



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

DRAFT

INTEGRATED RETAIL MANAGEMENT AND BRAND LICENCING AGREEMENT

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.....	5
6	PROFIT-SHARING.....	5
7	NATURE OF RELATIONSHIP.....	5
8	RESPONSIBILITIES OF THE UNIVERSITY	6
9	RESPONSIBILITIES OF THE SERVICE PROVIDER.....	6
10	PERSONNEL.....	13
11	SUB-CONTRACTING	14
12	WARRANTIES	15
13	HEALTH AND SAFETY.....	16
14	CONTRACT MANAGEMENT.....	17
15	DEFICIENCIES IN PERFORMANCE	17
16	UNIVERSITY PRECINCTS AND PROPERTY.....	17
17	CONFIDENTIALITY	18
18	INTELLECTUAL PROPERTY.....	18
19	DATA PROTECTION	20
20	RECORDS AND AUDIT	20
21	BREACH AND TERMINATION	20
22	LIMITATION OF LIABILITY.....	21
23	INSURANCE.....	22
24	FORCE MAJEURE.....	22
25	ADDRESSES AND NOTICES.....	22
26	SETTLEMENT OF DISPUTES.....	23
27	GENERAL PROVISIONS.....	23
	ANNEXURE A: CONTRACT DATA	26
	ANNEXURE B: SCOPE OF WORK.....	28
	ANNEXURE C: CYBER SECURITY REQUIREMENTS.....	29

1 APPOINTMENT

1.1 The University appoints the Service Provider on a non-exclusive basis, to provide the Services, and to act as the authorised retail management company to sell Wits branded merchandise to the University community and other customers as described in Annexure B (Scope of Work). The Service Provider accepts the appointment and therefore the Parties agree to bind themselves to the terms and conditions contained in this Agreement.

1.2 The main object of the appointment of the Service Provider with expertise in retail management is to ensure the effective, and efficient management, administration of the Wits Shop as well as the online platform (www.shop.wits.ac.za) in a fit for purpose way to build it into a profitable going concern, and to maximise and unlock value by promoting the sale of Wits branded merchandise through the Online Store/Pop-up/ Satellite Store.

2 STRUCTURE OF THE AGREEMENT

2.1 This Agreement consists of:

2.1.1 The Terms and Conditions;

2.1.2 Annexure A: Contract Data;

2.1.3 Annexure B: Scope of Work; and

2.1.4 Annexure C: Cyber Security Requirements.

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

2.2.1 In respect of all provisions (except those related to the Services):

2.2.1.1 The Terms and Conditions;

2.2.1.2 Annexure B: Scope of Work;

2.2.1.3 Annexure C: Cyber Security Requirements; and then

2.2.1.4 Annexure A: Contract Data.

2.2.2 In respect of the provisions detailing the Services:

2.2.2.1 Annexure B: Scope of Work;

2.2.2.2 The Terms and Conditions;

2.2.2.3 Annexure C: Cyber Security Requirements; and then

2.2.2.4 Annexure A: Contract Data.

3 INTERPRETATION OF THIS AGREEMENT

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

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

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

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

3.5 The clause headings in this Agreement have been

inserted for convenience only and will not be taken into account in its interpretation.

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

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

4 DEFINITIONS

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

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

4.1.1 The Terms and Conditions;

4.1.2 Annexure A: Contract Data;

4.1.3 Annexure B: Scope of Work;

4.1.4 Annexure C: Cyber Security Requirements; and

4.1.5 any other Annexures attached hereto;

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

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

4.4 **"Business Hours"** means 07h00 to 17h00, Monday to Friday unless otherwise agreed in writing between the Parties;

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

4.6 **"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:

4.6.1 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;

4.6.2 changing the Party's business strategy;

4.6.3 disposing of any significant assets of the Party;

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

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

4.6.6 initiating any litigation or any dispute resolution mechanism.

4.7 **"Confidential Information"** information that:

4.7.1 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

4.7.2 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”);
- 4.8 “**Contract Data**” means Annexure A (Contract Data) setting out the specific data of this Agreement which is attached to the Terms and Conditions;
- 4.9 “**Counterfeit Goods**” means any material, component, part, assembly, sub-assembly, product, and any other item forming part of the Services in which there is an indication by visual inspection, testing, or other information that it may be a copy or substitute made without legal right or authority or one whose material, performance, identity or characteristics have been misrepresented by the Service Provider, manufacturer or a supplier in the Service Providers supply chain;
- 4.10 “**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;
- 4.11 “**Cybersecurity**” means the practice of protecting systems, networks, and programs from digital attacks;
- 4.12 “**Data Protection Legislation**” means the following legislation:
- 4.12.1 Protection of Personal Information (POPI) Act 4 of 2013, as amended or substituted; and
- 4.12.2 such other legislation that is or may be applicable to the protection of Personal Information in South Africa;
- 4.13 “**Defect**” means:
- 4.13.1 Services that are not fit for the purpose for which it was procured and of suitable quality, or not provided on time and within budget; and/or
- 4.13.2 A defect, error, omission, failure, or inefficiency that impacts the technical performance of the University’s Information Technology System(s); and/or
- 4.13.3 Non-compliance with Annexure B (Scope of Work);
- 4.14 “**Financial Year**” means the University’s financial year, commencing annually on 1 January and ending on 31 December;
- 4.15 “**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);
- 4.16 “**ICAM**” means the University’s Integrated Campus Access Management system;
- 4.17 “**Information Technology System(s)**” means a Party’s information and communication technology systems and services, including but not limited to hardware, servers, software, network, infrastructure, and any transmissions emanating from or entering the aforementioned;
- 4.18 “**Intellectual Property**” means intellectual capital embodied in any and all technical and commercial information, whether registered or not, including techniques, specifications and formulae, know-how, systems and processes, methodologies, trade secrets, undisclosed inventions, patents, utility models, trademarks, designs, logos, copyright and plant breeders’ rights;
- 4.19 “**Key Personnel**” means the Personnel who have the required and necessary skills, expertise, qualifications, knowledge, and experience and who are critical for the successful performance of the Services, as named in section 8 of Annexure A (Contract Data);
- 4.20 “**Online Store**” means the website, app or platform upgraded or set up by the Service Provider in consultation with the University to assist with the digital sale of the Wits branded merchandise as set out in Annexure B (Scope of Work);
- 4.21 “**Operating Standard**” means, the standards according stipulated by the University, in accordance with which the Wits Shop is to be operated, maintained, furnished, equipped and refurbished, that is, as reasonably deemed necessary by the University (a) with respect to the Wits Shop at a level of service and quality generally considered to be “in keeping with the Wits brand as more fully set out in Annexure B (SoW);”
- 4.22 “**Party**” or “**Parties**” means the University or the Service Provider individually and collectively, as the context dictates;
- 4.23 “**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;
- 4.24 “**Personnel**” of a Party includes employees, directors, partners, agents, consultants, associates, contractors, sub-contractors, or other representatives of a Party;
- 4.25 “**Precincts**” means any premises owned by or which fall under the management and control of the University and/or any part thereof;
- 4.26 “**Pop-up/ Satellite Store**” means the temporary retail stores that will be opened by the Service Provider in consultation with the University and which will open for a short period of time in order to take advantage of opportunities such as a passing fad or seasonal demand to promote the sale of Wits branded merchandise as set out in Annexure B (Scope of Work);
- 4.27 “**Retail Manager**” means the person appointed by the Service Provider as its authorised representative to monitor and inspect the day-to-day operation and implementation of the Agreement at the Wits Shop as set out in Annexure B (Scope of Work);
- 4.28 “**Representative**” means the duly authorised person designated as such by the Parties in section 9 of Annexure A (Contract Data);
- 4.29 “**Rules**” are the rules, regulations policies, procedures, practices and standing orders of the University, as amended from time to time;
- 4.30 “**Scope of Work**” means the detailed scope of work attached to this Agreement as Annexure B (Scope of Work);
- 4.31 “**Services**” means the fit-for-purpose retail management, and administration of the Wits Shop as well as the online platform (www.shop.wits.ac.za) services as described in Annexure B (Scope of Work) and all services complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any documentation supplied to aid the use and/or implementation of such services;

- 4.32 **“Service Provider”** means the retail management company facilitating direct contractual relationships between the University and the University Community and other customers solely for purposes of selling Wits branded merchandise as described in this Agreement. The Service Provider is described in section 5 of Annexure A (Contract Data);
- 4.33 **“Service Provider Equipment”** means subject to clause 9.4 all tools, shop fittings, and equipment provided or used by the Service Provider in terms of this Agreement for purposes of providing the Services;
- 4.34 **“Signature Date”** means the date on which this Agreement is signed by the last Party to do so;
- 4.35 **“Standing Instructions”** means detailed description of the duties referred to in this Agreement and to be carried out by the Service Provider’s Personnel;
- 4.36 **“Student”** means a person registered full-time or part-time for a degree, diploma, licentiate or certificate of the University
- 4.37 **“Termination Date”** means the date specified in section 6 Annexure A (Contract Data);
- 4.38 **“Terms and Conditions”** means these terms and conditions contained in this document;
- 4.39 **“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;
- 4.40 **“University Community”** means the University’s Personnel, persons officially associated with the University, Students, former students and alumni of the University, as well as the University’s invitees, visitors and guests;
- 4.41 **“Wits Shop Domain Name”** means the domain name which is owned by the University viz. www.shop.wits.ac.za, identifying the Wits Shop on the internet, with the following web address <https://shop.wits.ac.za/>;
- 4.42 **“University Equipment”** means any and all equipment such that is temporarily provided by the University for use by the Service Provider in performing the Services;
- 4.43 **“University Marks”** its name, each and every registered or unregistered trademark and/or distinctive business name or any other distinctive mark, slogan, emblem or design, or any other form of corporate identity style names, songs, jingles, brand straplines, emblem or logo capable of protection against infringement by third parties, which University Marks may only be used in terms and in accordance with the specific consent and prescriptions by the University;
- 4.44 **“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;
- 4.45 **“Wits Shop Premises”** means the University’s retail outlet located at Solomon Mahlangu House, on the University’s Braamfontein East Campus, and any other designated facility belonging to or controlled by the University where the Services are delivered as set out in Annexure B (Scope of Work);
- 4.46 **“Wits branded merchandise”** means the merchandise to be sold in the Wits Shop that has the University Marks including but not limited to clothing, stationery, gadgets, or any other items that can feature the University’s emblem to promote the University’s brand.
- 5 TERM**
- 5.1 This Agreement commences on the Commencement Date and terminates on the Termination Date unless terminated earlier as provided in this Agreement
- 5.2 Notwithstanding the provisions of clause 5.1 above, the University may terminate this Agreement on 3 (three) month’s written notice to the Service Provider for any reason whatsoever and the Service Provider will have no recourse against the University in this regard.
- 6 PROFIT-SHARING**
- 6.1 As set out in Annexure B (Scope of Work), the Service Provider must:
- 6.1.1 within 3 (three) months of the Signature Date and in consultation with the University, develop and implement a complete, comprehensive, and effective 3 (three) year brand-business turnaround strategy with the objective of building the Wits Shop into a profitable going concern by year 3 (three) of this Agreement.
- 6.1.2 every 3 (three) months during the term of this Agreement, provide the University with a profit and loss statement. This statement must include a financial report that summarises the Service Provider’s revenues, expenses, and profits or losses.
- 6.2 On or before the third anniversary of this Agreement, the Parties agree to review the financial performance of the Wits Shop, based on the profit and loss statements referred to in clause 6.1.2. Based on this evaluation, the Parties shall take the following actions:
- 6.2.1 if it is shown that the Service Provider has made a profit by the end of year 3 (three) of this Agreement, the Parties shall enter into a separate profit-sharing agreement or any other suitable arrangement that benefits the University.
- 6.2.2 if the Service Provider has not made a profit by the end of year 3 (three), the University reserves the right to terminate this Agreement in accordance with clause 5.2.
- 7 NATURE OF RELATIONSHIP**
- 7.1 The Service Provider will provide the Services to the University as an independent contractor. Save as provided for herein, the Service Provider will only act as a retail management company that facilitates direct contractual relationships between the University and the University Community and other customers solely for purposes of selling Wits branded merchandise. Nothing in this Agreement will be construed as creating any relationship of agency, employment, partnership, joint venture or similar relationship between the University and the Service Provider.
- 7.2 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.
- 7.3 The Service Provider specifically acknowledges and agrees that this Agreement does not constitute an undertaking by the University that it will provide any guarantees on the volumes of sales generated by the Wits Shop or its online platform (www.shop.wits.ac.za). By way of amplification, it is the Service Provider’s responsibility to ensure that the Wits Shop and its online platform (www.shop.wits.ac.za) operates optimally and profitably.

