



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

PHOTOGRAPHIC SERVICES AGREEMENT

between

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

(*insert Photographer's complete details indicate whether CC/Pty Ltd/Sole Proprietor*)

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ANNEXURE "1"	SCOPE OF WORK
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- 3.3. “Confidential Information” information that (a) relates to the Disclosing Party’s past, present or future research, development, business activities, products, services, technical knowledge and personal information regarding any person, and (b) either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the other Party that it is claimed as confidential. (As used herein, the Party Disclosing Confidential Information is referred to as the “Disclosing Party” and the Party receiving the Confidential Information is referred to as the “Recipient” or the Receiving Party”)
- 3.4. “CPI” the average annual rate of change (expressed as a percentage) in the Consumer Price Index for all metropolitan areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it, which annual change will be determined by comparing the most recently published index with the average index published over the 12 months preceding the anniversary of the Effective Date, and applying the lower of the two compared indices
- 3.5. “Designated Areas” the areas on the Precincts allocated to the Photographer or identified by the University’s Representative from time to time for the provision of the Services
- 3.6. “Effective Date” **** 2018 (notwithstanding the Signature Date)

- 3.7. "Employee" any person employed by or in the service of the Photographer including any person at or off the Precincts performing functions on behalf of the Photographer
- 3.8. "Fee" the amount per Graduand who attends and who crosses the stage during the Graduation Ceremonies paid by the Photographer to the University in accordance with the requirements of the Agreement
- 3.9. "Graduation Ceremonies" the series of graduation ceremonies hosted by the University conferring degrees to its Graduands
- 3.10. "Graduand" a student who is about to receive an academic degree
- 3.11. "Great Hall" the hall where the Graduation Ceremonies are hosted, and is located within Central Block on the University's East Campus
- 3.12. "Party" the University or the Photographer and "Parties" means both of them
- 3.13. "Photographer" (*insert the Photographer's complete details including company registration number *)
- 3.14. "Photographer's Representative" the person designated as such by the Photographer
- 3.15. "Precincts" any property owned by or which falls under the management and control of the University and any part thereof

- 3.16. "Protection Services" the University's security division
- 3.17. "Signature Date" the date on which this Agreement is signed by the last Party to do so
- 3.18. "Services" the provision of photographic services at the Designated Areas to the University's Graduands and to students who have graduated at its Graduation Ceremonies, and other services ancillary and complementary thereto as detailed in the Agreement and the Annexures hereto
- 3.19. "Signature Date" the date on which this Agreement is signed by the last Party to do so
- 3.20. "Specifications" the specifications of the photographic services set out in Annexure "3"
- 3.21. "Termination Date" 20..... (3 years after the Effective Date)
- 3.22. "University" the University of the Witwatersrand, Johannesburg, a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997
- 3.23. "University's Representative" the person designated as such by the University
- 3.24. "Rules" the rules, regulations, policies, procedures, practices, standing orders and the like approved by the University Senate or Council or both
- 3.25. "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

4. INTERPRETATION

4.1. In this Agreement:

- 4.1.1. an expression which denotes -
 - 4.1.1.1. any gender includes the other genders;
 - 4.1.1.2. a natural person includes a juristic person and *vice versa*;
 - 4.1.1.3. the singular includes the plural and *vice versa*; and
 - 4.1.1.4. a Party includes a reference to that Party's successors in title and assigns allowed at law;
- 4.1.2. the clause headings appearing in this Agreement are for reference purposes only and will not affect the interpretation of the subject matter of this Agreement;
- 4.1.3. the appendices to this Agreement form an integral part of the Agreement and will 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 will take precedence, unless the context expressly indicates otherwise;
- 4.1.4. any reference to any agreement, annexure or schedule will be construed as including a reference to any agreement, annexure or schedule amending or substituting that agreement, annexure or schedule;
- 4.1.5. any word or expression related to a word or expression defined in this Agreement bears a corresponding meaning;
- 4.1.6. 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 relevant authority with the requisite authority;

- 4.1.7. 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 will include any provisions of which they are re-enactments (whether with or without modification);
- 4.1.8. 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 will not be construed as limiting the meaning of the general wording preceding it;
- 4.1.9. 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;
- 4.1.10. references to materials, information, data and other records are to materials, information, data and other records whether stored in electronic, written or other form;
- 4.1.11. when any number of days 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 first Business Day thereafter;
- 4.1.12. where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.

