SERVICE LEVEL AGREEMENT

SLA Heading for project\contract ENVIRONMENT

**Between**

**UNIVERSITY of JOHANNESBURG**

(A higher education institution established under the Higher Education Act 101 of 1997(as amended) represented by ………………………….. in his/her capacity as ……………………………………)

(hereinafter referred to as **“the Client”)**

**AND**

**………………………………….. CC / PTY (LTD)**

(A Company registered in terms of the Company Laws of South Africa / Close Corporation established in terms of the Close Corporation Act of 1984 and duly represented by …………………….. in his/her capacity as ……………………… and duly authorised thereto)

**(hereinafter referred to as “the Service Provider”**

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1. THE PARTIES TO THIS AGREEMENT ARE:
   1. The University of Johannesburg, a Higher Education Institution established under the Higher Education Act 101 of 1997 (as amended) hereinafter called “the Client”.
   2. …………………………… Close Corporation / Companies registered in terms of the Companies Laws of South Africa or the Close Corporation Act 69 of 1984 with registration number ………………………; and
2. PURPOSE AND OBJECTIVES

2.1 The purpose and objective of this Service Level Agreement (SLA) is the following:

2.1.1 The Service Provider will deliver the Services to the Client;

2.1.2 The Service Provider will maintain general levels of response, availability, and maintenance associated with the Services;

2.1.3 The Service Provider will assume its responsibilities in terms of this Agreement and any annexures attached hereto;

2.1.4 The Client will assume its responsibilities in terms of this Agreement as the Party receiving the Services;

2.1.5 Recognising that a Tender was awarded to the Service Provider by the Client, which is subject to the terms and conditions of the Client. The terms and conditions of the Client will supersede any terms and conditions of the Service Provider.

NOW THEREFORE THE PARTIES HERETO HAVE AGREED WITH EACH OTHER AS FOLLOWS:

1. INTERPRETATION, ABBREVIATIONS AND DEFINITIONS

The following expressions/acronyms bear the meaning assigned to them, and cognate expressions/acronyms shall bear corresponding meanings:

|  |  |  |
| --- | --- | --- |
|  | **Acceptance Certificate** | means the acceptance criteria set out in the Scope of Work. |
|  | **Background Intellectual Property** | [means Intellectual](https://www.lawinsider.com/dictionary/background-intellectual-property)Property owned or controlled by either of the Parties before the commencement date of this Agreement. |
|  | **Business Day** | means any day other than a Saturday, Sunday or public holiday in the RSA, within the meaning of the Public Holidays Act, 1994. |
|  | **Change Control Process** | Means the process through which all requests to change the baseline of the service are recorded, managed, evaluated and then approved, rejected or deferred. This ensures that beneficial changes are implemented with minimal disruption to IT services and the business. |
|  | **Incident Process** | Means the process through which all Incidents are recorded, investigated, monitored and resolved in an efficient manner. |
|  | **Request Fulfilment Process** | Means the process through which all Service Requests are recorded, maintained and fulfilled in an efficient manner. |
|  | **Problem Management process** | Means the process through which investigation and root cause analysis occurs for all faults logged through the correct logging procedure. |
|  | **Confidential Information** | means, when relating to one party (**"the Disclosing Party"**), information of a confidential or proprietary nature in whatever form (including electronic, oral, recorded or written), and, without limiting the generality of the term, will include know-how, business methods, trade secrets, specialist technical information or expertise, data, material (including biological materials), organisms, non-patentable inventions, formulae, systems, methods, processes, manufacturing techniques, instruction manuals, blueprints, samples, devices, demonstrations, show-how and any information, analysis or specifications derived from, containing or reflecting such information, which is made available in connection with this Agreement to the other Party (**"the Receiving Party"**) by the Disclosing Party, or which is recorded in agreed minutes following oral disclosure to the Receiving Party, and any other information which is otherwise made available by the Disclosing Party to the Receiving Party, whether before, on or after the Commencement Date, but excluding information which -   * + is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving Party contrary to the terms of this Agreement); or   + was lawfully in possession of the Receiving Party (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed; or   + following such disclosure, becomes available to the Receiving Party (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing Party, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information. |
|  | **Conflict of Interest** | occurs when there is a direct or indirect conflict, in fact, or in appearance, between the interests of employees, agents or members of an organisation. It will apply to financial, economic and other interests in any opportunity from which the organisation may benefit, as well as the use of the property of the organisation, including information. |
|  | **Commencement date** | Means the date of the signing of the contract between UJ and the service provider or the date on which the project starts |
|  | **Days** | shall be construed as calendar days unless qualified by the word **"business",** in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time. |
|  | **Default** | means any breach of the obligations of either Party or any act, omission, negligent act or statement of either Party, its employees, agents or sub-contractors and in respect of which liability arises from the defaulting Party to the other. |
|  | **ECT Act** | refers to the Electronic Communications and Transactions Act 25 of 2002 and its Regulations. |
|  | **Equipment** |  |
|  | **Foreground Intellectual Property** | Refers to Intellectual Property as may be created or developed, including Background Intellectual Property forming an integral part of the Foreground Intellectual property and not specifically excluded from the Foreground Intellectual Property by the Service Provider –   * + during and as part of the rendering of the Services and in the fulfilment of its obligations in terms of this Agreement;   + in the course and scope of the Services;   + directly related to the Services; or   + resulting from overall system integration, refinements or resultant research or that which is derived from the Services. |
|  | **Intellectual Property** | refers to Intellectual capital embodied in any and all technical, confidential and commercial information including all information relating to resources, techniques, know-how, production, research and development, all technical, scientific, theoretical, processing and principals, marketing, promoting, financing, engineering, manufacturing, distributing and transporting, storage and handling, testing and controlling, integratable techniques, technologies, data systems and processes, methodologies, trade secrets as well as know-how, undisclosed inventions, registered and unregistered patents, trademarks and designs and copyright in any works including literary works and computer software programs |
|  | **Law** | means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law. |
|  | **OEM** | means the Original Equipment manufacturer. |
|  | **POPIA** | refers to the Protection of Personal Information Act 4 of 2013, and its Regulations. |
|  | **Procurement Policy** | Refers to the Procurement Policy of the Client, which will be provided to the Service Provider upon request. |
|  | **Relative** | In relation to any person, means (a) the spouse or partner of that person; (b) anybody related to that person or his/her spouse within the third degree of consanguinity or affinity; or (c) any adoptive child within the first degree of consanguinity. |
|  | **RFP** | Request for Proposal - A formal method of solicitation where prospective suppliers are requested to submit a proposal for the provision of goods, works or services, based on the Specifications, Scope of Work, or Terms of Reference included in the solicitation documents. |
|  | **Scope of Work** | means the scope of work as detailed in **Annexure A**. |
|  | **Service Levels Targets** | Means the Service Level Targets detailed on **Annexure B.** |
|  | **Service Provider** |  |
|  | **Services** |  |
|  | **Service Credits** | A mechanism in which an amount is deducted from the total amount to be paid by the client under this service level agreement in failure of the service provider to meet a service performance standard set in the service levels. |
|  | **Specifications** | means the description or specification of the ???? including any required Service Levels as agreed between the Client and the Service Provider in writing and signed on behalf of both Parties or otherwise incorporated into the Agreement as more fully set out in the specifications document in the tender |
|  | **Support and Maintenance** | means the support and maintenance services of the Equipment to be rendered in accordance with the OEM’s specifications and in terms of this Agreement and all functions ancillary and complementary thereto, to the extent that these fall within the scope of the terms of the applicable OEM warranty for the Equipment. |
|  | **UJ** | refers to the University of Johannesburg (Client). |
|  | **Tender** |  |
|  | Words importing the masculine shall include a reference to the feminine and vice versa. | |
|  | Headings in this Agreement are for reference purposes only and shall not affect the interpretation hereof. | |
|  | Words importing the singular shall include a reference to the plural and vice versa. | |
|  | Reference to a document includes an amendment or supplement to, or replacement or novation of that document and any reference in this Agreement to legislation or a statute shall be a reference to such legislation or statute as at the Signature Date and as amended, varied or re-enacted from time to time. | |
|  | Where numerical figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail. | |
|  | If any provision is a definition and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of this Agreement. | |
|  | Where any number of days is prescribed in this Agreement, that number shall be determined inclusively of the first and exclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the following Business Day. | |
|  | The use of the word "including" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples. | |
|  | Unless expressly otherwise stated, no provision of this Agreement shall constitute a stipulation for the benefit of any person (*stipulation alteri*) who is not a party to this Agreement. | |
|  | The terms of this Agreement having been negotiated, shall not be interpreted against the Party who procured its preparation and drafting, it is specifically agreed that the *contra proferentem* rule shall not apply. | |

