



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

RETAIL LEASE AGREEMENT

between

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

.....

(REGISTRATION NUMBER)

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RETAIL AGREEMENT

PREAMBLE

The Operator leases the Premises from the University for the purposes of operating a

1. INTERPRETATION

Except to the extent to which the context may otherwise require, this Agreement will be construed in accordance with the following:

- 1.1. headings in this Agreement are for convenience only and will not be deemed part thereof or be taken into consideration in the interpretation or construction thereof,
- 1.2. references herein to the introduction, clauses, annexures and schedules are to the Introduction, Clauses, schedules and annexures to this Agreement unless the context requires otherwise. The annexures and schedules to this Agreement form an integral part of this Agreement,
- 1.3. in the event of conflict between the provisions of the Main Agreement and those contained in the annexures and/or schedules, the provisions in the Main Agreement will prevail,
- 1.4. words importing the singular only also include the plural and vice versa where the context requires,
- 1.5. any reference to any agreement, annexure or schedule will be construed as including a reference to any agreement, annexure or schedule amending or substituting that agreement, annexure or schedule,
- 1.6. if any definition in clause 2 contains a substantive provision conferring rights or imposing obligations on any Party, effect will be given to such provision as if it were a substantive provision in the body of this Agreement,
- 1.7. any word or expression related to a word or expression defined in this Agreement bears a corresponding meaning,
- 1.8. any word or expression importing any gender will include the other genders,
- 1.9. any reference to the provisions of law and any similar reference of general application will be construed to include both legislation and the common law, and any reference to "legislation" includes any statute, any regulations passed under any statute, as well as any public notice, ruling or similar legislative instrument passed or approved by a relevant authority with the requisite authority,

- 1.10. save where specifically provided otherwise, references to statutory provisions are to be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the Signature Date) from time to time and will include any provisions of which they are re-enactments (whether with or without modification),
- 1.11. the words “include” and “including” mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it,
- 1.12. wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instructions or determination by any Person, unless otherwise specified, such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination will be in writing and the words “notify”, “decide”, “consent”, “accept”, “agree”, “endorse”, “approve”, “certify”, “instruct” or “determine” and other related expressions are to be construed accordingly,
- 1.13. references to materials, information, data and other records are to materials, information, data and other records whether stored in electronic, written or other form,
- 1.14. when any number of days or other period is prescribed, it will be calculated exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or legally recognized public holiday in the Republic of South Africa, in which case the last day will be the next day which is not a Saturday, Sunday or legally recognized public holiday in the Republic of South Africa,
- 1.15. whenever this Agreement provides for approvals, consents or expressions of satisfaction by any one of the Parties, that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction,
- 1.16. each Party will ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act required by it from the other Party in respect of this Agreement will be applied for or requested promptly,
- 1.17. where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail, unless the context indicates a contrary intention,
- 1.18. the rule of construction that the Agreement will be interpreted against the party responsible for the drafting or preparation of the Agreement will not apply.

2. DEFINITIONS

In this Agreement, the following terms will have the meanings set out below:

- 2.1. "Agreement" this agreement and any annexure or schedule attached to this agreement
- 2.2. "Agreement Period" the period for which this Agreement subsists, including any period for which it is renewed
- 2.3. "Business" Operation of a
- 2.4. "Business Day" any day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa
- 2.5. "Business Hours" as required by the University
- 2.7. "Code of Practice" practices and operational functions to be followed by the Operator including food safety and occupational health and safety regulations
- 2.8. "Effective Date "
- 2.9. "External Clients" all clients who are not Internal Clients
- 2.10. "Internal Clients" members or entities of the University Community (e.g departments, schools, faculties, centres, institutes, etc.)
- 2.11. "Main Agreement" this Agreement excluding all annexures and schedules
- 2.12. "Month " a calendar month, being one of the 12 months of the Gregorian calendar
- 2.13. "OHS Act" the Occupational Health and Safety Act No. 85 of 1993
- 2.14. "Operator" the entity that leases the Premises and operates the Business, herein being with Registration number:
- 2.15. "Parties " the University and the Operator (and "Party" means either of them)
- 2.16. "Personnel" a party's directors, members, officers, employees, associates, contractors, servants, agents and/or representatives
- 2.17. "Premises " Situated in the building known as, , Campus, Wits University and measuring square meters

- 2.18 "Regulations" all rules, regulations, policies, procedures and standing orders of the University as amended from time to time
- 2.19 "Services" the operation of a
- 2.20 "University" the University of the Witwatersrand, Johannesburg, a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997
- 2.21 "University Community" includes all employees of the University, persons officially associated with the University, students, former students and alumni of the University, as well as invitees, visitors and guests
- 2.22 "University Precincts" premises owned by or which fall under the management or control of the University
- 2.23 "Utility Charges" assessment rates payable on the property and any other charges payable by the University to the local authority, refuse removal, sanitary fees, water, electricity, gas and sewerage services
- 2.24 "Year" a period of 12 Months commencing on the Effective Date

3. LETTING AND HIRING

- 3.1. Subject to the provisions contained in Clause 4.3 below, the University lets and the Operator leases the Premises on the terms of this Agreement and for the purposes set out herein.