8 RESPONSIBILITIES OF THE UNIVERSITY

- 8.1 The University will, subject to the Rules:
- 8.1.1 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. Specifically, The University will provide Service Provider with:
- 8.1.1.1 access to the Wits Shop Premises;
- 8.1.1.2 the location on the Precincts for setting up the Pop-up/ Satellite Store; and
- 8.1.1.3 access to the Wits Welcome Centre when it is constructed.
- 8.1.1.4 Access to shop space at the Wits Shop Premises, at the Matrix Student Centre for the pop-up store, and
- 8.1.1.5 the necessary utilities including water and electricity to perform its obligations under this Agreement. The Service Provider acknowledges and accepts that the University will not be responsible for any interruption in Business Hours and utilities. The Service Provider acknowledges and accepts that the shop space and utilities will be provided to the Service Provider at no additional cost for the first 3 (three) years of this Agreement. Upon the expiration of this period, the Parties shall negotiate and agree upon mutually acceptable terms of payment.
- 8.1.2 receive information from the Service Provider;
- 8.1.3 subject to availability of parking facilities and to the terms and conditions of the University's policy regarding the parking of vehicles on the Precincts, provide the Service Provider and its Personnel with parking facilities on the Precincts in close proximity to the Service Provider's point of operation. Any cost associated with the provision and use of such parking facilities will be for the account of the Service Provider;
- 8.2 in collaboration with the Service Provider develop an annual marketing plan for the Wits Shop and will provide limited marketing support for the launch of the revamped Wits Shop in the first year and ongoing marketing support through its social media channels and TV screens. All other marketing costs must be paid for by the Service Provider.

9 RESPONSIBILITIES OF THE SERVICE PROVIDER

- 9.1 The Service Provider must as set out in Annexure B (Scope of Work):
- 9.1.1 deliver the Services which are effective, efficient, profitable, and fit for the purpose required by the University on time, with reasonable care and skill, and in accordance with Annexure B (Scope of Work). The Service Provider acknowledges and accepts that it will only act as a retail management company responsible for facilitating direct contractual relationships between the University Community and other customers solely for purposes of selling Wits branded merchandise.
- 9.1.2 at its own cost assign Personnel who are sufficiently qualified, trained, and competent both in numbers and skill to provide the Services, to handle the customer demand, but also ensure that they are qualified, motivated, professional and friendly, and

- ensure the due and proper performance of its obligations under this Agreement. Without limiting any other obligation of the Service Provider under this Agreement or otherwise the Service Provider must provide continued training and development for all of its Personnel in those skill areas relevant to the performance of its obligations under this Agreement;;
- 9.1.3 ensure that the Services are carried out by certified, properly trained and competent Personnel in a professional manner and in accordance with the best practices in the retail industry (this includes the provisions of any legislation applicable to the Services).
- 9.1.4 designate a Representative, who will be responsible for liaising with the University's Representative at all times in respect of the provision of the Services and who will supervise the Personnel responsible for the provision of the Services;
- 9.1.5 in collaboration with the University and at its own cost:
- 9.1.5.1 develop an annual marketing plan for the Wits Shop;
- 9.1.5.2 a marketing plan for the launch of the revamped Wits Shop in the first year; and
- 9.1.5.3 regular, seamless marketing campaigns and activities through social media channels to promote the Wits Shop and Wits branded merchandise.
- 9.1.6 as set out in Annexure B (Scope of Work), ensure that adequate and effective management systems are in place in order to comply with its obligations in terms of this Agreement. Such management systems must at a minimum include but not be limited to the following components:
- 9.1.6.1 financial management; accounting;
- 9.1.6.2 payment tracking;
- 9.1.6.3 procurement;
- 9.1.6.4 logistics;
- 9.1.6.5 online inventory management;
- 9.1.6.6 order management;
- 9.1.6.7 marketing and promotions;
- 9.1.6.8 Pop-up store strategy;
- 9.1.6.9 eCommerce platform; and
- 9.1.6.10 contract management;
- 9.1.7 do all that is reasonably necessary within the course and scope of the Agreement to prevent or minimise the risk of loss or damage to University property, including its Information Technology System, the University's reputation and injury to persons;
- 9.1.8 co-operate and consult with other suppliers of the University, should it be necessary for purposes of ensuring the provision of the Services in a seamless manner.
- 9.2 As set out in Annexure B (Scope of Work), the Service Provider in consultation with the University must determine and communicate the plan for the setting up of the Pop-up/ Satellite Store.

9.3	Without limiting the generality of this clause, the Service Provider shall be responsible for purchasing, holding and maintaining stocks of the Wits branded merchandise, Service Provider Equipment and the like in sufficient quantities to meet its obligation in terms of this Agreement.	9.9.9	Agreement; and ensure that it avoids any appointment or circumstances which may reasonably result in any conflict between its interests and those of the University.
9.4	Subject to clause 23 such stocks shall be held at the risk of the Service Provider who must make provision for any storage, distribution, deliveries, insurance or security required for such stocks. The risk, title, and responsibility for such stocks shall be held by the Service Provider.	9.10	<u>Inventory/Wits branded merchandise</u>
9.5	The Service Provider may not without having obtained the prior written consent of the University use and/or provide any Service Provider Equipment for purposes of providing the Services. Additionally, after the University has approved of the use of any Service Provider Equipment, the Service Provider is required to provide the University with a detailed list of the Service Provider's Equipment together with their respective values and confirmation of insurance cover in respect of such Service Provider Equipment. Risk and title to the Service Provider's Equipment, supplied by the Service Provider shall be held by the Service Provider.	9.11	The Service Provider will purchase from the University, at cost all the inventory/Wits branded merchandise in the Wits Shop on the Signature Date and as more fully set out in the stock take inventory which will be provided to the Service Provider.
9.6	Ownership of the University Equipment shall remain with the University, but the Service Provider retains responsibility for its proper use and security.	9.12	Upon full payment of the purchase price by the Service Provider to the University, the Service Provider will become the legal owner of the inventory/Wits branded merchandise and the risk including the associated risks, and title to the inventory/Wits branded merchandise will transfer to the Service Provider;
9.7	The Service Provider must provide the University with a list of its nominated suppliers, such list will be updated at the start of each University term. The University reserves the right to require that the Service Provider discontinue the use of a particular supplier if the continued use of that supplier would not be in the best interests of the University.	9.13	Upon termination of this Agreement, for whatever reason, the University shall be entitled to have buy back option over the remaining Wits branded merchandise entitling the University, at its sole discretion, to purchase from the Service Provider, the remaining Wits branded merchandise or any portion thereof at a discounted rate and/or cost price (whichever is the lower) of the remaining Wits branded merchandise at the time of the exercise of the buy-back option.
9.8	The Service Provider shall provide sufficient equipment to perform the Services and shall ensure that all University Equipment is at all times in good working order.	9.14	<u>Management and Operation</u>
9.9	The Service Provider will (and will ensure the same from its Personnel) at all times:	9.14.1	Except as otherwise specified in this Agreement, the management and operation of the Wits Shop shall be under the exclusive supervision and control of the Service Provider. The Service Provider must operate the Wits Shop in a proper, efficient, and profitable manner that is consistent with the Operating Standard.
9.9.1	act in accordance with the lawful instructions of the University;	9.14.2	The Service Provider will at its own expense and in consultation with the University:
9.9.2	display in its relationship and interaction with the University, the utmost of good faith;	9.14.2.1	implement and maintain its own enterprise resource planning software to manage day-to-day business activities such as accounting, procurement, project management, risk management and compliance, and supply chain operations;
9.9.3	not exceed the express or implied limits of the authority in terms of this Agreement;	9.14.2.2	maintain the Wits Shop (and any portion thereof) or cause the Wits Shop (and any portion thereof) to be continuously operated and maintained, in accordance with the Operating Standard and in accordance with best industry practice. Such maintenance shall include, but not be limited to, repairs to improvements, maintenance of mechanical systems and equipment, existing fire protection systems, smoke detectors, security systems, alarms and the like that are not maintained by the University, and such other normal maintenance, alteration and repair work as may be reasonably advisable or necessary, and the Service Provider shall use Commercially Reasonable Efforts to promptly rectify any malfunctions or defects in such systems;
9.9.4	not perform its responsibilities in terms of this Agreement in a manner that would cause the University to be in violation of any applicable laws;	9.14.2.3	in the event of an emergency, take all actions (including, but not limited to, making repairs) which are immediately necessary to address the emergency;
9.9.5	comply with the Rules;	9.14.2.4	take prompt action, in accordance with this Agreement, to rectify, all unsafe conditions of which it is aware which could lead to bodily
9.9.6	provide the Services without causing any annoyance, discomfort, interruption or disturbance to other users of the Precincts, including the 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;		
9.9.7	immediately inform the University in writing of every event, which could result in a position where the Service Provider is unable to fulfil its obligations in terms of this Agreement;		
9.9.8	use Commercially Reasonable Efforts not to engage in activities which would detract it from the proper performance of its duties in terms of this		

	injury and/or direct and/or indirect damage to its Personnel, the University Community or the general public on or about the Wits Shop.		information management system.
9.15	<u>Online Store/e-commerce platform</u> <u>(www.shop.wits.ac.za)</u>	9.16	<u>Pop-up/ Satellite Store</u>
9.15.1	The Service Provider must design, develop, implement, and maintain an open source modern Online Store which will be hosted at https://shop.wits.ac.za/ .	9.16.1	The Service Provider must:
9.15.2	The Service Provider shall grant administrator rights on the Online Store to the University's designated Representative.	9.16.1.1	set-up, launch, and promote Pop-up/ Satellite Stores as and when required;
9.15.3	The Service Provider undertakes to ensure that:	9.16.1.2	develop and implement an effective marketing strategy to attract customers by utilising marketing campaigns and social media to promote the Pop-up/ Satellite Store, creating event pages, and using engaging content;
9.15.3.1	the Online Store is user friendly and delivers a seamless user experience;	9.16.1.3	ensure that the design and layout of the Pop-up/Satellite Store reflects the University's brand personality and message;
9.15.3.2	the Online Store is developed in compliance with all applicable legislation, as described in Annexure C (Cyber Security Requirements), including but not limited to the Data Protection Legislation, the Electronic Communications and Transactions Act and where applicable, international standards such as the Payment Card Industry Data Security Standards (PCI-DSS);	9.16.1.4	ensure that it has an engaging appearance, innovative design and retail concept to create and build brand awareness of the Wits branded merchandise offered at the Wits Shop, and that attracts and engages the University Community and other customers;
9.15.3.3	the functionality, security, and compliance of the Online Store is in accordance with industry best practices, adheres to the University's brand guidelines;	9.16.1.5	ensure that it has an effective and secure, flexible point of sale system that enables swift and secure transactions and that can accept various payment methods, including credit cards, digital wallets and contactless payments;
9.15.3.4	the Online Store aligns with the University's cybersecurity policies and procedures and as described in Annexure C (Cyber Security Requirements). The Service provider undertakes to ensure that its Cybersecurity systems are robust, and protected by a comprehensive set of strategies, protocols, and technologies that reduce the risk of cyber-attacks and contain damage if an attack occurs. The Service Provider acknowledges and accepts all risks associated with the Online Store and warrants that it has adequate business insurance cover in place that includes crisis and reputation management cover in place. Additionally, the Service Provider, in consultation with the University undertakes to ensure that it will carry out a code review exercise of the Online Store pre-deployment, after enhancements and changes are made to the Online Store post-deployment, and as may be required by the University;	9.16.1.6	ensure that it has a robust inventory management system, which allows it to ensure that it has accurate stock levels, even in a temporary setting;
9.15.3.5	its Online Store strategy is designed to increase sales and brand awareness while reducing risk and costs;	9.16.1.7	assign Personnel who are sufficiently qualified, trained, and competent both in numbers and skill to handle the customer demand, but also ensure that they are qualified, motivated, and friendly;
9.15.3.6	the Online Store integrates with its enterprise resource planning software so that the right information regarding prices, offers, products, stock status and product information is readily available on the Online Store platform;	9.16.1.8	measure and evaluate the performance of the Pop-up/ Satellite Store. The Service Provider must track and analyse different metrics, including but not limited to foot traffic, sales, conversion rate, customer satisfaction, and social media engagement, to assess the impact of the Pop-up/ Satellite Store. The Service Provider undertakes to use the insights and feedback from Pop-up/ Satellite Store to improve future Pop-up/ Satellite Store or its overall retail strategy. The Service Provider will include its analysis and finding in its reports to the University.
9.15.3.7	the University Community and other customers are offered the same products, offers and availability of merchandise both physically and online;	9.17	<u>Parking and Loading</u>
9.15.3.8	the Online Store has an agile and efficient customer portal, automatic ordering, a reliable and efficient delivery processes, and ongoing technical support; and	9.17.1	The Service Provider and its Personnel may, subject to the Rules, use parking bays that have been allocated to it by the University which are available and for general use, provided that they adhere to the Rules governing such use of the parking bays.
9.15.3.9	the Online Store has an integrated product	9.17.2	As may alternatively be arranged with the University, the Service Provider and its Personnel will park their cars only in parking bays designated for their use.
		9.17.3	The Service Provider will furnish the University with its and its Personnel's vehicle registration numbers within 5 (five) days and thereafter notify the University of any changes thereof within 5 (five) days after such changes occur. If the Service Provider or its Personnel park their vehicles on the Precincts other than in the designated bays, the University may charge the Service Provider per day

