

SOMERSET COLLEGE
TERMS AND CONDITIONS OF ENROLMENT

1. INTERPRETATION

In these conditions, unless the context otherwise indicates a contrary intention or the contrary intention clearly appears:

- 1.1 The following expressions bear the meanings assigned to them below and cognate expressions their corresponding meanings:
 - 1.1.1 "The Applicant/s" means the parent/s and/or guardian/s and/or other person/s identified as the applicants in the Enrolment Application;
 - 1.1.2 "The College" means Somerset College, an association not for gain incorporated in terms of Section 21 of the Companies Act No. 61 of 1973 (as amended) having registration number 1996/010718/08;
 - 1.1.3 "Debentures" means debentures issued by Vredelus Limited and where applicable or appropriate, shall be limited to those debentures offered and accepted for the admission of the Student;
 - 1.1.4 "The Deposit" means a deposit paid to the College in respect of the enrolment of the Student and shall include, where applicable or appropriate, a deposit so payable;
 - 1.1.5 "The Enrolment Loan" means the Deposit and Debentures held by and ceded to the College to secure the place of the Student and which is held to termination to account for any loss that may be suffered by the College for fees not paid, and which will be paid back, less any unrecovered loss at that time, and less any forfeiture for early withdrawal of the Student;
 - 1.1.6 "The Enrolment Application" means the document entitled "Acceptance of the offer of a Place at Somerset College", to which these terms and conditions are an annexure and shall include, where applicable or appropriate, these terms and conditions;
 - 1.1.7 "The Student" means the person identified as such in the Enrolment Application;
 - 1.1.8 "Term" means an academic term of the College, including the first and last days of the term in question.
- 1.2 Any gender includes the other genders.
- 1.3 A natural person includes a juristic person and vice versa.
- 1.4 The singular includes the plural and vice versa.

2. ENROLMENT

- 2.1 The College hereby agrees to enroll the Student upon and subject to the terms and conditions set out herein, and to the extent applicable or appropriate also to the Application to Enrol, submitted in respect of the Student.
- 2.2 The College shall only be bound by this agreement in the event that it has been duly signed by or on behalf of:
 - 2.2.1 The Applicant/s;
 - 2.2.2 The College.
- 2.3 Notwithstanding the provisions of this clause the College shall be entitled, in its discretion, to waive compliance with the requirement that the Enrolment Application be signed by one or more of the Applicants.
- 2.4 The fact that the Enrolment Application may not have been signed by all the Applicants shall not affect or limit the liability of those Applicants whose signature appears thereon, or on whose behalf it was signed.

3. REPAYMENT OF ENROLMENT LOAN

Where the enrolment of the Student is secured by an Enrolment Loan, such Enrolment Loan:

- 3.1 Shall become repayable/returnable by the College to the parent/s/guardian/s identified in this application on the 31st day of December in the year in which the Student completes Grade 12, provided that in the event that the admission is cancelled before the Student enters the school the full Enrolment Loan shall

become repayable/returnable 90 (ninety) days after the date of the cancellation referred to;

- 3.2 In the event that the Student leaves the school prior to the completion of Grade 12, and the parent/s/ guardian/s identified in this document elect not to leave the Enrolment Loan with the College until the 31st day of December in the year that the Student would have completed Grade 12, a portion of the Enrolment Loan, calculated as a percentage (linked to the CPIX but with a minimum of ten percent) per annum for early withdrawal, shall be forfeited by the the parent/s/guardian/s identified in this document, to the College;

- 3.3 Notwithstanding the above, the refund of the Enrolment Loan shall only be made upon written application for such repayment by the deposit/debenture holder to the College.

4. RULES

- 4.1 The Applicant/s and the Student agree and undertake to comply with and abide by the rules, Codes of Conduct, regulations, policies and procedures applicable from time to time to the College and decisions made by the College from time to time, and hereby agree and warrant and undertake to procure that every parent, guardian and/or other person exercising rights of control or decision-making powers in respect of the Student shall similarly comply and abide with the rules, Codes of Conduct, regulations, policies and procedures applicable to the College from time to time and the decisions made by the College from time to time;

- 4.2 The College shall be entitled to amend and/or replace the rules, the Codes of Conduct, regulations, policies and procedures from time to time applicable.

