

**SITE USAGE AND MAINTENANCE AGREEMENT**

Entered into by and between

**GAUTENG DEPARTMENT OF EDUCATION**  
(Hereinafter referred as ("GDE") Represented by  
**Mr Edward Mosuwe**

In his capacity as Head of Department Duly authorised

And

**Motheo Sports and Entertainment Foundation (MOTHEO)**

(Herein referred to as ("Motheo") Represented by

**Mr Petrus Sedibe**

In his capacity as the Chairperson

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**1. RECORDAL**

**WHEREAS –**

- 1.1. **The Gauteng Department of Education** (“GDE”) is the registered user of the “Property”;
- 1.2. The **Motheo Sports and Entertainment Foundation** (the “User”) is a non-profit organization requiring the property for after-schools and youth development programmes, namely:
  - 1.2.1 The User wishes to construct and use a Community Facility and utilize the Property as a site for community and youth development purposes.
  - 1.2.2 The User wishes to obtain the consent of the GDE to develop the site and take related measures to improve the Property.
- 1.3. The GDE hereby agrees to grant the User the right to use the Property and the User accepts the right to use the Property for the purpose stated in this Agreement

**NOW THEREFORE** the Parties enter into this Agreement to regulate their relationship in accordance with the provisions and terms described in this Agreement.

**2. DEFINITIONS**

- 2.1 In this Agreement, unless the context indicates differently:
  - 2.1.1. **“Agreement”** means the Use and Maintenance Agreement as set out in this document including all schedules and annexures as may be agreed to between the Parties , in writing;
  - 2.1.2. **“GDE”** means the Gauteng Department of Education;
  - 2.1.3. **“Commencement Date”** means the date of signature of this Agreement by the last Party signing or the date on which the Parties sign the agreement;
  - 2.1.4. **“Corporate Strategy”** means the Corporate Strategy relating to the alienation of leasing of GDE owned land;
  - 2.1.5. **“Day”** means a day of the week, excluding Saturdays, Sundays and public holidays, and business Day shall have a corresponding meaning;
  - 2.1.6. **“Month”** means a calendar month, and more specifically:
    - 2.1.6.1. In reference to a number of months from a specific date} means a calendar month commencing on that date or the same date of any subsequent month;

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- 2.1.6.2. In any other context, means a month of the calendar, that is, one of the 12 (twelve) months of the calendar; and "monthly" has the corresponding meaning;
- 2.1.7 "Property" means the property as indicated in paragraph 4 ;
- 2.1.8 "Parties" means the Parties to this Agreement as set out in paragraph 3;
- 2.1.9 "Reasonable Time" means a period of 30 (thirty) days, unless otherwise specified ;
- 2.1.10 "Use Period" means the duration of this Agreement , as more fully set out in clause;
- 2.1.11 "the User" means the Party referred to in the clause 3.2;
- 2.1.12 "Year" means a period of 12 (twelve) consecutive months, and
- 2.1.13 "Yearly" refers to a year from the commencement date or any anniversary of that date;
- 2.2 Words denoting the singular include references to the plural, and vice versa;
- 2.3 Words denoting any particular gender include reference to each of the persons, and vice versa;
- 2.4 No provision of the agreement shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having or being deemed to have structured or drafted such provision ; and
- 2.5 Utilization of the facility is for community and youth development purposes.
- 2.6. The User is responsible to ensure that anyone who visits, enters, or occupies the Property or part of the Property on arrangement with, on invitation or under the supervision of the User, complies with and adhere to all the restrictions, prohibitions or restraints in this Agreement. This means that the User will be held accountable not only for their own non-compliance with the Agreement but also if any other person does not comply with any such provision in this Agreement too.
- 2.7. This Agreement will be interpreted and applied in accordance with South African law.

### **3. PARTIES**

#### **3.1 GAUTENG DEPARTMENT OF EUDCATION**

Herein represented by **Mr Edward Mosuwe** in his capacity as the **Head of the Department** and duly authorized hereto; and

#### **3.2 USER**

MOTHEO SPORTS AND ENTERTAINMENT FOUNDATION NPO (also trading as MOTHEO

which is a Non-Profit Organization, with Registration Number **010-914 NPO**, herein represented by **Mr Petrus Sedibe** in his capacity and the **Chairperson**.

