
AGREEMENT

BETWEEN

**THE GAUTENG DEPARTMENT OF AGRICULTURE, CONSERVATION,
ENVIRONMENT AND LAND AFFAIRS, ACTING FOR AND ON BEHALF OF
THE GAUTENG PROVINCIAL GOVERNMENT**

AND

**THE UNIVERSITY OF THE WITWATERSRAND,
JOHANNESBURG**

[15 OCTOBER] 2003

TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION	2
2	PREAMBLE	10
3	CONCESSION CONTRACT	12
4	PUBLIC BENEFIT ORGANISATION	13
5	APPLICATION OF CERTAIN PBO FUNDS	17
6	DELIVERY OF STERKFRONTEIN SITE AND RIGHTS OF WAY, OWNERSHIP AND RISK	18
7	WITS'S INTELLECTUAL PROPERTY	19
8	PROPRIETARY MATERIALS	20
9	FOSSILS	21
10	ARCHAEOLOGICAL MATTERS AND NATIONAL MONUMENTS	23
11	FUNDRAISING	23
12	OTHER OBLIGATIONS OF DACEL	24
13	OTHER OBLIGATIONS OF WITS	26
14	NON-COMPETING	27
15	INDEMNITY	29
16	ENFORCEMENT AND CO-OPERATION	30
17	ENVIRONMENTAL IMPACT ASSESSMENT	31
18	TERMINATION	31
19	EFFECT OF TERMINATION	31

W4


20 GOVERNING LAW AND RESOLUTION OF DISPUTES 32

21 SUPPORT..... 35


22 MISCELLANEOUS PROVISIONS 36

23 DOMICILIA AND NOTICES..... 41

24 WITS REPRESENTATIVE 43

25 CONTRACT MANAGEMENT PLAN 44

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THIS AGREEMENT is made on the [15th] day of October 2003

BETWEEN

- (1) The Gauteng Department of Agriculture, Conservation, Environment and Land Affairs, acting for and on behalf of the Gauteng Provincial Government; and
- (2) The University of the Witwatersrand, Johannesburg.

NOW THEREFORE the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words and expressions shall bear the meanings hereby assigned to them:

“Associated Agreements” means the construction contracts, operation and maintenance contract or any other contract to be entered into by the Concessionaire in connection with the Project;

“Authority” means the Authority declared or established under the WHC Act with authority over the COH WHS, including without limitation authority to manage the COH WHS;

“Blue IQ” means Blue IQ Holdings Limited, a statutory company established by the [Blue IQ Holdings Limited Act] and wholly owned by the Gauteng Provincial Government;

“Business Day” means any day other than a Saturday, Sunday or a legally recognised public holiday in the Republic of South Africa;

“Community Development Trust” means a public benefit organisation as contemplated in section 30 of the Income Tax Act (Act No. 58 of 1962) to be established by DACEL

(Act No. 58 of 1962) to be established by DACEL to carry out community development programmes at or in connection with the COH WHS;

- “COH WHS”** means the Cradle of Humankind World Heritage Site;
- “Concessionaire”** means the successful bidder which will be selected pursuant to the tender process referred to in Clause 2.5 and with which DACEL, Wits and the PBO will conclude the Concession Contract;
- “Concession Area”** means the area over which the ICC shall be designed, constructed, operated and maintained, comprising the Mohale’s Gate Site and the Sterkfontein Site. A description and plan of the Concession Area is set out in Part A of Schedule 1;
- “Concession Contract”** means the concession contract for the Design and Construction, Disbursement, Exhibition Installation and Operation and Maintenance of the ICC to be entered into between DACEL, Wits, the PBO and the Concessionaire;
- “DACEL”** means the Gauteng Department of Agriculture Conservation, Environment and Land Affairs acting for and on behalf of the Gauteng Provincial Government;
- “Environmental Laws”** means any applicable law in force prior to and after the Signature Date, relating to pollution or the protection of the environment (which shall include any air, surface and sub-surface land, coastal, inland and ground waters) including, without limitation, laws relating to the release, exposure to, generation,

use, treatment, storage, transport, removal or disposal of Potentially Hazardous Materials and permits required for any development of the Concession Area under the Environment Conservation Act (Act No. 73 of 1989) and the National Environmental Management Act (Act No. 107 of 1998) and other laws of the Republic of South Africa;

“Exhibition Installation” means the design, construction, compilation, installation and operation of permanent and temporary exhibits at the ICC or at other places;

“Interpretation Centre” means the interpretation centre to be established and operated within that part of the Concession Area located at the Mohale’s Gate Site comprising, *inter alia*, a conference centre, an education resource centre, an outdoor amphitheatre and food and retail outlets;

“ICC” means the Interpretation Centre Complex, comprising the Interpretation Centre, the Orientation Centre and all associated facilities;

“Mohale’s Gate Site” means the farm Interpretation Centre 932-JQ, comprising Portion 4 of the farm Waterkloof 515-JQ, Portion 1 of the farm Waterpoort 585-JQ and Portion 3 of the farm Spring Farm 588-JQ, and measuring 100 hectares, situated adjacent to the COH WHS, forming part of the Concession Area and on which the Interpretation Centre will be established;

“NHR Act” means the National Heritage Resources Act (Act No. 25 of 1999);

No. 25 of 1999);

- “Orientation Centre”** means the orientation centre to be established and operated within that part of the Concession Area located at the Sterkfontein Site, comprising, *inter alia*, a fossil-preparation centre, an auditorium, a site museum and an educational resource centre;
- “Parties”** means DACEL and WITS, and **“Party”** shall, as the context requires, refer to any of them;
- “PBO”** means a public benefit organisation as contemplated in Section 30 of the Income Tax Act (Act No. 58 of 1962) to be established pursuant to Clause 4.1 hereof;
- “Person”** means any individual, partnership, corporation, company, business organisation, trust, governmental agency, parastatal, Relevant Authority, statutory entity or other entity;
- “Potentially Hazardous Materials”** means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour) capable of causing harm (whether alone or in combination with any other substance) to any human or any other living organism supported by the environment, or capable of damaging the environment or public health or posing a threat to public safety or potentially causing a public nuisance including, without limitation, any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances regulated, or for which liability or responsibility is imposed, under the applicable

- Environmental Laws;
- “Preliminary Design”** means the preliminary design of the ICC to be submitted to the Concessor by the Concessionaire in accordance with the provisions of the RFP issued to short listed bidders, and the Concession Contract;
- “Project”** means the design and execution of the Construction Works, the Exhibition Installation activities, and the Operation and Maintenance of the ICC by and all other obligations of the Concessionaire, pursuant to the provisions of the Concession Contract and the Associated Agreements;
- “Protected Sites”** means those portions of the Sterkfontein Site indicated in red on the map attached hereto as Part B of Schedule 1;
- “Rand” or “R”** means the lawful currency of the Republic of South Africa from time to time;
- “Relevant Authority”** means any ministry, department, agency, authority, organ or body of government at any level of government and any other public authority, body, entity or Person having jurisdiction under the laws of the government with respect to the Concessionaire or the Project;
- “Signature Date”** means the date of last signature of this Agreement;
- “Sterkfontein Site”** means: (a) Portion 1 called the Isaac Edwin Stegmann Nature Reserve of the farm Zwartkrans 172, Registration Division I.Q., Province of Gauteng; in extent 17,1306 hectares; and (b) the

Remaining Extent of the farm Zwartkrans 172, Registration Division I.Q., Province of Gauteng; in extent 61,941 hectares, both indicated on the plan attached hereto as Part B of Schedule 1, forming part of the Concession Area over which the Orientation Centre will be established, and shall include the Protected Sites but exclude the area marked "Staff Accommodation" and indicated in blue on the plan;

- "WHC Act"** means the World Heritage Convention Act (Act No. 49 of 1999);
- "World Heritage Convention"** means the Convention as defined in the WHC Act;
- "Wits"** means the University of the Witwatersrand, Johannesburg; and
- "Wits Intellectual Property"** means all intellectual property rights whatsoever, whether capable of registration or not, including but not limited to any of Wits's names, logos or images and any scientific discoveries by Wits and rights arising from those discoveries and all other intellectual property interests relating to Wits, its names, logos and/or images and such scientific discoveries and intellectual property rights.

- 1.2 Except to the extent to which the context may otherwise require, this Agreement shall be construed in accordance with the following:
- 1.2.1 unless otherwise defined herein, terms used herein with initial capitals which are defined in the Concession Contract, shall have the meanings assigned to them in the Concession Contract;

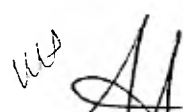
- 1.2.2 headings in this Agreement are for convenience only and shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof;
- 1.2.3 references herein to the Clauses and Schedules are to the clauses in and schedules to this Agreement unless the context requires otherwise. The Schedules to this Agreement shall form an integral part of this Agreement;
- 1.2.4 words importing the singular only, also include the plural and vice versa where the context requires;
- 1.2.5 any reference to any agreement, annexure or schedule shall be construed as including a reference to any agreement, annexure or schedule amending or substituting that agreement, annexure or schedule;
- 1.2.6 if any definition in this Clause 1 or elsewhere in this Agreement contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as a substantive provision of this Agreement;
- 1.2.7 any word or expression related to a word or expression defined in this Agreement shall bear a corresponding meaning;
- 1.2.8 any word or expression importing any gender shall include the other genders;
- 1.2.9 any reference to the provisions of law and any similar reference of general application shall 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;

- 1.2.10 save where specifically provided otherwise, references to statutory provisions shall 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;
- 1.2.11 the words “include” and “including” are to be construed without limitation;
- 1.2.12 wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination by any Person, unless otherwise specified –
- 1.2.12.1 such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination shall be in writing and the words “notify”, “decide”, “consent”, “accept”, “agree”, “endorse”, “approve”, “certify”, “instruct” or “determine” and other related expressions shall be construed accordingly; and
- 1.2.12.2 writing shall include but not be limited to manuscript, printed, typed and electronic records;
- 1.2.13 references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- 1.2.14 when any number of days or other period is prescribed, it shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or legally recognised public holiday in the Republic of South Africa, in which case the last day shall be the next day which is not a Saturday, Sunday or legally recognised public holiday in the Republic of South Africa;

- 1.2.15 whenever this Agreement provides for approvals, consents or expressions of satisfaction by any one of the Parties, that Party shall not unreasonably withhold or delay that approval, consent or expression of satisfaction; and
- 1.2.16 each Party shall 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 another Party in respect of this Agreement shall be applied for or requested promptly.

