

ANNEXURE .....

**ROAD ACCIDENT FUND  
SERVICE PROVIDER AGREEMENT  
SCHEDULE**

This **Service Provider Agreement** records the agreement between the Road Accident Fund and its Service Provider, which is recorded in this Schedule and the Annexures specified in clause 1.6 below. The standard South African Government Procurement General Conditions of Contract are incorporated into this **Service Provider Agreement** by reference only.

The contracting parties are the below mentioned persons and agree as follows:

**The Road Accident Fund (the “Fund”)**

(a statutory entity established in terms of section 2(1) of the Road Accident Fund Act, Act No. 56 of 1996, with its principal place of business at 38 Ida Street, Menlo Park, Pretoria, herein represented by Eugene Watson in his capacity as Chief Executive Officer, duly authorised thereto)

Physical Address: 420 Witch-hazel Avenue, Eco Glades 2 Office Park, Centurion  
Postal Address: Private Bag 178, Centurion, 0046  
Tel: 012 621 1769  
Contact Person: Edgar Matthysen  
E-mail: Edgarm@raf.co.za

and

.....] (the “Service Provider”)<sup>1</sup>

[(..... , herein represented by ....., duly authorised thereto in terms of .....)]<sup>2</sup>

[Physical Address: ...  
Postal Address: ...  
Contact Person: ...  
Tel: ...  
Fax ...  
E-mail: ...]<sup>3</sup>

<sup>1</sup> The name of the successful bidder will be specified after award of the tender.

<sup>2</sup> The details of the successful bidder and representative authorized to sign the contract will be specified after award of the tender.

<sup>3</sup> The contact details of the successful bidder and contact person will be specified after award of the tender.

## 1. RECORDAL

- 1.1. The **Service Provider** has been awarded a contract in terms of the **Fund's** Request for Proposal process of procurement.
- 1.2. This **Service Provider Agreement** serves to record the agreement between the parties and to regulate all aspects of the services and/or products to be supplied by the **Service Provider** and the general business relationship between the parties.
- 1.3. The Scope of Work specifying the services and products to be supplied to the **Fund** are those contained in the **Fund's** Request for Proposal under reference number ....., and any additions or amendments thereto furnished to the **Service Provider** during the procurement process. It is recorded that the **Service Provider** accepted these provisions and on the basis thereof submitted its proposal and any supplementary information thereto.
- 1.4. Such Scope of Work is incorporated into the provisions of this **Service Provider Agreement** as if specifically mentioned and are binding and enforceable on the parties.
- 1.5. In the event of any of the provisions of the **Fund's** Request for Proposal and any additions or amendments thereto furnished to the **Service Provider** during the procurement process, including the Scope of Work mentioned in clause 1.4 above, being in conflict with the provisions of this **Service Provider Agreement**, the provisions of this **Service Provider Agreement** (including the Annexures to this **Service Provider Agreement**) shall prevail.
- 1.6. It is recorded that the further Annexures to this **Service Provider Agreement** are as follows:
  - 1.6.1. Annexure A: RAF Special Conditions of Contract ("SCC");
  - 1.6.2. Annexure B: Deliverables Schedule<sup>4</sup>;
  - 1.6.3. Annexure C: Implementation Schedule<sup>5</sup>; and
  - 1.6.4. Annexure D: Pricing Schedule<sup>6</sup>.

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<sup>4</sup> The bidder is required to describe in a stand alone document to the bid (the Deliverable Schedule) the details of the respective services and products to be provided to the Fund.

<sup>5</sup> The bidder is required to describe in a stand alone document to the bid (the Implementation Schedule) the details of how and when the services and products will be delivered to the Fund.

<sup>6</sup> The bidder is required to describe in a stand alone document to the bid (the Pricing Schedule) the details of the pricing in respect of the services and products to be provided to the Fund.

## 2. ORDER OF PRECEDENCE

- 2.1. In the event of any of the provisions of this **Service Provider Agreement** being in conflict with each other, the conflict shall be resolved in accordance with the following order of precedence:
- 2.1.1. any **Change Order** that expressly provides that it takes precedence;
  - 2.1.2. this **Schedule**;
  - 2.1.3. the Scope of Work contained in the Request for Proposal;
  - 2.1.4. **Annexure A** (RAF Special Conditions of Contract (“SCC”));
  - 2.1.5. the **Government Procurement Special Conditions of Contract**;
  - 2.1.6. **Annexure B** - Deliverables Schedule;
  - 2.1.7. **Annexure C** - Implementation Schedule;
  - 2.1.8. **Annexure D** - Pricing Schedule; and
  - 2.1.9. other **Change Orders** (a later **Change Order** takes precedence over an earlier **Change Order**, unless the parties expressly stated a contrary intention in the specific older **Change Order**).

## 3. CHANGE ORDER

- 3.1. In this **Service Provider Agreement** “**Change Order**” means a document which is used for the specific purpose of recording the details of any amendments, deletions, insertions or additions to this **Service Provider Agreement** and which shall be signed by the authorised representatives of both parties before becoming effective and binding on the parties.
- 3.2. Should the parties wish to make any amendment, deletion, insertion or addition to this **Service Provider Agreement** the parties shall prepare a **Change Order**.
- 3.3. No **Change Order** shall be of any force or effect until it is executed by the duly authorised signatories of each of the parties.
- 3.4. Each executed **Change Order** shall be subject to the terms and conditions contained in this **Service Provider Agreement**, except as otherwise expressly provided for in such **Change Order** by the parties by specifically stating the parties’ intention to amend such terms and conditions of this **Service Provider Agreement** and identifying the specific terms and conditions being amended.
- 3.5. A unique, sequential, number shall be allocated to each **Change Order**.
- 3.6. The authorised representative of the **Fund**, for purposes of executing a **Change Order**, is the **Fund’s** Chief Executive Officer.