1. APPOINTMENT

**The Client hereby appoints the Service Provider to provide the Services in terms of the Scope of Work attached in Annexure 1, and the Service Provider hereby accepts such appointment (the “appointment”) subject to the terms and conditions of the Tender or RFP that was awarded by the Client.**

1. PERIOD OF APPOINTMENT

5.1 The appointment shall commence on the …………………. and shall continue for a period ……………(“initial period”), after which the parties will be able to review the terms and conditions. It will be within the Client’s absolute discretion to renew the Agreement.

5.2 The Client will have the option to extend the period of this Agreement after the initial period.

5.3 Despite the term contained in clause 5.1 above, the Client may terminate the Agreement by providing 30 days’ notice to the Service Provider, without providing reasons for this termination.

1. RELATIONSHIP OF THE PARTIES

6.1 The relationship of the parties, inter se, shall be governed by the terms of this Agreement and nothing contained herein shall be deemed to constitute a partnership, joint venture or the like between them nor to constitute one party the agent of the others for any purpose. No party shall by reason of the actions of any of the other parties incur any personal liability as a co-partner to any third party, and no party shall be entitled to authorise, represent or to hold out to any third party that the relationship between the parties is that of a partnership, joint venture or the like as aforesaid.

6.2 Notwithstanding the provisions of clause 6.1, the Service Provider shall act towards the Client with the utmost good faith. Where the Service Provider is required to give its consent, that consent shall not be unreasonably withheld.

1. GENERAL OBLIGATIONS OF THE PARTIES

7.1 The **Client** shall:

7.1.1 allow the Service Provider such access to the Client’s premises and systems as is reasonably necessary for it to perform its obligations in terms of the Agreement; and

7.1.2 make the payments to the Service Provider as set out in this Agreement.

7.2 The **Service Provider** shall:

7.2.1 render the Services as included in the Scope of Work as referenced in Annexure 1 during the period of this Agreement;

7.2.2 Adhere to the response times associated with service-related incidents or service requests;

7.2.3 Advance notifications to the client for all required maintenance;

7.2.4 Adhere to the client’s Change Management process for all required service changes;

7.2.5 Support the client’s disaster recovery requirements and processes;

7.2.6 furnish the client with written reports in respect to all aspects of the services as may be required by the client;

7.2.7 adhere to the responsibilities and requirements as set in Annexure . . . of this agreement.

1. STANDARD SERVICE PERFORMANCE
2. CONTRACT AMOUNT AND PAYMENT

9.1 The maximum amount payable to the Service Provider for the Equipment procured shall be the amount of R………………………….

9.2 The maximum amount payable to the Service Provider for the Services rendered shall be the amount of R………………………..

9.3 The Service Provider will keep full and proper financial records of all payments made by the Client and will provide all supporting documentation or information related to budgeted approved expenditure for services rendered in terms of this Agreement at the reasonable request of the Client.

9.4 All payments are due as follows:

9.4.1

9.5 Payment will be made by means of electronic transfer directly into the account nominated by the Service Provider.

9.6 Unless otherwise clearly stipulated, all amounts payable by the Client to the Service Provider in terms of this Agreement are exclusive of VAT, and VAT on such amounts and any other statutory levies, taxes and imposts thereon from time to time shall be borne and paid by the Client.

9.7 Without prejudice to any other rights or remedies of the Client hereunder, the Client shall be entitled to suspend the payment of any amount or the performance of any of its obligations in favour of the Service Provider hereunder, for such period as the Service Provider may be in breach of all or any of its duties, functions or obligations hereunder.

