



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

DRAFT

SERVICE PROVIDER AGREEMENT

entered into between and by

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

THE SERVICE PROVIDER

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<i>The University</i>		<i>Service Provider</i>	
Witness:		Witness:	

1 APPOINTMENT

The University appoints the Service Provider on a non-exclusive basis, to provide the Deliverables described in Annexure B (Scope of Work). The Service Provider accepts the appointment and therefore the Parties agree to bind themselves to the terms and conditions contained in this Agreement.

2 STRUCTURE OF THE AGREEMENT

2.1 This Agreement consists of:

- 2.1.1 The Terms and Conditions;
- 2.1.2 Annexure A: Contract Data;
- 2.1.3 Annexure B: Scope of Work; and
- 2.1.4 Annexure C: Fees.

2.2 In the event of a conflict between the documents comprising this Agreement, such conflict will be resolved in accordance with the order of precedence (in descending order of priority) as follows:

- 2.2.1 In respect of all provisions (except those related to the Deliverables):
 - 2.2.1.1 The Terms and Conditions;
 - 2.2.1.2 Annexure A: Contract Data;
 - 2.2.1.3 Annexure B: Scope of Work; and then
 - 2.2.1.4 Annexure C: Fees.

2.3 In respect of the provisions detailing the Deliverables:

- 2.3.1.1 Annexure B: Scope of Work;
- 2.3.1.2 Annexure C: Fees;
- 2.3.1.3 Annexure A: Contract Data, and then
- 2.3.1.4 The Terms and Conditions.

3 INTERPRETATION OF THIS AGREEMENT

3.1 Any reference to any legislation is to such legislation as at the Signature Date and as amended, re-enacted or substituted from time to time thereafter.

3.2 No provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement.

3.3 Any provisions of this Agreement which either expressly or by their nature extend beyond the expiration or termination of this Agreement shall survive such expiration or termination.

3.4 The Parties agree that the rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting of the Agreement, shall not apply.

3.5 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

4 DEFINITIONS

In this Agreement the following words have the meanings set out below and derivative words will have corresponding meanings:

4.1 **"Acceptance"** or **"Accepted"** or **"Accept"** means, in respect of the Deliverables, confirmation in writing by the University that the agreed Acceptance Criteria have been satisfied;

4.2 **"Acceptance Criteria"** means the criteria specifically set forth in the Annexure B (Scope of Work) by which the Deliverables will be evaluated by the University for purposes of determining Acceptance;

4.3 **"Acceptance Testing"** means the suitable and agreed process of achieving Acceptance for a Deliverable;

4.4 **"Agreement"** means collectively, the:

- 4.4.1 The Terms and Conditions;
- 4.4.2 Annexure A: Contract Data;
- 4.4.3 Annexure B: Scope of Work;
- 4.4.4 Annexure C: Fees; and
- 4.4.5 any other appendixes attached hereto;

4.5 **"Background Intellectual Property"** all Intellectual Property rights in existence before the Commencement Date, as well as Intellectual Property developed by a Party to this Agreement after its commencement and which does not fall within the scope of the definition of Foreground Intellectual Property;

4.6 **"Business Day"** means any day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa in terms of the Public Holidays Act 36 of 1994;

4.7 **"Commencement Date"** of this Agreement means the date specified in section 6 of Annexure A (Contract Data), notwithstanding Signature Date;

4.8 **"Confidential Information"** information that:

4.8.1 relates to the Disclosing Party's past, present or future research, development, business activities, products, services, technical knowledge and personal information regarding any person; and

4.8.2 either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the other Party that it is claimed as confidential. (As used herein, the Party Disclosing Confidential Information is referred to as the "Disclosing Party" and the Party receiving the Confidential Information is referred to as the "Receiving Party");

4.9 **"Contract Data"** means Annexure A (Contract Data) setting out the specific data of this Agreement which is attached to the Terms and Conditions;

4.10 **"Counterfeit Goods"** means any material, component, part, assembly, sub-assembly, product and any other item forming part of the Deliverables in which there is an indication by visual inspection, testing, or other information that it may be a copy or substitute made without legal right or authority or one whose material, performance, identity or characteristics have been misrepresented by the Service Provider, manufacturer or a supplier in the Service Providers supply chain;

4.11 **"CPI"** means the average annual rate of change (expressed as a percentage) in the Consumer Price Index for all metropolitan areas as published by Statistics South Africa (or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it), which annual change shall be determined by comparing the most recently published index with the average index published over the 12 (twelve) months preceding the anniversary of the Commencement Date, and applying the lower of the 2 (two) compared indices;

<i>The University</i>		<i>Service Provider</i>	
Witness:		Witness:	

- 4.12 **"Data Protection Legislation"** means the following legislation:
- 4.12.1 Protection of Personal Information Act 4 of 2013, as amended or substituted;
- 4.12.2 and, such other legislation that is or may be applicable to the protection of Personal Information in South Africa;
- 4.13 **"Deliverable(s)"** means without limitation the Goods, Software Products (whether licensed or assigned), and the Services, as the context may require, and anything incidental, ancillary or complementary thereto, and as set out in detail in Annexure B (Scope of Work) and where relevant includes any Documentation supplied to aid the use thereof;
- 4.14 **"Defect"** means:
- 4.14.1 A Deliverable which is not fit for the purpose for which it was procured and of suitable quality, on not provided on time and within budget; and/or
- 4.14.2 A defect, error, omission, failure, or inefficiency that impacts the University's ability to use any specific component of a Deliverable; and/or
- 4.14.3 A defect, error, omission, failure, or inefficiency that impacts the technical performance of the University's Information Technology System(s); and/or
- 4.14.4 Non-compliance with Annexure B (Scope of Work);
- 4.15 **"Documentation"** means the documentation, if any, required for the proper and effective use of the Deliverables;
- 4.16 **"Fees"** means the Service Provider's list of fees, expenses, disbursements, rates and prices (whichever is applicable) for the Deliverables and which is attached to the Agreement as Annexure C (Fees);
- 4.17 **"Force Majeure Event"** means the result of an act of god, flood, drought, earthquake or other natural phenomenon; war (declared or undeclared); fire; acts of terrorism; public disaster; governmental enactment, rule or regulation; or any other cause beyond a Party's reasonable control; excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Service Provider (or sub-contractor) places of business
- 4.18 **"Foreground Intellectual Property"** means Intellectual Property created or developed by a Party in the course and scope of this Agreement;
- 4.19 **"Goods"** means the fit for purpose goods described in Annexure B (Scope of Work) and all goods complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any Documentation supplied to aid the use of such goods;
- 4.20 **"Information Technology System(s)"** means a Party's information and communication technology systems and services, including but not limited to hardware, servers, software, network, infrastructure and any transmissions emanating from or entering the aforementioned;
- 4.21 **"Intellectual Property"** means intellectual capital embodied in any and all technical and commercial information, whether registered or not, including techniques, specifications and formulae, know-how, systems and processes, methodologies, trade secrets, undisclosed inventions, patents, utility models, trade marks, designs, copyright and plant breeders' rights;
- 4.22 **"Key Personnel"** means the Personnel who are able and available to fulfil the requirements of this Agreement, who have the required and necessary skills, expertise, qualifications, knowledge and experience and who are critical for the successful performance of the Deliverables, as named in section 10 of Annexure A (Contract Data);
- 4.23 **"OCM"** or **"OEM"** means the Original Component/Equipment Manufacturer;
- 4.24 **"Party"** or **"Parties"** means the University or the Service Provider individually and collectively, as the context dictates;
- 4.25 **"Personal Information"** means all information relating to an identifiable natural or juristic person as defined in the Protection of Personal Information Act 4 of 2013;
- 4.26 **"Personnel"** of a Party includes employees, directors, partners, agents, consultants, associates, contractors, sub-contractors or other representatives of a Party utilised in this Agreement;
- 4.27 **"Precincts"** means any premises owned by or which falls under the management and control of the University and any part thereof;
- 4.28 **"Representative"** means the duly authorised person named and designated as such in section 11 of Annexure A (Contract Data) or otherwise in writing by a Party;
- 4.29 **"Rules"** the rules, regulations policies, procedures, practices and standing orders of the University, as amended from time to time;
- 4.30 **"Scope of Work"** means the detailed scope of work attached to this Agreement as Annexure B (Scope of Work);
- 4.31 **"Service Levels"** means the standards and levels of performance expected by the University from the Service Provider in fulfilment of this Agreement, as set out in more detail in Annexure B (Scope of Work);
- 4.32 **"Service Provider"** means the Party detailed in section 5 of Annexure A (Contract Data);
- 4.33 **"Services"** means the fit for purpose services as described in Annexure B (Scope of Work) and all services complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any Documentation supplied to aid the use of such services;
- 4.34 **"Signature Date"** the date on which this Agreement is signed by the last Party to do so;
- 4.35 **"Software Products"** means, where applicable, the fit for purpose software products to be supplied (whether licensed or assigned) as described in Annexure B (Scope of Work) and, where relevant, includes any Documentation supplied to aid the use of such software products;
- 4.36 **"Termination Date"** means the date specified in section 6 Annexure A (Contract Data);
- 4.37 **"Terms and Conditions"** means these terms and conditions contained in this document;
- 4.38 **"University"** means the Witwatersrand, Johannesburg;
- 4.39 **"VAT"** means the value-added tax levied by the South

