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# UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

## ANNEXURE 7

### Tender Terms and Conditions



## 1 INTERPRETATION

- 1.1 Words and phrases defined in these Tender Terms & Conditions shall also apply in the interpretation of the same words and phrases in the Tender, save where specifically otherwise indicated.
- 1.2 Unless the context otherwise requires:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 words indicating a gender includes the other gender;
  - 1.2.3 words indicating natural persons shall include juristic persons; and
  - 1.2.4 references to annexures, schedules, parts, and sections are, unless otherwise provided, references to annexures, schedules, parts, and sections of these Tender Terms & Conditions.
- 1.3 Should any provision in a definition be a substantive provision conferring rights or imposing obligations on anyone, then effect shall be given to it as if it were a substantive provision in the body of these Tender Terms & Conditions.
- 1.4 The use of the word “including” followed by a specific example(s) shall not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example(s).
- 1.5 When any number of days is prescribed in these Tender Terms & Conditions, the same shall be reckoned inclusively of the first and exclusively 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 immediately following Business Day.
- 1.6 Any reference to any legislation is to such legislation as at the signature date and as amended or re-enacted from time to time.
- 1.7 Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.
- 1.8 The Parties agree that the rule of construction that these Tender Terms & Conditions shall be interpreted against the Party responsible for the drafting of the Tender Terms & Conditions

shall not apply.

- 1.9 The clause headings in these Tender Terms & Conditions have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.10 Where there is a conflict between these Tender Terms & Conditions and the Tender, the following order of priority shall apply to resolve the conflict:
  - 1.10.1 The Tender Terms & Conditions, and then
  - 1.10.2 The Tender.

## 2 DEFINITIONS

In these Tender Terms & Conditions, unless the context otherwise requires, the following words have the meanings set out below:

- 2.1 “**Business Day**” means any day other than a Saturday, Sunday, or official public holiday in RSA;
- 2.2 “**Contract Obligations**” means the obligations that the selected Tenderer is required to carry out under and in respect of the Contract;
- 2.3 “**Contract**” means the contract to be entered into between the University and the successful Tenderer(s) as a consequence of this Tender process;
- 2.4 “**Data Protection Legislation**” means the following legislation:
  - 2.4.1 POPI;
  - 2.4.2 alternatively, such other legislation as may become applicable to the protection of personal information in RSA;
- 2.5 “**Electronic Tender Submission Protocol**” means the document that sets out the protocol relating to email or electronic Tender Submissions;
- 2.6 “**Intellectual Property Rights**” includes any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, Internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know-how, business methods and trade secrets, applications for registration, and the right to apply for registration, for any of these rights and all other intellectual property rights and equivalent or similar forms of protection



existing anywhere in the world;

- 2.7 **"Party"** or **"Parties"** means the University or the Tenderer individually or collectively as the context may require;
- 2.8 **"Personal Information"** shall have the meaning as set out in POPI;
- 2.9 **"Personnel"** of a Party includes employees, partners, directors, or other representatives of a Party;
- 2.10 **"POPI"** means the Protection of Personal Information Act 4 of 2013;
- 2.11 **"Procurement Representative"** means the person nominated as such in the Tender, or such other person that the University may subsequently nominate in writing to the Tenderer;
- 2.12 **"RSA"** means the Republic of South Africa;
- 2.13 **"Site"** means the premises of the University where the proposed goods are to be delivered together with the premises where the proposed work is to be performed and any other premises identified in the Tender Documents as forming part of the site;
- 2.14 **"Social Media Platform"** means any social media-related service, application or platform;
- 2.15 **"Submission Date and Time"** means the closing date and time referred in the Tender;
- 2.16 **"Tender Documents"** means these Tender Terms & Conditions, the Tender, the Electronic Tender Submission Protocol (where applicable) and each of the documents, annexures or schedules referred to in the Tender;
- 2.17 **"Tender Submission"** means the quote, tender, proposal, response document or submission, as the context may require, submitted by a Tenderer interested in supplying goods and/or services at a specified price to the University;
- 2.18 **"Tender Terms & Conditions"** means these standard tender terms and conditions;
- 2.19 **"Tender"** means the document designated as such including but not limited to request for proposal (RFP) or request for quote (RFQ), as the context may require, which has been issued to the Tenderer manually or electronically in

conjunction with the other Tender Documents;

