UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

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MEMORANDUM OF AGREEMENT

entered into between and by

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

SERVICE PROVIDER DETAILS TO BE INSERTED

in respect of: Visitor Management System (VMS) – Hardware, Software and Licensing

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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 B: Scope of Work;

2.2.1.3 Annexure A: Contract Data; and then

2.2.1.4 Annexure C: Fees.

2.2.2 In respect of the provisions detailing the Deliverables:

2.2.2.1 Annexure B: Scope of Work;

2.2.2.2 Annexure C: Fees;

2.2.2.3 Annexure A: Contract Data, and then

2.2.2.4 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 will survive such expiration or termination.

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

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

3.6 Whenever this Agreement provides for approvals, consents or expressions of satisfaction by any one of the Parties, that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction.

3.7 At all times, the University and its engagements, including that with the Service Provider as set out in this Agreement, are subject to the Rules.

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 Annexure B (Scope of Work) in terms of which the Deliverables will be evaluated by the University for purposes of determining Acceptance;

4.3 "**Acceptance Period**" means the Acceptance Test period within which period the University completes the review and Acceptance Testing of the Deliverables and approves the Deliverable(s). Unless a different period is set forth in the Project Plan the acceptance period will be within 30 (thirty) Business Days after delivery of the Deliverables;

4.4 "**Acceptance Test Date**" means the date or dates on which the Acceptance Tests must be conducted, as set out in the Project Plan and/or the Annexures;

4.5 "**Acceptance Testing**" means the criteria and process of measurement, examination and/or such other activities as set out in Annexure B (Scope of Work) unless otherwise agreed by the Parties in writing;

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

4.6.1 The Terms and Conditions;

4.6.2 Annexure A: Contract Data;

4.6.3 Annexure B: Scope of Work;

4.6.4 Annexure C: Fees; and

4.6.5 any other Annexures attached hereto;

4.7 "**Annexures**" means annexures to this Agreement;

4.8 "**Approved Device**" means the Chainway C66 handheld device, or such successor model as the University approves in writing, on which the Software has been tested, and which is supported by its OEM;

Commented [JR1]: Please confirm and check against the SoW.

4.9 "**Background Intellectual Property**" means 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;

4.10 "**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;

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

4.12 "**Commercially Reasonable Efforts**" means, with respect to the Deliverables, the reasonable efforts used to deliver the Deliverables in terms of this Agreement, as expeditiously as possible. This excludes:

4.12.1 taking any actions that would, individually or in the aggregate, cause the University to incur costs, or suffer any other detriment, out of reasonable proportion to the benefits accruing in terms of this Agreement;

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4.12.2 changing the Party's business strategy;

4.12.3 disposing of any significant assets of the Party;

4.12.4 taking any action that would violate any law or order to which the Party is subject;

4.12.5 taking any action that would imperil the Party's existence or solvency; or

4.12.6 initiating any litigation or any dispute resolution mechanism.

4.13 "**Confidential Information**" means information that:

4.13.1 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

4.13.2 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**");

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

4.15 "**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;

4.16 "**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 will 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;

4.17 "**Data Protection Legislation**" means the following legislation:

4.17.1 Protection of Personal Information Act 4 of 2013, as amended or substituted; and

4.17.2 such other legislation that is or may be applicable to the protection of Personal Information in South Africa;

4.18 "**Deliverable(s)**" means without limitation the Goods, the Software (including the Software Licences) 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 for the proper and effective use and/or implementation of the Deliverables;

4.19 "**Defect**" means:

4.19.1 A Deliverable which is not fit for the purpose for which it was procured and of suitable quality, or not provided on time and within budget; and/or

4.19.2 A defect, error, omission, failure, or inefficiency that impacts the University's ability to use any specific component of a Deliverable; and/or

4.19.3 A defect, error, omission, failure, or inefficiency that impacts the technical performance of the University's Information Technology System(s); and/or

4.19.4 Non-compliance with Annexure B (Scope of Work);

4.20 "**Documentation**" means the documentation, if any, required for the proper and effective use and/or implementation of the Deliverables;

4.21 "**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);

4.22 "**Force Majeure Event**" means the result of an act of god, flood, drought, earthquake, or another 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 (e.g. strikes, lockouts and similar);

4.23 "**Foreground Intellectual Property**" means Intellectual Property created or developed by a Party in the course and scope, as a result of, and/or for the purpose of this Agreement;

4.24 "**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;

4.25 "**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;

4.26 "**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, trademarks, designs, copyright and plant breeders' rights;

4.27 "**Key Personnel**" means the Personnel 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 9 of Annexure A (Contract Data);

4.28 "**Milestone**" means a predefined event or stage that signifies the successful completion and Acceptance of a Deliverable and is described in Annexure B (Scope of Work);

4.29 "**OCM**" or "**OEM**" means the Original Component/Equipment Manufacturer;

4.30 "**Party**" or "**Parties**" means the University or the Service Provider individually and collectively, as the context dictates;

4.31 "**Payment Date**" is the date on which a Milestone is reached;

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4.32 "**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;

4.33 "**Personnel**" of a Party includes employees, directors, partners, agents, consultants, associates, contractors, sub-contractors, or other representatives of a Party;

4.34 "**Precincts**" means any premises owned by or which fall under the management and control of the University and/or any part thereof;

4.35 "**Project Plan**" means the overall project plan set out in Annexure B (Scope of Work);

4.36 "**Representative**" means the duly authorised person designated as such in section 10 of Annexure A (Contract Data);