- 3.7. No terms and conditions contained in, without limitation, any purchase order, quote, invoice, statement or similar document, other than a **Change Order** executed in pursuance to this clause 3, shall have the effect of changing any terms or condition contained in this **Service Provider Agreement**.

#### **4. SERVICES, MATERIALS OR PRODUCTS SUPPLIED (DELIVERABLES)**

- 4.1. The **Fund** appoints the **Service Provider** to provide to the **Fund** the services and / or products referred to in clause 1.3 above and as fully described in the specification contained in the **Fund's** Standard Bid Document and Annexure B and C.
- 4.2. The **Service Provider** shall provide the services and / or products as and when required and in the following instances:
- 4.2.1. during the scheduled testing; and
- 4.2.2. at the time of a disaster.
- 4.3. The **Service Provider** accepts the appointment on the terms and conditions set-out in this **Service Provider Agreement**.

#### **5. PAYMENT**

- 5.1. The **Fund** shall pay the **Service Provider**, in accordance with the provisions specified below, for the due, full and proper performance and fulfilment by the **Service Provider** of its obligations in terms of this **Service Provider Agreement**.
- 5.2. The **Fund** shall pay the **Service Provider** a monthly fee, monthly in arrears, in accordance with the pricing model set out in **Annexure D** (Pricing Schedule).
- 5.3. The pricing of this **Service Provider Agreement** is:
- 5.3.1. VAT inclusive;
- 5.3.2. inclusive of all other taxes and duties which are levied or charged by any revenue authority (including, without limitation, the South African Revenue Services);
- 5.3.3. inclusive of all costs and disbursements; and
- 5.3.4. fixed.
- 5.4. The **Service Provider** shall ensure that all invoices submitted to the **Fund** are sufficiently detailed and include such supporting documentation as is necessary for the **Fund** to be able to confirm the correctness of the amounts being invoiced.

- 5.5. Payment shall be made in accordance with the provisions of clause 4 in **Annexure A**.
- 5.6. The **Service Provider** acknowledges that the pricing specified in this **Service Provider Agreement** is intended to compensate the **Service Provider** fully for all **Deliverables** to be performed or provided by the **Service Provider** pursuant to this **Service Provider Agreement**. Accordingly, the **Fund** will not be obligated to pay the **Service Provider** any amounts in addition to those specifically described in this **Service Provider Agreement**.

## 6. DURATION AND DATES

- 6.1. This **Service Provider Agreement** shall come into effect on the date of signature by the authorised representative of the party signing last in time, the “**Effective Date**”, and shall endure, subject to its terms and conditions, for the maximum period of 12 (twelve) months (the “**Initial Period**”), unless terminated by the **Fund** on not less than 30 (thirty) days prior written notice to the **Service Provider**.
- 6.2. The **Service Provider** acknowledges and agrees that any and all work performed, including without limitation the procurement of goods and services by the **Service Provider**, prior to the **Effective Date** and any and all work performed after the expiry of the **Initial Period**, shall be at the **Service Provider's** sole risk and the **Service Provider** shall be without recourse against the **Fund**.

## 7. TAX CLEARANCE CERTIFICATE

- 7.1. Without limiting in any manner whatsoever the generality of the **Service Provider's** obligations in terms of clause 17 of **Annexure A**, the **Service Provider** shall, for the full and uninterrupted duration of this **Service Provider Agreement**, ensure that the **Fund** is –
- 7.1.1. placed in possession of an original, valid, unexpired Tax Clearance Certificate, issued by the South African Revenue Services;
- 7.1.2. furnished with a new, original, valid, unexpired Tax Clearance Certificate, issued by the South African Revenue Services, not less than 30 (thirty) days prior to the expiry of the Tax Clearance Certificate contemplated in clause 7.1.1 above, in the event of any such Tax Clearance Certificate expiring during the duration of this **Service Provider Agreement**.
- 7.2. Notwithstanding anything seemingly to the contrary in this **Service Provider Agreement**, until the **Service Provider** complies fully with its obligations under clause 7.1 above, the **Fund** has the right to withhold payment of any unpaid amounts provided for in this **Service Provider Agreement** –

7.2.1. without prejudice to any other rights which the **Fund** may have in terms of this **Service Provider Agreement** or in law; and

7.2.2. without interest accruing on the amount or amounts withheld.

7.3. A breach by the **Service Provider** of its obligations under clause 7.1 above is a material breach which will entitle the **Fund**, at its sole election, to cancel this **Service Provider Agreement** forthwith, without prejudice to any other rights which the **Fund** may have in terms of this **Service Provider Agreement** or in law.

## 8. SUBDELEGATION

8.1. The **Service Provider** shall not subcontract to any third party (“the **Subcontractor**”) any portion of the **Deliverables** that must be provided under this **Service Provider Agreement** without the **Fund’s** prior written consent.

8.2. The **Fund** shall not be under any obligation to consent to a request by the **Service Provider** to subcontract to any third party any portion of the **Deliverables** that must be provided under this **Service Provider Agreement**.