- 2.20 **"Tenderer"** means the legal entity responding to the Tender individually or collectively as the context may require;
- 2.21 **"University Precincts"** means any premises owned by or which fall under the management and control of the University;
- 2.22 **"University"** means the University of the Witwatersrand, Johannesburg, a public higher education institution recognised as such in terms of the Higher Education Act, 1997; and
- 2.23 **"University-Supplied Information"** means the information provided or made available by or on behalf of the University to any Tenderer concerning the Tender Documents or any of the matters contemplated by those documents.

### **3 CONTENTS AND REQUIREMENTS FOR SUBMISSION OF A TENDER SUBMISSION**

- 3.1 The Tenderer must:
  - 3.1.1 prepare and submit the Tender Submission strictly in accordance with the requirements set out in the Tender Documents;
  - 3.1.2 complete and include as part of its Tender Submission all the schedules, annexure, appendices, and other information required by the Tender Documents;
  - 3.1.3 inform the University in writing manually or electronically by the date specified in the Tender whether it intends to submit a Tender Submission; and
  - 3.1.4 submit the Tender Submission by the date and time specified in the Tender.
- 3.2 Where applicable or as set out in the Tender, the Tenderer must provide a list of subcontractors proposed to be engaged in respect of the Contract for approval by the University. However, the University reserves the right to refuse approval of any proposed subcontractor in accordance with the University's policies and procedures.
- 3.3 If the University consents to the Tenderer entering into a subcontract in terms of clause 3.2, the provisions of the Tender Documents will be applicable *mutatis mutandis* to the contract between the Tenderer and such subcontractor. The Tenderer hereby warrants and undertakes that its subcontractors will comply with and will



not breach any obligations of the Tenderer in terms of the Tender Documents.

- 3.4 By submitting a Tender Submission to the University, the Tenderer agrees to the terms and conditions as contained in the Tender Documents.

#### **4 COMMUNICATION**

- 4.1 All communication between the University and a Tenderer shall be to or from the Procurement Representative only, in writing, and in a form that can be read, copied, and recorded. For this purpose, in writing' means hand-written, type-written, printed, or electronically made, and resulting in a permanent record. Communication shall be in the English language.

- 4.2 The University takes no responsibility for non-receipt of communications from or by a Tenderer.

#### **5 TENDERER TO INFORM ITSELF FULLY**

- 5.1 The Tenderer must acquaint itself fully with the scope of the Tender including all conditions, contingencies and risks contained therein that might affect its Tender Submission or its performance in terms of the awarded Contract.

- 5.2 By submitting its Tender Submission, the Tenderer represents and warrants to the University that it has:

- 5.2.1 prepared the Tender Submission and would enter into the Contract with the University based on its own investigations, interpretations, deductions, information, and determinations and has not relied and will not rely upon, any University-Supplied Information for any purpose (including, but without limitation, determining whether or not to lodge a Tender Submission, preparing its Tender Submission, entering into the Contract, or performing its obligations under the Contract);

- 5.2.2 examined all information relevant to the risks, contingencies and other circumstances having an effect on its Tender Submission and which is obtainable by the making of reasonable enquiries including, without limitation, the material contained in the Tender Documents, any relevant technical advice made available by

the University and any applicable statutory requirements;

- 5.2.3 not relied on information provided, or represented to be provided, by or on behalf of the University (other than information contained in the Tender Documents including addenda issued, inclusion of additional returnable schedules/documents and other revisions duly issued by the University) without independently verifying that information and independently satisfying itself of the adequacy, accuracy, and correctness of the information;

- 5.2.4 calculated the price in its Tender Submission, including all taxes, duties, charges, licenses, and other costs, in addition to taking into account all other obligations under the Contract (and the other specific matters referred to in the Tender Documents), on the basis of the Tenderer assuming the risk position allocated under the proposed Contract;

- 5.2.5 satisfied itself as to the accuracy, correctness, and sufficiency of the Tender for the Contract Obligations and that the Tender Submission price covers the cost of complying with all of the Tenderer's obligations under the Contract;

- 5.2.6 where applicable, examined the Site together with its surroundings, conditions and characteristics and made an appropriate allowance in its Tender Submission for any effect thereon; and

- 5.2.7 assessed and understood all applicable statutory requirements relevant to the Contract Obligations and that it is able to fully perform the Contract without breaching those statutory requirements.

