

# MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN:

## WHOLESALE AND RETAIL SECTOR EDUCATION AND TRAINING AUTHORITY (W&RSETA)

(A schedule 3A National Public Entity established under section (9) of the Skills Development Act No. 97 of 1998, herein represented by Mr Tom Mkhwanazi, in his duly authorized capacity as the Chief Executive Officer)

**(Hereinafter referred to as the “Project Sponsor”)**

**And**

.....

(an entity registered under the laws of South Africa, herein represented by the Authorized Official who warrants that they have the authorized capacity to conclude the agreement on behalf of the Employer)

**(Hereinafter referred to as the “EMPLOYER”)**

**And**

.....

**Identification Number:**

(An individual who has been duly awarded the bursary to participate in the ILDP and one who warrants that they are authorised to sign this agreement in their personal capacity)

**(Hereinafter referred to as the “Bursary recipient”)**

**1. PRE-AMBLE**

1.1 The Project sponsor has awarded the above-mentioned recipient a bursary to participate in the 2022/23 International Leadership Development Programme (ILDP). The respective ILDP consists of formal hybrid study blocks, international immersions into Africa as well as other overseas destinations, syndicate-based Action Learning Research projects as well as personal development plan individual coaching. During the programme, delegates will be immersed in learning experiences to accelerate their business insights and learn directly from global business leaders. Delegates will be required to apply their learnings to identified strategic industry challenges in the domestic Wholesale and Retail Sector, in support of the W&RSETA’s goal to foster economic development, industry transformation and job creation.

1.2 Consequent to the award of the Bursary to the recipient to participate in the ILDP , the parties in this agreement have resolved to conclude this agreement in order to regulate the relationship between the three parties in order to ensure that the Bursary recipient participates in the programme to its completion. A further objective of this agreement, is that it aims to regulate the consequent failure by the Bursary recipient or the employer to complete the programme and the financial recovery processes to be engaged by the Project Sponsor resultant of such failure.

**2. PARTIES**

The Parties to this Agreement are:

2.1 **The WHOLESALE & RETAIL SETA (W&RSETA)** (“the Project Sponsor”), A schedule 3A National Public Entity established under section (9) of the Skills Development Act No. 97 of 1998, herein represented by the designated Official who warrants that they are duly authorised to sign this Agreement on behalf of W&RSETA, and

2.2 ..... (“Employer”), an entity registered in terms of the laws of South Africa, with the following registration number:....., herein represented by the designated Official who warrants that they are duly authorised to sign this Agreement on behalf of the Employer.

2.3 ..... (“Bursary Recipient”) an adult who has been awarded a bursary to participate in the ILDP, whose ID number is:.....

### 3 INTERPRETATION

- 3.1 In construing this Agreement and all related written instruments thereof, the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity or some repugnancy or inconsistency with the rest of the terms of this agreement.
- 3.2 If, however, the ordinary sense of the word leads to some absurdity or some repugnancy or inconsistency with the rest of the terms of this Agreement, then the words may be modified just so much as to avoid that absurdity, or repugnancy or inconsistency but no more.
- 3.3 Should clauses 3.1 and 3.2 be applied and fail to assist in the interpretation of this agreement then, the interpretation that will put an equitable construction upon this agreement and will not, unless the intention of the Parties is manifest, so construe the agreement as to give one of the Parties an unfair or unreasonable advantage over the other should be explored.
- 3.4 However general the expressions in this agreement may be, they only include the matters in respect of which it appears that the contracting Parties intend to contract and not those which they did not contemplate.
- 3.5 Reference to one gender includes the other gender, the singular includes the plural and *vice versa*.
- 3.6 The words “ including” and “ in particular” shall not limit the generality of any preceding words.
- 3.7 Where the approval or consent of any Party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not be unreasonably withheld or delayed by the Party who is required to give same.
- 3.8 Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.
- 3.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.

- 3.10 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- 3.11 Any reference to “days” shall be construed as being a reference to calendar days, unless qualified by the word “Business”.
- 3.12 The words “shall”, “will” and “must” used in the context of any obligation or restriction imposed on a Party have the same peremptory meaning.

#### **4 RESPONSIBILITIES OF PROJECT SPONSOR**

- 4.1 W&RSETA hereby undertakes to fund (name of student) for the 2023/24 International Leadership Development Programme (ILDP | ..... ) at an amount of .....Rands (R ....., 00) which is inclusive of tuition fees and an international immersion leg.

#### **5. RESPONSIBILITIES OF THE EMPLOYER**

- 5.1 The Employer agrees to ensure that the Bursary Recipient fulfils the following obligations towards the programme:
- (a) Attends the Induction,
  - (b) Attends the specified Block Weeks,
  - (c) Completes this programme, or
  - (d) Does not deregister from the Programme
- 5.2 The Employer agrees that should the Bursary recipient not achieve any of the above deliverables, that they will repay the full value of funds disbursed for the programme for that Bursary Recipient to the Project Sponsor.

#### **6. RESPONSIBILITY OF THE BURSARY RECIEPIANT**

- 6.1 The Bursary Recipient agrees per the provisions of this agreement and the concluded bursary agreement that they will:
- (a) Attend the Induction of the ILDP,

- (b) Attend all the specified Block Weeks in the programme,
- (c) Complete this programme, or
- (d) Will not deregister from the programme,
- (e) Should they deregister they agree to repay the employer the amount it has paid to the Project Sponsor.