8.3. The **Fund** shall, when giving consideration to a request contemplated in clause 8.1 above, take into consideration the following aspects pertaining to the **Subcontractor** :

8.3.1. An original B-BBEE Status Level Verification Certificate in respect of the **Subcontractor**, issued by an accredited verification agency, alternatively a certificate issued by the accounting officer (in respect of a close corporation), the registered auditor (in respect of a company) or accredited verification agency, that the **Subcontractor** is an Exempted Micro Enterprise, furnished to the **Fund** by the **Service Provider** with the written request contemplated in clause 8.1 above;

8.3.2. An original Declaration of Interest completed and signed by the **Subcontractor** and furnished to the **Fund** by the **Service Provider** with the written request contemplated in clause 8.1 above; and

8.3.3. An original valid Tax Clearance Certificate in respect of the **Subcontractor** and furnished to the **Fund** by the **Service Provider** with the written request contemplated in clause 8.1 above.

8.4. The **Fund** may, if the **Fund** elects to approve a request contemplated in clause 8.1 above, make such consent subject to such terms and conditions as the **Fund** in its sole election consider reasonable.

- 8.5. Notwithstanding that the **Fund** may elect to consent to a request contemplated in clause 8.1 above, such consent by the **Fund** shall not relieve the **Service Provider** of any of the **Service Provider's** obligations under this **Service Provider Agreement** and the **Service Provider** shall remain responsible for the actions and omissions of the **Subcontractor**.

## 9. SPECIAL TERMS AND CONDITIONS

- 9.1. At no additional cost to the **Fund**, other than the payment to be paid by the **Fund** to the **Service Provider** for the **Deliverables** in terms of this **Service Provider Agreement**, the **Service Provider** undertakes to:
- 9.1.1. supply the **Deliverables** with promptness, diligence, in a professional manner and with all due care, skill and expertise;
- 9.1.2. supply the **Deliverables** within the agreed timelines;
- 9.1.3. at all times act in the best interest of the **Fund** and avoid all conflicts of interest that may arise;
- 9.1.4. perform its obligations in a manner that does not infringe or constitute an infringement or misappropriation of any intellectual property or other proprietary rights of any third party; and
- 9.1.5. comply with all legal requirements and with the necessary licenses, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the supply of the **Deliverables** to the **Fund**.
- 9.2. Subject to the remaining provisions of this **Service Provider Agreement** making provision for specific service levels (if any), the **Service Provider** shall remedy a breach of the undertakings given in clause 9.1 within 5 (five) days of receipt by the **Service Provider** of the **Fund's** written notice of breach.
- 9.3. Provided that the **Service Provider** is not prevented from remedying a breach of an undertaking given in clause 9.1 above due to the **Fund** not complying with the **Fund's** obligations in terms of this **Service Provider Agreement**, the failure by the **Service Provider** to remedy the breach within the period specified in clause 9.2 above, or within such longer period agreed to by the **Fund** in writing, shall entitle the **Fund** to cancel this **Service Provider Agreement** forthwith, without prejudice to any other remedies that the **Fund** may have in terms of this **Service Provider Agreement** or in terms of the law.

- 9.4. Risk and benefit of any products and / or materials supplied to the **Fund** as part of the **Deliverables** shall pass to the **Fund** on the **Fund** taking delivery.
- 9.5. Ownership of any products or materials supplied to the **Fund** as part of the **Deliverables** shall pass to the **Fund** on the **Fund** making payment to the **Service Provider** in respect of the specific products and / or material.
- 9.6. Subject to the provisions of this **Service Provider Agreement**, including without limitation clause 9.5 below, all right, title and interest in intellectual property shall remain the property of the owner of such intellectual property.
- 9.7. All right, title and interest in intellectual property specifically created for the **Fund** as part of the **Deliverables** shall vest in the **Fund** and the **Service Provider** cedes and assigns insofar as it may be necessary all intellectual property in such **Deliverables** to the **Fund**.

## **10. SERVICE LEVEL (KEY PERFORMANCE INDICATORS) AND PENALTIES**

10.1. The following definitions apply to this clause:

10.1.1. “**Amount at Risk**” means 20% of the **Invoice Amount**;

10.1.2. “**Availability**” means:

10.1.2.1. the **Service** will be available and ready for use by the **Fund** within 40 (Forty) Business Hours after a **Service Call** during the scheduled testing and within 8 (Eight) Business Hours during the disaster;

10.1.2.2. subject to sub clause 10.1.2.3 below, the **Service** shall be free from any defects and errors; and

10.1.2.3. during the period of use network connectivity availability shall not fall below 99.5%;

10.1.3. “**Business Day**” means Monday to Friday, except Gazetted public holidays in the Republic of South Africa;

10.1.4. “**Business Hours**” means 07h00 to 17h00 on **Business Day**;

10.1.5. “**Invoice Amount**” means the monthly amount, less VAT, payable to the **Service Provider** for the particular month;

10.1.6. “**Service**” means the aggregate of all deliverables specified in the Scope of Work referred to in clause 1.3 above;



