

# GENERAL TERMS AND CONDITIONS

## 1. Definitions and Interpretation

1.1. Words and expressions shall have the following meaning, except where the context otherwise requires:

**"Affiliate"** means with respect to a Party, any corporate entity with legal personality that controls, is controlled by, or is under common control with such Party. An entity will be regarded as being in control of another entity if it owns, directly or indirectly, or is entitled to exercise, directly or indirectly, the votes attaching to at least 50% (fifty percent) of the equity share capital of the other entity, or if it possesses, directly or indirectly, the power to determine the composition of the majority of the board of directors of the other entity;

**"Agreement"** means an Agreement (including any Annexures) entered into between the Parties, and includes these Terms and Conditions;

**Anti-Bribery Laws** means (i) the South African Prevention and Combatting of Corrupt Activities Act (2004), (ii) the other public and commercial anti-bribery laws which may apply and (iii) international anti-corruption treaties such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption.

**"Black people"** means black people as defined in the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;

**"Client"** means a person registered with Sebenza Africa to participate in the Sebenza Africa corporate work experience initiative;

**"Confidential Information"** means information that is proprietary or confidential and is either clearly labelled as such or identified as confidential information by a Party, or information which the receiving Party knows or reasonably should have known is of a proprietary or confidential nature;

**"day"** means any day other than a Saturday, Sunday or official public holiday in South Africa;

**"new employment opportunities"** means employment opportunities created in addition to the employment opportunities that existed at the Client prior to its registration with Sebenza Africa and that effectively reduces the Youth unemployment rate;

**"Party"** means the Client or Sebenza Africa, and **"Parties"** means both of them;

**"Personal Information"** shall have the meaning set out in the Protection of Personal Information Act 4 of 2013 as amended, or such other legislation as may become applicable to the protection of personal information in South Africa;

**"Verified implementation partner"** means an implementation partner that has been verified by Sebenza Africa to be suitable to place Youth to receive a quality work experience;

**"Sebenza Africa"** means the Youth Employment Service (RF) NPC, registration number 2017/267641/08;

**"Sebenza Africa corporate work experience initiative"** means the creation of employment opportunities for Youth by the Client and the employment of Youth by the Client into those employment opportunities;

**"Sebenza Africa Practice Note"** means Practice Note No 1 of 2018: Youth Employment Service Initiative Practice Note published by the Minister of Trade and Industry (Notice 640 of 2018 in Government Gazette No. 41975 of 12 October 2018) as amended;

**"Sebenza Africa sponsored placement initiative"** means the sponsorship by the Client of a Youth to be placed at a Sebenza Africa verified implementation partner;

**"Youth"** means an unemployed, Black person between 18 and 35 years old.

**"Youth Employment Service Initiative"** means the Youth Employment Service Initiative as prescribed within Code Series 000, Statement 000 of the Amended Codes of Good Practice for Broad Based Black Economic Empowerment (Notice 502 of 2018 in Government Gazette No 41866 of 28 August 2018);

- 1.2. Headings have been inserted for convenience only and shall not be taken into account in the interpretation of any provision of these Terms and Conditions.
- 1.3. The singular shall include the plural, words in the masculine gender shall include the feminine gender, words indicating natural persons shall include juristic persons and vice-versa.

## 2. Application

- 2.1. By registering with Sebenza Africa, the Client agrees to be bound by these Terms and Conditions.
- 2.2. Where applicable, the Parties may enter into an Agreement on specific services, works or supplies.
- 2.3 In the event of an inconsistency between these Terms and Conditions and the Agreement, the Agreement shall apply.

## 3. B-BBEE Recognition

- 3.1. In the event that the Client elects to participate in B-BBEE Recognition for job creation through the creation of new employment opportunities, the Client must comply with the requirements for B-BBEE Recognition for job creation as contemplated in the Sebenza Africa Employment Service Initiative laws, including regulations, codes and practice notes regulating B-BBEE Recognition for job creation for Sebenza Africa Measured Entities.