- 4.1.13. expressions defined in this Agreement will bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 4.2. 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 will be given to it as if it were a substantive provision in the body of the Agreement.
- 4.3. 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;
- 4.4. Whenever this Agreement provides for approvals, consents or expressions of satisfaction by any one of the Parties, that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction.
- 4.5. 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.
- 4.6. The rule that an agreement will be interpreted against the party who drafted it will not apply to this Agreement.

5. COMMENCEMENT AND DURATION

The Photographer will provide the Services with effect from the Effective Date, for a period of 3 (three) years on the terms and conditions set out in this Agreement and unless earlier terminated as provided for in this Agreement terminates on the Termination Date.

6. RESPONSIBILITIES OF THE PHOTOGRAPHER

6.1. The Photographer will:

- 6.1.1. designate a person as its Representative, who will be responsible for liaising with the University's Representative at all times for the provision of the Services;
- 6.1.2. provide the Services in terms of this Agreement at the Graduation Ceremonies which includes supplying all necessary resources to provide the Services;
- 6.1.3. provide the Services of high quality in an professional manner at a competitive price that is comparable to similar local and national services;
- 6.1.4. exercise skill, care and diligence in fulfilling all its obligations in terms of this Agreement;
- 6.1.5. make available its Services for the duration of the Agreement including suitably qualified photographers, administrative personnel to ensure that requirements prescribed by the University are met;
- 6.1.6. use technologically advanced photographic equipment of good quality and superior grade materials to ensure that its photographs are of the finest quality and fit for purpose;
- 6.1.7. display samples of photographs taken at previous Graduation Ceremonies;
- 6.1.8. after the completion of each graduation ceremony provide the University with a copy of all orders placed by its Graduands, staff and/or invitees who have attended the Graduation Ceremonies and who have engaged the Photographer to provide the Services;
- 6.1.9. provide the University with the new price lists (if applicable) by 30 September of the year preceding the implementation of any increase in its prices;

- 6.1.10. allow access to designated members of the University's Representative, to its premises and equipment at any reasonable time in order for him/her to ascertain whether the requirements prescribed by the University are being complied with;
 - 6.1.11. not knowingly do any act during the term of this Agreement which, in the opinion of the University, is prejudicial to the University's image, the University's marks or the University's products and/or services;
 - 6.1.12. not cause or commit any nuisance on the Precincts or cause any annoyance or discomfort to other users of the Precincts including its students and staff;
 - 6.1.13. not use the Designated Areas or allow it to be used for any purpose other than for the provision of the Services;
 - 6.1.14. inform the University's Representative of the names of its Employees whom the Photographer wishes to be granted access to the Precincts for the purposes of fulfilling its obligations in terms of this Agreement. The University may object on reasonable grounds to any Employee assigned to provide the Services;
 - 6.1.15. deliver to the University the Services and ancillary services fit for the purpose for which they were procured and of suitable quality;
- 6.2. The Photographer must:
- 6.2.1. ensure that all equipment brought or provided for the provision of the Services complies with all applicable legal safety regulations and legislation and that a safety and technical inspection of these has been carried out by a duly qualified person.
 - 6.2.2. provide the University with satisfactory proof that in providing the Services, the applicable safety and emergency standards have been complied with;
 - 6.2.3. In the event of the Photographer storing photographic and ancillary equipment on the Precincts, the Photographer:
 - 6.2.3.1. agrees to assume all risk and liability therefor;

- 6.2.3.2. will ensure that it is at all times adequately protected and insured; and
 - 6.2.3.3. will not have a claim for damages against the University in the event of loss or theft of whatever nature;
 - 6.2.4. ensure that its Employees, enter and leave the Precincts only through the entrance and exit gates described by the Head: Protection Services and park only at the designated parking area/s;
 - 6.2.5. not bring onto the Precincts any article, including vehicles, which by reason of its weight or characteristics is liable to cause damage to the Precincts;
 - 6.2.6. not leave refuse or allow it to accumulate in or about the Precincts except in refuse bins;
- 6.3. whenever any of the Photographer's Employees, or any other person acting on its behalf are present on the Precincts the Photographer must ensure that all these persons abide by all the Rules, including access control and, those governing access to the Precincts, maintenance of security and consumption of liquor or other intoxicating substances and levels of sound, and without limiting the generality thereof, those relating to confidentiality, privacy, use and access to information technology as stipulated from time to time;
- 6.4. As part of the University's terms and conditions of entry, all vehicles and pedestrian traffic will be subject to both vehicle and bag searches. All passengers will enter through the pedestrian gate controlled by the University's ICAM card system. The Photographer will declare all materials, equipment and tools on entering and exiting the Precincts at Station Street security gate. The University, through Protection Services, will request proof of all materials, equipment and tools entering and leaving the Precincts at the Station Street security gate. The Photographer's vehicles will only be allowed to use Station Street security gate and no-other security gate. The Photographer must apply for to the University's Representative for a special access permit for vehicles. The special access permit

will only be considered for large vehicles and specific deliveries that cannot get access through the Station Street security gate.