4. DURATION AND CONDITIONS PRECEDENT

- 4.1. This Agreement comes into operation on the Effective Date notwithstanding the date of signature by the Parties and unless terminated earlier as provide for in this Agreement continues for a period of 3 (three) Years.
- 4.2. Notwithstanding 4.1, the Parties may negotiate a renewal hereof at the instance of either Party. For the avoidance of doubt and for the purposes of clarity the Operator acknowledges and accepts that the University may elect not to renew this Agreement in its sole and absolute discretion.
- 4.3. This Agreement is subject to the fulfilment or waiver of the conditions stipulated below, by no later than ten days from the date of signature of the Agreement by the Operator, (it being recorded that the date for fulfilment of the conditions precedent shall be capable of extension by written agreement of the University):

- 4.3.1 the Operator provides the University's Director: Services with documentary proof to the satisfaction of the Director: Services which confirms that the Operator has sufficient funds to operate the Business; and
- 4.3.2 the Operator provides the University's Director: Services with documentary proof to the satisfaction of the Director: Services which confirms that the Operator is not in contravention of any legislation, in particular the Labour Relations, Act 66 of 1995 as amended, the Basic Conditions of Employment Act 75 of 1997 as amended and the OHS Act.
- 4.4. The conditions precedent are for the benefit of the University and may be waived by notice by the University to the Operator.
- 4.5. If the conditions precedent referred to in clauses 4.3 are not fulfilled or waived on or prior to the date stipulated in clause 4.3 for such fulfilment or waiver, the provisions of this Agreement shall not become effective and this Agreement will terminate.
- 4.6. If the conditions precedent are not fulfilled or waived in terms of this clause 4.3 no Party shall have any claim against any other Party as a result of or in connection with any such non fulfillment or non-waiver, and the Parties indemnify each other accordingly.

5. DEPOSIT AND RENTAL

- 5.1 On entering into this Agreement the Operator shall pay the Lessor a deposit in the amount of equal to three Months' rent, which amount the University may apply, in whole or part, in meeting any payment due by the Operator to the University at any time during the terms of this Agreement or after the termination of this Agreement. Whenever during the terms of this Agreement the deposit is so applied in whole or part, the Operator shall on demand reinstate the deposit to its original amount. As soon as all the obligations of the Operator to the University have been discharged following the termination of this Agreement, the University shall refund to the Operator, free of interest, so much of the deposit as has not been applied in terms of this Clause.
- 5.2 The rental amount is R (.....) per month excluding VAT. For the duration of this Agreement the Rental shall increase annually by CPI on the anniversary date of this Agreement.
- 5.3 Without derogating from the provisions of clause 5.2 in this Agreement, the Operator will not be required to pay rental for the months of December and January of each year for the duration of this agreement.
- 5.4 The Operator must pay the rent monthly in advance on or before the 7th (seventh) day of every month.

- 5.5 Interest at the prime lending rate (at the time) of the Reserve Bank of South Africa Limited will become due to the University for any late payment of Rental by the Operator.

6. ADDITIONAL CHARGES

- 6.1. In addition to paying the rent and other amounts, the Operator will reimburse the University upon receiving an account from the University reflecting the amount(s) payable for:
- 6.1.1. Utility and Other Charges as stipulated in Annexure B to this Agreement;
- 6.2. The Operator will be liable for and will on demand pay for any charges arising directly out of its use of the telephone system installed in the Premises.
- 6.3. All telephonic and electronic data communications for University purposes will be routed through the University's systems and lines, unless otherwise agreed.
- 6.4. The Charge(s) in this clause 6 are due and payable forthwith on the rendering of the relevant invoice to the Operator by the University.

7. PAYMENTS

- 7.1. The Operator will not withhold, defer, or make any deduction from any payment due to the University, whether or not the University is indebted to the Operator or in breach of any obligation to the Operator.
- 7.2. All payments due by the Operator to the University under this Agreement will be made into the following Bank Account:

FIRST NATIONAL BANK OF SOUTH AFRICA

ACCOUNT NAME: Sundry Debtors

ACCOUNT NUMBER: 62077141580

BRANCH CODE: 251-905

REFERENCE: Customer number & reference as per invoice

- 7.3. The University will be entitled to withhold, defer, or make any deduction from any payment due to the Operator by the University, where the Operator is indebted to the University.

8. INSURANCE

- 8.1. The Parties record that the University has insured itself against its liability in law for the acts and omissions of persons acting on its behalf, and its registered students and Personnel are insured during the course and scope of their registered courses

and within the scope of the University's business, where fault can be attributed to the University, its affiliates or their respective Personnel. The University's maximum liability in connection with this Agreement will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.

- 8.2. The Operator will maintain insurance cover satisfactory to the University's insurance brokers, which includes indemnity for public liability, loss of income, SASRIA cover and which adequately insures against all the liabilities imposed on the Operator under this Agreement. The Operator will provide the University's insurance broker with documentary proof of such insurance cover.
- 8.3. The Operator may not keep or do in or about the Premises anything which is liable to enhance any of the risks against which the Premises are insured for the time being, to the extent that such insurance is rendered void or voidable or the premiums of such insurance are, or become liable to be, increased.
- 8.4. Without prejudice to any other right of action or remedy which the University may have arising out of a breach of this provision, the University may recover from the Operator on demand the full amount of any increase in insurance premiums in respect of the Premises attributable to such breach.
- 8.5. With effect from the date of occupation of the Premises by the Operator, the Operator will be responsible for and will arrange the necessary insurance cover in respect of loss or damage to:
 - 8.5.1. fixtures and fittings in the Premises that belong to the Operator and the University, and
 - 8.5.2. plate glass, window panels, geysers and shop fronts in or on the Premises.
- 8.6. The Operator indemnifies the University and its Personnel against any claims which may arise by virtue of any loss or damage referred to in clause 8.5.
- 8.7. The Operator will lodge copies of its insurance policies with the University, and will provide proof to the University that such policies are still in force from time to time upon request.
- 8.8. The Operator will be liable for any increased cost to the University of any insurance referred to in this clause 8 which results from the Operator's activities on the University Precincts.
- 8.9. Within 5 days of signature of this Agreement by the Operator, the Operator will furnish the University with confirmation of insurance cover which is satisfactory to the University's insurance brokers, which includes indemnity for public liability, and which adequately insures against all the liabilities imposed on the Operator under this Agreement. The Operator will provide the University's insurance broker with documentary proof of such insurance cover.

9. ASSIGNMENT AND SUBLETTING

- 9.1. The Operator will not be entitled to sublet the whole or any part of the Premises without the prior written permission of the University.
- 9.2. Save as set out in clause 9.1, the Operator shall not, without the University's prior consent, give up, for either a definite period or at all, occupation or possession of the Premises or any part thereof to any person, or permit any person whether as licensee, agent, occupier, custodian or otherwise to enter into possession of the Premises or any part thereof for either a definite period or at all.