- 5.3 The Tenderer acknowledges and agrees that it has been provided with information (including information contained in the Tender Documents) by the University only for the Tenderer's convenience and accordingly:

- 5.3.1 the University does not assume any responsibility or duty of care in respect of, give any warranty or make any representations in respect of any such information (including as to its accuracy or adequacy); and



5.3.2 the Tenderer agrees that it shall have no claim against the University or any Personnel of the University (whether in contract, delict (including negligence), equity, under statute or otherwise) in connection with any such information.

5.4 Clarification/briefing session and Site visit:

5.4.1 If specified in the Tender, each recipient of the Tender Documents who intends to submit a Tender Submission may be required to attend a clarification session and/or a Site visit.

5.4.2 The purpose of the clarification session and Site visit (if applicable) is for the University to explain the requirements and scope of the Tender and the Tender Documents to the Tenderers, for the Tenderers to seek clarification on any matter concerning the Tender or Tender Documents and to familiarise themselves with the Site, the Site conditions, and the extent of the Contract Obligations.

5.4.3 Any failure by the Tenderer to attend a clarification session or Site visit may negatively impact the Tenderer's Tender Submission.

5.5 Discussions with University Personnel or third parties:

5.5.1 The Tenderer must not communicate with any Personnel of the University in relation to the Tender or the proposed Contract Obligations without the prior Consent of the Procurement Representative.

## 6 AMENDMENT OF TENDER DOCUMENTS

The University may, at any time or times prior to the Submission Date and Time, issue to the Tenderer any amendment, annexure, or addendum to the Tender Documents. No amendment, annexure or addendum will form part of the Tender Documents unless it is in writing and expressly states that it shall form part of the Tender Documents.

## 7 SUBMISSION OF A TENDER SUBMISSION

7.1 Tenderers will be disqualified without the opportunity to make their Tender Submission responsive if:

7.1.1 it is submitted after the Submission Date

and Time specified in the Tender. It is the Tenderer's sole responsibility to ensure that the University receives the Tender Submission on or before the Submission Date and Time. The Tenderer acknowledges and agrees that the University will refuse any late Tender Submission submitted;

7.1.2 it is delivered to individuals other than the University Personnel listed in the Tender Documents;

7.1.3 where applicable, the Electronic Tender Submission Protocol is not followed by the Tenderer;

7.1.4 where applicable, it is not submitted in duplicate and/or does not include a soft copy (i.e., USB/memory stick) (where indicated in the Tender);

7.1.5 it is not signed by a duly authorised signatory as required in the Tender Documents;

7.1.6 proof of indicated insurance policies and their values are not provided;

7.1.7 the compulsory returnable schedules and documents as indicated in the Tender are not provided or not completed in full;

7.1.8 do not comply with the requested scope of work, specifications, and service levels, as the context requires, or

7.1.9 any compulsory/mandatory requirements as indicated in the Tender are not complied with.

7.2 The Tenderer agrees that a Tender Submission may be declared unresponsive and rejected if:

7.2.1 it contains any erasure, alteration, text addition or irregularity other than that as requested;

7.2.2 it is considered unbalanced, or does not include the required information necessary for proper comparison and evaluation;

7.2.3 it is incomplete or invalid documents are submitted;

7.2.4 it does not follow the required sequence of schedules and documents as prescribed in the Tender;

7.2.5 it is not submitted on the forms provided or forms are not completed;

7.2.6 any "must" condition is not met; or





7.2.7 the University reasonably deems it fit to do so for any other cause.

7.3 Should the Tenderer discover any discrepancy, error, or omission in its Tender Submission after its submission but before the Submission Date and Time, the Tenderer shall immediately notify the Procurement Representative in writing, of the nature of the discrepancy, error or omission.

