



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

DRAFT

FAST-MOVING CONSUMER GOODS (FMCG) AGREEMENT

entered into between and by

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

SERVICE PROVIDER DETAILS TO BE INSERTED – Applicable components to be indicated

Component	Description of the Component
Component 1	Groceries – Perishables (fresh fruit and vegetables, eggs etc.), Non-Perishables, Office groceries (such as tea, coffee, milk), frozen products (including vegetables, various types of frozen products-fish/chicken/pastries etc.) and non-alcoholic beverages (soft drinks, fruit juices etc.)
Component 2	Specialised Fresh fruit, vegetables, nuts, spices and deli items
Component 3	Water related beverages (still, sparkling)
Component 4	Water dispensers / coolers – delivery and replenishment/refill of containers/bottles
Component 5	Glass bottled water (still, sparkling)
Component 6	Alcoholic beverages
Component 7	Meat supply (Chicken, Beef, Mutton) - Halaal Butcheries
Component 8	Meat supply (Chicken, Beef, Mutton) - Non Halaal Butcheries
Component 9	Kitchen / Small appliances including but not limited to microwaves, refrigerators/freezers, kettles, toasters, fans
Component 10	Household/kitchen/electrical consumables including but not limited to detergents, toiletries, extension cords, plugs, batteries, packaging, disposables, crockery, kitchen smalls, packaging

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1 APPOINTMENT

- 1.1 The University appoints the Service Provider on a non-exclusive panel basis to supply and deliver the Goods and/or Services described in Annexure B (Scope of Work) and authorised Orders issued by the University from time to time.
- 1.2 The Service Provider accepts the appointment and agrees to provide the Goods and/or Services in accordance with this Agreement.
- 1.3 The University may appoint one or more service providers for any component and may allocate work among panel members at its sole discretion.
- 1.4 No exclusivity, minimum spend, minimum order quantities, guaranteed volumes, guaranteed turnover, guaranteed revenue or guaranteed market share are granted to the Service Provider.

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;
 - 2.1.4 Annexure C: Fees; and the
 - 2.1.5 Order(s).
- 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 Goods and/or Services):
 - 2.2.1.1 The Terms and Conditions;
 - 2.2.1.2 Annexure B: Scope of Work and/or Order(s);
 - 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 Goods and/or Services:
 - 2.2.2.1 Annexure B: Scope of Work and/or Order(s);
 - 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 Goods and/or Services, confirmation in writing by the University that the Goods and/or Services are fit for purpose, of suitable quality and within budget;
- 4.2 “**Agreement**” means collectively, the:
 - 4.2.1 The Terms and Conditions;
 - 4.2.2 Annexure A: Contract Data;
 - 4.2.3 Annexure B: Scope of Work;
 - 4.2.4 Annexure C: Fees;
 - 4.2.5 Order(s); and
 - 4.2.6 any other appendices attached hereto;
- 4.3 “**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;
- 4.4 “**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;
- 4.5 “**Catalogue**” means the Service Provider’s current electronic or printed catalogue reflecting the Goods, pricing and specifications available for purchase;
- 4.6 “**Certificate of Acceptability**” or “**CoA**” means a valid certificate issued in terms of applicable food safety legislation;
- 4.7 “**Commencement Date**” of this Agreement means the date specified in section 6 of Annexure A (Contract Data), notwithstanding Signature Date;
- 4.8 “**Confidential Information**” means information that:
 - 4.8.1 relates to the Disclosing Party’s past, present, or future research, development, business activities, products, services, technical knowledge, and personal information regarding any person; and
 - 4.8.2 either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the other Party that it is claimed as confidential. (As used herein, the Party disclosing Confidential Information is referred to as the “**Disclosing Party**” and the Party receiving the Confidential Information is referred to as the “**Receiving Party**”);
- 4.9 “**Contract Data**” means Annexure A (Contract Data) setting out the specific data of this Agreement which is



	attached to the Terms and Conditions;	4.19	"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;
4.10	"Counterfeit Goods" means any material, component, part, assembly, sub-assembly, product, and any other item forming part of the Goods and/or Services 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 Provider's supply chain;	4.20	"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;
4.11	"CPI" means the average annual rate of change (expressed as a percentage) in the Consumer Price Index for all metropolitan areas as published by Statistics South Africa (or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it), which annual change 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;	4.21	"Key Personnel" means the Personnel who are able and available to fulfil the requirements of this Agreement, who have the required and necessary skills, expertise, qualifications, knowledge, and experience and who are critical for the successful performance of the Goods and/or Services, as named in section 8 of Annexure A (Contract Data);
4.12	"Data Protection Legislation" means the following legislation:	4.22	"Management Meetings" means to meetings between the University and the Service Provider that will take place at least twice within every 12 (twelve) month period;
4.12.1	Protection of Personal Information Act 4 of 2013, as amended or substituted; and	4.23	"Monthly Sales Report" means a detailed summary of sales activities, including the Total Monthly Sales and performance metrics, specific to a given month;
4.12.2	such other legislation that is or may apply to the protection of Personal Information in South Africa;	4.24	"OCM" or "OEM" means the Original Component/Equipment Manufacturer;
4.13	"Defect" means:	4.25	"Order" means an official purchase order issued by the University for Goods and/or Services;
4.13.1	Goods and/or Services which are not fit for purpose for which they were procured and of suitable quality, or not provided on time and within budget; and/or	4.26	"Party" or "Parties" means the University or the Service Provider, individually and collectively, as the context dictates;
4.13.2	a defect, error, omission, failure, or inefficiency that impacts the University's ability to use any specific component of the Goods; and/or	4.27	"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;
4.13.3	non-compliance with Annexure B (Scope of Work) and/or an Order;	4.28	"Personnel" of a Party includes employees, directors, partners, agents, consultants, associates, contractors, sub-contractors, or other representatives of a Party utilised in this Agreement;
4.14	"Documentation" means the documentation, if any, required for the proper and effective use of the Goods and/or Services;	4.29	"Precincts" means any premises owned by or which fall under the management and control of the University and any part thereof;
4.15	"Fees" means the Service Provider's list of fees, expenses, disbursements, rates, and prices (whichever is applicable) for the Goods and/or Services and which is attached to the Agreement as Annexure C (Fees) and/or in an Order;	4.30	"Representative" means the duly authorised person named and designated as such in section 9 of Annexure A (Contract Data) or otherwise in writing by a Party;
4.16	"Force Majeure Event" means the result of an act of God, flood, drought, earthquake, or other natural phenomena; war (declared or undeclared); fire; acts of terrorism; public disaster; governmental enactment, rule, or regulation; or any other cause beyond a Party's reasonable control; excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Service Provider (or sub-contractor) places of business	4.31	"Rules" are the rules, regulations, policies, procedures, practices and standing orders of the University, as amended from time to time;
4.17	"Foreground Intellectual Property" means Intellectual Property created or developed by a Party in the course and scope of this Agreement;	4.32	"Scope of Work" means the detailed scope of work attached to this Agreement as Annexure B (Scope of Work) and/or in an Order;
4.18	"Goods" means the fit for purpose goods described in Annexure B (Scope of Work) and/or in an Order 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;	4.33	"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) and/or in an Order;
		4.34	"Service Provider" means the Party detailed in section 5 of Annexure A (Contract Data);
		4.35	"Services" means the fit for purpose services as described in Annexure B (Scope of Work) and/or in an



