



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

BUS SERVICE CONTRACT

between

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

Represented herein by [] in his/her capacity as[], he/she being duly authorised
(the "University")

and

(Registration Number:)

(the "Service Provider")

Represented herein by []in his/her capacity as[], he/she being duly authorised

WHEREAS the University requires the Service Provider to deliver the Bus Services;

AND WHEREAS in the last quarter of 2015, the University resolved in principle to employ workers who fell in particular categories and sectors and who were employed by companies to whom the University had previously outsourced services to (“service providers”). Pursuant to that decision, the University made offers of employment to such specified workers who (i) were permanently employed by service providers as at 7 October 2015 (the “Lock-in-Date”); (ii) were working on a fulltime basis with service providers and were delivering services exclusively to the University; and (iii) delivered services which were labour intensive, simple, routine and which the University could monitor;

AND WHEREAS on 1 October 2017 and in accordance with the resolution referred to above, the University, employed certain workers of the service provider who provided transport services to the University at the time and who met the criteria stipulated above or whose services were required by the University to meet the University’s operational requirements. Such workers resigned from the employ of the aforementioned service provider and were subsequently employed by the University and are now Insourced Employees;

AND WHEREAS the Service Provider in delivering the Bus Services is accordingly required to use the services of the Insourced Employees to deliver part of the Bus Services.

NOW WHEREFORE the Parties accordingly agree as follows:

1. INTERPRETATION

1.1. Unless inconsistent with the context, an expression which denotes:

1.1.1. Any gender includes the other genders;

1.1.2. a natural person includes an artificial person and vice versa;

1.1.3. the singular includes the plural and vice versa.

1.2. Headings in this Contract are for convenience only and shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof.

1.3. References herein to the introduction, clauses, annexures and schedules are to the introduction, clauses, schedules and annexures to this Contract unless the context requires

otherwise. The annexures and schedules to this Contract form an integral part of this Contract.

- 1.4. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail.
- 1.5. 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.
- 1.6. If any definition in Clause 2 contains a substantive provision conferring rights or imposing obligations on any Party, effect must be given to such provision as if it were a substantive provision in the body of this Contract.
- 1.7. Any word or expression related to a word or expression defined in this Contract bears a corresponding meaning.
- 1.8. 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 body with the requisite authority.
- 1.9. 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).
- 1.10. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.11. Wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instructions or determination by any Person, unless otherwise specified, such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination, must be in writing and the words "notify", "decide", "consent", "accept", "agree", "endorse", "approve", "certify", "instruct" or "determine" and other related expressions are to be construed accordingly.

- 1.12. Whenever this Contract 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.
- 1.13. 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 Contract must be applied for or requested promptly.
- 1.14. References to materials, information, data and other records are to materials, information, data and other records whether stored in electronic, written or other form.
- 1.15. When any number of days or other period 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 next Business Day.
- 1.16. Where any term is defined within the context of any particular clause in the Contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of the Contract, notwithstanding that that term has not been defined in this interpretation clause.
- 1.17. Any reference to an enactment is to that enactment as at the date of signature of the Contract and as amended, re-enacted or replaced from time to time.
- 1.18. The rule of construction that the Contract will be interpreted against the party responsible for the drafting or preparation of the Contract shall not apply.
- 1.19. The expiry or termination of the Contract shall not affect such of the provisions of the Contract 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. DEFINITIONS

- 2.1. **“Ad Hoc Instruction”** means any instruction to the Service Provider that is not provided for in the approved Bus Services Schedule, including, but not limited to and instruction to deliver bus services for Field Trips, Holidays and Sports Tours. The rates for services delivered pursuant to Ad Hoc Instructions are stipulated in Annexure 1 attached hereto. The terms and conditions contained in this Contract apply to Ad Hoc Instructions. For the avoidance of doubt and for the purposes of clarity services delivered pursuant to Ad Hoc Instructions must be delivered in accordance with the provisions contained in this Contract;

- 2.2. **“BCEA”** means the Basic Conditions of Employment Act 75 of 1997 as amended from time to time;
- 2.3. **“Buses”** means the passenger carrying vehicles described in Annexure 2 attached hereto which are owned by the Service Provider and which will be used by the Service Provider to deliver the Bus Services;
- 2.4. **“Bus Services”** means the delivery and management of passenger transportation services by the Service Provider in accordance with the Bus Services Schedule and any complementary or ancillary service thereto, including but not limited to the scheduling, cleaning, maintenance and repair of the Buses;
- 2.5. **“Bus Services Schedule”** a document which sets out the scheduling of the Bus Services as more fully described in Annexure 3 attached hereto but excludes bus services delivered pursuant to Ad hoc Instructions;
- 2.6. **“Contract Services Cost”** means the total contract price for the delivery of the Bus Services by the Service Provider as more fully described in Annexure 1 attached hereto;
- 2.7. **“Contract”** means this entire contract, including the Annexures attached hereto and any subsequently agreed annexures, Contract Amendments and Variation Orders;
- 2.8. **“Contract Amendment”** means any agreed change to this Contract, documented and signed by both parties, which results in a difference greater than R 50 000 per annum in Contract Services Cost. Any Contract Amendment to this contract must be signed by a representative of the University, duly authorised to sign contracts amendments on behalf of the University, but does not include the University Contract Manager. In the event that such a Contract Amendment is not signed by such a person the amendment is not binding on the University;
- 2.9. **“Effective Date”** means....., notwithstanding the date of Signature;
- 2.10. **“Employees”** means the Service Provider’s Employees and the Insourced Employees where applicable;
- 2.11. **“Facilities”** means the onsite offices and ablutions made available to the Service Provider by the University;
- 2.12. **“Financial Year”** means the University’s financial year;

- 2.13. **“Insourced Employees”** means those employees of the University who have been insourced by the University and whose details appear in Annexure 4 attached hereto and whose services will be used by the Service Provider to deliver part of the Bus Services;
- 2.14. **“Main Campus”** means the University’s campus located at 1 Jan Smuts Avenue, and which consists of East campus and West campus;
- 2.15. **“Month”** means one of the twelve months of the Gregorian calendar;
- 2.16. **“Parties”** means collectively, the University and the Service Provider, and “Party” means either one of them;
- 2.17. **“The Service Provider’s Employees”** means those individuals employed by the Service Provider to deliver the Bus Services and specifically excludes the Insourced Employees;
- 2.18. **“Precincts”** means any property owned by or falling under the control of the University and any venue stipulated in writing by the University;
- 2.19. **“PURCO SA”** means the Purchasing Consortium Southern Africa, which is a ‘not for profit’ private purchasing organisation, acting on behalf of universities, technikons and other higher educational institutions.
- 2.20. **“Service Provider’s Contract Manager”** means the person appointed by the Service Provider as its authorised representative to manage this Contract;
- 2.21. **“Service Provider’s Project Manager”** means the person appointed by the Service Provider as its authorised site representative to manage this Contract;
- 2.22. **“Service Provider”** means....., the legal entity with whom the University has contracted in terms of this Contract;
- 2.23. **“Standards”** means the measures used by the University to assess , *inter alia*, performance, availability and frequency of trips, as listed in Annexure 5 as amended from time to time and to be annexed hereto on or before 28 March 2018;
- 2.24. **“Temporary Relief Personnel”** means those employees of the Service Provider who are appointed by The Service Provider to drive the Bus Services on a Temporary basis under the provisions of this Contract;

