

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG PROVINCIAL DIVISION, PRETORIA)

Case number: 15876/2020

In the application of:

THE LAW SOCIETY OF SOUTH AFRICA

Applicant

and

MABUNDA INCORPORATED	1 st Respondent
KEKANA HLATSWAYO ADEBE INCORPORATED	2 nd Respondent
NOKO MAIMELA INCORPORATED	3 rd Respondent
MAPONYA INCORPORATED	4 th Respondent
TM CHAUKE INCORPORATED	5 th Respondent
NINGIZA HORNER INCORPORATED	6 th Respondent
TASNEEM MOOSA INCORPORATED	7 th Respondent
BORMAN AND NGWENYA INCORPORATED	8 th Respondent
MKHONTO AND NGWENYA INCORPORATED	9 th Respondent
MADUBA ATTORNEYS INCORPORATED	10 th Respondent
IQBAL MAHOMMED ATTORNEYS	11 th Respondent
TKN INCORPORATED	12 th Respondent
DEV MAHARAJ & ASSOCIATES	13 th Respondent
SARAS SAGATHEVAN ATTORNEYS	14 th Respondent
SHEREEN MEERSINGH & ASSOCIATES	15 th Respondent
SMITH TABATA ATTORNEYS	16 th Respondent
PULE INCORPORATED	17 th Respondent
BRIAN RAMABOA ATTORNEYS	18 th Respondent
GOVINDASAMY, NDZINGI & GOVENDER INC	19 th Respondent
HAMMANN-MOOSA INC	20 th Respondent
MATHOBO RAMBAU SIGOGO ATTORNEYS	21 st Respondent

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MAYAT NURICK LANGA INC	22 nd Respondent
SCMDHLULI ATTORNEYS INCORPORATED	23 rd Respondent
HAJRA PATEL INC	24 th Respondent
Z & Z NGOGODO INC	25 th Respondent
TWALA ATTORNEYS	26 th Respondent
SANGHAM INCORPORATED	27 th Respondent
RACHOENE ATTORNEYS	28 th Respondent
ZUBEDAK K SEEDAT & CO INCORPORATED	29 th Respondent
DUDZILE HLEBELA INC	30 th Respondent
MOCHE INCORPORATED ATTORNEYS	31 st Respondent
MARIVATE ATTORNEYS	32 nd Respondent
MGWESHE NGQELENI INC	33 rd Respondent
LEKHU PILSON ATTORNEYS INC	34 th Respondent
AK ESSACK, MORGAN NAIDOO & COMPANY	35 th Respondent
MOLABA ATTORNEYS	36 th Respondent
NAIDOO MAHARAJ INC	37 th Respondent
HARKOO BRIJLALA & REDDY INC	38 th Respondent
MATHIPANE TSEBANE ATTORNEYS	39 th Respondent
MORARE THOBEJANE INCORPORATED ATTORNEYS	40 th Respondent
NOMPUMELELO HADEBE INC	41 st Respondent
MBOWENI AND PARTNERS INC	42 nd Respondent
ROAD ACCIDENT FUND	43rd Respondent

In re the matter of:

MABUNDA INCORPORATED	1 st Applicant
KEKANA HLATSWAYO ADEBE INCORPORATED	2 nd Applicant
NOKO MAIMELA INCORPORATED	3 rd Applicant
MAPONYA INCORPORATED	4 th Applicant
TM CHAUKE INCORPORATED	5 th Applicant
NINGIZA HORNER INCORPORATED	6 th Applicant

Sir. 

TASNEEM MOOSA INCORPORATED	7 th Applicant
BORMAN AND NGWENYA INCORPORATED	8 th Applicant
MKHONTO AND NGWENYA INCORPORATED	9 th Applicant
MADUBA ATTORNEYS INCORPORATED	10 th Applicant
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HARKOO BRIJLALA & REDDY INC	38th
Applicant	
MATHIPANE TSEBANE ATTORNEYS	39th Applicant
MORARE THOBEJANE INCORPORATED ATTORNEYS	40th Applicant
NOMPUMELELO HADEBE INC	41st Applicant
MBOWENI AND PARTNERS INC	42nd Applicant

and

ROAD ACCIDENT FUND	Respondent
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SUPPLEMENTARY ANSWERING AFFIDAVIT

A. THE DEPONENT

I,

COLLINS PHUTJANE LETSOALO

Do hereby make oath and say that:

1. I am an adult male Acting Chief Executive Officer employed by the Road Accident Fund with my place of employment at 420 Witch Hazel Road, Eco Glades, Centurion, Pretoria.

SR. 

2. I am duly authorized to depose to this affidavit and to oppose this application on behalf of the Road Accident Fund ("the Fund") in accordance with section 12(2)(f) read with paragraph 13.7 of the Delegations of the Board.
3. The facts contained in this affidavit are within my personal knowledge except where the contrary is stated.
4. Where I make legal submissions, I do so on the advice of the Fund's legal representatives, which advice I accept.

B. INTRODUCTION

5. The purpose of this affidavit is to first answer to the Law Society of South Africa ("LSSA") and Black Lawyers Association ("BLA"). Second, to reply to paragraph 81 in the replying affidavit where I have branded a liar.
6. Both the LSSA and the BLA have been joined as *amici* by an order of court. In this affidavit we contend that they should be both be mulcted with costs because (a) they did not meet the test for joinder as *amici* and (b) their joinder was disruptive and led to the matter being adjourned to Wednesday, 18 March 2020.

C. POINTS IN LIMINE

This application was never urgent

LSSA

SF. Jutter

7. The LSSA contends that their intervention application is urgent as the effect of the impugned decision referred to in the notice of motion in the main application, means that the Fund will not have legal representation in court from 1 June 2020. This, as no provision has been made to deal with the impact of the notice of hand over and tender cancelation which will result in chaos affecting all participants to the litigation process
8. The LSSA further, in support of its contentions on urgency, submit that it became aware of the main application on 3 March 2020 and requested the application, which was received only on 4 March 2020. This is not correct.
9. On 18 and 20 February 2020, the Fund issued letters of handover to panels attorneys. This is common cause in the main application.
10. In response to notice of the handover of files, on 21 February 2020, the Acting Executive Director, Mr. Anthony Pillay ("Pillay") addressed a letter to the Chairperson of the Board for the Fund, Adv. Galetlane Rasethaba ("chairperson").
11. Pillay then requests the Fund to embark on a process that will not undermine the "*basic principles of contractual obligations*" and meaningful discharge of the Fund's statutory obligation. The LSSA requests the Fund to retract the handover notice.
12. The LSSA then states that should the Fund fail to retract the notices of handover, it will be left with no choice but to seek an urgent interdict. The Board was given until 25 February 2020 to respond.

S.K. 

13. The letter is attached by the LSSA as annexure "LSSA11."

14. Therefore, as at 21 February 2020, the LSSA had the intention of bringing this application but did not do so. It does not explain in its affidavit why it did not launch an application then.

15. I must deal with the point raised by the LSSA in terms of which Pillay points out that the notice of hand over will prejudice claimants and have an impact on the administration of justice. I pause to mention that this allegation is simply made to create an atmosphere. The Fund currently has 197 849 open matters. Out of these, only 6646 matters are on the June to December 2020 roll and only 62 on the January to December 2021 roll.

16. This conduct is directed at the delay of settlement of matters as envisaged by the Fund. I pause to mention that in addition to settled matters referred to in the answering affidavit, all 21 matters that were on the Court roll of the Durban High Court post June 2020 have now been settled, this is 100% settlement for matters received. We have as a result instructed the Durban team to come to the Head Office to lead the block settlement project. The relevant attorneys furnished the files in accordance with the hand over notices. Similarly, if the applicants comply with the hand over notice, I have no doubt that a very large number of the files in this Division will be settled.

17. In the table below, I set out, the top 10 firms in terms of payments from the Fund:

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No	Panel Attorney	2017/2018 FY	2018/2019 FY	2019/2020 FY	Total Paid
1	PULE INC	R 83 503 329	R 115 975 420	R 128 354 308	R 327 833 057
2	MAPONYA INCORPORATED	R 81 664 619	R 114 848 714	R 105 629 827	R 302 143 160
3	TAU PHALANE INCORPORATED ATTORNEYS	R 81 192 262	R 99 460 927	R 93 244 434	R 273 897 623
4	BORMAN DUMA ZITHA	R 72 933 498	R 85 682 177	R 112 841 974	R 271 457 650
5	TSEBANE MOLABA INCORPORATED	R 88 490 460	R 136 113 653	R 39 816 684	R 264 420 797
6	MOTHLE JOOMA SABDIA INC	R 68 822 055	R 93 110 561	R 101 851 753	R 263 784 369
7	MOCHE ATTORNEYS	R 63 499 902	R 87 895 239	R 109 095 850	R 260 490 990
8	TM CHAUKE INCORPORATED	R 78 052 978	R 93 170 546	R 65 570 372	R 236 793 897
9	NINGIZA HORNER ATTORNEYS	R 62 012 983	R 81 380 499	R 93 239 991	R 236 633 473
10	MATHIPANE TSEBANE ATTORNEYS	R 64 094 827	R 82 953 906	R 80 412 257	R 227 460 989

18. The court will note that six of the top paid panel attorneys bring this application. It is clear that they want to retain the status quo purely for financial gain, hence the reference to “*chaos*”.

19. The Board did not respond to the above letter but in on 25 February 2020, Pillay issued an advisory to its members titled “*LSSA Advisory: RAF handover of files*”. In this advisory, the LSSA indicates its concerns regarding the handover notices in terms of clause 14 of the extended SLA.

20. Pillay indicates that the LSSA has demanded a retraction of the handover notice and that the Board has agreed to consider the demand and revert on 2 March 2020 after a Board meeting to be held on 27 February 2020.

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21. On 27 February 2020, the Board met and resolved to address a letter to the LSSA and requested a meeting. The resolution is attached as annexures “AA25” and the letter is attached as “LSSA12”.
22. On 28 February 2020, the LSSA held meeting and resolved that it intervene in any application that might be brought against the Fund. The LSSA attaches the resolution as annexure “LSSA1” Therefore the decision to intervene was taken at that date. Alternatively, the LSSA could have brought an application of its own on the above date.
23. On 3 March 2020, the applicants in the main application issued and served the main application. The deponent for the LSSA indicates that he obtained the application only on 4 March 2020.
24. The LSSA therefore had more than 7 days to bring this application but brings it a day before the hearing in circumstances where the main application is ripe for hearing. This conduct is disruptive and prejudicial to the Fund and the hearing of this matter.
25. The application should be struck from the roll for lack of urgency. Even though they have been admitted, they have caused the postponement for 17 March 2020 and are liable for the wasted costs.

BLA

26. On 12 March 2020, the BLA addressed a letter to the Judge President Mlambo (“*Judge President*”) in terms of which they sought leave from the Judge President as *amicus* in

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all three applications as mentioned above as it believes that it is best positioned to provide an objective view on these matters. I submit that as at this date, the BLA could have brought this application as opposed to the unprecedented move to seek admission from the Judge President.

