



DRAFT

MEMORANDUM OF AGREEMENT

SERVICES AGREEMENT

entered into between and by

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

SERVICE PROVIDER DETAILS TO BE INSERTED

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1 APPOINTMENT

- 1.1 The University requires the Service Provider to provide professional photographic services and related services of exceptional quality to the University for its Graduands, and/or invitees at no cost to the University, for its graduation, inauguration, and other ceremonies as described in Annexure B (Scope of Work).
- 1.2 The Service Provider has expertise and specialises in the in the provision of photographic services for Universities, Technikons and other institutions.
- 1.3 The University appoints the Service Provider on a non-exclusive basis, to provide the Services and to perform all functions complementary and ancillary thereto described in Annexure B (Scope of Work). For the avoidance of doubt the Service Provider acknowledges that no form of exclusivity, nor volume, or value guarantee is being granted by the University.
- 1.4 The Service Provider accepts the appointment and therefore the Parties agree to bind themselves to the terms and conditions contained in this Agreement.

2 STRUCTURE OF THE AGREEMENT

- 2.1 This Agreement consists of:
- 2.1.1 The Terms and Conditions;
- 2.1.2 Annexure A: Contract Data;
- 2.1.3 Annexure B: Scope of Work;
- 2.1.4 Annexure C: Pricing Schedule; and
- 2.1.5 Annexure D: Code of Conduct.
- 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 Services):
- 2.2.1.1 The Terms and Conditions;
- 2.2.1.2 Annexure B: Scope of Work;
- 2.2.1.3 Annexure A: Contract Data;
- 2.2.1.4 Annexure D: Code of Conduct; and then
- 2.2.1.5 Annexure C: Pricing Schedule.
- 2.3 In respect of the provisions detailing the Services:
- 2.3.1.1 Annexure B: Scope of Work;
- 2.3.1.2 The Terms and Conditions,
- 2.3.1.3 Annexure A: Contract Data;
- 2.3.1.4 Annexure D: Code of Conduct; and then
- 2.3.1.5 Annexure C: Pricing Schedule.

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 “**Agreement**” means collectively, the:
- 4.1.1 The Terms and Conditions;
- 4.1.2 Annexure A: Contract Data;
- 4.1.3 Annexure B: Scope of Work;
- 4.1.4 Annexure C: Pricing Schedule; and
- 4.1.5 Annexure D: Code of Conduct; and
- 4.1.6 any other Annexures attached hereto;
- 4.2 “**Annexures**” means annexures to this Agreement;
- 4.3 “**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;
- 4.4 “**Commencement Date**” of this Agreement means the date specified in section 6 of Annexure A (Contract Data), notwithstanding Signature Date;
- 4.5 “**Commercially Reasonable Efforts**” means, with respect to the Services, the reasonable efforts used to provide the Services in terms of this Agreement, as expeditiously as possible. This excludes:
- 4.5.1 taking any actions that would, individually or in the aggregate, cause the University to incur costs, or suffer any other detriment, out of reasonable proportion to the benefits accruing in terms of this Agreement;
- 4.5.2 changing the Party’s business strategy;
- 4.5.3 disposing of any significant assets of the Party;
- 4.5.4 taking any action that would violate any law or order to which the Party is subject;
- 4.5.5 taking any action that would imperil the Party’s existence or solvency; or
- 4.5.6 initiating any litigation or any dispute resolution mechanism.
- 4.6 “**Confidential Information**” information that:
- 4.6.1 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
- 4.6.2 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");		
4.7	"Contract Data" means Annexure A (Contract Data) setting out the specific data of this Agreement which is attached to the Terms and Conditions;		
4.8	"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;	4.16	"Inauguration Ceremonies" means the formal event that marks the official commencement of the term of the University's Vice-Chancellor or Chancellor;
		4.17	"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;
4.9	"Data Protection Legislation" means the following legislation:	4.18	"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, logos, designs, copyright and plant breeders' rights;
4.9.1	Protection of Personal Information Act 4 of 2013, as amended or substituted; and	4.19	"Key Personnel" means the Personnel who have the required and necessary skills, expertise, qualifications, knowledge, and experience and who are critical for the successful performance of the Services, as named in section 8 of Annexure A (Contract Data);
4.9.2	such other legislation that is or may be applicable to the protection of Personal Information in South Africa;	4.20	"Party" or "Parties" means the University or the Service Provider individually and collectively, as the context dictates;
4.10	"Defect" means:	4.21	"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;
4.10.1	A Service that is not fit for the purpose for which it was procured, not of suitable quality, or not provided on time and within budget; and/or	4.22	"Personnel" of a Party includes employees, directors, partners, agents, consultants, associates, contractors, sub-contractors, or other representatives of a Party;
4.10.2	A defect, error, omission, failure, or inefficiency that impacts the University's ability to use any specific component of the Service; and/or	4.23	"Precincts" means any premises owned by or which fall under the management and control of the University and/or any part thereof;
4.10.3	A defect, error, omission, failure, or inefficiency in the Service that impacts the technical performance of the University's Information Technology System(s); and/or	4.24	"Protection Services" means the University's security division;
4.10.4	Non-compliance with Annexure B (Scope of Work);	4.25	"Representative" means the duly authorised person designated as such in section 9 of Annexure A (Contract Data);
4.11	"Designated Areas" means the areas on the Precincts allocated to the Service Provider or as identified by the University's Representative from time to time for the provision of the Service;	4.26	"Rules" are the rules, regulations policies, procedures, practices and standing orders of the University, as amended from time to time;
4.12	"Force Majeure Event" means the result of an act of god, flood, drought, earthquake, or another natural phenomenon; war (declared or undeclared); fire; acts of terrorism; public disaster; governmental enactment, rule, or regulation; or any other cause beyond a Party's reasonable control; excluding industrial action of whatever nature or cause (e.g. strikes, lockouts and similar);	4.27	"Scope of Work" means the detailed scope of work attached to this Agreement as Annexure B (Scope of Work);
4.13	"Graduand" means a student registered at the University and who is about to receive an academic degree;	4.28	"Services" means the fit-for-purpose services as described in Annexure B (Scope of Work) and all services complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any documentation supplied to aid the use and/or implementation of such services;
4.14	"Graduation Ceremonies" means the series of graduation ceremonies conferring degrees to its Graduands and/or invitees which is hosted by the University;	4.29	"Service Provider" means the Party detailed in section 4 of Annexure A (Contract Data);
4.15	"Great Hall" means the hall where the Graduation Ceremonies are hosted, and which is located within Robert Sobukwe Block on the University's East	4.30	"Signature Date" means the date on which this Agreement is signed by the last Party to do so;
		4.31	"Termination Date" means the date specified in section 6 Annexure A (Contract Data);
		4.32	"Terms and Conditions" means these terms and

	conditions contained in this document;	7.1.3	provide the Service Provider with an estimate of the number of Graduation Ceremonies to be presented by it for the following year, an estimate of the number of Graduands, and/or invitees who attend the Graduation Ceremonies, and its planned/upcoming Inauguration/other Ceremonies;
4.33	"University" means the University of the Witwatersrand, Johannesburg; a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997;		
4.34	"VAT" means the value-added tax levied by the South African Revenue Services on the supply of goods and services in terms of the Value Added Tax Act 89 of 1991.	7.1.4	subject to clauses 8.2.15, 8.2.16 and 14 of this Agreement the University grants to the Service Provider the right to bring onto the Precincts, equipment (including props, temporary sets, lighting, and cameras) stock, and ancillary equipment necessary for purposes of providing the Services. The University will not be liable for any damage to the Service Provider's stock, equipment, assets and/or ancillary equipment brought onto or stored on the Precincts, which has been caused by, rain, wind, hail, short circuiting in an electrical, floods, fire, riots or any other cause whatsoever; and
5	TERM		
5.1	This Agreement commences on the Commencement Date and terminates on the Termination Date unless terminated earlier as provided in this Agreement.		
5.2	Notwithstanding the provisions of clause 5.1 above, the University may terminate this Agreement on 1 (one) month's written notice to the Service Provider.		
6	NATURE OF RELATIONSHIP	7.1.5	receive information from the Service Provider.
6.1	The University has appointed the Service Provider as the preferred supplier to provide professional photographic services and related services at no cost to the University as described in Annexure B (Scope of Work).	8	RESPONSIBILITIES OF THE SERVICE PROVIDER
6.2	The Service Provider acknowledges and accepts that the University exercises no control over its Graduands, and/or invitees with regard to the choice of supplier of professional photographic services. The Service Provider accordingly acknowledges and accepts that the University in appointing the Service Provider as a preferred supplier is giving no undertaking, promise and/or guarantee to the Service Provider that it will be the exclusive supplier of professional photographic services to the Graduands, and/or invitees.	8.1	The Service Provider must:
6.3	The Service Provider acknowledges and accepts that the Graduands, and/or invitees are under no obligation to purchase the professional photographs taken at the Graduation, Inauguration or other ceremonies from the Service Provider.	8.1.1	provide the Services which includes supplying all necessary resources to provide the Services, which are of the finest quality, and which are fit for the purpose required by the University, on time, within budget, with reasonable care and skill, and in accordance with Annexure B (Scope of Work);
6.4	The Service Provider will provide the Services to the University as an independent contractor. Nothing in this Agreement will be construed as creating any relationship of agency, employment, partnership, joint venture or similar relationship between the University and the Service Provider.	8.1.2	undertake to perform its obligations in terms of this Agreement in accordance with ethical standards as may be reasonably expected from experts in the particular field;
6.5	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.	8.1.3	assign Personnel who are sufficiently qualified and competent both in numbers and skill to provide the Services and ensure the due and proper performance of its obligations under this Agreement;
6.6	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 Services from the Service Provider under this Agreement.	8.1.4	designate a Representative, who will be responsible for liaising with the University's Representative at all times in respect of the provision of the Services, and who will supervise the Personnel responsible for the delivery of the Services;
7	RESPONSIBILITIES OF THE UNIVERSITY	8.1.5	do all that is reasonably necessary within the course and scope of the Agreement to prevent or minimise the risk of loss or damage to University property, including its Information Technology System, the University's reputation and injury to persons;
7.1	The University will, subject to the Rules:	8.1.6	co-operate and consult with other suppliers of the University, should it be necessary for purposes of ensuring that the Services are provided in a seamless manner.
7.1.1	provide the Service Provider and its Personnel with such access to the Precincts and/or Information Technology Systems (where applicable) as may be reasonably necessary to allow the Service Provider to fulfil its obligations in terms of this Agreement;	8.2	Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider must:
7.1.2	allocate the Designated Area, for the exclusive use of the Service Provider for purposes of providing the Services in terms of this Agreement;	8.2.1	use technologically advanced photographic equipment of good quality and superior grade materials to ensure that its photographs are of the finest quality and fit for purpose;
		8.2.2	take the photographs of Graduands, and/or invitees on off the stage during the Graduation, Inauguration, or other Ceremony in a professional manner without disturbing the proceedings

- 8.2.3 at its own cost clearly display and advertise its photographic packages, price lists and clearly state the procedures for taking of photographs;
- 8.2.4 after the completion of each Graduation Ceremony and at the University's request provide the University with a copy of and/or statistics of all orders placed by its Graduands, and/or invitees who have attended the Graduation Ceremonies and who have engaged the Service Provider to provide the Services. The Service Provider acknowledges that the placing of orders and the payment thereof occurs in terms of a separate agreement between the Service Provider and the Graduands, and/or invitees. The Service Provider undertakes to ensure that all monies for the Services are recouped from the Graduands, at its own cost. The Service Provider acknowledges that it will not have any claim against the University in this regard;
- 8.2.5 Studio Requirements**
- 8.2.5.1 The Service Provider must:
- 8.2.5.1.1 have an established photographic studio geographically accessible to Graduands, and/or invitees which includes but is not limited to the following:
- 8.2.5.1.2 a fireproofed, secure storage environment to store its administrative database, digital images and back-ups thereof after the Graduation, Inauguration, or other Ceremonies for the duration of the Agreement;
- 8.2.5.1.3 have qualified administrative staff to assist with the handling of queries, taking of orders and the receipt of payment;
- 8.2.5.1.4 a dedicated complaints department with suitably trained personnel to assist Graduands with complaints and queries, suitably qualified administrative personnel, to manage incoming phone calls, the acceptance and delivery of orders, filing and maintenance of an administrative as well as digital database, general reception and any activities complementary and ancillary thereto; and
- 8.2.5.1.5 an accurate and technologically advanced information technology (IT) system to effectively capture, store and back-up all administrative and digital data.
- 8.2.5.1.6 provide "on site" assistance prior to the Graduation Ceremonies for the provision of the Services;
- 8.2.5.1.7 set up a mobile studio at the Graduation Ceremonies with sufficient stock and equipment which is of high standard and sufficient suitably trained Personnel to assist Graduands, and/or invitees who require such services before and after the Graduation Ceremonies;
- 8.2.5.1.8 make adequate facilities available to the Graduands, and/or invitees for the receipt of cash, or credit/debit card and electronic funds transfer, and or any other mobile payment, apps/ payments solutions;
- 8.2.6 comply with all the Services specifications as described in Annexure B (Scope of Work);
- 8.2.7 provide of an after-sales service which includes but
- 8.2.8 make the photographs available to Graduands, and/or invitees within 30 (thirty) days after the conclusion of a series of Graduation, Inauguration or other Ceremonies and post/courier the photographs to the Graduands, and/or invitees at its own cost;
- 8.2.9 at the University's request and at no cost to the University furnish the University with copies of photographs of the University's VIP guests;
- 8.2.10 at the University's request and at no cost to the University, provide the University with an electronic copy of all the digital images taken at all of the previous year's Graduation Ceremonies on the dates and times described in Annexure B (Scope of Work);
- 8.2.11 develop and maintain a safe and secure reliable data base of digital images and an administrative data base that performs consistently without causing problems, and that that would allow:
- 8.2.11.1 the safe and secure filing and storage of digital images after the Graduation Ceremonies for the duration of this Agreement;
- 8.2.11.2 processing of orders for the professional photographs by Graduands or the University at a later stage;
- 8.2.12 ensure that all stock and/or equipment bought or provided for the performance of the Services are of a high standard and quality;
- 8.2.13 ensure that the equipment brought or provided for the performance of the Services complies with all applicable legal safety regulations and legislation and that a safety and technical inspection of these has been carried out by a duly qualified person;
- 8.2.14 provide the University with satisfactory proof that in providing the Services, the applicable safety and emergency standards have been complied with;
- 8.2.15 ensure that the photographic and ancillary equipment brought or provided for the performance of the Services is at all times adequately protected and insured,. The Service Provider agrees to assume all risk and liability therefor, and acknowledges and accepts that it will not have a claim for damages against the University in the event of loss or theft of whatever nature;
- 8.2.16 In the event of the Service Provider storing photographic and ancillary equipment on the Precincts, the Service Provider:
- 8.2.16.1 agrees to assume all risk and liability therefor;
- 8.2.16.2 will ensure that it is at all times adequately protected and insured; and
- 8.2.16.3 will not have a claim for damages against the University in the event of loss or theft of whatever nature.
- 8.2.17 at its own cost supply to the University purchasing/hire forms ("Order Form"), which the University will distribute to its Graduands, and/or invitees together with their graduation information packages. For the avoidance of doubt it is recorded that the cost of printing of such forms will be borne



	by the Service Provider and the University accepts no liability for incorrect information on these forms and for any information supplied by its Graduands, and/or invitees to the Service Provider;		proper performance of its duties in terms of this Agreement; and
8.3	undertake to ensure that:	8.7.10	ensure that it avoids any appointment or circumstances which may reasonably result in any conflict between its interests and those of the University.
8.3.1	the Order Form does not contain additional charges, bank charges or any other charges associated with the provision of the Services;	9 PERSONNEL	
8.3.2	the Order Form will be submitted to the University's Representative for approval within 10 (ten) Business Days of the Signature Date;	9.1	The Parties will each nominate a Representative responsible for the overall management, execution, and oversight of this Agreement, who will:
8.3.3	any amendments to the Order Form must be submitted to the University's Representative for approval in writing.	9.1.1	on reasonable notice, consult with each other on matters relating to the Agreement;
8.4	subject to the provisions contained in clause 19.6, provide the University with the new price lists, if applicable, at least 30 (thirty) days before the anniversary of the Commencement Date ;	9.1.2	engage with each other to ensure that day-to-day decisions and approvals with respect to the Agreement are made timeously;
8.5	allow access to designated members of the University's Representative, to its premises and equipment at any reasonable time in order for him/her to ascertain whether the requirements prescribed by the University are being complied with;	9.1.3	oversee the contract management of the Agreement including oversight of the activities and responsibilities of the Personnel and Key Personnel;
8.6	not use the Designated Areas or allow it to be used for any purpose other than for the provision of the Service;	9.1.4	accept and acknowledge all notices and correspondence relating to the Agreement; and
8.7	The Service Provider will (and will ensure the same from its Personnel) at all times:	9.1.5	ensure that any administrative or compliance-related matters required in terms of this Agreement are carried out or completed timeously.
8.7.1	act in accordance with the lawful instructions of the University;	9.2	The Service Provider must inform the University of the names of its Representative, Personnel and/or Key Personnel authorised to provide the Services within 2 (two) Business Days of the Signature Date. The University may object on reasonable grounds to any such person assigned. Upon receipt of such objection, the Service Provider must immediately assign alternative Personnel to act on its behalf.
8.7.2	display in its relationship and interaction with the University, the utmost of good faith;	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.
8.7.3	not exceed the express or implied limits of the authority in terms of this 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.
8.7.4	not perform its responsibilities in terms of this Agreement in a manner that would cause the University to be in violation of any applicable laws;	9.5	The University will not be liable to the Service Provider for any delay or failure to provide the 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.
8.7.5	comply with the Rules including access control and, those governing access to the Precincts, maintenance of security and consumption of liquor or other intoxicating substances and levels of sound, and without limiting the generality thereof, those relating to confidentiality, privacy, use and access to information technology as stipulated from time to time;	9.6	The Service Provider accepts full responsibility for its Personnel's and sub-contractor's actions and will ensure that such actions at no time place the Personnel or property, including the Information Technology Systems, and the reputation of the University in danger.
8.7.6	provide the Services without causing any annoyance, discomfort, interruption or disturbance to other users of the Precincts, including the University's students and staff and will not prevent them from carrying out their normal activities, including but not limited to the academic processes such as lectures, study, research, conducting practical classes or writing examinations;	10 SUB-CONTRACTING	
8.7.7	provide progress report to the University's Representative as described in Annexure B (Scope of Work);	10.1	The Service Provider acknowledges that the University prefers to contract directly with all service providers.
8.7.8	immediately inform the University in writing of every event, which could result in a position where the Service Provider is unable to fulfil its obligations in terms of this Agreement;	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.
8.7.9	use Commercially Reasonable Efforts not to engage in activities which would detract it from the		

	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.	11.2.4	as at the Signature Date it is able to comply with all the specifications, to carry sufficient equipment (including props, temporary sets, lighting, and cameras) stock, and ancillary equipment as may be required by the University and to perform the Services as may be required by the University;
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.	11.2.5	it will, subject to the provisions of clause 10 use reputable suppliers that meet the requirements as described in this Agreement;
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.	11.2.6	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;
10.5	The Service Provider must ensure that each sub-contractor complies with all the terms of this Agreement as if it was the Service Provider.	11.2.7	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;
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 <i>mutatis mutandis</i> to the contract between the Service Provider and such sub-contractor.	11.2.8	in fulfilling its obligations under this Agreement, it will not infringe the intellectual property rights of any third party;
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.	11.2.9	it will comply with all applicable legislation in performing its obligations pursuant to this Agreement, including but not limited to:
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 19 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 Deliverables to the University.	11.2.9.1	the Compensation for Occupational Injuries and Diseases Act 140 of 1993 ("COIDA"). The Service Provider will, upon request by the University, produce written proof of its registration and good standing with the Compensation Commissioner, as defined in the COIDA;
10.9	The Service Provider will stand as surety and co-principal debtor with any of its appointed sub-contractors for the due fulfilment of its obligations.	11.2.9.2	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;
10.10	Any breach by the sub-contractor of the terms of this Agreement will be deemed to be a breach by the Service Provider.	11.2.9.3	the Basic Conditions of Employment Act 75 of 1997 ("BCEA");
11 WARRANTIES		11.2.9.4	the Labour Relations Act 66 of 1995 ("LRA");
11.1	The persons signing this Agreement on behalf of a Party expressly warrant their authority to do so.	11.2.9.5	the Data Protection Legislation; and
11.2	The Service Provider warrants and represents that:	11.2.9.6	all taxation legislation in respect of any taxes and levies which the government of the Republic of South Africa or any other authority may from time to time impose or increase. Where applicable, unless the Service Provider can provide the University, on reasonable request by the University, with satisfactory proof that it is not an employee or personal service provider, as defined in the Fourth Schedule to the Income Tax Act 58 of 1962, the University may withhold employee's tax from the remuneration payable by the University to the Service Provider in terms of this Agreement in accordance with the rates prescribed by the Income Tax Act at the entire risk and cost of the Service Provider. The Service Provider must immediately, and in any event, before accepting
11.2.1	it holds the absolute legal and beneficial title in and to the Services and has the unfettered right to supply and provide them and to pass unencumbered right and/or title to University;		
11.2.2	it has the necessary skills, qualifications expertise, financial resources, Personnel, capacity, knowledge, experience, resources, equipment, and infrastructure to provide the Services as required by the Agreement;		
11.2.3	Personnel and sub-contractors assigned or engaged by the Service Provider to perform any of its obligations or any part thereof under the provisions of this Agreement are competent and qualified to perform such obligations and will be properly supervised where this is appropriate;		



any payments from the University, notify the University of any change of fact or circumstance that affects or may affect the University's liability to deduct employee's tax from payments made in terms of the Income Tax Act. For these purposes "taxation" includes SITE and PAYE, VAT, all other forms of duties or taxation, taxation in respect of any assessment of taxation and any penalties or interest;

11.2.10 it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;

11.2.11 it has full power and authority to accept its appointment as set out in clause 1 and perform its obligations pursuant to this Agreement;

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

11.3 A breach of any of the undertakings and/or warranties as set out in this Agreement will be deemed to be a material breach of the Agreement entitling the University to, subject to the provisions of clause 20, terminate the Agreement. A termination under clause 11 will be without prejudice to any of the University's rights.

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

12 CONTRACT MANAGEMENT

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

13 DEFICIENCIES IN PERFORMANCE

13.1 Upon becoming aware of any Defect, a Party shall notify the other Party within 7 (seven) Business Days.

13.2 Within 7 (seven) Business Days of becoming aware of the Defect, or within an alternative time frame agreed upon in writing by both Parties, the Service Provider shall, at no additional cost to the University, promptly modify, reperform, or correct, the Defect. Upon receiving written notice of the Defect, the Service Provider must take immediate and necessary action to address and resolve the issue in a timely and diligent manner. For the avoidance of doubt it is recorded that the Service Provider is responsible for the costs of modifying, reperforming, or correcting the nonconforming Services and for all related costs, expenses and damages;

13.3 If the Service Provider is unable or unwilling to modify, reperform, or correct a Defect within the period as set out in clause 13.2, the University may, in addition to any other rights or remedies it may have at law,

13.3.1 by itself or through a third party modify, reperform, or correct the Services at the Service Provider's expense,

13.3.2 immediately terminate this Agreement; or

13.3.3 enforce the provisions of clause 20.

14 UNIVERSITY PRECINCTS AND PROPERTY

14.1 All Personnel, sub-contractor/s guests, invitees, or

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

14.2 Whenever any of the Service Provider, its Personnel, sub-contractor, or any person acting on its behalf are present on the Precincts the Service Provider will ensure that such person(s) comply with all applicable Rules including but not limited to:

14.2.1 the carrying of weapons, which is strictly prohibited;

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

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

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

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

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

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

14.2.8 any reasonable instructions received from the University; and

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

14.3 Without limiting the generality of the Service Provider's obligations, whenever any of the Service Provider, its Personnel, sub-contractor, or any person acting on its behalf are present on the Precincts the Service Provider will ensure that such person(s) :

14.3.1 enter and leave the Precincts only through the entrance and exit gates described by the Head: Protection Services and park only at the designated parking area/s;

14.3.2 not bring onto the Precincts any article, including vehicles, which by reason of its weight or characteristics is liable to cause damage to the Precincts;

14.3.3 not leave refuse or allow it to accumulate in or about the Precincts except in refuse bins.

14.4 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.

14.5 The University may require the Service Provider to effect the immediate removal from the Precincts of any Personnel of the Service Provider if the University on reasonable grounds deems it in the best interests of the University that such person is removed. The Service Provider will ensure that such person does not return to the Precincts. Removal by the Service Provider of such person(s) will not be a ground for any relaxation/waiver of the Service Provider's obligations under the Agreement.

- 14.6 As part of the University's terms and conditions of entry, the University reserves the right, at any given time and without prior warning, to search any or all of the Service Provider's movable property which includes but is not limited to vehicles, baggage and containers entering or exiting the Precincts. The Service Provider acknowledges and accepts that:
- 14.6.1 all vehicles and pedestrian traffic will be subject to both vehicle and bag searches. All passengers will enter through the pedestrian gate controlled by the University's access card system;
- 14.6.2 it must declare all materials, equipment and tools on entering and exiting the Precincts at Station Street security gate. The University, through Protection Services, will request proof of all materials, equipment and tools entering and leaving the Precincts at the Station Street security gate;
- 14.6.3 its vehicles will only be allowed to use the Yale Road South security gate and no-other security gate. The Service Provider must apply for to the University's Representative for a special access permit for vehicles. The special access permit will only be considered for large vehicles and specific deliveries that cannot get access through the Station Street security gate;
- 14.6.4 any items being delivered to Precincts must be clearly labelled with a contact name and telephone number. Authorised parking on the Precincts for the delivery must be arranged with the University's Representative 24 (twenty-four) hours prior to expected arrival.
- 14.7 No gatherings by the Service Provider's Personnel will be allowed in the Precincts.
- 14.8 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.
- 14.9 All right and title in any plant, equipment, tools, appliances or other property and items that the University provides to the Service Provider to enable the Service Provider to fulfil its obligations in terms of this Agreement remains the University's property and must only be used for the purposes of fulfilling the Service Provider's obligations. Upon termination of this Agreement, the Service Provider undertakes to return any plant, equipment, tools, appliances or other property and items utilised by it to fulfil its obligations in terms of this Agreement, to the University.
- 14.10 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.
- 14.11 The Service Provider acknowledges and agrees that it is responsible and must compensate the University for any loss or damage to the University's property by the Service Provider, its Personnel, its sub-contractors or any other third party acting on behalf of the Service Provider.
- 15 CONFIDENTIALITY**
- 15.1 The Service Provider acknowledges and accepts that in the course of providing the Services it will have access to Confidential and Personal Information of the University. The Service provider undertakes to ensure that it will not at any time disclose or use, directly or indirectly any such Confidential and Personal Information unless it first obtains the written consent of the University, or unless required by law or the lawful order of a court or governmental agency to do so. In this event, the Receiving Party will immediately give written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other remedy from the court or governmental agency.
- 15.2 The Service Provider will without limiting its obligations in terms of subject to the provisions of this clause 17, and with respect to the Confidential and Personal Information:
- 15.2.1 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 and Personal Information, are taken in order to safeguard the University's Party's proprietary and Confidential Information from unauthorised access or use;
- 15.2.2 inform its Personnel of the confidentiality restraint set out in this clause 15 and ensure that they are subject to the same confidentiality undertaking;
- 15.2.3 restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information in order to provide the Services;
- 15.2.4 ensure that its Personnel exercise care appropriate for the protection of the Confidential Information;
- 15.2.5 cause all its Personnel who are directly or indirectly given access to the said proprietary, Confidential and Personal Information to execute confidentiality undertakings substantially in accordance with the form attached hereto as Annexure D: Code of Conduct in order to protect the University against the unauthorised disclosure of such Confidential and Personal Information to any third party and to fully cooperate in the enforcement of such confidentiality undertakings;
- 15.2.6 subject to the provisions of this clause 15 and clause 17, keep all such Confidential and Personal Information and/or Personal Information obtained secret towards third parties and only use it for the performance of the Services expressly agreed upon by the Parties and disclose same to their Personnel only on the basis of the need to know;
- 15.2.7 upon demand by the University promptly deliver to the University any and all records containing Confidential and/or Personal Information which are in the Service Provider's and its Personnel's possession or control;
- 15.3 The Service Provider acknowledges that it will not acquire any proprietary or any other rights to any of the University's Confidential Information and/or Personal Information.
- 16 INTELLECTUAL PROPERTY**
- 16.1 All Intellectual Property belonging to a Party prior to the signing of this Agreement will remain the sole and exclusive property of that Party.
- 16.2 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.
- 16.3 In the event, that the Service Provider utilises the University's logos and/or trademarks in terms of this

	Agreement, such usage shall be in accordance with the following terms and conditions:		or use of any University information;
16.3.1	the trademarks and/or logos shall only be used in relation to the University's Graduation, Inauguration or other Ceremonies;	17.3.4	ensure the proper separation of information belonging to the University from any third-party information;
16.3.2	the Service Provider will not use the University's trademarks and/or logos in any manner which reflects unfavourably upon the good name, reputation and image of the University and in any manner which is contrary to applicable laws or regulations;	17.3.5	where appropriate, ensure the proper disposal of information belonging to the University;
16.3.3	all uses by the Service provider of the University's trademarks and/or logos shall accurately reproduce their colour, design and appearance and shall be used in accordance with the University's brand guidelines.	17.3.6	preserve the integrity of any information belonging to the University and prevent the corruption, destruction, or loss of such information at all times; and
16.4	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	17.3.7	ensure that all sub-contractors of the Service Provider, if any, comply with the provisions of this clause 16.5.
16.5	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.	17.4	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.
17	DATA PROTECTION	18	RECORDS AND AUDIT
17.1	In performing its obligations under this Agreement, the Parties will:	18.1	The Service Provider must keep and maintain full and accurate records of its performance under this Agreement throughout the term of the Agreement and for a period of up to 5 (five) years following its termination or expiry. Upon request, the Service Provider shall provide the University, its auditors, or duly authorised representatives with access to these records as may be required in connection with the Agreement.
17.1.1	comply with the provisions of the Data Protection Legislation insofar as it is applicable to this Agreement;	18.2	Additionally, the University shall have the right to audit the Service Provider's financial records related to gross sales at Graduation Ceremonies to verify the accuracy of payments due under this Agreement. The audit may be conducted by the University or a designated third party, and it shall occur:
17.1.2	not process Personal Information for any purpose other than that which may be required to perform their obligations under this Agreement and ensure that such processing will not place either Party in breach of any Data Protection Legislation.	18.2.1	Once per calendar year; or
17.2	The Service Provider will:	18.2.2	Upon reasonable suspicion of underreported sales, provided such audits are not conducted more than twice per year.
17.2.1	only act on the express instructions of the University in collecting, processing, and utilising any Personal Information this Agreement will constitute such instructions;	18.3	If any audit reveals an underpayment of more than 2% of the gross sales reported for any given year:
17.2.2	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.	18.3.1	The Service Provider shall promptly pay the University the amount of the underpayment along with an additional 2.5% penalty on the unpaid balance, within 30 (thirty) Business Days of receiving the audit report.
17.3	The Service Provider must be responsible for establishing and maintaining an information security programme that is designed to:	18.3.2	The Service Provider shall also bear the reasonable costs of the audit.
17.3.1	ensure the security and confidentiality of all Personal Information and any University information (including any back-ups, where applicable) by the use of encryption for such information at transit and rest;	19	FINANCIAL MATTERS
17.3.2	protect against any anticipated threats or hazards;	19.1	The Service Provider agrees to pay 5% (five percent) of the total gross sale per annum generated at the Graduation Ceremonies to the University.
17.3.3	protect against unauthorised access to, disclosure	19.2	The fee set out in clause 19.1 will be payable to the University on or before:
		19.2.1	28 February 2026 for the Service Provider's proceeding year's total gross sales;
		19.2.2	29 February 2027 for the Service Provider's proceeding year's total gross sales;

19.2.3	28 February 2028 for the Service Provider's proceeding year's total gross sales;	20.5	On termination or expiry of the Agreement for any reason, the Service Provider must:
19.3	The Service Provider must ensure that supporting documents relating to its gross annual sales are timeously provided to the University.	20.5.1	immediately deliver to the University all 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
19.4	The Parties agree that in the event an increase is levied by the Service Provider in respect of the amount charged by the Service Provider to the Graduands for the Services during the term of this Agreement, the fee will be increased by a percentage equal to but no greater than the percentage increase in the amount charged to the Graduands.	20.5.2	if so, required by the University, subject to the applicable fees as agreed between the Parties in writing, assist the University with the seamless transition of providing the Services to an incoming supplier. All applicable terms and conditions of this Agreement will apply to such transition services.
19.5	The Service Provider agrees that it will charge Graduands at the rates set out in Annexure C (Pricing Schedule).	20.6	Upon termination of the Agreement, the Service Provider will only be entitled to be paid for the Services provided on a <i>quantum meruit</i> 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 Services have been provided in full in terms of the Agreement.
19.6	The Parties record that should an increase in the amount charged by the Service Provider to the Graduands be levied during the term of this Agreement, such increase will be levied annually on the first and each subsequent anniversary of the Commencement Date, according to CPI.	20.7	If the University terminates this Agreement as provided for hereunder, the University's sole liability to the Service Provider, and the Service Provider's sole and exclusive remedy, is payment for Services received that have been completed and accepted in writing 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.
19.7	All payments due by the Service Provider to the University under this Agreement will be made by direct or electronic deposit into the account nominated in writing by the University.		
20 BREACH AND TERMINATION			
20.1	Should a Party commit a material breach of the Agreement, then the aggrieved Party will be entitled to require the defaulting Party to remedy the breach within 7 (seven) Business Days of delivery of a written notice requiring it to do so, or within any other reasonable period agreed to between the Parties.	21 LIMITATION OF LIABILITY	
20.2	If the defaulting Party fails to remedy such breach within the period specified in the breach notice, the aggrieved Party will be entitled to cancel this Agreement and to claim damages, alternatively to claim immediate specific performance of the defaulting Party's obligations. The foregoing is without prejudice to such other rights as the aggrieved Party may have in law.	21.1	Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider must do all that is commercially reasonably necessary within the course and scope of this Agreement to prevent or minimise the risk of loss or damage to property, University data/information and Personal Information, the University's reputation, and injury to persons.
20.3	If the Service Provider fails to comply with the terms of the Agreement, the University will be entitled, without prejudice to any of its rights in terms of this Agreement or in law to withhold all payments due and payable to the Service Provider until such time as the Service Provider has provided the Services to the satisfaction of the University.	21.2	The Service Provider will be liable for any loss of, or damage to, its, and/or the University's property or any financial loss suffered by it, and/or the University or for claims arising out of any damage to property or death or injury to any person, in the course and scope of providing the Services and/or for any act or omission by the Service Provider and/or its Personnel and/or agents.
20.4	The University will be entitled to terminate this Agreement with immediate effect, should the Service Provider:	21.3	The Service Provider hereby indemnifies the University:
20.4.1	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	21.3.1	for damage sustained by any Personnel in the course or scope of that individual's employment and whilst being on the Precincts. Save where such injury, loss or damage is caused by the gross negligence and wilful misconduct of the University or its Personnel;
20.4.2	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	21.3.2	against all claims of whatsoever nature and howsoever arising which may be made against the Service Provider and/or the University by any Personnel of the Service Provider for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by that Personnel member in the course or scope of that Personnel's employment and whilst being on the Precincts,
20.4.3	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.		

21.3.3	in respect of all actions, proceedings, liabilities, claims, damages costs and expenses arising out of the acts and/or omissions of its Personnel, guests, invitees, or any other person acting on behalf of the Service Provider; and	22.1.1	insurance covering its liability to any Personnel, as contemplated in COIDA;
21.3.4	from any liability arising from:	22.1.2	public liability insurance cover;
21.3.4.1	any breach of laws or regulations by the Service Provider which is directly applicable to providing the Services;	22.1.3	any other insurance cover deemed necessary by the University's insurers that will adequately make provision for any possible losses and/or claims arising from its, Personnel and/or omissions on the University;
21.3.4.2	any breach of labour legislation, including but not limited to the BCEA, the LRA, the Employment Equity Act No. 55 of 1998, and payment of any contributions in terms of the Unemployment Insurance Act No. 30 of 1966 and payment of any subscription to any relevant Bargaining Council that has or might have jurisdiction, as well as compliance with any Collective Contract concluded by such Bargaining Council;	22.1.4	professional indemnity insurance;
21.3.4.3	any breach of environmental legislation (where applicable);	22.1.5	general and commercial liability insurance which includes but is not limited to defective workmanship, public liability, products and equipment liability, data protection, cyber risk insurance, bodily injury and death, and property damage.
21.3.4.4	any breach of the Data Protection Legislation and the provisions of clause 16.5 above;	22.2	Where applicable, the Service Provider must ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement.
21.3.4.5	any breach of the Income Tax Act;	22.3	The Service Provider agrees to provide a certificate of proof of the insurance as set out in clause 22.1, a copy of the policy itself as well as any further documentation as may be reasonably be requested by the University.
21.3.4.6	work-related injury or death caused by the Service Provider including payment of any contributions or compensation as a result of any injury sustained by any Personnel of the Service Provider in terms of the COIDA and compliance with all safety regulations in terms of the OHSA;	22.4	Should the Service Provider fail to effect and/or keep in force to the satisfaction of the University and its insurance brokers any of the insurances it is required to effect and maintain under this Agreement, or fails to provide satisfactory evidence and/or copies of policies in terms of clause 22.3, this action would constitute a material breach by the Service Provider.
21.3.4.7	any claim by a third party that the Service Provider infringes upon its proprietary intellectual property rights or any other rights;	23	FORCE MAJEURE
21.3.4.8	the Service Provider's failure and/or refusal to meet the payment of any levies, contributions, or subscriptions to the applicable institutions in terms of any legislation; and/or	23.1	In the event of any failure, interruption, or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party (the " Affected Party ") must promptly notify the other Party in writing specifying:
21.3.4.9	costs incurred by the University in connection with the enforcement of this clause 21.	23.1.1	the nature of the Force Majeure Event;
21.4	The Parties record that the University has insured itself against the acts and omissions of persons acting on its behalf within the course and scope of the University's business. The University's maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.	23.1.2	the anticipated delay in the performance of obligations;
21.5	Notwithstanding anything to the contrary contained in this Agreement, the University shall not be liable to the Service Provider for any special, indirect, incidental and/or consequential damages arising from the losses or damages, including without limitation loss of profit, revenue, anticipated savings, business transactions, goodwill or other contracts whether arising from the negligence or breach of this Agreement by the University..	23.1.3	the action proposed to minimise the impact of the Force Majeure Event;
22	INSURANCE		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.
22.1	The Service Provider warrants that it has and will maintain the following insurance cover which includes indemnities for the liabilities in clause 21 and which adequately insures against all the liabilities imposed by this Agreement to the satisfaction of the University's insurance brokers, for the duration of this Agreement:	23.2	If the Force Majeure Event continues for 42 (forty-two) Business Days either Party may terminate at 7 (seven) Business Days' notice.
		23.3	In circumstances where a Party is an Affected Party, it will be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled in accordance with the terms and conditions of this Agreement.
		24	ADDRESSES AND NOTICES
		24.1	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



	Services) the addresses set out in section 10 of Annexure A (Contract Data).	25.8	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.
24.2	For purposes of this clause 24, the word "notice" will include a notice regarding a dispute, demand, breach, renewal, or termination.		
24.3	All notices given in terms of this Agreement will be in writing and any notice given by any Party to another (the "addressee") which:	25.9	Nothing in this clause 25 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.
24.3.1	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;	26	GENERAL PROVISIONS
24.3.2	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;	26.1	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 25 without giving effect to any conflict of laws.
24.3.3	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 24.3.3.	26.2	Entire Agreement
24.4	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.	26.2.1	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.
25	SETTLEMENT OF DISPUTES	26.2.2	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.
25.1	The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.	26.3	Variation and Cancellation
25.2	Each Party will inform the other in the event of any perceived or potential dispute occurring.	26.3.1	No amendment, variation, or consensual cancellation of this Agreement, including an amendment to this clause 26.3, and no settlement of any disputes arising under this Agreement, will be binding unless recorded in writing and signed by the Parties.
25.3	Within a period of 10 (ten) days after the date on which a dispute arises ("Dispute Date") the Parties' Representatives or Directors will meet to discuss the dispute and will endeavour to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute.	26.3.2	For the purposes of this clause 26.3, "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.
25.4	If the Parties are unable to resolve the dispute amicably within 30 (thirty) days from the Dispute Date, either Party may refer the dispute to the University's Vice-Chancellor or his nominee and the Service Provider's Chief Executive Officer or his duly appointed nominee, who will use their best endeavours to resolve the dispute.	26.4	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.
25.5	If the individuals referred to in clause 25.4 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 Chairperson of the Bar Council of South Africa on written request by either Party.	26.5	Indulgences
25.6	The costs of mediation will be borne by the Parties equally.	26.5.1	If either Party at any time breaches any of its obligations under this Agreement, the aggrieved Party:
25.7	The determination by the mediator will be final and binding and must be carried into effect by the Parties.	26.5.1.1	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;
		26.5.1.2	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.

26.6	Counterparts. 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.		
26.7	Electronic Signatures. By signing this Agreement electronically, the Parties agree to the acceptance of the terms and conditions of this Agreement as if it was physically signed by them by hand and in writing.		
26.8	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.	26.16	Integrity, Transparency and Fair Business Practice.
26.9	Assignment, cession, and delegation.	26.16.1	The Service Provider is required to submit to the University, annually, a valid B-BBEE certificate issued by a South African National Accreditation System ("SANAS") accredited B-BBEE verification agency; or a Sworn Affidavit in the case of the Service Provider is an Exempted Micro Enterprise ("EME") or in the case of the Service Provider being a greater than or equal to 51% (fifty-one per cent) Black Owned Qualifying Small Enterprise ("QSE").
26.9.1	The Service Provider must not cede, assign, or delegate any of its rights, responsibilities, or obligations to any other party, including subcontractors, without the prior consent of the University. If such consent is given to the Service Provider, the Service Provider is deemed to have bound itself as surety and co-principal debtor with the third party for the due performance by the third party of all its obligations in terms of the Agreement.	26.16.2	In instances where a QSE or an EME has black/black women ownership that is held through a trust, an employee share ownership programme/scheme or a broad-based ownership scheme, the University reserves the right to request proof of compliance of such a programme/scheme/trust with the requirements of the Code Series 100 of the Broad-Based Black Economic Empowerment Act and Codes of Good Practice as amended from time to time. The proof of compliance must be in the form of an ownership verification certificate issued by a SANAS-accredited B-BBEE verification agency.
26.9.2	The University may cede its rights or delegate its obligations to any other party.	26.16.3	The Service Provider undertakes to notify and provide full details to the University in the event that there is:
26.9.3	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.	26.16.3.1	a negative change to the Service Provider's B-BBEE rating, which is less than its B-BBEE status was at the time of its appointment, including the impact thereof;
26.10	Remedies. No remedy conferred by this Agreement is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy will be cumulative and in addition to every other remedy given under this Agreement or any existing or future law. The election of any one or more remedies by one of the Party's will not constitute a waiver by such Party of the right to pursue any other remedy.	26.16.3.2	a corporate or internal restructure or change in control of the Service Provider which has impacted, or is likely to impact, negatively on the Service Provider's B-BBEE rating.
26.11	Costs. The Parties will each pay their own costs of negotiating, drafting, preparing, and implementing this Agreement.	26.16.4	The Service Provider must issue the notice and relevant details required in clause 26.16.1 within 30 (thirty) days from the date the event occurred.
26.12	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.	26.16.5	The University reserves the right to, in its sole discretion, call upon the Service Provider to provide details regarding its shareholding, management, and related information in order to verify that the Service Provider is not engaging in fronting practices or other practices that are designed to circumvent the B-BBEE Act and the South African Department of Trade and Industry Codes of Good Practice.
26.13	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.	26.16.6	Should there be any negative change to the Service Provider's B-BBEE rating and should the Service Provider fail to comply with its reporting obligations in terms of clause 26.16.3, the University reserves the right to terminate this Agreement with immediate effect.
26.14	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.	26.16.7	The Service Provider must immediately notify the University during the subsistence of this Agreement upon becoming aware of any changes in circumstances which may give rise to a conflict of interest.
26.15	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		

- 26.16.8 The Service Provider agrees that it will immediately provide to the University such information as may be requested by the University for the purposes of checking for conflicts of interest, and the Service Provider warrants that such information so provided will in each instance be complete and accurate in all respects.
- 26.16.9 Should it be deemed by the University that a conflict of interest concern exists or has come into existence in relation to the Agreement, the University and the Service Provider must take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.
- 26.16.10 Where it is not reasonably possible to so resolve such a conflict of interest concern, the University will in its sole and absolute discretion be entitled to terminate this Agreement, in which event the Service Provider will not have any claim whatsoever against the University of any nature.
- 26.16.11 The Service Provider agrees that in connection with the Services to be provided under this Agreement:
- 26.16.11.1 to comply with all applicable laws and regulations in the Republic of South Africa regarding anti-bribery and corruption; not to offer, promise, give, request, accept or receive bribes, including facilitation payments;
- 26.16.11.2 to disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement;
- 26.16.12 The Service Provider represents and warrants that at the Commencement Date that neither the Service Provider nor its Personnel, its sub-contractors, or other persons associated with it, including but not limited to its own suppliers:
- 26.16.12.1 has been convicted of any criminal offence; and
- 26.16.12.2 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.
- 26.16.13 The Service Provider must notify the University by written notice as soon as it becomes aware of any breach of this Agreement.
- 26.16.14 The Parties agree that a breach by the Service Provider of any of its obligations or warranties under clause 26.16 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.
- 26.16.15 Either Party desiring to issue a news release or advertisement or another form of media publicity in relation to this Agreement must obtain the written consent of the other Party prior to the release of such publicity, which written consent will not be unreasonably delayed or withheld.
- 26.16.16 The Service Provider (and its Personnel) undertakes and agrees that for the duration of this Agreement and after the termination thereof:
- 26.16.16.1 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
- 26.16.16.2 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.
- 26.17 **Survival of Provisions.** Clauses 11.2.9, 15, 16, 17, 18, 21, 22, 25, 26.1 and 26.16 of this Agreement will survive termination.
- 26.18 **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. To be inserted.
- 4.2. No form of exclusivity has been conferred on the Service Provider nor volume or value guarantee granted by the University.

5. SERVICE PROVIDER DETAILS

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

6. TERM AND TERMINATION

6.1. Term

Commencement Date:	To be inserted, notwithstanding the Signature Date
Termination Date:	To be inserted.
Contract Term:	To be inserted.

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.	Mobile: To be inserted.	To be inserted.
Position: To be inserted.	Email: 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. DOMICILIUM CITANDI ET EXECUTANDI

10.1. 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.

10.2. Address for the Service of Legal Documents

The University	
Marked for the attention of:	Director Legal Services
Electronic mail address:	Nkosinathi.Mavimbela@wits.ac.za
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

To be inserted.

DRAFT

ANNEXURE C: PRICING SCHEDULE

To be inserted.

DRAFT

ANNEXURE D – CODE OF CONDUCT

CODE OF CONDUCT

Acknowledgement of Responsibilities

I (Insert name and surname of the Personnel providing the Services)

Do hereby declare that I understand and acknowledge that in terms of this the Agreement with the University, and in the course and scope of providing the Services, I have a fiduciary duty to the University to comply with the provisions of this Agreement, law and all of the University's rules, regulations, policies and procedures (hereinafter the "Rules"). More specifically:

1. That when providing the Services in terms of this Agreement, I should do so in good faith and in the best interest of the University. This duty is owed to the University and not to any individual. I accept that I may not engage in conduct which results in a conflict with the interests of the University.
2. That there must be no conflict between my private interests and that of the University and that I may not carry on business in competition with the University or use my relationship with the University to make a profit or earn a commission unless and until the University has duly authorised such conduct.
3. That I will act with the necessary care, skill and competency that is reasonably expected from a person performing similar duties to my own in terms of this Agreement.
4. That I am bound to act ethically and in accordance with the Rules insofar as it relates to the protection of confidential and personal information. I accordingly agree to keep confidential all University confidential and personal information that I may come across in performing my duties on in terms of this Agreement. I agree that confidential information also includes personal and private information entrusted to the University by private/natural persons and/or juristic entities. I undertake to take all necessary steps to prevent unauthorised access to confidential and personal information and will not act improperly upon any such information viewed in the course of performing my duties in terms of this Agreement. I undertake to uphold the Rules insofar as it applies to maintaining the confidentiality of personal information relating to private/natural persons and/or juristic entities. I acknowledge that the confidentiality provisions mentioned herein will extend beyond the duration of my duties in terms of this Agreement.
5. That I will comply with the Protection of Personal Information Act No. 4 of 2013 ("Act") as amended from time to time and process all the information and/or personal data in respect of the services being rendered in accordance with the said Act and only for the purpose of providing the Services in terms of this Agreement.
6. That I will use utmost discretion and show the utmost respect for privacy in all interactions with the Graduands, University staff, its guests/invitees or any third party information that I may come across in performing my duties in terms of this Agreement.
7. If I have any doubt on how to interpret this Code and in particular whether any information should be treated as confidential I will seek the advice from my Manager, the University's Director: Legal Services or the Head: Examinations and Graduation Office (EGO).
8. That the absence of specific guidelines in this code does not relieve me of my responsibility to act ethically under all circumstances.

This document has been explained to me by my Manager.

Signed at Johannesburg on this day of 20.....

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(Signature of Personnel providing the Services)

.....

(Signature of Manager representing the Service Provider)