	or part thereof for each vehicle parked other than in the designated parking bays as and for liquidated damages and the Service Provider hereby authorises the University to tow away, at the Service Provider's expense, all such vehicles belonging to the Service Provider or its Personnel and/or to attach violation stickers or notices to such vehicles.	9.18.4.2	ensure that the relevant legal requirements are met at all times in connection with the requirements of its licences for -
		9.18.4.2.1	television and radio broadcasting; and
		9.18.4.2.2	any other permitted activity on the Wits Shop Premises for which a licence is required (including a temporary liquor licence for a specific function); and
9.17.4	All the terms of this Agreement relating to the Premises apply <i>mutatis mutandis</i> to the parking bays referred to in clauses 9.17.19.17.2 except those which are obviously inapplicable.	9.18.4.3	ensure that certified copies of all licenses are provided to the University (annual renewals included); and the Service Provider shall ensure that all relevant licenses are granted and valid and/or renewed for the duration of the Agreement), including but not limited to the application for and payment of such license/s.
9.17.5	Without derogation from any Rules in force for the time being as envisaged in the Agreement, the Service Provider will at its own cost ensure that:		
9.17.5.1	ensure that all goods will be delivered to the designated receiving areas and only at times (agreed upon between the University and the Service Provider);	9.18.4.4	not place or leave any article or other thing in or about any passage, lift, stairway, pathway, parking garage, about the Wits Shop Premises/ Pop-up/ Satellite Stores so as to cause a nuisance, danger or obstruction;
9.17.5.2	the loading and off-loading of merchandise and other articles in connection with the Wits Shop are carried out only:		
9.17.5.2.1	in the loading bays and areas provided for the purpose, and	9.18.4.5	not bring into the Wits Shop Premises/ Pop-up/ Satellite Stores or the Precincts any article which, by reason of its weight or other characteristics, is likely to cause damage to the property, including to the Precincts and/or the Wits Shop Premises/ Pop-up/ Satellite Stores;
9.17.5.2.2	with due regard and consideration for the interests of other occupiers of the premises and the general public.		
9.17.5.2.3	no vehicles driven by it or its Personnel, invitees or guests will obstruct the free flow of traffic, the entrances or exits of driveways or the pedestrian entrances to the buildings on the Precincts.	9.18.4.6	not cause or commit any nuisance in the Wits Shop Premises or elsewhere on the Precincts or cause any annoyance or discomfort to other occupiers of the of the building where the Wits Shop Premises is situated or the Precincts,
9.17.5.3	in cooperation with the University, assist in reducing environmental impact by:	9.18.4.7	not cause or allow any loudspeakers, radios, television sets or similar apparatus to be operated in a manner that will disrupt other activities (especially academic activities) in the building where the Wits Shop Premises is situated or on the Precincts;
9.17.5.3.1	minimising the frequency/number of deliveries to the Wits Shop;		
9.17.5.3.2	encouraging suppliers to switch engines off when vehicles are stationary where applicable;	9.18.4.8	not leave refuse or allow it to accumulate in or about the Wits Shop Premises except in the refuse bins provided (which will be housed in the designated refuse area only) and will dispose of any wet waste daily in a manner approved by the University and by applicable legislation;
9.17.5.3.3	utilise smaller vehicles for the delivery of merchandise where applicable;		
9.17.5.3.4	use of fuel-efficient vehicles;		
9.17.5.3.5	use of bio degradable and sustainable forms of packaging for deliveries.	9.18.4.9	retain all refuse in an area screened off from the rest of the Wits Shop Premises by a wall and ensure that that area is at all times kept clean, tidy and hygienic to the standard set from time to time by the University. The said areas will be protected by fly catchers supplied by the Service Provider ;
9.18	<u>Wits Shop Premises/ Pop-up/ Satellite Stores</u>		
9.18.1	The Service Provider:		
9.18.2	subject to the provisions of clause 9.21.6 is responsible for the provision of furniture, computers, and any other resources required by its Personnel for purposes of providing the Services at the Wits Shop/ Pop-up/ Satellite Stores;	9.18.4.10	keep all refuse in the kind of container specified by the University in those positions indicated by the University which will be prepared for collection in the manner and at the times and places specified by the University;
9.18.3	must ensure that the Wits Shop/ Pop-up/ Satellite Stores is maintained in accordance with good housekeeping principles, are used exclusively for purposes of performing the Services, and are always available for inspection by the University.	9.18.4.11	refrain from interfering with the electrical, plumbing or gas installations or systems serving the Wits Shop Premises or the building where the Wits Shop Premises is situated, except as may be necessary to enable the Service Provider to carry out its obligations of maintenance and repair in terms of this Agreement;
9.18.4	The Service Provider must :		
9.18.4.1	not use the Wits Shop Premises/ Pop-up/ Satellite Stores or allow them to be used, in whole or part, for any purpose other than for the operation of the Wits Shop;	9.18.4.12	not affix any electrical fittings other than those approved by the University;

9.18.4.13	take all reasonable measures to prevent blockages and obstructions from occurring in the drains, sewerage pipes and water pipes serving the Wits Shop Premises ;	9.18.4.28	install, erect or place any machine, apparatus or other advertising media outside the Wits Shop Premises ;
9.18.4.14	provide at the Service Provider 's own expense all energy efficient electric, fluorescent and incandescent light bulbs required in the Wits Shop Premises;	9.18.4.29	bring any safe or other heavy object into the Wits Shop Premises or the Precincts.
9.18.4.15	keep the Wits Shop Premises open for business at least during Business Hours unless otherwise required. The Parties record that the University is closed between Christmas and New Year (or such extended period as the Vice-Chancellor may determine from time to time) and accordingly the Service Provider will be required to be closed during this period. However, permission to operate during such period may be given provided that written application is made no later than 1 (one) month in advance;	9.18.5	The Service Provider shall observe the necessary care and responsibility for the safekeeping of the keys for access to the Wits Shop provided by the University. The Service Provider shall:
9.18.4.16	not cause or allow the trade name of the Business conducted in the Wits Shop Premises to be changed without the prior consent of the University, which permission will not be unreasonably withheld;	9.18.5.1	not make any copies of such keys without the prior written consent of the University,
9.18.4.17	comply with, and ensure that any appointed agents comply with the University's cash collection controls and requirements including drop safes, pick up times and routes taken by pick up agents;	9.18.5.1.1	ensure that keys are not misused or used to allow access by unauthorised persons, and
9.18.4.18	not contravene or permit the contravention of any of the conditions of title under which the Precincts are held by the University or any of the provisions of the Town Planning Scheme applicable to the Wits Shop Premises;	9.18.5.1.2	return all keys (including copies made forthwith on expiry or termination of this Agreement for whatever reason.
9.18.4.19	clean the exterior of its shop fronts to the full height thereof (including the glass), the interior of the Wits Shop Premises and the signs;	9.19	<u>Assignment and Subletting</u>
9.18.4.20	keep the Wits Shop Premises and all its contents in a clean, orderly and sanitary condition;	9.19.1	The Service Provider will not be entitled to sublet the whole or any part of the Wits Shop Premises/ Pop-up/ Satellite Stores without the prior written permission of the University.
9.18.4.21	install and properly maintain a CCTV system or such other visual security system as the University may reasonably require;	9.19.2	The Service Provider shall not, without the University's prior written consent:
9.18.4.22	at its own expense repair any damage caused to the Wits Shop Premises by forcible entry;	9.19.2.1	give up, for either a definite period or at all, occupation or possession of the Wits Shop Premises/ Pop-up/ Satellite Stores or any part thereof to any person, or permit any person whether as licensee, agent, occupier, custodian or otherwise to enter into possession of the Wits Shop Premises or any part thereof for either a definite period or at all; or
9.18.4.23	ensure that the Wits Shop Premises are both adequately stocked and properly staffed with Personnel necessary to conduct of the Business;	9.19.2.2	cede, assign, transfer, alienate, or otherwise dispose of or pledge or hypothecate any of its rights and/or obligations under this Agreement.
9.18.4.24	keep the entrance to the Wits Shop Premises illuminated and well-lit during Business hours; and	9.20	<u>Maintenance and Repairs</u>
9.18.4.25	not without the University's prior written consent:	9.20.1	The Service Provider will throughout the Agreement care for maintain the Wits Shop Premises in good order, condition and repair and upon the expiry or termination thereof return and redeliver the Wits Shop Premises to the University in like good order and condition, and it will make good and repair at its own cost any damage and if it fails to do so, the University will without prejudice to any other remedy available to it be entitled to effect such replacement or repairs at the cost of the Service Provider and the Service Provider will reimburse the University for the cost of replacing, repairing or making good any broken, damaged or missing articles (including keys).
9.18.4.26	erect any radio or television aerial on the roof or exterior walls of the Wits Shop Premises or on the grounds building where the Wits Shop Premises is situated. Any aerial so installed without such consent may be removed by the University without notice at any time;	9.20.2	Without derogating from the generality of 9.20.1, the Service Provider will at its own cost maintain in good order and condition -
9.18.4.27	use any video or audio or other devices in a manner so as to be heard and/or seen outside of the Wits Shop Premises ; or	9.20.2.1	the interior of the Wits Shop Premises and all parts thereof, including all windows, doors, appurtenances, fixtures and fittings, geysers, shop fronts, contained in the Wits Shop Premises;
		9.20.2.2	any sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved by the University; (and on expiry or termination of this Agreement remove any such sign, awning, canopy, decoration, lettering, advertising matter and restore the Wits Shop

