



As the number of requests has grown, it has become necessary for the Eric and Sheila Samson Foundation ("**Foundation**") to establish certain guidelines and procedures for processing the multitude of requests that it receives. The Foundation has also had to ensure that the rights and obligations of the applicant and the Foundation are set out clearly. Accordingly, we request that you review the terms and conditions outlined below before you submit your request for funding. A signature version of these terms and conditions is included as an annexure to the application form.

## 1. **PBO Status**

- 1.1 The applicant undertakes to apply for and obtain registration with the South African Revenue Service ("**SARS**") as a Public Benefit Organisation ("**PBO**") in terms of section 30 of the Income Tax Act 58 of 1962 (or any such applicable sections to the extent the Income Tax Act is amended and/or replaced), to the extent that it has not been registered as such ("**PBO Status**"); and shall maintain such PBO Status for the duration of the funding.
- 1.2 The applicant hereby undertakes to furnish the Foundation with original certified copies of its registration of PBO Status (including, where applicable, its registration for section 18A exemption status) with SARS, prior to the application submission date, or within such extended time period as the Foundation, in its sole discretion, may agree in writing (the "**Registration Time Period**").
- 1.3 In addition to any other obligations on the successful applicant ("**Recipient**") contained elsewhere in these Terms and Conditions, the Recipient if registered as a section 18A exempt entity shall, for the duration of the funding, furnish the Foundation with a valid section 18A Tax Certificate issued by SARS in respect of every donation received from the Foundation (as applicable).
- 1.4 If the Recipient does not:
  - 1.4.1 maintain PBO Status for the duration of the funding as contemplated in clause 4; and/or
  - 1.4.2 does not furnish the Foundation with:
    - 1.4.2.1 original certified copies of its PBO Status registration within the Registration Time Period, and/or
    - 1.4.2.2 the valid section 18A Tax Certificates issued by SARS in respect of every donation received from the Foundation in accordance with these Terms and Conditions (if applicable),

any such non-compliances shall each constitute a material breach of a material term of these Terms and Conditions. In addition to any other rights or remedies the Foundation may have in terms of these Terms and Conditions or at law, the Foundation shall be entitled to immediately terminate the agreement set out in these Terms and Conditions



on the basis of the breach and shall be entitled to claim any damages suffered in respect thereof.

## 2. Responsibilities of the Recipient

- 2.1 In addition to any other obligations on the Recipient elsewhere in these Terms and Conditions, the Recipient undertakes to:
- 2.1.1 properly and timeously perform all obligations and deliver all requirements pertaining to the funding;
  - 2.1.2 provide such management, support, advice and guidance relating to the public benefit activity or project and/or in respect of any service or programme described in the application form as the Foundation may reasonably direct;
  - 2.1.3 provide accurate and reliable information in relation to any supporting invoices it presents to the Foundation from time to time;
  - 2.1.4 comply from time to time with all reasonable requests of the Foundation or any other person to whom authority has been delegated by the Foundation (and in this regard the Recipient, acting reasonably, shall be entitled to ask such person to show reasonable evidence that such person is so duly authorised by the Foundation);
  - 2.1.5 provide progress reports relating to the progress of the public benefit activity and/or project as specified in the application form, substantially in the form prescribed by the Foundation;
  - 2.1.6 use the funds and/or any portion thereof and/or any further amounts granted to the Recipient by the Foundation only for the agreed purposes, and to not use such funds for any other purpose whatsoever;
  - 2.1.7 carry out its public benefit activity and/or project in a diligent and professional manner and at all times act in the best interests of the parties and the joint co-operation, and shall ensure that, or shall procure that neither it and/or any of its directors, officers, shareholders, affiliates, employees, representatives, agents, contractors and/or sub-contractors (the "**Recipient's Personnel**") shall commit any act or omission which would result in damage to the goodwill or reputation of the Foundation either in South Africa or abroad. The Recipient hereby indemnifies and holds the Foundation harmless against any and all losses, liabilities, claims, demands, damages, judgments, costs and expenses (including reasonable attorneys' fees) whatsoever which the Foundation may have suffered as result of the Recipient and/or the Recipient's Personnel committing any such act or omission;
  - 2.1.8 retain accurate records and documentation of the expenditure pertaining to the funds and/or any portion thereof (including official receipts, invoices and accounts of any such expenses) and shall promptly on demand, at the Foundation's election,