1. SERVICE CREDITS

10.1 Notwithstanding anything to the contrary contained in this Agreement and without prejudice to any other rights or remedies of the Client under this Agreement or in law, the Client shall be entitled to recover penalties by means of service credits in terms of the following:

10.2 If any of the services are not delivered within the agreed timelines;

10.3 Or failure by the service provider to notify the client of any defaults;

10.4 Or failure to highlight any required works by the client;

10.5 Or a failure to execute any of the requirements as per the SLA;

10.6 Should the ordered Service fail to be rendered in accordance with clause 8, the Service Provider may be charged a delayed penalty of 1% (one percent) for each of the first two Business Days of delay and thereafter 2% (two percent) per Business Day of delay but, not more than 15% (ten percent) per delivery of the service. The delay penalty percentages will be calculated on the net value of the service to be rendered;

10.7 Where applicable, should the installation of the service/software/equipment not be in accordance with the Scope of Work and the Service Levels indicated on it, the Service Provider will be charged with a delay penalty of **7%**, unless pre-arranged with the client to extend the program due to unforeseen delays;

10.8 The maximum service credit shall be limited to **25%** of the total contract value;

10.9 Service Credits may be recovered by the Client as a credit against the next invoice which may subsequently be due for issue under this Agreement or, if no such invoice is due, as a debt due by the Service Provider, and payable within 30 (thirty) days of demand.

7. PURCHASE ORDERS ISSUED BY UJ AND PROCUREMENT POLICIES AND PROCEDURES

11.1 **In terms of the Client’s internal accounting processes, purchase orders for the budget available for specific goods and services are issued to potential suppliers of those goods and services. This does not amount to an offer to, or acceptance of an offer, to contract with the Service Provider for the amount recorded in the Purchase Order. This is merely an internal process to ring-fence the budget available for the goods and services.**

11.2 The Client will from time to time enter into Agreements with suppliers for the supply of goods or services as specified at the time of ordering the goods or services and at the tariffs agreed in terms of the tender. Invoices arising therefrom will then be debited against the Purchase Order. The amount recorded in the purchase order creates no expectation whatsoever that that is the total amount in respect of which Agreements will be concluded with suppliers.

11.3 The purchase of any goods and/or services will be in accordance with UJ’s procurement policies and procedures.

1. CONFLICT OF INTEREST

12.1 Both Parties confirm that none of their employees that will perform in terms of this Agreement has any conflict of interest or potential conflict of interest. In the event that either one of the Parties become aware of a conflict of interest or potential conflict of interest, such conflict shall be reported to the other party. Such conflict shall be dealt with in terms of the conflict of interest policies and procedures of the affected Party.

12.2 In addition to clause 12.1 above, in compliance with section 34(5) of the Higher Education Act 101 of 1997 (as amended by the Higher Education Amendment Act 9 of 2016), an employee of UJ may not conduct business directly or indirectly with UJ which entails a conflict of interest with UJ, unless the Council of UJ is of the opinion, and takes the decision, that (a) the goods, product or service in question are unique; (b) the supplier is a sole provider, and (c) it is in the best interest of UJ.

12.3 Section 34(6) of the Higher Education Act 101 of 1997 (as amended by the Higher Education Amendment Act 9 of 2016), confirms that an employee of UJ may not on behalf of UJ, contract with himself/herself, or his or her relative or any entity in which the employee or any relative has a direct or indirect financial or personal, fiduciary or other interest.

12.4 Section 34(7) confirms that contracting referred to in clause 14.2 (section 34(6)), relates to conduct that is aimed at receiving any direct or indirect financial, personal, fiduciary or other gains that does not form part of the employment relationship of the employee as contemplated in section 34(1) of the Higher Education Act.

12.5 Any persons(s) or entities contracting with UJ, who has identified a conflict of interest are obliged to report such conflict of interest and the nature of the conflict of interest to UJ, whether such conflict of interest is deemed to be prejudicial to UJ or not.

12.6 In the event of a reported conflict of interest, UJ will assess the situation and request that the party complete a declaration of interest form and submit it to UJ for assessment.

12.7 In the event of a party or entity not declaring such conflict of interest and the conflict of interest comes to the attention of UJ such action will be deemed a material breach of this Agreement and may in UJ’s discretion be grounds for termination in accordance with clause 8 above.

12.8 Once a conflict of interest has been identified, the relevant council approval must be obtained as prescribed by section 34 of the Higher Education Act

1. INDEMNITY

13.1 **Accept in the event of wilful misconduct or negligence; the Client shall not be liable on any ground whatsoever to the Service Provider or its servants, agents, employees or any other person or legal entity associated with the business of the Service Provider for any loss, injury or damages which they may suffer as a result of the conduct of the Service Provider, its employees, agents, officials or other persons for whose conduct the Client is legally liable, except from breach of contract**.

13.2 The Service Provider hereby indemnifies and holds the Client, its agents, employees or any other person for whose conduct the Client is liable, harmless against any claim, liability, loss, proceedings, expense and costs of whatsoever nature which may be made against the Client by third parties, arising from acts or commission by or on behalf of the Service Provider in connection with the Agreement.

1. INSURANCE

14.1 **The Service Provider shall, for the continued duration of this Agreement, have and maintain sufficient insurance to cover its obligations and liabilities under this Agreement**.

14.2 The Service Provider shall provide the Client with a certificate confirming the existence of such insurance upon request by the Client.

14.3 **The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Agreement**.

14.4 If the Service Provider or its personnel is involved in any occurrence, which to their knowledge may give rise to a claim under any insurance policy effected by the Client, the Service Provider shall without delay:

14.4.1 notify the Client of the circumstances giving rise to such occurrence, the nature of the occurrence and the estimate of any loss or damage which may be suffered as a result of such occurrence; and

14.4.2 provide the Client and its insurance brokers with any assistance reasonably required in order to ensure that the Client is able to successfully prosecute such insurance claim.

14.4.3 The Service Provider shall be covered by Public Liability Insurance.

1. FORCE MAJEURE

15.1 If either party is prevented, whether in whole or in part, from performing any of its duties, functions or obligations under this Agreement, whether timeously or at all, due to an act of God (which for the purposes hereof shall mean pandemic, epidemic, war, political riots, civil commotions, insurrection, sabotage, legal prohibitions or restrictions), then such failure shall not constitute a breach under this document, and the obligation to perform shall be suspended to the extent and during the continuance of such prevention provided that the Service Provider shall use its best endeavours to minimise any delay occasioned thereby.

15.2 In order to qualify for the protection under the above clause, the Service Provider shall forthwith upon the happening or anticipation of the happening of such event, notify the Client thereof and furnish the Client with full particulars of the nature and cause of the prevention or expected prevention and the anticipated extent and duration thereof.

