

SOFTWARE LICENSE AND SERVICES

A G R E E M E N T

Made and entered into by and between:

University of South Africa

a public Higher Educational Institution established and incorporated in terms of the Higher Education Act, 1997 (Act 101 of 1997), as amended and represented herein by Professor Puleng LenkaBula in her capacity as Principal and Vice Chancellor and also herein represented by Ms Mathabo Nakane in her capacity as Vice Principal: ICT & CIO Duly authorized in terms of item 11.6 of the Delegation by Council of Decision-Making Authority with its address situated at Oliver Tambo Building 11-21, 340 Preller Street, Muckleneuk Ridge, PRETORIA hereinafter referred to as UNISA

and

..... Pty Ltd Reg. No: of Address
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.....
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1. PREAMBLE

- 1.1 **WHEREAS** UNISA is desirous of licensing certain Software Products as fully described herein or in the tender documents and desires to procure training, maintenance and support in respect of such Software Products.
- 1.2 **AND WHEREAS** and in view of the above UNISA issued a tender with reference number [REDACTED] for the purposes of appointing a certified and approved Company to license the Software Products to UNISA and provide training, maintenance and support services (Services) in respect of such Software Products.
- 1.3 **AND WHEREAS** in its response the Company represented and warranted that it is either the proprietor of the Software Products or it is authorized, qualified and certified by the proprietor to license the Software Products to UNISA and further has the equipment, resources, capabilities, requisite skills and expertise to provide the Services as described in this Agreement, tender and related specifications documents.
- 1.4 **AND WHEREAS** upon the adjudication process of the Company's response to the tender and in reliance on the warranties made by the Company in its response to the tender, UNISA concluded with a recommendation that the Software Products and related Services solution proposed by the Company are the most suitable solution based on the tender and UNISA requirements.

NOW THEREFORE THE PARTIES WISH TO RECORD THEIR AGREEMENT IN WRITING

2. RECORDAL, APPOINTMENT AND AGREEMENT

- 2.1 UNISA hereby appoints the Company which hereby accepts such appointment to license the Software Products and provide related Services to UNISA.
- 2.2 The Company hereby grants to UNISA, a non-exclusive and non-transferrable license, for the duration of this Agreement to use the Software Products in accordance with the terms and conditions of this Agreement.
- 2.3 This Agreement and its Annexures set out and record the terms and conditions that are accepted by UNISA and the Company (collectively "the Parties") to regulate the relationship between the Parties and the execution of the Agreement by the Company in accordance with its response to the tender and related specifications documents.
- 2.4 For the avoidance of doubt, the Parties record and agree that the tender documents and the Company's response to such tender are incorporated in this Agreement by reference and constitute the provisions

of this Agreement. In case of a conflict between the terms of this Agreement, its Annexures and the Company's response, the terms of this Agreement and its Annexures shall prevail.

- 2.5 The Company hereby agrees and undertakes without limitations to execute its obligation in terms this Agreement diligently in a professional manner and with due regard to the requirements of UNISA and in accordance with the specific service levels agreed to by the Parties and set out in **Annexure A** hereof, to ensure that UNISA requirements as defined in the tender and the Company's response thereto are met in full.
- 2.6 The Company will at its own costs and expense procure any and all tools, software and all other resources required to provide the Services as specifically set out in this Agreement and any Annexures thereto.
- 2.7 The Company agrees and undertakes, at all times and whilst executing its obligations in terms of this Agreement to ensure that UNISA derives full value from the Software Products and Services and will not do or cause to be done anything that will in any manner whatsoever limit the value derived or to be derived by UNISA from the Software Products and related Services.

3. MAINTENANCE AND SUPPORT

- 3.1 Maintenance and Support Services ("Services") shall for the purposes of this Agreement mean and include the performance of scheduled and/or preventative maintenance services required for the purpose of ensuring the continued functionality of Software Products, including the provision and installation of upgrades, updates, enhancements and new releases without further charge to UNISA.
- 3.2 The Company shall during the term of this Agreement, provide the Services and shall be obliged to notify UNISA of any upgrades, updates, enhancements and/or new releases to and of the Software Products, and shall deliver and install such upgrades, updates, enhancements and/or new releases within a reasonable time after such item becomes available.
- 3.3 As part of the Services, UNISA will be entitled to receive technical user support for the Software Products, including in respect of any updates to the Software Products. The Services include the provision of telephonic support and any training that may be required by UNISA for the use of the Software Products.
- 3.4 The Company shall during the term of this Agreement and to the extent required apply any and all patches and software fixes released for the Software Products to ensure that Software Products perform according to program documentation and further ensure that UNISA information is secured, protected and is not corrupted or compromised in any manner. The program documentation shall for the avoidance of doubt refer to documentation in respect of the Software Products as provided by

the Company to UNISA, including user documentation and the specifications of the Software Products.

- 3.5 In addition to the above, the Company hereby agrees and undertakes to during the term of this Agreement continuously monitor the Software Products to facilitate their operation and help resolve any malfunctioning of the Software Products and to further detect and address threats to the functionality, security, integrity, and availability of the Software Products.
- 3.6 The Company confirms that it will for the purposes hereof and to the extent required have access to the Software Products Provider Support Centre and agrees that it will for the purposes of Software Products licensed to UNISA use such access exclusively for UNISA and in accordance with any conditions from the proprietor of the Software Products.
- 3.7 UNISA shall promptly report any errors, faults or defects in the Software Products to the Company by escalating such errors, faults or defects via the Company's service desk support contacts as set forth in Annexure "A" hereof.
- 3.8 If the Company fails to perform any of the Services in accordance with this Agreement then, without prejudice to any other rights or remedies UNISA may have under this Agreement or otherwise, the Company will upon written notice to it by UNISA and at its cost promptly remedy any default or re-perform any non-conforming Services within 48 hours from receipt of notice and take all measures necessary for that purpose (such as developing and implementing work around plans and allocating additional resources).
- 3.9 If it becomes clear to UNISA that the Company shall not remedy any default or re-perform any non-conforming Services, UNISA or a third party appointed by UNISA will remedy such non-performance; and any such performance by UNISA or a third party shall be at the cost of the Company.

