MEMORANDUM OF AGREEMENT

entered into by and between

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

a Tertiary Education Institution and Juristic Person registered in terms of the Higher Education Act no. 101 of 1997 as amended
acting through its
FINANCIAL AID AND SCHOLARSHIPS OFFICE
(Hereinafter referred to as “THE UNIVERSITY”)

represented herein by Professor Tawana Kupe, in his capacity as the Deputy Vice-Chancellor:
Finance and Operations, duly authorised

and

___________________________
(COMPANY NAME)

a ..................................................
(TYPE OF ENTERPRISE)

(Hereinafter referred to as “__________________________________________”)
(COMPANY NAME)

represented herein by__________________________________ in his/her capacity

as_____________________________ duly authorised
PREAMBLE

WHEREAS (COMPANY NAME) wishes to provide bursaries to Bursary-Holders for the purpose of funding the Qualification/s pursued by such Bursary-Holders while registered at THE UNIVERSITY;

AND WHEREAS subject to THE UNIVERSITY Rules and further subject to the conditions more fully set out hereinafter, THE UNIVERSITY agrees to act as an intermediary for the purpose of administering the provision of Bursaries to Bursary-Holders for and on behalf of (COMPANY NAME).

NOW THEREFORE the Parties agree as follows:

1. INTERPRETATION

1.1. Except to the extent to which the context may otherwise require, this Agreement will be construed in accordance with the following:

1.2. headings in this Agreement are for convenience only and will not be deemed part thereof or be taken into consideration in the interpretation or construction thereof;

1.3. references herein to the Introduction, Clauses, Annexures and Schedules are to the Introduction, Clauses, Schedules and Annexures to this Agreement unless the context requires otherwise. The Annexures and Schedules to this Agreement form an integral part of this Agreement;

1.4. order of precedence: In the event of conflict between the provisions contained in the Memorandum of Agreement between (COMPANY NAME) and THE UNIVERSITY and this Agreement and those contained in the Annexures, the provisions in the Memorandum of Agreement between (COMPANY NAME) and THE UNIVERSITY will prevail;
words importing the singular only, also include the plural and vice versa where the context requires;

1.5. any reference to any agreement, annexure or schedule will be construed as including a reference to any agreement, annexure or schedule amending or substituting that agreement, annexure or schedule;

1.6. if any definition in Clause 2 contains a substantive provision conferring rights or imposing obligations on any Party, effect must be given to such provision as if it were a substantive provision in the body of this Agreement;

1.7. any word or expression related to a word or expression defined in this Agreement bears a corresponding meaning;

1.8. any word or expression importing any gender will include the other genders;

1.9. any reference to the provisions of law and any similar reference of general application shall be construed to include both legislation and the common law, and any reference to “legislation” includes any statute, any regulations passed under any statute, as well as any public notice, ruling or similar legislative instrument passed or approved by a Relevant Authority with the requisite authority;

1.10. save where specifically provided otherwise, references to statutory provisions are to be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the Signature Date) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification);

1.11. the words “include” and “including” are to be construed without limitation;

1.12. wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instructions or determination by any Person, unless otherwise specified, such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination must be in writing and the words “notify”, “decide”, “consent”, “accept”, “agree”, “endorse”, “approve”, “certify”, “instruct” or “determine” and other related expressions are to be construed accordingly;
1.13. references to materials, information, data and other records are to materials, information, data and other records whether stored in electronic, written or other form;

1.14. when any number of days or other period is prescribed, it will be calculated exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or legally recognised public holiday in the Republic of South Africa, in which case the last day shall be the next day which is not a Saturday, Sunday or legally recognised public holiday in the Republic of South Africa;

1.15. whenever this Agreement provides for approvals, consents or expressions of satisfaction by any one of the Parties, that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction;

1.16. each Party must ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act required by it from another Party in respect of this Agreement or any Associated Agreements must be applied for or requested promptly;

1.17. where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

2. DEFINITIONS

In this Agreement unless inconsistent with the context, the following expression and words bear the meanings set out below and derivative expressions and words will have a corresponding meaning:

2.1 “Agreement” means this Agreement and all Annexures attached hereto;

2.2 “Bursary” means the funding which (COMPANY NAME) provides to the Bursary-Holder and which will be used for the purpose of funding the cost of attendance incurred by the Bursary-Holder in pursuing his/her Qualification with THE
UNIVERSITY as more fully described in the University’s Student Information Management System (SIMS);