15.3 The Service Provider shall at all times keep the Client informed as to the position prevailing from time to time, in order to enable the Client to take all such steps as it may consider necessary to protect its interests and reduce any loss or inconvenience to itself or others including, but not limited to, the right to appoint any other Service Provider(s) to render the services or any aspect thereof.

15.4 Notwithstanding anything to the contrary contained or implied in this clause 15, should such delay endure for a period of 3 (three) months or more, then the Client shall be entitled, but not obliged, to cancel this Agreement on written notice to the Service Provider to such effect and the Service Provider shall not have any claim against the Client arising there from.

1. BREACH

16.1 Should the Service Provider-

16.1.1 commit a material breach of any provision, term or condition of the Agreement and remain in default for a period of seven (7) days after receipt by it of written notice from the Client calling for such breach to be remedied; or

16.1.2 become controlled by a person or entity which does not have such control as at the date of the conclusion of the Agreement; or

16.1.3 not being a natural person, be wound up, liquidated, deregistered or placed under judicial management, in any event, whether provisionally or finally and whether voluntarily or compulsorily, or pass a resolution providing for any such event; or

16.1.4 being a natural person, be sequestrated or surrender his estate, whether provisionally or finally and whether voluntarily or compulsorily; or

16.1.5 have any judgment or similar award ("judgment") awarded against it and fail to satisfy such judgment within thirty days after becoming aware thereof and if such judgment is -

* + - 1. appealable, fail to appeal against such judgment within the time limits prescribed by law or fail to diligently prosecute such appeal thereafter or ultimately fail in such appeal; or
      2. a default judgment, fail to apply for the rescission thereof within the time limits prescribed by law or fail to diligently prosecute such application thereafter or ultimately fail in such application; or
      3. reviewable, fail to initiate proceedings for the review thereof within the time limits prescribed by law or fail to diligently prosecute such proceedings thereafter or ultimately fail in such proceedings; or

16.1.6 be or become insolvent or commit any act –

1. which is or, if it were a natural person, would be an act of insolvency as defined in the Insolvency Act No 24 of 1936, as amended; or

which, if it were a company, be deemed to be unable to pay its debts in terms of the Companies Act 71 of 2008; or

16.1.7 placed under business rescue in terms of the Companies Act of 2008; or

16.1.8 compromise or attempt to compromise with, or defer or attempt to defer payment of debts owing by it to, its creditors generally; or

16.1.9 alienate or encumber the whole or a major portion of its assets.

then the UJ shall be entitled, without prejudice to its other rights in law or otherwise in terms hereof including without limiting the generality of the aforegoing the right to claim damages, to cancel the Agreement or to claim immediate and specific performance of all the Service Provider’s obligations, whether or not otherwise then due for performance.

16.2 Should the Client commit a material breach of any provision, term or condition of the Agreement and remain in default for a period of seven (7) days after receipt by it of written notice from the *Service Provider*, calling for such breach to be remedied, the Service Provider will be entitled, without prejudice to any other rights it may have in terms of the Agreement or in law, to terminate the Agreement or to claim specific performance of all the Client’s obligations, whether or not such obligations would otherwise have fallen due for performance, in either event without prejudice to the Service Provider’s rights to claim damages.

1. DISPUTE RESOLUTION
   1. In the event of any disputes which may arise out of or in connection with this Agreement, the Parties shall in the first instance promptly refer the matter to their respective senior representatives to facilitate a resolution of the dispute. Should the Parties be unable to facilitate a resolution of the dispute within 10 (ten) business days of the matter having been referred to them, then the Parties shall seek assistance from a mutually agreed upon appropriately qualified mediator within 5(five) business days.
   2. Should the Parties be unable to agree upon such mediator or the mediation process fails within 14 (fourteen) business days of such mediator being appointed, then either Party may submit the said dispute or difference on written demand to arbitration in Johannesburg before an arbitrator appointed by Agreement between the Parties, or failing Agreement within 14 (fourteen) business days of the demand for arbitration, then any Party shall be entitled to forthwith call upon the chairperson of the Arbitration Foundation of South Africa (AFSA) to nominate the arbitrator, provided that the person so nominated shall be an advocate or other independent person appropriately qualified expert as agreed by the Parties of not less than 10 (ten) years standing. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties.
   3. Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
   4. Any arbitration in terms of this clause 17 (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
   5. This clause 17 will continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.
   6. The Parties agree that the written demand by a Party in terms of this clause 17 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 68 of 1969.
2. INTELLECTUAL PROPERTY
   1. The ownership of and rights in and to all Background Intellectual Property as well as Intellectual Property developed by a Party to this Agreement after its commencement which is not Foreground Intellectual Property will be and remains unaffected hereby.
   2. Where agreed to between the Parties in writing any Foreground Intellectual Property including software programmes or part thereof, business analysis, training and maintenance and support manuals, designs or any other material created in the course and scope of this Agreement is owned by the Client.
   3. Subject to clause 18.2 and upon the termination of this Agreement, the Service Provider shall ensure that all software programmes or part thereof, business analysis, training, maintenance and support manuals, designs or any other material created in the course and scope of this Agreement whether in its possession or not are immediately handed over to the Client.
3. CONFIDENTIALITY
   1. Each party –
      1. agrees that the Disclosing Party's Confidential Information will be held in confidence to the same extent, in the same manner, and with the same degree of care as that which the Receiving Party holds and protects its own Confidential Information, but the Receiving Party agrees that no less than a high degree of care will be used;
      2. shall be permitted to disclose relevant aspects of the Disclosing Party's Confidential Information to its officers, employees and consultants on a need-to-know basis, provided that the Receiving Party shall ensure that its officers, employees and consultants to whom it discloses the Disclosing Party's Confidential Information comply with this clause 19;
      3. will use the Disclosing Party's Confidential Information exclusively in connection with the Research Activities;
      4. except as permitted by a Project Agreement, will not disclose or divulge, directly or indirectly, the Disclosing Party's Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be granted or withheld in the sole and absolute discretion of, and subject to such conditions as required by, the Disclosing Party;
      5. shall not copy or reproduce the Disclosing Party's Confidential Information by any means without the prior written consent of the Disclosing Party, it being recorded that any such copies shall be and remain the property of the Disclosing Party; and
      6. shall not either directly or indirectly or in any capacity whatsoever, use all or any of the Disclosing Party's Confidential Information, save as required for the Research Activities and in particular shall not use or permit the use of the Disclosing Party's Confidential Information whether directly or indirectly to obtain a commercial, trading, investment, financial or other advantages over the Disclosing Party for itself or for any third party, or otherwise use it to the detriment of the Disclosing Party.
      7. Immediately upon the written request by the Disclosing Party at any time, the Receiving Party will return to the Disclosing Party all Confidential Information and all documents or media containing the Disclosing Party's Confidential Information and any and all copies or extracts thereof, and where such Confidential Information is in a form or format that is incapable of return, the Receiving Party shall delete or destroy or erase, as appropriate in the circumstances, such matter or such record containing the Confidential Information and shall within 3 (three) days of the date of the request, certify to the Disclosing Party what actions it has so taken.
      8. The obligations with respect to each item of Confidential Information shall commence on the date on which such information is disclosed or otherwise received (whether before or after the Commencement Date) and shall endure for as long as the Confidential Information remains confidential.
      9. Without prejudice to a Disclosing Party's other rights, in the event of any unauthorised disclosure or use of a Disclosing Party's Confidential Information which is or is reasonably likely to constitute a breach of any provision of a Project Agreement, the Receiving Party shall (i) immediately notify the Disclosing Party and take such steps as such the Disclosing Party may reasonably require in order to remedy or mitigate the effects of such actual or threatened breach; and (ii) use all reasonable endeavours to assist the Disclosing Party in recovering and preventing the use, dissemination, sale or other disposal of the Disclosing Party's Confidential Information.
4. DOMICILIA AND NOTICES
   1. For general purposes of communication as well as chosen domicilium citandi in terms of this Agreement, the following physical and email address may be used:

**20.1.1 University of Johannesburg**

Information and Communication Systems (ICS)

Cnr Kingsway and University Road

Auckland Park

2092

**Postal address**

PO Box 524

Auckland Park

2006

**CONTACT PERSON:**

Telephone:

E-mail:

**20.1.2……………………………………………**

Physical Address

Postal address

CONTACT PERSON:

Telephone:

E-mail:

* 1. A Party may change its *domicilium* or its address for the purposes of notices to any other physical address in the Republic of South Africa by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.
  2. All notices to be given in terms of this Agreement will be given in writing, in English and will be delivered during business hours and bear an acknowledgement of receipt, after which it will be presumed to have been received on the next business day following the date of delivery.
  3. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.
  4. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

1. ANTI-CORRUPTION
   1. The Parties and each of its 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.
   2. 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 RFP, will comply with the provisions of the ***Prevention and Combatting of Corrupt Activities Act of 2007 (PRECCA)***.
   3. Both Parties agree that **PRECCA** is applicable and in terms of section 13 of **PRECCA** the parties acknowledge that any person who, directly or indirectly -
      1. gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or the benefit of another person as
      2. an inducement to personally or by influencing any other person so to act award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
      3. a reward for acting as contemplated in (i); or
      4. with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agrees or offers to give any gratification to any person who has made a tender in relation to that contract whether for the benefit of that tenderer or for the benefit of any other person as

(i) an inducement to withdraw the tender; or

(ii) a reward for withdrawing or having withdrawn the tender,

* + 1. Is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.
  1. The Parties also agrees to adhere to any other applicable anti-bribery and anti-corruption laws and regulations applicable like the U.S. Foreign Corrupt Practices Act of 1977 (where applicable), the Australian Criminal Code Amendment (Bribery of Foreign Public Officials) Act of 1999, and the UK Bribery Act 2010 to the extent that they are applicable (collectively, the “**Applicable Anti-Corruption Legislation***”*).
  2. Should there be a breach of the Applicable Anti-Corruption Legislation by either Party, the Aggrieved Party may demand that any monies already paid under this Agreement, must be paid back, and any appropriate charges may be filed against the Defaulting Party.

