



**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, Annexure A and B** attached hereto. The standard South African Government Procurement General Conditions of Contract (“GCC”) are incorporated into this **Service Provider Agreement (“this 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)

Physical Address: 420 Witch-hazel Avenue, Block F Eco Glades Office Park, Centurion Pretoria  
Postal Address: Private Bag X178, Centurion, 0046  
Tel: (012) 429 5196  
Contact Person: **Bhekokwakhe Mkhwanazi** – Contracts Manager (Acting); or such other official duly authorised in terms of the Fund’s delegations of Authority and Approval Framework  
E-mail: [bhekokwakhe@raf.co.za](mailto:bhekokwakhe@raf.co.za)

and

**(“the Service Provider”)**

(a \_\_\_\_\_ company/corporation with limited liability and registered as such under registration number \_\_\_\_/\_\_\_\_\_/\_\_\_\_ represented by \_\_\_\_\_, duly authorised thereto, and in his/her capacity as \_\_\_\_\_.

Postal Address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Landline: \_\_\_\_\_  
Mobile: \_\_\_\_\_  
e-mail: \_\_\_\_\_

## 1. RECORDAL

- 1.1. **The Service Provider** may be awarded a contract in terms of **the Fund's** Request for Bid process of procurement subject to clause 19.
- 1.2. **This Agreement** serves to record the agreement between the parties and to regulate all aspects of the services and/or products ("**Deliverable/s**") to be supplied by **the Service Provider** and the general business relationship between the parties.
- 1.3. **The Service Provider** acknowledges that the appointment of **the Service Provider** is non-exclusive and not a guarantee that **the Fund** will require any services from **the Service Provider**, nor is **the Service Provider** entitled to any payment based merely on the fact of such appointment.
- 1.4. **The Fund** may, at **the Fund's** sole discretion, during the subsistence of **this Agreement**, from time-to-time, instruct **the Service Provider** to provide to **the Fund** the services set out under clause 2 hereunder.
- 1.5. The Terms of Reference or Specifications of the **Deliverables** to be supplied to **the Fund** are those contained in **the Fund's** Request for Bid reference **RAF/2014/000**\_\_\_\_ and any additions or amendments thereto furnished to **the Service Provider** in the bid process. It is recorded that **the Service Provider** accepted these provisions and on the basis thereof submitted its bid and any supplementary information thereto.
- 1.6. Such Terms of Reference or Specifications are incorporated into the provisions of **this Agreement** as if specifically mentioned and are binding and enforceable on the parties.
- 1.7. In the event of any of the provisions of **the Fund's** Request for Bid and any additions or amendments thereto furnished to **the Service Provider** in the bid process ("the Bid Documents"), including the Terms of Reference or Specifications mentioned in 1.5 and 1.6 above, being in conflict with the provisions of **this Agreement**, the provisions of **this Agreement** (including the Annexures to **this Agreement**) shall prevail.
- 1.8. **The Service Provider** accepts the appointment on the terms and conditions set-out in **this Agreement** and without further attaching its own provisions or conditions thereto making performance of its obligations subject to any terms or conditions contrary or in addition to the terms of **this Agreement** or any applicable **Scope of Work** orders.
- 1.9. It is recorded that the further Annexures to **this Agreement** are as follows:
  - 1.9.1. Annexure A: RAF Special Conditions of Contract ("SCC"); and
  - 1.9.2. Annexure B: Service Provider Proposal

