



TERMS OF REFERENCE

APPOINTMENT OF LEGAL FIRMS TO BE PART OF THE SOUTH AFRICAN BOARD FOR SHERIFFS LEGAL PANEL (Panel of Attorneys)

Reference Number: SABFS028/2023

Advertisement Date: 01/11/2023

Closing Date: 14/11/2023

Closing Time: 17:00

Tender Type: Public

TENDER DOCUMENTS ARE TO BE EMAILED TO:

proposals@sheriffs.org.za

1. BACKGROUND

The South African Board for Sheriffs ("SABFS") is a statutory body created under section 7 of the Sheriffs Act 90 of 1986 ("the Act"), with primary objectives centered around upholding the reputation, enhancing the status, and improving the training standards and functions performed by sheriffs. The overall functions of the SABFS are outlined in section 16 of the Sheriffs Act.

2. PURPOSE

The SABFS seeks to appoint various external legal firms to be established as a panel to provide professional legal services when required by the SABFS for a period of three (3) years. The panel so established will be responsible for assisting the SABFS to fulfil its mandate by providing general litigation and legal services pertaining to matters which might impact the SABFS as and when the need arises.

Based on the aforesaid, the SABFS requests proposals from capable legal firms with good standing within the legal fraternity.

3. SCOPE OF SERVICES

The legal firms will be required to render general legal and litigation services to the SABFS, which would include any matter which requires legal intervention and/or which legally impacts the SABFS.

3.1. The legal firms should be able to demonstrate expertise and processing of matters in one or more of the following fields of law:

- a. Contract and Commercial Law (i.e., Negotiations, advice on corporate governance, contract, interpretation, legal opinions)
- b. Industrial Relations (i.e., HR related, disciplinary hearings, CCMA Hearings)
- c. High Court, Lower Court litigation and other forums
- d. Administrative and Public law
- e. Civil litigation
- f. Constitutional law
- g. Criminal law
- h. Labour law

3.2. The legal firms' services might, dependent on the nature of each matter, also further entail:

- a. Consultations
- b. Research
- c. Investigations and Auditory services
- d. Report drafting
- e. Legal Opinions
- f. Service and Filing
- g. Execution and Enforcement
- h. Dispute Resolution
- i. Third-party services i.e., tracers, sheriffs, experts, CIPC, correspondents
- j. Drafting of pleadings
- k. Contract interpretation
- l. Interlocutory proceedings
- m. Representations and Appearances
- n. Bill of Costs
- o. Declaratory Orders
- p. Training
- q. Any additional services required to fulfil the initial mandate or instructions.
- r. Any other legal matter relevant to the execution of the mandate of the SABFS.

3.3. The legal firm and its attorneys and associates will further be required to display at least certain of the following skills and competencies:

- a. Regulatory compliance of the SABFS
- b. Contractual Interpretative skills
- c. Drafting skills
- d. Representation skills
- e. Research skills
- f. Knowledge and/or understanding the purpose of the SABFS.
- g. Dispute Resolution skills
- h. Settlement negotiation skills
- i. Infrastructure to handle workload.
- j. Quality and professional service delivery
- k. Target orientated.
- l. General Litigation experience
- m. Knowledge of appeal and review procedures in all forums

- n. Knowledge of the Rules of the Tribunal, High Court, SCA and Constitutional Court

- 3.4. The firms will be tasked to attend to the assigned files in line with the specific Department's policies and procedures and will be required to provide recommendations to the assigned Legal Manager and/or Executive Manager.

- 3.6 The firms will be dependent on the instructions of each matter, be responsible for appointing Junior and/or Senior Counsels, however, panel attorneys are prohibited from engaging external counsel for magistrate and regional court matters, unless prior authorization is granted by the Legal Manager and/or the Executive Manager of SABFS.

- 3.7. The law firms should be sufficiently able and flexible to collaborate and work with another law firm(s)/firm of attorneys should the SABFS so require.

- 3.8. The firms that are already performing legal services on behalf of SABFS should also submit their proposals.

4. DURATION

- 4.1. The duration of this assignment will be three (3) years from the date of appointment.

5. SPECIFIC COMPLIANCE

- 5.1 Bidder's company profile should indicate that the majority of the company is owned by South African citizens.

- 5.2. Proof of registration and confirmation of good standing of the Law Firm with the Legal Practice Council (LPC) is essential.

- 5.3. The following information regarding the law firm must be provided:
 - a. Name of the company or firm with its registered address, telephone number and e-mail addresses
 - b. Brief overview of the company's corporate structure
 - c. Names of the Directors
 - d. Staff compliment

- e. Proof of admission of the attorneys within the firm who will form part of the team to deliver services to the SABFS.
- f. Name of contact person/s for all communications between SABFS and the firm with telephone numbers and e-mail addresses
- g. A summary of the *curriculum vitae* of the proposed legal team members and their roles must be provided. Tertiary and other qualifications must be supported by documentary evidence.
- h. Fidelity fund certificate to be provided.

6. FUNCTIONALITY EVALUATION

6.1 **PHASE 1: Technical Evaluation**

Evaluation of the technical part of the proposal will be based on the candidate's responsiveness to the terms of reference, as well as the application of the evaluation criteria and points system as indicated below. Each responsive proposal will be given a technical score.

Criteria	Points
Company experience in the provision of the required services including specialized skills, expertise, and value-added services	60
Qualifications and experience of team members	20
Methodology and Approach	20
TOTAL	100

6.2 **PHASE 2: Pricing and BEE Evaluation**

The following 80/20 criteria will be used for the evaluation of the proposals:

- a. Pricing 80 points
- b. B-BBEE Points 20 points.

