



UNIVERSITY OF  
**KWAZULU-NATAL**™  
INYUVESI  
YAKWAZULU-NATALI

## MEMORANDUM OF AGREEMENT

entered into, by and between

**UNIVERSITY OF KWAZULU-NATAL**

a public higher education UKZN in terms of the Higher Education Act

No 101 of 1997, as amended

Herein represented by \_\_\_\_\_, duly authorised

("UKZN")

and

XXXXX

a .....

Herein represented by XXXXX, duly authorised

("XXX")

(collectively referred to as "the Parties")

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except where otherwise stated, the following expressions have the meaning assigned to them below:
- 1.1.1 **“this Agreement”** means the Agreement as recorded herein and any annexure hereto;
- 1.1.2 **“Business Day”** means any day other than a Saturday, Sunday or official Public Holiday in the Republic of South Africa;
- 1.1.3 **“Confidential Information”** means information that (a) relates to the Disclosing Party’s past, present or future research, development, business activities, products, services, technical knowledge relating to the field of Accounting / Finance / Stock Trade & Investment (b) either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the other Party that it is claimed as confidential. (As used herein, the Party Disclosing Confidential Information is referred to as the “Disclosing Party” and the Party receiving the Confidential Information is referred to as the “Recipient” or the “Receiving Party”);
- 1.1.4 **“Co-ordinator”** means a UKZN permanent staff member appointed to ensure the continuity of the mentorship programme and is to select, co-ordinate and oversee the UKZN student-mentors;
- 1.1.5 **“Effective Date”** means \_\_\_\_\_;
- 1.1.6 **“XXXX (external party)”** means the XXXX ;
- 1.1.7 **“Operator”** means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that person.
- 1.1.8 **“Personal Information”** as information relating to an identifiable, living, natural person and where it is applicable, and identifiable existing juristic person, including, but not limited to (A) information relating to the

race, gender, sex, marital status, national, ethnic or social origin, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, culture, language (b) information relating to the education or the medical, financial, criminal or employment history of the person; (c) any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; (d) the biometric information of the person; (e) the personal opinions, views or preference of the person; (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; (g) the views or opinions of another individual about the person; and (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

- 1.1.9            **“Processing”** means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use; (b) dissemination by means of transmission, distribution or making available in any other form or merging, linking as well as restriction, degradation, erasure or destruction of information.
- 1.1.10           **“UKZN”** means a public higher education UKZN in terms of the Higher Education Act No 101 of 1997;
- 1.1.11           **“Termination Date”** means the date on which this Agreement terminates for any reason whatsoever.
- 1.2              The headings of the clauses of this agreement are inserted for reference purposes only and will in no way govern or affect the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof.
- 1.3              If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definitions clause, effect will be given to it as if it were a substantive provision of this agreement.

- 1.4 Unless inconsistent with the context, an expression which denotes:
- 1.4.1 Any one gender includes the other gender.
  - 1.4.2 A natural person includes a legal person and *vice versa*.
  - 1.4.3 The singular includes the plural and *vice versa*.
- 1.5 Any annexures to this agreement form an integral part hereof and words and expressions defined in this agreement will bear, unless the context otherwise requires, the same meaning in such annexures;
- 1.6 When any number of days is prescribed in this agreement, same will be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day will be the day immediately following business day.
- 1.7 If the day for payment of any amount due in terms of this agreement falls on a day which is not a business day, the relevant date will be the preceding business day.
- 1.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.
- 1.9 Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, will bear the same meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that, that term has not been defined in this interpretation clause.
- 1.10 Any reference to an enactment in this agreement is to that enactment as at the signature date and as amended or re-enacted from time to time.
- 1.11 The expiry or termination of this agreement will not affect such of the provisions of this agreement as expressly provided that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## 2. PREAMBLE

**WHEREAS** the XXXX

**AND WHEREAS** XXX

**AND WHEREAS** XXX

**AND WHEREAS**, the parties intend to define the details of the future collaboration and the roles and responsibilities of each party involved.

## 3. DURATION OF AGREEMENT

3.1 Notwithstanding the date of signature of this Agreement, this Agreement shall commence on the Effective Date and shall terminate after XXXXX from the effective date.

3.2 The Parties may agree in writing to extend this Agreement for a further period and subject to such terms as they may agree, provided that such Agreement is concluded before the expiry of this agreement.

3.3 Either Party may terminate this Agreement at any time or any extension contemplated in clause 3.2.

3.3.1 on the grounds of breach, as provided for in clause 12; or

3.3.2 otherwise, on giving six (6) months written notice to the other.

