3 Prior to sourcing the beneficiaries from any other database, the Partner must provide the UIF with proof that 5 (five) days have lapsed from the date it submitted the opportunity form to PES for recruitment of the Programme beneficiaries and that reasonable follow up was made with the Departmental official responsible for the sourcing of such beneficiaries.
- 2.4 At least 70% (seventy) percent of the beneficiaries recruited to participate in this Programme must be contributors and/or former contributors as defined by the UI Act.
- 2.5 The Partner shall ensure that it gives priority to the recruitment of beneficiaries for the Programme who are in possession of minimum entry requirements for the Programme, which minimum entry requirements are specified in the opportunity form.
- 2.6 The Partner shall maintain the number of the required beneficiaries planned per the implementation plan.
- 2.7 The Partner shall not charge employers any placement fee for placing any of the unemployed beneficiaries at their workplaces.
- 2.8 The Partner shall recruit the beneficiaries provided for in the Approval Letter attached hereto as **Annexure A**.
- 2.9 The Partner may replace any beneficiary who drops out of the programme provided that the replacing beneficiary is selected through the process stipulated above.

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2.10 The beneficiary replacements will be allowed during the project implementation period provided the replacement beneficiaries are paid no less or no more than the approved stipend amount.

2.11 The placement of beneficiaries must not lead to retrenchments or replacement of employees already employed, where applicable. The Partner must advise employers as such and of the dire consequences of such a practice.

### 3. FUNDING

3.1 The UIF will fund the Partner to implement the Programme subject to the provisions of the Agreement and the accompanying annexures, and the conditions and requirements set out herein.

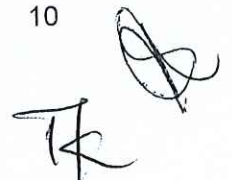
3.2 The total amount for the Programme to be funded to the Partner by the UIF and other amounts involved are as per **Annexure A** which is inclusive of Value Added Tax.

3.3 The cost items and terms thereof are broken down as follows:

3.3.1 The total approved maximum amount for the stipend as provided and payable in terms of the schedule provided in **Annexure A**. The UIF will disburse the funds to the Partner to pay the stipends to the beneficiaries recruited to the Programme until the UIF shall implement the process in terms of which UIF shall itself pay the stipends directly to the beneficiaries.

3.3.2 The Parties agree that the UIF will provide a one (1) month written notice to the Partner regarding the coming into effect of the process mentioned in 3.3.1 above.

3.3.3 The total approved maximum training fees will be payable as per **Annexure A** and deliverables set out below.

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3.3.4 Training fees will be paid per month, subject to specified requirements met by the Partner.

3.3.5 Payment for the Project Management fee is per **Annexure A**, payable as that percent (%) of each invoice.

3.4 Payment for both the stipend and the training fees which is one (1) month at a time, will be based on the following deliverables:

3.4.1 Signed Agreement between the UIF and Partner, including all the Annexures;

3.4.2 List of recruited beneficiaries who are active for the Programme;

3.4.3 Implementation Plan and Activities for the Programme;

3.4.4 Attendance Registers for the month(s) claimed for;

3.4.5 Submission of a workplace commitment/confirmation (if applicable);

3.4.6 Confirmation from the provincial UIF-LAP office/officials that the beneficiaries to the Programme are at least 70% UIF contributors;

3.4.7 Confirmation that Programme Bank Account is registered on the National Treasury's Central Supplier Database for tranche 1 (one) only.

3.4.8 A progress report clearly indicating progress made, number of active beneficiaries, including beneficiaries who dropped out, if any, and reasons for the dropping out;

3.4.9 Invoices as proof of disbursement to service providers, if any, if invoices were paid by service provider(s).

3.4.10 For a subsequent invoice (i.e. after the first invoice) the Partner shall submit proof of payment through bank transaction statements of stipends paid to all beneficiaries matching the tranche payment(s) by the UIF.