27. On 19 February 2020, the BLA addressed an email to its members expressing its disapproval with the “*termination*” of the services of attorneys without reasons. For the sake of brevity and in light of the limited time within which I must file this affidavit, I will refer to two points mentioned in the letter. I ask that the letter be incorporated herein as if specifically traversed. The BLA proceeded to record its disgust at the manner in which the Fund treats its members. Lastly, the BLA urges its members who have been “*terminated*” to launch urgent applications to “*stop the abuse*” and it will consider to join. I attach this letter as annexure “AA26”
28. I submit that, as at 19 February 2020, the BLA had already stated its support for any application to be brought regarding what it calls the “*termination*” of its members. It ought to have brought an application then but chose not to. It gives no explanation in its affidavit for this failure.
29. Similarly, the BLA brought an application on 16 March 2020 at 12:23 for the relief sought, expecting the Fund to file a notice of intention to oppose and its affidavit at 20h00, time-frames which are totally unreasonable.
30. The BLA contends that this matter is urgent as the main application is set down for hearing on 17 March 2020. It further states that it only had sight of the Fund’s answering affidavit on 10 March 2020. I submit that this allegation is incorrect as relates to the

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urgency of the matter. It is in any event irrelevant since the BLA could have brought its own application much earlier.

31. Further to that, the BLA seeks an order that the three applications mentioned above, including the current one, be postponed to 21 April 2020 to allow for directions in terms of which it will file submissions on all the applications within 20 days after the order is granted [i.e. by 14 April 2020]. This with the knowledge that the service level agreement that is the subject of this application ends on 31 May 2020 and that the Fund needs its files urgently. The conduct by the BLA is disruptive and dilatory.

32. I submit that the application by the BLA is not urgent and lacks merit. It should be struck from the roll.

The Law Society of South Africa or BLA are not entitled to admission as *amicus curiae*

33. The LSSA seeks an order that it be admitted as *amicus curiae* in terms of Rule 16A of the Uniform Rules of this Court. Similarly, the BLA seeks admission as *amicus curiae* in terms of Rule 16A of the Uniform Rules of Court but goes further and relies of Rule 10 of the Constitutional Court Rules with reference to *Fose v Minister of Safety and Security 1997 (3) SA 786* at paragraph 9 and *In re Certain Amicus Curiae Applications: Minister of Health v Treatment Action Campaign 2003 (5) SA 713 (CC)* at paragraph 5 thereof.

S.R.

34. The above matters do not assist either the BLA nor the *amici* as a collective. In the *Fose*, the court found that it is not enough that there is consent regarding admission as *amicus curiae*. The court stated that the underlying principles are whether the submissions are relevant and raise new contentions.

35. I submit that both the LSSA and the BLA seek to “supplement” the application as filed by the applicants and do not raise substantially new contentions. In the *Fose* matter, the Human Rights Commission was not admitted as *amicus curiae* despite an agreement by the parties as it did not raise new contentions.

36. Similarly, in the **TAC** matter, a doctor who sought to provide evidence was not allowed admission as *amicus* as the application was brought months out of time without condonation.

37. In any event, Rule 16A envisages the admission of an interested party in proceedings where a constitutional issue has been raised. Rule 16A (1) provides that a notice which details the constitutional issue in a clear and succinct manner must be filed with the Registrar.

38. It is only after the said notice that an interested party can, in the absence of consent, within 20 days apply to court for admission as *amicus curiae*.

39. There is no notice as contemplated by Rule 16A (1) in these proceedings. The BLA has sought to request the Judge President Mlambo regarding admission as *amicus curiae* in contravention with Rule 16A and states that the Judge President has waived the

A photograph of two handwritten signatures. The signature on the left is a stylized "SR." The signature on the right is a more complex, cursive name, possibly "J. Mlambo".

requirement of Rule 16A. I submit not. I submit that the Judge President simply stated that the BLA could file papers as a matter of cause.

40. Therefore, the *amici* cannot be admitted as *amici curiae*. Further, there is no justification in terms of which the court can exercise its discretion in terms Rule 16A (9) to dispense with the requirements of the notice in terms of Rule 16A (1).
41. The *amici* have further failed to indicate to the court why it is in the interest of justice that the requirements of Rule 16A (1) be condoned. The court will note that the purpose of the Rule is to ensure that notice of the constitutional issue is given to persons who might be affected by the or who might have a legitimate interest in the case.
42. The court will note that the Fund raised a point in *limine* of joinder in the main application. I submit therefore, that in the absence of the notice in terms of Rule 16A (1) notice, the admission of the *amici* would be dilatory and disruptive in circumstances where even their admission would not assist the court as the issues they seek to raise have already been catered for by the applicants. I submit that had the applicants sought it necessary to supplement the founding affidavit they could have done so.

Both LSSA and BLA have an alternative remedy

43. The BLA have referred to the matter of Fouriefismar Inc under case number 17518/2020 which is set down in the urgent roll of 21 April 2020. I attach a copy of the notice of motion in that matter as annexure "AA27". This Court will note that in that matter, only final relief is sought. What is of importance is that a Rule 16A notice has been



filed by the applicants in that matter, The BLA and the LSSA are at liberty to join in those proceeding as amici, at this early stage so that papers are properly filed without any disruption to those proceedings. A copy of the Rule 16A(1) notice in those proceedings is attached as "AA28".

D. AD REPLYING AFFIDAVIT

44. In paragraph 81.6 and 81.8 of the replying affidavit, the deponent alleges that I lied under oath and challenges a response from me and the recipients of the e-mail attached to the reply as annexure as "PBM28". The purpose of this affidavit is to respond thereto.
45. I, therefore, seek the indulgence of the Court that this affidavit be filed.
46. The applicant brought the application that is the subject of this affidavit. Among others, the applicants alleged at paragraph 28 of the founding affidavit that:

"It seems that the decision to demand the handover of the files from the panel attorneys as well as the decision to cancel the announcement of the tender and the tender itself was taken by the acting CEO, Mr. Letsoalo or his delegates. The significance of this is that if it corrects that the decision was not taken by the Board, the decision is ultra vires and unlawful".



47. The applicants further alleged that the decision to handover or cancel the tender, as given by myself, offends Section 11 and regulation 13(3) of the preferential Procurement Policy Framework Act, 2000.

48. Therefore, in the founding papers, it was the applicants' case that the decision to cancel should have been given by the Board and stood to be reviewed as it was not.

49. In answer, I indicated that the Board delegated its powers to cancel a tender to the Bid Adjudication Committee ("BAC"). I further provided the submission from Supply Chain Management ("SCM") to the BAC in terms of which a request is made regarding the cancellation of the tender.

50. I attached further the resolution by the BAC in terms of which the tender was cancelled as annexure "AA20".

51. In the replying affidavit served through email on 14 March 2020 at 01:23, the applicants made certain allegations to which they challenged the Fund to respond.

52. In paragraph 81.1 and 81.2, the applicants indicate that they have at "*all material times*" been aware of the provisions of the Fund's policy makes it "*unambiguous*" that the BAC "*solely enjoys the delegated powers from the Board for cancellation of bids and that Section 11(1)(H) and Section 56 of the Public Finance management act*"

SF. 

53. The applicants then seek to change their stance in reply indicating that though it was the BAC that has the power to cancel tenders, that I, through an email dated 13 February 2020 at 05:58am gave instructions that the tender be cancelled. Further that, the decision by the BAC to cancel the tender was a “rubberstamp” in terms of my instructions as I am not a member of the BAC.

54. The applicants now indicate, I repeat in reply, that in fact the Board had no role to play in the decision to cancel the tender and that I made myself central to both the execution of the decision to cancel the tender and to handover the files.

55. The applicants further state in paragraph 81.6 of the replying affidavit that the confirmation by me that the decision to cancel the tender was made by the BAC is “*untrue and a complete lie under oath designed to mislead*” the Court.

56. Reliance on the above allegations are based on an emailed attached to the replying affidavit as annexure “**PMB28**”.

57. This email was addressed to Mr. John Modise, (“Modise”), Victor Songelwa (“Songelwa”), the Chief Financial Officer and Chairperson of the BAC, Ms. Xingwana-Jabavu, the Chief Operating Officer, Phathutshedzo Lukhwareni (“Lukhwareni”), the Head of Strategy, Ms. Prudence Manyasa (“Manyasa”) and Mr. Mdhluli, the Acting General Manager: Legal Compliance and Regulations Department.

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58. I wrote to Songelwa in his capacity as the CFO and the person responsible for the SCM. Songelwa is in fact the person who must ensure that the process of cancellation commences. Therefore, what I meant in that email was that the processes should be undertook to ensure alignment with the decision already taken by management.

59. In addition to the above the Fund has extant corporate panel of attorneys that are also contracted to defend the claims against the Fund. Currently 8 law firms, namely, Van Greunen and Associates Inc, Borman Duma Zitha Attorneys, Molefe Dlepu Attorneys, Nozuko Nxusana Inc, Edelstein Attorneys, Mkhabela Huntley Inc, Roy Harichander Attorneys and Matho Tshwene Attorneys. All these attorneys are currently under the corporate litigation panel. Their SLAs with the Fund will only come to an end on the 30 September 2020. A fresh tender will be issued shortly for a new corporate panel, with an increased number of firms. The Fund intends increasing this panel to 20.

60. In circumstances where matters fail to settle, they can be sent for mediation, if mediation fails and the agreement with the state attorney has not come to fruition, the attorneys on the corporate panel will be utilized.

61. In terms of clauses 2.1.1.1.2.7 and 2.3.1.10 of the SLA with them they can also deal the third-party claims. Accordingly, should the need arise which is not likely at this stage, these firms of attorneys will be given files to assist with that small percentage of the files that may not be settled. I attach a copy of the standard SLA concluded with these firms as annexure "AA29". The SLA is identical for all the firms and I only attach one copy with the redacted personal details of the firm.

SP. 

62. In my answering affidavit, I referred to the draft MoU being discussed with SAMLA. I can confirm that the discussions are at an advanced stage. Both parties have exchanged comments on the MoU. It should be signed in due cause. Dr Edeling who a neuro-surgeon by profession confirms that as SAMLA, they have been appointed in 3 provinces i.e. Mpumalanga, Eastern Cape and Gauteng to mediate the medical negligence claims against the Department of Health. He has been practicing in the medico-legal field for twelve (12) years. He confirms that in sixteen (16) mediations that he has conducted himself, majority were settled. The remaining few were postponed for further investigation or reports. What is of relevance though, all the parties involved in mediation did not want the route of going to court. This has saved Departments of Health in the respective provinces millions of Rands. He informs me that the Premier in Gauteng has, as a matter of policy took a decision that all medical claims against the Department of Health in Gauteng must firstly go for mediation before medication can ensue.

63. According to Dr Edeling, the medical negligence cases they have handled were far more complex where they had to mediate on both negligence and causation. The claims against the Fund will according to him be easier because they only have to determine quantum. I attach his confirmatory as annexure "AA30".

64. The court will note that this email is dated 13 February 2020. When this email was sent, not only had the management taken a decision, but that the Board had already approved the strategic plan. I can confirm that that at this point, the Strategic Plan had already been sent to the Department on 31 January 2020. The Fund's management then made a presentation to the Department on 25 February 2020 on the Strategic Plan.

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65. Myself, Mr. Songelwa , Mr. Lukhwareni and Ms. Xingwana-Jabavu are part of management that took the decision. However, as management we had no powers to cancel the tender, this could only be done by the BAC. The BAC however would as of necessity, rely on motivation by management. They could not on their own volition simply cancel the tender without request, motivation and legislative prescripts.