- 6.5. Any items being delivered to Precincts must be clearly labelled with a contact name and telephone number. Authorized parking on the Precincts for the delivery must be arranged with the University's Representative 24 (twenty four) hours prior to expected arrival.

7. THE SERVICES

7.1. The Services comprises of:

7.1.1. the taking of photographs of Graduands on and/or off the stage during the Graduation Ceremony in a professional manner without disturbing the proceedings;

7.1.2. provide “on site” assistance prior to the Graduation Ceremonies by setting up of mobile studios at the Graduation Ceremonies with sufficient stock and equipment which is of high standard and sufficient suitably trained photographers to assist Graduands, staff and/or invitees who require such services before and after the Graduation Ceremonies;

7.1.3. Hours of operation and Designated Areas will be as following:

7.1.3.1. **HOURS:**

At the Graduation Ceremonies from 06h00;

7.1.3.2. **DESIGNATED AREAS:**

7.1.3.2.1. In the Great Hall when the Graduands are hooded (“hooding shot”) at the podium;

7.1.3.2.2. Adjacent to the Great Hall for a formal photo;

7.1.3.2.3. At the Designated Areas for photographs of the University’s VIP guests; and.

7.1.3.2.4. In the Exams Hall or at any other Designated Areas identified by the University’s Representative duly authorised thereto.

7.1.4. the handling of queries, taking of orders and the receipt of payment;

7.1.5. the development of photographs;

- 7.1.6. making the photographs available to Graduands within 30 (thirty) days after the conclusion of a series of Graduation Ceremonies and posting them to the Graduands at its own cost;
- 7.1.7. the development and maintenance of a reliable data base of digital images and an administrative data base;
- 7.1.8. the filing and storing of digital images for a period of 5 (five) years after the Graduation Ceremonies to enable the Photographer to process orders for photographs by Graduands or the University at a later stage;
- 7.1.9. the provision of an after-sales service which includes but is not limited to studio photographs subsequent to the Graduation Ceremony and providing Graduands with an opportunity to have re-shoots of their photographs; and
- 7.1.10. at the University's request and at no cost to the University furnish the University with copies of photographs of the University's VIP guests.
- 7.1.11. make adequate facilities available to the Graduands, staff and/or invitees for the receipt of cash, cheque or credit/debit card and electronic funds transfer payments;
- 7.1.12. at its own cost clearly display and advertise its photographic packages, price lists and clearly state the procedures for taking of photographs;
- 7.1.13. at its own cost supply and distribute purchasing forms to Graduands, staff and/or invitees together with their graduation information packages. The University accepts no liability for any information supplied by the Graduands, staff and/or invitees;
- 7.2. The placing of orders and the payment thereof occurs in terms of a separate agreement between the Photographer and the Graduand. All monies for the Services provided must be recouped from the Graduands by the Photographer at its own cost and Photographer will not have any claim against the University in this regard.

8. STUDIO REQUIREMENTS:

- 8.1. The Photographer must have an established photographic studio geographically accessible to Graduands which includes but is not limited to the following:
- 8.1.1. a fireproofed, secure storage environment to store its administrative database, digital images and back-ups thereof for 5 (five) years after the Graduation Ceremonies;
 - 8.1.2. a dedicated complaints department with suitably trained personnel to assist Graduands with complaints and queries, suitably qualified administrative personnel, to manage incoming phone calls, the acceptance and delivery of orders, filing and maintenance of an administrative as well as digital database, general reception and any activities complementary and ancillary thereto; and
 - 8.1.3. an accurate and technologically advanced information technology (IT) system to effectively capture, store and back-up all administrative and digital data.

9. ETHICAL STANDARDS

The Photographer undertakes perform its obligations in terms of this Agreement in accordance with ethical standards as may be reasonably expected from experts in the particular field.

