



**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 **Annexure A, B and C** 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: 38 Ida Street, Menlo Park, Pretoria
Postal Address: Private Bag X2003, Menlyn, 0063
Tel: (012) 429 5215
Contact Person: **Fezile Mchunu** – Contracts Manager; or such other official duly authorised in terms of the Fund’s delegations of Authority and Approval Framework
E-mail: fezilem@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: _____
Tel: _____
Fax: _____

1. RECORDAL

- 1.1. **The Service Provider** will be awarded a contract in terms of **the Fund's** Request for Bid process of procurement;
- 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 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/2012/000**___ 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.
- 1.4. 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.
- 1.5. 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 1.3 and 1.4 above, being in conflict with the provisions of **this Agreement**, the provisions of **this Agreement** (including the Annexures to **this Agreement**) shall prevail.
- 1.6. **The Service Provider** accepts the appointment on the terms and conditions set-out in **this Agreement**.
- 1.7. It is recorded that the further Annexures to **this Agreement** are as follows:
 - 1.7.1. Annexure A: RAF Special Conditions of Contract ("SCC"), and
 - 1.7.2. Annexure B: Project Implementation, Management and Maintenance Plan; and
 - 1.7.3. Annexure C: Pricing Schedule

2. SERVICES OR PRODUCTS SUPPLIED (DELIVERABLES)

- 2.1. **The Fund** appoints **the Service Provider** to supply, install and upgrade security systems and to provide 36 (thirty six) months service, support and maintenance (**Deliverables**) to the security systems.

2.2. Further to the provisions of clause 2.1 above, the **Deliverables** shall be provided as follows:

2.2.1. Supply, installation and upgrade of security equipment at:

- the Cape Town, Durban, Johannesburg and East London branch offices.

2.2.2. Maintenance, service and support of security equipment at:

- the Cape Town, Durban, Johannesburg, East London, Nelspruit, Eco Glades, Pretoria CBD and Menlyn branch offices.

2.3. **The Deliverables** shall be provided in 2 (two) phases:

2.3.1. Phase 1 –

2.3.1.1. shall comprise the supply, installation and upgrade of the security systems in all the regional branch offices named in clause 2.2.1 above;

2.3.1.2. **the Fund's** Service Manager shall have the sole right to determine whether the requirements under this Phase 1 have been complied with in full;

2.3.1.3. **the Fund's** Service Manager shall have due regard to the project management and implementation plan, attached hereto as **Annexure B**, to determine the progress achieved in fulfilling the requirements of Phase 1 and completed milestones;

2.3.1.4. should it appear, in the opinion of **the Fund's** Service Manager, that all outstanding **Deliverables** have been rendered under this Phase 1, then and only in such an eventuality will the provisions of Phase 1 be deemed to be fully implemented and all **Deliverables** rendered as required;

2.3.1.5. As evidence of **the Fund's** acceptance of the **Deliverables** rendered under Phase 1, **the Fund's** Service Manager shall sign-off on Phase 1 by issuing written acknowledgment of the acceptance of the satisfactory performance to the Service Manager of the **Service Provider**, such sign-off not to be unreasonably withheld.

2.3.2. Phase 2 –

2.3.2.1. shall comprise of the maintenance, service and support component as more fully appears in **the Fund's** Request for Bid reference **RAF/2012/000**_____ read in line with the **Service Provider's** proposal;

2.3.2.2. Phase 2 shall commence upon sign-off by **the Fund's** Service Manager in terms of clause 2.3.1.4 as read with 2.3.1.5 above, and shall, subject to the provisions of **this Agreement**, endure for a period of 36 (thirty six) months.

2.4. **The Service Provider** acknowledges that it is aware that the **Deliverables** shall be supplied and installed to address the following:

- Access Control System
- CCTV System
- Office Furniture

- Training
- X-ray Machines
- Metal Detectors
- Alarm System
- Public Announcement System

2.5. **The** further particulars of the scope of work and specifications for the **Deliverables** to be supplied to **the Fund** are those contained in **the Fund's** Request for Bid reference **RAF/2012/000**____ and those proposed by the **Service Provider** in its response to the bid as more fully detailed in **Annexure B** of **this Agreement**.

3. PAYMENT

3.1. **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**.