- 2.25. **“Sub-Contractor”** means a Third Party with which the Service Provider has contracted (such Contract is subject to the University’s written permission);
- 2.26. **“Third Party”** means any party other than the Service Provider and the University;
- 2.27. **“University Project Administrator”** means the person appointed by the University from time to time as its authorised representative to monitor and inspect the day-to-day operation and implementation of the Contract;
- 2.28. **“University’s Contract Manager”** means the person appointed by the University as its authorised representative to manage this Contract;
- 2.29. **“University’s Regulations”** means all rules, regulations, policies, procedures and standing orders of the University as amended from time to time;
- 2.30. **“University”** means the University of Witwatersrand, Johannesburg;
- 2.31. **“Utilities”** means the supply of water, electricity, telephone, internet connections and the like;
- 2.32. **“Variation Order”** means a minor scope change (excluding an Ad Hoc Instruction), to any of the Annexures of this Contract, which has been requested by either Party and accepted by both Parties in writing; and
- 2.33. **“WEC”** means University of the Witwatersrand, Johannesburg’s Education Campus.

3. APPOINTMENT

- 3.1. The Service Provider has expertise in the delivery and management of bus services and related services. Subject to the provisions contained in Clause 4.3 below, the University appoints the Service Provider to deliver the Bus Services with the objective of providing a safe and cost effective means of transport for students and staff of the University (the “Purpose”). The Service Provider hereby accepts such appointment.
- 3.2. The Service Provider must take all steps reasonably necessary, taking into account all relevant circumstances, to deliver cost effective, efficient, diligent, skilful and economical Bus Services

according to the Standards, agreed procedures and best practice. The delivery of the Bus Services must be fit for the purposes required by the University.

3.3. To this end the Service Provider must deliver the Bus Services in a competent and skilful manner.

4. DURATION AND REQUIREMENTS

4.1. Subject to the provisions contained in Clause 4.3 below, this Contract shall endure from the Effective Date untilunless terminated earlier as provided for in this Contract.

4.2. Nothing in this clause will be construed as precluding the University from inviting competitive tenders for the provision of the bus services prior to the termination of the Contract.

4.3. By no later than.....:

4.3.1 the Service Provider must provide the University's Director: Services with documentary proof to the satisfaction of the Director: Services which confirms that the Service Provider is in possession of all the requisite and valid permits, licences, and approvals (including but not limited to documentary proof of additional authority to transport scholars) to operate the Buses and deliver the Bus Services; and

4.3.2 the Service Provider must provide documentary proof to the satisfaction of the University's Insurers that it has comprehensive insurance cover in place in accordance with the provisions contained in Clause 20.1 below (the "Requirements").

4.4. The Requirements are for the benefit of the University.

4.5. Failure to fulfil the Requirements by due date constitutes a material breach of this Contract and because time is of the essence the University may without prejudice to any other rights it may have terminate this Contract with immediate effect.

5. BUSES

5.1. The Service Provider reserves ownership of all of the Buses

5.2. The Buses shall be clean, properly equipped, maintained and repaired by the Service Provider in accordance with the requirements stipulated in Annexure 6 attached hereto. The Service Provider must at the University's request provide the University with the maintenance schedule and records of all the Buses.

- 5.3. On a daily basis and prior to the use of each of the Buses, the Service Provider will inspect the Buses in accordance with the provisions contained in Annexure 6 attached hereto.
- 5.4. Unless otherwise agreed in writing, the Buses used in the delivery of the Bus Services must not be older than 3 years. The Buses must be maintained and must at all times be in good working order, fair wear and tear accepted and must have valid road worthy certificates. Insofar as a Bus is not in good working order the Service Provider must provide the University with a replacement Bus at its cost.

6. INSOURCED EMPLOYEES

6.1. It is acknowledged and agreed that the Service Provider is responsible for delivering the Bus Services. In fulfilment of its obligation to deliver the Bus Services, the Service Provider shall use the services of the Insourced Employees to deliver part of the Bus Services. Certain Insourced Employees shall, for the duration of this Contract but for the aforementioned purpose only, be under the direction, supervision and management of the Service Provider.

6.2. The University undertakes to:

- 6.2.1. assign the Insourced Employees to the Service Provider for the purpose stipulated in Clause 6.1 above;
- 6.2.2. inform the relevant Insourced Employees that they will work under the direction, supervision and management of the Service Provider and that they will comply with both the University's and the Service Provider's Regulations. The Parties agree that insofar as there is conflict between the Regulations of the respective Parties, then in that event the University's Regulations will prevail;
- 6.2.3. ensure that the relevant Insourced Employees comply with their contractual obligations in terms of their contracts of employment with the University and manage instances of non-compliance with such obligations.

6.3. Discipline of the Insourced Employees

- 6.3.1. The Service Provider must report all Employee Relations matters, including but not limited to, instances of *prima facie* cases of misconduct, poor work performance and/or incapacity by Insourced Employees to the University's Contracts Manager who will in turn deal with the matter in accordance with the University's Regulations.

- 6.3.2. The Service Provider will co-operate fully with the University when reporting the matters referred to in Clause 6.3.1 above and will provide the University with all necessary information and assistance to deal with such matters effectively and efficiently.
- 6.3.3. The Service Provider will cooperate and act in accordance with the University's instructions insofar as the University recommends remedial action in respect of any Insourced Employee/s.
- 6.3.4. The Service Provider must report all Employment Related matters, injuries, accidents or other incidents requiring investigation involving any Insourced Employee to the University immediately but no more than 24 (twenty four) hours of such incident coming to the attention of the Service Provider.

6.4. Conditions of Employments of the Insourced Employees

The University will:

- 6.4.1. determine the conditions of employment of the Insourced Employees, including but not limited to the hours and shifts of each Insourced Employee, provided that such determination shall not be in contravention of any legislation or regulation and that any variation of such hours and shifts must be communicated to the Service Provider by giving it reasonable notice.