6.3. **SUPERVISION**

The successful service providers will be regularly in contact with the legal manager whenever applicable.

6.4. **PAYMENT AGREEMENT**

Payment will be based on the signed service level agreement between the SABFS and the successful bidder.

7. ADDITIONAL INFORMATION TO BE SUBMITTED BY THE BIDDERS

- a. Any other information which the bidder may deem necessary and relevant for the bid.
- b. Bidders shall include all relevant information about the bidder, which will assist the SABFS in assessing the service provider's competence. In addition to procurement requirements, below is a list for guidance:
 - i. Certificate of incorporation / legal status
 - ii. ID copies of the directors for vetting purposes
 - iii. Certified copy of BEE certificate or sworn affidavit

8. REGISTRATION REQUIREMENTS

Service providers must submit the following information when preparing their bid documents:

- a. Certificate of Registration
- b. Valid and original tax clearance certificate at the time of bid closing for bids above R30 000.00 (bidders must ensure that their tax status is always compliant as failure to do so will result in an automatic disqualification)
- c. Certificate of registration with relevant professional body/s.
- d. Proof of banking details.
- e. Declaration of Interest

NB:

- *Please note that the above requirements are mandatory and MUST accompany the proposal.*
- *Non-compliance with the above mandatory submissions will lead to a disqualification.*
- *Proposals must be properly indexed.*

All inquiries relating to the tender must be communicated in writing only by no later than 12:00 p.m. on 14 November 2023. All written communication should be sent to the following email address only: proposals@sheriffs.org.za, Subject Heading SABFS028/2023 – Panel of attorneys.

9. All applicants are strictly forbidden to communicate with the office of the South African Board for Sheriffs in respect of their application, other than through the required communication channels as stipulated in this document.
10. Each applicant is required to submit one (1) softcopy to proposals@sheriffs.org.za, no later than the stipulated closing date and time.

11. The SABFS is not obliged to accept any applications and has the right to withdraw and/or amend tender specifications at its sole discretion.

Approved

A handwritten signature in black ink, appearing to read 'S Mashaba', enclosed within a hand-drawn oval.

Mrs. S Mashaba

Executive Manager: South African Board for Sheriffs

ANNEXURE "A"

SERVICE LEVEL AGREEMENT

BETWEEN

**THE SOUTH AFRICAN BOARD FOR
SHERIFFS**

AND

SERVICE PROVIDER

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1. INTERPRETATION

1.1. Definitions

In this agreement, unless the context indicates otherwise:

“Act”	means the Sheriff’s Act 90 of 1986.
“Agreement”	means this Service Level Agreement and includes its annexures, which shall form part of it.
“Business Day”	means any day other than a Saturday, Sunday, or statutory holiday in the Republic of South Africa.
“SABFS”	means the South African Board for Sheriffs, a statutory body established in terms of the Act.
“Commencement Date”	means the signature date.
“Confidential information”	means any information, documentation or trade secrets of whatever nature which may have been or may be obtained by either of the parties from the other, whether in writing or in electronic form or pursuant to discussions or as a result of the conclusion of this agreement, which may reasonably be regarded as being confidential and of a proprietary nature to any of the parties, including without limitation, agreements and understandings, technical information, know-how, trade secrets, software, computer programs, operating procedures and methodologies, proposals, pricing details, strategies, and any other business or financial information relating to the parties as well as the terms of conditions of this agreement and the details of any dispute between the parties or any dispute resolution and/or legal proceedings resulting from this Agreement.
“Force Majeure”	In the event beyond the control of the supplier and not involving the supplier’s fault or negligence and not reasonably

foreseeable. Such events may include, but is not restricted to, wars or revolutions, fires, food, epidemics, quarantine restrictions and freight embargoes.

“Parties”	means the SABFS and the supplier; and “party” means either one of them as the context may require.
“Proposal”	means the proposal in terms of which the supplier successfully tendered for the provision of services.
“PFMA”	means the Public Finance Management Act 1 of 1999.
“Services”	means the services provided by the supplier for a period of 3 years, See Annexure “A” attached hereto.
“Signature Date”	means the date on which this agreement is last signed by the parties.
“Supplier”	means service provider having registration number a company duly incorporated under the company laws of the Republic of South Africa; and
“VAT”	means value-added tax in terms of the Value-Added Tax Act 89 of 1991.

1.2. General Interpretation

In addition to the definitions in clause 1.1, unless the context requires otherwise:

- 1.2.1. a reference to any one gender, whether masculine, feminine or neuter, includes the other two.
- 1.2.2. any reference to a person, includes, without being limited to, any individual, body corporate, unincorporated association or other entity recognized under any law as having separate legal existence or personality.
- 1.2.3. any word or expression defined in and for the purposes of this agreement shall if expressed in the singular include the plural and vice

versa and a cognate word or expression shall have a corresponding meaning.

1.2.4. references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified, re-enacted, or replaced as far as such modification, re-enactment or replacement applies, or is capable of applying, to this agreement or any transaction entered into in accordance with this agreement.

1.2.5. references in this agreement to “clauses”, “sub-clauses” and “annexures” are to clauses and sub-clauses of, and annexures to, this agreement; and

1.3. Headings and Sub-headings:

1.3.1. All the headings and sub-headings in this agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

2. WHEREAS

2.1. The SABFS is responsible for carrying out the functions and exercising the powers set out in the Sheriff's Act 90 of 1986 or those assigned to it by or in terms of the Act, or any other national legislation.

2.2. The SABFS seeks to appoint a service provider **to provide services as stipulated in the Terms of Reference (“TOR”)** of which same can be seen on **Annexure “A”** attached hereto.

