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TRAINING SERVICES AGREEMENT

ENTERED INTO BY AND BETWEEN:
(Tick the applicable Provider)

GROWTH INSTITUTE (PTY) LTD
(2013/222309/07)

AND/OR

WORKPLACE INTEGRATED TRAINING SOLUTIONS (PTY) LTD
(2011/110872/07)

(HEREINAFTER REFERRED TO AS "THE PROVIDER")



Name Of Representative	<i>An approved private college</i>
Capacity Of Representative	

AND

COMPANY REGISTRATION NUMBER OR ID NUMBER

VAT NUMBER (IF APPLICABLE)

(HEREINAFTER REFERRED TO AS "THE CLIENT")

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TGG
The Growth Group

Growth Institute
Workplace Integrated Training Solutions
An approved private college

85

AGREEMENT NUMBER	
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86

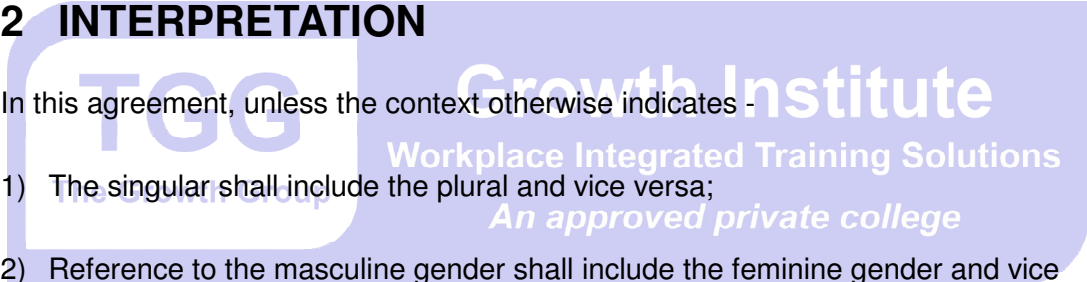
87 **1 INTENTIONS**

- 88 1) The client requires the training services of the service provider from time to time;
- 89 and
- 90 2) The service provider undertakes to provide to the client such training services
- 91 from time to time upon the terms and subject to the conditions contained in this
- 92 agreement and all addenda and/or schedules associated with this agreement;
- 93 and
- 94 3) The client and the service provider wish to record the relationship between them,
- 95 in writing.

96 **2 INTERPRETATION**

97 In this agreement, unless the context otherwise indicates -

- 98 1) The singular shall include the plural and vice versa;
- 99 2) Reference to the masculine gender shall include the feminine gender and vice
- 100 versa;
- 101 3) Natural persons shall include created entities (closed corporations, companies,
- 102 corporate or unincorporated) and vice versa;
- 103 4) The headings in this agreement are used for the sake of convenience and shall
- 104 not govern the interpretation hereof; and
- 105 5) All expressions contained in the body of this agreement shall have the same
- 106 meaning in all of the schedules and/or addenda attached hereto from time to
- 107 time.
- 108 6) References to any statutory provision shall be deemed to include such provision
- 109 as amended from time to time whether before, on or (in the case of re-
- 110 enactment or consolidation only) after the date of this agreement.



- 111 7) Where any term is defined within the context of any particular clause in this
 112 agreement, the term so defined shall, unless it clearly appears from the clause in
 113 question that such term has limited application to the relevant clause, bear the
 114 meaning ascribed for all purposes in terms of this agreement, notwithstanding
 115 that such term has not been defined in clause 3.
- 116 8) The rule of construction that, in the event of ambiguity, this agreement shall be
 117 interpreted against the party responsible for the drafting or preparation of the
 118 agreement, shall not apply.

119 3 DEFINITIONS

- 1) **“Agreement”** Shall mean this agreement and all of the schedules and annexures attached hereto from time to time;
- 2) **“Business Day”** Shall mean a day, which is not a Saturday, Sunday or public holiday in the republic of South Africa recognised as such under the Public Holidays Act, 1994 (Act 36 Of 1994);
- 3) **“Business Hours”** Shall mean such business hours as may be agreed upon between the service provider and the client from time to time. Such business hours shall be recorded in each of the relevant schedules attached hereto from time to time;
- 4) **“Commencement Date”** Shall mean the date, as specified in each of the schedules attached hereto from time to time;
- 5) **“Consumer Price Index”** Shall mean the percentage escalation of the consumer price index (excluding mortgage bonds) as published by Statistics South Africa from time to time;

- 6) **“Own intellectual property rights”** Shall have its ordinary meaning at law, and shall include without limitation all rights in and to the own intellectual property including copyright in

Any and all works produced as a result of or arising out of the training services;

Any and all documentation produced as a result of, or arising out of the training services, regardless of the author of such documentation;

Any and all training material, be it documented or otherwise, produced as a result of, or arising out of the training services;

All rights to own intellectual property which may be devised or come into existence in the future in any and all works produced as a result of, or arising out of, the training services;

- 7) **“Party”** Shall mean either the client or the service provider, as the case may be, and “parties” shall mean both of them;

- 8) **“Prime Fee”** Shall mean the fee, charged by the service provider on the late payments by its most favoured clients. This fee will be payable for every month which the client fails to pay an invoice or statement provided by the service provider for the purpose of collecting payment for professional services rendered to the client. This fee will be calculated as 5% of the total past due amount that the client must pay to the service provider;

- 9) **“QCTO”** Shall mean the Quality Control Council for Trades and Occupations

- 10) **“SAQA”** Shall mean the South African Qualifications Authority

- 11) "Schedules"** Shall mean the schedules attached hereto, marked "Schedule", and signed by both of the parties hereto; the schedule and/or schedules will define all work that the service provider undertakes to do upon instruction from the client;
- 12) "Service Price"** Shall mean the price that the service provider charges the client for professional services rendered to the client. The price can be calculated on the basis of:
- A fixed price for a specific deliverable and/or deliverables that the service provider agreed to provide to the client; and/or
- An hourly rate agreed between the client and the service provider for a specific deliverable and/or deliverables that the service provider agreed to provide to the client;
- Both parties will undertake to specify the service price in the schedule;
- 13) "Service"** Shall mean all work and/or services that the client defined in the schedule at an agreed service price and as undertaken by the service provider for the client;
- 14) "SETA"** Shall mean Skills Education Training Authorities
- 15) "Site"** Shall mean such site, as documented in each of the schedules attached hereto from time to time.