<i>The University</i>		<i>Service Provider</i>	
Witness:		Witness:	

- 4.40 African Revenue Services on the supply of goods and services in terms of the Value Added Tax Act 89 of 1991.
- 4.40 a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997.

5 TERM

- 5.1 This Agreement commences on the Commencement Date and terminates on the Termination Date, unless terminated earlier as provided in this Agreement.
- 5.2 Notwithstanding the provisions of clause 5.1 above, the University may terminate this Agreement on 1 (one) months written notice to the Service Provider.

6 NATURE OF RELATIONSHIP

- 6.1 The Service Provider will provide the Deliverables to the University as an independent contractor and nothing in this Agreement will be construed as creating any relationship of agency, employment, partnership, joint venture or similar relationship between the University and the Service Provider.
- 6.2 Neither Party shall have the authority to nor shall it represent that it has the authority to obligate or bind the other in any manner whatsoever.
- 6.3 The Service Provider specifically acknowledges and agrees that this Agreement does not constitute an undertaking by the University that it will procure minimum or any quantities and/or any guaranteed volumes of the Deliverables from the Service Provider in future under this Agreement.

7 RESPONSIBILITIES OF THE UNIVERSITY

- 7.1 The University will:
- 7.1.1 provide the Service Provider with such access to the Precincts and/or Information Technology Systems (where applicable) as is reasonably necessary to allow the Service Provider to fulfil its obligations in terms of this Agreement;
- 7.1.2 co-operate with and assist the Service Provider to enable it to provide the Deliverables;
- 7.1.3 designate an authorised Representative to oversee and supervise the Deliverables, to convey instructions to the Service Provider and to receive information from the Service Provider; and
- 7.1.4 pay the Service Provider as provided for in clause 22 of this Agreement.

8 RESPONSIBILITIES OF THE SERVICE PROVIDER

- 8.1 The Service Provider will:
- 8.1.1 deliver the Deliverables which are fit for the purpose required by the University on time, within budget, with reasonable care and skill, and in accordance with the Service Levels;
- 8.1.2 assign Personnel who are sufficiently qualified and competent both in numbers and skill to provide the Deliverables and ensure the due and proper performance of its obligations under this Agreement;
- 8.1.3 designate a Representative, who will be responsible for liaising with the University's Representative at all times in respect of the provision of the Deliverables and who will supervise the Personnel responsible for the Deliverables, as may be required;

- 8.1.4 do all that is reasonably necessary within the course and scope of the Agreement to prevent or minimise the risk of loss or damage to University property, including its Information Technology System, and injury to persons;
- 8.1.5 co-operate and consult with other suppliers of the University, should it be necessary for purposes of ensuring the delivery of the Deliverables in a seamless manner.
- 8.2 The Service Provider will (and will ensure the same from its Personnel) at all times:
- 8.2.1 act in accordance with the lawful instructions of the University;
- 8.2.2 generally display in its relationship and interaction with the University, the utmost of good faith;
- 8.2.3 not exceed the express or implied limits of the authority attendant to its appointment in terms of this Agreement;
- 8.2.4 not perform its responsibilities hereunder with actual knowledge that the manner in which such responsibilities are performed would cause the University to be in violation of any applicable laws;
- 8.2.5 comply with the Rules;
- 8.2.6 provide the Deliverables without causing any interruption or disturbance to everyday client or student activities, including but not limited to the academic processes such as lectures, study, research, conducting practical classes or writing examinations;
- 8.2.7 inform the University in writing of every failure, which could result in a position where the Service Provider is unable to fulfil its obligations in terms of this Agreement;
- 8.2.8 use best endeavours not to engage in activities which would detract from the proper performance of its duties in terms of this Agreement; and
- 8.2.9 ensure that it avoids any appointment or circumstances which may reasonably result in any conflict between its interests and those of the University.

9 PERSONNEL

- 9.1 The Parties shall each nominate a Representative responsible for the overall management, execution and oversight of this Agreement, who will:
- 9.1.1 consult with each other on reasonable notice on matters relating to the Agreement;
- 9.1.2 engage with each other to ensure that day-to-day decisions and approvals with respect to the Agreement are made timeously;
- 9.1.3 oversee the management of the Agreement in line with the provisions of clause 12 below, including oversight of the activities and responsibilities of the Key Personnel;
- 9.1.4 accept all notices and correspondence relating to the Agreement; and
- 9.1.5 ensure the execution of any administrative or compliance-related matters under this Agreement.
- 9.2 The Service Provider must inform the University of the names of its Representative, Personnel and/or Key Personnel authorised to provide the Deliverables. The

<i>The University</i>		<i>Service Provider</i>	
Witness:		Witness:	