- 10.1.7. “**Service Call**” means an e-mail notification to the **Service Provider** by the **Fund’s** authorised representative notifying the **Service Provider** that the **Fund** will require use of the **Service**;
- 10.1.8. “**Service Level**” means the targeted **Availability** of the **Service** for use by the **Fund** following a **Service Call**; and
- 10.1.9. “**Service Level Breach**” means a failure by the **Service Provider** to maintain the **Service Level**.
- 10.2. The **Service Provider** shall provide the **Service** in accordance with the **Service Level** failing which the **Fund** shall become entitled to the penalties (credits) specified below.
- 10.3. Notwithstanding anything seemingly to the contrary the **Fund** may in its sole discretion elect to waive a penalty and pursue a claim for damages instead.
- 10.4. The **Service Provider** shall continuously measure its performance against the **Service Level**.
- 10.5. Each **Service Level Breach** shall entitle the Fund to a penalty (credit) calculated as follows:
- 10.5.1. in respect of clause 10.1.2.1 a penalty of 10% of the **Amount at Risk** for each completed business hour for which the **Service** is not **Available** or part thereof;
- 10.5.2. in respect of clause 10.1.2.2 a penalty of 10% of the **Amount at Risk** for each completed business hour for which a defect or error in the **Service** is not resolved or part thereof; and
- 10.5.3. in respect of clause 10.1.2.3 a penalty of 10% of the **Amount at Risk** for each completed business hour for which the network connectivity availability falls below 99.5% or part thereof.
- 10.6. The **Service Provider** shall credit the **Fund** with the penalties (credits) due to the **Fund** for a particular month in the invoice issued for payment in respect of the following month, provided that in respect of penalties (credits) becoming due in the last month of this **Service Provider Agreement** the **Fund** shall be entitled to claim payment from the **Service Provider** following termination of this **Service Provider Agreement**. This clause is a separate and divisible clause from this **Service Provider Agreement** and shall remain in operation after this **Service Provider Agreement** is terminated or comes to an end through effluxion of time.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

\_\_\_\_\_  
For: **ROAD ACCIDENT FUND**  
Name: Eugene Watson  
Capacity: CEO

\_\_\_\_\_  
Witness  
Name:

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

\_\_\_\_\_  
For:  
Name:  
Capacity: <sup>7</sup>

\_\_\_\_\_  
Witness  
Name:

\_\_\_\_\_  
<sup>7</sup> The details of the successful bidder and representative authorized to sign the contract will be specified after award of the tender.

**ANNEXURE A**  
**ROAD ACCIDENT FUND**  
**SPECIAL CONDITIONS OF CONTRACT (“SCC”)**

**1. INTERPRETATION AND DEFINITIONS**

- 1.1. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context of the Agreement, the following words, terms or phrases have the following meanings:
- 1.1.1. **“Fund”** means the Road Accident Fund, a juristic person established in terms of Section 2(1) of the Road Accident Fund Act No. 56 of 1996 (as amended), as well as its successor in title and any other juristic person to whom the **Fund's** rights and obligations may be assigned and devolve upon;
- 1.1.2. **“Service Provider”** means the party described in the Schedule of the **Service Provider Agreement**, or in lieu of a **Service Provider Agreement** the party described as the Supplier in the Purchase Order issued by the Fund (whichever is applicable);
- 1.1.3. **“Confidential Information”** means the terms of this Agreement; any information concerning either party or its stakeholders and customers including its operations, business and financial affairs and all other matters which relate to the business of either party and in respect of which information is not readily available in the ordinary course of the business to a competitor of such party or in to any third party; proprietary information or secret information;
- 1.1.4. **“Intellectual Property Rights”** means all rights in and to the intellectual property including, without limitation, any know-how, patent, copyright, registered design, trademark or other industrial or intellectual property, whether registered or not and whether or not capable of being registered and any application for any of the aforementioned.
- 1.2. Any reference to the singular includes the plural and *vice versa*.
- 1.3. Any reference to natural persons includes legal persons and *vice versa*.
- 1.4. Any reference to a gender includes the other gender/s.
- 1.5. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.6. Where any number of days is prescribed in this Agreement same shall be considered to be calendar days and reckoned exclusive of the first and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.

- 1.7. The use of the word "including" or "includes" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example.
- 1.8. The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.
- 1.9. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.10. Records shall be binding on the parties and are not for information purposes only.
- 1.11. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.12. To the extent that there is a conflict between the provisions contained in the Schedule and the provisions contained in these Special Terms and Conditions of Contract (SCC), the provisions of the Schedule shall prevail.
- 1.13. To the extent that there is a conflict between the provisions contained in the Special Terms and Conditions of Contract (SCC) and the provisions contained in Government Procurement General Terms and Conditions of Contract (GCC), the provisions of the SCC shall prevail.
- 1.14. Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, abbreviations and phrases known in the relevant industry to which this Agreement applies shall be interpreted in accordance with their generally known meanings in such industry.
- 1.15. Any reference to any statute or statutory regulation shall include a reference to any amendments thereto and to the successor/s in title to such statutes and statutory regulations.
- 1.16. Any reference to any organisation, institution, office, body, department, organ or person vested with certain powers and authority shall include a reference to its successor/s in title.
- 1.17. The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.

- 1.18. If any provision in a recordal, preamble or definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement.
- 1.19. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

## 2. RECORDAL

- 2.1. The SCC is the **Fund's** standard terms and conditions of contract and constitutes part of the **Service Provider Agreement** between the Fund and the Service Provider, or in lieu of a **Service Provider Agreement**, constitutes part of the Purchase Order issued by the Fund to the Service Provider (whichever is applicable)
- 2.2. All references to the Agreement are references to the **Service Provider Agreement** or Purchase Order (whichever is applicable) and the SCC and the GCC.