## 4. Youth placement

- 4.1. The Client may:
  - 4.1.1. employ a Youth to participate in the Sebenza Africa corporate work experience initiative at the Client's workplace (hereinafter referred to as "**Internal Placement**");
  - 4.1.2. sponsor a Youth to be placed at a verified implementation partner (hereinafter referred to as "**Sponsored Host Placement**"); or
  - 4.1.3. participate as both an employer and a sponsor of Youth.
- 4.2. In the event that the Client employs a Youth to participate in the Sebenza Africa corporate work experience initiative (Internal Placement), the Terms and Conditions contained in Annexure "**A**" hereto will apply.

- 4.3. In the event that the Client sponsors a Youth to be placed at a verified implementation partner (Sponsored Host Placement), the Terms and Conditions contained in Annexure "**B**" hereto will apply.

## 5. Warranty

- 5.1. The Client warrants that:
  - 5.1.1. it has the necessary physical and human resources capacity, experience and expertise to fulfil its obligations in terms of these Terms and Conditions;
  - 5.1.2. its obligations will be performed by appropriately qualified, experienced and trained personnel exercising due skill, care and diligence;
  - 5.1.3. it will comply with all industry-related best practices, codes and standards as issued or published by a recognised body, council or similar organisation;
  - 5.1.4. it will timeously perform all services, functions and duties as provided for in these Terms and Conditions;
  - 5.1.5. it will faithfully carry out its obligations in terms of these Term and Conditions, in accordance with the best professional practices, competence and integrity;
  - 5.1.6. it will maintain and comply with all necessary licences, insurances, certificates, registrations, authorizations and consents required under the laws of the Republic of South Africa;
  - 5.1.7. it will provide Sebenza Africa with any information, documents and reports it requests in relation to these Terms and Conditions;
  - 5.1.8. it will keep suitable and accurate records, and ensure safe keeping of all such records relating to these Terms and Conditions.

## 6. Confidential Information

- 6.1. Each Party may be given access to Confidential Information of the other Party in order to perform its obligations in terms of these Terms and Conditions. A Party's Confidential Information shall not include information that:

- 6.1.1. is or becomes publicly known, other than through any act or omission of the receiving Party;
- 6.1.2. was in the other Party's lawful possession before the disclosure;
- 6.1.3. is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
- 6.1.4. is independently developed by the receiving Party, which independent development can be shown by written evidence; or
- 6.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 6.2. Each Party shall hold the other's Confidential Information in confidence and may make the other's Confidential Information available to any third party only if it has obtained prior written consent from the other Party to do so.
- 6.3. Each Party shall take all reasonable steps to ensure that the other Party's Confidential Information to which it has access, is not disclosed or distributed by its employees or agents in violation of the terms of these Terms and Conditions.

## **7. Data protection**

- 7.1. Either Party may need to provide, collect, use, store or process Confidential Information or Personal Information of the other Party and each Party hereby authorises such collection, use, storage and processing where the need arises.
- 7.2. Each Party shall only provide, collect, use, store or process Personal Information:
  - 7.2.1. in compliance with the applicable legislation;
  - 7.2.2. as is necessary for the purposes of these Terms and Conditions, and
  - 7.2.3. in accordance with lawful and reasonable instructions of the Party providing the Personal Information.
- 7.3. Each Party is responsible to obtain written consent from all applicable data subjects, for the collection, use, storage, processing or transfer of such data subjects' Personal Information whenever this is required for the

purposes of these Terms and Conditions and each Party warrants that it has done so.

- 7.4. Each Party warrants and undertakes that it shall take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of Personal Information processed by it and protect such Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.

## **8. Intellectual property**

- 8.1. The Parties record that each Party has created acquired or otherwise obtained rights to its own Intellectual Property. Each Party shall retain the ownership of their Intellectual Property.
- 8.2. A Party shall acquire no right or interest in the Intellectual Property of the other Party, except where a licence is expressly granted or where ownership is expressly transferred in writing.
- 8.3. Each Party warrants that no aspect of its Intellectual Property will infringe on the proprietary rights of any third party. In the event that the proprietary rights of a third party are infringed, the Party warranting ownership of or lawful right to the Intellectual Property hereby indemnifies and holds harmless the other Party against any loss, claims or expenses, including legal fees, from an aggrieved party.