10. COMPLIANCE WITH LAWS

- 10.1. The Photographer must at all times comply with:
- 10.1.1. all applicable laws, regulations, and the like; and
 - 10.1.2. the Rules.

11. RESPONSIBILITIES OF THE UNIVERSITY

11.1. The University will subject to its Rules:

11.1.1. designate a person as its Representative, who will be responsible for liaising with the Photographer's Representative;

11.1.2. grant the Photographer and its designated Employees such access to the Precincts as is reasonably necessary for it to perform its obligations in terms of this Agreement;

11.1.3. allocate the Designated Area, for the exclusive use of the Photographer;

11.1.4. supply the Photographer with an estimate of the number of Graduation Ceremonies to be presented by it for the following year as well as an estimate of the number of Graduands, staff and/or invitees who attend the Graduation Ceremonies.

11.2. Subject to clause 6 of this Agreement the University grants to the Photographer the right to bring onto the Precincts equipment (including props, temporary sets, lighting, and cameras) stock and ancillary equipment necessary for purposes of providing the Services. The University will not be liable for any damage to the Photographer's equipment, other assets and/or ancillary equipment under the University's control which has been caused by rain, wind, hail, short circuiting of electricity, floods, fire, riots or as a result of any reason whatsoever.

12. JOINT RESPONSIBILITIES

12.1. The Parties undertake to cooperate at all times in good faith and to do everything that is reasonably necessary for implementing and maintenance of the terms of this Agreement.

12.2. The Parties agree to meet at least every quarter for the duration of this Agreement for the purpose of furnishing progress reports, obtaining updated information of

the Graduands and to discuss miscellaneous matters regarding the duties and obligations of either of the Parties pertaining hereto.

13. DEFICIENCIES OR DEFECTS IN PERFORMANCE

The University must, as soon as reasonably practicable, notify the Photographer in writing of the particulars of any deficiency or defect in the performance by the Photographer of its obligations under the Agreement or where such performance is not in accordance with the provisions of this Agreement and provided that the University is not solely responsible therefor, instruct the Photographer to make good the defects or deficiencies or remedy the lack of due or proper performance, without undue delay. Should the defects or deficiencies in the performance of its work or the lack of due or proper performance not be remedied timeously, without limiting any other remedies the University may have in law, the University may immediately terminate this Agreement.

14. FINANCIAL MATTERS

- 14.1. The Photographer will pay the Fee in the amount of R** (*****) exclusive of VAT to the University.
- 14.2. The Fee is payable within 30 (thirty) days of the conclusion of the Graduation Ceremonies.
- 14.3. The Parties agree that in the event an increase is levied by the Photographer in respect of the amount charged by the Photographer to the Graduands for the Services during the term of this Agreement, the Fee will be increased by a percentage equal to but no greater than the percentage increase in the amount charged to the Graduands.
- 14.4. The Photographer will charge Graduands at the rates set out on the Pricing Schedule.
- 14.5. The Parties record that should an increase in the amount charged by the Photographer to the Graduands be levied during the term of this Agreement, such increase will be annually on the first and each subsequent anniversary of the Effective Date, at a rate not exceeding the CPI amount as defined and reported by Statistics South Africa or its successors applicable during the period of the proposed increase.

14.6. All payments due by the Photographer to the University under this Agreement will be made into the account nominated in writing by the University.

15. WARRANTIES AND GUARANTEES

15.1. The persons signing this Agreement on behalf of a Party expressly warrant their authority to do so.

15.2. the Photographer warrants that:

15.2.1. it has the necessary skills and qualifications to perform the Services in a professional and proper manner;

15.2.2. any Employee assigned or engaged by the Photographer to perform any of its obligations or any part thereof under the provisions of this Agreement is competent and qualified to perform such obligations and will be properly supervised where this is appropriate;

15.2.3. its sub-contractors will comply with and will not breach any of its obligations in terms of the Agreement and that all the provisions of the Agreement relating to any sub-contractors will be expressly reflected in its sub-contracts; and

15.2.4. as at the Signature Date it is able to comply with all the Specifications and to perform the Services as may be required by the University.

16. BREACH

16.1. An event of a material breach will occur should either Party breach any of the material terms or conditions of this Agreement and fail to remedy that breach within a period of 14 (fourteen) days of being called upon in writing to do so.

