



MEMORANDUM OF AGREEMENT

entered into by and between

DITSEBI SOLUTIONS (PTY) LTD

A Private Company duly incorporated in accordance with the laws of the Republic of South Africa with registration number 2004/035276/07 with its principal place of business at 309 Killarney Mall Office Tower, Killarney, Johannesburg, 2193.

(Hereinafter referred to as “**Ditsebi**”),

Herein duly represented by **Khoaripe Modiko**, in his capacity as Chief Executive Officer.

AND

.....

Name of Host Company

An enterprise duly incorporated in accordance with the laws of the Republic of South Africa with registration numberwith its principal place of business at

.....
.....

Herein duly represented by....., in his capacity as
Authorised Representative.



PREAMBLE:

Whereas Ditsebi has been appointed by the Department of Trade and Industry (the dti), in the capacity of Implementing Agent for the Itukise Internships for Unemployment Graduates Programme.

And Whereas Ditsebi submitted a proposal in response to the advertised tender under contract 23/17-18

And Whereas the dti awarded the contract 23/17-18 to Ditsebi and Ditsebi accepted such appointment

And Whereas Ditsebi and hereby agree to work together to provide workplace experience to Itukise programme Interns: professional candidates / in-service trainees / unemployed graduates).

NOW THEREFORE THE PARTIES WISH TO PUT THEIR AGREEMENT IN WRITING AND AGREE AS FOLLOWS:



1. INTERPRETATION

1.1. In this Agreement:

- 1.1.1. Clause headings are for convenience only and shall not be used in its interpretation, unless the context clearly indicates a contrary intention;
- 1.1.2. an expression which denotes any gender includes the other genders;
- 1.1.3. a natural person includes an artificial or juristic person and vice versa;
- 1.1.4. the singular includes the plural and vice versa;

1.2. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

- 1.2.1. **“Agreement”** or **“Contract”** means this agreement and any and all annexures thereto;
- 1.2.2. **“Host Employer”** means
- 1.2.3. **“Effective Date”** means the date of signature of this Agreement, or any date mutually agreed to by the Parties thereto;
- 1.2.4. **“Parties”** means Ditsebi and
- 1.2.5. **“Party”** means either Ditsebi
- 1.2.6. A reference to days, months, or years, shall be a reference to calendar days, months or years, as the case may be.
- 1.3. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the succeeding day which is not a Saturday, Sunday or public holiday.
- 1.4. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.



1.5. No rule of investigation, or any professional services body, or statutory body governing any of the Parties shall be applied to the disadvantage of a Party to this Contract because that Party was responsible for or participated in the preparation of this Contract or any part of it.

2. COMMENCEMENT AND DURATION

2.1. Subject to rights of termination stipulated herein, this Agreement shall commence on the Effective Date and shall continue thereafter on an as and when required basis.

2.2. Ditsebi may terminate this Agreement subject to a 30 days' written notice for unsatisfactory performance from and such termination shall not construe a breach in terms of this Agreement.

3. AGREEMENT

3.1. has the required organizational infrastructure, technical and mentoring capacity to provide appropriate Internship experience to of in-service training/ of professional trainees/ of graduate interns allocated;

3.2. confirms that they are not replacing their existing Internship programme or employees with Itukise Interns;

3.3. the Interns will receive their stipulated months' work experience in line with the objectives of the project;

3.4. will enter into a fixed term employment contract with each of the allocated Interns;

3.5. Mentors will be appointed at a ratio of 1:3 to support Interns for the duration of the Internship;

3.6. Ditsebi will pay Intern stipends in their personal bank accounts;

3.7. Should opt to pay Interns, will then submit a claim for the payment of stipends to Ditsebi. Once the claim has been received, Ditsebi will process the payment into 's nominated bank account;

3.8. The application form received from is annexed hereto as Annexure A, and together with this Agreement constitute the entire understanding and agreement between the parties.

4. PAYMENT

4.1. Ditsebi will pay Intern stipends into their personal bank accounts on the 25th of every month for the duration of the programme.

4.2. Interns will be able to download their monthly payment slips from the Itukise portal.

4.3. Should pay Intern stipends from its own budget, the following will be undertaken for reimbursement:

4.3.1. will invoice Ditsebi for the stipends and all invoices must be in the name of Ditsebi Solutions (Pty) Ltd, and clearly marked as Tax Invoice; and show the 's VAT number as well as Ditsebi Solutions' VAT number.

