

Appendix A

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TENDER NUMBER :



SERVICES AGREEMENT

between

THE COMPENSATION FUND

Physical Address	Compensation House, Cnr Hamilton & Soutpansberg streets, ‘ Pretoria		
Postal Address	P. O. Box 944, Pretoria, 0001		
Tel and Fax No.	Tel: (+27 12 313 6327 Fax: (+27 12) 357 1751		
Signed at	PRETORIA	Date	
Name			who warrants that they are duly authorised to sign
Office			

and

(“.....”)

Registration number			
Physical Address			
Postal Address			
Fax No.			
Signed at		Date	
Name			who warrants that they are duly authorised to sign
Office			

This Agreement comprises the Agreement and Schedules attached hereto.

PART 1 – BUSINESS AGREEMENT

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1. *Rules of interpretation.* In this Agreement :-

- 1.1.1 clause headings are for convenience and are not to be used in its interpretation;
 - 1.1.2 unless the context indicates a contrary intention an expression which denotes:-
 - 1.1.2.1. any gender shall include the other genders;
 - 1.1.2.2. a natural person shall include a juristic person and vice versa;
 - 1.1.2.3. the singular shall include the plural and vice versa;
 - 1.1.3 references to clauses, schedules, parts and sections are, unless otherwise provided, references to clauses, schedules, parts and sections of this Agreement;
 - 1.1.4 references to any enactment shall, unless expressly stipulated otherwise, be to RSA enactments and shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time;
 - 1.1.5 cross references to clauses in a specific schedule, part or section shall be a cross reference to clauses in such schedule, part or section unless specifically stated otherwise;
 - 1.1.6 when any number of days is prescribed same shall, unless otherwise specifically stated, be reckoned exclusively of the first and inclusively of the last day;
 - 1.1.7 if any provision in a definition or in the recital is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that it is only in the definition clause or recital, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
 - 1.1.8 where words have been defined in the body of this Agreement, such words shall, unless otherwise required by the context, have the meanings so assigned to them throughout this Agreement.
 - 1.1.9 where any provision contemplates a notice to be given or agreement to be reached between the parties, such notice or agreement shall, unless expressly provided otherwise, be made in writing.
- 1.2. ***Meanings of expressions and words.*** In this Agreement the following expressions and words have the meanings assigned to them below and derivative expressions and words will have a corresponding meaning:-

- 1.2.1 **“Agreement”** means this Agreement, including all schedules and annexes, together with amendments thereto executed by the parties in accordance with the Change Control Policy;
- 1.2.2 **“Bid”** means Contractor’s response to the Tender dated
- 1.2.3 **“Business Day”** means any day in the RSA which is not a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994. All references in this Agreement to days shall be deemed to be to calendar days, unless specifically stipulated as being Business Days;
- 1.2.4 **“Change Control Policy”** means the policy set out in **Schedule 1 - Change Control Policy**;
- 1.2.5 **“Client Service Manager” (“CSM”)** means a Contractor representative appointed as such in terms of **Schedule 2 – Contract Governance Structure** to fulfil the functions set out therein;
- 1.2.6 **“Contractor”** means _____, a company, cc, person or sole proprietor duly incorporated according to the laws of the Republic of South Africa, (Registration No _____);
- 1.2.7 **“Effective Date”** means notwithstanding the Signature Date, _____;
- 1.2.8 **“IT System”** means the computer and peripheral devices, hardware, firmware, operating system software and equipment to be utilised by Contractor in the performance of its obligations under this Agreement;
- 1.2.9 **“RSA”** means the Republic of South Africa;
- 1.2.10 **“Service Levels”** means the stipulated criteria applicable, if any, to the Services, as set out in **Error! Reference source not found.**;
- 1.2.11 **“Services”** means the services to be provided by Contractor to the Fund and the Regions, as the case may be, as specified in **Error! Reference source not found.**;
- 1.2.12 **“Signature Date”** means the date of signature of this Agreement by the party signing last;
- 1.2.13 **“SLA”** means a Service Level Agreement in respect of each region entered into by Contractor with the Fund and annexed to **Error! Reference source not found.** which shall be subject to the terms and conditions of this Agreement. It is recorded that no such SLA’s have been agreed to as at the signature date and all such SLAs will be agreed to between the parties in terms of the Change Control Policy;
- 1.2.13.1. **“the Fund” / CF** means the Compensation Fund;

- 1.2.14 **“Fund’s Managers” (“FM”)** means a Fund representative appointed as such in terms of **Schedule 2 – Contract Governance Structure** to fulfil the functions set out therein;
- 1.2.15 **“Regions” – Schedule 8** means Fund User Groups, being the provinces which will acquire Services from Contractor in terms of SLA’s executed between such Regions and Contractor, provided that where no such SLAs are executed, the Regions will acquire the Services on the basis set out in **Error! Reference source not found.**;
- 1.2.16 **“the Tender”** means Tender _____ issued by the Fund in respect of the Services.

2. BACKGROUND

It is recorded for the purposes of clarifying the operative provisions of this Agreement that it is being entered into under the following circumstances:-

- 2.1 The mandate of the Compensation Fund is derived from Section 27 (1)(c) of the Constitution of the Republic of South Africa. In terms of this act, all South Africans have a right to social security. The Compensation Fund is then mandated to provide social security to all injured and diseased employees.

The Compensation Fund is a public entity of the Department of Labour. The Fund administers the Compensation for Occupational Injuries and Diseases Act no. 130/1993 as amended by the COIDA 61/1997.

The main objective of the Act is to provide compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees, or for death resulting from such injuries or diseases, and provide for matters connected therewith.

The Fund generates its revenue from levies paid by employers, which consists mainly of annual assessments paid by registered employers on a basis of a percentage or fixed rate of the annual earnings of their employees. The COID Act, however, makes provision for a minimum assessment to ensure that the assessment is not less than the administration costs incurred.

The operations of the Compensation Fund are also affected by the following legislation:

- o Public Finance Management Act, of 1999 as amended
- o Occupational Health and Safety Act, 1993
- o NEDLAC Act, 1994
- o Labour Relations Act, 1995, as amended
- o Basic Conditions of Employment Act, 1997, as amended
- o Employment Equity Act, 1998
- o Skills Development Act, 1998 as amended
- o Unemployment Insurance Act, 2001 as amended
- o Unemployment Insurance Contributions Act, 2002

3. APPOINTMENT

The Fund hereby appoints Contractor, who accepts such appointment, to provide the Services in terms of this Agreement.