## **9. Liability and Indemnity**

- 9.1. The Parties, their employees, agents or sub-contractors, or any person acting for or on their behalf shall exercise due care and diligence in the performing their obligations in terms of these Terms and Conditions. A Party that has failed to exercise such due care and diligence shall be liable to the other Party for loss or damages caused to and sustained by the other Party due the wilful or negligent actions or omissions of the Party concerned, including their employees, agents or sub-contractors, provided that neither Party will be liable to the other Party, a cessionary or a third party claiming through or on behalf of such Party, for any indirect, special or consequential

damages arising out of or related to these Terms and Conditions.

- 9.2. Either Party indemnifies and holds harmless the other Party, its officers, employees and agents from and against any damages, loss, or liability, including legal costs and expenses incurred or suffered by any person arising from any claim, demand, action or proceeding by any person where such loss or liability was caused by a wilful, unlawful or negligent act or omission of the defaulting Party, its employees, agents or sub-contractors or any person acting for or on behalf of the defaulting Party.
- 9.3. The Parties shall ensure that its employees, agents or sub-contractors or any person acting for or on their behalf are aware of and have accepted, the terms of these Terms and Conditions to the extent that they apply to them.

## 10. Insurance

- 10.1. The Parties shall for the duration of these Terms and Conditions procure and maintain such insurance policy or policies, including public liability and general liability insurance, covering risks which may be incurred by a Party arising out of the acts or omissions of that Party, its employees, agents or sub-contractors or any person acting for or on behalf of that Party, in connection with these Terms and Conditions.

## 11. Breach

- 11.1. A Party may terminate these Terms and Conditions by notice in writing if the other Party fails to remedy a breach of a term of these Terms and Conditions within fourteen (14) days of written notice of such breach.
- 11.2. A Party may terminate these Terms and Conditions by notice in writing in the event of:
- 11.2.1. a compromise, scheme of arrangement or composition by the other Party with any or all of its creditors;
- 11.2.2. liquidation of the other Party, whether provisionally or finally or the commencement of business rescue of the other Party;
- 11.2.3. a default or cessation, or a reasonable prospect of default

or cessation (as the case may be), of the other Party's normal line of business;

- 11.2.4. the commission of any act or any omission which is an act of insolvency by an individual in terms of the Insolvency Act, 1936, or the existence of circumstances which would allow for the winding up of the other Party in terms of the Companies Act, 2008, and or in terms of section 68 of the Close Corporations Act, 1984, as the case may be;
- 11.2.5. disposal by the other Party of a material portion of its undertaking or assets;
- 11.2.6. any change of control of the other Party.
- 11.3. A Party shall be entitled, without prejudice to any other right which it may have against the other Party, to summarily and without any notice terminate these Terms and Conditions where:
- 11.3.1. a Party falsifies any documents or records required by these Terms and Conditions, or commits any act of fraud or dishonesty in respect any matters arising from these Terms and Conditions;
- 11.3.2. there has been gross misconduct by a Party or any of its employees while carrying out the obligations contained in these Terms and Conditions, or conduct considered by a Party to have risked or brought that Party into disrepute, or is likely to affect the reputation of that Party and/or any of the employees or affiliates of that Party.
- 11.4. Termination will be without prejudice to any rights of either Party against the other which accrued prior to termination or which otherwise relates to or may arise at any future time from any breach or non-observance of obligations under these Terms and Conditions which arose prior to termination.

## 12. Dispute resolution

- 12.1. Before resorting to court proceedings, the Parties must refer any dispute under or relating to these Terms and Conditions including its application, breach, interpretation, validity, termination or cancellation, or any matter arising out of its application, breach, interpretation, validity, termination or cancellation, to a representative nominated by each Party. The representatives of each Party shall endeavour to resolve the dispute within fourteen (14) days of notice of a dispute by a Party.
- 12.2. If the dispute remains unresolved by the Parties, then either Party may, in its sole discretion, initiate court proceedings.
- 12.3. Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under these Terms and Conditions, subject to its rights of termination under these Terms and Conditions.
- 12.4. A Party may commence court proceedings relating to any dispute arising under these Terms and Conditions at any time where that Party seeks urgent or interim declaratory or injunctive relief.