- 16) **“Skills Development Facilitation”** Shall refer to auxiliary services that the client can obtain from the service provider in terms of:
- Learnership registrations
 - Workplace training provider registrations
 - Registrations of, or amendments to, of qualifications
 - Claims to SETA
 - Advice on student mentorships
 - Other services in the context of academics and/or learnerships that the client may require from time to time

- 17) **“Skills Development Facilitator”** Shall refer to the person or entity that provides Skills Development Facilitation Services to the client from time to time

- 18) **“Training Services”** Shall mean the providing of training services by the service provider to the client, as may be requested by the client from time to time, as more fully described in each of the schedules attached hereto from time to time.

120 **4 SEPARATE AGREEMENTS**

- 121 1) This agreement shall operate as a severable and distinct training services
 122 agreement in respect of each schedule attached hereto from time to time, and
 123 any additional conditions in any such schedule contained shall be deemed to be
 124 incorporated herein, and shall form part of this agreement.

125 **5 DURATION OF THIS AGREEMENT**

- 126 1) This agreement shall commence upon the commencement date, as specified in
 127 each of the schedules attached hereto from time to time, and shall endure for
 128 the period, as stipulated in each of the schedules attached hereto from time to

129 time, unless terminated prior to the relevant cessation date, by either of the
 130 parties hereto, as provided for herein.

131 **6 REQUESTS FOR TRAINING SERVICES**

- 132 1) Prior to any instance of the provision of the training services, the client shall
 133 advise the service provider of such request.
- 134 2) The service provider shall forward to the client a signed proposed schedule
 135 setting out the costs in terms of which the training services will be provided.
- 136 3) The client, shall if it in its sole discretion deems acceptable to it the terms of
 137 such proposed schedule, sign such schedule where after it shall form part of this
 138 agreement as contemplated in clause 4 above.

139 **7 THE TRAINING SERVICES**

- 140 1) The service provider agrees to provide the training services, as described in
 141 each of the relevant schedules attached hereto from time to time, at the site,
 142 beginning on the commencement date, and continuing through to completion of
 143 the training services, subject to Clauses 17 and 18 below.
- 144 2) In performing the training services, the service provider shall adhere to the
 145 client's security regulations in force from time to time.
- 146 3) The service provider shall, for the duration of the agreement, ensure that it has
 147 sufficient personnel to provide the training services.

148 **7.1 NATURE OF THIS TRAINING SERVICE**

- 149 1) Unless others and explicitly specified by the service provider, the nature of the
 150 training service is that of a learnership.
- 151 2) In view of the nature of the training specified in (6.1.1) above, a formal
 152 qualification that is registered at SAQA and/or at QCTO and/or at SETA forms
 153 part of this learnership
- 154 3) All training offered by the service provider will have two content components:
 155 a) A set of core modules that is linked to a qualification as stipulated in (6.1.2)
 156 above, and
 157 b) Set of short course modules, workshops or enrichment module(s) to provide
 158 specific skills sets that could be absent or not explicit in the core modules
 159

160 8 CONSIDERATION AND PAYMENT

- 161 1) The client shall pay to the service provider the fees and charges as outlined in
162 each of the relevant schedules attached hereto from time to time. In addition,
163 the client agrees to pay at least a 50% professional retainer on fees and charges
164 that were agreed upon before the service provider will commence work.
- 165 2) All remaining fees and charges shall be paid by the client to the service provider
166 as specified in the schedule or schedules associated with this agreement. Said
167 amounts, fees, or charges will be payable by the client without deduction or set-
168 off. The parties agree that invoices may be submitted by email, by hand, by
169 courier or by registered post (through the South African post office) and provided
170 further that only the receipt by the client of the invoice by email, by hand or by
171 registered post shall constitute receipt of an invoice.
- 172 3) All payments to be made by the client to the service provider shall be made in
173 accordance with the terms and conditions contained in this agreement. The
174 client agrees to make all payments demanded by the service provider in the
175 following method:
- 176 a) Payments will be made by electronic funds transfer to the account specified
177 by the service provider on statements, invoices, emails, or any other written
178 communication sent by the service provider to the client by email, by hand,
179 by courier or by registered post (through the South African post office).
- 180 b) The client agrees that no payments will be made by cheque or by cash.
- 181 c) In cases where the client pays more than the total outstanding monies owed
182 to the service provider, the service provider reserves the right to maintain a
183 30-day freeze period on all payments made before refund requests from the
184 client can be considered.
- 185 4) The service provider undertakes to record the nature of the work done, the
186 nature of the project, the client's order number or contract number on all
187 invoices.
- 188 5) If the client fails to pay the fees and charges due to the service provider for a
189 period of 14 (fourteen) days after the date of due payment thereof, the service
190 provider shall be entitled, without prejudice to its other rights, by service of
191 written notice to the client of not less than 14 (fourteen) days, to suspend
192 provision of the training services, except to the extent that any part of such fees
193 or charges are disputed by the client, acting reasonably and in good faith.
194 Should the client fail to pay such undisputed sum after 14 (fourteen) days

195 following receipt of such notice, then the service provider may, at any time
 196 thereafter, by service of written notice, immediately terminate this agreement
 197 without prejudice to its other rights. Should it ultimately be determined that the
 198 client was liable for the disputed amount then the client shall pay the service
 199 provider penalty in the form of a prime fee from the due date thereof to the
 200 actual date of payment.

201 6) If the client fails to pay any other amount on the due date thereof, then the client
 202 shall pay the service provider a penalty in the form of a prime fee from the due
 203 date of payment to the actual date of payment.

204 7) Any additional charges for services not covered by this agreement or the
 205 schedule/s annexed hereto, extra-ordinary services performed outside the
 206 specified periods of coverage, commercial travel costs and per diem
 207 (sustenance) expenses not included in the schedules hereto (“other charges”)
 208 will be invoiced separately and charged to the client; provided that the service
 209 provider shall have obtained the client’s prior written consent to incur such
 210 additional charges.