- University may object on reasonable grounds to any such person assigned. Upon receipt of such objection, the Service Provider must immediately assign an alternative Personnel to act on its behalf.
- 9.3 The Service Provider acknowledges that the provision of Key Personnel and a Representative by the Service Provider, as specified in the Agreement, is critical to the Agreement.
- 9.4 If any of the Service Provider's Key Personnel are unavailable at any time, the Service Provider may provide a reasonable substitute, provided the Parties agree that such a substitute is suitable for the intended position.
- 9.5 In the event that the competency of the Personnel assigned or engaged by the Service Provider to perform any of its obligations or part thereof are not satisfactory to the University (based on reasonable grounds), the Service Provider agrees to provide a replacement that has the appropriate competencies within a reasonable timeframe and shall ensure seamless transition of the engagement between the Personnel so as not to hinder the performance of the Agreement.
- 9.6 The University shall not be liable to the Service Provider for any delay or failure to provide the Deliverables either at all or in a timely manner, where such delay or failure is attributable to a breach by the Service Provider resulting from non-fulfilment by the Service Provider of its obligations under this clause 9.
- 9.7 The Service Provider accepts full responsibility for its Personnel's actions and will ensure that such actions at no time place the Personnel or property, including the Information Technology Systems, of the University in danger.
- 10 SUB-CONTRACTING**
- 10.1 The Service Provider acknowledges that the University prefers to contract directly with all service providers.
- 10.2 The Service Provider shall not sub-contract any of its responsibilities or obligations in terms of this Agreement, without the prior written consent of the University in each instance. Such consent does not relieve the Service Provider of any of its obligations. The Service Provider remains responsible to the University for the fulfilment of its obligations and responsibilities in terms of this Agreement and it is responsible for the acts and omissions of its sub-contractor as if such are the acts and omissions of the Service Provider.
- 10.3 If the Service Provider seeks to sub-contract any of its obligations in terms of this Agreement, the University reserves the right to offer any other of the University's preferred service providers the opportunity to provide the sub-contracted services.
- 10.4 The Service Provider must ensure that any guarantees, warranties 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.
- 10.5 The Service Provider must ensure that each sub-contractor complies with all the terms of this Agreement as if it was the Service Provider.
- 10.6 If the University consents to the Service Provider entering into a sub-contract in terms of clause 10.2 the provisions of this Agreement will be applicable *mutatis mutandis* to the contract between the Service Provider and such sub-contractor.
- 10.7 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 Agreement and that all the provisions of the Agreement relating to any sub-contractor will be expressly reflected in the sub-contracts.
- 10.8 In the event of the Service Provider utilising the services of a sub-contractor, the University will make payment directly to the Service Provider as per clause 22 and the Service Provider agrees that liability and responsibility for any payment due to the sub-contractor shall lie with the Service Provider and no third party will be entitled to seek payment directly from the University for Deliverables to the University.
- 10.9 The Service Provider shall stand as surety and co-principal debtor with any of its appointed sub-contractors for the due fulfilment of its obligations.
- 10.10 Any breach by the sub-contractor of the terms of this Agreement shall be deemed to be a breach by the Service Provider.
- 11 WARRANTIES**
- 11.1 The persons signing this Agreement on behalf of a Party expressly warrant their authority to do so.
- 11.2 The Service Provider warrants and represents that:
- 11.2.1 it holds absolute legal and beneficial title in and to the Deliverables and has the unfettered right to provide them and to pass unencumbered right and/or title to University;
- 11.2.2 it has the necessary skills, qualifications expertise, finance, Personnel, capacity, knowledge, experience, resources, equipment and infrastructure to provide the Deliverables as required by the Agreement;
- 11.2.3 it is a member of all professional and other bodies as may be required by applicable legislation and/or relevant industry regulations pertaining to its business and that such membership is current and valid and will be maintained for the duration of the Agreement;
- 11.2.4 it holds, and will hold throughout this Agreement, all licences, certificates, permits, consents, approvals and authorities required to perform its obligations pursuant to this Agreement;
- 11.2.5 in fulfilling its obligations under this Agreement, it will not infringe the intellectual property rights of any third party;
- 11.2.6 ensure that the University has the full benefit of any OCM/OEM warranties that may attach to the Deliverables (i.e. the full flow through warranty including, but not limited to, any support and maintenance which may necessarily extend beyond the duration of this Agreement); it has the requisite authority to make such an undertaking and warranty on behalf of the OCM/OEM; and the Service Provider agrees to pursue any OCM/OEM warranties on the University's behalf if the University so requests;
- 11.2.7 it will comply with all applicable legislation in performing its obligations pursuant to this Agreement, including but not limited to:
- 11.2.7.1 the Compensation for Occupational Injuries

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Witness:		Witness:	

- and Diseases Act 140 of 1993 (“COIDA”). The Service Provider will, upon request by the University, produce written proof of its registration and good standing with the Compensation Commissioner, as defined in the COIDA;
- 11.2.7.2 the Occupational Health and Safety Act 85 of 1993 (“OHSА”). The Service Provider will in terms of section 37(2) of the OHSА, be deemed to be an employer in its own right with duties prescribed in the OHSА and undertakes to procure that all work will be performed and all equipment will be used in accordance with the provisions of the OHSА and any Regulations issued in terms of the OHSА. It is recorded that the Service Provider’s Chief Executive Officer (or equivalent officer) accepts the duties and responsibilities set out in section 16 of the OHSА;
- 11.2.7.3 the Basic Conditions of Employment Act 75 of 1997 (“BCEА”);
- 11.2.7.4 the Labour Relations Act 66 of 1995 (“LRA”);
- 11.2.7.5 the Data Protection Legislation; and
- 11.2.7.6 all taxation legislation in respect of any taxes and levies which the government of the Republic of South Africa or any other authority may from time to time impose or increase. Where applicable, unless the Service Provider can provide the University, on reasonable request by the University, with satisfactory proof that it is not an employee or personal service provider, as defined in the Fourth Schedule to the Income Tax Act 58 of 1962, the University may withhold employee’s tax from the remuneration payable by the University to the Service Provider in terms of this Agreement in accordance with the rates prescribed by the Income Tax Act at the entire risk and cost of the Service Provider. The Service Provider must immediately, and in any event, before accepting any payments from the University, notify the University of any change of fact or circumstance that affects or may affect the University’ liability to deduct employee’s tax from payments made in terms of the Income Tax Act. For these purposes “taxation” includes SITE and PAYE, VAT, all other forms of duties or taxation, taxation in respect of any assessment of taxation and any penalties or interest;
- 11.2.8 it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;
- 11.2.9 it has full power and authority to accept its appointment as set out in clause 1 and perform its obligations pursuant to this Agreement;
- 11.2.10 it is, and shall remain throughout the duration of the Agreement, the employer of all individuals who may work for the Service Provider in providing the Services, and the Service Provider shall be solely responsible for the remuneration, insurance and other obligations in respect of its Personnel.
- 11.3 A breach of any of the undertakings and/or warranties as set out in this Agreement will be deemed to be a material breach of the Agreement entitling the University to terminate the Agreement, subject to the provisions of clause 23. A termination under this clause 11 will be without prejudice to any of the University’s rights.
- 11.4 The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Deliverables,
- 12 CONTRACTUAL MANAGEMENT**
- The Parties agree that the contract management protocol for this Agreement is set out either in section 7 of Annexure A (Contract Data) and/or Annexure B (Scope of Work), whichever is applicable.
- 13 ACCEPTANCE**
- 13.1 Where applicable, the University has the right to inspect the Deliverables prior to Accepting the Deliverables.
- 13.2 It is specifically recorded that the Parties intend for each Deliverable to undergo Acceptance Testing, based on the Acceptance Criteria, as set out in Annexure B (Scope of Work).
- 13.3 The Service Provider will provide at its cost such materials and facilities reasonably necessary for the conduct of the Acceptance Testing.
- 13.4 In the event that the Service Provider unreasonably withholds or delays any Acceptance Testing procedures, the University shall be entitled but not obliged to cancel this Agreement.
- 14 DEFICIENCIES IN PERFORMANCE**
- 14.1 A Party who becomes aware of any Defect will notify the other Party within 7 (seven) Business Days after becoming aware of the Defect.
- 14.2 Within 7 (seven) Business Days after becoming aware thereof or such other time frame as may be agreed in writing between the Parties, the Service Provider will correct and repair any Defect in a Deliverable which prevents the Deliverable from conforming to the requirements of this Agreement and performing as warranted, at no cost to the University.
- 14.3 Where required by the University, the Service Provider will provide the University with a replacement Deliverable for the time that the affected Deliverable is being repaired so as to prevent unexpected interruptions in its own day-to-day operations and business.
- 14.4 In the event that the Service Provider is unable to repair an affected Deliverable as required, it shall replace the Deliverable at no additional cost to the University.
- 14.5 If the Service Provider is unable or unwilling to correct or repair a Defect or replace a Deliverable within the period as set out in clause 14.2, the University may, in addition to any other rights or remedies it may have at law, by itself or through a third party correct or repair the Defects or re-perform or replace the non-conforming Deliverables at the Service Provider’s expense, or require the Service Provider to provide the University with a refund for all Deliverables which do not conform or perform as warranted or are not fit for the purpose for which they were procured.
- 14.6 The Service Provider is responsible for the costs of repairing, replacing or correcting nonconforming Deliverables, and for all related costs, expenses and damages including, but not limited to, the costs of removal, disassembly, failure analysis, fault isolation, reinstallation, re-inspection, and retrofit of the

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- nonconforming Deliverables of the University's affected end-product; all freight charges; all customer charges; and all other corrective action costs (including costs of additional inspection or quality-control systems). Unless set off by the University, the Service Provider will reimburse the University for all such costs upon receipt of the University's invoice.
- 14.7 Unless agreed otherwise between the Parties in writing the Service Provider will continue to provide the Deliverables until the University is satisfied that the Deliverables are fit for the purpose for which they were procured, of suitable quality and that the Deliverables do not contain any Defects.
- 14.8 Risk, and where applicable title, in and to the Deliverables will pass from the Service Provider to the University on Acceptance of same by the University.

15 UNIVERSITY PRECINCTS AND PROPERTY

- 15.1 All Personnel, guests, invitees or any other persons acting on behalf of the Service Provider may only come onto the Precincts for the purposes of fulfilling the Service Providers' obligations under the Agreement, and for no other purpose, without the prior written consent of the University.
- 15.2 Whenever any of the Service Provider Personnel or any person acting on its behalf are present on the Precincts the Service Provider will ensure that such person(s) comply with all applicable Rules including but not limited to:
- 15.2.1 the carrying of weapons, which is strictly prohibited;
 - 15.2.2 the wearing of identification tags and the possession and use of access cards, which is required at all times whilst on the Precincts;
 - 15.2.3 occupational health, safety and emergencies practices and protocols;
 - 15.2.4 the security of the Precincts and the protection of persons and property thereon;
 - 15.2.5 the driving and parking of vehicles on or about the Precincts;
 - 15.2.6 the utilisation of the University's amenities and facilities;
 - 15.2.7 the prohibition or restriction of activities and practices which are actually or potentially detrimental to the interests of the University;
 - 15.2.8 any reasonable instructions received from the University; and
 - 15.2.9 any and all other applicable requirements prescribed by the University from time to time.
- 15.3 Where applicable, the Service Provider will pay to the University any charges levied by the University for the use or purchase of access cards and vehicle parking permits.
- 15.4 The University may require the Service Provider to effect the immediate removal from the Precincts of any Personnel of the Service Provider if the University on reasonable grounds deems it in the best interests of the University that such person is removed. The Service Provider will ensure that such person does not return to the Precincts without the University first having given the Service Provider its written consent. Removal by the Service Provider of such person(s) will not be a ground for any relaxation of the Service Providers obligations under the Agreement.

- 15.5 The University reserves the right, at any given time and without prior warning, to search any or all vehicles and baggage and containers entering or exiting the Precincts. The University reserves the right to screen all movable property brought onto the Precincts by the Service Provider or its Personnel.
- 15.6 No gatherings by the Service Provider's Personnel will be allowed on the Precincts.
- 15.7 The Service Provider agrees that it will not remove any property of whatever nature from the Precincts without the prior written permission of the University.
- 15.8 All right and title in any plant, equipment, tools, appliances or other property and items that the University provides to the Service Provider to enable the Service Provider to fulfil its obligations in terms of this Agreement remains the University's property and must only be used for the purposes of fulfilling the Service Provider's obligations. Upon termination of this Agreement the Service Provider undertakes to return any plant, equipment, tools, appliances or other property and items utilised by it to fulfil its obligations in terms of this Agreement, to the University.
- 15.9 The Service Provider agrees at all times to keep the University's property in good order and condition, subject, in certain specified cases, to fair wear and tear.
- 15.10 The Services Provider acknowledges and agrees that it is responsible and must compensate the University for any loss or damage to the University's property by the Service Provider, its Personnel, its sub-contractors or any other third party utilised by the Service Provider.

16 DOCUMENTATION

- 16.1 The Service Provider shall provide the University with all information required in order to enable the University to understand, use and operate the Deliverables (including but not limited to installation, commissioning, operation and maintenance) and all revisions and updates to such information, from time to time.
- 16.2 The University shall have the right to copy, reproduce and generally use the Documentation for the purpose as set out in this Agreement and the implementation, use and operation of the Deliverables.
- 16.3 The right to copy, reproduce and use the Documentation referred to in clause 16.2 shall also extend to the University's sub-contractors and third-party suppliers provided that such use is required for the purposes of providing services to the University.
- 16.4 The Service Provider warrants that such reproduction and use of the Documentation will not infringe any of its or any third party's intellectual property rights.

17 CONFIDENTIALITY

- 17.1 The Parties acknowledge that in terms of this Agreement they may have access to each other's Confidential Information. Each of the Parties agree that neither it nor any of its Personnel will at any time disclose or use, directly or indirectly, any Confidential Information of the other Party unless the Receiving Party first obtains written consent from the Disclosing Party or unless required by law or the lawful order of a court or governmental agency to do so. In this event the Receiving Party will immediately give written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other remedy from the court or governmental agency.
- 17.2 Each of the Parties will with respect to the Confidential

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Witness:		Witness:	

Information:

- 17.2.1 will ensure that all reasonable security measures, and at least the same steps that it takes for the purposes of protecting its own proprietary and Confidential Information, are taken in order to safeguard the other Party's proprietary and Confidential Information from unauthorised access or use;
- 17.2.2 inform its Personnel of the confidentiality restraint set out in this clause 17 and ensure that they are subject to the same confidentiality undertaking;
- 17.2.3 restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information in order to provide the Services;
- 17.2.4 ensure that its Personnel exercise care appropriate for the protection of the Confidential Information;
- 17.2.5 upon request by the Disclosing Party promptly deliver any and all records containing Confidential Information which is in the possession or control of the Recipient, its Personnel.
- 17.3 Except as expressly provided to the contrary elsewhere in this Agreement, the Parties will not acquire any proprietary or any other rights to any of other Party's Confidential Information.

18 INTELLECTUAL PROPERTY

- 18.1 The ownership of rights in and to all Background Intellectual Property will be and remains unaffected by this Agreement.
- 18.2 The University grants the Service Provider a non-exclusive, non-transferable, revocable, royalty-free licence to use the University's Background Intellectual Property solely to the extent necessary to enable the Service Provider to comply with its obligations hereunder.
- 18.3 Foreground Intellectual Property in the Deliverables, including but not limited to all specific documentation, manuals, designs, reports and plans specifically created or developed by the Service Provider in the course and scope of this Agreement is owned by the University.
- 18.4 Unless otherwise agreed, where such Foreground Intellectual Property incorporates the Service Provider's Background Intellectual Property, the Service Provider hereby grants to the University (including its third party service providers) a royalty-free, perpetual, non-exclusive licence to perform any lawful act, including the right of use of the Service Provider's Background Intellectual Property.
- 18.5 The Service Provider agrees to execute any documents or take any other actions as may reasonably be necessary, or as the University may reasonably request in writing, to perfect the University's ownership of the Foreground Intellectual Property.
- 18.6 Any sub-contract the Service Provider enters into in relation to this Agreement must contain a condition that the sub-contractor agrees to assign to the University all rights in any Foreground Intellectual Property created by it for the purposes of this Agreement.
- 18.7 The Service Provider shall not use the University's names, trade marks, logos or other Intellectual Property in publicity releases, publication, advertising materials or in any other manner, without the prior written consent

of the University in each instance.

- 18.8 The Service Provider shall not use, register or attempt to register any trade marks, company, business or trading names or domain names which are identical, similar to or which incorporate the University name, trade marks and logos, without the University's prior written consent; and
- 18.9 The Service Provider acknowledges and accepts that it shall not acquire, nor claim, any right, title or interest in or to the University name and logos or the goodwill attaching to them by virtue of this Agreement.

19 DATA PROTECTION

- 19.1 In performing its obligations under this Agreement, the Parties shall:
 - 19.1.1 comply with the provisions of the Data Protection Legislation insofar as it is applicable to this Agreement;
 - 19.1.2 not process Personal Information for any purpose other than that which may be required to perform its obligations under this Agreement and ensure that such processing will not place the University in breach of any Data Protection Legislation;
 - 19.1.3 only act on the express instructions of the University in collecting, processing and utilising any Personal Information (and for avoidance of doubt, this Agreement shall constitute such instructions);
 - 19.1.4 not disclose or otherwise make available any Personal Information to any third party other than authorised Personnel or sub-contractors who require access to such Personal Information strictly in order for the Service Provider to carry out its obligations pursuant to this Agreement, and ensure that such Personnel and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information.
- 19.2 The Service Provider shall be responsible for establishing and maintaining an information security system that is designed to:
 - 19.2.1 ensure the security and confidentiality of the all Personal Information and any University information (including any back-ups, where applicable) by the use of encryption for such information at transit and rest;
 - 19.2.2 protect against any anticipated threats or hazards;
 - 19.2.3 protect against unauthorised access to, disclosure or use of any University information;
 - 19.2.4 ensure the proper separation of information belonging to the University from any third party information;
 - 19.2.5 where appropriate, ensure the proper disposal of information belonging to the University;
 - 19.2.6 preserve the integrity of any information belonging to the University and prevent the corruption, destruction or loss of such information at all times; and
 - 19.2.7 ensure that all sub-contractors of the Service Provider, if any, comply with the provisions of this clause 19.
- 19.3 The Service Provider will report to the University orally

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- and confirmed in writing any actual and/or suspected breaches such as security incidents, unauthorised access or disclosure of Confidential and/or Personal Information immediately upon discovery of the unauthorised disclosure but in no event more than 2 (two) days after the Service Provider reasonably believes there has been such unauthorised use or disclosure.
- 19.4 Where the Service Provider (including the Service Provider's Personnel) is given access (whether direct or remote) to any University Information Technology Systems under or in connection with the Agreement, the Service Provider shall (and shall ensure that the Service Provider's Personnel):
- 19.4.1 comply with the Rules, requirements or other instructions of the University or, where applicable, the University's third party suppliers, regarding use of such University Information Technology Systems;
- 19.4.2 only use the University Information Technology Systems in connection with the proper delivery of the Deliverables;
- 19.4.3 not permit any other individual or entity to access the University Information Technology Systems;
- 19.4.4 upon the University's request, immediately cease access to and use of any University Information Technology Systems and return all University Information Technology Systems (and associated documentation) to the University; and
- 19.4.5 not reverse engineer, deconstruct, decompile, deactivate or disable any University Information Technology Systems or introduce any viruses or other similar code, or take any other action that would cause any damage or harm to any Information Technology Systems of the University.

20 RECORDS AND AUDIT

- 20.1 The Service Provider shall keep and maintain both during the term of the Agreement and for up to 5 (five) years following termination or expiry of the Agreement, full and accurate records of its performance of the Agreement.
- 20.2 The Service Provider shall on request afford the University, the University's auditors or its duly authorised representatives such access to those records as may be required in connection with the Agreement.

21 PENALTIES (WHERE APPLICABLE)

- 21.1 In the event that the Service Provider fails to meet any of the obligations contained in the Agreement, the Service Provider shall be liable to compensate the University for penalties as stipulated in Annexure A (Contract Data), Annexure B (Scope of Work), and/or Annexure C (Fees) (whichever is applicable).
- 21.2 To the extent that any provision of the Agreement is considered to be, or qualifies as, a penalty stipulation in terms of the Conventional Penalties Act 15 of 1962, as amended:
- 21.2.1 the Agreement shall not be construed or interpreted in such a way as entitling the University to recover both damages and the penalty;
- 21.2.2 the University shall be entitled to recover damages in lieu of the relevant penalty;

- 21.2.3 the University shall not be obliged to accept defective or delayed performance by the Service Provider; and
- 21.2.4 the Service Provider acknowledges and agrees, having taken account of the prejudice that will be suffered by the University, that the penalty stipulation is fair and equitable in the circumstances.

22 FINANCIAL TERMS

22.1 Fees:

- 22.1.1 The Fees, as set out in Annexure C (Fees), consist of the Services Providers charges, in respect of the Deliverables, the payment terms (if applicable) and any Fee adjustments, annual increases and/or exchange rate provisions (if applicable).

22.2 Administration Process:

- 22.2.1 The Service Provider must ensure that supporting documents have been approved by University, and are annexed to the invoice. Payment will be made against invoices submitted by the Service Provider.
- 22.2.2 Provided that the University is satisfied that the Service Provider has:
- 22.2.2.1 met the Acceptance Criteria in providing the Deliverables;
- 22.2.2.2 provided the Deliverables in accordance with the provisions of Annexure B (Scope of Work) including its responsibilities as set out the Agreement; and the University has approved of the payment of the amounts reflected on an invoice,
- the University will settle the invoice within 30 (thirty) days after presentation.

- 22.2.3 The University will as soon as practically possible notify the Service Provider of any incorrect or disputed invoice and once resolved between the Parties will pay the undisputed amount.

- 22.2.4 Fees, including those charges, damages and penalties described in this Agreement, to be paid by or retained from the Service Provider may, at the University's option, be set off against any amounts due and payable by the University to the Service Provider.

- 22.2.5 Subject to the provisions of clause 22.2.2, the University will effect payment by direct or electronic deposit into the nominated account of the Service Provider, stipulated on its invoice.

- 22.2.6 Where applicable and in the event of the Service Provider's Personnel become involved in any strike, stay-away or other action, where no, or only partial service is rendered, the Fees for the period concerned shall be adjusted accordingly and the Service Provider shall present revised invoices for payment at the end of the month in which the partial or no service, as the case may be, was rendered.

- 22.2.7 The Service Provider agrees that the University will deduct from the amount due by it in terms of this Agreement, or any other amount that it is required by law to deduct.

23 BREACH AND TERMINATION

- 23.1 Should a Party commit a material breach of the Agreement, then the aggrieved Party will be entitled to

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- require the defaulting Party to remedy the breach within 7 (seven) Business Days of delivery of a written notice requiring it to do so, or within any other reasonable period agreed to between the Parties.
- 23.2 If the defaulting Party fails to remedy such breach within the period specified in the breach notice, the aggrieved Party will be entitled to cancel this Agreement and to claim damages, alternatively to claim immediate specific performance of the defaulting Party's obligations. The foregoing is without prejudice to such other rights as the aggrieved Party may have in law.
- 23.3 If the Service Provider fails to comply with the terms of the Agreement, the University will be entitled, without prejudice to any of its rights in terms of this Agreement or in law to:
- 23.3.1 withhold all payments due and payable to the Service Provider until such time as the Service Provider has provided the Deliverables to the satisfaction of the University, or
- 23.3.2 engage a third party to provide the Deliverables which the Service Provider has failed to perform properly or at all, and the cost thereof shall be the responsibility of the Service Provider which may be deducted from any amount that may otherwise be due to the Service Provider under the Agreement.
- 23.4 The University will be entitled to terminate this Agreement with immediate effect, should the Service Provider:
- 23.4.1 be placed under compulsory or voluntary winding-up or business rescue, to the extent permitted by applicable law; or, being a natural person, commit an act of insolvency; or be provisionally or finally sequestered; or
- 23.4.2 suffer any judgement to be obtained against it and allow such judgement to remain unsatisfied or fail to apply for the rescission thereof within a period of 10 (ten) Business Days from the time the judgement was obtained; or
- 23.4.3 do or suffer any act or thing whereby the University's rights or interest may be prejudiced or which might cause the University to suffer any loss or damage.
- 23.5 On termination or expiry of the Agreement for any reason, the Service Provider shall:
- 23.5.1 immediately deliver to the University all Deliverables whether or not then complete, and return all University information (together with all copies thereof). Until they have been returned or delivered, the Service Provider shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement; and
- 23.5.2 if so required by the University, subject to the applicable fees as agreed between the Parties in writing, assist the University with the seamless transition of providing of the Deliverables to an incoming supplier. All applicable terms and conditions of this Agreement shall apply to such transition services.
- 23.6 Upon termination the Agreement, the Service Provider will only be entitled to be paid for the Deliverables provided on a *quantum meruit* basis and will not have any claim of any nature whatsoever against the University for any additional consideration and/or
- related payments which would have been payable had the Deliverables been provided in full in terms of the Agreement.
- 23.7 If the University terminates this Agreement as provided for hereunder, the University's sole liability to the Service Provider, and the Service Provider's sole and exclusive remedy, is payment for Deliverables received that have been completed and Accepted by the University before the date of termination. The University may also require Service Provider to transfer title and deliver to the University any or all property produced or procured by Service Provider to perform this Agreement.
- 24 LIMITATION OF LIABILITY**
- 24.1 Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider shall do all that is reasonably necessary within the course and scope of this Agreement to prevent or minimise the risk of loss or damage to property and injury to persons.
- 24.2 The Service Provider hereby indemnifies the University:
- 24.2.1 for any loss of, or damage to, property of the University or any financial loss suffered by the University, or for claims arising out of any death or injury to any person; and
- 24.2.2 against all claims of whatsoever nature and howsoever arising which may be made against the University by any Personnel of the Service Provider for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by that Personnel member in the course or scope of that Personnel's employment and whilst being on the Precincts,
- 24.2.3 in respect of all actions, proceedings, liabilities, claims, damages costs and expenses arising out of the acts and/or omissions of its Personnel, guests, invitees or any other person acting on behalf of the Service Provider; and
- 24.2.4 from any liability arising from:
- 24.2.4.1 any breach of laws or regulations by the Service Provider which are directly applicable to providing the Deliverables;
- 24.2.4.2 any breach of labour legislation, including but not limited to the BCEA, the LRA, the Employment Equity Act No. 55 of 1998, 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;
- 24.2.4.3 any breach of environmental legislation (where applicable);
- 24.2.4.4 any breach of the Data Protection Legislation and the provisions of clause 19 above;
- 24.2.4.5 any breach of the Income Tax Act;
- 24.2.4.6 work-related injury or death caused by the Service Provider including payment of any contributions or compensation as a result of any injury sustained by any Personnel of the Service Provider in terms of the COIDA and compliance with all safety regulations in terms

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- of the OHSa;
- 24.2.4.7 any claim by a third party that the Service Provider infringes upon its proprietary intellectual property rights or any other rights;
- 24.2.4.8 costs incurred by the University in connection with the enforcement of this clause 24; and/or
- 24.2.4.9 the Service Provider's failure and/or refusal to meet the payment of any levies, contributions or subscriptions to the applicable institutions in terms of any legislation.
- 24.3 The Parties record that the University has insured itself against the acts and omissions of persons acting on its behalf within the course and scope of the University's business. The University's maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.
- 24.4 Irrespective of the cause of action and notwithstanding anything else contained in the Agreement, in no event shall the University be liable to the Service Provider for any incidental, consequential, or any other indirect loss or damages, or for any loss of profits, revenues, or data, or for any exemplary or punitive damages.

25 INSURANCE

- 25.1 The Service Provider warrants that it has and will maintain the following insurance cover which includes indemnities for the liabilities stated above and which adequately insures against all the liabilities imposed by this Agreement to the satisfaction of the University's insurance brokers, for the duration of this Agreement:
 - 25.1.1 insurance covering its liability to any Personnel, as contemplated in COIDA;
 - 25.1.2 public liability insurance cover;
 - 25.1.3 any other insurance cover deemed necessary by the University's insurers that will adequately make provision for any possible losses and/or claims arising from its, Personnel and/or omissions on the University;
 - 25.1.4 professional indemnity insurance;
 - 25.1.5 general and commercial liability insurance which includes but is not limited to defective workmanship, public liability, products and equipment liability, cyber risk insurance, bodily injury and death, and property damage.
- 25.2 Where applicable, the Service Provider shall ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement.
- 25.3 The Service Provider agrees to provide a certificate of proof of the insurances as set out in clause 25.1, a copy of the policy itself as well as any further documentation as may be reasonably be requested by the University.
- 25.4 Should the Service Provider fail to effect and/or keep in force to the satisfaction of the University and its insurance brokers any of the insurances it is required to effect and maintain under this Agreement, or fails to provide satisfactory evidence and/or copies of policies in terms of clause 25.3, this action would constitute a material breach by the Service Provider.

26 FORCE MAJEURE

- 26.1 In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of

them) resulting from any Force Majeure Event, that Party (the "Affected Party") shall promptly notify the other Party in writing specifying:

- 26.1.1 the nature of the Force Majeure Event;
- 26.1.2 the anticipated delay in the performance of obligations;
- 26.1.3 the action proposed to minimise the impact of the Force Majeure Event;

and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

- 26.2 If the Force Majeure Event continues for 42 (forty-two) Business Days either Party may terminate at 7 (seven) Business Days' notice.
- 26.3 In circumstances where a Party is an Affected Party, it shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled in accordance with the terms and conditions of this Agreement.

27 ADDRESSES AND NOTICES

- 27.1 The Parties choose as their *domicilia citandi et executandi* for the purpose of giving or serving any notice (other than communication of day-to-day operational matters in relation to the rendering of the Services) the addresses set out in section 12 of Annexure A (Contract Data).
- 27.2 For purposes of this clause 27, the word "notice" will include a notice with regard to a dispute, demand, breach, renewal and termination.
- 27.3 All notices given in terms of this Agreement will be in writing and any notice given by any Party to another (the "addressee") which:
 - 27.3.1 is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the addressee's physical *domicilium* for the time being, will be deemed to have been received by the addressee on the first Business Day after the date of delivery. Delivery outside the said hours will not constitute proper delivery;
 - 27.3.2 is mailed by pre-paid registered mail from an address within the Republic of South Africa to the postal *domicilium* address for the time being, will be deemed to have been received by the addressee on the 10th (tenth) Business Day after the date of such despatch;
 - 27.3.3 is delivered by email to the addressee's e-mail *domicilium*, will be deemed to have been received by the addressee only once the addressee has acknowledged receipt thereof in writing, with an automatic "read receipt" not constituting acknowledgement of an e-mail for purposes of this clause 27.3.3.
- 27.4 Either Party will be entitled, from time to time, by giving written notice to the other, to vary its *domicilium* to any other physical and postal address within South Africa and any other e-mail address.

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Witness:		Witness:	

28 SETTLEMENT OF DISPUTES

- 28.1 Each Party will inform the other in the event of any perceived or potential dispute occurring.
- 28.2 Within a period of 14 (fourteen) days after the date on which a dispute arises ("**Dispute Date**") the Parties' Representatives or Directors will meet to discuss the dispute and will endeavour 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.
- 28.3 If the Parties are unable to resolve the dispute amicably within 30 (thirty) days from the Dispute Date, either Party may refer the dispute to the University's Vice-Chancellor or Deputy Vice-Chancellor and the Service Provider's Chief Executive Officer or their duly appointed nominees, who will use their best endeavours to resolve the dispute.
- 28.4 If the individuals described in clause 28.3 fail to resolve the dispute within a period of 30 (thirty) days after it has been referred to them, either Party may submit the matter for mediation. The Parties will refer the matter for mediation to a mediator appointed by agreement between the Parties, or, failing agreement, to a mediator appointed by the Chairman of the Bar Council of South Africa on written request by either Party. The costs of mediation will be borne between the Parties equally. The determination by the mediator will be final and binding and must be carried into effect by the Parties.
- 28.5 Nothing in this clause 28 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.
- 28.6 Subject to the provisions contained in clauses 28.1 — 28.3, the Parties will submit to the jurisdiction of the South Gauteng Local Division of the High Court of South Africa in regard to such dispute or difference.

29 GENERAL PROVISIONS

- 29.1 **Governing Law**
- 29.1.1 This Agreement is governed by the laws of the Republic of South Africa and any disputes will be subject to the provisions of clause 28 without giving effect to any conflict of laws.
- 29.2 **Entire Agreement**
- 29.2.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.
- 29.2.2 This Agreement will prevail over, cancel and supersede all terms and conditions, whether written, oral or implied, not contained in this Agreement which the Service Provider may seek to incorporate in the Agreement in whatsoever manner. In particular the Service Provider's standard terms and conditions (including but not limited to any quotations, invoices or standard supplier contracts) will not apply to this Agreement.
- 29.3 **Variation and Cancellation**
- 29.3.1 No amendment, variation or consensual cancellation of this Agreement, including an amendment to this clause 29.3, and no settlement of any disputes arising under this Agreement, shall

- 29.3.2 be binding unless recorded in writing and signed by the Parties.
For the purposes of this clause 29.3, "writing" 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; as amended or substituted.
- 29.4 **No Representations**
- 29.4.1 No Party may rely on any representation, which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.
- 29.5 **Indulgences**
- 29.5.1 If either Party at any time breaches any of its obligations under this Agreement, the aggrieved Party:
 - 29.5.1.1 may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. In particular, acceptance of late performance will be provisional only, and the aggrieved Party may still exercise that right during that period;
 - 29.5.1.2 will not be estopped (i.e. precluded) from exercising its rights arising out of that breach, despite the fact that it may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.
- 29.6 **Counterparts and Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Execution and delivery of this Agreement by electronic exchange bearing the copies of a Party's signature shall constitute a valid and binding execution and delivery of this Agreement by such Party. Such electronic copies shall constitute enforceable original documents and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto, the other Party hereto shall re-execute an original form thereof and deliver it to the requesting Party.
- 29.7 **Waiver.** No extension of time or waiver or relaxation of any of the provisions of this Agreement shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate to preclude such Party from exercising its rights strictly in accordance with this Agreement.
- 29.8 **Assignment, cession and delegation.**
- 29.8.1 The Service Provider shall not cede, assign or delegate any of its rights, responsibilities or obligations to any other party, including subcontractors, without the prior consent of the University. If such consent is given to the Service Provider, the Service Provider is deemed to have bound itself as surety and co-principal debtor with the third party for the due performance by the third party of all its obligations in terms of the Agreement.
- 29.8.2 The University may cede its rights or delegate its

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- obligations to any other party.
- 29.8.3 On termination of the Agreement for any reason whatsoever, and without prejudice to any of its other rights, the University may be entitled to take cession of any sub-contracts from the Service Provider and enforce any such sub-contracts.
- 29.9 **Remedies.** No remedy conferred by this Agreement is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy shall be cumulative and in addition to every other remedy given under this Agreement or under any existing or future law. The election of any one or more remedy by one of the Party's shall not constitute a waiver by such Party of the right to pursue any other remedy.
- 29.10 **Costs.** The Parties shall each pay their own costs of negotiating, drafting, preparing and implementing this Agreement.
- 29.11 **Severance.** If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the Parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
- 29.12 **Survival of Rights, Duties and Obligations.** Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 29.13 **Successors in title.** Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee, of a Party shall be bound by this Agreement.
- 29.14 **Change Control.** If at any time while this Agreement is in force the major portion of the assets of the Service Provider is disposed of or the majority shareholding or the business of the Service Provider is transferred or there is a change of management control of the Service Provider, the Service Provider shall notify the University forthwith, giving details, whereupon the University will be entitled but not obliged to terminate the Agreement forthwith without payment to the Service Provider of any damages whatsoever resulting from such termination.
- 29.15 **Integrity, Transparency and Fair Business Practice.**
- 29.15.1 The Service Provider is required to submit to the University, annually, a valid B-BBEE certificate issued by a South African National Accreditation System ("SANAS") accredited B-BBEE verification agency; or a Sworn Affidavit in the case of the Service Provider is an Exempted Micro Enterprise ("EME") or in the case of the Service Provider being a greater than or equal to 51% (fifty-one percent) Black Owned Qualifying Small Enterprise ("QSE").
- 29.15.2 In instances where a QSE or an EME has black/black women ownership that is held through a trust, an employee share ownership programme/scheme or a broad-based ownership scheme, the University reserves the right to request proof of compliance of such a programme/scheme/trust with the requirements of the Code Series 100 of the Broad-Based Black Economic Empowerment Act and Codes of Good Practice as amended from time to time. The proof of compliance must be in the form of an ownership verification certificate issued by a SANAS-accredited B-BBEE verification agency.
- 29.15.3 The Service Provider undertakes to notify and provide full details to the University in the event that there is:
- 29.15.3.1 a negative change to the Service Provider's B-BBEE rating, which is less than what its B-BBEE status was at the time of its appointment, including the impact thereof;
- 29.15.3.2 a corporate or internal restructure or change in control of the Service Provider which has impacted, or is likely to impact, negatively on the Service Provider's B-BBEE rating.
- 29.15.4 The Service Provider shall issue the notice and relevant details required in clause 29.15.1 within 30 (thirty) days from the date the event occurred.
- 29.15.5 The University reserves the right to, in its sole discretion, call upon the Service Provider to provide details regarding its shareholding, management, and related information in order to verify that the Service Provider is not engaging in fronting practices or other practices that are designed to circumvent the B-BBEE Act and the South African Department of Trade and Industry Codes of Good Practice.
- 29.15.6 Should there be any negative change to the Service Provider B-BBEE rating and should the Service Provider fails to comply with its reporting obligations in terms of clause 29.15.3, University reserves the right to terminate this Agreement with immediate effect.
- 29.15.7 The Service Provider shall immediately notify the University during the subsistence of this Agreement upon becoming aware of any changes in circumstances which may give rise to a conflict of interest.
- 29.15.8 The Service Provider agrees that it will immediately provide to the University such information as may be requested by the University for the purposes of checking for conflicts of interest, and the Service Provider warrants that such information so provided will in each instance be complete and accurate in all respects.
- 29.15.9 Should it be deemed by the University that a conflict of interest concern exists or has come into existence in relation to the Agreement, the University and the Service Provider shall take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.
- 29.15.10 Where it is not reasonably possible to so resolve such a conflict of interest concern, the University shall in its sole and absolute discretion be entitled to terminate this Agreement, in which event the Service Provider shall not have any claim whatsoever against the University of any nature.
- 29.15.11 The Service Provider agrees that in connection with the Deliverables to be provided under this Agreement:
- 29.15.11.1 to comply with all applicable laws and regulations in the Republic of South Africa regarding anti-bribery and corruption; not to offer, promise, give, request, accept or receive