## **8 TENDER SUBMISSION'S SUBMITTED BY JOINT VENTURES OR CONSORTIA**

8.1 Where applicable and where a Tenderer is comprised of more than one legal entity:

8.1.1 any Tender Submission submitted must include all details relevant to each entity and the structure of the joint venture or consortium submitting the Tender Submission, and the Tender Submission must be executed by each such entity;

8.1.2 the liability of all such entities shall be joint and several in accordance with the provisions of the Contract; and

8.1.3 the University may require a copy of any joint venture agreement or other contractual arrangement relating to the Tenderer's composition to be provided to the University before considering any such Tender Submission.

## **9 WITHDRAWAL OF A TENDER SUBMISSION**

The Tenderer may, without prejudice, withdraw its Tender Submission at any time before the Contract is awarded.

## **10 TENDER SUBMISSION VALIDITY**

Tender Submissions shall remain valid for acceptance by the University for the period specified in the Tender. In the event that the Tender does not specify a period then the Tender Submission shall remain valid for acceptance by the University for a period of 6 (six) months commencing on the Submission Date and Time.

## **11 CONFIDENTIAL INFORMATION AND PUBLICITY**

11.1 The fact that the University is seeking satisfactory responses/submissions for the supply of the goods and/or services, together

with the University-Supplied Information and all information contained in the Tender Documents or disclosed to the Tenderer in connection with the Tender process including drawings, specifications and technical and other information supplied to Tenderers is confidential. Except with the prior written consent of the University, the Tenderer agrees that it shall not disclose such information to any third party, or permit it to be used, copied, reproduced, or distributed in whole or part for any purpose other than for the preparation of the Tender Submission. The obligations created by this clause 11.1 do not apply in relation to any particular item of information that is or becomes public knowledge other than by a breach of these Tender Terms & Conditions.

11.2 The Tenderer must not advertise or issue any information, publication, document, or article (including photographs or film) for publication or media release or other publicity in relation to the Tender. Where the Tenderer receives an enquiry relating to the Tender from the media, the Tenderer must refer the person making the enquiry to the Procurement Representative and must immediately notify the Procurement Representative of the fact that an enquiry was made. The Tenderer agrees to not make any other comment in response to such an enquiry.

11.3 Notwithstanding the provisions of this clause 11, the University may require the Tenderer to execute a confidentiality agreement at any time during the Tender process. The University may exclude from consideration any Tenderer that fails to sign such an agreement.

11.4 Without limiting the Tenderer's obligations under clause 11.1 above, the Tenderer shall ensure that all of its Personnel and any other third party to whom it discloses any of the information contemplated by clause 11.1 will in each case comply with the provisions of this clause 11 to the same extent as if such person had been named in this clause in the place of the Tenderer.

11.5 By submitting a Tender Submission, the Tenderer agrees that the University may, for the purpose of carrying out the Tender evaluation, copy, use and disclose any documentation or information provided by the Tenderer.



## 12 INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights, including copyright in the Tender Documents, drawings, data, and technical and other pictorial and written information supplied to the Tenderer by the University or any third party for or on behalf of the University, shall be and at all times remain the property of the University.
- 12.2 The University may, in its sole discretion and at any stage before or after completion of the Tender process, require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to any Tenderer including all copies of such information) be:
- 12.2.1 returned to the University, in which case the Tenderer must promptly return all such information to the address identified by the University; or
- 12.2.2 destroyed by the Tenderer, in which case the Tenderer must promptly destroy all such information.
- 12.3 Without affecting any Intellectual Property Rights which may exist in the Tender Submission, any samples, hard copy, and soft copy (i.e., USB/memory stick) documentation, submitted by a Tenderer will become the property of the University and will not be returned. Please note samples will only be returned if requested by the Tenderer.

## 13 DATA PROTECTION

- 13.1 Each Party shall comply with its respective obligations under the Data Protection Legislation.
- 13.2 In processing the Personal Information, the Tenderer shall comply with POPI, and subject to any amendments or substitutions which may be made from time to time.
- 13.3 The Tenderer agrees to indemnify, and keep indemnified, the University from and against all liabilities, costs, expenses, damages and losses and any professional costs and expenses suffered by, incurred by, or awarded against the University, arising out of or in connection with any failure by the Tenderer or its Personnel to comply with its obligations under this clause 13.