7. THE SERVICE PROVIDER RESPONSIBILITIES

- 7.1. The Service Provider will deliver the Bus Services in a manner which is fit for purpose and in accordance with the provisions and Standards contained in this Contract and the Annexures attached hereto.
- 7.2. Without derogating from the provisions of Clause 7.1, the Service Provider will direct, supervise and manage the services of certain Insourced Employees in accordance with the chart contained in Annexure 7 attached hereto and will, *inter alia*, ensure compliance by such Insourced Employees of :

- 7.2.1. all lawful instructions, orders and directions issued to such Insourced Employees by the Service Provider and/or the University; and
 - 7.2.2. with all of the University's Regulations and all relevant legislation.
- 7.3. The Service Provider must give effect to Ad Hoc Instructions, provided that the University gives the Service Provider reasonable prior notification of the required Services, and the Parties agree to the Ad Hoc Instruction in writing.
- 7.4. Whenever any of the Service Provider's Employees its agents and associates or any other person (excluding the Insourced Employees) acting on its behalf are present on the University's Precincts, the Service Provider must ensure that these persons comply with all applicable Regulations including, but not limited to, regulations pertaining to:
 - 7.4.1. the carrying of weapons on the University Precincts;
 - 7.4.2. the wearing of identification tags and the possession and use of access cards;
 - 7.4.3. vehicle access to and parking on the University Precincts;
 - 7.4.4. the wearing of working and protective clothes;
 - 7.4.5. the removal of refuse of any kind from the University Precincts, including but not limited to recyclable materials; and
 - 7.4.6. all other reasonable requirements as laid down from time to time by the University.
- 7.5. The Service Provider will be diligent and exercise due care in fulfilling all its obligations under this Contract including its obligations in respect to safety and security of any property belonging to the University.
- 7.6. The Service Provider may use the Facilities including offices subject to the following conditions, that:
 - 7.6.1. the Facilities are kept clean and tidy, in accordance with the principles of good housekeeping;
 - 7.6.2. the Facilities are not used for any activities other than those directly related to the rendering of the Bus Services;
 - 7.6.3. the University may inspect the Facilities at any time; and
 - 7.6.4. The Service Provider may access such Facilities only for the duration of the Contract.

- 7.7. The Service Provider must ensure that the Facilities are equipped with a telephone and fax machine, and that the Project Manager has access to and makes use of an e-mail facility. Upon receiving an account from the University reflecting the amount(s) payable, The Service Provider will reimburse the University for the consumption of Utilities by the Service Provider while operating in the Facilities.
- 7.8. The Service Provider must provide the University with a list of its Employees who are available and duly authorised by the Service Provider to deal with any after hour emergencies together with up-to-date contact details, such details to be amended as and when any changes occur therein.
- 7.9. The University may require the Service Provider to effect the immediate removal from the University Precincts of any the Service Provider Employee, if the University on reasonable grounds deems it in the best interests of the University that such person is removed, the Service Provider must ensure that that person does not return to the University Precincts without the University first having given the Service Provider its consent for that person to return. Such consent shall not be unreasonably withheld. Despite the removal by the Service Provider of such person/s the Service Provider will still comply with its obligations in terms of this Contract.
- 7.10. Insofar as the Service Provider's Employees need to meet on University Precincts with a recognised union in terms of a collective agreement between the Service Provider and such union, specific arrangements must be made with the relevant University structures prior to any such meeting that properly address the following requirements:
- 7.10.1. the University's operational requirements;
 - 7.10.2. the fulfilment of the University's other contractual obligations; and
 - 7.10.3. any other conditions regarding union meeting time and place that are reasonable and necessary to safeguard life and property, and to prevent the undue disruption of work.
- 7.11 The Service Provider must comply with all relevant legislation, including the Occupational Health and Safety Act 85 of 1993, the Protection of Personal Information Act 4 of 2013 (POPI), and in relation to its Employees the Labour Relations Act 66 of 1995, the

Employment Equity Act 55 of 1998, the Basic Conditions of Employment Act 75 of 1997, the Skills Development Act 97 of 1998, the Unemployment Insurance Act 63 of 2001, and the Compensation for Occupational Injuries and Diseases Act 130 of 1994.

- 7.12 Without derogating from Clause 7.11 above, the Service Provider must protect personal information of whatever nature and must process personal information (as defined in Legislation) obtained from the University in compliance with the relevant legislation and take appropriate security safeguards against the unauthorised or unlawful processing of such personal information and against the accidental loss or destruction of, or damage to, such personal information to ensure a level of security appropriate to:
- 7.12.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - 7.12.2. the nature of the Personal Information to be protected.
- 7.13 Where best practice demands that users of the University's equipment, installations or material and the like be specifically trained in such use, then only Employees who have received the requisite training may operate or use the equipment, material or installations. The Service Provider must ensure that Employees comply with safety requirements.
- 7.14 The Bus Services shall be delivered by the Service Provider using competent Employees and in a professional and tradesman-like manner meeting all of the requirements of South African and Industry standards and best practices, and any codes of practice and legislation that are applicable to the Bus Services.
- 7.15 On or before the Effective Date, the Service Provider shall produce documentary proof to the University that it has complied in all respects with the provisions of Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA). The Service Provider shall perform and comply with all the provisions of COIDA and more particularly shall render all returns and pay all assessments for which it is liable in terms of COIDA.
- 7.16 The Service Provider must train the Employees in accordance with the training schedule to attached hereto as Annexure 8. The Parties agree that corrective training will occur as and when needed. The Service Provider shall ensure that the Employees are trained and

competent to perform the Bus Services. The Service Provider must provide continued training and development to the Employees in those skill areas relevant to the performance of its obligations under this Contract.

7.17 The Service Provider shall conduct its operations on the University Precincts in accordance with the standard operating procedures agreed with the University.

7.18 Upon reasonable notice from the University, the Service Provider shall provide the University's auditors with information relating to this Contract. Such information will be provided by the auditors of the Service Provider.

7.19 The Bus Services shall be carried out in such a manner so as to cause the minimum possible disruption to the University's normal activities.

7.20 On or before the monthly meetings stipulated in Clause 10.7 below, the Service Provider must furnish the University's Operation's Manager with monthly reports substantially in accordance with Annexure 9.

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

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

7.23 The Service Provider must assign to work at the University, a staff complement sufficient both in numbers and skills to ensure due and proper performance of its obligations under the Contract at all times, and in accordance with the organogram provided to the University.

7.24 The Service Provider shall provide the University with a comprehensive list of names and identity numbers of all Employees of The Service Provider delivering the Bus Services, and shall immediately inform the University of any changes thereto. The University has the right to interview the Service Provider's Site Manager before appointment and to object on reasonable grounds to the appointment of a candidate. If the University objects on

reasonable grounds to such an appointment, any further appointment shall be made in consultation with the University.

7.25 Without prejudice to the University's rights in terms of Clause 16, but subject to Clause 7.26, if The Service Provider breaches any of its obligations contained in Clause 7, the University will be entitled to claim a penalty in respect of each instance of such breach in an amount equivalent to 1 (one) day's charges for the Bus Services per day that the Service Provider is and remains in such breach. For the purposes of calculating such penalty one day's charges will be deemed to be 1/30 (one thirtieth) of the total charges due to the Service Provider in terms of this Contract for the calendar month preceding the date of such breach.