3.4.11 Partner's invoice itemising all cost items being claimed for the Programme in line with the approval, indicating the month number covered by the invoice out of the approved number of months (each invoice shall specify the month being claimed for and identify the month number);

3.4.12 A pro - forma invoice (itemised in line with the approved cost items and rates) for verification and acceptance by the UIF;

- 3.4.13 The Partner accepts that they will only submit the invoice after both Parties have agreed on deliverables and agreed on the invoice amount due;
- 3.4.14 Final invoice in line with the UIF acceptance of the pro-forma invoice minus 50% of Project Management Fee from the monthly claim.
- 3.5 For every Tranche payable to the Partner, the UIF is entitled to withhold an amount equivalent to 50% (fifty percent) of the Project Management Fee due to the Partner.
- 3.6 The withheld Project Management Fee mentioned above will be paid to the Partner after production of proof of employment or outcome it is for, as per the commitment letter on the following conditions:
- 3.6.1 50% of the retained fees after 12 months of completion of the Programme on submission of a list beneficiaries from the programme indicating the ID number, the name of the beneficiary and the name of the employer and the employer's eight (8) digit UIF reference number. The 50% of the Project management fee will be pro-rated according to the number of beneficiaries at the time of verification.
- 3.6.2 The remainder of the withheld fees after 24 months of completion of the Programme on submission of a list of employees, beneficiaries from the Programme indicating the ID number, the name of the beneficiary and the name of the employer and the employer's eight (8) digit UIF reference number. The 50% of the project management fee will be pro-rated according to the number of beneficiaries at the time of verification.
- 3.7 To claim for a subsequent Tranche of Stipends, the Partner must account for the previous tranche through stipend payment register and Tranche Reconciliation clearly showing the amount received, related expenditure, bank charges, interest earned and the balance. The bank statement submitted, for above, must support all this information. Any amount not utilized shall be deducted from the subsequent tranche being claimed. The Partner must submit a credit note of the amount equal to the amount not utilized. If there is no subsequent claim the balance must be paid back to the UIF after 30 Days.



3.8 When submitting any invoice(s) the Partner shall never combine any invoice with overlapping financial years in terms of the UIF financial year system which starts on 01 April and end on 31 March the following year. Such invoices must be separated according to the financial years.

3.9 The Partner must account for the expenditure on the previous tranche payment before the next tranche can be processed.

#### **4. PAYMENT**

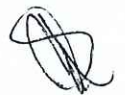
4.1 Without limiting UIF rights, UIF may withhold or suspend any payment in whole or in part if it considers that the conditions and requirements as stated in clause 3 above or this Annexure, have not been complied with.

4.2 In respect of any Tranche payment, the Partner must submit a pro-forma invoice and the relevant deliverables as outlined in clause 3 above to the UIF for verification prior submitting the final Accurate Invoice(s) for payment.

4.3 UIF will after verification, transfer the funding electronically into the Partner's Project Bank Account opened specifically for the Programme upon receipt of Accurate Invoice and accepted deliverables within 30 Days.

4.4 The Partner must account for any, and all expenditure relating to the Programme from the Partner's Project Specific Bank Account.

4.5 The Parties acknowledge that most of the beneficiaries may be disadvantaged persons who may have no means to travel to work/to the programme, as such, the Partner acknowledges that the UIF is unable to



transfer any Stipend payment to the Partner in advance as that is contrary to National Treasury regulations.

- 4.6 The Partner must open and maintain a separate Bank Account into which the UIF will transfer the Stipend Tranches from time to time, until it pays same directly to each beneficiary' bank account.
- 4.7 The Partner must not shift the funds transferred by the UIF from this Bank Account for any purpose whatsoever other than to disburse the Stipend to the beneficiaries.
- 4.8 Where a Partner pays stipends through a third party, proof of bank transactions from the third party's bank account must be provided substantiating the payments made to each beneficiary. Such payments must be effected within 3 (three) days of transfer of stipend tranche. Whatever is left from the payment of stipends must be paid back to the project bank account by the 4<sup>th</sup> (forth) day.
- 4.9 The Partner shall upon completion or termination of this Agreement refund to the UIF all funds paid by the UIF and not spent or committed. Any interest earned therefrom may be used to offset bank charges and the remainder shall belong to the UIF and must be paid back within 30 (thirty) days after the completion of the Programme.
- 4.10 The Partner shall pay any Value Added Tax payable in respect of the Programme in terms of this Agreement. The Partner accepts that UIF bears no responsibility, and any VAT liability shall rest with the Partner.

## 5. IMPLEMENTATION PLAN

- 5.1 The Partner shall implement the Programme in accordance with the Implementation Plan, which is **Annexure B** to the Agreement.

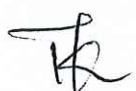


## **6. REPORTS**

- 6.1 The Partner must keep a complete record of all Progress Reports, which must include beneficiary statistics, expenditure and any other relevant matter to the programme.
- 6.2 The Partner shall attend meetings with the UIF from time to time to discuss the Programme when required.
- 6.3 UIF reserves the right to seek clarification and request further information and supporting documentation during and/or after completion of the Project notwithstanding the termination of the Agreement.