211 **9 PRICE PROTECTION**

212 1) The service provider represents that the fees and charges, documented in each
 213 of the relevant schedules attached hereto from time to time, are at least as
 214 favourable as those charged to the service provider’s best customers for the
 215 same or similar training services, taking into account pricing factors such as the
 216 duration of the project and the total anticipated fees to be earned by the service
 217 provider, the client acknowledging that such pricing factors may result in another
 218 customer of the service provider’s securing a lower service rate than that agreed
 219 with the client for a particular project.

220 2) The increase in any fees shall be as agreed by the parties in the applicable
 221 schedule hereto.

222
 223 **10 WARRANTIES**

224 1) The service provider warrants that:

- 225 a) It possesses the necessary staff to carry out the training services;
- 226 b) The facilitators appointed by the service provider to work on each project
- 227 shall not, without the written consent of the client which consent may not be

- 228 unreasonably withheld or delayed, be replaced or substituted until such
 229 section of the project set out in the schedules hereto, has been completed,
 230 the client acknowledging that the service provider may utilise such facilitators
 231 to render services to other clients of the service provider simultaneously with
 232 the rendering of the training services, provided that the service provider shall
 233 ensure that any such facilitators shall be available to provide the training
 234 services for at least 50% (fifty percent) of the hours required by the client;
- 235 c) The training services referred to in this agreement, shall be performed in a
 236 timely manner by suitably professional personnel;
- 237 d) The performance of the training services by the service provider shall in no
 238 way constitute an infringement or other violation of any copyright, trade
 239 secret, trademark, patent, invention, proprietary information, or other own
 240 intellectual property rights of any third party;
- 241 e) It shall at all times strictly comply with all applicable legislation and with all
 242 the provisions and requirements of any of the client's data protection policies
 243 and procedures which may be in force from time to time;
- 244 f) The solutions developed by the service provider for use by the client will
 245 meet the client's requirements as set forth in the client's written
 246 requirements, and that subsequent modifications and/or customisations of
 247 the solution ("the modifications") must be communicated in writing by the
 248 client to the service provider.
- 249 g) Because not all errors in the modifications and/or customisations of the
 250 solution can or need be corrected, the service provider does not warrant that
 251 all defects in the solution made by the service provider will be corrected.
 252 Notwithstanding the foregoing, the service provider warrants that the
 253 modifications will substantially comply with the specifications provided by the
 254 client to the service provider.
- 255 h) Except as expressly stated in this agreement, the service provider gives no
 256 warranties, express or implied, by operation of law or otherwise.

257 **11 INDEMNIFICATION**

- 258 1) Subject to clause 2), the client hereby indemnifies and holds the service provider
 259 harmless against all claims, legal actions, costs or expenses of whatsoever
 260 nature arising out of any infringement or alleged infringement by the service
 261 provider of any copyright, trade secret, trademark, patent, invention, proprietary

-
- 262 information or any other proprietary rights of any third party attributable to the
263 provision of the training services, or any part thereof, by the service provider.
- 264 2) The service provider will have no liability to the client if any claim for
265 infringement or alleged infringement is based upon:
- 266 a) An infringement or alleged infringement of a third party's own intellectual
267 property rights which arose due to the service provider rendering training
268 services to the client at the client's specific request where the client ought to
269 have known that the rendering of such training services may have resulted in
270 an infringement of a third party's own intellectual property rights;
- 271 b) A modification other than by the service provider of the work or material or
272 any component thereof which is the subject of the claim by any third party,
273 save where the modification was affected with the knowledge and written
274 approval of the service provider;
- 275 c) The use of the work or material or any component thereof which is the
276 subject of the claim in combination with equipment, devices, or software,
277 other than in accordance with the client's specifications, to the extent the
278 infringement would not have occurred but for such combination;
- 279 d) Use of the work or material or any component thereof which is the subject of
280 the claim in a manner for which it was not intended; or
- 281 e) Use of other than the most current release of the work or material or any
282 component thereof which is the subject of the claim if such claim could have
283 been prevented by the use of the most current release.
- 284 3) The client shall immediately notify the service provider, in writing, of any
285 proceedings instituted by a third party against the client in respect of any alleged
286 infringement referred to in Clause (11.1), which notice shall constitute full
287 authority for the client to defend such proceedings.
- 288 4) The client shall, at its own expense, defend any action instituted by such third
289 party against the client.
- 290 5) The client's obligation to indemnify the service provider will survive the
291 termination, for any reason, of this agreement.

292 **12 LIMITATION OF LIABILITY**

- 293 1) Under no circumstances shall either party be liable for any indirect or
294 consequential damages, or amounts for loss of income, profits, data, or savings
295 arising out of or relating to its performance or failure to perform under this

296 agreement. The aggregate liability of each party to the other for all claims
 297 arising in respect of this agreement, irrespective of the number of claims,
 298 whether arising from contract, delict, or otherwise, shall be limited to R10 000
 299 (ten thousand Rands).

300 2) Notwithstanding Clause 12.1, the limitation of liability shall not apply so as to
 301 restrict liability for death or personal injury resulting from the negligence of either
 302 party and/or its appointed agents.

303 **13 OWN INTELLECTUAL PROPERTY RIGHTS**

304 1) Save as specifically provided in any schedule hereto, the parties hereby agree
 305 that all own intellectual property rights arising out of, or vesting in the training
 306 services and/or any training and/or documentation provided during or with such
 307 training provided by the service provider to the client in terms of this agreement
 308 shall vest in the service provider and the parties agree to honour the own
 309 intellectual property rights of the service provider by, inter alia, keeping all
 310 proprietary information and/or confidential information in the strictest confidence,
 311 notwithstanding the termination of this agreement for any reason whatsoever.

312 2) Upon termination of this agreement for any reason whatsoever, the parties
 313 agree that the own intellectual property rights which have then accrued to the
 314 service provider, will remain vested in the service provider and that,
 315 notwithstanding such termination, the client will have no rights in or to the own
 316 intellectual property rights.