4. CONSULTATION AND IMPLEMENTATION

- 4.1 The Parties shall establish an Implementation Committee ("IC") as soon as possible following the date upon which this Agreement comes into operation.
- 4.2 The purpose of the IC is to assess the implementation of this Agreement, coordinate the implementation of this Agreement and to resolve any identified problems in the implementation of this Agreement.
- 4.3 This IC shall be constituted by two members of each Party. The committee shall meet regularly but not less than every two weeks for the duration of the Agreement.

- 4.4 The IC may take such decisions as are necessary to give effect to this Agreement; prepare reports on the state of implementation; any matter which is necessary to ensure the success of the implementation of this Agreement and resolve of any disputes arising from the implementation of this Agreement.
- 4.5 The Parties designate representatives below that will serve as primary contacts for the respective Parties.
- 4.6 The primary contacts will manage all significant communications between the Parties and are as follows:

UNISA	The Company
ICT	
Name:
Title:
Tel: (012) 429	Tel:
Mobile Number:	Mobile Number:.....
E-mail:@unisa.ac.za	E-mail:

5. TERM AND TERMINATION

- 5.1 This Agreement shall be effective and valid from untilunless terminated or renewed by agreement in writing between the Parties in accordance with its terms. The Company acknowledges and confirms that no expectation has been created by anyone, by this Agreement or any other agreement, entitling the Company or UNISA to expect the renewal or extension of the term of this Agreement.
- 5.2 Both Parties have the right to terminate this Agreement without giving reasons by giving three calendar months' written notice to the other Party. Provided that in the event that UNISA terminates the Agreement partly or in whole in accordance with this clause or other reason not related to the Company's breach, UNISA shall pay the Company for the portion of the Services rendered up to and as at the date of such termination as well as reimburse the Company any costs reasonably incurred and substantiated by the Company in connection with and in contemplation of the provision of the Services to UNISA. Any and all fees paid in advance to the Company shall upon termination of the Agreement be immediately reimbursed to UNISA.
- 5.3 Either Party may immediately terminate this Agreement by giving the other notice in writing if:
- 5.3.1 the other Party is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration.
 - 5.3.2 the other Party takes steps to deregister itself (close down) or is deregistered.
 - 5.3.3 the other Party makes any settlement or arrangement with its creditors.

- 5.3.4 the other Party fails to satisfy a court order against it or does not apply for recession of such order within 21 days from the date of the order (does not satisfy a writ of execution) for one million rand or more, within 21 days.
- 5.3.5 anything analogous to the foregoing occurs in any applicable jurisdiction, which is not dismissed in 21 days.
- 5.3.6 termination is necessary to comply with any applicable law or government instructions.
- 5.3.7 If the other commits material breach as contemplated in clause 24 of this Agreement.

5.4 If the Company fails to render any portion of the Services timeously or to the reasonable satisfaction of UNISA and fails to rectify such non-performance within the period specified in the notice given by UNISA requesting such rectification, UNISA may in addition to any other remedies available to it procure from a third party ("Step-In"), upon such terms and condition as it deems appropriate, the Services similar to those deemed to have been delayed or delivered unsatisfactorily by the Company, at the additional cost of the Company which costs are in addition to the charges UNISA would have paid to the Company for properly delivered Services. The Company will credit UNISA for any monies paid to the Company and UNISA appointed third party for Services provided by UNISA appointed third party for the purposes of Step-In, in addition to the usual charges UNISA paid to the Company for the relevant portion of the Services. However, the Company will allow UNISA full access to the Software Products and related infrastructure and continue performance of its obligations in terms of this Agreement to the extent that such obligations are not affected by the Step-In.

5.5 If this Agreement is terminated by UNISA due to a material breach of the Agreement by the Company or if terminated by the Company for any reason, the Company will provide assistance to UNISA to enable UNISA to effect a smooth non-disruptive transition to another service provider or to re-establish UNISA's in-house IT service, whichever UNISA, in its sole discretion may decide. To this end, the Company will for a period of 30 days from date of termination specifically and as UNISA may direct:

- 5.5.1 provide advice and guidance to the new service provider or UNISA as the case may be;
- 5.5.2 make the Company's personnel available to render assistance to UNISA or to the new the service provider, subject to the Parties agreeing on the applicable rates that will apply for rendering such assistance; or
- 5.5.3 provide, on an ad-hoc basis, the Services that the Company was providing under this Agreement until the new the Company or UNISA is capable of performing the Services, subject to the Parties agreeing on the applicable charges that will apply for performing such services.