2.3. The supplier successfully tendered for the rendering of the services to the SABFS under current tender.

2.4. The SABFS wishes to appoint the supplier to render the services to the SABFS in accordance with the terms and conditions of this agreement and in compliance with the provisions of the Act.

3. RECORDAL

3.1. The South African Board for Sheriffs (“SABFS”) is an officially recognised Regulatory Body, operating under the legal framework of the Sheriff's Act 90 of 1986 and its accompanying Regulations. In accordance with their authority, the SABFS has the capability to establish formal written agreements with their appointed service providers, aiming to uphold specific standards. The aim of such agreements is to establish clear terms between the SABFS and attorneys, who serve as service providers to the SABFS, while also addressing various related matters.

4. STATUS OF AGREEMENT

- 4.1. This agreement is intended to represent the clear intentions of the parties in relation to the provision of legal services by the attorney to the SABFS. Although the parties enter into the agreement with the intention of being bound by the provisions, the parties record that due to the nature of the relationship and the service provided by the attorney, it may from time to time become necessary to deviate from the strict terms of the agreement. In such cases the parties undertake to act in good faith and where possible to reach a prior agreement in respect of the non – compliance with the provisions of the agreement.
- 4.2. It is specifically recorded, that the agreement is entered into with the attorney and not the law firm. The SABFS may also enter into similar agreements with other attorneys at the same firm, but on different terms.

5. PURPOSE OF AGREEMENT

- 5.1. The purpose of this agreement is to: -
 - 5.1.1. set out in general terms the legal services to be sought and supplied.
 - 5.1.2. indicate the arrangements for giving and receiving instructions and for undertaking the relevant work.
 - 5.1.3. set out timetabling arrangements for the provision of services.
 - 5.1.4. specify the standard of legal work to be provided.
 - 5.1.5. specify the standard, level, and timing of information to be supplied by SABFS.
 - 5.1.6. indicate arrangements for monitoring service delivery, both as regards quality of work and turnaround times.
 - 5.1.7. specify financial arrangements, and
 - 5.1.8. set out any other obligations of the parties in relation to the delivery of services under the agreement.

6. APPOINTMENT OF AND INSTRUCTIONS TO THE ATTORNEY

- 6.1. Only the authorised person of the SABFS will have authority to appoint the attorney in respect of any particular matter.
- 6.2. All appointments will be done in writing and the letter of instruction will clearly delineate the parameters of the mandate given to the attorney.

- 6.3. The attorney will only have such authority as may be expressly provided in terms of this agreement and/or per a specific mandate provided.
- 6.4. Full documentation with regards to a specific instruction will be supplied to the attorney.
- 6.5. The SABFS will be responsible for the provision of adequate detailed and timely instructions to enable the work to be carried out in accordance with the provisions of the agreed service levels at all stages of its performance.

7. SERVICES TO BE RENDERED BY THE SUPPLIER

- 7.1. The SABFS hereby appoints the supplier, which appointment the supplier hereby accepts, to render the services in accordance with the terms and conditions of this agreement and in compliance with the provisions of the Act, subject at all times to the direction of the SABFS.
- 7.2. The following are the duties and responsibilities of the attorney:
 - 7.2.1. All instructions will be carried out in terms of the mandate given to the attorney.
 - 7.2.2. For the sake of clarity, it is recorded that the attorney will not embark on any legal work without having been instructed to do so by the SABFS in writing.
 - 7.2.3. If the attorney is of the view that additional legal work may be required which is not specifically included in his/her mandate, the attorney will advise the SABFS of the need for such work and request written instructions in this regard.
 - 7.2.4. It is the responsibility of the attorney to apprise himself/herself of the terms of the initial procurement process of the SABFS and the fee agreement entered into between the SABFS and the attorney.
 - 7.2.5. Whilst the SABFS will have given consideration to the merits, locus standi, jurisdiction and the economics of recovering/defending a particular matter prior to handing it to the attorney, the attorney still has a duty to immediately notify the SABFS prior to unnecessary legal costs being incurred, if he/she disagrees with the view of the SABFS.
 - 7.2.6. Whilst the attorney is appointed by the SABFS to act on behalf of the SABFS, the attorney must at all times be cognizant of the potential for a conflict of interest which may arise between the instructions to act on behalf of the SABFS against a third party. If such a conflict of interest should at any time come to the attention of the attorney, it is the attorney's duty to point such conflict out to the SABFS and to request instructions.

- 7.2.7. The attorney may also in accepting an instruction from the SABFS be conflicted by virtue of an existing attorney – SABFS relationship, whether between the firm and any specific SABFS, or alternatively between the specific attorney and a SABFS. It is the duty of the attorney to do a conflict check prior to accepting the instruction if he/she has reason to believe that such a conflict may exist. The attorney will immediately inform the SABFS of any conflict of which he may become aware and obtain the SABFS's instructions. The SABFS may after consideration in its sole discretion decide to terminate the attorney's mandate in respect of the specific instruction.
- 7.2.8. Instructions are given to specific attorneys within the firm and only the attorney to whom the instruction has been given may accept the instruction. If that attorney cannot accept the instruction, he will in writing inform the SABFS within three (3) days of receipt of the instruction.
- 7.2.9. If the SABFS has requested the attorney to provide it with a report in respect of any instruction at least a prima facie report on the prospects of success will, where possible, be concluded before the attorney commences with the instruction to defend or sue.
- 7.2.10. The attorney shall not undertake to work for and against SABFS.