10. COMPLIANCE WITH LAWS AND REGULATIONS

- 10.1. The Operator must comply with all relevant Legislation, including but not limited to the OHS Act, the Liquor Act No 2 of 2003, the Labour Relations Act 66 of 1995, the Employment Equity Act 55 of 1998, the Basic Conditions of Employment Act 75 of 1997, the Skills Development Act 97 of 1998, the Unemployment Insurance Act 63 of 2001 and the Compensation for Occupational Injuries and Diseases Act 130 of 1993. In particular, the Operator must comply fully with the provisions of the Labour Relations Act to the extent that section 197 thereof may be held to be applicable to this Agreement.
- 10.2. Without limiting the generality of the aforesaid, the Operator must comply with the Workers Charter and Commercial Protocol attached hereto as Annexure D to this Agreement and if applicable to the conditions imposed on the Operator by the University in respect of the sale of alcohol on the Premises. The document which stipulates such conditions is attached hereto as Annexure C.
- 10.3. The Operator must keep statistics, minutes and other records required by legislation on file and available for inspection by the University's nominee.
- 10.4. Without prejudice to the University's rights in terms of clause 26, if it is found that the Operator has breached any of its obligations contained in clauses 10.1 and 10.2 and fails to remedy such breach within 7 (seven) days after receiving a demand that it be remedied, the University will be entitled to claim a penalty in respect of each instance of such breach in an amount equivalent to R1,000.00 (one thousand Rand) per day that the Operator is and remains in such breach.
- 10.5. The University may elect whether to claim damages or the penalty described in 4 from the Operator in the event of a breach of 10.1 and 10.2 and may without prejudice to any other method of recovery deduct the amount of such penalty from any monies in its hands due or which may become due to the Operator. The payment or deduction of such penalty will not relieve the Operator from its obligations to comply with 10, or from any of its obligations and liabilities under the Contract or at law.

- 10.6. On or before the Effective Date, the Operator shall produce documentary proof to the University that it has complied in all respects with the provisions of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.

11. SUNDRY OBLIGATIONS OF THE OPERATOR

11.1. The Operator will:

- 11.1.1. at its own expense and without recourse to the University, comply with all relevant legislation and the University's Regulations, codes of practice and industry norms,
- 11.1.2. appoint a suitably qualified manager who will be available during Business Hours to facilitate the management of activities,
- 11.1.3. comply with all health and safety standards in the industry,
- 11.1.4. ensure pest control is carried out in accordance with the pest control schedule required by the Code of Practice For the Safe Handling of Food. Additional unscheduled, ad hoc pest control activities may be required and will be complied with,
- 11.1.5. furnish the University on demand with all pest control certificates. All necessary inspections will be carried out, and certificates will be issued, by contractors approved by the University,
- 11.1.6. not use the Premises or allow them to be used, in whole or part, for any purpose other than for the operation of the Business,
- 11.1.7. ensure that:
 - 11.1.7.1. certified copies of all licenses are provided to the University (annual renewals included), and
 - 11.1.7.2. the legal requirements are met in connection with application for and payment of television and radio broadcasting licenses if applicable,
- 11.1.8. not place or leave any article or other thing in or about any passage, lift, stairway, pathway, parking garage, about the Premises so as to cause a nuisance, danger or obstruction,
- 11.1.9. not bring into the Premises any article which, by reason of its weight or other characteristics, is likely to cause damage to the Premises,
- 11.1.10. not cause or commit any nuisance on the University Precincts or cause any annoyance or discomfort to other occupiers of the University Precincts,

- 11.1.11. not cause or allow any loudspeakers, radios, television sets or similar apparatus to be operated in a manner that will disrupt other activities (especially academic activities) on the University Precincts,
- 11.1.12. not leave refuse or allow it to accumulate in or about the Premises except in the refuse bins provided (which will be housed in the designated refuse area only) and will dispose of any wet waste daily in a manner approved by the University and by applicable legislation,
- 11.1.13. retain all refuse in an area screened off from the rest of the Premises by a wall, and ensure that that area is at all times kept clean, tidy and hygienic to the standard set from time to time by the University. The said areas will be protected by fly catchers supplied by the Operator,
- 11.1.14. keep all refuse in the kind of container specified by the University in those positions indicated by the University which will be prepared for collection in the manner and at the times and places specified by the University,
- 11.1.15. refrain from interfering with the electrical, plumbing or gas installations or systems serving the Premises or the Building, except as may be necessary to enable the Operator to carry out its obligations of maintenance and repair in terms of this Agreement,
- 11.1.16. not affix any electrical fittings other than those approved by the University,
- 11.1.17. take all reasonable measures to prevent blockages and obstructions from occurring in the drains, sewerage pipes and water pipes serving the Premises,
- 11.1.18. provide at the Operator's own expense all electric, fluorescent and incandescent light bulbs required in the Premises,
- 11.1.19. keep the Premises and Satellites open for business on the dates and times agreed to with the University. The Parties record that the University is closed between Christmas and New Year and accordingly the Operator is expected to be closed during this period. However, permission to operate during such period may be given provided that written application is made no later than 1 (one) Month prior to the event,
- 11.1.20. not cause or allow the trade name of the business or business conducted in the Premises to be changed without the prior consent of the University, which permission will not be unreasonably withheld,
- 11.1.21. attend all meetings scheduled to discuss matters related to the operation, lease and matters related to the Business and the Premises,
- 11.1.22. upon notice from the University, give the University or its auditors access to all the Operator's records and systems related to this Agreement,
- 11.1.23. comply with all laws, by-laws and regulations relating to tenants or occupiers of business premises or affecting the conduct of any business

