

# RSK004/2020: REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A SUITABLY QUALIFIED BIDDER FOR THE CLOSE PROTECTION SERVICES FOR A PERIOD OF 10 (TEN) MONTHS

The Public Investment Corporation (PIC) is a registered Financial Service Provider (FSP) and a public entity, wholly owned by the South African Government. PIC invests funds on behalf of public sector entities. Among the PIC's clients are the Government Employees Fund ("GEFP"), Unemployment Insurance Fund ("UIF") and Compensation Fund ("CP"):

- Protected unmarked Armed Vehicles with drivers to transport staff from the PIC offices to sites and back from Sites to PIC offices (Mostly Applicable to sites in Gauteng)
- Protected unmarked Armed Vehicles with drivers to transport staff from accommodation/airport to sites and back from Sites to accommodation/airport (Applicable to sites outside Gauteng)
- Armed Protection Services during the site visits
- Armed protection from Employees' homes to the office
- Armed protection from the office to the Employees' homes
- Armed protection during weekends to Employees
- Threat assessment and/or identification
- Risk Assessment
- Enemy Identification
- Intelligence gathering

**Enquiries:** tenders4@pic.gov.za and shala.msomi@pic.gov.za Closing date for the bid submission: 20 January 2021, Closing time: 11:00 AM

**Enquiries:** tenders4@pic.gov.za and shala.msomi@pic.gov.za A compulsory virtual briefing session will be held on Monday, 14 December 2020 (11:00 - 12:30). Service providers must be connected at 10:45, as the session will start at exactly 11:00.

Bidders are requested to forward their email address to: tenders4@pic.gov.za and complete Non-Disclosure Agreement (NDA) with this subject line: Appointment of a service provider for the Close Protection Services for the briefing session.

A soft copy of the RFP document and NDA will be available from the PIC website:

<https://www.pic.gov.za/pic/tenders/properties-procurement> from Monday, 7 December 2020.

All enquiries should be directed to: tenders4@pic.gov.za

Due to the COVID-19 pandemic, all bidders who attend the compulsory briefing session will be provided with a one drive link to submit their bids. No other methods will be accepted.

**BID NO (RSK004 2020): REQUEST FOR PROPOSAL**  
**FOR THE APPOINTMENT OF A SUITABLY QUALIFIED BIDDER FOR THE**  
**PROVISION OF CLOSE PROTECTION SERVICES TO PIC EMPLOYEES FOR A**  
**PERIOD OF TEN (10) MONTHS**

Bid Number	:	RSK004 2020
Closing Date	:	20 January 2021
Closing Time	:	11:00
Briefing Session	:	14 December 2020 (compulsory)
Briefing Session Time	:	11:00 -12:30
Submission	:	One drive link will be provided after the briefing session

Validity period of bid: 120 days

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## 1 DEFINITIONS AND ABBREVIATIONS

- 1.1 **B-BBEE** means black broad-based economic empowerment
- 1.2 **Bid** means a written offer in a prescribed or stipulated form in response to an invitation by PIC for the provision of goods and services, through price quotations, advertised competitive tendering processes or proposals;
- 1.3 **BBBEE Act** means the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 1.4 **Consortium or joint venture** means an association of persons for the purpose of combining their expertise, property, capital, skill and knowledge in an activity for the execution of a contract;
- 1.5 **Contract** means the agreement that results from the written acceptance of a bid by the PIC and successful negotiation and signature of same by both parties delegated authorities;
- 1.6 **Functionality** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account among other factors, the quality, reliability, viability and durability of service and the technical capacity and ability of a bidder;
- 1.7 **Ownership** means the percentage ownership and control, exercised by individuals within an enterprise;
- 1.8 **PPPFA** means the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2017);
- 1.9 **SANAS** means the South African National Accreditation System;
- 1.10 **Validity Period** means the time period for which price quotation for the provision of goods and services shall remain valid, in this case, being a period of 180 (one hundred and twenty) days;

## 2 INTRODUCTION

The Public Investment Corporation (PIC) is an asset management company wholly owned by the government of the Republic of South Africa duly represented by the Minister of Finance. The PIC manages investments on behalf of public sector funds which include Government Employees Pension Fund (GEPF), Unemployment Insurance Fund (UIF) and Compensation Fund.