8. MANAGEMENT OF INSTRUCTIONS RECEIVED

The attorney will: -

- 8.1. ensure that each instruction is properly registered and allocated a reference number.
- 8.2. operate a diary system to ensure cases are managed effectively and that the SABFS at all times, remain fully aware of the developments in each case at all times.
- 8.3. communicate effectively with the SABFS to avoid misunderstandings and conflicting views on the handling of any instruction.
- 8.4. All instructions must be handled expeditiously.

9. SETTLEMENT OF MATTERS

- 9.1. The SABFS aims to resolve all and any matters as expeditiously as possible. The attorney must ensure that an attempt at a speedy resolution of an instruction must be attempted on the instructions of the SABFS at all times where possible.
- 9.2. The attorney will assist SABFS in achieving this aim by exploring all reasonable means to resolve instructions at an earlier stage if it is to the SABFS's advantage to do so. The attorney will take a pragmatic view and

consider disposal at an earlier stage to avoid the risk of future adverse developments.

- 9.3. The attorney and the SABFS will collectively work towards progression of the case to an early resolution. The parties' collective actions and decisions will be taken in a manner which is conducive to early resolution of issues between the parties with the aim of settling the matter without the need for a full trial, where possible.
- 9.4. The attorney will, at all times, protect the best interests of the SABFS through early offers or the use of tactical procedural steps to progress an action.
- 9.5. No settlement negotiations will be entered into without SABFS's prior written authorization.

10. NON – EXCLUSIVITY

- 10.1. Whilst SABFS restricts the number of attorneys it uses; it is specifically recorded that this agreement is not exclusive in that the SABFS is entitled to utilise the services of other attorneys for the services referred to in this agreement.
- 10.2. This agreement also does not guarantee the attorney any work and does not entitle the attorney to demand that the SABFS shall provide it with work.
- 10.3. The agreement does not preclude the attorney from accepting other work, including work from third parties which may result in a conflict of interest. This clause must however always be read subject to any actual conflict of interests as provided for in clause 7.2.6 above.

11. STANDARD OF SERVICE

- 11.1. Both parties recognise that the effective delivery of services and meeting deliverables depend on full co – operation and openness between the parties.
- 11.2. The attorney will provide his legal services with reasonable care and skill to a professional standard and in good faith to the SABFS.
- 11.3. Whilst it is the intention of the parties that the attorney will at all times strive to meet the agreed turnaround times, the parties agree that all matters are unique and different factors may have an impact on the achievement of the agreed turnaround times.
- 11.4. Similarly, the timetabling requirements for provision by the SABFS to the attorney of information required for the provision of legal services will also vary according to the particular circumstances. Therefore, the parties agree that on individual matters it may be impractical to work according to the agreed timeframes and in this case a timetable for completion of the work should be agreed between the parties.

12. REPORTING

- 12.1. All reporting will be done to the person who will be identified in the letter of appointment.
- 12.2. The attorney will keep the SABFS informed of progress in matters it handles. The attorney will however attempt to avoid any unnecessary reporting where there has not been any change in the status of a matter.
- 12.3. All communications will be by means of email.
- 12.4. The attorney will be advised of any changes in the SABFS staff member dealing with the matter.

13. RESPONSIBILITY FOR PROVIDING LEGAL SERVICES

- 13.1. The attorney shall supply legal services to the SABFS to meet the requirements of the SABFS.
- 13.2. The attorney shall provide such services from its own resources and staff.
- 13.3. The SABFS appoints an individual attorney rather than a law firm. Therefore, if the attorney is not able to accept the instruction, for any reason, including but not limited to insufficient resources to carry out the work within the required timescale, or because the specialized nature of the work may require a particular expertise, or any conflict by the instructed attorney, he/she may not without the prior agreement of the SABFS pass the instruction on to another attorney, whether in the same firm or in another firm.
- 13.4. The attorney may dedicate some of the work to junior attorneys within the attorney's firm, charging out work at their rate, provided there is no unnecessary duplication of the work, and the appointed attorney retains personal responsibility for the management of the matter, and personally produces the report. The attorney shall at all times keep the SABFS fully informed as to which attorney and member of staff are dealing with an instruction.
- 13.5. The mechanism for ensuring the quality of the work undertaken is the responsibility of the attorney, who is responsible for ensuring that work is conducted by appropriate staff and is sufficiently supervised.

14. INTERACTION WITH ANY PARTY ON BEHALF OF THE SABFS

- 14.1. The attorney will at all times be professional in his dealings when representing SABFS.
- 14.2. The attorney will immediately notify the SABFS if a third party has complained about the attorney, whether that complaint be formal or informal.

15. APPOINTMENT OF ADVOCATES

- 15.1. The attorney will only appoint advocates where the complexity and quantum of the instruction merits the appointment of an advocate.
- 15.2. In choosing an advocate, the attorney will always be mindful of the costs in relation to the quantum of the claim and will ensure that the seniority of the advocate will be justified by the complexity of the claim and the quantum involved.
- 15.3. Should it be necessary, the attorney may appoint a local advocate to assist in either drafting a legal opinion or with the litigation proceedings or any aspect thereof where it appears to the attorney to be economic or efficient to do so.
- 15.4. Appointment of junior and senior advocates on the same matter will only be allowed where the quantum merits such appointment and where fees for both junior and senior advocates would be allowed by a court in the ordinary course.
- 15.5. **Any appointment of an advocate will first be approved by the SABFS.** The SABFS will agree on the necessity for appointing an advocate, the identity of the advocates and the fee structure of the advocate.
- 15.6. **It is specifically noted that it is SABFS's policy not to appoint advocates on Magistrate's Court and/or Regional Court matters as the supplier must use all available internal resources and rely on one's own professional expertise.**

16. FEE ARRANGEMENTS

- 16.1. A fee structure has been agreed with the attorney. A copy of the fee structure is attached hereto as **Annexure "B."**
- 16.2. All fees will be charged monthly in accordance with the agreed fee structure.
- 16.3. The attorney will render monthly itemized statements of accounts in accordance with the agreed fee structure.
- 16.4. Where fees are charged in accordance with the hourly rate, a clear indication should be given of the time spent.
- 16.5. Certain fees and disbursements will be disallowed by the SABFS unless specifically agreed. A list of disallowed items has been included as **Annexure "C."**
- 16.6. The parties agree that there may be items that have not been foreseen by either party in entering into this agreement. It is specifically recorded that with respect to any such items the parties will attempt to reach a reasonable agreement.