carried on in the Premises, in particular those relating to health and safety,

- 11.1.24. comply with, and ensure that any appointed agents comply with the University's cash collection controls and requirements including drop safes, pick up times and routes taken by pick up agents,
- 11.1.25. not contravene or permit the contravention of any of the conditions of title under which the University Precincts are held by the University or any of the provisions of the Town Planning Scheme applicable to the Premises,
- 11.1.26. clean the exterior of its shop fronts to the full height thereof (including the glass), the interior of the Premises and the signs,
- 11.1.27. keep the Premises and all its contents in a clean, orderly and sanitary condition,
- 11.1.28. install and properly maintain a CCTV system or such other visual security system as the University may reasonably require ,
- 11.1.29. at its own expense repair any damage caused to the Premises by forcible entry,
- 11.1.30. ensure that the Premises are both adequately stocked with merchandise and properly staffed with Personnel necessary for the provision of the Services,
- 11.1.31. keep the shop fronts of the Premises illuminated and well lit during trading hours, and
- 11.1.32. not without the University's prior consent:
 - 11.1.32.1. erect any radio or television aerial on the roof or exterior walls of the Premises or on the grounds of the Building. Any aerial so installed without such consent may be removed by the University without notice at any time,
 - 11.1.32.2. use any video or audio or other devices in a manner so as to be heard and/or seen outside of the Premises, or
 - 11.1.32.3. install, erect or place any machine, apparatus or other advertising media outside the Premises.

12. EMPOWERMENT

12.1. Broad-Based Black Economic Empowerment ("B-BBEE")

- 12.1.1. The University subscribes to the Department of Trade and Industry (DTI) Broad-based Black Economic Empowerment Codes of Good Practice ("Codes"), and/or any code in the Charter issued in terms of section 9(1) of the Broad Based Black Economic Empowerment Act, No. 53 of 2003 (collectively "B-BBEE Legislation") and has undertaken to measure itself against this standard.

- 12.1.2. It is the University's strategic intent to continuously improve its B-BBEE contribution level in terms of the Codes, and the Operator undertakes to assist the University in this regard.
- 12.1.3. The Operator warrants that it has a B-BBEE contribution level of . ("B-BBEE Rating") as at the Effective Date.

- 12.1.4. Without limiting the Operator's obligations in terms of this clause 12, the Operator will:
 - 12.1.4.1. for the duration of this Agreement retain and/or improve its B-BBEE Rating,
 - 12.1.4.2. provide a valid B-BBEE accreditation certificate from a verification agency accredited by SANAS (the South African National Verification System) on the Effective Date and at least annually thereafter,
 - 12.1.4.3. provide the University with annual updates on its status in respect of B-BBEE compliance requirements and confirmation that it has maintained/improved its B-BBEE Rating,
 - 12.1.4.4. present a transformation plan clearly demonstrating how and when the Operator will achieve an acceptable B-BBEE Rating in cases where this has not yet been met, and
 - 12.1.4.5. in the event of an adverse change to its B-BBEE Rating, advise the University within a period of 1 (one) month from the date on which the event giving rise to the adverse change in the B-BBEE Rating occurred, and what steps have been and/or will be taken by the Operator to restore its original B-BBEE Rating.

12.2. Others

- 12.2.1. The Operator will inform the University of the number of women and disabled persons employed by the Operator.
- 12.2.2. Clauses 12.1.4.1 and 12.1.4.3 to 12.1.4.5 inclusive will apply mutatis mutandis to this clause 12.2.
- 12.2.3. Failure to comply with any of the requirements set out in clauses 12.1 and 12.2, alternatively to provide substantiating evidence proving all efforts made to meet the performance targets, will constitute a material breach of the Agreement.

13. MAINTENANCE AND REPAIRS

13.1. The Operator will throughout the Agreement Period:

13.1.1. Maintain in good order, condition and repair -

13.1.1.1. the interior of the Premises and all parts thereof, including all windows, doors, appurtenances, fixtures and fittings (including the extraction canopy and filters), geysers, shop fronts, cold/deep freeze room, dishwasher contained in the Premises, and

13.1.1.2. any sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved by the University;

13.1.1.3. all wiring, lamps and fittings for electric light and power as well as all pipes and fittings for the supply of water and sewerage to the Premises which are situated in the Premises and which serve the Premises exclusively. The Operator will, however, also be responsible to repair all similar equipment which is situated on the University Precincts and which does not serve the Premises exclusively if the University can prove that the Operator or its Personnel, invitees or guests were responsible for any damage thereto.

13.1.2. ensure that the decor of the Premises is maintained at a level which is in keeping with the standards of the Building,

13.1.3. ensure that all the operating facilities are maintained in accordance with good housekeeping principles, are used exclusively for purposes of performing its obligations under the Agreement, and are available for inspection at all times,

13.1.4. promptly repair or make good all damage occurring in the Premises from time to time during the Agreement Period, whatever the cause of such damage, including damage to any part of the interior or exterior of the Premises or to any window, door, appurtenance, fixture or fitting, shop fronts and replace all such items (as well as any keys) which have been broken, lost or destroyed (again regardless of cause), and

13.1.5. on the termination of this Agreement, return the Premises and all such parts thereof (including all keys) to the University in good order, condition and repair, fair wear and tear excepted.

13.2. If the Operator notifies the University in writing within 7 (seven) days after having taken possession of the Premises of the need for any repairs to or in the Premises or of the fact that any part of the Premises, including any lock, key, door, window, appurtenance, fixture or fitting, is damaged, missing, or out of order, the University will promptly cause the necessary repair or replacement to be effected at the University's own expense. If or in so far as the Operator does not give such notice, the Operator is deemed to have acknowledged that the Premises and all parts

thereof were intact, in place, and in good order, condition and repair when the Operator took possession of the Premises under this Agreement.

13.3. The Operator will:

13.3.1. not allow or cause any blockage of any sewerage or water pipes or drains in or used in connection with the Premises,

13.3.2. remove at its cost any such obstruction or blockage which occurs in the Premises, and

13.3.3. alter its plumbing layout to cater for needs of the Business as in the discretion of the University appears necessary.

13.4. Subject to any notification given by the Operator in terms of clause 13.2, the Operator acknowledges that the Premises and all keys, taps, fittings and other installations, locks, doors, windows, sewerage pans, pipes, electrical installations and water taps (hereinafter referred to as the "appurtenances") are in order at the Effective Date.

