



Gauteng
City-Region
Observatory

PROJECT AGREEMENT

entered into between and by

GCRO WITS

and

THE SERVICE PROVIDER

DRAFT AGREEMENT

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1. DEFINITIONS

Unless the context clearly indicates otherwise, the following terms shall bear the following meanings:

- 1.1. **“Acceptance Criteria”** means the criteria expressly outlined in the Scope of Work by which the Deliverables, Services or Output will be evaluated by GCRO WITS for purposes of determining Acceptance by GCRO WITS
- 1.2. **“Acceptance” or “Accepted” or “Accept”** means, in respect of the Deliverables, Services or Output, confirmation in writing by GCRO WITS that the agreed Acceptance Criteria have been satisfied
- 1.3. **“Agreement”** this agreement together with all annexures and schedules hereto (if relevant and applicable).
- 1.4. **“Background Intellectual Property”** all Intellectual Property rights in existence before the Commencement Date of this Agreement as well as Intellectual Property developed by a Party to this Agreement after its commencement and which does not fall within the scope of the definition of Foreground Intellectual Property
- 1.5. **“Business Day”** any day which is not an official public holiday in South Africa
- 1.6. **“Commencement Date”** means [to be inserted]
- 1.7. **“Confidential Information”** means any and all tangible and intangible information relating to the management, operations, finances and products or services of GCRO WITS, including financial data, computer programs and systems, electronic media transferable plans and drawings, projections, existing and proposed and contemplated projects or investments, formulae, processes, methods, products, manuals, supplier lists, customer lists, purchase and sales records, territories, marketing information, contracts, correspondence, all personal information and secret knowledge, technical information and specifications,

manufacturing techniques, designs, circuit diagrams, instruction manuals, blueprints, electronic artwork, samples, devices, demonstrations, formulae, know-how, information concerning materials, scientific information generally, and other materials of whatever description in which GCRO WITS has an interest in being kept confidential including scientific knowledge gathered during the course of research and/or claimed as confidential by GCRO WITS at the time of disclosure or promptly thereafter and includes information (whether oral, documentary, magnetic, electronic, graphic or digitised) containing or consisting of information or material of a technical, financial, operational, commercial, administrative or planning nature or in the nature of intellectual property of any kind and relating (wholly or in part) to GCRO WITS or any of its actual or projected projects, research activities or businesses, including its suppliers, funders, Personnel, students, facilities, assets, financial condition or results, rights, obligations and liabilities and similar or dissimilar information relating to the business of GCRO WITS, whether developed by or provided to the Service Provider by others but will exclude information which the Service Provider can prove:

- 1.7.1. was in the Service Provider's lawful possession before its first receipt thereof before, on or after the date of this Agreement; or
- 1.7.2. was independently received in good faith from a third party who has the right to disclose the same and who did not receive it directly or indirectly from GCRO WITS with a restriction on the use thereof; or
- 1.7.3. is or becomes through no act or default of the Service Provider, public knowledge as evidenced by the publication or otherwise thereof; or

- 1.7.4. is or was independently developed by Personnel of the Service Provider to whom no disclosure of such Confidential Information has been made or communicated.
- 1.8. **“Contract Price”** an amount not exceeding [insert] for the delivery of the Services, as set out in more detail in Annexure B, and which amount may not be varied unless by the prior written and signed agreement of the Parties
- 1.9. **“Data Protection Legislation”** means the following legislation:
- 1.9.1. POPI
- 1.9.2. alternatively, such other legislation as may become applicable to the protection of personal information in the Republic of South Africa
- 1.10. **“Deliverable”** refers to anything in writing or otherwise tangible (whether in hard copy or electronic format) created or prepared by the Service Provider for GCRO WITS as part of the Work and as more fully set out in the Scope of Work
- 1.11. **“Foreground Intellectual Property”** such Intellectual Property as may be created or developed including the Project Data and Background Intellectual Property forming an integral part of the Foreground Intellectual property in the course and scope of this Agreement
- 1.12. **“GCRO WITS’ Representative”** the Executive Director of GCRO as at the Signature Date or any other person nominated in writing by the Executive Director of GCRO from time to time
- 1.13. **“GCRO WITS”** means the University of the Witwatersrand, Johannesburg, acting on behalf of the Gauteng City-Region Observatory, a partnership (in the spirit of a social partnership) of the University of the Witwatersrand, Johannesburg, the University of Johannesburg, the Gauteng Provincial Government and organised Local Government in Gauteng

- 1.14. **“Hosting Infrastructure”** refers to the physical infrastructure where the Project Data is hosted
- 1.15. **“Intellectual Property”** intellectual capital whether or not subject to statutory protection embodied in any and all technical and commercial information, including chemical structures, biological or chemical information, manufacturing techniques and designs, specifications and formulae, know-how, data, database rights, systems and processes, production methods, test results, models, drawings, prototypes, methodologies, trade secrets, undisclosed inventions, financial and marketing information, as well as registered and unregistered intellectual property in the form of patents, utility models, trademarks, designs and plant breeders’ rights (whether granted, registered or applied for), and copyright in any works including literary works or computer software programs in source and object code format)
- 1.16. **“IT Platform”** means a computer platform designed for in-field collection, monitoring and processing of Project Data collected from the field
- 1.17. **“Milestone Date”** means the date specified for the achievement of a Milestone, as specified in the relevant Scope of Work
- 1.18. **“Milestone”** means a milestone for the completion of a specific task, project or Deliverable associated with the Services as specified in the Scope of Work
- 1.19. **“Output”** refers to anything in writing or otherwise tangible (whether in hard copy or electronic format) which the Service Provider provides inputs into and assists GCRO WITS to create or prepare, but which is not a Deliverable
- 1.20. **“Parties”** GCRO WITS and the Service Provider, and **“Party”** means one of them
- 1.21. **“Personal Information”** shall have the meaning set out in POPI