5.6 This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement ends for whatever reason or is declared invalid.

6. EFFECT OF TERMINATION

- 6.1 On termination, cancellation, or expiry this Agreement, all amounts due to the Company for Services rendered before termination will become due and payable even if the Company have not yet invoiced them. Payment for such Services will be subject to the payment terms agreed to in this Agreement. UNISA may not withhold the amounts for any reason, unless such payment is disputed by UNISA. The Company will refund UNISA the proportion UNISA has paid in advance for Services not rendered.
- 6.2 Following termination, UNISA may take advantage of any post-termination assistance that the Company may generally make available (such as but not limited to data retrieval arrangements). The Company will upon request from UNISA provide UNISA with post-termination assistance at such costs as may be agreed to by the Parties. UNISA's right to take advantage of any post-termination assistance will depend on UNISA's acceptance of and compliance with reasonable additional fees, conditions or terms that the Company may impose for such assistance.
- 6.3 Upon termination or expiry of this Agreement, the Company shall remove and return any and all proprietary software and confidential UNISA information to UNISA without any charge to UNISA.
- 6.4 This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement lapses, is terminated or declared invalid for whatever reason.

7. RESPONSIBILITIES OF THE COMPANY

- 7.1 The Company hereby agrees and undertakes to execute and implement this Agreement in accordance with its terms, tender, its response to the tender as well all annexures attached thereto.
- 7.2 The Company will, whilst performing its obligations ensure optimal functioning of the Software Products and specifications in accordance with Software Products documentation, ensure proper management of all documents related to the Agreement, for audit purposes, and that documentation and or reports submitted to UNISA are of good quality and include relevant stakeholder consultations and communications during the documentation compilation.
- 7.3 The Company agrees that it will for the duration of this Agreement, deploy adequately certified and qualified resources and deliver the Services within the stipulated Service Level Agreement (Annexure A), taking into consideration the expected business outcomes, the functional requirements, the size of the institution and industry best practices.
- 7.4 Some resources of the Company may be required to be in possession of valid security clearances to the level determined by UNISA commensurate with the nature of the activities they are expected to perform. The costs of obtaining suitable clearances are for the account of the Company. When requested upon to do so, the Company will supply and maintain a list of personnel involved on the execution of this Agreement indicating their clearance status.
- 7.5 Although no employee - employer relationship exists between UNISA and the Company, the Company and its resources must to an extend applicable adhere to UNISA's policies (which include health and

safety, physical security procedure, access control procedures, information security policies) as provided in writing by UNISA to the Company or made available to the Company through the relevant UNISA Website.

7.6 The Company will to the extent required in executing its obligations in terms of this Agreement be responsible for its own travelling, parking and accommodation costs incurred in the discharging of its obligations in terms of this Agreement. UNISA will not accommodate or pay any claim whatsoever for travelling, parking and accommodation, unless specifically contracted otherwise.

7.7 The Company will use its reasonable endeavors to ensure the continuous transfer of knowledge and skills to UNISA resources in cases where these resources work alongside each other or collaboratively to ensure success.

7.8 The Company will provide a knowledge transfer plan and reporting on agreed intervals on tasks, activities, actions, accreditations, or certifications as may be required by UNISA from time to time.

8. RESPONSIBILITIES OF UNISA

8.1 UNISA will on the terms agreed to by UNISA in this Agreement or any annexure thereto provide the Company with necessary documentation, information and material required for the successful execution of this Agreement. The terms will, without any limitation apply, to deployment site list, user details, configuration procedures and relevant system access.

8.2 Where required, provide the Company with the necessary access to UNISA facilities and infrastructure required for the implementation and execution of the Company's obligations under this Agreement.

8.3 Currently available relevant documentation, material and or equipment required for performance of Services by the Company will upon request by Company be provided by UNISA, however where certain institutional information for the deliverables is required but is not documented, the Company will be required to solicit and document this information at no extra charge to UNISA, subject to the full co-operation of UNISA personnel.

8.4 Where required, direct and facilitate engagements, which include without any limitation training with all relevant stakeholders necessary for the successful implementation and execution of the Agreement.

9. PERFORMANCE AND GOOD FAITH

8.1 The Parties will always cooperate with each other and act in good faith towards each other in the performance and execution of this Agreement.

10. COMMERCIALS AND PAYMENT PLAN

10.1 The Company will upon execution of its obligations and responsibilities in terms of this Agreement be entitled to be paid in accordance with the provisions of this clause:

- 10.2 Year 1:(incl. VAT).
- 10.3 Year 2(incl. VAT).
- 10.4 Year 3.....(incl. VAT).
- 10.5 Software License Fees
- 10.5 All legitimate payments due to the Company will be electronically paid into a chosen official bank account of the Company as specified in the Agreement or any related statement of account.
- 10.6 The Parties record and agree that UNISA will pay for the Services on the basis of the deliverables and milestones achieved and approved by UNISA. The deliverables and milestones and acceptance criteria for such deliverables shall be fully defined in **Annexure A**. For the avoidance of doubt, no advance payment shall be made for the Services and payment will only be made for Software Products delivered and Services rendered.
- 10.7 In the event of any disputes as to the amount arising out of the calculation of any fee or charges payable by UNISA, Parties will attempt to resolve the dispute amicably as set out in the dispute resolution clause from the date on which the dispute is noted.
- 10.8 All compliant invoices and statements issued by the Company are payable within 30 (thirty) calendar days from the date of receipt of statement and associated invoice, unless the payment is disputed, and written confirmation is dispatched to the Company within 21 (twenty-one) calendar days from the date of receipt of such invoice and statement.
- 10.9 The payments will be without any deduction, set off or demand and free of exchange and bank charges. UNISA will make payment in the manner specified in this Agreement. Notwithstanding the aforesaid, if an invoice is disputed, UNISA shall pay the undisputed amount. UNISA shall upon resolution of the dispute and to the extent that the amount is payable pay such amount in accordance with the payment terms set out in this Agreement.
- 10.10 The Company will not be entitled to withhold or halt the provision of Services whilst any disputed payment is outstanding from UNISA. Any delayed payment that are not subject to dispute will be settled by mutual consent in no more than 30 calendar days from due date.
- 10.11 The Company will under no circumstances provide any credit bureau with information about the payment of amounts or any undisputed outstanding payments.