5. FEES

- 5.1 Unless otherwise specifically agreed to in writing by the College:
 - 5.1.1 All the Enrolment Loans, fees and disbursements payable by the Applicant/s shall be as determined and published from time to time by the College. The Enrolment Loans, fees and disbursements payable, may be varied at the discretion of the College upon giving 30 (thirty) days notice in writing to the Applicant/s. The fees and disbursements quoted by the College are not all inclusive and only include those items specifically referred to in the schedule of fees and disbursements, and the Applicants hereby agree to repay the College all expenditure incurred by the College on behalf of and/or directly in relation to the Student. The fees together with any other amounts claimable by the College shall be paid in advance, free of exchange and without deduction or set-off by not later than the first day of each respective Term;
 - 5.1.2 It is agreed that any fees paid in advance will be deposited by the College and held in accordance with The Consumer Protection Act, with interest or other income therefrom to accrue to the College as income;
 - 5.1.3 All other amounts claimable by the College shall be paid by the Applicant/s to the College within 7 (seven) days of receipt of an account in respect thereof;
 - 5.1.4 A late payment administration fee shall be levied in respect of all amounts not paid on the due date thereof;
 - 5.1.5 The College reserves the right to undertake a full credit reference check for the purposes of a financial means assessment. This will include contacting the present school (as laid down in the Independent School's Association of Southern Africa's "Code of Ethical Practice);
 - 5.1.6 A certificate signed by the headmaster of the College alternatively the business manager of the College (whose appointment need not be proved), certifying the amount owing to the College by the Applicant/s and/or the Student and/or both in respect of capital, penalty fees and/or any other amount shall be sufficient proof thereof for the purpose of obtaining summary judgement, provisional sentence and/or default judgement and in any legal proceedings the burden to prove that the certificate is incorrect (and the extent thereof) shall rest upon the party/ies challenging the same;
 - 5.1.7 In the event that any payment is not made to the College on due date thereof and the Applicant/s or any of them remain in default

for a period of 14 (fourteen) days after receipt by any of the Applicants of written notice calling for such payment, or in the event that the Student or any party comprising the Applicant/s breaches any term or condition hereof or the rules, the Codes of Conduct, regulation, policies and procedures referred to above and remain in default for a period of 14 (fourteen) days after receipt by any of the Applicants of written notice requiring the remedy of such breach, the College shall be entitled, entirely without prejudice, to any other rights it may have in terms hereof or otherwise, to terminate the enrolment of the Student forthwith upon written notice given to any of the Applicant/s which notice shall be complete upon the posting thereof to the *domicilium citandi et executandi* of the Applicant/s. Upon termination of the enrolment the Student shall be obliged to leave Somerset College forthwith;

5.1.8 To the extent that the Applicant/s or any of them paid an Enrolment Loan applicable to the enrolment of the Student, the Applicant/s agree that the College shall be entitled but not obliged to set-off against the Enrolment Loan, any amount due by the Applicant/s, or any one of them to the College.

6. INDEMNITY AND LIABILITY

6.1 The Applicant/s and/or the Student and/or the parent/s and/or the custodian/guardian/s shall have no claim for damages against the College, its Board of Governors, the headmaster and/or staff of the College, the authorized agents and/or representatives of the College and/or the trustees for the time being, from time to time of the Somerset College Educational Trust (hereinafter collectively referred to as the Somerset College) and may not withhold or delay any payment due to the College by reason directly or indirectly of:

6.1.1 A breach by the College of any of its obligations;

6.1.2 Any act or omission of any party comprising the persons and entities referred to in the definition of the Somerset College or any agent or servant or contractor of any such entity or person, where or not negligent (but excluding gross negligence), or otherwise actionable at law, regardless the reason thereof, including the negligence (but excluding gross negligence) of any of the entities or persons referred to hereinbefore and the Applicant/s and the Student, jointly and severally the one paying the other to be absolved, hereby indemnify the Somerset College or any of the parties comprising the Somerset College against all liability to the Student, the parent/s of the Student, the custodian/s of the Student, the guardian/s of the Student, the Applicant/s and/or members of the Applicant/s household/s.

6.2 The liability of the Applicant/s under and by virtue of the provisions of this clause and/or these conditions shall be joint and several, the one paying the other to be absolved.