	Order and all services complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any Documentation supplied to aid the use of such services;				purpose required by the University on time, within budget, with reasonable care and skill, and in accordance with this Agreement, including but not limited to the Annexure B (Scope of Work) Orders and Service Levels;
4.36	"Signature Date" means the date on which this Agreement is signed by the last Party to do so;	8.1.2			assign Personnel who are sufficiently qualified and competent both in numbers and skill to provide the Goods and/or Services and ensure the due and proper performance of its obligations under this Agreement and/or in an Order;
4.37	"Termination Date" means the date specified in section 6 Annexure A (Contract Data);				
4.38	"Terms and Conditions" means these terms and conditions contained in this document;	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 Goods and/or Services and who will supervise the Personnel responsible for the delivery of the Goods and/or Services, as may be required;
4.39	"Total Sales" refers to the overall invoice value pertaining to the provision of Goods and/or Services, encompassing any ad hoc supplies or other provisions made to the University within the specified month, as per this Agreement;				
4.40	"University" means the University of Witwatersrand, Johannesburg, a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997;	8.1.4			do all that is reasonably necessary within the course and scope of the Agreement and/or in an Order 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;
4.41	"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.	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 Goods and/or Services in a seamless manner.
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.	8.2			The Service Provider will (and will ensure the same from its Personnel), at all times:
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.	8.2.1			act in accordance with the lawful instructions of the University;
6	NATURE OF RELATIONSHIP	8.2.2			display in its relationship and interaction with the University, the utmost good faith;
6.1	The Service Provider will provide the Goods and/or Services to the University as an independent contractor and nothing in this Agreement and/or in an Order will be construed as creating any relationship of agency, employment, partnership, joint venture or similar relationship between the University and the Service Provider.	8.2.3			not exceed the express or implied limits of the authority attendant to its appointment in terms of this Agreement and/or in an Order;
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.	8.2.4			not perform its responsibilities hereunder with actual knowledge that the manner in which such responsibilities are performed would cause the University to be in violation of any applicable laws;
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 Goods and/or Services from the Service Provider in future under this Agreement.	8.2.5			comply with the Rules;
7	RESPONSIBILITIES OF THE UNIVERSITY	8.2.6			provide the Goods and/or Services without causing any interruption or disturbance to the everyday client or student activities, including but not limited to the academic processes such as lectures, study, research, conducting practical classes or writing examinations;
7.1	The University will, subject to the Rules:	8.2.7			inform the University immediately in writing where the Service Provider is unable to fulfil its obligations in terms of this Agreement and/or in an Order;
7.1.1	provide the Service Provider and its Personnel with such access to the Precincts as is reasonably necessary to allow the Service Provider to fulfil its obligations in terms of this Agreement and/or in an Order;	8.2.8			use best endeavours not to engage in activities which would detract from the proper performance of its duties in terms of this Agreement and/or in an Order; and
7.1.2	receive information from the Service Provider; and	8.2.9			ensure that it avoids any appointment or circumstances which may reasonably give rise to a conflict of interest with the University.
7.1.3	pay the Service Provider as provided for in clause 24 of this Agreement and/or in an Order.	8.3			The Service Provider shall not impose a minimum order quantity or minimum order value.
8	RESPONSIBILITIES OF THE SERVICE PROVIDER	8.4			The Service Provider shall accommodate low-volume and single-unit orders.
8.1	The Service Provider will:	8.5			The Service Provider shall only supply against authorised University Orders.
8.1.1	deliver the Goods and/or Services which are fit for				

8.6 The Service Provider shall not substitute products without prior written approval from 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 consult with each other on reasonable notice on matters relating to the Agreement and/or in an Order;

9.1.2 engage with each other to ensure that day-to-day decisions and approvals with respect to the Agreement and/or an Order are made timeously;

9.1.3 oversee the management of the Agreement in line with the provisions of clause 12 below, including oversight of the activities and responsibilities of the Key Personnel;

9.1.4 accept all notices and correspondence relating to the Agreement and/or an Order; and

9.1.5 ensure the execution of any administrative or compliance-related matters under this Agreement and/or in an Order.

9.2 The Service Provider must, on written request by the University, inform the University of the names of its Representative, Key Personnel and any other Personnel authorised to provide and deliver the Goods and/or Services. Where delivery is performed by a third-party transport, logistics or courier provider engaged by the Service Provider, it is sufficient for the Service Provider to identify that provider, and clause 10.11 applies. The University may object on reasonable grounds to any such person or provider being assigned and, upon receipt of such objection, the Service Provider must promptly assign a suitable alternative.

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 Goods and/or Services 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, of the University in danger.

10 SUB-CONTRACTING

10.1 The Service Provider acknowledges that the University prefers to contract directly with all service providers.

10.2 The Service Provider 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 were 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 24 and the Service Provider agrees that liability and responsibility 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 Goods and/or Services to the University.

10.9 The Service Provider must 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 and/or in an Order will be deemed to be a breach by the Service Provider.

10.11 Notwithstanding clause 10.2, the Service Provider may engage third-party transport, logistics or courier providers for the delivery of Goods without obtaining the University's prior written consent in each instance, provided that the Service Provider:

10.11.1 remains fully liable to the University for the acts and omissions of such providers as if they were its own;

10.11.2 ensures that such providers comply with clauses 16 18 and 22 including all cold-chain requirements; and

10.11.3 identifies such providers to the University on written request. The remaining provisions of this clause 10 continue to apply.

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 Goods and/or Services and has the unfettered right to provide them and to pass unencumbered right and/or title to University;



11.2.2	it has the necessary skills, qualifications, expertise, finance, Personnel, capacity, knowledge, experience, resources, equipment, and infrastructure to provide the Goods and/or Services as required by the Agreement;				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 employees' 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;
11.2.3	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;	11.2.8			it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;
11.2.6	ensure that the University has the full benefit of any OCM/OEM warranties that may attach to the Goods and/or Services (i.e. the full flow through warranty including, but not limited to, any support and maintenance which may necessarily extend beyond the duration of this Agreement); it has the requisite authority to make such an undertaking and warranty on behalf of the OCM/OEM; and the Service Provider agrees to pursue any OCM/OEM warranties on the University's behalf if the University so requests;	11.2.9			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 will remain throughout the duration of the Agreement, the employer of all individuals who may work for the Service Provider in providing the Goods and/or Services, and the Service Provider will be solely responsible for the remuneration, insurance, and other obligations in respect of its Personnel.
11.2.7	it will comply with all applicable legislation in performing its obligations pursuant to this Agreement, including but not limited to:	11.3			A breach of any of the undertakings and/or warranties as set out in this Agreement will be deemed to be a material breach of the Agreement entitling the University to terminate the Agreement, subject to the provisions of clause 25. A termination under clause 11 will be without prejudice to any of the University's rights.
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;	11.4			The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Goods and/or Services,
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;	12			CONTRACTUAL MANAGEMENT & ESCALATION PROTOCOL
11.2.7.3	the Basic Conditions of Employment Act 75 of 1997 ("BCEA");	12.1			The Parties agree that the contract management and escalation protocol for this Agreement is set out in Annexure A (Contract Data).
11.2.7.4	the Labour Relations Act 66 of 1995 ("LRA");	12.2			The University reserves the right to monitor supplier performance and adjust work allocation among panel members based on value, service quality, responsiveness, product availability and compliance performance.
11.2.7.5	the Data Protection Legislation; and	13			ORDERING, DELIVERY, AND INSPECTION OF GOODS
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	13.1			<u>Ordering Protocol:</u>
		13.1.1			For the avoidance of doubt, the Service Provider agrees that it will not supply any Order on back-order (that is, where an Order is placed for any Goods that are temporarily out of stock, alternatively, an order for Goods that cannot be fulfilled at the current time due to a lack of available supply). The Service Provider acknowledges and agrees that the University will not accept or pay for any Goods supplied on back-order.
		13.1.2			Where Orders have been placed, the Service Provider agrees that Orders will be delivered at a minimum twice a week, subject to section 2 of Annexure B (Scope of Work) and to any shorter delivery period specified for a particular