4.37 "**Rules**" are the rules, regulations, policies, procedures, practices and standing orders of the University, as amended from time to time;

4.38 "**Scope of Work**" means the detailed scope of work attached to this Agreement as Annexure B (Scope of Work);

4.39 "**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);

4.40 "**Service Provider**" means the Party detailed in section 5 of Annexure A (Contract Data);

4.41 "**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 and/or implementation of such services;

4.42 "**Signature Date**" means the date on which this Agreement is signed by the last Party to do so;

4.43 "**Site(s)**" refers to the specific location(s) and premises identified in Annexure B (Scope of Work), where applicable, for this Agreement;

4.44 "**Software**" means the visitor management system software described in Annexure B (Scope of Work), including its mobile applications, server components and integration modules for the University's Gallagher Command Centre access control platform, any third-party software supplied with it, and all updates, upgrades, patches and new releases provided under this Agreement;

4.45 "**Software Licences**" means the licences to use the Software granted or procured by the Service Provider in terms of clause 19.10, in the quantities and for the periods set out in Annexure C (Fees);

4.46 "**Termination Date**" means the date specified in section 6 Annexure A (Contract Data);

4.47 "**Terms and Conditions**" means these terms and conditions contained in this document;

4.48 "**University**" means the University of the Witwatersrand, Johannesburg; a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997;

4.49 "**VAT**" means the value-added tax levied by the South African Revenue Service on the supply of goods and services in terms of the Value Added Tax Act 89 of 1991.

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) month's 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. 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 will have the authority to, nor will 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 under this Agreement.

7 RESPONSIBILITIES OF THE UNIVERSITY

7.1 The University will, subject to the Rules:

7.1.1 provide the Service Provider and its Personnel with such access to the Precincts and/or Information Technology Systems (where applicable) as may be reasonably necessary to allow the Service Provider to fulfil its obligations in terms of this Agreement;

7.1.2 receive information from the Service Provider; and

7.1.3 pay the Service Provider as provided for in clause 23 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 Annexure B (Scope of Work);

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 delivery of the Deliverables;

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, the University's reputation 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

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from its Personnel) at all times:

8.2.1 act in accordance with the lawful instructions of the University;

8.2.2 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 in terms of this Agreement;

8.2.4 not perform its responsibilities in terms of this Agreement in a manner that 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 annoyance, discomfort, interruption or disturbance to other users of the Precincts, including the University's students and staff and will not prevent them from carrying out their normal 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 event, 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 Commercially Reasonable Efforts not to engage in activities which would detract it 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 will each nominate a Representative responsible for the overall management, execution, and oversight of this Agreement, who will:

9.1.1 on reasonable notice, consult with each other 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 contract management of the Agreement including oversight of the activities and responsibilities of the Personnel and Key Personnel;

9.1.4 accept and acknowledge all notices and correspondence relating to the Agreement; and

9.1.5 ensure that any administrative or compliance-related matters required in terms of this Agreement are carried out or completed timeously.

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 within 2 (two) Business Days of the Signature Date. The University may object on reasonable grounds to any such person assigned. Upon receipt of such objection, the Service Provider must immediately assign 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 The University will 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.

9.6 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, and the reputation of the University in danger.

9.7 Where any Personnel will have access to the University's security, access control or visitor management systems, or to the data held in them, the Service Provider must, before deploying such Personnel and thereafter on reasonable request, provide the University with proof of a satisfactory criminal record check for each such person.

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 must 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 23 and the Service Provider agrees that liability and responsibility

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for any payment due to the sub-contractor will 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 will 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 will 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 the absolute legal and beneficial title in and to the Deliverables and has the unfettered right to supply and provide them and to pass unencumbered right and/or title to University and, in respect of the Software, holds (or will procure from the licensor) all rights necessary to grant the licences set out in clause 19.10;

11.2.2 it has the necessary skills, qualifications, expertise, financial resources, 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 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 the University will receive the full benefit from OCM/OEM warranties for the Deliverables, including support and maintenance beyond this Agreement's duration. The Service Provider warrants that it has the authority to provide these warranties on behalf of the OCM/OEM and agrees to obtain and/or transfer any requested OCM/OEM warranties for the University;

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 and Diseases Act 130 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 ("**OHSA**"). The Service Provider will in terms of section 37(2) of the OHSA, be deemed to be an employer in its own right with duties prescribed in the OHSA and undertakes to procure that all work will be performed, and all equipment will be used in accordance with the provisions of the OHSA and any Regulations issued in terms of the OHSA. 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 OHSA;

11.2.7.3 the Basic Conditions of Employment Act 75 of 1997 ("**BCEA**");

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's 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;

11.2.7.7 the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (the "**Sexual Offences Act**"), including ensuring that none of its Personnel who have, or may have, access to or contact with students or other vulnerable persons on the Precincts is listed on the National Register for Sex Offenders established under the Sexual Offences Act;

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 must remain throughout the duration of the Agreement, the employer of all individuals who may work for the Service Provider in providing the Deliverables, and the Service Provider will be solely responsible for the remuneration, insurance, and other obligations in respect of its Personnel.

11.2.11 that it will use Commercially Reasonable Efforts:

11.2.11.1 to ensure that no viruses or similar items are coded or introduced into the systems or University Information Technology Systems used to provide the Services;

11.2.11.2 not to introduce or code any viruses or similar items into any University Information Technology Systems or Deliverables.