## **7. ACCOUNTING TO THE UIF**

- 7.1 All income and expenditure relating to the Programme shall be accounted for separately from Partner's other activities with sufficient and appropriate evidence provided.
- 7.2 The Partner shall update and balance all its accounting records pertaining to the funding on a monthly basis.
- 7.3 The Partner shall at all times maintain its accounting records for the funding in line with this Agreement, and any other requirements stipulated by the UIF from time to time.
- 7.4 The Partner shall immediately report to the UIF any loss, theft, damage to or destruction of any records pertaining to the funding.
- 7.5 The Partner shall in the case of the accounting records being computerized, at all times make monthly backups which shall be kept in a safe fireproof place remote from the Partner or, in the case of accounting records being in the form

of manual books of account, by ensuring that, outside normal business hours, such records are kept in a safe place.

7.6 The Partner must ensure that it maintains adequate precautions so that the accounting records are at all times capable of being retrieved to a readable and printable form, including conversion from one software system to another from time to time.

7.7 The Partner shall retain its accounting records, and all files and documents relating to the Programme for at least five years from the date of the last entry recorded in each accounting or financial or other record; and

7.7.1 at no place other than its main office, or, in the case of electronic accounting records or files, the location at which such accounting records or files are ordinarily hosted; save with the prior written consent of the UIF, or when removed therefrom under other lawful authority; provided that in the case of electronic accounting and financial records or files hosted offsite, such records or files shall always be reasonably secured and shall remain immediately accessible on request to authorised persons from the UIF and Partner.

## **8. AUDITING**

8.1 UIF may at any time, in its discretion and at its expense, appoint auditor (s) or suitably qualified investigator(s) to audit or investigate any suspicion of non-compliance with this Agreement and/or fraud or corruption related to the Programme or any aspect of the Agreement.

8.2 The Partner shall:

8.2.1 allow auditor(s) or investigator(s) so appointed, timeous unrestricted access to any records;

8.2.2 as the auditor(s) or investigator(s) may deem necessary, to examine the records for the purposes of discharging his or her duties;


- 8.2.3 without delay, furnish the auditor or investigator with any authority which may be required to enable him or her to obtain such information as he or she may reasonably require for such purpose;
- 8.2.4 This clause shall survive the termination of the Agreement.

## **9. WARRANTIES**

9.1 The Partner warrants that:

- 9.1.1 It possesses adequate staff and/or resource personnel with necessary skills, capacity and qualifications to implement the Programme;
- 9.1.2 It has full authority to enter into this Agreement and perform all obligations under the Agreement;
- 9.1.3 It has all consents and permits necessary to implement the Programme (s) in accordance with the Agreement and that it has all licenses, certificates, authorisations and consents required under the laws of the Republic of South Africa; and
- 9.1.4 None of its Key Personnel, Board of Directors and Shareholders are employees as defined in the Public Service Act.

## **REPORT OF DISHONEST OR IRREGULAR CONDUCT**

- 9.2 The Partner is required to report to the UIF without delay any suspicion of unethical behaviour of any person in respect of the Agreement.
- 9.3 To this end, the Partner shall communicate this duty to all the Partner's stakeholders (including employees, creditors, host employers etc.), and provide and maintain a safe space for these stakeholders to discharge this reporting duty.

## **10. OBLIGATIONS OF THE PARTNER**



10.1 The Partner shall:

- 10.1.1 use the funding exclusively for the purpose and in compliance with the provisions of the Agreement;
- 10.1.2 ensure that it implements the Programme in accordance with the Project Implementation Plan attached hereto as **Annexure B**;
- 10.1.3 promptly inform the UIF if there is a deviation on the implementation of the Programme in compliance with the Implementation Plan attached as **Annexure B**;
- 10.1.4 train the beneficiaries in compliance with the approved Programme;
- 10.1.5 provide workplace placement for beneficiaries as required by the Programme;
- 10.1.6 ensure that the beneficiaries who participate in the Programme are absorbed or placed in permanent employment on completion of the UIF funding, where that is the goal;
- 10.1.7 accept that the UIF keeps records of employees and shall use the UIF database as the authority to test whether or not the beneficiaries are employed as employment is the goal.
- 10.1.8 declare all the beneficiaries as employees with the UIF in terms of the UI Act; where applicable.
- 10.1.9 take responsibility for all beneficiaries in the Programme and not discriminate them and refer them to the Department or the UIF;
- 10.1.10 keep full and accurate records of all the key activities including but not limited to any training undertaken in the Programme;
- 10.1.11 ensure that the Employers are capacitated in their roles and obligations to host and absorb the Programme beneficiaries where applicable;
- 10.1.12 accept that the Department and the UIF and their stakeholders reserve the right to access the beneficiaries and employers, if applicable, of the Programme with or without notice to the Partner for purposes of monitoring, evaluation and reporting during and beyond the contract period;
- 10.1.13 ensure that it maintains dedicated personnel to which all documentation relevant to this Agreement should be addressed;