## 4. SCOPE OF MOU

(HERE YOU WOULD CHECK THE FOLLOWING WITH EXTERNAL PARTY;) for example)

- For which students funding is meant (Previously Disadvantages, race, sex etc)
- For First years or up to 4<sup>th</sup> Year / Post Grad etc
- Minimum Academic Performance
- Specific Degrees funding is to be made available for

5. OBLIGATIONS OF \_\_\_\_\_

\_\_\_\_\_ will:

(\_\_\_\_\_ to set out what their contribution would be)

6. OBLIGATIONS OF UKZN

UKZN will :

(Examples of what is usually expected from us)

The University shall provide XXX with annual reports on the performance of the Bursary Recipients.

The University will refund any uncommitted funding received from XXX in the manner prescribed by XXX.

The University will use the Bursary Funds provided by XXX for the purposes of this MOU only.

The University will keep copies of all documents relating to its obligations in terms of this MOU, and shall retain such documentation for a period of not less than 5 (five) years after termination of this MOU.

The MOU will inform XXX of the registration period/s for the relevant academic year.

The University grants permission to XXX or its duly authorised representatives to inspect documentation, books or accounts relating the Parties engagement in terms of this MOU on reasonable prior written notice.

7. PROTECTION OF PERSONAL INFORMATION

- 7.1 If UKZN provides personal information of either the UKZN or any student / employee to the XXX, UKZN consents and authorise the XXX to process the personal information for the purpose set out in this agreement only.
- 7.2 If the XXX provides personal information of either the XXX or any of its employees to the UKZN, the XXX consents and authorise the UKZN to process the personal information for the purpose set out in this agreement only.
- 7.3 UKZN will obtain all necessary consents for the disclosure of the Personal Information of the students acting as mentors and UKZN will only provide the XXX with the Personal Information where the UKZN has obtained the voluntary specific and informed consent of the person to whom the Personal information pertains to disclose the personal information.
- 7.4 XXX will obtain all necessary consents for the disclosure of the Personal Information and XXX will only provide the UKZN with the Personal Information where the XXX has obtained the voluntary specific and informed consent of the person to whom the Personal information pertains to disclose the personal information
- 7.5 Any party to this agreement will destroy or delete any Personal Information as and when it is required.
- 7.6 Both parties agree to keep personal information confidential and not disclose any personal information to any other person other than is required by law or in the course of the proper performance of its obligation under this agreement.
- 7.7 Both parties agree to maintain appropriate security measures to prevent the loss of, damage to or unauthorised destruction of personal information and unlawful access to or processing of personal information in accordance with the best industry practice;
- 7.8 Both parties agree to notify the other if there are reasonable grounds to believe that personal information held by the other has been accessed or acquired by an unauthorised person.

## **8. CONFIDENTIALITY OF INFORMATION**

- 8.1 The parties shall keep confidential and shall not disclose to any third party (other than

for the purposes of performing services under this Agreement) any of the confidential information disclosed to either party during the discussions or negotiations or implementation of this Agreement or at any time thereafter.

8.2 The provisions of 8.1 shall not apply to any confidential information which:

8.2.1 is or hereafter becomes part of the public domain (otherwise than as a result of a breach of the provisions of 8.1 above);

8.2.2 can be shown to have been lawfully in the possession of the party receiving such confidential information, or its affiliates, prior to its disclosure and is not subject to any existing Contract between the parties and/or their affiliates;

8.2.3 is acquired by a party or its affiliates independently from a third party, who lawfully acquired such information without restriction, or information which is acquired or developed by a party or its affiliates independently of the other party; or

8.2.4 is disclosed or released by the receiving party to satisfy an order of Court or otherwise comply with the provisions of any law or regulation in force at the time.

## **9. GOODWILL AND NO CORRUPTION**

9.1 In implementing this Agreement and in all further dealings with each other, the parties undertake to observe utmost good faith and to give effect to the intent and purpose of this Agreement.

9.2 The Parties will not make or cause to be made any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or a corrupt practice either directly or indirectly to any person as an inducement or reward in relation to the execution of this Agreement. Any such practice will be grounds for summary termination of this Agreement.

## **10. BREACH**

10.1 In the event of either Party being in breach of any of the terms of this Agreement and

failing to remedy such breach within a period of ten (10) days after receipt by it of a written notice requiring such breach to be remedied, the Party aggrieved thereby shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement or at law, to:

10.1.1 claim specific performance of the terms of this Agreement as well as such damages which it may have suffered; or

10.1.2 cancel this Agreement and claim and recover damages; or

10.1.3 keep this Agreement in force and recover such damages as it may have suffered as a result of such breach.