Established in 1911, the PIC ranks amongst the best and most successful asset management firms in the world and is by far the biggest in Africa. The PIC runs one of the most diversified portfolios, which is made-up of multiple asset classes. These asset classes include listed equities, real estate, capital market, private equity and impact investing. Through listed investments, the PIC controls over 10% of the Johannesburg Stock Exchange and has direct and indirect exposure to almost all sectors of the South African economy. The corporation has a mandate to invest in the rest of the African continent and beyond. Over and above generating financial returns for clients, through its impact-investing programme, the PIC seeks to generate social returns by investing in projects that ensure inclusive growth. The PIC supports the United Nations' Sustainable Development Goals and considers environmental, social and governance issues in all its investments.

### 3 OBJECTIVE

The PIC is looking to appoint a bidder to provide close personal security services for PIC employees who need to visit sites e.g. constructional sites on an **ad-hoc basis**, for a period of 10 months as well as other PIC employees in general who need close personal security as a result of the risks emanating from their employment with the PIC.

### 4 SCOPE

Services to be provided include but is not limited to:

- Protected unmarked Armed Vehicles with drivers to transport staff from the PIC offices to sites and back from Sites to PIC offices (Mostly Applicable to sites in Gauteng)
- Protected unmarked Armed Vehicles with drivers to transport staff from accommodation/airport to sites and back from Sites to accommodation/airport (Applicable to sites outside Gauteng)
- Armed Protection Services during the site visits
- Armed protection from Employees' homes to the office
- Armed protection from the office to the Employees' homes
- Armed protection during weekends to Employees
- Threat assessment and/or identification
- Risk Assessment
- Enemy Identification
- Intelligence gathering

#### 4.1 Minimum Requirements

The bidder must comply to the following **minimum requirements** in order to respond to this RFP. Bidders who are **NOT compliant** will be **disqualified**. The bidder must demonstrate their capability with regards to the following requirements:

#	Description	Comply	Not Comply	Comment
4.1	Professional Close Protection Officers (CPOs) registered with the relevant regulatory authority.  (Proof must be provided)			
4.2	Automobile(s) specially equipped for security			
4.3	Firearm competency.			
4.3	<u>Surveillance and anti-surveillance</u> protection that identifies and deters potential attackers prior to any attack, including the use of drones  (Where necessary).			
4.5	CPOs trained in evasive and defensive driving.			
4.6	First Aid competence of CPOs.			
4.7	Three relevant contactable references.			
4.8	Minimum 10 years in implementing close personal protection services.			
4.9	National footprint.			

## 5 CONTRACT TERM

The contract will be for a period of 10 months.

## 6 COMPULSORY BRIEFING SESSION AND PRESENTATIONS

The compulsory briefing session will take place on 14 December 2020 at 11:00 – 12:30. Bidders are requested to forward their email address to: [tenders4@pic.gov.za](mailto:tenders4@pic.gov.za) and complete Non-Disclosure Agreement (NDA) with this subject line: Appointment of a service provider for the Close Protection Services for the briefing session.

The presentations may be required for the technical evaluation. Bidders will be advised of this post the closing date of this submission.

## 7 QUERIES AND CLARIFICATIONS

Queries and clarifications must be addressed in writing to [shala.msomi@pic.gov.za](mailto:shala.msomi@pic.gov.za). Please quote **RSK004 2020** on ALL correspondence.

## 8 CLOSING DATE

Closing date for all submissions will be 20 January 2021 at 11:00. Due to the COVID-19 pandemic, all bidders who attend the compulsory briefing session will be provided with a one drive link to submit their bids. No other methods of submission will be accepted.

## 9 EVALUATION CRITERIA AND METHODOLOGY

The evaluation criteria will be based on the following four phases:

- Phase 1: Compliance with Minimum requirements (par 4.1)
- Phase 2: Administrative requirements (par 10)
- Phase 3: Functionality Evaluation (par 11)
- Phase 4: Price and BEE Evaluations (80/20 points) in accordance with Preferential Procurement Policy Framework Act (No. 5 of 2000).



All bid responses that do not meet the administrative requirements will be disqualified and will not be considered for further evaluation on the Functional Requirements.

## 10 ADMINISTRATIVE REQUIREMENTS

- A bid document outlining the resources to be allocated and the quotation for the assignment.
- Proof of CSD registration
- Proof of current PSIRA registration
- A valid BBBEE status level certificate issued by a SANAS accredited verification agency or affidavit confirming BEE status.
- Completion of this document i.e. Invitation to Bid and Declaration of interest.