- 16.7. Where expenditure has to be incurred on behalf of SABFS, the attorney will always be mindful of the cost to SABFS and will, where possible, select the least costly option.
- 16.8. The SABFS shall be responsible for payment of all allowed expenditure incurred by the attorney with the SABFS's prior consent, including, but not limited to: -
- 16.8.1. travel and subsistence expenses in accordance with the agreed rates incurred by the attorney in respect of work undertaken for the SABFS, other than those related to the ordinary administration of the attorney's Office; and
- 16.8.2. all fees on outlays incurred by an advocate or other professionals who are appointed to assist with the instruction.
- 16.9. The disbursements payable by the SABFS hereunder will be billed in accordance with the fee agreement with the attorney and annexed hereto as **Annexure "B."**
- 16.10. Travel expenses, including: -
- 16.10.1. airfares.
- 16.10.2. car hire.
- 16.10.3. accommodation.
- 16.10.4. equipment hires.
- 16.10.5. venue hire
- 16.10.6. meals and subsistence
- will be agreed with the SABFS prior to incurrence thereof.
- 16.11. In respect of airfares, accommodation and car hire, the attorney will provide the SABFS with three (3) quotes for selection.
- 16.12. The attorney will where possible, and where it is more cost – effective, make use of the services of candidate attorneys to deliver documents and courier companies will only be used where this is the only viable option.
- 16.13. Invoices are payable 30 days after receipt.

17. TURNAROUND TIMES AND MONITORING

- 17.1. Arrangements for monitoring and measuring turnaround times have been agreed between the attorney and the SABFS. The agreed turnaround times are attached hereto as **Annexure "A."**
- 17.2. Whilst it is the intention of the parties that the attorney will at all times strive to meet the agreed turnaround times, the parties agree that all matters are unique and different factors may have an impact on the achievement of the agreed turnaround time. In reviewing the achievement of turnaround times, regard will be given to: -

- 17.2.1. the sufficiency, accuracy and timeliness of instructions received by the attorney from the SABFS.
 - 17.2.2. the timeframe for provision of instructions by the SABFS.
 - 17.2.3. any delays in obtaining the requisite information, either from SABFS or any other professional appointed to assist the attorney.
 - 17.2.4. the timetables imposed by the courts.
 - 17.2.5. any other relevant factors.
- 17.3. Whilst the responsibility to inform the SABFS of any delays in meeting the agreed turnaround times remains with the attorney, the SABFS undertakes to raise any concerns about the progress of individual matters with the attorney.
- 17.4. Overall progress and performance may be monitored from time to time by the SABFS.

18. REVIEWS

- 18.1. This agreement will be reviewed annually or earlier if circumstances require.
- 18.2. The Legal Manager will act as liaison between SABFS and the attorney. The LM will be responsible for keeping under review the services to be provided by the attorney. In fulfilling this function, they will meet as and when required and will also form a channel for communication of matters pertinent to this agreement as and when such matters arise.
- 18.3. At the time of the review, the SABFS will draw to the attention of the attorney any matters which are expected to have significant impact on the work of the attorney in the provision of services to the SABFS.
- 18.4. Likewise, at the time of the review and otherwise as circumstances require, the attorney shall draw to the attention of SABFS any matters which are expected to have a significant impact on delivery of services to SABFS.

19. TERMINATION AND EXIT

19.1. Termination of Agreement by Supplier

- 19.1.1. The supplier shall be entitled to terminate this agreement immediately on written notice to the SABFS if the SABFS is in material breach of any of its material obligations under this agreement and the SABFS has failed to remedy that breach within thirty (30) Business Days after receiving written notice from the supplier requiring it to remedy that breach, provided that:

- 19.1.1.1. The supplier shall not be entitled to terminate this agreement unless the breach cannot be adequately compensated by the payment of damages; and where it relates to non-payment of any undisputed amount which are due and payable to the supplier shall not be entitled to terminate this agreement unless **(i)** the supplier has given the SABFS written notice of such breach and informed the SABFS in such a notice that non-payment will result in termination of this agreement; and **(ii)** the SABFS has failed to make payment of such amounts within thirty (30) days of receiving such written notice.

19.2. Termination of the Agreement by the SABFS

Without prejudice to any rights of the SABFS arising from any other provisions of this agreement, the SABFS shall be entitled to terminate this agreement immediately upon written notice and without liability to the supplier in the event that, *inter alia*, the supplier:

-
- 19.2.1. is categorized as a Restricted Service provider in terms of Legal Practice Council; and/or
- 19.2.2. is guilty of any serious misconduct or deliberate neglect in the discharge of its duties; and/or
- 19.2.3. is guilty of conduct which is likely to bring itself or the SABFS into disrepute; and/or
- 19.2.4. is convicted of any offence involving dishonesty; and/or
- 19.2.5. is guilty, in the reasonable opinion of the SABFS of any unbecoming, unprofessional, dishonourable, or unworthy conduct; and/or
- 19.2.6. is convicted of any criminal offence relating to fraud; and/or
- 19.2.7. commits a breach of any of the terms of this agreement.