7.26 The University will be entitled to elect whether to claim damages or the penalty described in Clause 7.25 from the Service Provider in the event of a breach of Clause 7 and may without prejudice to any other method of recovery deduct the amount of such penalty from any monies in its hands due or which may become due to the Service Provider. The payment or deduction of such penalty will not relieve the Service Provider from its obligations to comply with the provisions of Clause 7 or from any of its obligations and liabilities under the Contract or at law.

7.27 The University reserves the right to appoint other Service Providers to perform the Services and it is expected of the Service Provider to co-operate with such other Service Provider/s.

8. UNIVERSITY RESPONSIBILITIES

8.1. The University must allow the Service Provider such access to University Precincts as is reasonably necessary for it to perform its obligations in terms of this Contract.

8.2. The University will provide parking facilities on the University Precincts in close proximity to the Service Provider's point of operation, subject to availability of parking facilities and to the terms and conditions of the University's policy regarding the parking of vehicles on University Precincts. The Service Provider parks the Buses and its vehicles on the University's Precincts at its risk.

- 8.3. The University will provide the Service Provider with the Facilities as well as electricity necessary for the Service Provider to perform its obligations under this Contract.
- 8.4. The University will be solely responsible for equipping, furnishing and maintaining the Facilities and for the costs incurred in so doing.
- 8.5. The University shall pay the Service Provider for the delivery of the Services in terms of this Contract when such amounts become due in line with Clause 12 read with Annexure 1.
- 8.6. The University will be responsible for the payment of salaries and/ or other relevant and necessary payments due to the Insourced Employees. Under no circumstances will the Service Provider be responsible for payment of salaries and/or other relevant and necessary payments due to the Insourced Employees.

9. TEMPORARY RELIEF PERSONNEL

- 9.1. Upon written request by the University, the Service Provider shall within a reasonable period of time provide the Temporary Relief Personnel, in accordance with the University's requirements, to work temporarily where there is, inter alia, a vacancy, unforeseen absenteeism of Insourced Employees, labour unrest or a temporarily increased workload. The Service Provider shall charge the University the rates for the services of the Temporary relief Personnel as more fully stipulated in Annexure 1 attached hereto.
- 9.2. The Service Provider must:
 - 9.2.1 conclude contracts of employment with Temporary Relief Personnel, which conforms with all the applicable Laws, which among others includes, but is not limited to section 29 of the BCEA. Copies of such contracts of employment must be provided to the University on request and subject to the consent of the relevant Temporary Relief Personnel.
 - 9.2.2 ensure that contracts of employment expressly state that the Temporary Relief Personnel acknowledge and accept that they are not employees of the University.
- 9.3. The contract of employment between the Service Provider and the Temporary Relief Personnel must stipulate that the Temporary Relief Personnel acknowledge and accept that:

- 9.3.1 their services are required based on the University's operational requirements on an ad hoc temporary and flexible basis, and that continuity of placement with the University is therefore not guaranteed;
- 9.3.2 acknowledge that they will be subject to the general health and safety, security and operational rules binding the University's Employees;
- 9.3.3 acknowledge that they must notify either the University's or the Service Provider's Operations Manager of any unsafe working environment or unsafe Equipment;
- 9.3.4 acknowledge that they will abide by the University's Regulations, insofar as they may be applicable to them; and
- 9.3.5 acknowledge that their placement at the University is subject to the University's discretion.

9.4. The Service Provider shall not assign any Temporary Relief Personnel to the University for a period longer than 3 (three) months unless:

- 9.4.1 the nature of the work for which the Temporary Relief Personnel is employed is of a limited or definite duration; and
- 9.4.2 the placement of any Temporary Relief Personnel on the University's Premises for a period longer than 3 (three) months is justified for the following reasons:

- 9.4.2.1 the Temporary Relief Personnel is replacing a University Employee who is temporarily absent from work;

- 9.4.2.2 the Temporary Relief Personnel is employed on account of a temporary increase in the volume of work which is not expected to endure beyond a period of 12 (twelve) months;

- 9.4.2.3 the Temporary Relief Personnel is employed to work exclusively on a specific project that has a limited or defined duration;

- 9.4.2.4 the Temporary Relief Personnel is appointed to perform seasonal work; or

9.4.2.5 the Temporary Relief Personnel is appointed in a position which is funded by an external source for a limited period of time.

9.5. The Service Provider undertakes to permit the University access at all reasonable times to the records and documents (including payroll information) relating to the employment and payment of Temporary Relief Personnel provided that such Personnel consents to such access. Such access shall be for the University to satisfy itself that the Service Provider is, inter alia, meeting its obligations to such Temporary Relief Personnel.

9.6. Any termination of this Contract, or of the Services rendered by any Temporary Relief Personnel, for reason whatsoever shall not constitute an unfair dismissal by the University of such Personnel and nor shall the Service Provider or any Temporary Relief Personnel be entitled to the payment by the University as a result of redundancy or for any other compensatory payments which may be applicable on termination of this Contract or of the contract of employment of the Temporary Relief Personnel by the Service Provider .

9.7. Indemnity

9.7.1 The Service Provider hereby indemnifies and holds the University harmless from any and all losses, claims, damages, costs, fines and expenses of whatsoever nature arising from or in connection with:

9.7.1.1 any claim or action arising from the Service Provider's failure to observe or perform any duties or obligations to be observed or performed by the Service Provider in terms of clause 9; and

9.7.1.2 any claims brought by any Temporary Relief Personnel against the University, including actions instituted against the University in terms of the Labour Relations Act 66 of 1995, as amended("LRA").

9.7.1.3 any contravention by the Service Provider of section 198(4) of the LRA, which includes a contravention of:

9.7.1.4 a collective agreement concluded at a bargaining council that regulates terms and conditions of employment;

9.7.1.5 a binding arbitration award that regulates terms and conditions of employment;

9.7.1.6 the BCEA; or

9.7.1.7 a determination made in terms of the Wage Act, 1957; and

9.7.1.8 the Service Provider's failure to deduct Pay-As-You-Earn tax or fails to deducts sufficient Pay-As-You-Earn tax and is not absolved from liability by the Commissioner of the South African Revenue Service from payment of such tax, including all penalties and fines payable to the Commissioner of the South African Revenue Service in respect thereof.

9.8. The Service Provider hereby indemnifies the University against any legal costs including professional charges calculated on an attorney and client basis, incurred by the University and associated with defending any action, complaint, dispute, or claim lodged by Temporary Relief Personnel and in the event of an award or determination being made against the University, the Service Provider shall pay any amount ordered to be paid by the University.

10. CONTRACT MANAGEMENT

10.1. The Service Provider will appoint a Contract Manager, with authority to conduct contractual negotiations and conclude Variation Orders. Should the value of any proposed negotiations or Contract Amendments be in excess of the mandate given to the Contract Manager by the Service Provider, he/she shall refer the matter to the Board of Directors of the Service Provider for consideration, and authorisation if the Board approves.

10.2. The Service Provider will appoint a Project Manager with authority and responsibility to manage the delivery of the Bus Services in terms this Contract. The Service Provider will ensure that the necessary internal approval mechanisms are in place to provide the Service Provider's Project Manager with the necessary authority to effectively carry out the Service Provider's obligations to the University.

10.3. The University will appoint a Contract Manager with authority to conduct contractual negotiations. The conclusion of amendments to this Contract must be signed by a person

authorised by the University to do so. The person who is authorised by the University for this purpose is the Chief Operations Officer or his or her nominee.

10.4. The University will appoint a University Project Administrator who will supervise the day-to-day operations of the Service provider. Should the Service Provider fail to remedy any defect in its performance subject to notice and within a reasonable time, the Project Administrator is authorised to:

10.4.1 arrange for the remedying of any defects in the performance of the Service Provider's obligations in so far as these relate to the day to day operations of the Bus Service.

10.5. The Service Provider may not appoint or remove the Project Manager without first providing the University with reasonable notice thereof.

10.6. The Parties may at any stage agree to Contract Amendments, including (but not limited to) additional or reduced Services. Such agreement must be reduced to writing and signed by the Parties, before such amendment will become effective.

10.7. The University and the Service Provider will convene Contract performance review meetings, at least as often as stipulated below or more frequently as may be necessary for the proper management of the Contract. At such meetings the Service Provider will provide feedback to the University on the performance of the Service Provider's obligations. The frequency of, and the persons who must attend these meetings are as follows:

10.7.1 Weekly meeting – The Service Provider's Project Manager and the University Project Administrator or their nominees. The University Project Administrator must keep formal minutes of all such meetings, and circulate these among the attendees; and

10.7.2 Monthly Management meeting – University's Contract Manager, the Service Provider's Contract Manager and the Service Provider's Project Manager, University Project Administrator or their nominees. The University's Contract Manager must keep formal minutes of all such meetings, and circulate these among the attendees.

11. CHANGE OF SPECIFICATIONS OR CONDITIONS/VARIANCE ORDERS AND CONTRACT AMENDMENTS

11.1. In consultation with the Service provider, the University may amend or add to the Bus Services as and when necessary and depending on changing conditions and requirements. Charges therefore will be calculated using the charges stipulated in Annexure 1 as a basis for that calculation and as modified taking into account the specific changes in the conditions and requirements. No changes will become effective unless reduced to writing and signed by the Parties.

11.2. Any change by the Service Provider to the following:

11.2.1 The number of buses necessary to deliver the service;

11.2.2 The frequency and routes used; and

11.2.3 The schedule and time of bus services;

is subject to the written approval of the University.

12. BILLINGS ADMINISTRATION

12.1. The costs associated with this Agreement are reflected in in Annexure 1.

12.2. Every month the Service Provider will submit invoices to the University reflecting:

12.2.1 the fixed monthly charge for Scheduled Bus Services;

12.2.2 the charges for Ad-Hoc Instructions, accompanied by supporting documentation giving rise to the Ad-Hoc Instruction; and

12.2.3 any change in the fuel price will be factored into the calculation of charges for any month with immediate effect (see Annexure 1).

12.3. All invoices and supporting documentation will reach the University by no later than the 7th day of the month following the month to which the invoice relates.

12.4. If the Service Provider fails to perform whole or part of the Bus Services satisfactorily then the University will not be liable to pay for that part of the charges stipulated in Annexure 1 which relate to the Bus Services which have not been delivered satisfactorily.

12.5. Where the University has a query regarding any amounts due to the Service Provider, the University shall not delay payment of the total amount due but only withhold that portion of

payment which is the subject of the query. Any amount due as determined by query resolution will be paid within 10 (ten) working days of resolution of the query.

12.6. All costs associated with Variation Orders and Contract Amendments must be calculated in accordance with the charges agreed to and reflected in Annexure 1.

12.7. The University agrees to pay all amounts due and owing to the Service Provider prior to the end of the month following the month to which the invoice relates, provided that the invoice was submitted within the time periods laid down above.

13. HEALTH AND SAFETY

13.1 Notwithstanding anything else contained herein, the prevention of accidents, safety performance and adherence to sound and safe work standards and practices are essential requirements of this Contract. Accordingly, the Service Provider and the Employees will, while on the University Precincts, strictly adhere to all applicable safety and health requirements of statutes, ordinances, by-laws and regulations as well as the University's codes of practice, policies, procedures or instructions relating to safety and health applicable to the University Precincts or the execution of the Contract.

13.2. In terms of Section 37(2) of the OHS Act, the Service Provider hereby agrees that the University is relieved of any and all of its liabilities in terms of Section 37(1) of the OHS Act in respect of any acts or omissions of the Service Provider and/or its Employees to the extent permitted by the OHS Act, and that this Contract comprises the written agreement between the University and the Service Provider contemplated in section 37(2).

13.3. Without detracting from the generality of the above, and without limiting its liability in any way, the Service Provider will ensure that the Service Provider and the Employees will at all times comply with any conditions, codes of practice or any other provisions of a like nature which may be specified by the University from time to time, or any instructions, orders, prohibition, exemption certificate etc, issued in terms of the OHS Act. Such compliance will, inter alia, necessitate the Service Provider ensuring that the Service Provider and the Employees at all times whilst on the University Precincts, where specified by the University (by notice, sign, regulation, instruction, etc) or where necessitated by the nature of the Services, wear the required personal protective clothing and equipment ("PPE"). It is the

responsibility of the Service Provider to ensure that the Employees are in possession of such PPE and to maintain the PPE clothing and equipment worn by the Service Provider Employees in a serviceable condition at the Service Provider's cost.

13.4. The delivery of the Bus Services for and on behalf of the University or on or at the University Precincts, must be supervised to ensure compliance with the OHS Act. The Service Provider warrants that the person appointed in writing to perform such supervision is suitably qualified and trained to understand the risks and hazards associated with delivery of the Bus Services by the Service Provider, and to ensure compliance with this Contract, and the OHS Act.

13.5. The Service Provider acknowledges that the University retains an interest in any investigation and/or inquiry conducted in terms of the OHS Act or any other investigations which may be conducted into any incident. The Service Provider will furnish a written report to the University within 24 (twenty four) hours following the conclusion of any such investigation or inquiry.

13.6. The Service Provider will be deemed to have full knowledge of the delivery of the Bus Services in terms of the Contract, and the implications or potential implications on the health and/or safety of employees and other persons. The Service Provider will, before delivering the Bus Services and, conduct a risk assessment to the satisfaction of the University.