- 1.22. **“Personnel”** a Party’s officers, employees, agents and/or consultants
- 1.23. **“POPI”** means the Protection of Personal Information Act 4 of 2013
- 1.24. **“Precincts”** any premises owned by or which fall under the management and control of the University of the Witwatersrand, Johannesburg
- 1.25. **“Project Data”** means all:
- 1.25.1. data collected by the Service Provider through survey fieldwork, which fieldwork involves geo-located face-to-face surveys with adult residents in households at pre-selected randomly sampled sites across the GCR using computer-assisted personal interviewing instruments (“**CAPI**”); and
 - 1.25.2. meta-data collected for each interview in the course of fieldwork, as may be feasible and relevant, including all available GPS coordinates, the date and time of the interview, time taken for the survey and survey sections, automated quality control checks and error flags, and fieldworker comments on the survey as may be recorded
- 1.26. **“Project”** means the implementation of fieldwork for primary data collection from residents on their quality of life, as defined in clause 4 and the Scope of Work
- 1.27. **“Rules”** rules, regulations, policies, procedures, practices, standing orders and the like of GCRO WITS as approved by their Senate or Council or both
- 1.28. **“Scope of Work”** means the scope of work detailed in Annexure A
- 1.29. **“Service Provider’s Representative”** means the person nominated in writing by the Service Provider from time to time

- 1.30. **“Service Provider”** [to be inserted]
- 1.31. **“Signature Date”** the date on which this Agreement is signed by the last Party to do so
- 1.32. **“Steering Committee”** means the joint committee established by the Parties as more fully set out in clause 10 to oversee and manage the operational aspects of the Project
- 1.33. **“Termination Date”** means [to be inserted]
- 1.34. **“VAT”** value-added tax levied by the South African Revenue Services on the supply of goods and services in terms of the Value Added Tax Act, 89 of 1991
- 1.35. **“Viruses”** means anything or device (including any software, code, file or program) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices
- 1.36. **“Work”** means the work that the Service Provider performs, creates or prepares together with GCRO WITS utilised by GCRO WITS, in rendering the Services, which work includes Deliverables, Output, processes, procedures, investigations, notes, working papers, recordings, models, advice, findings or recommendations, whether in draft or final form, in writing or orally

2. INTERPRETATION

2.1. In this Agreement:

2.1.1. an expression which denotes:

- 2.1.1.1. any gender includes the other genders;
- 2.1.1.2. a natural person includes a juristic person and vice versa;
- 2.1.1.3. the singular includes the plural and vice versa; and
- 2.1.1.4. a Party includes a reference to that Party's successors in title and assigns allowed at law;
- 2.1.2. the clause headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation of the subject matter of this Agreement;
- 2.1.3. where applicable, the appendices to this Agreement form an integral part of the Agreement and shall be read as if incorporated herein, provided that if there is any conflict between the body of the Agreement and the appendices the provisions contained in the body of the Agreement shall take precedence, unless the context expressly indicates otherwise;
- 2.1.4. any reference to any agreement, annexure or schedule shall be construed as including a reference to any agreement, annexure or schedule amending or substituting that agreement, annexure or schedule;
- 2.1.5. any word or expression related to a word or expression defined in this Agreement bears a corresponding meaning;
- 2.1.6. any reference to the provisions of law and any similar reference of general application shall 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 relevant authority with the requisite authority;
- 2.1.7. save where specifically 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 Signature Date) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification);
- 2.1.8. 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 shall not be construed as limiting the meaning of the general wording preceding it;

- 2.1.9. wherever provision is made for the giving or issuing of any notice, application, submission, request, decision, consent, permission, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instructions or determination by any person, unless otherwise specified, such notice, decision, consent, permission, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination must be in writing and the words “notify”, “apply”, “submit”, “request”, “decide”, “consent”, “permit”, “accept”, “agree”, “endorse”, “approve”, “certify”, “instruct” or “determine” and other related expressions are to be construed accordingly;
- 2.1.10. references to materials, information, data and other records are to materials, information, data and other records whether stored in electronic, written or another form;
- 2.1.11. when any number of days is prescribed, it shall 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 shall be the first Business Day thereafter;
- 2.1.12. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.1.13. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 2.2. If any provision contained in this Agreement is inconsistent with any document relevant to the Agreement issued by GCRO WITS, this Agreement will prevail.
- 2.3. If any definition contains a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 2.4. Each Party must 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 another Party in respect of this Agreement must be applied for or requested promptly;
- 2.5. 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.
- 2.6. 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 must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

- 2.7. The rule that an agreement shall be interpreted against the party who drafted it shall not apply to this Agreement.

3. **APPOINTMENT**

GCRO WITS hereby appoints the Service Provider, and the Service Provider hereby accepts the appointment to conduct the Project defined herein for and on behalf of GCRO WITS on the terms and conditions contained herein. Without limiting the generality of the obligations of the Service Provider, these obligations include the Deliverables described in the Scope of Work.