## 3. NON-PERFORMANCE OF THE SERVICE PROVIDER

- 3.1. In the event of the Service Provider not meeting the performance standards set by the Fund, the Fund shall be entitled to call upon the Service Provider by written notice to remedy the situation.
- 3.2. Should the Service Provider fail to remedy the situation within 14 (fourteen) days the Fund shall be entitled to cancel this Agreement forthwith and without further notice to the Service Provider.
- 3.3. Should the Service Provider fail to meet the set performance standards, the Fund shall be entitled to cancel any outstanding payment due to the Service Provider with regards to the deliverable in terms of the Agreement.

## 4. PAYMENT

- 4.1. An original and detailed tax invoice must be submitted after the Fund has acknowledged receipt of the services rendered or goods received in writing.
- 4.2. A correct and original tax invoice must be submitted to the Fund by the 1<sup>st</sup> (first) calendar day of the month.
- 4.3. All supporting documentation, including but not limited to monthly statements (where applicable) and a verification of bank details, must be received before payment can be effected.

- 4.4. The Service Provider shall be required to verify its bank account details by furnishing the Fund with a letter from its bank with a bank stamp, alternatively it shall furnish the Fund with a cancelled cheque.
- 4.4.1. The following bank details must be verified:
- Account Holder and any Trading Names
  - Bank Name
  - Branch Name
  - Branch Code
  - Account Number
  - Type of Account
- 4.5. Payment will be made by the end of the month on condition that the documentation listed in 4.2 and 4.3 above is furnished to the Fund by the 1<sup>st</sup> (first) calendar day of the month.
- 4.6. If an invoice and supporting documentation is submitted to the Fund after the 1<sup>st</sup> (first) calendar day of the month it shall only be paid by the end of the following month.
- 4.7. Should the documentation be incomplete, incorrect or late (see clauses 4.1 – 4.6 above), payment shall only be effected once the correct and complete documents are received and shall be made in terms of the provisions of 4.5 and 4.6 above. No penalty interest shall be permitted to be charged by the Service Provider in this event.
- 4.8. Payment shall be effected by electronic bank transfer or any other method of payment decided to be used by the Fund from time to time and at the **Fund's** sole discretion.
- 4.9. Any special or unusual expenses incurred by the Service Provider at the **Fund's** specific written request must be charged by the Service Provider at cost to the Fund. The Fund may inspect expense vouchers at any reasonable time. The Fund shall at its own cost verify any such special or unusual expenses.
- 4.10. Value Added Tax (VAT) shall be charged on all invoices, which must include the Service Provider's VAT registration number, in terms of the Value Added Tax legislation applicable in the Republic of South Africa.

## **5. CONFIDENTIAL INFORMATION**

- 5.1. The parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any parties, including any of their employees, agents, consultants and sub-contractors directly, unless the parties are involved with the execution of this Agreement and then only on a need to know basis.

- 5.2. The parties shall prevent disclosure of the Confidential Information, except as may be required by law.
- 5.3. The parties agree that they shall protect each other's Confidential Information using the same standard of care that each party applies to safeguard its own Confidential Information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
- 5.4. Within thirty (30) days after the termination of this Agreement, for whatever reason, the receiving party of Confidential Information shall return same or at the discretion of the disclosing party of such Confidential Information, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.
- 5.5. The disclosing party of Confidential Information may at any time request the receiving party of such Confidential Information to return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement, and may in addition request the receiving party to furnish a written statement to the effect, that upon such return, the receiving party has not retained in its possession or under its control either directly or indirectly any such material.
- 5.6. As an alternative to the return of the material contemplated in 5.5 above, the receiving party shall at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed.
- 5.7. The receiving party shall comply with the request in terms of clauses 5.5 and 5.6, within fourteen (14) days of receipt of same.
- 5.8. It is recorded that the following information shall, for the purpose of this Agreement, not be considered to be Confidential Information:
  - 5.8.1. Information known to either of the parties prior to the date that it was received by the other party;  
or
  - 5.8.2. Information known to the public or generally available to the public prior to the date that it was disclosed by either of the parties to the other; or
  - 5.8.3. Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the parties to the other, through no act or failure to act on the part of the recipient of such Information; or
  - 5.8.4. Information which either of the parties, in writing, authorises the other to disclose.
- 5.9. For the avoidance of any doubt, no provision of this Agreement should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the Confidential Information in the event that the receiving party receives the request for the whole or any part of the confidential information in terms of the provisions of the Promotion to Access to Information Act No. 2 of 2000.

- 5.10. Breach of these obligations shall, without prejudice to any other rights that the parties have in law and or in terms of this Agreement entitle the Fund to recover damages from the Service Provider.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1. Where the Service Provider's services and/or products supplied to the Fund in terms of this Agreement include Intellectual Property Rights which require to be protected, this is acknowledged by the Fund.
- 6.2. Where certain information pertaining to the Service Provider's Intellectual Property Rights is disclosed to the Fund and any of its employees and consultants, such information shall be treated as Confidential Information and afforded the protection in terms of clause 5.above.

## **7. WARRANTIES**

- 7.1. Where the Service Provider's products and/or services supplied to the Fund in terms of this Agreement include or come with certain warranties or guarantees, these shall be incorporated into this Agreement as if specifically mentioned and the Fund shall receive the full benefits thereof.
- 7.2. All representations made by the Service Provider in this regard whether in writing or verbally shall be deemed to be incorporated into this Agreement as if specifically stated.
- 7.3. Where a dispute arises regarding the terms and conditions of such warranties or guarantees and the representations made by the Service Provider, then the standard practice of the Service Provider in giving such warranties in the normal course of its business shall be deemed to apply as the minimum warranty or guarantee benefits due to the Fund.
- 7.4. The particular terms and conditions of such warranties or guarantees may be recorded in the Schedule. In the event of a conflict between the provisions contained in the Schedule and the provisions contained in the SCC pertaining to such warranties or guarantees, the provisions of the Schedule shall prevail.