13.5. The Operator will erect in the Premises such fixtures and fittings as may be necessary for the carrying on of the Business, of the best available quality and design which will be in keeping with the general finish of the Premises and to the University's prior approval, and on the basis that the Operator will:

13.5.1. supply and at all times keep in a good, clean and hygienic condition, all furniture and equipment required for its business,

13.5.2. submit to the University's representative working drawings, layouts, perspective details, colour schemes, an artist's impression and specifications ("the store layout plans") of all such fixtures and fittings to be installed and erected in the Premises within 30 (thirty) days of signing the Agreement,

13.5.3. obtain the approval of the University's representative for the shop layout plans,

13.5.4. erect and install its fixtures and fittings strictly in accordance with the approved shop layout plans prior to the opening date, and

13.5.5. permit and allow the University's representative to inspect and reasonably supervise (if the University so elects), the implementation of the shop layout plan.

14. ALTERATIONS, ADDITIONS AND IMPROVEMENTS

14.1. The Operator may not without the University's prior consent, which will not unreasonably be withheld:

14.1.1. make any structural alterations or additions to the Premises,

- 14.1.2. make any other non-structural alterations or additions to the Premises and may not install any floor covering, interior or exterior lighting, plumbing, fixtures or shades or make any change to the shop front,
 - 14.1.3. attach to the walls of the Premises any fittings, shelving or appurtenances,
 - 14.1.4. drive or permit to be driven any nails or screws into the walls or ceiling of the Premises, and
 - 14.1.5. paint, affix or attach to the Premises any advertising signs or other matter, awning or canopy or any other thing of any kind provided that if such signs, awnings or canopy are in keeping with the general standard and finish of the Building. If the Operator commits a breach of this provision the University will be entitled, without notice or order of court, to remove the offending item(s). If the University consents, the work will be done strictly in accordance with the University's specifications.
- 14.2. The Operator will not remove or dismantle any permanent fittings in the Premises without the University's prior consent. All such fittings will remain the property of the University at all times.
 - 14.3. If the Operator does alter, add to, or improve the Premises in any way, whether or not in breach of clause 14.1 or 14.2, the Operator will at its own cost and expense, if so required in writing by the University, restore the Premises on the termination of this Agreement to their condition as it was prior to such alteration, addition or improvement having been made. The University's requirement in this regard may be communicated to the Operator at any time, but not later than the 7th (seventh) day after the Operator has delivered up the Premises pursuant to the termination of this Agreement, and this clause 14.3 will not be construed as excluding any other or further remedy which the University may have in consequence of a breach by the Operator of this clause 14.
 - 14.4. Save for any improvement which is removed from the Premises as required by the University in terms of clause 14.3, all improvements made to the Premises belong to the University and may not be removed from the Premises at any time.
 - 14.5. The Operator does not, whatever the circumstances, have any claim against the University for compensation for any improvement to the Premises, nor does the Operator have a right of retention in respect of any improvements.

15. OCCUPATIONAL HEALTH AND SAFETY

- 15.1. Notwithstanding anything else contained herein, the prevention of accidents, safety performance and adherence to sound and safe work standards and practices are essential requirements of this Agreement. Accordingly, the Operator and its Personnel will, while on the University Precincts, strictly adhere to all applicable safety and health requirements of statutes, ordinances, by-laws and regulations as well as the University's codes of practice, policies, procedures or instructions relating to safety and health applicable to the University Precincts or the execution of the Agreement.

- 15.2. Nothing in this clause 15 will:
- 15.2.1. be construed as an assumption by the University of any of the Operator's duties, or
 - 15.2.2. limit any other right or remedy available to the University.

16. LIMITATION OF LIABILITY

- 16.1. The Parties record that the University has insured itself against its liability in law for the acts and omissions of persons acting on its behalf, and its registered students and Personnel are insured during the course and scope of their registered courses and within the scope of the University's business, where fault can be attributed to the University, its affiliates or their respective Personnel. The University's maximum liability in connection with this Agreement will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.
- 16.2. While this Agreement is in force, the University may at any time take electric wires, air conditioning equipment, water pipes, telephone cables or any other equipment, conduit or wiring through the Premises, should it be necessary for the supply of electricity, air conditioning, water or any other services to any other part of the Building. The University will, however, endeavour to ensure that as little inconvenience as possible is caused to the Operator. The Operator will not reduce the rental or withhold or defer payment of rental or any other amount or terminate the Agreement as a result of any such inconvenience or interference with its business activities.
- 16.3. Without in any way limiting any of the University's rights, the Operator has no claim for damages against the University and may not withhold or delay any payment due to the University or cancel this Agreement by reason directly or indirectly of:
- 16.3.1. any act or omission of the University or its Personnel, whether or not negligent, or otherwise actionable at law, and including any act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard, or caretaker,
 - 16.3.2. the condition or state of repair at any time of the Premises,
 - 16.3.3. any failure or suspension of, or any interruption in, the supply of water, electricity (including scheduled interruptions), gas, air-conditioning, heating, or any other amenity or service to the Premises, (including any cleaning service),
 - 16.3.4. any breakdown of, or interruption in the operation of, any machinery, plant, equipment, installation or system situated in or on, or serving the Premises, including any lift, geyser, boiler, burglar alarm, or security installation or system, again regardless of cause,
 - 16.3.5. any interruption of, or interference with, the enjoyment or beneficial occupation of the Premises caused by any building operations or other

works to or in the Premises or elsewhere on or about the University Precincts, whether by the University or by anybody else, or

- 16.3.6. any other event or circumstance whatever occurring, or failing to occur, upon, in, or about the Premises, whether or not the University could otherwise have been held liable for such occurrence or failure,

and the Operator indemnifies the University against all liability for physical injury or loss of or damage to property suffered by the Operator and/or any of its Personnel, customers, guests and other invitees and all other persons who may enter upon the Premises or any parts thereof through or under the Operator, in consequence of any such matter as is referred to in clauses 16.3.1 to 16.3.6 above.