	Premises to the same good condition as it was before the erection of such sign, awning, canopy, decoration, lettering, advertising matter);	9.20.2.11	The Service Provider must:
9.20.2.3	all wiring, lamps and fittings for electric light and power as well as all pipes and fittings for the supply of water and sewerage to the Wits Shop Premises which are situated in the Wits Shop Premises and which serve the Wits Shop Premises exclusively. The Service Provider will, however, also be responsible to repair all similar equipment which is situated on the Precincts and which does not serve the Wits Shop Premises exclusively if the University can prove that the Service Provider or its Personnel, invitees or guests were responsible for any damage thereto;	9.20.2.11.1	not allow or cause any blockage of any sewerage or water pipes or drains in or used in connection with the Wits Shop Premises ;
		9.20.2.11.2	remove at its cost any such obstruction or blockage which occurs in the Wits Shop Premises ; and
		9.20.2.11.3	alter its plumbing layout to cater for needs of the Business as in the discretion of the University appears necessary.
		9.20.2.12	Subject to any notification given by the Service Provider in terms of clause 9.20.2.10, the Service Provider acknowledges that the Wits Shop Premises and all keys, taps, fittings and other installations, locks, doors, windows, sewerage pans, pipes, electrical installations and water taps (hereinafter referred to as the "appurtenances") are in order at the Effective Date.
9.20.2.4	ensure that the decor of the Wits Shop Premises is maintained at a level which is in keeping with the standards of the University's requirements;		
9.20.2.5	ensure that all the Wits Shop Premises are maintained in accordance with good housekeeping principles, are used exclusively for purposes of performing its obligations under the Agreement, and are available for inspection at all times;	9.21	<u>Alterations, Additions and Improvements</u>
		9.21.1	The Service Provider may not without the University's prior written consent:
		9.21.1.1	make any non-structural alterations or additions to the Wits Shop Premises ;
9.20.2.6	promptly repair or make good all damage occurring in the Wits Shop Premises from time to time during the Agreement, whatever the cause of such damage, including damage to any part of the interior or exterior of the Wits Shop Premises or to any window, door, appurtenance, fixture or fitting, shop fronts and replace all such items (as well as any keys) which have been broken, lost or destroyed (again regardless of cause);	9.21.1.2	install any floor covering, interior or exterior lighting, plumbing, fixtures or shades or make any change to the shop front;
		9.21.1.3	attach to the walls of the Wits Shop Premises any fittings, shelving or appurtenances;
		9.21.1.4	drive or permit to be driven any nails or screws into the walls or ceiling of the Wits Shop Premises ; and
9.20.2.7	on the termination of this Agreement, return the Wits Shop Premises and all such parts thereof (including all keys) to the University in good order, condition and repair, fair wear and tear excepted.	9.21.1.5	paint, affix or attach to the Wits Shop Premises of any part of the building where the Wits Shop Premises is situated any advertising signs or other matter, awning or canopy or any other thing of any kind provided that if such signs, awnings or canopy are in keeping with the general standard and finish of the building where the Wits Shop Premises is situated. If the Service Provider commits a breach of this provision the University will be entitled, without notice or order of court, to remove the offending item(s).
9.20.2.8	if the Service Provider employs the services of a contractor who is not registered as a vendor with the University, the Service Provider must ensure that the services of the contractor are fit for the intended purpose;		
9.20.2.9	all work performed by the contractor complies with the University's requirements. All liability for repairs will be borne by the Service Provider.		If the University consents, the work will be done strictly in accordance with the University's specifications.
9.20.2.10	If the Service Provider notifies the University in writing within 7 (seven) days after having taken possession of the Wits Shop Premises of the need for any repairs to or in the Wits Shop Premises or of the fact that any part of the Wits Shop Premises , including any lock, key, door, window, appurtenance, fixture or fitting, is damaged, missing, or out of order, the University will promptly cause the necessary repair or replacement to be effected at the University's own expense. If or in so far as the Service Provider does not give such notice, the Service Provider is deemed to have acknowledged that the Wits Shop Premises and all parts thereof were intact, in place, and in good order, condition and repair when the Service Provider took possession of the Wits Shop Premises under this Agreement.	9.21.2	The Service Provider will not remove or dismantle any permanent fittings in the Wits Shop Premises without the University's prior written consent. All such fittings will remain the property of the University at all times.
		9.21.3	If the Service Provider does alter, add to, or improve the Wits Shop Premises in any way, whether or not in breach of clause 9.21.1 or 9.21.2, the Service Provider will at its own cost and expense, if so required by the University, restore the Wits Shop Premises on expiry or the termination of this Agreement to their condition as it was prior to such alteration, addition or improvement having been made. The University's requirement in this regard may be communicated to the Service Provider at any time, but not later than the 7th (seventh) day after the Service Provider has delivered up the Wits

	Shop Premises pursuant to the termination of this Agreement, and this clause 9.21.3 will not be construed as excluding any other or further remedy which the University may have in consequence of a breach by the Service Provider of this clause 9.21.	9.23.1	As part of its risk management duties, and without limiting any other obligation of the Service Provider under this Agreement or otherwise, and subject to clause 14, the Service Provider is required to do the following:
9.21.4	Save for any improvement which is removed from the Wits Shop Premises as required by the University in terms of clause 9.21.3, all improvements made to the Wits Shop Premises belong to the University and may not be removed from the Wits Shop Premises at any time.	9.23.1.1	conduct risk assessments of the activities performed under this Agreement,
		9.23.1.2	present the risk assessment reports to the University;
9.21.5	The Service Provider will not, whatever the circumstances, have any claim against the University for compensation for any improvement to the Wits Shop Premises, nor does the Service Provider have a right of retention in respect of any improvements.	9.23.1.3	ensure all aspects of the Services undertaken are assessed, controlled and reviewed regularly; and
		9.23.1.4	remedy any deficiencies identified as a part of the risk assessment(s) to the satisfaction of the University.
9.21.6	The Service Provider will, at its own costs and subject to the University's prior approval, erect such fixtures and fittings which is appropriately functional, speaks to the sophistication, reach and reputation of the Wits brand, attracts customers, is of the best available quality and design, in keeping with the general finish of the building where the Wits Shop Premises/ Pop-up/ Satellite Stores is/are situated as may be necessary for the provision of the Services, and on the basis that the Service Provider will:	9.23.2	Save as may specifically be provided to the contrary in this Agreement, the Service Provider will at its own cost supply all the required materials, and Service Provider Equipment necessary to carry out its obligations in terms of this Agreement.
		9.23.3	The Service Provider must furnish the University's Representative with quarterly reports as set out in the Scope of work, no later than the 7th day of the month following the month to which the report relates.
9.21.6.1	supply and at all times keep in a good, clean and hygienic condition, all furniture and equipment required for the Wits Shop;	9.23.4	The University reserves the right to require the Service Provider to furnish it with any additional information over and above the information furnished in the Service Provider's quarterly reports that is deemed to be pertinent to the Service Provider's fulfilment of its obligations in terms of this Agreement.
9.21.6.2	submit to the University's representative working drawings, layouts, perspective details, colour schemes, an artist's impression and specifications ("the store layout plans") of all such fixtures and fittings to be installed and erected in the Wits Shop Premises within 30 (thirty) days of signing the Agreement;	9.23.5	Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider will ensure that it and its Personnel comply with all applicable laws relating to occupational health and safety including the Occupational Health and Safety Act, 85 of 1993 ("OHS Act").
9.21.6.3	obtain the approval from the University's duly authorised representative for the shop layout plans;	9.23.6	The Service Provider must keep statistics, minutes and other records required by legislation on file and available for inspection by the University's Representative.
9.21.6.4	erect and install its fixtures and fittings strictly in accordance with the approved shop layout plans prior to the opening date; and	9.23.7	The Service Provider may address service performance, operational, administrative and other contractual issues immediately to University's Representative.
9.21.6.5	permit and allow the University's authorised representative to inspect and reasonably supervise (if the University so elects), the implementation of the shop layout plan.	9.24	<u>Operational Management:</u>
9.21.7	Without limiting any other section of the Agreement, the Service Provider shall be responsible for the costs to return to a "as was" condition from any damage caused to the buildings, grounds, or the University's Equipment or other equipment, and furnishings caused in whole or in part by the Service Provider's Personnel while performing the activities in terms of this Agreement. The Service Provider shall immediately report in writing the occurrence any damage to the University's Representative	9.24.1	The Service Provider will appoint:
9.22	<u>Sustainability/Going Green</u>	9.24.1.1	a Retail Manager with the authority and responsibility to manage and supervise the operational aspects of this Agreement. The Service Provider must delegate to the Retail Manager authority to arrange immediately for the remedying of any defect in the performance of the Service Provider's obligations in so far as these relate to the day-to-day operations, and
9.22.1	The Service Provider will use recyclables disposables and will ensure that it enforces environmentally sustainable practices during the course of this Agreement.	9.24.1.2	The Retail Manager must be stationed at the Wits Shop and will not, under any circumstances, assist in or perform any other activity or work for the Service Provider other than that directly related to the Services;
9.22.2	The Service Provider agrees that it conserve resources such as electricity, water and gas.	9.24.2	The Service Provider shall consult with the University before making decisions affecting the
9.23	<u>Risk Management</u>		

	appointment or removal of its Retail Manager.		be done in accordance with POPI.
9.24.3	The Service Provider is required to provide Performance Reports. The Performance Reports are required to be provided electronically as requested by the University's Representative and must include:	10.3	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.
9.24.3.1	the Service Provider's letterhead and signature;	10.4	The Service Provider acknowledges that the provision of Key Personnel and a Representative by the Service Provider, as specified in the Agreement, is critical to the Agreement.
9.24.3.2	date of the report and the reporting period covered;	10.5	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.
9.24.3.3	an index based on the list of report inclusions and page/section referencing;	10.6	The Service Provider acknowledges the importance of an orderly transition from one service provider to another, and accordingly undertakes to cooperate with, and assist the University and any new service provider appointed by the University, on termination of the Agreement. In complying with the requirements of this clause 10.6, the Service Provider shall provide the University with all information, data and documentation pertaining to its Personnel complement and the provision of the Services. The Service Provider further acknowledges that the obligation to cooperate and assist the University may extend beyond the termination date and that the obligation will arise irrespective of whether the Agreement is terminated due to breach of the Agreement or the effluxion of time.
9.24.3.4	a record of any actions, follow ups or updates on the identified incidents;		
9.24.3.5	a list of any Personnel and their training undertaken prior to commencement;		
9.24.3.6	legislative changes, new procedures and risk mitigation;		
9.24.3.7	any plan of actions requested from the University that addresses poor performance; and		
9.24.3.8	any additional information requested from the University.		
9.24.4	In addition to the Performance Reports, the Service Provider is required to immediately record and report the following to the University's Representative:		
9.24.4.1	health and safety issues or incidents;	10.7	<u>Relief Personnel</u> The Service Provider may provide relief Personnel by temporarily transferring Personnel from another site for whatever reason, including seasonal workload peaks, or to replace Personnel on training, leave or sick leave, provided that the University's Representative is given reasonable notice of this. The Service Provider shall bear all costs related to the provision of relief Personnel.
9.24.4.2	any other incidents or matters as requested by the University, including those set out in Annexure B (Scope of Work).		
9.24.5	The University's Representative shall take formal written minutes at the performance review meetings and circulate them in accordance with the requirements of the Parties management teams. The minutes will be approved by the chairperson of the meeting.	10.8	<u>Medical Fitness</u> The Service Provider will ensure that all of its onsite Personnel are fit for duty. The University reserves the right on reasonable grounds to require that individual Service Provider Personnel be certified fit for duty by a medical practitioner approved by the University at Service Provider expense.
10 PERSONNEL			
10.1	The Parties will each nominate a Representative responsible for the overall management, execution, and oversight of this Agreement, who will:		
10.1.1	on reasonable notice, consult with each other on matters relating to the Agreement;	10.9	<u>Emergencies</u> The Retail Manager will immediately alert the University's Representative of all emergencies, incidents and unusual events by mobile phone SMS or WhatsApp and within 12 (twelve) hours in writing.
10.1.2	engage with each other to ensure that day-to-day decisions and approvals with respect to the Agreement are made timeously;		
10.1.3	oversee the contract management of the Agreement including oversight of the activities and responsibilities of the Personnel and Key Personnel;	10.10	<u>First Aid</u>
10.1.4	accept and acknowledge all notices and correspondence relating to the Agreement; and	10.10.1	Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider shall ensure that at all times properly equipped first aid boxes are available and replenished in the appointed areas which will be under the control of a trained first aid provider and that it has appointed safety representatives, in accordance with the OHS Act and with best practice.. In cases of emergency, the Service Provider's Retail Manager shall be responsible for summoning an ambulance. Where necessary, the University will offer assistance.
10.1.5	ensure that any administrative or compliance-related matters required in terms of this Agreement are carried out or completed timeously.		
10.2	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, and will immediately inform the University of any prospective changes thereto. The disclosure of this information will	10.10.2	The Service Provider shall ensure that at least 2 (two) of its Personnel will have undergone first aid courses approved by the University.