3.2. **The Service Provider** shall be entitled to receive payment in respect of the completed **Deliverables** according to the pricing schedule submitted as **Annexure F** of the Bid Document.

3.2.1. For the sake of convenience, the pricing schedule is reproduced in **this Agreement** and annexed hereto as **Annexure C**.

3.3. **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.

3.4. The pricing of **this Agreement** is:

3.4.1. VAT inclusive;

3.4.2. inclusive of all other taxes and duties which are levied or charged by any revenue authority (including, without limitation, the South African Revenue Services);

3.4.3. inclusive of all costs and disbursements; and

3.4.4. fixed for the initial period.

3.5. **The Service Provider** shall invoice **the Fund** in respect of completed **Deliverables** as set out in clause 3.2 above.

3.6. 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.

- 3.7. **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 agreed in writing by the **Fund** in advance of them being incurred.
- 3.8. Notwithstanding anything to the contrary, the **Service Provider** shall, at all times during the subsistence of **this Agreement**, not subcontract without the prior written approval of **the Fund**.
- 3.9. **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**.
- 3.10. Payment shall be made in accordance with the provisions of clause 4 in **Annexure A**.
- 3.11. 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**.
- 3.12. Accordingly, **the Fund** will not be obligated to pay **the Service Provider** any amounts in addition to those specifically described in **this Agreement**, unless:
- 3.12.1. there is an agreed change in the scope of the **Deliverables**, or
 - 3.12.2. a change in applicable law to which additional charges apply and have been approved in writing by **the Fund**, or
 - 3.12.3. additional **Deliverables** are required by **the Fund**.

4. DURATION AND DATES

- 4.1. The provision of the **Deliverables** due under **this Agreement** shall be divided into 2 (two) phases and shall commence as follows:
- 4.1.1. on the date of signature of **this Agreement** by the signatory which signs it last in time ("**the Effective Date**"), Phase 1 shall commence and shall endure for a period as specified in the project implementation and maintenance plan attached hereto as **Annexure B**, and
 - 4.1.2. immediately following upon sign-off of Phase 1, Phase 2 (two) shall commence and shall endure for 36 (thirty six) months ("**the Initial Period**"), unless terminated by **the Fund** on not less than 30 (thirty) days prior written notice to **the Service Provider**.
- 4.2. The **Service Provider** shall provide the **Deliverables** in accordance with the timeframes proposed in **Annexure B** or within such agreed timelines as the parties may agree to in writing from time to time.

- 4.3. **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.

5. SPECIAL TERMS AND CONDITIONS

- 5.1. 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:
- 5.1.1. supply **the Deliverables** with promptness, diligence, in a professional manner and with all due care, skill and expertise;
 - 5.1.2. render **the Deliverables** within the agreed timelines;
 - 5.1.3. act in the best interest of **the Fund** and avoid all conflicts of interest that may arise;
 - 5.1.4. 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
 - 5.1.5. 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**.
- 5.2. Notwithstanding anything seemingly to the contrary contained in **this Agreement**, a breach by **the Service Provider** of any of the provisions specified in clause 5.1 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.
- 5.3. All intellectual property (IP) shall remain the property of the owner of such intellectual property.
- 5.4. Subject to clause 5.5 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.

5.5. Notwithstanding the provisions of clause 5.3 & 5.4 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 specified in clause 3 above and **the Fund** shall have the right to use, reproduce and adapt the documentation for its own internal use.

5.6. 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**.

5.7. The Parties appoint the following individuals to whom the Parties assign the management of the **Deliverables**. (Hereinafter referred to as the “Service Manager(s)”)

5.7.1. **The Fund:** Matome Lehomo
 Tel: (012) 621 1790
 E-mail: matomel@raf.co.za
 (or such other official duly authorised in terms of the Road Accident Fund’s Delegations of Authority and Approval Framework)

5.7.2. **The Service Provider:** _____
 Tel: _____
 Fax: _____
 e-mail: _____

6. PERSONAL INFORMATION

6.1. 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**.

6.2. For purposes of clause 6.1 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:

6.2.1. 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;

- 6.2.2. information relating to the education or the medical, financial, criminal or employment history of the person;
 - 6.2.3. any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person;
 - 6.2.4. the blood type or any other biometric information of the person;
 - 6.2.5. the personal opinions, views or preferences of the person;
 - 6.2.6. 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;
 - 6.2.7. the views or opinions of another individual about the person; and
 - 6.2.8. 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.
- 6.3. Without limiting the scope of the definition in clause 6.2 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.