19.3. In the event of termination of this Agreement in terms of clause 19.2

- 19.3.1. SABFS shall be entitled to claim from the supplier as and by way of agreed pre-estimated liquidated damages an amount equivalent to all payments made by SABFS to the supplier in terms of this agreement, as at the date of the termination.
- 19.3.2. the supplier shall forfeit all and any claims (including, without limitation, any unpaid or undrawn invoices) it may have against the SABFS in terms of this agreement; and

19.3.3. SABFS shall not be required to return any performance rendered or goods supplied to it by the supplier in terms of this agreement.

19.4. In the event that the SABFS is required to take legal steps to enforce compliance with the terms of this agreement and/or incurs any legal costs arising from a breach of this agreement by the supplier, such costs will be recovered by the SABFS from the supplier on an attorney-and-own-client scale.

19.5. This termination provision is in addition to, and does not in any way derogate from, any statutory or common law remedy that SABFS may have for breach of this agreement, including breach of any representation or warranty.

20. HANDOVER PROCESS

20.1. The exit plan shall, as a minimum contain the following:

20.1.1. An up-to-date description of the services and of the materials and underlying process used by the supplier in the provision of the services prior to the relevant termination and/or expiration of the agreement.

20.1.2. A detailed program of the proposed transfer process of the service to the SABFS (or the replacement service provider).

20.1.3. A description of the continuing provision of the services throughout the handover period and the parallel provision of additional service (including training) required that the parties may agree will be performed by the supplier for the satisfactory conclusion of the services and the associated handover.

20.1.4. Should the parties (both acting reasonably and in good faith) be unable to agree on a handover process or this agreement is terminated or expires prior to the parties agreeing to a handover, the supplier shall, in addition to performing its obligation, assist the SABFS in facilitating a seamless transfer of the service back to the SABFS (replaced service provider).

21. CESSION

Neither party may cede any rights under this agreement to any other party.

22. PAYMENT AND FEES

22.1. As consideration for the services rendered, the SABFS will pay the supplier a fee as indicated on **Annexure "B,"** which amount shall be paid upon delivery of the services

as required by the SABFS, to the reasonable satisfaction of the SABFS, of the agreed deliverables in terms of the TOR.

- 22.2. Without prejudice to its other remedies under this agreement, the SABFS shall be entitled to withhold at its discretion up to 10% of the fees payable to the supplier in respect of any deliverable submitted by the supplier to the SABFS pursuant to this agreement until such time as the deliverable has been executed to the reasonable satisfaction of the SABFS and confirmed as such in writing by the SABFS.
- 22.3. The supplier shall provide SABFS with invoices for the fees claimed for the services rendered.
- 22.4. Payment of the above invoice will be made within thirty (30) days from the date of receipt of the invoice.
- 22.5. In the event of a dispute arising in relation to the invoice referred to above, the undisputed amount (if any) of the invoice will be paid in accordance with the time periods above, and the disputed portion (if any) will be paid within seven (7) days of the dispute resolution proceedings provided for in clause 33. Pending the outcome of the aforesaid dispute, the supplier shall be required to continue rendering the services to SABFS.

23. LIMITATION OF LIABILITY

Except in cases of criminal negligence or wilful misconduct: -

- 23.1. the supplier shall not be liable to the SABFS, whether in contract, delict or otherwise, for any indirect or consequential loss or damage, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the SABFS; and
- 23.2. the aggregate liability of the supplier to SABFS, whether under the contract, in tort or otherwise, shall not exceed the total fees due.

24. CONFLICT OF INTEREST

- 24.1. The supplier shall avoid any conflict of interest that may arise during the period of this agreement.
- 24.2. The supplier shall notify SABFS, as soon as reasonably possible, in writing of any matters that constitute or that may potentially give rise to a conflict of interest.
- 24.3. Both parties shall always act in the best interest of each other in all matters relating to this agreement.

25. INTELLECTUAL PROPERTY

- 25.1. For the purposes of this agreement “intellectual property” shall include, without limitation:
 - 25.1.1. Trademarks, service marks, trade names, domain names, design rights, and patents, in each case whether registered or unregistered and including applications for the grant of any of the foregoing; and
 - 25.1.2. Rights in know-how, designs, utility models and petty patents, research, and analysis reports to be produced by the supplier pursuant to this agreement, including confidential information and trade secrets from the SABFS.
- 25.2. All the Intellectual Property arising from the execution of this agreement shall vest in the SABFS. The supplier undertakes to honour SABFS's rights to such Intellectual Property and all related future rights by keeping the research conducted, analysis done, and any reports or agreements produced, whether published or unpublished, confidential.
- 25.3. In the event that the supplier, or any of its employees, team members or subcontractors would like to use the information or data generated arising from this agreement for academic or any other purpose, prior written consent must be obtained from the SABFS.
- 25.4. The supplier shall immediately disclose to SABFS all intellectual property rights made or conceived by it in the performance of the services, whether alone or in conjunction with others. To the extent that they do not vest automatically in the SABFS, the supplier hereby, free of consideration, unconditionally cedes and assigns to the SABFS all its rights in and to this intellectual property, which rights shall become and remain the sole property of the SABFS. It is further recorded that SABFS shall be entitled to cede and assign all such rights to any other person without limitation and without any additional consideration to the supplier.
- 25.5. SABFS may make an application at its own expense for the registration of a patent for any such invention or for the registration of such design or trademark.
- 25.6. The supplier shall, forthwith upon being called upon to do so, sign all documents and to do all things necessary so as to comply with all the legal formalities to enable the SABFS to take assignment of all such intellectual property that is created or comes into existence during the period of this agreement and to obtain or to record such intellectual property rights at any applicable intellectual property registry.
- 25.7. The supplier shall from time to time, whether during the period of this agreement or after the expiry or early termination of this agreement, upon request by the SABFS do all things which may be required to protect the rights of the SABFS in terms of this clause.