2 PREAMBLE

- 2.1 The National Government has delegated the responsibility of managing the sustainable development of the COH WHS to DACEL. That delegation is currently an interim one, and DACEL has initiated proceedings with a view to being appointed permanently as the Authority for the COH WHS under the WHC Act.
- 2.2 DACEL has during 2000 and 2001 commissioned a number of studies to explore the parameters of potentially sustainable development at the COH WHS.
- 2.3 Wits is the owner of the Sterkfontein Site, one of the sites at the COH WHS, and has over several decades undertaken studies into the protection and scientific exploration of the Sterkfontein Caves at the Sterkfontein Site and various other fossil sites within the COH WHS.
- 2.4 DACEL and Wits have agreed to work together to develop the COH WHS for the benefit of all interested communities, the promotion and development of tourism and related facilities, and the promotion of education and research. In doing these things, they wish to:
- 2.4.1 maximise the preservation of the environment at the COH WHS in accordance with the requirements of the World Heritage Convention and the WHC Act;



- 2.4.2 enhance economic development in the region in which the COH WHS is located and stimulate job creation opportunities, especially for members of communities living in that region, and to create an enabling environment which will encourage and facilitate capacity development and skills transfer for people, private sector entities and organs of government affected by the COH WHS.
- 2.5 DACEL in conjunction with Wits therefore intends establishing the ICC, in a Public Private Partnership with the Concessionaire, who will be selected pursuant to a tender process. That establishment will entail the provision to the Concessionaire of capital funding of approximately R180 000 000.00 (one hundred and eighty million Rand) in the form of subscriptions by Blue IQ for convertible shares in the Concessionaire (which will use those funds for investment in the ICC), and will further entail DACEL granting to the Concessionaire the right to design, construct, install exhibits at, operate and maintain the ICC with the Concessionaire exercising such rights to enable it to raise revenue by, *inter alia*, charging and collecting revenue from visitors to the ICC. The terms on which the ICC will be designed and constructed, exhibits will be installed, and the ICC will be operated and maintained will be set out in the Concession Contract.
- 2.6 As part of the ICC, the Concessionaire will be entitled to develop and operate the Orientation Centre at the Sterkfontein Site and the Interpretation Centre at the Mohale's Gate Site, and to conduct other activities at each of those sites as part of its Concession Rights.
- 2.7 DACEL and WITS will co-operate in the establishment of the ICC on the Concession Area, comprising the Orientation Centre at the Sterkfontein Site and the Interpretation Centre at the Mohale's Gate Site, on the terms and conditions set out in this Agreement.

3 CONCESSION CONTRACT

- 3.1 At the Signature Date the Concession Contract is in draft form, and the revised draft circulated to the bidders to whom the RFP was sent, as black-lined by the preferred bidder, is the subject of negotiations between DACEL, Wits and that preferred bidder.
- 3.2 The preferred bidder has been selected, and the Parties intend to conclude the Concession Contract, on mutually acceptable terms and conditions, with the PBO and that bidder, which will become the Concessionaire.
- 3.3 To comply with the procurement process by which DACEL is bound, that Concession Contract, once concluded, will be referred for formal approval to DACEL's Departmental Acquisitions Council. This Council was established by the Gauteng Provincial Government's Executive Council in accordance with the Gauteng Provincial Government's Cabinet Memorandum of 10 December 2001, to ensure that DACEL's process of obtaining goods and services is transparent and equitable and accords with the requirements of the Public Finance Management Act. The members of that council are currently Dr T Hanekom (DACEL's Head of Department), Mr M Mokoena (Chief Director, DACEL), Mr T Van Schalkwyk (Director and Chief Financial Officer, DACEL) and Mr R Mathebe (Director of Finance, DACEL).
- 3.4 In the event that the Concession Contract is, for any reason whatsoever, not concluded in the concession process currently under way, the Parties agree to continue to co-operate with each other in relation to the COH WHS, and to endeavour to conclude a concession agreement for an Interpretation Centre Complex incorporating a development at the Sterkfontein Site and one at the Mohale's Gate Site, as contemplated in this Agreement and the current draft of the Concession Contract.

4 PUBLIC BENEFIT ORGANISATION

4.1 Establishment

DACEL shall establish the PBO in the form of a trust.

4.2 Representation on the PBO

The PBO shall be managed by a board of trustees which will initially consist of the trustees contemplated in clauses 4.2.5 and 4.2.6, and which will in due course consist of:

- 4.2.1 1 (one) trustee nominated by the National Minister for Science and Technology;
- 4.2.2 1 (one) trustee nominated by the National Minister for Arts and Culture;
- 4.2.3 1 (one) trustee nominated by the National Minister for Environmental Affairs and Tourism;
- 4.2.4 1 (one) trustee nominated by the Mayor of the West Rand District Municipality;
- 4.2.5 1 (one) trustee nominated by the Premier of the Gauteng Provincial Government;
- 4.2.6 1 (one) trustee nominated by Wits;
- 4.2.7 1 (one) trustee, who shall be an internationally eminent person, nominated by DACEL in consultation with any third party/ies it wishes to consult;
- 4.2.8 1 (one) trustee, who shall be an international palaeontological expert, nominated by DACEL in consultation with Wits and any other third party/ies DACEL wishes to consult;

4.2.9 not more than 3 (three) trustees who shall each have expertise in one or more of the areas of finance, tourism, marketing and the promotion of tourists destinations, and who shall be nominated by DACEL in consultation with any third party/ies it desires to consult.

4.3 Objects

The objects of the PBO shall be to:

4.3.1 carry out in connection with the COH WHS, public benefit activities as defined in Section 30 of the Income Tax Act on a non-profit basis;

4.3.2 co-ordinate and carry out fundraising activities for the COH WHS;

4.3.3 compile and disseminate information about the COH WHS, the PBO, the Community Development Trust and the activities carried out under its auspices in relation to the COH WHS;

4.3.4 receive the concession fee and other payments from the Concessionaire pursuant to the provisions of the Concession Contract;

4.3.5 promote and support scientific research and education in and in relation to the COH WHS;

4.3.6 promote and support community development activities at or in connection with the COH WHS;

4.3.7 provide financial support for scientific research, education and community development activities in or in relation to the COH WHS;

4.3.8 make annual distributions to support and fund scientific research and education, in accordance with the provisions of Clause 5;

4.3.9 make distributions to the Community Development Trust, in accordance with the provisions of Clause 5;

4.3.10 make distributions to DACEL in its capacity as Authority for the COH WHS, or any other entity appointed as Authority for the COH WHS, to be used for purposes of the COH WHS.

4.4 Trust Deed

4.4.1 DACEL shall procure that the trust deed for the PBO:

4.4.1.1 is consistent with the requirements and obligations applicable to the COH WHS under the World Heritage Convention, that Convention's operational guidelines, the WHC Act and Regulations under it and any requirements of the Authority;

4.4.1.2 contains provisions that oblige the PBO to carry out its activities in a way that complies with the requirements and obligations applicable to the COH WHS and to the World Heritage Convention, its operational guidelines, the WHC Act and Regulations under it and any requirements established by the Authority established under the WHC Act with authority over the COH WHS;

4.4.1.3 contains provisions that oblige the PBO to make its annual distributions to the Community Development Trust, and for scientific research and education, on the bases that will be provided for in that trust deed and that are consistent with Clauses 4.3.4 to 4.3.10 inclusive and Clause 5;

4.4.1.4 contains initial provisions that have been approved by Wits, and is not thereafter amended without the prior approval of Wits;

4.4.1.5 contains provisions establishing a scientific advisory committee in accordance with the provisions of Clause 4.5; and

4.4.1.6 is consistent with the provisions of this Agreement generally.



4.5 Scientific Advisory Committee

DACEL shall procure that the PBO will establish and maintain a scientific advisory committee, which will make decisions relating to scientific matters, research and development in connection with the COH WHS. The trustees of the PBO shall be obliged to give effect to all decisions made by that scientific advisory committee. The following provisions shall apply to that scientific advisory committee:

4.5.1 Wits shall be entitled to nominate one member of that scientific advisory committee, and from time to time to remove and/or replace its nominee. In addition, the University of Pretoria, Rand Afrikaans University (or its successor-in-title from time to time) and the Northern Flagship Institution will each also be invited to nominate one member of that scientific advisory committee, on the basis that each of them will be entitled from time to time to remove and/or replace its nominee. The scientific advisory committee will also include an internationally eminent expert with expertise in an area of science relevant to scientific research in or in relation to the COH WHS, who will be appointed by DACEL in consultation with Wits and any other third party/ies DACEL wishes to consult, and not more than three other members with relevant expertise in areas of scientific research and education relevant to the COH WHS appointed from time to time by the members for the time being of the scientific advisory committee. The member of that scientific advisory committee nominated by Wits shall be the chairperson of that committee. That chairperson shall have a casting vote in addition to a deliberative vote.