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#### 4. PROPERTY

- 4.1 The property hereby granted usage for the purpose of this Agreement is portion of ERF 3841 of Protea Glen, Extension 3, Soweto
- 4.2 The User will construct a full FIFA accredited artificial turf soccer field (40m x 80m) 4 (four) Combi Courts, 15 (fifteen) Toilets, 4 (four) Change Rooms, 4 (four) Showers, Olympic Swimming pool and a community hall which is used as a sports ground for the school (community) and the implementation of Safe-Hub programming

#### 5. DURATION

The Use Period will be for a period of Five (5) years from the Commencement Date and MOTHEO may be conferred the right to renew the usage agreement for further successive period of 5 years.

#### 6. OPTION TO RENEW

- 6.1 If this Agreement is not terminated by either of both parties at the expiry of the user, the agreement will automatically continue
- 6.2 Should the User have diligently honored its obligations hereunder, thought the Use Period, both parties would have to agree on the renew of this Agreement for a further period of 5 (five) years, commencing immediately after the expiry of the use of the Period
- 6.3 Should the User desire to exercise clause 6.2 it shall give written notice to the GDE to that effect, not less than 6 (six) calendar months before the expiry of the Use Period, failing which clause 6.2 shall lapse and shall be of no force and effect
- 6.4 Should however the lease be terminated or no longer be renewed as per agreement between the two parties, the sport facility will remain with the GDE and MOTHEO shall have no claim against the department

#### 7. USER AND MAINTENANCE AGREEMENT

- 7.1 The Parties hereby agree that GDE, hereby allocates the Property to and allows the User to develop infrastructure and use the Property;
- 7.2 The User shall effect certain improvements thereon, use and maintain such improvements and the Property to the satisfaction of the GDE, which shall be governed by the terms and conditions herein contained;
- 7.3 The User shall use the property for the purpose agreed upon this Agreement and no other purpose without prior consent of the GDE. Motheo will only utilize 50% of the PORTION of ERF 3481 (Size of property is 4,6375Ha and therefore 50% of the site is 2,31875Ha)

#### 8. CONTRAVENTION OF LAWS

- 8.1 As per agreement from both parties with regards to the property 50% of ERF 3481 will be maintained, meaning 50% that belongs to the GDE will not be tempered with;
- 8.2 The User hereby confirms that as from the Commencement Date shall be deemed:
  - 8.2.1. to have acquired full control in respect of the Property for purposes of the

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Occupational Health and Safety Act (Act 85 of 1993) ("OHS Act") and Regulations, and that it is regarded as the client for the purposes of the said Act to this effect the User shall manage, administer and audit compliance of the OHS Act in the management of the property

- 8.2.2. The User hereby agrees, in terms of Section 37(2) of the OHS Act and Regulations and all responsibility for health and safety matters relating to the occupation of the Property that the User and /or any of its agents execute in terms of this Agreement, shall be its obligations.

### **9. RATES AND TAXES**

- 9.1. The GDE will be responsible for the payment of assessment rates and taxes in respect of the property

### **10. MUNICIPAL COSTS AND LEVIES**

- 10.1. The User shall continue to pay for all municipal services until a school has been constructed and a new agreement on payment of utilities shall be worked between the two parties

### **11. SERVICES**

- 11.1 The GDE and Motheo Foundation will be responsible to ensure that the Property is provided with infrastructure as required on the Property.
- 11.2 Any and all required upgrades will be the Responsibility of both parties. Need of the required upgrades will be through consultation of both parties with the required regional authority;
- 11.3 The GDE will not be responsible for any damages that may be suffered by the User as a result of power outages and interruptions to electricity services.
- 11.4 Electricity suppliers must have access to their services in relation to the Property at all times
- 11.5 No mechanical equipment, including mechanical excavators, may be used under or In close proximity to electrical services without the electricity supplier's prior written approval
- 11.6. The User will be responsible to pay for all costs which may occur due to the relocation of the electricity suppliers' services or for the repair of the GDE's damaged services.
- 11.7. The User will be responsible for security of the Property (PORTION ERF 3481)

### **12. IMPROVEMENTS TO THE PROPERTY**

- 12.1. The User is entitled to improve the property to enable it to carry out its functions as prescribed by the board of directors of the User;
- 12.2. Prior to any improvements, the User shall submit the plans and specifications in respect to the construction envisaged to the GDE for approval;
- 12.3. The User shall plant lawns at its costs on the Property wherever it is necessary, and no trees or shrubs shall be removed from the Property without due consideration