## 14 UNIVERSITY'S DISCRETION

- 14.1 The University reserves the right to:
- 14.1.1 award portions of the Tender to more than one Tenderer;
- 14.1.2 award this Tender in full, in parts or not at all and/or call for new Tender Submissions in the event of unsatisfactory reply to this Tender;
- 14.1.3 cancel, withdraw, defer, suspend, or reissue the Tender at any time (either in whole or in part and whether before or after the Submission Date and Time);
- 14.1.4 award the Tender to a panel of service providers;
- 14.1.5 request further information should a tender offer yield insufficient detail and Tenderer differentiation;
- 14.1.6 contact any Tenderer during the evaluation process, in order to clarify any information, without informing any other Tenderer;
- 14.1.7 share all information and findings with any other higher education entities worldwide, provided such information has not been marked as confidential, for benchmarking purposes;
- 14.1.8 provide to all Tenderers any further information or addenda that has been provided to a particular Tenderer;
- 14.1.9 change the Submission Date and Time;
- 14.1.10 refuse to consider any Tender Submission which:
- 14.1.10.1 is lodged by any means other than in accordance with the Tender Documents;
- 14.1.10.2 is lodged after the Submission Date and Time; or
- 14.1.11 in its evaluation and assessment of the Tender Submission:
- 14.1.11.1 apply such criteria as the University sees fit and give such weighting to that selection criteria as may be determined by the University;
- 14.1.11.2 if the University considers any Tender Submission to be ambiguous, erroneous or incomplete, then to:



- 14.1.11.2.1 refuse to consider the relevant TenderSubmission;
- 14.1.11.2.2 request further information from the relevantTenderer; or
- 14.1.11.2.3 request the relevant Tenderer to amend itsTender Submission, as the University sees fit;
- 14.1.12 decide to:
  - 14.1.12.1 accept a Tenderer's Tender Submission for;
  - 14.1.12.2 not proceed with;
  - 14.1.12.3 carry out itself;
  - 14.1.12.4 have any other person or persons (whether or not a Tenderer who has submitted a Tender Submission) carried out,
- all or any part of the Contract Obligations;
- 14.1.13 to enter into mandated negotiations with any one or more selected Tenderer(s) in relation to the terms of their Tender Submission's;
- 14.1.14 appoint a preferred Tenderer, but continue discussionswith other Tenderers;
- 14.1.15 at any time invite any other person to participate as a Tenderer in the Tender process;
- 14.1.16 at any time pre-qualify, shortlist, or enter into direct negotiations with any one or more persons (whether or not any such person submitted a Tender Submission);
- 14.1.17 require changes to the Contract Obligations, any technical specifications or otherwise engage any Tenderer in connection with the Contract Obligations;
- 14.1.18 prior to the award of the Contract, cancel the Tender if:
  - 14.1.18.1 due to changed circumstances;
  - 14.1.18.2 there is no longer a need for the services, works orgoods requested;
  - 14.1.18.3 funds are no longer available to cover the total envisaged expenditure for the duration of the Contract; or
  - 14.1.18.4 no acceptable Tender Submissions were received;

- 14.1.19 determine, after opening and before detailed evaluation, whether each Tender Submission properly received:
  - 14.1.19.1 comply with the requirements of the TenderDocuments;
  - 14.1.19.2 has been properly and fully completed and signed,and
  - 14.1.19.3 is responsive to the other requirements of theTender Documents.
- 14.1.20 audit the awarded Tender process or Contract(s) from time to time.

## 15 UNSUCCESSFUL TENDER SUBMISSION'S

- 15.1 At the completion of the Tender process, the unsuccessful Tenderers will be advised in writing that their Tender Submission has been unsuccessful.
- 15.2 The University has no obligation to disclose the reasons for the acceptance or non-acceptance of any Tender Submission and the Tenderer agrees that no further correspondence in connection with the Tender or the Tenderer's Tender Submission will be entered into.