## 2. SERVICES OR PRODUCTS SUPPLIED (DELIVERABLES)

- 2.1. **The Fund** appoints **the Service Provider**, which appointment the **Service Provider** accepts, as a non-exclusive supplier of ICT Hardware, maintenance, service and repairs (**Deliverables**) to its regional offices and to all other areas wherein **the Fund** has a footprint, subject to the terms of **this Agreement**.
- 2.2. For the avoidance of doubt, the Parties hereto record that there shall be no obligation on **the Fund** to procure any **Deliverables** whatsoever, or any minimum amount or number of **Deliverables** from the **Service Provider** for the duration of **this Agreement** and the **Service Provider** accepts that orders in the form of scopes of work shall be on an ad hoc basis, at the sole and exclusive discretion of **the Fund**, and that it shall have no rights of exclusivity in terms hereof.
- 2.3. Without limiting the generality of **the Service Provider's** obligations with respect to the provision of the **Deliverables**, **the Service Provider** shall provide:
- 2.3.1. ICT Hardware:
- 2.3.1.1. Laptops;
  - 2.3.1.2. Desktops;
  - 2.3.1.3. Thin clients; and
  - 2.3.1.4. Monitors.
- 2.3.2. Maintenance, service and repairs that shall include but shall not be limited to:
- 2.3.2.1. diagnosis, rectification and fixing of errors, malfunctions and defects;
  - 2.3.2.2. diagnosis, rectification and fixing of critical errors;
  - 2.3.2.3. diagnosis and rectification of problems identified by **the Fund**;
  - 2.3.2.4. lubrication, necessary adjustments and replacement of unserviceable parts;
  - 2.3.2.5. guidance and assistance to ensure correct application, configuration and use of the ICT Hardware;
  - 2.3.2.6. provision of advice on enhancements, modifications, additions or alterations to facilitate the optimal use of the ICT Hardware; and
  - 2.3.2.7. the provision of loan ICT Hardware of the same configuration which is in accordance to the terms and conditions of **this Agreement** and any User Requirement Specification.
- 2.3.3. Transport and delivery of all required **Deliverables**, where applicable.
- 2.4. **The Fund** shall be entitled to, from time-to-time, instruct **the Service Provider** to provide the **Deliverables** to any area/region in which **the Fund** has a presence within the borders of the Republic of South Africa.

- 2.5. The **Service Provider** shall provide the **Deliverables** in accordance with timeframes specified in each particular **Scope of Work** orders, or in accordance with such agreed timelines as the parties may agree to in writing from time to time.

### **3. ORDERING METHOD (SCOPE OF WORK)**

- 3.1. **The Fund** and **Service Provider** shall, from time to time, during the subsistence of **this Agreement** agree upon the particulars of the **Deliverables** to be provided by the **Service Provider** in the form of **Scope of Work** orders.
- 3.2. **The Fund** and the **Service Provider** shall in respect of each **Scope of Work** orders agree the following minimum criteria:
- 3.2.1. The particulars of **Deliverables** to be rendered by the **Service Provider**;
- 3.2.2. The timeframes within which the **Service Provider** must provide the **Deliverables**, including the effective date of the specific **Scope of Work** orders; and
- 3.2.3. The fees and expenses that **the Fund** shall pay to the **Service Provider** as consideration for the **Deliverables**.
- 3.3. **The Fund** and the **Service Provider** may in respect of each **Scope of Work** orders agree the following additional criteria:
- 3.3.1. A project plan, delivery schedule, or similar document that aligns with the **Deliverables** and timeframes specified in clause 3.2.1 and 3.2.2 above;
- 3.3.2. Billing milestones for the payment, in installments, of the fees and expenses specified in clause 3.2.3 above; and
- 3.3.3. Any other criteria that **the Fund** and the **Service Provider** wish to incorporate in the specific **Scope of Work** orders.
- 3.4. Each **Scope of Work** order must be signed by the Service Manager of the **Fund** and the authorised representative of the **Service Provider** before coming into effect.
- 3.5. Each **Scope of Work** orders shall, upon coming into effect, be deemed incorporated into **this Agreement** as an order.
- 3.6. In the event of any conflict between a term or condition contained in any **Scope of Work** orders and a term or condition contained in **this Agreement**, the term or condition contained in **this Agreement** shall take preference, unless **the Fund** and the **Service Provider** specifically agreed in the particular **Scope of Work** orders that the **Scope of Work** orders shall take precedence over **this Agreement**.

#### 4. DURATION AND DATES

- 4.1. **This Agreement** shall commence on the date of signature of **this Agreement** by the signatory which signs it last in time; “**the Effective Date**” and shall endure for 36 (thirty six) months (“**the Initial Period**”), unless terminated by **the Fund** on not less than 30 (thirty) days’ written notice to **the Service Provider**.
- 4.2. **The Fund** shall be entitled to renew **this Agreement** for such further periods as may be determined at **the Fund**’s sole discretion, from the end of the **Initial Period**, by furnishing **the Service Provider** with written notice of **the Fund**’s election to renew **this Agreement** not later than 1 (one) month prior to the termination of the **Initial Period** or such additional renewal period, as the case may be.
- 4.3. Any provisions of **this Agreement** or related **Scope of Work** orders with outstanding **Deliverables** creating obligations extending beyond the term of **this Agreement** shall survive the expiration or termination of **this Agreement**, regardless of the reason for such termination.