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11.3 If a virus or similar item is found and the presence of same is due to the Service Provider's reckless or negligent act or omission, the Service Provider must reduce the effects of the virus or similar item and, if the virus or similar item causes loss of operational efficiency or loss of data, the Service Provider must mitigate and restore such losses within 2 (two) Business Days. Any work required under this clause 11.2.11 will be considered part of the Services and the Service Provider must perform such work without adjustment to the Fees.

11.4 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, subject to the provisions of clause 24, terminate the Agreement. A termination under clause 11 will be without prejudice to any of the University's rights.

11.5 The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Deliverables.

11.6 Where any of the Service Provider's Personnel have, or may have, access to or contact with students or other vulnerable persons on the Precincts in the course of providing the Deliverables, the Service Provider must, prior to deploying any such Personnel and thereafter on reasonable request by the University, provide the University with written confirmation that such Personnel have been screened against, and do not appear on, the National Register for Sex Offenders established under the Sexual Offences Act. The Service Provider must immediately remove from the Precincts, and permanently withdraw from providing the Deliverables, any Personnel who is or becomes listed on the National Register for Sex Offenders, or against whom a charge or conviction relating to a sexual offence arises and must immediately notify the University in writing of any such circumstance.

11.7 Without limiting clause 11.2, the Service Provider warrants that: (a) the Software Licences are genuine, will be issued in the name of the University and will remain valid and active for the duration of this Agreement; (b) the Software will perform materially in accordance with Annexure B (Scope of Work) and the Documentation, including on all Approved Devices and in its integration with the University's Gallagher Command Centre platform; (c) the Software contains no time-lock, licence-expiry or other disabling mechanism other than those disclosed to the University in writing before the Signature Date, and no such mechanism will be used to disable the Software during the term of this Agreement while the University is not in material breach of its payment obligations; and (d) it is, and will for the duration of this Agreement remain, authorised by the relevant OEMs to supply, repair and support the Approved Devices, and to obtain the Gallagher licences and deliver the integration required by Annexure B (Scope of Work).

12 CONTRACT MANAGEMENT

The Parties agree that the contract management protocol for this Agreement is set out in Annexure B (Scope of Work).

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 at its cost provide the University with such materials and facilities reasonably necessary to conduct the Acceptance Testing.

13.4 In the event that the Service Provider unreasonably withholds or delays any Acceptance Testing procedures, the University will have the exclusive right, but not the obligation, without prejudice to any of the University's rights, to cancel this Agreement or claim damages, in order to safeguard its interests and protect its reputation.

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 of the Defect or such other time frame as may be agreed upon in writing between the Parties, the Service Provider shall promptly and at no additional cost to the University, modify, correct, and repair any Defect. Upon receipt of written notification of a Defect, the Service Provider must take immediate and necessary action to rectify the Defect in a timely and diligent manner, using appropriate remedies such as repair, replacement, or re-performance. To facilitate the resolution process, the University shall, upon written request by the Service Provider, provide the Service Provider with unrestricted working access to the non-conforming Deliverables. Additionally, upon receipt of a reasonable written request by the Service Provider, the University may consider transferring title to any replaced parts/items to the Service Provider.

14.3 Where required by the University, the Service Provider will, at its own cost, provide the University with a replacement Deliverable for the time that the affected Deliverable is being repaired so as to prevent unexpected interruptions in the University's own day-to-day operations and business.

14.4 In the event that the Service Provider is unable to repair an affected Deliverable, it must replace the Deliverable at no additional cost to the University.

14.5 If the Service Provider is unable or unwilling to modify, 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,

14.5.1 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

14.5.2 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; or

14.5.3 enforce the provisions of clause 24,

14.6 The Service Provider is responsible for the costs of modifying, 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 into, and re-Acceptance 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).

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14.7 Unless explicitly stated otherwise in a written agreement between the Parties, the Service Provider must ensure uninterrupted provision of the Deliverables until such time as the University deems them to be fit for the intended purpose for which they were acquired, meeting the required level of quality, and free from any Defects.

15 RISK AND TITLE

Without prejudice to rights of rejection under this Agreement and subject to clause 11, ownership of the Deliverables (other than the Software and any loaner devices), including the associated risks, will transfer to the University upon Acceptance and full payment by the University. The University will become the legal owner of the Deliverables upon such transfer. The University's rights in the Software are as set out in clause 19.10. Loaner devices supplied in terms of Annexure B (Scope of Work) remain the property of the Service Provider, and the University will take reasonable care of them while they are in its possession.

16 UNIVERSITY PRECINCTS AND PROPERTY

16.1 All Personnel, guests, invitees, or any other persons acting on behalf of the Service Provider may not, without prior written consent of the University, be allowed access to the Precincts for the purposes of fulfilling the Service Provider's obligations under the Agreement. The Service Provider acknowledges and accepts that access granted by the University in terms of this clause will be limited to the purpose stated above and for no other purpose.

16.2 Whenever any of the Service Provider, its 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:

16.2.1 the carrying of weapons, which is strictly prohibited;

16.2.2 the wearing of identification tags and the possession and use of access cards, which is required at all times whilst on the Precincts;

16.2.3 occupational health, safety, and emergencies practices and protocols;

16.2.4 the security of the Precincts and the protection of persons and property thereon;

16.2.5 the driving and parking of vehicles on or about the Precincts;

16.2.6 the utilisation of the University's amenities and facilities;

16.2.7 the prohibition or restriction of activities and practices which are actually or potentially detrimental to the interests of the University;

16.2.8 any reasonable instructions received from the University; and

16.2.9 any and all other applicable requirements prescribed by the University from time to time.

16.3 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.

16.4 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. Removal by the Service Provider of such person(s) will not be a ground for any relaxation/waiver of the Service Provider's obligations under the Agreement.

16.5 The University reserves the right, at any given time and without prior warning, to search any or all of the Service Provider's movable property which includes but is not limited to vehicles, baggage and containers entering or exiting the Precincts.

16.6 No gatherings by the Service Provider's Personnel will be allowed in the Precincts.

16.7 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.

16.8 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 to the University any plant, equipment, tools, appliances, or other property and items utilised by it to fulfil its obligations in terms of this Agreement.

16.9 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.

16.10 The Service 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 acting on behalf of the Service Provider.

17 DOCUMENTATION

17.1 The Service Provider will provide the University with the Documentation required 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.

17.2 The University must 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.

17.3 The right to copy, reproduce and use the Documentation referred to in clause 17.2 will also extend to the University's sub-contractors and third-party suppliers, provided that such use is required to provide services to the University.

17.4 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.

18 CONFIDENTIALITY

18.1 The Parties acknowledge that in terms of this Agreement, they may have access to each other's Confidential Information. Each of the Parties agrees 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

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seek a protective order or other remedy from the court or governmental agency.

18.2 Each of the Parties will with respect to the Confidential Information:

18.2.1 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;

18.2.2 inform its Personnel of the confidentiality restraint set out in this clause 18 and ensure that they are subject to the same confidentiality undertaking;

18.2.3 restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information to provide the Deliverables;

18.2.4 ensure that its Personnel exercise care appropriate for the protection of the Confidential Information;

18.2.5 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, and its Personnel.

18.3 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 the other Party's Confidential Information.

19 INTELLECTUAL PROPERTY

19.1 The ownership of rights in and to all Background Intellectual Property will be and remains unaffected by this Agreement.

19.2 The University grants the Service Provider a non-exclusive, non-transferable, revocable, royalty-free licence for the duration of this Agreement to use the University's Background Intellectual Property solely to the extent necessary to enable the Service Provider to comply with its obligations hereunder.

19.3 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.

19.4 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.

19.5 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.

19.6 Any sub-contract the Service Provider enters into in relation to this Agreement must contain a condition that the sub-contractor agrees to assign all rights to the University in any Foreground Intellectual Property created by it for the purposes of this Agreement.

19.7 The Service Provider will not use the University's names, trademarks, logos or other Intellectual Property in publicity releases, publications, advertising materials or in any other manner, without the prior written consent of the University in each instance.

19.8 The Service Provider will not use, register, or attempt to register any trademarks, company, business or trading names or domain names which are identical, similar to or incorporate the University name, trademarks, and logos, without the University's prior written consent; and

19.9 The Service Provider acknowledges and accepts that it will 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.

19.10 In respect of the Software, the Service Provider grants, or will procure that the relevant licensor grants, to the University a non-exclusive licence, in the quantities and for the periods set out in Annexure C (Fees), to install and use the Software at all Sites and on all Approved Devices. This licence extends to the University's contractors (including its security service providers) to the extent that they operate the Software on the University's behalf. Where any Software Licence is subscription-based, the Service Provider will, at the University's request on expiry or termination of this Agreement, procure that it continues for a transition period of up to 90 (ninety) days at the pro-rata Fees, to enable the University to migrate to a replacement solution.

20 DATA PROTECTION

20.1 In performing its obligations under this Agreement, the Parties will:

20.1.1 comply with the provisions of the Data Protection Legislation insofar as it is applicable to this Agreement;

20.1.2 not process Personal Information for any purpose other than that which may be required to perform their obligations under this Agreement and ensure that such processing will not place either Party in breach of any Data Protection Legislation.

20.2 The Service Provider will:

20.2.1 only act on the express instructions of the University in collecting, processing, and utilising any Personal Information; this Agreement will constitute such instructions;

20.2.2 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.

20.3 The Service Provider must be responsible for establishing and maintaining an information security programme that is designed to:

20.3.1 ensure the security and confidentiality of 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;

20.3.2 protect against any anticipated threats or hazards;

20.3.3 protect against unauthorised access to, disclosure or use of any University information;

20.3.4 ensure the proper separation of information belonging to the University from any third-party information;

20.3.5 where appropriate, ensure the proper disposal of information belonging to the University;

20.3.6 preserve the integrity of any information belonging to the University and prevent the corruption, destruction, or loss of such information at all times; and

20.3.7 ensure that all sub-contractors of the Service Provider, if any, comply with the provisions of this clause 20.3.

20.4 The Service Provider must immediately notify the University of any actual or suspected security incident, unauthorised access to, use of, loss of, disclosure of, alteration of or destruction of Confidential Information and/or Personal Information and must confirm such notification in writing within 24 (twenty-four) hours of becoming aware of the incident, providing all available details of the nature, scope, actual or potential impact and remedial measures taken or proposed.

20.5 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 will (and must ensure that the Service Provider's Personnel):

20.5.1 comply with the Rules, requirements, or other instructions of the University or, where applicable, the University's third-party suppliers, regarding the use of such University Information Technology Systems;

20.5.2 only use the University Information Technology Systems in connection with the proper delivery of the Deliverables;

20.5.3 not permit any other individual or entity to access the University Information Technology Systems;

20.5.4 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

20.5.5 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.

20.6 In respect of Personal Information processed through the Software (including visitors' identity document details, photographs, access events and any watchlist information), the Parties record that the University is the responsible party and the Service Provider is an operator as contemplated in the Protection of Personal Information Act 4 of 2013. Without limiting clauses 20.1 to 20.5, the Service Provider will: (a) not store or process such Personal Information outside the Republic of South Africa without the University's prior written consent and compliance with section 72 of that Act; (b) retain such Personal Information only for the retention periods specified by the University; and (c) on expiry or termination of this Agreement, provide the University with a complete export of such Personal Information and all other data held in the Software in an open, documented format at no additional cost, and thereafter securely delete it and confirm the deletion in writing.

21 RECORDS AND AUDIT

21.1 The Service Provider must 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.

21.2 The Service Provider must 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.

22 PENALTIES

22.1 In the event that the Service Provider fails to meet any of the obligations contained in the Agreement, the Service Provider will be liable to compensate the University for penalties as stipulated in Annexure A (Contract Data) and/or Annexure B (Scope of Work), if applicable.

22.2 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:

22.2.1 the Agreement will not be construed or interpreted in such a way as to entitle the University to recover both damages and the penalty;

22.2.2 the University will be entitled to recover damages in lieu of the relevant penalty;

22.2.3 the University will not be obliged to accept defective or delayed performance by the Service Provider; and

22.2.4 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.

23 FINANCIAL TERMS

23.1 **Fees**:

23.1.1 The Fees, as set out in Annexure C (Fees), consist of the Service Providers' charges, in respect of the Deliverables, the Payment Dates and any Fee adjustments, annual increases and/or exchange rate provisions.

23.2 **Administration Process**:

23.2.1 The Service Provider must ensure that supporting documents have been approved by the University and are annexed to the invoice. The University will pay against invoices submitted by the Service Provider.

23.2.2 On condition that the University is satisfied that the Service Provider has:

23.2.2.1 provided the Deliverables in accordance with the provisions of Annexure B (Scope of Work) and the University has Accepted the Deliverables; and

23.2.2.2 provided the Deliverables that are fit for the purpose for which they were procured, of suitable quality and within budget as set out in Annexure C (Fees); and

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23.2.2.3 the University has approved the payment of the amounts reflected on an invoice in writing,

the University will settle the invoice within 30 (thirty) days after presentation.

23.2.3 In order to ensure efficient financial transactions, the University shall promptly notify the Service Provider in the event of any discrepancies or disagreements regarding invoices. The University and the Service Provider will work collaboratively to resolve such issues, and once mutually resolved, the University shall promptly pay the undisputed amount. In the event that the University and the Service Provider are unable to reach a resolution regarding the disputed invoice, the matter will be referred to in accordance with the provisions of clause 29.

23.2.4 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.

23.2.5 Subject to the provisions of clause 23.2.2, the University will pay by direct or electronic deposit into the Service Provider's nominated account, as stipulated on its invoice.

23.2.6 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 will be adjusted accordingly and the Service Provider must 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.

23.2.7 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.

23.2.8 No Deliverables outside Annexure B (Scope of Work), including additional Approved Devices, spare parts or additional maintenance or upgrade work, will be paid for unless the University has approved a written quotation and issued an official purchase order before the work is performed or the Goods are supplied.

24 BREACH AND TERMINATION

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

24.2 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.

24.3 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 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.

24.4 The University will be entitled to terminate this Agreement with immediate effect, should the Service Provider:

24.4.1 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 sequestrated; or

24.4.2 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

24.4.3 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.

24.5 On termination or expiry of the Agreement for any reason, the Service Provider must:

24.5.1 immediately deliver to the University all Deliverables whether or not then complete and return all University information (together with all copies thereof), including all data held in the Software, exported in accordance with clause 20.6. Until they have been returned or delivered, the Service Provider will be solely responsible for their safekeeping and will not use them for any purpose not connected with this Agreement; and

24.5.2 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 the Deliverables to an incoming supplier. All applicable terms and conditions of this Agreement will apply to such transition services.

24.6 Upon termination of 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.

24.7 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.

25 LIMITATION OF LIABILITY

25.1 Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider must do all that is commercially reasonably necessary within the course and scope of this Agreement to prevent or minimise the risk of loss or damage to property, University data/information and Personal Information, the University's reputation, and injury to persons.

25.2 The Service Provider will be liable for any loss of, or damage to, its, and/or the University's property or any financial loss suffered by it, and/or the University or for claims arising out of any damage to property or death

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or injury to any person, in the course and scope of providing the Deliverables and/or for any act or omission by the Service Provider and/or its Personnel and/or agents.

25.3 The Service Provider hereby indemnifies the University:

25.3.1 for damage sustained by any Personnel in the course or scope of that individual's employment and whilst being on the University Precincts. Save where such injury, loss or damage is caused by the gross negligence and wilful misconduct of the University or its Personnel;

25.3.2 against all claims of whatsoever nature and howsoever arising which may be made against the Service Provider and/or 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,

25.3.3 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

25.3.4 from any liability arising from:

25.3.4.1 any breach of laws or regulations by the Service Provider which is directly applicable to providing the Deliverables;

25.3.4.2 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. 63 of 2001 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;

25.3.4.3 any breach of environmental legislation (where applicable);

25.3.4.4 any breach of the Data Protection Legislation and the provisions of clause 20.3 above;

25.3.4.5 any breach of the Income Tax Act;

25.3.4.6 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 of the OHSA;

25.3.4.7 any claim by a third party that the Service Provider infringes upon its proprietary intellectual property rights or any other rights;

25.3.4.8 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; and/or

25.3.4.9 costs incurred by the University in connection with the enforcement of this clause 25.

25.4 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.

25.5 Notwithstanding anything to the contrary contained in this Agreement, the University shall not be liable to the Service Provider for any indirect, consequential, incidental, special, punitive or exemplary damages, including loss of profit, loss of revenue, loss of anticipated savings, loss of business opportunities, loss of goodwill or loss of contracts, arising out of or in connection with this Agreement. The Service Provider shall remain fully liable to the University, without limitation, for any loss, damage, cost, expense, claim, penalty, fine or liability arising from or in connection with: (a) fraud, fraudulent misrepresentation, corruption, dishonesty, wilful misconduct or gross negligence; (b) any breach of its confidentiality obligations; (c) any breach of its data protection, information security or cybersecurity obligations, including any unauthorised access to, disclosure of, loss of, corruption of, destruction of or inability to access University information, Confidential Information or Personal Information; (d) any infringement or alleged infringement of Intellectual Property rights; (e) any indemnity given by the Service Provider under this Agreement; (f) any breach of applicable law; (g) death, personal injury or damage to property caused by the Service Provider or its Personnel, agents or sub-contractors; (h) any regulatory investigation, sanction, administrative fine or enforcement action arising from the acts or omissions of the Service Provider; or (i) any costs incurred by the University in investigating, mitigating, remediating or recovering from any of the foregoing events. Subject to the foregoing, neither Party shall be liable to the other for indirect or consequential damages.

26 INSURANCE

26.1 The Service Provider warrants that it has and will maintain the following insurance cover which includes indemnities for the liabilities in clause 25 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:

26.1.1 insurance covering its liability to any Personnel, as contemplated in COIDA;

26.1.2 public liability insurance cover;

26.1.3 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;

26.1.4 professional indemnity insurance;

26.1.5 general and commercial liability insurance which includes but is not limited to defective workmanship, public liability, products and equipment liability, data protection, cyber risk insurance, bodily injury and death, and property damage.

26.2 Where applicable, the Service Provider must ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement.

26.3 The Service Provider agrees to provide a certificate of proof of the insurance as set out in clause 26.1, a copy of the policy itself as well as any further documentation as may reasonably be requested by the University.

26.4 Should the Service Provider fail to effect and/or keep in

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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 26.3, this action would constitute a material breach by the Service Provider.

27 FORCE MAJEURE

27.1 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**") must promptly notify the other Party in writing specifying:

27.1.1 the nature of the Force Majeure Event;

27.1.2 the anticipated delay in the performance of obligations;

27.1.3 the action proposed to minimise the impact of the Force Majeure Event;

and the Affected Party will 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 will use all reasonable efforts to minimise the effects of the same and will resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

27.2 If the Force Majeure Event continues for 42 (forty-two) Business Days either Party may terminate at 7 (seven) Business Days' notice.

27.3 In circumstances where a Party is an Affected Party, it will 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.

28 ADDRESSES AND NOTICES

28.1 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 Deliverables) the addresses set out in section 11 of Annexure A (Contract Data).

28.2 For purposes of this clause 28, the word "notice" will include a notice regarding a dispute, demand, breach, renewal, or termination.

28.3 All notices given in terms of this Agreement will be in writing and any notice given by any Party to another (the "**addressee**") which:

28.3.1 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;

28.3.2 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;

28.3.3 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 28.3.3.

28.4 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.

29 SETTLEMENT OF DISPUTES

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

29.2 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.

29.3 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 his nominee and the Service Provider's Chief Executive Officer or his duly appointed nominee, who will use their best endeavours to resolve the dispute.

29.4 If the individuals referred to in clause 29.3 are unable to resolve the dispute within 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 Parties will bear the costs of mediation equally. The mediator's determination will be final and binding and must be carried into effect by the Parties.

29.5 If the mediator is unable to resolve the dispute or difference to the mutual satisfaction of the Parties, 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.

29.6 Nothing in this clause 29 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.

30 GENERAL PROVISIONS

30.1 **Governing Law**. This Agreement is governed by the laws of the Republic of South Africa, and any disputes will be subject to the provisions of clause 29 without giving effect to any conflict of laws.

30.2 **Entire Agreement**

30.2.1 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.

30.2.2 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.

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30.3 **Variation and Cancellation**

30.3.1 No amendment, variation, or consensual cancellation of this Agreement, including an amendment to this clause 30.3, and no settlement of any disputes arising under this Agreement, will be binding unless recorded in writing and signed by the Parties.

30.3.2 For the avoidance of doubt, a document executed by means of an electronic signature in accordance with clause 30.6 and the Electronic Communications and Transactions Act 25 of 2002 will constitute a written document for purposes of this clause 30.3.

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

30.5 **Indulgences**

30.5.1 If either Party at any time breaches any of its obligations under this Agreement, the aggrieved Party:

30.5.1.1 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;

30.5.1.2 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.

30.6 **Source Code Escrow**. Where the Software is proprietary to the Service Provider or its licensor, the Service Provider shall maintain a source code escrow arrangement with an independent escrow agent approved by the University.

30.7 **Escrow Release Events**. The University shall be entitled to access and use the escrow materials upon the occurrence of the Service Provider's insolvency, business rescue, liquidation, cessation of support, discontinuation of the Software, or any other event that materially impairs the University's continued use of the Software.

30.8 **Vulnerability Management**. The Service Provider shall maintain a vulnerability management programme and shall promptly identify, assess and remediate vulnerabilities affecting the Deliverables.

30.9 **Critical Vulnerabilities**. The Service Provider shall immediately commence remediation of any critical security vulnerability and shall fully remediate such vulnerability within 48 (forty-eight) hours of becoming aware of it or receiving notification thereof from the University or any third party.

30.10 **Cybersecurity Incidents**. The Service Provider must notify the University immediately and in any event within 24 (twenty-four) hours after becoming aware of any actual or suspected cybersecurity incident.

30.11 **Security Standards**. The Service Provider shall maintain security measures and controls consistent with recognised industry standards and best practice throughout the term of this Agreement.

30.12 **Business Continuity**. The Service Provider shall maintain and test appropriate business continuity and disaster recovery plans to ensure the uninterrupted provision of the Deliverables.

30.13 **Backup and Recovery**. The Service Provider shall implement appropriate backup procedures and recovery measures for all University data processed or stored as part of the Deliverables.

30.14 **Recovery Objectives**. The Service Provider shall ensure that its disaster recovery arrangements are capable of restoring the Deliverables and University data within the recovery objectives specified by the University from time to time.

30.15 **Exit Assistance**. Upon expiry or termination of this Agreement, the Service Provider shall provide all reasonable assistance required by the University to facilitate an orderly transition of the Deliverables.

30.16 **Knowledge Transfer**. Exit assistance shall include the transfer of operational knowledge, technical information, system configurations, integration specifications and relevant documentation reasonably required by the University or a replacement supplier.

30.17 **Data and Configuration Export**. Upon request by the University, the Service Provider shall provide a complete export of all University data, system configurations and integration information in a usable and documented format without unreasonable delay.

30.18 **Data Ownership**. All data collected, generated, processed, stored or derived from the University's use of the Deliverables shall remain the exclusive property of the University.

30.19 **Counterparts and Electronic Signatures**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute a single instrument. By signing this Agreement electronically, the Parties agree to the acceptance of the terms and conditions of this Agreement as if it were physically signed by them by hand and in writing.

30.20 **Waiver**. No extension of time or waiver or relaxation of any of the provisions of this Agreement will operate as an estoppel against any Party in respect of its rights under this Agreement, nor will it operate to preclude such Party from exercising its rights strictly in accordance with this Agreement.

30.21 **Assignment, cession, and delegation**.

30.21.1 The Service Provider must 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 the University gives such consent, the Service Provider is deemed to have bound itself as surety and co-principal debtor with the third party for the third party's due performance of all its obligations under the Agreement.

30.21.2 The University may cede its rights or delegate its obligations to any other party.

30.21.3 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.

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30.22 **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 will be cumulative and in addition to every other remedy given under this Agreement or any existing or future law. The election of any one or more remedies by one of the Parties will not constitute a waiver by such Party of the right to pursue any other remedy.

30.23 **Costs**. The Parties will each pay their own costs of negotiating, drafting, preparing, and implementing this Agreement.

30.24 **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 will not in any way be affected or impaired thereby and the Parties will endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.

30.25 **Survival of Rights, Duties and Obligations**. Termination of this Agreement for any cause will 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.

30.26 **Successors in title**. Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator, or trustee, of a Party will be bound by this Agreement.

30.27 **Change of 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 will 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.

30.28 **Integrity, Transparency and Fair Business Practice**.

30.28.1 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 per cent) Black Owned Qualifying Small Enterprise ("**QSE**").

30.28.2 In instances where a QSE or an EME has black or 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 53 of 2003 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.

30.28.3 The Service Provider undertakes to notify and provide full details to the University in the event that there is:

30.28.3.1 a negative change to the Service Provider's B-BBEE rating, which is less than its B-BBEE status was at the time of its appointment, including the impact thereof;

30.28.3.2 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.

30.28.4 The Service Provider must issue the notice and relevant details required in clause 30.28.1 within 30 (thirty) days from the date the event occurred.

30.28.5 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.

30.28.6 Should there be any negative change to the Service Provider's B-BBEE rating, and should the Service Provider fail to comply with its reporting obligations in terms of clause 30.28.3, the University reserves the right to terminate this Agreement with immediate effect.

30.28.7 The Service Provider must 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.

30.28.8 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.

30.28.9 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 must take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.

30.28.10 Where it is not reasonably possible to so resolve such a conflict of interest concern, the University will in its sole and absolute discretion be entitled to terminate this Agreement, in which event the Service Provider will not have any claim whatsoever against the University of any nature.

30.28.11 The Service Provider agrees that in connection with the Deliverables to be provided under this Agreement:

30.28.11.1 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 bribes, including facilitation payments;

30.28.11.2 to disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement;

30.28.12 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

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Deliverables furnished under this Agreement is Counterfeit Goods.

30.28.13 The Service Provider warrants that only new, unused, authentic, genuine, and legitimate items must form part of the Deliverables supplied to the University.

30.28.14 The Service Provider warrants that it will only purchase or source items directly from OCM/OEMs, 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 will take to ensure those items thus procured are new, unused, authentic, genuine, and legitimate items.

30.28.15 The Service Provider represents and warrants that at the Commencement Date neither the Service Provider nor its Personnel, its sub-contractors, or other persons associated with it, including but not limited to its own suppliers:

30.28.15.1 has been convicted of any criminal offence; and

30.28.15.2 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.

30.28.16 The Service Provider must notify the University by written notice as soon as it becomes aware of any breach of this Agreement.

30.28.17 The Parties agree that a breach by the Service Provider of any of its obligations or warranties under clause 30.28 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.

30.28.18 Either Party desiring to issue a news release or advertisement or another form of media publicity in relation to this Agreement must obtain the written consent of the other Party prior to the release of such publicity, which written consent will not be unreasonably delayed or withheld.