13.7. The Service Provider must, on or before the commencement date provide the University with a health and safety file and therein have copies of all appointments required by the OHS Act and OHS Regulations and, in particular, without limiting this obligation, the Service Provider must advise the University of the responsible person appointed by it in terms of section 16(2) as well as the safety supervisor in terms of section 8.2 of the OHS Act.

13.8. The Service Provider must immediately and in writing advise the University of any hazardous situation which may arise from the supply of the Bus Services.

13.9. Without prejudice to its other rights in law or in terms of this Contract, the University is entitled at any time:

13.9.1 to require the Contractor to suspend all activities on the University Precincts,
or

13.10.1 to terminate this Contract forthwith,

if, in the reasonable opinion of the University, the Service Provider has breached any provision of this clause 13. The University will be entitled to recover from the Service Provider any loss occasioned to it as a result of such suspension or termination, including the cost of procuring the supply of the Bus Services by another Service Provider.

13.10. Nothing in this clause 13 shall:

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

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

13.11. For the purposes of this clause, "as far as reasonably practicable" shall have the same meaning as contemplated in the OHS Act.

13.12. Without derogating from the above, The Service Provider shall:

13.12.1 comply with the Wits Emergency Response Plan attached hereto as Annexure 10;

13.12.2 take such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of Employees;

13.12.3 establish, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to the Bus Services and as far as is reasonably practicable, further establish what precautionary measures should be taken with respect to the Bus Services in order to protect the health and safety of the Employees, and provide the necessary means to apply such precautionary measures;

13.12.4 provide such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety of the Employees;

13.12.5 as far as is reasonably practicable, not permit any Employee to deliver the Bus Services unless the any precautionary measures which may be prescribed, have been taken; and

- 13.13. Without limiting the generality of the aforementioned the University must ensure that at all times properly equipped first aid boxes are available in appointed areas. Both Parties must appoint safety representatives, in accordance with the OHS Act and with best practice.

14. DISPUTE RESOLUTION

- 14.1. The Parties will negotiate in good faith to resolve any disputes that may arise out of this Contract.
- 14.2. Each Party will inform the other in writing within two working days in the event of any perceived or potential dispute of Contract arising.
- 14.3. The University's Contract Manager and the Service Provider's Contracts Manager must first attempt to resolve the dispute.
- 14.4. Failing the parties reaching a satisfactory resolution of the dispute in terms of clause 14.1 to 14.3, the dispute must be submitted jointly by the University and the Service Provider's Contract Managers in writing to the University's Chief Operating Officer and The Service Provider Chief Executive Officer for resolution.
- 14.5. Any disputes which cannot be resolved by the Parties in terms of clauses 14.1 to 14.4 inclusive within seven (7) Business Days shall at the instance of either Party be adjudicated by the South Gauteng High Court, Johannesburg, unless the Parties agree to refer the dispute to arbitration in terms of a separate arbitration agreement. The Parties irrevocably consent and submit to the exclusive jurisdiction of the South African courts for the adjudication of such disputes.
- 14.6. Save where payment is withheld by the University following failure by the Service Provider to deliver the Bus Services, neither Party shall withhold services or payment pending resolution of a dispute. Only payment in respect of the Bus Service(s) in dispute may be withheld.

15. PROPRIETARY RIGHTS

- 15.1. All proprietary assets or related materials provided by a Party for use in accordance with this Contract shall remain the exclusive property of that Party. Where one Party grants the

other access to its proprietary assets, this is restricted to a non-transferable right of use solely in relation to this Contract.

- 15.2. All intellectual property arising out of the fulfilment by the Service Provider of all and any of its obligations and duties under this Contract, including copyright in documentation, knowhow and trade secret information, belongs to the University.
- 15.3 Without derogating from the generality of the aforesaid, all reports that the University commissioned by the Service Provider to develop or write for the University remain the exclusive property of the University.

16. BREACH AND TERMINATION

- 16.1. If The Service Provider commits a material breach of any of the provisions of this Contract, the University shall be entitled to give the Service Provider notice to remedy the breach.
- 16.2. If the Service Provider fails to comply with that notice within five (5) Business Days (or any other period stipulated in writing by the University) of the date of posting thereof, the University shall be entitled to cancel this Contract or to claim specific performance, in either event without prejudice to the University's right to claim damages.
- 16.3. If the Service Provider fails to comply with the terms of the Contract, the University will be entitled, without prejudice to any of its rights in terms of this Contract or in law -
 - 16.3.1. to withhold all payments due and payable to the Service Provider until such time as the Service Provider has complied therewith, to the satisfaction of the University; and/or
 - 16.3.2. to engage a Third Party to perform the Bus Services which the Service Provider shall have failed to perform properly or at all, and the cost thereof may be deducted from any amount that may otherwise be due to The Service Provider under the Contract.
- 16.4. If the Service Provider consistently defaults in the performance of its obligations under this Contract, the University will be entitled to cancel this Contract without prejudice to any other rights that the University may have in law. For the purposes of this clause

16.4, “consistent default” shall mean the failure of the Service Provider to comply with its obligations hereunder on three (3) occasions within a period of fifteen (15) consecutive Business Days.

16.5. If:

- 16.5.1. the Service Provider is placed in liquidation, either provisionally or finally, whether voluntarily or compulsorily; or
- 16.5.2. the Service Provider applies for or undergoes business rescue in terms of Chapter 6 of the Companies’ Act, 2008; or
- 16.5.3. the estate of the Service Provider is sequestrated, either provisionally or finally; or
- 16.5.4. the estate of the Service Provider is surrendered; or
- 16.5.5. the Service Provider commits an act of insolvency; or:
- 16.5.6. the Service Provider dies, whether the Service Provider is an individual or a member of a partnership or syndicate; or
- 16.5.7. a judgment in any competent court is given against the Service Provider, and is not satisfied within a period of fourteen (14) days, or
- 16.5.8. before completion of the Contract the major portion of the assets of the Service Provider is disposed of or the majority shareholding of the Service Provider is transferred or there is a change of management control of the Service Provider,

the University will be entitled, but not obliged, to terminate the Contract forthwith without payment to the Service Provider of any damages whatsoever resulting from such termination.

16.6. The University may terminate this Contract by giving the Service Provider one (1) months written notice of such termination.

16.7. Upon termination of this Contract, each Party shall deliver to the other Party or, at the other Party’s option, destroy all originals and copies of confidential information

supplied to it by the other Party. Should either Party fail to comply with this, the non-compliant Party will be entitled to withhold all payments due and payable to the other until such time as the non-compliant Party has complied therewith.