4.5.2 One of the duties of the scientific advisory committee shall be to decide applications for financial support for scientific research and education in or in relation to the COH WHS to be funded from the portion of the concession fee payable to the PBO in terms of the Concession Contract contemplated in clause 5.3 and any other funds

which the trustees of the PBO make available for such funding purposes. The scientific advisory committee will notify the trustees of the PBO of its decisions on distributions to be made by the PBO to applicants for that scientific research and education, which the PBO will be required to follow in accordance with clause 5.3.

5 APPLICATION OF CERTAIN PBO FUNDS

5.1 In terms of the Concession Contract, the Concessionaire will pay a concession fee to the PBO for each year until the end of the Concession Period. All amounts received in each year by the PBO from that concession fee pursuant to the provisions of the Concession Contract shall be distributed by it as follows:

5.1.1 two-thirds of those amounts shall be distributed by it to the Community Development Trust; and

5.1.2 the remaining one-third of those amounts shall be distributed by it as financial support for scientific research and education in or in relation to the COH WHS.

5.2 Wits shall be entitled to receive one-half of all amounts distributed by the PBO in accordance with the provisions of Clause 5.1.2. Those amounts shall be distributed as annual distributions to Wits, each of which shall be made at or before the end of the calendar year in which the PBO receives payment of the relevant concession fee from the Concessionaire. If the Concessionaire fails to make any concession fee payment timeously in accordance with the provisions of the Concession Contract, but makes that payment late, then Wits shall be entitled to receive its share of that payment as part of the annual distribution to it in the calendar year in which the PBO receives that payment.

5.3 The other half of the amount distributed by the PBO in accordance with the provisions of Clause 5.1.2 shall be distributed by the PBO in accordance with the decisions of the scientific advisory committee. The Parties affirm


Wits

that scientific research and education that will be eligible for funding from this source will include, but not be limited to, projects carried out by Wits or researchers associated with it, and by any of the other institutions entitled to nominate members to the scientific advisory committee or researchers associated with them.

- 5.4 All distributions pursuant to clause 5.3 shall be made in accordance with the criteria set out in Annex A. Those criteria are not exhaustive, and the scientific advisory committee and the trustees of the PBO will be entitled also to take into account any other criteria that they deem relevant in making any such distribution.

6 DELIVERY OF STERKFONTein SITE AND RIGHTS OF WAY, OWNERSHIP AND RISK

- 6.1 Wits shall, subject to the restrictions stipulated in the Concession Contract regarding Protected Sites and the staff accommodation area in the Sterkfontein Site, on the date specified in the delivery schedule (included in the construction schedule attached to the Concession Contract) and otherwise as required by any provision of the Concession Contract, deliver undisturbed possession of the Sterkfontein Site to DACEL and shall thereafter ensure that DACEL continues to be entitled to undisturbed possession of the Sterkfontein Site, so as to enable DACEL to perform its obligations under the Concession Contract, from the date of such delivery until termination of the Concession Contract.
- 6.2 For the purposes of Clause 6.1, undisturbed possession of the Sterkfontein Site means that there will be no claims to occupy or use any part of it actual and/or pending, by any of the current or previous land owners or any other Person, and there will be no tenants or legal or illegal occupants on or with rights in respect of any part of the Sterkfontein Site, save as provided for in the Concession Contract. The Parties intend that the Concession Contract will provide for Wits's staff members and students to have access to the Sterkfontein Site, and to be entitled to use the facilities provided for

Wits


them in the Orientation Centre, in order to conduct scientific research and other activities of an educational nature, free of charge. The Parties record their intention that, subject to the requirements of Clause 15 of the current draft of the Concession Contract (or any restrictions that may replace them in the final Concession Contract), such access by Wits's staff members and students shall be unlimited for the purposes of conducting scientific research and other activities of an educational nature.

6.3 The Concessionaire will not be granted any rights in relation to the Protected Sites, save for those rights that will be detailed in the Concession Contract, or any rights that are agreed to by Wits, DACEL and the Concessionaire.

6.4 Wits shall supply DACEL with the required diagrams, copies of title deeds, information and the like to enable DACEL to fulfil its obligations in terms of the Concession Contract.

6.5 The Parties acknowledge that ownership of the Sterkfontein Site and all immovable assets thereon shall be and remain vested in Wits or its successors in title.

7 WITS'S INTELLECTUAL PROPERTY

7.1 It is specifically recorded that all rights in respect of Wits's intellectual property shall remain the sole property of Wits, subject to the rights of use granted to the Concessionaire in terms of the Concession Contract.

7.2 The Parties agree that in relation to fundraising projects by either of them or by them jointly for the COH WHS or the Project or any part of it, the "Wits" logo and the "COH WHS" logo may be used jointly; provided that neither logo may be used without the prior consent of Wits (in relation to the "Wits" logo) or DACEL (in relation to the "COH WHS" logo) first being obtained, and neither of the Parties shall be entitled unreasonably to withhold that consent. Those fundraising projects shall be carried out in accordance with the provisions of Clause 11, and the use of those logos

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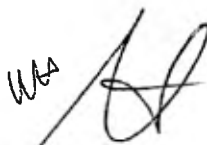
shall comply with the provisions of the Concession Contract dealing with "branding" and the use of logos in relation to services, marketing and fundraising activities relating to the COH WHS and the Project.

- 7.3 As soon as possible after signature of this Agreement, the Parties shall each nominate a media representative. Such representatives shall meet in order to agree a joint policy on media releases and public statements in relation to the Project and the ICC. All media releases or public statements in relation to the ICC or the Project by either Party shall conform to that joint policy, unless the other Party has in any specific case agreed otherwise, and each Party shall, to the extent that it is able to do so, ensure that its representatives, staff and persons affiliated with it only issue media releases or make public statements in relation to the ICC or the Project in accordance with that joint policy, or with the prior written approval of the Parties.

8 PROPRIETARY MATERIALS

To the extent that, on termination of the Concession Contract or expiry of the Concession Period, DACEL is granted a non-exclusive, royalty-free licence to use Proprietary Materials necessary for the Operation and Maintenance of the Orientation Centre or relating to the Sterkfontein Site, DACEL shall:

- 8.1 be entitled to grant to a new concessionaire appointed in accordance with the provisions of Clause 12.4 a non-exclusive, royalty-free licence to use such Proprietary Materials as part of its concession rights; or
- 8.2 in the event that the Sterkfontein Site does not constitute a part of the subject matter of any new concession contract or arrangement regarding the COH WHS –
- 8.2.1 grant to Wits a non-exclusive, royalty-free licence to use such Proprietary Materials at or in connection with the Orientation Centre and the Sterkfontein Site, which licence shall, to the extent possible, be capable of being freely transferred by Wits to third parties; or




- 8.2.2 assign (to the extent that it can do so only in respect of the Orientation Centre or the Sterkfontein Site) to Wits all rights in and to such Proprietary Materials on the basis that such rights shall, to the extent possible, be capable of being freely assigned by Wits to third parties for use at or in connection with the Orientation Centre and the Sterkfontein Site.

9 FOSSILS

- 9.1 The Parties affirm their commitment to original fossils and casts in the Wits collection or under Wits's control being made available for educational purposes, especially in connection with the ICC. The Parties also recognise that scientists with academic and research interests in those fossils and casts are entitled to have those interests protected in a reasonable way. The Parties shall endeavour in good faith to deal with those fossils and casts in a manner which to best effect recognises that commitment and those interests. The fossils to be displayed from time to time will be agreed between the Concessionaire and Wits on an annual basis, and Wits undertakes not to withdraw any such fossils unless it shall have given the Concessionaire not less than 6 (six) months prior notice of such intended withdrawal.
- 9.2 Wits shall make available original fossils to the Concessionaire for display in exhibitions at the ICC, provided that Wits shall be entitled to refuse access to original fossils that are, at the relevant time, reasonably required for scientific research being conducted under the auspices of Wits, or where the Deputy Vice Chancellor: Research at Wits decides that such original fossils are too fragile to be transported to and from such exhibitions. The Parties specifically record their intention to facilitate and enhance the visitor experience at the ICC and Wits accordingly undertakes not to unreasonably refuse access to or use in exhibitions or for making casts of any original fossils.

Wits


- 9.3 Should the Concessionaire wish to use any original fossils in exhibitions curated by it outside the ICC, this shall be subject to the prior written approval of Wits, on a 'case by case' basis and on terms agreed in each case between the Concessionaire and Wits. Wits shall act reasonably in relation to that approval and those terms.
- 9.4 The Parties shall procure that the Concession Contract will contain provisions in terms of which the Concessionaire shall bear all risk in relation to fossils in its possession or under its control and shall be obliged to take the necessary measures to ensure the security and preservation of such fossils.
- 9.5 Wits undertakes to provide the Concessionaire with access to any first generation fossil casts owned by Wits, in order to enable the Concessionaire to reproduce such casts or make images of them in any form, at the Concessionaire's cost and risk, and subject to the Concessionaire complying with the reasonable requirements of Wits in relation to the security and preservation of those fossil casts.
- 9.6 To the extent that Wits has custody or control of any fossils in respect of which no first generation casts exist and the Concessionaire wishes to have such fossils cast, Wits will either make the casts of those fossils or make the original fossils available to the Concessionaire for it to have casts made at the Concessionaire's costs, as Wits and the Concessionaire agree on each occasion. Any:
- 9.6.1 casts made by Wits shall be at the Concessionaire's cost;
- 9.6.2 fossils made available to the Concessionaire shall be made available on the basis that they are at the Concessionaire's risk, and that they are made available subject to the Concessionaire complying with the reasonable requirements of Wits in relation to the security and preservation of those fossils;

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- 9.6.3 casts made by the Concessionaire shall be made under the supervision of Wits.