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 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 Agreement**.
- 7.2. Notwithstanding anything seemingly to the contrary contained in **this 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 Agreement** -
- 7.2.1. without prejudice to any other rights which **the Fund** may have in terms of **this 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**, 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.

8. CHANGE CONTROL

8.1. In this clause 8, "**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.

8.2. Should either party wish to make any change to **this Agreement**, that party shall prepare a draft **Change Order** which shall specify the following:

- 8.2.1. the party's name and contact details and the date of the **Change Order** request;
- 8.2.2. a description of the proposed change and the reason for proposing the change;
and
- 8.2.3. when the party would require the **Change Order** to be implemented, if agreed.

8.3. 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:

- 8.3.1. the continued provision of the balance of the Parties' obligations under **this Agreement**;
- 8.3.2. resources including, without limitation, staff; and
- 8.3.3. fees and any reimbursable expenses.

8.4. 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:

- 8.4.1. the continued provision of the balance of the Parties' obligations under **this Agreement**;
- 8.4.2. resources including, without limitation, staff; and
- 8.4.3. fees and any reimbursable expenses.

8.5. No **Change Order** shall be of any force or effect until it is executed by the duly authorised signatories of each of the Parties.

8.6. 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.

- 8.7. A unique, consequential, number shall be allocated to each **Change Order**.
- 8.8. The authorised representative of **the Fund**, for purposes of executing a **Change Order**, is **the Fund's** Chief Executive Officer.
- 8.9. 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 8, shall have the effect of changing any term or condition contained in **this Agreement**.

9. SUBDELEGATION

- 9.1. 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.
- 9.2. 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**.
- 9.3. The **Fund** shall, when giving consideration to a request contemplated in clause 9.1 above, take into consideration the following aspects pertaining to the **Subcontractor** :
 - 9.3.1. 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 9.1 above;
 - 9.3.2. 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 9.1 above; and
 - 9.3.3. 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 9.1 above.

- 9.4. The **Fund** may, if the **Fund** elects to approve a request contemplated in clause 9.1 above, make such consent subject to such terms and conditions as the **Fund** in its sole election consider reasonable.
- 9.5. Notwithstanding that the **Fund** may elect to consent to a request contemplated in clause 9.1 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**.

10. MAINTENANCE AND PREVENTATIVE MAINTENANCE SERVICE LEVELS

- 10.1. **The Service Provider** undertakes to provide the maintenance and service of security systems as listed hereunder:

10.1.1. Roller and Shutter Doors

- test and operate roller shutter doors for good functionality
- grease and lubricate all motional parts;
- inspect conditions of roller shutter to required standards; and
- maintain, service and do repairs where it is necessary

10.1.2. Control Panels

- Check all terminal connections;
- Visually inspect condition of equipment and wiring;
- Test all relays, timers and overloads; and
- Maintain, service and do repairs where it is necessary

10.1.3. Intercom and Evacuation System

- Test all speakers and sirens;
- Test all relays, fuses, fault and alarm indicators; and
- Service, repair and maintain the system up to required standard

10.1.4. Turnstiles and Automated Paraplegic Gates

- Check operation of turnstiles after opening and closing; and
- Service, repair and maintain up to required standards

10.1.5. Biometric Access Control System, X-ray Machines and Walk-through Detectors

- Check any faults and mitigate the outcome; and
- Maintain, service and do repairs where necessary

10.1.6. Wood, Glass and Aluminium Doors

- Check all access doors with magnetic door closers and maintain to required standards;
- Maintain all break glass units; and
- Repair and replace damaged door hinges where applicable

10.1.7. Closed Circuit Television (CCTV) System

- Clean all lenses and adjust focus where necessary; and
- Maintain, service and repair all cameras where necessary

10.2. **The Service Provider** shall provide preventative maintenance as detailed hereunder:

- 2 x maintenance site visits per week
- 1 x monthly maintenance activity per month

10.2.1. **The Service Provider** shall provide **the Fund** with prior notice of each service visit envisaged in clause 10.2 above.