4.4. All invoices, prices and payments must be stated and made in South African monetary currency, currently Rand.

4.5. Invoices may be submitted to Ditsebi Solutions' registered address, or by email to nvnkosi@ditsebi.co.za.

4.6. Ditsebi will endeavour to make payment within 7 (seven) days of receipt of a valid invoice.

4.7. No interest shall be payable by Ditsebi on overdue or outstanding invoices.



- 4.8. Should Ditsebi dispute any amount shown on an invoice submitted byit must notify within 7 days of receipt of the invoice and must pay any amounts not in dispute, provided that the payment by Ditsebi of any amount which is the subject of a disputed invoice, shall not to be considered as an acceptance of the amount in dispute or of Ditsebi's liability to make that payment. The fact that Ditsebi queries an invoice after the 7 days' period shall not be construed as a waiver by Ditsebi of its right to dispute the invoice.
- 4.9. Should discover or is advised of any errors or exceptions relating to its invoicing, and Ditsebi will jointly review the nature of the errors or exceptions, and must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.
- 4.10. Payment will be effected by bank transfer to the banking account information as reflected on 's invoice. Ditsebi's liability towards will be deemed to have been met when the bank transfer is made.
- 4.11. will ensure that Ditsebi at all times has the correct banking details information for the purposes of making a transfer.
- 4.12. Ditsebi Solutions may deduct the following amounts from any moneys due to
- 4.12.1. all liabilities which Ditsebi may have paid, suffered or incurred and which or for which or its employees is or are liable to bear, pay or reimburse to Ditsebi;
- 4.12.2. If fails to perform any of its obligations under this Agreement, Ditsebi may upon prior written notice withhold payment of all or part of any amount payable to under this Agreement, until the performance is rendered by
- 4.12.3. must upon termination of the contract with the intern(s) inform Ditsebi within 7 number days of such termination to avoid undue payment/reimbursement made towards the intern or



5. INDEMNITY

- 5.1 agrees to indemnify, hold harmless and defend Ditsebi and its officers, employees, agents and representatives from and against the following;
- 5.2 Any claims whatever nature arising out of its actions (including those of its personnel and representatives) arising out of or related to carrying out this Agreement or being on site at the facility for purpose of this Agreement.
- 5.3 all claims of any nature whatsoever, legal actions, reasonable costs or expenses arising out of any injury, loss or death caused by the negligent or wilful conduct of or any of its employees or agents;
- 5.4 all claims of any nature whatsoever, legal actions, reasonable costs or expenses arising out of any breach or alleged breach by of any provision of this Agreement.

6. LIMITATION OF LIABILITY

Notwithstanding anything contrary contained in this Agreement, Ditsebi will not be liable to for any indirect or consequential loss or damage including, without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of this contract.

7. CANVASSING AND INDUCING DITSEBI EMPLOYEES

- 7.1 will not under any circumstances offer, promise or make any gifts, payments, loans, reward, inducement benefit or other advantage to any of Ditsebi's employees.
- 7.2 Should perform any act referred to in Clause 7.1 above, such will constitute a material breach of this Agreement and Ditsebi will be entitled to terminate this Agreement forthwith, without prejudice and claim any resultant damages from



8. FRAUD

8.1 If, at any time during the Term of this Agreement Ditsebi determines in its reasonable discretion, based on prima facie evidence, that has in respect of this Agreement:

8.1.2 acted dishonestly and/or in bad faith;

8.1.3 has made any intentional misrepresentation to Ditsebi, whether in any negotiations preceding the conclusion of, or in the execution of this Agreement between the parties, Ditsebi will be entitled to forthwith terminate this Agreement on written notice to

8.4 Upon the termination of this Agreement on the basis of Clauses 8.1.2 and 8.1.3, Ditsebi shall be entitled, in addition to all other remedies available to it, to recover from all damages it has suffered by virtue of fraudulent conduct.

9. FORCE MAJEURE

9.1 Neither party shall be liable for any failure to fulfil its obligations under this Agreement if such failure is caused by any circumstances beyond its reasonable control, including flood, wild fire, earthquake, war, tempest, hurricane, amendment of statute, issue of regulations, government restrictions or acts of God;

9.2 Should either party be unable to fulfil its obligations under this Agreement for a period in excess of 30 (thirty) days due to circumstances beyond its reasonable control, as recorded in Clause 10.1, the other party may cancel forthwith by written notice;

9.3 Should this Agreement be terminated in accordance with the provisions of Clause 9.1, the party affected by force majeure shall not be liable for any damages arising out of such termination.