## 11 TECHNICAL / FUNCTIONAL SCORING CRITERIA

With regards to technicality / functionality, a minimum score of 70% must be achieved in order to proceed to the next phase of evaluation. The following criteria shall be applicable, and the maximum points of each criterion are indicated in the table below:

No	CRITERIA FOR EVALUATION FUNCTIONALITY	Weight
1	Experience of company and operators proposed. <ul style="list-style-type: none"> <li>• Certifications</li> <li>• Qualifications and Experience</li> </ul>	40
2	Response time and operational capability <ul style="list-style-type: none"> <li>• Service offering</li> <li>• Equipment</li> <li>• Assessment and protection methodology / protocols</li> </ul>	40
3	References	20
	Total	100

## 12 PRICING AND BEE

For the purposes of this bid the following minimum rates must be provided:

- Daily rate (12hour day) for CPO
- Daily rate (12hour day) for armoured vehicle
- Rate per kilometer for distance travelled

Pricing for other services identified in the scope and other relevant services must be indicated but will not be used for the purposes of evaluation.

## 13 TERMS AND CONDITIONS

- 13.1. The PIC may amend any bid conditions, bid validity period, RFP specifications, or extend the bid closing date, all before the bid closing date
- 13.2. The PIC may amend any bid conditions, bid validity period, RFP specifications, or extend the bid closing date, all before the bid closing date.
- 13.3. PIC may negotiate with all or some of the shortlisted bidders.
- 13.4. PIC may request any relevant information and/ or documents to verify or clarify information supplied in the bid response.
- 13.5. The PIC reserves the right not to accept the lowest priced bid or any bid in part or in whole.
- 13.6. Should you not receive feedback within 30 business days after the closing date, you must consider your proposal unsuccessful.
- 13.7. PIC may disregard any submission if that bidder, or any of its directors:
  - a. Have abused the Supply Chain Management (SCM) system of any Government Department/ institution.
  - b. Have committed proven fraud or any other improper conduct in relation to such system.
  - c. Have failed to perform on any previous contract and the proof thereof exists.
  - d. Is restricted from doing business with the public sector if such a supplier obtained preferences fraudulently or if such supplier failed to perform on a contract based on the specific goals
- 13.8. The award of this tender shall be subject too successful negotiation and conclusion of an SLA / contract. There will be no binding agreement between the parties if a contract has not been concluded.

- 13.9. Bidder are advised that a valid contract will only come into existence between the PIC and the successful bidder after conclusion of successful negotiations and signature of the Contract by both parties' respective delegated authorities.
- 13.10. PIC may prior to the award of the bid, cancel a bid if
- Due to changed circumstances, there is no longer a need for the goods or services requested.
  - Funds are no longer available to cover the total envisaged expenditure.
  - No acceptable bids are received.
- 13.11. The PIC reserves the right not to accept the lowest priced bid or any bid in part or in whole.

PART A

**INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE PUBLIC INVESTMENT CORPORATION</b>			
BID NUMBER:	RSK004 2020	CLOSING DATE: 20 January 2021	CLOSING TIME: 11:00
DESCRIPTION	APPOINTMENT OF A SERVICE PROVIDER FOR A CLOSED PROTECTION SERVICES		
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO		TECHNICAL ENQUIRIES MAY BE DIRECTED TO:	
CONTACT PERSON		CONTACT PERSON	
TELEPHONE NUMBER		TELEPHONE NUMBER	
FACSIMILE NUMBER		FACSIMILE NUMBER	
E-MAIL ADDRESS		E-MAIL ADDRESS	
<b>SUPPLIER INFORMATION</b>			
NAME OF BIDDER			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE		NUMBER
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE		NUMBER
E-MAIL ADDRESS			

VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</i>					
13 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]		14 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES, ANSWER PART B:3]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/>					
YES <input type="checkbox"/> NO					
DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES					
<input type="checkbox"/> NO					
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?					
<input type="checkbox"/> YES <input type="checkbox"/> NO					
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?					
<input type="checkbox"/> YES <input type="checkbox"/> NO					
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?					
<input type="checkbox"/> YES <input type="checkbox"/> NO					
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B

TERMS AND CONDITIONS FOR BIDDING

**1. BID SUBMISSION:**

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED—(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).

**2. TAX COMPLIANCE REQUIREMENTS**

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

(Proof of authority must be submitted e.g. company resolution)

DATE:

.....

SBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or

- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

2.1 Full Name of bidder or his or her representative:

.....

2.2 Identity Number: .....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): .....

2.4 Company Registration Number: .....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number: .....

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

<sup>1</sup>“State” means –

(a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(b) any municipality or municipal entity;

(c) provincial legislature;

(d) national Assembly or the national Council of provinces; or

(e) Parliament.

<sup>2</sup>"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder YES / NO  
presently employed by the state?

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: .....

Name of state institution at which you or the person

connected to the bidder is employed : .....

Position occupied in the state institution:

.....



Any other particulars:

.....  
.....  
.....

2.7.2 If you are presently employed by the state, did you obtain YES / NO  
the appropriate authority to undertake remunerative  
work outside employment in the public sector?

2.7.2.1 If yes, did you attached proof of such authority to the bid YES / NO  
document?

(Note: Failure to submit proof of such authority, where  
applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....  
.....

.....

2.8 Did you or your spouse, or any of the company's directors / YES / NO  
trustees / shareholders / members or their spouses conduct  
business with the state in the previous twelve months?

2.8.1 If so, furnish particulars:

.....  
.....  
.....

2.9 Do you, or any person connected with the bidder, have YES / NO  
any relationship (family, friend, other) with a person  
employed by the state and who may be involved with  
the evaluation and or adjudication of this bid?

2.9.1 If so, furnish particulars.

.....  
.....  
.....

2.10 Are you, or any person connected with the bidder, YES/NO  
  
aware of any relationship (family, friend, other) between  
  
any other bidder and any person employed by the state  
  
who may be involved with the evaluation and or adjudication  
  
of this bid?

2.10.1 If so, furnish particulars.

.....  
.....  
.....

2.11 Do you or any of the directors / trustees / shareholders / members YES/NO  
  
of the company have any interest in any other related companies  
  
whether or not they are bidding for this contract?

2.11.1 If so, furnish particulars:

.....  
.....  
.....



3 Full details of directors / trustees / members / shareholders.

Full Name

Identity Number

Personal Tax Reference Number

State Employee Number / Persal Number

**DECLARATION**

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....

Signature

Date

.....

Position

Name of bidder



**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

Between

**PUBLIC INVESTMENT CORPORATION SOC LIMITED**

**(Registration Number 2005/009094/06) (“PIC”)**

AND

---

(Identity Number / Registration Number: \_\_\_\_\_)

(Hereinafter referred to as the parties.)

### **Introduction**

1. The parties wish to record the terms and conditions upon which each shall disclose confidential information to the other, which terms and conditions shall constitute a binding and enforceable agreement between the parties and their agents.
2. This agreement shall also bind the parties, notwithstanding the date of signature hereof, in the event that either party shall have disclosed any confidential information to the other party prior to date of signature hereof.
3. For the purposes of this agreement the party which discloses confidential information shall be referred to as “the disclosing party” and the party which receives the confidential information shall be referred to as “the receiving party”.

### **The Confidential Information**

4. "Confidential Information" shall, for the purpose of this agreement include, without limitation, any technical, commercial or scientific information, know-how, trade secrets, processes, machinery, designs, drawings, technical specifications, terms of agreements, details of investment strategies, organisational strategies or structure of either party, products or services offered by either party or any other matter which relates to the business of either party in respect of which information is not readily available in the normal course of business which may come to the knowledge of the other party in whatever form, disclosed to or assessed by either party during the course of his relationship with the other party.

**Disclosure of confidential information**

5. The disclosing party shall only disclose the confidential information to the receiving party to the extent deemed necessary or desirable by the disclosing party in its discretion.
6. The receiving party acknowledges that the confidential information is a valuable, special and unique proprietary asset to the disclosing party.
7. The receiving party agrees that it will not, during or after the course of their relationship and/or the term of this agreement as described in Clause 17, disclose the information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this agreement. In this agreement “third party” means any party other than the parties.
8. Notwithstanding anything to the contrary contained in this agreement the parties agree that the confidential information may be disclosed by the receiving party to other related parties on a need-to-know basis; provided that that party takes whatever steps are necessary to procure that such other related parties agree to abide by the terms of this agreement to prevent the unauthorised disclosure of the confidential information to third parties. For purposes of this clause, the receiving party’s other related parties and employees, directors or managers shall be deemed to be acting, in the event of a breach, as that party’s duly authorised agents.
9. The receiving party agrees:

- 9.1 not to utilise, exploit or in any other manner whatsoever use the confidential information disclosed pursuant to the provisions of this agreement for any purpose whatsoever without the prior written consent of the disclosing party;
- 9.2 that the unauthorized disclosure of the confidential information to a third party may cause irreparable loss, harm and damage to the disclosing party. Accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, claim, harm or damage, of whatever nature, suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of this agreement.