- produce, provide or make same available or provide copies (at the Foundation's cost) thereof, to the Foundation;
- 2.1.9 allow the Foundation to audit, monitor and review the operations being conducted under or in respect of the public benefit activity and/or project and for these purposes,
  - 2.1.10 grant the Foundation access during normal business hours to the Recipient's premises and/or the sites where the operations are being conducted and grant access to the books, materials and records of the Recipient pertaining to the public benefit activity and/or project;
  - 2.1.11 engage in reviews and discussions in respect of the public benefit activity and/or project (including regarding funding and any programmes and initiatives) from time to time as the Foundation may determine;
  - 2.1.12 comply in all material respects with all laws, rules and regulations and requirements of any governmental body or other authoritative entity applicable to it and/or to its administration and utilisation of the funding provided in terms of these Terms and Conditions and/or in respect of the public benefit activity and/or project, including (without limitation) that it will ensure adherence to the principles of good corporate governance;
  - 2.1.13 shall only after obtaining the prior written approval of the Foundation seek, raise or otherwise obtain any additional funding in respect of the public benefit activity and/or project set out in the application form, and agreed between the parties, and the Recipient hereby undertakes to consult with the Foundation to the extent that such external funding is required;
  - 2.1.14 shall not, and shall procure that the Recipient's Personnel shall not, furnish any information and/or advice of any nature whatsoever nor of any confidential information of the Foundation to any person without the prior written consent of the Foundation, except to the extent that the Recipient is under an obligation to disclose in terms of clause 16 (Confidentiality) and then to the extent of and subject to the provisions contained therein;
  - 2.1.15 shall not, and shall procure that the Recipient's Personnel shall not in any manner publicise and/or make available any media or other public releases of the funding without the prior written approval of the Foundation; and
  - 2.1.16 forthwith notify the Foundation in writing if any of the information provided by it set out in the application form and accompanying documents changes during the period of the funding.
- 2.2 The Recipient acknowledges and agrees that any breach by it and/or the Recipient's Personnel of the Recipient's confidentiality obligations and/or obligations not to commit any act or omission resulting in damage to the reputation and/or goodwill of the Foundation under these Terms and Conditions and/or any breach by the Recipient of its



obligations and undertakings in terms of maintaining its PBO Status shall constitute a material breach of a material term of these Terms and Conditions, in respect of which The Foundation shall be entitled, in addition to any other rights it may have in terms of these Terms and Conditions, to immediately terminate these Terms and Conditions and claim any damages it may suffer as a result thereof from the Recipient.

### 3. Responsibilities of the Foundation

- 3.1 The Foundation shall provide the Recipient with such information as the Recipient reasonably requires from time to time thus enabling the Recipient to carry out its responsibilities to the Foundation under these Terms and Conditions in a proper and timely manner.
- 3.2 The Foundation shall have the right to perform reasonable background checks as permitted by law on any officer, partner, employee, permitted subcontractor or agent of the Recipient that would perform any obligations under these Terms and Conditions or otherwise participate in the public benefit activity and/or project. Upon request, the Recipient shall provide a list of references to the Foundation and cooperate with the Foundation as reasonably necessary to confirm the information provided by such references.
- 3.3 The Foundation shall endeavour to communicate regularly with the Recipient regarding any issues that may from time to time arise affecting the relationship between the parties and the implementation and administration of the relevant public benefit activity and/or project.
- 3.4 The Foundation shall monitor and evaluate in association with the Recipient the use of the funds in accordance with the information provided for in the application form or any further correspondence regarding the funding.