## **8. CESSION AND ASSIGNMENT**

The Service Provider shall not cede, assign, abandon or transfer any of its rights and/or obligations in terms of this Agreement (whether in part or in whole) or delegate any of its obligations in terms of this Agreement, without the prior written consent of the Fund.

## **9. NON-EXCLUSIVE AGREEMENT**

The Fund is not obliged to make exclusive use of the Service Provider as a service provider. Nothing in this Agreement shall be interpreted as precluding the Fund from procuring similar or equivalent products or service from other service providers.



## **10. CONTRACTUAL RELATIONSHIP – COMMUNICATIONS WITH NEWS MEDIA AND CONSENSUAL EFFORTS AT RESOLUTION**

- 10.1. The Service Provider may not make a statement or furnish any information or cause any information to be furnished to any news media, on or regarding any matter relating to the contractual relationship between the parties, except with the prior written permission of the Chief Executive Officer of the Fund.
- 10.2. The parties agree that they shall inform each other as soon as possible about any problem relating to the contractual relationship between them that either of them may experience, and further that they shall make all reasonable effort to resolve any such problem consensually.

## **11. RELATIONSHIP**

This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purpose whatsoever and neither of the parties shall be entitled to act on behalf of, or to represent, the other unless duly authorised thereto in writing.

## **12. LIMITATION OF LIABILITY AND INDEMNIFICATION**

- 12.1. The Fund shall not be liable for any damages arising out of any injuries sustained by the Service Provider's employees, consultants, agents, representatives or sub-contractors whilst such persons are on any premises or in any vehicle owned or used by the Fund or arising out of any damage or loss of any property belonging to such persons on or in such premises or property, whether such injury or damage or loss is caused by the negligence by the Fund or any of its employees, consultants, agents, representatives or sub-contractors or by any other cause whatsoever.
- 12.2. The Service Provider indemnifies the Fund against any claims that may arise from the performance of their functions and actions in terms of this Agreement and that of their employees, consultants, agents, representatives or sub-contractors.
- 12.3. Each party hereby indemnifies the other party against all damages, losses or liabilities caused due to an event which is at its risk or due to that party's negligence, either contractually or delictually. The liability of each party to indemnify the other party shall be reduced proportionally if the event at the other party's risk or negligence contributed to the damage, loss or liability.
- 12.4. The Service Provider shall ensure that it and its employees, consultants, agents, representatives and sub-contractors concerned do not in any way infringe or allow any infringement of any other party's Intellectual Property Rights in the performance of this contract, and the Service Provider hereby

indemnifies and holds the Fund harmless from and against any claims arising against the Fund as a result of any such infringements by the Service Provider of such Intellectual Property Rights.

### **13. INSURANCE**

- 13.1. Without limiting the Service Provider's liabilities or responsibilities in terms of the Agreement, the Service Provider shall provide insurance to cover its liabilities and responsibilities in terms of the Agreement.
- 13.2. Notwithstanding anything elsewhere contained in the Agreement, the Service Provider shall provide at least:
- 13.2.1. Insurance in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. The Service Provider shall upon request from the Fund submit proof to the satisfaction of the Fund that the Service Provider is insured under the Compensation for Occupational Injuries and Diseases Act by providing the Fund with adequate proof stating that it has paid all assessments due;
  - 13.2.2. Insurance covering legal liability in respect of claims for death of/or injury to persons or loss of/or damage to third party property;
  - 13.2.3. Motor vehicle liability insurance in respect of all motor vehicles brought onto the premises of the Fund.
- 13.3. The Fund shall have the right to examine the policies maintained by the Service Provider at any time during the term of the Agreement.

### **14. SAFETY AND SECURITY**

- 14.1. The Service Provider agrees to comply with the **Fund's** security and safety procedures. Without limiting the generality thereof the Service Provider must specifically comply with the Occupational Health and Safety Act.
- 14.2. The Fund shall be entitled to request the Service Provider to remove any employee, agent, consultant or subcontractor from its team if the Fund is of the opinion that such a person is a security or safety risk or that the conduct of such a person is detrimental to the relationship between the parties. Such a person must be removed by the Service Provider within the time period stipulated by the Fund. The Service Provider indemnifies the Fund against any claims that might arise due to such removal.

### **15. CANVASSING, GIFTS, INDUCEMENTS AND REWARDS**

- 15.1. The Service Provider shall not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of the **Fund's** employees, consultants or subcontractors.

15.2. Such an act shall constitute a material breach of the Agreement and the Fund shall be entitled to terminate the Agreement forthwith, without prejudice to any of its rights in terms of this Agreement or in law.

## **16. MEETINGS**

16.1. If the nature of the goods or services supplied to the Fund dictate it, authorised representatives of the parties must attend periodic meetings at such intervals as such representatives may agree from time to time but in any event not less than once every two weeks. The meetings shall take place at the location and at such times as the representatives may agree.

16.2. Each party's representatives shall be entitled to place such items which they intend discussing at a meeting on the agenda for the meeting and shall give the representatives of the other party notice of all such items by no later than 16h00 two (2) days preceding the day on which the meeting is to be held.

16.3. The Service Provider shall not be entitled to payment from the Fund for time spent attending the aforementioned meetings.