10.2.2. **The Service Provider** shall:

- 10.2.2.1. Maintain the systems at optimum performance levels;
- 10.2.2.2. Repair faults as detected during each maintenance visit within the stipulated time frames;
- 10.2.2.3. Carry out full system operation checks as applicable; and
- 10.2.2.4. Perform scheduled service for each item comprising the security system.

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

10.3.1. 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

10.3.2. Normal working hours shall be:

- 08:00 to 17:00 Monday to Friday

10.3.3. After hours shall be:

- Monday to Friday 18:00 to 07:00
- Saturday, Sunday and Public Holidays

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

- Telephone _____
- Cellphone _____
- E-mail _____

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

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

- 10.4.2. A fault report on all faults and callouts which may have taken place during a particular month;
and
- 10.4.3. upon written approval by **the Fund**; replacement equipment shall be purchased and invoiced accordingly.
- 10.5. **The Service Provider** shall charge and shall invoice for all items listed in this clause 10 as per the attached pricing schedule annexed hereto as **Annexure C** and **the Fund** shall only be liable to make payment according to the prices specified in the said pricing schedule.
- 10.6. **The Service Provider** shall present to **the Service Manager** of **the Fund** for signature, an acceptance certificate on completion of each monthly inspection and maintenance service, such certificate to be accompanied by a service report on the work which carried out in the preceding month.

11. PENALTIES

11.1. In this clause 11 -

- 11.1.1. **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.
- 11.1.2. **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**.
- 11.1.3. **Service Level Default** means, in respect of each **Deliverable**, a failure by **the Service Provider** to meet a service level target.
- 11.1.4. **Value of the Service** means the **Deliverables** performed in a particular month as evidenced by an invoice submitted to **the Fund** for payment.
- 11.2. 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.
- 11.3. 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**.
- 11.4. The total aggregate amount of **Penalties** shall not exceed:
- 11.4.1. 10% (ten percent) in any particular month; and
- 11.4.2. 20% (twenty percent) of the total contract price.

- 11.5. **The Service Provider** shall, as part of the standard monthly reporting provided to **the Fund**, include a report on **Service Level Defaults**.
- 11.6. 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.
- 11.7. Penalty Formula:
 $P = R \cdot x$
Where:
P = service level credit payable
R = The price for the specific **Deliverable** (as contained in the Pricing Schedule).
 $x = (M - A) / M$
Where: M = The associated metric specified in the service levels.
A = **Service Provider's** performance against the service levels as set out in the monthly report.
- 11.8. **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:
- 11.8.1. 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**;
- 11.8.2. where such failure is due to an event attributable to **the Fund**.
- 11.8.3. where the end user of **the Fund** is not available when **the Service Provider** requires the end user to be available.

12. OFFER BY SERVICE PROVIDER

- 12.1. 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**.
- 12.2. **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.

13. ORDER OF PRECEDENCE

13.1. In the event of any of the provisions of **this Agreement**, or any Annexure to **this Agreement**, or any **Change Order** or addendum or any Bid Document being in conflict with each other, the conflict shall be resolved in accordance with the following order of precedence:

13.1.1. **This Agreement** takes precedence over the 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 and/or Specifications;

13.1.2. A **Change Order** signed later in time shall take precedence over **this Agreement** and any other **Change Order** signed earlier in time; notwithstanding that it does not specifically provide that it takes precedence over **this Agreement**,

13.1.3. This **Schedule** takes precedence over **Annexure A**;

13.1.4. **Annexure A** takes precedence over the Government Procurement General Conditions of Contract; and

13.1.5. The aforementioned documents take precedence over any other annexure to **this Agreement**;

Signed at Pretoria on this _____ day of _____ 2013.

For: **ROAD ACCIDENT FUND**
Name: Eugene Watson
Capacity: Chief Executive Officer

Witness
Name:

Signed at _____ on this ____ day of _____ 2013.

For: _____
Name: _____
Capacity: _____

Witness
Name:

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 1st (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 1st (first) calendar day of the month.
- 4.6. If an invoice and supporting documentation is submitted to the Fund after the 1st (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

PROJECT IMPLEMENTATION, MANAGEMENT AND MAINTENANCE PLAN

ANNEXURE C

PRICING SCHEDULE