#### 5. PAYMENT

- 5.1. **The Fund** shall pay **the Service Provider** for the due, full and proper performance and fulfilment by **the Service Provider** of its obligations referred to in **this Agreement** and in each particular **Scope of Work** orders.
- 5.2. **The Service Provider** shall charge and shall invoice for all completed **Deliverables** as per the pricing provided in response to a request for quote and **the Fund** shall only be liable to make payment according to the prices specified in the said quotation taking into consideration the proposed pricing.
- 5.3. **The Service Provider** shall not require, nor shall **the Fund** be expected to make available, or pay over to the **Service Provider** a deposit as part payment for **Deliverables** yet to be rendered.
- 5.4. The pricing of **this Agreement** is:
- 5.4.1. VAT inclusive;
  - 5.4.2. inclusive of all other taxes and duties which are levied or charged by any revenue authority (including, without limitation, the South African Revenue Services);
  - 5.4.3. inclusive of packaging, installation, maintenance and specified delivery; and
  - 5.4.4. fixed for the duration of **the Initial Period**.
- 5.5. **The Service Provider** shall invoice **the Fund** in respect of completed **Deliverables** as set out in the response to a request for quotation.

- 5.6. Payment of these invoices shall be subject to the review and sign off by **the Fund's** designated Service Manager of the work carried out, which sign off shall not be unreasonably withheld.
- 5.7. **The Fund** shall be liable to reimburse the **Service Provider** for any expenses incurred only to the extent that these have been specifically agreed in **this Agreement** or a particular **Scope of Work** orders or agreed in writing by **the Fund** in advance of them being incurred.
- 5.8. **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 as well as to be able to tie the invoice to the specific deliverable.
- 5.9. Payment shall be made in accordance with the provisions of clause 4 in **Annexure A**.
- 5.10. Both Parties acknowledge that the charges specified in **this Agreement** are intended to compensate **the Service Provider** fully for all **Deliverables** to be performed or provided by **the Service Provider** pursuant to **this Agreement**.
- 5.11. Accordingly, **the Fund** will not be obligated to pay **the Service Provider** any amounts in addition to those specifically described in **this Agreement**, unless:
- 5.11.1. there is an agreed change in the scope of **the Deliverables**, or
  - 5.11.2. a change in applicable law to which additional charges apply and have been approved in writing by **the Fund**, or
  - 5.11.3. additional **Deliverables** are required by **the Fund**.

## **6. SPECIAL TERMS AND CONDITIONS**

- 6.1. 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 Agreement**, and provided that the unjustifiable actions of **the Fund** do not prevent **the Service Provider** from performing its obligations under **this Agreement** and barring any force majeure event, **the Service Provider** undertakes at all times to:
- 6.1.1. supply **the Deliverables** with promptness, diligence, in a professional manner and with all due care, skill and expertise;
  - 6.1.2. render **the Deliverables** within the agreed timelines;
  - 6.1.3. act in the best interest of **the Fund** and avoid all conflicts of interest that may arise;
  - 6.1.4. 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
  - 6.1.5. 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**.

- 6.2. Notwithstanding anything seemingly to the contrary contained in **this Agreement**, a breach by **the Service Provider** of any of the provisions specified in clause 6.1 above shall constitute a material breach of **this Agreement** which will entitle **the Fund** to require **the Service Provider** to rectify the breach within 5 (five) days, failing which, without prejudice to any other remedies **the Fund** may have in law, **the Fund** may terminate **this Agreement** summarily.
- 6.3. All intellectual property (IP) shall remain the property of the owner of such intellectual property.
- 6.4. Subject to clause 6.5 below, all templates, documents, procedures and frameworks including, but not limited to, project methodologies, development methodologies, implementation methodologies, training methodologies, training material/courseware and the supporting documents and artefacts thereto, remain the property of **the Service Provider** and/or their respective owners and may not be reproduced or reused in any form whatsoever without the express written approval of **the Service Provider** and/or the respective intellectual property owner.
- 6.5. Notwithstanding the provisions of clause 6.3 and 6.4 above, ownership in any documentation specified as a **Deliverable** in the Terms of Reference contained in the Proposal Documents shall pass to **the Fund** upon payment by **the Fund** to **the Service Provider** of the amount referred to in clause 5.2 above and **the Fund** shall have the right to use, reproduce and adapt the documentation for its own internal use.
- 6.6. Notwithstanding anything to the contrary, **the Service Provider** chooses its *domicilium citandi et executandi* where **the Service Provider** will receive service of all legal process and notices at the physical address given in **this Schedule**.
- 6.7. The Parties appoint the following individuals to whom the Parties assign the management of the **Deliverables**. (Hereinafter referred to as the “Service Manager(s)” )