### **13. Independence and non-exclusivity**

- 13.1. The Parties to these Terms and Conditions are independent contractors and these Terms and Conditions shall not be construed to create a partnership, agency, joint venture or employment relationship between them.
- 13.2. Unless authorised in writing to do so, neither Party shall hold itself out to be the agent or representative of the other, and may not bind each other in any way.

### **14. Assignment, cession and delegation**

- 14.1. Neither Party shall be entitled to assign, cede, delegate, or transfer any rights, obligations, share or interest acquired in terms of these Terms and Conditions, in whole or in part, to any other party or person without the express prior written consent of the other Party, which consent shall not unreasonably be withheld or delayed.

- 14.2. Notwithstanding the provisions of clause 14.1, the Client may assign, cede, delegate, or transfer any rights, obligations, share or interest acquired in terms of these Terms and Conditions, in whole or in part to an Affiliate, without the express prior written consent of the other Party.

### **15. Anti-Bribery and Anti-Corruption**

- 15.1. Each Party represents that it is familiar with the Anti-Bribery Laws.
- 15.2. Each Party represents that the performance under these Terms and Conditions will be made in compliance with the Anti-Bribery Laws.
- 15.3. Each Party warrants that it and its Affiliates have not made, offered, or authorised and will not make, offer, or authorise with respect to the matters which are the subject of these Terms and Conditions, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to any person (including a public official) where such payment, gift, promise or advantage would violate the Anti-Bribery Laws.
- 15.4. Neither Party shall make any unofficial payment to a public official to speed up an administrative process where the outcome is already pre-determined (facilitation payment) in the performance of its obligations in terms of these Terms and Conditions.
- 15.5. Each Party agrees to maintain adequate internal controls and to keep accurate and complete records that support the payments due and all transactions under these Terms and Conditions and grants the other Party such access, as may be necessary in order to assess compliance with these Terms and Conditions.
- 15.6. Each Party further covenants that should it be notified by another Party of its concerns that there has been a violation of an anti-bribery clause, it shall cooperate in good faith with that Party and its representatives in determining whether such violation has occurred, and shall respond promptly and in reasonable detail to any notice from that Party, and shall furnish documentary support for such response upon that Party's request.

## **16. Applicable law and jurisdiction**

16.1. These Terms and Conditions and the relationship of the Parties in connection with the subject matter of these Terms and Conditions are governed and determined in accordance with the laws of the Republic of South Africa.

## **17. Force majeure**

17.1. Despite any other provision of these Terms and Conditions to the contrary, no Party need act if it is impossible to do so owing to any cause beyond its reasonable control including, without limitation, war, riot or natural disaster.

17.2. The non-performing Party agrees to notify the other Party promptly after it determines that it is unable to act.

17.3. No Party has any responsibility or liability for any loss or expense suffered or incurred by one Party as a result of the other Party not acting for as long as the impossibility of performance continues.

17.4. However, the non-performing Party agrees to make reasonable efforts to avoid or remove the cause of non-performance and agrees to continue performance under these Terms and Conditions promptly when the cause is removed.

## **18. General**

18.1. Subject to clause 2.3, the Parties waive the right to rely on any alleged or express provision not contained in these Terms and Conditions.

18.2. A Party may not rely on any representation, which allegedly induced that Party to enter into these Terms and Conditions, unless the representation is recorded in these Terms and Conditions.

18.3. No failure by a Party to enforce any provision of these Terms and Conditions shall constitute a waiver of such provision or affect in any manner such Party's right to require performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.

18.4. These Terms and Conditions may only be varied in writing signed by all Parties to this these Terms and Conditions.

18.5. Notwithstanding termination of these Terms and Conditions, any clause, which from the context contemplates on-going rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect.