- 10.1.14 promptly notify the UIF in writing in relation to any changes to its Key Personnel, Senior Management, Board of Directors and Shareholders to this Agreement;
- 10.1.15 ensure that each beneficiary affixes their signature on the Attendance Register (whether electronic or manual) on a daily basis or on the days they are required to attend any training and/or activity relating to the Programme. The Partner must ensure that it keeps and maintains the record of training attendance on the Attendance Register;
- 10.1.16 in writing to inform the UIF of beneficiaries who drop-out, deregister from the Programme or beneficiaries who are absent for no acceptable reason for long periods of time, within 30 (thirty) days about learner drop-out, deregistration or long absence;
- 10.1.17 pay the Stipend to the beneficiaries for the number of days they attended the relevant activities and/or training as supported by the Attendance Register (the Stipend is also payable to the beneficiaries on Public holidays, Official School Holidays, and approved leave as provided for by the relevant legislation;
- 10.1.18 allow the UIF or its duly authorized representatives to inspect and/or audit the documentation, books or accounts relating to the Programme in general, on reasonable prior written notice, and to allow UIF or its duly authorized representatives, to make copies of such documentation, books or accounts in order to ensure that the Agreement is being duly complied with;
- 10.1.19 provide the UIF with Close-Out reports no later than 1 (one) month after the Programme has concluded as contemplated in the Implementation Plan;
- 10.1.20 be responsible for the day-to-day running, including the administration of the finances and the quality assurance of its activities in relation to the Programme; and
- 10.1.21 ensure that employers, cover the beneficiaries for all applicable legal obligations applicable in the employer – employee relationship. Should employers fail to provide for these legal obligations, the Partner shall take responsibility.

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10.2 In fulfilment of their obligations under this Agreement, the Partner shall comply with all the applicable provisions of the PFMA insofar as it relates to this Agreement.

## 11. OBLIGATIONS OF THE UIF

12.1 The UIF undertakes to:

12.1.1 Make payment(s) to the Partner for the implementation of the Programme in terms of **Annexure A**; and

12.1.2 verify that all beneficiaries selected for participation on the Programme are recruited first from the Department's database ESSA to enable the Department and the UIF to report on the number of unemployed beneficiaries placed.

12.2 The UIF shall not release any payments until it is satisfied with the agreed deliverables.

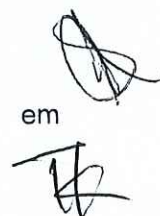
12.3 UIF shall confirm acceptance of the pro-forma invoice for stipends and training as described above.

## 12. WITHHOLDING FUNDING AND REPAYMENT

12.1 The UIF shall withhold or suspend any payment in whole or in part if it considers the conditions and requirements of this Agreement have not been met.

12.2 UIF shall require the Partner at any time to repay all or part of the funding, if the Partner is in breach of the Agreement, or any statement(s) made in their application/proposal for funding are incorrect, incomplete, false or misleading.

12.3 UIF shall recover all losses incurred from the Partner in accordance with applicable legislation including but not limited to the PFMA, National Treasury Regulations, etc.

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12.4 The Partner shall be liable to repay a portion of the Management Fee to the UIF for beneficiaries who complete the Programme (if it is a Programme) but are not absorbed in fulltime employment post the UIF funding. This amount will be calculated as a total Management Fee paid divided by total number of participants recruited.

### 13. LIMITATION OF LIABILITY

13.1 The Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall be liable to the other Party for all losses which constitute direct and/or general damages.

13.2 Subject to clause 14.3, the Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall not be liable to the other Party for any losses which constitute indirect, special and/or consequential damages.

13.3 Notwithstanding anything to the contrary set forth in clause 14.2 above or this Agreement in general, the Parties agree that they shall be liable to each other for: -

13.3.1 Losses which constitute indirect, special and/or consequential damages where such damages are caused by a breach of any Intellectual Property and/or Confidential Information undertaking contained in the Agreement;

13.3.2 all losses which arise out of their Corrupt Activity or fraud; and

13.3.3 all losses which arise out of their dishonesty or gross negligence regardless of whether such losses arise out of Agreement or delict.