10 **ARCHAEOLOGICAL MATTERS AND NATIONAL MONUMENTS**

To the extent that DACEL is able to, it shall support any application by Wits in terms of the NHR Act, to acquire custody of any archaeological objects, palaeontological material, fossils, articles of value or antiquity, structures and other remains or things of geological, palaeontological or archaeological interest or cultural significance or burial sites discovered or existing at the Sterkfontein Site, or discovered by research conducted at the Mohale's Gate Site by scientists or other researchers affiliated with Wits.

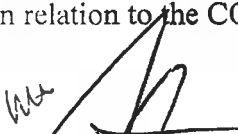
11 **FUNDRAISING**

- 11.1 The Parties contemplate that joint fundraising projects may be conducted by them in relation to the COH WHS, and/or the Project or parts of it. In addition, they contemplate that each of them may conduct its own fundraising projects in relation to the COH WHS, and/or the Project or parts of it.

- 11.2 The Parties will co-ordinate their fundraising activities in relation to the COH WHS and the Project or parts of it. For that purpose, they shall meet from time to time to identify fundraising goals to be pursued jointly by them, and others which each of them will pursue independently. In those meetings they will agree on their joint and independent fundraising programmes. In co-ordinating their fundraising activities and programmes, their aim shall be to avoid competition which is detrimental to the overall fundraising activities relating to the COH WHS and the Project.

- 11.3 The Parties shall keep each other informed as to the progress of their joint and separate fundraising activities.

- 11.4 Neither Party shall engage in fundraising programmes or activities which compete with the agreed programmes and activities of the other Party or of the Parties jointly in relation to the COH WHS and the Project.



- 11.5 Each Party shall be entitled without restriction to engage in fundraising programmes and activities which do not compete in the manner contemplated in Clause 11.2 with the joint or independent fundraising activities and programmes relating to the COH WHS and the Project referred to in Clause 11.2.
- 11.6 Funds raised specifically for the COH WHS or the Project shall not be contributed to the PBO, unless this is agreed when the relevant fundraising programme is agreed. The funds raised by Wits specifically for its own research activities or other academic interests and projects independently of the COH WHS and Project fundraising programme agreed in terms of this Clause 11 shall be retained and applied by it to those activities.
- 11.7 Subject to Clause 11.6 and to Wits's right to receive funds from the PBO in accordance with Clause 5.2, Wits shall have no right to receive distribution of any of the funds raised through its fundraising activities which, in accordance with the provisions of this Clause, are contributed to the PBO (but shall always be entitled to apply for funds contemplated in Clause 5.3 or for any other research funding offered by the PBO).
- 11.8 The Parties acknowledge that the Concessionaire will be entitled to raise revenue by various means which will include some fundraising activities directed at commercial funders and sponsors who agree to fund particular projects at the ICC. In this regard, commercial funders and sponsors means those funders and sponsors who would or might derive marketing or other commercial benefits from funding projects at the ICC. In their fundraising programmes relating to the COH WHS or the Project, the Parties shall not compete with or hinder the Concessionaire from implementing the Concessionaire's permitted fundraising activities relating to the Project.

12 OTHER OBLIGATIONS OF DACEL


- 12.1 DACEL undertakes not to take any action, exercise any rights or give any consent or approval under the Concession Contract insofar as it relates to

the Orientation Centre and/or the Sterkfontein Site, without consulting with and obtaining the prior approval of Wits. Wits reciprocally undertakes not to take any action, exercise any rights or give any consent or approval under the Concession Contract insofar as it relates to the Interpretation Centre and/or the Mohale's Gate Site, without consulting with and obtaining the prior approval of DACEL.

12.2 Notwithstanding the provisions of the Concession Contract, the Parties agree that no termination of the Concession Contract shall take place other than in the manner contemplated in this clause. If either Party wishes the Concession Contract to be terminated as a result of an infringement by the Concessionaire of that Party's rights in terms of the Concession Contract, that Party shall consult with the other Party with a view to them reaching agreement that the Concession Contract should be terminated and that DACEL should enforce its rights of termination in terms of the Concession Contract on behalf of both Wits and DACEL. If agreement cannot be reached, the dispute between the Parties shall be resolved in accordance with the provisions of Clause 20.2.

12.3 DACEL may at any time, cede, delegate, assign, sub-contract or otherwise dispose of its rights and obligations under the Concession Contract to any entity which replaces it as the management Authority of the COH WHS, or to an assignee which succeeds DACEL as the Gauteng provincial department with responsibility for conservation and environment. If it wishes to do so to any other assignee and is permitted to do so under the Concession Contract, then insofar as those rights and obligations relate to the Sterkfontein Site, it will first obtain the approval of Wits to the proposed assignee.

12.4 In the event that the Concession Contract is terminated (whether by expiry of its term or by an early termination permitted under the Concession Contract) and DACEL intends to conclude a new concession contract or enter into a similar arrangement which includes the Sterkfontein Site, the prior consent of Wits shall be required for the conclusion of such new

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concession contract or arrangement and the terms applicable to the Sterkfontein Site.

- 12.5 Blue IQ will subscribe for and hold convertible shares with limited rights in the capital of the Concessionaire. As a shareholder in the Concessionaire Blue IQ will be entitled to receive notice of and to attend meetings of shareholders of the Concessionaire. DACEL undertakes to liaise with Blue IQ and obtain from it the information which Blue IQ obtains as a shareholder of the Concessionaire and that is relevant to the Sterkfontein Site, the Orientation Centre or the activities of the Concessionaire relevant to Wits, and to keep Wits informed of all of that information which DACEL obtains.

13 OTHER OBLIGATIONS OF WITS

- 13.1 Wits will use its resources to help establish and enhance the profile of the COH WHS and the ICC by:

13.1.1 making available the services of scientists and/or other experts employed by or affiliated with it where agreed, provided that the Parties shall have agreed on the fee for the services of such scientists and/or experts in advance;

13.1.2 making available items from collections which it owns, for display in the ICC. Where those items are fossils, Wits shall be entitled in making those items available, to do so on the terms in the Concession Contract relating to fossils, and in accordance with the provisions of Clause 9 of this Agreement. Where they are not fossils, Wits shall be entitled to require that the Concessionaire accepts terms similar to those applicable to fossils in the Concession Contract, and clause 9 of this Agreement, before making those items available;

13.1.3 assisting in the marketing, scientific profiling and organising of relevant conferences and seminars at or in connection with the COH WHS, provided that such assistance shall be confined to

assistance that can be provided within an agreed upon budget or at a reasonable cost to Wits, as determined by Wits; and

13.1.4 promoting the use of the COH WHS and the ICC.

13.2 Wits undertakes to facilitate and enhance the visitor experience at the Sterkfontein Site by, *inter alia*, working with the Concessionaire to procure the provision of facilities by the Concessionaire which will enable visitors to view research being undertaken, provided that such viewing does not unreasonably interfere with the research being conducted.

13.3 In terms of the Concession Contract, the Concessionaire will be obliged before proceeding with any construction, compilation, installation or operation of any exhibition to obtain the approval of both the Parties. The Parties are entitled to reject any proposed exhibition that does not accord with prevailing academic practice, or does not accurately reflect the Story Line (as defined in the Technical Requirements set out in the Concession Contract). As between the Parties, the assessment of proposed exhibitions in light of prevailing academic practice and reflection of that Story Line shall be undertaken by Wits, and if there is any dispute with the Concessionaire concerning that Story Line, the decision of the Vice Chancellor of Wits shall be the decision of the Parties. Wits acknowledges that in carrying out that assessment it will not favour any particular academic approach or any then-current orthodoxy; it will encourage and recognise a broad and diverse approach; and it will allow the Concessionaire to reflect a range of scientific views and hypotheses in the exhibits within the broader ambit of what is known to be scientifically accurate and authentic (or what has not been established to be scientifically inaccurate or inauthentic).

14 NON-COMPETING

14.1 Each Party undertakes not to carry on any activities or establish any developments, nor to procure that third parties carry on any activities or establish any developments, within the COH WHS that will in any way

compete with the activities of the Concessionaire under the Concession Contract.

14.2 Notwithstanding the provisions of Clause 14.1, DACEL acknowledges that Wits will be entitled to develop, or procure the development of a limestone exhibit or museum associated with the old limestone kilns located on the Sterkfontein Site, provided that:

14.2.1 any such exhibit or museum is integrated into the Concessionaire's Detailed Design;

14.2.2 the prior written approval of the Concessionaire is obtained in relation to any such proposed exhibition or museum; and

14.2.3 upon completion of such development, such exhibit or museum is operated by the Concessionaire as part of its Concession Rights.

14.3 Outside the COH WHS, the Parties shall not carry on activities or establish developments which directly compete with activities or developments in the COH WHS. In that regard activities which directly compete will be those which are intended to attract participants or visitors to them in place and instead of to the affected activities or developments at the COH WHS.