## ANNEXURE “A” INTERNAL PLACEMENT OF YOUTH

### 1. Client obligations

- 1.1. The Client must:
  - 1.1.1. Register with Sebenza Africa in the form and manner prescribed on the Sebenza Africa website.
  - 1.1.2. Pay the prescribed fee to Sebenza Africa for registration with Sebenza Africa as provided on the Company Registration Portal on the Sebenza Africa website.
  - 1.1.3. Recruit Youth to participate in the Sebenza Africa corporate work experience initiative.
  - 1.1.4. Pay the prescribed fee to Sebenza Africa, in the event that the Client requires Sebenza Africa to source Youth to be employed by the Client to participate in the Sebenza Africa corporate work experience initiative.
  - 1.1.5. Enter into a 12-month, fixed term employment contract with each Youth that the Client will employ to participate in the Sebenza Africa corporate work experience initiative.
  - 1.1.6. Provide Sebenza Africa with a Schedule containing the information provided on the Company Registration Portal on the Sebenza Africa website, for each Youth that the Client will employ to participate in the Sebenza Africa corporate work experience initiative.
  - 1.1.7. Provide Sebenza Africa with confirmation that it has entered into a 12- month, fixed term employment contract with each Youth that the Client will employ to participate in the Sebenza Africa corporate work experience initiative.
  - 1.1.8. Pay the prescribed fee to Sebenza Africa to manage, monitor and evaluate the Youth employed by the Client to participate in the Sebenza Africa corporate work experience initiative.
  - 1.1.9. Provide a quality work experience to each Youth that the Client will employ to participate in the Sebenza Africa corporate work experience initiative and must:

- a) allocate a supervisor employed by the Client to supervise, manage and mentor the Youth;
- b) pay the prescribed salary timeously to each Youth employed by the Client; and
- c) comply with all the applicable laws, regulations, orders and any other statutory requirements in performing its functions and complying with its obligations.

### 2. Sebenza Africa obligations

- 2.1. Sebenza Africa must:
  - 2.1.1. Register the Client to participate in the Sebenza Africa corporate work experience initiative.
  - 2.1.2. Source Youth to participate in the Sebenza Africa corporate work experience initiative, if required by the Client to do so.
  - 2.1.3. Provide a cellular telephone to each Youth employed by the Client to participate in the Sebenza Africa corporate work experience initiative.
    - 2.1.4. Manage, monitor and evaluate the Youth employed by the Client to participate in the Sebenza Africa corporate work experience initiative and report to the Client on matters arising as a result of the management, monitoring and evaluation of the Youth.

## **ANNEXURE “B” SPONSORED HOST PLACEMENT OF YOUTH**

### **1. Client obligations**

- 1.1. The Client must:
  - 1.1.1. Register with Sebenza Africa in the form and manner prescribed on the Sebenza Africa website.
  - 1.1.2. Pay the prescribed fee to Sebenza Africa for registration with Sebenza Africa as provided on the Company Registration Portal on the Sebenza Africa website.
  - 1.1.3. Pay the prescribed fee to Sebenza Africa to:
    - 1.1.3.1. place Youth at a verified implementation partner; and
    - 1.1.3.2. enable Sebenza Africa to manage, monitor and evaluate the Youth placed at a verified implementation partner.

### **2. Sebenza Africa obligations**

- 1.2. Sebenza Africa must:
  - 1.2.1. Register the Client to participate in the Sebenza Africa sponsored host placement initiative.
  - 1.2.2. Create a database of verified implementation partners at which Youth will be sponsored and placed.
  - 1.2.3. Facilitate the placement of Youth at verified implementation partners.
    - 2.1.1. Provide a cellular telephone to each Youth placed at a verified implementation partner.
  - 1.2.4. Facilitate payment of the prescribed salary to each Youth participating in the Sebenza Africa sponsored host placement initiative.
  - 1.2.5. Manage, monitor and evaluate the Youth participating in the Sebenza Africa sponsored host placement initiative and report to the Client on matters arising as a result of the management, monitoring and evaluation of the Youth.