13.4 Notwithstanding anything to the contrary contained in the Agreement, the Partner's maximum liability for any and all claims, howsoever arising or connected to the Agreement, will be to the extent of damages suffered by UIF in terms of the Funding Amount.


#### **14. CHANGE OF CONTROL**

- 14.1 The Partner must obtain prior written approval from the UIF if it seeks to change 50% (fifty percent) or more of its Key Personnel, Board of Directors and Shareholders, which written approval shall not be unreasonably withheld.
- 14.2 Should either Party wish to make any amendment or alteration to the Project specification that Party shall prepare a change order and present to the other Party, which shall specify the following:
- 14.2.1 the date of the change order;
  - 14.2.2 the description of the proposed amendment or alteration;
  - 14.2.3 if applicable, previous unspecified ad-hoc work to be undertaken;
  - 14.2.4 the reason for making the proposed amendment or alteration;
  - 14.2.5 when the Party requires the change to be implemented;
  - 14.2.6 the resources available; and
  - 14.2.7 the continued balance of the Parties obligations under the Agreement.
  - 14.2.8 The other Party shall be given an opportunity to consider such change order and make a decision on whether it is prepared to accept such change order or not.
- 14.3 No change order shall be of any force and effect until it is signed by duly authorized representatives of each of the Parties.

#### **15. CESSION AND ASSIGNMENT**

- 15.1 Neither Party shall be entitled to cede any of its rights nor assign any of its obligations hereunder without the prior written consent of the other, such consent not to be unreasonably withheld.

#### **16. FORCE MAJEURE**


16.1 Each Party will not be liable to the other for any default or delay in the performance of its obligations under this Agreement if and to the extent that such default or delay is caused by any act of God, pandemics, war or civil disturbance, court order, or any other circumstances beyond its reasonable control, including failures and fluctuations in electric power or communications, to the extent that such failures and fluctuations are beyond its reasonable control.

16.2 Notwithstanding any circumstances of force majeure, the non-performing Party will notify the other as soon as possible; that it be excused from further performance or observance of its obligation(s) so affected for so long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; and co-operate with the other party in implementing such contingency measures as that other party may reasonably require.

## **17. INDULGENCE AND VARIATION**

17.1 No relaxation or indulgence granted by the Party (grantor) to the other from time to time shall be deemed to be a waiver of the grantor's rights in terms hereof, nor shall any such relaxation or indulgence be deemed to be a novation or waiver of the terms and conditions of this Agreement unless agreed to in writing. No amendment or variation of any of the provisions of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties.

## **18. ENTIRE AGREEMENT**

18.1 This Agreement together with its Annexures embodies the entire Agreement between the Parties hereto.

## **19. GOOD FAITH AND CO-OPERATION**


19.1 The Parties shall display good faith and good ethical values in their dealings with each other.

## **20. BREACH AND TERMINATION**

20.1 Except where expressly provided to the contrary, should any Party commit a breach of any of the terms and conditions of this Agreement and fail to rectify such breach within a period of 14 (fourteen) days after written notice has been given to the defaulting Party by or on behalf of the other Party (aggrieved Party) calling upon the defaulting Party to remedy such breach, then notwithstanding any previous indulgence on the part of the aggrieved Party and without prejudice to any other or further rights of such aggrieved Party in terms hereof or otherwise, such aggrieved Party shall be entitled, without further notice:

20.1.1 to cancel this Agreement and to claim payment of damages from the defaulting Party for such loss or damage as the aggrieved Party may have suffered as a result of such default on the part of the defaulting Party and / or such cancellation, in which event the aggrieved Party shall be entitled to retain all monies to be paid to the defaulting Party in terms hereof, if any, until the actual amount of damages has been determined by arbitration, settlement agreement or otherwise and thereupon to set off such damages against such monies retained by the other Party; or

20.1.2 to enforce specific performance by the defaulting Party in terms of the Agreement which performance shall become immediately due and claimable from the defaulting Party.

20.2 The Parties may terminate this Agreement by giving the other 30 (thirty) days' written notice together with its reasons to do so.

20.3 Should the UIF terminate this Agreement in terms of clause 21.2 above, it shall pay the Partner for the work done up to the date of termination.