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and expert advice;

12.4. The User must at his own expense and without recourse to the GDE:

12.4.1 Maintain the Property and all parts thereof in good order and condition throughout the Use Period to the satisfaction of the GDE;

12.4.2 Promptly repair or make good of damage occurring in the Property from time to time during the Use Period;

12.4.3 Ensure that any extension to the existing building structures and/or intensification of land uses on the Property would be subject to prevailing planning and building regulations, subject to GDE's consent to the proposed extensions being had and obtained;

12.5. All maintenance on the Property, being structural or fair wear and tear shall be for the User's account, and

12.6. Should the User fail to carry out any of their obligations under this Agreement with regard to any maintenance, repair or replacement, both parties will be entitled, without prejudice to any of its other rights or remedies, to have the required maintenance, repair or replacement done and to recover the reasonable cost thereof from the User on demand

**13. OTHER OBLIGATIONS**

13.1. The User will:

13.1.1 Grant the GDE and its authorized representatives and agents 24-hour unrestricted access to the electricity, water and any other municipal services in relation to the Property;

13.1.2 Clean the property so that it is at all times free of litter and clean to the satisfaction of the GDE and Planning and Urban Management Department;

13.2.3 Maintain the property and all improvements thereon regularly at its costs;

13.1.4 Not hold or allow the holding of sales by public auction in or on the Property without the prior written consent of the GDE which will not unreasonably be withheld; and

13.1.5 Have no claim of any nature against the GDE:

13.1.5.1 for any interruption in the supply of water, electricity, heating, gas or any other service as a result of any cause wholly or partly beyond the GDE's control;

**14. OUTDOOR ADVERTISMENT AND MARKETING**

14.1. The User is entitled to outdoor advertising on the Property and the branding of the constructed facilities; GDE must be able to collect all tele-communication costs and generated revenues by outdoor advertising

14.2. Prior to any outdoor advertising, the User will submit to the GDE all sketches of the proposed signs for the GDE's approval, particularly as regards the design, color and

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position thereof;

- 14.3. All costs and expenses required for the erection and installation thereof will be paid by the User and the User will ensure that no damage is caused to the Property in the process of such erection;
- 14.4. This means that the GDE will not be responsible for costs, harm or damage caused by the signboards, signs or neon signs as a result of installing, operating or removing them,
- 14.5. The User indemnifies, holds harmless and absolves the GDE against all damage to persons or Property arising out of the installation or operation of any such signboards, signs or neon signs.
- 14.6. The User also indemnifies holds harmless against and releases the GDE from all claims, costs and expenses of any nature made against the GDE under any circumstances as a result of the installation, operation or removal of any sign or any defective sign or as a result of any failure on the part of the User to keep and maintain that sign in good order and condition.
- 14.7. The User must keep and maintain all such signs in good and proper working order and in a neat, clean and tidy condition at all times. The User must comply with and carry out all the requirements of any competent authority in regard to such signs from time to time.

## **15. INSURANCE**

- 15.1. The User will insure:
  - 15.1.1 All improvements, buildings and outbuildings forming part of the Property under usage by the User, to the full replacement value thereof as determined from time to time, and to the satisfaction of the GDE;
  - 15.1.2 The contents of the portion of the Property, to the full replacement value thereof as determined from time to time, and to the satisfaction of the GDE; and
  - 15.1.3 Public liability with an insurance company registered in the Republic of South Africa, against all normal insurable risk for loss of or damage suffered by the general public and in respect of all improvements, buildings and outbuildings forming part of the Property as well as the contents of the Property for the full duration of this Agreement.
- 15.2. Public liability insurance relating to damage or loss suffered by the general public in respect of buildings constructed by GDE on behalf of the User shall be insofar it relates post the construction defects liability period;
- 15.3. The User will ensure that any damage caused to the Property will be repaired and the contents replaced as soon as possible having regard to the time frame required by the User's insurer for the processing of an insurance claim;
- 15.4. If it is required by the GDE, the User will provide the GDE with a photocopy of the original insurance policies within 3 (three) Months after signature of this Agreement;
- 15.5. If requested by the GDE, the User will also provide the GDE with proof of payment of the premiums that fall due in respect of this insurance policy;
- 15.6. Should both parties fail to insure the Property or pay the insurance premiums in terms of this clause, both parties will be entitled, without taking