14.4 The Parties acknowledge the desirability of each of them engaging in activities and developments which are complementary to those at the COH WHS – that is, which are intended to attract participants or visitors who are likely to participate in and visit the relevant activities and developments at the COH WHS in addition or in conjunction with those of the relevant Party. For example, and without limiting the principles in this sub-clause, 'Wits's plans to develop a cultural precinct around its main campus, a Rock Art Museum (RARI) and various activities and displays (which displays are complementary to the display of fossils at the ICC) connected with its Faculty of Health Sciences are recognised as being complementary to those that will be located at the COH WHS, and as

likely generally to enhance the attractions for participants and visitors of the region in which the COH WHS is located.

14.5 If DACEL notifies Wits of any breach by any member of the staff of Wits of Wits's rules restricting business activities in which its staff are permitted to engage, where those business activities may compete with the activities of the Concessionaire in relation to the Project, Wits undertakes to take reasonable steps to ensure that the breach is remedied and the relevant rules are complied with.

14.6 Any dispute between the Parties as to whether any activity or development is directly competitive with or complementary to the activities and developments at the COH WHS shall be resolved in accordance with the provisions of Clause 20.2.

15 INDEMNITY

15.1 Each Party indemnifies the other Party, and holds the other harmless from any liability, loss, damage, costs or claim of any kind whatsoever incurred or suffered by the other Party on or after the Signature Date, under any indemnity given by it in the Concession Contract in favour of the Concessionaire, if that liability, loss, damage, cost or claim arises from any act or omission of the indemnifying Party, except to the extent that it is directly caused by any negligence, material default or material breach of statutory duty on the part of the other Party.

15.2 Without limiting the generality of the foregoing, each Party's indemnity under Clause 15.1 shall extend to all liability, loss, damage, or costs and claims in respect of:

15.2.1 the death or injury to any Person; or

15.2.2 the loss of or damage to any property; or

15.2.3 any economic loss,

arising out of any such act or omission.

16 ENFORCEMENT AND CO-OPERATION

In order to fulfil the purposes of this Agreement and the Concession Contract, each of Wits and DACEL undertakes to act in good faith and in a spirit of co-operation. Without limiting the generality hereof, each of Wits and DACEL specifically undertakes:

- 16.1 to timeously fulfil all of its obligations under the Concession Contract;
- 16.2 to timeously enforce their respective rights against the Concessionaire under the Concession Contract;
- 16.3 not to enforce the O&M Bond or the Construction Bond without first consulting with the other Party;
- 16.4 to consult with each other on any matter arising under this Agreement or the Concession Contract and not to enforce any of their respective rights under the Concession Contract without having first consulted the other Party;
- 16.5 to use reasonable endeavours to protect the rights of the other Party and not to do or omit to do anything that may adversely affect the other Party;
- 16.6 to provide any approval required by either of them under the Concession Contract as expeditiously as possible. Where, in terms of the Concession Contract the joint approval of both Wits and DACEL is required, the Parties undertake to procure such joint approval as expeditiously as possible. In the event that the Parties are unable to agree on any such matter the provisions of Clauses 20:2.1.6, 20.2.1.7 and 20.2.1.8 shall apply. The Parties undertake to perform their obligations under this Clause in a manner that will not result in a breach by either or both of them of their respective obligations under the Concession Contract; and
- 16.7 to provide the other of them with information in its possession, and copies of documents and reports received by it, in relation to the COH WHS;

provided that insofar as any matter covered in this Clause 16 relates to the Sterkfontein Site, neither Party shall take any action without consulting with and obtaining the prior agreement of the other Party. If the Parties are unable to agree on any such matter, that dispute shall be resolved in accordance with the provisions of Clause 20.2.

17 ENVIRONMENTAL IMPACT ASSESSMENT

Wits shall, as an interested and affected party under the Regulatory Provisions, be entitled to make representation to DACEL on the Environmental Impact Assessment undertaken by the Concessionaire pursuant to the terms of the Concession Contract.

18 TERMINATION

Neither Party shall be entitled to terminate this Agreement for as long as the Concession Contract or any subsequent concession contract to which it is a party relating to the Concession Area, remains in force. If either Party is of the view that it has a reason to terminate this Agreement, the Parties shall consult with each other in order to attempt to reach an amicable settlement, failing which the provisions of Clause 20.2 shall apply.

19 EFFECT OF TERMINATION

19.1 If Wits terminates this Agreement, then without prejudice to any other rights that DACEL may have, Wits shall ensure that DACEL, the Concessionaire and/or any other concessionaire under a concession contract to which Wits is a party shall have access to the Orientation Centre and the Sterkfontein Caves for the purposes of performing their obligations and exercising their rights under the Concession Contract or any subsequent concession contract concluded pursuant to Clause 12.4.

19.2 If either Party terminates this Agreement, the other Party shall be entitled to claim from the defaulting party all damages suffered by the aggrieved party as a result of such termination. Wits acknowledges that, without limiting the foregoing, where it is the defaulting party, the damages for

which DACEL shall be entitled to be compensated shall include financial compensation for the depreciated value at the date of termination of this Agreement of the assets comprising the Orientation Centre at the Sterkfontein Site, depreciated on the basis ordinarily applied by DACEL in relation to the categories of fixed assets concerned.

19.3 If, on any termination of this Agreement, the Parties reach an agreement settling any claims that either of them may have against the other, which agreement is in any respect inconsistent with any of the provisions of Clauses 19.1 or 19.2, or a dispute in terms of Clause 20.2 is resolved in a way which is inconsistent with any of those provisions, then the provisions of that agreement or of that resolution shall supersede the affected provisions of those clauses.

19.4 The Parties acknowledge that the Concession Contract will continue in force in accordance with its terms, notwithstanding any prior termination of this Agreement, and each of them shall continue to exercise its rights and perform its obligations under the Concession Contract in accordance with its terms, notwithstanding the termination of this Agreement. Accordingly, where this Agreement is not terminated by Wits, or by DACEL in response to any default by Wits, the provisions of Clause 12.2 shall survive termination of this Agreement and continue to apply between the Parties.

19.5 The provisions of this Clause 19 shall survive termination of this Agreement.

20 GOVERNING LAW AND RESOLUTION OF DISPUTES

20.1 Governing Law

This Agreement shall be governed by the laws of the Republic of South Africa.

20.2 Resolution of Disputes

- 20.2.1 Any dispute between any of the Parties in regard to:
- 20.2.1.1 the interpretation of;
- 20.2.1.2 the effect of;
- 20.2.1.3 the Parties' respective rights and obligations under;
- 20.2.1.4 a breach of;
- 20.2.1.5 any matter arising out of,

this Agreement shall:

- 20.2.1.6 in the first instance, be referred to the Vice Chancellor of Wits and the Head of Department of DACEL, who shall attempt to resolve the dispute amicably between themselves within 5 (five) Business Days of the dispute arising, and if the dispute is still unresolved, then
- 20.2.1.7 in the second instance, be referred to the Chairman of the Council of Wits and the Member of the Executive Committee in the Gauteng Province responsible for conservation and the environment (currently the MEC responsible for DACEL), who shall attempt to resolve the dispute within 10 (ten) Business Days, and if it still remains unresolved, then
- 20.2.1.8 as a last resort, be submitted to arbitration in the manner set out in this Clause 20.

20.2.2 The said arbitration shall be held subject to the provisions of this Clause 20:

- 20.2.2.1 at Johannesburg;
- 20.2.2.2 informally;

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20.2.2.3 otherwise in accordance with the provisions of the Arbitration Act (Act No. 42 of 1965), as amended,

20.2.2.4 it being the intention that if possible it shall be held and concluded within 21 (twenty one) Business Days after it has been demanded.

20.2.3 The arbitrator shall be, if the question in issue is:

20.2.3.1 primarily an accounting matter, an independent accountant agreed upon between the Parties;

20.2.3.2 primarily a legal matter, a practising Senior Counsel of no less than 10 (ten) years standing agreed upon between the Parties;

20.2.3.3 any other matter, a suitably qualified and experienced independent person agreed upon between the Parties.

20.2.4 If the Parties cannot agree on the question in issue within 7 (seven) Business Days after the arbitration has been demanded, the question in issue shall be deemed to be a legal issue. If the Parties cannot agree upon a particular arbitrator in terms of Clause 20.2.3 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of Clauses 20.2.3.1, 20.2.3.2 or 20.2.3.3 as the case may be, shall be made by the President of the Attorneys Association of Gauteng within 7 (seven) Business Days after the parties have so failed to agree.

20.2.5 Subject to Clause 20.2.6, the Parties irrevocably agree that the decision in these arbitration proceedings:

20.2.5.1 shall be binding on them;

20.2.5.2 shall be carried into effect; and

20.2.5.3 may be made an order of any Court of competent jurisdiction.

20.2.6 Any Party that is aggrieved by the decision of the arbitrator pursuant to Clause 20.2.5, shall have the right to appeal such decision to a panel of 3 (three) arbitrators. That appeal must be instituted within [20 (twenty) Business Days] after the decision of the arbitrator is given to the Parties, by written notice of appeal being given by the aggrieved Party to the other Party. DACEL and Wits shall each appoint 1 (one) arbitrator within 7 (seven) days of receipt of the notice of appeal from the aggrieved Party. Within 7 (seven) days of such appointment, the 2 (two) arbitrators so appointed shall jointly appoint the third arbitrator who shall act as the president of the arbitral panel. The provisions of Clauses 20.2.2, 20.2.5, 20.2.7 and 20.3 shall apply. Neither Party shall be entitled to appeal any decision of the arbitral panel.