<i>The University</i>		<i>Service Provider</i>	
Witness:		Witness:	

- bribes, including facilitation payments;
- 29.15.11.2 to disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement;
- 29.15.12 The Service Provider represents and warrants that it has policies and procedures in place consistent with acceptable industry standards, for the avoidance, mitigation, detection and disposition of Counterfeit Goods to ensure that none of the Deliverables furnished under this Agreement are Counterfeit Goods.
- 29.15.13 The Service Provider warrants that only new, unused, authentic, genuine and legitimate items shall form part of the Deliverables supplied to the University.
- 29.15.14 The Service Provider warrants that it shall only purchase or source items directly from OCM/OEM's, OCM/OEM authorised (e.g. Franchised Distributors or aftermarket manufacturers). The use, purchase or sourcing of items from non OCM/OEM authorised Independent Distributors or brokers is not permitted unless first approved in writing by the University. The Service Provider must present compelling support for its request to use such non OCM/OEM authorised suppliers for the University's approval (including but not limited to OCM/OEM documentation that authenticates supply chain traceability of the items to the OCM/OEM) and include in its request all necessary actions that it shall take to ensure those items thus procured are new, unused, authentic, genuine and legitimate items.
- 29.15.15 The Service Provider represents and warrants that at the Commencement Date that neither the Service Provider nor its Personnel, its sub-contractors, or other persons associated with it, including but not limited to its own suppliers:
- 29.15.15.1 has been convicted of any criminal offence; and
- 29.15.15.2 having made reasonable enquiries, to the best of its knowledge and belief, has not been or is not the subject of any investigation, inquiry or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 29.15.16 The Service Provider shall notify the University by written notice as soon as it becomes aware of any breach of this Agreement.
- 29.15.17 The Parties agree that a breach by the Service Provider of any of its obligations or warranties under clause 29.15 is a material breach of this Agreement, irrespective of the level of financial loss, deprivation of benefit or exposure to liability to which such breach would or potentially would give rise.
- 29.15.18 Either Party desiring to issue a news release or advertisement or another form of media publicity in relation to this Agreement shall obtain written consent of the other Party prior to the release of such publicity, which written consent will not be unreasonably delayed or withheld.
- 29.15.19 The Service Provider (and its Personnel) undertakes and agrees that for the duration of this Agreement and after the termination thereof:
- 29.15.19.1 not to privately or publicly make any disparaging remarks, derogatory statements or
- any other comments about the University via any social media site or any other platform; and
- 29.15.19.2 to immediately remove any reference to the University of whatsoever nature that the Service Provider or its Personnel have made via any social media site or any other platform.
- 29.16 **Survival of Provisions.** Clauses 11.2.7, 17, 18, 19, 20, 24, 25, 28, 29.1 and 29.15 of this Agreement shall survive termination.
- 29.17 **Good Faith.** Each of the Parties undertakes with each of the others to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement.

<i>The University</i>		<i>Service Provider</i>	
Witness:		Witness:	

ANNEXURE A: CONTRACT DATA

1 SIGNATORIES

For the University			
Signature(s)			
Full Name(s)			
Capacity			
Signature Date			
Place	Signed at:		
Witness	Signature: _____	Name: _____	Date: _____

For the Service Provider			
Signature(s)			
Full Name(s)			
Capacity			
Signature Date			
Place	Signed at:		
Witness	Signature: _____	Name: _____	Date: _____

2 INTRODUCTION

2.1 This Annexure A (Contract) Data is made pursuant to the Terms and Conditions concluded between the University and the Service Provider.

3 DEFINITIONS AND INTERPRETATION

3.1 In this Annexure A (Contract Data), unless the context otherwise requires, terms used but not defined in this Annexure A: Contract Data shall have the meanings given to them in the Terms and Conditions.

4 CLASSIFICATION AND TYPE OF AGREEMENT

The classification and type of this Agreement without limitation includes: <ul style="list-style-type: none"> To be inserted.
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5 SERVICE PROVIDER DETAILS

Full Registered Name:	
Registration Number:	
Country of Incorporation:	

6 TERM AND TERMINATION

6.1 Term

<i>The University</i>	<i>Service Provider</i>
Witness: _____	Witness: _____

Commencement Date:	dd/mm/yy
Termination Date:	dd/mm/yy
Contract Term:	insert years

7 CONTRACTUAL MANAGEMENT

7.1 Meetings and Reporting Requirements

To be inserted

7.2 Performance Reports

To be inserted

7.3 Project Governance

To be inserted

8 PENALTIES

To be inserted

9 DETAILS OF INSURANCE COVER

To be inserted

10 SERVICE PROVIDER'S KEY PERSONNEL

Full Name & Position	Contract Details	Area of Responsibility
Name: Position:	Mobile: Email:	To be inserted
Name: Position:	Mobile: Email:	To be inserted

11 REPRESENTATIVES

Details	University	Service Provider
Name:		
Position:		
Tel:		
Email:		

12 DOMICILIUM CITANDI ET EXECUTANDI

12.1 Address for Operational Correspondence

The University	
Marked for the attention of:	To be inserted
Electronic mail address:	To be inserted

Physical Address:	To be inserted
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The Service Provider	
Marked for the attention of:	To be inserted
Electronic mail address:	To be inserted
Physical Address:	To be inserted

12.2 Address for the Service of Legal Documents

The University	
Marked for the attention of:	Nkosinathi Mavimbela [Operations Manager Legal Services]
Electronic mail address:	To be inserted
Physical Address:	5th Floor, Room 5006A, Solomon Mahlangu House East Campus, Braamfontein, Johannesburg 2050

The Service Provider	
Marked for the attention of:	To be inserted
Electronic mail address:	To be inserted
Physical Address:	To be inserted

<i>The University</i>	<i>Service Provider</i>
Witness:	Witness:

ANNEXURE B: SCOPE OF WORK

[To be included as per Tender Documentation]

<i>The University</i>		<i>Service Provider</i>	
Witness:		Witness:	

ANNEXURE C: FEES

1. FEES

1.1. Total Contract Value (if applicable)

To be inserted

1.2. Payment Terms/Milestones (if applicable)

To be inserted

1.3. Fee Adjustments, annual increases and/or Exchange Rate Fluctuation Provisions (if applicable)

To be inserted

1.4. PURCO Rebate

The Service Provider agrees that it will provide for 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 Deliverables and/or Services (including any additional services and or goods).

The Service Provider agrees that it will send copies of its monthly invoice and statement to both Purchasing Consortium for all higher education institutions in Southern Africa (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.

[Detailed pricing schedule/information to be inserted hereunder]

<i>The University</i>		<i>Service Provider</i>	
Witness:		Witness:	