4. **PROJECT SCOPE**

- 4.1. The scope of this project entails the collection of primary data, through an in-household field survey, on various dimensions of the quality of life of residents in the GCR, which data is required by the political and administrative decision-makers, civil society organisations, businesses, academics and students, communities and ordinary residents to further various developmental aims, as more fully set out in the Scope of Work.
- 4.2. The Project entails the implementation of fieldwork at the highest possible levels of rigour, quality and integrity, within time and budget and in accordance with best academic practice, which fieldwork involves geo-located face-to-face surveys with adult residents in households at pre-selected randomly sampled sites across the GCR using CAPI.
- 4.3. The Service Provider is primarily responsible for the Project, under the supervision of, and where relevant as contracted by and, where relevant, in collaboration with GCRO WITS, on the terms specified in this Agreement.

5. **COMMENCEMENT AND DURATION**

- 5.1. This Agreement commences on the Commencement Date and, unless terminated earlier as provided in this Agreement, continues until the Termination Date.
- 5.2. Notwithstanding the provisions of clause 5.1 above, GCRO WITS may terminate this Agreement on 1 (one) month's written notice to the Service Provider.

6. **INDEPENDENT CONTRACTOR**

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.

7. **NO EXCLUSIVITY**

The Service Provider acknowledges that nothing contained in this Agreement will oblige GCRO WITS to procure the Services exclusively from the Service Provider.

8. **RESPONSIBILITIES OF GCRO WITS**

8.1. GCRO WITS shall:

8.1.1. designate a person to act as its representative in connection with the Project (**GCRO's Project Representative**). GCRO WITS may from time to time and on written notice designate another person to act as its representative. GCRO's Project Representative is authorised to act on behalf of GCRO in all matters on the operation of the Project.

8.1.2. provide the Service Provider with such access to GCRO WITS and its Personnel as may be necessary to enable the Service Provider to perform in terms of this Agreement for the due and proper implementation of the Project and make available all information necessary to enable the Service Provider to fulfil its obligations under the Agreement;

8.1.3. give timeous written notice to the Service Provider if and whenever it becomes aware of any deficiencies in the performance of the Service Provider obligations in terms of this Agreement;

8.1.4. pay Service Provider as provided for in clause 15 of this Agreement.

8.2. If deemed necessary, and agreed to in writing between the Parties, GCRO WITS will provide the Service Provider with access to the infrastructure required for the fulfilment of Service Provider's obligations in terms of the Agreement.

9. **RESPONSIBILITIES OF SERVICE PROVIDER**

9.1. The Service Provider agrees to:

- 9.1.1. deliver the Project, which is fit for purpose, in a timely manner and within the Contract Price;
- 9.1.2. exercise skill, care, diligence and integrity in the fulfilment of its obligations in terms of the Agreement;
- 9.1.3. assign a Personnel complement sufficient both in numbers and skill to ensure due and proper performance of its obligations under this Agreement and the Scope of Work attached hereto.
- 9.1.4. inform GCRO WITS in writing of the names of any person/s that the Service Provider wishes to employ to assist it in carrying out the Project. GCRO WITS may, prior to the appointment of such a person object on reasonable grounds to any such person being employed. Upon receipt of such objection, the Service Provider must immediately remove such and provide for the replacement of such person from the Project. Without derogating from the generality of those described above, the Service Provider is prohibited from employing and/or sub-contracting and/or appointing any person to assist in carrying out the Project unless the prior express written consent of GCRO WITS is obtained.
- 9.1.5. re-perform the Services free of charge, in the event any Project Data is lost, corrupt or unusable by the GCRO WITS;
- 9.1.6. comply with all applicable laws, regulations and the like in rendering the Services;
- 9.1.7. whenever the Service Provider or any of the Service Provider's Personnel or any other person acting on its behalf is present on the Precincts of GCRO WITS, ensure that all these persons abide by all the Rules including access control and rules relating to confidentiality, privacy, use and access to information technology as stipulated from time to time.

10. **PROJECT STEERING COMMITTEE**

- 10.1. In order to facilitate and manage the delivery of the Services, the Parties will form the Steering Committee.
- 10.2. The Steering Committee will comprise of at least 2 (two) representatives from each Party, and it may invite other parties to participate in meetings, as it deems appropriate.

- 10.3. The Steering Committee will meet regularly in order to assess and manage the operational progress of the delivery of the Services and implement appropriate plans and mechanisms to ensure timeous delivery of each Deliverable.
- 10.4. The Steering Committee will use its best endeavours to reach its decisions by consensus. If consensus cannot be reached, the matters will be referred to the executive management of the Parties for resolution.
- 10.5. The Steering Committee will be responsible for:
 - 10.5.1. establishing a Project working group for the purposes of facilitating operational aspects of the Project;
 - 10.5.2. reviewing the reports submitted to the Project working group;
 - 10.5.3. Considering financial reports and reports on the progress of the Project; and
 - 10.5.4. recommending an appropriate course of action for the Project.

11. **PERFORMANCE REVIEW**

For the duration of the project, GCRO WITS will conduct periodic reviews to determine the progress and success of the Project to date.