20.2.7 No party shall institute any action or proceeding against the other Party in any Court concerning any disputed matter other than:

20.2.7.1 for the purpose of seeking any interim relief from any competent Court having jurisdiction pending the institution of any arbitration proceedings in terms of this Clause; or

20.2.7.2 the entry of a judgement upon an award rendered by the arbitrator pursuant to this Clause.

20.3 Obligations During Arbitration

Pending any attempt at amicable settlement or any arbitration award, both Parties shall continue to perform their obligations hereunder unless otherwise agreed in writing.

21 SUPPORT

21.1 The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such acts and the taking of all such steps as may be

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open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

21.2 The Parties acknowledge that to avoid confusion and facilitate performance of the Concessionaire's obligations under the Concession Contract, the DACEL project manager in charge of the COH WHS will be designated in the Concession Contract as the representative of the Parties where any formal communication is to take place, and through whom formal consents, approvals and decisions are to be conveyed to the Concessionaire. This mechanism is not intended to release either Party from any of its obligations under the Concession Contract, nor to detract from either Party's rights under the Concession Contract. In this regard –

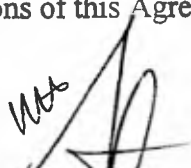
21.2.1 the Parties acknowledge that Wits will continue to have direct contact with the Concessionaire in relation to the Project, to facilitate construction and operation of the ICC in a way that is to the best advantage of the Project; but

21.2.2 all formal approvals and decisions required from Wits under the Concession Contract shall be notified by Wits to the DACEL project manager who is the formal representative of the Parties under the Concession Contract, to be conveyed by him or her to the Concessionaire formally in accordance with the Concession Contract. DACEL shall procure that its designated representative will faithfully convey those decisions and approvals in accordance with the Concession Contract.

22 MISCELLANEOUS PROVISIONS

22.1 Primacy of this Agreement

This Agreement and the Concession Contract shall govern all aspects of, and all contractual relationships relating to, the Project as between the Parties. In the event of any conflict between the Concession Contract and this Agreement, the provisions of this Agreement shall prevail.



22.2 Confidentiality

Confidential Information Defined

As used in this Agreement, the term "**Confidential Information**" shall mean:

22.2.1 information, including trade secrets, technical or non-technical data, a formula, pattern, strategy, compilation, programme, device, method, technique, drawing, process, financial data, which:

22.2.1.1 derives economic or academic value, actual or potential, from not being generally known to other Persons who can obtain economic value from its disclosure or use; or

22.2.1.2 is the subject of efforts which are reasonable under the circumstances to maintain its secrecy; or

22.2.1.3 is identified by the Party who owns such information as **Confidential Information**.

22.2.2 any information relating to any discovery, finding, scientific research, any other research or any other activity of similar nature, in relation to archaeological objects, palaeontological material, fossils, articles of value or antiquity, structures and other remains or things of geological, palaeontological or archaeological interest or cultural significance or burial sites discovered or existing on the Concession Area.

22.3 Exclusions

Confidential Information shall not include any information which:

22.3.1 has been made public by the Party whose information it is or any third party entitled to do so, or that is or becomes generally known to the public through no fault of the Party receiving it;

- 22.3.2 is received without restriction from a third party not bound by any duty of confidentiality with respect to such Confidential Information;
- 22.3.3 was developed through any Party's own efforts, provided that such development can be documented as having been developed without the use of any Confidential Information;
- 22.3.4 is required to be disclosed in terms of any Regulatory Provision;
- 22.3.5 a Party uses or discloses in order to pursue any legal remedies available to it.

22.4 Importance of Non-Disclosure

Each Party recognises and acknowledges that:

- 22.4.1 Confidential Information of the other Party may be commercially and/or academically valuable proprietary property of such Party, the design and development of which may have involved the expenditure of substantial amounts of money and the use of skilled development experts over a long period of time and which may afford such Party a commercial advantage over its competitors or other Persons;
- 22.4.2 the loss of this competitive advantage due to unauthorised disclosure or use of Confidential Information may cause great injury and harm to such Party; and
- 22.4.3 the restrictions imposed upon the Parties under this Agreement are necessary to protect the confidentiality of Confidential Information and to prevent the occurrence of such injury and harm.

22.5 Identification of Confidential Information

Each Party shall take appropriate steps to enable the other Party to identify information provided by it which should be protected as Confidential Information. Accordingly, each Party shall use its best efforts to designate any Confidential Information provided to any other Party. In addition, any

Confidential Information, which is communicated orally, shall be identified as Confidential Information in such communication.

22.6 Protection of Confidential Information

To protect the Confidential Information of the Parties, each Party shall adopt and maintain basic security measures. Such security measures shall include, to the extent appropriate, physical security measures, restrictions on access by unauthorised personnel, use of confidentiality agreements with personnel, legending, systematic segregation and appropriate record retention systems.

22.7 Prohibitions and Indemnities

Each Party receiving Confidential Information (the "Receiving Party") shall not, without the prior written consent of the Party from whom such Confidential Information was obtained (the "Disclosing Party"), disclose or divulge to or permit any Person not authorised to receive such Confidential Information to obtain any Confidential Information disclosed to the Receiving Party or any of its employees, agents, advisors or other third parties acting on behalf of the Receiving Party by the Disclosing Party (whether or not such Confidential Information is in tangible or intangible form) for as long as the Confidential Information remains Confidential Information. Each Receiving Party shall use any Confidential Information disclosed by the Disclosing Party hereunder (whether or not such Confidential Information is in tangible or intangible form) only for purposes of the Project. Each Receiving Party hereby indemnifies and holds harmless the Disclosing Party from and against all claims, losses, damages, liabilities, costs and expenses (including reasonable expenses of investigation and reasonable legal fees on an attorney and client scale, and pre- and post-judgement interest and penalties) arising from any such unauthorised disclosure or use by the Receiving Party or any of its employees, agents, advisors or other third parties acting on behalf of the Receiving Party.

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22.8 Avoidance of Unnecessary Disclosure

In providing information hereunder, each Party shall take care, and shall ensure that its respective representatives take care, to avoid the disclosure of competitively sensitive financial, academic, operating or similar data, if any, as to which disclosure would have adverse consequences to the other or both Parties.

22.9 Procedures Prior to Disclosure

The Parties acknowledge that each of them may be required to disclose Confidential Information to governmental agencies or authorities by operation of law, and each Party shall take advice of counsel and otherwise endeavour to limit disclosure of Confidential Information to that purpose. Each Party will give the other Party prior written notice of any required disclosure of Confidential Information, which notice shall specify so far as possible all material aspects of any such disclosure, so that the other Parties can seek a protective order or other action preventing such disclosure. The Receiving Party shall refrain for as long as reasonably possible from disclosing such Confidential Information so as to allow the other Party to seek such protective order or other action.

22.10 Variations in Writing

All additions, amendments, variations and any consensual cancellation of this Agreement shall be binding only if in writing and signed by duly authorised representatives of each of the Parties.

22.11 Entire Agreement

This Agreement and the Concession Contract represent the entire agreement between the Parties in relation to the subject matter hereof. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein or in the Concession Contract have been made or agreed to.



22.12 No Waiver

No waiver by any Party of any default or variation by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or variation whether of a like or different character, or shall be effective, unless in writing duly executed by an authorised representative of such Party.

22.13 Time and Indulgence

Any time or other indulgence allowed by one Party to the other in which to perform its duties and obligations hereunder or to remedy any breach hereof shall not be, and shall not be construed as, a waiver by the Party giving such time or indulgence of any of its rights hereunder.

22.14 No Third Party Beneficiaries

This Agreement is made exclusively for the benefit of the Parties and no third party shall have any rights hereunder or be deemed to be a beneficiary hereof except as may be expressly provided herein.

22.15 Language

This Agreement has been drawn up and shall be construed in the English language.

23 **DOMICILIA AND NOTICES**

23.1 Domicilia

The Parties choose as their *domicilium citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

DACEL:

Address: Department of Agriculture, Conservation, Environment and
Land Affairs

68 Diamond Building

cnr Eloff and Market Streets Johannesburg

Facsimile: (011) 337 2292

Telephone: (011) 355 1900

Attention: The Head of Department

WITS:

Address: 1 Jan Smuts Avenue,
Braamfontein,
Johannesburg

Facsimile: (011) 339 8215

Telephone: (011) 717 1242/3

Attention: The Vice Chancellor

23.2 Notices in writing

Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

23.3 Change of domicilium

Any Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in South Africa or its postal address or its telefax number, provided that the change shall become effective *vis-à-vis*

that addressee on the 7th (seventh) Business Day from the receipt of the notice by the addressee.

23.4 Requirements for notices

Any notice to a Party:

23.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 10th (tenth) Business Day after posting (unless the contrary is proved);

23.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery (unless the contrary is proved); or

23.4.3 sent by telefax to its chosen telefax number, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

23.5 Actual receipt

Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent or delivered to it in accordance with Clause 23.4.

24 WITS REPRESENTATIVE

24.1 Wits shall be represented for all purposes under this Agreement by either its Vice Chancellor or its Deputy Vice Chancellor (Research), or any other representative nominated for that purpose in writing by the Vice Chancellor.

24.2 Where DACEL requires any decision, consent, approval or similar act contemplated in Clause 1.2.16 from Wits, it shall be entitled and obliged to

Wits

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request it directly from Wits's representative nominated in accordance with Clause 24.1, or if no such representative has been nominated, from Wits's Vice Chancellor or (if DACEL so elects) Wits's Deputy Vice Chancellor (Research). If any such representative (other than the Vice Chancellor) fails to give the applicable decision, consent, approval or similar acts within 5 (five) Business Days, DACEL shall be entitled to request it directly from the Vice Chancellor and to require that it is given by that officer.