11. UNGC PRINCIPLES

The Parties shall adhere to the United Nations Global Compact (UNGC) principles dealing with human rights, labor standards, the protection of the environment and anti-corruption. The Parties will support and respect the protection of internationally proclaimed human rights within their sphere of influence; and will make sure that they are not complicit in human rights abuses. The Parties shall uphold the

freedom of association and the effective recognition of the right to collective bargaining; uphold the elimination of all forms of forced and compulsory labour; uphold the effective abolition of child labour; and uphold the elimination of discrimination in respect of employment and occupation. The Parties shall support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies. The Parties shall work against corruption in all its forms, including extortion and bribery. In the event of a party acquiring knowledge of fraud or corruption on the part of its employees in relation to this agreement, the Parties will inform each other.

12. NON-SOLICITATION

Neither party shall during the currency of this Agreement or for a period of 12 (twelve) months following termination thereof directly or indirectly solicit, engage, employ or offer employment to any staff member of the other party who was involved in the implementation or execution of the Agreement, nor will either party, whether for its own account or for the account of any other person, intentionally interfere with the relationship of the other party, or endeavour to entice away from the other party, any person who during the term of the Agreement was a customer or The Company of the other party.

13. INTERFACE WITH OTHER SERVICE PROVIDERS

- 13.1 As part of its IT strategy implementation, UNISA has embarked or may during the term of this Agreement embark on a process of on-boarding various service providers to partner and support UNISA with this program in the medium to long-term.
- 13.2 The Company will be expected to interface and collaborate with other service providers during this process.
- 13.3 An authorised representative of UNISA will coordinate and oversee any potential objective collaborations and interfaces between various ICT's service providers.

14. SERVICE TRANSITION AND CONTINUITY

- 14.1 Service transition entails Services required to plan and manage the change from the current state of Services in its lifecycle, to the future state. It includes managing risk for new, changed and retired Services or solutions including the identification and remediation of the likely impact to UNISA and the end-user experience, noting the Transition and Disengagement requirements.
- 14.2 Transition-In Services will be implemented in line with the project plan or any other implementation methods that may be agreed to by the Parties during the implementation process.

- 14.3 Contractual relationship as an outcome of the process commences upon signing of this Agreement by the delegated authorities of both Parties, therefore the blanket purchase Agreement (BPA) or purchase order (PO) only serve as financial instruments to facilitate contract payments.
- 14.4 The project transitioning programme must consider core business Services continuity requirements, change management drive and risk management relating to Services disruptions as well as ensure stability of application/s or system/s availability.

15. DATA INTEGRITY AND DISASTER RECOVERY, INTELLECTUAL PROPERTY

- 15.1 **Data Integrity and Disaster Recovery.** Any data losses, damage or inconvenience proven to have been solely attributable to the Company and connected with the technical operations triggers will be remedied by the Company at its costs, notwithstanding the foregoing the Company hereby undertakes to take diligent and reasonable steps to prevent or mitigate such loss, damage or inconvenience against UNISA and recover such loss, at no extra cost to UNISA.
- 15.2 Ownership of UNISA's data, whether under its control or not, will continue to vest with and be the exclusive property of UNISA, the Company will not obtain any proprietary rights in such data.
- 15.3 Both Parties will take reasonable precautions to preserve the integrity of UNISA's data or Intellectual Property and to prevent any unauthorised access, corruption or loss of such data to minimize any disruption to UNISA's normal business activities.
- 15.4 The Company hereby warrants and undertakes that it will, within its legal right and capacity, take reasonable care to avoid infringement of any trademark, patent, design, copyright or trade secret that extends to UNISA or reasonably associated third Parties, and that it will not unreasonably allow UNISA to be exposed to any legal jeopardy in respect of such intellectual property rights and hereby fully indemnifies UNISA against any claim from a third party arising from its failure or refusal to comply with the provisions hereof.
- 15.5 The Company will at its cost and expense rectify any aspects of its equipment, Software Products or Services that has the effect of infringing on any intellectual property to the extent necessary.
- 15.6 The Company warrants that it is the proprietor of the Software Products or is authorized by the proprietor to license the Software Products to UNISA and hereby indemnifies UNISA against claims, actions, proceedings, losses, damages, expenses and costs arising from or in connection with a breach of third-party intellectual property.
- 15.7 The Company will not co-brand any artefacts produced from this Agreement. No information about or arising from this Agreement can be used by the Company without prior written approval of the UNISA.