12. **ACCEPTANCE**

- 12.1. After a Deliverable, Service or Output has been provided to GCRO WITS, GCRO WITS will test it to determine if it conforms to the applicable Acceptance Criteria.
- 12.2. If GCRO WITS determines that the Deliverable, Service or Output does conform to the Acceptance Criteria, GCRO WITS shall notify the Service Provider that it is Accepted.
- 12.3. If GCRO WITS determines that the Deliverable, Service or Output does not operate in accordance with, or otherwise conform to, the applicable Acceptance Criteria, then GCRO WITS will provide the Service Provider with a notice describing the reasons why it has failed to comply with the Acceptance Criteria.

13. **WARRANTIES**

- 13.1. The Service Provider warrants that:
 - 13.1.1. it is in the business of providing the Services;

- 13.1.2. the Services are fit for the intended purposes for which they will be used as more fully set out in the Scope of Work;
- 13.1.3. it acknowledges that GCRO WITS is relying on its representation of its experience and expert knowledge and that any substantial misrepresentation may result in damage to GCRO WITS;
- 13.1.4. it knows the particular purpose for which GCRO WITS require the Services;
- 13.1.5. it is the lawful licensee or owner of the Services and has all the necessary rights in the Services to grant the use of the Services to GCRO WITS;
- 13.1.6. the Services and any other work performed by it hereunder shall not infringe upon any copyright, patent, trade secret, or other proprietary rights, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or Intellectual Property right that would conflict with its obligations under this Agreement;
- 13.1.7. it shall disclose all third parties whose Intellectual Property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in force written agreements with such third parties, if any, for the duration of this Agreement;
- 13.1.8. all software, information data, materials and other input or assistance directly provided by it during the performance of the Services and Project are either owned by it or in its lawful possession and will not infringe on the Intellectual Property rights of any third party
- 13.1.9. it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards;
- 13.1.10. it will use its best efforts to ensure that Viruses are not introduced into the IT Platform, and the GCRO WITS Hosting Infrastructure, and that, where it transfers a Virus to GCRO WITS through the Services, it shall reimburse GCRO WITS the actual cost incurred by GCRO WITS to remove or recover from the Virus, including the costs of persons employed by GCRO WITS; and
- 13.1.11. the Services are free of any mechanism which may disable the Services and the Service Provider warrants that no loss of Project Data will result from such items if present in the Services.

- 13.2. For any breach of the warranties in 13.1 by the Service Provider, GCRO WITS shall be entitled to rely on the provision contained in clause 20.

14. PERSONNEL AND SUB-CONTRACTING

- 14.1. Any Personnel assigned or engaged by the Service Provider to perform any of its obligations or any part thereof under the provisions of this Agreement must be competent and qualified to perform such obligations and must be appropriately supervised where this is appropriate. The Service Provider must appoint a representative or representatives to supervise the performance of its Personnel employed in connection with the Project at all times. The Service Provider must advise GCRO WITS in writing of the name or names of the representatives as the case may be.
- 14.2. The Service Provider must not, without the prior written consent of GCRO WITS, sub-contract any of its obligations in terms of this Agreement. Such consent does not relieve the Service Provider of any obligations, and the Service Provider is responsible to GCRO WITS for the acts and omissions of its sub-Service Provider as if such acts have been acts and omissions of the Service Provider.
- 14.3. If GCRO WITS consents to the Service Provider entering into a sub-contract in terms of 14.1, the provisions of this Agreement will be applicable *mutatis mutandis* to the contract between the Service Provider and such sub-Service Provider. The Service Provider hereby warrants and undertakes that its sub-Service Providers will comply with and will not breach any obligations of the Service Provider in terms of the Agreement and that all the provisions of the Agreement relating to any sub-Service Providers will be expressly reflected in its sub-contracts.

15. FEES AND PAYMENT TERMS

- 15.1. The Parties agree that payment will be made in accordance with the payment schedule stipulated in Annexure B and against approved invoices submitted by the Service Provider. Provided that the payment of the amounts on an invoice has been approved by GCRO WITS' designated representative, GCRO WITS will settle the invoice within 30 (thirty) days after presentation.
- 15.2. The Contract Price as set out in Annexure B is firm and fixed for the duration of this Agreement, and the Parties agrees that there will be no adjustment to it including changes resulting from exchange rate fluctuations.
- 15.3. For the fulfilment of its obligations in terms of this Agreement, GCRO WITS agrees to pay the Service Provider the Contract Price, upon Acceptance as per clause 12.