## 16 TERMS AND CONDITIONS OF CONTRACT

- 16.1 The Tenderer agrees that:
  - 16.1.1 it has read and fully understood the terms and conditions contained in the Contract before submitting its Tender Submission;
  - 16.1.2 the Contract as incorporated in the Tender Documents will apply if the Tenderer is awarded/appointed as a successful service provider(s);
  - 16.1.3 the appointment of a successful service provider shallbe subject to:
    - 16.1.3.1 the successful negotiation with the University on all outstanding matters relating to the successful Tenderer's Tender Submission including but not limited to negotiation of improved pricing;
    - 16.1.3.2 the University's rules, regulations, policies, andprocedures.
- 16.2 In the event that there is failure to reach agreement within the period as stipulated in the Tender, after the award has been made to the successful Tenderer, the University reserves the





right to:

- 16.2.1 withdraw the award issued to the successful Tenderer; and
- 16.2.2 appoint an alternative service provider(s); or
- 16.2.3 cancel, withdraw, defer, suspend, or reissue the Tender in whole or in part.

#### 17 **FORCE MAJEURE**

No Party shall have any claim against another Party (the “**Affected Party**”) for any delay or failure by the Affected Party to carry out any of its obligations under these Tender Terms & Conditions arising from or attributable to acts of God, fire, pandemic, epidemic, war, terrorism, law, government or regulatory requirements, or any other cause whatsoever beyond the control of the Affected Party (“**Force Majeure**”).

#### 18 **LIMITATION OF LIABILITY**

- 18.1 The University makes no representation or warranty whatsoever (whether express or implied, written or oral) to the Tenderer and makes no undertakings to the Tenderer, other than to invite the Tenderer to submit a Tender Submission in the manner contemplated by the Tender.
- 18.2 The Tender Documents constitute an invitation to potential service providers to make an offer for the provision of goods and/or services to the University. The Tender Documents should not be construed or relied upon as an offer capable of acceptance.
- 18.3 The Tenderer participates in the Tender process contemplated by the Tender Documents at its own risk and expense. The Tenderer is not entitled to be reimbursed or compensated for any expense or loss incurred in connection with preparing or submitting the Tender Submission or otherwise in connection with the Tender Documents.
- 18.4 To the maximum extent permitted by law, the University, and its Personnel shall have no liability or responsibility whatsoever to the Tenderer (whether based in contract, promissory estoppel, restitution, quantum meruit, quasi- contract, delict, statute or otherwise) in connection with or in relation to the Tender Documents, or the Tenderer’s participation in the Tender process. Without

limiting the foregoing, the University will not be liable or responsible to the Tenderer in circumstances where:

- 18.4.1 the University terminates the Tender process;
- 18.4.2 the University elects not to acquire (in whole or in part) the goods and/or services that are the subject of the Tender Documents;
- 18.4.3 the Tenderer is not selected to supply the goods and/or services that are the subject of the Tender Documents;
- 18.4.4 the University conducts negotiations with any third party in parallel with any negotiations that it conducts with the Tenderer;
- 18.4.5 the University terminates negotiations with a successful Tenderer (see clause 15);
- 18.4.6 any information (including but not limited to Confidential Information and/or Personal Information) forming part of the Tender Submission is lost, corrupted, or not received; or
- 18.4.7 the University exercises any of its rights or discretions under or in connection with the Tender Documents.

#### 19 **DISPUTE RESOLUTION**

- 19.1 The Parties will negotiate in good faith to resolve any disputes that may arise out of the Tender Terms & Conditions.
- 19.2 Should any dispute of whatever nature arise from or in connection with these Tender Terms and Conditions then the dispute shall, unless the Parties otherwise agree in writing:
  - 19.2.1 in the first instance be referred to the University’s Head of Procurement and the Tenderer’s Tender/Bid Manager or duly authorised representative to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute;
  - 19.2.2 if the individuals described in clause 19.2.1, fail to resolve the dispute within a period of 30 (thirty) Business Days, the Parties respective internal legal counsel/director/advisor shall attempt to resolve the dispute amicably;



19.2.3 if the individuals described in clause 19.2.2, fail to resolve the dispute within a period of 30 (thirty) Business Days the dispute must be referred to the University's Vice-Chancellor or a Deputy Vice-Chancellor or duly authorised designee and the Tenderer's Chief Executive Officer or their duly appointed representatives, who will use their best endeavours to resolve the dispute. Their determination will be final and binding and will be carried into effect by the Parties;

19.2.4 if the individuals described in clause 19.2.3, fail to resolve the dispute within a period of 30 (thirty) Business Days after it has been referred to them, either Party will be entitled to refer the dispute for adjudication by a competent South African Court, unless the Parties agree to resolve such dispute by mediation and/or arbitration in terms of a separate arbitration agreement between the Parties.