66. When the BAC ultimately took a decision, it had before it motivation by management. It applied its collective mind independently. It is incorrect to say that it simply rubber-stamped by decision. I submit that the BAC took a decision based on the assessments of the facts before it without my interference. I attach the confirmatory affidavits of Songelwa, who is the Chairperson of the BAC as “AA31”,,

67. In addition, it is clear from the memorandum attached to the answering affidavit as annexure “AA32” that the BAC applied its mind to the decision to cancel the tender. In this memorandum from the SCM to the BAC and at paragraph 3.1 thereof, the SCM states:

“3.1 The request for the cancellation of the bid served at Special BAC meeting held on 20 February 2020. The Special BAC resolved to refer the matter back to the SCM to engage Business Unit to submit a formal request regarding cancellation.”

A handwritten signature in black ink, appearing to read "S.P. Jantjie".

68. It is clear from the memorandum attached to the answering affidavit that the item served before the Special BAC of the 20 February 2020, but that it refused to take the decision because there was no formal request from management. If they wanted to simply rubber-stamp my “decision” they would have cancelled the tender without demanding a formal request.

69. With what I say above, it is inconceivable how the email referred to can ever be construed to mean that I lied under oath in order to misled the Court. I submit therefore that paragraph 81.6 be struck from the replying affidavit for being both scandalous and vexatious.

70. Further to the above, it is clear that the deponent for the applicants admitted under oath that he knew full well that the BAC had the power to cancel the tender and he yet made the submission to the contrary i.e. that it was in fact the Board that had that authority. I submit that the court should take a dim view of the allegations by the applicants in this regard.

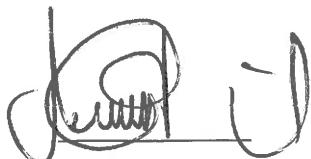
Conclusion

71. In these circumstances, the LSSA and the BLA are not entitled to be admitted as *amici curiae* in this matter and their applications should be dismissed with costs of two counsel.

72. I therefore seek the indulgence for the filing of this affidavit. I further seek an order that paragraph 81.6 be struck from the replying affidavit for reasons indicated above.

SP. 

73. Lastly, I request an order that the applicants be ordered to pay costs for this preparation of this affidavit on an attorney and client scale.



DEPONENT

Thus, signed and sworn to at **PRETORIA** on this the 17th day of **MARCH 2020**. The deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath as binding on his conscience.



COMMISSIONER OF OATH

NAME:

ADDRESS:

CAPACITY:

AREA:

SADA SY JESSE RAULINGA
COMMISSIONER OF OATHS/KOMMISSARIS VAN EDE
RAMBEVHA MOROBANE ATTORNEYS
LOFTUS OFFICE PARK, BUILDING B, 3rd FLOOR
416 KIRKNESS STREET, ARCADIA, PRETORIA
PRACTISING ATTORNEY/PRAKTISERENDE PROKUREUR
REPUBLIC OF SOUTH AFRICA/REPUBLIEK VAN SUID-AFRIKA

LSSA11

S U T T U R

LETTER TO THE CHAIRPERSON ROAD ACCIDENT FUND BOARD

The Chairperson Road Accident Fund Board.

Attention: Adv Galetlane Rasethaba

Per email: ounma.rasethaba@icloud.co

21 February 2020

Dear Adv. Rasethaba

RE: RAFT Directive

It has been brought to our attention that all RAF panel attorneys have received a notice from the RAF, directing them to return all files within.

The LSSA fails to understand the reason for such drastic action, which in our view is arbitrary, irrational and contrary to the public interest.

We believe that the directive was issued without due consideration of consequences that are likely to arise, which include:

- * Negative impact on the administration of Justice;
- Prejudice to claimants and the injured;
- The increased likelihood of default judgements
- Attorneys' possible breach their ethical code, which compels them to prioritise parties' interests.

In the result we respectfully demand that the directive be retracted, and the Road Accident Fund embark on a process that does not seek to undermine basic principles of contractual obligations(express and implied), the parties' rights to justice and meaningful discharge of the Road Accident Fund's statutory obligation, which is compensation for the loss or injury sustained in accidents which occur in public roads.

Should you fail to meet the demand, the LSSA will be left with no choice but to seek an urgent Court interdict.

Yours sincerely,
LSSA11

We trust the board will ensure that this matter is appropriately resolved in the broader interests of the country.

We would appreciate your response by midday, Tuesday 17 March 2020.



Anthony Pillay
Acting Executive Director
Law Society of South Africa
Tel: +27 (0)12 366 8800
Fax: +27 (0)86 677 8832
ton@lssa.org.za



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RESOLUTION

**EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF THE ROAD ACCIDENT FUND
ESTABLISHED IN TERMS OF THE ROAD ACCIDENT FUND ACT, 56 OF 1996, AS AMENDED, And
HELD AT ECOGLADES, CENTURION ON 27 FEBRUARY 2020.**

"12.2 Handover of Files: Claims Panel of Attorneys

Resolved that

1. The Board would write a letter to the Law Society of South Africa and request a meeting.
2. Management was requested to prepare a detailed handover plan which could be substantiated and implemented.
3. The Board delegated the oversight of the implementation of the detailed plan to the OPSIT Committee. The Chairperson of the OPSIT Committee would serve as liaison with management.
4. Reporting should take place on a weekly basis.
5. Should there be failure in terms of the implementation of this particular plan there will be consequence management."

Certification

I confirm that the above resolutions are a true extract of the original. The minutes have not yet been approved by the Board of the Road Accident Fund.

A handwritten signature in black ink, appearing to read "Ottauer".

**Signature
Chairperson of the Board**

A handwritten date in black ink, appearing to read "11.03.2020".

Date

Handwritten initials "S.R." followed by a stylized signature.

Email Address: junec@raf.co.za
Contact Number: +27 012 621 1696

28 February 2020

Office of the Executive Director
Law Society of South Africa

By E-mail: tony@lssa.org.za

Attention: Mr Anthony Pillay

Dear Sir

RAF PANEL ATTORNEYS

I hereby acknowledge receipt of your letter dated 25 February 2020.

A delegation of the Board of the Road Accident will avail itself to meet with the Executive Director of the Law Society of South Africa in order to discuss the way forward during the second week of March 2020, on a date to be agreed on.

Yours sincerely

MS T MSIBI
VICE-CHAIRPERSON
ROAD ACCIDENT FUND BOARD

Centurion: Eco Gables 2, 420 Witch Hazel Avenue, Centurion, 0046 Private Bag X178 Centurion 0046
T +27 12 621 1600 | www.raf.co.za

Board Members: Adv Galedane Basethaba (Chairperson), Ms Thembelihle Mtati (Vice Chairperson), Mr Hini Daniels, Dr Pretor du Plessis, Ms Lorraine Francois, Dr Nomonde Mabuya-Mphoza, Ms Lusandu Mafandzi, Mr Kholo Molhebo, Mr Moses Nyama, Dr Marin Pernze, Mr Tshabane Tshabane

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RESOLUTION

At its meeting held on 28 February 2020 the House of Constituents of the Law Society of South Africa (LSSA) resolved that: -

1. the LSSA intervene in the matter that might be brought against the Road Accident Fund in the High Court of South Africa (Gauteng Provincial Division, Pretoria);
2. the President and/or Vice Presidents be authorized to sign any documents in the matter.

Dated at Pretoria on this 12th day of March 2020

A Pillay

Acting Executive Director

Law Society of South Africa





Established in 1977

OFFICE OF THE PRESIDENT
BLACK LAWYERS ASSOCIATION

president@blaonline.org.za
mkutama@kutamaattorneys.co.za

AA 26
619

LEGAL EDUCATION CENTRE:
1st Floor Kings, Block 1 Kings Mead Building
The Oval Office Park
Meadowbrook Lane
Bryanston, JHB,
Tel: (011) 403 0802

19 February 2020

MEDIA RELEASE

BLA CONDEMN THE RAF DECISION TO TERMINATE ITS ATTORNEYS OF RECORD.

The Black Lawyers Association ("BLA") is shocked and express disapproval of the Road Accident Fund ("RAF") decision to terminate the services of its attorneys of record without valid reasons and legal considerations.

The BLA noted with disgust that the RAF treats its Attorneys with contempt and disrespect despite their professional services that they have been rendering. The RAF recently changed the Service Level Agreement (SLA) in order to unlawfully facilitate the termination and to avoid to announce the results of the tender process it started in November 2018.

The RAF management failed to understand that its Attorneys must be afforded time to prepare their bill of costs, give proper notice of termination as Attorneys of record as prescribed by the rules of court and more importantly the RAF cannot use their attorneys for signing court documents/ pleadings as it is against the Legal Practise Act. Further the RAF cannot directly brief Advocates to appear on its behalf without Attorneys of record.

The RAF decision will delay finalization of claims with dire consequences to claimants, whom are already violated. It will further undermine the rule of law in that justice delayed is justice denied.

The BLA view this termination as wasteful expenditure and therefore call upon the shareholder / Minister of Transport Hon Fikile Mbalula to intervene. We further call upon for the removal of the Acting Chief Executive Officer Mr Collins Letsoalo with immediate effect and appointment of a legal qualified Acting Chief Executive Officer who will appreciate and understand legal processes and consequences thereof.

Accordingly, the BLA urge the terminated Attorneys to launch an urgent application to stop this abuse of processes and failure to account, and we will consider to join as a party or friend of the court.

National Executive Committee: Mr. Mashudu Kutama (President), Mr. Bayethe Maswazi (Deputy President), Ms. Mabaeng Lenyai (Secretary General), Ms. Charlotte Mahlatji (Deputy Secretary General), Mr. Noveni Kubayi (Treasury General), Ms. Zanele Nkosi (Head: Events & Campaigns), Mr. Vumani Mthembu (Head: Legal Education & Research), Ms. Nolundi Nyati (Head: Policy & Legislation) and Ms Nompumelelo Khaba (President: BLA Student Chapter).

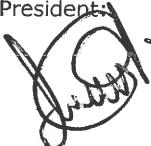
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Truth to be told, this action will lead to retrenchment of professional and staff members of terminated law firms. From a simple laptop calculations, we talking about more than 500 attorneys and 2000 staff members faced with retrenchment in this difficult economic situation.

The BLA has availed itself to RAF to discuss costs saving measures to minimise the costs of litigation without success. We are still available to discuss these measures with new Acting CEO.

Mashudu Kutama – The President
Black Lawyers Association
082 884 5244

National Executive Committee: Mr. Mashudu Kutama (President), Mr. Bayethe Maswazi (Deputy President), Ms. Mabaeng Lenyai (Secretary General), Ms. Charlotte Mahlatji (Deputy Secretary General), Mr. Noveni Kubayi (Treasury General), Ms. Zanele Nkosi (Head: Events & Campaigns), Mr. Vumani Mthembu (Head: Legal Education & Research), Ms. Nolundi Nyati (Head: Policy & Legislation) and Ms Nompumelelo Khaba (President: BLA Student Chapter).