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- away from any other rights it may have under this Agreement, to take out the necessary insurance policy or to pay the premiums and recover the cost from the User;
- 15.7. All insurance monies received by the User are to be applied to the reinstatement of the Property or the compensation of the injured Party;
  - 15.8. The User must give all notices and comply with all conditions and requirements imposed by all relevant insurance policies, and must ensure that the insurance policies which it is required to take out in terms of this Agreement, are valid for the duration of this Agreement the User will be responsible to pay for any amounts above the insured amount in the event of a claim;
  - 15.9. The public liability insurance of the Property may be reviewed on every anniversary of the Commencement Date and in circumstances where a review takes place, the GDE and User will agree on the level of public liability insurance required;
  - 15.10. If the Parties cannot agree on the level of insurance required within 10 (ten) Days of the review date in question, an appropriate level of insurance will be determined by an expert appointed by the GDE or by the GDE's insurance brokers, with the consent of the User, which consent must not be unreasonably refused. The expert will determine an appropriate level of public liability cover in the light of prevailing market conditions and their findings will be final and binding on the Parties, who will bear the costs of the appointment and functioning of the expert in equal shares

### **16. CESSION, ASSIGNMENT AND SUB-LETTING**

- 16.1. The User may not cede their rights under this Agreement.
- 16.2. The User may sub-let the Property provided it is done in consultation with GDE and written consent is issued by GDE

### **17. ALTERATIONS BY THE GDE**

- 17.1. The GDE will be entitled, but not obliged subject to the User's obligation in terms of clauses 11 and 12 above, at any time during the Use Period to undertake repairs, alterations or improvements to the Property which the GDE may determine in their discretion are desirable or necessary, subject to the User's written consent, which must not be unreasonably withheld.
- 17.2. The GDE is responsible for the cost incurred in affecting such improvements.
- 17.3. The GDE must ensure that the User's right to use the Property during such construction will suffer the minimum disruption possible and that adequate scaffolding and boarding is erected in order to give the User access to the Property to the extent necessary.
- 17.4. The GDE undertakes to complete such alterations or improvements as efficiently and speedily as possible.

### **18. DAMAGE OR INJURY**

- 18.1 The GDE will not be responsible and User will not have a claim against the GDE for:

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- 18.1.1 Any accident, injury, damage or loss which the User may directly or indirectly suffer, arising from any cause wholly or partly beyond the GDE's control;
- 18.1.2 Any loss, damage or injury which the User may directly or indirectly suffer by reason of any theft from the Property

### **19. EXCLUSION OF GDE FROM CERTAIN LIABILITY AND INDEMNITY**

- 19.1. The User will have no claim for damages against the GDE and may not withhold or delay any payment due to the GDE as a result of:
  - 19.1.1 The condition or state of repair at any time of the Property or any part of the Property for which the User is responsible;
  - 19.1.2 Any failure, suspension or any interruption in the supply of water, electricity, gas, air conditioning, heating or any other amenity or services to the Property provided by the GDE and/or any statutory authority, as a result of any cause wholly or partly beyond the GDE's control;
  - 19.1.3 Any breakdown of, or interruption in the operation of, any machinery, plant and equipment, installation or system situated in or on or serving, the Property or any part of the Property, including any lift, geyser, boiler, burglar alarm, or security installation or system, as a result of any cause wholly or partly beyond the GDE's control;
  - 19.1.4 Any interruption or interference with, the beneficial occupation of the Property caused by any building operations or other works to or on the Property, by the GDE or by anybody else; and
  - 19.1.5 This clause limits the responsibility of the GDE. In any of these circumstances, the User will have no claim against the GDE and all losses are for the account of the User.
- 19.2. The User indemnifies the GDE and hold it harmless against all loss or damage in any way sustained by the User and in respect of all claims or proceedings made or instituted against the GDE by third Parties by reason of or in any way arising out of this Agreement and also in respect of all legal costs on the Attorney and Client scale or other expenses that may be incurred by the GDE in examining, resisting or settling any such claims or proceedings

### **20. DAMAGE AND DESTRUCTION OF PROPERTY**

- 20.1. This Agreement will remain in full force and effect, except that in event of total destruction of the Property or the Property becoming incapable of letting or unusable within 10 ten days of the event causing the destruction or damage to the Property, the Agreement will immediately be terminated, and the User will have no claim against the GDE in respect of such termination.