10. BREACH & TERMINATION

10.1 Each clause in this Agreement is essential and non-compliance herewith shall constitute breach.

- 10.2 Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if the following inclusive but not exclusive factors occur:
- 10.2.1 that other party commits any breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 7 (seven) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 10.2.2 a curator is appointed over any of the property or assets of that other party;
- 10.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- 10.4 that other party goes into liquidation, whether provisionally or finally;
- 10.5 that other party ceases, or threatens to cease, to carry on business;
- 10.6 any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 10.7 the rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any).

11 DISPUTE RESOLUTION

- 11.1 Any dispute between the parties which arises shall be referred to a committee consisting of 2 (two) representatives appointed by Ditsebi and 2 (two) representatives appointed by the Host Employer, who will use their best efforts to resolve the dispute within 10 (ten) business days of the dispute having been referred to them;
- 11.2 If so, agreed by the committee referred to in Clause 11.1 above, any dispute of a technical nature concerning the interpretation of any specification or requirements, may be referred by such committee, together with reasons for referring the matter, to a panel of not less than 3 (three) experts appointed by the Chairperson or President for the time being of the Law Society of South Africa for final settlement. Such experts shall be deemed to act as experts and not arbitrators. The decision of the experts shall, in the absence of a clerical or manifest error, be final and binding on the parties and the experts' fees for so acting shall be borne by the parties in equal shares, unless the experts determine that the conduct of either party was such that it should bear a greater proportion of all such fees;

11.3 Should the committee be unable to agree on whether a dispute is technical or not or if they are unable to resolve a dispute in accordance with clauses 11.1 and 11.2, or if they are unable to agree to a referral to a panel of at least 3 (three) experts in terms of clause 11.2 above, as the case maybe, then such dispute may be submitted to and decided by arbitration in terms of clause 12 below.

11.4 Nothing in this clause shall prevent a party from instituting action out of any court of law with jurisdiction over the Defendant, within the Republic of South Africa.

12 ARBITRATION

12.1 Subject to Clause 11 above, any dispute arising out of or in connection with this Agreement may, at the instance of a party seeking relief, be decided by way of arbitration as set out below:

12.1.1 The arbitration will take place in Johannesburg in accordance with the rules of the Arbitration Foundation of Southern Africa (“**AFSA**”);

12.1.2 Should the parties fail to agree in writing on an arbitrator within 7 (seven) days after the arbitration has been demanded, the arbitrator shall be nominated by AFSA;

12.1.3 Any arbitration in terms of this Clause shall be conducted in camera and the parties shall treat as confidential and not disclose to any third-party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcomes of the arbitration, without written consent of the other party;

12.1.4 The Parties irrevocably agree that any award or decision that is made in the arbitration proceedings:

12.1.4.1 shall be binding on them;

12.1.4.2 shall be carried into effect;

12.1.4.3 may be subject to review;

12.1.4.4 may be made an order of any Court of competent jurisdiction.

12.1.5 During the existence of any dispute, the Parties must continue to perform all of their obligations under this Agreement;

12.1.6 Nothing in this Clause prevents a Party from seeking any urgent Court interlocutory relief which may be required in relation to this Agreement.

13 CONFIDENTIALITY

13.1 Each party ("the Receiving Party") must treat and hold as confidential all information which they may receive from the other party ("the Disclosing Party") or which becomes known to them concerning the Disclosing Party during the currency of this Agreement;

13.2 The confidential information of the Disclosing Party shall, without limitation, include:

13.2.1 operating know-how, processes and techniques used by a Party in the conduct of its business;

13.2.2 trade secrets, know-how, inventions, technical data, product or process specifications, exclusivity arrangements, designs formulations, computer programmes and all other technical, mechanical and computer information, belonging to or in the possession of a Party and used by its business operations;

13.2.3 knowledge of details and particulars in regard to a Party's suppliers, customers and business associates;

13.2.4 a Party's method of conducting business, management, costs and source of material;

13.2.5 the contractual, financial management and supply arrangements between a Party and its clients and business associates;

13.2.6 any other matter which relates to the business of a Party in respect of which information is not readily available in the normal course of business and which may come to the knowledge of the other Party;

13.2.7 the Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its confidential information:

13.2.7.1 it will only make the confidential information available to those of its employees who are actively involved in the execution of this Agreement;



13.2.7.2 it will take all practical steps to impress upon those employees who need to be given access to confidential information, the confidential nature thereof;