**Title**

10. All confidential information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party:
- 10.1 to be proprietary to the disclosing party; and
- 10.2 not to confer any rights to the receiving party of whatever nature in the confidential information.

**Restrictions on disclosure and use of the confidential information**

11. The receiving party undertakes not to use the confidential information for any purpose other than:
- 11.1 that for which it is disclosed; and
- 11.2 in accordance with the provisions of this agreement.



**Standard of care**

12. The receiving party agrees that it shall protect the confidential information disclosed pursuant to the provisions of this agreement using the same standard of care that the receiving party applies to safeguard its own proprietary, secret or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

**Return of material containing or pertaining to the confidential information**

13. The disclosing party may, at any time, request the receiving party to return any material containing, pertaining to or relating to confidential information disclosed pursuant to the terms of this agreement and may, in addition request the receiving party to furnish a written statement to the effect that, upon such return, the receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material.
14. As an alternative to the return of the material contemplated in clause 13 above, the receiving party shall, at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed. Notwithstanding the aforesaid, the receiving party will be entitled to retain such documents as they are reasonably required to retain in order to fulfil their professional obligation with regard to document retention, imposed on them by the professional body of which they are a member.
15. The receiving party shall comply with a request in terms of this clause, within 7 (seven) days of receipt of such a request.

**Excluded confidential information**

16. The obligations of the receiving party pursuant to the provisions of this agreement shall not apply to any confidential information that:
- 16.1 is known to, or in the possession of the receiving party prior to disclosure thereof by the disclosing party;
  - 16.2 is or becomes publicly known, otherwise than as a result of a breach of this agreement by the receiving party;
  - 16.3 is developed independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this agreement;
  - 16.4 is disclosed by the receiving party to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the receiving party shall advise the disclosing party to take whatever steps it deems necessary to protect its interests in this regard and provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the greatest extent possible in the circumstances;
  - 16.5 is disclosed to a third party pursuant to the prior written authorisation of the disclosing party;
  - 16.6 is received from a third party in circumstances that do not result in a breach of the provisions of this agreement.

### **Term**

17. Subject to clause 2 this agreement shall commence upon the date of signature of the last signing party hereto ("the effective date") and shall endure for a period of 12 (twelve) months ("the term") thereafter, or for a period of one year from the date of the last disclosure of confidential information to the receiving party, whichever is the longer period, whether or not the parties continue to have any relationship for that period of time. In the event that the parties extend the term by mutual and written agreement, then the provisions hereof shall endure for a further minimum period of 12 (twelve) months mutatis mutandis.

### **No Solicit**

18. Both parties agree that they will not solicit, interfere with, or entice or endeavour to solicit, interfere with or entice away from the other party, any employee or consultant of the other party, or of either parties consultant(s) or sub-contractor, for the duration of this agreement.

### **Additional Action**

19. Each party to this agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this agreement.

### **Breach**

20. In the event that the receiving party should breach the provisions of this agreement and fail to remedy such breach within 7 (seven) days from date of a written notice to do so, then the disclosing party shall be entitled to invoke all remedies available to it in law including the institution of urgent interim proceedings and/or an action for damages.

### **Amendments**

21. No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced in writing and signed by both parties.

### **Enforcement**

22. The failure by the disclosing party to enforce or to require the performance at any time of any of the provisions of this agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this agreement or any part hereof or the right of the disclosing party to enforce the provisions of this agreement.

### **Headings**

23. The headings of the clauses of this agreement are used for convenience only and shall not affect the meaning or construction of the contents of this agreement.

### **Representations & Warranties**

24. Each party represents that it has authority to enter into this agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this agreement.

### **Entire agreement**

25. This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral, with respect to the subject matter of this agreement.

**Governing law**

26. This agreement and the relationship of the parties in connection with the subject matter of this agreement and each other shall be governed and determined in accordance with the laws of the Republic of South Africa.