2.3 “Bursary Agreement” means an agreement concluded between (COMPANY NAME) and the Bursary–Holder which regulates inter alia, the granting of the Bursary by (COMPANY NAME) to the Bursary-Holder;

2.4 “Bursary-Holder” means a student who is registered with THE UNIVERSITY in terms of the University’s Rules on a full-time basis for the purpose of pursuing his/her Qualification with THE UNIVERSITY within the minimum period prescribed by the University in terms of the University’s Rules and who is in receipt of a Bursary from (COMPANY NAME);

2.5 “Bursary Funds” means the funding provided by (COMPANY NAME) to the Bursary-Holder and which shall be administered by THE UNIVERSITY for and on behalf of (COMPANY NAME);

2.6 “Intellectual Property” means any copyright and ancillary and supplementary rights, technical or commercial information, including, without limitation, computer software, documentation, drawings, designs, improvements, inventions, patents, developments, additions, trademarks, industrial designs and models, techniques, know-how, production development and research, all technical, scientific, theoretical, processing and principals, marketing, promoting, financing, engineering, manufacturing, distributing and transporting, testing and controlling, integrate-able techniques, technologies, data systems and processes, methodologies, trade secrets as well as undisclosed inventions, registered and unregistered patents, trade marks and designs, whether such material is registered or unregistered, and irrespective of whether such material is capable of such registration;

2.7 “Key Personnel” means the personnel appointed by (COMPANY NAME) for the purposes of engaging with THE UNIVERSITY in terms of this Agreement;

2.8 “Parties” mean THE UNIVERSITY and (COMPANY NAME);

2.9 “Qualification” means any degree offered by THE UNIVERSITY as stipulated in its list of qualifications;
2.10 “Registered student” means a student who has been admitted to pursue a Qualification with THE UNIVERSITY in terms of the UNIVERSITY Rules;

2.11 “Registration period” means the period within the academic year of THE UNIVERSITY in which THE UNIVERSITY registers students for the purpose of pursuing the Qualification/s;

2.12 “UNIVERSITY Rules” means the rules, regulations policies, procedures, practices and standing orders as approved by THE UNIVERSITY Senate or Council or both and as amended from time to time.

3 TERM

3.1 Notwithstanding the date of signature hereto, this Agreement endures for a period of (3) three years commencing on 1 January 2013 and terminates on 31 December 2015 unless terminated earlier by either Party as provided for in this Agreement.

3.2 The provisions of this Agreement relating to confidentiality, intellectual property, and dispute resolution shall survive the termination of this Agreement.

4 RIGHTS AND OBLIGATIONS OF (COMPANY NAME)

4.1 (COMPANY NAME) must comply with the provisions contained in Annexure A annexed hereto.

4.2 During the first registration period of the relevant academic year, (COMPANY NAME) will provide THE UNIVERSITY with the following details of key personnel within (COMPANY NAME) who are authorised to act on behalf of (COMPANY NAME) in terms of this Agreement:

4.2.1 the full names and surnames of key personnel;
4.2.2 the capacities of key personnel;
4.2.3 the role which key personnel will fulfil vis-à-vis THE UNIVERSITY for the purpose of this Agreement;
4.2.4 specimen signatures of key personnel as more fully stipulated in Annexure A hereto.

4.3 Insofar as ____________________________ (COMPANY NAME) divert(s) or otherwise replace(s) any key personnel then in that event ____________________________ (COMPANY NAME) will immediately notify THE UNIVERSITY of such diversion or replacement by completing and providing THE UNIVERSITY with a copy of Annexure A2 hereto.

4.4 ____________________________ (COMPANY NAME) will provide THE UNIVERSITY with a pdf list/s of Bursary-Holders in the manner described and on the dates stipulated in Annexure A hereto.

4.5 Without derogating from the generality of the aforesaid, the list referred to in Clause 4.4 above must specify the amount of Bursary Funds which each Bursary-Holder must receive.

4.6 In the event that ____________________________ (COMPANY NAME) wishes to supplement or amend the list referred to in clause 4.4, then in that event ____________________________ (COMPANY NAME) will effect tracked changes to such list for the purpose of indicating the manner in which such list had been amended and/or supplemented.

4.7 ____________________________ (COMPANY NAME) undertakes not amend and/or supplement the list referred to in clause 4.4 in any form or manner after the first registration period of the relevant academic year.