### **21. ADDRESS**

#### **21.1. User's Address**

Contact Person: Petrus Sedibe (Chairperson)

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Motheo Sports and Entertainment Foundation

Address: 219 Kent Avenue

Randburg

Tel: 073 648 0165

Email: petrussedibe@gmail.com

### **21.2. GDE**

Contact person: Director: Office of Head of Department Gauteng

Department of Education

Address: 17 immonds Street Johannesburg 2001

Tel: 011 355 0000

Email: Edward.musowe@gauteng.gov.za

## **22. DISPUTE RESOLUTION**

**22.1.** In the event of a dispute arising between the Parties, it is the recorded intention of the Parties that such dispute shall be resolved as expeditiously and amicably as possible by way of mediation. In this regard the Parties agree as follows:

- 22.1.1 The Parties shall jointly agree upon a mediator within a period of 10 (ten) Days to either Party Giving the other notice, failing which the GDE shall be entitled to appoint an independent mediator within 15 (fifteen) Days from failure to agree upon mediator;
- 22.1.2 The process of mediation shall commence by the one Party giving the other notice of the dispute and requesting confirmation of a proposed mediator to be appointed, alternatively requesting the other Party to propose a mediator for consideration;
- 22.1.3 Upon appointment of the mediator such mediator shall decide upon all aspects pertaining to the mediation process including costs, procedures, venues and any other aspect which the mediator regards appropriate to rule;
- 22.1.4 All discussions, disclosures, submissions and/or information made or provided during mediation shall be privileged unless the Parties agree to the contrary, specifically to any particular aspect or generally, as the case may be. Such agreements shall be reached in discussion with the mediator and recorded by the mediator as being part of the mediation process.

## **23. BREACH**

- 23.1. The principle of control of the Property by the GDE, as the case may be, shall remain an integral part of this agreement and be adhered to, entitling the GDE, as the case may be, to withdraw and claim cancellation of this Agreement, if:
  - 23.1. The User, including its agents or employees, fails to remedy any breach of this Agreement within 10 (ten) days after receipt by it of written notice calling upon

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it to remedy the breach in question.

23.1.1 The User will not receive compensation for any alterations or improvements under all circumstances related to the termination of this Agreement.

23.1.2 Any improvements effected on the Property will revert to the GDE on termination of the Agreement.

23.1.3 The GDE has the right to request the User, in writing to remove certain improvements, at the User's cost, if such improvements were effected during the Use Period.

### **24. CANCELLATION**

24.1. The GDE will be entitled to cancel this Agreement by written notice to the User if the User commits any other breach of this Agreement and fails to remedy the breach within Reasonable Time after receiving written notice from the GDE to do so.

24.2. Should the User fail to perform any obligation in terms of this Agreement, and remain in default for 10 (ten) Days after receiving written notice from the GDE to remedy the default, the GDE may without prejudice to any other rights under this Agreement, perform the obligation on behalf of the User and demand the reasonable cost of doing so from the User.

24.3. The GDE's remedies under 22.1 and 22.2 are additional to any other remedies they may have in law.

24.4. Should the User not be in contravention of this Agreement and the GDE request the cancellation of this agreement. The User will receive reasonable compensation for any alterations or improvements under all circumstances related to the termination of this Agreement. The value of the compensation due to the User will be valued by an expert appointed by the GDE, with the consent of the User, which consent must not be unreasonably refused.

24.5. Despite anything to the contrary contained in this Agreement, either Party may cancel this Agreement by giving the other Party 3 (three) month's written notice.

### **25. WARRANTY OF AUTHORITY**

25.1. The person signing this Agreement on behalf of the User as well as the GDE expressly warrants their authority to do so.

### **26. CESSION, DELEGATION, ASSIGNMENT AND SUB-LETTING**

26.1. Neither Party may cede, delegate, assign or transfer their rights under this Agreement without the prior written consent of the other part being had and obtained.