- 10.10.3 The Service Provider shall provide proof of successful training undergone by its Personnel who have attended such first aid courses.
- 10.10.4 The Service Provider shall provide proof of successful training undergone by its Personnel who have attended such first aid courses.
- 10.11 **Identification**
- 10.11.1 The Service Provider will, at its own cost issue personal identification name tags to all of the Service Provider's Personnel on Site.
- 10.11.2 The Service Provider will ensure that all on Site Personnel display their identification tags at all times, in such a way as to be fully visible.
- 10.12 **ICAM Access Cards**
- 10.12.1 The Service Provider will, subject to clause 16.3, be required to apply for and obtain ICAM access cards for all of its Personnel deployed on the Precinct's at the beginning of each year and whenever new Personnel are deployed.
- 10.12.2 If any of its Personnel deployed on the Precinct's is no longer employed by the Service Provider, it is the Service Provider's responsibility to immediately notify the University's Representative, giving all details so that the card can be de-activated for security purposes. Only Service Provider Personnel who have valid ICAM access cards will be permitted access to the Precincts.
- 10.13 **Union Meetings**
- 10.13.1 In so far as the Service Provider's Personnel need to meet with a recognised union in terms of a collective agreement between the Service Provider and such union, specific arrangements will be made by the Service Provider with the relevant University structures prior to any such meeting that properly addresses:
- 10.13.1.1 the University's operational requirements,
- 10.13.1.2 the fulfilment of the University's other contractual obligations, and
- 10.13.1.3 any other conditions regarding union meeting time and place that are reasonable and necessary to safeguard life or property, and to prevent the undue disruption of work.
- 10.14 The Service Provider will provide continuous supervision over its Personnel and carry out inspections to ensure that a proper Service is provided and Operating Standard is being adhered to;
- 10.15 The Service Provider will as set out in Annexure B (Scope of Work):
- 10.15.1 ensure that its Personnel dispose of any refuse and other materials discarded in the Wits Shop only at points designated for that purpose by the University and that its Personnel do not in any way sort, manage, retain and/or remove or otherwise distribute or dispose of such refuse and such materials;
- 10.15.2 be diligent and exercise due care in fulfilling all its obligations under the Agreement
- 10.15.3 use the Wits Shop Premises as set out in Annexure B (Scope of Work). The University will provide the basic infrastructure and the Service Provider is responsible for providing the necessary, furniture, equipment (including but not limited to shelving, desks, chairs, computers and appliances);
- 10.15.4 ensure that each of its onsite offices on the Precincts is equipped with telephones, computers and related necessary equipment, in accordance with the requirements of the Agreement, and that functional and constantly available e-mail and mobile phone facilities are available to the Retail Manager and other Key Personnel;
- 10.15.5 provide the University with a list of its Personnel who are available and duly authorised by the Service Provider to deal with any after hour emergencies together with up-to date contact details, such details to be amended as and when any changes occur;
- 10.16 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.
- 10.17 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 10.
- 11 SUB-CONTRACTING**
- 11.1 The Service Provider acknowledges that the University prefers to contract directly with all service providers.
- 11.2 The Service Provider must not sub-contract any of its responsibilities or obligations in terms of this Agreement, without the prior written consent of the University in each instance. Such consent does not relieve the Service Provider of any of its obligations. The Service Provider remains responsible to the University for the fulfilment of its obligations and responsibilities in terms of this Agreement and it is responsible for the acts and omissions of its sub-contractor as if such are the acts and omissions of the Service Provider. For the avoidance of doubt, it is recorded that the Service Provider may subject to the provisions of this Agreement, appoint sub-contractors to manufacture/supply/deliver the Wits branded merchandise, but the Service Provider will remain liable to comply with its obligations under this Agreement, and to ensure that its provisions are complied with by the subcontractor concerned.
- 11.3 If the Service Provider seeks to sub-contract any of its obligations in terms of this Agreement, the University reserves the right to offer any other of the University's preferred service providers the opportunity to provide the sub-contracted services.
- 11.4 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.
- 11.5 The Service Provider must ensure that each sub-contractor complies with all the terms of this Agreement as if it was the Service Provider.
- 11.6 If the University consents to the Service Provider entering into a sub-contract in terms of clause 11.2 the provisions of this Agreement will be applicable mutatis mutandis to the contract between the Service Provider and such sub-contractor.
- 11.7 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. The Service Provider hereby agrees to indemnify, defend, and hold harmless the University, its officers, employees, agents, and representatives from and against any and all claims, liabilities, losses, damages, costs, or expenses (including legal fees) arising out of or in connection with:		Service Provider undertakes to ensure that the third-party merchandise complies with the University's quality and brand standards and guidelines;
11.7.1	Any act or omission of the Service Provider's sub-contractors, including but not limited to non-compliance with the terms of this Agreement;	12.2.5	it use Commercially Reasonable Efforts to prevent the unauthorised sale or distribution of Wits branded merchandise by third parties;
11.7.2	Any breach of any warranty, representation, or obligation under this clause by the Service Provider or its sub-contractors; and	12.2.6	it and its Personnel, vendors, suppliers and/or subcontractors engaged to provide items or the Services under this Agreement, has and will maintain all the skills, experience, and qualifications to provide the Services contemplated by the Agreement, including any required training, registration, certification or licences.
11.7.3	Any claim, demand, or action brought by a sub-contractor against the University related to the Service Provider's performance or non-performance of its obligations under the sub-contract or this Agreement.	12.2.7	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;
11.8	In the event of the Service Provider utilising the services of a sub-contractor, the Service Provider agrees and accepts 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 provided to the University.	12.2.8	it holds, and will hold throughout this Agreement, all licences, certificates, permits, consents, approvals, and authorities required to perform its obligations pursuant to this Agreement;
11.9	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.	12.2.9	in fulfilling its obligations under this Agreement, it will not infringe the intellectual property rights of any third party and/or of the University;
11.10	Any breach by the sub-contractor of the terms of this Agreement will be deemed to be a breach by the Service Provider.	12.2.10	it has had an opportunity to seek independent legal advice as to the nature, effect and extent of this Agreement, and to the rights created and extinguished by this Agreement;
12	WARRANTIES	12.2.11	it agrees that the University has not made any promise, representation or inducement, or been party to any conduct material to the entry of the Service Provider into this Agreement, other than those matters set out in this Agreement; and
12.1	The persons signing this Agreement on behalf of a Party expressly warrant their authority to do so.	12.2.12	it is aware that the University is relying upon these warranties in executing this Agreement and it will comply with all applicable legislation in performing its obligations pursuant to this Agreement, including but not limited to:
12.2	The Service Provider warrants and represents that:	12.2.12.1	legal and regulatory compliance relating to retail sector management;
12.2.1	it holds the absolute legal and beneficial title in and to the Services and has the unfettered right to supply and provide them and to pass unencumbered right and/or title to University;	12.2.12.2	legal and regulatory compliance relating to Cybersecurity;
12.2.2	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;	12.2.12.3	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;
12.2.3	it will not represent itself as an entity or affiliate of the University, nor trade under the designation "Wits Shop". The Service Provider undertakes to use its own business trading name and to represent itself at the Online Store/Pop-up/ Satellite Store, in all communications, publications, promotional material, and notices as "An Authorised Retailer of Wits Branded merchandise". For the avoidance of doubt, the Service Provider acknowledges and accepts that it is a separate and distinct legal entity from the University and that it will ensure that in facilitating the relationship between the University Community and other customers, through the provision of the Services it will not do and/or omit to do and/or make any representations that will adversely affect the University and its brand, this includes but is not limited to representing and/or creating the perception that it is anything more than authorised management retail company to the University.	12.2.12.4	the Occupational Health and Safety Act 85 of 1993 ("OHSA"). The Service Provider will in terms of section 37(2) of the OHSA, be deemed to be an employer in its own right with duties prescribed in the OHSA and undertakes to procure that all work will be performed, and all equipment will be used in accordance with the provisions of the OHSA and any Regulations issued in terms of the OHSA. It is recorded that the Service Provider's Chief Executive Officer (or equivalent officer) accepts the duties and responsibilities set out in section 16 of the OHSA;
12.2.4	it will use reputable suppliers that meet the requirements as described in this Agreement. The	12.2.12.5	the Basic Conditions of Employment Act 75 of

	1997 ("BCEA");		prejudice to any of the University's rights.
12.2.12.6	the Labour Relations Act 66 of 1995 ("LRA");	12.2.19	The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Services.
12.2.12.7	the Data Protection Legislation; and		
12.2.12.8	all taxation legislation in respect of any taxes and levies which the government of the Republic of South Africa or any other authority may from time to time impose or increase. Where applicable, unless the Service Provider can provide the University, on reasonable request by the University, with satisfactory proof that it is not an employee or personal service provider, as defined in the Fourth Schedule to the Income Tax Act 58 of 1962, the University may withhold employee's tax from the remuneration payable by the University to the Service Provider in terms of this Agreement in accordance with the rates prescribed by the Income Tax Act at the entire risk and cost of the Service Provider. The Service Provider must immediately, and in any event, before accepting any payments from the University, notify the University of any change of fact or circumstance that affects or may affect the University's liability to deduct employee's tax from payments made in terms of the Income Tax Act. For these purposes "taxation" includes SITE and PAYE, VAT, all other forms of duties or taxation, taxation in respect of any assessment of taxation and any penalties or interest;	13 HEALTH AND SAFETY	
		13.1	Notwithstanding anything else contained in the Agreement, the prevention of accidents, safety performance and adherence to sound and safe work standards and practices by the Service Provider are essential terms of this Agreement. Accordingly, the Service Provider and its Personnel will, while on the Precincts, strictly adhere to all applicable safety and health requirements of statutes, ordinances, by-laws and regulations as well as the University's codes of practice, policies, procedures or instructions relating to safety and health applicable to the Precincts or the execution of the Agreement.
		13.2	In terms of section 37(2) of the OHS Act, the Service Provider hereby agrees that the University is relieved of any and all of its liabilities in terms of section 37(1) of the OHS Act in respect of any acts or omissions of the Service Provider and/or the Service Provider's Personnel to the extent permitted by the OHS Act, and that this Agreement comprises the written agreement between the University and the Service Provider contemplated in section 37(2).
		13.3	Without detracting from the generality of the above, and without limiting its liability in any way, the Service Provider will ensure that it and its Personnel will at all times comply with any conditions, codes of practice or any other provisions of a like nature which may be specified by the University from time to time, and any instructions, orders, prohibition, exemption certificates and the like issued in terms of the OHS Act. Such compliance will, inter alia, necessitate the Service Provider ensuring that the Service Provider's Personnel at all times whilst on the Precincts, where specified by the University (by notice, sign, regulation, instruction or the like) or where necessitated by the nature of the Services, wear the required personal protective clothing and equipment ("PPE") if applicable. It is the responsibility of the Service Provider to ensure that its Personnel are in possession of such PPE and to maintain it in a serviceable condition at the Service Provider's cost (if applicable).
12.2.13	it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;		
12.2.14	it has full power and authority to accept its appointment as set out in clause 1 and perform its obligations pursuant to this Agreement;		
12.2.15	it is and must remain throughout the duration of the Agreement, the employer of all individuals who may work for the Service Provider in providing the Services, and the Service Provider will be solely responsible for the remuneration, insurance, and other obligations in respect of its Personnel.		
12.2.16	that it will use Commercially Reasonable Efforts:		
12.2.16.1	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;	13.4	All Services performed and/or articles / substances supplied for and on behalf of the University or on or at the Precincts, must be performed under close supervision inter alia to ensure compliance with the Agreement and the OHS Act. The Service Provider warrants that the person/s appointed to perform such supervision is/are suitably qualified and trained to understand the risks and hazards associated with any Services performed or articles/substances supplied by the Service Provider, and to ensure compliance with the Agreement, and the OHS Act.
12.2.16.2	not to introduce or code any viruses or similar items into any University Information Technology Systems or Services.		
12.2.17	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 12.2.16 will be considered part of the Services and the Service Provider must perform such work at its own cost.	13.5	The Service Provider acknowledges that the University retains an interest in any investigation and/or inquiry conducted in terms of the OHS Act or any other investigations which may be conducted into any incident. The Service Provider shall furnish a written report to the University within 24 (twenty four) hours following the conclusion of any such investigation or inquiry.
12.2.18	A breach of any of the undertakings and/or warranties as set out in this Agreement will be deemed to be a material breach of the Agreement entitling the University to, subject to the provisions of clause 21, terminate the Agreement. A termination under clause 12 will be without	13.6	The Service Provider shall be deemed to have full knowledge of the Services and/or articles/substances supplied in terms of the Agreement, and the implications or potential implications on the health and/or safety of employees and other persons. The