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 17518/20

In the matter between:

FOURIEFISMER INCORPORATED

First Applicant

LINDSAYKELLER ATTORNEYS

Second Applicant

PRETORIA ATTORNEYS' ASSOCIATION

Third Applicant

and

ROAD ACCIDENT FUND

First Respondent

CHAIRPERSON OF THE BOARD
THE ROAD ACCIDENT FUND

Second Respondent

ACTING CHIEF EXECUTIVE
THE ROAD ACCIDENT FUND

Third Respondent

MINISTER OF TRANSPORT

Fourth Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE THAT the applicants intend applying on Tuesday, 21 April 2020 at 10h00 or as soon thereafter as counsel for the applicants may be heard, for an order in the following terms:

1. The forms, service and time periods prescribed by the Uniform Rules of Court be dispensed with and that the application be heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court;

2. The decision of the first respondent to dispense with the services of all panel attorneys with effect from 1 June 2020 is reviewed and set aside and is declared to be constitutionally invalid;
3. The decision of the first respondent dated 18 February 2020 and 20 February 2020 to demand from RAF Panel Attorneys to hand over all unfinalised files in their possession to the RAF is reviewed and set aside and is declared to be constitutionally invalid;
4. The purported cancellation of Tender No. RAF/2018/00054 for the appointment of new panel attorneys dated 26 February 2020 and 28 February 2020 is reviewed and set aside and is declared to be constitutionally invalid;
5. It is directed that, in terms of section 8 of the Promotion of Administrative Justice Act, 3 of 2000 and/or section 172(1)(b) of the Constitution:
 - 5.1 The panel attorneys on the first respondent's panel as at the date of the launch of this application shall continue to serve on the first respondent's panel of attorneys;
 - 5.2 The first respondent shall fulfil all of its obligations to such attorneys, including making payments of amounts due to them; and

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(b) Following the provision of the record, the applicants will supplement their founding papers and/or amend their notice of motion by 23 March 2020 in terms of Rule 53(4).

IN the event of opposition to the application, you are required:

- i) To serve and file a notice of opposition on or before 16 March 2020;
- ii) In the notice of opposition to appoint attorneys with an address within 15 (fifteen) kilometres from the High Court, as envisaged by Rule 6(5)(b) of the Uniform Rules of Court;
- iii) To file your answering affidavit, if any, by no later than 30 March 2020.

Provided that there is compliance with the aforesaid timeline, the applicants intend filing their replying affidavit on or before 6 April 2020.

KINDLY ENROL the matter accordingly.



DATED at PRETORIA on this the 9th day of MARCH 2020.



FOURIE FISMES INC
Attorneys for Applicants
305 BROOKS STREET
MENLO PARK
PRETORIA
TEL: (012) 362 1681
REF: CP FOURIE
Email: cpfourie@fsf.co.za

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA

AND TO: ROAD ACCIDENT FUND
First Respondent
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION
GAUTENG

"SERVICE BY SHERIFF"

AND TO: CHAIRPERSON OF THE BOARD OF
THE ROAD ACCIDENT FUND
Second Respondent
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION
GAUTENG

"SERVICE BY SHERIFF"

SP.



AND TO: ACTING CHIEF EXECUTIVE OFFICER OF
THE ROAD ACCIDENT FUND
Third Respondent
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION
GAUTENG

"SERVICE BY SHERIFF"

AND TO: MINISTER OF TRANSPORT
Fourth Respondent
C/O THE STATE ATTORNEY
316 THABO SEHUME STREET
PRETORIA CENTRAL
PRETORIA
GAUTENG

"SERVICE BY SHERIFF"

SAR,



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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No:

In the matter between:

FOURIEFISMER INCORPORATED First Applicant

LINDSAYKELLER ATTORNEYS Second Applicant

PRETORIA ATTORNEYS' ASSOCIATION Third Applicant

and

ROAD ACCIDENT FUND First Respondent

CHAIRPERSON OF THE BOARD OF
THE ROAD ACCIDENT FUND Second Respondent

ACTING CHIEF EXECUTIVE OFFICER OF
THE ROAD ACCIDENT FUND Third Respondent

MINISTER OF TRANSPORT Fourth Respondent

RULE 16A NOTICE

KINDLY TAKE NOTICE THAT the applicants in the above matter raise the
following constitutional issues:

1.

1.1 That the decisions of the first respondent to dispense with panel attorneys with effect from 1 June 2020 and a Directive to return all unfinished files are unconstitutional on the grounds of irrationality;

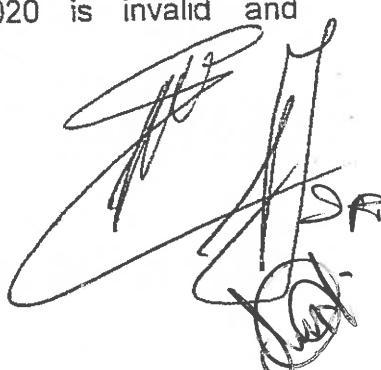
1.2 The applicants contend that the decisions:

1.2.1 infringe the rights of plaintiffs to have a fair hearing before the High Court in terms of Section 34;

1.2.2 infringe the constitutional rights of the public to social security in terms of Section 27(1)(c), of which the first respondent and the Road Accident Fund, 1996 forms part;

1.2.3 infringe the constitutional rights of litigants in terms of Section 12(1)(c) of the Constitution to the right to freedom and security of the person.

1.3 That the decision of the first respondent to cancel Tender No. RAF/2018/00054 for the appointment of new panel attorneys dated 26 February 2020 and 28 February 2020 is invalid and unconstitutional on the grounds of legality.

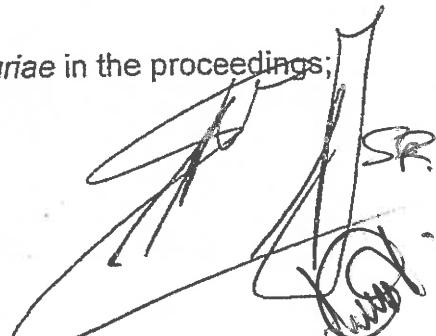


KINDLY TAKE NOTICE THAT this is an urgent matter which has been set down for hearing on Tuesday, 21 April 2020, using shortened timeframes and accordingly:

- (a) any interested party in the aforesaid constitutional issue may, with the written consent of all the parties to the proceedings, given not later than 10 (ten) days after the filing of the founding affidavit or may be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties;
- (b) The written consent contemplated in Rule 16A(2) shall, within 5 (five) days of it having been obtained, be lodged with the Registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument;
- (c) If the interested party contemplated in sub-rule (2) of Rule 16A is unable to obtain the written consent as contemplated therein, he/she may, within 5 (five) days of the expiry of the 10 (ten) day period above, apply to the Court to be admitted as an *amicus curiae* in the proceedings.

An application to be admitted as an *amicus curiae* shall:

- (a) Briefly describe the interests of the *amicus curiae* in the proceedings;

A large, handwritten signature in black ink, appearing to be "CLERK OF THE COURT". The signature is fluid and cursive, with "CLERK" at the top and "OF THE COURT" below it, enclosed in a stylized oval shape.

(b) Clearly and succinctly set out the submissions which will be advanced by the *amicus curiae*, the relevance thereof to the proceedings and his/her reasons for believing that the submissions will assist the Court and are different from those of the parties; and

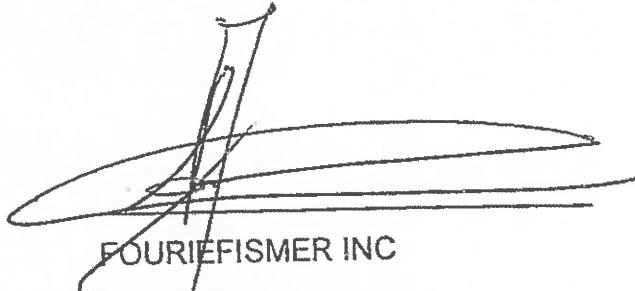
(c) Be served upon all parties to the proceedings.

KINDLY display this notice on a public notice board at the High Court, Pretoria.

DATED at PRETORIA on this the

9th

day of MARCH 2020.


FOURIEFISMER INC

Attorneys for Applicants

305 BROOKS STREET

MENLO PARK

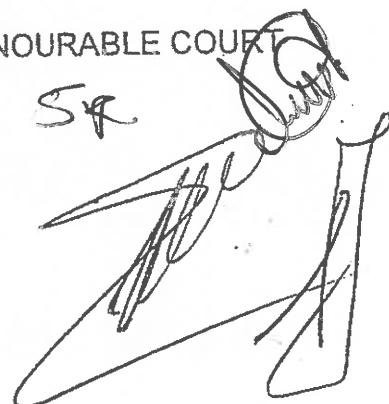
PRETORIA

TEL: (012) 362 1681

REF: CP FOURIE

Email: cpfourie@fsf.co.za

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA


S.R.

AND TO: ROAD ACCIDENT FUND
First Respondent
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION
GAUTENG

"SERVICE BY SHERIFF"

AND TO: CHAIRPERSON OF THE BOARD OF
THE ROAD ACCIDENT FUND
Second Respondent
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION
GAUTENG

"SERVICE BY SHERIFF"

AND TO: ACTING CHIEF EXECUTIVE OFFICER OF
THE ROAD ACCIDENT FUND
Third Respondent
2 ECO GLADES OFFICE PARK
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GAUTENG

"SERVICE BY SHERIFF"

SR. 


AND TO: MINISTER OF TRANSPORT
Fourth Respondent
C/O THE STATE ATTORNEY
316 THABO SEHUME STREET
PRETORIA CENTRAL
PRETORIA
GAUTENG

"SERVICE BY SHERIFF"

[Handwritten signature]

**ROAD ACCIDENT FUND
SERVICE PROVIDER AGREEMENT**

SCHEDULE

This **Service Provider Agreement** records the agreement between the Road Accident Fund and its Firm, which is recorded in this Schedule and **Annexure A** attached hereto. The standard South African Government Procurement General Conditions of Contract ("GCC") are incorporated into this **Service Provider Agreement ("this Agreement")** by reference only.

The contracting parties are the below mentioned persons and agree as follows:

The Road Accident Fund (“the Fund”)

(a statutory entity established in terms of section 2(1) of the Road Accident Fund Act, Act No. 56 of 1996, as amended, with its principal place of business at 420 Witch-Hazel Avenue, Eco Glades Office Park 2, Highveld, Centurion, 0046, herein represented by Eugene Watson in his capacity as Chief Executive Officer, duly authorised)

Physical Address: 420 Witch-Hazel Avenue, Eco Glades Office Park 2, Highveld, Centurion, 0046

Postal Address: Private Bag X178, Centurion, 0046

Tel: (012) 649 2037

Contact Person: **Azwifaneli Muifha** –or such other official duly authorised in terms of the Fund's Delegations of Powers and Functions Policy Framework

E-mail: contractmanagement@raf.co.za

and

van Gruener and Associates Incorporated ("the Firm")

(a company with limited liability and represented by Johan van Greunen, duly authorised thereto, and in his capacity as Director.