317 **14 ASSIGNMENT**

318 1) Subject to any limitation on any own intellectual property rights set out in any
 319 schedule hereto, the service provider hereby does not cede and assign to the
 320 client all own intellectual property rights arising out of the training services and/or
 321 any training provided by the service provider.

322 2) This assignment applies to all own intellectual property rights which may vest in
 323 the service provider as a result of this agreement as well as all other computer
 324 programs, manuals and other documentation developed in respect of all training
 325 services provided in the future.

326 3) The client agrees that this assignment terminates all rights of the client to claim
 327 any rights in the work produced as a result of the training services, whether

328 moral, residual or of any other kind after the training services have been
329 completed.

330 **15 CONFIDENTIALITY**

- 331 1) Each party acknowledges and agrees that all material and information which has
332 or will come into its possession or knowledge in connection with this agreement,
333 or the performance hereof, consists of confidential and proprietary data, whose
334 disclosure to or use by third parties will be damaging to the other of them.
- 335 2) Both parties, therefore, agree to hold such material and information in strictest
336 confidence, not to make use thereof other than for the performance of this
337 agreement, to release it only to employees reasonably requiring such
338 information, and not to release or disclose it to any other party, unless so
339 required by law.
- 340 3) Confidential and proprietary information is not meant to include any information
341 which, at the time of disclosure, is generally known by the public or any
342 competitors of either party.
- 343 4) Neither party shall use the names, trademarks, or trade names, whether
344 registered or not, of the other party in publicity releases or advertising or in any
345 other manner, including customer lists, without having secured the prior written
346 approval of the other party, which approval will not be unreasonably withheld or
347 delayed.
- 348 5) The parties' obligations of confidentiality under this agreement will survive the
349 termination of this agreement for any reason.

350 **16 PUBLICITY**

- 351 1) The service provider will submit to the client all advertising, written sales
352 promotions, press releases and any other publicity material relating to the
353 conclusion of this agreement in which the client's or the client's trade name or
354 trademark is mentioned, and will not publish or use or allow the publication or
355 the use of such advertising, sales promotions, press releases or publicity
356 material without the prior written approval of the client in each instance, which
357 approval will not be unreasonably withheld or delayed.
- 358 2) The client will submit to the service provider all advertising, written sales
359 promotions, press releases and any other publicity material relating to the
360 conclusion of this agreement in which the service provider's name or the service

361 provider's trade name or trademark is mentioned, and will not publish or use or
 362 allow the publication or the use of such advertising, sales promotions, press
 363 releases or publicity material without the prior written approval of the service
 364 provider in each instance, which approval will not be unreasonably withheld or
 365 delayed.

366 **17 BREACH**

- 367 1) Should either party to this agreement commit a breach of any of the terms and
 368 conditions hereof, and remain in default for a period of fourteen (14) days after
 369 receipt of a written notice from the other party calling for such breach to be
 370 remedied, the party delivering such notice will be entitled, without prejudice to
 371 any other rights it may have hereunder or in law, to terminate this agreement by
 372 written notice to that effect given to the defaulting party.
- 373 2) Either party may summarily terminate this agreement, at any time, by providing
 374 to the other ("the defaulting party") notice of such termination if -
- 375 a) The defaulting party is, other than for the purposes of reconstruction or
 376 amalgamation, placed under voluntary or compulsory winding up order,
 377 judicial management order or under receivership or under the equivalent of
 378 any of the foregoing: or
- 379 b) The defaulting party makes any arrangement or composition with its
 380 creditors generally, or ceases or threatens to cease to carry on business.

381 **18 TERMINATION**

- 382 1) Providing that there are no schedules in force under this agreement, either party
 383 shall be entitled to terminate this agreement, at any time, by providing to the
 384 other party 60 (sixty) calendar days prior written notice of such intention to
 385 terminate.
- 386 2) In the event that this agreement is terminated for any reason whatsoever, each
 387 party shall immediately return to the other all papers, materials and other
 388 documentation then in its possession belonging to the other and shall comply
 389 with the provisions of the assignment clause set out above.

390 **19 FORCE MAJEURE**

- 391 1) Should either the client or the service provider (hereinafter referred to as "the
 392 invoking party") be prevented from fulfilling any of its obligations in terms of this

393 agreement as a result of any act of god, war, fire, flood, legislation, insurrection,
394 sanctions, trade embargo or any economic or other cause beyond the
395 reasonable control of such party (any such event hereinafter called "force
396 majeure") then –

397 a) The invoking party will forthwith give written notice thereof to the other party -
398 b) Specifying the cause and anticipated duration of the force majeure; and
399 c) Promptly upon termination of the force majeure, stating that such force
400 majeure has terminated.

401 2) Performance of any such obligations will be suspended from the date on which
402 notice is given of a force majeure event until the date on which notice is given of
403 termination of a force majeure event (hereinafter referred to as the "suspension
404 period"), subject always to the remaining provisions of this force majeure clause.

405 3) The invoking party will not be liable for any delay or failure in the performance of
406 any obligation hereunder, or loss or damage due to or resulting from the force
407 majeure during the suspension period provided that -

408 a) The invoking party uses and continues to use its best efforts to perform such
409 obligation;

410 b) If the force majeure shall continue for more than thirty (30) consecutive days
411 the other party will be entitled to cancel this agreement on the expiry of such
412 period, but will not be entitled to claim damages against the invoking party as
413 a result of the delay or failure in the performance of any obligations

414 hereunder due to or resulting from the force majeure; and

415 c) The party not invoking force majeure will be entitled to elect, by giving written
416 notice within ten (10) calendar days of the termination thereof, as to whether
417 or not it requires the invoking party to perform any obligations, incurred prior
418 to the force majeure event.

419 **END OF PAGE**

420

-
- 433 respect of which receipt has been acknowledged under signature of a duly
 434 authorized or responsible person shall be deemed, unless the contrary is
 435 proved, to have been received on the day of delivery.
- 436 4) Any notice by hand, email, telefax to a party at its designated address above
 437 may be and shall be deemed, unless the contrary is proved, to have been
 438 received within two (2) hours of transmission where it is transmitted during
 439 normal business hours or within twelve (12) hours of the first business day after
 440 it is transmitted where it is transmitted outside those business hours.
- 441 5) In the event that either party should move premises or change address, it shall
 442 forthwith notify the other in writing accordingly at its *Domicilium* address.
- 443 6) Said notice must happen no later than five working days after the change of
 444 address or move occurred.