- Service Provider shall, before conducting any Services and/or supplying any articles substance in terms of the Agreement, conduct a risk assessment to the satisfaction of the University. The results of such risk assessment must be provided, in writing, to the University's Representative not less than 7 (seven) days before the Services and/or supply of articles/substances in terms of the Agreement.
- 13.7 The Service Provider must, on or before the Effective Date provide the University with copies of all appointments required by the OHS Act and OHS Regulations and, in particular, without limiting this obligation, the Service Provider must advise the University of the responsible person appointed by it in terms of section 16(2) of the OHS Act and, where applicable, in terms of General Machinery Regulation 2(1).
- 13.8 The Service Provider must immediately and in writing advise the University of any hazardous situation which may arise from the supply of the Services.
- 13.9 Without prejudice to its other rights in law or in terms of this Agreement, the University is entitled at any time:
- 13.9.1 to require the Service Provider to suspend all activities on the Precincts, or
- 13.9.2 to terminate this Agreement forthwith,
- 13.9.3 if, in the reasonable opinion of the University, the Service Provider has breached any provision of this clause 13. The University shall be entitled to recover from the Service Provider any loss occasioned to it as a result of such suspension or termination, including the cost of procuring the supply of the Services by another service provider.
- 13.9.4 limit any other right or remedy available to the University.
- 13.10 **Incidents**
- 13.10.1 The Service Provider must immediately notify the University in writing if any health and safety accident, incident or near miss accident or incident occurs.
- 13.10.2 Within 24 (twenty-four) hours of any health and safety accident or incident, the Service Provider must provide the University with a report of the accident or incident occurring which includes a detailed chronology, a description of events and the proposed remedial action.
- 13.10.3 The Service Provider must fully co-operate with the University in connection with any investigation following a health and safety accident, incident or near miss accident or incident.
- 13.11 Nothing in this clause 13 will:
- 13.11.1 be construed as an assumption by the University of any of the Service Provider's duties, or
- 13.11.2 limit any other right or remedy available 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).
- 15 DEFICIENCIES IN PERFORMANCE**
- 15.1 A Party who becomes aware of any Defect will notify the other Party within 7 (seven) Business Days after becoming aware of the Defect.
- 15.2 Within 7 (seven) Business Days after becoming aware of the Defect or such other time frame as may be agreed upon in writing between the Parties, the Service Provider shall promptly and at no additional cost to the University, modify, reperform, 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. For the avoidance of doubt it is recorded that the Service Provider is responsible for the costs of modifying, reperforming, or correcting the nonconforming Services and for all related costs, expenses and damages;
- 15.3 If the Service Provider is unable or unwilling to modify, reperform, or correct a Defect within the period as set out in clause 14.2., the University may, in addition to any other rights or remedies it may have at law,
- 15.4 by itself or through a third party modify, reperform, or correct the Services at the Service Provider's expense; or
- 15.5 enforce the provisions of clause 21.
- 15.6 The Service Provider is responsible for the costs of modifying, repairing, replacing or correcting nonconforming Services, and for all related costs, expenses and damages.
- 15.7 Unless explicitly stated otherwise in a written agreement between the Parties, the Service Provider must ensure uninterrupted provision of the Services until such time as the University deems them to be fit for the intended purpose for which they were acquired, meeting the required level of quality, and free from any Defects.
- 16 UNIVERSITY PRECINCTS AND PROPERTY**
- 16.1 All Personnel, guests, invitees, or any other persons acting on behalf of the Service Provider may not without prior written consent of the University be allowed access to the Precincts for the purposes of fulfilling the Service Provider's obligations under the Agreement., The Service Provider acknowledges and accepts that access granted by the University in terms of this clause will be limited to the purpose stated above and for no other purpose.
- 16.2 Whenever any of the Service Provider, its Personnel or any person acting on its behalf are present on the Precincts the Service Provider will ensure that such person(s) comply with all applicable Rules including but not limited to:
- 16.2.1 the carrying of weapons, which is strictly prohibited;
- 16.2.2 the wearing of identification tags and the possession and use of ICAM access cards, which is required at all times whilst on the Precincts;
- 16.2.3 occupational health, safety, and emergencies practices and protocols;
- 16.2.4 the security of the Precincts and the protection of persons and property thereon;
- 16.2.5 the driving and parking of vehicles on or about the Precincts;
- 16.2.6 the utilisation of the University's amenities and facilities;
- 16.2.7 the prohibition or restriction of activities and practices which are actually or potentially detrimental to the interests of the University;
- 16.2.8 any reasonable instructions received from the University; and

- 16.2.9 any and all other applicable requirements prescribed by the University from time to time.
- 16.3 Where applicable, the Service Provider will pay to the University any charges levied by the University for the use or purchase of ICAM access cards and vehicle parking permits.
- 16.4 The University may require the Service Provider to effect the immediate removal from the Precincts of any Personnel of the Service Provider if the University on reasonable grounds deems it in the best interests of the University that such person is removed. The Service Provider will ensure that such person does not return to the Precincts. Removal by the Service Provider of such person(s) will not be a ground for any relaxation/waiver of the Service Provider's obligations under the Agreement. In such event, the Service Provider must ensure that:
- 16.4.1 all University property, including but not limited to ICAM access cards, parking permits, and other University keys in such person's possession, is immediately returned to the University; and
- 16.4.2 such person does not return to the Precincts without the University first having given the Service Provider its consent in writing for that person to return, and
- 16.4.3 subject to clause 16, ensure that its Personnel, only enter the Precincts for the purpose of fulfilling the Service Provider's obligations under this Agreement and for no other purpose.
- 16.5 The University reserves the right, at any given time and without prior warning, to search any or all of the Service Provider's movable property which includes but is not limited to vehicles, baggage and containers entering or exiting the Precincts.
- 16.6 No gatherings by the Service Provider's Personnel will be allowed in the Precincts.
- 16.7 The Service Provider agrees that it will not remove any property of whatever nature from the Precincts without the prior written permission of the University.
- 16.8 All right and title in any plant, equipment, tools, appliances or other property and items that the University provides to the Service Provider to enable the Service Provider to fulfil its obligations in terms of this Agreement remains the University's property and must only be used for the purposes of fulfilling the Service Provider's obligations. Upon termination of this Agreement, the Service Provider undertakes to return any plant, equipment, tools, appliances or other property and items utilised by it to fulfil its obligations in terms of this Agreement, to the University.
- 16.9 The Service Provider agrees at all times to keep the University's property in good order and condition, subject, in certain specified cases, to fair wear and tear.
- 16.10 The Service Provider acknowledges and agrees that it is responsible and must compensate the University for any loss or damage to the University's property by the Service Provider, its Personnel, its sub-contractors or any other third party acting on behalf of the Service Provider.
- 17 CONFIDENTIALITY**
- 17.1 The Parties acknowledge that in terms of this Agreement, they may have access to each other's Confidential Information. Each of the Parties 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.
- 17.2 Each of the Parties will with respect to the Confidential Information:
- 17.2.1 will ensure that all reasonable security measures, and at least the same steps that it takes for the purposes of protecting its own proprietary and Confidential Information, are taken in order to safeguard the other Party's proprietary and Confidential Information from unauthorised access or use;
- 17.2.2 inform its Personnel of the confidentiality restraint set out in this clause 17 and ensure that they are subject to the same confidentiality undertaking;
- 17.2.3 restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information in order to provide the Services;
- 17.2.4 ensure that its Personnel exercise care appropriate for the protection of the Confidential Information;
- 17.2.5 upon request by the Disclosing Party promptly deliver any and all records containing Confidential Information which is in the possession or control of the Recipient, and its Personnel.
- 17.3 Except as expressly provided to the contrary elsewhere in this Agreement, the Parties will not acquire any proprietary or any other rights to any of the other Party's Confidential Information.
- 18 INTELLECTUAL PROPERTY**
- 18.1 The copyright and all other Intellectual Property rights of whatsoever nature belonging to either Party, including without limitation the Party's logo, emblem or any other form of corporate identity, shall remain vested at all times in that Party.
- 18.2 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 Marks, without the University's prior written consent;
- 18.3 Grant of Licence:
- 18.3.1 To the extent required in terms of this Agreement, for the duration of this Agreement and only on the merchandise sold in the Wits Shop, Online Store/Pop-up/ Satellite Store, the University grants to the Service Provider, a limited, non-exclusive, non-transferable, royalty-free, revocable licence, to place the University Marks on the merchandise and to sell it in the Wits Shop, Online Store/Pop-up/ Satellite Store. The University reserves the right to revoke this license upon 7 (seven) days' written notice if the Service Provider breaches this Agreement, fails to meet quality standards, engages in conduct detrimental to the University's reputation, or fails to remedy any breach within a reasonable time after written notice. Upon termination, the Service Provider must immediately cease all use of the University Marks and return all unsold merchandise, unless otherwise agreed in writing between the Parties.
- 18.3.2 To the extent required in terms of this Agreement, for the duration of this Agreement and only for