16.2. Upon the occurrence of an event of breach the aggrieved Party will be entitled, in addition to any other rights which it may have in law, to cancel this Agreement on written notice to the defaulting Party and to claim from the defaulting Party such damages as the aggrieved Party may suffer.

16.3. Any termination of this Agreement will not absolve the Parties from the obligation to observe the confidentiality measures and other restraints as set out herein.

17. CONFIDENTIAL INFORMATION

- 17.1. The Photographer acknowledges that in the course of performing the Services it may have access to Confidential Information of the University. The Photographer will ensure that it will not at any time disclose or use, directly or indirectly any such Confidential Information unless it first obtains the written consent of the University or unless required by law or the lawful order of a court or governmental agency to do so. Should the Photographer be required to disclose Confidential Information in terms of a lawful order of court or a governmental agency, the Photographer must immediately notify the University of the order in writing, to enable the University to seek a protective order or other remedy from the court or governmental agency.
- 17.2. The Photographer will:
- 17.2.1. cause all its Employees who are directly or indirectly given access to the said proprietary and Confidential Information to execute confidentiality undertakings substantially in accordance with the form attached hereto as Annexure "D" in order to protect the University against the unauthorised disclosure of such Confidential Information to any third party and to fully co-operate in the enforcement of such confidentiality undertakings.
 - 17.2.2. keep all such Confidential Information obtained secret towards third parties and only use it for the performance of the Services expressly agreed upon by the Parties and disclose same to their employees only on the basis of the need to know;
 - 17.2.3. upon demand by the University promptly deliver to the University any and all records containing Confidential Information which are in the Photographer's, possession or control;
 - 17.2.4. will not acquire any proprietary or any other rights to any of the University's Confidential Information.
- 17.3. With respect to the performance of the Services in terms of this Agreement, the Photographer is not authorized to use the name, logo or trademarks of the University in connection with any advertising, publicity or marketing or

promotional materials or activities without the prior written consent of the University.

- 17.4. The above undertakings will not apply to Confidential Information which:
- 17.4.1. is or becomes generally available to the public other than as a result of disclosure by the Photographer in breach of this clause 17;
 - 17.4.2. is or was independently developed by the Photographer or on its behalf by persons having no access to such Confidential Information;
 - 17.4.3. was in the Photographer's possession prior to the Effective Date; or
 - 17.4.4. 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 Photographer 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, 2000 (Act No. 2 of 2000) the Photographer will, in as far as it is able, apply the principles of Chapter 4 of that Act in order to avoid and/or limit the extent of any such disclosure.
- 17.5. The Photographer will treat this Agreement and every part herein and the arrangements herein contemplated as confidential and will in no way disclose, publish or circulate same without the consent of the University first having been had and obtained. The Photographer will not make any public statement in connection with the Agreement, including in-house publications and newsletters, without the prior consent of the University.
- 17.6. The provisions of this clause 17 will survive the termination or expiry of this Agreement.

18. SETTLEMENT OF DISPUTES

- 18.1. The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.
- 18.2. Each Party will inform the other in the event of any perceived or potential dispute occurring.

- 18.3. The Parties' respective Representatives will first attempt to resolve the dispute.
- 18.4. If the Parties fail to resolve the dispute in terms of clause 18.3 within ten (10) Business Days after receipt of the notice referred to in clause 18.2 either Party may submit the dispute for resolution to the University's Vice-Principal or his nominee and the Photographer's chief executive officer or his nominee.
- 18.5. If the individuals referred to in clause 18.4 are unable to resolve the dispute within a period of thirty (30) 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. The determination by the mediator will be final and binding and must be carried into effect by the Parties.
- 18.6. If the Parties are unable to resolve the dispute or difference to their mutual satisfaction by way of 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.
- 18.7. The Photographer will not withhold any Services pending resolution of a dispute.

19. SUB-CONTRACTING, CESSION AND DELEGATION

19.1. Sub-contracting

19.1.1. The Photographer must not, without the prior consent of the University in each instance, sub-contract any of its obligations in terms of this Agreement. Such consent does not relieve the Photographer of any of its obligations and it is responsible to the University for the acts and omissions of its sub-contractor as if such acts have been acts and omissions of the Photographer.

19.1.2. If the Photographer seeks to sub-contract any of its obligations in terms of this Agreement, the University reserves the right to offer any other of the University's preferred service providers the opportunity to provide the sub-contracted services, without any recourse to the Photographer.