6.7.1. **The Fund:**

\_\_\_\_\_

Landline: \_\_\_\_\_

Mobile: \_\_\_\_\_

e-mail: \_\_\_\_\_

(or such other official duly authorised in terms of the Road Accident Fund’s Delegations of Authority and Approval Framework)

6.7.2. **The Service Provider:**

\_\_\_\_\_

Landline: \_\_\_\_\_

Mobile: \_\_\_\_\_

e-mail: \_\_\_\_\_

## 7. PERSONAL INFORMATION

- 7.1. Both Parties agree to treat as confidential the **Personal Information** which comes to either party's knowledge, except if the communication of such information is required by law or for the proper performance of that party's obligations in terms of **this Agreement**.
- 7.2. For purposes of clause 7.1 above **Personal Information** means information provided by **the Fund** under **this Agreement**, and received by **the Service Provider** for the performance of **the Deliverables** under **this Agreement**, as well as **Personal Information** held by **the Fund** and accessed by **the Service Provider** during the performance of **the Service Provider's** obligations under **this Agreement**, relating to an identifiable, living, natural person, including but not limited to:
- 7.2.1. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
  - 7.2.2. information relating to the education or the medical, financial, criminal or employment history of the person;
  - 7.2.3. any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person;
  - 7.2.4. the blood type or any other biometric information of the person;
  - 7.2.5. the personal opinions, views or preferences of the person;
  - 7.2.6. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - 7.2.7. the views or opinions of another individual about the person; and
  - 7.2.8. the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.
- 7.3. Without limiting the scope of the definition in clause 7.2 above **the Service Provider** hereby specifically undertakes to keep confidential any **Personal Information** relating to persons who have lodged claims with **the Fund** under the Road Accident Fund Act, Act No 56 of 1996, its predecessors and any entity mandated in terms of future legislation to compensate persons injured in motor vehicle accidents.

## 8. TAX CLEARANCE CERTIFICATE

- 8.1. 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 Agreement**, ensure that **the Fund** is –



- 8.1.1. placed in possession of an original, valid, unexpired Tax Clearance Certificate, issued by the South African Revenue Services;
  - 8.1.2. 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 8.1.1 above, in the event of any such Tax Clearance Certificate expiring during the duration of **this Agreement**.
- 8.2. Notwithstanding anything seemingly to the contrary contained in **this Agreement**, until the **Service Provider** complies fully with its obligations under clause 8.1 above, **the Fund** has the right to withhold payment of any unpaid amounts provided for in **this Agreement** -
- 8.2.1. without prejudice to any other rights which **the Fund** may have in terms of **this Agreement** or in law; and
  - 8.2.2. without interest accruing on the amount or amounts withheld.
- 8.3. A breach by the **Service Provider** of its obligations under clause 8.1 above is a material breach which will entitle **the Fund**, in its sole election, to cancel **this Agreement** forthwith, without prejudice to any other rights which **the Fund** may have in terms of **this Agreement** or in law.

## 9. CHANGE CONTROL

- 9.1. In this clause 9, "**Change Order**" means a document which is used for the specific purpose of recording the details of any change to **this Agreement** and which shall be signed by the authorized representatives of both Parties before becoming effective and binding on the Parties.
- 9.2. Should either party wish to make any change to **this Agreement**, that party shall prepare a draft **Change Order** which shall specify the following:
- 9.2.1. the party's name and contact details and the date of the **Change Order** request;
  - 9.2.2. a description of the proposed change and the reason for proposing the change; and
  - 9.2.3. when the party would require the **Change Order** to be implemented, if agreed.
- 9.3. In the event that the **Change Order** is requested by **the Fund**, **the Service Provider** shall promptly undertake an exercise to determine the impact (including any knock-on effect) of the proposed change on:
- 9.3.1. the continued provision of the balance of the Parties' obligations under **this Agreement**;
  - 9.3.2. resources including, without limitation, staff; and
  - 9.3.3. fees and any reimbursable expenses.