### 4. Use of Funds

- 4.1 Funds received from the Foundation can be expended only for the public benefit activity and/or project and expenses set forth in the Recipient's funding request or application. Alternate use of the funds is permissible only if the Recipient has first contacted the Foundation to propose such changes, and subsequently received written approval from the Foundation, to proceed with the authorised changes. **Note: Failure to adhere to any conditions stipulated herein, or what was agreed between the parties may result in returning a portion or all of the funds made available and could impact eligibility for future funding.**
- 4.2 Any portion of the awarded funds not used for the purposes of the public benefit activity and/or project or funding application purpose, not spent in accordance with the budget submitted to the Foundation or not used within the Funding Period, as defined in clause 5



below, shall be repaid by the Recipient to the Foundation within 30 (thirty) days, unless prior written approval is provided by the Foundation to retain the funds until completion of the public benefit activity and/or project.

5. **Funding period** - Notwithstanding the signature date, but subject to any earlier valid termination of these Terms and Conditions, the funding shall commence on the date of receipt of funding into the Recipient's nominated bank account and end on the anniversary of the funding receipt date ("**Funding Period**"). Subsequently, the Recipient shall be obliged to make a new application for consideration by the Foundation unless written approval for an extended Funding Period is provided by the Foundation. At all times, it shall be the responsibility of the Recipient to provide a duly completed application form to the Foundation timeously (i.e. within three months) prior to the expiry of the Funding Period. The Funding Period applies irrespective of the Recipient's public benefit activity and/or project duration. **Note: No costs should be incurred by the Recipient prior to the Funding being paid as the Recipient will have no rights of recourse against the Foundation or its trustees if the award is revoked. The funding is always subject to the availability of cash within the Foundation and any delays in the agreed terms will not give rise to any claims or responsibility being assumed by the Foundation or its officers.**
6. **Changes in Use of Funds** – The Recipient is required to alert the Foundation of any significant change to the organisation, or to the public benefit activity and/or project, that could impede its ability to undertake the activities or achieve the goals outlined in the application. Such changes could include alterations to the Recipient's budget, staffing, work plan, funding from other sources, or relationships with other organisations, etc. If there is any doubt about the importance of a change, the Foundation should be consulted. Furthermore, the funds may not be transferred or assigned to any other entity, without prior written approval from the Foundation.
7. **Reporting** – The Recipient must adhere to the reporting conditions set forth in the approval letter or as agreed. The reporting conditions include *inter alia* the provision of receipts of all expenditure paid using the funds. Should a Recipient complete their scope of work and expend their funds prior to the end of their term, they may request to submit a final report ahead of schedule, or in lieu of an interim report, with written approval by the Foundation.
8. **Reversion of Funds** – The Recipient will return to the Foundation any unexpended funds remaining within 30 (thirty) days after the conclusion of the Funding Period, unless prior written approval is provided by the Foundation. Moreover, in the event of a termination, discussed below, the Recipient will immediately return all unexpended funds to the Foundation and provide documentary evidence of the refund.
9. **Termination of Funding** – The Foundation reserves the right to terminate the funding obligation if, in its sole discretion, the Foundation determines that the Recipient has made any misrepresentations, has in any way misappropriated funds, or has done anything inconsistent with its application or with these Terms and Conditions. The Foundation shall be entitled to a



return of any misappropriated funds. Any declaration, order, or, act, leading to, or, resulting in the sequestration, winding-up, liquidation, business rescue, (any similar or analogous proceedings) of your organisation, in terms of the Insolvency Act, No 24 of 1936, or, any other applicable Act, will automatically terminate the funding obligation. **Note: Recipients have no right to a formal appeal process when an award or continuation of an award is denied. This is because neither the approval nor extension of a funding period, public benefit activity and/or project period, or the award gives the Recipient any legal entitlement to receive the award or additional multi-year awards.**