- 16.4. The University is responsible for the maintenance of, and for all repairs and replacements becoming necessary from time to time in or to, the Premises, and all parts thereof other than those which are the responsibility for the time being of the Operator or local authority, and the University's obligations in this respect include the maintenance and repair of the structure of the Premises, all systems, works and installations contained therein, the roofs, the exterior walls, the lifts (if applicable), the grounds and gardens.
- 16.5. The University is not, however, in breach of clause 16.4 in so far as any of its obligations thereunder are not or cannot be fulfilled by reason of any *vis maior* or the acts or omissions of others over whom the University has no direct authority or control, and where the University is indeed in breach of clause 16.4, the Operator's only remedy against the University is a right of action for specific performance.
- 16.6. Should the Operator fail to carry out any of its obligations under this Agreement with regard to any maintenance, repair or replacement, the University may, without prejudice to any of its other rights or remedies, to effect the required item of maintenance, repair or replacement and to recover the cost thereof from the Operator on demand.
- 16.7. The University does not warrant that the Premises are suitable for the purposes of the Operator or that the Operator or any of its associates will be granted any license or consent which may be necessary for the carrying on of any business or activity in the Premises.

17. ACCESS TO UNIVERSITY PRECINCTS

- 17.1. Subject to clause 22, any Personnel of the Operator may only come onto the University Precincts for the purposes of fulfilling the Operator's obligations under this Agreement, and for no other purpose, without the prior consent of the University's Director: Protection Services or Director: Legal Services.
- 17.2. Whenever any of the Operator's Personnel are present on the University Precincts the Operator will ensure that such persons comply with all applicable Regulations including, but not limited to, Regulations pertaining to:
- 17.2.1. the carrying of weapons,
- 17.2.2. the wearing of identification tags and the possession and use of access cards,

- 17.2.3. vehicle access to and parking on the University precincts,
 - 17.2.4. any instructions from the Director: Protection Services, and
 - 17.2.5. all other requirements laid down from time to time by the University.
- 17.3. The Operator will pay to the University any charges levied by the University for the use or purchase of identification tags, access cards and vehicle parking permits.
- 17.4. The Operator will be diligent and exercise due care in fulfilling all its obligations under the Agreement including its obligations in respect to safety, the environment and the maintenance of any equipment and other property belonging to the University or persons on the University Precincts.
- 17.5. The University may require the Operator to effect the immediate removal from the University Precincts of any Personnel, invitee or guest of the Operator if the University on reasonable grounds deems it in the best interests of the University that such person is removed. The Operator will ensure that that person does not return to the University Precincts without the University first having given the Operator its consent for that person to return. Such consent will not be unreasonably withheld. Removal by the Operator of such person/s will not be a ground for any relaxation of the Operator's obligations hereunder.
- 17.6. The Operator will not remove any goods of whatever nature from the University Precincts without the written permission of the Director: Services or his or her nominee, Director: Protection Services or his or her nominee or the Chief Financial Officer or his or her nominee or the Director: Legal Services or his or her nominee.
- 17.7. In so far as the Operator's Personnel need to meet with a recognized union in terms of a collective agreement between the Operator and such union, specific arrangements must be made with the relevant University structures prior to any such meeting that properly address:
- 17.7.1. the University's operational requirements,
 - 17.7.2. the fulfilment of the University's other contractual obligations, and
 - 17.7.3. any other conditions regarding union meeting time and place that are reasonable and necessary to safeguard life or property, and to prevent the undue disruption of work.
- 17.8. All other gatherings will be subject to the University's regulations.

18. GENERAL ACCESS

- 18.1. The University's Personnel may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the Operator or any other occupier of the Premises:
- 18.1.1. enter the Premises in order to inspect them to ensure compliance with the relevant legislation, including but not limited to the Occupational Health and Safety Act and the Regulations governing food safety compliance, and codes of practice.

- 18.1.2. enter the Premises in order to inspect them, to carry out any necessary repairs, replacements or other works, or to perform any other lawful function in the bona fide interests of the University or any of the occupiers of the Premises, or
 - 18.1.3. carry out elsewhere in the Premises any necessary repairs, replacements or other works.
- 18.2. The University will ensure that this right is exercised with due regard for, and a minimum of interference with, the beneficial enjoyment of the Premises by those in occupation thereof.
- 18.3. Within 10 (ten) days receipt of written notice of the University calling upon the Operator to do so, the Operator must provide the University with access to its books of account to allow the University to assess the economic viability of the Business. In its assessment the University will measure the annual rent to revenue ratio of the Business amongst others things.

19. UNIVERSITY'S RIGHT TO ADD TO BUILDINGS

- 19.1. The University will be entitled at all times during the operation of this Agreement to complete or add to the buildings on the Premises (including the Building) and to effect any repairs, alterations, improvements and additions (including new buildings whether or not linked) to the said buildings and for such purpose to erect scaffolding, hoardings and building equipment in, at, near or in front of the Premises and also such devices as may be required by law or which the architects may certify to be reasonably necessary for the protection of any person against injury arising out of the building operations, in such manner as may be reasonably necessary for the purposes of any of the works aforesaid.
- 19.2. The University will further be entitled, by itself or through workmen, to all such rights of access to any portion of the Premises as may be reasonably necessary for the purposes aforesaid. The University will further be entitled to lead pipes and any other services through the Premises should it be necessary to link such pipes or other services with any other premises, provided that in doing so the University does not unreasonably interfere with the Operator's beneficial occupation of the Premises.
- 19.3. In exercising its above rights the University will use its best endeavours to cause as little interference as possible with the Operator's beneficial occupation of the Premises. The Operator will not be entitled to any remission of rent, compensation or damages by reason of the exercise by the University of its rights under this clause.