- 9.4. In the event that the **Change Order** is requested by **the Service Provider**, **the Service Provider** shall furnish **the Fund** with the details of the impact (including any knock-on effect) of the proposed change on:
- 9.4.1. the continued provision of the balance of the Parties' obligations under **this Agreement**;
  - 9.4.2. resources including, without limitation, staff; and
  - 9.4.3. fees and any reimbursable expenses.
- 9.5. No **Change Order** shall be of any force or effect until it is executed by the duly authorised signatories of each of the Parties.
- 9.6. Each executed **Change Order** shall be subject to the terms and conditions contained in **this 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 Agreement** and identifying the specific terms and conditions being amended.
- 9.7. A unique, consequential, number shall be allocated to each **Change Order**.
- 9.8. The authorised representative of **the Fund**, for purposes of executing a **Change Order**, is **the Fund's** Chief Executive Officer.
- 9.9. No terms and conditions contained in, without limitation, any purchase order, quote, invoice, statement or similar document, other than a **Change Order** executed pursuant to this clause 9, shall have the effect of changing any term or condition contained in **this Agreement**.

## 10. SUBDELEGATION

- 10.1. The **Service Provider** shall not subcontract to any third party ("**the Subcontractor**") any portion of the **Deliverables** that must be provided under **this Agreement** without the **Fund's** prior written consent.
- 10.2. 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 Agreement**.
- 10.3. **The Fund** shall, when giving consideration to a written request for consent contemplated in clause 10.1 above, conduct a due diligence on the **Subcontractor**.
- 10.4. Further to the provisions of clause 10.3 above, and to assist **the Fund** in conducting its due diligence as envisaged, **the Service Provider** shall provide with the written request, and **the Fund** shall take into consideration, the following aspects pertaining to the **Subcontractor**:

10.4.1. 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;

10.4.2. An original Declaration of Interest completed and signed by the **Subcontractor**; and

10.4.3. An original valid Tax Clearance Certificate in respect of the **Subcontractor**.

10.5. The **Fund** may, if the **Fund** elects to approve a request contemplated in clause 10.1 above, make such consent subject to such terms and conditions as the **Fund** in its sole election consider reasonable.

10.6. Notwithstanding that the **Fund** may elect to consent to a request contemplated in clause 10.1 above, such consent by the **Fund** shall not relieve the **Service Provider** of any of the **Service Provider's** obligations under **this Agreement** and the **Service Provider** shall remain responsible for the actions and omissions of the **Subcontractor**.

## **11. SUBCONTRACTORS AND HDI REQUIREMENTS**

11.1. **The Service Provider** shall in all instances where **the Fund** consents in terms of the provisions of clause 10 above, serve as the principal contractor in respect of the provision of the **Deliverables** and shall, at all times, remain solely responsible for the performance of the **Deliverables**.

11.2. **The Service Provider** recognises that **the Fund** has appointed **the Service Provider** in reliance on the expertise and B-BBEE nature of both **the Service Provider** and the **Subcontractors**.

11.3. **The Service Provider** shall utilise only the **Subcontractors** as its contractors for the rendering of the **Deliverables** in terms of **this Agreement**.

11.4. **The Service Provider** shall, for audit purposes and upon request by **the Fund**, supply **the Fund** with any agreement or correspondence between it and its **Subcontractors** relating to the appointment in terms of the Bid and **this Agreement**.

11.5. The **Service Provider** shall not terminate its relationship with one or more of its **Subcontractors** without the prior written consent of **the Fund**, which consent shall not unreasonably be withheld.

11.6. **The Service Provider** shall not appoint any new **Subcontractor** without the prior written consent of **the Fund**, which consent shall not unreasonably be withheld.

11.7. **The Service Provider** indemnifies and holds **the Fund** harmless against any claim/s of any nature whatsoever brought by the **Subcontractors** arising as a result of or in connection with any breach of

any contractual obligation owed by the **Service Provider** to the **Subcontractors** in the performance of the **Deliverables**.

## 12. PENALTIES

12.1. In this clause 12 -

12.1.1. **Amount at Risk** means the maximum amount of all penalties, in aggregate, during the subsistence of **this Agreement**. This amount shall not exceed 10% (ten percent) of any particular invoice submitted in any billing period.

12.1.2. **Billing Period** means any period starting from the 1<sup>st</sup> day of the month until the last day of that same month in which **Deliverables** are rendered and for which an invoice is submitted for payment.