- 15.8 The Company will take all reasonable steps to ensure that UNISA's data is not accessible to any party who is not authorised by either UNISA or the Company to access such data. UNISA will take reasonable steps to ensure that the data as provided to the Company during the Data Migration (if required) is not corrupted and reflects the correct information.
- 15.9 Any UNISA data in the possession of the Company, or to which the Company may have access during the currency of this Agreement, may be used by the Company only in the performance of the Services under the terms of this Agreement.
- 15.10 If UNISA's data is corrupted, lost, or sufficiently degraded to be unusable, due to any act or omission by the Company, The Company will without delay or charges to UNISA take all steps required to restore, or procure the restoration of the UNISA's data.
- 15.11 If the corruption, loss or degradation of the UNISA's data is due to wilful negligence or an act of omission of the Company, the Company will be liable to UNISA for such loss or degradation.
- 15.12 **Intellectual Property.** The Company has created, acquired or otherwise obtained rights in its intellectual property (which includes its technology), which it may utilise or include in the provision of the Services and despite anything contained in the Agreement, the Company will own all right, title, and interest in its intellectual property.
- 15.13 If the Company uses any of UNISA's intellectual property (which includes its technology) in connection with the Company's performance under this Agreement, UNISA's intellectual property will remain UNISA's property, and the Company will not acquire any right or interest in it.
- 15.14 If the Company uses any of its intellectual property in connection with its performance under this Agreement, the Company's intellectual property will remain the property of the Company and UNISA will not acquire any right or interest in it.
- 15.15 The Company hereby grants UNISA a non-transferable and non-exclusive free of charge license in respect of any intellectual property that may be needed in supplying the Services.
- 15.16 Neither Party will obtain any rights in the existing material or intellectual property of the other Party or its licensors that was not created in performing the Agreement or existed before the commencement of the Agreement, unless a license is granted.
- 15.17 The Company's or UNISA's logos and sub-logos, marks, and trade names are the respective Parties' trademarks as the case may be, and neither UNISA nor the Company may use them without permission of the owner thereof. Any other trademark or trade name that may appear on the Company's or UNISA's marketing material is the property of its respective owner.
- 15.18 Except as expressly permitted under the Agreement, the Software Products or Services may not be:
- modified, distributed, or used to make derivative works;

- rented, leased, loaned, sold or assigned;
- decompiled, reverse engineered, or copied (except when required for back up purposes); or
- reproduced, transferred, or distributed.

15.19 Nothing contained in the Agreement will restrict the Company from using any generic ideas, concepts, know-how, or techniques developed by the Company or learned in the course of providing the Services with the exclusion of any confidential or proprietary information of UNISA.

15.20 Neither UNISA nor the Company will be liable to the other Party hereto for any claim that arises out of goods or services UNISA, or the Company select and acquire from third parties.

15.21 The Parties shall use commercially reasonable security and anti-virus measures when uploading Customer Data to, access, use or provide the Services to prevent unauthorized access to, or use of, the Services, and the Parties shall notify the other Party promptly of any such unauthorized access or use of which it becomes reasonably aware.

16. CONFIDENTIALITY

16.1 For the avoidance of any doubt and for purposes of this Agreement “confidentiality” means any information of a confidential nature.

16.2 Each Party agrees that it will, always (both during the term of this Agreement and after its termination) keep confidential and will not use (other than strictly for purposes of the Agreement) without prior written consent of the other or disclose to any third party any confidential information, unless the information is in the public domain.

16.3 The Company, its sub-contractors and all its resources working on the project will sign a Non-Disclosure Agreement or their employment or contract terms will include confidentiality provisions which similarly protect the Parties.

16.4 Each Party will use the Confidential Information exclusively in connection with the Agreement and protect it in the same manner it protects the confidentiality of its own proprietary and confidential information of like kind, and:

- only give the information to any of its employees or agents that need it, and only give as much of it as they need;
- use reasonable security procedures to make sure employees or agents keep the information confidential;

- get confirmation and undertaking of confidentiality from those employees or agents who need access to the information; and
- not reveal the information to anyone else.

16.5 Confidential Information disclosed hereunder will always remain, as between the Parties, the property of the disclosing Party. No license under any trade secrets, copyrights or other rights is granted by this Agreement or any disclosure of confidential information.

16.6 Confidential Information of the disclosing Party may not be copied or reproduced by the recipient without the disclosing Party's prior written consent except for the exclusive purpose of this Agreement.

16.7 If a Party received a subpoena or other validly issued administrative or judicial process demanding Confidential Information of another Party, the recipient will promptly notify the disclosing Party if permitted in terms of the relevant legislation governing the subpoena demand process being made.

16.8 No media releases, public announcements and public disclosures relating to this Agreement nor its subject matter, including but not limited to promotional and marketing material, will be made without affording the other Party an opportunity to comment.

16.9 At the end of this Agreement, or on written request, the Parties will give back to the other all originals and copies of confidential information of the other that they have. If the other agrees, they may destroy the confidential information they have.

16.10 These responsibilities or obligations will not apply to any information that:

- is lawfully in the public domain (available to the general public) when a Party received it;
- lawfully becomes part of the public domain afterwards;
- is given to the receiving Party afterwards by a different person who is allowed to reveal the confidential information; or
- is given to comply with a court order or other legal duty.

16.11 This clause about confidential information is separate from the rest of this Agreement and remains valid in perpetuity.

17. PROTECTION OF PERSONAL INFORMATION

17.1 Commencement

The provisions of this clause will only become operative on the Signature Date as stated in the Agreement.

17.2 Processing limitations

It is recorded that, pursuant to its obligations under this Agreement, the Company will process Personal Information in connection with and for the purposes of the provision of the Services for or on behalf of UNISA and will act as UNISA's Operator for purposes of Protection of Personal Information Act (POPIA) no.4 of 2013.

The Parties have agreed on the following contractual clauses in order to adduce adequate safeguards with respect to the protection of Personal Information:

17.2.1 Unless required by law, the Company shall process the Personal Information only:

- (a) On behalf of UNISA and in compliance with its instructions and this Agreement;
- (b) For the purposes connected with the provision of the Company services or as specifically otherwise instructed or authorised by UNISA in writing; and
- (c) The Company shall treat the Personal Information that comes to its knowledge or into its possession as confidential and shall not disclose it without the prior written consent of UNISA.

17.3 Security measures

17.3.1 The Company warrants that it shall secure the integrity of the Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent:

- (a) Loss of, or damage to, or unauthorised destruction of the Personal Information; and
- (b) Unlawful access to or processing of the Personal Information.