19.3 Subject to the provisions contained in clause 19.2, the University and the Tenderer irrevocably consent and submit to the non-exclusive jurisdiction of the High Court of RSA, Gauteng Local Division, Johannesburg, for the adjudication of such disputes.

## **20 CONFLICT OF INTEREST**

The Tenderer must disclose to the University any circumstances, arrangements or relationships which constitute, or might reasonably be considered to constitute, an actual or potential conflict of interest with the Tenderer's obligations under the Tender Documents or under any Contract that might be entered into. The Tenderer shall make this disclosure to the University as soon as becoming aware of it and, in any event, must be enclosed in its Tender Submission.

## **21 ANTI-COMPETITIVE BEHAVIORS**

21.1 In consideration of the University accepting the submission of a Tender Submission, the Tenderer represents and warrants to the University that:

21.1.1 it has no knowledge of the Tender Submission price or terms of any other Tenderer;

21.1.2 except where it has notified the University in writing prior to the submission of its Tender Submission, the Tenderer has not entered into any contract, arrangement or understanding with any other Tenderer or any recipient of a Tender:

21.1.2.1 as to who should be the selected Tenderer; or

21.1.2.2 relating to the pricing or terms offered in the Tender Submission;

21.1.3 The Tenderer acknowledges and agrees that the University is relying on the representations and warranties in this clause 21 when considering the Tender Submission and entering into the Contract. If the Tenderer breached any of the representations and warranties in clause 21.1 then:

21.1.3.1 the University may refuse to consider the Tenderer's Tender Submission;

21.1.3.2 the University may take any other action that it is entitled to take at law; and

21.1.3.3 in the event that the University becomes aware of the breach of warranty after the Contract is entered into, withhold from any payments due under the Contract an amount equal to the University's estimation of the losses suffered by it from the breach of clause 21.

## **22 INTEGRITY, TRANSPARENCY AND FAIR BUSINESS**

22.1 The University 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")

22.2 The Tenderer is required to submit to the University a valid B-BBEE certificate.

22.3 The University reserves the right to, in its sole discretion, call upon a Tenderer to provide details regarding its shareholding, management, and related information in order to verify that the Tenderer is not engaging in fronting



practices or other practices that are designed to circumvent the B-BBEE Act and South African Codes of Good Practice.

- 22.4 The Tenderer undertakes, as soon as possible, to notify and provide full details to the University in the event that there is a change to the Tenderer's B-BBEE rating.
- 22.5 Should there be any negative change to the Tenderer's B-BBEE rating, and should the Tenderer fail to comply with its reporting obligations in terms of clause 22.4 the University reserves the right to disregard the Tenderer's Tender Submission.
- 22.6 Tenderers are expected to uphold standards to safeguard fair conduct of business, competition and not to obtain any undue advantages.
- 22.7 Tenderers shall ensure that it, its Personnel and its sub- contractors or agents will not engage in any fronting practices.
- 22.8 Tenderers should keep proper and accurate records and ensure transparent and honest financial reporting. All information concerning financial status, performance and business activities shall be disclosed according to requirements of applicable laws, regulations, and industry practices.
- 22.9 The Tenderer represents, warrants, and agrees to:
- 22.9.1 comply with all applicable laws and regulations in RSA regarding anti-bribery and corruption; not to offer, promise, give, request, accept or receive bribes, including facilitation payments;
- 22.9.2 disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Tender; and
- 22.9.3 use its best endeavours to prevent bribes.
- 22.10 The Tenderer agrees to indemnify, and keep indemnified, the University from and against all liabilities, costs, expenses, damages and losses and any professional costs and expenses suffered by, incurred by, or awarded against the University, arising out of or in connection with any failure by the Tenderer or its Personnel to comply with its obligations under this clause 22.