## **17. COMPLIANCE WITH LAWS AND TAX OBLIGATIONS**

17.1. The Service Provider warrants that it complies with all laws and regulations applicable to it, with its legal obligations pertaining to its business in general and to its obligations contained in this Agreement as well as with all applicable requirements of any government department (whether national, provincial or local), other public authorities and regulating bodies (whether statutory or voluntary); and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained.

17.2. The Service Provider warrants that any of its undertakings in terms of this Agreement do not constitute a contravention in terms of any statute, statutory regulation, other law or regulating body's rules that it is bound by; and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so.

17.3. The Service Provider furthermore specifically warrants that it complies with all of its obligations in terms of all tax laws and regulations applicable to it, including but not limited to all of its obligations pertaining to the payment of income tax, capital gains tax, employees tax (PAYE and SITE), value added tax, skills development levies, unemployment insurance fund levies, workmen's compensation fund levies, regional services council levies and all other taxes and levies payable both now or in the future and whether it is liable in the Republic of South Africa or other jurisdictions; and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so.

- 17.4. The Service Provider warrants that it is well acquainted with its obligations as contemplated in 17.1 – 17.3, above and undertakes to take all reasonable and necessary steps to remain so.
- 17.5. The Service Provider specifically warrants that it is well acquainted with its obligations as a taxpayer, provisional taxpayer, employer, employee, labour broker, personal service company, personal service trust and the like (as the case may be) and its income tax, employees taxes and levies (SITE, PAYE, UIF, SDL, others) and other tax implications and obligations in terms of the Income Tax Act as a whole and specifically the Fourth Schedule thereto, and their successor/s in title.
- 17.6. Any specific warranties given by the Service Provider in clause 17. above shall not in any way limit or affect the generality of the warranties and undertakings given in this clause. Such specific warranties and undertakings are merely included for the sake of additional clarity.

## 18. BREACH

- 18.1. In the event of either one of the parties (the “defaulting party”) committing a breach of any of the provisions of this Agreement and failing to remedy such breach within a period of fourteen (14) days after receipt of a written notice from the other party (the “aggrieved Party”) calling upon the defaulting party to remedy the breach complained of, then the aggrieved party shall be entitled at their sole discretion and without prejudice to any of their other rights in law and/or in terms of this Agreement, either to: -
- 18.1.1. Claim specific performance in the terms of the Agreement;
  - 18.1.2. Cancel the Agreement forthwith and without further notice and recover damages from the defaulting party.
- 18.2. In the event of the defaulting party being in breach of any provision of this Agreement and the aggrieved party having to take legal action / dispute resolution action against the defaulting party as a result thereof (see the arbitration clause 21. below), the defaulting party shall be liable to pay the aggrieved party's legal costs as well as all expenses which have reasonably been incurred in having to take such legal action, which expenses will include but not be limited to private investigators fees, tracing agents fees, forensic auditors fees, valuation fees and such similar professional fees in terms of any court order, arbitration award or settlement agreement (whether legal action was instituted in by way of arbitration, in a court of law or other forum, or was resolved prior to any such action having to be taken).

## 19. TERMINATION

- 19.1. The Fund may terminate this Agreement, or suspend its operation, in whole or in part, at any time and at the **Fund's** sole discretion, by giving not less than 1 (one) month's written notice to the Service Provider.
- 19.2. The Fund when giving notice under clause 19.1 shall, in the written notice, specify the extent of the termination or suspension, and the effective date of such termination or suspension.

- 19.3. The Service Provider, upon receipt of a notice contemplated under clause 19.1 shall discontinue the supply of all services or goods under this Agreement, to the extent specified, and on the date specified in the notice.
- 19.4. In the event of the termination or suspension, in whole or in part, of this Agreement by the Fund under this clause 19, the Fund shall pay the Service Provider for services or goods already supplied by the Service Provider under this Agreement, up to and including the date of termination or suspension specified in the notice.
- 19.5. The Fund shall not be liable for any consequential loss resulting from the termination or suspension of this Agreement by the Fund under this clause 19, including, without limitation, any loss of profits or any costs associated with the termination or suspension of any sub-contracts entered into by the Service Provider.
- 19.6. Termination or suspension of the Agreement under this clause 19 shall be without prejudice to any rights that may have accrued to either of the parties, in respect of goods or services delivered before the date of termination or suspension, specified in the notice. It is specifically agreed that, upon termination or suspension of this Agreement under clause 19, no rights shall accrue to either party in respect of goods or services not yet delivered under the Agreement.

## **20. DISPUTE RESOLUTION**

- 20.1. All disputes concerning or arising out of this Agreement exists once a party notifies the others in writing of the nature of the dispute and requires the dispute to be resolved under this clause. The parties must refer any dispute to be resolved by:
- 20.1.1. Negotiation, in terms of clause 20.4; failing which
  - 20.1.2. Mediation, in terms of clause 20.5; failing which
  - 20.1.3. Arbitration, in terms of clause 21.
- 20.2. Clause 20.1 shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of the dispute resolution process contemplated in clause 20.1, for which purpose the parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.
- 20.3. Clause 20.1 constitutes the irrevocable consent of the parties to the dispute resolution proceeding in terms hereof and neither of the parties shall be entitled to withdraw there from or to claim at any negotiation, mediation or arbitration proceedings that they are not bound by the dispute resolution provisions of this Agreement.

