



UNIVERSITY OF THE  
WITWATERSRAND,  
JOHANNESBURG

**DRAFT**

**CLEANING, HYGIENE, LANDSCAPE MAINTENANCE. PEST CONTROL AND WASTE  
MANAGEMENT SERVICES AGREEMENT**

Sterkfontein Caves Precinct

entered into between and by

**THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG**

and

**SERVICE PROVIDER DETAILS TO BE INSERTED**

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## 1 APPOINTMENT

The University appoints the Service Provider on a non-exclusive basis, to provide cleaning, hygiene, landscape maintenance, pest control, and waste management services at the Site(s) ("Services"/"Deliverables") described in Annexure B (Scope of Work). The Service Provider accepts the appointment and therefore the Parties agree to bind themselves to the terms and conditions contained in this Agreement.

## 2 STRUCTURE OF THE AGREEMENT

- 2.1 This Agreement consists of:
- 2.1.1 The Terms and Conditions;
- 2.1.2 Annexure A: Contract Data;
- 2.1.3 Annexure B: Scope of Work; and
- 2.1.4 Annexure C: Fees.
- 2.2 In the event of a conflict between the documents comprising this Agreement, such conflict will be resolved in accordance with the order of precedence (in descending order of priority) as follows:
- 2.2.1 In respect of all provisions (except those related to the Deliverables):
- 2.2.1.1 The Terms and Conditions;
- 2.2.1.2 Annexure B: Scope of Work;
- 2.2.1.3 Annexure C: Fees; and then
- 2.2.1.4 Annexure A: Contract Data.
- 2.2.2 In respect of the provisions detailing the Deliverables:
- 2.2.2.1 Annexure B: Scope of Work;
- 2.2.2.2 Annexure C: Fees;
- 2.2.2.3 The Terms and Conditions; and then
- 2.2.2.4 Annexure A: Contract Data.

## 3 INTERPRETATION OF THIS AGREEMENT

- 3.1 Any reference to any legislation is to such legislation as at the Signature Date and as amended, re-enacted, or substituted from time to time thereafter.
- 3.2 No provision of this Agreement constitutes a stipulation for the benefit of any person who is not a Party to this Agreement.
- 3.3 Any provisions of this Agreement which either expressly or by their nature extend beyond the expiration or termination of this Agreement will survive such expiration or termination.
- 3.4 The Parties agree that the rule of construction that the Agreement will be interpreted against the Party responsible for the drafting of the Agreement, will not apply.
- 3.5 The clause headings in this Agreement have been inserted for convenience only and will not be taken into account in its interpretation.
- 3.6 Whenever this Agreement provides for approvals, consents or expressions of satisfaction by any one of the Parties, that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction.
- 3.7 At all times, the University and its engagements, including that with the Service Provider as set out in

this Agreement, are subject to the Rules.

## 4 DEFINITIONS

In this Agreement the following words have the meanings set out below and derivative words will have corresponding meanings:

- 4.1 "Acceptance" or "Accepted" or "Accept" means, in respect of the Deliverables, confirmation in writing by the University that the agreed Acceptance Criteria have been satisfied;
- 4.2 "Acceptance Criteria" means the criteria specifically set forth in Annexure B (Scope of Work) in terms of which the Deliverables will be evaluated by the University for purposes of determining Acceptance;
- 4.3 "Acceptance Period" means in respect of any equipment, installation, or once-off Deliverable (but excluding ongoing Services), the period during which the University may inspect and verify compliance with the requirements of this Agreement. Unless otherwise agreed, the Acceptance Period shall be 10 (ten) Business Days from delivery or completion. Ongoing Services shall not be subject to an Acceptance Period but shall be continuously monitored in accordance as set out in Annexure B (Scope of Work);
- 4.4 "Acceptance Test Date" means the date or dates on which the Acceptance Tests must be conducted, as set out in the Annexures;
- 4.5 "Acceptance Testing" means the criteria and process of measurement, examination and/or such other activities as set out in Annexure B (Scope of Work) unless otherwise agreed by the Parties in writing;
- 4.6 "Ad hoc Services" means the Services/Deliverables not expressly included in the routine or scheduled scope of work but which may be required on an as-needed basis, and which will not occur frequently. Such services shall only be undertaken upon prior written approval by the University's authorised representative, strictly in accordance with the process prescribed in clause 9.3;
- 4.7 "Agreement" means collectively, the:
- 4.7.1 The Terms and Conditions;
- 4.7.2 Annexure A: Contract Data;
- 4.7.3 Annexure B: Scope of Work;
- 4.7.4 Annexure C: Fees; and
- 4.7.5 any other Annexures attached hereto;
- 4.8 "Annexures" means annexures to this Agreement;
- 4.9 "Background Intellectual Property" all Intellectual Property rights in existence before the Commencement Date, as well as Intellectual Property developed by a Party to this Agreement after its commencement and which does not fall within the scope of the definition of Foreground Intellectual Property;
- 4.10 "Business Day" means any day which is not a Saturday, Sunday, or official public holiday in the Republic of South Africa in terms of the Public Holidays Act 36 of 1994;
- 4.11 "Commencement Date" of this Agreement means the date specified in section 6 of Annexure A (Contract Data), notwithstanding Signature Date;

- 4.12 “**Commercially Reasonable Efforts**” means, with respect to the Deliverables, the reasonable efforts used by the Service Provider to deliver the Deliverables in terms of this Agreement, as expeditiously as possible. This excludes:
- 4.12.1 taking any actions that would, individually or in the aggregate, cause the University to incur costs, or suffer any other detriment, out of reasonable proportion to the benefits accruing in terms of this Agreement;
- 4.12.2 changing the Party’s business strategy;
- 4.12.3 disposing of any significant assets of the Party;
- 4.12.4 taking any action that would violate any law or order to which the Party is subject;
- 4.12.5 taking any action that would imperil the Party’s existence or solvency; or
- 4.12.6 initiating any litigation or any dispute resolution mechanism.
- 4.12.7 “**Confidential Information**” is information that:
- 4.12.7.1 relates to the Disclosing Party’s past, present or future research, development, business activities, products, services, technical knowledge, and personal information regarding any person; and
- 4.12.7.2 either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the other Party that it is claimed as confidential. (As used herein, the Party disclosing Confidential Information is referred to as the “Disclosing Party” and the Party receiving the Confidential Information is referred to as the “Receiving Party”);
- 4.13 “**Contract Data**” means Annexure A (Contract Data) setting out the specific data of this Agreement which is attached to the Terms and Conditions;
- 4.14 “**Counterfeit Goods**” means any material, component, part, assembly, sub-assembly, product, and any other item forming part of the Deliverables in which there is an indication by visual inspection, testing, or other information that it may be a copy or substitute made without legal right or authority or one whose material, performance, identity or characteristics have been misrepresented by the Service Provider, manufacturer or a supplier in the Service Providers supply chain;
- 4.15 “**CPI**” means the average annual rate of change (expressed as a percentage) in the Consumer Price Index for all metropolitan areas as published by Statistics South Africa (or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it), which annual change will be determined by comparing the most recently published index with the average index published over the 12 (twelve) months preceding the anniversary of the Commencement Date, and applying the lower of the 2 (two) compared indices;
- 4.16 “**Data Protection Legislation**” means the following legislation:
- 4.16.1 Protection of Personal Information Act 4 of 2013, as amended or substituted; and
- 4.16.2 such other legislation that is or may be applicable to the protection of Personal Information in South Africa;
- 4.17 “**Deliverable(s)**” means without limitation the Goods, and the Services, as the context may require, and anything incidental, ancillary, or complementary thereto, and as set out in detail in Annexure B (Scope of Work) and where relevant includes any Documentation supplied for the proper and effective use and/or implementation of the Deliverables;
- 4.18 “**Defect**” means any failure, omission or shortcoming in the performance of the Services/Deliverables by the Service Provider, including where:
- 4.18.1 the Services/Deliverables are not fit for the purpose for which they were procured and of suitable quality, on not provided on time and within budget;
- 4.18.2 non-compliance with Annexure B (Scope of Work);
- 4.18.3 scheduled Services/Deliverables are omitted, partially performed, inadequately performed or performed in an untimely manner;
- 4.18.4 the performance of the Services gives rise to, or reasonably may give rise to, a health, hygiene, safety, environmental or heritage-related risk;
- 4.18.5 the Services/Deliverables are performed using inappropriate materials, chemicals, equipment or methods, including those not approved for use in Heritage-Sensitive Areas; or
- 4.18.6 there is persistent or repeated failure to comply with Annexure B (Scope of Work), whether or not such failure has previously been remedied.
- 4.19 “**Documentation**” means the documentation, if any, required for the proper and effective use and/or implementation of the Deliverables;
- 4.20 “**Fees**” means the Service Provider’s list of fees, expenses, disbursements, rates, and prices (whichever is applicable) for the Services/Deliverables and which is attached to the Agreement as Annexure C (Fees);
- 4.21 “**Force Majeure Event**” means the result of an act of god, flood, drought, earthquake, or another natural phenomenon; war (declared or undeclared); fire; acts of terrorism; public disaster; governmental enactment, rule, or regulation; or any other cause beyond a Party’s reasonable control; excluding industrial action of whatever nature or cause (e.g. strikes, lockouts and similar);
- 4.22 “**Foreground Intellectual Property**” means Intellectual Property created or developed by a Party in the course and scope, as a result of, and/or for the purpose of this Agreement;
- 4.23 “**Goods**” means the fit-for-purpose goods described in Annexure B (Scope of Work) and all goods complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any Documentation supplied to aid the use of such goods;
- 4.24 “**Heritage-Sensitive Areas**” means any areas, structures, geological formations, or palaeontological or archaeological deposits within and/or at the Site(s), including the Sterkfontein Caves that are protected under applicable heritage legislation, including the National Heritage Resources Act, or are reasonably regarded as having archaeological, palaeontological, scientific, cultural, or historical significance. This includes, without limitation, fossil-bearing deposits, excavation and research zones,