4. DURATION

- 4.1. **Duration.** Subject to the provisions of clause 4.2, this Agreement shall commence on the Effective Date for a period of two (2) years and, subject to the rights of termination stipulated herein, shall continue until the expiry of the project.
- 4.2. **Instruction from the Fund.** Notwithstanding the provisions of clause 4.1, the Contractor will provide services to the Fund in terms of this Agreement up until the close of business on _____ (“the Initial Period”) provided that the Fund may, subject to the parties reaching agreement on pricing for such extended period, extend this date for an additional period not exceeding 2 (two) years on the same terms and conditions on written notice to Contractor, which notice shall be given no less than 90 (ninety) days prior to the expiry date of the Initial Period.

5. BLACK ECONOMIC EMPOWERMENT

- 5.1. Contractor hereby acknowledges its commitment to achieving Black Economic Empowerment and agrees that for the duration of this Agreement, it shall comply with **Schedule 4 – Black Economic Empowerment.**

6. LOCAL PRESENCE

- 6.1 Contractor hereby acknowledges the need for local representation in respect of the Fund from where Contractor expects to operate from.

7. THE SERVICES

- 7.1. **Provision of Services.** During the currency of this Agreement, Contractor shall provide the Services set out in **Error! Reference source not found.** to the Fund and the regions in accordance with:-

- the Service Levels;
- the terms of this Agreement.

7.2 Service by the service provider

The overall goal of turnaround strategy is to return an underperforming CF to normal in terms of acceptable levels of service delivery, financial health and administration.

To achieve these objectives, the CF turnaround strategy must reverse causes of distress, resolve the financial crisis, achieve a rapid improvement in financial performance, regain stakeholder support, and overcome internal constraints and unfavorable characteristics identified.

Turnaround approach should at least include the following components which are:- stabilizing the fund, enhancing and optimizing the CF's (people, processes and systems) in terms of the turnaround model indicated below.

7.2.1 Components of turnaround strategy

7.2.1.1 Managing the turnaround

The enabling components to manage the turnaround are turnaround leadership, stakeholder management, and turnaround project management.

7.2.1.2 Stabilising the business and the financial management

The CF needs to be stabilized to ensure the short-term future of the business, introducing predictability and ensuring legal and fiduciary compliance (PFMA).

7.2.1.3 Fixing the distressed Compensation Fund

The underperforming or distressed public entity needs to be fixed in strategic, organisational and operational terms.

7.2.1.4 The successful service provider will be required to:

- **Devise and Implement a Remedial Plan to remedy the interim crisis :- (Business unusual plan of action)**
 - Identify the root cause or contributory factors to the issues and weaknesses identified in the business process
 - Perform Root Cause Analysis on finance, fraud and risk administration and management
 - Perform a diagnostic review of people and systems to identify weaknesses to establish controls
 - Develop mitigating action plan aimed to resolving, eliminating, or minimising the incidence of the identified issues, weakness and lack of controls

- **Develop, design and implement the turnaround plan for the CF (Future model for the CF):-**
 - Diagnostic of the alignment of the strategic objectives of the CF against its shareholders mandate and objectives
 - Perform a legal review with the aim enhance service delivery. The legal review must be included in the turnaround plan.
 - Develop and implement a change management program addressing all elements of the program
 - Map and design Business Process for the Fund which includes both business processes for core and support functions of the CF
- **Develop and implement a change management program addressing all elements of the program**
 - Provide best practice benchmark study to the CF
 - Develop, Review and Update Governance Policy and Procedures as may be required
 - Facilitate the turnaround leadership
 - Develop, design and implement the turnaround approach and plan for the CF
 - Implement the turnaround plan for the CF

- **People**
 - Review Employment Contracts, Score Cards and Performance management, and redefine these as may be necessary
 - Develop appropriate organisational structure
 - Develop job descriptions covering posts in the revised organisational structure
 - Perform a complete skills audit across all levels of staff and evaluate current skills against the skills required to perform the job requirements
 - Evaluate suitability of current staff and perform a best fit placement of staff into positions where they are best trained and able to perform in accordance with the organisation's goals.
 - Manage the implementation of the new Human resource organisational structure in accordance with best HR practice

- **Business Processes and Systems**
 - Review, Map, Optimise and Define all Business Processes across the entire value chain
 - Review, Map, Optimise and Define all Systems Processes to close the gaps in governance and controls across the entire value chain
 - Develop mitigation strategies for work segmentation, Risks and Controls
 - Develop segmented workflows to optimise employee load balancing and turnaround times on tasks and service delivery elements
 - Business systems and architecture review and make recommendations for optimisation
 - Review, design and implement business intelligent information reports and advise a business specification to implement BI
 - Develop Dashboards and Radars to facilitate good and timeous management information to feed into effective management processes

7.2.1.5 Project Office

Establishment of a Project Office to manage projects relating to the scope of work and delivery of the turnaround plan and to co-ordinate activities of the remedial and turnaround implementation plan at a location determined by the Director General of Labour.

Resource the project office with resources to manage both the remedial and modernisation of the CF.

7.2.1.6 Actuarial and Audit Professional Services (remedial plan)

An analysis of the Compensation Fund conducted provides for the estimation of ± 600 000 claims that has remained unpaid for a number of years. The objective of the assignment is to conduct an actuarial valuation to determine the value of these claims as well as the impact thereof on the financial reserves of the Fund.

A comprehensive valuation report highlighting the work carried out, the methodology used and the findings and recommendations arising from the valuation should be produced.

The audit is an essential component of the diagnostic study which aims to assess the finance capacity of the C F.

Key deliverables will be to:-

- a. compile or update the Fund's action plan in response to the AG findings and Public Protector reports,
- b. conduct priority assessment of the action required to achieve the best results within project timeframes.
- c. allocate responsibilities with timelines for the priority areas identified following the review and assessment.
- d. make recommendations that are aimed at improving the financial reporting process going forward.
- e. design and implement general financial management in terms of GRAAP and PFMA
- f. establish controls and procedures that are aimed to mitigate and eliminate risk and fraud.
- g. review and optimise business processes to ultimately ensure that all amounts received by the Fund in terms of PFMA are receipted, completely, timely and accurately deposited and that all monies transferred and paid by the Fund, for claims and other Fund expenditure are accurately, efficiently and appropriately utilized and substantiated.

7.2.1.7 Output Required

The project deliverables will be to manage the implementation of the turnaround of the CF in terms of the scope of work indicated under paragraph 3.

7.3 **Contractor's obligations.** The obligations of Contractor referred to in this Agreement shall include, without limitation:-

7.3.1 Refraining from acting in such a manner, or failing to act, which itself amounts to or circumvent compliance with any of the conditions of this agreement.