- 25.8. Should the supplier fail to sign any cession, assignment or other required documents provided for in this clause and fail to hand them to the SABFS or its representative within seven (7) days after being called upon in writing to do so, then the supplier irrevocably and in rem suam appoints any person nominated by the SABFS, with power of substitution, as the agent of the supplier, to sign any cession, assignment or other required document on its behalf.
- 25.9. The supplier shall retain all of its intellectual property rights in respect of any and all of its tools, models, methodologies, or the like of a common or generic nature supplied or developed by the supplier in the ordinary course of its business, before, during or after the period of this agreement.
- 25.10. The provisions of this clause shall survive the expiry of this agreement or termination or cancellation of this agreement for any reason whatsoever.

26. ANNOUNCEMENTS

- 26.1. Subject to clause 26.2, neither of the parties shall make any announcement or statement about this Agreement or its contents without first having obtained the other parties' prior written consent to the announcement or statement and to its contents, provided that such consent may not be unreasonably withheld.
- 26.2. The provisions of clause 26.1 shall not apply to any announcement or statement which either of the parties is obliged to make in terms of the Act or any other law or enactment, provided that the party in question shall consult with the other party before making any such announcement or statement.

27. CONFIDENTIALITY

- 27.1. During the period of this agreement, the supplier will gain access to confidential information that is not in the public domain. The supplier and all its employees, team members or subcontractors will during the period of this agreement as well as after its expiry or termination or cancellation for whatsoever reason protect the confidentiality of all such information and will not disclose the confidential information or the provisions of this agreement to any third party, without the prior written consent of the SABFS.
- 27.2. Disclosure of any confidential information by the supplier to any of its employees shall be made in confidence and shall extend only so far as may be necessary for the purposes of performance of its services.
- 27.3. The supplier shall procure that its employees or team members are made fully aware of the need for confidentiality and will procure that they return all hard and electronic copies of confidential information to SABFS upon termination of this agreement.

28. PROFESSIONAL INDEMNITY COVER

The attorney shall at all times retain professional indemnity cover and will provide the SABFS with proof of such cover upon request.

29. RIGHT OF RETENTION

The supplier shall, during the term of this agreement or upon termination of this agreement, for any reason whatsoever, not have a lien or other right of retention over the SABFS's data and records (including the SABFS's Confidential Information).

30. FORCE MAJEURE

- 30.1. The supplier shall not be liable for forfeiture of its performance security, damages, termination for default or the imposition of penalties pursuant to clauses 17 if and to the extent that its delay in performance or other failure to perform its obligations under this agreement is as a result of an event of Force Majeure.
- 30.2. If a Force Majeure situation arises, the supplier shall promptly notify the SABFS in writing of such condition and the cause thereof. Unless otherwise directed by the SABFS in writing, the supplier shall continue to perform its obligations under this agreement as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 30.3. In the event of the Force Majeure persisting for more than three (3) months, it will constitute grounds for terminating this agreement on seven (7) days written notice to the other party.

31. TAXES

- 31.1. The Supplier confirms that:
 - 31.1.1. its tax matters are in order; and
 - 31.1.2. it has submitted an original tax certificate issued by the South African Revenue Services to the South African Board for Sheriffs prior to the award of the contract.

32. BREACH

32.1. The SABFS may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, terminate this contract in whole or in part: -

32.1.1. if the supplier fails to perform any obligation(s) under this agreement.

or

32.1.2. if the supplier, in the judgment of SABFS, has engaged in corrupt or fraudulent practices in competing for or in executing this agreement.

32.2. In the event the SABFS terminates the contract in whole or in part, the SABFS may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered, and the supplier shall be liable to the SABFS for any excess costs for such similar services. However, the supplier shall continue the performance of its services to the extent not terminated.

33. DISPUTE RESOLUTION

33.1. If any dispute or difference of any kind whatsoever arises between SABFS and the supplier in connection with or arising out of this agreement, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

33.2. If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation (referred to in 33.1) above, then either the SABFS or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may commence unless such notice is given to the other party.

33.3. Should it not be possible to settle the dispute by means of mediation within 30 days of receipt of the notice to commence with mediation, such dispute will be submitted to, and decided by, arbitration pursuant to the rules of the Arbitration Foundation of South Africa ("AFSA") or its successor body. Nothing shall however prevent either party from applying for interim and urgent relief from a court of competent jurisdiction.

33.4. Notwithstanding any reference to mediation and/or court proceedings herein: -

33.4.1. the parties shall continue to perform their respective obligations under this agreement unless they otherwise agree; and

33.4.2. SABFS shall pay the supplier any monies due to the supplier.

34. VARIATIONS AND REPRESENTATIONS

34.1. Operational or policy changes within the SABFS may result in the need to amend the agreement from time to time. Any proposal to add, modify or amend the agreement in

a material respect will be tabled for discussion between the parties at the earliest opportunity. Any modification, which has the effect of changing the attorney's fees, will be regarded as a material change.

34.2. Neither party entering into this agreement relies upon any representation, disclosure, or expression of opinion, which has not been incorporated into this agreement.