17.3.2 The Company shall take reasonable measures to:

- (a) Identify all reasonable foreseeable internal and external risks to the Personal Information in its possession or under its control;
- (b) Establish and maintain appropriate safeguards against the risk identified;
- (c) Regularly verify that the safeguards are effectively implemented;
- (d) Ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; and
- (e) Shall notify UNISA of the risks identified and the safeguards established and implemented from time to time.

17.3.3 The Company shall:

- (a) Have due regard to generally accepted information security practices and processes which may apply to it;
- (b) Comply with UNISA's information security practices and procedures and applicable industry or professional rules and regulations, of which UNISA undertakes to keep The Company informed from time to time; and
- (c) Within five (5) business days of a request from UNISA, The Company shall provide to UNISA a written explanation and full details of the appropriate technical and organisational measures taken by or on behalf of the Company to demonstrate and ensure compliance with this clause.

17.4 The Company's general obligations with regards to Personal Information

17.4.1 In addition to the other obligations set out in this clause, the Company shall:

- (a) Take reasonable steps to ensure the reliability of any of its Staff who have access to the Personal Information;
- (b) Limit access to the Personal Information only to those Staff who need to know to enable the Company to perform the services and ensure that staff used by the Company to provide the Services have undergone training in the care and handling of the Personal Information;
- (c) Deal promptly and properly with all reasonable inquiries from UNISA relating to its Processing of the Personal Information and provide to UNISA copies of the Personal Information in the format reasonably specified by UNISA;
- (d) Promptly inform UNISA of its inability to comply with UNISA's instructions and this clause, in which case UNISA is entitled to suspend the Processing of Personal Information and/or terminate this Agreement;
- (e) Provide UNISA with full co-operation and assistance in relation to any requests for access or correction or complaints made by Data Subjects; and
- (f) At the request of UNISA or any regulatory body, submit its Personal Information Processing facilities for audit of the Processing activities covered by this Agreement.

17.5 **Notifications**

17.5.1 The Company must notify UNISA in writing:

- (a) Within 1 (one) business day or otherwise as soon as reasonably possible if any Personal Information has been or may reasonably believe to have been accessed or acquired by an unauthorised person or if a breach has occurred with reference to its use of the Personal Information under this Agreement. The notification must provide sufficient information to allow affected Data Subjects to take measures against the potential consequences of the compromise, including, if known to the Company, the identity of the unauthorised person who may have accessed or acquired the Personal Information;
- (b) Within 3 (three) business days of receipt thereof, of any request for access to or correction of the Personal Information or complaints received by the Company relating to UNISA's obligations in terms of POPIA and provide UNISA with full details of such request or complaint; and
- (c) Promptly of any legally binding request for disclosure of Personal Information or any other notice or communication which relates to the Processing of the Personal Information from any supervisory or governmental body.

17.6 **Return or destruction of Personal Information**

Upon termination of this Agreement or upon request by UNISA, the Company shall return any material containing, pertaining or relating to the Personal Information disclosed pursuant to this Agreement to UNISA. Alternatively, the Company shall, at the instance of UNISA, destroy such material and shall certify to UNISA that it has done so, unless the law prohibits the Company from doing so. In applying this destruction alternative, the Company shall provide UNISA with the Certificate of Destruction to confirm that the destruction was done in a manner that the Personal Information cannot be reconstructed to its original format. In that case, the Company warrants that it will guarantee the confidentiality of the Personal Information and will not actively process the Personal Information any further.

17.7 **Warranties**

The Company warrants that in addition to the warranties stated in the rest of this Agreement, it shall comply with all regulatory and statutory requirements which impact on or relate to the Company and the Services, including, but not limited to, POPIA.

17.8 **Indemnities**

The Company hereby indemnifies and holds harmless UNISA from any and all penalties, claims, loss or damage arising from any claim or action brought against UNISA and arising from or due to the Company's breach of its information protection obligations set out in this clause.

17.9 **Ownership of Information**

- (a) The Company acknowledges and agrees that UNISA retains all right, title and interest in and to the Personal Information.
- (b) The Company shall not possess or assert any lien or other right against or to such Personal Information and no such Personal Information shall be sold, assigned, leased or otherwise disposed of to third parties by the Company or commercially exploited by or on behalf of the Company or its Staff.

18. **WARRANTIES**

18.1.1 The Company warrants in relation to the Agreement that:

18.1.2 the Company and its personnel possess and have the right to use knowledge and expertise sufficient to enable the Company to license the Software Products to UNISA and provide the Services;

18.1.3 The Company will employ a sufficient number of suitably trained personnel to provide the Services and to achieve the service levels; and

18.1.4 The Company will license the Software Products to UNISA and provide the Services according to all applicable laws, enactments, and regulations.

18.2 The Company warrants that the Software Products licensed to UNISA and Services procured in terms of this Agreement will meet UNISA requirements as defined in this Agreement or any annexure thereto as well as the tender requirements, in the event of any failure to meet the Services requirements, the Company will remedy the defects immediately and ensure that the Services are not unduly affected. UNISA shall if the defects are not remedied be entitled but not obliged to terminate the Agreement and secure similar Services from a third-party vendor. Any and all additional costs shall be for the account of the Company.

18.3 The Company further warrants that:

18.3.1 it has the legal right, licenses and full power and authority to execute and deliver, and to exercise the Company's rights and perform the Company's obligations under the Agreement and hereby fully indemnifies UNISA against any damages, claim of whatever nature or intellectual property infringement proceedings arising out of the Services that may be instituted against UNISA by any third party.

18.3.2 The Company and its personnel will not introduce any malicious software into UNISA's material or UNISA's system.

18.4 As part of the Services, the Company will ensure that the security software related to Services and/or the Software Products or related infrastructure shall be kept up-to-date on any systems used to access the Services.