- 15.4. GCRO WITS will effect payment by direct/electronic deposit into the nominated account of the Service Provider.
- 15.5. GCRO WITS will deduct from the amount due by it in terms of this Agreement any amounts that it is required by law to deduct.
- 15.6. GCRO WITS will not be liable for any other payment, unless otherwise provided herein, or as agreed between the Parties.
- 15.7. The Service Provider will be responsible for the payment of any income tax and any other levies or any increase thereto imposed by the South African Revenue Service, the State or other authorities which is payable in respect of the operation of or existence of this Agreement.
- 15.8. The Service Provider warrants that it understands the requirements of the Fourth Schedule to the Income Tax Act no 58 of 1962 (the "**Income Tax Act**") pertaining to the taxation obligations of independent service providers, labour brokers and personal service providers, as defined in the Fourth Schedule to the Income Tax Act.
- 15.9. Unless the Service Provider can provide GCRO WITS, on reasonable request by GCRO WITS, with satisfactory proof that it is not an employee, as defined in the Fourth Schedule to the Income Tax Act, GCRO WITS may withhold employee's tax from the remuneration payable by GCRO WITS to Service Provider in terms of this Agreement in accordance with the rates prescribed by the Income Tax Act at the entire risk and cost of the Service Provider.
- 15.10. The Service Provider must immediately, and in any event, before accepting any payments from GCRO WITS, notify GCRO WITS of any change of fact or circumstance that affects or may affect GCRO WITS' liability to deduct employee's tax from payments made in terms of the Income Tax Act.
- 15.11. It is specifically agreed that this Agreement is not a contract of employment between GCRO WITS and the Service Provider and as such GCRO WITS has among other things no legal liability or responsibility for the Service Provider's income tax or other tax responsibilities, or for medical aid, accident or retirement provision to the Service Provider.
- 15.12. The Service Provider hereby indemnifies GCRO WITS against all losses, claims, liabilities, damage or expense which Wits may suffer as a result of, or which may be attributable to, any liability of GCRO WITS for taxation in respect of payment made in terms of this Agreement. For these purposes "taxation" includes SITE and PAYE, VAT, all other forms of

duties or taxation, taxation in respect of any assessment of taxation and any penalties or interest.

16. CONFIDENTIALITY

- 16.1. The Service Provider acknowledges that in the course of performing its obligations in terms of this Agreement, it may have access to Confidential Information of GCRO WITS. The Service Provider agrees that neither the Service Provider nor any of its Personnel will at any time during or after the performance of such Services disclose or use, directly or indirectly any such Confidential Information unless the Service Provider first obtains the written consent of GCRO WITS or unless required by law or the lawful order of a court or governmental agency to do so. In this event, the Service Provider must immediately give written notice to GCRO WITS so that it may seek a protective order or another remedy from the court or governmental agency.
- 16.2. The Service Provider must with respect to the Confidential Information:
- 16.2.1. inform its Personnel of the confidentiality restraint set out in this clause 16 and ensure that they are subject to the same confidentiality undertaking;
 - 16.2.2. restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information in order to perform its obligations in terms of this Agreement;
 - 16.2.3. ensure that its Personnel use a reasonable degree of care appropriate for the protection of the Confidential Information;
 - 16.2.4. use the Confidential Information only for the purposes for which it was provided;
 - 16.2.5. upon demand by GCRO WITS promptly deliver to GCRO WITS any and all records containing Confidential Information which are in the possession or control of the Service Provider, its consultants or agents.
- 16.3. The Service Provider agrees that it will not acquire any proprietary or any other rights to any of GCRO WITS' Confidential Information.

17. INTELLECTUAL PROPERTY

- 17.1. The Parties hereby record that the ownership of rights in and to all Background Intellectual Property as well as Intellectual Property developed by a party to this Agreement after its

commencement which is not Foreground Intellectual Property will be and remains unaffected hereby.

- 17.2. The Service Provider will grant GCRO WITS a worldwide non-exclusive royalty-free licence to all of its Background Intellectual Property, which licence will be strictly limited for academic and research purposes and will endure for the duration of this Agreement.
- 17.3. Any Intellectual Property rights of a Party, which are created pursuant to, and are subject to, the provisions of this Agreement, may be governed by the South African Intellectual Property Rights from Publicly Financed Research and Development Act no. 51 of 2008 and the Regulations thereto (jointly referred to as the “**IPR-PFRD Act**”). The South African government has certain rights to the intellectual property in terms of sections 11(1)(e), 11(2) and 14 of the IPR-PFRD Act.
- 17.4. Notwithstanding the provisions of clause 15, all Foreground Intellectual Property created in all work in terms of this Agreement will be owned by GCRO WITS.
- 17.5. The Deliverables, as specified in the Scope of Work and produced by the Service Provider, pursuant to the performance of this Agreement, will be owned by GCRO WITS.
- 17.6. Upon termination of this Agreement, the Service Provider undertakes to ensure that all documentation or any other material created in the course and scope of this Agreement whether in its possession or not is immediately handed over to GCRO WITS.
- 17.7. The Service Provider cedes and assigns to GCRO WITS all Intellectual Property rights it may have in relation to the Project, more specifically the Project Data, research, studies, evaluations, reports, other data, Work, Output and recommendations to GCRO WITS arising out of or related to the fulfilment of its obligations in terms of this Agreement. Such Intellectual Property rights do not include the know-how acquired by the Service Provider prior to the practical commencement of the Project, nor do they extend to the data gathering and IT Platform that is developed by the Service Provider in implementing the Project.

18. **DATA PROTECTION**

- 18.1. Each Party shall comply with its respective obligations under the Data Protection Legislation.
- 18.2. In processing the Personal Information, the Service Provider shall strictly 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.