445 **21 DISPUTE RESOLUTION**

- 446 1) Should any dispute arise between the parties to this agreement, then before that
 447 dispute is referred for resolution by mediation or to a court of competent
 448 jurisdiction, the parties hereby agree that representatives from both parties shall
 449 meet to review such dispute and to arrive, if possible, at an amicable and
 450 negotiated solution with regards thereto.
- 451 2) Such meeting, as envisaged in clause (21.1) above, shall be held within five (5)
 452 business days after either party has called such a meeting.
- 453 3) Only in the event of the said representatives being unable to negotiate and
 454 agree on an amicable settlement of such dispute within five (5) business days
 455 after such meeting is held, shall the dispute be referred for resolution by
 456 mediation or to a court of competent jurisdiction.

457 **22 MEDIATION**

- 458 1) Subject to clause 21 above, any dispute arising out of or in connection with this
 459 agreement, may be decided either by way or mediation or litigation as set out
 460 below
- 461 2) If, in the reasonable opinion of the party seeking relief, the dispute is of such a
 462 nature that mediation would be an inappropriate forum, such party may seek
 463 relief in a court of law. Accordingly –
- 464 3) In the case of mediation –

-
- 465 a) The mediation shall be conducted in accordance with the rules of the
 466 Mediation Council of South Africa as published by this Council from time to
 467 time;
- 468 b) The Medication Council shall be responsible for the appointment of a
 469 mediator, and where the parties agree in writing, more than 1 (one) mediator
 470 may be appointed;
- 471 c) The mediation shall include the right of appeal provided for by the rules of
 472 the Mediation Council;
- 473 d) Notwithstanding the institution and commencement of mediation
 474 proceedings, either party may nonetheless approach a court of law for relief
 475 of an urgent nature in circumstances in which such relief cannot be given or
 476 cannot urgently be given by the mediator;
- 477 e) In making an award, the mediator appointed shall also in his discretion make
 478 a decision with regard to the costs of the mediation including any value
 479 added tax, charges and disbursements and fees of a like nature, incurred by
 480 the successful party in successfully enforcing or defending any of the
 481 provisions of this agreement, or any claim hereunder and shall be for the
 482 account of the unsuccessful party. In so doing, the mediator shall be entitled
 483 to appoint a taxation consultant and/or a taxing master to determine the
 484 amount of the fees;
- 485 4) In the case of litigation, the parties consent to the jurisdiction of the South
 486 African magistrate's court in respect of all proceedings which may arise out of or
 487 in connection with this agreement.

488 **23 CESSION AND ASSIGNMENT**

- 489 1) Except as provided for in this clause, no part of this agreement may be ceded,
 490 assigned, transferred or made over by either party without having secured the
 491 prior written consent of the other party, which consent may not be unreasonably
 492 withheld or delayed.

493 **24 JURISDICTION**

- 494 1) This agreement will be governed, construed and take effect in all respects in
 495 accordance with the laws of the republic of South Africa, and the parties hereby
 496 consent and submit subject to the provisions of all clauses to the jurisdiction of
 497 the magistrate's court of South Africa in regard to all proceedings, actions,
-

498 applications or the like, undertaken at any time, instituted by either party against
 499 the other and in any way arising from this agreement.

500 **25 ENTIRE AGREEMENT**

501 1) This agreement, together with all schedules and other attachments referenced
 502 herein, constitutes the entire agreement between the client and the service
 503 provider and supersedes all proposals, oral and written, between the parties on
 504 this subject.

505 **26 INDEPENDENT CONTRACTOR**

506 1) It is expressly understood that the client and the service provider are contractors
 507 independent of one another, and that neither has the authority to bind the other
 508 to any third person, or to otherwise act in any way as the representative of the
 509 other, unless otherwise agreed upon, in writing, between both of the parties
 510 hereto.

511 **27 NON-SOLICITATION** 

512 1) Neither the service provider nor the division of the client which has engaged the
 513 training services of the service provider in respect of any schedule hereto, shall,
 514 during the term of such schedule and for a period of 12 (twelve) months after its
 515 termination, whether directly or indirectly, employ any person who was employed
 516 by the other of them during the term of the relevant schedule and was engaged,
 517 in the case of the service provider's employees, in rendering the training
 518 services or part thereof, or, in the case of the client's employees, in receiving the
 519 training services or part thereof, without the prior written consent of the other.

520 2) Should either party as set out in Clause 27.1 employ any person in
 521 contravention of Clause 27.1, the recruiting party shall pay to the other within 30
 522 (thirty) days of receipt of notice to that effect, a sum equal to 100 percent (100%)
 523 of the previous six (6) months' actual remuneration received by such employee
 524 as at the date of the employee leaving the other, excluding any bonus or
 525 incentive payments, by the way of compensation and cost of recruitment and
 526 training associated with the replacement of such employee. The parties agree
 527 this represents a genuine pre-estimate of loss.

528

529 **28 SKILLS DEVELOPMENT FACILITATION**

- 530 1) If required by the client or if the service provider considers it essential to the
 531 performance of this agreement, the service provider will recommend a Skills
 532 Development Facilitator to the client.
- 533 2) The client can enter into a separate agreement with a Skills Development
 534 Facilitator recommended by the service provider. This option will create a
 535 contractual agreement between the client and the Independent Skills
 536 Development Facilitator and Growth will not form party to such agreement in any
 537 way contemplated by anyone.
- 538 3) The client retains the option to waive the services of an independent skills
 539 facilitator as contemplated in this Clause 27.
- 540 4) In case of such waiver in (27) (3) above, the client cannot put blame on the
 541 service provider, its representatives or agent for:
- 542 a) An unsuccessful learnership registration at SETA
 543 b) And unsuccessful workplace training provider accreditation at the Institute of
 544 Certified Bookkeepers
 545 c) The rejection of grants by SETA