12.1.3. **Penalty/ies** means the monetary penalty which **the Service Provider** shall incur and which **the Fund** may elect to recover in the event of a **Service Level Default**.

12.1.4. **Service Level Default** means, in respect of each **Deliverable**, a failure by **the Service Provider** to meet a service level target.

12.1.5. **Value of the Service** means the **Deliverables** performed in a particular month as evidenced by an invoice submitted to **the Fund** for payment.

12.2. The Parties agree that the service levels specified in **this Schedule** and under **Annexure B** serves to achieve a fair, accurate and consistent measurement of **the Service Provider's** performance of its obligations in terms of **this Agreement**. Accordingly, the Parties agree that the service levels shall be used to determine and measure **the Service Provider's** performance.

12.3. In respect of each **Service Level Default**, **the Service Provider** shall incur a penalty of the amount of 10% (ten percent) of the **Value of the Deliverable**.

12.4. The total aggregate amount of **Penalties** shall not exceed:

12.4.1. 10% (ten percent) in any particular month; and

12.4.2. 20% (twenty percent) in any financial year.

12.5. **The Service Provider** shall, as part of the standard monthly reporting provided to **the Fund**, include a report on **Service Level Defaults**.

12.6. Without prejudice to any other rights that **the Fund** may have in law, **the Fund** shall be entitled to recover damages from the **Service Provider** in lieu of the prescribed penalty.

12.7. **The Fund** agrees that **the Service Provider** shall not be held liable for failure to meet the Service Levels: and accordingly no penalties will accrue:

- 12.7.1. where such failure to meet such service level is as a result of **the Service Provider** being obliged to work with third party contractors, appointed by **the Fund**;
- 12.7.2. where such failure is due to an event attributable to **the Fund**.
- 12.7.3. where the end user of **the Fund** is not available when **the Service Provider** requires the end user to be available.

### 13. SERVICE STANDARDS

- 13.1. **The Service Provider** shall proceed with the carrying out of the **Deliverables** regularly, diligently and in accordance with such expertise as may be necessary to provide the **Deliverables**.
- 13.2. **The Fund** shall provide all supervision, materials, plant, tools, equipment and facilities necessary to perform the **Deliverables** in accordance with **this Agreement**.
- 13.3. **The Service Provider** shall be deemed to have capacity to deliver the **Deliverables** and to have satisfied itself of the conditions and all circumstances affecting the carrying out of the **Deliverables**.
- 13.4. If a **Scope of Work** contains specific dates, times or periods by which any part of the **Deliverables** is to be completed, **the Service Provider** shall complete such parts by such dates, times or periods unless otherwise agreed.
- 13.5. Accordingly, no claim by **the Service Provider** for additional payment or extension of time will be allowed on the grounds of any matter relating to the **Deliverables** or as to the circumstances or conditions under which the **Deliverables** are to be provided.
- 13.6. **The Service Provider** shall not do anything or cause anything to be done, which may damage the reputation of **the Fund** or bring **the Fund** into disrepute.

### 14. SERVICE MANAGEMENT

- 14.1. **The Service Provider** shall employ sufficient staff to ensure the **Deliverables** are provided as required under **this Agreement**.
  - 14.1.1. **The Service Provider** must employ sufficient staff to ensure that the **Deliverables** are provided at all times and in all respects according to **the Fund's** Request for Quotation reference **RAF/2014/000**\_\_\_\_\_ and any subsequent **Scope of Work**.
  - 14.1.2. **The Service Provider** must ensure that a sufficient reserve of staff is available to provide the **Deliverables** to **the Fund** during absences of any staff.

- 14.2. **The Service Provider** must employ for the purposes of **this Agreement** only such persons as are careful, skilled and experienced in the duties required of them, and must ensure that every such person is properly and sufficiently trained and instructed.
- 14.3. Where a **Scope of Work** provides that **Deliverables** shall be undertaken by **Key Personnel**, **the Service Provider** shall undertake all reasonable steps to ensure that the **Key Personnel** shall remain engaged for the full period of the **Deliverable**. For the sake of clarity, **Key Personnel** shall be deemed to be those persons identified in a **Scope of Work** as being identified to fulfil the requirements of the Request for Quotation reference **RAF/2014/000** \_\_\_\_.
- 14.4. In the event of sickness or other emergencies, **the Service Provider** shall provide suitably qualified and experienced replacement personnel, which are acceptable to **the Fund** (such acceptance not to be unreasonably withheld or delayed), without additional charge or expense at the earliest possible opportunity.
- 14.5. In circumstances beyond its reasonable control, **the Service Provider** may, subject to the reasonable approval of **the Fund**, replace any of the **Key Personnel** with personnel of equivalent expertise and experience, and at the same cost.
- 14.6. If in the opinion of **the Fund** and **the Service Provider** a handover period is required, **the Service Provider** shall provide both the **Key Personnel** and the replacement personnel during this period at no extra charge.