1. DATA PROTECTION
   1. **All parties agree that they will comply with POPIA and the Regulations issued in terms thereof and process all the information and/or personal data in respect of this Agreement being in accordance with POPIA and only for the purpose of fulfilling their obligations in terms of this Agreement. Furthermore, until such time as POPIA becomes fully operational, they will also comply with any other applicable data protection legislation. The definitions as used in section 1 of the POPIA and the ECT Act shall apply to this clause**.
   2. All Parties to this Agreement confirm that any Personal Information collected in terms of this Agreement shall be processed lawfully in compliance with POPIA. Any Personal Information processed in terms of this Agreement shall be minimal, adequate, relevant and not excessive.
   3. Without prejudice to the generality of Clause 22.1, with respect to any processing of Personal Information under this Agreement, each Party to this Agreement shall take appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Information supplied to it by another Party to this Agreement, and against accidental loss or destruction of, or damage to, that Personal Information in accordance with Condition Seven as set out in the POPIA.
   4. **Under no circumstances may any of the Parties share the Personal Information of the other Party with a third party without the written consent of the Party to whom the Personal Information belongs.**
   5. All the Parties to this Agreement confirm that one or more of the Parties to this Agreement will possess and will continue to possess information that may be classified or may be deemed as private, confidential or as personal information. Such information may be deemed as the private, confidential or as personal information in so far as it relates to any Party to this Agreement. Such information may also be deemed as private, confidential or as personal information of any third person who may be directly or indirectly associated with this Agreement. Further, it is acknowledged and agreed by all Parties to this Agreement, that such private, confidential, or as personal information may have value and such information may or may not be in the public domain.
   6. Each Party to this Agreement undertakes:
      1. to obtain the relevant consent as prescribed within the Protection of Personal Information Act 4 of 2013 unless there is an applicable exemption;
      2. to treat the Personal Information as confidential information in accordance with this Agreement;
      3. not to use, or knowingly permit any Third Party to use, or have access to, the Personal Information for any purpose other than as is expressly permitted by this Agreement; and
      4. that it shall not use the Personal Information held by it pursuant to this Agreement, for any purpose that is inconsistent with those purposes notified to the relevant data subject, on or before the time of collection of that Personal Information.
   7. Each Party shall promptly inform the other of any actual or suspected unauthorised access, use or other abuse of the Personal Information and/or any information technology systems relating thereto ("Unauthorised Use/access") of which it or any of its employees become aware of. Each Party will ensure that they have a proper breach process in place to deal with any unauthorised access or use of Personal Information in terms of this Agreement.
   8. Each Party shall at its own cost provide at the other Party's request all reasonable assistance to the requesting Party in relation to the preparation and presentation of the relevant information to the Regulator, or as otherwise required by the applicable legislation for the purpose of prosecuting those individuals responsible for an incident of unauthorised use for any legal actions that the requesting Party may bring against third Parties responsible for an incident of unauthorised use or co-operate with any inquiry from any regulator or authority.
   9. **No Party may transfer Personal Information about a data subject to a third party who is in a foreign country unless they have obtained the relevant consent of the other Party and there is full compliance with section 72 of POPIA.**
2. ACCESS CONTROL AND PARKING
   1. **The Client has certain access control and parking measures in place to ensure safe access to its premises, which may include sporadic searches of vehicles**.
   2. Any person or its employees or agents will at all times be obliged to adhere to the policies and procedures pertaining to access control and parking.
   3. Save for UJ’s negligence and/or wilful misconduct, UJ and the persons for whose conduct it is responsible, will not be held liable for any loss, damage or destruction of any vehicles of any person entering the campuses of UJ.
   4. The Service Provider indemnifies the Client against any claims of such nature instituted against it, provided that this exemption of liability and indemnity will not apply in the case of gross negligence on the part UJ.
   5. The other party, its employees, agents and sub-contractors enter the premises of the Client at their own risk; this includes the use of the parking areas.
3. CESSION, ASSIGNMENT AND SUB-CONTRACTING
   1. The Service Provider is not entitled, without the prior written consent of the Client, to cede all or any part of its rights in terms of the Agreement to any person, assign all or any part if its obligations in terms of the Agreement to any person, or subcontract with any other person to perform all or any part of its obligations in terms of the Agreement. The Client is entitled with notice to the Service Provider, to cede all or any part of its rights in terms of the Agreement to any person or assign all or any part of its obligations in terms of the Agreement to any person.
   2. Any change in control in the juristic entity of the Service Provider shall be deemed to constitute a cession of rights and assignment of obligations, which shall not be allowed by the Client. In the event of a change of control of the juristic entity, the Client must be informed accordingly, and its written prior consent must be obtained.
   3. In the event that the permission of the Competition Commission of South Africa must be obtained in the event of a merger or acquisition of a juristic entity, a certificate of approval to this effect must be forwarded to the Client.
   4. Should the Service Provider employ a sub-contractor or an agent to carry out any of its obligations in terms of this Agreement, then the terms and conditions of this Agreement shall take precedence over any Agreement that the Service Provider may enter into with such sub-contractor.
   5. In the event of the Service Provider utilising the services of a sub-contractor or an agent, the Service Provider remains liable for the due fulfilment of the obligations in accordance with the terms of this Agreement. In addition, any breach by a sub-contractor or agent of the terms of this Agreement shall be deemed to be a breach of this Agreement by the Service Provider.
   6. In the event of the Service Provider utilising the services of a sub-contractor, liability and responsibility for any payment due to the sub-contractor or agent shall lie with the Service Provider.
4. MISCELLANEOUS
   1. **Entire Agreement:** This Agreement and its Annexures constitute the entire Agreement between the Parties with respect to the purpose of this Agreement and supersede and cancel all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances and Agreements between the Parties with respect to or in connection with any of the matters or things to which such Agreement applies or refers.
   2. **Non-variation**: No addition to or variation, consensual cancellation, novation or assignment of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives. This Agreement may be executed by image capturing technology (including by electronic signature), such execution to be considered an original for all purposes.
   3. **Indulgence:** No latitude, extension of time or other indulgence which may be given or allowed by a Party to the other Party in respect of the performance of any obligation under this Agreement or **enforcement** of any right arising from this Agreement; and no single or partial exercise of any right by a Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of, that Party's rights in terms of or arising from this Agreement, or stop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement.
   4. **Payment of costs:** Each Party shall pay its own cost of negotiating, drafting, preparing and implementing this Agreement and the Annexures to it.
   5. **Unenforceable provisions:** If any of the provisions of this Agreement are found by a competent authority to **be** void or unenforceable, such provisions shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.
   6. **Good faith:** Notwithstanding the foregoing, the Parties shall negotiate in good faith in order to agree on the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or enforceable.
   7. **Non-exclusive Agreement**: Nothing herein is intended nor shall be construed as creating any exclusive **arrangement** with the Service Provider. This Agreement shall not restrict the Client from acquiring similar, equal or like goods and/or services from other entities or sources. **Jurisdiction:** This Agreement shall be governed by and interpreted according to the laws of the Republic of South Africa. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the competent courts of Johannesburg, South Africa over any claim or matter (including any non-contractual claim) arising under or in connection with this Agreement.
   8. **Severability:** All provisions and the various clauses of this Agreement are, notwithstanding the manner in which **they** have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
   9. **Agency:** No Party shall present itself as the representative or agent of any other Parties for any legal action to be taken, nor shall it have the power of authority to commit any other Party(ies) other than as anticipated in **terms** of this Agreement, unless it receives prior written consent from the Party concerned, and then only to the extent set out therein. All Parties shall act as independent contractors for the purposes of this Agreement. Nothing in this Agreement shall be interpreted as establishing a joint venture between the Parties.
5. SIGNATORIES

This Agreement is made in two equally authentic copies, one for each of the signing parties.

**26.1 Signed on behalf of the Client of Johannesburg (UJ).**

**SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2020.**

**SIGNATURE:**

**NAME IN PRINT:**

In his/her capacity as ………………… and warranting that he/she is duly authorised hereto.

WITNESSES SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESSES NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**26.2 Signed on behalf of…………………………………………**

**SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2020.**

**SIGNATURE:**

**NAME IN PRINT**

In his/her capacity as …………………… and warranting that he/she is duly authorised hereto.

WITNESSES SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESSES NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2020.

SIGNATURE:

NAME IN PRINT

In his/her capacity as …………………… and warranting that he/she is duly authorised hereto.

WITNESSES SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESSES NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ANNEXURE 1 -** **EQUIPMENT SERVICE LEVEL AGREEMENT**

* 1. The Service Provider:
  2. will be fully responsible for the registration of all Equipment in order to ensure that it qualifies for the OEM’s warranty. During the warranty period the Service Provider must maintain the Equipment and repair and/or replace defective components in accordance with the warranty at no additional charge to the Client;
  3. must supply the Equipment purchased and/or leased as well as render the Services as included in the Scope of Work during the period of this Agreement;
  4. must at no additional cost to the Client, but at all times subject to the terms of the applicable OEM warranty:
     1. provide Support and Maintenance, labour and parts as per the OEM’s specifications;
     2. replace such parts as may be deemed necessary by the Client;
     3. attend call-outs due to malfunctions; and
     4. inspect, adjust, clean, lubricate, repair and configure the Equipment as may be necessary to keep the Equipment in good working order for the period of this Agreement; provided that:

the Equipment is under warranty; and

the repairs are in respect of hardware only.