**Submission**

27. The parties hereby submit to the non-exclusive jurisdiction of the Northern - Gauteng High Court.

**Domicile (Physical Address)**

28. Any written notice in connection with this agreement may be addressed:

- 29.1 in the case of PIC to

MENLYN MAINE CENTRAL SQUARE

CORNER ARAMIST AVENUE & COROBAY AVENUE

WATERKLOOF GLEN EXTENSION 2

0181

and shall be marked for the attention of.....;

- 29.2 in the case of \_\_\_\_\_ to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and shall be marked for the attention of

\_\_\_\_\_.

30. A party may change that party's address, by prior notice in writing to the other party.
  
31. If any notice is to be sent by mail, it shall be sent by prepaid registered mail and shall then be deemed until and unless the contrary is proved, to have been received 10 (ten) days after the date of posting.
  
32. If any notice is sent by telefax, it will be deemed, until and unless the contrary is proved, to have been received on the date recorded on the transmission slip.
  
33. If any notice is delivered by hand, it will be deemed to have been received on proof of the date of delivery.

**Severability**

34. In the event of any one or more of the provisions of this agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, and this agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this agreement, and the agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

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Signed at                      on this the                      day of                      2020

---

Witness signature.

---

Signature

Duly authorised representative of

Public Investment Corporation SOC Limited

---

Print name.

---

Print Name.

---

Date.

---

Date.

Signed at                      on this the                      day of                      2020

---

Witness signature.

---

Duly authorised representative of

---

---

Print name.

---

Print Name.

---

Date.

---

Date.



## **ANNEXURE B**

### Contracting terms and conditions

- Bidder are advised that a valid contract will only come into existence between the PIC and the successful bidder after conclusion of successful negotiations and signature of the Contract by both parties' respective delegated authorities.

Key contractual principles that successful Bidder must note for the final contract are as follows:

- Duration

Contracts will be for a fixed period. There will be no auto-renewals renewals.

- Limitation of Liability

The limitation of liability is subject to negotiation and will be informed by the contract value and risk associated with the contract.

### Ownership of Data

The PIC shall retain ownership of the Data and all Intellectual Property Rights in and to all the Data.

### Termination of Convenience

PIC requires a clause addressing termination of convenience

### Governing Law

The PIC preferred Governing Law of the Contract between the parties is the law of the Republic of South Africa. In the event that the parties cannot agree on South African law, the PIC will accept the law of England.

### Warranty

The Successful Bidder warrants that it:

- is authorised to enter into an Agreement and able to perform each of its duties in terms of the Agreement;
- is suitably qualified to provide the Services;
- is registered with the relevant industry body and its employees have the required certification and licences; and
- has public liability insurance cover commensurate with the risks to which it is exposed for the Term of the Agreement. Documentary proof of such insurance cover is to be provided to on or before the Date of Signature.

The Bidder shall provide the Services:

- with due care and skill;
- in accordance with the terms and conditions of this Agreement; and
- in compliance with all applicable laws and regulations.

The Bidder further warrants and guarantees that:

- the Services shall be rendered and executed in a professional manner in accordance with the standards agreed between the Parties and expected in the relevant industry; and
- the personnel tasked with rendering the Services have completed the requisite formal training and have the expertise to execute their functions properly, regarding but not limited to:
- the execution of their Services, having regard for the legal aspects thereof;

#### Data Storage

The Successful Bidder must disclose where the data is stored. PIC requires data to be stored in the Republic of South Africa or an EU jurisdiction.

#### Exit Management

If this Agreement is terminated in whole or in part for any reason whatsoever the provisions of the exit management plan agreed (if any) between the Parties shall come into effect and in any event, including where no agreed exit management plan exists, the Supplier shall co-operate fully with the PIC to ensure an orderly migration of the Services to the PIC or, at the PIC's request, a new supplier (an **Orderly Migration**). Without limiting the foregoing, the PIC shall be entitled to require the Supplier to continue to provide the Services for up to **[6 (six)]** months after the effective date of the termination of this Agreement on the same payment terms if, in the opinion of the PIC, such continuation is required in order to allow for an Orderly Migration. Co-operation by the Supplier shall include (without limitation), at the PIC's



election, the provision by the Supplier of such personnel, equipment, resources, software, documentation, training and consultancy as may reasonably be required to enable an Orderly Migration and the return of the PIC's data in the manner, timeframes and a form and format specified by the PIC.