4.8 Whenever ____________________________ (COMPANY NAME) or any of its staff, agents and associates or any other person acting on its behalf are present on the precincts of THE UNIVERSITY, ____________________________ (COMPANY NAME) must ensure that all these persons abide by all the University Rules including access control confidentiality, privacy, use and access to information technology as stipulated from time to time.

4.9 On the date of commencement of this Agreement, ____________________________ (COMPANY NAME) will provide THE UNIVERSITY with documentation relating to the application and selection processes, this includes details of the criteria applied by ____________________________ (COMPANY NAME) when awarding Bursaries to Bursary-Holders. Such documentation will form Annexure B to this Agreement.
4.10 By no later than end of March of the relevant year and unless otherwise agreed to in writing by the Parties, (COMPANY NAME) will effect payment of the Bursary Funds to THE UNIVERSITY for the purpose of enabling THE UNIVERSITY to fulfil its obligations in terms of this Agreement.

4.10 (COMPANY NAME) agrees that nothing precludes THE UNIVERSITY from engaging on the same or similar basis as regulated by this Agreement with other third Parties.

4.11 (COMPANY NAME) grants permission to THE UNIVERSITY or its duly authorised representatives to inspect documentation, books or accounts relating the Parties engagement in terms of this Agreement on reasonable prior written notice.

5 RIGHTS AND OBLIGATIONS OF THE UNIVERSITY:

Subject to the University Rules:

5.1 (COMPANY NAME) must comply with the provisions contained in Annexure A anned hereto.

5.2 THE UNIVERSITY is responsible for administering the Bursary funds in the following manner:

  5.2.1 THE UNIVERSITY will receive the Bursary Funds paid by (COMPANY NAME) into THE UNIVERSITY’S donor account;

  5.2.2 THE UNIVERSITY will effect payment of the Bursary Funds to the Bursary-Holders in accordance with the provisions contained in clause 4.4;

  5.2.3 THE UNIVERSITY will provide (COMPANY NAME) with a statement of account as more fully stipulated in Annexure A to this Agreement

5.3 THE UNIVERSITY will refund any uncommitted funding received from the (COMPANY NAME) in the manner described and on the dates stipulated in Annexure A to this Agreement.
5.4 THE UNIVERSITY will use the Bursary Funds provided by (COMPANY NAME) for the purposes of this Agreement only.

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

5.6 THE UNIVERSITY will inform (COMPANY NAME) of the registration period/s for the relevant academic year.

5.7 THE UNIVERSITY grants permission to (COMPANY NAME) or its duly authorised representatives to inspect documentation, books or accounts relating the Parties engagement in terms of this Agreement on reasonable prior written notice.

6. INTELLECTUAL PROPERTY

6.1 All Intellectual Property, including but not limited to any ideas, thoughts and written material, created and/or developed by THE UNIVERSITY in terms of this Agreement is owned by THE UNIVERSITY.

7 INSURANCE AND WARRANTIES

7.1 Insofar as they are liable in law therefore, the Parties have insured themselves against the acts and omissions of persons acting on their behalf and their registered students and staff are insured during the course and scope of their registered courses and within the scope of the parties business. THE UNIVERSITY’S maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.

7.2 Each party warrants that:

7.2.1 it has the power and authority to enter into and perform its obligations under this Agreement;
7.2.2 it has the resources, skills, knowledge and abilities necessary to perform its obligations under this Agreement.

8. USE OF THE PARTIES’ NAMES

The names of the Parties shall not be used in relation to any publication, product or service marketed as a result of this Agreement unless the written permission of the Party to be so named is first sought and obtained. However, the Parties may furnish each other with consent to make use of their names for agreed and specified purposes only.

9. CONFIDENTIALITY

9.1 The Parties acknowledge in terms of this Agreement that a Party (hereinafter the Receiving Party) may have access to Confidential Information of the other Party (hereinafter the Disclosing Party). The Parties agree that neither of the Parties nor any of their employees, consultants, students or agents will at any time during or after the performance of the Parties obligations in terms of this Agreement disclose or use, directly or indirectly any such Confidential Information unless the Receiving Party first obtains the written consent of the Disclosing Party or unless required by law or the lawful order of a court or governmental agency to do so. In this event, the Receiving Party shall immediately give written notice to the Disclosing Party so that it may seek a protective order or other remedy from the court or governmental agency.