	purposes of the Online Store, the University grants to the Service Provider, a limited, non-exclusive, non-transferable, royalty-free, revocable licence, to use the Wits Shop Domain name https://shop.wits.ac.za/ exclusively for the operation, administration and management of the Online Store.		Provider any right, title or interest in or to the University Marks and the Wits Shop Domain name other than the right to use the University Marks and the Wits Shop Domain Name in the manner contemplated by this Agreement, and only for so long as this Agreement is in force.
18.3.3	The Parties shall mutually and in good faith agree upon the method(s) in terms of which the Service Provider will use the Wits Shop Domain name. The Service Provider will not use the Wits Shop Domain name in breach of the scope of its license rights under this Agreement.	18.3.9	<u>Infringement</u>
18.3.4	The Service Provider shall not have the right to grant sublicenses of its license rights referred to in clauses 18.3.1 and 18.3.2 to resellers, agents, distributors, exclusive dealers and similar persons and entities solely in connection with the marketing, advertising, sale and provision of the Services.	18.3.10	In the event that the Service Provider becomes aware of any unauthorised use of the University Marks or the Wits Shop Domain Name, or of any uses of confusingly or substantially similar trademarks, service marks, trade names or domain names, on or in connection with the marketing, advertising or provision of similar goods or services ("Unauthorised Use"), the Service Provider shall promptly notify the University.
18.3.5	The Service Provider agrees that the nature and quality of all Wits branded merchandise which are marketed, advertised, sold or provided under or in association with the University Marks or the Wits Shop Domain Name shall conform to the University's brand guidelines and to such reasonable guidelines and standards as are provided in writing from time to time by the University.	18.3.11	The University shall have the right, but not the obligation, and at the Service Provider's cost to challenge and attempt to eliminate each Unauthorised Use. The Service Provider, at its own cost, shall reasonably cooperate with the University in investigating, prosecuting and settling any infringement action instituted by the University against any person or entity engaging in an Unauthorised Use.
18.3.6	The Service Provider agreed agrees to cooperate with the University in facilitating University's control of the nature and quality of the Wits branded merchandise, and to permit reasonable, periodic inspections of Service Provider's operations as requested in writing by University.	18.4	The Service Provider's use of the University Marks on the merchandise in terms of this Agreement, shall be limited to the duration of this Agreement and shall in accordance with the following terms and conditions :
18.3.7	The Service Provider Licensee also agrees that, to the extent reasonably practical, the University shall cause to appear on all advertisements, promotions and other displays on or in connection with which the University Marks or the Wits Shop Domain Name are used, such legends, markings and notices as the University may reasonably require in order to give appropriate notice of any trademark rights therein. The Service Provider agrees to submit to the University, on a periodic basis as reasonably requested by the University samples of any advertisements, promotions and other displays bearing the University Marks or the Wits Shop Domain Name.	18.4.1	the University Marks shall only be used in relation to the provision of the Services in the Wits Shop, Online Store/Pop-up/ Satellite Store;
18.3.8	The Service Provider acknowledges and agrees that:	18.4.2	the University reserves the right to request that the Service Provider applies for prior written approval for each advertisement, brochure, piece of marketing collateral, or other item that contains the University Marks. The Service Provider acknowledges that is right to advertise and promote Wits branded merchandise will not limit or restrict any advertising rights that the University has in respect of its own promotional activities;
18.3.8.1	the University is the sole and exclusive owner of rights in the University Marks and the Wits Shop Domain Name, that it will not acquire, nor claim, any right, title, or interest in or to the University Marks or the goodwill attaching to them by virtue of this Agreement. The Service Provider undertakes not to challenge the validity of the University Marks or the Wits Shop Domain Name, or University's registration and ownership of the University Marks and the Wits Shop Domain Names, and agrees that it will do nothing inconsistent with such ownership.	18.4.3	the Service Provider will not use the University Marks with any disparaging, unlawful or derogatory material, in any manner that may diminish or otherwise damage the University's goodwill in that trademark, reflects unfavourably upon the good name, reputation and image of the University, and in any manner which is contrary to applicable laws or regulations;
18.3.8.2	that all use of the University Marks and the Wits Shop Domain Name and all goodwill developed therefrom shall inure to the benefit of and be on behalf of University who is the owner of the University Marks and the Wits Shop Domain Name. The Service Provider agrees that nothing in this Agreement shall give the Service	18.4.4	all uses by the Service provider of the University Marks shall accurately reproduce their colour, design and appearance and shall be used in accordance with the University's brand guidelines.
		18.5	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 Marks, without the University's prior written consent.
		18.6	The Service Provider acknowledge that it may use approved third-party vendors for the manufacturing of the Wits branded merchandise and undertake to obtain the University's prior written authorisation to use the University Marks and other Intellectual Property on the merchandise.
		18.7	Should the University consent to the use of the University Marks, and other Intellectual Property by third-party vendors referred to in clause Error!

	Reference source not found. above, the University reserves its right to grant a restricted sub-license to allow the approved third-party vendors limited use of the University's Intellectual Property.		belonging to the University from any third-party information;
18.8	The Service Provider shall ensure that any unique designs created for the University in terms of this Agreement by it or approved third party vendors are assigned or licensed to the University at no additional cost in perpetuity.	19.3.5	where appropriate, ensure the proper disposal of information belonging to the University;
18.9	The Service Provider cedes and assigns to the University all intellectual property rights it may have in the Services, including the Online Sore platform, and recommendations to the University arising out of or related to the fulfilment of its obligations in terms of this Agreement.	19.3.6	preserve the integrity of any information belonging to the University and prevent the corruption, destruction, or loss of such information at all times; and
18.10	The Service Provider, at its own cost 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 University's Intellectual Property.	19.3.7	ensure that all sub-contractors of the Service Provider, if any, comply with the provisions of this clause 19.
18.11	The Service Provider may not delete remove or in any way interfere with the University's Intellectual Property, created by it in the course of this Agreement and stored in any information technology device, without permission of the Director: Legal Services.	19.4	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.
19 DATA PROTECTION		19.5	Where the Service Provider (including the Service Provider's Personnel) is given access (whether direct or remote) to any University Information Technology Systems under or in connection with the Agreement, the Service Provider will (and must ensure that the Service Provider's Personnel):
19.1	In performing its obligations under this Agreement, the Parties will:	19.5.1	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;
19.1.1	comply with the provisions of the Data Protection Legislation insofar as it is applicable to this Agreement;	19.5.2	only use the University Information Technology Systems in connection with the proper delivery of the Services;
19.1.2	not process Personal Information for any purpose other than that which may be required to perform their obligations under this Agreement and ensure that such processing will not place either Party in breach of any Data Protection Legislation.	19.5.3	not permit any other individual or entity to access the University Information Technology Systems;
19.2	The Service Provider will:	19.5.4	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
19.2.1	only act on the express instructions of the University in collecting, processing, and utilising any Personal Information this Agreement will constitute such instructions;	19.5.5	not reverse engineer, deconstruct, decompile, deactivate, or disable any University Information Technology Systems or introduce any viruses or other similar code, or take any other action that would cause any damage or harm to any Information Technology Systems of the University.
19.2.2	not disclose or otherwise make available any Personal Information to any third party other than authorised Personnel or sub-contractors who require access to such Personal Information strictly in order for the Service Provider to carry out its obligations pursuant to this Agreement, and ensure that such Personnel and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information.	20 RECORDS AND AUDIT	
19.3	The Service Provider must be responsible for establishing and maintaining an information security programme that is designed to:	20.1	The Service Provider must keep and maintain both during the term of the Agreement and for up to 5 (five) years following termination or expiry of the Agreement, full and accurate records of its performance of the Agreement as more fully set out in Annexure B (SoW).
19.3.1	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;	20.2	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.
19.3.2	protect against any anticipated threats or hazards;	21 BREACH AND TERMINATION	
19.3.3	protect against unauthorised access to, disclosure or use of any University information;	21.1	Should a Party commit a material breach of the Agreement, then the aggrieved Party will be entitled to require the defaulting Party to remedy the breach within 7 (seven) Business Days of delivery of a written notice requiring it to do so, or within any other reasonable
19.3.4	ensure the proper separation of information		

	period agreed to between the Parties.	22.3.1	or damage sustained by any Personnel in the course or scope of that individual's employment and whilst being on the Precincts. Save where such injury, loss or damage is caused by the gross negligence and wilful misconduct of the University or its Personnel;
21.2	If the defaulting Party fails to remedy such breach within the period specified in the breach notice, the aggrieved Party will be entitled to cancel this Agreement and to claim damages, alternatively to claim immediate specific performance of the defaulting Party's obligations. The foregoing is without prejudice to such other rights as the aggrieved Party may have in law.	22.3.2	against all claims of whatsoever nature and howsoever arising which may be made against the Service Provider and/or the University by any Personnel of the Service Provider for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by that Personnel member in the course or scope of that Personnel's employment and whilst being on the Precincts,
21.3	The University will be entitled to terminate this Agreement with immediate effect, should the Service Provider:	22.3.3	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
21.3.1	breach any of the provisions relating to the use of the University Marks and the sale of the Wits branded merchandise;	22.3.4	from any liability arising from:
21.3.2	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	22.3.4.1	any breach of laws or regulations by the Service Provider which is directly applicable to providing the Services;
21.3.3	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	22.3.4.2	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;
21.3.4	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.	22.3.4.3	any breach of environmental legislation (where applicable);
21.4	On termination or expiry of the Agreement for any reason, the Service Provider must:	22.3.4.4	any breach of the Data Protection Legislation and the provisions of clause 19 above;
21.4.1	immediately deliver to the University all Services whether or not then complete and return all University information (together with all copies thereof). Until they have been returned or delivered, the Service Provider will be solely responsible for their safekeeping and will not use them for any purpose not connected with this Agreement; and	22.3.4.5	any breach of the Income Tax Act;
21.4.2	if so, required by the University, subject to the applicable fees as agreed between the Parties in writing, assist the University with the seamless transition of providing the Services to an incoming supplier. All applicable terms and conditions of this Agreement will apply to such transition services.	22.3.4.6	work-related injury or death caused by the Service Provider including payment of any contributions or compensation as a result of any injury sustained by any Personnel of the Service Provider in terms of the COIDA and compliance with all safety regulations in terms of the OHSA;
21.5	Upon termination of the Agreement, the Service Provider must transfer title and deliver to the University any or all property produced or procured by Service Provider to perform this Agreement.	22.3.4.7	any claim by a third party that the Service Provider infringes upon its proprietary intellectual property rights or any other rights;
22	LIMITATION OF LIABILITY		
22.1	Without limiting any other obligation of the Service Provider under this Agreement or otherwise, the Service Provider must do all that is commercially reasonably necessary within the course and scope of this Agreement to prevent or minimise the risk of loss or damage to property, University data/information and Personal Information, the University's reputation, and injury to persons.	22.3.4.8	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
22.2	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 illness 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.	22.3.4.9	costs incurred by the University in connection with the enforcement of this clause 22.
22.3	The Service Provider hereby indemnifies the University:	22.4	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.
		22.5	Notwithstanding anything to the contrary contained in this Agreement, the University shall not be liable to the Service Provider 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 by the University.

protection, cyber risk insurance, bodily injury and death, and property damage.

23 INSURANCE

23.1 The Service Provider warrants that it has and will maintain the following insurance cover which includes indemnities for the liabilities in clause 22 and which adequately insures against all the liabilities imposed by this Agreement to the satisfaction of the University's insurance brokers, for the duration of this Agreement:

23.1.1 The Service Provider may not keep or do in or about the Wits Shop Premises anything which is liable to enhance any of the risks against which the building where the Wits Shop Premises is situated is insured for the time being, to the extent that such insurance is rendered void or voidable or the premiums of such insurance are, or become liable to be, increased.

23.1.2 Without prejudice to any other right of action or remedy which the University may have arising out of a breach of this provision, the University may recover from the Service Provider on demand the full amount of any increase in insurance premiums in respect of the building where the Wits Shop Premises is situated attributable to such breach.

23.1.3 In determining whether any increase in the University's insurance premiums is wholly or in part a consequence of the Service Provider's use of the Wits Shop Premises, a certificate issued by the University's insurers and/or broker recording that the Service Provider's use of the Wits Shop Premises has resulted in an increase in such premiums and the extent to which such increase is attributable to the Service Provider. The certificate will be conclusive evidence of the matters dealt with in such certificate.

23.1.4 With effect from the date of occupation of the Wits Shop Premises by the Service Provider, the Service Provider will be responsible for and will arrange the necessary insurance cover in respect of loss or damage to:

23.1.5 the contents of the Wits Shop Premises, including fixtures and fittings Service Provider, and

23.1.6 plate glass, window panels, geysers and shop fronts in or on the Wits Shop Premises.

23.1.7 stock and/or merchandise in the Wits Shop Premises.

23.1.8 The Service Provider indemnifies the University and its Personnel against any claims which may arise by virtue of any loss or damage as set out in this clause 23.

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

23.1.10 public liability insurance cover;

23.1.11 any other insurance cover deemed necessary by the University's insurers that will adequately make provision for any possible losses and/or claims arising from its, Personnel and/or omissions on the University;

23.1.12 professional indemnity insurance;

23.1.13 general and commercial liability insurance which includes but is not limited to defective workmanship, public liability, products and equipment liability, data

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

23.3 The Service Provider agrees to provide a certificate of proof of the insurance as set out in clause 23.1, a copy of the policy itself as well as any further documentation as may be reasonably be requested by the University.

23.4 Should the Service Provider fail to effect and/or keep in force to the satisfaction of the University and its insurance brokers any of the insurances it is required to effect and maintain under this Agreement, or fails to provide satisfactory evidence and/or copies of policies in terms of clause 23.3, this action would constitute a material breach by the Service Provider.

24 FORCE MAJEURE

24.1 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:

24.1.1 the nature of the Force Majeure Event;

24.1.2 the anticipated delay in the performance of obligations;

24.1.3 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.