10. **Monitoring** – The Foundation may, at its expense, monitor and conduct an evaluation of operations, which may include visits by representatives of the Foundation to observe the Recipient's program procedures and operations and to discuss the program with Recipient's Personnel.
11. **Accounting and Financial Review** – A complete and accurate record of the funds received and expenses incurred must be made available by the Recipient, upon request. The Foundation may, at its own expense, and with reasonable notice to the Recipient, audit or have audited the records of the Recipient insofar as they relate to the activities funded by the Foundation.
12. **Current and future funding** – By making this award, the Foundation assumes no obligation to provide future or continuing support for the Recipient. Furthermore, if the Foundation's financial status changes negatively, the Foundation reserves the right to cancel or reduce future payouts on any commitments it has made.
13. **Record Keeping** – The Recipient agrees that financial and programme records and supporting documentation will be made available, at the request of the Foundation, for a period of five (5) years from the date of receipt of the funds.
14. **Assignment** - The Recipient shall not be entitled to cede, assign, transfer or otherwise make over any of its rights or delegate any of its obligations under these Terms and Conditions to any third party without the prior written consent of the Foundation.
15. **Relationship** – The parties record that the Recipient shall fulfil its obligations in terms of these Terms and Conditions to the Foundation as an independent PBO and nothing in these Terms and Conditions shall be deemed to create a relationship of employer and employee, agency, partnership or joint venture between the Recipient (on the one hand) and the Foundation (on the other hand), and the Recipient shall not hold itself out as being an employee, agent or partner of the Foundation or as being in a joint venture with the Foundation. Save as otherwise provided herein, neither party shall be entitled to bind the other party to any obligation of any nature whatsoever or to incur any liability on behalf of the other party, whether in contract or otherwise.



## 16. Confidentiality

- 16.1 When information provided in the context of these Terms and Conditions is described by the party providing it as confidential, the receiving party will take all reasonable measures to keep the information confidential and will only use the information for the purpose for which it was provided.
- 16.2 The receiving party undertakes to disclose any such confidential information only to persons who have a need to know, within the aforesaid purpose and who are bound by like obligations of confidentiality and restrictions on use as contained herein. However, there will be no obligation of confidentiality or restriction on use where:
  - 16.2.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving party; or
  - 16.2.2 the information was received from a third party not in breach of an obligation of confidentiality.
- 16.3 The receiving party shall ensure that its employees and/or representatives comply with the provisions of this *Confidentiality* clause 16.
- 16.4 The parties shall use their best endeavours to ensure that their employees, agents and sub-contractors, treat as strictly confidential, all information relating to these Terms and Conditions of which they become aware as a result of the public benefit activity or project and funding. The parties shall use their best endeavours to ensure that their employees and sub-contractors do not disclose any such information to third parties at any time except with the prior approval in writing of the other party.
- 16.5 This obligation shall survive the expiration or earlier termination of these Terms and Conditions for a period of 5 (five) years.

## 17. Intellectual Property and Publication

- 17.1 The Recipient shall not publish, market, use, brand and/or make public reference to ("**Use**") the Foundation's brand, unless the prior written approval of the Foundation has been obtained and then only for purposes of the public benefit activity and/or project and subject to the provisions of this clause 17 (Intellectual Property and Publication).
- 17.2 The Recipient and the Foundation agree to cooperate with each other in good faith to reach agreement on the manner in which the Foundation's brand shall be used for purposes of the public benefit activity and/or project, provided that any such Use shall only be in accordance with the written approval of the Foundation, as contemplated in clause 17.1.



- 17.3 In the event that the Foundation provides its prior written approval to the use of the Foundation's brand and/or other intellectual property of the Foundation as contemplated in clause 17.1., the Recipient undertakes to ensure that such Use is in accordance with the applicable and then current Foundation policies and procedures as notified in writing by the Foundation to the Recipient, from time to time.
- 17.4 At any public or formal events and/or activities financed as a result of, or forming part of the public benefit activity and/or project, appropriate signage of the Foundation's brand shall be displayed in prominent places and acknowledging the Foundation's collaboration and association, subject to the prior written approval of the Foundation, as contemplated in clause 17.1.
- 17.5 The Foundation shall, from time to time, on written notice to the Recipient, be entitled to publicise the public benefit activity or project, and/or details thereof, and/or details of its relationship with the Recipient, in terms of these Terms and Conditions.
- 17.6 Save as is otherwise expressly provided in these Terms and Conditions, the Recipient shall not acquire any rights, title, or interest of any kind in any intellectual property rights of the Foundation. All intellectual property rights of the Foundation and all modifications made by it to those intellectual property rights shall, at all times, remain the sole property of the Foundation.
- 17.7 Upon termination of these Terms and Conditions, for any reason whatsoever, the Recipient shall promptly return, any items, or, materials, reflecting the Foundation's brand in its possession.