9.2 The Receiving Party shall with respect to the Confidential Information:

9.2.1 Inform its consultants, employees, students or agents of the confidentiality restraint set out in this clause 9 and ensure that they are subject to the same confidentiality undertaking.

9.2.2 Restrict disclosure of Confidential Information to its consultants, employees or agents who have a need to know such Confidential Information in order to perform its obligations in terms of this Agreement.

9.2.3 Ensure that its consultants, employees or agents use reasonable degree of care appropriate for the protection of the Confidential Information.
9.2.4 Use the Confidential Information only for the purposes for which it was provided.

9.2.5 Upon demand by the Receiving Party promptly deliver to the Receiving Party any and all records containing Confidential Information which are in, the Disclosing Party's, its consultants' or agents' possession or control.

9.2.6 The Receiving Party will not acquire any proprietary or any other rights to any of the Disclosing Party's Confidential Information.

9.3 Confidential Information will include any and all personal information relating to Bursary-Holders, tangible and intangible information relating to the management, operations, finances and products or services of the Disclosing Party, including but not limited to, financial data, computer programs and systems, electronic media transferable plans and drawings, projections, existing and proposed and contemplated projects or investments, formulae, processes, methods, products, manuals, supplier lists, customer lists, purchase and sales records, territories, marketing information, contracts, correspondence, all personal information and secret knowledge, technical information and specifications, manufacturing techniques, designs, circuit diagrams, instruction manuals, blueprints, electronic artwork, samples, devices, demonstrations, formulae, know-how, information materials, scientific information generally, and other materials of whatever description in which the Disclosing Party has an interest in being kept confidential including scientific knowledge gathered during the course of research and/or claimed as confidential by the Disclosing Party at the time of disclosure or promptly thereafter and includes information (whether oral, documentary, magnetic, electronic, graphic or digitized) containing or consisting of information or material of a technical, financial, operational, commercial, administrative or planning nature or in the nature of intellectual property of any kind and relating (wholly or in part) to the Disclosing Party's or any of its actual or projected projects, research activities or businesses, including its suppliers, funder's, personnel, students, facilities, assets, financial condition or results, rights, obligations and liabilities and similar or dissimilar information relating to the business of the Disclosing Party, whether developed by or provided to it by others and/or any and all information which is of a confidential nature but will exclude information which the Receiving Party can prove:-
9.3.1 was in its lawful possession prior to its first receipt thereof before, on or after the date of this Agreement; or

9.3.2 was independently received in good faith from a third party who has the right to disclose the same and who did not receive it directly or indirectly from the Disclosing Party with restriction on the use thereof; or

9.3.3 is or becomes through no act or default of the Receiving Party public knowledge as evidenced by the publication or otherwise thereof; or

9.3.4 is or was independently developed by an employee of the Receiving Party to whom no disclosure of such Confidential Information has been made or communicated to.

10 DISPUTES

10.1 Duly represented by persons authorised thereto, the Parties shall negotiate in good faith amongst themselves with a view to settling any dispute or claim arising out of or relating to this Agreement.

10.2 Any such dispute or claim which cannot be settled between the parties in terms of 10.1 above, the dissatisfied party may serve process instituting action arising out of such dispute in a competent civil court; or with the consent of the other party refer the dispute to arbitration by a single arbitrator to be mutually agreed upon or, failing agreement, to be nominated by the Accounting Officers of both parties.

10.3 The arbitration shall be in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the parties or, failing such Agreement, in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") and arbitration will take place in Johannesburg.

10.4 The decision of the arbitrator will be final and binding on the parties, and may at the request of either party be made an Order of Court of competent jurisdiction, and each of the parties hereby agrees to submit itself to the jurisdiction of such Court.
11 BREACH AND TERMINATION

11.1 Should either Party:-

11.1.1 commit any act of insolvency; or

11.1.2 be wound up, whether provisionally or finally and whether compulsorily or voluntarily or be placed under judicial management;

11.1.3 enter into any arrangement or compromise with any of his creditors; or

11.1.4 have a judgment given against him in any court of law which, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of ten (10) days; or

11.1.5 commit a material breach of any of the terms and conditions of this Agreement and fail to remedy such breach within a period of fourteen (14) days after receipt of written notice from the aggrieved party requiring it to remedy same,

then the aggrieved Party may without prejudice to any other rights it may have in terms of this Agreement or at law to terminate this Agreement and to claim any damages it may have suffered as a result of the breach.