13.2.7.3 it will not at any time, whether during this Agreement or thereafter, either use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties;

13.2.8 All written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or will come into the possession of the Receiving Party and its employees, will be, and will at all times remain, the sole and absolute property of such party and shall be promptly handed over to such party when no longer required for the purposes of this Agreement;

13.2.9 Upon termination or expiry of this Agreement, the Receiving Party will deliver to the Disclosing Party or, at the Disclosing Party's option, destroy all originals and copies of the Disclosing Party's confidential information in its possession;

13.2.10 The confidentiality obligations set out in this Clause shall not apply to any information which:

13.2.10.1 a Party can demonstrate, is already in the public domain or became available to the public through no breach by any of the persons contemplated in this Clause;

13.2.10.2 was rightfully in a Party's possession without obligation of confidence prior to receipt from the other Party as proven by its written records;

13.2.10.3 can be proved to have been rightfully received by a Party from a third party without obligation of confidence;

13.2.10.4 is required to be disclosed in order to comply with any judicial order or decree, provided that a Party has given the other Party sufficient prior written notice of such request or enable such other Party to defend or protect such disclosure;

13.2.10.5 is disclosed by either party to its professional advisors in the bona fide course of seeking business and professional advice;

13.2.11 The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage, which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or its employees;



- 13.3 This Clause shall be of force and effect from the Effective Date of this Agreement and shall remain in force and effect for the duration of this Agreement and for a further period of 5 (five) years from the date of termination of this Agreement;
- 13.4 The provisions of this Clause are severable from the remaining provisions of this Agreement and shall remain in effect notwithstanding the termination of or invalidity for any reason of this Agreement.

14 ASSIGNMENT AND SUB-CONTRACTING

- 14.1 is not permitted to assign or sub contract all or any part of the Agreement.

15 STATUS OF HOST EMPLOYER

- 15.1 At all times during the Term of this Agreement, is deemed as an independent Host Employer and will not act as, or be regarded as, an agent or employee of Ditsebi and;
- 15.2 and its employees will not be entitled to any benefits which would ordinarily accrue to any employee of Ditsebi by virtue of their status as an employee. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between Ditsebi and save to the extent expressly or otherwise provided for in this Agreement, neither Party shall, without the prior written approval of the other Party, have any authority or power to bind the other or to contract in the name of or create a liability against the other in any way or for any purpose.

16 GENERAL

- 16.1 This document constitutes the sole record of the Agreement between the Parties.
- 16.2 No Party shall be bound by any express or implied term, representation or the like not recorded herein.
- 16.3 Any notice to be served by one party shall at all times be in writing or any other form of communication in terms of the Electronic Communications Act 36 of 2005.



- 16.4 Any communication sent shall be deemed to have been received by the recipient with 24 hours upon dispatch thereof unless there is evidence to the contrary within 48 hours from the date of dispatch.
- 16.5 No addition to, variation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 16.6 Failure or neglect by a Party to, at any time, enforce any of the provisions of this Agreement shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.
- 16.7 If any provision of this Agreement is determined to be invalid or unenforceable, the provisions shall be deemed to be severable from the remainder of this Agreement and shall not affect the enforceability of the remainder of this Agreement.

17 NOTICES AND DOMICILIA

17.1 The shareholders choose as their domicilia citandi et executandi their respective addresses provided for in this Clause for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the shareholders.

17.2 For purposes of this agreement the Parties respective addresses shall be:

17.2.1 Ditsebi Solutions (Pty) Ltd

309 Killarney Mall Office Towers

60 Riviera Road

Killarney

2193

Telephone: 011 486 0736

Cell: 083 261 3420

17.2.2

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Telephone:

Contact:

or at such other address in the Republic of South Africa, not being a post office box or poste restante, of which the Party concerned may notify the others in writing.

18 GOVERNING LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the Republic of South Africa, and the Parties hereto submit to the jurisdiction of the courts of the Republic of South Africa.

19 SIGNATURES

The persons signing this agreement in a representative capacity warrant their authority to do so.

THUS, DONE AND SIGNED at **JOHANNESBURG** on this the day of 2018.

By and on behalf of **DITSEBI SOLUTIONS (PTY) LTD**

Signature

Witnesses:



1. -----

2. -----

THUS, DONE AND SIGNED at _____ on this the _____ day _____ of 2018/2019.

By and on behalf of _____

Signature

Witnesses:

1. -----

2. -----