## 15. AGREED LEAD TIMES

### DELIVERY

- 15.1. **The Service Provider** shall deliver the ordered **Deliverables** in the quantities, on the delivery date and at the delivery address specified in the accepted **Scope of Work** order and shall subsequently render the **Deliverables** in terms of a valid **Scope of Work** for the duration of **this Agreement** in terms of the provisions of **this Agreement** within a maximum set delivery lead time of 7 business days.
- 15.2. If, in the reasonable opinion of **the Service Provider**, it is likely that **the Service Provider** will not meet any agreed delivery lead-time, **the Service Provider** shall immediately notify **the Fund** and advise **the Fund** of the steps which **the Service Provider** will take to avoid or mitigate any resultant or subsequent failure to meet the agreed lead-times.
- 15.3. Upon non-conformance to any of the agreed lead-times specified in clause 15.1 above or upon receipt of the notification specified in paragraph 15.2 above, **the Fund** may at its option:

15.3.1. Cancel the **Scope of Work** in question and place a replacement **Scope of Work** with a different **Service Provider**; or

15.3.2. Extend the relevant lead-time in writing by such period as it deems reasonable.

15.4. The **Service Provider** shall be liable for any additional cost or expense incurred by **the Fund** in the event of a cancellation or extension as stipulated in clause 15.3 above.

15.5. If any of the **Deliverables** do not conform to the User Requirement Specification as contained in the **Scope of Work**, the **Service Provider** shall immediately replace same with relevant **Deliverables** which substantially meets the User Requirement Specification.

## REPAIRS

15.6. **The Service Provider** guarantees the following:

15.6.1. For Emergency Breakdown

- 2 hours response time, Monday to Sunday
- 6 hours repair time for all Ordinary Breakdown Service Call and Operational Damage Repair Call; Monday to Friday
- 8 hours repair time for all Ordinary Breakdown Service Call and Operational Damage Repair Call ; Saturday and Sunday

15.6.2. Normal working hours shall be:

- 08:00 to 17:00 Monday to Friday

15.6.3. After hours shall be:

- Monday to Friday 17:01 to 07:59
- Saturday, Sunday and Public Holidays

15.6.4. All service calls shall be directed to **the Service Provider** using the following contact details:

- Landline \_\_\_\_\_
- Mobile \_\_\_\_\_
- E-mail \_\_\_\_\_

15.7. If the **Service Provider** is unable to make repairs within 1 hour of responding to an Ordinary Breakdown Service Call and Operational Damage Repair Call, the **Service Provider** shall immediately provide loan ICT Hardware which substantially meets the User Requirement Specification.

## REPORTING

15.8. **The Service Provider** shall provide the following detailed reports on a monthly basis:

15.8.1. A repair/replacement and cost assessment report of all equipment identified as faulty during maintenance activities;

15.8.2. a fault report on all faults and callouts which may have taken place during a particular month;  
and

15.8.3. upon written approval by **the Fund**; replacement equipment shall be purchased and invoiced accordingly.

## 16. WARRANTY

16.1. In addition to all other warranties given by **the Service Provider** to **the Fund** in terms of any other provision contained in **this Agreement**, the **Service Provider** warrants to **the Fund** that it or its **Subcontractor**:

16.1.1. shall ensure that the ICT Hardware shall be without latent defects and the **Service Provider** shall be responsible to make good at its own expense any latent defects of any nature encountered in the ICT Hardware during the existence of **this Agreement** or thereafter;

16.1.2. shall have the right to transfer beneficial ownership of all ICT Hardware provided to **the Fund** in terms of **this Agreement**;

16.1.3. has the rights to license or sublicense (or the rights to grant access to and use of) any software to **the Fund** as part of the **Deliverables**;