35. ADDRESSES FOR LEGAL PROCESS AND NOTICES

35.1. The parties choose for the purposes of this agreement the following addresses and contact details:

35.1.1. The SABFS:

Physical Address: Thornhill Office Park
84 Bekker Road, Building 25
Vorna Valley
Midrand

Postal Address: P.O. Box 15223
Vlaeberg
8018

Telephone No: (021) 426 – 0577

Email: [insert e-mail address]

Attention: [insert name]

35.1.2. The Service Provider:

Physical Address: _____

Postal Address: _____

Telephone No: _____

Email: _____

Attention: _____

- 35.2. Any legal process to be served on either party may be served on it at the address specified for it in clause 35 and it chooses that address as *its domicilium citandi et executandi* for all purposes under this agreement.
- 35.3. Any notice or other communication to be given to either party in terms of this agreement shall be valid and effective only if it is given in writing, provided that any notice given by e-mail shall be regarded for this purpose as having been given in writing.
- 35.4. A notice to a party which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 35 shall be deemed to have been received (unless the contrary is proved) within 14 (fourteen) days from the date it was posted, or any notice to a party which is delivered to that party by hand at the address specified for it in clause 35 shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 35.5. Each notice by e-mail to a party at the specified contact details stipulated in clause 35 shall be deemed to have been received (unless the contrary is proved) within 12 (twelve) hours of transmission if it is transmitted during normal business hours of the receiving party or within 12 (twelve) hours of the beginning of the next business day after it is transmitted, if it is transmitted outside those business hours.
- 35.6. Notwithstanding anything to the contrary in this clause 35, a written notice or other communication actually received by a party shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 35.7. A party may by written notice to the other party change its address or contact details for the purposes of clause 35 to any other address provided that the change shall become effective on the 7th (seventh) day after the receipt of the notice.

36. SUBCONTRACTS

The supplier shall notify the SABFS in writing of all subcontracts awarded under this agreement if not already specified in the Bid. Such notification, in the original Bid or later, shall not relieve the supplier from any liability or obligation under this agreement.

37. GENERAL

37.1. Severance

If any provision of this agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

37.2. Entire Agreement

37.2.1. This agreement constitutes the entire agreement between the parties in regard to its subject matter.

37.2.2. Neither party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this agreement.

37.3. No Waiver

The failure by either party to enforce any provision of this agreement shall not affect in any way that party's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision thereof.

37.4. Amendments

No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

37.5. General Co – operation

Each party shall co-operate with the other and execute and deliver to the other party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this agreement.

37.6. Survival of Rights, Duties and Obligations

Termination of this agreement for any cause shall not release either party from any liability which at the time of termination has already accrued to the other party or which thereafter may accrue in respect of any act or omission prior to such termination.

37.7. Governing Language

This agreement shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged between the parties shall also be written in English.

37.8. Governing Law

The validity of this agreement, its interpretation, the respective rights and obligations of the parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

37.9. Contractual Relationship

Nothing contained in this agreement shall be construed as creating a joint venture, partnership, agency, or employment relationship between the SABFS and the supplier. The supplier shall not act as agent of the SABFS and shall not make any representations on behalf of the SABFS or bind the SABFS financially or otherwise without the prior written authorisation of the SABFS.

38. SIGNATURE BY PARTIES

SIGNED at _____ on _____ 2023.

(Duly authorised on behalf of the SABFS)

1. Witness

2. Witness

SIGNED at _____ on _____ 2023.

(Duly authorised on behalf of the Supplier)

1. Witness

2. Witness

ANNEXURE “B”

PRICING

FEE STRUCTURE FOR HIGH COURT MATTERS

No.	DESCRIPTION	COST
1.	Receipt and perusal of e-mails	R80.00 per email
2.	Emails drafted with no attachments	R80.00 per email
3.	Emails drafted with attachments to be sent	R100.00 per email
4.	Formal letters drafted	R150.00 per letter
5.	Telephone calls	R33.00 per every fifteen (15) minutes (landline)
6.	Cellular calls	R45.00 per every fifteen (15) minutes (landline)
7.	Consultations between attorney and the SABFS	R388.00 per every (15) minutes
8.	Attendance at Court by a Senior Attorney on unopposed matters	R1 500.00 per hour to a maximum of R15 000.00 per day
9.	Preparing for a matter	R388.00 per every (15) minutes
10.	Index and paginating	R500.00 per hour
11.	Attending Court on an opposed matter: -R18 000.00 per day for senior attorney with more than 10 years post admission experience -R12 000.00 per day for junior attorney with less than 10 years post admission experience	Senior Attorneys: R1800-00 per hour Junior Attorneys: R1200.00 per hour
12.	Attorneys attending to Disciplinary Hearings on behalf of the SABFS	an all – inclusive day fee of R12 000.00 (inclusive of preparation, consulting with witnesses, preparing packs
13.	Travelling	R6.00 per kilometre
14.	Counsel’s fees shall be approved by the SABFS in advance prior to the appointment. The SABFS shall have the right to appoint Counsel of its own choice	
15.	Printing costs only with approval from SABFS	

Fee structure for Magistrate’s Court matters shall be on a party and party scale.

39. ANNEXURE "C"

DISALLOWED ITEMS

The following items will not be allowed in respect of fees and disbursements for Magistrate's and High Court matters:

1. Fees for Counsel which have not been specifically agreed upon by the SABFS.
2. Travel agent's commissions and fees.
3. Travel insurance
4. Fees for drawing of the statement of account to the SABFS
5. Fees for providing progress on matters to the SABFS.
6. Separate fees for serving and filing of court processes.
7. Travelling fees for serving and filing of court processes (where charged in addition to fees for serving and filing)
8. Fees for attendance of meetings by candidate attorney in addition to the main attorney
9. Duplication of fees in respect of the same service
10. Interest on fees
11. Fees charged on any queries raised by the SABFS or the attorney.
12. Waiting time at Court in excess of two hours
13. Printing costs