6.3 The Applicant/s and/or the Student and/or the parent/s and/or the custodian/guardian/s give their consent for the Student's name, photo, and/or work to be reproduced in newsletters, newspapers and Internet sites and other such publicity media. Furthermore, they will not hold the School staff and their agents liable for any possible actions resulting from privacy or copyright issues.

6.4 The Applicant/s and/or the Student and/or the parent/s and/or the custodian/guardian/s consent to the College disseminating their names and contact details only to other parents, staff or responsible persons engaged or authorized by the College for school related purposes, unless at any time, they instruct the school in writing to the contrary.

6.5 The Applicant/s and/or the Student and/or the parent/s and/or the custodian/guardian/s undertake to inform the College management forthwith of any legal action pending and/or court orders/interdicts in existence which pertain to or affect the Student or the relationship of the Applicant/s and/or the parent/s and/or the custodian/guardian/s to the Student.

7. DOMICILIA AND NOTICE

7.1 The Applicant/s and the Student choose as their *domicilium citandi et executandi* the residential address of the Applicant/s

reflected on the Enrolment Application provided if more than one residential address is reflected in respect of the Applicant/s, the residential address, first reflected, shall be deemed to be the *domicilium citandi et executandi*;

7.2 Any notice, demand or other communication properly addressed to the addressee at the latter's *domicilium* in terms hereof, and sent by prepaid registered post shall be deemed to be received by the addressee on the fifth business day following the date of the posting thereof. The provisions of this clause shall not be construed as precluding the utilization of other means and methods, including telefax and/or e-mail, for the transmission or delivery of notices, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used;

7.3 This contract may be terminated by either party upon 1 (one) term's written notice. The requirement for a term's notice shall be deemed not to have been satisfied unless the other Party receives the applicable notice on or before 16h30 on the last day of the term (prior to the applicable holiday) preceding the term at the end of which the notice is to take effect:

7.3.1 This period of notice applies if the parent wishes to terminate this contract for any reason and to withdraw the Student prior to the final exit examination. If such notice is not given, a full term's fees, at the rate applicable for the next term in which the Student would have been, shall be paid in lieu of notice;

7.3.2 Similarly this period of notice applies if the school elects for any reason to terminate this contract.

7.4 Notice to any one of the Applicants shall be deemed to be notice to all the Applicants.

8. COSTS

In the event that the College briefs legal representatives to enforce any of its rights in terms hereof, and/or to defend any proceedings brought by or on behalf of the Applicant/s and/or the Student, it shall be entitled to recover costs on the scale as between attorney and own client, including collection commission and tracing charges.

9. JURISDICTION AND DISPUTE RESOLUTION

9.1 In the event of any dispute or difference arising between the parties hereto or any of them, relating to or arising out of these conditions including the implementation, execution, interpretation, rectification, validity, enforceability, termination or cancellation of any agreement concluded between the parties and/or the enrolment of the Student at the College, the parties will meet forthwith to attempt to settle such dispute or difference and failing such settlement within a period of 7 (seven) days, the dispute or difference shall, if demanded by any party on written notice to the other party/ies, be submitted for resolution to a referee in accordance with the provisions set out below.

9.2 The hearing referred to in sub-clause 9.1 will be held:

9.2.1 At Somerset West;

9.2.2 Informally but in accordance with the provisions of the Arbitration Act No. 42 of 1965, as amended;

9.2.3 With a view of its being completed within 30 (thirty) business days after it is demanded, having particular regard to any urgency regarding the matter in issue.

9.3 The referee will be, if the question in issue is:

9.3.1 Primarily a legal matter, a practicing senior advocate or attorney of not less than 15 years standing and failing agreement between the parties to the dispute within 48 (forty-eight) hours after a hearing of the dispute has been demanded in terms of sub-clause 9.1 of this clause, such person shall be nominated by the president for the time being of the Cape Law Society or such entity or body as may replace it from time to time hereafter;

9.3.2 In any other matter, an independent person agreed to by the parties and failing agreement between the parties to the dispute within 48 (forty-eight) hours after a hearing of the dispute has

been demanded in terms of sub-clause 9.1 of this clause, such person shall be nominated by the president for the time being of ISASA or such entity or body as may replace it from time to time hereafter.