18.5 UNISA warrants that:

18.5.1 it has entered into the Agreement based on the proposal and submissions made by the Company in its response to tender issued by UNISA.

18.5.2 by entering into this Agreement UNISA is not acting in breach of any Agreement to which UNISA is a Party.

19. ASSIGNMENT AND SUBCONTRACTING

19.1 No Party may delegate its duties under this Agreement or assign its rights under this Agreement, in whole or in part without the other Party's prior written consent, which may not be unreasonably withheld.

19.2 The Company may not cede or assign all rights and obligations under this Agreement to any third party without UNISA's prior written consent, which may be withheld by UNISA at its sole discretion.

19.3 The Company may upon prior written approval by UNISA sub-contract or delegate the Company's obligations under this Agreement to third party contractors. The Company will remain liable for performance of the third-party contractors.

20. RELATIONSHIP

20.1 Nothing in this Agreement will be construed as constituting a temporary employment service or as creating a partnership between the Parties and no Party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party.

20.2 Each Party enters into the Agreement as an independent contractor. The Agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.

21. APPOINTMENTS AND GOVERNANCE

21.1 After signing this Agreement, each Party will appoint a suitably qualified and responsible person to act as their representative. If a Party does not appoint a representative, the natural person that is ordinarily responsible for the day-to-day administration of that Party will be its representative.

21.2 The representative's responsibilities include to manage and coordinate the Services and to discuss and manage any changes.

21.3 The representatives will meet as contemplated in clause 4.3 hereof or as may be agreed between the Parties in writing for urgent matters from time to time.

21.4 A Party may, on five business days' written notice to the other, appoint an alternative representative who is suitably qualified and responsible.

21.5 Both Parties will, in a separate appointment schedule, appoint other relevant personnel where necessary in connection with the provision of Services.

22. DISPUTE RESOLUTION

22.1 For the purposes of this clause, AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its place).

22.2 There will be a dispute about or from this Agreement if a Party writes to the other about it and asks for it to be resolved under this clause. The Parties must refer any dispute to be resolved by:

22.2.1 negotiation (direct talks to try and agree how to end the dispute); failing which

22.2.2 mediation (talks in which a neutral third party tries to help the Parties agree how to end the dispute); failing which

22.2.3 arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

22.3 Each Party must make sure that their chosen representatives meet within 10 days of notification, to negotiate and try to end the dispute by written Agreement within 15 more days.

22.4 If negotiation fails, the Parties must refer the dispute to mediation under AFSA's rules.

22.5 If mediation fails, the Parties must refer the dispute within 15 days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration

will be held in English in Pretoria. The Parties will agree and appoint one arbitrator. If the Parties cannot agree on the arbitrator within 10 days after the referral, the secretariat of AFSA will appoint the arbitrator.

- 22.6 Any legal costs (attorneys and advocates fees and the costs of experts and witnesses) incurred by the Parties in the arbitration will be recoverable on the attorney and own-client scale.
- 22.7 Upon such referral to arbitration, the costs of and incidental to the referral, including the fees of the arbitrator/arbitrators, and award will be in the discretion of the arbitrator, who may determine the quantum of the costs and liability for payment of such costs.
- 22.8 The award of the arbitrator will be final and binding on the Parties and any Party will be entitled to apply to the Courts to have such an award made an order of court.
- 22.9 This clause will not preclude the Parties from obtaining interim relief on an urgent basis in a Court of competent jurisdiction pending the decision of the Arbitrator. To this end, the Parties hereby consent to the jurisdiction of the North Gauteng High Court, Pretoria.
- 22.10 The Parties may agree otherwise in writing.
- 22.11 This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement ends or is invalid.

23. FORCE MAJEURE

- 23.1 No Party is responsible for any breach of this Agreement caused by circumstances beyond its control, including pandemic, flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or 'acts of God'.
- 23.2 If there is an event of force majeure, the Party affected will immediately notify the other of:
- 23.2.1 the cause, nature and extent of the circumstances;
- 23.2.2 the expected duration of the circumstances; and
- 23.2.3 the extent to which its performance will be affected; and
- 23.2.4 they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this Agreement. The Parties will continue to comply with the responsibilities that are not affected by the circumstances.
- 23.3 If a Party cannot fulfil a material (significant) part of its responsibilities under this Agreement for more than 30 days because of force majeure, the other Party may cancel this Agreement, without liability to the affected Party.

24. BREACH AND TERMINATION

- 24.1 If a Party does not remedy any breach of this Agreement (failure to comply with it) within 30 days of receiving written notice from the other Party to do so, the other Party may, without prejudice to any of its rights:
- 24.1.1 claim specific performance of this Agreement (make the Party comply with this Agreement);
or
 - 24.1.2 immediately cancel this Agreement in writing; and
 - 24.1.3 claim direct damages from the other Party, including any claim for any fees already due.
- 24.2 UNISA will in the event of cancellation of this Agreement arising from breach by the Company be entitled to appoint any third party to provide the Services.

25. LIMITATIONS OF LIABILITY

- 25.1 Neither UNISA nor the Company will be liable to the other for any indirect, special or consequential loss, injury, expense or indirect damages (including, but not limited to foreseeable or unforeseeable loss of business, production, profits, anticipated savings, goodwill, contracts, loss of use, business interruption or other economic loss or loss consequent upon loss or corruption of data, stored programs, tapes, cd's, loss of use and indirect damages relating to downtime or costs of substitute products arising and irrespective of whether liability arises in contract, delict or otherwise).
- 25.2 Despite anything else in this Agreement, the Parties' maximum liability to each other for any claim for direct damages is the total amount of fees UNISA has paid the Company in the preceding twelve (12) months for the Services related to the claim. The Parties' total aggregate liability for all claims under this Agreement will never be greater than the maximum liability. This limitation applies to the extent allowed by any law that applies and subject to the terms of this Agreement, and regardless of the basis of the claim (whether in contract, delict, or any other legal basis).
- 25.3 This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement ends or is invalid.