- 18.3. The Service Provider shall promptly inform GCRO WITS of any actual or suspected unauthorised access, use or other abuse of the Project Data, IT Platform, and/or any other information technology systems relating thereto (“**Unauthorised Use**”) of which it or any of its, or its Personnel becomes aware.
- 18.4. Each Party shall at its cost provide at the other Party’s request all reasonable assistance to the requesting Party in relation to the preparation and presentation of the relevant information to the regulators or as otherwise required by the applicable legislation for the purpose of prosecuting those individuals responsible for an incident of Unauthorised Use for any legal actions that the requesting Party may bring against third Parties responsible for an incident of Unauthorised Use or co-operate with any inquiry from any regulator or authority.
- 18.5. Project Data:
- 18.5.1. Project Data shall be deemed Confidential Information and Personal Information of GCRO WITS in terms of this Agreement.
- 18.5.2. All Project Data collected by the Service Provider during the term of the Agreement shall be deemed to be the Intellectual Property GCRO WITS (for the avoidance of doubt at the very moment the Project Data is collected by the Service Provider, the Project Data vests in GCRO WITS).
- 18.5.3. GCRO WITS shall own all rights, title and interest in and to all of the Project Data. The Service Provider agrees that it shall not obtain any proprietary rights in such Project Data.
- 18.5.4. Any improvements or enhancements to the Project Data resulting from this Agreement will remain the property of GCRO WITS.
- 18.5.5. The Project Data in the possession of the Service Provider, or to which the Service Provider may have access during the term of this Agreement, may not be used by the Service Provider for any purposes whatsoever other than as may be specifically required to enable the Service Provider to fulfil its obligations in terms of this Agreement.
- 18.5.6. The Service Provider agrees that it shall be held liable for any direct or indirect loss, destruction, alteration or disclosure of Project Data caused by any of the Service Provider’s Personnel.
- 18.6. Hosting Infrastructure:

- 18.6.1. The Project Data developed and supported by the Service Provider will be hosted within the Service Provider's Hosting Infrastructure.
- 18.6.2. Notwithstanding clause 18.6.1, the Service Provider will routinely perform a data transfer of all Project Data to GCRO WITS' Hosting Infrastructure as frequently as practically feasible but not less than once a week throughout the period of the Agreement.
- 18.6.3. Upon the Termination Date, the Service Provider agrees that it will retain a copy of all Project Data in a secure environment on its Hosting Infrastructure for a period of 2 (two) years. GCRO WITS reserves the right to request a copy of the Project Data within this 2 (two) year period.
- 18.7. Following the expiration of the period set out in clause 18.7, the Service Provider will destroy all Project Data on its Hosting Infrastructure and certify that it has done so. The Parties obligations under clause 18 will survive the termination of this Agreement.
- 18.8. The Service Provider agrees to indemnify, and keep indemnified, GCRO WITS from and against all liabilities, costs, expenses, damages and losses and any professional costs and expenses suffered by, incurred by, or awarded against GCRO WITS, arising out of or in connection with any failure by the Service Provider or its Personnel to comply with its obligations under this clause 18.

19. **FORCE MAJEURE**

- 19.1. 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.
- 19.2. For the purpose of this Agreement force majeure means any circumstance arising from or attributable to acts of God, including epidemic, war, terrorism, law, government or regulatory requirements, or any other cause whatsoever beyond the control of the (the "**Affected Party**").
- 19.3. The Affected Party must give notice thereof to the other immediately upon the occurrence of an event of force majeure and again immediately on the cessation thereof.
- 19.4. If the force majeure is of such a 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 this 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.

- 19.5. If the force majeure is of such a nature that it will not result in impossibility of performance of the obligation in question but will delay the performance thereof, the Affected Party is entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both Parties, provided that if the force majeure situation persists for more than 90 (ninety) days the Other Party will be entitled to terminate the Agreement but is not entitled to recover any damages which it may suffer as a result of such premature termination.

20. **NON-PERFORMANCE, BREACH AND TERMINATION**

20.1. Non-Performance

- 20.1.1. In the event that the Service Provider fails to fulfil any of its responsibilities, as set out in this Agreement including the Scope of work, and does not remedy such failure within 10 Business Days' of GCRO WITS calling upon it to do so, GCRO WITS is entitled to:
- 20.1.1.1. withhold payment including a Milestone payment on which there is a deficiency in performance in terms of the Scope of Work; and/or
- 20.1.1.2. engage a third party to perform some or all of the Services which the Service Provider shall have failed to perform correctly 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; and/or
- 20.1.1.3. execute a financial penalty commensurate with the funds required for GCRO WITS to rectify the deficiency in performance through alternative contracting means in the following terms:
- 20.1.1.3.1. for deficiencies in performance in respect of the integrity or quality of any interviews, the cost of repeating the deficient interview(s) at a rate of R 1 500.00 (one thousand five hundred Rand) per interview;
- 20.1.1.3.2. for a failure to produce the Deliverables on the Milestone Dates as set out in the Scope of Work, an amount of 1% (one per cent) of the Contract Price per week of the delayed Deliverable;
- 20.1.1.3.3. for failures in respect of the IT Platform which materially affects the usability of the Project Data (i.e. the datasets), an amount of 1% (one per cent) of the Contract Price per week of the delayed progress or inability to scrutinise and verify interviews;
- 20.1.2. The GCRO WITS may impose the penalty contemplated in clause 20.1.1.3 in respect of each instance of the Service Provider's failure to fulfil its responsibilities. Without

prejudice to any other method of recovery, GCRO WITS may deduct the penalty amount from any monies 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 and liabilities under this Agreement or at law.

20.1.3. The penalty set out in clause 20.1.1.3 is in addition and without prejudice to any of the University's rights.

20.1.4. In such circumstances, GCRO WITS may elect the remedies described in clause 20.1 and/or institute a breach in accordance with the provisions of clause 20.2.