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

24.3 In circumstances where a Party is an Affected Party, it will be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled in accordance with the terms and conditions of this Agreement.

25 ADDRESSES AND NOTICES

25.1 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).

25.2 For purposes of this clause 25, the word "notice" will include a notice regarding a dispute, demand, breach, renewal, or termination.

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

25.3.1 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;

- 25.3.2 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;
- 25.3.3 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 25.3.3.
- 25.4 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.
- 26 SETTLEMENT OF DISPUTES**
- 26.1 The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.
- 26.2 Each Party will inform the other in the event of any perceived or potential dispute occurring.
- 26.3 Within a period of 10 (ten) days after the date on which a dispute arises ("Dispute Date") the Parties' Representatives or Directors will meet to discuss the dispute and will endeavour to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute.
- 26.4 If the Parties are unable to resolve the dispute amicably within 30 (thirty) days from the Dispute Date, either Party may refer the dispute to the University's Vice-Chancellor or his nominee and the Service Provider's Chief Executive Officer or his duly appointed nominee, who will use their best endeavours to resolve the dispute.
- 26.5 If the individuals referred to in clause 26.4 are unable to resolve the dispute within a period of 30 (thirty) days after it had been referred to them, either Party may submit the matter for mediation. The Parties will refer the matter for mediation to a mediator appointed by agreement between the Parties, or, failing agreement, to a mediator appointed by the Chairperson of the Bar Council of South Africa on written request by either Party. 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.
- 26.6 If the mediator is unable to resolve the dispute or difference to the mutual satisfaction of the Parties, the Parties will submit to the jurisdiction of the South Gauteng Local Division of the High Court of South Africa in regard to such dispute or difference.
- 26.7 Nothing in this clause 26 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.
- 27 GENERAL PROVISIONS**
- 27.1 **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 26 without giving effect to any conflict of laws.
- 27.2 **Entire Agreement**
- 27.2.1 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.
- 27.2.2 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.
- 27.3 **Variation and Cancellation**
- 27.3.1 No amendment, variation, or consensual cancellation of this Agreement, including an amendment to this clause 27.3, and no settlement of any disputes arising under this Agreement, will be binding unless recorded in writing and signed by the Parties.
- 27.3.2 For the purposes of this clause 27.3, "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.
- 27.4 **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.
- 27.5 **Indulgences**
- 27.5.1 If either Party at any time breaches any of its obligations under this Agreement, the aggrieved Party:
- 27.5.1.1 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;
- 27.5.1.2 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.
- 27.6 **Counterparts and Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute a single instrument. By signing this Agreement electronically, the Parties agree to the acceptance of the terms and conditions of this Agreement as if it was physically signed by them by hand and in writing.
- 27.7 **Waiver.** No extension of time or waiver or relaxation of any of the provisions of this Agreement will operate as an estoppel against any Party in respect of its rights under this Agreement, nor will it operate to preclude such Party from exercising its rights strictly in accordance with this Agreement.
- 27.8 **Assignment, cession, and delegation.**
- 27.8.1 The Service Provider must not cede, assign, or delegate any of its rights, responsibilities, or obligations to any other party, including subcontractors, without the prior consent of the

	University. If such consent is given to the Service Provider, the Service Provider is deemed to have bound itself as surety and co-principal debtor with the third party for the due performance by the third party of all its obligations in terms of the Agreement.		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.
27.8.2	The University may cede its rights or delegate its obligations to any other party.		
27.8.3	On termination of the Agreement for any reason whatsoever, and without prejudice to any of its other rights, the University may be entitled to take cession of any sub-contracts from the Service Provider and enforce any such sub-contracts.	27.15.3	The Service Provider undertakes to notify and provide full details to the University in the event that there is:
27.9	Remedies. No remedy conferred by this Agreement is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy will be cumulative and in addition to every other remedy given under this Agreement or any existing or future law. The election of any one or more remedies by one of the Party's will not constitute a waiver by such Party of the right to pursue any other remedy.	27.15.3.1	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;
		27.15.3.2	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.
27.10	Costs. The Parties will each pay their own costs of negotiating, drafting, preparing, and implementing this Agreement.	27.15.4	The Service Provider must issue the notice and relevant details required in clause 27.15.1 within 30 (thirty) days from the date the event occurred.
27.11	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.	27.15.5	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.
27.12	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.	27.15.6	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 27.15.3, the University reserves the right to terminate this Agreement with immediate effect.
27.13	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.	27.15.7	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.
27.14	Change Control. If at any time while this Agreement is in force the major portion of the assets of the Service Provider is disposed of or the majority shareholding or the business of the Service Provider is transferred or there is a change of management control of the Service Provider, the Service Provider will notify the University forthwith, giving details, whereupon the University will be entitled but not obliged to terminate the Agreement forthwith without payment to the Service Provider of any damages whatsoever resulting from such termination.	27.15.8	The Service Provider agrees that it will immediately provide to the University such information as may be requested by the University for the purposes of checking for conflicts of interest, and the Service Provider warrants that such information so provided will in each instance be complete and accurate in all respects.
27.15	Integrity, Transparency and Fair Business Practice.	27.15.9	Should it be deemed by the University that a conflict of interest concern exists or has come into existence in relation to the Agreement, the University and the Service Provider must take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.
27.15.1	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").	27.15.10	Where it is not reasonably possible to so resolve such a conflict of interest concern, the University will in its sole and absolute discretion be entitled to terminate this Agreement, in which event the Service Provider will not have any claim whatsoever against the University of any nature.
27.15.2	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	27.15.11	The Service Provider agrees that in connection with the Services to be provided under this Agreement:
		27.15.11.1	to comply with all applicable laws and regulations in the Republic of South Africa regarding anti-bribery and corruption; not to

	offer, promise, give, request, accept or receive bribes, including facilitation payments;		social media site or any other platform; and
27.15.11.2	to disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement;	27.15.19.2	to immediately remove any reference to the University of whatsoever nature that the Service Provider or its Personnel have made via any social media site or any other platform.
27.15.12	The Service Provider represents and warrants that it has policies and procedures in place consistent with acceptable industry standards, for the avoidance, mitigation, detection, and disposition of Counterfeit Goods to ensure that none of the Services furnished under this Agreement are Counterfeit Goods.	27.16	Survival of Provisions. Clauses 12.2.12, 17, 18, 19, 20, 22, 23, 26, 27.1 and 27.15 of this Agreement will survive termination.
27.15.13	The Service Provider warrants that only new, unused, authentic, genuine, and legitimate items must form part of the Services supplied to the University.	27.17	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.
27.15.14	The Service Provider warrants that it will only purchase or source items directly from OCM/OEMs, OCM/OEM authorised (e.g., Franchised Distributors or aftermarket manufacturers). The use, purchase, or sourcing of items from non-OCM/OEM authorised Independent Distributors or brokers is not permitted unless first approved in writing by the University. The Service Provider must present compelling support for its request to use such non-OCM/OEM authorised suppliers for the University's approval (including but not limited to OCM/OEM documentation that authenticates supply chain traceability of the items to the OCM/OEM) and include in its request all necessary actions that it will take to ensure those items thus procured are new, unused, authentic, genuine, and legitimate items.		
27.15.15	The Service Provider represents and warrants that at the Commencement Date that neither the Service Provider nor its Personnel, its sub-contractors, or other persons associated with it, including but not limited to its own suppliers:		
27.15.15.1	has been convicted of any criminal offence; and		
27.15.15.2	having made reasonable enquiries, to the best of its knowledge and belief, has not been or is not the subject of any investigation, inquiry or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.		
27.15.16	The Service Provider must notify the University by written notice as soon as it becomes aware of any breach of this Agreement.		
27.15.17	The Parties agree that a breach by the Service Provider of any of its obligations or warranties under clause 27.15 is a material breach of this Agreement, irrespective of the level of financial loss, deprivation of benefit or exposure to liability to which such breach would or potentially would give rise.		
27.15.18	Either Party desiring to issue a news release or advertisement or another form of media publicity in relation to this Agreement must obtain the written consent of the other Party prior to the release of such publicity, which written consent will not be unreasonably delayed or withheld.		
27.15.19	The Service Provider (and its Personnel) undertakes and agrees that for the duration of this Agreement and after the termination thereof:		
27.15.19.1	not to make any disparaging remarks, derogatory statements, or any other comments privately or publicly about the University via any		

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. Integrated Retail Management and Brand Licencing Agreement

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:	Nkosinathi.Mavimbela@wits.ac.za
Physical Address:	5th Floor, Room 5006A, Solomon Mahlangu House East Campus, Braamfontein, Johannesburg 2050

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



ANNEXURE B: SCOPE OF WORK

To be inserted

DRAFT

ANNEXURE C: CYBER SECURITY REQUIREMENTS

1. General Cybersecurity Standards

- The Service Provider must comply with internationally recognised cybersecurity standards, such as:
 - **ISO/IEC 27001** for Information Security Management.
 - **NIST Cybersecurity Framework**.
 - **PCI DSS (Payment Card Industry Data Security Standard)** for handling payment transactions.
- The Service Provider must align with the University's cybersecurity policies and procedures.

2. Secure Development Practices

- The Service Provider must use secure software development lifecycle (SDLC) practices, including:
 - Code reviews and vulnerability assessments during development.
 - Secure coding techniques to protect against common vulnerabilities (e.g., OWASP Top 10).
 - Routine penetration testing of the platform to identify and mitigate security vulnerabilities.
- The Service Provider must provide assurance of the platform's resilience against SQL injection, cross-site scripting (XSS), and other web application vulnerabilities.

3. Data Protection and Privacy

- All data, including personal information of customers and students, must be handled in compliance with POPI and other applicable data protection regulations.
- The Service Provider must encrypt sensitive data at rest and in transit using industry-standard encryption protocols (e.g., TLS 1.2 or higher for data in transit).
- Access to customer data must follow the principle of least privilege, ensuring only authorized personnel have access.

4. Authentication and Access Control

- The platform must implement **Multi-Factor Authentication (MFA)** for all administrative accounts.
- Role-based access control (RBAC) must be used to restrict access to critical functions and data.
- The Service Provider must maintain secure session management practices, including automatic session timeouts and protection against session hijacking.

5. Incident Response and Recovery

- The Service Provider must establish and maintain an incident response plan, which includes:
 - Procedures for identifying, reporting, and mitigating security incidents.
 - Notification of the university's Cybersecurity Office within 24 hours of a detected breach or incident.
- The Service Provider must ensure data backups are conducted regularly and stored securely in a manner that enables quick recovery from cyber incidents or system failures.

6. Monitoring and Auditing

- The Service Provider must implement continuous security monitoring to detect and respond to unauthorized access and malicious activities.
- Audit logs for all critical transactions and administrative activities must be maintained for a minimum of 12 months.
- Logs must be protected from tampering and available for forensic analysis, if required.

7. Secure Payment Processing

- All payment transactions must comply with **PCI DSS** to protect customer payment data.
- Integration with payment gateways must follow secure API usage guidelines and be isolated from other critical functions of the platform.

8. Vendor Management and Third-Party Risk

- If the Service Provider subcontracts any portion of the Services, subcontractors must also comply with these cybersecurity requirements.
- The Service Provider must conduct regular risk assessments of third-party integrations and provide proof of their security posture upon request.

9. Security Training and Awareness

- The Service Provider must ensure that all personnel involved in the project receive regular cybersecurity training.
- Evidence of training completion must be provided upon request by the university.

10. Termination and Data Transfer

- Upon termination of the Agreement, the Service Provider must securely transfer all data generated and/or created and any all Intellectual Property to the university.
- All data held by the Service Provider must be securely destroyed following a method compliant with NIST SP 800-88 Guidelines for Media Sanitisation.

11. Compliance and Reporting

- The Service Provider must provide quarterly cybersecurity status reports to the University, detailing:
 - Security incidents and remediation actions.



-
- Results of vulnerability scans and penetration tests.
 - The Service Provider must submit to annual security audits conducted by an independent third party or the University's cybersecurity team.

DRAFT