## 18. Indemnity

- 18.1 The Recipient hereby indemnifies the Foundation, its trustees and employees, against all and any claims, losses, liability and damages whether direct or indirect, of whatsoever nature and howsoever arising (whether in contract, delict or otherwise), as a result of a failure by the Recipient, its employees, agents, assignees or sub-contractors, to comply with these Terms and Conditions.
- 18.2 The Recipient hereby indemnifies the Foundation, its trustees and employees, against all and any claims, losses, liability and damages, whether direct or indirect, of whatsoever nature and howsoever arising (whether in contract, delict or otherwise), as a result of exercising their powers or fulfilling their duties in compliance with these Terms and Conditions.

## 19. Domicilium

- 19.1 The parties hereby choose *domicilium citandi et executandi* for all purposes under these Terms and Conditions at the addresses indicated hereunder –





- 19.1.1 The applicant: As indicated in the accompanying application form  
Physical Address: As indicated in the accompanying application form  
Contact person: As indicated in the accompanying application form  
E-mail address: As indicated in the accompanying application form
- 19.1.2 The Donor: The Eric and Sheila Samson Foundation  
Physical Address: C/o Macglobal Proprietary Limited, 1<sup>st</sup> floor, Investec Building,  
36 Hans Strijdom Avenue, Foreshore, Cape Town, 8001  
Contact person: As advised in the award letter  
E-mail address: [trustees@samsonfoundation.org](mailto:trustees@samsonfoundation.org)
- 19.2 Any notice to any party shall be addressed to the party at that party's *domicilium* aforesaid and be sent either by electronic mail, pre-paid registered post or be delivered by hand. In the case of any notice-
- 19.2.1 sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the fifth business day after posting; and
- 19.2.2 delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day;
- 19.2.3 successfully transmitted by electronic mail, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day.
- 19.3 Either party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in South Africa, provided that the change shall become effective on the fifth business day from the deemed receipt of the notice by the other party.
- 19.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

## 20. Breach

- 20.1 If the Recipient breaches any material provision or obligation or term of these Terms and Conditions (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring the Recipient to do so, then the Foundation shall be entitled without notice, in addition to any other remedy available to it at law or under these Terms and Conditions, including obtaining an interdict, to cancel these Terms and Conditions or to claim specific performance of any obligation whether or not the due date



for performance has arrived, in either event without prejudice to the Foundation's right to claim damages.

- 20.2 Without derogating from any rights afforded to the Foundation in terms of clause 20.1 above, in the event that the Recipient has committed a breach as contemplated in clause 20.1, the Foundation shall be entitled to withhold any portion of the funding and/or other amounts of funding contemplated in the application form and these Terms and Conditions and the Recipient shall have no claim of whatsoever nature and howsoever arising against the Foundation in this regard.
- 20.3 Notwithstanding anything to the contrary contained herein, the Foundation, its trustees and employees, shall not be liable for any indirect or consequential losses or damages (including loss of profits, loss of customers, goodwill and/or reputation) whatsoever and howsoever arising (whether in contract, delict or otherwise).

## 21. Resolution of Disputes

- 21.1 For the purposes of this clause 21, the term "**dispute**" shall be interpreted in its widest sense and shall include (without limitation) any dispute or difference in connection with or in respect of the conclusion or existence of these Terms and Conditions, the carrying into effect of these Terms and Conditions, the interpretation or application of the provisions of these Terms and Conditions, the parties' respective rights and obligations in terms of and arising out of these Terms and Conditions or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of these Terms and Conditions.
- 21.2 In the event that any dispute arises the parties agree that they shall first endeavour to settle the dispute by private mediation in terms of clause 21.3 below ("**Mediation**"). If such dispute is not resolved by Mediation the parties agree that the dispute shall be referred exclusively to private arbitration in accordance with 21.5 below ("**Arbitration**").