20.2. Breach

20.2.1. Should any Party (the "**Defaulting Party**") commit a breach of any of the provisions of this Agreement, then the other Party (the "**Aggrieved Party**") shall be obliged to give the Defaulting Party 5 (five) Business Days' written notice, to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall, without prejudice to the Aggrieved Party's rights to claim damages or such other rights it may have in law, be entitled to:

20.2.1.1. terminate this Agreement for a material breach, such termination to be effective immediately upon receipt by the Defaulting Party of a written notice to that effect; and/or

20.2.1.2. claim immediate payment of all monies due to which the breach relates or specific performance by the Defaulting Party of all the Defaulting Party's obligations.

20.3. Termination

20.3.1. Either Party may terminate the Agreement immediately by giving written notice to the other Party if the other Party:

20.3.1.1. is placed in business rescue or liquidation proceedings are instituted; or

20.3.1.2. does not cure a material breach within the required notice period as described in clause 20.2.

20.3.2. In such circumstances, GCRO WITS will be entitled, to terminate the Agreement forthwith without payment to the Service Provider of any damages whatsoever resulting from such termination.

20.3.3. Notwithstanding anything contained herein, the cancellation of this Agreement will not affect any of the Parties' rights that had accrued at the date of termination.

21. LIABILITY AND INDEMNITY

21.1. 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.

21.2. The Service Provider hereby indemnifies and hold GCRO WITS harmless:

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

21.2.2. against all claims of whatsoever nature and howsoever arising which may be made against GCRO WITS 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 Precinct's,

21.2.3. save where such injury, loss or damage is caused by the gross negligence and willful misconduct of GCRO WITS or its Personnel.

21.3. The Service Provider hereby indemnifies and holds GCRO WITS harmless:

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

21.3.2. from any liability arising from:

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

21.3.2.2. 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

21.3.2.3. costs incurred by GCRO WITS in connection with the enforcement of this clause 21.3.

21.4. The Parties record that GCRO WITS 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 GCRO WITS' business, where fault can be attributed to, its affiliates or their respective Personnel or students. GCRO WITS' 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.

- 21.5. The Parties furthermore record that, subject to clause 22 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.

22. **INSURANCE**

- 22.1. Without detracting from the liability of the Service Provider as set out in clause 21 or elsewhere in this Agreement, the Service Provider will at all times while this Agreement is in force maintain insurance cover satisfactory to GCRO WITS insurance brokers, including public and private liability insurance which adequately insures against all the liabilities imposed by this Agreement.

- 22.2. The Service Provider will forward proof of its insurance cover specified in clauses to the University on or before the Commencement Date

- 22.3. The Service Provider must insure itself against liability arising out of or due to its fault or the fault of any of its Personnel, agents, associates or other persons acting on its behalf.

23. **DISPUTE RESOLUTION**

- 23.1. The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.

- 23.2. Each Party will inform the other in the event of any perceived or potential dispute occurring.

- 23.3. The Parties' respective Representatives will first attempt to resolve the dispute. If the Parties fail to resolve the dispute in terms of clause 23.3 within 14 (fourteen) Business Days after receipt of the notice referred to in clause 23.2 either Party may submit the dispute for resolution to Executive Director of GCRO or his/her nominee and the legal advisor or representative of the Service Provider or its nominee.

- 23.4. If the individuals referred to in clause 23.3 are unable to resolve the dispute within a period of 42 (forty-two) days after it had been referred to them, either Party may submit the matter for mediation. The Parties will refer the matter for mediation to a mediator appointed by

agreement between the Parties, or, failing agreement, to a mediator appointed by the Chairman of the Bar Council of South Africa on written request by either Party. The costs of mediation will be borne between the Parties equally. If the Parties are unable to resolve the dispute or difference through mediation, the Parties will submit to the jurisdiction of the South Gauteng Local Division of the High Court of South Africa in regard to such dispute or difference.

24. MISCELLANEOUS MATTERS

24.1. Address for correspondence

24.1.1. Any correspondence (other than a notice contemplated in clause 24.2) in connection with this Agreement may be addressed, in the case of GCRO WITS, to:

Physical Address : 6th Floor University Corner

11 Jorissen St (Cnr Jorissen and Jan Smuts)

Braamfontein

Johannesburg

Postal Address

Private Bag 3, WITS, 2015

Electronic mail address: Rob.Moore@wits.ac.za

In the case of the Service Provider:

Physical Address: [insert]

Postal Address: [insert]

Electronic mail address: [insert]

24.2. Address for Service of Legal Documents

24.2.1. The Parties choose the following physical addresses at which documents in legal proceedings in connection with this Agreement may be served (i.e. their *domicilia citandi et executandi*):

24.2.1.1. **GCRO WITS:**

Office of the Director: Legal Services

5th Floor, Solomon Mahlangu House

1 Jan Smuts Avenue

Braamfontein

Johannesburg

24.2.1.2. **Service Provider**

[insert]

24.3. Notice

24.3.1. Notice will be deemed to have been duly given:

24.3.1.1. 7 (seven) days after posting, if posted by registered post to the Party's address in terms of this sub-clause;

24.3.1.2. on delivery, if delivered to the Party's physical address set out in clause 24.1.1;

24.3.1.3. on despatch, if sent to the Party's then fax number or electronic mail address set out in clause 24.1.1 and confirmed by registered letter posted no later than the next Business Day;

24.3.1.4. unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

24.3.2. All notices and correspondence in connection with this Agreement will be in the English language.

24.3.3. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address in terms of clause 24.2.1.2.