20. RIGHT OF INSPECTION AND EXHIBITION OF NOTICES

- 20.1. The Operator will:
 - 20.1.1. at all reasonable times permit prospective tenants/operators of the Premises or any portion thereof to view the interior of the Premises, and

- 20.1.2. during the period of 6 (six) months immediately preceding the termination or expiry of the Agreement, permit the University or any incoming tenant to exhibit on the windows of the Premises "To let" notices and/or any notice that may be required in connection with any application for any license to carry on business in the Premises.

21. AREA OF THE PREMISES

If it is necessary in terms of this Agreement to determine the area, in square metres, of the Premises or Building, such determination will be made according to the South African Property Owners' Association (SAPOA) standard method for measuring floor areas. Any dispute between the University and the Operator as to any such area will be determined by an independent architect, acting as expert and not arbitrator, whose certificate as to such area will be final and binding on the parties. If the parties fail to agree on the identity of such architect, he will be appointed by the Executive Director for the time being of the South African Institute of Architects.

22. REGULATIONS

- 22.1. The Operator will ensure that it and any of its Personnel comply at all times with the Regulations including rules and regulations in connection with the :
 - 22.1.1. security of the Premises and the protection of persons and property thereon, including in particular any rules for the control and identification of persons and vehicles entering the Premises or any parts thereof. It is specifically noted that no firearms or other dangerous weapons may be brought on to the precincts of the University or any other property under its control without the prior written permission of the Vice-Chancellor of the University (or his nominee),
 - 22.1.2. securing of cash points in consultation with the Director: Protection Services,
 - 22.1.3. driving and parking of vehicles on or about the Premises,
 - 22.1.4. utilization of common amenities and facilities on the Premises,
 - 22.1.5. prohibition or restriction of specific activities and practices which are actually or potentially detrimental to the general interests of the University, and
 - 22.1.6. loading and off-loading of merchandise and other articles on and about the Premises.
- 22.2. This clause 22 will not be construed as implying that the University assumes any liability which it would not otherwise have had in connection with the subject matter of any Regulation or instruction referred to herein.

- 22.3. In compliance with University Regulations, the Operator's Personnel will purchase, and keep on their persons at all times, a security access card, which will give them access through the gates, and validate their right to be on the University Precincts.

23. ADMITTANCE TO THE PREMISES

For security purposes the University may lock the entrances to the Premises at a set time after business hours and will make available only selected entrances which, in the University's opinion, are necessary to admit or to let out the Operator or its Personnel. The University may from time to time stipulate the ways by which entry to the Premises may be gained after business hours.

24. PARKING AND LOADING

- 24.1. The Operator and its Personnel may use parking bays on the Premises which are available and for general use, provided that they adhere to the Regulations governing such.
- 24.2. As may alternatively be arranged with the University, the Operator and its Personnel will park their cars only in parking bays designated for their use.
- 24.3. The Operator will furnish the University with its and its Personnel's vehicle registration numbers within 5 (five) days and thereafter notify the University of any changes thereof within 5 (five) days after such changes occur. If the Operator or its Personnel park their vehicles on the University Precincts other than in the designated area, the University may charge the Operator per day or part thereof for each vehicle parked other than in the designated parking area as and for liquidated damages and the Operator hereby authorises the University to tow away, at the Operator's expense, all such vehicles belonging to the Operator or its Personnel and/or to attach violation stickers or notices to such vehicles. The Operator acknowledges and accepts that parking is on a hunting basis.
- 24.4. All the terms of this Agreement relating to the Premises apply *mutatis mutandis* to the parking bays referred to in clauses 24.1 and 24.2 except those which are obviously inapplicable.
- 24.5. Without derogation from any Regulations in force for the time being as envisaged in the Agreement, the Operator will ensure that:
- 24.5.1. the loading and off-loading of merchandise and other articles in connection with the Business are carried out only:
- 24.5.1.1. in the loading bays and areas provided for the purpose, and

- 24.5.1.2. with due regard and consideration for the interests of other occupiers of the Premises and the general public.
- 24.6. The Operator will purchase parking permits from the University and comply with all the Regulations relating to parking on the University Precincts.

25. DAMAGE TO OR DESTRUCTION OF PREMISES

- 25.1. If the Premises are destroyed or so damaged that they can no longer be beneficially occupied, this Agreement terminates at the same time unless the Parties agree otherwise in writing.
- 25.2. If the Premises are significantly damaged but can still be beneficially occupied, this Agreement remains in force and the University will repair the damage without undue delay but the rent will be abated so as to compensate the Operator fairly for the effects of the damage and repair work on the enjoyment of the Premises.
- 25.3. Failing agreement on such abatement or on the applicability of this clause 26 to any particular circumstances, the matter will be referred to an expert appointed by the parties jointly or, if they do not agree on such appointment, nominated by the President for the time being of The Institute of Estate Agents of South Africa, and the decision of such expert will be final and binding. The expert's fees and disbursements, including any inspection costs, will be borne and paid by the parties in equal shares. Pending determination of the abatement the Operator will continue to pay the full rent for the Premises as if they had not been damaged, and as soon as the matter has been resolved the University will make the appropriate repayment to the Operator.

26. BREACH AND TERMINATION

- 26.1. Should the Operator default in any payment due under this Agreement and fail to remedy such default within 7 (seven) days after receiving a written demand that it be remedied, the University will be entitled, without prejudice to any alternative or additional right of action or remedy available to the University under the circumstances, to cancel this Agreement without further notice and with immediate effect, be repossessed of the Premises, and recover from the Operator damages for the default or breach and the cancellation of this Agreement.
- 26.2. In the event of the University having cancelled this Agreement justifiably but the Operator remaining in occupation of the Premises, with or without disputing the cancellation, and continuing to tender payments of rent and any other amounts which would have been payable to the University but for the cancellation, the University may accept such payments without prejudice to and without affecting the cancellation, in all respects as if they had been payments on account of the damages suffered by the University by reason of the unlawful holding-over on the part of the Operator.

26.3. If the Operator consistently defaults in the performance of its obligations under this Agreement, the University will be entitled to cancel this Agreement without prejudice to any other rights that the University may have in law. For the purposes of this clause 26.3, "consistent default" means the failure of the Operator to comply with its obligations hereunder on 3 (three) occasions within a period of 60 (sixty) consecutive Business Days.