## 21. DISPUTE RESOLUTION

- 21.1 Should any dispute pertaining to the Agreement or performance thereunder arise at any time between the Parties, the duly authorized senior officials of each Party shall meet within 10 (ten) days, or such period as the Parties may agree, from the date on which the dispute was notified in writing by one of the Parties to the other, to attempt to resolve the dispute amicably.
- 21.2 Any dispute arising out of or in connection with the Agreement, may be decided by way of arbitration, as set out below.
- 21.3 The arbitration will be conducted in accordance with the rules of the Arbitration Foundation of South Africa ("**AFSA**") from time to time.
- 21.4 AFSA will be responsible for the appointment of an arbitrator and, where the Parties agree, in writing, more than one arbitrator may be appointed.
- 21.5 The arbitration will include the right of review provided for by the rules of AFSA.
- 21.6 Notwithstanding the Partner and commencement of arbitration proceedings, either Party may nonetheless approach a court of law for relief of an urgent nature in circumstances in which such relief cannot be given or cannot urgently be given by the arbitrator.
- 21.7 In making an award, the arbitrator appointed will also, in his/her discretion, make a decision with regard to the costs of the arbitration, incurred by the successful party in successfully enforcing or defending any of the provisions of this Agreement or any claim hereunder, and shall be for the account of the unsuccessful party. In so doing, the arbitrator shall be entitled to appoint a taxation consultant and/or a taxing master to determine the amount of the fees.
- 21.8 The Parties irrevocably agree that the decision in these arbitration proceedings:

21.8.1 shall be binding on them;

21.8.2 shall be carried into effect; and

21.8.3 may be made an order of any court of competent jurisdiction.

21.8.4 Shall only be subject of review, not appeal.

21.9 This clause shall survive the termination of the Agreement.

## **22. JURISDICTION AND GOVERNING LAW**

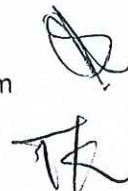
22.1 The validity of this Agreement, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

22.2 The Parties hereby, subject to the arbitration provisions herein, consent to the jurisdiction of the Gauteng High Court, Pretoria Division and all appeal courts in respect of the proceedings arising out of or in connection with this Agreement.

## **23. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT**

23.1 Nothing contained in the Agreement shall be construed to confer or be deemed to confer on either Party any rights or licences in the Intellectual Property of the other Party.

23.2 All research, data, information, documents gathered by the Partner from individual interviews and/ or group discussions, field research, supplementary sources and expert reports, written instructions, drawings, notes, memoranda, records, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the foregoing items) which are created, compiled, devised or brought into being or come into the possession of Partner during



the subsistence of the Agreement , shall be the property of UIF, and upon the termination of the Agreement , or earlier if required by UIF, such documents and all copies shall be handed over to UIF.

23.3 In addition, UIF shall retain exclusive control and rights to all the Partner's work undertaken in terms of the Agreement, and more specifically, the right to edit and publish such work.

23.4 All policies, documents, programmes or reports of UIF and any work completed in terms of this Agreement shall remain the intellectual property of UIF and all documents in this respect shall be submitted to UIF. No publication of any material or communication in the media or other form regarding the content of these policies, documents, programmes or reports and any work completed in terms of this Agreement is allowed except with the express written consent of UIF.

23.5 This clause shall survive the termination of this Agreement.

## **24. CONFIDENTIALITY OF INFORMATION**

24.1 The Parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any third Parties, including any of their employees, agents, consultants and sub-contractors directly, unless the Parties are involved with the execution of this Agreement and then only on a need to know basis.

24.2 The Parties shall prevent disclosure of Confidential Information, except as may be required by law.

24.3 The Parties agree that they shall protect each other's Confidential Information using the same standard of care that each party applies to safeguard its own Confidential Information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.



24.4 Within thirty (30) days after the termination of the Agreement, for whatever reason, the receiving party of Confidential Information shall return same or at the discretion of the disclosing party of such Confidential Information, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.

24.5 The disclosing party of Confidential Information may at any time request the receiving party of such Confidential Information to return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement, and may in addition request the receiving party to furnish a written statement to the effect, that upon such return, the receiving party has not retained in its possession or under its control either directly or indirectly any such material.

24.6 As an alternative to the return of the material contemplated in 25.5 above, the receiving Party shall at the instance of the disclosing Party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed.

24.7 The receiving Party shall comply with the request in terms of clause 25.5 above and within fourteen (14) days of receipt of same.