Postal Address:

John van Gremerswaal
Charles de Gremerswaal
Johanna

Contact Person: Johan van Greunen

Landline: **012 651 2055**

Mobile:

e-mail: [\[REDACTED\]](mailto:)

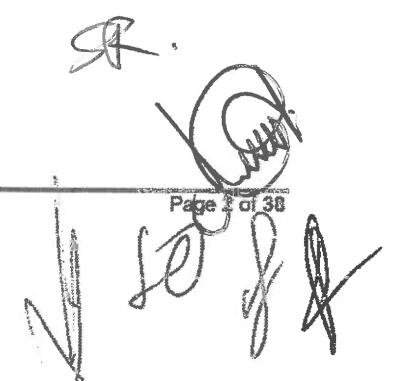
Page 1 of 35

1. RECORDAL

- 1.1. **The Firm** has been awarded a contract in terms of the provisions of Regulation 16A.6.6 of the **Public Finance Management Act (PFMA)**.
- 1.2. **This Agreement** serves to record the agreement between the parties and to regulate all aspects of the services and/or products ("Deliverable/s") to be supplied by **the Firm** and the general business relationship between the parties.
- 1.3. The Terms of Reference or Specifications of the **Services** to be supplied to **the Fund** are those contained in **the PFMA's** Regulation 16A.6.6 process of procurement and any additions or amendments thereto furnished to **the Firm** in the bid process. It is recorded that **the Firm** accepted these provisions and on the basis thereof submitted its bid and any supplementary information thereto.
- 1.4. Such Terms of Reference or Specifications are incorporated into the provisions of **this Agreement** as if specifically mentioned and are binding and enforceable on the parties.
- 1.5. In the event of any of the provisions of **the PFMA's** Regulation 16A.6.6 process of procurement and any additions or amendments thereto furnished to **the Firm** in the bid process conducted by South African Civil Aviation Authority under bid reference number SACAA/POAT/007/14("the Bid Documents"), including the Terms of Reference or Specifications mentioned in 1.3 and 1.4 above, being in conflict with the provisions of **this Agreement**, the provisions of **this Agreement** (including the Annexures to **this Agreement**) shall prevail.
- 1.6. It is recorded that the further Annexures to **this Agreement** are as follows:
 - 1.6.1. Annexure A: RAF Special Conditions of Contract ("SCC").

2. SERVICES OR PRODUCTS SUPPLIED (SERVICES)

- 2.1. **The Fund** appoints the **Firm** onto a panel of preferred Firms which entitles the **Fund**, from time to time, to instruct the **Firm** to provide corporate legal services to the **Fund (Services)**
 - 2.1.1. Further to the provisions of clause 2.1 above and to provide clarity, **the Firm** is appointed to provide **Services** under the following category:
 - 2.1.1.1. Administrative and Corporate/Commercial Law/Debt Collection
 - 2.1.1.1.1. Administrative/Public Law
 - 2.1.1.1.1.1. Legislative Drafting
 - 2.1.1.1.1.2. Constitutional Law


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2.1.1.1.2. Commercial/Corporate Law

- 2.1.1.1.2.1. Contract Law
- 2.1.1.1.2.2. Intellectual Property Law
- 2.1.1.1.2.3. Commercial Law
- 2.1.1.1.2.4. Information Technology Law
- 2.1.1.1.2.5. Corporate Governance
- 2.1.1.1.2.6. Property Law
- 2.1.1.1.2.7. Personal Injury and MVA Law

2.1.1.1.3. Debt Collection

2.1.1.3.1 Recoveries.

2.2. *The Firm* shall, and acknowledges its obligation to have access to suitably qualified and experienced personnel and to utilise any set standards, instrument or process that *the Fund* deems suitable in rendering the *Services*.

2.3. Subject to clause 2.1 above as read with Regulation 16A.6.6 of the PFMA process of procurement and any additions or amendments thereto furnished to *the Firm* in the bid process, the outcomes to be derived by *the Fund* from *the Services* shall primarily, but not exclusively, comprise of the following:

2.3.1. Administrative and Corporate/Commercial Law/Debt Collection

2.3.1.1. Administrative/Public Law

- Advise on the PFMA and related legislation;
- Advise on public procurement;
- Draft and negotiate agreements between organs of state;
- Provide litigation services in all areas of administrative/public law; and
- Generally advise on all matters relating to the public sector.

2.3.1.2. Legislative Drafting

- Provide opinions, and
- Draft, and comment on national legislation affecting the Road Accident Fund.

2.3.1.3. Constitutional Law

- Advise on the constitutionality of legislation, policies, etc.; and
- Provide litigation services in all areas of constitutional law.

2.3.1.4. Contract Law

- Provide advise/opinion on contractual issues;
- Provide litigation services in all areas of contract law; and
- Draft and vet contracts as and when required.

2.3.1.5. Intellectual Property Law

S.R.
J.O.
J.S.

- Advise on intellectual property matters, including trademarks, copyright, designs, etc.;
- Provide litigation services in all areas of intellectual property law; and
- Provide any other services related hereto.

2.3.1.6. Commercial Law

- Provide advice on commercial law matters; and
- Provide litigation services in all areas of commercial law.

2.3.1.7. Information Technology Law

- Advise on all legal issues arising from the development, procurement and use of information technology by **the Fund**;
- Provide litigation services in all areas of information technology law; and
- Draft and negotiate information technology agreements.

2.3.1.8. Corporate Governance

- Advise on all aspects of corporate governance; and
- Provide litigation services in all areas of corporate governance.

2.3.1.9. Property Law

- Provide advice on all property related matters;
- Draft and negotiate lease agreements; and
- Provide litigation services in all property related matters.

2.3.1.10. Personal Injury and MVA Law

- Advise on all aspects of personal injury and Road Accident Fund legislation; and
- Provide litigation services in all areas of personal injury and Road Accident Fund legislation.

2.4. The **Firm** shall provide the **Services** in accordance with timeframes agreed in terms of the provisions of clause 13 or in accordance with such agreed timelines as the parties may agree to in writing from time to time in the form of **Scope of Works** documents as provided for more fully under clause 13 hereunder.

2.5. It is an express provision of **this Agreement** that the person identified below shall be the **Lead Attorney** appointed to ensure the fulfilment of the obligations under **this Agreement**:

2.5.1 Name: 

2.5.2 Position: 

2.5.3 Contact numbers: 

2.5.4 Email address: 

2.6. The further particulars of the **Services** to be supplied to **the Fund** are those contained in **the Fund's** Regulation 16A.6.6 PFMA process of procurement and those proposed by **the Firm** in its response to the bid.

2.7. The **Firm** acknowledges that the appointment onto the **Fund's** panel of preferred firms is non-exclusive and does not guarantee that the **Fund** will require any **Services** from the **Firm**, nor is the **Firm** entitled to any payment based merely on the fact of such appointment.

2.8. The **Fund** may, at the **Fund's** sole discretion, during the subsistence of this **Agreement**, from time-to-time instruct the **Firm** to provide to the **Fund** the **Services** set out under clause 2.1 above.

2.9. The **Firm** accepts the appointment on the terms and conditions set-out in this **Firm Agreement**.

3. PAYMENT

3.1. The **Fund** shall pay the **Firm** for the due, full and proper performance and fulfilment by the **Firm** of its obligations referred to in this **Agreement**, a fee, in accordance with the **Fee Schedule** below:

POSITION	Hourly Rate (Rand value)	VAT	Total Hourly Rate (VAT Inc)
Senior Director	R3 100.00	R434.00	R3 534.00
Director	R2 500 .00	R350.00	R2 850.00
Senior Associate	R1 750.00	R245.00	R1 995.00
Associate	R1 300.00	R182.00	R1 482.00
Candidate Attorney	R950.00	R133.00	R1 083.00

3.2. The **Firm** shall invoice the **Fund** for services rendered, in accordance with the **Fee Schedule**, *pro rata*, in increments of ten (10) minutes. To avoid doubt, the **Firm** shall be entitled to invoice the **Fund** for any incomplete ten (10) interval as if the ten (10) minutes interval was completed.

3.3. In addition to the fees referred to in clause 3.1 above, the **Fund** shall pay the **Firm** for disbursements incurred in providing the **Services**, subject to the following provisions:

3.3.1. All disbursements shall be charged at actual costs without any margin or mark-up;

3.3.2. No travelling expenses may be charged in respect of travelling within 50 kilometres of the **Firm's** chosen *domicilium citandi et executandi*;

3.3.3. In instances where the **Firm** is required to travel outside 50 kilometres of the **Firm's** chosen *domicilium citandi et executandi*, travelling expenses may be charged subject to the following limitations:

3.3.3.1. Airfare (domestic) - economy class tickets;

3.3.3.2. Airfare (international) - economy class tickets;

3.3.3.3. Care-hire – Group B vehicles; and

3.3.3.4. Own vehicle – cost per kilometer calculated in accordance with the Automobile Association of South Africa's Running Cost Table in respect of a petrol vehicle with an engine capacity of 1600 cc.

3.3.4. Disbursements in respect of accommodation may be charged for bed and breakfast establishments with a maximum of a three star rating.

3.3.5. In instances where any expert is instructed on behalf of the **Fund**, prior written authorisation must be obtained from the **Fund's** Senior Manager: Legal or a delegate. The **Firm** shall discuss expert fees with the expert and obtain written instructions from the **Fund's** Senior Manager: Legal, or a delegate, with regards to the expert fees prior to instructions being given to the expert.

3.3.6. The **Firm** shall confer with the **Fund** before briefing counsel in any matter and prior written authorisation must be obtained from the **Fund's** Senior Manager: Legal, or a delegate, the **Fund** retaining the exclusive right to elect which counsel to brief. The **Firm** shall discuss and negotiate counsel fees with counsel on behalf of the **Fund** and obtain prior written instructions from the **Fund's** Senior Manager: Legal, or a delegate, with regards to counsel fees before the brief is given to such counsel.

3.4. Notwithstanding clause 3.3 above, the **Fund** may in its sole discretion agree in writing to reimburse the **Firm's** expenses, in advance of them being incurred, on a basis other than specified in clause 3.3 above, if it is justifiable in the **Fund's** view in the particular instance to do so.

3.5. The **Firm** shall not require, nor shall the **Fund** be expected to make available, or pay over to the **Firm** a deposit as part payment for **Services** yet to be rendered.

3.6. Payment of these invoices shall be subject to the review and sign off by the **Fund's** designated Service Manager of the services provided, which sign off shall not be unreasonably withheld.

3.7. The **Fund** shall be liable to reimburse the **Firm** for any expenses incurred only to the extent that these have been specifically agreed in **this Agreement** or agreed in writing by the **Fund** in advance of them being incurred.

3.8. The **Firm** shall ensure that all invoices submitted to the **Fund** are sufficiently detailed and include such supporting documentation as is necessary for the **Fund** to be able to confirm the correctness of the amounts being invoiced as well as to be able to tie the invoice to the specific **Deliverable**. Without limiting the generality of the aforementioned, the **Firm** shall ensure that every invoice for payment of fees is accompanied by a fee memorandum containing the following details:

- 3.8.1. The details of the matter, i.e. a name that identifies the specific instruction;
- 3.8.2. The name of the **Fund** official dealing with the matter;
- 3.8.3. The name of the **Lead Attorney** responsible for managing the matter;
- 3.8.4. Details of the work performed and calculation of the fees invoiced, with reference to:
 - 3.8.4.1. A description of the work performed;
 - 3.8.4.2. The date on which the work was performed;
 - 3.8.4.3. The name of the person who performed the work;

- 3.8.4.4. The seniority of the person who performed the work;
- 3.8.4.5. The applicable rate, as contemplated in clause 3.1;
- 3.8.4.6. The time taken to perform the work;
- 3.8.4.7. The amount invoiced as a function of the particulars of paragraphs 3.8.4.5 and 3.8.4.6; and
- 3.8.4.8. Details of any disbursements paid or incurred with supporting documentation attached to the invoice.

3.9. Milestone billing shall apply in order to permit interim payments prior to the completion of the total effort required from **the Firm** in terms of any particular instruction given to **the Firm** by **the Fund** in terms of **this Agreement**. Wherever possible **the Firm** shall, in respect of each individual instruction contemplated in clause 2.1 invoice **the Fund** monthly for work performed and disbursements paid or incurred.