- cave interiors, rock formations, museums, and all areas forming part of the Site(s), as well as any areas where the Services may pose a risk of damage, contamination, disturbance, or degradation to such heritage resources;
- 4.25 **“Information Technology System(s)”** means a Party’s information and communication technology systems and services, including but not limited to hardware, servers, software, network, infrastructure, and any transmissions emanating from or entering the aforementioned;
- 4.26 **“Intellectual Property”** means intellectual capital embodied in any and all technical and commercial information, whether registered or not, including techniques, specifications and formulae, know-how, systems and processes, methodologies, trade secrets, undisclosed inventions, patents, utility models, trademarks, designs, copyright and plant breeders’ rights;
- 4.27 **“Key Personnel”** means the Personnel who have the required and necessary skills, expertise, qualifications, knowledge, and experience and who are critical for the successful performance of the Deliverables, as named in section 9 of Annexure A (Contract Data);
- 4.28 **“NRSO”** means the National Register for Sex Offenders established in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), as amended;
- 4.29 **“OCM”** or **“OEM”** means the Original Component/Equipment Manufacturer;
- 4.30 **“Party”** or **“Parties”** means the University or the Service Provider individually and collectively, as the context dictates;
- 4.31 **“Payment Date”** is the date described in Annexure C;
- 4.32 **“Personal Information”** means all information relating to an identifiable natural or juristic person as defined in the Protection of Personal Information Act 4 of 2013;
- 4.33 **“Personnel”** of a Party includes employees, directors, partners, agents, consultants, associates, contractors, sub-contractors, or other representatives of a Party;
- 4.34 **“Precincts”** means any premises owned by or which fall under the management and control of the University and/or any part thereof;
- 4.35 **“Representative”** means the duly authorised person designated as such in section 10 of Annexure A (Contract Data);
- 4.36 **“Rules”** are the rules, regulations policies, procedures, practices and standing orders of the University, as amended from time to time;
- 4.37 **“Scope of Work”** means the detailed scope of work attached to this Agreement as Annexure B (Scope of Work);
- 4.38 **“Services”** means the fit-for-purpose services as described in Annexure B (Scope of Work) and all services complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any Documentation supplied to aid the use and/or implementation of such services;
- 4.39 **“Service Levels”** means the standards and levels of performance expected by the University from the Service Provider in fulfilment of this Agreement, as set out in more detail in Annexure B (Scope of Work);
- 4.40 **“Service Provider”** means the Party detailed in section 5 of Annexure A (Contract Data);
- 4.41 **“Service Provider Equipment”** means subject to clauses 9.1.3 and 28 all tools and equipment provided or used by the Service Provider in terms of this Agreement for purposes of providing the Services;
- 4.42 **“Signature Date”** means the date on which this Agreement is signed by the last Party to do so;
- 4.43 **“Site(s)”** refers to the Sterkfontein Caves precinct, including student accommodation, labs, the visitor centre, the museum, pedestrian routes, lawns, paved areas, roads, and surrounding landscape identified in Annexure B (Scope of Work), where applicable, for this Agreement;
- 4.44 **“SORMA”** means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), as amended, including any regulations issued under it;
- 4.45 **“Termination Date”** means the date specified in section 6 Annexure A (Contract Data);
- 4.46 **“Terms and Conditions”** means these terms and conditions contained in this document;
- 4.47 **“Temporary Relief Personnel”** means those employees of the Service Provider who are appointed by the Service Provider on a temporary basis in terms of this Agreement;
- 4.48 **“University”** means the University of the Witwatersrand, Johannesburg; a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997;
- 4.49 **“VAT”** means the value-added tax levied by the South African Revenue Services on the supply of goods and services in terms of the Value Added Tax Act 89 of 1991;
- 4.50 **“Vulnerable Persons”** means any of the following individuals:
- (a) a Child (a person under 18 years of age) or a person with a mental disability;
  - (b) a female under the age of 25 years who receives tuition, vocational training as part of her employment or resides in a building or structure at a higher education college, higher education institution or university college or any training institute.
  - (c) a person who is being cared for or sheltered in a facility that provides services to victims of crime;
  - (d) a person with a physical, intellectual, or sensory disability who receives community-based care and support services (other than from a family member), resides in a building, structure, or facility used primarily as a residence for such persons; or is cared for in a facility providing 24-hour care to persons with physical, intellectual, or sensory disabilities; or
  - (e) a person who is 60 years of age or older who receives community-based care and support services (other than from a family member), resides in a building, structure, or facility used primarily as a residence for such persons; or is

cared for in a facility providing 24-hour care.

Equipment, supplied by the Service Provider shall be held by the Service Provider.

**5 TERM**

5.1 This Agreement commences on the Commencement Date and terminates on the Termination Date unless terminated earlier as provided in this Agreement.

9.1.4 subject to clauses 10 and 11, assign Personnel who are sufficiently qualified and competent both in numbers and skill to provide the Deliverables and ensure the due and proper performance of its obligations under this Agreement;

5.2 Notwithstanding the provisions of clause 5.1 above, the University may terminate this Agreement on 1 (one) month's written notice to the Service Provider.

9.1.5 designate a Representative, who will be responsible for liaising with the University's Representative at all times in respect of the provision of the Deliverables and who will supervise the Personnel responsible for the delivery of the Deliverables;

**6 NATURE OF RELATIONSHIP**

6.1 The Service Provider will provide the Deliverables to the University as an independent contractor. Nothing contained in this Agreement will be construed as creating any relationship of agency, employment, partnership, joint venture or similar relationship between the University and the Service Provider.

9.1.6 do all that is reasonably necessary within the course and scope of the Agreement to prevent or minimise the risk of loss or damage to University property, including its Information Technology System, the University's reputation and injury to persons;

6.2 Neither Party will have the authority to, nor will it represent that it has the authority to obligate or bind the other in any manner whatsoever.

9.1.7 co-operate and consult with other suppliers of the University, should it be necessary for purposes of ensuring the delivery of the Services/Deliverables in a seamless manner;

6.3 The Service Provider specifically acknowledges and agrees that this Agreement does not constitute an undertaking by the University that it will procure minimum or any quantities and/or any guaranteed volumes of the Deliverables from the Service Provider under this Agreement.

9.1.8 without limiting any other section of the Agreement, the Service Provider shall be responsible for all costs and expenses required to repair, restore, or reinstate any buildings, grounds, equipment, or furnishings to its "as was" condition from any damage caused to the buildings, grounds, or other equipment and furnishings, in whole or in part, by the Service Provider's Personnel while performing its obligations in terms of this Agreement. The Service Provider shall immediately, and in any event within 24 (twenty-four) hours, report in writing the occurrence of any damage to the University's Representative;

**7 MANDATORY REPORTING**

The Parties acknowledge their obligations under SORMA. Each Party will ensure that its representatives who, in the course of their duties under this Agreement, have knowledge or a reasonable suspicion that a sexual offence has been committed against a vulnerable person, promptly report such knowledge or suspicion to the South African Police Service in accordance with SORMA.

**8 RESPONSIBILITIES OF THE UNIVERSITY**

8.1 The University will, subject to the Rules:

9.2 The Service Provider will (and will ensure the same from its Personnel) at all times:

8.1.1 provide the Service Provider and its Personnel with such access to the Site(s), and/or Precincts and/or Information Technology Systems (where applicable) as may be reasonably necessary to allow the Service Provider to fulfil its obligations in terms of this Agreement;

9.2.1 act in accordance with the lawful instructions of the University;

8.1.2 receive information from the Service Provider; and

9.2.2 display in its relationship and interaction with the University, the utmost of good faith;

8.1.3 pay the Service Provider as provided for in clause 25 of this Agreement.

9.2.3 not exceed the express or implied limits of the authority in terms of this Agreement;

**9 RESPONSIBILITIES OF THE SERVICE PROVIDER**

9.1 The Service Provider must:

9.2.4 not perform its responsibilities in terms of this Agreement in a manner that would cause the University to be in violation of any applicable laws;

9.1.1 deliver the Services/Deliverables which are fit for the purpose required by the University on time, within budget, with reasonable care and skill, and in accordance with Annexure B (Scope of Work);

9.2.5 comply with the Rules;

9.1.2 without limiting the generality of this clause, the Service Provider shall be responsible for purchasing, holding and maintaining the Goods, and Service Provider Equipment in sufficient quantities to deliver the Services/Deliverables in terms of this Agreement;

9.2.6 provide the Deliverables without causing any annoyance, discomfort, interruption or disturbance to other users of the Site(s) and/or Precincts, including the University's students and staff and will not prevent them from carrying out their normal activities, including but not limited to the academic processes such as lectures, study, research, conducting practical classes or writing examinations;

9.1.3 provide the University, within 5 (five) Business Days of the Commencement Date, with a detailed list of the Service Provider's Equipment together with their respective values and confirmation of insurance cover in respect of such Service Provider Equipment. Risk and title to the Service Provider's

9.2.7 inform the University in writing of every event, which could result in a position where the Service Provider is unable to fulfil its obligations in terms of this Agreement;

9.2.8 use Commercially Reasonable Efforts not to engage in activities which would detract it from the proper performance of its duties in terms of this

- Agreement; and
- 9.2.9 ensure that it avoids any appointment or circumstances which may reasonably result in any conflict between its interests and those of the University.
- 9.3 **Ad Hoc Services**
- 9.3.1 All Ad Hoc Services shall:
- 9.3.1.1 be subject to budget availability and approval in accordance with the Rules;
- 9.3.1.2 be clearly defined in a written request issued by the University, specifying the nature and scope of the Services, the location at the Site(s), and the required timeframe for performance;
- 9.3.1.3 be priced in accordance with Annexure C: Fees on a quotation submitted by the Service Provider and approved in writing by the University prior to commencement.
- 9.3.2 The Service Provider shall not commence any Ad Hoc Services unless and until :
- 9.3.2.1 t the quotation has been approved in writing by the University confirming approval of the scope, timeframe, and applicable fees; and
- 9.3.3 a purchase order (PO) has been issued by the University. **Ordering & Reporting:**
- 9.3.4 the Service Provider must have ordering procedures that are efficient and user-friendly and comply with the University's procurement procedures and policies;
- 9.3.5 the Service Provider must frequently consult with the University's Representative in determining replenishment quantities and stock holding;
- 9.3.6 the Service Provider must provide a catalogue containing all Goods, with product descriptions, detailed icons/pictures, and their recommended usage;
- 9.3.7 the Service Provider must generate monthly and annual activity reports reflecting the Goods ordered and expenses incurred by the University;
- 9.4 **Inventory:**
- 9.4.1 the Service Provider must store and inventory sufficient quantities of all occurring products and supplies at its own facilities;
- 9.4.2 if a proposed product does not have the availability requested or becomes unavailable, the Service Provider must notify the University in advance or immediately;
- 9.4.3 the University will place monthly orders and will expect full delivery within 5 (five) business days of placing the order;
- 9.4.4 Ad hoc orders and lesser quantities are expected to be delivered within 48 (forty-eight) hours of ordering.
- 9.5 **Heritage-Sensitive Areas**
- 9.5.1 For purposes of this Agreement, "**Heritage Protection Protocols**" includes but is not limited to:
- 9.5.1.1 all applicable laws, all directives, permits, approvals, guidelines, restrictions, and conditions issued by any competent authority, including but not limited to the South African Heritage Resources Agency or relevant provincial heritage resources authorities;
- 9.5.1.2 Site-specific protocols, including access controls, supervision requirements, and controls relating to noise, vibration, water use, waste management, and spill prevention, as well as written operational instructions issued by the University governing the Services performed within or in proximity to Heritage-Sensitive Areas, including the Sterkfontein Caves;
- 9.5.1.3 requirements relating to approved method statements for Services performed within or near Heritage-Sensitive Areas; and
- 9.5.1.4 prohibition of any materials or activities that pose a risk to heritage resources.
- 9.5.2 The Service Provider shall ensure that all Services performed within or near any Heritage-Sensitive Areas are carried out strictly in accordance with the Heritage Protection Protocols and, where applicable, with the prior written approval of the University in accordance with this Agreement.
- 9.5.3 The Service Provider shall not undertake, permit, or cause any activity that may damage, contaminate, disturb, or adversely affect any Heritage-Sensitive Areas, including through the use of inappropriate chemicals, materials, equipment, pest-control measures, waste-handling practices, or vegetation-removal methods.
- 9.5.4 Without limiting clause 9.5.3 or any other obligations of the Service Provider under this Agreement, the Service Provider shall exercise a high degree of skill, care, and diligence in performing all Services within or near Heritage-Sensitive Areas, so as to preserve the integrity, condition, and stability of such areas.
- 9.5.5 The Service Provider shall:
- 9.5.5.1 use only non-abrasive, non-corrosive, and heritage-appropriate materials, methods, and equipment; and
- 9.5.5.2 not undertake any specialised cleaning or higher-risk activity without the University's prior written approval of the relevant method statements.
- 9.5.6 The Service Provider shall ensure that all Personnel assigned to work in or near Heritage-Sensitive Areas receive appropriate heritage-awareness and site-specific training prior to commencing work in such areas.
- 9.5.7 The Service Provider shall immediately report to the University any incident, damage, deterioration, or risk affecting Heritage-Sensitive Areas.
- 9.5.8 The Service Provider acknowledges the irreplaceable nature of Heritage-Sensitive Areas. Any failure to comply with this clause shall constitute a material breach of this Agreement and a failure to meet the required service standards.
- 10 PERSONNEL**
- 10.1 The Parties will each nominate a Representative responsible for the overall management, execution, and oversight of this Agreement, who will:
- 10.1.1 on reasonable notice, consult with each other on matters relating to the Agreement;

10.1.2	engage with each other to ensure that day-to-day decisions and approvals with respect to the Agreement are made timeously;		others include, but are not limited to, section 29 of the BCEA. Copies of such contracts of employment must be provided to the University on request, and
10.1.3	oversee the contract management of the Agreement including oversight of the activities and responsibilities of the Personnel and Key Personnel;	10.8.3.2	ensure that contracts of employment expressly state that the Temporary Relief Personnel acknowledge and accept that they are not employees of the University.
10.1.4	accept and acknowledge all notices and correspondence relating to the Agreement; and	10.8.4	The contract of employment between the Service Provider and the Temporary Relief Personnel must stipulate that the Temporary Relief Personnel acknowledge and accept that:
10.1.5	ensure that any administrative or compliance-related matters required in terms of this Agreement are carried out or completed timeously.		
10.2	The Service Provider must inform the University of the names of its Representative, Personnel and/or Key Personnel authorised to provide the Deliverables within 2 (two) Business Days of the Signature Date. The University may object on reasonable grounds to any such person assigned. Upon receipt of such objection, the Service Provider must immediately assign alternative Personnel to act on its behalf.	10.8.4.1	their services are required based on the University's operational requirements on an ad hoc temporary, and flexible basis, and that continuity of placement with the University is therefore not guaranteed;
10.3	The Service Provider acknowledges that the provision of Key Personnel and a Representative by the Service Provider, as specified in the Agreement, is critical to the Agreement.	10.8.4.2	acknowledge that they will be subject to the general health and safety, security and operational rules binding the University's Employees;
10.4	If any of the Service Provider's Key Personnel are unavailable at any time, the Service Provider may provide a reasonable substitute, provided the Parties agree that such a substitute is suitable for the intended position.	10.8.4.3	acknowledge that they must notify either the University or the Service Provider's representatives of any unsafe working environment or unsafe equipment;
10.5	The University will not be liable to the Service Provider for any delay or failure to provide the Deliverables either at all or in a timely manner, where such delay or failure is attributable to a breach by the Service Provider resulting from non-fulfilment by the Service Provider of its obligations under this clause 10.	10.8.4.4	acknowledge that they will abide by the Rules, insofar as they may be applicable to them; and
10.6	The Service Provider's Personnel are contracted to the Service Provider. Nothing contained in this Agreement may be construed as constituting any relationship of employment between the University and the Service Provider's Personnel.	10.8.4.5	acknowledge that their placement at the University is subject to the University's discretion.
10.7	The Service Provider accepts full responsibility for its Personnel's actions and will ensure that such actions at no time place the Personnel, Heritage-Sensitive Areas, or property, including the Information Technology Systems, and the reputation of the University in danger.	10.8.5	The Service Provider agrees that it will not assign any Temporary Relief Personnel to the University for a period longer than 3 (three) months unless:
10.8	<b><u>Temporary Relief Personnel</u></b>	10.8.5.1	the nature of the work for which the Temporary Relief Personnel is employed is of a limited or definite duration; and
10.8.1	The Service Provider may provide Temporary Relief Personnel by provisionally transferring Personnel from another site in the event of labour unrest, seasonal workload peaks, or to replace Personnel on training, leave or sick leave, provided that the University is given reasonable written notice of this. The Service Provider will bear all costs related to the provision of Temporary Relief Personnel.	10.8.5.2	the placement of any Temporary Relief Personnel on the University's Premises for a period longer than 3 (three) months may only be justified for the following reasons:
10.8.2	The Service Provider undertakes and agrees that it will not hold the Temporary Relief Personnel out as employees of the University.	10.8.5.2.1	the Temporary Relief Personnel is replacing a University Employee who is temporarily absent from work;
10.8.3	The Service Provider must:	10.8.5.2.2	the Temporary Relief Personnel is employed on account of a temporary increase in the volume of work which is not expected to endure beyond a period of 12 (twelve) months;
10.8.3.1	conclude contracts of employment with Temporary Relief Personnel, which conforms with all the applicable laws, which among	10.8.5.2.3	the Temporary Relief Personnel is employed to work exclusively on a specific Services that has a limited or defined duration;
		10.8.5.2.4	the Temporary Relief Personnel is appointed to perform seasonal work; or
		10.8.5.2.5	the Temporary Relief Personnel is appointed in a position which is funded by an external source for a limited period of time.
		10.8.6	The Service Provider undertakes to permit the University access at all reasonable times to the records and documents (including payroll information) relating to the employment and payment of Temporary Relief Personnel provided

- that such Personnel consents to such access. Such access shall be for the University to satisfy itself that the Service Provider is, *inter alia*, meeting its obligations to such Temporary Relief Personnel.
- 10.8.7 Any termination of this Agreement, or of the Services rendered by any Temporary Relief Personnel, for reason whatsoever shall not constitute an unfair dismissal by the University of such Personnel and nor shall the Service Provider or any Temporary Relief Personnel be entitled to the payment by the University as a result of redundancy or for any other compensatory payments which may be applicable on termination of this Agreement or of the contract of employment of the Temporary Relief Personnel by the Service Provider.
- 10.8.8 The Service Provider hereby indemnifies and holds the University harmless from any and all losses, claims, damages, costs, fines and expenses of whatsoever nature arising from or in connection with:
- 10.8.8.1 any claim or action arising from the Service Provider's failure to observe or perform any duties or obligations to be observed or performed by the Service Provider in terms of clauses 10.8 and 11;
- 10.8.8.2 any claims brought by any Temporary Relief Personnel against the University, including actions instituted against the University in terms of the Labour Relations Act 66 of 1995, as amended("LRA");
- 10.8.8.3 any contravention by the Service Provider of section 198(4) of the LRA, which includes a contravention of:
- 10.8.8.4 a collective agreement concluded at a bargaining council that regulates terms and conditions of employment;
- 10.8.8.5 a binding arbitration award that regulates terms and conditions of employment;
- 10.8.8.6 the BCEA; or
- 10.8.8.7 a determination made in terms of the Wage Act, 1957; and
- 10.8.8.8 the Service Provider's failure to deduct Pay-As-You-Earn tax or fails to deduct sufficient Pay-As-You-Earn tax and is not absolved from liability by the Commissioner of the South African Revenue Service from payment of such tax, including all penalties and fines payable to the Commissioner of the South African Revenue Service in respect thereof.
- 10.8.9 The Service Provider hereby indemnifies the University against any legal costs including professional charges calculated on an attorney and client basis, incurred by the University and associated with defending any action, complaint, dispute, or claim lodged by Temporary Relief Personnel and in the event of an award or determination being made against the University, the Service Provider shall pay any amount ordered to be paid by the University.
- 11 VETTING AND THE NATIONAL REGISTER FOR SEX OFFENDERS**
- 11.1 before assigning any Personnel to a role involving contact with Vulnerable Persons in connection with the Services, the Service Provider will, at its own cost,
- conduct appropriate pre-engagement vetting and NRSO status checks in accordance with SORMA, and will implement ongoing monitoring at intervals reasonably commensurate with the risk profile of the role.
- 11.2 the Service Provider will ensure that no personnel who are required, pursuant to this Agreement, to work with or have access to Vulnerable Persons, are persons whose details appear on the NRSO in terms of SORMA.
- 12 SUB-CONTRACTING**
- 12.1 The Service Provider acknowledges that the University prefers to contract directly with all service providers and that the Service Provider was appointed on the basis of its own skills, expertise, capacity and resources.
- 12.2 Subject always to the prior written consent of the University in each instance, the Service Provider may subcontract only those discrete components of the Services that constitute specialised work which the Service Provider is unable to perform in-house.
- 12.3 Any request for consent to subcontract must be submitted to the University in advance and in writing, together with:
- 12.3.1 a detailed motivation explaining why the work cannot reasonably be performed in-house;
- 12.3.2 full details of the proposed subcontractor, including qualifications, experience and capacity;
- 12.3.3 confirmation of compliance with all Personnel, vetting and statutory requirements; and
- 12.3.4 such additional information as the University may reasonably require.
- 12.4 The University may, in its sole discretion, grant or refuse consent to any proposed subcontracting, impose conditions on such consent, or require alternative arrangements for the performance of the relevant Services.
- 12.5 Any consent granted by the University:
- 12.5.1 shall not constitute a delegation, assignment or novation of the Service Provider's obligations;
- 12.5.2 shall not limit or reduce the Service Provider's liability or responsibility under this Agreement; and
- 12.5.3 shall not create any contractual relationship between the University and any subcontractor.
- 12.6 If the University consents to the Service Provider entering into a sub-contract in terms of clause 12.5 the provisions of this Agreement will be applicable *mutatis mutandis* to the contract between the Service Provider and such sub-contractor.
- 12.7 Without limitation, any Services performed by a subcontractor shall be deemed to constitute "Services" for purposes of this Agreement and shall be subject to, *inter alia*:
- 12.7.1 the Service Levels, Acceptance Criteria and performance standards set out in Annexure B;
- 12.7.2 the provisions relating to Acceptance, deficiencies in performance, rectification and remedies;
- 12.7.3 all penalties, fee adjustments and withholding mechanisms; and
- 12.7.4 the University's rights to withhold payment, procure replacement services and recover costs.

- 12.8 The Service Provider will not engage any subcontractor for work involving contact with Vulnerable Persons without ensuring the subcontractor is bound by written obligations no less protective than those contained in this Agreement, including vetting in compliance with SORMA, NRSO screening and mandatory reporting.
- 12.9 The Service Provider must ensure that any guarantees, warranties, or other undertakings given by a sub-contractor are transferable to the University and warrants that such guarantees will, on notice from the University, be transferred to the University.
- 12.10 The Service Provider must ensure that each sub-contractor complies with all the terms of this Agreement as if it were the Service Provider.
- 12.11 No subcontractor may further subcontract any portion of the Services without the prior written consent of the University, which consent may be withheld in the University's sole discretion.
- 12.12 The Service Provider hereby warrants and undertakes that its sub-contractors will comply with and will not breach any obligations of the Service Provider in terms of the Agreement and that all the provisions of the Agreement relating to any sub-contractor will be expressly reflected in the sub-contracts.
- 12.13 In the event of the Service Provider utilising the services of a sub-contractor, the University will make payment directly to the Service Provider as per clause 25 and the Service Provider agrees that liability and responsibility for any payment due to the sub-contractor will lie with the Service Provider and no third party will be entitled to seek payment directly from the University for Deliverables to the University.
- 12.14 The Service Provider will stand as surety and co-principal debtor with any of its appointed sub-contractors for the due fulfilment of its obligations.
- 12.15 Any breach by the sub-contractor of the terms of this Agreement will be deemed to be a breach by the Service Provider.
- 13 WARRANTIES**
- 13.1 The persons signing this Agreement on behalf of a Party expressly warrant their authority to do so.
- 13.2 The Service Provider warrants and represents that:
- 13.2.1 it holds the absolute legal and beneficial title in and to the Deliverables and has the unfettered right to supply and provide them and to pass unencumbered right and/or title to University;
- 13.2.2 it has the necessary skills, qualifications expertise, financial resources, Personnel, capacity, knowledge, experience, resources, equipment, and infrastructure to provide the Deliverables as required by the Agreement;
- 13.2.3 it acknowledges and understands the heritage, archaeological, palaeontological and scientific significance of the Site(s), including the Heritage-Sensitive Areas as defined in this Agreement;
- 13.2.4 it has the requisite expertise, systems, procedures, and appropriately trained Personnel to perform the Services within or near Heritage-Sensitive Areas in a manner that safeguards such areas from damage, contamination, or disturbance;
- 13.2.5 it shall at all times comply with all applicable heritage legislation and the Heritage Protection Protocols, and with any lawful instructions issued in writing by the University in relation thereto;
- 13.2.6 it will not knowingly or negligently engage in any act or omission which may adversely affect the integrity, condition, or preservation of any Heritage-Sensitive Area;
- 13.2.7 it is a member of all professional and other bodies as may be required by applicable legislation and/or relevant industry regulations pertaining to its business and such membership is current and valid and will be maintained for the duration of the Agreement;
- 13.2.8 it holds, and will hold throughout this Agreement, all licences, certificates, permits, consents, approvals, and authorities required to perform its obligations pursuant to this Agreement;
- 13.2.9 in fulfilling its obligations under this Agreement, it will not infringe the intellectual property rights of any third party;
- 13.2.10 the University will receive the full benefit from OCM/OEM warranties for the Deliverables, including support and maintenance beyond this Agreement's duration. The Service Provider warrant that it has the authority to provide these warranties on behalf of the OCM/OEM and agrees to obtain and/or transfer any requested OCM/OEM warranties for the University;
- 13.2.11 it will comply with all applicable legislation in performing its obligations pursuant to this Agreement, including but not limited to:
- 13.2.11.1 the Compensation for Occupational Injuries and Diseases Act 140 of 1993 ("COIDA"). The Service Provider will, upon request by the University, produce written proof of its registration and good standing with the Compensation Commissioner, as defined in the COIDA;
- 13.2.11.2 the Occupational Health and Safety Act 85 of 1993 ("OHSA"). The Service Provider will in terms of section 37(2) of the OHSA, be deemed to be an employer in its own right with duties prescribed in the OHSA and undertakes to procure that all work will be performed, and all equipment will be used in accordance with the provisions of the OHSA and any Regulations issued in terms of the OHSA. It is recorded that the Service Provider's Chief Executive Officer (or equivalent officer) accepts the duties and responsibilities set out in section 16 of the OHSA;
- 13.2.11.3 the Basic Conditions of Employment Act 75 of 1997 ("BCEA");
- 13.2.11.4 the Labour Relations Act 66 of 1995 ("LRA");
- 13.2.11.5 the Data Protection Legislation; and
- 13.2.11.6 all taxation legislation in respect of any taxes and levies which the government of the Republic of South Africa or any other authority may from time to time impose or increase. Where applicable, unless the Service Provider can provide the University, on reasonable request by the University, with satisfactory proof that it is not an employee or personal service provider, as defined in the Fourth

<p>Schedule to the Income Tax Act 58 of 1962, the University may withhold employee's tax from the remuneration payable by the University to the Service Provider in terms of this Agreement in accordance with the rates prescribed by the Income Tax Act at the entire risk and cost of the Service Provider. The Service Provider must immediately, and in any event, before accepting any payments from the University, notify the University of any change of fact or circumstance that affects or may affect the University's liability to deduct employees' tax from payments made in terms of the Income Tax Act. For these purposes "taxation" includes SITE and PAYE, VAT, all other forms of duties or taxation, taxation in respect of any assessment of taxation and any penalties or interest;</p> <p>13.2.11.7 the National Heritage Resources Act 25 of 1999 ("NHRA"), where applicable;</p> <p>13.2.11.8 any applicable provincial or local heritage legislation, regulations, by-laws, and guidelines;</p> <p>13.2.12 it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;</p> <p>13.2.13 it has full power and authority to accept its appointment as set out in clause 1 and perform its obligations pursuant to this Agreement;</p> <p>13.2.14 it is and must remain throughout the duration of the Agreement, the employer of all individuals who may work for the Service Provider in providing the Deliverables, and the Service Provider will be solely responsible for the remuneration, insurance, and other obligations in respect of its Personnel.</p> <p>13.2.15 it will comply with all applicable mandatory reporting obligations under SORMA;</p> <p>13.2.16 it has and will maintain appropriate policies, procedures, and controls to ensure compliance with SORMA; and</p> <p>13.2.17 no Personnel assigned to perform the Services as set out in this Agreement, is listed on the National Register for Sex Offenders;</p> <p>13.2.18 that it will use Commercially Reasonable Efforts:</p> <p>13.2.18.1 to ensure that no viruses or similar items are coded or introduced into the systems or University Information Technology Systems used to provide the Services;</p> <p>13.2.18.2 not to introduce or code any viruses or similar items into any University Information Technology Systems or Deliverables.</p> <p>13.3 If a virus or similar item is found and the presence of same is due to the Service Provider's reckless or negligent act or omission, the Service Provider must reduce the effects of the virus or similar item and, if the virus or similar item causes loss of operational efficiency or loss of data, the Service Provider must mitigate and restore such losses within 2 (two) Business Days. Any work required under this clause 13.2.18 will be considered part of the Services and the Service Provider must perform such work without adjustment to the Fees.</p> <p>13.4 A breach of any of the undertakings and/or warranties as set out in this Agreement will be deemed to be a material breach of the Agreement entitling the</p>	<p>University to, subject to the provisions of clause 26, terminate the Agreement. A termination under clause 13 will be without prejudice to any of the University's rights.</p> <p>13.5 The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Deliverables,</p> <p><b>14 CONTRACT MANAGEMENT</b></p> <p>The Parties agree that the contract management protocol for this Agreement is set out in Annexure B (Scope of Work).</p> <p><b>15 ACCEPTANCE</b></p> <p>15.1 Where applicable, the University has the right to inspect the Deliverables prior to Accepting the Deliverables.</p> <p>15.2 It is specifically recorded that the Parties intend for each Deliverable to undergo Acceptance Testing, based on the Acceptance Criteria, as set out in Annexure B (Scope of Work).</p> <p>15.3 The Service Provider will at its cost provide the University with such materials and facilities reasonably necessary to conduct the Acceptance Testing.</p> <p>15.4 In the event that the Service Provider unreasonably withholds or delays any Acceptance Testing procedures, the University will have the exclusive right, but not the obligation, without prejudice to any of the University's rights, to cancel this Agreement or claim damages, in order to safeguard its interests and protect its reputation.</p> <p><b>16 DEFICIENCIES IN PERFORMANCE</b></p> <p>16.1 The University shall, upon becoming aware of any Defect in the performance of the Services/Deliverables in accordance with this Agreement, including Annexure B (Scope of Work), notify the Service Provider in writing:</p> <p>16.1.1 immediately or within 24 (twenty-four) hours in the case of operational failures requiring urgent attention, including but not limited to missed cleaning schedules, uncollected refuse, or overflowing bins; and</p> <p>16.1.2 as soon as reasonably practicable, but in any event within 5 (five) Business Days in respect of all other failures.</p> <p>16.2 Failure by the University to notify the Service Provider within the timeframes contemplated in clause 16.1 shall not relieve the Service Provider of its obligations under this Agreement, nor prejudice any rights or remedies available to the University.</p> <p>16.3 Upon receipt of a notice in terms of clause 16.1, or upon otherwise becoming aware of a Defect, the Service Provider shall at its own cost and without delay:</p> <p>16.3.1 immediately and in any event 24 (twenty-four) hours where the Defect relates to hygiene, sanitation, waste management, pest control, safety, environmental risk, Heritage-Sensitive Areas, or materially disrupts the University's operations; or</p> <p>16.3.2 within 48 (forty-eight) hours, or such shorter period as the University may reasonably require, in respect of all other Defects, unless otherwise agreed in writing.</p> <p>16.4 Rectification shall include, where applicable and</p>
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	without limitation:		degradation of overall service standards.
16.4.1	re-performance of the affected Services;	16.8	The rights of the University under this clause 16, are in addition to, and shall not limit, any other rights or remedies available under this Agreement or at law, including the right to terminate for material or persistent breach.
16.4.2	make-good cleaning and deep cleaning;		
16.4.3	disinfection, decontamination and odour control;		
16.4.4	removal, collection, and lawful disposal of waste;		
16.4.5	sanitation of affected areas;	<b>17</b>	<b>RISK AND TITLE</b>
16.4.6	implementation of pest and vector control measures;		Without prejudice to rights of rejection under this Agreement and subject to clause 13, ownership of the Deliverables, including the associated risks, will transfer to the University upon Acceptance and full payment by the University. The University will become the legal owner of the Deliverables upon such transfer.
16.4.7	cleaning and maintenance of Heritage-Sensitive Areas in accordance with the Heritage Protection Protocols;	<b>18</b>	<b>UNIVERSITY PRECINCTS AND PROPERTY</b>
16.4.8	grounds, garden, and turf maintenance, including replanting, soil rehabilitation, and irrigation system adjustments where required;	18.1	All Personnel, guests, invitees, or any other persons acting on behalf of the Service Provider may not without prior written consent of the University be permitted access to the Site(s) and/or Precincts. Any access granted by the University shall be solely for the purpose of fulfilling the Service Provider's obligations under the Agreement. The Service Provider acknowledges and accepts that access granted by the University in terms of this clause will be limited to the purpose stated above and for no other purpose and for no other purpose.
16.4.9	replenishment of consumables; and		
16.4.10	any additional measures required to restore the affected area or Services/Deliverables to the standards required under this Agreement.	18.2	Whenever any of the Service Provider, its Personnel or any person acting on its behalf are present on the Site(s) and/or Precincts the Service Provider will ensure that such person(s) comply with all applicable Rules including but not limited to:
16.5	If the Service Provider:		
16.5.1	fails to rectify the Defect within the required timeframe specified in clause 16.1; or	18.2.1	the carrying of weapons, which is strictly prohibited;
16.5.2	repeatedly commits the same or similar Defect; or	18.2.2	the wearing of identification tags and the possession and use of access cards, which is required at all times whilst on the Site(s) and/or Precincts;
16.5.3	commits a Defect that poses a health, safety, environmental, heritage, or reputational risk;	18.2.3	occupational health, safety, and emergencies practices and protocols;
	then University may, without prejudice to any other rights or remedies:	18.2.4	the security of the Site(s) and/or Precincts and the protection of persons and property thereon;
16.5.4	require the Service Provider to provide the University with a refund in respect of any non-compliant or defective Services/Deliverables that are not fit for the purpose for which they were procured;	18.2.5	the driving and parking of vehicles on or about the Site(s) and/or Precincts;
16.5.5	procure replacement or remedial Services from a third party at the Service Provider's cost;	18.2.6	the utilisation of the University's amenities and facilities;
16.5.6	apply penalties in accordance with this Agreement;	18.2.7	the prohibition or restriction of activities and practices which are actually or potentially detrimental to the interests of the University;
16.5.7	withhold payment in respect of the affected or non-compliant Services/Deliverables;	18.2.8	any reasonable instructions received from the University; and
16.5.8	take such immediate remedial action as may be necessary in urgent or emergency circumstances, at the Service Provider's cost;	18.2.9	any and all other applicable requirements prescribed by the University from time to time.
16.5.9	treat such failure as a material breach of this Agreement; and/or	18.3	Where applicable, the Service Provider will pay to the University any charges levied by the University for the use or purchase of access cards and vehicle parking permits.
16.5.10	enforce the provisions of clause 26,	18.4	The University may require the Service Provider to effect the immediate removal from the Site(s) and/or Precincts of any Personnel of the Service Provider if the University on reasonable grounds deems it in the best interests of the University that such person is removed. The Service Provider will ensure that such person does not return to the Site(s) and/or Precincts. Removal by the Service Provider of such person(s)
16.6	The Service Provider shall be responsible for all costs, losses, expenses and damages arising out of or in connection with any Defect, including costs incurred by the University in engaging alternative service providers, additional supervision, inspections, or compliance measures.		
16.7	Unless directed otherwise by the University, the Service Provider shall:		
16.7.1	continue to perform all unaffected Services without interruption; and		
16.7.2	at no additional cost to the University, allocate sufficient resources, including additional Personnel or equipment where necessary, to ensure that the rectification of any Defect does not result in any		

- will not be a ground for any relaxation/waiver of the Service Provider's obligations under the Agreement.
- 18.5 The University reserves the right, at any given time and without prior warning, to search any or all of the Service Provider's movable property which includes but is not limited to vehicles, baggage and containers entering or exiting the Site(s) and/or Precincts.
- 18.6 No gatherings by the Service Provider's Personnel will be allowed in the Site(s) and/or Precincts.
- 18.7 The Service Provider agrees that it will not remove any property of whatever nature from the Site(s) and/or Precincts without the prior written permission of the University.
- 18.8 All right and title in any plant, equipment, tools, appliances or other property and items that the University provides to the Service Provider to enable the Service Provider to fulfil its obligations in terms of this Agreement remains the University's property and must only be used for the purposes of fulfilling the Service Provider's obligations. Upon termination of this Agreement, the Service Provider undertakes to return any plant, equipment, tools, appliances or other property and items utilised by it to fulfil its obligations in terms of this Agreement, to the University.
- 18.9 The Service Provider agrees at all times to keep the University's property in good order and condition, subject, in certain specified cases, to fair wear and tear.
- 18.10 The Service Provider acknowledges and agrees that it is responsible and must compensate the University for any loss or damage to the University's property by the Service Provider, its Personnel, its sub-contractors or any other third party acting on behalf of the Service Provider.
- 19 DOCUMENTATION**
- 19.1 The Service Provider will provide the University with the Documentation required in order to enable the University to understand, use and operate the Deliverables (including but not limited to installation, commissioning, operation, and maintenance) and all revisions and updates to such information, from time to time.
- 19.2 The University must have the right to copy, reproduce and generally use the Documentation for the purpose as set out in this Agreement and the implementation, use and operation of the Deliverables.
- 19.3 The right to copy, reproduce and use the Documentation referred to in clause 19.2 will also extend to the University's sub-contractors and third-party suppliers provided that such use is required for the purposes of providing services to the University.
- 19.4 The Service Provider warrants that such reproduction and use of the Documentation will not infringe any of its or any third party's intellectual property rights.
- 20 CONFIDENTIALITY**
- 20.1 The Parties acknowledge that in terms of this Agreement, they may have access to each other's Confidential Information. Each of the Parties agree that neither it nor any of its Personnel will at any time disclose or use, directly or indirectly, any Confidential Information of the other Party unless the Receiving Party first obtains written consent from the Disclosing Party or unless required by law or the lawful order of a court or governmental agency to do so. In this event, the Receiving Party will immediately give written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other remedy from the court or governmental agency.
- 20.2 Each of the Parties will with respect to the Confidential Information:
- 20.2.1 will ensure that all reasonable security measures, and at least the same steps that it takes for the purposes of protecting its own proprietary and Confidential Information, are taken in order to safeguard the other Party's proprietary and Confidential Information from unauthorised access or use;
- 20.2.2 inform its Personnel of the confidentiality restraint set out in this clause 20 and ensure that they are subject to the same confidentiality undertaking;
- 20.2.3 restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information in order to provide the Deliverables;
- 20.2.4 ensure that its Personnel exercise care appropriate for the protection of the Confidential Information;
- 20.2.5 upon request by the Disclosing Party promptly deliver any and all records containing Confidential Information which is in the possession or control of the Recipient, and its Personnel.
- 20.3 Except as expressly provided to the contrary elsewhere in this Agreement, the Parties will not acquire any proprietary or any other rights to any of the other Party's Confidential Information.
- 21 INTELLECTUAL PROPERTY**
- 21.1 The ownership of rights in and to all Background Intellectual Property will be and remains unaffected by this Agreement.
- 21.2 The University grants the Service Provider a non-exclusive, non-transferable, revocable, royalty-free licence for the duration of this Agreement to use the University's Background Intellectual Property solely to the extent necessary to enable the Service Provider to comply with its obligations hereunder.
- 21.3 Foreground Intellectual Property in the Deliverables, including but not limited to all specific documentation, manuals, designs, reports and plans specifically created or developed by the Service Provider in the course and scope of this Agreement is owned by the University.
- 21.4 Unless otherwise agreed, where such Foreground Intellectual Property incorporates the Service Provider's Background Intellectual Property, the Service Provider hereby grants to the University (including its third-party service providers) a royalty-free, perpetual, non-exclusive licence to perform any lawful act, including the right of use of the Service Provider's Background Intellectual Property.
- 21.5 The Service Provider agrees to execute any documents or take any other actions as may reasonably be necessary, or as the University may reasonably request in writing, to perfect the University's ownership of the Foreground Intellectual Property.
- 21.6 Any sub-contract the Service Provider enters into in relation to this Agreement must contain a condition that the sub-contractor agrees to assign to the University all rights in any Foreground Intellectual

- Property created by it for the purposes of this Agreement.
- 21.7 The Service Provider will not use the University's names, trademarks, logos or other Intellectual Property in publicity releases, publications, advertising materials or in any other manner, without the prior written consent of the University in each instance.
- 21.8 The Service Provider will not use, register, or attempt to register any trademarks, company, business or trading names or domain names which are identical, similar to or incorporate the University name, trademarks, and logos, without the University's prior written consent; and
- 21.9 The Service Provider acknowledges and accepts that it will not acquire, nor claim, any right, title, or interest in or to the University name and logos or the goodwill attaching to them by virtue of this Agreement.
- 22 DATA PROTECTION**
- 22.1 In performing its obligations under this Agreement, the Parties will:
- 22.1.1 comply with the provisions of the Data Protection Legislation insofar as it is applicable to this Agreement;
- 22.1.2 not process Personal Information for any purpose other than that which may be required to perform their obligations under this Agreement and ensure that such processing will not place either Party in breach of any Data Protection Legislation.
- 22.2 The Service Provider will:
- 22.2.1 only act on the express instructions of the University in collecting, processing, and utilising any Personal Information this Agreement will constitute such instructions;
- 22.2.2 not disclose or otherwise make available any Personal Information to any third party other than authorised Personnel or sub-contractors who require access to such Personal Information strictly in order for the Service Provider to carry out its obligations pursuant to this Agreement, and ensure that such Personnel and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information.
- 22.3 The Service Provider must be responsible for establishing and maintaining an information security programme that is designed to:
- 22.3.1 ensure the security and confidentiality of all Personal Information and any University information (including any back-ups, where applicable) by the use of encryption for such information in transit and rest;
- 22.3.2 protect against any anticipated threats or hazards;
- 22.3.3 protect against unauthorised access to, disclosure or use of any University information;
- 22.3.4 ensure the proper separation of information belonging to the University from any third-party information;
- 22.3.5 where appropriate, ensure the proper disposal of information belonging to the University;
- 22.3.6 preserve the integrity of any information belonging to the University and prevent the corruption, destruction, or loss of such information at all times; and
- 22.3.7 ensure that all sub-contractors of the Service Provider, if any, comply with the provisions of this clause 21.9.
- 22.4 The Service Provider must report to the University orally and confirm in writing any actual and/or suspected breaches such as security incidents, unauthorised access, or disclosure of Confidential and/or Personal Information immediately upon discovery of the unauthorised disclosure but in no event more than 2 (two) days after the Service Provider reasonably believes there has been such unauthorised use or disclosure.
- 22.5 Where the Service Provider (including the Service Provider's Personnel) is given access (whether direct or remote) to any University Information Technology Systems under or in connection with the Agreement, the Service Provider will (and must ensure that the Service Provider's Personnel):
- 22.5.1 comply with the Rules, requirements, or other instructions of the University or, where applicable, the University's third-party suppliers, regarding the use of such University Information Technology Systems;
- 22.5.2 only use the University Information Technology Systems in connection with the proper delivery of the Deliverables;
- 22.5.3 not permit any other individual or entity to access the University Information Technology Systems;
- 22.5.4 upon the University's request, immediately cease access to and use of any University Information Technology Systems (and associated documentation) to the University; and
- 22.5.5 not reverse engineer, deconstruct, decompile, deactivate, or disable any University Information Technology Systems or introduce any viruses or other similar code, or take any other action that would cause any damage or harm to any Information Technology Systems of the University.
- 23 RECORDS AND AUDIT**
- 23.1 The Service Provider must keep and maintain both during the term of the Agreement and for up to 5 (five) years following termination or expiry of the Agreement, full and accurate records of its performance of the Agreement.
- 23.2 The Service Provider must on request afford the University, the University's auditors, or its duly authorised representatives such access to those records as may be required in connection with the Agreement.
- 24 PENALTIES**
- 24.1 In the event that the Service Provider fails to meet any of the obligations contained in the Agreement, the Service Provider will be liable to compensate the University for penalties as stipulated in Annexure A (Contract Data) and/or Annexure B (Scope of Work), if applicable.
- 24.2 To the extent that any provision of the Agreement is considered to be, or qualifies as, a penalty stipulation in terms of the Conventional Penalties Act 15 of 1962,

	as amended:		Provider, stipulated on its invoice.
24.2.1	the Agreement will not be construed or interpreted in such a way as entitling the University to recover both damages and the penalty;	25.2.6	Where applicable and in the event of the Service Provider's Personnel become involved in any strike, stay-away or other action, where no, or only partial service is rendered, the Fees for the period concerned will be adjusted accordingly and the Service Provider must present revised invoices for payment at the end of the month in which the partial or no service, as the case may be, was rendered.
24.2.2	the University will be entitled to recover damages in lieu of the relevant penalty;		
24.2.3	the University will not be obliged to accept defective or delayed performance by the Service Provider; and	25.2.7	The Service Provider agrees that the University will deduct from the amount due by it in terms of this Agreement, or any other amount that it is required by law to deduct.
24.2.4	the Service Provider acknowledges and agrees, having taken account of the prejudice that will be suffered by the University, that the penalty stipulation is fair and equitable in the circumstances.		
<b>25</b>	<b>FINANCIAL TERMS</b>	<b>26</b>	<b>BREACH AND TERMINATION</b>
25.1	<b>Fees:</b>	26.1	Should a Party commit a material breach of the Agreement, then the aggrieved Party will be entitled to require the defaulting Party to remedy the breach within 7 (seven) Business Days of delivery of a written notice requiring it to do so, or within any other reasonable period agreed to between the Parties.
25.1.1	The Fees, as set out in Annexure C (Fees), consist of the Service Provider's charges, in respect of the Deliverables, the Payment Dates and any Fee adjustments, annual increases and/or exchange rate provisions.	26.2	If the defaulting Party fails to remedy such breach within the period specified in the breach notice, the aggrieved Party will be entitled to cancel this Agreement and to claim damages, alternatively to claim immediate specific performance of the defaulting Party's obligations. The foregoing is without prejudice to such other rights as the aggrieved Party may have in law.
25.2	<b>Administration Process:</b>	26.3	If the Service Provider fails to comply with the terms of the Agreement, the University will be entitled, without prejudice to any of its rights in terms of this Agreement or in law:
25.2.1	The Service Provider must ensure that supporting documents have been approved by the University and are annexed to the invoice. Payment will be made against invoices submitted by the Service Provider.	26.3.1	to withhold all payments due and payable to the Service Provider until such time as the Service Provider has provided the Deliverables to the satisfaction of the University;
25.2.2	On condition that the University is satisfied that the Service Provider has:	26.3.2	engage a third party to provide the Deliverables which the Service Provider has failed to perform properly or at all, and the cost thereof shall be the responsibility of the Service Provider, which may be deducted from any amount that may otherwise be due to the Service Provider under the Agreement.
25.2.2.1	provided the Deliverables in accordance with the provisions of Annexure B (Scope of Work) and the University has Accepted the Deliverables; and	26.4	The University will be entitled to terminate this Agreement with immediate effect, should the Service Provider:
25.2.2.2	provided the Deliverables that are fit for the purpose for which they were procured, of suitable quality and within budget as set out in Annexure C (Fees); and	26.4.1	be placed under compulsory or voluntary winding-up or business rescue, to the extent permitted by applicable law; or, being a natural person, commit an act of insolvency, or be provisionally or finally sequestered; or
25.2.2.3	the University has approved the payment of the amounts reflected on an invoice in writing,	26.4.2	suffer any judgement to be obtained against it and allow such judgement to remain unsatisfied or fail to apply for the rescission thereof within a period of 10 (ten) Business Days from the time the judgement was obtained; or
	the University will settle the invoice within 30 (thirty) days after presentation.	26.4.3	do or suffer any act or thing whereby the University's rights or interest may be prejudiced, or which might cause the University to suffer any loss or damage.
25.2.3	In order to ensure efficient financial transactions, the University shall promptly notify the Service Provider in the event of any discrepancies or disagreements regarding invoices. The University and the Service Provider will work collaboratively to resolve such issues and once mutually resolved, the University shall promptly make payment for the undisputed amount. In the event that the University and the Service Provider are unable to reach a resolution regarding the disputed invoice, the matter will be referred to in accordance with the provisions of clause 31.	26.5	On termination or expiry of the Agreement for any reason, the Service Provider must:
25.2.4	Fees, including those charges, damages and penalties described in this Agreement, to be paid by or retained from the Service Provider may, at the University's option, be set off against any amounts due and payable by the University to the Service Provider.	26.5.1	immediately deliver to the University all Deliverables whether or not complete and return all University information (together with all copies
25.2.5	Subject to the provisions of clause 25.2.2, the University will effect payment by direct or electronic deposit into the nominated account of the Service		

	thereof). Until they have been returned or delivered, the Service Provider will be solely responsible for their safekeeping and will not use them for any purpose not connected with this Agreement; and		Site(s) and/or Precincts,
26.5.2	if so, required by the University, subject to the applicable fees as agreed between the Parties in writing, assist the University with the seamless transition of providing the Deliverables to an incoming supplier. All applicable terms and conditions of this Agreement will apply to such transition services.	27.3.4	in respect of all actions, proceedings, liabilities, claims, damages costs and expenses arising out of the acts and/or omissions of its Personnel, guests, invitees, or any other person acting on behalf of the Service Provider; and
26.6	Upon termination of the Agreement, the Service Provider will only be entitled to be paid for the Deliverables provided on a <i>quantum meruit</i> basis and will not have any claim of any nature whatsoever against the University for any additional consideration and/or related payments which would have been payable had the Deliverables have been provided in full in terms of the Agreement.	27.3.5	from any liability arising from:
26.7	If the University terminates this Agreement as provided for hereunder, the University's sole liability to the Service Provider, and the Service Provider's sole and exclusive remedy, is payment for Deliverables received that have been completed and Accepted by the University before the date of termination. The University may also require the Service Provider to transfer title and deliver to the University any or all property produced or procured by the Service Provider to perform this Agreement.	27.3.5.1	any breach of laws or regulations by the Service Provider which is directly applicable to providing the Deliverables;
		27.3.5.2	any breach of labour legislation, including but not limited to the BCEA, the LRA, the Employment Equity Act No. 55 of 1998, and payment of any contributions in terms of the Unemployment Insurance Act No. 30 of 1966 and payment of any subscription to any relevant Bargaining Council that has or might have jurisdiction, as well as compliance with any Collective Contract concluded by such Bargaining Council;
		27.3.5.3	any breach of environmental legislation (where applicable);
		27.3.5.4	any breach of the Data Protection Legislation and the provisions of clause 21.9 above;
		27.3.5.5	any breach of the Income Tax Act;
		27.3.5.6	work-related injury or death caused by the Service Provider including payment of any contributions or compensation as a result of any injury sustained by any Personnel of the Service Provider in terms of the COIDA and compliance with all safety regulations in terms of the OHSA;
<b>27</b>	<b>LIMITATION OF LIABILITY</b>		
27.1	Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider must do all that is commercially reasonably necessary within the course and scope of this Agreement to prevent or minimise the risk of loss or damage to property, University data/information and Personal Information, the University's reputation, and injury to persons.	27.3.5.7	any claim by a third party that the Service Provider infringes upon its proprietary intellectual property rights or any other rights;
27.2	The Service Provider will be liable for any loss of, or damage to, its, and/or the University's property or any financial loss suffered by it, and/or the University or for claims arising out of any damage to property or death or injury to any person, in the course and scope of providing the Deliverables and/or for any act or omission by the Service Provider and/or its Personnel and/or agents.	27.3.5.8	the Service Provider's failure and/or refusal to meet the payment of any levies, contributions, or subscriptions to the applicable institutions in terms of any legislation; and/or
		27.3.5.9	costs incurred by the University in connection with the enforcement of this clause 27.
27.3	The Service Provider hereby indemnifies the University:	27.4	The Parties record that the University has insured itself against the acts and omissions of persons acting on its behalf within the course and scope of the University's business. The University's maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.
27.3.1	for any loss of, or damage to, property of the University, and/or the Site(s) and/or Precincts or any financial loss suffered by the University, or for claims arising out of loss of data or information or any death or injury to any person; and	27.5	Notwithstanding anything to the contrary contained in this Agreement, neither the University nor the Service Provider will be liable to the other for any indirect or consequential loss or damages, including without limitation loss of profit, revenue, anticipated savings, business transactions, goodwill or other contracts, whether arising from the negligence or breach of this Agreement by the University or the Service Provider.
27.3.2	for damage sustained by any Personnel in the course or scope of that individual's employment and whilst being on the Site(s) and/or Precincts. Save where such injury, loss or damage is caused by the gross negligence and wilful misconduct of the University or its Personnel;		
27.3.3	against all claims of whatsoever nature and howsoever arising which may be made against the Service Provider and/or the University by any Personnel of the Service Provider for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by that Personnel member in the course or scope of that Personnel's employment and whilst being on the		
		<b>28</b>	<b>INSURANCE</b>
		28.1	The Service Provider warrants that it has and will maintain the following insurance cover which includes indemnities for the liabilities in clause 27 and which adequately insures against all the liabilities imposed by this Agreement to the satisfaction of the University's insurance brokers, for the duration of this

	Agreement:		operational matters in relation to the rendering of the Deliverables) the addresses set out in section 11 of Annexure A (Contract Data).
28.1.1	insurance covering its liability to any Personnel, as contemplated in COIDA;		
28.1.2	public liability insurance cover;	30.2	For purposes of this clause 30, the word "notice" will include a notice regarding a dispute, demand, breach, renewal, or termination.
28.1.3	any other insurance cover deemed necessary by the University's insurers that will adequately make provision for any possible losses and/or claims arising from its, Personnel and/or omissions on the University;	30.3	All notices given in terms of this Agreement will be in writing and any notice given by any Party to another (the "addressee") which:
28.1.4	professional indemnity insurance;	30.3.1	is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the addressee's physical domicilium for the time being, will be deemed to have been received by the addressee on the first Business Day after the date of delivery. Delivery outside the said hours will not constitute proper delivery;
28.1.5	general and commercial liability insurance which includes but is not limited to defective workmanship, public liability, products and equipment liability, data protection, cyber risk insurance, bodily injury and death, and property damage.	30.3.2	is mailed by pre-paid registered mail from an address within the Republic of South Africa to the postal domicilium address for the time being, will be deemed to have been received by the addressee on the 10th (tenth) Business Day after the date of such despatch;
28.2	Where applicable, the Service Provider must ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement.	30.3.3	is delivered by email to the addressee's e-mail domicilium, will be deemed to have been received by the addressee only once the addressee has acknowledged receipt thereof in writing, with an automatic "read receipt" not constituting acknowledgement of an e-mail for purposes of this clause 30.3.3.
28.3	The Service Provider agrees to provide a certificate of proof of the insurance as set out in clause 28.1, a copy of the policy itself as well as any further documentation as may be reasonably be requested by the University.	30.4	Either Party will be entitled, from time to time, by giving written notice to the other, to vary its <i>domicilium</i> to any other physical and postal address within South Africa and any other e-mail address.
28.4	Should the Service Provider fail to effect and/or keep in force to the satisfaction of the University and its insurance brokers any of the insurances it is required to effect and maintain under this Agreement, or fails to provide satisfactory evidence and/or copies of policies in terms of clause 28.3, this action would constitute a material breach by the Service Provider.		
<b>29</b>	<b>FORCE MAJEURE</b>	<b>31</b>	<b>SETTLEMENT OF DISPUTES</b>
29.1	In the event of any failure, interruption, or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party (the "Affected Party") must promptly notify the other Party in writing specifying:	31.1	The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.
29.1.1	the nature of the Force Majeure Event;	31.2	Each Party will inform the other in the event of any perceived or potential dispute occurring.
29.1.2	the anticipated delay in the performance of obligations;	31.3	Within a period of 14 (fourteen) days after the date on which a dispute arises (" <b>Dispute Date</b> ") the Parties' Representatives or Directors will meet to discuss the dispute and will endeavour to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute.
29.1.3	the action proposed to minimise the impact of the Force Majeure Event;	31.4	If the Parties are unable to resolve the dispute amicably within 30 (thirty) days from the Dispute Date, either Party may refer the dispute to the University's Vice-Chancellor or his nominee and the Service Provider's Chief Executive Officer or his duly appointed nominee, who will use their best endeavours to resolve the dispute.
	and the Affected Party will not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party will use all reasonable efforts to minimise the effects of the same and will resume the performance of its obligations as soon as reasonably possible after the removal of the cause.	31.5	If the individuals referred to in clause 31.4 are unable to resolve the dispute within a period of 30 (thirty) days after it had been referred to them, either Party may submit the matter for mediation. The Parties will refer the matter for mediation to a mediator appointed by agreement between the Parties, or, failing agreement, to a mediator appointed by the Chairman of the Bar Council of South Africa on written request by either Party. The costs of mediation will be borne by the Parties equally. The determination by the mediator will be final and binding and must be carried into effect by the Parties.
29.2	If the Force Majeure Event continues for 42 (forty-two) Business Days either Party may terminate at 7 (seven) Business Days' notice.		
29.3	In circumstances where a Party is an Affected Party, it will be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled in accordance with the terms and conditions of this Agreement.		
<b>30</b>	<b>ADDRESSES AND NOTICES</b>		
30.1	The Parties choose as their <i>domicilia citandi et executandi</i> for the purpose of giving or serving any notice (other than communication of day-to-day	31.6	If the mediator is unable to resolve the dispute or

	difference to the mutual satisfaction of the Parties, the Parties will submit to the jurisdiction of the South Gauteng Local Division of the High Court of South Africa in regard to such dispute or difference.	32.6	<b>Counterparts and Electronic Signatures.</b> This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute a single instrument. By signing this Agreement electronically, the Parties agree to the acceptance of the terms and conditions of this Agreement as if it were physically signed by them by hand and in writing.
31.7	Nothing in this clause 31 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.		
<b>32</b>	<b>GENERAL PROVISIONS</b>		
32.1	<b>Governing Law.</b> This Agreement is governed by the laws of the Republic of South Africa and any disputes will be subject to the provisions of clause 31 without giving effect to any conflict of laws.	32.7	<b>Waiver.</b> No extension of time or waiver or relaxation of any of the provisions of this Agreement will operate as an estoppel against any Party in respect of its rights under this Agreement, nor will it operate to preclude such Party from exercising its rights strictly in accordance with this Agreement.
32.2	<b>Entire Agreement</b>		
32.2.1	This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.	32.8	<b>Assignment, cession, and delegation.</b>
32.2.2	This Agreement will prevail over, cancel, and supersede all terms and conditions, whether written, oral, or implied, not contained in this Agreement which the Service Provider may seek to incorporate in the Agreement in whatsoever manner. In particular, the Service Provider's standard terms and conditions (including but not limited to any quotations, invoices, or standard supplier contracts) will not apply to this Agreement.	32.8.1	The Service Provider must not cede, assign, or delegate any of its rights, responsibilities, or obligations to any other party, including subcontractors, without the prior consent of the University. If such consent is given to the Service Provider, the Service Provider is deemed to have bound itself as surety and co-principal debtor with the third party for the due performance by the third party of all its obligations in terms of the Agreement.
32.3	<b>Variation and Cancellation</b>	32.8.2	The University may cede its rights or delegate its obligations to any other party.
32.3.1	No amendment, variation, or consensual cancellation of this Agreement, including an amendment to this clause 32.3, and no settlement of any disputes arising under this Agreement, will be binding unless recorded in writing and signed by the Parties.	32.8.3	On termination of the Agreement for any reason whatsoever, and without prejudice to any of its other rights, the University may be entitled to take cession of any sub-contracts from the Service Provider and enforce any such sub-contracts.
32.3.2	For the purposes of this clause 32.3, "writing" will exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002; as amended or substituted.	32.9	<b>Remedies.</b> No remedy conferred by this Agreement is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy will be cumulative and in addition to every other remedy given under this Agreement or any existing or future law. The election of any one or more remedies by one of the Parties will not constitute a waiver by such Party of the right to pursue any other remedy.
32.4	<b>No Representations.</b> No Party may rely on any representation, which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.	32.10	<b>Costs.</b> The Parties will each pay their own costs of negotiating, drafting, preparing, and implementing this Agreement.
32.5	<b>Indulgences</b>	32.11	<b>Severance.</b> If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby and the Parties will endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
32.5.1	If either Party at any time breaches any of its obligations under this Agreement, the aggrieved Party:		
32.5.1.1	may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach unless the aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. In particular, acceptance of late performance will be provisional only, and the aggrieved Party may still exercise that right during that period;	32.12	<b>Survival of Rights, Duties and Obligations.</b> Termination of this Agreement for any cause will not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.
32.5.1.2	will not be estopped (i.e., precluded) from exercising its rights arising out of that breach, despite the fact that it may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.	32.13	<b>Successors in title.</b> Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator, or trustee, of a Party will be bound by this Agreement.
		32.14	<b>Change Control.</b> If at any time while this Agreement is in force the major portion of the assets of the Service Provider is disposed of or the majority

	shareholding or the business of the Service Provider is transferred or there is a change of management control of the Service Provider, the Service Provider will notify the University forthwith, giving details, whereupon the University will be entitled but not obliged to terminate the Agreement forthwith without payment to the Service Provider of any damages whatsoever resulting from such termination.	32.15.8	The Service Provider agrees that it will immediately provide to the University such information as may be requested by the University for the purposes of checking for conflicts of interest, and the Service Provider warrants that such information so provided will in each instance be complete and accurate in all respects.
32.15	<b>Integrity, Transparency and Fair Business Practice.</b>	32.15.9	Should it be deemed by the University that a conflict of interest concern exists or has come into existence in relation to the Agreement, the University and the Service Provider must take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.
32.15.1	The Service Provider is required to submit to the University, annually, a valid B-BBEE certificate issued by a South African National Accreditation System ("SANAS") accredited B-BBEE verification agency; or a Sworn Affidavit in the case of the Service Provider is an Exempted Micro Enterprise ("EME") or in the case of the Service Provider being a greater than or equal to 51% (fifty-one per cent) Black Owned Qualifying Small Enterprise ("QSE").	32.15.10	Where it is not reasonably possible to so resolve such a conflict of interest concern, the University will in its sole and absolute discretion be entitled to terminate this Agreement, in which event the Service Provider will not have any claim whatsoever against the University of any nature.
32.15.2	In instances where a QSE or an EME has black/black women ownership that is held through a trust, an employee share ownership programme/scheme or a broad-based ownership scheme, the University reserves the right to request proof of compliance of such a programme/scheme/trust with the requirements of the Code Series 100 of the Broad-Based Black Economic Empowerment Act and Codes of Good Practice as amended from time to time. The proof of compliance must be in the form of an ownership verification certificate issued by a SANAS-accredited B-BBEE verification agency.	32.15.11	The Service Provider agrees that in connection with the Deliverables to be provided under this Agreement:
		32.15.11.1	to comply with all applicable laws and regulations in the Republic of South Africa regarding anti-bribery and corruption; not to offer, promise, give, request, accept or receive bribes, including facilitation payments;
		32.15.11.2	to disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement;
32.15.3	The Service Provider undertakes to notify and provide full details to the University in the event that there is:	32.15.12	The Service Provider represents and warrants that it has policies and procedures in place consistent with acceptable industry standards, for the avoidance, mitigation, detection, and disposition of Counterfeit Goods to ensure that none of the Deliverables furnished under this Agreement are Counterfeit Goods.
32.15.3.1	a negative change to the Service Provider's B-BBEE rating, which is less than its B-BBEE status was at the time of its appointment, including the impact thereof;	32.15.13	The Service Provider warrants that only new, unused, authentic, genuine, and legitimate items must form part of the Deliverables supplied to the University.
32.15.3.2	a corporate or internal restructure or change in control of the Service Provider which has impacted, or is likely to impact, negatively on the Service Provider's B-BBEE rating.	32.15.14	The Service Provider warrants that it will only purchase or source items directly from OCM/OEMs, OCM/OEM authorised (e.g., Franchised Distributors or aftermarket manufacturers). The use, purchase, or sourcing of items from non-OCM/OEM authorised Independent Distributors or brokers is not permitted unless first approved in writing by the University. The Service Provider must present compelling support for its request to use such non-OCM/OEM authorised suppliers for the University's approval (including but not limited to OCM/OEM documentation that authenticates supply chain traceability of the items to the OCM/OEM) and include in its request all necessary actions that it will take to ensure those items thus procured are new, unused, authentic, genuine, and legitimate items.
32.15.4	The Service Provider must issue the notice and relevant details required in clause 32.15.1 within 30 (thirty) days from the date the event occurred.	32.15.15	The Service Provider represents and warrants that at the Commencement Date that neither the Service Provider nor its Personnel, its sub-contractors, or other persons associated with it, including but not limited to its own suppliers:
32.15.5	The University reserves the right to, in its sole discretion, call upon the Service Provider to provide details regarding its shareholding, management, and related information in order to verify that the Service Provider is not engaging in fronting practices or other practices that are designed to circumvent the B-BBEE Act and the South African Department of Trade and Industry Codes of Good Practice.	32.15.15.1	has been convicted of any criminal offence; and
32.15.6	Should there be any negative change to the Service Provider's B-BBEE rating, and should the Service Provider fail to comply with its reporting obligations in terms of clause 32.15.3, the University reserves the right to terminate this Agreement with immediate effect.	32.15.15.2	having made reasonable enquiries, to the best of its knowledge and belief, has not been or is
32.15.7	The Service Provider must immediately notify the University during the subsistence of this Agreement upon becoming aware of any changes in circumstances which may give rise to a conflict of interest.		



not the subject of any investigation, inquiry or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 32.15.16 The Service Provider must notify the University by written notice as soon as it becomes aware of any breach of this Agreement.
- 32.15.17 The Parties agree that a breach by the Service Provider of any of its obligations or warranties under clause 32.15 is a material breach of this Agreement, irrespective of the level of financial loss, deprivation of benefit or exposure to liability to which such breach would or potentially would give rise.
- 32.15.18 Either Party desiring to issue a news release or advertisement or another form of media publicity in relation to this Agreement must obtain the written consent of the other Party prior to the release of such publicity, which written consent will not be unreasonably delayed or withheld.
- 32.15.19 The Service Provider (and its Personnel) undertakes and agrees that for the duration of this Agreement and after the termination thereof:
- 32.15.19.1 not to make any disparaging remarks, derogatory statements, or any other comments privately or publicly about the University via any social media site or any other platform; and
- 32.15.19.2 to immediately remove any reference to the University of whatsoever nature that the Service Provider or its Personnel have made via any social media site or any other platform.
- 32.16 **Survival of Provisions.** Clauses 13.2.11, 20, 21, 22, 23, 27, 28, 31, 32.1 and 32.15 of this Agreement will survive termination.
- 32.17 **Good Faith.** Each of the Parties undertakes with each of the others to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement.

**ANNEXURE A: CONTRACT DATA**

**1. SIGNATORIES**

For the University	
Signature(s)	
Full Name(s)	
Capacity	
Signature Date	
Place	

For the Service Provider	
Signature(s)	
Full Name(s)	
Capacity	
Signature Date	
Place	

**2. INTRODUCTION**

2.1. This Annexure A (Contract) Data is made pursuant to the Terms and Conditions concluded between the University and the Service Provider.

**3. DEFINITIONS AND INTERPRETATION**

3.1. In this Annexure A (Contract Data), unless the context otherwise requires, terms used but not defined in this Annexure A: Contract Data will have the meanings given to them in the Terms and Conditions.

**4. CLASSIFICATION AND TYPE OF AGREEMENT**

4.1. This Agreement governs the relationship between the University and the Service Provider in respect of the provision of the Deliverables by the Service Provider.

4.2. No form of exclusivity has been conferred on the Service Provider nor volume or value guarantee granted by the University.

**5. SERVICE PROVIDER DETAILS**

Full Registered Name:	To be inserted
Registration Number:	To be inserted
Country of Incorporation:	To be inserted

**6. TERM AND TERMINATION**

**6.1. Term**

Commencement Date:	To be inserted, notwithstanding the Signature Date
Termination Date:	To be inserted
Contract Term:	To be inserted years



**7. PENALTIES**

- 7.1. Penalties will be imposed in the event of ineffective or inaccurate operation of the Deliverables after Acceptance Testing has taken place, failure to meet and/or satisfy the completion requirements as outlined in the Annexures or within Acceptance Period, or any delay in delivering any part the Deliverables. These penalties may include but are not limited to, temporary withholding of payment until satisfactory functioning is demonstrated, retention of payments allocated to specific portions of the Deliverables7.2.
- 7.2. If the Service Provider fails to fulfil its obligations as outlined above and does not rectify the breach as stipulated in the Terms after receiving a demand for remedy, the University has the right to impose a penalty for each instance of the breach.

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**8. DETAILS OF INSURANCE COVER**

To be inserted

DRAFT

**9. SERVICE PROVIDER'S KEY PERSONNEL**

Full Name & Position	Contact Details	Area of Responsibility
Name: <b>To be inserted</b> Position: <b>To be inserted</b>	Mobile: <b>To be inserted</b> Email: <b>To be inserted</b>	<b>To be inserted</b>
Name: <b>To be inserted</b> Position: <b>To be inserted</b>	Mobile: <b>To be inserted</b> Email: <b>To be inserted</b>	<b>To be inserted</b>

**10. REPRESENTATIVES**

Details	University	Service Provider
Name:	<b>To be inserted</b>	<b>To be inserted</b>
Position:	<b>To be inserted</b>	<b>To be inserted</b>
Tel:	<b>To be inserted</b>	<b>To be inserted</b>
Email:	<b>To be inserted</b>	<b>To be inserted</b>

**11. DOMICILIUM CITANDI ET EXECUTANDI**

**11.1. Address for Operational Correspondence**

The University	
Marked for the attention of:	<b>To be inserted</b>
Electronic mail address:	<b>To be inserted</b>
Physical Address:	<b>To be inserted</b>

The Service Provider	
Marked for the attention of:	<b>To be inserted</b>
Electronic mail address:	<b>To be inserted</b>
Physical Address:	<b>To be inserted</b>

**11.2. Address for the Service of Legal Documents**

The University	
Marked for the attention of:	Director Legal Services
Electronic mail address:	<a href="mailto:nkosinathi.mavimbela@wits.ac.za">nkosinathi.mavimbela@wits.ac.za</a>
Physical Address:	5 <sup>th</sup> Floor, Room 5006A, Solomon Mahlangu House East Campus, Braamfontein, Johannesburg 2050

The Service Provider	
Marked for the attention of:	<b>To be inserted</b>
Electronic mail address:	<b>To be inserted</b>
Physical Address:	<b>To be inserted</b>

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**ANNEXURE B: SCOPE OF WORK**

To be inserted

DRAFT

**ANNEXURE C: FEES**

**1. FEES**

**A. The fees are as described in Pricing Schedule: Annexure C**

- i) The Fees are as described in section 1.2:
- ii) The pricing contained in Annexure C (Fees) is the maximum that the Service Provider can charge the University.
- iii) The Service Provider agrees not to unilaterally increase the prices. However, nothing in this contract prevents the Service Provider from improving the prices.
- iv) The Service Provider acknowledges and accepts that the pricing is all inclusive and includes all costs and charges associated with the Annexure B (Scope of Work).
- v) The prices for the Services must include VAT, all other taxes (as far as they are applicable) and insurance as required.
- vi) All costs must be firm from the date of receipt of the purchase order issued by the University. Furthermore, no additional costs will be accepted by the University.

1.1. Fee Adjustment Provisions [Exchange Rate Fluctuation Provisions and/or Annual Increases]

The University reserves the right to accept/decline any proposed price increases

**Exchange Rate Fluctuation**

The University reserves the right to refuse any ROE fluctuations which the Service Provider accepts. The Service Provider agrees that any increase in ROE is not guaranteed and must bear the risk.

1.2. Detailed Pricing Schedule

To be inserted