547 **29 STUDENT PERFORMANCE**

- 548 1) The service provider will reserve the right to terminate this agreement if it is
 549 found that students do not perform and expected despite the best efforts made
 550 by lecturers through the means of:
- 551 a) Explanations
 552 b) Extra tuition
 553 c) Or any other means deemed essential by the lecturer to ensure that the
 554 student is prepared for his/her assessments
- 555 2) The service provider cannot guarantee that all students that are part of this
 556 agreement, will pass all courses all the time
- 557 3) Students are expected to do assignments when instructed by lecturers
- 558 4) Students are expected to attend a minimum of 80% of all classes
- 559 5) Students are expected to be in class at least ten minutes before the start of the
 560 class

-
- 561 6) Students are expected to hand in assignments or assessments on the times and
 562 at the places specified by lecturers
- 563 7) Students are deemed to be under the same rules of conduct in class as they
 564 would be at the workplace. Any misconduct will be reported to the client and the
 565 service provider may:
- 566 a) Request that the student be removed from the class, or
 567 b) Be replaced with another student, or
 568 c) Barred from continuing with the rest of the training
- 569 8) Students suspected of being under the influence of alcohol or any other harmful
 570 or addictive substances will be reported to the client

571 **30 RE-ASSESSMENT OF STUDENTS**

- 572 1) Students who fail any given modules will have the opportunity to take one re-
 573 assessment per module
- 574 2) The cost of the re-assessment in (30) (1) above will be billed to the client and
 575 not to the student
- 576 3) Any student failing a reassessment will have to repeat the whole module as full
 577 cost
- 578 4) In the case of a student failing the intervention in (30) (3) above, such student
 579 will not be allowed to continue with the training as contemplated in this
 580 agreement

582 **31 SUSPENSION OF TRAINING**

- 583 1) The training contemplated in this agreement may require a registration process
 584 to be undertaken at:
- 585 a) SETA and/or
 586 b) Qualification providers and/or
 587 c) Professional bodies and/or
 588 d) Any other institution or entity that requires such registration
- 589 2) The client agrees to keep to the timelines of the registration process in (31) (1)
 590 above
- 591 3) The client agrees to provide the service provider and/or an appointed Skills
 592 Development Facilitator with all documents that may be required to complete the
 593 registration in (31) (1) above

-
- 594 4) The client agrees to deliver all documents in the time frames requested by either
595 the service provider and/or an appointed Skills Development Facilitator
- 596 5) The service provider reserves the right to suspend all training in case it is found
597 that the registration process in (31) (1) above is delayed through no fault of:
598 a) The service provider and/or
599 b) A Skills Development Facilitator and/or
600 c) Any institution contemplated in (31) (1) above
- 601 6) In case of any delay in (31) (5) above, the service provider will serve a notice of
602 non-compliance on the client
- 603 7) The notice in (31) (6) above will:
604 a) Alert the client of the delay
605 b) Alert the client about corrective actions to remove the delay
606 c) Alert the client about specific timelines and/or documentation and/or both the
607 avoid the delay
- 608 8) In case of any more delays after the actions in (31) (7) above, the service
609 provider will reserve the right to suspend the training contemplated in this
610 agreement until the registration in (31) (1) is complete
- 611 9) The client will be responsible for penalties and other costs in case of a delay in
612 (31) (5) above
- 613 10) In the event the client being in default of any payments associated with this
614 agreement, training will be suspended until such time that the default has been
615 rectified
- 616 11) In the event of repeated attendance of less than 80%, the client will be notified of
617 a suspension of classes until such time that all students can attend each
618 subsequent class
619

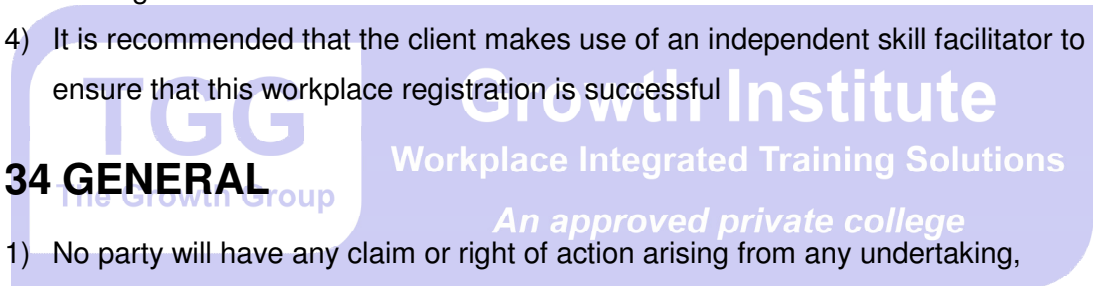
620 **32 ATTENDANCE REGISTERS**

- 621 1) The service provider will create a master attendance register that will contain the
622 logos of the service provider and the client
- 623 2) The attendance register will contain the details (name, ID number and course)
624 for each student that is enrolled on this learnership
- 625 3) All students are expected to fill in and sign the attendance register during each
626 lecture

- 627 4) Said attendance register must be countersigned by the lecturer(s) appointed by
 628 the service provider for the purpose of this training agreement
 629 5) The client must provide the service provider with a copy of this attendance
 630 register at the end of each lecture
 631

632 **33 WORKPLACE REGISTRATION**

- 633 1) To meet the requirements of this learnership, the client must register as an
 634 accredited workplace training provider at:
 635 a) The Institute of Certified Bookkeepers (ICB)
 636 b) The client's home SETA
 637 2) Growth Institute will provide assistance to the client to complete this
 638 accreditation process as required by ICB and by SETA
 639 3) The invoice issued to the client includes an administration fee for the purpose of
 640 this registration
 641 4) It is recommended that the client makes use of an independent skill facilitator to
 642 ensure that this workplace registration is successful



643 **34 GENERAL**

- 644 1) No party will have any claim or right of action arising from any undertaking,
 645 representation or warranty not included in this agreement.
 646 2) No failure by a party to enforce any provision of this agreement will constitute a
 647 waiver of such provision or affect in any way a party's right to require the
 648 performance of such provision at any time in the future, nor will a waiver of a
 649 subsequent breach nullify the effectiveness of the provision itself.
 650 3) No agreement to vary, add to, or cancel this agreement will be of any force and
 651 effect unless reduced to writing and signed by the parties to this agreement.
 652 4) Any invalidity, in whole or in part, of any provision of this agreement shall not
 653 affect the validity of any other of its provisions.
 654 5) In the event that there is any conflict between the terms and conditions
 655 contained in each of the schedules attached hereto and the terms and
 656 conditions contained in the main body of this agreement, the terms and
 657 conditions contained in the main body of this agreement shall prevail.