25 CONTRACT MANAGEMENT PLAN

The Parties acknowledge that each of them has seen the latest draft (as at the Signature Date) of the management plan for the design, construction, exhibition installation, operation and maintenance of the ICC, prepared in consultation with the National Treasury to comply with Clause 16.7.1(b) of the National Treasury Regulations issued in terms of the Public Finance Management Act. DACEL shall undertake the contract management responsibilities in relation to the concession for the design, construction, exhibition installation, operation and maintenance of the ICC. It will do so in accordance with the provisions of the Concession Contract, this Agreement and that contract management plan. To the extent that any of those responsibilities relates to the Orientation Centre or the Sterkfontein Site, Wits undertakes to carry out any responsibilities allocated to it by DACEL, in accordance with the Concession Contract and this Agreement, so as to enable that contract management plan to be implemented. Each of the Parties undertakes to ensure that the support required from it under that contract management plan will be made available by it, so that the requirements of the National Treasury Regulations are met.



SIGNED AT [JHB] ON [15] OCTOBER 2003.

For and on behalf of **DACEL**

Phanehom

P. HANEKOM
HEAD OF DEPARTMENT

SIGNED AT [WITS] ON **15** OCTOBER 2003.

For and on behalf of **WITS**

A. George

VICE-CHANCELLOR,
UNIVERSITY OF THE WITWATERSRAND,
JOHANNESBURG.

ANNEX A

**CRITERIA FOR DISTRIBUTION OF FUNDS BY THE PBO IN SUPPORT OF
SCIENTIFIC RESEARCH IN OR IN RELATION TO THE COH WHS**

These criteria shall be used by the trustees of the PBO and by its scientific advisory committee in selecting recipients for distribution of funds by the PBO. These criteria are not exhaustive, and those trustees and the members of that committee shall be entitled in addition to have regard to any other criteria that they deem relevant.

1 PRIOR RESEARCH RECORD

The prior research record of the applicant will be assessed taking the following into account:


1.1 Research outputs

- these may include publications in peer-reviewed journals, peer-reviewed published conference proceedings, other conference proceedings including published abstracts, books or chapters in books, keynote or plenary addresses, patents, artefacts and products, technical reports and any other measurable outputs, including annotated bibliographies, CD-ROMS, development and production of software, electronic publications, plant breeding rights, research guides, vaccines and web sites. For all these research outputs appropriate and concise descriptions must be included in the application for evaluation;
- the frequency of the publications, the impact factor of the research outputs and whether they are local or international will also be considered, as will the citation indices for journal articles.

1.2 Students

The following factors will be taken into consideration:

- 1.2.1 whether or not higher degree students are being trained in the process;

WGA


1.2.2 the applicant's prior record as a supervisor;

1.2.3 whether or not the students are persons who, prior to the new democratic dispensation marked by the adoption and coming into force of the Constitution of the Republic of South Africa Act No. 108 of 1996, were disadvantaged by unfair discrimination on any of the grounds contemplated in the Constitution.

1.3 **Conferences**

1.3.1 whether or not the applicant appears regularly at international conferences to present his/her work;

1.3.2 whether or not such appearances occur by invitation.

1.4 **Professional Associations**

Details of the applicant in relation to:

1.4.1 academic qualifications;

1.4.2 office held in national and international associations;

1.4.3 memberships of editorial boards of journals;

1.4.4 honorary degrees conferred;


1.4.5 civil awards conferred.

1.5 **National Research Foundation Rating**

The NRF rating, if any, held by the applicant in the relevant sector.

1.6 **Other Team Member or Collaborators**

The criteria set out above will also be applied to team members of or collaborators with the applicant.

WAA


2 NATURE OF THE RESEARCH PROPOSAL

The following will need to be established:

- 2.1 the feasibility of the proposal and the realism of the time frame;
- 2.2 the sources of additional funding (if any);
- 2.3 that the applicant will acknowledge the source(s) of funding for the proposal;
- 2.4 the stakeholders in terms of the likely outputs;
- 2.5 whether or not:
 - 2.5.1 the work falls within an area regarded by the Scientific PBO as a priority interest;
 - 2.5.2 value for money will be obtained;
 - 2.5.3 the work is original;
 - 2.5.4 the proposal will add to the sum total of useful human knowledge, have practical application, lead to commercial development capable of being dealt with by the applicant and his/her team members or collaborators, address a pressing local or national need;
 - 2.5.5 the work is ethically sound as determined by the ethics committee of the appropriate institution;
 - 2.5.6 the budget is costed realistically;
 - 2.5.7 there is sufficient funding for the proposal;
 - 2.5.8 funding other than from the Scientific PBO has been obtained;
 - 2.5.9 publications will ensue or there are other more appropriate means of disseminating the likely results;

MA


- 2.5.10 this is an area in which the applicant has previously demonstrated some level of expertise;
- 2.5.11 the work will raise public awareness and understanding of the COH WHS.

Wits


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SCHEDULE 1

PART A

DESCRIPTION

MOHALE'S GATE SITE

The land situated adjacent to the COH WHS, forming part of the Concession Area and over which the Interpretation Centre will be established being the farm Interpretation Centre 932-JQ, comprising Portion 4 of the farm Waterkloof 515-JQ, Portion 1 of the farm Waterpoort 585-JQ, and Portion 3 of the farm Spring Farm 588-JQ, measuring 100 (one hundred) hectares.

STERKFORTEIN SITE

- (a) Portion 1 called the Isaac Edwin Stegmann Nature Reserve of the farm Zwartkrans 172, Registration Division I.Q. Province of Gauteng; in extent 17,1306 hectares; and
- (b) the Remaining Extent of the farm Zwartkrans 172, Registration Division I.Q. Province of Gauteng; in extent 61,941 hectares, indicated on the plan attached hereto as Part B of Schedule 1, forming part of the Concession Area over which the Orientation Centre will be established, and shall include the Protected Sites but exclude the area marked "Staff Accommodation" and indicated in blue on the plan.
-

SCHEDULE 1 - PART B

PAGE 5/14 - RCVD AT 2003/10/16 02:25:01 (South Africa Standard Time) - SVR:ZA-JHB-FAX001/6 - DNS:5077 - CSID:27 11 466 0974 - DURATION (mm-ss):05-28

COMPONENTS

1. The figure ABCDE~~F~~HJKLMNPQR represents the Remainder of the farm vide Diagram S.G. No. A1255/1984 10003/1861 Deed of Transfer no.
2. The figure ^DEF~~GH~~ represents Portion 1 vide Diagram S.G. No. A5068/1957 Deed of Transfer No. 20082/1958

NOTES

1. The figure abcdefg represents a Proclamation Area vide Diagram S.G. No. A275/1945
2. The figure hjkm represents a Proclamation Area vide Diagram S.G. No. A 4382/1992

S.G. No.

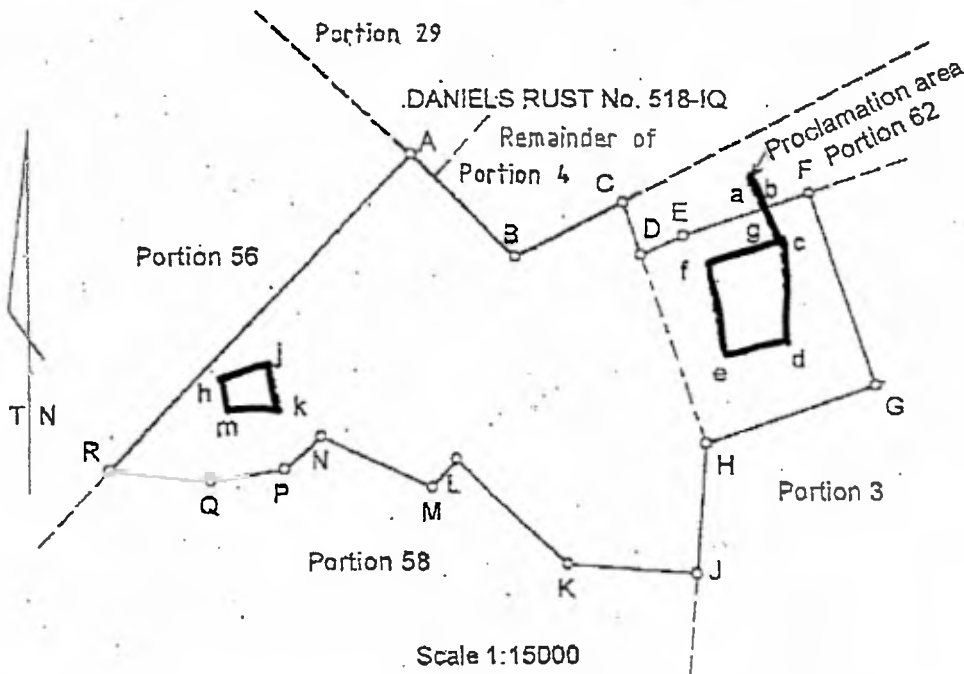
3461/2002

Approved

[Signature]

for
SURVEYOR-
GENERAL

2002-06-21



The figure **ABCDEF~~F~~HJKLMNPQR.**
 represents **79,0725 hectares** of land being
PORTION 65 of the farm
ZWARTKRANS No. 172-IQ
 and comprises components 1 and 2 as listed above