24.8 It is recorded that the following information shall, for the purpose of this Agreement, not be considered to be Confidential Information:

24.8.1 Information known to either of the Parties prior to the date that it was received by the other Party; or

24.8.2 Information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or

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24.8.3 Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such Information; or

24.8.4 Information, which, either of the Parties, in writing, authorizes the other to disclose.

24.9 For the avoidance of any doubt, no provision of this Agreement should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving Party to disclose the whole or any part of the Confidential Information in the event that the receiving Party receives the request for the whole or any part of the Confidential Information in terms of the provisions of the Promotion to Access to Information Act No. 2 of 2000 and Protection of Personal Information Act 4 of 2013.

24.10 This clause shall survive the termination of the Agreement.

## 25. INDEMNITY

25.1 The Partner agrees, to the fullest extent permitted by law, and subject to a limitation of liability clause, to indemnify and hold UIF, its officers, directors and employees harmless against all damages, liabilities or costs, including reasonable attorneys' fees and defence costs, to the extent caused by the Partner's grossly negligent conduct during training under the Agreement and that of its sub-consultants or anyone for whom the Partner is legally liable.

25.2 UIF agrees, to the fullest extent permitted by law and subject to the limitation of liability clause, to indemnify and hold the Partner, its officers, directors, employees and sub-consultants harmless against all damages, liabilities or costs, including reasonable attorneys' fees and defence costs, to the extent caused by UIF's grossly negligent in connection with the training to be rendered and the acts of its contractors, subcontractors or consultants or anyone for whom the UIF is legally liable.


25.3 The Partner acts as an independent contractor and not as an agent, official or employee of UIF and has no authority to bind UIF.

25.4 The Partner undertakes to obtain the necessary consent in the event of it making use of the works and rights or any other intellectual property of third parties. The Partner hereby indemnifies UIF against any action or application, including all costs, which might arise out of such breach.

25.5 The Partner indemnifies UIF against all claims for or arising from the presence of the Partner and/or its representatives on UIF's property.

25.6 The Partner shall ensure that it takes out adequate insurance against any claim or injury of any third party, any of its employees or any other person for whom it may be responsible in terms of the Employment Laws or any other relevant legislation and indemnifies the UIF from any liability in respect thereof.

25.7 The Partner must comply with any Labour, Environmental, Health Industrial and Safety legislation and indemnifies the UIF against any claims in respect thereof.

## **26. PENALTY CLAUSE**

26.1 UIF shall be entitled to raise penalties against the Partner in accordance with this Agreement in the event of any acts or omissions in terms of the Partner's obligations which result from its failure to implement the Programme.

26.2 Notwithstanding anything to the contrary contained in this Agreement, the penalty imposed in terms of clause 27.1 above will be to the extent of the damages/losses suffered by UIF in terms of the Agreement.

26.3 The withheld 50% of the Project management fee mentioned above will be pro-rated according to the number of beneficiaries employed at the time of verification and the penalty is imposed.

26.4 The UIF's right to impose penalties referred to above shall not stand in the alternative to the UIF's right to claim damages in the event of breach by the Partner of any or all other terms and conditions of the Agreement.

## **27. DATA PROTECTION**

27.1 When processing Personal Information, the Receiving Party shall ensure that its Personnel shall:

27.1.1 comply with all Applicable Law, including but not limited to, all applicable Data Protection Legislation;

27.1.2 take, implement and maintain all reasonable and appropriate technical and organisational precautions and measures necessary to secure and preserve the integrity and Confidentiality of Personal Information and to prevent any (i) loss of, damage to, or unauthorised destruction of Personal Information; or (ii) unauthorised or unlawful access to, use of, or Processing of Personal Information;

27.1.3 use and apply appropriate measures, procedures and controls in relation to Personal Information, in accordance with Best Industry Practice;

27.1.4 not do anything, or omit to do anything, which will contravene any Applicable Law, including any applicable Data Protection Legislation, or which will cause the Disclosing Party to contravene any Applicable Law, including any applicable Data Protection Legislation;

27.1.5 comply at all times with any policies and procedures relating to the protection, privacy, processing and destruction of Personal Information which apply to the services and which are notified to the Receiving Party by the other Party;

27.1.6 keep Personal Information Confidential and only process, use and/or hold such Personal Information for the specific purpose for which it was provided


to the Receiving Party, for the purposes of performing its obligations in terms of this Agreement and only as required or permitted by any applicable Data Protection Legislation;

27.1.7 only retain Personal Information for as long as it is required to be retained by law and/or by the Receiving Party in line with the purpose for which the Personal Information was provided in accordance with any Applicable Law.