26. OFFICIAL ADDRESSES OF PARTIES

- 26.1 The Parties choose the following addresses to which notices may be given, and at which documents in legal proceedings may be served in connection with this Agreement.
- 26.2 Any notice given in this Agreement will be in writing and will, if delivered by hand be deemed to have been duly received by the addressee on the date of delivery and, if posted by prepaid registered post

be deemed to have been received by the addressee on the fourteenth (14) day following the day of such posting.

UNISA's address	The Company's address
Physical Address: Oliver Tambo Building 11-21 340 Preller Street Muckleneuk Ridge Pretoria South Africa Telephone: (012) 429 6904 Email: legal@unisa.ac.za	Physical Address:
Postal Address: PO Box 392 Unisa South Africa 0003	Postal Address: PO Box
Other electronic correspondence: Invoicing: ICTProcurement@unisa.ac.za	

26.3 Notwithstanding anything to the contrary contained in this Agreement a written notice or communication actually received by one of the Parties from other Party (including electronic communication channels) will be adequate written notice or communication to such Party.

27. ANTI-CORRUPTION

27.1 The Parties and each of its owners, affiliates, officers, directors, employees and agents acting under its instructions and/or influence and taking actions in furtherance of this Agreement, will comply with all applicable anti-corruption laws, including the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 of the Republic of South Africa.

27.2 The Parties also agree to adhere to any local and global anti-bribery and anti-corruption laws and regulations that may be applicable to this Agreement or Services. (collectively, the "Applicable Anti-Corruption Legislation").

27.3 Should there be a breach of the Applicable Anti-Corruption Legislation by either Party, the aggrieved Party may claim for damages incurred in accordance with the breach provisions of the Agreement.

28. GENERAL

- 28.1 The Agreement is the entire agreement between the Parties on the subject matter hereof.
- 28.2 The Agreement may be signed in two or more counterparts, and the signed counterparts, taken together, will constitute a binding Agreement between the Parties.
- 28.3 No change to the Agreement is effective unless in writing and signed by both Parties.
- 28.4 The Company will to the extent applicable notify UNISA of any changes to any third-party software license terms which may have impact on the Services (other than open-source licenses) by notifying UNISA by email. The updated third-party software license terms will be effective immediately and UNISA will be deemed to have accepted them upon notification.
- 28.5 Any waiver which either Party may allow the other Party, will not affect or substitute any of the Party's rights in terms of this Agreement.
- 28.6 If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this Agreement if it does not change its purpose.
- 28.7 This Agreement shall be construed and governed by South African law.
- 28.8 The Parties consent to the jurisdiction of the courts of the province in which UNISA has its headquarters in respect of any action or proceedings the Company or UNISA may bring against each other in connection with this Agreement, even if the action or proceedings would otherwise be beyond its jurisdiction, without prejudice to the Party's right to institute any action in any other court having jurisdiction.
- 28.9 Each Party is responsible for its own costs of drafting and negotiating this Agreement.
- 28.10 A Party will not make any announcement or statement to the press about this Agreement, without first getting written permission from the other Party.
- 28.11 The termination, cancellation, or expiry of this Agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

29. AUDIT

- 29.1 The Company will supply UNISA and/or its agents appointed for purposes of audit with all reasonable information, access and assistance necessary to perform audits of the IT environment insofar as same relates to the provision of the Services by the Company to UNISA. Audits may be performed for quality assurance, architectural compliance and performance-monitoring purposes, amongst others
- 29.2 Without limiting the generality of the foregoing, the Company undertakes at all times to take all commercially reasonable steps to ensure that the Services are delivered in such a ways as to allow UNISA to pass any internal or external audits which may be conducted where UNISA has made the

Company aware of the requirements of such audits suitably in advance. The Company further undertakes timeously to implement all relevant audit recommendations subject to the provisions of the Change Procedure.

30. CHANGE PROCEDURE

- 30.1 During the currency of this Agreement, events may occur which cause a Party to request a change to the nature and scope of the Services. No such change shall be implemented unless the Parties comply with the provisions of this clause.
- 30.2 The Parties agree that UNISA shall be entitled to propose, and subsequently, require that the Company from time to time during the performance of its obligations under this Agreement to make any change, modification, addition or deletion to the Services falling within the scope of this Agreement and does not constitute unrelated work.
- 30.3 The Parties agree that the Company may from time to time during the performance of this Agreement propose to UNISA any change that the Company considers necessary or desirable to improve quality or efficiencies. The Parties agree UNISA may in its sole discretion approve or reject any change proposed by the Company.
- 30.4 The Parties agree that no amendment or variation of the Services shall be effective unless it is in writing, dated and signed by a duly authorised representatives of the Parties.

31 SIGNATORIES BY DELEGATED AUTHORITY

The representatives to this Agreement, hereby confirm that they are duly authorised to engage and conclude contracts on behalf of its respective Parties.

Place of signature and date of signature

UNISA	
Prof Puleng LenkaBula Principal and Vice Chancellor	
Ms. M. Nakene Vice Principal: ICT and CIO Date:	

Place of signature and date of signature

The Company	
Name:	
Title:	
Date:	

ANNEXURE A: SERVICE LEVEL AGREEMENT