- 9.4 If agreement cannot be reached between the parties within 48 (forty-eight) hours after a hearing has demanded as to whether the question in issue falls under sub-clause 9.3.1 or sub-clause 9.3.2, then a practicing senior advocate of not less than 15 years standing (to be determined in accordance with sub-clause 9.3 above) will determine the nature of such issue.
- 9.5 The referee:
 - 9.5.1 Will have regard to the desire of the parties to dispose of such dispute expeditiously, economically and confidentially;
 - 9.5.2 Need not observe or take into account the strict rules of law in arriving at his/her decision, which will be made as an expert and not as an arbitrator;
 - 9.5.3 Will determine the party liable for his/her costs and the costs of any experts he consults and the costs of the parties, and such party will pay his/her said costs;
 - 9.5.4 Will be entitled to consult with attorneys, counsel and/or any other expert with regard to any matter or issue as he/she may deem fit.
- 9.6 The parties irrevocably agree that the decision in any proceedings hereunder:
 - 9.6.1 Will be final and binding on all of them;
 - 9.6.2 Will forthwith be carried in effect;
 - 9.6.3 May be made an order of any court of competent jurisdiction.
- 9.7 The provisions of this clause will continue to be binding on the parties notwithstanding any termination or cancellation of the agreement between the parties.
- 9.8 Notwithstanding the provisions of this clause, the parties agree that the College shall be entitled to institute legal proceedings against the Applicant/s or any of them and/or the Student out of any court of competent jurisdiction and the Applicant/s and/or Student consent and submit to the jurisdiction of the Cape of Good Hope Provincial Division of the High Court of South Africa in any dispute arising from or in connection with these conditions and/or the Student. Notwithstanding such submission, the College will be entitled to institute legal proceedings against the Applicant/s or any of them in any magistrate's court having jurisdiction notwithstanding that the amount of the claim may exceed the jurisdiction of that court, to which jurisdiction the Applicant/s or any of them, as the case may be, hereby consent.
- 9.9 Provisions of this clause shall apply *mutatis mutandis* in relation to any dispute or difference between the College on the one hand

and/or the Applicant/s or any of them and/or the Student on the other hand in respect of the rules, the Codes of Conduct, regulations, policies and procedures applicable from time to time to the College and/or the enforcement thereof.

10. **PLEDGE / CESSION**

- 10.1 The Applicant/s hereby agree to pledge the Debentures and all claims pursuant thereto, both future and present of whatsoever nature and from whatsoever causes arising, to the College as security for payment of any amount that may become due by the Applicant/s to the College or in respect of the Student to the College, regardless of the cause therefor;
- 10.2 The cession which is the subject matter of this agreement shall endure and be of force and effect until all amounts that may become due and payable by the Applicant/s in respect of the Student, regardless the nature thereof, have been paid;
- 10.3 In the event that the Applicant/s are not the registered and/or beneficial owners of the Debentures, the Applicant/s hereby warrant and undertake that they have the authority, on behalf of the registered and beneficial owner/s of the Debentures, to pledge and cede the Debentures as envisaged herein as security for payment of all amounts due or that may become due to the College in respect of the Student, regardless the nature thereof, and upon the terms and conditions contained herein.

11. **WARRANTY OF AUTHORITY**

Any person/s signing the Enrolment Application warrants that he/she has the authority to sign it on behalf of any person/s he/she purports to represent.

12. **VARIATION**

- 12.1 The College shall be entitled to vary the terms and conditions at any stage upon giving one Term's notice to the Applicant/s;
- 12.2 No variation of these conditions, which has the effect of releasing the Applicant/s and/or the Student from any of these obligations in terms hereof shall be binding on the College unless contained in a written document duly signed on behalf of the College.

13. **NON-WAIVER**

The College shall not be regarded as having waived or be precluded in any way from exercising any right by reason of the fact that it has at any time granted an extension of time or shown any indulgence of the Applicant/s and/or the Student or has failed to enforce or delayed in the enforcement of any right against the Applicant/s and/or the Student.

I/We hereby confirm that I/we have read and fully understand and accept the terms and conditions of this contract.

Signed at this day of 20.....

Signed: (Father)

(Mother)

(Guardian / Custodian)

(TO BE SIGNED BY BOTH PARENTS OR DULY APPOINTED GUARDIAN OR CUSTODIAN)

Signed on behalf of the College on this day of 20.....

Signed:

Authorised Signatory: Name: