



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

DRAFT

PROFESSIONAL SERVICES AGREEMENT

[Component to be inserted]

[The final agreement will be tailored to accommodate the specific component that has been awarded to the successful Tenderer]

entered into between and by

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

SERVICE PROVIDER DETAILS TO BE INSERTED

TABLE OF CONTENTS

1	APPOINTMENT	3
2	STRUCTURE OF THE AGREEMENT	3
3	INTERPRETATION OF THIS AGREEMENT	3
4	DEFINITIONS	3
5	TERM.....	6
6	NATURE OF RELATIONSHIP.....	6
7	RESPONSIBILITIES OF THE UNIVERSITY	6
8	RESPONSIBILITIES OF THE SERVICE PROVIDER.....	6
9	PERSONNEL.....	7
10	SUB-CONTRACTING	7
11	WARRANTIES	8
12	REPORTS.....	9
13	WORKING PAPERS	9
14	CONTRACT MANAGEMENT.....	9
15	ACCEPTANCE.....	9
16	DEFICIENCIES IN PERFORMANCE	9
17	UNIVERSITY PRECINCTS AND PROPERTY.....	9
18	CONFIDENTIALITY	10
19	INTELLECTUAL PROPERTY.....	10
20	DATA PROTECTION	11
21	RECORDS AND AUDIT	12
22	FINANCIAL TERMS	12
23	BREACH AND TERMINATION	12
24	LIMITATION OF LIABILITY	13
25	INSURANCE.....	14
26	FORCE MAJEURE.....	14
27	ADDRESSES AND NOTICES.....	14
28	SETTLEMENT OF DISPUTES.....	14
29	GENERAL PROVISIONS.....	15
	ANNEXURE A: CONTRACT DATA	18
	ANNEXURE B: SCOPE OF WORK	21
	ANNEXURE C: FEES.....	22

1 APPOINTMENT

- 1.1 The University requires the Service Provider to provide Services in accordance with the timelines provided by the University, in terms of the Scope of Work (Annexure B) hereto and the Statement of Work which will be annexed hereto from time to time. A complete description of the Services will be more fully described in the Engagement Plan and subdivided into separate Engagement(s) as detailed in subsequent Statement of Work in the format of the template attached as Annexure "D" to this Agreement. The annexures will form an integral part of this Agreement and will be duly signed by the Parties.
- 1.2 The Service Provider possesses the necessary specialist skills and expertise to provide the Services.
- 1.3 The University appoints the Service Provider on a non-exclusive basis and the Service Provider accepts the appointment 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 will provide the overall standard terms and conditions upon which the University will contract with the Service Provider for the provision of the Services.
- 2.2 This Agreement consists of:
- 2.2.1 The Terms and Conditions;
- 2.2.2 Annexure A: Contract Data;
- 2.2.3 Annexure B: Scope of Work;
- 2.2.4 Annexure C: Fees; and
- 2.2.5 Annexure D: Statement of Work.
- 2.3 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:
- 2.3.1 In respect of all provisions (except those related to the Services):
- 2.3.1.1 The Terms and Conditions;
- 2.3.1.2 Annexure B: Scope of Work;
- 2.3.1.3 Annexure A: Contract Data;
- 2.3.1.4 Annexure C: Fees; and then
- 2.3.1.5 Annexure D: Statement of Work.
- 2.4 In respect of the provisions detailing the Services:
- 2.4.1.1 Annexure B: Scope of Work;
- 2.4.1.2 Annexure C: Fees;
- 2.4.1.3 Annexure D: Statement of Work;
- 2.4.1.4 Annexure A: Contract Data, and then
- 2.4.1.5 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 Services, confirmation in writing by the University that the agreed Acceptance Criteria have been satisfied;
- 4.2 "Acceptance Criteria" means the criteria specifically set forth in Annexure B (Scope of Work) and/or a Statement of Work in terms of which the Services will be evaluated by the University for purposes of determining Acceptance;
- 4.3 "Acceptance Period" means the period within which the University reviews the Services and approves the Services. Unless a different period is set forth in the Engagement Plan the acceptance period will be within 30 (thirty) Business Days after delivery of the Services;
- 4.4 "Ad hoc Agreed-upon Procedure Services" refer to specific, customised assessments or examinations performed by the Service Provider at the request of the University. In these Engagements, the Service Provider carries out a predefined set of procedures, as agreed upon with the University, to address specific concerns or objectives related to financial or non-financial information, processes, or systems. The procedures are tailored to the unique requirements and circumstances of the University and include but are not limited to examining specific financial transactions, compliance with certain regulations, internal controls, or other areas of interest;
- 4.5 "Agreement" means collectively, the:
- 4.5.1 The Terms and Conditions;
- 4.5.2 Annexure A: Contract Data;
- 4.5.3 Annexure B: Scope of Work;
- 4.5.4 Annexure C: Fees;
- 4.5.5 Annexure D: Statement of Work; and
- 4.5.6 any other Annexures attached hereto;
- 4.6 "Annexures" means annexures to this Agreement;
- 4.7 "Background Intellectual Property" all Intellectual Property rights in existence before the Commencement Date, as well as Intellectual Property developed by a

- Party to this Agreement after its commencement and which does not fall within the scope of the definition of Foreground Intellectual Property;
- 4.8 **“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;
- 4.9 **“Commencement Date”** of this Agreement means the date specified in section 6 of Annexure A (Contract Data), notwithstanding Signature Date;
- 4.10 **“Commercially Reasonable Efforts”** means, with respect to the Services, the reasonable efforts used to deliver the Services in terms of this Agreement, as expeditiously as possible. This excludes:
- 4.10.1 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;
- 4.10.2 changing the Party's business strategy;
- 4.10.3 disposing of any significant assets of the Party;
- 4.10.4 taking any action that would violate any law or order to which the Party is subject;
- 4.10.5 taking any action that would imperil the Party's existence or solvency; or
- 4.10.6 initiating any litigation or any dispute resolution mechanism.
- 4.11 **“Confidential Information”** information that:
- 4.11.1 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
- 4.11.2 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”**);
- 4.12 **“Contract Data”** means Annexure A (Contract Data) setting out the specific data of this Agreement which is attached to the Terms and Conditions;
- 4.13 **“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;
- 4.14 **“Data Protection Legislation”** means the following legislation:
- 4.14.1 Protection of Personal Information Act 4 of 2013, as amended or substituted; and
- 4.14.2 such other legislation that is or may be applicable to the protection of Personal Information in South Africa;
- 4.15 **“Defect”** means:
- 4.15.1 A deliverable which is not fit for the purpose for which it was procured and of suitable quality, on not provided on time and within budget; and/or
- 4.15.2 A defect, error, omission, failure, or inefficiency that impacts the University's ability to use any specific component of the deliverable; and/or
- 4.15.3 A defect, error, omission, failure, or inefficiency that impacts the technical performance of the University's Information Technology System(s); and/or
- 4.15.4 Non-compliance with Annexure B (Scope of Work) and/or the Statement of Work;
- 4.16 **“Effective Date”** means the date reflected in a Statement of Work as the date upon which the Services listed in such Statement of Work will commence;
- 4.17 **“Engagement”** means the assignment, including the Services, output and work, to which this Agreement relates;
- 4.18 **“Engagement Plan”** refers to the project/internal audit plan outlined in Annexure B (Scope of Work), a Statement of Work, or any plan mutually agreed upon in writing and signed by the Parties, and attached hereto;
- 4.19 **“Enterprise Risk Management Services”** which include *inter alia*:
- 4.19.1 assisting the University's Council and management team in implementing and maintaining an effective and functional enterprise risk management process which is in accordance with applicable legislation, and international best practice and is aligned with good corporate governance; and
- 4.19.2 timeously update the University's risk assessments, risk registers and dashboards;
- 4.19.3 evaluate and identify risk management measures; and
- 4.19.4 facilitate and provide agreed-upon training to guide the University's staff in the identification, management of risks and the implementation of the risk management processes;
- 4.20 **“Fees”** means the Service Provider's list of fees, expenses, disbursements, rates, and prices (whichever is applicable) for the Services and which is attached to the Agreement as Annexure C (Fees);
- 4.21 **“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);
- 4.22 **“Foreground Intellectual Property”** means Intellectual Property created or developed by a Party in the course and scope, as a result of, and/or for the purpose of this Agreement;
- 4.23 **“Grant Management Services”** relates to the funding received by the University from Donors, the Department of Higher Education (“DHET”), research grants and other donor funding. The Parties record that the University will only appoint the Service Provider to provide the Grant Management Services in the event that such services are required by the University. The Services will be more fully described in the Statement

	of Work attached hereto from time to time. A full and complete description of the Services and the terms of its inclusion under this Agreement must be reduced to writing and annexed hereto. The annexure will form an integral part of this Agreement and will be duly signed by the Parties. The Grant Management Services includes <i>inter alia</i> assessing the expenditure, controls and processes related to:		
4.23.1	the management of the funding referred to in 4.23;	4.28	"Party" or "Parties" means the University or the Service Provider individually and collectively, as the context dictates;
4.23.2	facilitate and assist with the implementation and compliance of the grant funding provisions as required;	4.29	"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;
4.23.3	facilitate and assist with the implementation and compliance of the grant funding provisions as required;	4.30	"Personnel" of a Party includes employees, directors, partners, agents, consultants, associates, contractors, sub-contractors, or other representatives of a Party;
4.23.4	compliance with the terms and conditions of the funding referred to in 4.23; and	4.31	"Precincts" means any premises owned by or which fall under the management and control of the University and/or any part thereof;
4.23.5	assessing whether the University's processes are satisfactorily controlled, complete, accurate and valid;	4.32	"Representative" means the duly authorised person designated as such in section 9 of Annexure A (Contract Data);
4.24	"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;	4.33	"Report" is the written report containing any information, advice, recommendations or other content of any reports, presentations or other communications provided by the Service Provider used for, including but not limited to, summarising internal audit outcomes, which may include reports, findings, and recommendations and progress of the Services based on the work performed during the provision of the Services;
4.25	"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;	4.34	"Rules" are the rules, regulations policies, procedures, practices and standing orders of the University, as amended from time to time;
4.26	"Internal Audit Services" which includes <i>inter alia</i> :	4.35	"Scope of Work" means the detailed scope of work attached to this Agreement as Annexure B (Scope of Work);
4.26.1	evaluating and analysing the effectiveness of procedures relating to the University's:	4.36	"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 a Statement of Work;
4.26.1.1	internal audit accounting environment;	4.37	"Service Provider" means the Party detailed in section 5 of Annexure A (Contract Data);
4.26.1.2	administrative and operational environment; and	4.38	"Services" means Internal Audit Services, Enterprise Risk Management Services, Grant Management Services and Ad hoc Agreed-upon Procedure Services as more fully described in Annexure B (Scope of Work), a Statement of Work, including all services complementary and ancillary thereto to be provided in terms of this Agreement;
4.26.1.3	compliance with the University's policies, procedures, protocols/guidelines and processes;	4.39	"Signature Date" means the date on which this Agreement is signed by the last Party to do so;
4.26.1.4	testing the design of the University's internal audit accounting environment; and	4.40	"Statement of Work" for each Engagement:
4.26.1.5	assessing whether the policies, procedures, and protocols/guidelines are satisfactorily controlled, complete, accurate and valid;	4.40.1	there will be a specific Statement of Work, which will be conducted in accordance with the terms of this Agreement;
4.26.2	the development of a 3 (three) year rolling and annual Engagement Plan which must be conducted in accordance with the Standards for the Professional Practice of Internal Auditing published by the Institute of Service Providers based on the approach agreed upon by the University;	4.40.2	the Statement of Work will set out the specific objectives related to the scope of Services, any other responsibilities of the Service Provider, any of the University's responsibilities, the form of any reports, a quotation and all the relevant parameters, and will also be used to supplement the Scope of Work, for the avoidance of doubt the Statement of Work will follow a broad format, but may vary in content depending on the specific Services being;
4.26.3	provide the necessary project management services for the delivery of the annual internal Engagement Plan which must be on time within budget and fit for the University's Purpose;	4.40.3	the Statement of Work will constitute a separate and divisible relationship between the relevant Parties thereto; and
4.27	"Key Personnel" means the Personnel who have the required and necessary skills, expertise, qualifications, knowledge, and experience and who are critical for the successful performance of the Services, as named in		

- 4.40.4 the Statement of Work will form an integral part of this Agreement and must be duly signed by the Parties.
- 4.41 **"Termination Date"** means the date specified in section 6 Annexure A (Contract Data);
- 4.42 **"Terms and Conditions"** means these terms and conditions contained in this document;
- 4.43 **"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;
- 4.44 **"University's Purpose"** means to assist the University by providing the Services to ensure that its internal audit accounting environment, Grant Management processes and Enterprise Risk Management processes are satisfactorily controlled, complete, accurate, valid and in accordance with applicable legislation, and aligned to good corporate governance in a manner which satisfies the requirements for international best practice;
- 4.45 **"Working Papers"** means the Service Provider documents which record all audit evidence obtained during an audit or investigation. Working papers are used to support the audit work done in order to provide assurance that the audit was performed in accordance with the relevant auditing standards;
- 4.46 **"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.
- 5 TERM**
- 5.1 **Duration of the Agreement**
- 5.1.1 This Agreement commences on the Commencement Date and terminates on the Termination Date unless terminated earlier as provided in this Agreement.
- 5.1.2 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.
- 5.2 **Duration of the Statement of Work(s)**
- 5.2.1 The Effective Date and duration of each Engagement will be stated in the relevant Statement of Work.
- 5.2.2 Should any Statement of Work be terminated for any reason whatsoever, whether due to a breach thereof by either Party or otherwise, such termination will not affect the continuation or enforceability of this Agreement or any other Statement of Work. The Parties agree that any Statement of Work entered into will not exceed the Termination Date and will run concurrently with the term of the Agreement.
- 5.3 Each Statement of Work to this Agreement may be renewed for a further period, provided that the total duration of the Statement of Work is no greater than the duration of this Agreement. No Party will be entitled to enforce its rights in a Statement of Work by withholding performance or applying set-off under another Statement of Work.
- 6 NATURE OF RELATIONSHIP**
- 6.1 The Service Provider will provide the Services to the University as an independent contractor. Nothing in this Agreement and/or a Statement of Work will be construed as creating any relationship of agency, employment, partnership, joint venture or similar relationship between the University and the Service Provider.
- 6.2 Neither Party will have the authority to, nor will it represent that it has the authority to obligate or bind the other in any manner whatsoever.
- 6.3 The Service Provider specifically acknowledges and agrees that this Agreement and/or a Statement of Work 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 and/or a Statement of Work.
- 7 RESPONSIBILITIES OF THE UNIVERSITY**
- 7.1 The University will, subject to the Rules:
- 7.1.1 provide the Service Provider and its Personnel with such access to the Precincts and/or Information Technology Systems (where applicable) as may be reasonably necessary to allow the Service Provider to fulfil its obligations in terms of this Agreement and/or a Statement of Work;
- 7.1.2 receive information from the Service Provider; and
- 7.1.3 pay the Service Provider as provided for in clause 22 of this Agreement.
- 8 RESPONSIBILITIES OF THE SERVICE PROVIDER**
- 8.1 The Service Provider will:
- 8.1.1 perform the Services in terms of this Agreement according to the agreed specifications more fully described in the Statement of Work attached hereto from time to time;
- 8.1.2 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 and/or a Statement of Work;
- 8.1.3 designate a Representative, who will be responsible for liaising with the University's Representative at all times with respect to the provision of the Services and who will supervise the Personnel responsible for the delivery of the Services;
- 8.1.4 create a detailed work plan which identifies and sequences the activities needed to successfully provide the Services;
- 8.1.5 provide the University with reasonable prior written notice of any further and/or additional information, data and resources which may be necessary for the provision of the Services. The notice for additional information will include the timeframe within which the Service Provider requires the information;
- 8.1.6 deliver the Services on time, within budget and fit for the University's Purpose;
- 8.1.7 report to the University's Representative in a format and within the timeframes as specified in the Statement of Work and provide a final Report on the Services. The Report must contain insights and recommendations on business strategy execution and the redeployment of valuable resources toward achieving strategic goals and objectives of the University and must include all recommendations necessary for further action to be taken by the

- University if applicable. The report must in addition offer solutions to assist the University in identifying gaps in the control structure which are reportable in accordance with the Standards for the Professional Practice of Internal Auditing published by the Institute of Service Providers;
- 8.1.8 do all that is reasonably necessary within the course and scope of the Agreement and/or a Statement of Work to prevent or minimise the risk of loss or damage to University property, including its Information Technology System, the University's reputation and injury to persons;
- 8.1.9 co-operate and consult with other suppliers of the University, should it be necessary for purposes of ensuring the delivery of the Services in a seamless manner.
- 8.2 The Service Provider will (and will ensure the same from its Personnel) at all times:
- 8.2.1 act in accordance with the lawful instructions of the University;
- 8.2.2 display in its relationship and interaction with the University, the utmost of good faith;
- 8.2.3 not exceed the express or implied limits of the authority in terms of this Agreement;
- 8.2.4 not perform its responsibilities in terms of this Agreement in a manner that would cause the University to be in violation of any applicable laws;
- 8.2.5 comply with the Rules;
- 8.2.6 provide the 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;
- 8.2.7 inform the University in writing of every event, which could result in a position where the Service Provider is unable to fulfil its obligations in terms of this Agreement;
- 8.2.8 use Commercially Reasonable Efforts not to engage in activities which would detract it from the proper performance of its duties in terms of this Agreement; and
- 8.2.9 ensure that it avoids any appointment or circumstances which may reasonably result in any conflict between its interests and those of the University.
- 8.3 The Service Provider must comply with the rules of all relevant governmental, regulatory, professional, or other entities having the force of law. In particular, the Service Provider undertakes to comply with audit independence and professional audit rules so as to maintain its independence as external auditors when rendering non-audit services to and forming business relationships with audit clients. The Service Provider will take all Commercial Reasonable Efforts necessary to attempt to resolve a conflict or independence concern if any arises during the course of the Agreement.
- 9 PERSONNEL**
- 9.1 The Parties will each nominate a Representative responsible for the overall management, execution, and oversight of this Agreement, who will:
- 9.1.1 on reasonable notice, consult with each other on matters relating to the Agreement and/or a Statement of Work;
- 9.1.2 engage with each other to ensure that day-to-day decisions and approvals with respect to the Agreement and/or a Statement of Work are made timeously;
- 9.1.3 oversee the contract management of the Agreement and/or a Statement of Work including oversight of the activities and responsibilities of the Personnel and Key Personnel;
- 9.1.4 accept and acknowledge all notices and correspondence relating to the Agreement and/or a Statement of Work; and
- 9.1.5 ensure that any administrative or compliance-related matters required in terms of this Agreement and/or a Statement of Work are carried out or completed timeously.
- 9.2 The Service Provider must inform the University of the names of its Representative, Personnel and/or Key Personnel authorised to provide the 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.
- 9.3 The Service Provider acknowledges that the provision of Key Personnel and a Representative by the Service Provider, as specified in the Agreement and/or a Statement of Work, 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 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, and the reputation 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 and/or a Statement of Work, 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/or a Statement of Work, 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 and/or a Statement of Work, the University reserves the right to offer any of the University's preferred vendors the

	opportunity to provide the sub-contracted services.	11.2.6	it will comply with all applicable legislation in performing its obligations pursuant to this Agreement and/or a Statement of Work, including but not limited to:
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.	11.2.6.1	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;
10.5	The Service Provider must ensure that each sub-contractor complies with all the terms of this Agreement and/or a Statement of Work as if it were the Service Provider.	11.2.6.2	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;
10.6	If the University consents to the Service Provider entering into a sub-contract in terms of clause 10.2 the provisions of this Agreement and/or a Statement of Work will be applicable <i>mutatis mutandis</i> to the contract between the Service Provider and such sub-contractor.	11.2.6.3	the Basic Conditions of Employment Act 75 of 1997 (“BCEA”);
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.	11.2.6.4	the Labour Relations Act 66 of 1995 (“LRA”);
10.8	In the event of the Service Provider utilising the services of a sub-contractor, the University will make payment directly to the Service Provider as per clause 22 and the Service Provider agrees that liability and responsibility for any payment due to the sub-contractor will lie with the Service Provider and no third party will be entitled to seek payment directly from the University for Services to the University.	11.2.6.5	the Data Protection Legislation; and
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.	11.2.6.6	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 and/or a Statement of Work in accordance with the rates prescribed by the Income Tax Act at the entire risk and cost of the Service Provider. The Service Provider must immediately, and in any event, before accepting any payments from the University, notify the University of any change of fact or circumstance that affects or may affect the University’s liability to deduct employee’s tax from payments made in terms of the Income Tax Act. For these purposes “taxation” includes SITE and PAYE, VAT, all other forms of duties or taxation, taxation in respect of any assessment of taxation and any penalties or interest;
10.10	Any breach by the sub-contractor of the terms of this Agreement and/or a Statement of Work will be deemed to be a breach by the Service Provider.		it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;
11	WARRANTIES		it has full power and authority to accept its appointment as set out in clause 1 and perform its obligations pursuant to this Agreement and/or a Statement of Work;
11.1	The persons signing this Agreement and/or a Statement of Work on behalf of a Party expressly warrant their authority to do so.		it is and must remain throughout the duration of the Agreement and/or a Statement of Work, 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
11.2	The Service Provider warrants and represents that:		
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 the 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 and/or a Statement of Work;		
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;	11.2.7	
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 and/or a Statement of Work;	11.2.8	
11.2.5	in fulfilling its obligations under this Agreement, it will not infringe the intellectual property rights of any third party;	11.2.9	

- remuneration, insurance, and other obligations in respect of its Personnel.
- 11.2.10 that it will use Commercially Reasonable Efforts:
- 11.2.10.1 to ensure that no viruses or similar items are coded or introduced into the systems or University Information Technology Systems used to provide the Services;
- 11.2.10.2 not to introduce or code any viruses or similar items into any University Information Technology Systems or Services.
- 11.3 If a virus or similar item is found and the presence of same is due to the Service Provider's reckless or negligent act or omission, the Service Provider must reduce the effects of the virus or similar item and, if the virus or similar item causes loss of operational efficiency or loss of data, the Service Provider must mitigate and restore such losses within 2 (two) Business Days. Any work required under this clause 11.2.10 will be considered part of the Services and the Service Provider must perform such work without adjustment to the Fees.
- 11.4 A breach of any of the undertakings and/or warranties as set out in this Agreement and/or a Statement of Work will be deemed to be a material breach of the Agreement entitling the University to, subject to the provisions of clause 23, terminate the Agreement and/or a Statement of Work. A termination under clause 11 will be without prejudice to any of the University's rights.
- 11.5 The warranties contained in this Agreement and/or a Statement of Work are in addition to any other express, implied and/or statutory warranties applicable to the Services.
- 12 REPORTS**
- 12.1 No Report or any communication (regardless of the form of communication) will constitute a legal opinion or legal advice.
- 12.2 The Reports provided by the Service Provider will be based solely upon such data and information provided by or on behalf of the University. The University will not evaluate, nor will it have any responsibility to verify independently the accuracy or completeness of the information, or the sufficiency of such data and information for the University's purposes.
- 12.3 The University may not rely on any verbal reports (that are not confirmed by the Service Provider in writing) or draft written reports, except where compelled by legal process, of which the University will notify the Service Provider to enable it to take action as appropriate.
- 12.4 The University may not disclose, orally or in writing, any Report or any portion, abstract or summary thereof, to any third party without:
- 12.4.1 the prior written consent of the Service Provider; and
- 12.4.2 procuring such third-party to sign a release letter in a form to be provided by the Service Provider.
- 12.5 To the extent the University is permitted to disclose any written Report as set forth herein, it will disclose such Report only in the original, complete and unaltered final form, with all restrictive legends (if any) intact.
- 13 WORKING PAPERS**
- 13.1 The Service Provider will retain ownership in its working papers and other documents produced by it in the course of this Agreement. Should the University wish to obtain access to these documents, the Service Provider will consider the University's request and may make them available to the University for inspection on terms determined by the Service Provider.
- 13.2 The Service Provider must retain documents relating to any Engagement for a minimum period of 5 (five) years after the end of the relevant Engagement. Thereafter, unless separate arrangements have been made, the documents may be destroyed upon notice to the University.
- 14 CONTRACT MANAGEMENT**
- The Parties agree that the contract management protocol for this Agreement is set out in Annexure B (Scope of Work) and/or a Statement of Work.
- 15 ACCEPTANCE**
- 15.1 The Services, with respect to each deliverable or output, will be deemed final and Accepted by the University during the Acceptance Period.
- 15.2 The Service Provider will, prior to the Acceptance Period, be responsible for amending or updating the deliverable or output within the time periods as requested by the University in writing.
- 16 DEFICIENCIES IN PERFORMANCE**
- 16.1 A Party who becomes aware of any Defect will notify the other Party within 7 (seven) Business Days after becoming aware of the Defect.
- 16.2 Within 7 (seven) Business Days after becoming aware of the Defect or such other time frame as may be agreed upon in writing between the Parties, the Service Provider will promptly and at no additional cost to the University, modify or correct any Defect. Upon receipt of a written notification regarding a Defect, the Service Provider must take immediate and necessary actions to rectify the Defect in a timely and diligent manner, utilising appropriate remedies such as repair, replacement, or re-performance. To facilitate the resolution process, the University shall upon written request by the Service Provider provide the Service Provider with unrestricted working access to the non-conforming Services. Additionally, the University may, on receipt of a reasonable written request by the Service Provider consider the transfer of title to any replaced parts/items to the Service Provider.
- 16.3 The Service Provider is responsible for the costs of modifying, or correcting nonconforming Services, and for all related costs, expenses and damages.
- 17 UNIVERSITY PRECINCTS AND PROPERTY**
- 17.1 All Personnel, guests, invitees, or any other persons acting on behalf of the Service Provider may not without prior written consent of the University be allowed access to the Precincts to fulfil the Service Provider's obligations under the Agreement and/or a Statement of Work. 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.
- 17.2 Whenever any of the Service Provider, its Personnel or any person acting on its behalf are present on the Precincts the Service Provider will ensure that such person(s) comply with all applicable Rules including but not limited to:
- 17.2.1 the carrying of weapons, which is strictly prohibited;

- 17.2.2 the wearing of identification tags and the possession and use of access cards, which is required at all times whilst on the Precincts;
- 17.2.3 occupational health, safety, and emergency practices and protocols;
- 17.2.4 the security of the Precincts and the protection of persons and property thereon;
- 17.2.5 the driving and parking of vehicles on or about the Precincts;
- 17.2.6 the utilisation of the University's amenities and facilities;
- 17.2.7 the prohibition or restriction of activities and practices which are actually or potentially detrimental to the interests of the University;
- 17.2.8 any reasonable instructions received from the University; and
- 17.2.9 any and all other applicable requirements prescribed by the University from time to time.
- 17.3 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.
- 17.4 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. 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 and/or a Statement of Work.
- 17.5 The University reserves the right, at any given time and without prior warning, to search any or all of the Service Provider's movable property which includes but is not limited to vehicles, baggage and containers entering or exiting the Precincts.
- 17.6 No gatherings by the Service Provider's Personnel will be allowed in the Precincts.
- 17.7 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.
- 17.8 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 a Statement of Work remains the University's property and must only be used for the purposes of fulfilling the Service Provider's obligations. Upon termination of this Agree and/or a Statement of Work, 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 a Statement of Work, to the University.
- 17.9 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.
- 17.10 The Service Provider acknowledges and agrees that it is responsible and must compensate the University for any loss or damage to the University's property by the Service Provider, its Personnel, its sub-contractors or any other third party acting on behalf of the Service Provider.
- 18 CONFIDENTIALITY**
- 18.1 The Parties acknowledge that in terms of this Agreement and/or a Statement of Work, 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 remedy from the court or governmental agency.
- 18.2 Each of the Parties will with respect to the Confidential Information:
- 18.2.1 will ensure that all reasonable security measures, and at least the same steps that it takes for the purposes of protecting its own proprietary and Confidential Information, are taken in order to safeguard the other Party's proprietary and Confidential Information from unauthorised access or use;
- 18.2.2 inform its Personnel of the confidentiality restraint set out in this clause 18 and ensure that they are subject to the same confidentiality undertaking;
- 18.2.3 restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information in order to provide the Services;
- 18.2.4 ensure that its Personnel exercise care appropriate for the protection of the Confidential Information;
- 18.2.5 upon request by the Disclosing Party promptly deliver any and all records containing Confidential Information which is in the possession or control of the Recipient, and its Personnel.
- 18.3 Except as expressly provided to the contrary elsewhere in this Agreement and/or a Statement of Work, the Parties will not acquire any proprietary or any other rights to any of the other Party's Confidential Information.
- 19 INTELLECTUAL PROPERTY**
- 19.1 The ownership of rights in and to all Background Intellectual Property will be and remains unaffected by this Agreement and/or a Statement of Work.
- 19.2 The University grants the Service Provider a non-exclusive, non-transferable, revocable, royalty-free licence for the duration of this Agreement and/or a Statement of Work to use the University's Background Intellectual Property solely to the extent necessary to enable the Service Provider to comply with its obligations hereunder.
- 19.3 Foreground Intellectual Property created, in terms of this Agreement and/or a Statement of Work excluding the Working Papers is owned by the University. The Service Provider irrevocably assigns, transfers and conveys to the University all rights, title and interest in and to the Foreground Intellectual Property and agrees to execute any documents or take any other action which may be necessary to give effect to this requirement. Upon termination of this Agreement and/or a Statement of Work, the Service Provider undertakes to ensure that all software programs, reports or part thereof, business analysis, training, maintenance and

- support manuals, designs or any other material created in the course and scope of this Agreement and/or a Statement of Work whether in its possession or not is immediately handed over to the University.
- 19.4 The Service Provider may not delete remove or in any way interfere with the University's Intellectual Property, including Foreground Intellectual Property created by the Service Provider in the course of this Agreement and/or a Statement of Work and stored in any information technology device, without written consent from the University.
- 19.5 For the avoidance of doubt, the Service Provider will own any knowledge, know-how, skills, experience and expertise only gained, developed or created during the course of, or pursuant to the provision of the Services under this Agreement and/or a Statement of Work by the Service Provider.
- 19.6 The Service Provider agrees to execute any documents or take any other actions as may reasonably be necessary, or as the University may reasonably request in writing, to perfect the University's ownership of the Foreground Intellectual Property.
- 19.7 Any sub-contract the Service Provider enters into in relation to this Agreement and/or a Statement of Work 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 and/or a Statement of Work.
- 19.8 The Service Provider will not use the University's names, trademarks, logos or other Intellectual Property in publicity releases, publications, advertising materials or in any other manner, without the prior written consent of the University in each instance.
- 19.9 The Service Provider will not use, register, or attempt to register any trademarks, company, business or trading names or domain names which are identical, similar to or incorporate the University name, trademarks, and logos, without the University's prior written consent; and
- 19.10 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 and/or a Statement of Work.
- 20 DATA PROTECTION**
- 20.1 In performing its obligations under this Agreement and/or a Statement of Work, the Parties will:
- 20.1.1 comply with the provisions of the Data Protection Legislation insofar as it is applicable to this Agreement and/or a Statement of Work;
- 20.1.2 not process Personal Information for any purpose other than that which may be required to perform their obligations under this Agreement and/or a Statement of Work and ensure that such processing will not place either Party in breach of any Data Protection Legislation.
- 20.2 The Service Provider will:
- 20.2.1 only act on the express instructions of the University in collecting, processing, and utilising any Personal Information this Agreement and/or a Statement of Work will constitute such instructions;
- 20.2.2 not disclose or otherwise make available any Personal Information to any third party other than authorised Personnel or sub-contractors who require access to such Personal Information strictly
- in order for the Service Provider to carry out its obligations pursuant to this Agreement and/or a Statement of Work, and ensure that such Personnel and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information.
- 20.3 The Service Provider must be responsible for establishing and maintaining an information security programme that is designed to:
- 20.3.1 ensure the security and confidentiality of all Personal Information and any University information (including any back-ups, where applicable) by the use of encryption for such information at transit and rest;
- 20.3.2 protect against any anticipated threats or hazards;
- 20.3.3 protect against unauthorised access to, disclosure or use of any University information;
- 20.3.4 ensure the proper separation of information belonging to the University from any third-party information;
- 20.3.5 where appropriate, ensure the proper disposal of information belonging to the University;
- 20.3.6 preserve the integrity of any information belonging to the University and prevent the corruption, destruction, or loss of such information at all times; and
- 20.3.7 ensure that all sub-contractors of the Service Provider, if any, comply with the provisions of this clause 19.10.
- 20.4 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.
- 20.5 Where the Service Provider (including the Service Provider's Personnel) is given access (whether direct or remote) to any University Information Technology Systems under or in connection with the Agreement and/or a Statement of Work, the Service Provider will (and must ensure that the Service Provider's Personnel):
- 20.5.1 comply with the Rules, requirements, or other instructions of the University or, where applicable, the University's third-party suppliers, regarding the use of such University Information Technology Systems;
- 20.5.2 only use the University Information Technology Systems in connection with the proper delivery of the Services;
- 20.5.3 not permit any other individual or entity to access the University Information Technology Systems;
- 20.5.4 upon the University's request, immediately cease access to and use of any University Information Technology Systems and return all University Information Technology Systems (and associated documentation) to the University; and
- 20.5.5 not reverse engineer, deconstruct, decompile, deactivate, or disable any University Information

Technology Systems introduce any viruses or other similar code, or take any other action that would cause any damage or harm to any Information Technology Systems of the University.

clause 28.

21 RECORDS AND AUDIT

21.1 The Service Provider must keep and maintain both during the term of the Agreement and/or a Statement of Work and for up to 5 (five) years following termination or expiry of the Agreement and/or a Statement of Work, full and accurate records of its performance of the Agreement and/or a Statement of Work.

22.2.6

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

21.2 The Service Provider must on request afford the University, the University's auditors, or its duly authorised representatives such access to those records as may be required in connection with the Agreement and/or a Statement of Work.

22.2.7

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

22.2.8

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

22 FINANCIAL TERMS

22.1 Fees:

22.1.1 For the fulfilment of its obligations in terms of this Agreement, the University agrees to pay the Service Provider a fee inclusive of VAT as more fully described in Annexure C (Fees) and/or in the various Statement of Work(s).

22.2.9

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

22.2 Administration Process:

23 BREACH AND TERMINATION

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

23.1

Should a Party commit a material breach of the Agreement and/or a Statement of Work, 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.

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

23.2

If the defaulting Party fails to remedy such breach within the period specified in the breach notice, the aggrieved Party will be entitled to cancel this Agreement and/or a Statement of Work 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.

22.2.2.1 provided the Services in accordance with the provisions of Annexure B (Scope of Work), Statement of Work and the University has Accepted the Services; and

23.3

If the Service Provider fails to comply with the terms of the Agreement and/or a Statement of Work, the University will be entitled, without prejudice to any of its rights in terms of this Agreement and/or a Statement of Work 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.

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

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

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

22.2.3 The University will be afforded the opportunity to dispute an invoice in accordance with the provisions of clauses 22.2.4 and 22.2.5. For the avoidance of doubt, disputed items relate to those items that appear on the invoice that are invalid, suspicious or are incorrect or unauthorised billing amounts.

23.4

The University will be entitled to terminate this Agreement and/or a Statement of Work with immediate effect, should the Service Provider:

22.2.4 The University will be afforded up to 30 (thirty) Business Days after the date of the invoice to identify and raise a dispute on any invoice. The Service Provider will acknowledge the disputed invoice, and investigate, and provide feedback to the University within 21 (twenty-one) Business Days.

23.4.1

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

22.2.5 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 Commercial Reasonable Efforts to resolve the disputes amicably and any failure to agree will be subject to

23.4.2

suffer any judgement to be obtained against it and allow such judgement to remain unsatisfied or fail to apply for the rescission thereof within a period of 10 (ten) Business Days from the time the judgement was obtained; or

23.4.3

do or suffer any act or thing whereby the University's rights or interest may be prejudiced, or which might cause the University to suffer any loss or damage.

23.5

On termination or expiry of the Agreement and/or a

	Statement of Work for any reason, the Service Provider must:		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,
23.5.1	immediately deliver to the University all Services whether or not 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 a Statement of Work; and	24.3.3	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
23.5.2	if so, required by the University, subject to the applicable fees as agreed between the Parties in writing, assist the University with the seamless transition of providing the Services to an incoming supplier. All applicable terms and conditions of this Agreement and/or a Statement of Work will apply to such transition services.	24.3.4	from any liability arising from:
		24.3.4.1	any breach of laws or regulations by the Service Provider which is directly applicable to providing the Services;
		24.3.4.2	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;
23.6	Upon termination of the Agreement and/or a Statement of Work, 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 been provided in full in terms of the Agreement and/or a Statement of Work.	24.3.4.3	any breach of environmental legislation (where applicable);
		24.3.4.4	any breach of the Data Protection Legislation and the provisions of clause 19.10 above;
23.7	If the University terminates this Agreement and/or a Statement of Work 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 by the University before the date of termination. The University may also require the Service Provider to transfer title and deliver to the University any or all property produced or procured by the Service Provider to perform this Agreement and/or a Statement of Work.	24.3.4.5	any breach of the Income Tax Act;
		24.3.4.6	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 OHS Act;
24	LIMITATION OF LIABILITY	24.3.4.7	any claim by a third party that the Service Provider infringes upon its proprietary intellectual property rights or any other rights;
24.1	Without limiting any other obligation of the Service Provider under this Agreement and/or a Statement of Work or otherwise, the Service Provider must do all that is commercially reasonably necessary within the course and scope of this Agreement and/or a Statement of Work 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.	24.3.4.8	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
		24.3.4.9	costs incurred by the University in connection with the enforcement of this clause 24.
24.2	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.	24.4	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.
24.3	The Service Provider hereby indemnifies the University:	24.5	Notwithstanding anything to the contrary contained in this Agreement and/or a Statement of Work, neither the University nor the Service Provider will be liable to the other for any indirect or consequential loss 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 and/or a Statement of Work by the University or the Service Provider.
24.3.1	or damage sustained by any Personnel in the course or scope of that individual's employment and whilst being on the University Precincts. Save where such injury, loss or damage is caused by the gross negligence and wilful misconduct of the University or its Personnel;	24.6	The University may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement and/or a Statement of Work against a member firm of the Service Provider, its subcontractors, shareholders, directors, officers, partners, principals, or
24.3.2	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		

employees ("IA Persons"). The University will make a claim or bring proceedings only against the Service Provider.

25 INSURANCE

25.1 The Service Provider must maintain in effect, throughout the term of this Agreement and/or a Statement of Work, insurance issued by a nationally recognised and reputable insurance company with a sound financial standing. This insurance must be sufficient to cover all indemnities and liabilities to which the Service Provider may be subject in relation to a Statement of Work and this Agreement. Additionally, the Service Provider must insure itself against liability arising out of its fault or the fault of any of its Personnel, or other persons acting on its behalf.

25.2 Where applicable, the Service Provider must ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement and/or a Statement of Work.

25.3 The Service Provider agrees to provide a certificate of proof of the insurance as set out in clause 25.1, a copy of the policy itself as well as any further documentation as may be reasonably be requested by the University.

25.4 Should the Service Provider fail to effect and/or keep in force to the satisfaction of the University and its insurance brokers any of the insurances it is required to effect and maintain under this Agreement and/or a Statement of Work or fails to provide satisfactory evidence and/or copies of policies in terms of clause 25.3, this action would constitute a material breach by the Service Provider.

26 FORCE MAJEURE

26.1 In the event of any failure, interruption, or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party (the "**Affected Party**") must promptly notify the other Party in writing specifying:

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

and the Affected Party 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.

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

26.3 In circumstances where a Party is an Affected Party, it will be relieved from any obligation to make payments under this Agreement and/or a Statement of Work 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 a Statement of Work.

27 ADDRESSES AND NOTICES

27.1 The Parties choose as their *domicilia citandi et executandi* for the purpose of giving or serving any

notice (other than communication of day-to-day operational matters in relation to the rendering of the Services) the addresses set out in section 10 of Annexure A (Contract Data).

27.2 For purposes of this clause 27, the word "notice" will include a notice regarding a dispute, demand, breach, renewal, or termination.

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

27.3.1 is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the addressee's physical *domicilium* for the time being, will be deemed to have been received by the addressee on the first Business Day after the date of delivery. Delivery outside the said hours will not constitute proper delivery;

27.3.2 is mailed by pre-paid registered mail from an address within the Republic of South Africa to the postal *domicilium* address for the time being, will be deemed to have been received by the addressee on the 10th (tenth) Business Day after the date of such despatch;

27.3.3 is delivered by email to the addressee's e-mail *domicilium*, will be deemed to have been received by the addressee only once the addressee has acknowledged receipt thereof in writing, with an automatic "read receipt" not constituting acknowledgement of an e-mail for purposes of this clause 27.3.3.

27.4 Either Party will be entitled, from time to time, by giving written notice to the other, to vary its *domicilium* to any other physical and postal address within South Africa and any other e-mail address.

28 SETTLEMENT OF DISPUTES

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

28.2 Within a period of 14 (fourteen) days after the date on which a dispute arises ("**Dispute Date**") the Parties' Representatives or their duly appointed nominees will meet to discuss the dispute and will endeavour to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute.

28.3 If the Parties are unable to resolve the dispute amicably within 30 (thirty) days from the Dispute Date, either Party may refer the dispute to the University's Vice-Chancellor or 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.

28.4 If the individuals referred to in clause 28.3 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.

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

Parties will submit to the jurisdiction of the South Gauteng Local Division of the High Court of South Africa in regard to such dispute or difference.

28.6 Nothing in this clause 28 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.

29 GENERAL PROVISIONS

29.1 **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 28 without giving effect to any conflict of laws.

29.2 Entire Agreement

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

29.2.2 This Agreement will prevail over, cancel, and supersede all terms and conditions, whether written, oral, or implied, not contained in this Agreement which the Service Provider may seek to incorporate in the Agreement in whatsoever manner. In particular, the Service Provider's standard terms and conditions (including but not limited to any quotations, invoices, or standard supplier contracts) will not apply to this Agreement.

29.3 Variation and Cancellation

29.3.1 No amendment, variation, or consensual cancellation of this Agreement, including an amendment to clause 29.3, and no settlement of any disputes arising under this Agreement, will be binding unless recorded in writing and signed by the Parties.

29.3.2 For the purposes of this clause 29.3, "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.

29.4 **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.

29.5 Indulgences

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

29.5.1.1 may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach unless the aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. In particular, acceptance of late performance will be provisional only, and the aggrieved Party may still exercise that right during that period;

29.5.1.2 will not be estopped (i.e., precluded) from exercising its rights arising out of that breach, despite the fact that it may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

29.6 **Counterparts and Electronic Signatures.** This

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

29.7 **Waiver.** No extension of time or waiver or relaxation of any of the provisions of this Agreement and/or a Statement of Work 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.

29.8 Assignment, cession, and delegation.

29.8.1 The Service Provider must not cede, assign, or delegate any of its rights, responsibilities, or obligations to any other party, including sub-contractors, 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 and/or a Statement of Work.

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

29.8.3 On termination of the Agreement and/or a Statement of Work for any reason whatsoever, and without prejudice to any of its other rights, the University may be entitled to take cession of any sub-contracts from the Service Provider and enforce any such sub-contracts.

29.9 **Remedies.** No remedy conferred by this Agreement and/or a Statement of Work 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 and/or a Statement of Work or any existing or future law. The election of any one or more remedies by one of the Parties will not constitute a waiver by such Party of the right to pursue any other remedy.

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

29.11 **Severance.** If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality, and enforceability of the remaining provisions 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.

29.12 **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.