16.1.4. no other third party shall have any right to institute a claim based on infringement of any patent, trade secret, copyright, or other proprietary right of that party or any other third-party or to contest **the Fund's** rights of ownership of the ICT Hardware or its beneficial use of any software supplied in terms of **this Agreement**;

16.1.5. has the necessary capacity to supply the **Deliverables** within the agreed lead-times;

16.1.6. is suitably qualified to provide the **Deliverables**;

16.1.7. shall provide a 3 year on-site service warranty on all hardware;

16.1.8. shall provide additional hardware support after the 3 year onsite service warranty, until the end of the asset lifecycle, being 5 years for all classes (3 years onsite warranty and 2 years out of warranty); and

16.1.9. shall provide hardware maintenance, repair and support for existing ICT Hardware (current fleet), after year 3 of the ICT Hardware's lifecycle.

16.2. The risk of loss or damage to the **Deliverables** shall vest with the **Service Provider** until date of delivery as evidenced by the signature of **the Fund** on the **Service Provider's** delivery note in respect of such **Deliverable** from which date the risk shall pass to **the Fund**.

## 17. REQUIREMENTS FOR ICT HARDWARE

17.1. **The Service Provider** warrants the availability of spare parts for the ICT Hardware supplied in terms of **this Agreement** for at least 5 (five) years after the manufacture of such ICT Hardware was terminated by the OEM.



- 17.2. **The Service Provider** shall ensure that all ICT Hardware shall conform to the User Requirement Specification contained in any **Scope of Work**.
- 17.3. **The Service Provider** shall be responsible for obtaining the requisite permission, licenses, certificates and/or any other requirements of any law, regulation, user policy and/or code of conduct in order for **the Fund** to lawfully use and operate the ICT Hardware.
- 17.4. **The Service Provider** shall supply **the Fund** with all OEM warranties in respect of the ICT Hardware Software and Maintenance purchased by and/or licensed to **the Fund**.

## 18. NON-SOLICITATION

**The Service Provider** agrees that, during the term of **this Agreement** and for a period of one year thereafter **the Service Provider** will not, except as stated in **this Agreement**, or with the written consent of **the Fund**, solicit or offer employment to any employee of **the Fund** who was directly involved in the provision of the **Deliverables** provided that this prohibition shall not restrict the right of **the Service Provider** to advertise or recruit generally in the media or from hiring an employee of **the Fund** who answers such advertisement or who otherwise voluntarily applies for employment without having been initially solicited by or on behalf of **the Service Provider**.

## 19. OFFER BY SERVICE PROVIDER

- 19.1. Signature of **this Agreement** by **the Service Provider** shall be an offer by **the Service Provider** to **the Fund** to enter into **this Agreement**, which offer shall be irrevocable for a period of 90 (ninety) days from the date of signature by **the Service Provider**.
- 19.2. **This Agreement** shall be concluded and be binding on **the Fund** only when signed by **the Fund**, until which time no obligations of any kind whatsoever shall exist on the part of **the Fund** in respect of any matter herein provided or referred to.

## 20. ORDER OF PRECEDENCE

- 20.1. In the event of any of the provisions of **this Agreement**, or any Annexure to **this Agreement**, or any **Change Order** or orders or any Bid Document being in conflict with each other, the conflict shall be resolved in accordance with the following order of precedence:
- 20.1.1. This **Schedule**;
- 20.1.2. the Request for Bid and any additions or amendments thereto (“the Bid Documents”), including the Terms of Reference and/or Specifications;
- 20.1.3. a **Change Order** signed later in time;



- 20.1.4. any other **Change Order** signed earlier in time;
- 20.1.5. **Annexure A**;
- 20.1.6. **Annexure B**;
- 20.1.7. the Government Procurement General Conditions of Contract; and
- 20.1.8. The aforementioned documents take precedence over any other annexure to **this Agreement**;

Signed at Pretoria on this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

_____	_____
For: <b>ROAD ACCIDENT FUND</b>	Witness
Name: Eugene Watson	Name:
Capacity: Chief Executive Officer	

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

_____	_____
For: _____	Witness
Name: _____	Name:
Capacity: _____	

**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. Recordals 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:
  - 4.4.2. Account Holder and any Trading Names
  - 4.4.3. Bank Name
  - 4.4.4. Branch Name
  - 4.4.5. Branch Code
  - 4.4.6. Account Number
  - 4.4.7. 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 sub-contractors.

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.

# **ANNEXURE B**

## **SERVICE PROVIDER PROPOSAL**