	Component. No delivery fee will be levied against the University for delivery of any Order (including, but not limited to, desk drop delivery, office delivery, and storage delivery) unless the University agrees otherwise in writing.		any claim for damages which the University may have, be entitled to cancel all or any portions of the Order by giving written notice to the Service Provider. The University will not be liable to compensate the Service Provider in any way, save that where the University has only partially cancelled the Order, the University will be liable to pay for the portion of the Order not cancelled, which payment will be made in accordance with the terms and conditions herein.
13.1.3	The University or its nominated duly authorised representative will inform the Service Provider in writing before the release date of the Order of the nominated University Personnel responsible for the collection of the Order. The University will provide the Service Provider with the nominated University Personnel's full name, staff card number or identity document number. The Service Provider must not release any Goods until it has obtained written confirmation from the University and validated the University Personnel's details upon collection.	13.3	<u>Inspection and Rejection of Goods prior to and after Delivery:</u>
13.2	<u>Delivery:</u>	13.3.1	The University or its nominated duly authorised representative will at all reasonable times prior to and after delivery of Goods and/or Services be entitled to inspect or test the Goods and/or Services prior to Accepting the Goods and/or Services.
13.2.1	The Service Provider's obligation is to deliver the Goods on or before the date stated in the Order if revised. The Service Provider must:	13.3.2	Should any inspection prior to delivery of the Goods and/or Services, reveal that the Goods and/or Services are, in the reasonable opinion of the University, Defective in any manner, then the University reserves the right to either cancel all or any part of the Order relating to such Goods and/or Services, or to require the Service Provider, at the University's election, to repair, replace or remedy the Defective Goods and/or Services without prejudice to any claim which the University may have for damages, by giving notice to that effect to the Service Provider, and/or demand a refund of all monies paid.
13.2.1.1	securely package supplied Goods in boxes, crates or drums or in a manner or form so as to adequately protect the Goods when transported and stored (unless otherwise stated in the Order, no payment is made for containers or packing materials or their return to the Service Provider);		
13.2.1.2	on despatch of each consignment, send to the University at the address for delivery of the Goods, an advice or delivery note specifying the means of transport, weight, number or volume as appropriate and the point and date of despatch and reference to the relevant Order.	14	DEFICIENCIES IN PERFORMANCE
13.2.2	The Service Provider will not be entitled to give, nor will the University be required to take, partial or late delivery of Goods, unless specified in the Order and/or agreed to by the University in writing.	14.1	A Party that becomes aware of any Defect will notify the other Party within 7 (seven) Business Days after becoming aware of the Defect.
13.2.3	Delivery, including complete delivery and Acceptance, of the Goods by the Service Provider must only be made during normal working hours unless otherwise arranged in advance with the authorised representative of the University. The Service Provider must timeously notify the authorised representative of the University at the place of delivery of the Service Provider's intention to deliver the Goods so as to allow the University to make appropriate arrangements for the off-loading and storage of the Goods.	14.2	Within 7 (seven) Business Days after becoming aware thereof or such other time frame as may be agreed in writing between the Parties, the Service Provider will correct and repair any Defect in the Goods and/or Services which prevents the Goods and/or Services from conforming to the requirements of this Agreement and/or in an Order and performing as warranted, at no cost to the University.
13.2.4	Before or together with the delivery of the Goods, the Service Provider will furnish the University with all documentation containing operating and maintenance instructions for the Goods.	14.3	Where required by the University, the Service Provider will provide the University with replacement Goods and/or Services for the time that the affected Goods and/or Services are being repaired so as to prevent unexpected interruptions in its own day-to-day operations and business.
13.2.5	Should the Service Provider at any time become aware that it will not be able to deliver the Goods on the agreed date of delivery, then it will immediately notify the University in writing of such inability and of an alternative later delivery date by which the Goods will be delivered. It will be within the University's sole discretion whether or not to accept such a later alternative delivery date.	14.4	In the event that the Service Provider is able to correct or repair the affected Goods and/or Services as required, it must correct or replace the Goods and/or Services at no additional cost to the University.
13.2.6	Should the University not accept such later alternative delivery date, or should the Service Provider fail to give such notice, and should the Service Provider fail to deliver all of the Goods on the delivery date relevant to such Goods, then the University will immediately, and without prejudice to	14.5	If the Service Provider is unable or unwilling to correct or repair a Defect or replace the Goods and/or Services within the period as set out in clause 14.2, the University may, in addition to any other rights or remedies it may have at law, by itself or through a third party correct or repair the Defects or re-perform or replace the non-conforming Goods and/or Services at the Service Provider's expense, or require the Service Provider to provide the University with a full refund for all Goods and/or Services which do not conform or perform as warranted or are not fit for purpose for which they were procured.
		14.6	The Service Provider is responsible for the costs of repairing, replacing or correcting nonconforming Goods and/or Services, and for all related costs, expenses and



- damages including, but not limited to, the costs of removal, disassembly, failure analysis, fault isolation, reinstallation, re-inspection, and retrofit of the non-conforming Goods and/or Services 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).
- 14.7 Unless agreed otherwise between the Parties in writing the Service Provider will continue to provide the Goods and/or Services until the University is satisfied that the Goods and/or Services are fit for purpose for which they were procured, of suitable quality and that the Goods and/or Services do not contain any Defects.
- 15 RISK AND TITLE**
- Without prejudice to rights of rejection under this Agreement and subject to clauses 11 and 13, ownership of, including risk in the Goods and/or Services, passes to the University, which becomes the legal owner when the Goods and/or Services are Accepted and paid for in full by the University.
- 16 FOOD SAFETY AND REGULATORY COMPLIANCE**
- 16.1 Where the Service Provider supplies food products, fresh produce, beverages or meat products, the Service Provider warrants that it shall:
- 16.1.1 maintain a valid Certificate of Acceptability;
- 16.1.2 maintain all transportation and storage approvals required by law;
- 16.1.3 maintain cold-chain management systems where applicable;
- 16.1.4 comply with Regulation 638 of 2018 and all applicable food safety legislation; and
- 16.1.5 permit the University to conduct audits relating to food safety compliance.
- 17 LIQUOR LICENSING**
- 17.1 Where alcoholic beverages are supplied under this Agreement, the Service Provider shall maintain a valid liquor licence for the duration of this Agreement.
- 17.2 Failure to maintain such licence shall constitute a material breach.
- 18 UNIVERSITY PRECINCTS AND PROPERTY**
- 18.1 All Personnel, guests, invitees, or any other persons acting on behalf of the Service Provider may only come onto the Precincts for the purposes of fulfilling the Service Provider's obligations under the Agreement and/or in an Order, and for no other purpose, without the prior written consent of the University.
- 18.2 Whenever any of the Service Provider Personnel or any person acting on its behalf is present on the Precincts, the Service Provider will ensure that such person(s) comply with all applicable Rules, including but not limited to:
- 18.2.1 the carrying of weapons, which is strictly prohibited;
- 18.2.2 the wearing of identification tags and the possession and use of access cards, which are required at all times whilst on the Precincts;
- 18.2.3 occupational health, safety, and emergency practices and protocols;
- 18.2.4 the security of the Precincts and the protection of persons and property thereon;
- 18.2.5 the driving and parking of vehicles on or about the Precincts;
- 18.2.6 the utilisation of the University's amenities and facilities;
- 18.2.7 the prohibition or restriction of activities and practices which are actually or potentially detrimental to the interests of the University;
- 18.2.8 any reasonable instructions received from the University; and
- 18.2.9 any and all other applicable requirements prescribed by the University from time to time.
- 18.3 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.
- 18.4 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 a person does not return to the Precincts without the University first having given the Service Provider its written consent. Removal by the Service Provider of such person(s) will not be a ground for any relaxation of the Service Providers' obligations under the Agreement and/or in an Order.
- 18.5 The University reserves the right, at any given time and without prior warning, to search any or all vehicles and baggage and containers entering or exiting the Precincts. The University reserves the right to screen all movable property brought onto the Precincts by the Service Provider or its Personnel.
- 18.6 No gatherings by the Service Provider's Personnel will be allowed in the Precincts.
- 18.7 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.
- 18.8 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 and/or in an Order 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 and/or in an Order the Service Provider undertakes to return any plant, equipment, tools, appliances or other property and items utilised by it to fulfil its obligations in terms of this Agreement and/or in an Order, to the University.
- 18.9 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.
- 18.10 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 utilised by the Service Provider.
- 19 DOCUMENTATION**
- 19.1 The Service Provider must provide the University with all information required in order to enable the University to understand, use and operate the Goods and/or Services and all revisions and updates to such information, from time to time.
- 19.2 The University will 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 Goods and/or Services.

19.3 The right to copy, reproduce and use the Documentation referred to in clause 19.2 will also extend to the University's sub-contractors and third-party suppliers provided that such use is required for the purposes of providing services to the University.

19.4 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.

20 CONFIDENTIALITY

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

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

20.2.1 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;

20.2.2 inform its Personnel of the confidentiality restraint set out in this clause 20 and ensure that they are subject to the same confidentiality undertaking;

20.2.3 restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information in order to provide the Goods and/or Services;

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

20.2.5 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.

20.3 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.

21 INTELLECTUAL PROPERTY

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

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

21.3 Foreground Intellectual Property in the Goods and/or Services, 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.

21.4 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.

21.5 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.

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

21.7 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.

21.8 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

21.9 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.

22 DATA PROTECTION

22.1 In performing its obligations under this Agreement, the Parties shall:

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

22.1.2 not process Personal Information for any purpose other than that which may be required to perform its obligations under this Agreement and ensure that such processing will not place the University in breach of any Data Protection Legislation;

22.2 The Service Provider shall;

22.2.1 only act on the express instructions of the University in collecting, processing, and utilising any Personal Information (and for the avoidance of doubt, this Agreement will constitute such instructions);

22.2.2 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.

22.3 The Service Provider must report to the University orally



	and confirm in writing any actual and/or suspected breaches such as security incidents, unauthorised access, or disclosure of Confidential and/or Personal Information immediately upon discovery of the unauthorised disclosure but in no event more than 2 (two) days after the Service Provider reasonably believes there has been such unauthorised use or disclosure.	24.2.2.3	met the University's requirements in providing the Goods and/or Services; and
		24.2.2.4	provided Goods and/or Services that are fit for purpose for which they were procured, of suitable quality and within budget as set out in Annexure C (Fees) and/or in an Order; and
22.4	The Service Provider must be responsible for establishing and maintaining an information security programme that is designed to:	24.2.2.5	the University has approved the payment of the amounts reflected on an invoice,
22.4.1	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 in transit and at rest;		the University will settle the invoice within 30 (thirty) days after the presentation.
22.4.2	protect against any anticipated threats or hazards;	24.2.3	The University will be afforded the opportunity to dispute an invoice in accordance with the provisions of clauses Error! Reference source not found. and 24.2.5. To ensure clarity, it is hereby clarified that disputed items will encompass those items that are listed on the invoice that are deemed invalid or suspicious, including but not limited to instances of fraud, inaccuracies, Defective Goods and/or Services, or unauthorised billing amounts.
22.4.3	protect against unauthorised access to, disclosure or use of any University information;		
22.4.4	ensure the proper separation of information belonging to the University from any third-party information;	24.2.4	The University will be afforded up to 15 (fifteen) Business Days after receipt of an invoice to identify and raise a dispute in respect of such invoice. The Service Provider will acknowledge receipt of the dispute, investigate the matter, and provide written feedback to the University within 21 (twenty-one) Business Days after receipt of the dispute notice.
22.4.5	where appropriate, ensure the proper disposal of information belonging to the University;		
22.4.6	preserve the integrity of any information belonging to the University and prevent the corruption, destruction, or loss of such information at all times; and	24.2.5	All disputes will be resolved within 60 (sixty) Business Days. During this time the University may withhold payment on such disputed invoices and no interest will be charged until the dispute has been finally resolved. The Parties will use reasonable efforts to resolve the disputes amicably and promptly and any failure to agree will be subject to clause 30.
22.4.7	ensure that all sub-contractors of the Service Provider, if any, comply with the provisions of this clause 22.		
23	RECORDS AND AUDIT		
23.1	The Service Provider will 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.	24.2.6	The University will, once the dispute has been resolved between the Parties, pay the undisputed amount in accordance with clause 24.2.2.
23.2	The Service Provider will 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.	24.2.7	Subject to the provisions of clause 24.2.2, the University will effect payment by direct or electronic deposit into the nominated account of the Service Provider, stipulated on its invoice.
24	FINANCIAL TERMS	24.2.8	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 will 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.
24.1	Fees: The Fees, as set out in Annexure C (Fees) and/or in an Order, consisting of the Service Providers' charges, in respect of the Goods and/or Services, the payment terms and any Fee adjustments, annual increases and/or exchange rate provisions.	24.2.9	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.
24.2	Administration Process:		
24.2.1	The Service Provider must ensure that supporting documents have been approved by University and are annexed to the invoice. Payment will be made against invoices submitted by the Service Provider.	25	BREACH AND TERMINATION
24.2.2	On condition that the University is satisfied that the Service Provider has:	25.1	Should a Party commit a material breach of the Agreement and/or an Order, 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.
24.2.2.1	met its responsibilities as set out in the Agreement; and		
24.2.2.2	provided the Goods and/or Services in accordance with the provisions of Annexure B (Scope of Work) and/or in an Order; and	25.2	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/or an Order, 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.

25.3 If the Service Provider fails to comply with the terms of the Agreement and/or an Order, the University will be entitled, without prejudice to any of its rights in terms of this Agreement and/or an Order or in law to:

25.3.1 withhold all payments due and payable to the Service Provider until such time as the Service Provider has provided the Goods and/or Services to the satisfaction of the University, or

25.3.2 engage a third party to provide the Goods and/or Services which the Service Provider has failed to perform properly or at all, and the cost thereof will be the responsibility of the Service Provider which may be deducted from any amount that may otherwise be due to the Service Provider under the Agreement and/or an Order.

25.4 The University will be entitled to terminate this Agreement and/or an Order with immediate effect, should the Service Provider:

25.4.1 be placed under compulsory or voluntary winding-up or business rescue, to the extent permitted by applicable law; or, being a natural person, commit an act of insolvency, or be provisionally or finally sequestered; or

25.4.2 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

25.4.3 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.

25.5 On termination or expiry of the Agreement and/or an Order for any reason, the Service Provider shall:

25.5.1 immediately deliver to the University all Goods and/or Services whether or not then complete and return all University information (together with all copies thereof). Until they have been returned or delivered, the Service Provider will be solely responsible for their safekeeping and will not use them for any purpose not connected with this Agreement and/or an Order; and

25.5.2 if so, required by the University, subject to the applicable fees as agreed between the Parties in writing, assist the University with the seamless transition of providing of the Goods and/or Services to an incoming supplier. All applicable terms and conditions of this Agreement and/or an Order will apply to such transition services.

25.6 Upon termination of the Agreement, the Service Provider will only be entitled to be paid for the Goods and/or Services 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 Goods and/or Services been provided in full in terms of the Agreement and/or an Order.

25.7 If the University terminates this Agreement and/or an Order 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 Goods and/or Services 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 and/or an Order.

26 LIMITATION OF LIABILITY

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

26.2 The Service Provider hereby indemnifies the University:

26.2.1 for any loss of, or damage to, property of the University or any financial loss suffered by the University, or for claims arising out of loss of University information/data and Personal Information, or any death or injury to any person; and

26.2.2 against all claims of whatsoever nature and howsoever arising which may be made against the University by any Personnel of the Service Provider for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by that Personnel member in the course or scope of that Personnel's employment and whilst being on the Precincts,

26.2.3 in respect of all actions, proceedings, liabilities, claims, damages costs and expenses arising out of the acts and/or omissions of its Personnel, guests, invitees, or any other person acting on behalf of the Service Provider; and

26.2.4 from any liability arising from:

26.2.4.1 any breach of laws or regulations by the Service Provider which is directly applicable to providing the Goods and/or Services;

26.2.4.2 any breach of labour legislation, including but not limited to the BCEA, the LRA, the Employment Equity Act No. 55 of 1998, and payment of any contributions in terms of the Unemployment Insurance Act No. 63 of 2001 and the Unemployment Insurance Contributions Act 4 of 2002 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;

26.2.4.3 any breach of environmental legislation (where applicable);

26.2.4.4 any breach of the Data Protection Legislation and the provisions of clause 22 above;

26.2.4.5 any breach of the Income Tax Act;

26.2.4.6 work-related injury or death caused by the Service Provider, including payment of any contributions or compensation as a result of any injury sustained by any Personnel of the Service Provider in terms of the COIDA and compliance with all safety regulations in terms of the OHSA;

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



26.2.4.8	costs incurred by the University in connection with the enforcement of this clause 26; and/or		that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement and/or an Order.
26.2.4.9	the Service Provider's failure and/or refusal to meet the payment of any levies, contributions, or subscriptions to the applicable institutions in terms of any legislation;	27.3	The Service Provider agrees to provide a certificate of proof of the insurance as set out in clause Error! Reference source not found. , a copy of the policy itself as well as any further documentation as may be reasonably be requested by the University.
26.2.4.10	costs incurred by the University in connection with the enforcement of this clause 26.	27.4	Should the Service Provider fail to effect and/or keep in force to the satisfaction of the University and its insurance brokers any of the insurances it is required to effect and maintain under this Agreement and/or an Order or fails to provide satisfactory evidence and/or copies of policies in terms of clause 27.3, this action would constitute a material breach by the Service Provider.
26.3	The Parties record that the University has insured itself against the acts and omissions of persons acting on its behalf within the course and scope of the University's business. The University's maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.		
26.4	Irrespective of the cause of action and notwithstanding anything else contained in the Agreement, in no event will the Parties be liable to each other for any incidental, consequential, or any other indirect loss or damages, or for any loss of profits, revenues, or for any exemplary or punitive damages, provided that this clause does not apply to, and does not limit, the Service Provider's liability arising from death or personal injury, any food safety incident or product recall, fraud or wilful misconduct, breach of clause 20 or clause 22, or infringement of third-party intellectual property rights.	28	FORCE MAJEURE
27	INSURANCE	28.1	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 ") will promptly notify the other Party in writing specifying:
27.1	The Service Provider warrants that it has and will maintain the following insurance cover, to the extent applicable to the Component(s) for which it is appointed and to the minimum limits of indemnity set out in Annexure A (Contract Data), which includes indemnities for the liabilities stated above and which adequately insures against the liabilities imposed by this Agreement and/or an Order, for the duration of this Agreement and/or an Order:	28.1.1	the nature of the Force Majeure Event;
27.1.1	is registered with, and in good standing in respect of assessments payable to, the Compensation Fund in terms of COIDA, alternatively holds equivalent insurance covering its liability to any Personnel as contemplated in COIDA;	28.1.2	the anticipated delay in the performance of obligations;
27.1.2	public liability insurance cover;	28.1.3	the action proposed to minimise the impact of the Force Majeure Event;
27.1.3	goods in transit insurance covering the Goods until risk in the Goods passes to the University in terms of clause 15;		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.
27.1.4	professional indemnity insurance, but only where the Service Provider provides installation, maintenance, servicing, calibration or advisory Services (including in respect of Component 4 - Water Dispensers and Component 9 - Appliances);	28.2	If the Force Majeure Event continues for 42 (forty-two) Business Days either Party may terminate this Agreement and/or an Order at 7 (seven) Business Days' notice.
27.1.5	general and commercial liability insurance which includes but is not limited to public liability, products liability (including product recall and product contamination cover where the Service Provider supplies foodstuffs, fresh produce, beverages or meat products), bodily injury and death, and property damage;	28.3	In circumstances where a Party is an Affected Party, it will be relieved from any obligation to make payments under this Agreement and/or an Order 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 and/or an Order.
27.1.6	motor vehicle insurance, including third-party liability cover, in respect of all vehicles used to deliver the Goods to or within the Precincts;	29	ADDRESSES AND NOTICES
27.1.7	where the Service Provider hosts an ordering platform for the University or otherwise Processes Personal Information on the University's behalf, cyber risk and data protection liability insurance.	29.1	The Parties choose as their <i>domicilia citandi et executandi</i> 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 Goods and/or Services) the addresses set out in section 10 of Annexure A (Contract Data).
27.2	Where applicable, the Service Provider must ensure	29.2	For purposes of this clause 29, the word "notice" will include a notice regarding a dispute, demand, breach, renewal, or termination.
		29.3	All notices given in terms of this Agreement will be in writing and any notice given by any Party to another (the " addressee ") which:
		29.3.1	is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the addressee's physical <i>domicilium</i> 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;	31.1	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 30 without giving effect to any conflict of laws.
29.3.2	is mailed by pre-paid registered mail from an address within the Republic of South Africa to the postal <i>domicilium</i> 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;	31.2	Entire Agreement
		31.2.1	This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement, and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.
29.3.3	is delivered by email to the addressee's e-mail <i>domicilium</i> , 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 29.3.3.	31.2.2	This Agreement will prevail over, cancel, and supersede all terms and conditions, whether written, oral, or implied, not contained in this Agreement which the Service Provider may seek to incorporate in the Agreement in whatsoever manner. In particular, the Service Provider's standard terms and conditions (including but not limited to any quotations, invoices, or standard supplier contracts) will not apply to this Agreement.
29.4	Either Party will be entitled, from time to time, by giving written notice to the other, to vary its <i>domicilium</i> to any other physical and postal address within South Africa and any other e-mail address.		
30	SETTLEMENT OF DISPUTES	31.3	Variation and Cancellation
30.1	Each Party will inform the other in the event of any perceived or potential dispute occurring.	31.3.1	No amendment, variation, or consensual cancellation of this Agreement, including an amendment to this clause 31.3, and no settlement of any disputes arising under this Agreement, will be binding unless recorded in writing and signed by the Parties.
30.2	Within a period of 14 (fourteen) days after the date on which a dispute arises (" Dispute Date "), the Parties' operational managers 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.	31.3.2	For the purposes of this clause 31.3 "writing" will exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002, as amended or substituted.
30.3	If the Parties are unable to resolve the dispute amicably within 14 (fourteen) days from the Dispute Date, either Party may refer the dispute to the University's Head of Procurement and/or the University's Chief Financial Officer and the Service Provider's duly appointed representative, who will use their best endeavours to resolve the dispute.	31.4	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.
30.4	If the individuals referred to in clause 30.3 are unable to resolve the dispute within a period of 30 (thirty) days after it had been referred to them, either Party may refer the dispute to the University's Vice-Chancellor or Deputy Vice-Chancellor and the Service Provider's Chief Executive Officer or their duly appointed nominees, who will use their best endeavours to resolve the dispute.	31.5	Indulgences
		31.5.1	If either Party at any time breaches any of its obligations under this Agreement, the aggrieved Party:
		31.5.1.1	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	If the individuals referred to in clause 30.4 are unable to resolve the dispute within a period of 30 (thirty) days after it had been referred to them, either Party may submit the matter for mediation. The Parties will refer the matter for mediation to a mediator appointed by agreement between the Parties, or, failing agreement, to a mediator appointed by the Chairman of the Bar Council of South Africa on written request by either Party. The costs of mediation will be borne by the Parties equally. The determination by the mediator will be final and binding and must be carried into effect by the Parties.	31.5.1.2	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	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.	31.6	Counterparts and Electronic Signatures. Notwithstanding clause 31.3.2, 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. Execution and delivery of this Agreement by electronic exchange bearing the copies of a Party's signature will constitute a valid and binding execution and delivery of this Agreement by such Party. Such electronic copies will constitute enforceable original documents and will be considered
30.7	Nothing in this clause 30 will preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.		
31	GENERAL PROVISIONS		



	to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto, the other Party hereto will re-execute an original form thereof and deliver it to the requesting Party.				forthwith without payment to the Service Provider of any damages whatsoever resulting from such termination.
31.7	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.	31.15	Integrity, Transparency and Fair Business Practice.		
31.8	Assignment, cession, and delegation.	31.15.1			The University subscribes to the Department of Trade and Industry (DTI) Broad-based Black Economic Empowerment Codes of Good Practice ("Codes"), and/or any code in the Charter issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 (collectively "B-BBEE Legislation") and has undertaken to measure itself against this standard.
31.8.1	The Service Provider will 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 in terms of the Agreement.	31.15.2			It is the University's strategic intent to continuously improve its B-BBEE contribution level in terms of the Codes, and the Service Provider undertakes to assist the University in this regard.
31.8.2	The University may cede its rights or delegate its obligations to any other party.	31.15.3			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").
31.8.3	On termination of the Agreement for any reason whatsoever, and without prejudice to any of its other rights, the University may be entitled to take cession of any sub-contracts from the Service Provider and enforce any such sub-contracts.	31.15.4			In instances where a QSE or an EME has black/black women ownership that is held through a trust, an employee share ownership programme/scheme or a broad-based ownership scheme, the University reserves the right to request proof of compliance of such a programme/scheme/trust with the requirements of the Code Series 100 of the B-BBEE Legislation. The proof of compliance must be in the form of an ownership verification certificate issued by a SANAS-accredited B-BBEE verification agency.
31.9	Remedies. No remedy conferred by this Agreement is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy will be cumulative and in addition to every other remedy given under this Agreement or under any existing or future law. The election of any one or more remedies by one of the Parties will not constitute a waiver by such Party of the right to pursue any other remedy.	31.15.5			The Service Provider undertakes to notify and provide full details to the University in the event that there is:
31.10	Costs. The Parties will each pay their own costs of negotiating, drafting, preparing, and implementing this Agreement.	31.15.5.1			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;
31.11	Severance. If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality, and enforceability of the remaining provisions 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.	31.15.5.2			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.
31.12	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.	31.15.6			The Service Provider will issue the notice and relevant details required in clause 31.15.1 within 30 (thirty) days from the date the event occurred.
31.13	Successors in title. Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator, or trustee, of a Party will be bound by this Agreement.	31.15.7			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 Legislation.
31.14	Change Control. If at any time while this Agreement is in force the major portion of the assets of the Service Provider is disposed of or the majority shareholding or the business of the Service Provider is transferred or there is a change of management control of the Service Provider, the Service Provider will notify the University forthwith, giving details, whereupon the University will be entitled but not obliged to terminate the Agreement	31.15.8			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 31.15.5, the University reserves the right to terminate this Agreement with immediate effect.
		31.15.9			The Service Provider will 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.	31.15.17.2	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.
31.15.10	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.	31.15.18	The Service Provider will notify the University by written notice as soon as it becomes aware of any breach of this Agreement.
31.15.11	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 will take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.	31.15.19	The Parties agree that a breach by the Service Provider of any of its obligations or warranties under clause 31.15 is a material breach of this Agreement, irrespective of the level of financial loss, deprivation of benefit or exposure to liability to which such breach would or potentially would give rise.
31.15.12	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.	31.15.20	Either Party desiring to issue a news release or advertisement or another form of media publicity in relation to this Agreement will obtain the written consent of the other Party before the release of such publicity, which written consent will not be unreasonably delayed or withheld.
31.15.13	The Service Provider agrees that in connection with the Goods and/or Services to be provided under this Agreement:	31.15.21	The Service Provider (and its Personnel) undertakes and agrees that for the duration of this Agreement and after the termination thereof:
31.15.13.1	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;	31.15.21.1	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
31.15.13.2	to disclose all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement;	31.15.21.2	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.
31.15.14	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 Goods and/or Services furnished under this Agreement is Counterfeit Goods.	31.16	Protection of Students, Staff and Vulnerable Persons.
31.15.15	The Service Provider warrants that only new, unused, authentic, genuine, and legitimate items will form part of the Goods and/or Services supplied to the University.	31.16.1	The Service Provider acknowledges that it may, through its Personnel, have access to University campuses, residences, facilities, students, staff members, visitors and other vulnerable persons.
31.15.16	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.	31.16.2	The Service Provider warrants that it has adopted appropriate policies, procedures and controls to prevent harassment, sexual misconduct, sexual exploitation, abuse, grooming, intimidation and gender-based violence.
		31.16.3	The Service Provider shall ensure that none of its Personnel assigned to perform services under this Agreement has been convicted of any offence contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 where such conviction would reasonably render such person unsuitable for engagement at a higher education institution.
		31.16.4	The Service Provider shall immediately notify the University in writing if it becomes aware of any allegation, investigation, charge or conviction relating to any sexual offence committed by any of its Personnel while performing services under this Agreement.
		31.16.5	The Service Provider shall fully cooperate with any investigation conducted by the University or any competent authority relating to allegations of sexual misconduct, harassment, abuse, exploitation or conduct prohibited in terms of applicable legislation.
31.15.17	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:	31.16.6	The University may require the immediate removal from its premises of any Personnel implicated in conduct contemplated in this clause pending the
31.15.17.1	has been convicted of any criminal offence; and		



outcome of an investigation.

- 31.16.7 Any breach of this clause shall constitute a material breach of this Agreement and shall entitle the University to terminate the Agreement with immediate effect, without prejudice to any other rights or remedies available to it in law.
- 31.17 **Survival of Provisions.** Clauses 11.2.7, 20, 21, 22, 23, 26, 27, 30, 31.1, 31.15 and 31.17 of this Agreement will survive termination.
- 31.18 **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.

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. The classification and type of Agreement is a Fast-Moving Consumer Goods (FMCG) supply and delivery agreement of products that are typically sold quickly and at a relatively low cost, including but not limited to food, beverages, personal care products, and household items. The goal of the contract is to establish a mutually beneficial relationship between the Parties and ensure efficient distribution of the products to end consumers.
- 4.2. The Service Provider acknowledges and agrees that it has been selected as a contracted panel member for the University. The Service Provider understands and accepts that the allocation of work and total contract spend are not guaranteed and are subject to the University's discretion, which may include distributing work among other panel members. The Service Provider further recognises that being awarded this contract does not confer exclusivity or a guarantee of a specific volume of work. The University reserves the right to assign work to any panel member based on its assessment of various factors, such as expertise, capacity, and performance. The Service Provider understands that its participation in the panel of service providers does not guarantee a continuous or predetermined workload. While the University will make every effort to allocate work fairly and equitably among panel members, the actual distribution of assignments will depend on the University's specific needs and priorities at any given time.
- 4.3. No form of exclusivity has been conferred on the Service Provider, nor volume or value guarantee been 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
Termination Date:	To be inserted
Contract Term:	To be inserted years

7. DETAILS OF INSURANCE COVER

To be inserted

8. 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

9. 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

10. CONTRACT MANAGEMENT

- 10.1. The Service Provider and University's relationship managers (as set out in section 10.5) will be each of the Party's primary points of contact for Service Review Meetings.
- 10.2. The relationship managers will meet upon 10 (ten) Business Days' written notice by either Party to:
 - 10.2.1. discuss each Party's performance against the provisions set out in the Agreement;
 - 10.2.2. obtain feedback concerning reasons for such non-performance;
 - 10.2.3. in the case of the Service Provider, ensure that its insurance coverage, B-BBEE status, and legislative requirements/registrations are up to date (including but not limited to notice of any material changes, cancellations or lapses in such documentation) and together with documentary proof of such insurance coverage, B- B-BBEE status, legislative requirements;
 - 10.2.4. to enable a better understanding of pricing and volumes related to the range of products purchased; and
 - 10.2.5. any other issue pertaining to the Party's performance or obligations under the Agreement ("**Service Review Meetings**").
- 10.3. At the Service Review Meetings:
 - 10.3.1. an attendance register will be maintained, and all present and absent representatives will be noted by the University relationship manager;
 - 10.3.2. account status and the applicable management reports will be completed by the Service Provider (at no additional cost to the University) prior to the Service Review Meeting where they will be discussed with the University. The Parties will create and implement an action plan for the proper performance of the Goods and/or Services;
 - 10.3.3. either Party must document all Service Review Meetings and required actions.
- 10.4. Management Meetings:
 - 10.4.1. Management Meetings between the University and the Service Provider will be held to review, amongst other things:
 - 10.4.1.1. The performance of the previous contract year from the Effective Date or from the previous management meeting;
 - 10.4.1.2. Any problems or difficulties arising between the Parties;
 - 10.4.1.3. Important outcomes as documented in the Service Review Meetings;

10.4.2. Minutes for each meeting be drawn up as soon as practicable thereafter by the University; disseminated for comment and approval and filed for record-keeping purposes.

10.5. Relationship Managers:

Service Provider Relationship Manager:	To be inserted
Cell:	To be inserted
E-mail:	To be inserted
University Relationship Manager:	To be inserted
Phone:	To be inserted
E-mail:	To be inserted

11. ESCALATION PROTOCOL

11.1. The Parties will escalate any financial or payment issues, risks and/or actual, potential, envisaged and/or impending delays (collectively referred to here as "**Escalation Triggers**") in accordance with the escalation table set out in section 11.5 below.

11.2. The Parties will work together in good faith to produce a plan listing all the necessary tasks and activities required, or a workaround or a circumvention to address and mitigate such Escalation Triggers.

11.3. The Service Provider must respond to queries logged by acknowledging such queries and providing approximate timelines to the University for resolution within 48 (forty-eight) hours. The Service Provider will resolve queries without undue and unnecessary delay in any event no later than 5 (five) days after receipt of the query

11.4. The Parties will escalate any Escalation Triggers within 5 (five) Business Days ("**Escalation Date**") of that Party becoming aware of such Escalation Triggers which it is not able to resolve.

11.5. Escalation Contacts

The University				
Area of Responsibility	Title	Name	Contact Number(s)	Email Address
Procurement: Operations	Buyer	To be inserted	To be inserted	To be inserted
	Procurement Operations Manager	To be inserted	To be inserted	To be inserted
	Head of Procurement	To be inserted	To be inserted	To be inserted
Payment	Head of Creditors	To be inserted	To be inserted	To be inserted

The Service Provider				
Area of Responsibility	Title	Name	Contact Number(s)	Email Address
To be inserted	To be inserted	To be inserted	To be inserted	To be inserted
To be inserted	To be inserted	To be inserted	To be inserted	To be inserted

12. DOMICILIUM CITANDI ET EXECUTANDI

12.1. Address for Operational Correspondence

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

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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12.2. **Address for the Service of Legal Documents**

The University	
Marked for the attention of:	Director of 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

ANNEXURE B: SCOPE OF WORK

1. BACKGROUND & PURPOSE

- 1.1. The University intends to establish partnerships with providers specialising in the supply and delivery of fast-moving consumer goods, as detailed in this agreement. The goods will be delivered directly to the designated offices within the University's premises for 3 (three) years with the possibility of extending for a further 2 (two) years. The scope of this arrangement encompasses the comprehensive supply and delivery of the following components:

Component	Description of the Component
Component 1	Groceries – Perishables (fresh fruit and vegetables, eggs etc.), Non-Perishables, Office groceries (such as tea, coffee, milk), frozen products (including vegetables, various types of frozen products-fish/chicken/pastries etc.) and non-alcoholic beverages (soft drinks, fruit juices etc.)
Component 2	Specialised Fresh fruit, vegetables, nuts, spices and deli items
Component 3	Water related beverages (still, sparkling)
Component 4	Water dispensers / coolers – delivery and replenishment/refill of containers/bottles
Component 5	Glass bottled water (still, sparkling)
Component 6	Alcoholic beverages
Component 7	Meat supply (Chicken, Beef, Mutton) - Halaal Butcheries
Component 8	Meat supply (Chicken, Beef, Mutton) - Non Halaal Butcheries
Component 9	Kitchen / Small appliances including but not limited to microwaves, refrigerators/freezers, kettles, toasters, fans
Component 10	Household/kitchen/electrical consumables including but not limited to detergents, toiletries, extension cords, plugs, batteries, packaging, disposables, crockery, kitchen smalls, packaging

2. THE UNIVERSITY'S OBJECTIVES

The University's objective is to ensure that the required fast-moving consumer goods are available when needed. This supports the success imperatives related to the University's academic programme.

3. SCOPE OF WORK

- 3.1. The Service Provider must:
- 3.1.1. supply and deliver items. Delivery must be within the specified timeframes indicated in the order or email request and made to the respective location specified in the University's order document and as agreed with the service provider. However, note that any order received by the successful service provider before 12H00 noon on the day before its scheduled delivery must be included in that scheduled delivery.
 - 3.1.2. ensure that delivery is to the desk or offices located within the University's Braamfontein and Parktown precincts and may also be located within public or teaching hospitals within the Johannesburg region. Refer to <https://www.wits.ac.za/maps/> for the University's Braamfontein and Parktown Precincts.
 - 3.1.3. provide to the University with its tax invoices each week with the applicable matching orders referenced. The University will not pay for Goods supplied without the applicable matching authorised Order.
 - 3.1.4. swap out Defective, damaged, or expired items at no additional cost to the University. Goods must not be expired when delivered and should have a reasonable lifespan. For example, items such as milk, soft drinks, water, biscuits, and tinned/canned foods should not expire within the next 3 (three) months. However, it is reasonable to expect items such as fresh fruit and vegetables will have a shorter lifespan (for example, a few days).
 - 3.1.5. acknowledge and accept that there is no minimum order requirement.
 - 3.1.6. allow for the delivery of low volume or single unit request i.e. no minimum order quantity required for any of the items required



- 3.1.7. ensure that where appliances are requested, these items are under warranty and must be replaced (including but not limited to small appliances), repaired or refunded if defective within the OEM warranty period. Appliances must be fit for purpose both post-delivery and during their expected useful life.
- 3.1.8. only supply and deliver the required item(s) as specified in the Order.

4. COMPLIANCE & LEGISLATIVE REQUIREMENTS

- 4.1.1. The Service Provider must diligently and continuously comply with all relevant legislation and regulations applicable to this Agreement, maintaining a high standard of adherence with zero tolerance for non-compliance. This includes, but is not limited to, ensuring the continuous validity of all necessary certifications, such as tax clearance and compliance certificates, COIDA, certificates of acceptability for the provision of food-related items, liquor licenses for the provision of alcoholic beverages, as required by the current legal framework, and maintaining compliance with VAT regulations.
- 4.1.2. Where a successful service provider has been appointed for components 1,2,3,4,5,7 or 8, the successful service provider must ensure that it has a valid certificate of acceptability for its premises during the duration of the agreement. This includes the CoA for the storage area. To note an applicable CoA for transportation for food products must be included where relevant for Component 1,2,3,4,5,7 and 8.
- 4.1.3. Where a successful service provider has been appointed for component 1,2,3,4,5,7 or 8 the successful service provider must ensure that they are fully compliant with Regulation 638 of 2018 for the duration of the contract. The University reserves the right to conduct food safety audits and document review.

5. DELIVERY AND DELIVERY SCHEDULE

- 5.1. The delivery periods are indicated below:
 - 5.1.1. The Service Provider must deliver the Goods at minimum twice a week to the specified delivery location within the Precincts on the date(s) specified by the University, in accordance with the instructions set out in each order unless agreed in writing by the University's representative. Weekly delivery may be considered only for low-volume orders. The University's respective buyer will communicate this to the Service Provider.
 - 5.1.2. Any Order received by the Service Provider before 12H00 noon on the day before its scheduled delivery must be included in that scheduled delivery.
 - 5.1.3. Emergency Orders will be handled on a case-by-case basis if the weekly delivery time will not meet the University's delivery timeframes, and this will be for exceptional circumstances. In-store collection protocol may then be considered.
 - 5.1.4. Additional delivery requirement for Component 2: Fresh food items such as fruit and vegetables must be delivered within 24 hours of placing an order, and daily deliveries must be accommodated if required.
- 5.2. In-store collection will only be allowed on condition that the following protocol is complied with:
 - 5.2.1. The duly authorised University buyer has permitted and confirmed in writing the i) purchase order details and ii) the University staff member's details, including staff number and identification information, to the Service Provider's duly authorised representative. In-store collections must fully match the authorised order, and no additions or amendments will be allowed upon collection.
 - 5.2.2. The Goods will be considered received by the University only when a duly authorised University representative confirms and signs the Service Provider's delivery note.

6. ACCEPTANCE

- 6.1. The Goods must conform to the related specifications or other related requirements outlined in the Order.
- 6.2. The Service Provider's Goods and/or Services will be considered accepted by the University when:
 - 6.2.1. The Goods and/or Services meet the requirements as set out in the Order; and
 - 6.2.2. The Goods and/or Services provided by the Service Provider are fit for purpose; and
 - 6.2.3. All Goods and/or Services have been formally accepted in writing and signed off by the University.

7. CONTRACTUAL MANAGEMENT

- 7.1. Formal meetings may be called during the course of the year. The University may request reports from the Service Provider to better



understand pricing and volumes related to the range of products purchased. The Service Provider's performance will be assessed annually, with monitoring during the Agreement period.

- 7.2. The related discounts/rebates will be effective for the contract period. Pricing will be monitored for market acceptability.

8. SERVICE LEVELS

- 8.1. The Service Provider agrees that all requests for quotation will be responded to within 2 (two) Business Days.

- 8.2. The Service Provider must at all times adhere to the delivery requirements as set out in section 5.

9. FINANCIAL ARRANGEMENTS

- 9.1. Prices of Goods must be as specified in the quotation and Order. The prices charged to the University must not exceed the in-store price of the respective Goods.
- 9.2. The Service Provider must identify any opportunities for cost savings for the University, including allowing the University to benefit from any discounts that the Service Provider has received or has agreed to.
- 9.3. The University will benefit from any rebate programmes that the Service Provider has implemented, proposed or initiated over the duration of the Agreement.
- 9.4. The Service Provider agrees that all scheduled deliveries as per the Agreement are at no cost to the University unless the University has agreed to a particular delivery fee and has agreed to incur such costs in writing.
- 9.5. The University may, at its discretion, process payments through weekly payment runs. However, nothing in this Agreement obliges the University to make payment earlier than the period stipulated in clause 24.2.2.