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

29.14 **Change Control.** If at any time while this Agreement is

<p>in force the major portion of the assets of the Service Provider is disposed of the majority shareholding or the business of the Service Provider is transferred or there is a change of management control of the Service Provider, the Service Provider will notify the University forthwith, giving details, whereupon the University will be entitled but not obliged to terminate the Agreement forthwith without payment to the Service Provider of any damages whatsoever resulting from such termination.</p>	29.15.8	<p>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.</p>
<p>29.15 Integrity, Transparency and Fair Business Practice.</p>	29.15.9	<p>Should it be deemed by the University that a conflict of interest concern exists or has come into existence in relation to the Agreement and/or a Statement of Work, the University and the Service Provider must take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.</p>
<p>29.15.1 The Service Provider is required to submit to the University, annually, a valid B-BBEE certificate issued by a South African National Accreditation System ("SANAS") accredited B-BBEE verification agency; or a Sworn Affidavit in the case of the Service Provider is an Exempted Micro Enterprise ("EME") or in the case of the Service Provider being a greater than or equal to 51% (fifty-one per cent) Black Owned Qualifying Small Enterprise ("QSE").</p>	29.15.10	<p>Where it is not reasonably possible to resolve such a conflict of interest concern, the University will in its sole and absolute discretion be entitled to terminate this Agreement and/or a Statement of Work, in which event the Service Provider will not have any claim whatsoever against the University of any nature.</p>
<p>29.15.2 In instances where a QSE or an EME has black/black women ownership that is held through a trust, an employee share ownership programme/scheme or a broad-based ownership scheme, the University reserves the right to request proof of compliance of such a programme/scheme/trust with the requirements of the Code Series 100 of the Broad-Based Black Economic Empowerment Act and Codes of Good Practice as amended from time to time. The proof of compliance must be in the form of an ownership verification certificate issued by a SANAS-accredited B-BBEE verification agency.</p>	29.15.11	<p>The Service Provider agrees that in connection with the Services to be provided under this Agreement and/or a Statement of Work:</p>
<p>29.15.3 The Service Provider undertakes to notify and provide full details to the University in the event that there is:</p>	29.15.11.1	<p>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;</p>
<p>29.15.3.1 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;</p>	29.15.11.2	<p>to disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement and/or a Statement of Work;</p>
<p>29.15.3.2 a corporate or internal restructure or change in control of the Service Provider which has impacted, or is likely to impact, negatively on the Service Provider's B-BBEE rating.</p>	29.15.12	<p>The Service Provider warrants that only new, unused, authentic, genuine, and legitimate items must form part of the Services supplied to the University.</p>
<p>29.15.4 The Service Provider must issue the notice and relevant details required in clause 29.15.1 within 30 (thirty) days from the date the event occurred.</p>	29.15.13	<p>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:</p>
<p>29.15.5 The University reserves the right to, in its sole discretion, call upon the Service Provider to provide details regarding its shareholding, management, and related information in order to verify that the Service Provider is not engaging in fronting practices or other practices that are designed to circumvent the B-BBEE Act and the South African Department of Trade and Industry Codes of Good Practice.</p>	29.15.13.1	<p>has been convicted of any criminal offence; and</p>
<p>29.15.6 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 29.15.3, the University reserves the right to terminate this Agreement with immediate effect.</p>	29.15.13.2	<p>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.</p>
<p>29.15.7 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.</p>	29.15.14	<p>The Service Provider must notify the University by written notice as soon as it becomes aware of any breach of this Agreement and/or a Statement of Work.</p>
	29.15.15	<p>The Parties agree that a breach by the Service Provider of any of its obligations or warranties under clause 29.15 is a material breach of this Agreement and/or a Statement of Work, irrespective of the level of financial loss, deprivation of benefit or exposure to liability to which such breach would or potentially would give rise.</p>
	29.15.16	<p>Either Party desiring to issue a news release, advertisement or another form of media publicity in relation to this Agreement and/or a Statement of Work must obtain the written consent of the other Party prior to the release of such publicity, which</p>



written consent will not be unreasonably delayed or withheld.

29.15.17 The Service Provider (and its Personnel) undertakes and agrees that for the duration of this Agreement and/or a Statement of Work and after the termination thereof:

29.15.17.1 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

29.15.17.2 to immediately remove any reference to the University of whatsoever nature that the Service Provider or its Personnel have made via any social media site or any other platform.

29.16 **Survival of Provisions.** Clauses 11.2.6, 18, 19, 20, 21, 24, 25, 28, 29.1 and 29.15 of this Agreement (including a Statement of Work) will survive termination.

29.17 **Good Faith.** Each of the Parties undertakes with each of the others to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement and/or a Statement of Work.

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ANNEXURE A: CONTRACT DATA

1. SIGNATORIES

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

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

2. INTRODUCTION

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

3. DEFINITIONS AND INTERPRETATION

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

4. CLASSIFICATION AND TYPE OF AGREEMENT

4.1. 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 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. 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:	To be inserted
Physical Address:	5th Floor, Room 5006A, Solomon Mahlangu House East Campus, Braamfontein, Johannesburg 2050



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

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ANNEXURE B: SCOPE OF WORK

To be inserted

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ANNEXURE C: FEES

1. FEES

1.1. Total Estimated Contract Value

To be inserted

1.2. Fee Adjustment Provisions [Exchange Rate Fluctuation Provisions and/or Annual Increases]

To be inserted

1.3. Rate Card

To be inserted

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ANNEXURE D: STATEMENT OF WORK

1 INTRODUCTION

- 1.1 The University and the Service Provider concluded a Professional Services Agreement (“**Main Agreement**”) on [insert date] with an effective date of [insert date].
- 1.2 This Statement of Work is made pursuant to the terms of the Main Agreement between the contracting parties stated below.

2 DEFINITIONS AND INTERPRETATION

- 2.1 In this Statement of Work, unless the context otherwise requires, terms used but not defined in this Statement of Work will have the meanings given to them in the Main Agreement.
- 2.2 Should either Party wish to make any change to this Statement of Work, including its schedules, annexures and/or appendices, such change shall only take effect once reduced to writing and signed by both Parties. This same restriction applies to the waiving of this requirement, which cannot be overridden verbally or by action implying intention.
- 2.3 All provisions of the Main Agreement which are not expressly changed or excluded in this Statement of Work continue to bind the Parties in respect of this Statement of Work as if they were the Parties under the Main Agreement.
- 2.4 This Statement of Work will commence on the Effective Date as set out below.

3 REPRESENTATIVES OF THE PARTIES

3.1 The Engagement managers of the Parties under this Statement of Work are as follows:

3.1.1 For the Service Provider:

Name:	
Position within the Service Provider:	
Contact Details:	

3.1.2 For the University:

Name:	
Position within the University:	
Contact Details:	

4 DURATION

Engagement Effective Date:	
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Engagement End Date:	
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5 SCOPE OF WORK

5.1 Engagement Description:

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5.2 Description of Services

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6 DELIVERABLES

6.1 Description of the deliverables:

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7 ACCEPTANCE

7.1 Subject to the provisions contained in the Main Agreement, the following will apply for purposes of this Statement of Work:

Deliverable	Description	Acceptance Criteria	Acceptance Period
[insert]	[To be included]	[insert]	[insert]
[insert]	[To be included]	[insert]	[insert]

8 ENGAGEMENT PLAN & TIMELINES

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9 SERVICE LEVELS

--

10 CONTRACT MANAGEMENT

11 FEES

11.1 Subject to the provisions contained in the Main Agreement, the following fees will apply:

--

12 REGULATORY REQUIREMENTS APPLICABLE TO THE ENGAGEMENT

--

13 OTHER SPECIFIC TERMS

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SIGNED at _____ by **the Service Provider** _____ on this the _____ day of _____ 202_.

(Print Name in block letters)

Designation

Signature

For and on behalf of **the Service Provider** and duly authorised thereto.

SIGNED at _____ by **the University** _____ on this the _____ day of _____ 202_.

(Print Name in block letters)

Designation

Signature

For and on behalf of **the University** and duly authorised thereto.

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