11.2 Notwithstanding anything contained herein, the cancellation of this Agreement shall not affect any of the Parties’ rights that had accrued at the date of termination.

11.3 Either Party may terminate this Agreement by giving the other Party one (1) months written notice of such termination.

12 DOMICILIUM CITANDI ET EXECUTANDI

12.1 For the purpose of serving notices the Parties choose the following addresses as their respective domicilium citandi et executandi:
12.2 Every notice in terms of this agreement will be in writing and will be deemed, unless the contrary is proved:

12.3 If delivered by hand to the other party, to have been given on the first business day following the signature of such delivery having been received;

12.4 If transmitted by telefacsimile to the other Party, shall be regarded as having been given in writing and shall be deemed to have been received by the other Party once telephonic confirmation of receipt has been obtained by the sender.

12.5 If sent by electronic mail, shall be regarded as having been given in writing and shall be deemed to have been received by the other party once telephonic confirmation of receipt has been obtained by the sender.

12.6 Notwithstanding anything to the contrary herein contained, a written notice actually received by any Party from the other party, will be deemed to have been delivered to such Party’s domicilia citandi et executandi on the date when such notice was received.
13. **FORCE MAJEURE**

13.1 If a Party is delayed, interrupted in or prevented from the performance of any obligation hereunder by reason of an act of God, fire, flood, earthquake, war (declared or undeclared), public disaster, strike, governmental enactment, rule or regulation, or any other cause beyond such Party's control, such Party shall not be liable to the other in that respect; and the time for performance of such obligation will be extended for a period equal to the duration of the contingency which occasioned the delay, interruption or prevention.

13.2 The Party whose obligations are affected by Force Majeure must promptly furnish 48 (forty eight) hours' written notice of such and the reason therefore, to the other Party and must use its best endeavours to terminate the circumstances giving rise to Force Majeure and upon termination of the circumstances giving rise thereto, must forthwith give written notice thereof to the other Party and must continue with its obligations.

13.3 If any event of Force Majeure delays the performance of the obligation for a continuous period of one (1) month, the Party not claiming Force Majeure may, at its option and without further obligation, terminate this Agreement upon written notice to the other Party.

14 **GENERAL CONDITIONS**

14.1 Any amendments to this contract are of no force and effect unless reduced to writing and signed by both Parties.

14.2 Neither Party is regarded as having waived, or is precluded any way from exercising any right under or arising out of this Agreement by reason of such party having at any time granted any extension of time for, or having shown any indulgence to the other Party with reference to any performance of any obligation under this agreement, or having failed to enforce, or delayed in enforcing any right of action against the other Party.

14.3 Nothing contained in this Agreement shall be construed as creating a partnership between the Parties or as deeming either Party as an agent or representative of or
employee of the other. Neither Party may act as the agent of the other Party or incur any liability on behalf of the other Party.

14.4 Neither Party may assign or cede any benefit, obligation or interest they may have in this agreement to any other person without the prior written consent of the other Party.

14.5 This Agreement is governed by and interpreted in accordance with the laws of the Republic of South Africa and the parties hereby submit irrevocably to the jurisdiction of the courts of South Africa.

14.6 This Agreement constitutes the entire agreement between the Parties hereto in regard to the subject matter dealt with herein and no addition to, alteration or variation of or deletion from this Agreement will be of any force or effect unless reduced to writing and signed by both Parties hereto.

14.7 The rule that an Agreement will be interpreted against the Party that drafted it shall not apply to this Agreement.

14.8 In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the Agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

Thus done and signed at ..................................................... on this the .......... day of .......................... 2013 in the presence of the undersigned witnesses

For and on behalf of the  

(Company Name)

NAME IN FULL: ............................................................  
SIGNATURE: ...........................................
AS WITNESSES

NAME IN FULL: ........................................................ SIGNATURE: ........................................

NAME IN FULL: ........................................................ SIGNATURE: ........................................

Thus done and signed at ........................................................ on this the ............ day of ............... .... 2013 in the presence of the undersigned witnesses

For and on behalf THE UNIVERSITY

NAME IN FULL: ........................................................ SIGNATURE: ........................................

AS WITNESSES

NAME IN FULL: ........................................................ SIGNATURE: ........................................

NAME IN FULL: ........................................................ SIGNATURE: ........................................