* + 1. must provide to the Client on a quarterly basis the mark-up percentage on all Equipment sold to the Client;
    2. must guarantee that the Equipment is fit for purpose and of the quality represented by it in the Scope of Work;
    3. must all times ensure device warranty and asset management throughout the lifecycle of the Equipment as more fully set out in the Scope of Work, irrespective of the date of termination of this Agreement for whatsoever reason;
    4. must at all times ensure that it honours OEM warranty in relation to the Equipment, irrespective of the date of termination of this Agreement for whatsoever reason;
    5. agrees that the warranty period in respect of the Equipment commences from the date of proof of delivery of the Equipment to the Client and shall bear an OEM warranty of a minimum of 3 (three) year next business day response warranty, irrespective of the date of termination of this Agreement for whatsoever reason;
    6. agrees that where the Equipment is procured from an OEM, that the Service Provider assigns to the Client, to the extent permitted by law, the benefits of the warranties given by the OEM. This assignment does not in any way relieve the Service Provider from the obligation to comply with warranties offered directly by the Service Provider under this Agreement;
    7. guarantees, subject to the terms of the applicable OEM warranty, that the Equipment will be replaced or repaired if found to be defective by the Client within the applicable warranty period;
    8. must inform the Client in writing of the names of Personnel employed by it that is authorised to render the Services under this Agreement. The Client may object on reasonable grounds to any such person being deployed to render the Services under this Agreement. Upon receipt of such objection, the Service Provider must immediately remove such Personnel from the Client Precincts, and such Personnel must cease and desist in the performance of the Services or any part thereof.
    9. In the event where an OEM directly notifies the Client that the Equipment (including but not limited its parts, components, software) needs to be replaced concerning specific Equipment model already procured by the Client, in such instances, the Service Provider agrees to assist the Client in identifying the Equipment and the component that needs to be replaced.
    10. Adhere to the Service Level Targets described below.
  1. Will be entitled to charge for any work carried out at the Client’s instance where such work is to be done outside Business Hours. However, if a request for Support and Maintenance is logged during Business Hours, but the Service Provider conducts the repairs after Business Hours or continues after Business Hours, the Service Provider agrees that it will not levy a fee or charge.
  2. SERVICE performance
  3. **Standard of performance**
     1. The Service Provider will supply the Equipment and Services to the Client, as set out in the Agreement and in accordance with the Scope of Work \_\_\_\_\_\_\_\_\_\_\_\_\_\_
     2. All Services shall be carried out by competent personnel in a professional manner to all of the requirements of South African and industry standards and best practices, and any codes of practice and legislation that are applicable to the Services.
     3. All Services carried out at the Client’s premises shall be performed with a minimum of noise and minimum interruption to normal Client activities.
     4. The Service Provider shall provide the Client with all information required in order to enable the Client to understand, use and operate the Equipment (including but not limited to installation, commissioning, operation and maintenance) and all revisions and updates to such information from time to time.
     5. The Client shall have the right to copy, reproduce and generally use the documentation solely for the Client’s business purposes and the implementation, use and operation of the Equipment. The Service Provider warrants that such copying, reproduction and use of such documentation does not infringe any third party’s intellectual property rights and indemnifies the Client against any such claims by any third party.
     6. The Client will not be required to take the partial or late supply of Equipment unless agreed to by the Client in writing.
     7. Should the Service Provider at any time become aware that it will not be able to supply the Equipment for delivery on the agreed delivery date, then it will immediately notify the Client in writing of such inability and of an alternative later delivery date by which the Equipment will be supplied or whether the Service Provider is able to provide alternative products (that are equal in construction, quality and aesthetic to the Equipment) in substitution for the Equipment that is fit for purpose. It will be within the Client’s sole discretion whether or not to accept such later alternative delivery date or alternative products as a substitution for the Equipment. The Client will be the sole determiner of whether or not any proposed substitute goods are equal in construction quality and aesthetic and are fit for purpose. All substitutions must be clearly identified as such within submission documents.
     8. Should the Client not accept such later alternative delivery date or the proposed alternative products in substitution for the Equipment, or should the Service Provider fail to give such notice, and should the Service Provider fail to supply all of the Equipment on the delivery date relevant to such Equipment, then the Client will immediately, and without prejudice to any claim for damages which the Client may have, be entitled but not obliged to invoke service credits or cancel all or any portions of the order by giving written notice to the Service Provider. The Client will not be liable to compensate the Service Provider in any way, except where the Client has only partially cancelled the order; the Client will be liable to pay for the portion of the order not cancelled.
     9. Prior to, or together with, the supply of the Equipment, the Service Provider will furnish the Client with all documentation containing operating, recommended usage and maintenance instructions for the Equipment.
     10. The Client will at all reasonable times prior to and after delivery of the Equipment be entitled to inspect or test any Equipment supplied by the Service Provider.
     11. Should any inspection prior to the delivery date of the Equipment, reveal that the Equipment is, in the reasonable opinion of the Client, defective in any manner, then the Client reserves the right to either cancel all or any part of the order relating to such Equipment, or to require the Service Provider, at the Client’s election, to replace or remedy the defective Equipment without prejudice to any claim which the Client may have for damages, by giving written notice to that effect to the Service Provider, and/or demand a refund of all monies paid.
     12. If the Service Provider fails to comply with its obligations, the Client may reject any part of the Equipment by giving written notice to the Service Provider specifying the reason for rejection and whether replacement Equipment is required and within what time period, but subject to availability of replacement Equipment.
     13. The Client shall return the rejected Equipment to the Service Provider at the Service Provider’s risk and expense. Any money paid to the Service Provider in respect of the Equipment not replaced within the time period requested by the Client, together with the costs of returning the rejected Equipment to the Service Provider must be paid by the Service Provider to the Client
  4. **WARRANTIES**