7.4 **Change in scope of services.** Should any party wish to propose any change to the scope or nature of Services, such party shall adhere to the Change Control Policy.

7.5 **Changes only effective once signed off by both parties.** Any changes proposed by the parties in terms of clause 7.4 will only become effective once signed off by both parties, pending which signing off, both parties shall continue to perform their respective obligations in terms of this Agreement.

8 SERVICE LEVELS

8.2 **Undertaking to achieve Service Levels.** Contractor undertakes that in providing the Services to the Fund, it will achieve the Service Levels set out in **Error! Reference source not found.**

8.3 **Penalties.** Without detracting from any rights or remedies which the Fund may have, Contractor agrees to the payment of penalties in accordance with the provisions of **Error! Reference source not found.**, if any.

8.4 **Obligations upon failure to meet Service Levels.** Should Contractor at any time fail to meet the Service Levels due to its default, Contractor will, without prejudice to the Fund's other rights and remedies:-

8.4.1 provide all such additional resources as may be necessary to perform the Services in accordance with the Service Levels as soon as possible thereafter and at no additional cost to the Fund; and

8.4.2 at the request of the Fund, promptly remedy any default or re-perform any non-conforming Service at no additional charge to the Fund.

9. FINANCIAL MATTERS

9.1 **Consideration.** As consideration for the provision of Services pursuant to this Agreement, the Contractor shall receive remuneration on the basis set out in **Schedule 5 – Pricing Schedule.**

9.2 **Additional charges.** Contractor shall not be entitled to claim for any additional payment exceeding the service charge indicated in **Schedule 5**, on the grounds of any misunderstanding or misinterpretation in respect of the Services, nor will Contractor be released from any risk or obligations imposed on or undertaken by Contractor on any such grounds or on the grounds that it could not have foreseen any matter which might affect, or have affected, the price or its performance or any part thereof in terms of this Agreement.

10. RELATIONSHIPS WITH THIRD PARTIES

10.1 **Service providers.** It is recorded that Contractor may establish contractual relationships with service providers to undertake services pursuant to this Agreement. Accordingly:-

10.1.1 Contractor shall be responsible for establishing appropriate service levels with such service providers and for implementing quality assurance measures to ensure that the Fund is afforded a prompt and professional service;

10.1.2 Contractor shall be solely liable to such service providers for all payments to be made for authorised services rendered or made in respect of claims and Contractor hereby indemnifies the Fund against any claim which may be made by any such service provider against the Fund ;

10.1.3 Contractor shall be liable to the Fund for the negligent or intentional misconduct of such service providers and shall not exclude such liability.

11. FRAUD PREVENTION AND DETECTION

11.1 **Prevention of collusion.** Contractor shall take adequate steps to minimise the risk of collusion among its staff, the Fund employees, service providers and claimants.

Furthermore, Contractor's systems and procedures shall incorporate both preventative and detective safeguards capable of preventing and detecting fraudulent transactions.

11.2 Notification of fraud. Contractor shall notify the Fund in writing of any suspected irregularities involving a Fund's employee or claimant immediately upon such suspicion arising.

11.3 Assistance. Contractor shall assist the Fund in investigating such irregularities by providing to the Fund any evidence that it may have and by making its staff available to testify at any proceedings in respect thereof, whether informal or formal.

12. MANAGEMENT INFORMATION SYSTEMS

12.1 Management Reports. Contractor shall furnish the Fund with the reports set out in **Error! Reference source not found.** on the terms stipulated therein.

13. CONTRACTOR'S PERSONNEL

13.1 Contractor to adhere to security procedures of Fund. Contractor Personnel shall at all times when on Fund premises adhere to the standard health, safety and security procedures and guidelines applicable to Fund Personnel, as varied and conveyed by Fund to Contractor from time to time. Should the Fund at any time have reason to believe that any of Contractor's Personnel is failing to comply with such standard health, safety and security procedures and guidelines, the Fund may deny such person access to any or all of the Fund's premises or systems and require Contractor to replace such person without delay.

14. DATA/INFORMATION

14.1 Ownership. Ownership in all Fund Data/information, whether under its control or not, shall continue to vest in the Fund and Contractor shall not obtain any proprietary rights in such data/information. Without derogating from the foregoing, the database containing the up to date information in respect of claims, including all back-up copies of such data, shall vest in the Fund.

14.2 Data/information may only be used in performance of the Services. The Fund's Data/information in the possession of Contractor, or to which Contractor may have access during the currency of this Agreement, may not be used by Contractor for any purposes whatsoever other than as may be specifically required to enable Contractor to comply with its obligations in terms of this Agreement.

14.3 Preservation of integrity of data/information. Both parties shall take reasonable precautions (having regard to the nature of their obligations in terms of this Agreement), to preserve the integrity of the Fund's Data/information and to prevent any unauthorised access, corruption or loss of such data/information.

15. GOVERNANCE STRUCTURES

In order to facilitate the smooth and effective management of the relationship, the parties will implement and adhere to the contract governance structures set out in **Schedule 2 – Contract Governance Structure** as amended from time to time.

16. CONTRACTOR'S WARRANTIES

16.1 Competition issues. Contractor warrants that:-

16.1.1 it has not contravened any provision of the Competition Act 1998 (Act No. 89 of 1998) ("**the Competition Act**") with regard to the submission of its Bid;

16.1.2 to its knowledge the transaction contemplated in this Agreement does not contravene any provision of the Competition Act or require any consents or approvals from the Competition Authorities contemplated in the Competition Act;

16.1.3 it has disclosed all correspondence, if any, between itself and the Competition Authorities in respect of the transaction contemplated by this Agreement.

16.2 Contractor is qualified to provide the Services. Contractor warrants that it possesses the requisite knowledge, skill and experience to provide the Services.

17. OBLIGATIONS OF CONTRACTOR

17.1 Problem and Negative Trend Identification. Should Contractor encounter any problem or identify any trend in relation to the Services or any component thereof, which could cause, or which indicates the likely occurrence of, a disruption to the Fund's business or the availability of the Services, it must report such matter to the Fund in writing without delay. Thereafter, the parties will agree on corrective measures to be taken to address or pre-empt the problem, as the case may be, in accordance with the Change Control Policy, if necessary.

17.2 Items required for the Services. Save as provided otherwise, Contractor shall supply all items required for the provision of the Services.

17.3 Suitably Qualified Personnel. Contractor shall employ suitably qualified and trained Personnel to provide the Services to the Fund in terms of this Agreement.

18. OBLIGATIONS OF THE FUND

18.1 The Fund shall ensure that any party over which it has direct control performs its duties and functions referred to in this Agreement in a manner which enables Contractor to comply with its obligation to provide the Services.

19. ADVICE

19.1 Provision of advice. Contractor shall at all times during the period of this Agreement provide advice, information and assistance to the Fund that is necessary to render the Services in the most efficient manner.

19.2 Additional advice. Without limiting the generality of the obligation referred to in clause 19.1, Contractor shall ensure that suitably trained and qualified staff are made available to support, assist and consult to the Fund and its Personnel at no additional cost to the Fund on any aspect in respect of the Services at all times during this Agreement.

20. REVIEW OF THE AGREEMENT

It is fundamental to the success of this Agreement and the parties' ongoing relationship that this Agreement reflects and continues to reflect their prevailing business imperatives and capabilities. Consequently the parties agree that for the purposes of reviewing this Agreement, the services provided, or any other matter arising out of this Agreement, they will, at a minimum, formally meet as a Steering Committee within 30 (thirty) days of the anniversary of the Effective Date each year during the currency of this Agreement, provided that any and all such changes agreed at such meetings shall be executed in accordance with the Change Control Policy.

21. ACCOUNTING REQUIREMENTS AND INSPECTION

21.1 Requirements. Contractor shall -

21.1.1 operate a proper and efficient accounting system and maintain books of account and other records in the English language adequate to reflect truly and fairly, and in conformity with generally accepted accounting practice consistently applied, the financial position and financial affairs of Contractor;

21.1.2 keep all accounting records drawn up for a period of at least 3 (three) years after termination or expiry of this Agreement in hard copy and electronic format;

21.1.3 keep all its books and records at all times within the RSA and for the time periods stipulated in all applicable laws;

21.2 Exclusions. Notwithstanding the provisions of clause 21.1, the Fund shall not be entitled to access the financial statements and balance sheet of the Contractor, provided that should the Fund require to inspect such excluded records, it may request the Contractor's auditors, or the forensic services division of any auditing firm of international standing and repute, to scrutinise such records to determine the existence of any irregularity suspected by the Fund, provided that any party other

than the Contractor's auditors shall be obliged to maintain the confidentiality of the aforementioned excluded records.

21.3 Access. Contractor shall, in order to enable the Fund to determine whether the provisions of this Agreement are being complied with:

21.3.1 provide the Fund with such information as it may reasonably require;

21.3.2 allow the Fund to inspect and take copies of any documents of Contractor relating to the Services, including all data, information, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence; and

21.3.3 allow the Fund or its authorised representatives to conduct interviews with any of Contractor 's employees or auditors, subject to reasonable notice being given to Contractor .

21.4 Contractor to provide reasonable assistance. Where:-

21.4.1 any information required for the inspection in terms of this clause 21 is kept by means of a computer, Contractor shall give the Fund such reasonable assistance as it requires to facilitate inspection and the taking of copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information;

21.4.2 Contractor is required to provide information or allow the Fund to inspect or take copies of any items of any description, Contractor shall provide the information or, as the case may be, allow the Fund to inspect and take copies of the items

21.5 Information to be provided in specified form. Any information required to be provided to the Fund pursuant to this clause 21 shall be provided by Contractor in such form (including a form otherwise than in writing) as the Fund may reasonably specify.

21.6 Contractor to allow access to premises. Where, pursuant to any provision contained in this clause 21, Contractor is required to allow the Fund to inspect or take copies of any item of any description, Contractor shall allow the Fund, or its authorised representatives such access to any premises of Contractor as is necessary to enable the Fund to inspect or take copies of the items.

21.7 The Fund's rights where it suspects unlawful activity by Contractor.

Notwithstanding the foregoing, but subject to the limitation contained in clause 21.3, should the Fund reasonably suspect any fraudulent or other unlawful activity by Contractor or its Personnel, the Fund, its inspectors or other authorised agents shall have the right of immediate access to all the records and sites of Contractor and Contractor agrees to provide reasonable assistance at all times during the currency of

this Agreement or at any time thereafter. For the avoidance of doubt, Contractor shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this clause 21.7 if the result of such investigation reveals no fraudulent or other unlawful activity by Contractor or its Personnel.

21.8 Cost of inspection and minimum interference. The inspection contemplated in this clause 21 will be conducted:-

21.8.1 during Contractor's business hours;

21.8.2 with the minimum of interference in the provision of the Services and Contractor's other operations;

21.8.3 at the Fund's cost.

22. CONFIDENTIAL INFORMATION

22.1 Confidentiality obligation. Each party ("**the receiving party**") must treat and hold as confidential all information, which they may receive from the other party ("**the disclosing party**") or which becomes known to them concerning the disclosing party during the currency of this Agreement.

22.2 Nature of the confidential information. The confidential information of the disclosing party shall, without limitation, include:-

22.2.1 all associated material and documentation, including information contained therein;

22.2.2 all information relating to :-

22.2.2.1 the disclosing party's past, present and future research and development;

22.2.2.2 the disclosing party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;

22.2.2.3 the terms and conditions of this Agreement;

22.2.2.4 the Fund's Data/information;

22.2.2.5 all personal information of claimants.

22.3 The receiving party's obligations with regard to confidential information. The receiving party agrees that in order to protect the proprietary interests of the disclosing party in its confidential information:-

22.3.1 it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Agreement;

22.3.2 it will initiate internal security procedures reasonably acceptable to the disclosing party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;

22.3.3 subject to the right to make the confidential information available to their Personnel, they will not at any time, whether during this Agreement or thereafter, either use any confidential information of the disclosing party or directly or indirectly disclose any confidential information of the disclosing party to third parties;

22.3.3.1 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the disclosing party which have or will come into the possession of the receiving party and its Personnel, will be, and will at all times remain, the sole and absolute property of such party and shall be promptly handed over to such party when no longer required for the purposes of this Agreement.

22.4 ***Obligations in respect of confidential information upon termination.*** Upon termination or expiry of this Agreement, the receiving party will deliver to the disclosing party, or at the disclosing party's option, destroy all originals and copies of the disclosing party's confidential information in its possession.

22.5 ***Information which will not constitute confidential information.*** The foregoing obligations shall not apply to any information which:-

22.5.1 is lawfully in the public domain at the time of disclosure;

22.5.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;

22.5.3 subsequently becomes available to the receiving party from a source other than the disclosing party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or

22.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

22.6 ***Disclosure to professional advisors.*** Nothing in this clause shall preclude the parties from disclosing the confidential information to their professional advisors in the bona fide course of seeking business and professional advice.

22.7 ***Indemnity in respect of confidential information.*** The receiving party hereby indemnifies the disclosing party against any loss or damage, which the disclosing party may suffer as a result of a breach of this clause by the receiving party or its Personnel.

22.8 ***Severability.*** The provisions of this clause 22 are severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force and effect for a period of 10 (ten) years after the date of termination.

23. INTELLECTUAL PROPERTY RIGHTS

23.1 *No aspect of the Services to infringe 3rd Party Intellectual Property Rights.*

Contractor warrants that no aspect of the Services provided in terms hereof will infringe any patent, design, copyright, trade secret or other proprietary right of any third party ("**third party proprietary rights**"), and Contractor shall, at its cost, defend the Fund against any claim that the Services infringe any such third party proprietary rights, provided that the Fund gives prompt notice to Contractor of such claim and Contractor controls the defence thereof. Contractor further indemnifies the Fund against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Fund in any action which is attributable to such claim and will reimburse the Fund with all costs reasonably incurred by the Fund in connection with any such action.

23.2 *Process in the event of a claim.* Should any claim be made against the Fund by any person in terms of clause 23.1, the Fund shall give Contractor written notice thereof within 10 (ten) days of becoming aware of such claim to enable Contractor to take steps to contest it.

23.3 *Infringement of 3rd Party rights.* Should any third party succeed in its claim for the infringement of any third party proprietary rights, Contractor shall, at its discretion and within 30 (thirty) days of the Services having been found to infringe:-

23.3.1 obtain for the Fund the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or

23.3.2 replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or

23.3.3 alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or

23.3.4 withdraw the subject of infringement.

24. DISPUTE RESOLUTION

The parties accept that disputes may arise between them during the course of this Agreement. Any dispute which cannot be resolved between the respective Service Managers of the Parties shall be dealt with in accordance with the provisions of **Schedule 6 - Dispute Resolution.**

25. FUND DEFAULT

25.1 *Event of default.* Should the Fund commit any material breach of this Agreement and fail to remedy such breach within 30 (thirty) days of receipt of written notice from Contractor calling upon it to do so, the Contractor may, without prejudice to any of its other rights in terms of this Agreement or at law, terminate this Agreement forthwith on written notice to the Fund. In such event, the Contractor will implement the provisions of **Schedule 7 - Transfer Management Provisions** and the Agreement will terminate on satisfactory completion of such provisions.

25.2 *Content of notice.* The termination notice contemplated in clause 25.1 must specify the type of breach which has occurred that entitles Contractor to terminate this Agreement.

26. CONTRACTOR BREACH

26.1 *Definition:-*

For the purposes of this clause 26, a “Persistent Failure” means any failure by the Contractor to provide the Services or achieve the service Levels (“Service Failure”) which has continued or occurred more than twice within a 6 (six) month period after a final warning notice in terms of clause 26.1.1.4 is served on Contractor. Thus if any Service Failure has occurred more than once then the Fund may give a formal warning notice to Contractor, specifying:

26.1.1.1 that it is a formal warning notice;

26.1.1.2 reasonable details of the Service Failure; and

26.1.1.3 that if such Service Failure recurs or continues, it may result in a termination of this Agreement;

26.1.1.4 if within 90 (ninety) days of service of such warning notice, the Service Failure specified occurs again, then the Fund may serve a final warning notice on Contractor stating that if such Service Failure recurs within 6 (six) months of the date of service of such final warning notice, the Agreement may be terminated.

26.2 *Breach.* Should:

26.2.1 Contractor be in material breach of its obligations in terms of this Agreement and fail to remedy such breach within 30 (thirty) days of being notified thereof by the Fund in writing;

26.2.2 Contractor commit a Persistent Breach;

26.2.3 a court make an order that Contractor be wound up or a resolution for a voluntary winding-up of Contractor is passed;

- 26.2.4** any receiver or manager in respect of Contractor be appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- 26.2.5** any voluntary arrangement be made for a composition of debts or a scheme of arrangement be approved under the Insolvency Act 1986 or the Companies Act 1973 in respect of Contractor; or
- 26.2.6** an administration order be made in respect of Contractor;
- 26.2.7** the Fund may, without prejudice to any of its other rights in terms of this Agreement or at law, terminate this Agreement forthwith on written notice to the Contractor. In such event, the Contractor will implement the provisions of **Schedule 7 - Transfer Management Provisions** and the Agreement will terminate on satisfactory completion of such provisions.

27. TRANSFER MANAGEMENT UPON TERMINATION

Upon termination of this Agreement for any reason whatsoever and howsoever arising, in order to ensure the smooth and uninterrupted transition of the Services from Contractor to the Fund, or its nominated Service Provider, the parties shall comply with the transfer management provisions set out in **Schedule 7 - Transfer Management Provisions**.

28. FORCE MAJEURE

28.1 *Liability for failure to fulfil a party's obligations.* Neither party shall be liable for any failure to fulfil its obligations under this Agreement if such failure is caused by force majeure.

28.2 *Definition.* For the purposes of this clause "force majeure" shall mean any event beyond the reasonable control of a party, including:-

28.2.1.1 war, riots, civil or military insurrection or any political or civil disturbance;

28.2.1.2 natural disasters such as earthquakes, fire, storms or floods; or

28.2.1.3 any government restrictions; or

28.2.1.4 other acts of God which directly causes a party to be unable to comply with all or a material part of its obligations under this Agreement, provided that:-

28.2.2 a labour dispute, strike or lockout which could be resolved by the affected party acceding to the demands made of it shall not be deemed to be an event of force majeure; and

28.2.3 the inability to meet any payment because of a lack of funds shall in no circumstances be treated as an event of force majeure.

28.3 Provisions relating to Contractor. Should Contractor be unable to provide any Services for a period in excess of 21 (twenty one) days as a result of force majeure as contemplated in this clause 28, the Fund shall be entitled to acquire the affected Services from alternative suppliers for the period of Contractor's inability.

28.4 Right to cancel the Agreement. Should either party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 90 (ninety) days due to circumstances beyond its reasonable control, as recorded in clause 28.128.1, the other party may:-

28.4.1 to the extent that such inability cancel the relevant SLA forthwith by written notice;

28.4.2 to the extent that such inability relates to the entire Agreement, cancel the entire Agreement forthwith by written notice.

28.5 No damages payable. Should this agreement be terminated in accordance with the provisions of clause 28.4, the party affected by force majeure shall not be liable for any damages arising out of such termination.

29. NOTICES AND DOMICILIUM

29.1 Addresses. The parties select as their respective *domicilia citandi et executandi* and for the purposes of giving or sending any notice provided for or required in terms the Agreement, the addresses set out on the face of this Agreement, or such other address or telefax number as may be substituted by notice given as herein required.

29.2 Notices. Any notice addressed to a party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by telefax or DOCEX.

29.3 Deemed Receipt. Any notice shall be deemed to have been received:-

29.3.1 if posted by prepaid registered post, 7 (seven) days after the date of posting thereof,

29.3.2 if hand delivered, on the day of delivery,

29.3.3 if sent by telefax, on the date and time of sending of such telefax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such telefax, or, should no postal facilities be available on that date, on the next business day.

30. INDEPENDENT STATUS

30.1 No Partnership. Nothing in this Agreement shall be construed as creating a partnership between the parties and neither party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.

30.2 Contractor to comply with all employment legislation, etc. Contractor warrants that it has full knowledge of all relevant statutory, collective and other stipulations

applicable to the relationship with its contractors and its relationship with the Fund. This includes, but is not limited to, the Labour Relations Act, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force or which may come into force during the currency of this Agreement. Contractor warrants that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, Contractor shall immediately take all steps to remedy such contravention. If the Fund advises Contractor of any contravention of such legislation in writing, Contractor shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the Fund informed regarding the steps taken and the implementation and the result thereof.

30.3 No temporary employment service. Contractor warrants that it is conversant with section 198(4) of the Labour Relations Act and warrants further that any contractor supplied by Contractor shall be an independent contractor as defined in the Labour Relations Act and the Occupational Health and Safety Act, 1993 and will render the Services as such. Contractor hereby indemnifies and holds the Fund harmless against any claim or action whatsoever in terms of section 198(4) of the Labour Relations Act, instituted against the Fund by a contractor of Contractor. In the event that Contractor or any of its contractors rendering the Services to the Fund, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then Contractor shall immediately inform the Fund thereof and on request supply the Fund with a copy of any award made pursuant to such proceedings or agreement and any documentation that the Fund may request in respect thereof.

30.4 Good Faith. The parties shall at all times owe each other a duty of good faith in their dealings with one another.

31. ASSIGNMENT AND SUB-CONTRACTING

31.1 Restriction on assignment or transfer of this Agreement. Neither party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

31.2 The right to sub-contract. Contractor may sub-contract any of its obligations in terms of this Agreement to a third party, provided that:-

31.2.1 such sub-contracting shall not absolve Contractor from responsibility for achieving the Service Levels or complying with its obligations in terms of this Agreement and Contractor hereby indemnifies and holds the Fund harmless against any loss, harm or damage which the Fund may suffer as a result of such sub-contracting.

31.2.2 such sub-contracting shall not have the effect of diluting or circumventing the provisions of clause 5;

31.2.3 Contractor shall at all times remain the sole point of contact for the Fund in respect of the acquisition of services by the Fund.

32. LIMITATION OF LIABILITY

Under no circumstances shall either party be liable for any indirect, consequential or like damages which may arise pursuant to this Agreement.

33. GENERAL

33.1 Whole Agreement. This Agreement constitutes the entire Agreement between the parties in respect of the subject matter hereof and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement.

33.2 No Variation. No variation or consensual cancellation of this Agreement and no addition to this Agreement shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives, whether in terms of the Change Control Policy or otherwise.

33.3 Waiver. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

33.4 Severability. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

33.5 Applicable Law. This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

33.6 Jurisdiction. "Subject to clause 0, the parties hereto consent, in terms of Section 45 of Act 32 of 1944 to the jurisdiction of the Magistrate Court, to adjudicate any dispute arising from or in connection with this Agreement".

33.7 Survival. Notwithstanding termination of this Agreement, any clause which, from the context, contemplates ongoing rights and obligations of the parties, shall survive such termination and continue to be of full force and effect.

33.8 Counterparts. In the event that the Parties do not sign the same document, then this Agreement may be executed by each Party signing a counterpart, which counterparts together shall constitute one and the same agreement.

Part 2
Schedules

Schedule 1 - Change Control Policy

- 1.1. If the Fund requires any amendment, alteration or addition to the provisions of **Error! Reference source not found.**, or any SLA, it shall inform Contractor of such request by written notice. The notice shall set out full particulars of such proposed amendment, alteration or addition.
- 1.2. Contractor shall, within 30 (thirty) days of receipt of the notice, submit a written notice to the Fund ("**Change Note**"), which notice shall set out the following:-
 - 1.2.1. the title of the change;
 - 1.2.2. the originator and date of the request for change;
 - 1.2.3. the reason for the change;
 - 1.2.4. full details of the proposed change, including any specifications;
 - 1.2.5. the impact on the price structure, if any;
 - 1.2.6. a timetable for the case/instruction, together with any proposals for acceptance of the change;
 - 1.2.7. a schedule of payments, if appropriate;
 - 1.2.8. details of the likely impact, if any, of the change on other aspects of the services, including without being limited to:
 - 1.2.8.1. the human resources to be made available;
 - 1.2.8.2. the amounts payable, if any, by the Fund in respect of such change;
 - 1.2.8.3. the payment profiles;
 - 1.2.8.4. documentation and training to be provided by Contractor as a result of such change;
 - 1.2.8.5. service levels and working arrangements;
 - 1.2.8.6. any other contractual issues;
 - 1.2.8.7. the date of expiry of validity of the Change Note.
- 1.3. The Fund shall, within a period of 60 (sixty) days from the date of receipt by it of the Change Note, provided that this period may be extended where the approval of the Procurement Office through the Fund Tender Committee is required, evaluate the Change Note and may by written notice to Contractor -
 - 1.3.1.1. request further information from Contractor and extend the time period within which to evaluate the Change Note;
 - 1.3.1.2. approve the Change Note with or without modification (provided that any modification is approved by Contractor);

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- 1.3.1.3. reject the Change Note.
- 1.4. If the Fund approves the Change Note, two copies of the Change Note shall be signed by a duly authorised representative of each of the parties. A Change Note signed by both parties shall constitute an amendment to this Agreement. Each of the parties shall be required to maintain a file in chronological order of all amendments after the signature date.
- 1.5. Contractor shall be entitled to recommend to the Fund any amendment, alteration or addition to the services by written notice, which notice shall be in the form of a Change Note, setting out all the information referred to in 1.2. The Fund shall evaluate the Change Note on the same terms and conditions *mutatis mutandis*.
- 1.6. Neither the Fund nor Contractor shall unreasonably withhold its consent to any Change Note, provided that neither party shall be obliged to consent to any Change Note increasing the price or requiring the other party to incur any expenditure not provided for in this Agreement.
- 1.7. Until both parties have agreed to and signed a Change Note, the obligations of Contractor to the Fund in terms of this Agreement shall not be affected and Contractor shall continue to provide the services and fulfil all of its obligations to the Fund in terms of this Agreement in full, unless otherwise agreed by the parties in writing.
- 1.8. Any discussions between the parties in connection with a request by the Fund or a recommendation by Contractor, shall be without prejudice to the rights of each party under this Agreement.
- 1.9. Any costs or expenditure incurred by Contractor, its agents or sub-contractors that have not been authorised in advance by the Fund for a change in the services pursuant to this Schedule shall be for the sole account of Contractor.

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Schedule 2 – Contract Governance Structure

1. OPERATIONAL STEERING COMMITTEE

- 1.1. **Steering Committee.** Management of the Services and the relationship between the Parties shall vest in a Steering Committee to be constituted in accordance with the provisions of clause 1.3, within 30 (thirty) days of the Signature Date, or such longer period as the parties may agree in writing.
- 1.2. **Functions.** The functions of the Steering Committee shall be:
- 1.2.1. to provide a means for the joint review of issues relating to all day-to-day aspects of the performance of Services pursuant to this Agreement;
 - 1.2.2. to provide a forum for joint strategic discussion, and possible variations of this Agreement to reflect more efficient performance of this Agreement;
 - 1.2.3. to provide a means of agreeing Change Proposals; and
 - 1.2.4. in certain circumstances, pursuant to the Dispute Resolution Procedure, to provide a means of resolving disputes or disagreements between the parties.
- 1.3. **Constitution of Steering Committee.** The Steering Committee shall be constituted and shall function in accordance with the following provisions -
- 1.3.1. the Steering Committee shall comprise the representatives of the parties set out in annexe "A" to this Schedule. Such representatives shall be authorised to make decisions at Steering Committee meetings on behalf of the respective parties;
 - 1.3.2. the chairperson of the Steering Committee shall be the Director General of Labour or his delegate;
 - 1.3.3. any appointment, removal or replacement of representatives by a party shall be by written notice to the other party and shall be effective as soon as such notice is received by the other party;
 - 1.3.4. the Steering Committee may from time to time co-opt additional persons to sit on the Steering Committee, whether in a voting or monitoring capacity;
 - 1.3.5. subject to the provisions of this Agreement, the members of the Steering Committee may adopt such procedures and practices for the conduct of the activities of the Steering Committee as they consider appropriate from time to time;
 - 1.3.6. the Steering Committee shall meet on at least a monthly basis during the currency of this agreement and, in addition, the Steering Committee shall meet upon the request on reasonable notice of any party or to conduct other ad hoc function contemplated in this Agreement. The time and place for meetings shall be determined by the Steering Committee.
 - 1.3.7. duly appointed alternate representatives shall be entitled to attend meetings of the Steering Committee and shall have the right to speak thereat but no alternate shall be entitled to vote if his principal is present at that meeting.

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- 1.3.8. a quorum for a meeting of the Steering Committee shall be one representative of each of the parties.
- 1.3.9. each member of the Steering Committee shall be entitled to one vote.
- 1.3.10. all recommendations, agreements and other decisions of the Steering Committee must be reached by way of consensus.
- 1.3.11. where the Steering Committee decides it is appropriate, meetings may also be held by telephone or another form of telecommunication, by which each participant can hear and speak to all other participants at the same time.
- 1.4. **Status of Decisions.** No decision of the Steering Committee shall have the effect of amending the terms of this Agreement and should any decision be taken which requires the amendment of this Agreement, such amendment shall be effected in terms of the Change Control Policy.
- 1.5. **Task Groups.** The Steering Committee may appoint task groups as and when required to investigate and research operational and strategic matters relating to claims and any other matter arising out of or in connection with this Agreement.
- 1.6. **Minutes of Meetings.** All business transacted at meetings of the Steering Committee shall be recorded and signed by a member of the Steering Committee representing each of the parties and the minutes so kept shall be circulated to the members of the Steering Committee within 7 (seven) days of each meeting. Such minute book shall at all times be available for inspection by the members of the Steering Committee or their duly authorised agents who shall be entitled to take copies thereof or to make extracts there from.

2. CONTRACT MANAGERS

- 2.1. **Appointment.** As soon as possible after the Effective Date Contractor and the Fund shall each appoint a contract manager to be responsible for the overall delivery of services by Contractor to the Fund.
- 2.2. **Authority.** Each party's contract manager shall be authorised to manage this Agreement on behalf of the party making the appointment and the Parties will procure that their service managers have the necessary skill, expertise and experience to carry out such responsibility. Unless otherwise specifically provided in this Agreement or agreed to in writing by a party, such party's service manager will be entitled to make operational decisions concerning the provision of the Services but shall not be authorised to bind or commit it to any amendments to this Agreement.
- 2.3. **Liaison.** All communications concerning the performance of this Agreement shall, unless otherwise agreed to between the Parties, take place between the parties' service managers.

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STEERING COMMITTEE REPRESENTATIVES

1. Director General of Labour (Project sponsor)
2. Commissioner of CF
3. Contractor Managers;
4. Department of Labour PMO team.

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Schedule 3 – Services

To be defined with the Contractor in terms of paragraph 7.2.1 above.

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Schedule 4 – Black Economic Empowerment

- 1.1. **Definitions.** For the purposes of this clause:-
- 1.1.1. **"BEE"** means black economic empowerment;
- 1.1.2. **"BEE Entities"** means any entity in which PDIs or companies controlled by PDIs or trusts primarily for the benefit of PDIs, or a combination of the three, exercise Control. In addition where any entity is Controlled by another BEE entity, it shall also qualify as a BEE entity. For the avoidance of doubt, in determining whether an entity is a BEE entity, the enquiry shall continue up the hierarchy of shareholding until the identity of natural persons who ultimately hold the shares is determined, if necessary;
- 1.1.3. **"Control"** in this sense means:-
- 1.1.3.1. the holding of in excess of 35% of the total issued shares in a Company; or
- 1.1.3.2. the possession and exercise of legal authority and power to manage the assets and daily operations of the business and the active and continuous exercise of managerial authority and power in determining the policies and directing the operations of the business;
- 1.1.4. **"PDI person or sole proprietor"** means any South African citizen who falls within a population group that had no franchise in national elections prior to the Republic of South Africa Constitution Act, 1983 (Act No 110 of 1983) and Constitution of the Republic of South Africa Act (No 200 of 1993);
- 1.2. **Minimum BEE requirements for companies or CCs.** It is an express term of this Agreement that:-
- 1.2.1. no less than 35% (thirty five percent) of the ordinary voting shares in Contractor shall at all times during the currency of the Agreement be held by BEE Entities or PDIs;
- 1.2.2. the BEE shareholders shall enjoy voting rights in respect of their shares no less favourable than any other class of shareholders;
- 1.2.3. there shall be BEE voting representation on the Board of Contractor commensurate with the percentage BEE/PDI shareholding in Contractor.
- 1.3. **Good Faith.** Contractor shall act in good faith in fulfilling its obligations in terms of this clause.

Schedule 4 – Black Economic Empowerment

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Schedule 5 – Pricing Schedule

1. PRICING PRINCIPLES

- 1.1. The pricing:-
 - 1.1.1. shall remain fixed for the Initial Period;
 - 1.1.2. based on actual services rendered;
 - 1.1.3. inclusive of VAT;
 - 1.1.4. in South African Rands; and

2. PAYMENT TERMS

- 2.1 Payment will be made 30 days from invoice receipt date by the Fund.
- 2.2 Must include all supporting documents to validate an invoice for payment.
- 2.3 Must be authorised for payment by a member of staff with the authorised delegated authority.
- 2.4 Payment will only be authorised by the Fund in pursuant of clause 2.3 above and with confirmation of quality and performance of the Contractor, by the Fund's (delegated staff that issued the instruction).
- 2.5 Interest for overdue payments will not exceed prime plus 1%.

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PRICING SCHEDULE

To be included on award of the bid.

Schedule 6 - Dispute Resolution schedule			
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Schedule 6 - Dispute Resolution

Any dispute which arises between the parties and which cannot be resolved between the relevant Contract Managers shall be resolved in accordance with the following procedure:-

- 1.1. **Referral of dispute to joint committee of the parties.** Any dispute which arises shall be referred to a committee comprising the CEO of the Fund and the CEO of Contractor, or alternates appointed by them, who will use their best endeavours to resolve the dispute within 14 (fourteen) days of the dispute having been referred to them.
- 1.2. **Referral of dispute to experts.** If so agreed by the parties, any dispute of a technical nature may be referred, together with reasons for referring the matter, to a panel of three experts appointed by the Arbitration Foundation of South Africa ("AFSA") for final settlement. Such experts shall be deemed to act as experts and not as arbitrators. The decision of the experts shall (in the absence of clerical or manifest error) be final and binding on the parties and the experts' fees for so acting shall be borne by the parties in equal shares unless the experts determine that the conduct of either party was such that it should bear a greater proportion or all of such fees.
- 1.3. **Submission of dispute to arbitration.** Should the dispute be unable to be resolved in accordance with the foregoing, or should the parties be unable to agree on whether a dispute is technical or not, such dispute shall be referred to the Fund's Tender policy for resolution, or such other legislation or regulation which supersedes it, in the absence of which such dispute shall be finally resolved in accordance with the Rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 1.4. **Appointment of experts or Arbitrators by AFSA.** Where AFSA is required in terms of this Agreement to appoint an independent third party, it is the parties intention that such third party shall have the requisite skills, experience and expertise necessary to determine the specific issue at hand.

Schedule 6 - Dispute Resolutionschedule			
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Schedule 7 - Transfer Management Provisions

1. INTRODUCTION

In view of the strategic importance of the Services to the business operations of the Fund it is necessary to make provision for the orderly transfer of the Services from Contractor to the Fund or a third party provider should this Agreement or any part thereof terminate for any reason whatsoever. This schedule contains the provisions relating to such a transfer.

2. TRANSFER MANAGEMENT PLAN

2.1. **Transfer of Services.** Upon expiry or termination of this Agreement, Contractor shall take all reasonable steps necessary to effect the transfer of cases:-

2.1.1 To the to the Fund or designated provider, as the case may be, within 30 (thirty) days of the effective date of termination ("**Agreement Termination Date**"), or such longer period as may be agreed between the parties in writing.

2.2. **Agreeing and carrying out of a transfer management plan.** Contractor shall upon receipt of the Fund's written request for a Transfer Management Plan meeting, which request shall be made no later than within 30 (thirty) days of the date of notice of the termination of this Agreement or any part thereof, meet with the Fund and agree on a transfer management plan with agreed time scales, which transfer management plan shall, unless otherwise agreed by the parties, be completed within 30 (thirty) days of the date of the request by the Fund;

2.3. Contractor shall:-

2.3.1 carry out the transfer management plan contemplated in clause 2.1 of this Section within 60 (sixty) days of the date of termination contemplated in clauses 25 or 26 of the Agreement, or as otherwise agreed by the parties; and

2.3.2 meet with the Fund to review progress at regular intervals.

2.4. **Contents of Plan.** The Transfer Management Plan contemplated in clause 2.1 of this schedule shall make provision for Contractor to :-

2.4.1 provide consulting advice to the Fund relating to specific service management issues and shall include reasonable access to any Contractor employees who have experience in providing the Services to the Fund;

2.4.2 commit such resources (including services not included in the Services) as are reasonably necessary to effect the transition;

2.5. **Liability for cost of implementation.** Should this Agreement be terminated:-

2.5.1 due to a breach thereof by Contractor, then Contractor shall bear the cost of implementing the Transfer Management Plan;

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2.5.2 due to circumstances other than the default of Contractor, then the Fund shall bear the cost of implementing the Transfer Management Plan on a time and materials basis at Contractor's then current fees.

3. GENERAL OBLIGATIONS OF CONTRACTOR

3.1. **The orderly and uninterrupted transition of all Services.** Contractor shall use all reasonable efforts to effect the orderly and uninterrupted transition of all the affected Services back to the Fund or the Fund's nominated third party service provider.

3.2. **Delivery of confidential information, data and proprietary material.** Contractor shall deliver to the Fund, within 14 (fourteen) days of the date of termination of the Agreement, all confidential information, data and other proprietary material to the Fund.

4. AUTHORITIES AND OTHER RIGHTS GRANTED TO CONTRACTOR

All authorities and other rights granted by the Fund to Contractor shall continue whilst Contractor continues to provide the Services in accordance with this schedule, whereafter such authorities and other rights shall automatically terminate.

5. PAYMENT IN THE EVENT OF A DISPUTE

If there is a dispute between the parties as to the amounts payable to either party pursuant to this schedule, the charges payable by the parties in terms of clause 2.5 of this schedule, shall be paid into a joint account in the name of the Fund and Contractor. Such charges, together with any interest thereon, shall only be paid out to one or both of the parties on production of:

- 5.1. a statement signed by both parties authorising the payment; or
- 5.2. a final arbitration award or order ordering the payment to be made to one or both of the parties.

6. SEVERABILITY OF THIS SCHEDULE

This schedule is severable from the rest of this Agreement and shall remain valid and binding on the parties notwithstanding any termination of this Agreement.

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Schedule 8 – Regional offices of CF

Attached