ANNEXURE C: FEES

1. TOTAL CONTRACT SPEND

- 1.1. The Service Provider must maintain accurate and detailed records of all transactions and expenditure relating to this Agreement, including invoices, delivery notes and supporting financial documentation, and must make those records available for inspection on written request by the University in accordance with clause 23. The University's relationship managers are responsible for monitoring the University's aggregate expenditure against the approved total contract value.
- 1.2. The Service Provider must provide a Monthly Sales Report upon request from the University's representative, detailing the expenditure incurred under this Agreement if requested to do so by the University. The reports must include a breakdown of expenses, highlight any significant or exceptional items and provide any requested details. The Monthly Sales Report must be submitted to the University's relationship managers as set out in section 10.5 of Annexure A (Contract Data).
- 1.3. The University does not guarantee any minimum or maximum level of expenditure under this Agreement. The Service Provider will have no claim against the University in respect of any Goods and/or Services supplied otherwise than pursuant to a duly authorised Order, and the University will not be liable for payment in respect of any such supply. Any increase in the total contract value beyond that approved by the University requires a written variation signed by an authorised signatory of the University before the additional Goods and/or Services are supplied.
- 1.4. The Service Provider confirms that the pricing covers all activities associated with the Annexure B (Scope of Work). Any adjustment agreed to between the Parties must be agreed to in writing and signed by the authorised representatives of each Party. Accordingly, the Service Provider must not unilaterally increase prices unless it communicates such increases to, and the University agrees to, in writing. Furthermore, the Service Provider must give the University reasonable notice of any pricing changes before the proposed effective date.

2. CATALOGUE

- 2.1. Where the Service Provider publishes a catalogue, it must provide the University with an electronic copy at least 3 (three) Business Days before the catalogue pricing takes effect. Each catalogue must state the date its pricing takes effect and the date it expires. The electronic copy must be delivered to the University's relationship managers as set out in section 10.5 of Annexure A (Contract Data).
- 2.2. The Service Provider will not charge the University any amount exceeding the prices specified in the applicable catalogue for the period during which that catalogue is stated to be valid. Where an item is offered at a promotional or special price during that period, whether in-store, online or otherwise, the University is entitled to the lower price. Any additional charges or price increases require the University's prior written agreement.
- 2.3. In the event that the Service Provider charges the University an amount exceeding the prices specified in the applicable catalogue or engages in any price discrepancy, the provisions set out in clause 24.2 (Administration Process) and section 5 (Pricing Compliance & Protocol) of this Annexure C will apply.
- 2.4. The Service Provider hereby agrees that the University will have full entitlement to any and all discounts and benefits offered in the catalogue or in any promotional materials advertised by the Service Provider (this includes, but is not limited to, any discounts offered by OEMs or the Service Provider's vendors), without limitation or restriction.
- 2.5. The University will be entitled to avail itself of these discounts and benefits at its discretion, and the Service Provider will not impose any conditions or requirements that would hinder or restrict the University's access to these discounts and promotions.
- 2.6. In the event that the University incurs any unwarranted or additional charges, the Service Provider will, at the sole discretion of the University, be required to promptly remedy the situation by either issuing



a full refund or providing a credit note.

3. QUOTE VALIDITY & FEE ADJUSTMENTS

- 3.1. The prices and terms outlined in a quote must be valid for a minimum period of 7 (seven) calendar days from the date of issuance, or for such longer period as the Service Provider states in the quote. Each quote must state its expiry date. After expiry, the quote will lapse, and prices or terms may change. Catalogue item pricing must remain valid up to the catalogue expiry date.
- 3.2. Price escalation for Goods and/or Services will only be considered under exceptional circumstances and will require a detailed breakdown of cost components and their percentage contribution to the total selling price.
- 3.3. The University retains the right to accept or reject any proposed price increases.
- 3.4. Retroactive price increases are not permissible.
- 3.5. Where the Goods are imported, and the price is directly affected by movements in the British Pound Sterling, Euro or United States Dollar against the South African Rand, either Party may request an adjustment to the price of those Goods, provided that:
 - 3.5.1. the exchange rate movement exceeds 10% (ten percent) measured against the South African Reserve Bank published mid-rate applying on the date of the quote or the date on which the price was last adjusted, whichever is later;
 - 3.5.2. the Service Provider provides written notice and supporting evidence of the movement and its effect on the price at least 30 (thirty) days before the proposed adjustment takes effect;
 - 3.5.3. the University may validate the adjustment and request further evidence; and
 - 3.5.4. any corresponding decrease exceeding the same threshold is passed on to the University on the same basis. This section does not apply to locally sourced Goods.
- 3.6. The prices for the Goods and/or Services must include VAT, all applicable taxes, and the required mandatory insurance.

4. REBATE (IF APPLICABLE)

- 4.1. During the term of this Agreement, if either Party wishes to explore the possibility of implementing a rebate clause, it will notify the other Party in writing. Upon receiving such notification, both Parties will engage in good faith discussions and negotiations to determine the terms and conditions of the rebate clause.
- 4.2. The negotiation process shall include, but not be limited to, the following:
 - 4.2.1. Identification of the purpose and objectives of the rebate clause.
 - 4.2.2. Determination of the eligibility criteria for the rebate.
 - 4.2.3. Establishment of the calculation method and percentage for the rebate.
 - 4.2.4. Specification of any limitations or conditions for the rebate.
 - 4.2.5. Identification of any reporting requirements or documentation necessary to claim the rebate.
 - 4.2.6. Determination of the duration and commencement date of the rebate clause.

- 4.2.7. Consideration of any potential impacts or implications of the rebate clause on other provisions of this Agreement.
- 4.2.8. Resolution of any other matters deemed necessary for the successful implementation of the rebate clause.
- 4.3. If the Parties reach a mutual agreement on the terms of the rebate clause through negotiations, the agreed-upon terms will be recorded in writing and shall form an integral part of this Agreement. Both Parties will sign the written addendum to indicate their acceptance and commitment to the rebate clause.

5. PRICING COMPLIANCE & PROTOCOL

- 5.1. The Service Provider acknowledges and recognises the University's commitment to ensuring that the Goods and/or Services provided under this Agreement consistently deliver value for money. Accordingly, the Service Provider will consistently act in utmost good faith towards the University when determining the pricing of these items. The Service Provider hereby undertakes that all pricing will be fair, market-related, and will reflect the best value for money, while strictly avoiding any anti-competitive practices. The provisions of clause 23 and clause 24.2 apply.
- 5.2. The Service Provider warrants and guarantees that the fees charged for the provision of Goods and/or Services will be in line with prevailing market rates and will not exceed industry-related price(s). The Service Provider hereby agrees to grant the University unrestricted access to its records and accounts and to provide duly authorised copies of such records and accounts, as may be reasonably required and agreed upon by both Parties, to facilitate inspections and audits. The purpose of such inspections and audits will include, but not be limited to, the verification of the accuracy of all fees charged to the University and the review of any books of account maintained by the Service Provider in connection with the provision of the Goods and/or Services. The Service Provider will promptly comply with any request made by the University during the term of this Agreement and for a period of 5 (five) years following its expiry, providing the University and/or its designated internal and external auditors with access to the required records and accounts, as necessary for the proper performance of their duties and obligations.
- 5.3. In the event that the University discovers an overpayment made to the Service Provider for the Goods and/or Services rendered under this Agreement, the University will promptly notify the Service Provider of such overpayment. Upon receipt of such notification, the Service Provider agrees to promptly take the necessary actions to rectify the overpayment. The Service Provider must reimburse the University for the full amount of the overpayment within 10 (ten) days of receiving the notification. The reimbursement will be made electronically to the University, and the Service Provider will provide the University with any necessary documentation or evidence to support the reimbursement. If the overpayment is not rectified within the specified timeframe, the University reserves the right to offset the overpayment against any outstanding payments owed to the Service Provider under this Agreement. Alternatively, the University may request the Service Provider to issue a credit note or make other appropriate arrangements to rectify the overpayment. The Service Provider understands and agrees that the University may deduct the overpayment amount from any future payments due to the Service Provider under this Agreement, without prejudice to any other rights or remedies available to the University under applicable laws or this Agreement. The Service Provider agrees to cooperate fully with the University in investigating and resolving any overpayment issues, including providing any requested documentation, records, or other information reasonably required by the University to resolve the matter. This clause will survive the termination or expiration of this Agreement and remain in effect until the overpayment has been fully rectified to the University's satisfaction.