17. ADDRESSES AND DOMICILIA

17.1. Any notice or correspondence in connection with this Agreement must be addressed:

17.1.1. in the case of the **University**, to:

Postal Address

PO Box 464

Wits

2050

Physical Address

Services Department

West Campus

University of the Witwatersrand, Johannesburg

1 Jan Smuts Avenue

Braamfontein

Fax No. 011 7171726

Electronic mail address:

marked for the attention of: The Transport Operations Manager,

17.1.2. in the case of **the Service Provider**, to:

Physical Address

Electronic mail address:

Marked for the attention of:

The notice will be deemed to have been duly given:

- 17.1.2.1. seven (7) days after posting, if posted by registered post to the Party's address in terms of this sub-clause;
- 17.1.2.2. on delivery, if delivered to the Party's physical address set out in 17.1;
- 17.1.2.3. on despatch, if sent to the Party's then fax number or electronic mail address set out in 17.1 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 actor omission of the addressee.

- 17.2. A Party may change its address for this purpose to another address in the Republic of South Africa, by notice to the other Party.
- 17.3. 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 sent to or delivered at its chosen address in terms of 17.1.
- 17.4. All notices and correspondence in connection with this Agreement will be in the English language.

18. FORCE MAJEURE

- 18.1. 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 Contract, if and to the extent that such failure or delay is caused by force majeure.
- 18.2. For the purpose of this Contract force majeure means any circumstance which is beyond the reasonable control of the Party giving notice of force majeure ("the Affected Party"), including war (whether declared or not), revolution, invasion, insurrection, unrest, riot, civil commotion, sabotage, blockade, boycott, the exercise of military or usurped power, fire, explosion, unrest, storm, flood, rain, drought, wind lightning or any other adverse weather

condition, epidemic, quarantine, accident, acts or restraints of government imposition, or restrictions of or embargoes on imports or exports.

18.3. 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.

18.4. If force majeure is of such nature that it will result in impossibility of performance of an obligation going to the root of the Contract, the Party not so affected ("the Other Party") is entitled, on receipt of notice of the force majeure event, to terminate the Contract 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.

18.5. 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 Party, provided that if such force majeure situation persists for a period in excess of 90 (ninety) days the Other Party will be entitled to terminate the Contract but is not entitled to recover any damages which it may suffer as a result of such premature termination.

18.6. Notwithstanding the provisions contained in Clause 18.1-18.5 and insofar as the Service Provider is the Affected Party then in that event the Service Provider must take all reasonable steps to limit the duration of the failure to fulfil its obligations and duties in terms of this Contract, and should make every effort to provide the best service possible under the circumstances.

19. LIMITATION OF LIABILITY

19.1. Without limiting any other obligation of the Service Provider under this Contract or otherwise, the Service Provider shall do all that is reasonably necessary within the course and scope of this Contract 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.

19.2. The Service Provider hereby indemnifies the University –

- 19.2.1. for any loss of, or damage to, property of the Service Provider or any financial loss suffered by the Service Provider or for claims arising out of any death or injury to any person; and
 - 19.2.2. against all claims of whatsoever nature and howsoever arising which may be made against the University by any Employee of the Service Provider for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by that Employee in the course or scope of that Employee's employment and whilst being on the University's Precincts;
- 19.3. The Service Provider hereby further indemnifies the University –
- 19.3.1. in respect of all actions, proceedings, liabilities, claims, damages costs and expenses arising out of the acts and / or omissions of its employees, directors, associates, guests, invitees or any other person acting on behalf of the Service Provider; and
 - 19.3.2. from any liability arising from:
 - 19.3.3. any breach of laws or regulations by the Service Provider including any breach of labour legislation, transport legislation, the Basic Conditions of Employment Act No. 75 of 1997, the Employment Equity Act No. 55 of 1998, the Skills Development Act No. 97 of 1998, the Labour Relations Act No. 66 of 1995, the Income Tax Act No. 58 and payment of any contributions in terms of the Unemployment Insurance Act No. 30 of 1966 and payment of any subscription to any relevant Bargaining Council that has or might have jurisdiction, as well as compliance with any Collective Contract concluded by such Bargaining Council;
 - 19.3.4. work-related injury or death caused by the Service Provider in respect of the Service Provider's Employees including payment of any contributions or compensation as a result of any injury sustained by such Employees in terms of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and compliance with all safety regulations in terms of the OHS Act;
 - 19.3.5. any claim by a Third Party that the Service Provider infringes upon its proprietary intellectual property rights or any other rights;

- 19.3.6. costs incurred by the University in connection with the enforcement of this Clause 19;
- 19.3.7. any claim against the University for consequential loss and/or loss of profits and/or business interruption loss howsoever caused; and/or
- 19.3.8. The Service Provider's failure and / or refusal to meet the payment of any levies, contributions or subscriptions to the institutions in terms of any legislation.

20. INSURANCE

- 20.1. The Service Provider as set out in 19 or elsewhere in this Contract, must at all times while this Contract is in force maintain comprehensive insurance cover satisfactory to the University's insurance brokers, including but not limited to, professional indemnity insurance, public liability, motor liability, umbrella liability, motor fleet third party and passenger liability and SASRIA cover which adequately insures against all the liabilities imposed by this Contract. The Service Provider agrees to waive any subrogation rights it may have against the University and its Employees including the Insourced Employees.
- 20.2. The terms of the Service Providers insurance cover as provided for in Clause 20.1 above shall not be altered without the consent of the University. Proof of payment of premiums on the policy shall be furnished annually to the University. This clause shall not limit the Service Provider's right to source and transfer cover to another insurance company acceptable to the University along similar lines to those agreed between the Parties, provided that the Service Provider shall notify the University at least 30 (thirty) days before effecting such change.
- 20.3. Without derogating from the provisions contained in Clause 20.1 and before starting work under the Contract, the Service Provider shall be fully and comprehensively insured against, *inter alia*, loss or damage to Equipment and/or the Buses in the possession of the Service Provider and/or operated by the Employees. In the event of loss of or damage to any Equipment and/or the Buses used in the delivery of the Bus Services the Service Provider shall at its cost replace the damaged or lost Equipment and/or Buses within 24 (twenty-four) hours.

20.4. The Service Provider shall ensure that each sub-contractor is insured against the sub-contractor's corresponding liabilities.

20.5. The University has insured itself against its liability in law for the acts and omissions of persons acting on its behalf and its registered students and its Employees including the Insourced Employees are insured during the course and scope of their registered courses and within the scope of the University's business, where fault can be attributed to the University and its affiliates . The University's maximum liability in respect of any loss of or damage to property or death of or injury to any person or from any other cause resulting or arising from or in connection with any act or omission in terms of this Contract, whether arising from contract, delict (including negligence and gross negligence) or otherwise, shall be limited, whether for a single or multiple events, to the extent of its insurance cover herein.

21. CONFIDENTIALITY

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

21.2. Notwithstanding the provisions of 21.1, information will be deemed not to be Confidential Information if it -:

21.2.1. is or becomes generally available to the public other than as a result of disclosure by the Service Provider in breach of this clause 21;

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

21.2.3. was in the Service Provider's possession prior to the Effective Date;

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

in which case the Service Provider will give the University reasonable notice thereof as soon as is reasonably practicable, and, in the case of any disclosure required in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) the Service Provider 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.