4. 2. 1. The Service Provider hereby expressly warrants and represents that the Equipment:
      2. are free of any encumbrances and liens, and the Service Provider is legally permitted to deliver the Equipment and Services to the Client;
      3. be new and in good condition and no second-hand, used, reconditioned, old or previously sold and returned Equipment, materials, parts or components will be supplied or used by the Service Provider in the supply of the Equipment. The Service Provider guarantees that when additional hardware components are installed in any Equipment under warranty that the OEM has approved these components (for the avoidance of doubt any and all counterfeit goods will not be accepted by the Client). If the Service Provider becomes aware or suspects that it has furnished counterfeit goods to the Client under this Agreement, the Service Provider shall promptly, but in no case later than 30 (thirty) days from discovery, shall notify the Client and replace, at the Service Provider’s expense, such counterfeit goods with those items that conform to the OEM and requirements of this Agreement. The Service Provider agrees that it shall be liable for all costs related to the replacement of counterfeit goods and any testing or validation necessitated by the installation of authentic Equipment after counterfeit goods have been replaced;
         1. comply with any applicable standards of the South African Bureau of Standards and any other standards specified in this Agreement;
         2. supplied by it will be free from patent and latent defects in design and manufacture, defective materials and workmanship and general failure, save where same arises from fair wear and tear, provided that the defect in such Equipment will not be as a result of improper use of the Equipment;
      4. will be in good working condition on the date of delivery to the Client;
      5. when supplied, will comply with all relevant laws and regulations relating to their manufacture, use, export and import; and that no intellectual property rights, including patents, copyright or trademarks will be breached or infringed upon.
      6. The Service Provider hereby expressly warrants and represents that, in respect of the Services:
      7. it has the skills, expertise and capacity to perform the Services timeously and competently;
      8. it will employ only persons who are careful, competent and efficient, and who are properly qualified and skilled to render the Services, and
      9. the Services will comply with the Client’s specifications; industry standards and such other requirements as may reasonably be inferred from the Scope of Work. Any departure from such specifications or standards is a breach of this Agreement unless such departure has been authorised in advance by the Client in writing.
      10. The Service Provider further warrants that all Services and Equipment will be fit in every respect for the purpose for which they are required.
      11. These warranties are in addition to any other rights of the Client in this Agreement or in law.

#### 

#### **ANNEXURE 2 – SUPPORT AND MAINTENANCE SERVICE LEVEL AGREEMENT**

**1. SUPPORT AND MAINTENANCE:**

* 1. The client shall
     1. Provide physical access to the equipment in the offices where onsite support is required;
     2. Provide a facility for remote access, permissions and logins to the system, excluding the provisions of 3G devices or software or hardware required for remote access by the service provider;
     3. Comply to the procedures set out in the agreement;
     4. Acknowledge and respond to recommendations made by the service provider within a reasonable timeframe;
     5. Ensure that all Client relevant staff are informed of the call logging and reporting processes and procedures as set out in this agreement;
     6. Escalate service-related incidents to the service provider;
     7. Client will be responsible for the ongoing system administration of the service;
     8. diagnose initial support requests prior to escalating to the service provider;
     9. escalate any support requests which could not be resolved by the client to the service provider;
     10. Where applicable, client will be responsible for the procurement of licenses and any renewal of licenses when required and ensuring that the latest version of the software is in use.

1. The Service Provider shall
   1. support and maintain for the Client, for the Services listed under this service level agreement;
   2. avail a platform for the client to report service related calls;
   3. manage and resolve all incidents within the agreed service levels;

2.4 where applicable be responsible to install any service-related product updates and patches where these are available from the OEM;

* 1. design, install and configure the service for the client’s within the agreed timelines;
  2. implement any service-related changes whilst conforming to the client’s change management process and security requirements;

1. SERVICE SUPPORT
   1. The service support hours will be available as follows:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Time** | **Sun** | **Mon** | **Tue** | **Wed** | **Thu** | **Fri** | **Sat** |
| **Begin** | N/A | 07:00 | 07:00 | 07:00 | 07:00 | 07:00 | N/A |
| **End** | N/A | 17:00 | 17:00 | 17:00 | 17:00 | 17:00 | N/A |

* 1. Support Call Priority and Category and relevant obligations:

| **Call Priority** | **Definition** |
| --- | --- |
| **Priority 1** | **Definition**:  Critical service is down or not available  Functions not usable  The core business of the client is severely impacted  No workaround or alternative is available  Data is corrupted  Many users are impacted  Regulatory/legal deadlines will be missed  Critical client’s deadlines are at risk  High impact Cyber Security Incident  Critical business function is affected (e.g Registration, Examination or Payroll)  All essential users at One or more campuses are affected  Threatens client’s ability to generate revenue, includes a critical bug. |
| **Priority 2** | **Definition:**  Some functions are usable with severe restrictions  No workaround or alternative is available  Several users are affected  Degradation of critical system transaction or system process.  Loss of non-critical system transaction or system process |
| **Priority 3** | **Definition:**  Basic functions are usable with minor restrictions  Workaround or alternative is available  Degradation of system transaction or system process.  Loss of non-critical facility or system transaction.  Solid or intermittent problems of low impact.  Problems that degrade but do not prevent a business unit from providing a service. |

9.3 Support Call Priority Response and Resolution:

| Call Priority | Response Time  (Acknowledgement of Call Assignment) | Resolution Time |
| --- | --- | --- |
| Priority 1 | 1 Business Hour | 4 business hours |
| Priority 2 | 2 Business Hours | 8 Business hours |
| Priority 3 | 4 Business Hours | 24 Business hours |

* 1. Escalation of Support Calls:

9.3.1 Client’s Escalation Contact Details

| **Title** | **Name** | **Office Number** | **Mobile Number** |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

9.3.1 Service Provider’s Escalation Contact Details

| **Title** | **Name** | **Office Number** | **Mobile Number** |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

* 1. Service Level Management and Reporting:
     1. Service Review Meetings

|  |  |  |  |
| --- | --- | --- | --- |
| **Meeting** | **Frequency** | **Service Provider Representative** | **Client Representative** |
| Contract and SLA performance review | Monthly |  |  |
| Ad-hoc meetings | On request |  |  |
| Project Meetings | As defined by the project team |  |  |
| IT Steering Committee | Monthly |  | CIO/Delegated Authority |

9.4.1 Service Level Reporting

|  |  |  |
| --- | --- | --- |
| **Type of Report** | **Frequency** | **Recipients** |
| Calls stats Service Level Performance | Monthly |  |
| Project Status Report | Monthly |  |