### 21.3 Mediation

- 21.3.1 **Mediation Notice** - Within 30 (thirty) days of a dispute arising any party ("**Referring party**") shall be entitled to refer a dispute to mediation in terms of this clause 21.3 by notifying the other parties in writing of its intention to do so ("**Mediation Notice**"). The Mediation Notice shall include the names of 3 (three) persons whom the referring party proposes for appointment as mediator.
- 21.3.2 **Appointment of Mediators** – There shall be 1 (one) mediator who shall be, if the question in issue is –
- 21.3.2.1 an accounting matter, an independent chartered accountant with not less than 10 (ten) years' experience as a chartered accountant;



- 21.3.2.2 a legal matter, a practising senior counsel or, alternatively, a practising attorney with not less than 10 (ten) years' experience as a practising senior counsel or attorney (as the case may be); or
  - 21.3.2.3 any other matter, a suitably qualified person.
- 21.3.3 The appointment of a mediator shall be chosen from the 3 (three) persons proposed in the Mediation Notice by the referring party in terms of 21.3.1 and shall be agreed upon between the parties, but failing agreement between them within a period of 10 (ten) days after the mediation has been demanded, any of the parties shall be entitled to request the Chairperson of The Cape Bar to make the appointment who, in making this appointment, shall have regard to the nature of the dispute.
- 21.3.4 **Mediation Proceedings** - Unless otherwise expressly agreed by the parties in writing –
- 21.3.4.1 the mediation proceedings shall be held in Cape Town, South Africa and shall be conducted under the procedures of the Independent Mediation Service of South Africa ("**Mediation Rules**");
  - 21.3.4.2 the mediator shall be entitled, on the written application of any party at any time (provided only that such party is then a party to the proceedings), to be made in a manner acceptable to the mediator, to amend the Mediation Rules including any time period provided for in them or to supplement them in the interests of resolving the dispute effectively, efficiently and economically (but provided that no such amendment or supplemental rule shall operate retrospectively);
  - 21.3.4.3 the mediation proceedings shall be conducted as expeditiously as possible;
  - 21.3.4.4 the mediator shall be entitled to determine his or her jurisdiction and shall be entitled, *mero motu*, to raise matters mutatis mutandis as if the dispute was being heard before a Judge in the Western Cape High Court, Cape Town;
  - 21.3.4.5 unless otherwise agreed by the parties, any interim or final award by a mediator in terms of this clause 21.3 shall be subject to a right of appeal in terms of the Mediation Rules. The appeal shall be considered by a panel of 3 (three) appeal mediators agreed upon in writing between the parties, or in the absence of an agreement within 10 (ten) days of an appeal being requested by any party in writing, by a panel of 3 (three) mediators appointed by the Chairperson of The Cape Bar; and
  - 21.3.4.6 subject to the right of appeal referred to in clause 21.3.4.5 above, the decision of the mediator shall be final and binding on the parties (and if appealed, the decision of the panel of 3 (three) mediators shall be final and



binding) and may be made an order of any court of competent jurisdiction. Each of the parties hereby submit to jurisdiction of the Western Cape High Court, Cape Town should the other party wish to make such a decision or a decision of the appeal mediators referred to in clause 21.3.4.5, an order of court.

- 21.3.5 **Conflict with Mediation Rules** - The provisions of this clause 21 shall prevail to the extent of there being any conflict between the Mediation Rules and this clause 21.
- 21.3.6 **Prescription** - Without detracting from the effect (if any) of any other act taken by any party which may affect the issue of prescription, the parties irrevocably agree and acknowledge that the Mediation Notice shall interrupt prescription and shall be deemed to constitute the service of a process for the purpose of interrupting prescription in terms of section 13 of the Prescription Act, No. 68 of 1969 (or, as the case may be, the corresponding provision in any amendment thereto or in any replacement legislation).
- 21.3.7 **Consent to Mediation** - The provisions of this 21.3 –
- 21.3.7.1 constitute an irrevocable consent by the parties to the mediation proceedings provided for herein and no party shall be entitled to withdraw from the provisions of this 21.3.7 or claim at any such proceedings that it is not bound by this 21.3.7 or such proceedings; and
  - 21.3.7.2 are severable from the rest of these Terms and Conditions and shall remain in effect despite the termination, cancellation, invalidity, or alleged invalidity of these Terms and Conditions for any reason whatsoever.
- 21.3.8 **Termination of Mediation** - The Mediation contemplated in this clause 21.3 shall terminate when –
- 21.3.8.1 any party withdraws by written notice to the other party from the Mediation;
  - 21.3.8.2 the Mediator, at his discretion, withdraws from Mediation; or
  - 21.3.8.3 the parties conclude a written settlement.
- 21.4 **Interim Relief in Court** - Nothing in this clause 21 shall preclude any party from seeking interim and/or urgent relief from a court of competent jurisdiction and to this end the parties hereby consent to the jurisdiction of the Western Cape High Court, Cape Town.
- 21.5 **Arbitration** – In the event that the dispute is not concluded by written settlement between the parties and the Mediation is terminated, the parties agree that the dispute