26.4. If:

26.4.1. the Operator is placed in liquidation, either provisionally or finally, whether voluntarily or compulsorily, or

26.4.2. the Operator applies for or undergoes business rescue in terms of Chapter 6 of the Companies' Act, 2008, or

26.4.3. the estate of the Operator is sequestrated, either provisionally or finally, or

26.4.4. the estate of the Operator is surrendered, or

26.4.5. the Operator commits an act of insolvency, or

26.4.6. the Operator dies, whether the Operator is an individual or a member of a partnership or syndicate, or

26.4.7. a judgment in any competent court is given against the Operator, and is not satisfied within a period of 14 (fourteen) days, or

26.4.8. before completion of the Agreement the major portion of the assets of the Operator is disposed of or the majority shareholding of the Operator is transferred or there is a change of management control of the Operator,

the University will be entitled, but not obliged, to terminate the Agreement forthwith without payment to the Operator of any damages whatsoever resulting from such termination.

26.5. Neither Party will be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this Agreement by reason of such Party having at any time granted any extension of time for, or having shown any indulgence to, the other Party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other Party.

26.4 Without derogating from the generality of the aforesaid, the University will be entitled to terminate this Agreement on one month's written notice to the Operator insofar as the University is of the opinion that the Business is no longer economically viable or for any other reason whatsoever.

27. DISPUTE RESOLUTION

- 27.1. The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.
- 27.2. Within a period of 14 (fourteen) days after the date on which the dispute arose (“the Dispute Date”) the Parties will meet to discuss the dispute and will endeavour to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute.
- 27.3. If the Parties are unable to resolve the dispute amicably within 30 (thirty) days from the Dispute Date, either Party may refer the dispute to the Chief Operating Officer and the Director/s of the Operator, owner or equivalent, or their duly appointed representatives, who will use their best endeavours to resolve the dispute. Their determination will be final and binding and will be carried into effect by the Parties.
- 27.4. If the individuals described above fail to resolve the dispute within a period of 30 days after it has been referred to them, either Party will be entitled to refer the dispute for adjudication by a competent South African Court, unless the Parties agree to resolve such dispute by arbitration in terms of a separate arbitration agreement between the Parties.
- 27.5. The University and the Supplier irrevocably consent and submit to the exclusive jurisdiction of the South Gauteng High Court, Johannesburg for the adjudication of such disputes.

28. DOMICILIA AND NOTICES

28.1. Address for correspondence

28.1.1. Any correspondence (other than a notice contemplated in 28.2) in connection with this Agreement may be addressed:

28.1.1.1. in the case of the University, to:

Physical Address

Services Department
Services Building
West Campus
1 Jan Smuts Avenue
Braamfontein
Johannesburg

Postal Address

P.O Box 464
Wits
2050

Electronic mail address:

Karen.duplessis@wits.ac.za

28.1.1.2. in the case of the Operator to:

Physical Address:

Postal Address:

Electronic mail address:

28.1.2. The notice will be deemed to have been duly given:

28.1.2.1. seven (7) days after posting, if posted by registered post to the Party's address in terms of this sub-clause,

28.1.2.2. on delivery, if delivered to the Party's physical address set out in clause 28.1.1,

28.1.2.3. on despatch, if sent to the Party's then fax number or electronic mail address set out in clause 28.1.1 and confirmed by registered letter posted no later than the next business day,

unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

28.1.3. A Party may change its address for this purpose to another address in the Republic of South Africa, by notice to the other Party.

28.1.4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address in terms of clause 28.1.1.

28.1.5. All notices and correspondence in connection with this Agreement will be in the English language.

28.2. Address for Service of Legal Documents

28.2.1. The Parties choose the following physical addresses at which documents in legal proceedings in connection with this Agreement may be served (i.e. their *domicilia citandi et executandi*):

28.2.1.1. The University :

Office of the Director: Legal Services
5th Floor, Senate House
1 Jan Smuts Avenue
Braamfontein
Johannesburg

28.2.1.2. The Operator :
Hand deliver to

28.2.2. A Party may change its address for this purpose to another physical address in the Republic of South Africa at which legal process can be served, by notice to the other Party.

29. GENERAL CONDITIONS

29.1. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and will supersede all previous proposals, both verbal and written, negotiations, representations, commitments, writings and all other communications between the Parties. No amendment or consensual cancellation or novation of this Agreement or any provision or term thereof and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement shall be binding unless recorded in a document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect to which it was made or given.

- 29.2. No Party may rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 29.3. Nothing contained in this Agreement will be construed as creating a partnership between the Parties or as deeming either Party as an agent or representative of or employee of the other. Neither Party may act as the agent of the other Party or incur any liability on behalf of the other Party.
- 29.4. The Operator may not assign or cede any benefit, obligation or interest it may have in terms of this Agreement to any other person without the prior consent of the University.
- 29.5. The Parties will pay their own costs relating to the negotiation, preparation and settlement of this Agreement.
- 29.6. In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the Agreement will be carried out as nearly as possible in accordance with its original terms and intent.
- 29.7. This Agreement is governed by and interpreted in accordance with the laws of the Republic of South Africa and the parties hereby submit irrevocably to the jurisdiction of the South Gauteng High Court, Johannesburg.
- 29.8. Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, curator or trustee of the Operator will be bound by this Agreement.
- 29.9. The Operator may not do anything that may disparage or harm the good name or reputation of the University.
- 29.10. The failure of either Party to comply with any non-material provision of this Agreement will not excuse the other Party from performing the latter's obligations hereunder fully and timeously subject to the relevant provisions in the Agreement.
- 29.11. The persons signing this Agreement on behalf of the Parties expressly warrant their authority to do so.

Signed on behalf of the University: _____

Name:

Designation:

Date: _____

Place: _____

Witness: _____

Signed on behalf of the Operator: _____

Name: _____

Designation: _____

Date: _____

Place: _____

Witness: _____