- 19.1.3. The Photographer must ensure that any guarantees or other undertakings given by the sub-contractor are transferable to the University and warrants that such guarantees will, at the request of the University, be transferred to the University. The Photographer must ensure that each sub-contractor complies with all the terms of this Agreement as if it was the Photographer.
- 19.1.4. If the University consents to the Photographer entering into a sub-contract in terms of 19.1.1, the provisions of this Agreement will be applicable *mutatis mutandis* to the agreement between the Photographer and such sub-contractor.
- 19.1.5. 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 sub-contracts from the Photographer and enforce any such sub-contracts.

19.2. **Cession and delegation**

- 19.2.1. The Photographer must not, without the prior consent of the University, cede any of its rights or delegate any of its obligations in terms of the Agreement to any other party. If such consent is given to the Photographer, the Photographer 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.
- 19.2.2. The University may cede its rights or delegate its obligations to any other party.

20. **BREACH**

- 20.1. An event of a material breach will occur should either Party breach any of the material terms or conditions of this Agreement and fail to remedy that breach within a period of 14 (fourteen) days of being called upon in writing to do so.
- 20.2. Upon the occurrence of an event of breach the aggrieved Party will be entitled, in addition to any other rights which it may have in law, to cancel this Agreement on written notice to the defaulting Party and to claim from the defaulting Party such damages as the aggrieved Party may suffer.

20.3. Any termination of this Agreement will not absolve the Parties from the obligation to observe the confidentiality measures and other restraints as set out herein.

21. FORCE MAJEURE

21.1. If a Party is delayed, interrupted in or prevented from the performance of any obligation hereunder by reason of an act of God, fire, flood, earthquake, war (declared or undeclared), public disaster, strike, governmental enactment, rule or regulation, or any other cause beyond such Party's control, such Party will not be liable to the other in that respect; and the time for performance of such obligation will be extended for a period equal to the duration of the contingency which occasioned the delay, interruption or prevention.

21.2. The Party whose obligations are affected by force majeure will promptly furnish within 48 (forty eight) hours' notice of such and the reason therefor to the other Party and will use its best endeavours to terminate the circumstances giving rise to the force majeure and, upon termination of the circumstances giving rise thereto, will forthwith give notice thereof to the other Party and will continue with its obligations.

21.3. If the force majeure delays the performance of the obligation for a continuous period of three (3) months, the Party not claiming force majeure may, at its option and without further obligation, terminate this Agreement upon written notice to the other Party.

22. LIMITATION OF LIABILITY

22.1. The University has insured itself against the acts and omissions of persons acting on its behalf and its students and staff are insured during the course and scope of the University's business. The University's maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.

22.2. The Photographer must insure itself against liability arising out of or due to its fault or the fault of any of its Employees, agents, associates or other persons acting on its behalf. Such coverage must be on terms satisfactory to and in an amount considered appropriate by the University's Insurance Brokers. The Photographer must provide proof to the satisfaction of the University that such insurance cover has been taken out and maintained.

23. EMPOWERMENT

23.1. Broad Based Black Economic Empowerment (“B-BBEE”)

- 23.1.1. The University subscribes to the Department of Trade and Industry (DTI) Broad-based Black Economic Empowerment Codes of Good Practice (“Codes”), and/or any code in the Charter issued in terms of section 9(1) of the Broad Based Black Economic Empowerment Act, No. 53 of 2003 (collectively “B-BBEE Legislation”) and has undertaken to measure itself against this standard.
- 23.1.2. It is the University’s strategic intent to continuously improve its B-BBEE contribution level in terms of the Codes, and the Photographer undertakes to assist the University in this regard.
- 23.1.3. Without limiting the Photographer’s obligations in terms of this clause 23, the Photographer will –
 - 23.1.3.1. for the duration of this Agreement retain and/or improve its B-BBEE Rating;
 - 23.1.3.2. provide a valid B-BBEE accreditation certificate from a verification agency accredited by SANAS (the South African National Accreditation System) on the Commencement Date and at least annually thereafter (if applicable).
 - 23.1.3.3. in the event of an adverse change to its B-BBEE Rating, advise the University within a period of 1 (one) month from the date on which the event giving rise to the adverse change in the B-BBEE Rating occurred, and what steps have been and/or will be taken by the Photographer to restore its original B-BBEE Rating.