3.10. Payment shall be made in accordance with the provisions of clause 4 in Annexure A.

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

- 3.11.1. VAT inclusive;
- 3.11.2. Inclusive of all other taxes and duties which are levied or charged by any revenue authority (including, without limitation, the South African Revenue Services);
- 3.11.3. exclusive of all other costs and disbursements not specified; and
- 3.11.4. fixed, provided amounts specified in clause 3.1 will be adjusted annually inline with year on year increase in the Consumer Price Index (Headline CPI) as published by the Stats SA in the PO141-Consumer Price Index (CPI) publication, or such other publication that may in future replace PO141 CPI publication. To avoid doubt, the adjustment shall be calculated and become effective annually on the anniversary of the **Effective Date** and the percentage adjustment shall be equivalent to the percentage change in the year-on-year Consumer Price Index (Headline CPI), calculated on the latest available release by Stats SA in the PO141-Consumer Price Index (CPI) publication, or such other publication that may in future replace PO141 CPI publication.

3.12. Both Parties acknowledge that the charges specified in **this Agreement** are intended to compensate **the Firm** fully for all **Services** to be performed or provided by **the Firm** pursuant to **this Agreement**.

3.13. Accordingly, **the Fund** will not be obligated to pay **the Firm** any amounts in addition to those specifically described in **this Agreement**, unless:

- 3.13.1. there is an agreed change in the scope of the **Services**, or
- 3.13.2. a change in applicable law to which additional charges apply and have been approved in writing by **the Fund**, or

3.13.3. additional Services are required by **the Fund**.

4. DURATION AND DATES

4.1. This **Agreement** shall commence on date of signature by the party signing last in time (**the Effective Date**) and shall terminate on 30 September 2020 (**the Initial Period**), unless terminated by **the Fund** in terms of the provisions set out hereunder or for any other unspecified legally valid ground.

5. SPECIAL TERMS AND CONDITIONS

5.1. At no additional cost to **the Fund**, other than the payment to be paid by **the Fund** to **the Firm** for **the Services** in terms of **this Agreement**, and provided that the unjustifiable actions of **the Fund** do not prevent **the Firm** from performing its obligations under **this Agreement** and barring any force majeure event, **the Firm** undertakes at all times to:

5.1.1. supply **the Services** with promptness, diligence, in a professional manner and with all due care, skill and expertise;

5.1.2. render **the Services** within the agreed timelines;

5.1.3. act in the best interest of **the Fund** and avoid all conflicts of interest that may arise;

5.1.4. perform its obligations in a manner that does not infringe or constitute an infringement or misappropriation of any intellectual property or other proprietary rights of any third party; and

5.1.5. comply with all legal requirements and with the necessary licenses, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the supply of **the Services** to **the Fund**.

5.2. All Intellectual property (IP) shall remain the property of the owner of such intellectual property.

5.3. Subject to clause 5.4 below, all templates, documents, procedures and frameworks including, but not limited to, project methodologies, development methodologies, implementation methodologies, training methodologies, training material/courseware and the supporting documents and artefacts thereto, remain the property of **the Firm** and/or their respective owners and may not be reproduced or reused in any form whatsoever without the express written approval of **the Firm** and/or the respective intellectual property owner.

5.4. Notwithstanding the provisions of clause 5.2 and 5.3 above, ownership in any documentation specified as a **Deliverable** in the Terms of Reference contained in the Regulation 16A.6.6 process of procurement shall pass to **the Fund** upon payment by **the Fund** to **the Firm** of the amount specified in clause 3 above and **the Fund** shall have the right to use, reproduce and adapt the documentation for its own internal use.

5.5. Risk and benefit of any products and / or materials supplied to the **Fund** as part of the **Services** shall pass to the **Fund** on the **Fund** taking delivery.

5.6. Ownership of any products or materials supplied to the **Fund** as part of the **Services** shall pass to the **Fund** on the **Fund** making payment to the **Firm** in respect of the specific products and / or material.

5.7. The **Firm** shall, annually on the anniversary of the **Effective Date**, furnish a certified copy of the valid Fidelity Fund Certificate for the **Firm** and a certificate of Good Standing in respect of each of the **Lead Attorney** who provide **Services** to the **Fund**.

5.8. The **Firm** agrees that, in as far as the law allows, no limitation of the **Firm's** liability shall apply in respect of any claims by the **Fund**, of whatever nature, arising out of breach of contract, negligent or intentional actions or omissions or unlawful conduct of the **Firm**, its directors, employees or agents.

5.9. The Parties appoint the following individuals to whom the Parties assign the management of the **Services**. (Hereinafter referred to as the "**Service Manager(s)**")

5.9.1. **The Fund:** Tshepo Mahlare

Tel: (012) 621 1799

E-mail: Tshepo@raf.co.za

(or such other official duly authorised in terms of the Road Accident Fund's Delegations of Powers and Functions Policy Framework)

5.9.2. **The Firm:** _____

Tel: _____

Mobile: _____

e-mail: _____

6. PROTECTION OF PERSONAL INFORMATION

6.1. The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013, (POPI) which in essence comprises of both Parties allowing the other Party access to records on the condition that the identifiable person (or his or her guardian or curator) to whom the records relates has furnished prior written consent for the disclosure of the records.

6.2. Each party understands and acknowledges that the restrictions and obligations accepted by that other party pursuant to **this Agreement** are reasonable and necessary in order to protect the interests of the other party, its employees and claimants and that Party's failure to comply with **this Agreement** in any



respect could cause irreparable harm to **the Fund**, its employees and claimants for which there may be no adequate legal remedy.

6.3. Each party therefore understands and agrees, notwithstanding any contrary provision in any other agreement between the Parties, that each party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach of **this Agreement**, and may prevent the other party, any of its agents or subcontractors, or any third party who has received records from that party from violating **this Agreement** by any legal means available.

6.4. Each party further understands that violation of **this Agreement** may subject that party to applicable legal penalties, including those provided under Promotion of Access to Information Act 2 of 2000 (PAIA) and POPI and may lead to termination of any agreements entered into between **the Fund** and the **Firm** emanating from **this Agreement**.

6.5. Both Parties agree to treat as confidential the **Personal Information** which comes to either party's knowledge, except if the communication of such information is required by law or for the proper performance of that party's obligations in terms of **this Agreement**.

7. TAX CLEARANCE CERTIFICATE

7.1. Subject to any direction from the South African Revenue Services and without limiting in any manner whatsoever the generality of **the Firm's** obligations in terms of clause 17 of **Annexure A**, **the Firm** shall, for the full and uninterrupted duration of **this Agreement**, ensure that **the Fund** is –

7.1.1. placed in possession of an original, valid, unexpired Tax Clearance Certificate, issued by the South African Revenue Services;

7.1.2. furnished with a new, original, valid, unexpired Tax Clearance Certificate, issued by the South African Revenue Services, not more than 5 (five) days after the expiry of the Tax Clearance Certificate contemplated in clause 7.1.1 above, in the event of any such Tax Clearance Certificate expiring during the duration of **this Agreement**.

7.2. Notwithstanding anything seemingly to the contrary contained in **this Agreement**, until the **Firm** complies fully with its obligations under clause 7.1 above, **the Fund** has the right to withhold payment of any unpaid amounts provided for in **this Agreement** –

7.2.1. without prejudice to any other rights which **the Fund** may have in terms of **this Agreement** or in law; and

7.2.2. without interest accruing on the amount or amounts withheld.

7.3. A breach by the **Firm** of its obligations under clause 7.1 above is a material breach which will entitle **the Fund**, in its sole election, to cancel **this Agreement** forthwith, without prejudice to any other rights which **the Fund** may have in terms of **this Agreement** or in law.

8. CHANGE CONTROL

8.1. In this clause 8, "**Change Order**" means a document which is used for the specific purpose of recording the details of any change to **this Agreement** and which shall be signed by the authorized representatives of both Parties before becoming effective and binding on the Parties.

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

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

8.3. In the event that the **Change Order** is requested by **the Fund**, **the Firm** shall promptly undertake an exercise to determine the impact (including any knock-on effect) of the proposed change on:

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

8.4. In the event that the **Change Order** is requested by **the Firm**, **the Firm** shall furnish **the Fund** with the details of the impact (including any knock-on effect) of the proposed change on:

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

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

8.6. Each executed **Change Order** shall be subject to the terms and conditions contained in **this Agreement** except as otherwise expressly provided for in such **Change Order** by the Parties by

specifically stating the Parties' intention to amend such terms and conditions of *this Agreement* and identifying the specific terms and conditions being amended.

8.7. A unique, consequential, number shall be allocated to each *Change Order*.

8.8. The authorised representative of *the Fund*, for purposes of executing a *Change Order*, is *the Fund's* Chief Executive Officer or such other official duly authorised in terms of *the Fund's* Delegations of Powers and Functions Policy Framework.

8.9. No terms and conditions contained in, without limitation, any purchase order, quote, invoice, statement or similar document, other than a *Change Order* executed pursuant to this clause 8, shall have the effect of changing any term or condition contained in *this Agreement*.

9. SERVICE STANDARDS

9.1. *The Firm* shall proceed with the carrying out of the *Services* regularly, diligently and in accordance with such expertise as may be necessary to provide the *Services*.

9.2. *The Fund* shall not be obliged to provide any supervision, materials, plant, tools, equipment and facilities necessary to perform the *Services* in accordance with *this Agreement*.

9.3. *The Firm* shall be deemed to have capacity to deliver the *Services* and to have satisfied itself of the conditions and all circumstances affecting the *Services* and the carrying out of the *Services*.

9.4. Accordingly, no claim by *the Firm* for additional payment or extension of time will be allowed on the grounds of any matter relating to the *Services* or as to the circumstances or conditions under which the *Services* are to be provided.

9.5. *The Firm* shall not do anything or cause anything to be done, which may damage the reputation of *the Fund* or bring *the Fund* into disrepute.

10. SERVICE MANAGEMENT

10.1. *The Firm* shall employ sufficient staff to ensure the *Services* are provided as required under *this Agreement*.

10.1.1. *The Firm* must employ sufficient staff to ensure that the *Services* are provided at all times and in all respects according to *the Fund's* Regulation 16A.6.6 process of procurement.

10.1.2. *The Firm* must ensure that a sufficient reserve of staff is available to provide the *Services* to *the Fund* during absences of any staff.

10.2. **The Firm** must employ for the purposes of *this Agreement* only such persons as are careful, skilled and experienced in the duties required of them, and must ensure that every such person is properly and sufficiently trained and instructed.

10.3 Given that clause 2.5 provides that **Services** shall be undertaken by a **Lead Attorney**, **the Firm** shall undertake all reasonable steps to ensure that the **Lead Attorney** shall remain engaged for the full period of the **Deliverables**. For the sake of clarity, **Lead Attorney** shall be deemed to be that person identified under clause 2.5 to fulfil the requirements of *this Agreement*.

10.4 In the event of sickness or other emergencies, **the Firm** shall provide suitably qualified and experienced replacement personnel, which are acceptable to **the Fund** (such acceptance not to be unreasonably withheld or delayed), without additional charge or expense at the earliest possible opportunity.

10.5 In circumstances beyond its reasonable control, **the Firm** may, subject to the reasonable approval of **the Fund**, replace any of the **Lead Attorney** with personnel of equivalent expertise and experience, and at the same cost.

10.6 If in the opinion of **the Fund** and **the Firm** a handover period is required, **the Firm** shall provide both the **Lead Attorney** and the replacement personnel during this period at no extra charge.