30.28.19 The Service Provider (and its Personnel) undertakes and agrees that for the duration of this Agreement and after the termination thereof:

30.28.19.1 not to make any disparaging remarks, derogatory statements, or any other comments privately or publicly about the University via any social media site or any other platform; and

30.28.19.2 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.

30.29 **Survival of Provisions**. Clauses 11.2.7, 11.6, 18, 19, 20, 21, 25, 26, 29, 30.1,30.7,30.9, 30.28 and 30.17 of this Agreement will survive termination.

30.30 **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.

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ANNEXURE A: CONTRACT DATA

1. SIGNATORIES

For the University	
Signature(s)	
Full Name(s)	
Capacity	
Signature Date	
Place	

For the Service Provider	
Signature(s)	
Full Name(s)	
Capacity	
Signature Date	
Place	

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 will have the meanings given to them in the Terms and Conditions.

4. CLASSIFICATION AND TYPE OF AGREEMENT

4.1. This Agreement is classified as an Information and Communication Technology (ICT) agreement for mixed Goods and Services. It is a fixed-term agreement comprising: (a) the once-off supply, configuration, implementation and integration of the Software with the University's Gallagher Command Centre access control platform, payable on Acceptance of the Milestones in Annexure B (Scope of Work); (b) recurring Software Licences, maintenance and support, measured against the Service Levels in Annexure B (Scope of Work); and (c) the as-and-when repair and replacement of Approved Devices and supply of spare parts, ordered by official University purchase order at the rates in Annexure C (Fees).

4.2. No form of exclusivity has been conferred on the Service Provider nor volume or value guarantee granted by the University.

5. SERVICE PROVIDER DETAILS

Full Registered Name:	To be inserted
Registration Number:	To be inserted
Country of Incorporation:	To be inserted

6. TERM AND TERMINATION

6.1. **Term**

Commencement Date:	To be inserted, notwithstanding the Signature Date

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Termination Date:	To be inserted
Contract Term:	To be inserted

7. PENALTIES

7.1. A penalty may be imposed under this section 7 if the Service Provider, without a valid excuse under this Agreement (including under clause 27): a) delivers a Deliverable that fails Acceptance Testing or fails to operate effectively or accurately once Accepted; b) fails to meet a Milestone or other completion requirement in the Project Plan, or fails to complete Acceptance Testing within the Acceptance Period; or c) otherwise delays delivery of any part of the Deliverables, and fails to remedy such breach within the period specified in a written notice from the University requiring it to do so.

7.2. Where a breach referred to in clause 7.1 is not remedied within the period specified in the University's notice, the University may, in addition to or instead of any other remedy available to it under this Agreement (including withholding or retaining payment pending satisfactory performance), impose a penalty at the rate and frequency, and up to the maximum amount, specified in Annexure A (Contract Data), Annexure B (Scope of Work), or Annexure C (Fees). Where no such rate or maximum is specified, the University may impose a penalty that is reasonable having regard to the nature of the breach and the University's likely loss, provided that the penalty will not exceed a reasonable proportion of the Fees payable under the Agreement. This penalty is a genuine pre-estimate of the University's loss and is subject to the Conventional Penalties Act 15 of 1962, without prejudice to the University's right to elect to claim damages in lieu of the penalty under clause 22.2 of the Terms and Conditions.

7.3. For the purposes of clause 7.2: (a) the Service Level penalties set out in Annexure B (Scope of Work) are the applicable rates; (b) where a single incident falls within more than one Service Level category, only the highest applicable penalty will apply to that incident; (c) penalties will be recovered by credit note or by set-off against the Service Provider's next invoice in accordance with clause 23.2.4 of the Terms and Conditions; and (d) the aggregate penalties imposed in any calendar month will not exceed [__]% (to be inserted) of the Fees payable for that month for Software Licences, maintenance and support.

8. DETAILS OF INSURANCE COVER

To be inserted. As a minimum, the Service Provider must hold: (a) public liability insurance; (b) professional indemnity insurance; (c) products liability insurance in respect of Approved Devices and other Goods supplied; and (d) cyber liability insurance, including cover for data breaches and third-party privacy claims.

9. SERVICE PROVIDER'S KEY PERSONNEL

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

10. REPRESENTATIVES

Details	University	Service Provider
Name:	To be inserted	To be inserted
Position:	To be inserted	To be inserted
Tel:	To be inserted	To be inserted
Email:	To be inserted	To be inserted

11. DOMICILIUM CITANDI ET EXECUTANDI

11.1. **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

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

Address for the Service of Legal Documents

The University	
Marked for the attention of:	Director 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

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ANNEXURE B: SCOPE OF WORK

To be inserted

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ANNEXURE C: FEES

1. FEES

1.1. Fee Provisions

The relevant details shall be inserted based on the requirements set out in the Tender RFP Document and the Pricing Schedule.

1.2. Fee Adjustment Provisions

The relevant details shall be inserted based on the requirements set out in the Tender RFP Document and the Pricing Schedule.

2. Detailed Pricing Schedule

2.1. Subject to the provisions in clause 23.2, the following payment plan will apply:

The detailed Pricing Schedule shall be inserted in accordance with the successful Tenderer's submission and the award of the tender, subject to the final outcome of the tender process.

3. PURCO

Where this tender has been facilitated by PURCO, the provisions contained in the RFP Documentation and the Pricing Schedule shall govern and form part of this Agreement, subject to the outcome of the tender process and the award thereof.

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