658 **35 WORK SCHEDULE FOR THIS AGREEMENT**

659 **35.1 WORK COMMENCEMENT DATE**

660

661 The work described in this agreement shall start on

662

19 April 2016

663

664 **35.2 WORK COMPLETION DATE**

665

666 The work described in this agreement shall be completed on or no later than

667

18 April 2017

668

669 **35.3 APPOINTMENT OF TRAINING PROVIDER(S)**

670

671 1) The client agrees to appoint the service provider as the training provider for the
672 work to be done in terms of this schedule.

673 2) The client agrees that the service provider can perform the work required by the
674 client, as it is specified in this schedule, either on its own or by co-opting other
675 training providers to perform work specified by the client.

676 3) The service provider undertakes only to co-opt other training providers at no
677 additional cost to the client in cases where tuition falls outside the immediate
678 expertise of the service provider.

679 4) The service provider agrees to inform the client in writing of any work that will be
680 more suitably done by a secondary training provider.

681 5) Both parties agree that such written notice can be delivered by email, by hand,
682 by courier or by registered post (through the South African post office).

683 6) The use of secondary training providers will remain the sole discretion of the
684 service provider.

685 7) In events where the client does not wish to make use of secondary training
686 providers, as recommended by the service provider, the client will not have a
687 claim against the service provider for those items in this work schedule that

- 688 could be done or should have been done by the recommended secondary
 689 training providers.
- 690 8) The client agrees that any work done or to be done by secondary training
 691 providers recommended to the client by the service provider will not and shall
 692 not constitute a separate agreement between the client and so such secondary
 693 training provider.
- 694 9) The client agrees that there will be no claim against the service provider
 695 regarding work or warranties issued to the client by any secondary training
 696 provider.
- 697 10) The service provider undertakes to introduce the client to other secondary
 698 training providers that could undertake work for the client that is not in the
 699 specialisation range of the service provider.
- 700 11) The service provider will be indemnified of all claims that the client may have
 701 against so such secondary training provider.
- 702 12) Both parties agree that the service provider will introduce all other training
 703 providers to the client in good faith and without malice. In such case, the client
 704 will not have a claim against the training provider for any defects, errors,
 705 omissions and any other disputes or damages arising from the client's
 706 engagement with so such secondary training provider.

707 **35.4 PRICING**

708 The price of all the work to be done will be specified in (33.5.) hereunder.
 709

710 **35.5 WORK SPECIFICATION, PRICING AND PAYMENT**
 711 **ARRANGEMENT**

712 The client instructs the training provider to perform the following work:

- 713
- 714 1) Provide training of an accredited learnership program to the contact value of:
 715

R 272 380-20 Including VAT

- 716
- 717 2) The client undertakes to pay for the services described in this agreement by the
 718 means of four equal tranches as specified hereunder

- 719 3) The client understand that any payment terms agreed upon by the service
 720 provider will be based on the outcome of a credit check performed on the client
 721 by the service provider
- 722 4) The service provider retains the right to cancel the terms of payment in the event
 723 that the client credit rating declined since the date of this agreement
- 724 5) The client understands that terms are not offered automatically but that it will be
 725 based on credit checks
 726

Payment Date	Amount (VAT Included)
10 April 2016	R 108 952.08
30 June 2016	R 54 476.04
31 August 2016	R 54 476.04
31 October 2016	R 54 476.04
Total	R 272 380.20

727

728 **35.6 INFORMATION AND DISCLOSURES**

- 729 1) Parties agree that the rule of construction does not apply to this agreement
- 730 2) The client agrees to provide the training provider with all the information required
 731 to perform the work specified in (6) above.
- 732 3) Both parties agree that confidentiality, intellectual property and other
 733 disclosures, rights or obligations apply to this agreement.
- 734 4) The training provider will send all requests for information in writing to the client.
 735 Such notices can be delivered by email, by hand, by courier or by registered
 736 post (through the South African post office).
- 737 5) The client agrees to disclose or provide all information requested by the training
 738 provider within the timelines specified by the training provider.
- 739 6) The client also agrees to disclose or provide all information requested by the
 740 training provider in writing and that such disclosure be substantiated by relevant
 741 documents such as (but not limited to):
- 742 a) Testimonials from the client's clients or other training providers;
- 743 b) Agreements or contracts containing pertinent information required by the
 744 training provider to do work specified in this schedule.

-
- 745 c) Other documents, brochures or information sources containing pertinent
 746 information required by the training provider to do work specified in this
 747 schedule.
- 748 7) The client agrees that the training provider retains the right to terminate the work
 749 specified in this agreement in case of non-performance or positive mal-
 750 performance by the client.
- 751 8) Parties agree to make use of mediators (each at their own cost) in case of a
 752 dispute
- 753 9) Parties agree to the jurisdiction of the magistrate's courts act in case action
 754 needs to be instituted for whatever reason.
 755

756 **35.7 STUDENT PERFORMANCE**

- 757 1) The client agrees to monitor the academic performance of all students that are
 758 registered for this learnership.
- 759 2) The client understands that students must attain a final mark of at least 60% to
 760 be considered competent for the qualification
- 761 3) Students will be expected to complete and pass:
 762 a) All formative assessments from the ICB with at least 75%
 763 b) All class tests given by lecturers with at least 75%
 764 c) Final exam with at least 60%
- 765 4) Students must spend at least eight (8) hours per week in terms of personal study
 766 times
- 767 5) Students are expected to maintain good behaviour in class
- 768 6) Student's bad behaviour will be reported to the client
- 769 7) Non-performing students will be reported to the client
- 770 8) The service provider will render reasonable assistance in class to ensure optimal
 771 student performance
- 772 9) Students will be requested to pre-read all core modules before tuition starts
- 773 10) Students must attend at least 80% of all classes