24.4. Change of address

24.4.1. A Party may change its address for this purpose to another address in the Republic of South Africa, by notice to the other Party.

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

24.5. Conflict of Interest

The Service Provider must disclose to GCRO WITS any circumstances, arrangements or relationships which constitute, or might reasonably be considered to constitute, an actual or potential conflict of interest with the Service Provider obligations under the Agreement. The Service Provider shall make this disclosure to GCRO WITS as soon as becoming aware of it and, in any event, during the term of the Agreement.

24.6. Integrity, Transparency and Fair Business

24.6.1. GCRO WITS does not tolerate any form of bribery, corruption, extortion, embezzlement, money laundering, or fronting as envisaged in, inter alia, the Prevention of Organised Crime Act, No. 121 of 1998, as amended, the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended and the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended (the “**B-BBEE Act**”)

24.6.2. The Service Provider is required to submit to GCRO WITS, a valid B-BBEE certificate.

24.6.3. GCRO WITS reserves the right to, in its sole discretion, call upon the Service Provider to provide details regarding its shareholding, management, and related information in order to verify that the Service Provider is not engaging in fronting practices or other practices that are designed to circumvent the BBEE Act and South African dti Codes of Good Practice.

24.6.4. The Service Provider undertakes, as soon as possible, to notify and provide full details to GCRO WITS in the event that there is a change to the Service Provider's B-BBEE rating.

24.6.5. Should there be any negative change to the Service Provider's B-BBEE rating and should the Service Provider fail to comply with its reporting obligations in terms of clause 24.6.4 GCRO WITS reserves the right to terminate the Agreement.

24.6.6. The Service Provider shall strictly follow all the applicable anti-bribery and corruption laws and regulation. The Service Provider is expected to uphold standards to safeguard fair conduct of business, competition and not to obtain any undue advantages.

24.6.7. The Service Provider shall ensure that its sub-contractors or agents will not engage in any fronting practices.

24.6.8. The Service Provider shall keep proper and accurate records and ensure transparent and honest financial reporting. All information concerning a financial status, performance and business activities shall be disclosed according to requirements of applicable laws, regulations and industry practices.

24.6.9. The Service Provider represents, warrants and agrees to:

24.6.9.1. 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;

24.6.9.2. disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement; and

24.6.9.3. use its best endeavours to prevent bribes.

24.6.10. The Service Provider agrees to indemnify, and keep indemnified, GCRO WITS from and against all liabilities, costs, expenses, damages and losses and any professional costs and expenses suffered by, incurred by, or awarded against GCRO WITS, arising out of or in connection with any failure by the Service Provider or its Personnel to comply with its obligations under this clause 24.6.

24.7. GCRO's Name

24.7.1. 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 GCRO WITS in connection with any marketing, co-branding and/or promotional materials or activities, or for any other purpose whatsoever.

24.7.2. 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, except as permitted by law, about GCRO WITS and its Personnel:

24.7.2.1. by way of news interviews or the expression of personal views, opinions or judgments to the news media;

24.7.2.2. on any social media platform;

24.7.2.3. privately or publicly to any third party.

24.8. Entire Agreement

This Agreement and its Annexures 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.

24.9. 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.

24.10. Variation, Cancellation and Waiver

No addition to or variation of any clause of this Agreement (including this clause 24.10), consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination will be of any force or effect unless reduced to writing and signed by both Parties or their duly authorised representatives.

24.11. Indulgences

24.11.1. If either Party at any time breaches any of its obligations under this Agreement, the other Party (the "**Aggrieved Party**"):

24.11.2. may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the Aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. In particular, acceptance of late performance will be provisional only, and the Aggrieved Party may still exercise that right during that period;

24.11.3. will not be estopped (i.e. precluded) from exercising its rights arising out of that breach, despite the fact that it may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

24.12. Assignment, cession and delegation

Neither Party may, without the prior consent of the other Party, cede any of its rights or delegate any of its obligations in terms of this Agreement to any other party.

24.13. Applicable law

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

24.14. Jurisdiction

Subject to the provisions contained in clause 23, the Parties consent to the jurisdiction of the South Gauteng High Court, Johannesburg.

24.15. 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 shall be bound by this Agreement.

24.16. Severability

If any provision of this Agreement is invalid, unenforceable or illegal, the remaining provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

24.17. Counterparts

This Agreement may be executed in any number of counterparts and by the Parties hereto on separate counterparts, each of which when executed and delivered will be an original and each of the counterparts will together constitute one and the same instrument.

24.18. Costs

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

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

(Print Name in block letters)	Designation	Signature
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For and on behalf of the **Service Provider** and duly authorised thereto.

AS WITNESSES:

1. _____
2. _____

SIGNED at _____ by the **GCRO WITS** on this the _____ day of _____ 201_.

(Print Name in block letters)	Designation	Signature
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For and on behalf of **GCRO WITS** and duly authorised thereto.

AS WITNESSES:

1. _____
2. _____

ANNEXURE A – SCOPE OF WORK

[Content to be included based on tender documentation]

DRAFT

ANNEXURE B – PRICING SCHEDULE

[Content to be included based on tender documentation]

DRAFT