11. SUBCONTRACTING

11.1. **The Firm** shall not subcontract to any third party ("the **Subcontractor**") any portion of the **Services** that must be provided under *this Agreement* without the **Fund's** prior written consent.

11.2. **The Fund** shall not be under any obligation to consent to a request by the **Firm** to subcontract to any third party any portion of the **Services** that must be provided under *this Agreement*.

11.3. **The Fund** shall, when giving consideration to a written request for consent contemplated in clause 11.1 above, conduct a due diligence on the **Subcontractor**.

11.4. Further to the provisions of clause 11.3 above, and to assist **the Fund** in conducting its due diligence as envisaged, **the Firm** shall provide with the written request, and **the Fund** shall take into consideration, the following aspects pertaining to the **Subcontractor**:

11.4.1. An original B-BBEE Status Level Verification Certificate in respect of the **Subcontractor**, issued by an accredited verification agency, alternatively a certificate issued by the accounting officer (in respect of a close corporation) the registered auditor (in respect of a

company) or accredited verification agency, that the **Subcontractor** is an Exempted Micro Enterprise or a Qualifying Small Enterprise;

11.4.2. An original Declaration of Interest completed and signed by the **Subcontractor**; and

11.4.3. An original valid Tax Clearance Certificate in respect of the **Subcontractor**.

11.5. The **Fund** may, if the **Fund** elects to approve a request contemplated in clause 11.1 above, make such consent subject to such terms and conditions as the **Fund** in its sole election consider reasonable.

11.6. Notwithstanding that the **Fund** may elect to consent to a request contemplated in clause 11.1 above, such consent by the **Fund** shall not relieve the **Firm** of any of the **Firm's** obligations under **this Agreement** and the **Firm** shall remain responsible for the actions and omissions of the **Subcontractor**.

12. SUBCONTRACTORS AND HDI REQUIREMENTS

12.1. The **Firm** shall in all instances where the **Fund** consents in terms of the provisions of clause 11 above, serve as the principal contractor in respect of the provision of the **Services** and shall, at all times, remain solely responsible for the performance of the **Services**.

12.2. The **Firm** recognises that the **Fund** has appointed the **Firm** in reliance on the expertise and B-BBEE nature of both the **Firm** and the **Subcontractors**.

12.3. The **Firm** shall utilise only the **Subcontractors** as its contractors for the rendering of the **Services** in terms of **this Agreement**.

12.4. The **Firm** shall, for audit purposes and upon request by the **Fund**, supply the **Fund** with any agreement or correspondence between it and its **Subcontractors** relating to the appointment in terms of the Bid and **this Agreement**.

12.5. The **Firm** shall not terminate its relationship with one or more of its **Subcontractors** without the prior written consent of the **Fund**, which consent shall not unreasonably be withheld.

12.6. The **Firm** shall not appoint any new **Subcontractor** without the prior written consent of the **Fund**, which consent shall not unreasonably be withheld.

12.7. The **Firm** indemnifies and holds the **Fund** harmless against any claim/s of any nature whatsoever brought by the **Subcontractors** arising as a result of or in connection with any breach of any contractual obligation owed by the **Firm** to the **Subcontractors** in the performance of the **Services**.

13. SCOPE OF WORK

13.1. ***The Fund* and *Firm* may agree upon the particulars of the *Services* to be provided by the *Firm* in the form of a *Scope of Work* document.**

13.2. ***The Fund* and the *Firm* shall in respect of the *Scope of Work* document agree upon the following minimum criteria:**

- 13.2.1. The specific particulars of the *Services* to be rendered by the *Firm*;
- 13.2.2. The timeframes within which the *Firm* must provide the *Services*; and
- 13.2.3. The fees and expenses that *the Fund* shall pay to the *Firm* as consideration for the *Services*.

13.3. ***The Fund* and the *Firm* may in respect of each *Scope of Work* document agree to the following additional criteria:**

- 13.3.1. A project plan, delivery schedule, or similar document that aligns with the *Services* and Timeframes.
- Billing milestones for the payment, in installments, of the fees and expenses; and
- 13.3.2. Any other criteria that *the Fund* and the *Firm* wish to incorporate in the specific *Scope of Work* document.

13.4. **Each *Scope of Work* document shall, upon coming into effect, be deemed incorporated into *this Agreement* as an addendum.**

13.5. **In the event of any conflict between a term or condition contained in any *Scope of Work* document and a term or condition contained in *this Agreement*, the term or condition contained in *this Agreement* shall take preference, unless *the Fund* and the *Firm* specifically agreed in the particular *Scope of Work* document that the *Scope of Work* document shall take precedence over *this Agreement*.**

14. ACTING AGAINST THE FUND

14.1. ***The Firm* agrees that from the *Effective Date*, it shall not act in any manner which may give rise to a conflict of interest in relation to the *Fund* or the *Services* to be rendered in terms of *this Agreement*.**

14.2. **From the *Effective Date* of *this Agreement* the *Firm* may not accept any instruction to submit claims against the *Fund*, prosecute actions against the *Fund*, and defend actions instituted by the *Fund* or in any way act against the *Fund*.**

14.3. In addition to clause 14.1 above, in instances where the **Firm** accepted an instruction to act against the **Fund** prior to the **Effective Date** of this **Service Agreement**, the **Firm** shall terminate such mandate/s within a period of 30 (thirty) **Days** from the **Effective Date** of this **Agreement**.

15. FURNISHING OF INSTRUCTIONS

15.1. Instructions will only be furnished by the Legal Compliance and Regulation Department.

15.2. The **Fund** reserves the right to determine the manner in which instructions will be allocated between the **Firms**. In the furnishing of instructions, the **Fund** will consider *inter alia*:

- 15.2.1. The need to keep claims arising from the same cause of action with the same **Firm**.
- 15.2.2. The fact that a **Firm** is under **Suspension** in terms of clause 16 below;
- 15.2.3. The fact that a matter involves a point of law that has previously been considered by a **Firm**
- 15.2.4. Where, in the view of the Fund, the value and/or complexity of the matter warrants a particular **Firm** being instructed;
- 15.2.5. The performance of a particular **Firm**; and
- 15.2.6. Any other consideration which the Fund may deem to be relevant in the circumstances.

16. SUSPENSION OF NEW INSTRUCTIONS

16.1. Reasons for Suspension

16.1.1. In deciding to suspend new instructions being given to the **Firm**, the **Fund** will have regard to, amongst others, the following:

- 16.1.1.1. A breach or breaches of the terms of this **Agreement**;
- 16.1.1.2. The capacity of the **Firm**;
- 16.1.1.3. The level of service delivery by the **Firm** or any of the **Lead Attorney** in its employ;
- 16.1.1.4. The performance of the **Firm** in terms of the service levels contained in *this Agreement*;
- 16.1.1.5. Changes in ownership and/or management of the **Firm** that may affect the **Firm's** B-BBEE rating adversely; and
- 16.1.1.6. Any other reason which in the **Fund's** opinion will warrant the suspension of new instructions to the **Firm**.

16.2. Period of Suspension

- 16.2.1. The initial period of suspension will be determined by the **Fund** but shall be no less than 3 (three) months for each particular breach, each suspension period to run separately, cumulatively and in succession.
- 16.2.2. The **Fund** may extend the initial period of suspension for a further 3 (three) month period should the **Fund** deem this to be appropriate and in **the Fund's** best interest.
- 16.2.3. At any time during or after the period of suspension, the **Fund** may terminate this **Agreement** in accordance with clause 18 below.

16.3. Process of Suspension

- 16.3.1. Notice of suspension and the duration of the initial period for which instructions are to be suspended, will be delivered to the **Firm** in writing by the **Fund's Supply Chain Management (SCM) General Manager** and shall contain the reason/s for instructions being suspended.
- 16.3.2. The suspension will become effective on the same day that the notice referred to in clause 16.3.1 above is delivered in writing to the **Firm**.
- 16.3.3. In the event of the initial period of suspension being extended by the **Fund**, this will be conveyed to the **Firm** by the **Fund's SCM General Manager** in writing, at least 10 (ten) days before the initial period of suspension expires and shall contain the reason/s for the suspension period being extended.

16.4. Disputes arising from Suspension

- 16.4.1. Within 5 (five) days of receipt of either of the notices referred to in clause 16.3 above, the **Firm** may deliver a written response to the **Fund's SCM General Manager** addressing the reason/s for the suspension or the extension of the suspension period.
- 16.4.2. The **Fund** will consider and review all relevant factors and within 10 (ten) days of receipt of the response contemplated in clause 16.4.1 above, will in writing notify **the Firm** whether:
 - 16.4.2.1. the initial or extended suspension period will remain in effect; or
 - 16.4.2.2. the initial or extended suspension period will be varied, in which event the **Firm** will be advised of the new period of suspension.

16.4.3. In the event of the **Firm** remaining dissatisfied with the decision of the **Fund**, the **Firm** may, within 3 (three) days of receipt of the notification referred to in clause 16.4.2 above, in writing, send a meeting request to the **Fund's SCM General Manager** to discuss the suspension.

16.4.4. Such meeting will be held within 10 (ten) days from receipt of the request referred to in clause 16.4.3 above, or such longer period as agreed to between the **Parties**.

16.4.5. Within 3 (three) days of the meeting contemplated in clause 16.4.4 being held, the **Fund's SCM General Manager** will notify the **Firm** of the decision regarding the suspension.

16.4.6. Instructions to the **Firm** will remain suspended during the process contemplated in this clause 16.

16.4.7. Failing to provide valid and tangible reasons to sway **the Fund** against the suspension will result in the suspension being confirmed and the decision of the **Fund** will be final in this regard.

16.5. Relationship between the Parties during the period of Suspension

16.5.1. All the terms of this **Agreement** will remain of full force and effect for the duration of the period of suspension.

16.5.2. The **Firm** shall ensure that all instructions received by the **Firm** before the suspension are dealt with in a professional and ethical manner.

16.5.3. The **Firm** shall also ensure that the service standards expected of the **Firm** before the suspension are maintained during the period of suspension.

17. TERMINATION OF THIS AGREEMENT BY THE FUND

17.1. Notice Period

The **Fund** may at any time terminate this **Agreement** by giving 30 (thirty) days' written notice to the **Firm**.