- 21.3. The Service Provider will be entitled, to the extent necessary to comply with its obligations in terms of this Contract, to disclose Confidential Information to its Personnel and professional advisers provided that the Service Provider shall ensure that the Personnel and/or professional advisers in question have been duly notified of and are bound to respect the confidentiality and secrecy of the Confidential Information disclosed to them.
- 21.4. The Service Provider will exercise proper internal controls over all documentation containing Confidential Information and will not make copies of any Confidential Information except as may be required for the purposes referred to in this clause 18 and / or this Contract.
- 21.5. Without limiting its obligations in terms hereof the Service Provider shall take at least the same steps relating to Confidential Information as the Service Provider takes for the purposes of protecting its own proprietary and confidential information.
- 21.6. The Service Provider will, at the request of the University, which may be at any time, return to it all documentation or other written or printed material containing Confidential Information and delete or destroy all electronic records containing Confidential Information.
- 21.7. The Parties shall treat this Contract and every part herein and the arrangements herein contemplated as confidential and shall in no way disclose, publish or circulate same without the consent of the other Party first having been had and obtained. Neither party shall not make any public statement in connection with the Contract, including in-house publications and newsletters, without the prior consent of the other Party.

21.8. The provisions of this Clause 21 will survive the termination or expiry of this Contract.

22. WAIVER

22.1. No failure or delay to exercise any right or concession granted in terms of this Contract shall constitute a waiver of such rights.

22.2. No waiver of any condition of this Contract shall be binding unless expressed in writing and signed by the relevant University Representative or Contractor Representative.

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 Service Provider undertakes to assist the University in this regard.

23.1.3. The Service Provider warrants that it has a B-BEE contribution level of () ("B-BBEE Rating") as at the Signature Date.

23.1.4. Without limiting the Service Provider's obligations in terms of this Clause 23, the Service Provider will:

23.1.4.1. for the duration of this Contract ensure that its B-BBEE Rating does not fall below a level two, provided that there is no legislative change to the existing Codes as at signature of the Contract;

23.1.4.2. provide a valid B-BBEE accreditation certificate from a verification agency accredited by SANAS (the South African National Verification System) on request and at least annually;

- 23.1.4.3. provide the University with annual updates on its status in respect of B-BBEE compliance requirements and confirmation that it has maintained/improved its B-BBEE Rating;
- 23.1.4.4. present a transformation plan clearly demonstrating how and when the Service Provider will achieve an acceptable B-BBEE Rating in cases where this has not yet been met; and
- 23.1.4.5. 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 Service Provider to restore its original B-BBEE Rating.

24. SUB-CONTRACTING AND CESSION AND DELEGATION AND NON-VARIATION

- 24.1. The Service Provider acknowledges that the University prefers to contract directly with all service providers. Accordingly:
 - 24.1.1.1. The Service provider must not, without the prior consent of the University in each instance, sub-contract any of its obligations in terms of this Contract. Such consent does not relieve the Service Provider of any of its obligations and it is responsible to the University for the acts and omissions of its sub-contractor as if such acts have been acts and omissions of the Service Provider.
 - 24.1.1.2. If the Service Provider seeks to sub-contract any of its obligations in terms of this Contract, 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 Service Provider.
 - 24.1.1.3. The Service Provider must ensure that any guarantees or other undertakings given by a sub-contractor are transferable to the University and warrants that such guarantees will, on notice from the University, be transferred to the University. The Service Provider

must ensure that each sub-contractor complies with all the terms of this Contract as if it was the Service Provider.

24.1.1.4. If the University consents to the Service Provider entering into a sub-contract in terms of 24.1 the provisions of this Contract will be applicable mutatis mutandis to the contract between The Service Provider and such sub-contractor. The Service Provider hereby warrants and undertakes that its sub-contractors will comply with and will not breach any obligations of the Service Provider in terms of the Contract and that all the provisions of the Contract relating to any sub-contractor will be expressly reflected in the sub-contracts.

24.1.1.5. On termination of the Contract 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 Service Provider and enforce any such sub-contracts.

26. GENERAL CONDITIONS

- 26.1. The Service Provider will not under any circumstances act or purport to act as the agent of the University.
- 26.2. Any employee, director, associate, guest, invitee or any other person acting on behalf of the Service Provider may only come onto the Precincts of the University for the purpose of fulfilling the Service Provider's obligations under this Contract and for no other purpose without the prior written consent of the Director Protection Services or the Director: Services.
- 26.3. Clauses relating to dispute resolution, confidentiality, proprietary rights, indemnity, insurance and damages shall survive the termination or expiration of this Contract for any reason.
- 26.4. This document, including the Annexures hereto constitutes the entire Contract between the Parties.

27. CESSION AND DELEGATION

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

28. WHOLE AGREEMENT AND NON-VARIATION

This is the only and entire agreement between the Parties and there shall be no binding rights or obligations which are not contained in this Contract, and the parties agree that no variation of this Contract will be effective unless reduced to writing and signed by the Parties.

29. ENTIRE CONTRACT

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

30. NO REPRESENTATIONS

No Party may rely on any representation which allegedly induced that Party to enter into this Contract, unless the representation is recorded in this Contract.

31. VARIATION, CANCELLATION AND WAIVER

No amendment or consensual cancellation or novation of this Contract or any provision or term thereof and no settlement of any disputes arising under this Contract and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Contract shall be binding unless recorded in a document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect to which it was made or given. No extension of time or waiver or relaxation of any of the provisions or terms of this Contract shall operate as an estoppel against either Party in respect of its rights under this Contract, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Contract.

32. APPLICABLE LAW

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

33. JURISDICTION

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

34. SUCCESSORS IN TITLE

Without prejudice to any other provision of this Contract, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of a Party shall be bound by this Contract.

35. UNLAWFULNESS

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

36. COSTS

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

37. COUNTERPARTS

This Contract 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.

38. PURCO SA REBATE

38.1 The Service Provider will pay to PURCO SA a 2% (two percent) service fee which is calculated on the total value of each monthly invoice issued by the Service Provider to the University for the provision of the Bus Services (including services delivered in terms of an Ad Hoc Instruction).

38.2 The Service provider will send copies of its monthly invoice and statement to both PURCO SA and the University. Upon receipt of the Service Provider's invoice, PURCO SA will invoice the Service provider the 2% (two percent) service fee which is payable to PURCO SA by the Service Provider within 30 (thirty) days of PURCO SA's invoice date.

Signed at _____ on _____ 2018

For **THE UNIVERSITY**

Name: _____

Capacity: _____

who warrants authority

Signed at _____ on _____ 2018

For **THE SERVICE PROVIDER**

Name: _____

Capacity: _____

who warrants authority