24. MISCELLANEOUS MATTERS

24.1. Address for correspondence

24.1.1. Any correspondence (other than a notice contemplated in 24.2) in connection with this Agreement may be addressed:

24.1.1.1. in the case of the University, to:

Physical Address

1 Jan Smuts Avenue
Braamfontein
Johannesburg

Postal Address

Private Bag 3
Wits
2050

Electronic mail address: nicoleen.potgieter@wits.ac.za
marked for the attention of: the Head, Examinations and
Graduation Office (EGO)

24.1.1.2. in the case of the Photographer to:

Physical Address

.....
.....
.....

Postal Address

.....
.....
.....

Electronic mail address:
marked for the attention of: (*insert designation)

24.1.2. The notice will be deemed to have been duly given:

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

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

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

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.

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

24.1.4. 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 24.1.1.

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

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. The University :
Office of the Director: Legal Services
5th Floor, Solomon Mahlangu House
1 Jan Smuts Avenue
Braamfontein
Johannesburg

24.2.1.2. The Photographer:
.....
.....
.....
.....

24.2.2. 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.

24.3. Entire Agreement

24.3.1. This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.

24.3.2. This Agreement will prevail over, cancel and supersede all terms and conditions, whether written, oral or implied, not contained in this Agreement which the Photographer may seek to incorporate in the Agreement in whatsoever manner.

24.4. 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.

24.5. Variation, Cancellation and Waiver

No addition to or variation of any clause of this Agreement (including this clause 24.5), 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.

24.6. Indulgences

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

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

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

24.7. Applicable Law

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

24.8. Jurisdiction

The Parties consent to the jurisdiction of the South Gauteng High Court, Johannesburg.

24.9. 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.

24.10. Severability

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

24.11. Precedence of Documents

If there is any inconsistency between the provisions of the Agreement, a descending order of precedence will be accorded to:

24.11.1. the Main Agreement;

24.11.2. the Scope of Work;

24.11.3. the Pricing Schedule;

24.11.4. the Specifications; and

24.11.5. the Code of Conduct

so that the provision in the higher ranked document, to the extent of the inconsistency, will prevail.

24.12. Costs

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

Signed on behalf of the University:

Name: _____

Designation: _____

Date: _____

Place: _____

Witness: _____

Signed on behalf of the Photographer:

Name: _____

Designation: _____

Date: _____

Place: _____

Witness: _____

CODE OF CONDUCT

Acknowledgement of Responsibilities

I(Insert staff member’s names and surname)

Do hereby declare that I understand and acknowledge that I have a fiduciary duty to the University to comply with the law and all of the University’s rules, regulations, policies and procedures (hereinafter the Rules) when acting on behalf of the University. More specifically:

Initial

1. That when acting on behalf of the University I should do so in good faith and in the best interest of the University. This duty is owed to the University and not to any individual. I accept that I may not engage in conduct which results in another person’s interests being in conflict with those of the University.

Initial

2. That there must be no conflict between my private interests and that of the University and that I may not carry on business in competition with the University or use my relationship with the University to make a profit or earn a commission unless and until the University has duly authorised such conduct.

Initial

3. That I will act with the necessary care, skill and competency that is reasonably expected from a person performing similar duties to my own on behalf of the University.

Initial

4. That I am bound to act ethically and in accordance with the Rules insofar as it relates to the protection of Confidential Information. I accordingly agree to keep confidential all University Confidential Information that I may come across in performing my duties on behalf of the University. University Confidential Information also includes personal and private information entrusted to the University by private persons. I undertake to take all necessary steps to prevent unauthorised access to Confidential Information and will not act improperly upon any such information viewed in the course of performing my duties on behalf of the University. I undertake to uphold the Rules insofar as it applies to maintaining the confidentiality of personal information relating to private persons. I acknowledge that the confidentiality provisions mentioned herein will extend beyond the duration of my duties on behalf of the University.

Initial

5. That I will use utmost discretion and show the utmost respect for privacy in all interactions with student or staff information that I may come across in performing my duties on behalf of the University.

Initial

6. That if I have any doubt on how to interpret this Code and in particular whether any

information should be treated as confidential I will seek the advice of any one of the following officials of the University: the Registrar or the Director: Legal Services.

Initial

7. That the absence of specific guidelines in this code does not relieve me of my responsibility to act ethically under all circumstances.

Initial

This document has been explained to me by my Manager

.....

(Insert Details of Manager)

Signed at Johannesburg on this day of 20.....

..... (Staff member's Signature)

Signed at Johannesburg on this day of 20.....

..... (Signature of Manager representing the Photographer)