26.2 The User shall obtain consent from GDE to sublet the Property

### **27. ADDRESS FOR NOTICES AND LEGAL PROCEEDINGS**

27.1. The Parties choose the addresses in paragraph 19 of this Agreement as their respective address for the purposes of legal proceedings and for the purposes of

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giving or sending any notice provided for or necessary in terms of this Agreement (*domicilium citandi et executandi*).

- 27.2. Any Party may change their address to any other physical address, postal address (other than to a paste restante) or fax number in the Republic of South Africa by giving written notice to the other Party. Such change of address will be effective 5 (five) days after receipt of the change of address.
- 27.3. All notices to be given in terms of this Agreement must
- 27.3.1 Be given in writing;
  - 27.3.2 Be delivered or sent by prepaid registered post or by electronic mail;
  - 27.3.3 If delivered be presumed to have been received on the date of delivery;
  - 27.3.4 If sent by prepaid registered post, be presumed to have been received; and
  - 27.3.5 If sent by electronic mail and receipt acknowledged by the recipient, be presumed to have been received on the first day following the date of sending of the electronic mail unless the contrary is proved;
- 27.4. A written notice or communication actually received by one of the Parties from another shall be adequate written notice or communication to such Party irrespective of any of other provision in this Agreement.

### **28. ADMINISTRATION COSTS**

- 28.1. Each Party will be responsible for their own costs incurred in the preparation and finalization of this Agreement.

### **29. FORCE MAJEURE**

- 29.1. If it becomes impossible for a Party to perform any obligation (other than a payment obligation) in terms of this Agreement because of an event or circumstance that was unforeseen or reasonably unforeseeable when the Agreement was entered into or which, if the event could have been foreseen at that time, could not be guarded against or avoided by reasonable care or the reasonable acts of that Party (for example floods, fire or landslides), that Party may:
- 29.1.1 Notify the other Party within 5 (five) days of the nature, extent, effect and likely duration of the event or circumstance (and keep the other Party updated; Take all commercially reasonable action to remedy or minimize the consequences (and report to the other Party);
  - 29.1.2 Immediately resume performance of its obligations under this Agreement and
  - 29.1.3 notify the other Party when performance of the obligation again becomes possible;
  - 29.1.4 Performance of any such obligation is suspended for as long as the

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event or circumstance continues to make the performance impossible,

29.1.5. If the event or circumstance continues for a period exceeding 2 (two) months either Party may cancel this Agreement on written notice to the other Party provided that the obligation which the affected Party is unable to perform is a material obligation under this Agreement.

**30. WHOLE AGREEMENT**

30.1. This Agreement constitutes the whole of the agreement between the Parties in relation to the lease of the Property and no agreement or amendment of the terms and conditions of this Agreement will be binding on the Parties unless it is in writing and signed. By or on behalf of both Parties.

**31. WAIVER**

31.1. No acceptance of any breach or waiver by either Party of any of their rights under this Agreement will limit the rights of any Party or be deemed to vary this Agreement in any way.

**32. SEVERANCE**

32.1. To the extent that it is found that any clause in this Agreement is in conflict with the provisions and requirements of the Consumer Protection Act, 2008 and its Regulations, or any other law, that clause will be removed from this Agreement and to the extent practical, feasible and lawful the remainder of this Agreement will be enforceable against the Parties.

**33. CONFIDENTIALITY**

33.1. The Parties to this Agreement shall keep the terms of this Agreement confidential and shall not disclose such terms to any third Party, other than with the express written authority of the other Party, save where such disclosure is required by law and/or in order to enforce the provisions of this Agreement.

GDE

Signed at \_\_\_\_\_ on this day \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_

Name & Surname: Petrus Sedibe

Signature \_\_\_\_\_

In the presence of the undersigned witness:

**Witness 1.**

Name & Surname: \_\_\_\_\_

Signature: \_\_\_\_\_

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**Witness 2.**

Name & Surname: \_\_\_\_\_

Signature: \_\_\_\_\_

**THE USER**

Signed at Protea Glen on this day 17 of March 2023

Name & Surname:

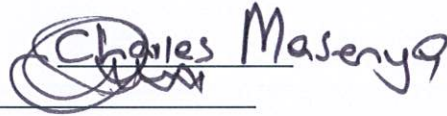
Signature 

In the presence of the undersigned witnesses:

**Witness 1.**

Name & Surname:

Signature:



**Witness 2.**

Name & Surname:

Signature:

