

# **REQUEST FOR PROPOSAL**

## **PROVISION OF SERVICES OF AN INDEPENDENT ELECTORAL OFFICER**

**Closing Date: Friday, 24 May 2019**

**Time: 12h00**

## **1. REQUEST FOR PROPOSAL**

The Eskom Pension and Provident Fund (“the Fund” or “The EPPF”) herewith invites proposals from suitably qualified service providers to submit responses to this Request for Proposal (RFP) for appointment to the Provision of Services of an Independent Electoral Officer (herein after IEO).

## **2. PURPOSE**

The purpose of this RFP document is to provide broad details relevant to the services required and is not intended to provide a detailed overview of every action required.

## **3. OVERVIEW**

### **3.1 The Fund**

The Eskom Pension & Provident Fund (“Fund”) is a defined benefit (DB) pension fund. It is registered as a privately administered pension fund organisation in terms of the Pension Funds Act, 24 of 1956 (PFA) and approved as a pension fund in terms of the Income Tax Act, 58 of 1962.

The Fund is governed by a Board of Trustees consisting of 14 Board Members. In terms of the Rules of the Fund, the term of office of the Board is four years before which an election has to take place. Similarly, as for Board Members appointed by the Employer, such appointments must take place at the same time as elections are held.

Seven Board Members are appointed by the Principal Employer and seven Board Members are elected by various constituencies, namely non-unionized active members, unionized active members and pensioners, in accordance with the provisions of the Rules. The seven elected representatives consist of two Board Members elected by the pensioner group; two Board Members elected by non-unionized active member group and three Board Members elected by unionized active member groups.

The Fund conducts the nomination and election processes through its internal infrastructure. For the pensioner group, the processes are conducted on a national basis via various channels, and for active contributing members the processes are conducted through various channels, including the internal employer distribution channels. In addition, the Fund is also facilitating the nomination and election processes by means of electronic channels for those who have access to such channels. The Fund membership at 31 March 2019 is about 79 340 which represents active members, deferred members and pensioners.

The Fund requires an independent electoral body to provide the services of an IEO; to monitor and ensure that the process of nomination and voting is free and fair; to capture the results of the nomination and election processes as an independent body; and to report to the Board on the results of the election and the fairness of the election processes.

## 4. RFP RESPONSE GUIDELINES

### 4.1 Scope of work

#### Overseeing a free and fair election process

The IEO will be expected to:-

- Oversee the different nomination processes for candidates to stand for election to the Board of Trustees, in respect of the unionized and non-unionized active member groups and pensioner groups of the Fund.
- Ensure that the nomination and voting processes are conducted in a procedurally correct, free and fair manner.
- Oversee the subsequent separate voting processes by active non-unionized members, active unionized members and pensioners.
- Advise the Fund on the soundness of its nomination and election processes.
- Review and advise the Fund on the election communication strategy, information documents, nomination forms and ballot papers.

#### Data capturing and data validation

- The IEO will be required to validate and capture the nominations received as well as the votes cast in respect of member and pensioner candidates from the different constituencies. The Fund must be assured that all nominations made, and votes cast meet the election criteria and that discrepancies will be pointed out to the Fund for further management or intervention.
- The Fund will provide a data set that is linked to the Fund's administration system. The data set provides for easy verification of nominators, nominees and voters via employee or pensioner numbers. It also ensures the "one person one vote" principle in both the nomination and voting processes. The data set will be available for use by the IEO and may be subjected to the IEO's integrity verification tests, before use.
- The IEO will provide the necessary infrastructure for the validation and data capturing processing unit.
- Although dates may vary in practice, the election activities are scheduled to take place on the following dates:

ACTIVITY	DATE
Pensioner nominations	1 August 2019 – 30 September 2019
Member nominations	1 August 2019 – 30 September 2019
Union representatives nominations	1 August 2019 – 30 September 2019
Validation/capturing of nominations, nomination acceptance, design of ballot papers and electronic forms	1 October 2019 - 14 October 2019
Distribution of ballot papers/ voting channels	15 October 2019 - 30 November 2019
Pensioner voting process	1 January 2020 – 29 February 2020
Member voting process	1 January 2020 – 29 February 2020

Counting votes, validation of Employer Trustees/ capturing and Report on election	1 – 31 March 2020
Objections, Complaints, Queries and Dispute Resolution	1- 30 April 2020

A final report on the elections and the results must be delivered to the Fund by 4<sup>th</sup> May 2020.

#### **4.2 Point of contact and queries**

All contact and questions regarding this RFP must only be directed at the identified election email address at [TrusteeElection@eppf.co.za](mailto:TrusteeElection@eppf.co.za).

All queries are to be submitted via e-mail only. No telephonic or personal queries will be accepted.

The response(s) to all queries received regarding the RFP and the RFP process will be distributed in writing to all respondents on record at the time.

After the distribution of this RFP, a **Compulsory** briefing session will be conducted with all potential respondents to provide any further information; address any possible uncertainties relevant to the RFP; and/or to further detail the EPPF's requirements.

The briefing session is scheduled to take place at **12:00 on the 17 May 2019** at the EPPF's offices at, EPPF Office Park, 24 Georgian Crescent East, Bryanston East, 2191. The information provided during this briefing session should be taken into consideration when responding to this RFP.

The cut-off date for the submission of questions is **21 May 2019**. Final response to clarification questions will be provided by **22 May 2019**.

Respondents must not contact any of the Fund's Board Members, executives, consultants or staff to discuss matters related to this RFP or the RFP process. Discussion of this RFP with any person within or associated with the Fund other than the designated contact person as above and whose details appear in the table below may result in the disqualification of the relevant respondent from the process.

#### **4.3 RFP process and submission procedure**

The Fund will review proposals at its discretion against a set of pre-defined criteria and will rate each proposal on its ability to satisfy the requirements stated in this RFP.

Successful respondents (if any) will be formally notified. If you do not receive feedback from the Fund within a period of three weeks following the closing date for submission of responses, please accept that your response was unsuccessful.

A formal agreement will be entered into between the Fund and the successful respondent, appointing them on such terms as may be determined by the Fund.

Potential respondents are requested to be mindful of the time allowed for responses, the closing date and time, the delivery address for proposals and must note that late or incomplete submissions will not be considered.

The RFP must be submitted with the necessary supporting detail and must provide the information requested in this RFP.

The Fund reserves the right to consider any proposal in its entirety or partially, and the right not to make any appointment. The Fund further reserves the right to withdraw this RFP without any further notice and liability. The Fund's decision is final, and no correspondence will be entered into.

#### **4.4 *Submission date, time and address***

The closing date for submission of proposals at the delivery address indicated below is **Friday, 24 May 2019 at 12:00 pm.**

Proposals must be submitted in a sealed envelope and addressed to:

The Secretary of the Procurement Committee  
Independent Electoral Officer Services Provider  
Eskom Pension and Provident Fund  
Isivuno House,  
EPPF Office Park,  
24 Georgian Crescent East,  
Bryanston East,  
2191.

The proposals must be placed in the Fund's official Tender Box that is placed in the reception area at:

**Isivuno House,  
EPPF Office Park,  
24 Georgian Crescent East,  
Bryanston East,  
2191.**

Respondents must ensure that whoever delivers the proposal to the Fund takes care to complete the RFP register at the reception desk. Respondents utilising the services of courier companies to submit their proposals must ensure that the name of the respondent is accurately and legibly recorded on the cover of the package, and that the courier company official completes the RFP register at the reception desk.

The responses should be bound and packaged in such a way to ensure that the overall size of the submission/s **does not exceed the size of an A4 Lever Arch file** as this is the maximum size that can be accommodated by the tender box slots. Multiple packs may be submitted and should be clearly marked and numbered to ensure identification after the closing of the RFP.

Proposals may not be faxed or e-mailed, and proposals received by any other means other than being placed in the tender box will not be considered and will be rendered invalid.

#### **4.5 RFP process requirements**

The following minimum requirements will be applied to the RFP process:

- i. Responses received after the closing date and time will be considered late and **will not** be accepted. If a response is considered late, it will be returned unopened to the return address of the relevant respondent identified on the response envelope.
- ii. In the absence of a clear return address on the envelope, any late response or any additional documentation/items will be destroyed by the Fund.
- iii. All responses must be submitted in full and complete on or before the closing time. The Fund will not allow additions and/or amendments to any response to be submitted after the closing date and time and will not receive various documents or items in separate envelopes as one submission.
- iv. Responses may be withdrawn in writing by a respondent prior to the closing date and time.
- v. All enquiries relevant to the RFP may only be submitted to the indicated point of contact and in writing. Telephonic and/or verbal enquiries will not be entertained.
- vi. During the course of this RFP process, respondents may acquire confidential information relating to the Fund's business, projects and/or customers. Respondents are required to keep this information strictly confidential at all times (even after the RFP process has been completed) and may not use or attempt to use or allow such information to be used for personal gain or the gain of any other person or institution.
- vii. Respondents may not disclose any such confidential information to any third party, but to the extent that such disclosure may be necessary for the submission of a formal proposal, must approach the Fund for prior approval to

share any information with any third party. This does not apply to information which must, by law, be disclosed or becomes available to and known by the public due to no fault on the part of the respondents.

- viii. Respondents must comply with the highest ethical standards in order to promote mutual trust and an environment where business can be conducted with integrity, in a fair and reasonable manner.
- ix. Respondents must, on the official letterhead of the firm submitting the response, declare that:
  - a. the information provided in all documentation is true and correct; and
  - b. the signatory of the tender document is duly authorised to do so by means of a special or general resolution of the company responding.
- x. Proposals submitted to the Fund must remain valid for a minimum period of 90 days from the closing date.
- xi. Respondents will be held to the proposals submitted. The Fund reserves the right to negotiate the modification of a proposal with the successful respondents in whole or in part.
- xii. Agreements reached after such modifications with the successful respondents, or parts thereof, and accepted by the Fund will form part of the contract.
- xiii. Each proposal will be evaluated for general conformity to specifications and the demonstrated capabilities of respondents to execute the scope of work.
- xiv. Respondents must provide resumes of all key professionals they propose for execution of the scope of work. Each resume may not be longer than one page.
- xv. In general respondents must indicate the experience and field/s of expertise of their firms and must specifically indicate previous work done in the retirement fund and financial services industry, if any.
- xvi. Respondents are responsible for any and all costs and liabilities incurred in responding to this RFP. The Fund will not be responsible for any costs whatsoever or howsoever arising.
- xvii. The Fund reserves the right to withdraw this RFP for any reason and at any time without incurring any cost or liability.
- xviii. The Fund reserves the right to withdraw, at any stage of this process, amend or cancel this RFP, reject or not accept any or all proposals, obtain any information from any lawful source regarding past business history and practices of the respondent, and to take any such information into consideration in the evaluation process.

- xix. The Fund is under no obligation to explain acceptance or rejection of any specific service provider(s) and the Fund's decision is final and binding, no correspondence will be entered into.
- xx. The Fund reserves the right to appoint another service provider to provide the same or similar services without consultation with the service providers that may be appointed through this process.

#### **4.6 Structure of responses**

All responses are required to be prepared as follows:

- 4.6.1 Responses must be electronically generated and one printed original must be signed by the individual(s) legally authorised to bind the respondent. The original proposal must be clearly marked as original.
- 4.6.2 Responses must be clearly indexed.
- 4.6.3 Legibility, clarity and completeness are essential.
- 4.6.4 The RFP responses must contain the following:
  - i. One original response and 5 copies, clearly marked, bound and signed as original and copy. Responses bound with paper clips or rubber bands will not be considered "bound" as envisaged in this RFP and will thus be disqualified;
  - ii. One digital/electronic copy of the RFP response on a USB memory stick. Respondents who submit their digital/electronic copies on any other device or in any manner other than on a USB memory stick will be deemed to have failed to submit their electronic copies and thus disqualified; and
  - iii. The digital/ electronic copies of the RFP response must be provided in Adobe Reader Portable Document Format (PDF), free of any viruses or malicious ware.
- 4.6.5 Responses must be prepared as simply as possible, providing a straightforward, concise description of the interested parties and the capabilities available to satisfy the requirements of the RFP.
- 4.6.6 Responses must indicate whether the Respondent has systems, processes and procedures aimed at the protection of the Fund's personal information whilst providing services to the Fund. The response must indicate how these systems, processes and procedures comply with the requirements of the Protection of Personal Information Act, 4 of 2013.
- 4.6.7 Failure to prepare responses in the manner specified in paragraph 4.6.1 to 4.6.4 above will result in the relevant response being disqualified.

## 4.7 Evaluation criteria

Respondents will be evaluated according to the extent to which they are able to fulfil the requirements of the Fund. Evaluation criteria will place particular emphasis on the following areas:

### 4.7.1 Track record/Technical ability

Respondents must provide evidence of their capability and experience in providing the services sought by the Fund.

Respondents must have experience in the implementation of the execution of an Independent Electoral voting processes with appropriate proven experience. Respondents will be required to:

- Demonstrate that they have sufficient infrastructure and resources to support the execution of any instructions as per the scope of work defined in 4.1, in the event that they are appointed.
- Demonstrate a good understanding of the independent electoral voting process and how to apply their expertise to different variables and scenarios; and
- Demonstrate a sound track record of executing a national voting campaign of this scale and complexity.

### 4.7.2 Fee structure

Respondents must submit a fee schedule, no more than one page in length, reflecting the rates for each person or position proposed to form part of the team assigned to provide services to the Fund.

Respondents must indicate whether or not the rates set out in the fee schedule are negotiable.

All rates quoted **must be indicated both exclusive and inclusive of Value Added Tax (VAT)**.

### 4.7.3 Empowerment / B-BBEE

The Fund is committed to advancing the objectives of B-BBEE. Details of the respondent's B-BBEE credentials, supported by a copy of a rating certificate from a SANAS accredited rating institution, and/or where applicable, an affidavit in the prescribed format, must be provided. Responses from respondents with a B-BBEE rating worse than 3 (three) will not be considered.

Broad-Based Black Economic Empowerment (B-BBEE) as a critical initiative for inclusive and sustainable economic growth and prosperity in South Africa. We actively seek to be a leader in transformation within our operating environment and to this end, we have put policies in place that favour the procurement of goods and services from black owned or empowered businesses. For further information on the Fund's B-BBEE Policy and initiatives, visit the Fund's website to source our annual reports.

#### **4.8 Requirement of respondents**

Respondents must be a well-established Independent Electoral entity that has been in business for a minimum of five years and must be able to demonstrate their experience in executing a national voting campaign of a national scale and complexity. Respondents must provide supporting documentation to indicate the period of time they have been in operation and services that they have provided.

Where the respondent is a company as envisaged in the Companies Act, 2008, only the business start date of the entity as recorded in its company documents issued by the Companies and Intellectual Property Commission (CIPC) will be taken into account in determining the number of years it has been in business. Responses from respondents who have not been in business for a minimum of five years will not be considered.

#### **4.9 Services required from the IEO**

The IEO will be expected to:

- Oversee the election process to ensure that it is procedurally correct, free and fair.
- Provide advisory input on communication strategy, information documents, nomination forms and ballot papers.
- Provide staff for project implementation.
- Provide associated technology and infrastructure.
- Draft and provide an election report with, inter alia, an overview of the process, voting percentages and results.
- Provide a certificate to the Fund to certify that the elections have been free, fair and procedurally correct.

The IEO will be required to enter into a formal service level agreement with the Fund and will also be expected to enter into a confidentiality agreement with the Fund.

#### **4.10. Supporting Documentation**

Proposals must include clear and comprehensive details, including references, of the following:

- Details of experience in trustee election (or similar) projects within the RSA with specific reference to the number of years' experience with overseeing elections; as well as the provision of the contact details and project specifics of at least three contactable references, not limited to but preferably in the retirement fund industry.
- Details of the available infrastructure and support facilities to facilitate quick turn-around, on-time delivery, high service levels and quality guarantees.
- Contact details and CV of the personnel that will be involved in this project.

- A comprehensive client list with an indication of projects concluded.
- Black Economic Empowerment credentials, which will include details of ownership and management; BBBEE and secondary empowerment initiatives, staffing structure highlighting BBBEE alignment and valuation certificate/s issued by a recognized authority in the RSA, if any.
- Details of good standing with the Tax authorities of the RSA, including a valid tax clearance certificate.
- Company or CC registration documents and recent, up-to-date VAT registration certificates.
- Clear details of contact persons and the e-mail address and telephone number/s of such contact persons.

Respondents may be disqualified from the tender process if the abovementioned documents are not submitted.

## 5. Appendix A – Declaration Form

I, \_\_\_\_\_ in my capacity as \_\_\_\_\_ of  
(Name) (Position)

\_\_\_\_\_ declare that I am authorised to sign this proposal being submitted  
by  
(Company Name)

\_\_\_\_\_ and any contract resulting from it on behalf of the company.  
(Company Name)

I declare that all information provided in the proposal is true, correct, and binding on the company.

I further declare and undertake that all information gained from the Fund through this RFP document or from any other interaction relevant to this RFP, will remain confidential.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

## 6. Appendix B – Fund Terms of Business

### Background

The Fund wishes to appoint a suitable service provider for the provision of an Independent Electoral Officer.

By submitting a response to this Request for Proposal (“RFP”) by the Fund, a service provider automatically undertakes to be bound by and agrees to the conditions set out herein. This document is a summary of the terms of the services agreement which will be entered into with the successful respondent.

Parties that do not consider themselves bound by the provisions of this document, or who are not in a position to fulfil the technical and professional requirements as detailed in this RFP and in terms of generally accepted practice standards, should not respond to the RFP, as submission of a response presupposes agreement to the terms of this document.

### Terms of Business

The Fund hereby sets out the Terms of Business that will apply to the work to be done by the successful service provider appointed in terms of the RFP.

On appointment of a preferred service provider, an agreement detailing the services to be rendered and required service levels will be entered into between the parties. These Terms of Business do not in any way establish an agreement to provide services as outlined in the RFP, but only serve to indicate the terms and conditions that will apply in respect of the preferred service provider.

#### 1 The Services to be provided

- 1.1 **The Services** – The service provider will provide the services described in the RFP, and at the location(s) to be set out in the agreement which will be entered into between the Fund and the successful service provider (“the Agreement”). Where the Agreement refers to services **to be performed** this means that the service provider will provide the Fund with the Services and will be responsible for the management and control of the Services and the quality of any deliverables listed or referred to in the Agreement. Where the Agreement refers to services **to assist you** this means that Fund will use reasonable skill and care, as specified, to assist the service provider with its project, but the service provider will be responsible for the overall management and control of the Services and for the results to be achieved from providing the Services.
- 1.2 **The service provider’s staff** – Where individual members of the service provider’s staff (including partners and directors) are named in the Agreement, the service provider will make every reasonable effort to ensure that the named individual(s) are available to support its work for Fund for the estimated period stated in the Agreement. Where the service provider considers changes in its named staff necessary or appropriate, for reason of, inter alia, resignation,

relocation, training or illness, the service provider may make the changes after giving Fund reasonable notice and will provide Fund with details of replacement staff.

- 1.3 **Timetable** – Where a Timetable is referred to or set out in the Agreement the service provider undertakes to meet the obligations in accordance with such Timetable.
- 1.4 **Changes to Services** – Once a preferred service provider has been appointed, the Fund may request changes to the Services or changes to any other aspect of the Agreement. Requests for changes must be sufficiently detailed to enable the other party to assess the impact of the requested change on the cost, Timetable or any other aspect of the agreement. The Fund and the service provider agree to work together to consider, and, if appropriate, agree to any changes and resultant cost variations. Until a change is agreed to in writing by both parties, they will continue to act in accordance with the latest agreed version of the agreement.
- 1.5 **Contract Management** – Both parties may designate a contact that will be responsible for managing all issues relating to the performance of the Agreement.

## 2 Deliverables

- 2.1 **Preparation and Delivery** – The Fund will incorporate the deliverables listed or referred to in the RFP, into the Agreement.
- 2.2 **Acceptance** - The deliverables will be accepted by the Fund when the acceptance criteria specified in the Agreement, have been met or when the Fund make any productive or live use of the deliverables, whichever occurs first – as specified in the Agreement.
- 2.3 **Ownership of Deliverables / Access to Working Papers**
  - 2.3.1 **Client Materials** – Subject to 2.3.2 below, the preferred service provider will own the copyright in all its working documents used in rendering the services. The Fund shall have copyright in all the deliverables specifically identified as such.
  - 2.3.2 **Non-client Material Deliverables** – The Fund will own the copyright and all other intellectual property rights in all the deliverables and in all other materials or software created under the Agreement whether by or on behalf of the Fund solely or by both parties jointly. The Fund will have a non-exclusive, non-transferable licence to use these deliverables for its own internal use

and only for the purposes for which they were delivered. However, the Fund shall not provide these deliverables or copies thereof to any third party.

- 2.3.3 **Internal Audit Working Papers** – The service provider shall, with the Fund’s prior consent, and subject to 2.3.2 above, provide access to its internal audit working papers to the Fund’s external auditors. It is a condition of access that the external auditors will not disclose to any other party than the Fund any findings that might arise from their review of the party’s working papers.

## 2.4 Reports

**Oral and Draft Reports** – The service provider’s oral reports and any draft reports that it may submit will not constitute its definite findings and conclusions. These will be contained in its final written report and any other written reports as stipulated in terms of the Agreement.

## 3 The Fund’s responsibilities

- 3.1 **Support Facilities** – The Fund agrees to provide the service provider with facilities that it may reasonably require to perform the Services.
- 3.2 **Information and Materials** – The Fund agrees to provide all information and materials reasonably required to enable the service provider to provide the Services.
- 3.3 **The Fund staff** – The Fund will ensure that its staff members are available to provide such assistance as the service provider may reasonably require and that it is given reasonable access to senior management, as well as any other relevant Fund staff members, to enable the service provider to provide the Services.
- 3.4 **Suppliers and other Third Parties** – Where the service provider uses third parties to provide services, materials, information or support to a project in terms of its agreement with the Fund, including where the service provider employs other suppliers whose work may affect its ability to provide the Services in terms of the Agreement, the service provider will ensure that it has appropriate agreements in place with those third parties to enable it to perform the Services under the terms of the Agreement. The service provider will be responsible for the management and payment of the third parties and the quality of their input and work.

## 4 Fees and Payment

- 4.1 **Payment for Services** – The Fund agrees to pay for the Services as will be agreed to and stipulated in the Agreement.
- 4.2 **Time Charging** – Where Time charging applies, the fees will be calculated applying the fee rate and on the basis of an eight-hour day worked on weekdays, excluding public holidays. Unless the Agreement states otherwise, hours worked in excess of eight hours a day or outside working days shall be charged at the stipulated fee or rate plus such premium as may be agreed in writing.
- 4.3 **Payment of Invoices** – For Fixed Price charges invoices will be issued in accordance with the payment plan set out in the Agreement. All invoices will be payable within thirty days from date of receipt thereof. Where invoices are not paid within the stipulated period, interest at the current bank rate of interest will be included in the arrear payments.

## 5 Term, Suspension and Termination

- 5.1 **Duration of Agreement** – The Agreement will apply from the Commencement Date, which will be stated in the document, or where no Commencement Date is specified, from the date of signature of the document by both parties. The Agreement will continue until all the Services and deliverables have been provided in accordance with the provisions of the Agreement, unless it is terminated earlier in accordance with the terms summarised below.
- 5.2 **Termination of the Agreement** – Unless stated otherwise in the Agreement, the Agreement may be terminated by either party at any time by giving the other party not less than 30 days' written notice. Where the Agreement is terminated in this way the Fund will pay the service provider for all Services provided and completed up to the date of termination. Where the Services have been provided on a Fixed Price fees basis, and if the service provider is unable to agree on the fees payable in the event of termination, the Fund will only pay all sums due at the date of termination in respect of services already completed as at the termination date.
- 5.3 **Termination for Breach of Agreement** – The Agreement may be terminated by either party on written notice with immediate effect if the other commits a material breach of any term of the Agreement that is not remedied within 30 days of dispatch of a written request to remedy the same.
- 5.4 **Termination for Insolvency** – The Agreement may be terminated by either party by written notice in the event that the other party is unable to pay its debts or has been placed under administration, judicial manager, liquidator or similar person or officer appointed or compromises generally with its creditors or ceases for any other reason to carry on business or in the reasonable opinion of the other party any of these events appears likely.

## **6 Confidentiality and Conflicts of Interest**

- 6.1 By signing the Agreement, each party is under a professional obligation not to disclose to a third party any information confidential to the other party. Similarly, reports by the service provider are for the use of the Fund alone and may not be disclosed to third parties without the Fund's prior written consent.
- 6.2 Notwithstanding 6.1 above, either party will be entitled to disclose confidential information of the other to a third party to the extent required by law or where the said information is already known to the public, provided that in the former case (and without breaching any legal requirement), where reasonably practicable not less than five business days' notice in writing is first given to the other party.
- 6.3 Without prejudice to 6.1 and 6.2 above, the service provider may cite the performance of the Services to their clients and prospective clients as an indication of their experience, unless both parties specifically agree otherwise in writing.
- 6.4 The Agreement does not preclude the service provider from offering similar services to the Fund's competitors in the course of the service provider's business, provided that the service provider shall not disclose any confidential information obtained from the Fund to such other competitors.

## **7 Liability**

- 7.1 The service provider shall use reasonable skill and care expected from an expert in its industry in the provision and delivery of the Services and the deliverables in terms of the Agreement.
- 7.2 The service provider shall accept liability to pay compensation for damages and losses arising as a direct result of breach of the Agreement or negligence on its part or third parties acting on behalf of the service provider in respect of Services provided in connection with, or arising out of the Agreement (or any variation or addition thereto) but the maximum liability of the service provider and its related or associated entities, and their respective directors, partners, employees and agents and sub-contractors for all claims arising out of the Services provided in connection with the Agreement shall be limited to an amount equal to the agreed fee.
- 7.3 The service provider will not be liable to the Fund or any cessionary, assignee, successor or third party claiming through or on behalf of the Fund for any punitive damages whatsoever or for loss or damages beyond the maximum liability specified.

- 7.4 The term “service provider” specifically includes any agent or sub-contractor of it, and their respective employees, agents, partners or sub-contractors who perform work in connection with the Services.
- 7.5 The service provider shall not be liable for any loss, damages, costs or expenses directly or indirectly incurred as a result of information supplied by, or misrepresentations, negligence, fraudulent acts or default on the part of the Fund, its directors, employees, contractors or agents. The Fund indemnifies the service provider and holds it harmless against all and any such claims made against it in respect of any such loss, damages, costs or expenses and against the actual costs incurred by the service provider in defending such claims.
- 7.6 Any claims against the service provider, howsoever arising, must be commenced formally by process initiating arbitration proceedings within three years after the Fund or the party bringing the claim becomes aware of the facts that give rise to the claim and, in any event regardless of the knowledge of the claimant, by no later than three years after the date of any alleged breach of contract, delictual act or other act or omission giving rise to a cause of action.

## **8 General**

- 8.1 **Sub-contracting** – The service provider reserves the right to employ agents and sub-contractors to assist it when providing any part of the Services. Any reference to the service provider’s staff in the Agreement includes agents and sub-contractor staff and their respective employees, agents, partners or sub-contractors who perform work in connection with the Services and the service provider shall remain liable to the Fund in respect of any Services provided by such sub-contractors, agents or associates of the service provider.
- 8.2 **Force Majeure** – Neither of the parties to the Agreement will be liable to the other for any delay or failure to fulfil obligations caused by circumstances beyond its reasonable control.
- 8.3 **Assignment** – Neither of the parties to the Agreement may cede, assign, delegate, transfer, encumber, charge or otherwise seek to deal in any of its rights or obligations under the Agreement without the prior written consent of the other party.
- 8.4 **Notices** – Notices must be served either personally, sent by prepaid registered post or faxed to the address of the other party given in the Agreement or to any other address as the parties may have notified during the period of the Agreement. Any notice sent by registered post will be

deemed to have been delivered 10 days after sending. Any notice sent by fax or served personally will be deemed to have been delivered on the first working day following its dispatch.

- 8.5 **Amendment** – Any amendment or consensual variation, cancellation or termination of the Agreement, or any of its terms, will not be effective unless agreed in writing and signed by both parties.
- 8.6 **Survival** – The confidentiality clause in the Agreement shall survive the termination or expiry of the Agreement and shall continue to bind the parties.
- 8.7 **Staff** – Neither of the parties to the Agreement will during the period of the Agreement or within six months of its termination or expiry solicit directly or indirectly any employees of the other who have been involved in providing or receiving Services or otherwise connected with the Agreement. This will not restrict either of the parties from employing staff who apply unsolicited in response to a general advertising or other general recruitment campaign.
- 8.8 **Data** – During the provision of the Services, the Fund may from time to time request for data extracts which may fall outside the scope of normal reporting. The expectation from the Fund is that these services will not attach any additional fees.
- 8.9 **Electronic Communications** – During the provision of the Services, the Fund may from time to time communicate electronically. However, as the service provider is aware, the electronic transmission of information cannot be guaranteed to be secure or error-free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, whilst the Fund carry out commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data, it remains the service provider's responsibility to carry out a virus check on any documents before launching them whether to be sent or to be received on disk or otherwise. Therefore and notwithstanding any collateral contract, warranty or representation, the Fund will have no liability to the service provider on any basis, whether in contract, delict (including negligence) or otherwise, in respect of any error or omission arising from or in connection with the electronic communication of information to or from the service provider and the service provider's reliance on such information and including (but not limited to) the acts or omissions of the relevant service providers.

If the communication relates to a matter of significance on which the service provider wishes to rely and is concerned about the possible effects of electronic transmission, the service provider should request a hard copy of such transmission from the Fund.

8.10 **Validity of Provisions** – If any provision of the Agreement is held to be invalid, in whole or in part, such provision shall be deemed not to form part of the agreement. In any event the enforceability of the remainder of the agreement will not be affected.

8.11 **Applicability** – The Agreement shall apply to work undertaken in relation to the service provider, its holding company or any of its subsidiary, associated or related companies, agents or sub-contractors.

8.12 **Future Assignments** – The terms and conditions shall apply not only to the Agreement, but also to all future engagements or assignments undertaken by the service provider, unless otherwise agreed in writing.

**9 Dispute Resolution and Governing Law**

9.1 Should any dispute arise between the Fund and the service provider, both parties will attempt to resolve the dispute in good faith through senior-level negotiations. If the dispute is not resolved through negotiation or mediation within a reasonable time both of parties agree that it shall be finally resolved in accordance with the rules of the Arbitration Foundation of South Africa by an arbitrator or arbitrators appointed by the Foundation and agreed upon by both parties.

9.2 The provisions of the Agreement shall be construed in accordance with the laws of the Republic of South Africa. The parties submit to the non-exclusive jurisdiction of the Gauteng Local Division, Johannesburg.

**10. QUOTATION/PROPOSAL CONDITIONS Validity of quotations**

**10.1 Validity of Quotations**

Quotations must be valid for at least 90 days from the closing date of the tender. Include original valid tax clearance certificates, proof of registration of the business, audited annual financial statements or management accounts and the latest B-BBEE certification.

**10.2 Closing date for proposal submission**

The closing date for submission of proposals at the delivery address indicated below is Friday, 24 May 2019, 12:00 noon.

**11. Acceptance**

By signature of this document, the service provider agrees to be bound by the terms of business contained herein.

Signed in acceptance on behalf of .....being duly authorized thereto.

Signed at..... on this.....day of.....2019

Name & Surname.....

Designation.....

Signature.....