Gauteng Province,
 Compiled in May 2002 by me

[Signature]

A.P. MARSHALL (PLS 0378)
 Professional Land Surveyor

This diagram is annexed to	The original diagram are as listed above	File -/21
No.		S.R.
d.d.		G.P.
i.f.o.		Comp. IQND-2
Registrar of Deeds Pretoria		



[Handwritten mark]

SIDES Metres		ANGLES OF DIRECTION		COORDINATES Y System: WG 27° X	
		Constants:		- 0,00	+ 2 800 000,00
AB	500,88	227 33 40	A	- 65 768,41	+ 73 615,52
BC	678,08	235 26 50	B	- 66 138,06	+ 73 277,52
CD	97,73	239 25 00	C	- 66 696,52	+ 72 892,93
DE	150,50	344 52 36	D	- 66 780,66	+ 72 843,21
EF	490,54	41 39 50	E	- 66 822,53	+ 72 998,15
FG	262,44	343 01 50	F	- 66 503,09	+ 73 357,15
GH	216,80	15 51 30	G	- 66 579,58	+ 73 608,16
HJ	1065,81	324 39 25	H	- 66 520,44	+ 73 816,70
JK	206,67	99 04 40	J	- 67 136,96	+ 74 686,09
KL	36,35	97 32 00	K	- 66 932,90	+ 74 653,49
LM	21,42	94 52 10	L	- 66 896,86	+ 74 648,72
MN	156,66	92 39 00	M	- 66 875,51	+ 74 646,90
NP	58,81	83 48 20	N	- 66 719,02	+ 74 639,66
PQ	64,01	80 28 20	P	- 66 650,55	+ 74 646,01
QR	118,21	73 12 30	Q	- 66 597,42	+ 74 656,60
RA	1291,72	146 20 47	R	- 66 484,25	+ 74 690,75
INDICATORY DATA					
D-D1	0,64	59 25 00	D1	- 66 780,11	+ 72 843,53
E-E1	0,66	73 00 00	E1	- 66 821,90	+ 72 998,34
H-H1	0,23	195 51 30	H1	- 66 520,50	+ 73 816,48
HEKPOORT (2527) Δ 20				- 62 985,35	+ 70 558,25
WELTEVREDEN W (2527) Δ 87				- 67 575,60	+ 72 626,17

3472/2002

Approved
Morley
for
SURVEYOR-
GENERAL
2002-06-21

SHEET 1
OF
3 SHEETS

- COMPONENTS :**
- 1) The figure ABJKLMNPQR represents Portion 3 of the farm
SPRING FARM No. 588-JQ, vide Diagram SG No. 3471/2002
Deed
 - 2) The figure BabGH represents Portion 4 of the farm
WATERKLOOF No. 515-JQ, vide Diagram SG No. 3469/2002
Deed
 - 3) The figure aCDEPb represents Portion 1 of the farm
WATERPOORT No. 585-JQ, vide Diagram SG No. 3470/2002
Deed

The figure ABCDEFGHJKLMNPQR represents
100,0000 hectares of land, being
the farm INTERPRETATION CENTRE No. 932-JQ
and comprises components 1 to 3 as shown above.

Province of Gauteng. Surveyed in October and November 1993
and in March and April 2002 by me
JAE Morley (PLS 418)
Professional Land Surveyor

This diagram is annexed to	The existing diagrams and deeds	File JQ 932
No.	are as shown above.	SR 1522/2002
Registrar of Deeds PRETORIA		Comp: JQSY-32 JQSY 34



Morley

Servitude Notes :

- 1) The line km represents the centre line of a Power Line Servitude 22,00 metres wide vide Diagram SG No. ~~A5670/1980~~ 2137/1998 Deed of Servitude No. ~~K2416/1981~~.
- 2) The figure defg represents a Servitude vide Diagram SG No. A 5460/1973, Deed of Servitude No. K 854/1977s.
- 3) The line hj represents an Underground Pipeline Servitude 2,50 metres wide vide Diagram SG No. 12679/1995, Deed of Servitude No. K 6124/1997s.

347212002

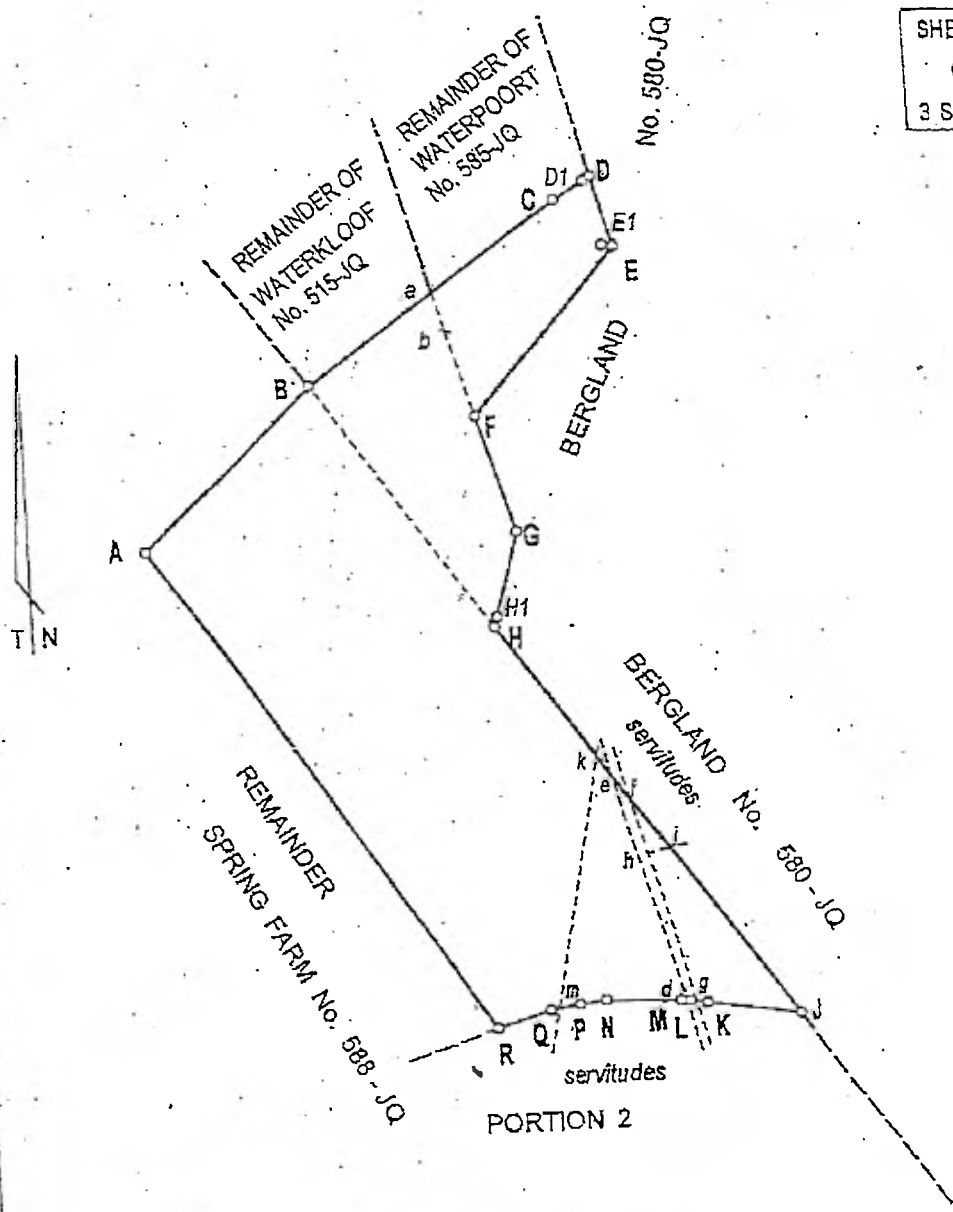
Approved

[Signature]

for
SURVEYOR-
GENERAL

2002-06-21

SHEET 2
OF
3 SHEETS



Scale 1:15 000

the farm INTERPRETATION CENTRE No. 932-JQ

Surveyed in October and November 1993
and in March and April 2002 by me

J A E Morley (PLS 418)
Professional Land Surveyor.



347212002
Approved
[Signature]
for
SURVEYOR-
GENERAL
2007-06-21

SHEET 3
OF
3 SHEETS

Description of Beacons

- A, B, R 15mm X 600mm steel pegs.
- C tubular fence post.
- D, E, H not beacons.
- D1 20mm steel peg.
- E1 20mm iron peg (next to corner fence post)
- F 20mm steel peg (~~6,7 metres east of corner fence post~~)
- G fencing standard (next to old rail fence post).
- H1 old rail fence post (1,6 metres high).
- J 20mm X 900mm steel peg (1,4 metres west of corner fence post).
- K tubular gate post.
- L, M 20mm X 900mm steel pegs.
- N, Q tubular corner fence posts.
- P 20mm X 900mm steel peg (next to fencing standard).

the farm INTERPRETATION CENTRE No. 932-JQ

Surveyed in October and November 1993
and in March and April 2002 by me

[Signature]
J A E Morley (PLS 418)
Professional Land Surveyor.
[Signature]



SCHEDULE 1

PART C

**ORIENTATION CENTRE FACILITIES FOR WITS STAFF AND
STUDENTS**

- The facilities in the Orientation Centre to which Wits staff members and students will require access will be designated in the Detailed Design of the Orientation Centre when it is
 - approved in accordance with the terms of the Concession Contract.
-

AK *MB*