## **11. DISPUTE RESOLUTION**

11.1 In the event of a dispute arising out of or in connection with this Agreement including its interpretation or implementation (“the Dispute”), then upon written notice from any Party to the other (“the Dispute Notice”) the Parties will attempt to settle the dispute by mediation.

11.2 The mediation shall be administered by the parties unless otherwise agreed, and shall be conducted on an expedited basis. The parties shall use their best endeavours to settle the dispute within 14 days of the Dispute Notice.

11.3 The mediator shall be a person agreed by the parties or, failing Agreement, nominated for that purpose by the Chairperson for the time being of the General Counsel of the Bar.

11.4 The place of the mediation shall be determined by the mediator.

11.5 If the dispute is not settled within 14 days of the Dispute Notice, the dispute shall, upon written notice from any party to the other (“the Arbitration Notice”) be settled by arbitration.

11.6 The arbitrator will be an independent person agreed upon by the Parties to the dispute and, failing such Agreement within 5 (five) days after the Arbitration Notice, will be appointed by the chairman and, failing him, any competent officer for the time being of the Association of Arbitrators (Southern Africa), who may be requested on notice by

either Party to make the appointment at any time after the expiry of that 5-day period.

- 11.7 Immediately after the arbitrator has been agreed upon or appointed, the Party who has given the Arbitration Notice shall request the arbitrator to nominate a date and place when and where the arbitration proceedings will be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 11.8 The arbitration will be held at the location chosen by the arbitrator in accordance with the formalities and procedure settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence.
- 11.9 Unless agreed otherwise the arbitration shall be administered by the parties.
- 11.10 The arbitration will be held as soon as possible after it is requested with a view to it being completed within 30 (thirty) days if possible, after it has been so requested.
- 11.11 The arbitrator will be entitled to make such award, including an award for costs, specific performance, an interdict, damages or a penalty or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including, if applicable, costs on the attorney and client scale, or own client scale, and his own fees.
- 11.12 Any award made by the arbitrator:
- 11.12.1 will be final and binding on the Parties to the Agreement; and
- 11.12.2 may be made an order of any court to whose jurisdiction the Parties are subject.
- 11.13 The governing substantive law of this Agreement and the governing procedural law of the arbitration shall be the law of South Africa.
- 11.14 The sub-clauses afore stated of this clause will not preclude either Party from obtaining intermediate relief on an urgent basis from a court of competent jurisdiction, pending the decision of the arbitrator.

## 12. DOMICILIUM AND NOTICES

12.1 The Parties choose *domicilium citandi et executandi* ("domicilium") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows:

XXX

Physical Address:

Postal Address:

Telephone:

Fax Number:

Email Address:

The University

Physical Address

Office of the Registrar

c/o Legal Services

Westville Campus

University Road

Chiltern Hills

Westville

3629

Postal Address:

Private Bag X54001

Durban, 4000

Telephone: 031 260 2810

Fax Number: 031 260 2824

Email Address: [legalservices@ukzn.ac.za](mailto:legalservices@ukzn.ac.za)

12.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa, to vary its postal domicilium to any other postal address within the Republic of South Africa and to vary its facsimile domicilium to any other facsimile number.

12.3 Any notice given by either Party to the other ("addressee") which is:

12.3.1 delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery; or

12.3.2 posted by prepaid registered post to the addressee's postal domicilium for the time being shall be deemed (unless the contrary is proved by the addressee)

to have been received by the addressee on the fourteenth day after the date of posting.

12.4 Any notice given by either Party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

12.5 This shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this Agreement.

12.6 Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

### **13. GENERAL**

13.1 This Agreement constitutes the sole record of the Agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.

13.2 No addition to, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.

13.3 No indulgence or extension of time which either Party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

13.4 Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager,

curator or trustee, of either Party shall be bound by this Agreement.

13.5 The signature by either Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as the other Party.

13.6 The laws of the Republic of South Africa govern this contract.

#### 14. COSTS

Each Party shall bear and pay the costs incurred by it in respect of the negotiation, drafting, preparation and execution of this Agreement.

**SIGNED at** \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
**For: UKZN**

\_\_\_\_\_  
Signatory:

Capacity:

Authority:

**SIGNED at** \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
**For: XXX**

\_\_\_\_\_  
Signatory:

Capacity:

Authority: