



UNIVERSITY OF THE  
WITWATERSRAND,  
JOHANNESBURG

## **DINING HALL CATERING AGREEMENT**

entered into between and by

**THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG**

and

**THE SERVICE PROVIDER**

**DRAFT - NOT FOR SIGNATURE**

---

## TABLE OF CONTENTS

1.	DEFINITIONS.....	3
2.	INTERPRETATION.....	8
3.	APPOINTMENT.....	10
4.	DURATION.....	11
5.	OPERATIONAL MANAGEMENT OF THE AGREEMENT.....	11
6.	THE SERVICE PROVIDER'S RESPONSIBILITIES.....	13
7.	SERVICE PROVIDER PERSONNEL.....	23
8.	WARRANTIES.....	26
9.	UNIVERSITY RESPONSIBILITIES.....	28
10.	AMENDMENT OF AGREEMENT.....	28
11.	CLAIMS FOR VARIATION ORDERS.....	29
12.	SUBCONTRACTING, CESSION AND DELEGATION.....	29
13.	FEES AND PAYMENT TERMS.....	30
14.	COMPLIANCE WITH LAWS, REGULATIONS AND STANDARDS.....	34
15.	HEALTH AND SAFETY.....	34
16.	LIABILITY AND INDEMNITY.....	37
17.	INSURANCE.....	38
18.	PROPRIETARY RIGHTS.....	39
19.	CONFIDENTIAL INFORMATION.....	39
20.	DATA PROTECTION.....	40
21.	DISPUTE RESOLUTION.....	41
22.	BREACH AND TERMINATION.....	41
23.	FORCE MAJEURE.....	43
24.	ADDRESSES AND DOMICILIA.....	43
25.	MISCELLANEOUS MATTERS.....	44
26.	GENERAL.....	48
	ANNEXURE A – SCOPE OF WORK.....	51
	ANNEXURE B – FEES.....	53
	ANNEXURE C – SERVICE PROVIDER'S INSURANCE DOCUMENTATION.....	54

The University of Witwatersrand	
The Service Provider	

## 1. DEFINITIONS

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

- 1.1. **“Ad Hoc Instruction”** any instruction to the Service Provider that is not provided for in the meals schedule and which will not occur frequently enough to warrant a Variation Order;
- 1.2. **“Additional Services”** means those ad hoc or additional catering services which may be required and agreed to for specific events and/or functions or due to changing needs and which are not listed in the Agreement;
- 1.3. **“Agreement”** means this entire Agreement including all annexures and any subsequently agreed annexures, appendices, Amendment of Agreement and Variation Orders;
- 1.4. **“Amendment of Agreement”** means any agreed change to this Agreement pursuant to clause 10, documented and signed by both Parties, which results in a difference greater than R 100 000.00 (one hundred thousand Rand) per annum in the Fees;
- 1.5. **“Business Day”** means any day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.6. **“Catering Facility”** any dining hall, kitchen, cafeteria and any other designated facility belonging to or controlled by the University where the Services are delivered as specified in the Scope of Work;
- 1.7. **“Catering Manager”** the person appointed by the Service Provider as its authorised representative to monitor and inspect the day-to-day operation and implementation of the Agreement in a specific Catering Facility;

The University of Witwatersrand	
The Service Provider	

- 
- 1.8. **“Cleaning Materials”** means those cleaning materials defined in the Scope of Work;
- 1.9. **“Comments Register”** means a book kept in each residence dining hall in which students and other users may place comments, suggestions and/or complaints about Services rendered, and is referred to in the Scope of Work;
- 1.10. **“Consumable Items”** means those consumable items defined in the Scope of Work;
- 1.11. **“Data Protection Legislation”** means the following legislation i) POPI; or ii) such other legislation as may become applicable to the protection of personal information in the Republic of South Africa;
- 1.12. **“Effective Date”** means [insert], notwithstanding the Signature Date;
- 1.13. **“Fees”** means the fees charged by the Service Provider on for the Services as set out in Annexure B, which includes VAT;
- 1.14. **“Financial Year”** the University’s financial year, commencing annually on 1 January and ending on 31 December;
- 1.15. **“ICAM”** means the University’s Integrated Campus Access Management system;
- 1.16. **“Liaison Officer”** the person appointed by the University to monitor, administer and inspect the day-to-day operation and implementation of the Agreement in a specific Catering Facility;
- 1.17. **“Month”** means a calendar month, being one of the 12 (twelve) months from January to December in any year;
- 1.18. **“Operating Facilities”** means the onsite offices, ablutions, changing rooms, tea rooms, storerooms and general working facilities made available to the Service Provider by the University;

The University of Witwatersrand	
The Service Provider	

- 
- 1.19. **“Operating Hours”** the times during which the Service Provider must provide the Services as specified in the Scope of Work. For the avoidance of doubt Operating Hours for Additional Services will be communicated by the University to the Service Provider as and when the need arises;
- 1.20. **“Parties”** means collectively, the University and the Service Provider, and **“Party”** means either of them;
- 1.21. **“Performance Report”** means a performance report that is provided by the Service Provider per clauses 5.7 and 5.8;
- 1.22. **“Personal Information”** means all information relating to an identifiable natural or juristic person as set out in POPI;
- 1.23. **“Personnel”** means a Party’s directors, members, officers, employees, agents, associates and/or representatives, and the Service Provider’s subcontractors and their directors, members, officers, employees, associates, agents and/or representatives if any;
- 1.24. **“POPI”** means the Protection of Personal Information Act 4 of 2013, as amended or substituted;
- 1.25. **“Project Manager”** means the person appointed by the Service Provider, who shall ensure the successful implementation of the Services during the duration of the Agreement;
- 1.26. **“PURCO”** means the Purchasing Consortium Southern Africa, which is a ‘not for profit’ private purchasing organisation, acting on behalf of universities, technikons and other higher educational institutions;
- 1.27. **“Scope of Work”** means the scope of work detailed in Annexure A;

The University of Witwatersrand	
The Service Provider	

- 
- 1.28. **“Service Levels”** means the deliverables, response times and standards against which performance by the Service Provider is measured and which are set out in this Agreement including the Scope of Work;
- 1.29. **“Service Provider Equipment”** means all tools and equipment provided or used by the Service Provider for the Services;
- 1.30. **“Service Provider Personnel Accommodation”** means rooms rented from the University by the Service Provider for the Service Provider's Personnel on the University Precincts. This accommodation may only be used for temporary accommodation to house staff in circumstances which require services outside those which are part of the ordinary course of operations;
- 1.31. **“Service Provider's Representative”** means the person nominated in the Scope of Work or otherwise in writing by the Service Provider from time to time;
- 1.32. **“Service Provider”** means [please insert details], a company established in accordance with the laws of [please insert details], with registration number [please insert details];
- 1.33. **“Services”** means the catering services forming the subject matter of this Agreement; including the catering services for residences and all complementary and ancillary services in support thereof required by the University and provided by the Service Provider under this Agreement;
- 1.34. **“Signature Date”** means the date on which the last Party signs the Agreement;
- 1.35. **“Specifications”** means the specifications for the performance of the Services as set out in this Agreement, including the Standards;
- 1.36. **“Standards”** means the measures used by the University to assess the performance of the Service Provider in terms of this Agreement;

The University of Witwatersrand	
The Service Provider	

- 
- 1.37. **“Standing Instructions”** means detailed descriptions of the duties referred to in this Agreement and to be carried out by the Service Provider’s Personnel;
- 1.38. **“Systems”** an overall computing environment functioning as a whole, typically including hardware, software, infrastructure, access control, meal booking systems and Third Party support services;
- 1.39. **“Termination Date”** means [insert];
- 1.40. **“Third Party”** any party other than the University and the Service Provider;
- 1.41. **“University Community”** all employees of the University, persons officially associated with the University, students, former students and alumni of the University, as well as invitees, visitors and guests
- 1.42. **“University Equipment”** means all equipment such that is temporarily provided by the University for use by the Service Provider in performing the Services;
- 1.43. **“University Precincts”** means any premises owned by or which fall under the management and control of the University;
- 1.44. **“University Regulations”** means all rules, regulations, policies, procedures and standing orders of the University as amended from time to time;
- 1.45. **“University’s Operations Manager”** means the person appointed by the University, who oversees the day to day operations of the Agreement;
- 1.46. **“University’s Representative”** means the person nominated in the Scope of Work or otherwise in writing by the University from time to time;

The University of Witwatersrand	
The Service Provider	

- 1.47. **“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;
- 1.48. **“Variation Order”** an agreed change to the Fees pursuant to clause 11, which does not exceed R100 000.00 (one hundred thousand Rand) in value per annum;
- 1.49. **“VAT”** value-added tax levied by the South African Revenue Service on the supply of goods and services in terms of the Value Added Tax Act 89 of 1991;
- 1.50. **“Year”** means a calendar year, beginning on 1 January and ending on 31 December.

## 2. INTERPRETATION

- 2.1. Unless inconsistent with the context, an expression which denotes:
- 2.1.1. any gender includes the other genders,
- 2.1.2. a natural person includes an artificial person and vice versa, and
- 2.1.3. the singular includes the plural and vice versa.
- 2.2. Headings in this Agreement are for convenience only and will not be deemed part thereof or be taken into consideration in the interpretation or construction thereof.
- 2.3. References herein to the introduction, clauses, annexures, appendices and schedules are to the introduction, clauses, schedules, appendices and annexures to this Agreement unless the context requires otherwise. The annexures, appendices and schedules to this Agreement form an integral part of this Agreement.
- 2.4. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail.
- 2.5. Any reference to any agreement, annexure, appendix or schedule will be construed as including a reference to any agreement, annexure, appendix or schedule amending or substituting that agreement, annexure, appendix or schedule.

The University of Witwatersrand	
The Service Provider	



- 
- 2.6. If any definition in clause 1, contains a substantive provision conferring rights or imposing obligations on any Party, the effect will be given to such provision as if it were a substantive provision in the body of this Agreement.
- 2.7. Any word or expression related to a word or expression defined in this Agreement bears a corresponding meaning.
- 2.8. Any reference to the provisions of law and any similar reference of general application will be construed to include both legislation and the common law, and any reference to “legislation” includes any statute, any regulations passed under any statute, as well as any public notice, ruling or similar legislative instrument passed or approved by a body with the requisite authority.
- 2.9. Save where expressly provided otherwise, references to statutory provisions are to be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the Effective Date) from time to time and will include any provisions of which they are re-enactments (whether with or without modification).
- 2.10. The words “include” and “including” mean “include without limitation” and “including without limitation”. The use of the words “include” and “including” followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.
- 2.11. Wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instructions or determination by any Person, unless otherwise specified, such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination will be in writing and the words “notify”, “decide”, “consent”, “accept”, “agree”, “endorse”, “approve”, “certify”, “instruct” or “determine” and other related expressions are to be construed accordingly.
- 2.12. Whenever this Agreement provides for approvals, consents or expressions of satisfaction by anyone of the Parties that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction.
- 2.13. Each Party will ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act required by it from the other Party in respect of this Agreement will be applied for or requested promptly.

The University of Witwatersrand	
The Service Provider	

- 
- 2.14. References to materials, information, data and other records are to materials, information, data and other records whether stored in electronic, written or another form.
  - 2.15. When any number of days or other period is prescribed, it will be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the next Business Day.
  - 2.16. Where any term is defined within the context of any particular clause in the Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, will bear the same meaning ascribed to it for all purposes in terms of the Agreement, notwithstanding that that term has not been defined in this interpretation clause.
  - 2.17. Any reference to an enactment is to that enactment as at the date of signature of the Agreement and as amended, re-enacted or replaced from time to time.
  - 2.18. The rule of construction that the Agreement will be interpreted against the party responsible for the drafting or preparation of the Agreement will not apply.
  - 2.19. The expiry or termination of the Agreement will not affect such of the provisions of the Agreement as expressly provide that they will operate after any such expiry or termination or which of necessity will continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
  - 2.20. This Agreement will prevail over, cancel and supersede:
    - 2.20.1. any other Agreement between the Parties relating to the subject matter of this Agreement, and
    - 2.20.2. all terms and conditions, whether written, oral or implied, not contained in this Agreement.

### 3. APPOINTMENT

- 3.1. The University hereby appoints the Service Provider to render the Services, and the Service Provider accepts such appointment on the terms and conditions set out in this Agreement.
- 3.2. The Service Provider agrees that nothing contained in this Agreement will oblige the University to procure the Services exclusively from the Service Provider.
- 3.3. The Service Provider will operate in all respects as an independent contractor. Nothing in the Agreement will constitute a partnership between the Parties or constitute either Party an agent of the other Party for any purpose, nor entitle either Party to commit or bind the other Party in any manner.

The University of Witwatersrand	
The Service Provider	

#### 4. DURATION

- 4.1. This Agreement commences on the Effective Date and terminates on the Termination Date unless terminated earlier as provided in this Agreement.
- 4.2. Notwithstanding the provisions of clause 4.1 above, the University may terminate this Agreement on 1 (one) Month's written notice to the Service Provider.

#### 5. OPERATIONAL MANAGEMENT OF THE AGREEMENT

- 5.1. The Service Provider shall appoint:
  - 5.1.1. its Project Manager with authority and responsibility to manage and supervise the operational aspects of the Agreement. The Project Manager shall be required to attend monthly meetings as set out in this clause 5. The Service Provider must delegate to the Project authority to arrange immediately for the remedying of any defect in the performance of the Service Provider's obligations in so far as these relate to the day-to-day operations, and
  - 5.1.2. a Catering Manager for each Catering Facility to manage the day to day and general operations;
- 5.2. The Catering Manager must:
  - 5.2.1. be stationed at the Catering Facility at the office allocated by the University and shall not, under any circumstances, assist in or perform any other activity or work for the Service Provider other than that directly related to the Services;
  - 5.2.2. subject to clause 7.2, inform the relevant Liaison Officer of any assigned Service Provider Personnel who are absent from the Catering Facility and shall record all such absenteeism with the reason therefore in an appropriate log that may be inspected at any time by the University. Any vacational and training leave must first be discussed and approved in advance with the University's Operations Manager, and
  - 5.2.3. submit monthly reports to the University's Operations Manager by the 7<sup>th</sup> of each month, giving an overview of Services performed during the preceding month. The report will list problems encountered and suggested recommendations for Service improvement and account for any incomplete or unperformed Services.
- 5.3. The Service Provider shall consult with the University before making decisions affecting the appointment or removal of its Catering Manager and/or Project Manager.

The University of Witwatersrand	
The Service Provider	

- 
- 5.4. The University shall appoint:
- 5.4.1. a University's Operations Manager to administer the day to day and general operations of the Agreement and to attend weekly or monthly meetings, and
- 5.4.2. a Liaison Officer for each Catering Facility to administer the day to day and general operations, and to attend weekly or monthly meetings.
- 5.5. Each Liaison Officer shall supervise the day-to-day operations of the Service Provider in a designated Catering Facility. If the Service Provider fails to remedy any defect in its performance subject to notice and within a reasonable time, the University's Operations Manager shall have the authority to arrange for the remedying of any defects in the performance of the Service Provider's obligations, at the Service Provider's cost, in so far as these relate to day to day operations.
- 5.6. The University and the Service Provider shall hold regular performance review meetings with respect to the Agreement, as frequently as required and attended by the persons stipulated below:
- 5.6.1. Monthly: The University's Operations Manager and Liaison Officers, and the Project Manager.
- 5.6.2. Weekly: the University's Liaison Officer and the Catering Manager.
- 5.7. The persons cited in clauses 5.6.1 and 5.6.2 will meet to:
- 5.7.1. review incidents and events;
- 5.7.2. review the Performance Report from the Service Provider;
- 5.7.3. assess and manage the operational progress of the delivery of the Services;
- 5.7.4. and implement appropriate plans and mechanisms to ensure timeous delivery of the Services.
- 5.8. The Service Provider is required to provide Performance Reports. The Performance Reports are required to be provided electronically as requested by the University's Operations Manager and must include:
- 5.8.1. the Service Provider's letterhead and signature;
- 5.8.2. date of the report and the reporting period covered;

The University of Witwatersrand	
The Service Provider	

- 5.8.3. an index based on the list of report inclusions and page/section referencing;
  - 5.8.4. a record of any actions, follow-ups or updates on the identified incidents;
  - 5.8.5. a list of any Personnel and their training undertaken prior to the Effective Date and during the course of the Agreement;
  - 5.8.6. any legislative changes, new procedures and risk mitigation;
  - 5.8.7. any plan of actions requested from the University that addresses poor performance; and
  - 5.8.8. any additional information requested from the University.
- 5.9. In addition to the Performance Reports, the Service Provider is required to immediately record and report the following to the University's Operations Manager:
- 5.9.1. any health and safety issues or incidents;
  - 5.9.2. any other incidents or matters as requested by the University, (including those set out in the Scope of Work).
- 5.10. The University's Liaison Officer shall take formal minutes at performance review meetings with respect to the Agreement, and circulate them in accordance with the requirements of the Parties management teams. The minutes will be approved by the chairperson of the meeting.

## 6. THE SERVICE PROVIDER'S RESPONSIBILITIES

### 6.1. Standard of Services

- 6.1.1. The Service Provider agrees to perform the Services in accordance with the Scope of Work, Specifications and the Service Levels, at the Catering Facilities, and at the Fees set out in Annexure B, to the satisfaction of the University and with the standard of care and skill of an expert regularly rendering Services of the type required by this Agreement, and in conformance with all applicable rules, regulations, codes, standards and legislation in the Republic of South Africa.
- 6.1.2. The Service Provider, in addition to any other service it must provide to the University in terms of the Agreement, must provide the Services weekly from Monday to Sunday, unless agreed otherwise in writing, excluding the period from 25<sup>th</sup> December of one year and ending on 1<sup>st</sup> January the following year inclusive. The Operating Hours are set out in the Scope of Work.

The University of Witwatersrand	
The Service Provider	

- 6.1.3. The Services must be carried out by certified, adequately trained and competent Personnel in a professional manner and in accordance with the best practices in the catering industry (this includes the provisions of any legislation applicable to the Services). In providing the Services, the Service Provider must use foods, beverages and materials which conform to trade standards and the Specifications.
- 6.1.4. Without limiting the generality of this clause, the Service Provider shall be responsible for purchasing, holding and maintaining stocks of food, beverages, retail items, Cleaning Materials and disposable goods, Service Provider Equipment and uniforms in sufficient quantities to meet the Specifications and Service Levels.
- 6.1.5. Subject to clause 17, such stocks shall be held at the risk of the Service Provider who must make provision for any insurance or security required for such stocks. Title to and responsibility for such stock shall be held by the Service Provider.
- 6.1.6. Ownership of the University Equipment shall remain with the University, but the Service Provider retains responsibility for its proper use and security. Title to other equipment supplied by the Service Provider shall be held by the Service Provider.
- 6.1.7. The Service Provider must provide the University with a list of its nominated suppliers, which such list will be updated at the start of each University term. The University reserves the right to require that the Service Provider discontinue the use of a particular supplier if the continued use of that supplier would not be in the best interests of the University.
- 6.1.8. The Service Provider shall provide sufficient equipment to perform the Services and shall ensure that all University Equipment is at all times in good working order.
- 6.1.9. The Service Provider shall provide Ad Hoc Services when the University supplies it with an Ad Hoc Instruction provided that the University gives the Service Provider reasonable prior notification.
- 6.1.10. The Service Provider must provide Additional Services upon University request provided that the University gives the Service Provider reasonable prior notification, and the Parties conclude an Amendment Agreement or Variation Order, as the case may be.

**6.2. Monitoring of Standards**

**6.2.1. Monitoring Procedures**

The University of Witwatersrand	
The Service Provider	

- 6.2.1.1. The Service Provider shall be responsible for establishing and conducting food safety related and quality monitoring systems and procedures approved by the University to ensure that the Services are provided per the Scope of Work and Specifications at all times.
- 6.2.1.2. To this end, the University requires that performance of the Services is regularly monitored against the Scope of Work, Specifications, legislation and accepted industry standards of good practice.
- 6.2.1.3. Monitoring systems and procedures operated by the Service Provider shall include:
- 6.2.1.3.1. a Comments Register to be drawn up and distributed in consultation with the University's Operations Manager,
- 6.2.1.3.2. Student satisfaction surveys shall be performed at least twice a year, or at other intervals, as agreed with the University, and
- 6.2.1.3.3. Monthly operational reports giving an overview of the previous month's operations under prescribed headings, including:
- 6.2.1.4. The Liaison Officer will audit the state of the Catering Facilities and Operating Facilities every 3 (three) months or as and when requested by the Liaison Officer to the Service Provider (this will serve both a monitoring and planning function).
- 6.2.1.5. Notwithstanding the above, the University reserves the right to substitute any other method of monitoring and/or planning.

6.2.2. Rights of Inspection

- 6.2.2.1. The University reserves the right, either directly or through its appointed agents, to inspect the Service being rendered by the Service Provider and the Catering Facilities and Operating Facilities being used by the Service Provider. Such inspections shall neither mitigate in any respect the responsibilities of the Service Provider under the Agreement nor substitute for any expertise for which the Service Provider is responsible.
- 6.2.2.2. Further rights of inspection are set out in the Scope of Work.

6.3. **Duties**

The University of Witwatersrand	
The Service Provider	

6.3.1. Supervision

The Service Provider will:

- 6.3.1.1. ensure that when on the University Precincts, the Service Provider's Personnel comply with all applicable University Regulations including regulations pertaining to identification tags, vehicle and personnel access, uniforms and all security requirements as laid down from time to time by the University;
- 6.3.1.2. provide continuous supervision over its Personnel and carry out inspections to ensure that a proper Service is provided;
- 6.3.1.3. ensure that its Personnel dispose of any refuse and other materials discarded in the Catering Facilities only at points designated for that purpose by the University and that its Personnel do not in any way sort, manage, retain and/or remove or otherwise distribute or dispose of such refuse and such materials;
- 6.3.1.4. be diligent and exercise due care in fulfilling all its obligations under the Agreement including its obligations in respect to safety, security and the maintenance of any equipment and other property belonging to the University;
- 6.3.1.5. use the Operating Facilities subject to the conditions contained in the Scope of Work. The University will provide the basic infrastructure and the Service Provider is responsible for providing the necessary, furniture, equipment (including but not limited to shelving, desks, chairs, computers and appliances);
- 6.3.1.6. ensure that each of its onsite offices on the University Precincts is equipped with telephones, computers and necessary equipment, following the requirements of the Agreement, and that e-mail and mobile phone facilities are fully functional and always available to the Catering Manager and other key management Personnel;
- 6.3.1.7. provide the University with a list of its Personnel who are available and duly authorised by the Service Provider to deal with any after hour emergencies together with up-to-date contact details, such details to be amended as and when any changes occur;
- 6.3.1.8. in the event that the Service Provider redeploys any of its Personnel, or the University requires that the Service Provider on reasonable grounds effects the immediate removal from the University Precincts of any of its Personnel of the

The University of Witwatersrand	
The Service Provider	



---

Service Provider, such person will be removed by the Service Provider. In any such event, the Service Provider must ensure that:

6.3.1.8.1. all University property, including but not limited to access cards, parking permits, and all Operating Facility and Catering Facility and other University keys in such person's possession, is immediately returned to the University, and

6.3.1.8.2. such person does not return to the University Precincts without the University first having given the Service Provider its consent in writing for that person to return, and

6.3.1.9. subject to clause 25.4, ensure that its Personnel, only enter the University Precincts for the purpose of fulfilling the Service Providers obligations under this Agreement and for no other purpose.

6.3.2. Risk Management

6.3.2.1. The Service Provider, as part of its risk management duties, is required to do the following:

6.3.2.1.1. Develop a health, safety and security risk register.

6.3.2.1.2. Conduct risk assessments of the activities performed under this Agreement, implement controls, provide a safe work procedure to the University and identify further training requirements.

6.3.2.1.3. Present the risk assessment reports to the University.

6.3.2.1.4. Ensure all aspects of the Services undertaken are assessed, controlled and reviewed regularly.

6.3.2.1.5. Remedy any deficiencies identified as a part of the risk assessment(s) to the satisfaction of the University.

6.3.3. Premises

6.3.3.1. The University shall provide the Service Provider with the necessary Catering Facilities and Operating Facilities. The Service Provider is responsible for the

The University of Witwatersrand	
The Service Provider	

provision of furniture, shelving, computers, and any other resources required by its Personnel.

6.3.3.2. The Service Provider must ensure that all the Catering Facilities and Operating Facilities are maintained in accordance with sound housekeeping principles, are used exclusively for purposes of performing the Services, and are available for inspection at all times by the University.

6.3.3.3. If the University provides the Service Provider with keys for access to the Catering Facilities and/or the Operating Facilities, the Service Provider shall observe the necessary care and responsibility for their safekeeping. The Service Provider shall:

6.3.3.3.1. not make any copies of such keys without the prior consent of the Liaison Officer,

6.3.3.3.2. ensure that keys are not misused or used to allow access by unauthorised persons, and

6.3.3.3.3. return all keys (including copies made in accordance with clause 6.3.3.1) forthwith on expiry or termination of this Agreement.

6.3.3.4. Without regard to any other section of the Agreement, the Service Provider shall be responsible for the costs to return to a "as was" condition from any damage caused to the buildings, grounds, or other equipment and furnishings caused in whole or in part by the Service Provider's Personnel while performing the activities arising under this Agreement. The Service Provider shall immediately report in writing the occurrence of any damage to the Liaison Officer.

6.3.3.5. The Service Provider will remove all packaging materials, rubbish and dirt associated with the Service Provider's provision of Services under the Scope of Work.

6.3.4. Hygiene

6.3.4.1. The Service Provider shall at all times ensure that its Personnel maintain a high level of personal and food hygiene.

The University of Witwatersrand	
The Service Provider	

- 
- 6.3.4.2. The Service Provider shall ensure that its Personnel report skin infections, infected wounds and sores, symptoms of food poisoning or illness be immediately reported to the Liaison Officer.
- 6.3.4.3. The Service Provider shall ensure that all of its Personnel wear clean protective clothing at the start of each working day and replaced more frequently should heavy soiling occur.
- 6.3.4.4. The Service Provider undertakes to ensure that its Personnel wash their hands regularly in a designated wash hand basin during the working day and especially after the following:
- 6.3.4.4.1. after visiting the toilet;
  - 6.3.4.4.2. on entering and re-entering a food room;
  - 6.3.4.4.3. between handling raw and cooked food;
  - 6.3.4.4.4. after eating, smoking, coughing, sneezing or blowing their nose;
  - 6.3.4.4.5. after handling waste food or refuse;
  - 6.3.4.4.6. after handling cleaning chemicals.
- 6.3.4.5. The Service Provider undertakes to ensure that its Personnel do not eat sweets, chew gum, drink juice or blow into bags whilst on duty.
- 6.3.4.6. The Service Provider shall keep the Catering Facilities and the Operating Facilities in a clean and hygienic state, and shall at its cost provide all Consumable Items and Cleaning Materials needed to clean the Catering Facilities and Operating Facilities.
- 6.3.4.7. The Service Provider shall ensure that adequate stock levels of all consumable Cleaning Materials are maintained in order to avoid Service interruptions.
- 6.3.4.8. The storage of all Cleaning Materials and chemicals, and similar products must be properly secured and in accordance with statutory requirements and proper records of issue must be kept.

The University of Witwatersrand	
The Service Provider	

6.3.4.9. All Cleaning Materials must be of good quality as approved by the University and at minimum carry South African National Standards (SANS) mark, correspondingly bio-degradable materials and chemicals should be used.

6.3.4.10. The University reserves the right to determine and/or source the type and/or brand of product/s to be used by the Service Provider where it deems appropriate.

6.3.4.11. The Service Provider shall be responsible for transport between the points of delivery, storage and consumption of all consumable materials used to clean the Catering Facilities.

6.3.5. Sustainability and Going Green

6.3.5.1. The Service Provider will use recyclables disposables and will ensure that it enforces environmentally sustainable practices, as more fully set out in the Scope of Work, during the course of this Agreement.

6.3.5.2. The Service Provider agrees that it will at all times conserve resources such as electricity, water and gas.

6.3.6. Knowledge Transfer

6.3.6.1. The Service Provider agrees to provide to the University, with the training of its Personnel, service providers, suppliers and/or its vendors, the purpose of which is to transfer the know-how of the Service Provider used to perform the Services. The Parties shall prepare and agree on a written knowledge transfer training plan, within 30 (thirty) days of the Effective Date, which will be sufficient to allow for the transfer of the reasonably necessary knowledge to the University, its Personnel, service providers, suppliers and/or its vendors.

6.3.6.2. The knowledge transfer must be sufficient to enable the University, its Personnel, service providers, suppliers and/or vendors to perform the Services in the event of termination of this Agreement or any other event as and when deemed necessary by the University.

6.3.6.3. Any such transfer of knowledge shall not act as a transfer of any Service Provider intellectual property rights except as described in clause 18 of this Agreement.

6.3.7. Additional Responsibilities

The University of Witwatersrand	
The Service Provider	

- 
- 6.3.7.1. The Parties will work together to compose Standing Instructions which will be completed to the satisfaction of the University within 1 (one) Month of the Effective Date.
- 6.3.7.2. The Service Provider will conduct its operations on the University Precincts in accordance with the Standing Instructions.
- 6.3.7.3. The Service Provider shall co-operate with the University in the introduction of new Systems and procedures to assist in streamlining the administration and safety of the Services.
- 6.3.7.4. The Service Provider is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any food sample reports, health and safety, environmental sustainability, price, cost, or budget computations required under the Agreement. The Service Provider agrees that the University or its duly authorised representative has the right to audit any directly pertinent books, documents, papers and records related to the performance of this Agreement. The Service Provider shall make available to the University or its agents all such records, Systems and documents on the Service Provider's premises during reasonable working hours within 10 (ten) days of a written request for availability. The Service Provider agrees to either i) allow the University to make and or retain copies of those documents useful for documenting the audit activity and results or ii) sequester the original or copies of those documents the University identifies for later access by the University. The Service Provider agrees to disclose within 90 (ninety) days of receipt any independent auditor's reports, which bear directly on the performance or administration of this Agreement. The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of 3 (three) years after its termination. The right to audit shall also apply to vendors, suppliers and/or subcontractors used by the Service Provider for the purpose of fulfilling the Agreement. If the audits discover substantive findings related to fraud, misrepresentation or non-performance, the University may invoke the provisions of clause 6.4.
- 6.3.7.5. Where best practice demands that users of the University's equipment, installations or material and the like be specifically trained in such use, then only Personnel of

The University of Witwatersrand	
The Service Provider	

the Service Provider who have received the requisite training may use such equipment, installations or material.

6.3.7.6. Save as may expressly be provided to the contrary in this Agreement, the Service Provider will supply all the required materials and Service Provider Equipment necessary to carry out its obligations in terms of this Agreement.

6.3.7.7. The University reserves the right to appoint other service providers to perform specific services in the area of the Service Provider's operations, and it is expected of the Service Provider to co-operate with such other service provider(s).

6.3.7.8. The Service Provider must furnish the University's Operations Manager with monthly reports as set out in the Scope of work, no later than the 7<sup>th</sup> day of the month following the month to which the report relates.

6.3.7.9. The University reserves the right to require the Service Provider to furnish it with any information it deems pertinent to the Service Providers fulfilment of its obligations under the Agreement even information over and above the information furnished in the Service Provider's monthly reports.

6.3.7.10. The Service Provider will ensure that it and its Personnel comply with ~~the~~ all applicable laws relating to food safety, occupational health and safety including the Occupational Health and Safety Act, 85 of 1993 ("**OHS Act**"). Without limiting the generality of this, the Service Provider must ensure that at all times adequately equipped first aid boxes are available in appointed areas and that it has appointed safety representatives, under the OHS Act and with best practice.

6.3.7.11. The Service Provider must keep statistics, minutes and other records required by legislation on file and available for inspection by the University's Operations Manager.

6.3.7.12. The Service Provider may address service performance, operational, administrative and other contractual issues immediately to University's Operations Manager.

6.3.7.13. The Service Provider's Operating Hours must fit in with the requirements of the University's Operations Manager (in consultation with other relevant University departments). The Operating Hours are set out in the Scope of Work.

#### 6.4. Penalties

The University of Witwatersrand	
The Service Provider	

6.4.1. Without prejudice to any of the University's rights under this Agreement or at law, if the Service Provider breaches any of its obligations as specified in this Agreement, the University will be entitled to claim a penalty in respect of each instance of such breach and/or delay in an amount of 10% (percent) of the total Agreement value per day that the Service Provider is and remains in such breach.

6.4.2. The University will be entitled to elect whether to claim damages or the penalty described in clause 6.4.1 from the Service Provider in the event of a breach specified above and may without prejudice to any other method of recovery deduct the amount of such penalty from any monies in its hands due or which may become due to the Service Provider. The payment or deduction of such penalty will not relieve the Service Provider from its obligation to comply with its obligations specified above or from any of its obligations and liabilities under this Agreement or at law.

## 7. SERVICE PROVIDER PERSONNEL

### 7.1. Personnel Complement

7.1.1. The Service Provider will assign a Personnel complement sufficient both in numbers and skills to ensure due and proper performance of the Services at all times.

7.1.2. The Service Provider shall ensure that its Personnel are trained and competent to perform the Services. The Service Provider must provide continued training and development for all of its Personnel in those skill areas relevant to the performance of its obligations under this Agreement. The Service Provider must provide details of its training and Personnel development programme for each year to the University for its consideration, by the 1<sup>st</sup> day of December of the preceding year.

7.1.3. The Service Provider shall provide the University with a comprehensive list of names and identity numbers of all Personnel of the Service Provider, and will immediately inform the University of any prospective changes thereto. The disclosure of this information will be done in accordance with POPI.

7.1.4. The University has the right to interview any new Catering Manager, Project Manager and its other supervisory Personnel before appointment and to object on reasonable grounds to the appointment of a candidate. If the University objects on reasonable grounds to such an appointment, any further appointment shall be made in consultation with the University.

The University of Witwatersrand	
The Service Provider	

7.1.5. The Service Provider acknowledges the importance of an orderly transition from one service provider to another and accordingly undertakes to cooperate with and assist the University and any new service provider appointed by the University, on termination of the Agreement. In complying with the requirements of this clause 7.1.5, the Service Provider shall provide the University with all information, data and documentation pertaining to its Personnel complement and the provision of the Services. The Service Provider further acknowledges that the obligation to cooperate and assist the University may extend beyond the termination date and that the obligation will arise irrespective of whether the Agreement is terminated due to a breach of the Agreement or the effluxion of time.

**7.2. Relief Personnel**

The Service Provider may provide relief Personnel by temporarily transferring Personnel from another site for whatever reason, including seasonal workload peaks, or to replace Personnel on training, leave or sick leave, provided that the University's Operations Manager and the Liaison Officer is given reasonable notice of this. The Service Provider shall bear all costs related to the provision of relief Personnel.

**7.3. Medical Fitness**

The Service Provider will ensure that all of its onsite Personnel are fit for duty. The University reserves the right on reasonable grounds to require that individual Service Provider Personnel be certified fit for duty by a medical practitioner approved by the University at Service Provider expense.

**7.4. Uniform**

The Service Provider's Personnel will be required to wear the prescribed uniform (including protective clothing as necessary), at all times when on the University Precincts, including when arriving for and departing from duty.

**7.5. Emergencies**

The Catering Manager and/or Project Manager will alert the University's Operations Manager of all emergencies, incidents and unusual events immediately by mobile phone SMS or WhatsApp and within 12 (twelve) hours in writing.

**7.6. First Aid**

7.6.1. The Service Provider shall be responsible for the provision and replenishment of first aid boxes at the Catering Facilities, which will be under the control of a trained first aid

The University of Witwatersrand	
The Service Provider	



provider. In cases of emergency, the Service Provider's supervisor at the Catering Facility shall be responsible for summoning an ambulance. Where necessary, the University will offer assistance.

7.6.2. The Service Provider shall ensure that at least 2 (two) of its Personnel per Catering Facility will have undergone first aid courses approved by the University.

7.6.3. The Service Provider shall provide proof of successful training undergone by its Personnel who have attended such first aid courses.

7.6.4. The Service Provider shall provide proof of successful training undergone by its Personnel who have attended such first aid courses.

**7.7. Identification**

7.7.1. The Service Provider will issue personal identification name tags to all of the Service Provider's on Site Personnel at its cost.

7.7.2. The Service Provider will ensure that all on Site Personnel display their identification tags at all times, in such a way as to be fully visible.

**7.8. ICAM Access Cards**

7.8.1. The Service Provider will be required to apply for and obtain ICAM access cards for all of its Personnel deployed on the University Precinct's at the beginning of each Year and whenever new Personnel are deployed.

7.8.2. The cost of these cards will be for the Service Provider's account.

7.8.3. If an individual is no longer employed by the Service Provider, it is the Service Provider's responsibility to notify the University's Operations Manager immediately, giving all details) so that the card can be de-activated for security purposes. Only Service Provider Personnel who have valid ICAM access cards will be permitted access to the University Precincts.

**7.9. Union Meetings**

7.9.1. In so far as the Service Provider's Personnel need to meet with a recognised union in terms of a collective agreement between the Service Provider and such union, specific arrangements will be made by the Service Provider with the relevant University structures before any such meeting that adequately addresses:

The University of Witwatersrand	
The Service Provider	

- 
- 7.9.1.1. the University's operational requirements,
  - 7.9.1.2. the fulfilment of the University's other contractual obligations, and
  - 7.9.1.3. any other conditions regarding union meeting time and place that are reasonable and necessary to safeguard life or property, and to prevent the undue disruption of work.
- 7.9.2. All gatherings will be subject to the University's Regulations.

**7.10. Service Provider Personnel Accommodation**

- 7.10.1. Service Provider Personnel Accommodation, as may be provided by the University, is subject to the following:
- 7.10.1.1. On-site, short term accommodation may be made available, at the University's discretion and upon its written approval, for certain of the Service Provider's designated Personnel including those who are appointed by the Service Provider as the after-hours emergency response team. The University does not guarantee the availability of Service Provider Personnel Accommodation facilities.
  - 7.10.1.2. The provision of Service Provider Personnel Accommodation is subject to change at any time without due notice by the University.
  - 7.10.1.3. Subject to clause 7.10.1.1, the Service Provider agrees that it shall bear all costs and expenses of Service Provider Personnel Accommodation and these are payable monthly in advance in accordance with the terms of the lease agreement entered into between the University and the Service Provider.
  - 7.10.1.4. The Service Provider shall ensure that its Personnel who occupy Service Provider Personnel Accommodation adhere to all University Rules.

**8. WARRANTIES**

- 8.1. The Service Provider warrants that:
- 8.1.1. it and its Personnel, vendors, suppliers and/or subcontractors engaged in providing items or the Services under this Agreement, has and will maintain all the skills, experience, and qualifications to provide the Services contemplated by the Agreement, including any required training, registration, certification or licensure;

The University of Witwatersrand	
The Service Provider	

- 
- 8.1.2. there is no actual or potential conflict between the Service Provider and the University, and its Services under this Agreement, and in the event of change in either the Service Provider's personal interests or Services under this Agreement, the Service Provider will inform the University regarding the possible conflict of interest which may arise as a result of the change. The Service Provider also affirms that there is no actual or potential conflict between Personnel of the University and the Service Provider;
- 8.1.3. the Services and/or the University's use of products, processes, techniques and methodologies provided by the Service Provider or developed by the Service Provider shall not infringe upon the copyright, patent, or other proprietary rights of other third parties;
- 8.1.4. all Services provided shall conform to the level of quality performed by experts regularly rendering this type of Service. The Service Provider warrants that for 90 (ninety) days after accepted completion of a requested Service that its Services are entirely satisfactory to the University and will repair, replace or redo at no additional cost to the University any unsatisfactory Services;
- 8.1.5. it will comply with all applicable rules, regulations, codes, standards and legislation in the Republic of South Africa in the performance of the Service and this Agreement;
- 8.1.6. it will promote the interests of the University in the performance of the Services;
- 8.1.7. it will make itself familiar with, and comply with, the University Regulations;
- 8.1.8. it has had an opportunity to seek independent legal advice as to the nature, effect and extent of this Agreement, and to the rights created and extinguished by this Agreement;
- 8.1.9. the Services shall be fit for the purposes for which these types of Services are commonly required and for any other purposes described in this Agreement;
- 8.1.10. it agrees that the University has not made any promise, representation or inducement, or been a party to any contract material to the entry of the Service Provider into this Agreement, other than those matters set out in this Agreement; and
- 8.1.11. it is aware that the University is relying upon these warranties in executing this Agreement.

The University of Witwatersrand	
The Service Provider	

---

**9. UNIVERSITY RESPONSIBILITIES**

- 9.1. The University shall allow the Service Provider such access to University Precincts and Systems as is reasonably necessary for it to perform its obligations in terms of the Agreement.
- 9.2. The University shall provide the Service Provider with:
- 9.2.1. reasonable prior notification of any proposed Amendment of Agreement or Variation Orders;
  - 9.2.2. parking facilities on the University Precincts in close proximity to the Service Provider's point of operation, subject to availability of parking facilities and to the terms and conditions of the University's policy regarding the parking of vehicles on University Precincts. Any cost associated with the provision and use of such parking facilities is for the account of the Service Provider;
  - 9.2.3. the necessary utilities including water and electricity to perform its obligations under this Agreement. The University will not be responsible for any interruption in utilities;
  - 9.2.4. the Catering Facilities;
  - 9.2.5. the Operating Facilities;
  - 9.2.6. subject to clause 7.10, Service Provider Personnel Accommodation.

**10. AMENDMENT OF AGREEMENT**

- 10.1. The University will not be liable for any Additional Service undertaken or expenditure incurred which is not contained in an Amendment of Agreement.
- 10.2. Where an Amendment of Agreement is required, the University will provide the Service Provider with reasonable prior notification in order to allow appropriate resource scheduling to take place.
- 10.3. Any Amendment of Agreement to this Agreement must be signed by a duly authorised representative of the University and the Service Provider's Representative. In the event that such an Amendment of Agreement is not signed by both Parties then the amendment is not binding on the Parties.

The University of Witwatersrand	
The Service Provider	

**11. CLAIMS FOR VARIATION ORDERS**

- 11.1. Any claim for a Variation Order on quoted Services shall be forwarded by the Service Provider in writing to the University's Operations Manager within 2 (two) Business Days from the time the Service Provider becomes aware of the circumstances giving rise to the request for the Variation Order. The University retains the right to have Services completed at the agreed price.
- 11.2. The University shall only consider a claim for Variation Order where the Service Provider is able to satisfy the University that the claimed Variation Order is due to unforeseeable circumstances beyond the Service Provider's control.
- 11.3. The Service Provider agrees that a lack of knowledge of the University's requirements or of the effort and materials required to perform the Services shall not constitute a valid basis for a Variation Order.
- 11.4. Any Variation Order must be signed by the University's Representative. A Variation Order which is not signed by the University's Representative is not binding on the University.

**12. SUBCONTRACTING, CESSION AND DELEGATION**

**12.1. Subcontracting**

- 12.1.1. The Service Provider will not, without the prior written consent of the University in each instance, subcontract any of its obligations in terms of this Agreement. Such consent does not relieve the Service Provider of any of its obligations, and it is responsible to the University for the acts and omissions of its subcontractor as if such acts have been acts and omissions of the Service Provider.
- 12.1.2. If the Service Provider seeks to subcontract any of its obligations in terms of this Agreement, the University reserves the right to offer other service providers the opportunity to provide the subcontracted Services, without any recourse to the Service Provider.
- 12.1.3. The Service Provider will ensure that any guarantees or other undertakings that were given by a subcontractor are transferable to the University and warrants that such guarantees will, on notice from the University, be transferred to the University. The Service Provider will ensure that each subcontractor complies with all the terms of this Agreement as if it was the Service Provider.

The University of Witwatersrand	
The Service Provider	

12.1.4. If the University consents to the Service Provider entering into a subcontract in terms of clause 12.1.1, the provisions of this Agreement will be applicable mutatis mutandis to the Agreement between the Service Provider and such subcontractor. The Service Provider hereby warrants and undertakes that its subcontractor 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 subcontractor will be expressly reflected in the subcontract.

12.1.5. On termination of the Agreement for any reason whatsoever, and without prejudice to any of its other rights, the University will be entitled to take cession of any subcontractors from the Service Provider and enforce any such subcontract agreements.

## 12.2. Cession and delegation

The Service Provider will not, without the prior written consent of the University, cede any of its rights or delegate any of its obligations in terms of the Agreement to any Third Party. 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.

## 13. FEES AND PAYMENT TERMS

13.1. The Fees, as set out in Annexure B, consist of the Service Provider's monthly charges, including meal costs, overhead costs, and labour costs.

13.2. In respect of clause 13.1, the Service Provider shall assist the University in composing a budget and payment plan for meal, overhead and labour charges on or about the Effective Date for the first Financial Year of the Agreement and in August of each Year following the Effective Date for the next Financial Year. The University shall determine which meal and overhead items are affordable and required for that Financial Year and the resulting charges will be paid to the Service Provider. Any other costs for overhead and set up items will be borne by the Service Provider.

13.3. The Service Provider shall charge the University the predetermined fee per meal (for any meal) per person as set out in Annexure B. However, for meals that have been booked or ordered but not consumed at the mealtime indicated by the University's student or other members of the University Community, the Service Provider shall not charge a fee for such meal.

The University of Witwatersrand	
The Service Provider	

- 13.4. The University's access control system will validate extra charges if claimed. Extra meals will not be paid for by the University if claimed using tokens or vouchers unless a prior written agreement with the University has been entered into.
- 13.5. The Catering Manager (where required the Project Manager) and the University's Operations Manager shall determine on a weekly basis with the official meal and access control system records and after that approve and sign-off in writing.
- 13.6. Subject to clause 13, the Fees will not be increased for the first 12 (twelve) Months of the Agreement unless agreed in writing between the Parties.
- 13.7. Thereafter, and provided the relevant supporting documentation required by the University is supplied by the Service Provider and the University agrees thereto in writing, the charges may be adjusted as follows:
- 13.7.1. for the labour cost component in respect of remuneration of the Service Provider's Personnel, according to the annual increases in wages specified in the Basic Conditions of Employment Act, No 75 of 1997, specifically the Sectoral Determination 14: Hospitality Sector, South Africa, of section 56(3) (b) (refer: <http://www.labour.gov.za/DOL/legislation/sectoral-determinations>), and
- 13.7.2. for the remaining components of the charges (including charges per meal and the charges referred to in clause 13.1), annually on the first and each subsequent anniversary of the Effective Date, as successfully negotiated between the Parties and finally agreed upon by the University.
- 13.8. Fees for Additional Services shall be at the same rates and prices as set out in Annexure B or as otherwise may be agreed by the Parties in writing.
- 13.9. **Submission of Invoices**
- 13.9.1. The Service Provider shall submit Monthly invoices in respect of the Fees set out in Annexure B to the University, detailing meal costs, overhead costs and labour costs calculated at the agreed rates and charges on a monthly billing cycle in the month after the Services for which payment is claimed, has been done.
- 13.9.2. Each invoice submitted by the Service Provider shall be a valid tax invoice, which:
- 13.9.2.1. sets out the description of the Services delivered in accordance with Annexure B, and the amount and method of calculation of any tax payable,
- 13.9.2.2. displays the VAT numbers of the University and the Service Provider,

The University of Witwatersrand	
The Service Provider	

- 
- 13.9.2.3. clearly indicates the University's order number (if any),
- 13.9.2.4. is accompanied when requested by the University by:
- 13.9.2.4.1. original schedule of rates and Fees as detailed in Annexure B,
- 13.9.2.4.2. workbook sheets, including a year-to-date statement of accounts receivable and accounts payable by a Catering Facility in both printed and softcopy (Excel) formats,
- 13.9.2.4.3. any other supporting documentation required by the University, and
- 13.9.2.5. indicates any amounts owing to the Service Provider by the University for any Additional Services,
- 13.9.2.6. contains the invoice date which must be the beginning of the month within which the services were delivered, and
- 13.9.2.7. must reach the University by no later than 5<sup>th</sup> the Business Day of the month following the month to which the invoice relates.
- 13.9.3. The University reserves the right to reject any invoice submitted by the Service Provider that is not accompanied by all relevant supporting documentation. In the case of incomplete claims, the University shall only pay amounts that have supporting documentation.
- 13.9.4. The University reserves the right, in consultation with the Service Provider, to amend or add to the Specifications as and when necessary, depending on changing conditions and requirements.

### 13.10. Invoicing and Payment

- 13.10.1. The University shall not be liable to pay any invoice submitted more than 60 (sixty) days after completion of the Services unless the University has agreed that late invoices may be submitted.
- 13.10.2. Amounts (including those charges and penalties described in clauses 6.4 and 14.3, and in the Scope of Work to be paid by or retained from the Service Provider may, at the University's option, be set off against any amounts due by the University.

The University of Witwatersrand	
The Service Provider	



13.10.3. The University shall not be liable to pay any invoice submitted more than 60 (sixty) days after completion of the Services unless the University has agreed that late invoices may be submitted.

13.10.4. The University shall pay all amounts due to the Service Provider by the end of the Month following the Month to which the invoice relates, provided that the invoice and all necessary supporting documents have been submitted timeously.

13.10.5. If the University has a query regarding any amounts claimed, the University shall not delay payment of the total amount payable, but only withhold that portion of the payment which is the subject of the query. Payment of amounts which have been withheld in terms of this clause 13.10.5 shall be made within 10 (ten) Business Days following the resolution of the query.

13.10.6. Where the Service Provider does not submit the invoice:

13.10.6.1. within the time required, or

13.10.6.2. in the prescribed format, or

13.10.6.3. with supporting documentation,

the period within which payment is made in terms of clause 13.10.5 is extended by the length of time from the date when the Service Provider should have submitted such invoice, to the date when it does submit it (and taking into account the University's electronic payment cycle), in the correct format with the correct documentation. If the University has a query regarding any amounts claimed, the University shall not delay payment of the total amount payable, but only withhold that portion of the payment which is the subject of the query. Payment of amounts which have been withheld in terms of this clause 13.10.6 shall be made within 10 (ten) Business Days following the resolution of the query.

13.10.7. By the 7<sup>th</sup> (seventh) day of each Month the Service Provider must provide the University with an electronic copy of all data and reports generated during the Month to which the invoice relates.

The University of Witwatersrand	
The Service Provider	

#### 14. COMPLIANCE WITH LAWS, REGULATIONS AND STANDARDS

14.1. The Service Provider agrees that at all times during the duration of this Agreement it will comply with:

14.1.1. all relevant labour legislation, which includes but is not limited to, the OHS Act, the Labour Relations Act 66 of 1995, the Employment Equity Act 55 of 1998, the Basic Conditions of Employment Act 75 of 1997, the Skills Development Act 97 of 1998, the Unemployment Insurance Act 63 of 2001, and the Compensation for Occupational Injuries and Diseases Act 130 of 1993. In particular, the Service Provider will comply with the provisions of the Labour Relations Act to the extent that section 197 thereof may be held to be applicable to the provision of the Services in terms of this Agreement;

14.1.2. POPI;

14.1.3. Foodstuffs, Cosmetics and Disinfectant Act 54 of 1972 (including but not limited to regulations 607 and 638);

14.1.4. Hazard Analysis and Critical Control Point (“**HACCP**”).

14.2. The Service Provider will ensure that it and its Personnel comply with all applicable laws, including the provisions set out in this clause 14. Without limiting the generality of this, the Service Provider will comply with legislation relating to the Services and will keep statistics, minutes and other records required by legislation on file and available for inspection by the University’s Operations Manager.

14.3. Without prejudice to the University’s rights in terms of clause 22, if the Service Provider breaches any of its obligations contained in clauses 14.1 and 14.2, the University will be entitled to impose the penalty described in clause 6.4.

14.4. On or before the Effective Date, the Service Provider will produce documentary proof to the University that it has complied in all respects with the provisions of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA). The Service Provider will perform and comply with all the provisions of COIDA and more particularly will render all returns and pay all assessments for which it is liable in terms of COIDA.

#### 15. HEALTH AND SAFETY

15.1. Notwithstanding anything else contained in the Agreement, the prevention of accidents, safety performance and adherence to sound and safe work standards and practices by the Service

The University of Witwatersrand	
The Service Provider	

Provider are essential terms of this Agreement. Accordingly, the Service Provider and its Personnel will, while on the University Precincts, strictly adhere to all applicable safety and health requirements of statutes, ordinances, by-laws and regulations as well as the University's codes of practice, policies, procedures or instructions relating to safety and health applicable to the University Precincts or the execution of the Agreement.

- 15.2. In terms of section 37(2) of the OHS Act, the Service Provider hereby agrees that the University is relieved of any and all of its liabilities in terms of section 37(1) of the OHS Act in respect of any acts or omissions of the Service Provider and/or the Service Provider's Personnel to the extent permitted by the OHS Act, and that this Agreement comprises the written agreement between the University and the Service Provider contemplated in section 37(2).
- 15.3. Without detracting from the generality of the above, and without limiting its liability in any way, the Service Provider will ensure that it and its Personnel will at all times comply with any conditions, codes of practice or any other provisions of a like nature which may be specified by the University from time to time, and any instructions, orders, prohibition, exemption certificates and the like issued in terms of the OHS Act. Such compliance will, inter alia, necessitate the Service Provider ensuring that the Service Provider's Personnel at all times whilst on the University Precincts, where specified by the University (by notice, sign, regulation, instruction or the like) or where necessitated by the nature of the Services, wear the required personal protective clothing and equipment ("PPE") if applicable. It is the responsibility of the Service Provider to ensure that its Personnel is in possession of such PPE and to maintain it in a serviceable condition at the Service Provider's cost (if applicable).
- 15.4. All Services performed and/or articles/substances supplied for and on behalf of the University or on or at the University Precincts, must be performed under close supervision among other things to ensure compliance with the Agreement and the OHS Act. The Service Provider warrants that the person/s appointed to perform such supervision is/are suitably qualified and trained to understand the risks and hazards associated with any Services performed or articles/substances supplied by the Service Provider, and to ensure compliance with the Agreement, and the OHS Act.
- 15.5. The Service Provider acknowledges that the University retains an interest in any investigation and/or inquiry conducted in terms of the OHS Act or any other investigations which may be conducted into any incident. The Service Provider shall furnish a written report to the University within 24 (twenty-four) hours following the conclusion of any such investigation or inquiry.

The University of Witwatersrand	
The Service Provider	

- 15.6. The Service Provider shall be deemed to have full knowledge of the Services and/or articles/substances supplied in terms of the Agreement, and the implications or potential implications on the health and/or safety of employees and other persons. The Service Provider shall, before conducting any Services and/or supplying any articles substance in terms of the Agreement, conduct a risk assessment to the satisfaction of the University. The results of such risk assessment must be provided, in writing, to the University's Operations Manager not less than 7 (seven) days before the Services and/or supply of articles/substances in terms of the Agreement.
- 15.7. The Service Provider must, on or before the Effective Date provide the University with copies of all appointments required by the OHS Act and OHS Regulations and, in particular, without limiting this obligation, the Service Provider must advise the University of the responsible person appointed by it in terms of section 16(2) of the OHS Act and, where applicable, in terms of General Machinery Regulation 2(1).
- 15.8. The Service Provider must immediately and in writing advise the University of any hazardous situation which may arise from the supply of the Services.
- 15.9. Without prejudice to its other rights in law or in terms of this Agreement, the University is entitled at any time:
- 15.9.1. to require the Service Provider to suspend all activities on the University Precincts, or
- 15.9.2. to terminate this Agreement forthwith,
- if, in the reasonable opinion of the University, the Service Provider has breached any provision of this clause 15. The University shall be entitled to recover from the Service Provider any loss occasioned to it as a result of such suspension or termination, including the cost of procuring the supply of the Services by another service provider.
- 15.9.3. limit any other right or remedy available to the University.
- 15.10. **Incidents**
- 15.10.1. The Service Provider must immediately notify the University in writing if any health and safety accident, incident or near-miss accident or incident occurs.
- 15.10.2. Within 24 (twenty-four) hours of any health and safety accident or incident, the Service Provider must provide the University with a report of the accident or incident occurring which includes a detailed chronology, a description of events and the proposed remedial action.

The University of Witwatersrand	
The Service Provider	

15.10.3. The Service Provider must fully co-operate with the University in connection with any investigation following a health and safety accident, incident or near-miss accident or incident.

15.11. Nothing in this clause 15 will:

15.11.1. be construed as an assumption by the University of any of the Service Provider's duties, or

15.11.2. limit any other right or remedy available to the University.

## 16. LIABILITY AND INDEMNITY

16.1. Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider will do all that is reasonably necessary within the course and scope of this Agreement to prevent or minimise the risk of loss or damage to property and injury to persons by fire, theft, burglary or vandalism or by any other means.

16.2. The Service Provider hereby indemnifies and hold the University harmless:

16.2.1. for any loss of, or damage to, the property of the University or any financial loss suffered by the University, or for claims arising out of any death or injury to any person, and

16.2.2. against all claims of whatsoever nature and howsoever arising which may be made against the University by any Personnel of the Service Provider for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by any Personnel in the course or scope of that individuals employment and whilst being on the University Precinct's,

16.2.3. save where such injury, loss or damage is caused by the gross negligence and wilful misconduct of the University or its Personnel.

16.3. The Service Provider hereby indemnifies and holds the University harmless:

16.3.1. in respect of all actions, proceedings, liabilities, claims, damages, costs and expenses arising out of the acts and/or omissions of its Personnel, and

16.3.2. from any liability arising from:

16.3.2.1. any breach of laws or regulations by the Service Provider,

The University of Witwatersrand	
The Service Provider	

- 16.3.2.2. 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, and/or
- 16.3.2.3. costs incurred by the University in connection with the enforcement of this clause 16.
- 16.4. The Parties record that the University has insured itself against its liability in law for the acts and omissions of persons acting on its behalf, and its registered students and Personnel are insured during the course and scope of their registered courses and within the scope of the University's business, where fault can be attributed to the University, its affiliates or their respective Personnel or students. The University's maximum liability in respect of any cause resulting or arising from or in connection with any act or omission in terms of this Agreement will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.
- 16.5. The Parties furthermore record that, subject to clause 17.1 the Service Provider's maximum liability in respect of any cause resulting or arising from or in connection with any negligent act or omission in terms of this Agreement will be limited, whether for a single or multiple events to the extent of its insurance cover herein.

## 17. INSURANCE

- 17.1. Without detracting from the liability of the Service Provider as set out in clause 16 or elsewhere in this Agreement, the Service Provider will at all times while this Agreement is in force maintain insurance coverage satisfactory to the University's insurance brokers, including public liability insurance, third party motor liability insurance and business all risks liability insurance which adequately insures against all the liabilities imposed by this Agreement.
- 17.2. The Service Provider will forward proof of its insurance cover specified in clauses 17.1 and 17.3 to the University on or before the Effective Date and thereafter the terms will not be altered without the consent of the University. Proof of payment of premium for the policy will be furnished annually to the University.
- 17.3. Before commencing the Services under the Agreement, the Service Provider shall be fully insured against loss of or damage to the Service Provider Equipment.
- 17.4. The Service Provider will ensure each subcontractor is insured against the subcontractor's corresponding liabilities.

The University of Witwatersrand	
The Service Provider	

17.5. The Service Provider shall replace any damaged or lost University Equipment within a reasonable time, but in any event, within a maximum period of 7 (seven) days from the date the damage was incurred or the loss suffered.

**18. PROPRIETARY RIGHTS**

18.1. All proprietary assets or related materials provided by a Party for use in accordance with this Agreement will remain the exclusive property of that Party. Where one Party grants the other access to its proprietary assets, this is restricted to a non-transferable right of use solely in relation to this Agreement.

18.2. All reports that the University commissions the Service Provider to develop or write for the University remain the exclusive property of the University.

18.3. All intellectual property that was developed for the University in accordance with the University's instructions arising out of the fulfilment by the Service Provider of all and any of its obligations and duties under this Agreement, including copyright in documentation, knowhow and trade secret information, belongs to the University.

**19. CONFIDENTIAL INFORMATION**

19.1. The Service Provider will treat as confidential all information and know-how which it may, in terms of this Agreement, receive from the University, or which may become known to the Service Provider in the course of implementing the terms and conditions of this Agreement ("**Confidential Information**"), and will not divulge to any other party in any other circumstances any such information, whether during the currency of this Agreement or at any time thereafter, unless the prior consent of the University has been obtained.

19.2. Notwithstanding the provisions of clause 19.1, the information will be deemed not to be Confidential Information if it:

19.2.1. is or becomes generally available to the public other than as a result of disclosure by the Service Provider in breach of this clause 19,

19.2.2. is or was independently developed by the Service Provider or on its behalf by persons having no access to such Confidential Information,

19.2.3. was in the Service Provider's possession prior to the Effective Date,

19.2.4. is required to be disclosed in terms of any law or under an order of court or under the rules of any stock exchange or other applicable regulatory authority, in which case the

The University of Witwatersrand	
The Service Provider	

Service Provider will give the University reasonable notice thereof as soon as is reasonably practicable, and, in the case of any disclosure required in terms of the Promotion of Access to Information Act No. 2 of 2000 the Service Provider will, in as far as it is able, apply the principles of Chapter 4 in order to avoid and/or limit the extent of any such disclosure.

- 19.3. The Service Provider will be entitled, to the extent necessary to comply with its obligations in terms of this Agreement, to disclose Confidential Information or Personal Information to its Personnel and professional advisers provided that the Service Provider will ensure that its Personnel and/or professional advisers in question have been duly notified of and are bound to respect the confidentiality and secrecy of the Confidential Information or Personal Information disclosed to them.
- 19.4. The Service Provider will exercise proper internal controls over all documentation containing Confidential Information or Personal Information and will not make copies of any Confidential Information or Personal Information except as may be required for the purposes referred to in clauses 19 and/or 20.
- 19.5. Without limiting its obligations in terms hereof the Service Provider will take at least the same steps relating to Confidential Information or Personal Information as the Service Provider takes for the purposes of protecting its own proprietary information, confidential information and Personal Information
- 19.6. The Service Provider will, at the request of the University, which may be at any time, return to it all documentation or other written or printed material containing Confidential Information or Personal Information and delete or destroy all electronic records containing Confidential Information or Personal Information.
- 19.7. The provisions of this clause 19 will survive the termination or expiry of this Agreement.

**20. DATA PROTECTION**

- 20.1. Each Party shall comply with its respective obligations under the Data Protection Legislation.
- 20.2. In processing the Personal Information, the Service Provider shall comply with POPI, notwithstanding the date of enactment of the legislation and its regulations, and subject to any amendments or substitutions which may be made from time to time.
- 20.3. The Service Provider agrees to indemnify, and keep indemnified, the University from and against all liabilities, costs, expenses, damages and losses and any professional costs and expenses suffered by, incurred by, or awarded against the University, arising out of or in

The University of Witwatersrand	
The Service Provider	



connection with any failure by the Servicer Provider or its Personnel to comply with its obligations under this clause 20.

## 21. DISPUTE RESOLUTION

- 21.1. The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.
- 21.2. Each Party will notify the other in the event of any perceived or potential dispute occurring.
- 21.3. All disputes between the Parties will be determined in accordance with the provisions of this clause 19.7.
- 21.4. Within a period of 14 (fourteen) days of the date on which the dispute arose (the “**Dispute Date**”), the Project Manager and the University’s Operations Manager will meet to discuss the dispute and will endeavour to resolve the dispute amicably.
- 21.5. If the Project Manager and the University’s Operations Manager are unable to resolve the dispute in terms of clause 21.4 within 30 (thirty) days from the Dispute Date, the dispute will be referred to the University’s Vice-Chancellor or his authorised nominee and the Service Provider’s Chief Executive Officer or an equivalent senior management representative or their duly appointed and authorised representative/s, who will use their best endeavours to resolve the dispute.
- 21.6. If the individuals described in clause 21.5 above are unable to resolve the dispute within a period of 30 (thirty) days after it has been referred to them, either Party may refer the matter for mediation. The aggrieved Party 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 between the Parties equally. The determination by the mediator will be final and binding and must be carried into effect by the Parties.
- 21.7. If the mediator is unable to resolve the dispute or difference, either Party may institute an action in the South Gauteng High Court, Johannesburg.

## 22. BREACH AND TERMINATION

- 22.1. If the Service Provider commits a material breach of any of the provisions of this Agreement, the University shall be entitled to give the Service Provider notice to remedy the breach.
- 22.2. If the Service Provider fails to comply with the notice contemplated in clause 22.1 above within 5 (five) Business Days of the date of delivery thereof, the University shall be entitled to cancel

The University of Witwatersrand	
The Service Provider	

this Agreement or to claim specific performance, without prejudice to the University's right to claim damages.

22.3. 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 to:

22.3.1. withhold all payments due and payable to the Service Provider until such time as the Service Provider has complied therewith, to the satisfaction of the University, or

22.3.2. engage a Third Party to perform the Services which the Service Provider will have failed to perform properly or at all, and the cost thereof may be deducted from any amount that may otherwise be due to the Service Provider under the Agreement.

22.4. If the Service Provider consistently defaults in the performance of its obligations under this Agreement, the University will be entitled to cancel this Agreement without prejudice to any other rights that the University may have in law. For the purposes of this clause 22.4, "consistent default" will mean the failure of the Service Provider to comply with its obligations hereunder on 3 (three) occasions within a period of 60 (sixty) consecutive Business Days.

22.5. If:

22.5.1. the Service Provider is placed in liquidation, either provisionally or finally, whether voluntarily or compulsorily, or

22.5.2. the Service Provider applies for or undergoes business rescue in terms of Chapter 6 of the Companies' Act, 2008, or

22.5.3. the estate of the Service Provider is sequestrated, either provisionally or finally, or

22.5.4. the estate of the Service Provider is surrendered, or

22.5.5. the Service Provider commits an act of insolvency, or

22.5.6. the Service Provider dies, whether the Service Provider is an individual or a member of a partnership or syndicate, or

22.5.7. a judgment in any competent court is given against the Service Provider, and is not satisfied within a period of 14 (fourteen) days, or

22.5.8. before completion of the Agreement, the significant portion of the assets of the Service Provider is disposed of, or the majority shareholding of the Service Provider is transferred, or there is a change of management control of the Service Provider,

The University of Witwatersrand	
The Service Provider	

then 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.

## 23. FORCE MAJEURE

- 23.1. Neither Party is responsible to the other for its failure to perform, for defective performance or for any delay in performing any obligation under the Agreement, if and to the extent that such failure or delay is caused by *force majeure*.
- 23.2. For the purpose of this Agreement *force majeure* means any circumstance which is beyond the reasonable control of the Party giving notice of *force majeure* (the “**Affected Party**”), including war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, the exercise of military or usurped power, fire, explosion, flood, drought, lightning or any other adverse weather condition, epidemic, quarantine, accident, acts and restraints of government imposition or restrictions of or embargoes on imports or exports.
- 23.3. The Affected Party will give notice thereof to the other immediately upon the occurrence of an event of *force majeure* and again immediately on the cessation thereof.
- 23.4. If *force majeure* is of such nature that it will result in impossibility of performance of an obligation going to the root of the Agreement, the Party not so affected (the “**Other Party**”) is entitled, on receipt of notice of the *force majeure* event, to terminate the Agreement upon notice to the Affected Party but will not be entitled to recover any damages which it may suffer as a result of such premature termination.
- 23.5. If *force majeure* delays the performance of the Affected Party’s obligations for a continuous period of 60 (sixty) days, the Other Party may, at its option and without further obligation, terminate this Agreement upon notice to the Affected Party.

## 24. ADDRESSES AND DOMICILIA

- 24.1. The Parties select as their respective *domicilia citandi et executandi*, and for the purposes of giving or sending any notice provided for or required in terms of this Agreement, the addresses (including email addresses) set out below, or such other address as a Party elects in writing:

### 24.1.1. The University:

Director: Legal Services

5<sup>th</sup> Floor, Solomon Mahlangu House

1 Jan Smuts Avenue

The University of Witwatersrand	
The Service Provider	

Braamfontein

Johannesburg

Email address: [charmaine.johnstone@wits.ac.za](mailto:charmaine.johnstone@wits.ac.za)

Marked for the attention of: Director: Legal Services

24.1.2. **The Service Provider:**

Physical Address

Full physical address [insert]

Email address: [insert contact person's email address]

Marked for the attention of: [insert contact person's name]

24.1.3. Any notice addressed to a Party at its physical address shall be delivered by hand or by courier.

24.1.4. Any notice shall be deemed to have been given if:

24.1.4.1. delivered by hand or by courier, on the day of delivery; or

24.1.4.2. sent by email, the next Business Day.

24.1.5. A Party may change its address for this purpose to another physical address in the Republic of South Africa at which legal process can be served, by notice to the other Party.

25. **MISCELLANEOUS MATTERS**

25.1. **Obligations of the Service Provider regarding B-BBEE Status**

25.1.1. 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**”).

The University of Witwatersrand	
The Service Provider	

- 25.1.2. 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.
- 25.1.3. The Service Provider undertakes to notify and provide full details to the University in the event that there is:
- 25.1.3.1. a negative change to the Service Provider's B-BBEE rating, which is less than what its B-BBEE status was at the time of its appointment, including the impact thereof;
  - 25.1.3.2. 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.
- 25.1.4. The Service Provider shall issue the notice and relevant details required in clause 25.1.3 within 30 (thirty) days from the date the event occurred.
- 25.1.5. Should there be any adverse change to the Service Provider B-BBEE rating and should the Service Provider fails to comply with its reporting obligations in terms of this clause 25.1, University reserves the right to terminate this Agreement with immediate effect.

## 25.2. **Anti-Corruption Obligations**

- 25.2.1. The Service Provider agrees that in connection with the Services to be provided under this Agreement:
- 25.2.1.1. 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;
  - 25.2.1.2. to disclose all bribes immediately, offers of bribes or suspicions of bribery or corruption regarding this Agreement;
  - 25.2.1.3. to use its best endeavours to prevent bribes;

The University of Witwatersrand	
The Service Provider	

25.2.1.4. to use all reasonable endeavours to ensure that its Personnel, any third party agent, subcontractor, or other representative used in the performance of the Service Provider's obligations under this Agreement are aware of and comply with the provisions this clause 25.2.

25.2.2. The Service Provider agrees to indemnify, and keep indemnified, the University from and against all liabilities, costs, expenses, damages and losses and any professional costs and expenses suffered by, incurred by, or awarded against the University, arising out of or in connection with any failure by the Service Provider or its Personnel to comply with its obligations under this clause 25.2.

**25.3. The University Name**

25.3.1. The Service Provider agrees that it is not authorised to use the name, trademarks, marks, devices, trade names, business names, trading styles, logos or domain names of the University in connection with any marketing, co-branding and/or promotional materials or activities, or for any other purpose whatsoever.

25.3.2. Either Party desiring to issue a news release or advertisement or another form of media publicity in relation to this Agreement shall obtain written consent of the other Party prior to the release of such publicity, which written consent will not be unreasonably delayed or withheld.

25.3.3. The Service Provider undertakes and agrees that for the duration of this Agreement and after the termination thereof not to make any disparaging remarks, derogatory statements or comments about the University and its Personnel on any social media platform (which includes but is not limited to the internet, WhatsApp, Facebook, LinkedIn).

25.3.4. The Parties acknowledge and agree that the provisions of this clause 25.3 shall survive the expiration or termination of this Agreement and shall continue to operate after any such expiration or termination.

**25.4. Access to University Precincts**

25.4.1. Any Personnel, guest, invitee or any other person acting on behalf of the Service Provider may only come onto the University Precincts for the purposes of fulfilling the Service Provider's obligations under this Agreement, and for no other purpose, without the prior written consent of the University's Representative or his or her nominee.

The University of Witwatersrand	
The Service Provider	

- 25.4.2. Whenever any of the Service Provider’s Personnel, guest, invitee or any person acting on its behalf are present on the University Precincts the Service Provider will ensure that such person/s comply with all applicable University Regulations including regulations pertaining to:
- 25.4.2.1. the carrying of weapons;
  - 25.4.2.2. the wearing of identification tags and the possession and use of access cards;
  - 25.4.2.3. vehicle access to and parking on the University Precincts;
  - 25.4.2.4. any instructions from the University’s Representative; and
  - 25.4.2.5. any and all other applicable requirements laid down from time to time by the University.
- 25.4.3. 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.
- 25.4.4. The Service Provider will be diligent and exercise due care in fulfilling all its obligations under the Agreement including its obligations in respect to safety, the environment and the maintenance of any Service Provider Equipment and property belonging to the University or persons on University Precincts.
- 25.4.5. The University may require the Service Provider to effect the immediate removal from the University 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 that person does not return to the University Precincts without the University first having given the Service Provider its consent, which will not unreasonably be withheld, for that person to return. Removal by the Service Provider of such person/s will not be a ground for any relaxation of the Service Provider’s obligations hereunder.
- 25.4.6. The Service Provider will not remove any goods of whatever nature (including Service Provider Equipment) from the University Precincts without the written permission of the University’s Representative.
- 25.4.7. The University reserves the right, at any given time and without prior warning, to search any or all vehicles and containers entering or exiting the University Precincts.

The University of Witwatersrand	
The Service Provider	

25.4.8. All gatherings will be subject to the University Regulations.

**25.5. PURCO**

25.5.1. The Service Provider undertakes to the University that it will pay to PURCO a 2% (two per cent) service fee which is calculated on the total value of each invoice issued by the Service Provider to the University for the delivery of the Services. The Service Provider will send copies of its invoice and statement to both the University and PURCO. Upon receipt of the Service Provider's invoice, PURCO will invoice the Service Provider the 2% (two per cent) service fee which is payable directly to PURCO by the Service Provider within 30 (thirty) days of PURCO's invoice date.

**26. GENERAL**

**26.1. Entire Agreement**

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.

**26.2. No Representations**

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.

**26.3. Variation, Cancellation and Waiver**

26.3.1. No amendment or consensual cancellation or novation of this Agreement or any provision or term thereof and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement will be binding unless recorded in a document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made will be strictly construed as relating strictly to the matter in respect to which it was made or given.

26.3.2. No data message (as defined in the Electronic Communications and Transactions Act, 25 of 2002), including an e-mail, SMS, and recorded voice message, sent by either Party, shall amend this Agreement, or the rights and duties of the Parties in any manner, unless such data message is reduced to paper and signed by both Parties duly authorised signatories.

26.3.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement will operate as an estoppel against either Party in respect of its rights under

The University of Witwatersrand	
The Service Provider	



---

this Agreement, nor will it operate to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

**26.4. Applicable Law**

This Agreement will be interpreted and implemented in accordance with the law of the Republic of South Africa.

**26.5. Jurisdiction**

Subject to the provisions of clause 21, the Parties consent to the jurisdiction of the South Gauteng High Court, Johannesburg.

**26.6. Successors in title**

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.

**26.7. Unlawfulness**

If any of the terms of this Agreement is held to be invalid, unlawful or unenforceable, such term will be severable from the remaining terms and conditions which will continue to be valid and enforceable. The Parties agree to negotiate an Amendment of Agreement to remove any such invalidity.

**26.8. Costs**

Each Party will bear its own costs relating to the negotiation, preparation and signature of this Agreement.

The University of Witwatersrand	
The Service Provider	

---

SIGNED at \_\_\_\_\_ by the **University** on this the \_\_\_\_\_ day of \_\_\_\_\_ 201\_.

\_\_\_\_\_

(Print Name in block letters)

Designation

Signature

For and on behalf of the **University**  
and duly authorised thereto.

SIGNED at \_\_\_\_\_ by the **Service Provider** on this the \_\_\_\_\_ day of \_\_\_\_\_ 201\_.

\_\_\_\_\_

(Print Name in block letters)

Designation

Signature

For and on behalf of the **Service  
Provider** and duly authorised thereto.

The University of Witwatersrand	
The Service Provider	

**ANNEXURE A – SCOPE OF WORK**

1. <b>Overview of the Services:</b>	[Content to be included based on tender documentation]	
2. <b>Objectives:</b>	[Content to be included based on tender documentation]	
3. <b>The University's Requirements</b>	[Content to be included based on tender documentation]	
4. <b>Scope of Work:</b>	[Content to be included based on tender documentation]	
5. <b>Service Provider Responsibilities:</b>	[Content to be included based on tender documentation]	
6. <b>Standards:</b>	[Content to be included based on tender documentation]	
7. <b>Specifications:</b>	[Content to be included based on tender documentation]	
8. <b>Service Levels:</b>	[Content to be included based on tender documentation]	
9. <b>Representatives of the Parties:</b>	University Representative	Service Provider Representative
Name:	[insert]	[insert]
Position:	[insert]	[insert]
Tel:	[insert]	[insert]
Email:	[insert]	[insert]
10. <b>Operations and Project Managers of the Parties:</b>	University's Operations Manager	Project Manager
Name:	[insert]	[insert]
Position:	[insert]	[insert]

The University of Witwatersrand	
The Service Provider	

Insert Date

---

Tel:	[insert]	[insert]
Email:	[insert]	[insert]

Please initial here

The University of Witwatersrand	
The Service Provider	

**ANNEXURE B – FEES**

[To be inserted]

The University of Witwatersrand	
The Service Provider	

**ANNEXURE C – SERVICE PROVIDER’S INSURANCE DOCUMENTATION**

[To be inserted]

The University of Witwatersrand	
The Service Provider	