## **7. DURATION**

- 7.1 This MOA shall take effect on from the date that the last party signs this agreement and shall be valid for a period of two (2) years.
- 7.2 This Agreement will automatically come to an end upon the termination date stipulated above, which date will represent the termination of the Agreement between the Parties.
- 7.3 Any extensions or renewal of this Agreement by the Parties will be valid only if reduced in writing and signed by both Parties and/or their duly authorized representatives.

## **8. BREACH AND DISPUTE RESOLUTION**

- 8.1 Should any Party (“the guilty party”) commit a breach of this MOU and fail or refuse to rectify that breach within fourteen (14) days after receipt of a written notice from the other Party (the “innocent party”), calling upon the guilty party to rectify that breach, the innocent party shall be entitled, without prejudice to any other of his rights, to forthwith cancel this MOA by written notice to the guilty party and the amount as paid by the Project Sponsor for the Bursary awarded to the Bursary Recipient will be due and payable and recoverable.
- 8.2 Notwithstanding any provision to the contrary in this MOA, the Project Sponsor shall be entitled to institute any delictual, contractual or other claim against any of the other Parties for any indirect or consequential losses or damages (including without limitation, loss of profit, loss of use, loss of production, loss of business, or loss of business opportunity) due to any cause whatsoever.

8.3 The Parties hereby consent to the jurisdiction of the North High Court of South Africa located in the Gauteng Province for purposes of executing legal disputes and contractual claims against the other party.

## **9. TERMINATION**

9.1 Neither of the Parties may terminate this Agreement, or suspend its operations in whole or in part, at any time and or at its sole discretion without giving written notice to the other Party as which point the amount paid for the Bursary Recipient will be become due and payable to the Project Sponsor.

9.2 The terminating party, when giving notice under clause 9.1 shall, in the written notice, specify the extent of the termination or suspension, and the effective date of such action.

9.3 Termination or suspension of the Agreement under this clause 9 shall be without prejudice to any other rights that may have accrued to either of the Parties, in respect of deliverables rendered before the date of termination or suspension. The Parties specifically agree that upon termination or suspension of this Agreement no rights shall accrue to either party for the services not yet rendered under this Agreement except those already initiated at the date of termination.

9.4 The Agreement shall also be terminated for any material none performance by either Party to this Agreement and in which instance the SETA reserves the right to recover the amount already paid to the Bursary Recipient and or the Employer.

9.5 Further, if, as a result of "*Force Majeure*", the Parties can no longer continue performing the obligation of the Agreement or it would be undesirable to continue with the Agreement, it shall be terminated.

## **10. DOMICILIUM CITANDI ET EXECUTANDI**

10.1 Any notice in terms of this Agreement shall be delivered to the physical addresses of the Parties or shall be sent by registered post to the postal addresses or fax or email address of the Party to whom it is addressed.

10.2 Any notice will be deemed to have been received by the Party to whom it is addressed or delivered when receipt thereof is acknowledged utilizing a signed delivery note or if it is confirmed by the other party in case of fax or email.

10.3 Any notice delivered by hand to the Party shall be deemed to have been delivered on the day of delivery. Any notice sent by registered post shall be deemed to have been received within seven (7) days from the date on which it was posted, and any notice sent by fax or email to a Party at the telefax numbers specified shall be deemed to have been received within one (1) hour of transmission if it is transmitted during normal business hours and confirmed by the other party or by e-mail.

10.4 Either Party may from time to time decide to vary its *domicilium*, address, fax number or email address by giving written notice to the other Party.

10.5 The Project Sponsor chooses for this Agreement its *domicilium citandi et executandi* and address for any notices as follows:

10.5.1 Street Address: **W&RSETA**  
 Riverside Office Park, Building  
 Cnr Lenchen and Heuwel Street  
**CENTURION**

10.5.2 Postal Address: W&RSETA  
 Private Bag X106  
**CENTURION**  
 0046

10.6 The Employer chooses for this agreement its *domicilium citandi et executandi* and address for any notices as follows:

10.6.1 Street Address:  
 .....  
 .....  
 .....

10.7 The Bursary Recipient chooses for this agreement its *domicilium citandi et executandi* and address for any notices as follows:

10.7.1 Street Address:  
 .....  
 .....  
 .....

**11. GENERAL**

- 11.1 The Parties undertake to do all such things, perform all such acts, and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or be conducive to the giving of effect to the terms, conditions, and import of this Agreement.
- 11.2 The Parties shall at all times during the continuance of this agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this agreement.
- 11.3 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful, or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.
- 11.4 No amendment, alteration, addition, or variation of this Agreement, including this clause, shall be of any force or effect unless reduced into writing and signed by all the Parties to the Agreement.
- 11.5 It is specifically recorded that this document embodies the entire agreement between the Parties and no other agreements outside the confines of this agreement shall supersede this agreement unless varied through a signed addendum by both parties.
- 11.6 This agreement shall be governed and construed following the laws of the Republic of South Africa which were in force and effect at the time of signature of the agreement.

**Thus, done and signed at..... on this day of ...../...../2023**

\_\_\_\_\_  
**Mr Tom Mkhwanazi**  
**Chief Executive Officer**  
**Project Sponsor**

As witness:

1. \_\_\_\_\_ Name and Surname\_\_\_\_\_



Thus, done and signed at..... on this day of ...../...../2023

\_\_\_\_\_

**Duly authorized signatory for the Employer**

**Company name**

As witness:

1. \_\_\_\_\_ Name and Surname\_\_\_\_\_

Thus, done and signed at..... on this day of ...../...../2023

\_\_\_\_\_

**Name**

**Bursary Recipient**

As witness:

1. \_\_\_\_\_ Name and Surname\_\_\_\_\_