774 **35.8 TUITION TIMES**

- 775 1) The service provider will publish, in cooperation with the client, a tuition schedule
- 776 2) Students are expected to attend a minimum of 80% of classes that are published
 777 on the tuition schedule
-

- 778 3) Students absent due to health reasons must provide a sick note on request
779

780 **35.9 EXAM SCHEDULES**

781

- 782 1) Client and students must ensure that they adhere to the official exam schedule
783 as published by the service provider and the institute of chartered bookkeepers
784 2) Exam dates are final and cannot be changed
785 3) Unless otherwise indicated, all exams will be held at a central location specified
786 by Growth Institute prior to the exam date
787

788 **35.10 SUPPLEMENTARY EXAMS**

- 789 1) Students can apply for supplementary exams according to the policies and rules
790 of the institute of chartered bookkeepers
791 2) Fees for supplementary exams must be paid before students sit for such
792 supplementary exams
793 3) If a student fails any supplementary exam, the student will have to re-enrol for
794 that module and the service provider will reserve the right to place the student in
795 another class where the module, that the student has failed, is taught
796

797 **35.11 COLLECTION OF OVERDUE ACCOUNTS**

- 798 1) The client agrees that the service provider will employ the services of
799 accountability (<https://www.accountability.co.za/>) to act as the service provider's
800 agent in case the client is in default with the terms of this agreement
801 2) The client agrees to pay all costs incurred to collect monies from the client on
802 any amount that is in default in terms of this agreement
803 3) The client agrees that the service provider will serve the client with a default
804 notice in writing if any amount in this agreement is in default.
805 4) The client will have ten calendar days after the notice has been issued by hand,
806 registered mail, email or fax to correct the default status
807 5) Should the client refuse or neglect to correct the default status the entire account
808 will be handed over to accountability for action and to protect the interests of the
809 service provider

810 6) The service provider retains the right to suspend all classes in case of payment
811 defaults by the client

812

813 **35.12 RIGHT OF FIRST REFUSAL**

814 The client agrees that the service provider will retain the right of first refusal on all
815 subsequent training needs that may arise at the client.

816

817 **35.13 COMPETITIVE BID**

818 The client warrants that the proposals submitted by the service provider to the client
819 will not be used as leverage to other providers that could harm the service provider's
820 standing and/or business relationship with the client.

821

822 **35.14 SHARING OF INFORMATION WITH THIRD PARTIES**

823 1) The client undertakes not to share any information that the service provider
824 submitted to the client by email, fax, documents, minutes of meetings or
825 otherwise with any third party unless the client received written permission from
826 the service provider to do so.

827 2) This clause will also apply to all training material, textbooks and other material
828 associated with training that the service provider gave to the client and/or
829 employees and/or interns that are either a party to this agreement or a student of
830 this agreement

831

832 **35.15 NON-REGISTERED LEARNERSHIPS**

833 The client understands that tax rebates and SETA claims may not apply to training
834 interventions that are not recognised by SETA as a learnership.

835

836 **35.16 PRE-ASSESSMENT OF STUDENTS**

837 1) The service provider agrees to assist the client with a pre-assessment process
838 to select suitable candidates as students on this learnership

-
- 839 2) Pre-assessments will take be conducted at a time and place that is mutually
840 agreed upon by the client and the service provider
- 841 3) The client agrees that the service provider will charge a per-assessment fee of R
842 5000-00 per day or part thereof to conduct a pre-assessment of students
- 843 4) Should the client decide to waive any pre-assessment the client do so at own
844 risk and not at risk of the service provider
845

846 **35.17 REPLACEMENT OF STUDENTS**

- 847 1) The client can, at any time, replace a student that does not perform on this
848 learnership in terms of:
- 849 a) Academic performance
850 b) Attendance
851 c) Employee resignation
- 852 2) The client undertakes that, in case of a replacement, the service provider will
853 issue an invoice for any module or modules that the replacement has missed
- 854 3) The service provider will not issue the client with a credit not and/or refund for
855 such replacement

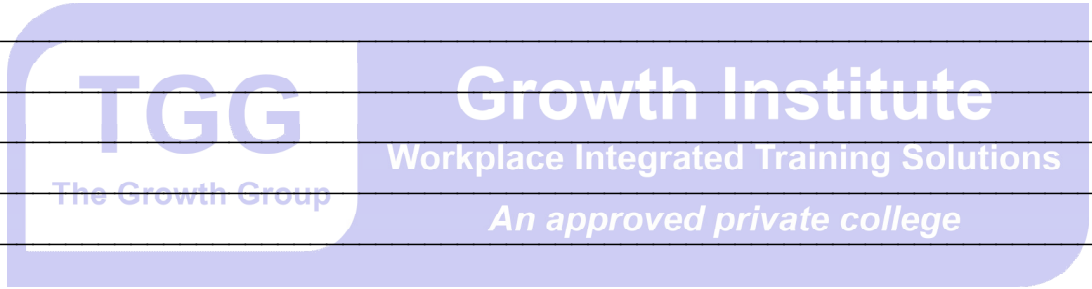
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857 **35.18 SELECTION OF STUDENTS OF THIS LEARNERSHIP**

858 In the event that the client selects a student that do not meet the minimum
859 admission criteria as specified by the service provider, blame cannot be apportioned
860 to the service provider when such student's academic performance is sub-standard
861
862

863 **35.19 ADDITIONAL TERMS AND CONDITIONS**

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890 **36 EXECUTION**

891 **36.1 CLIENT SIGNATURE**

892

893 This agreement is executed for and on behalf of –

894

895 1) The client by In
896 his or

897

898 Her capacity asof
899 the client.

900

901 2) The service provider by In his or
902 her

903

904 Capacity as  **Growth Institute** Of the
905 Workplace Integrated Training Solutions
906 service provider. *An approved private college*

Thus done and signed at On this the
..... Day of In the year of

..... in the presence of the undersigned witness:

As witness:

For and on behalf of:

The client

907

908

36.2 SERVICE PROVIDER SIGNATURE

Thus done and signed at on this the
..... Day of In the year of
in the presence of the undersigned witness:

As witness:

For and on behalf of:

The service provider

909
910