- 20.4. Within ten (10) days of notification, the parties must seek an amicable resolution to the dispute by referring the dispute to designated and authorized representatives of each of the parties to negotiate and resolve the dispute. If an amicable resolution to the dispute is found the authorized representatives of the parties must sign, within the ten (10) day period, an agreement confirming that the dispute has been resolved.
- 20.5. If negotiation in terms of clause 20.4 fails, the parties must, within fifteen (15) days of the negotiations failing, refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).
- 20.6. The periods for negotiation (specified in clause 20.4) or for referral of the dispute for mediation (specified in clause 20.5), may be shortened or lengthened by written agreement between the parties.

## **21. ARBITRATION OF DISPUTES**

- 21.1. In the event of the mediation contemplated in clause 20.5 failing the parties shall refer the dispute, within fifteen (15) days of the mediation failing, for resolution by expedited arbitration under the current rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).
- 21.2. A single arbitrator shall be appointed by agreement between the parties within ten (10) days of the dispute being referred for arbitration, failing which the arbitrator shall be appointed by the Secretariat of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).
- 21.3. At all times, every reasonable effort shall be made to ensure that such arbitrator has the necessary technical skills to enable him to adjudicate the dispute in a satisfactory manner.
- 21.4. The arbitration shall be held at Sandton, South Africa, in English.
- 21.5. The South African law shall apply.
- 21.6. The parties shall be entitled to legal representation.
- 21.7. The award of the arbitrator shall be final and binding on the parties, who hereby agree to give effect to the award. Either party shall be entitled to have the arbitrator's award made an order of court at the cost of the party requesting same.
- 21.8. Should any dispute arise between the parties whether in regard to the interpretation of the provisions of this Agreement, a breach of any of its provisions, a variation or cancellation thereof, or any other matter whatsoever, then and in such event, such a dispute shall be resolved by way of arbitration.

21.9. This clause 21 read with clause 20 above is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause.

## **22. DOMICILIUM AND NOTICE ADDRESS**

The parties each choose their *domicilium citandi et executandi* as the address where they will receive service of all legal process and notices at the respective physical addresses given in the Schedule or the Purchase Order (whichever is applicable).

## **23. NOTICE**

23.1. All notices, correspondence and any other communication between the parties shall be made in writing and shall be sent by hand delivery, by registered post, by facsimile transmission or by e-mail with a 'read receipt'.

23.2. If notice is given by way of e-mail it must be with a 'read receipt', such notice shall be deemed to be received 1 (one) day after sending.

23.3. If notice is given by way of facsimile transmission, such notice shall be deemed to be received 1 (one) day after sending.

23.4. If notice is given by registered post, such notice shall be deemed to be received 7 (seven) days after sending.

23.5. If notice is given by hand delivery, such notice shall be deemed to be received after delivery.

23.6. Any legal process shall be served at the parties' chosen *domicilium citandi et executandi* addresses.

23.7. Any changes to the parties' notice addresses and *domicilium* addresses as furnished in the Schedule shall be given in writing and shall be deemed to apply upon the date of receipt of such notice.

## **24. GENERAL CONTRACT PROVISIONS**

### **24.1. Entire Contract**

This Agreement replaces all previous agreements with a similar content between the Service Provider and the Fund. There are no prior or parallel agreements with a similar subject matter to this Agreement that are binding on the parties.

- 24.1.1. This Agreement constitutes the sole and entire agreement between the parties.
- 24.1.2. All the representations, undertakings, warranties or guarantees (“the representations”) made by the parties are contained in this Agreement. Any representations not contained in this Agreement shall not be binding on the parties and shall be without any force or effect.
  - 24.1.2.1. The provisions of clause 7. above shall be excluded here from, where applicable.
- 24.1.3. Any provision at variance with the terms and conditions of this Agreement shall not be binding on the parties and shall be without any force or effect.

#### 24.2. Amendments and Latitude

- 24.2.1. No amendment or variation of this Agreement (including this clause), whether by addition, deletion, waiver, novation or consensual cancellation shall be binding on the parties and shall be without any force or effect unless reduced to writing and signed by the parties to this Agreement.
- 24.2.2. No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation in this Agreement or any enforcement of any rights arising from this Agreement and no single or partial exercise of any right by any party, shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or estop such a party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision of this Agreement.

#### 24.3. Severability

- 24.3.1. If any term, condition or performance, or any part thereof, in this Agreement (the “provision”) is determined to be invalid, illegal, unlawful or unenforceable to any extent, then that provision shall be removed from the remaining provisions of this Agreement, or amended to make it valid, legal, lawful or enforceable (as the case may be), in such a manner as to leave the amended agreement substantially the same in essence, and the Agreement so amended shall remain in force and effect.
- 24.3.2. If any provision of this Agreement is determined to be invalid, illegal, unlawful or unenforceable to any extent as contemplated in 24.3.1 above, such a provision shall be deemed to be severable from the rest of the provisions of this Agreement, and shall not in any way affect the validity and enforceability of the rest of the provisions of this Agreement and the Agreement as a whole.

#### 24.4. Warranty of Authority

The Fund and the Service Provider warrant to each other that their respective signatories and representatives have the power, authority and legal right to conclude and sign this Agreement and perform in terms of this Agreement, and that this Agreement has been duly authorised by all necessary



actions of their respective governing organs and management, as the case may be, and constitutes valid and binding obligations on them in accordance with the provisions of this Agreement.

#### 24.5. Costs

Each party shall pay their own legal and other consulting and advisory fees and related expenses incurred in regard to the negotiation, drafting, preparation and finalisation of this Agreement and the entire transaction.