27.2 The Receiving Party further undertakes to:

27.2.1 Immediately notify the Disclosing Party in the event of the Receiving Party and/or its Personnel's non-compliance, suspected or anticipated non-compliance, or breach of any applicable Data Protection Legislation or any other obligations in terms of the provisions of applicable clause (s) of this Agreement;

27.2.2 designate a competent manager to oversee the protection of Personal Information within the organisation, which individual shall be a point of contact for other Party;

27.2.3 immediately notify the Disclosing Party where there are reasonable grounds to believe that the Personal Information has been accessed, acquired or Processed by an unauthorised person, or has been used or Processed in any unauthorised or unlawful manner, including any data breaches or security incidents of which the Receiving Party becomes aware. In such event, the Receiving Party shall immediately:

27.2.3.1 comply with all instructions and directions given by the Disclosing Party in relation thereto;

27.2.3.2 take all measures necessary to determine the scope of the compromise and to restore the integrity of the Personal Information;

27.2.3.3 provide all information which may be requested by the Disclosing Party, co-operate fully with the Disclosing Party in relation to any notifications which may be made by the Disclosing Party to any regulator, data subjects (as defined in any applicable Data Protection Legislation) or any other person; and

27.2.3.4 co-operate fully with the Disclosing Party in relation to any investigations that the Disclosing Party may initiate or which may be initiated by an investigator or other authority.

27.3 The Receiving Party warrants that it has obtained written consent from all applicable data subjects (as defined in any applicable Data Protection Legislation) for the collection, copying, use, storage, processing or transfer of such data subjects' Personal Information whenever this is required for purposes of this Agreement.

27.4 Any breach of the obligations set out in clause 21 shall be deemed to be a material breach of this Agreement and shall entitle the affected Party to terminate this Agreement on written notice to the defaulting Party in accordance with the provisions of the breach clause hereto.

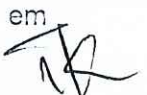
27.5 The Receiving Party hereby indemnifies and holds the Disclosing Party harmless from and against any and all claims, damage and/or loss of any nature whatsoever, arising from the Receiving Party and/or its Personnel breaching any of the provisions of this clause, and/or from any other cause whatsoever in respect of any access to and/or Processing of the Personal Information by the Receiving Party and/or its Personnel.

27.6 The obligations in this clause shall survive the termination of this Agreement, and shall continue to be of force and effect for so long as:

27.6.1 the Receiving Party is in possession of, or has under its control; or

27.6.2 any of the Receiving Party's sub-contractors or Personnel have in their possession or under their control,  
any Personal Information received and/or processed by it from or on behalf of the Disclosing Party.

## 28. SUB-CONTRACTING

  
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28.1 The Partner may appoint and utilize sub-contractor(s) in the performance of the Programme.

28.2 Sub-contracting by the Partner in terms of this Agreement will not relieve it from any liability or obligation under this Agreement.

28.3 The Partner shall ensure that the sub-contractor (s) complies with the standards, policies and procedures of the Agreement in the performance of the services from time to time.

## **29. LEGAL COSTS**

29.1 Each Party will pay its own costs and expenses incurred by it in connection with the negotiation and execution of the Agreement.

## **31. DOMICILIUM CITANDI ET EXECUTANDI**

31.1 The Parties choose domicilium citandi et executandi ("domiciliuim") for all purposes relating to this Agreement, including giving any notice, the serving of any process and for any other purposes arising out of this Agreement as set out in the contract to which this is an Annexure or:

31.2 at such address in South Africa of which the party concerned may notify the other in writing.

31.3 Any Party shall be entitled, from time to time by written notice to the other Party, to vary its domicilium to any other address within the Republic of South Africa, one of which should always be physical address and to vary its facsimile domicilium to any other facsimile number.

31.4 Any notice given by a Party to the other parties ("addressee") which is hand delivered between the hours of 08:00 and 16:00 on any day to the addressee's physical domicilium for the time being shall be presumed, until the contrary is


proved by the addressee, to have been received by the addressee at the time of delivery.

31.5 Any notice by a Party to the addressee which is posted by prepaid registered post from an address within the Republic of South Africa, at the addressee's domicilium for the time being, shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee, on the 7th (seventh) day after the date of posting.

31.6 Where, in terms of this Agreement, any communication is required to be in writing, the term "writing" shall include communication by facsimile or per email.

31.7 Communications by facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 24 (twenty-four) hours after the time of transmission.

31.8 Communication per email shall be deemed to have been received when a read receipt is received by the sender.

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