## **23 UNIVERSITY PRECINCTS**

- 23.1 All Personnel, guests, invitees, or any other persons acting on behalf of the Tenderer may only come onto the University Precincts for the purposes of fulfilling the Tenderer's obligations under the Tender, and for no other purpose, without the prior written consent of the University.
- 23.2 Whenever any of the Tenderer's Personnel or any person acting on its behalf are present on the University Precincts the Tenderer will ensure that such person(s) comply with all applicable University rules and regulations including regulations pertaining to:
- 23.2.1 the carrying of weapons;
- 23.2.2 the wearing of identification tags and the possession and use of access cards;
- 23.2.3 vehicle access to and parking on the University Precincts;
- 23.2.4 any instructions from the University; and
- 23.2.5 any and all other applicable requirements laid down from time to time by the University.
- 23.3 The University may require the Tenderer to affect the immediate removal from the University Precincts of any Personnel of the Tenderer if the University on reasonable grounds deems it in the best interests of the University that such a person is removed. The Tenderer will ensure that that person does not return to the University Precincts without the University first having given the Tenderer its written consent, which will not unreasonably be withheld, for that person to return.
- 23.4 The Tenderer will not remove any property of whatever nature from the University Precincts without the written permission of the University.
- 23.5 The University reserves the right, at any given time and without prior warning, to search for any or all vehicles and containers entering or exiting the University Precincts.
- 23.6 All gatherings will be subject to the University's rules and regulations.

## **24 UNIVERSITY'S NAME**

- 24.1 The Tenderer agrees that it is not authorised to



use the name, trademarks, marks, devices, trade names, business names, trading styles, logos, or domain names of the University in connection with any marketing, co-branding and/or promotional materials or activities, or for any other purpose whatsoever.

24.2 The Tenderer undertakes and agrees that for the duration of these Tender Terms & Conditions and after the termination thereof not to make any disparaging remarks, derogatory statements, or comments, except as permitted by law, about the University and its Personnel:

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

24.2.2 on any Social Media Platform;

24.2.3 privately or publicly to any third party.

24.3 The Parties acknowledge and agree that the provisions of this clause 24 shall survive the expiration or termination of these Tender Terms & Conditions and shall continue to operate after any such expiration or termination.

## 25 GENERAL

25.1 These Tender Terms & Conditions are governed by the laws of the RSA, and any disputes will be subject to the provisions of clause 19 without giving effect to any conflict of laws.

25.2 These Tender Terms & Conditions constitute the entire agreement between the Parties relating to its subject matter and supersedes all other oral or written representations, understandings, or agreements.

25.3 No amendment, variation, or consensual cancellation of these Tender Terms & Conditions, including an amendment to this clause 25.3, and no settlement of any disputes arising under these Tender Terms & Conditions, shall be binding unless recorded in writing and signed by both Parties. For the purposes of this clause, a “written document” shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002, and “signed” shall mean a signature executed by hand with a pen and without any electronic process, or

intervention.

25.4 Each undertaking in these Tender Terms & Conditions shall be deemed to be and shall be construed as an undertaking separate and severable from every other undertaking given in terms of these Tender Terms & Conditions.

25.5 No undertaking shall be limited or restricted by reference to or inference from any other separate acknowledgement and/or undertaking.

25.6 If any provision or undertaking in these Tender Terms & Conditions is or becomes illegal, invalid, or unenforceable, such provision shall be divisible and be regarded as *pro non scripto*, the remainder of these Tender Terms & Conditions to be regarded as valid and binding.

25.7 No extension of time or waiver or relaxation of any of the provisions of these Tender Terms & Conditions shall operate as an estoppel against any Party in respect of its rights under these Tender Terms & Conditions, nor shall it operate to preclude such Party from exercising its rights strictly in accordance with these Tender Terms & Conditions.

25.8 The Tenderer shall not be entitled to assign, cede, or otherwise transfer the benefit or burden of all or any part of these Tender Terms & Conditions without the written consent of the University, which consent shall not be unreasonably delayed or withheld.

25.9 All costs of any nature whatsoever related to the preparation and submission of the Tender Submission, including but not limited to items such as presentations, Site inspection by any of the short-listed Tenderers, are for the account of the Tenderer.