shall within 30 (thirty) days after termination of Mediation be referred exclusively to arbitration in accordance with the following provisions –

- 21.5.1 the parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) days of meeting to agree on the procedure, the arbitration shall take place in accordance with the rules of the Arbitration Foundation of Southern Africa or its successor in title ("**AFSA**") by an arbitrator appointed by AFSA;
- 21.5.2 if AFSA no longer exists then the arbitrator shall be appointed by the President for the time being of the Cape Law Society and the arbitration shall be conducted in accordance with the Arbitration Act No 42 of 1965;
- 21.5.3 unless agreed otherwise the arbitration shall be administered by the parties;
- 21.5.4 the arbitration award shall be final and binding on the parties and no party shall have any right to appeal as provided for in article 22 of such rules against any award, save for any appeal for manifest error contemplated by the rules of AFSA;
- 21.5.5 the place of the arbitration hearing shall be Cape Town; and
- 21.5.6 for the purposes of having any award made by the arbitrator being made an order of court, each of the parties hereby submits itself to the non-exclusive jurisdiction of the Western Cape High Court, Cape Town,

the provisions of this clause 21.5 are severable from the rest of these Terms and Conditions and shall remain in effect despite the termination, cancellation, invalidity, or alleged invalidity of these Terms and Conditions for any reason whatsoever.

## 22. Force Majeure

- 22.1 If any party is prevented from carrying out any obligation imposed upon it in terms of these Terms and Conditions by reason of any *force majeure*, act of God, act of state, insurrection, strike, sanctions, boycott, embargo, industry wide strikes, power failures, explosion, fire, flood, war and other hostilities, civil commotions, governmental acts, regulations or orders, or any other circumstance beyond any party's reasonable control, the incapacitated party shall advise the other party of the existence of the circumstances and the expected duration thereof. The performance by the incapacitated party in terms of these Terms and Conditions shall, to the extent that it is made impossible by such circumstances, be suspended until such circumstances cease to prevail.
- 22.2 If any event of force majeure persists for more than 30 (thirty) consecutive days, the Foundation may terminate these Terms and Conditions, with immediate effect, on written notice to that effect to the Recipient.



## 23. General

- 23.1 These Terms and Conditions shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the laws of the Republic of South Africa.
- 23.2 These Terms and Conditions constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. These Terms and Conditions supersede and replace all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.
- 23.3 No addition to, variation, novation or agreed cancellation of any provision of these Terms and Conditions shall be binding upon the parties unless reduced to writing and signed by or on behalf of the Foundation.
- 23.4 No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 23.5 Without prejudice to any other provision of these Terms and Conditions, any successor in title, including any executor, heir, liquidator, judicial manager, curator, or trustee, of either party shall be bound by these Terms and Conditions.
- 23.6 Notwithstanding anything to the contrary contained herein, the provisions of this clause 23, clause 17 (Indemnity), clause 16 (Confidentiality), clause 20 (Breach), clause 21 (Resolution of disputes), clause 19 (Domiciliumm), and any other provision which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this, shall survive any termination of the Terms and Conditions for any reason whatsoever.

Thank you in advance for adhering to the foregoing guidelines. Should you have any further questions, you may contact our office via email ([trustees@samsonfoundation.org](mailto:trustees@samsonfoundation.org))