17.2. Reasons for Termination

17.2.1. In deciding to terminate this **Agreement**, the **Fund** will have regard to, amongst others, the following:

- 17.2.1.1. a breach or breaches of the terms of this **Agreement**;
- 17.2.1.2. the **Firm** failing to uphold the attorney/client relationship;
- 17.2.1.3. the **Firm** acting against the **Fund**;
- 17.2.1.4. operational requirements of the **Fund**;
- 17.2.1.5. an attorney or candidate attorney employed by the **Firm** being found guilty of a fraudulent act;
- 17.2.1.6. an attorney delivering **Services** to the **Fund** being suspended or removed from the roll of attorneys by a Law Society for any reason;
- 17.2.1.7. the **Firm** failing to provide the **Fund** with Fidelity Fund certificates when requested to do so by **the Fund**;
- 17.2.1.8. the **Firm** failing to provide the **Fund** with a B-BBEE rating when requested to do so by **the Fund**;
- 17.2.1.9. instructions to the **Firm** having been suspended and on the expiration of the initial or extended suspension period, the cause or causes for suspension having not been remedied by the **Firm** to the satisfaction of the **Fund**;
- 17.2.1.10. a *de bonis propriis* cost order being granted against the **Firm** in a matter in which the **Firm** has been instructed by the **Fund**;
- 17.2.1.11. an adverse cost order being granted against the **Fund**, or any of its employees in their personal capacity, which could have been avoided had the **Firm** taken reasonable care in the handling of the matter;
- 17.2.1.12. a Court making a finding to the effect that the **Firm**, or any of the **Lead Attorney** in its employ, had acted unprofessionally in discharging its duties in relation to any matter where the **Firm** held instructions on behalf of **the Fund**;
- 17.2.1.13. a judgment by default being granted against the **Fund** in a matter in which the **Firm** was instructed by the **Fund** and the sole cause of the default judgment being that the **Firm** failed to timeously enter an Appearance to Defend ;

17.2.1.14. a judgment by default being granted against the **Fund** due to the **Firm's** failure to deliver a Plea;

17.2.1.15. a writ of execution being served on the **Fund** and the sole cause of the writ being that the **Firm** failed to provide the **Fund** with the Court Order within 3 (three) days of the order being granted;

17.2.1.16. a writ of execution being served on the **Fund** and the sole cause of the writ being that the **Firm** failed to provide the **Fund** with the *allocatur* of the Taxing Master within 3 (three) days of the *allocatur* being signed by the Taxing Master;

17.2.1.17. the **Firm** being instructed to oppose a taxation of a Bill of Costs and failing to do so;

17.2.1.18. the capacity of the **Firm**;

17.2.1.19. the level of service delivery by the **Firm**;

17.2.1.20. the performance of the **Firm** in terms of the service levels contained in this **Agreement**;

17.2.1.21. changes in ownership and/or management of the **Firm** that may lower the **Firm's** B-BBEE rating; and

17.2.1.22. any other reason which in the **Fund's** opinion will warrant the termination of this **Agreement**.

17.3. Process of Termination

17.3.1. Notice of termination of this **Agreement**, will be delivered to the **Firm** in writing by the **Fund's** **SCM General Manager** and shall contain the reason/s for the termination of this **Agreement**.

17.4. Disputes arising from Termination of this Agreement by the Fund

17.4.1. Within 5 (five) days of receipt of the notice referred to in clause 17.3 above, the **Firm** may deliver to the **Fund's** designated **SCM General Manager** a written response to such notice, addressing the reason/s for the termination of this **Agreement**.

17.4.2. The representation made by the **Firm** will be considered by the **Fund** and within 10 (ten) days of receipt of the response referred to in clause 17.4.1 above, the **Fund's SCM General Manager** will, in writing, notify the **Firm** if the **Fund** confirms the termination of this **Agreement**.

17.4.3. In the event of the **Firm** remaining dissatisfied with the decision of the **Fund**, the firm may, within 3 (three) days of receipt of the letter referred to in clause 17.4.2 above, in writing, send a meeting request to the **Fund's SCM General Manager** to discuss the termination of this **Agreement**.

17.4.4. Such meeting will be held within 10 (ten) days from receipt of the request referred to clause 17.4.3 above, or such longer period as agreed to between the Parties.

17.4.5. Within 3 (three) days of the meeting being held, the **Fund's SCM General Manager** will notify the **Firm** of the **Fund's** decision regarding the termination of this **Agreement**.

17.4.6. In the event of the **Firm** remaining dissatisfied with the decision of the **Fund**, the **Firm** may refer the dispute for arbitration in terms of the provisions contained in **Annexure A**.

17.5. **Relationship between the Parties after Termination of this Agreement by the Fund**

17.5.1. The **Firm**, upon receipt of a notice contemplated under clause 17.1 above, shall be deemed to be under suspension as contemplated in clause 16 above for the duration of the 30 (thirty) days' notice period contemplated in clause 17.1 above.

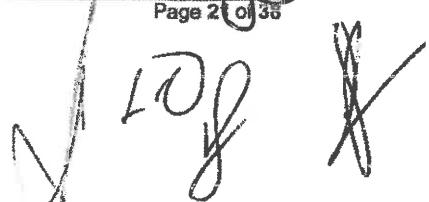
17.5.2. During this 30 (thirty) days' notice period, all the terms of clause 16.5 above shall apply to the **Firm**.

17.5.3. During the 30 (thirty) days' notice period, irrespective of whether the **Firm** agrees with the termination or not, the **Firm** shall prepare all unfinalised files and matters for handover to the **Fund**.

17.5.4. The **Firm** shall also ensure that the service standards expected of the **Firm** before the termination of this **Agreement** is maintained during the period of deemed termination.

17.5.5. The governing principles of good faith, mutual trust and ethical dealings shall endure after termination of this **Agreement**.


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17.5.6. Once this **Agreement** with the **Firm** is terminated, the **Firm** shall be disqualified from consideration for any tender issued by the **Fund** for a period of 3 (three) years after the date of termination.

18. TERMINATION OF THIS AGREEMENT BY THE FIRM

18.1. Process of Termination

18.1.1. The **Firm** may terminate this **Agreement** by giving the **Fund** (sixty) days' notice in writing.

18.1.2. Notice of termination of this **Agreement** by the **Firm** will be delivered in writing to the **Fund's** designated **SCM General Manager** and shall contain the reason/s for the termination of this **Agreement**.

18.1.3. The termination of this **Agreement** will become effective on the first day following the 60 (sixty) days' notice referred to in clause 18.1.1.

18.2. Relationship between the Parties after Termination of this Agreement by the Firm

18.2.1. The **Firm**, upon receipt by the **Fund** of a notice contemplated under clause 18.1.1 above, shall be deemed to be under suspension as contemplated in clause 16 above for the duration of the 60 (sixty) days' notice period contemplated in clause 18.1.1 above.

18.2.2. During this 60 (sixty) days' notice period, all the terms of clause 16.5 above shall apply to the **Firm**.

18.2.3. During the 60 (sixty) days' notice period, the **Firm** shall prepare all unfinalised files for hand over to the **Fund**.

18.2.4. The **Firm** shall also ensure that the service standards expected of the **Firm** before the termination of this **Agreement** is maintained during the period of the deemed suspension.

19. ORDER OF PRECEDENCE

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

19.1.1. **The Schedule**;

19.1.2. A **Change Order** signed later in time;

19.1.3. any other **Change Order** signed earlier in time;

19.1.4. any applicable **Scope of Work**;

19.1.5. **Annexure A**;

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19.1.6. the Government Procurement General Conditions of Contract; and

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

Signed at Centurion on this 1ST day of JUNE 2017.

For: **Road Accident Fund**
 Name: **Eugene Watson**
 Capacity: **Chief Executive Officer**


 Witness
 Name: L-O BONCHUZO

Signed at  on this  day of  2017.

For: 
 Name: 
 Capacity: **Director**


 Witness
 Name: 

ANNEXURE A
ROAD ACCIDENT FUND
SPECIAL CONDITIONS OF CONTRACT ("SCC")

1. INTERPRETATION AND DEFINITIONS

1.1. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context of the Agreement, the following words, terms or phrases have the following meanings:

- 1.1.1 "Fund" means the Road Accident Fund, a juristic person established in terms of Section 2(1) of the Road Accident Fund Act No. 56 of 1996 (as amended), as well as its successor in title and any other juristic person to whom the Fund's rights and obligations may be assigned and devolve upon;
- 1.1.2 "Firm" means the party described in the Schedule of the *Firm Agreement*, or in lieu of a *Firm Agreement* the party described as the Supplier in the Purchase Order issued by the Fund (whichever is applicable);
- 1.1.3 "Confidential Information" means the terms of this Agreement; any information concerning either party or its stakeholders and customers including its operations, business and financial affairs and all other matters which relate to the business of either party and in respect of which information is not readily available in the ordinary course of the business to a competitor of such party or in to any third party; proprietary information or secret information;
- 1.1.4 "Intellectual Property Rights" means all rights in and to the intellectual property including, without limitation, any know-how, patent, copyright, registered design, trademark or other industrial or intellectual property, whether registered or not and whether or not capable of being registered and any application for any of the aforementioned.

1.2. Any reference to the singular includes the plural and vice versa.

1.3. Any reference to natural persons includes legal persons and vice versa.

1.4. Any reference to a gender includes the other gender/s.

1.5. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.



1.6. Where any number of days is prescribed in this Agreement same shall be considered to be calendar days and reckoned exclusive of the first and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.

1.7. The use of the word "including" or "includes" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example.

1.8. The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.

1.9. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

1.10. Recordals shall be binding on the parties and are not for information purposes only.

1.11. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

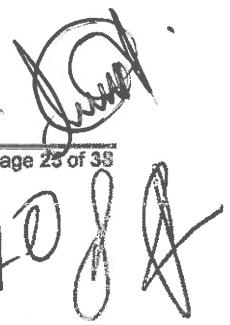
1.12. To the extent that there is a conflict between the provisions contained in the Schedule and the provisions contained in these Special Terms and Conditions of Contract (SCC), the provisions of the Schedule shall prevail.

1.13. To the extent that there is a conflict between the provisions contained in the Special Terms and Conditions of Contract (SCC) and the provisions contained in Government Procurement General Terms and Conditions of Contract (GCC), the provisions of the SCC shall prevail.

1.14. Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, abbreviations and phrases known in the relevant industry to which this Agreement applies shall be interpreted in accordance with their generally known meanings in such industry.

1.15. Any reference to any statute or statutory regulation shall include a reference to any amendments thereto and to the successor/s in title to such statutes and statutory regulations.

1.16. Any reference to any organisation, institution, office, body, department, organ or person vested with certain powers and authority shall include a reference to its successor/s in title.

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1.17. The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.

1.18. If any provision in a recordal, preamble or definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement.

1.19. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

2. RECORDAL

2.1. The SCC is the Fund's standard terms and conditions of contract and constitutes part of the *Firm Agreement* between the Fund and the Firm, or in lieu of a *Firm Agreement*, constitutes part of the Purchase Order issued by the Fund to the Firm (whichever is applicable)

2.2. All references to the Agreement are references to the *Firm Agreement* or Purchase Order (whichever is applicable) and the SCC and the GCC.

3. NON-PERFORMANCE OF THE FIRM

3.1. In the event of the Firm not meeting the performance standards set by the Fund, the Fund shall be entitled to call upon the Firm by written notice to remedy the situation.

3.2. Should the Firm fail to remedy the situation within 14 (fourteen) days the Fund shall be entitled to cancel this Agreement forthwith and without further notice to the Firm.

3.3. Should the Firm fail to meet the set performance standards, the Fund shall be entitled to cancel any outstanding payment due to the Firm with regards to the deliverable in terms of the Agreement.

4. PAYMENT

4.1. An original and detailed tax invoice must be submitted after the Fund has acknowledged receipt of the services rendered or goods received in writing.

4.2. A correct and original tax invoice must be submitted to the Fund by the 1st (first) calendar day of the month.

4.3. All supporting documentation, including but not limited to monthly statements (where applicable) and a verification of bank details, must be received before payment can be effected.

4.4. The Firm shall be required to verify its bank account details by furnishing the Fund with a letter from its bank with a bank stamp, alternatively it shall furnish the Fund with a cancelled cheque.

4.4.1. The following bank details must be verified:

4.4.2. Account Holder and any Trading Names

4.4.3. Bank Name

4.4.4. Branch Name

4.4.5. Branch Code

4.4.6. Account Number

4.4.7. Type of Account

4.5. Payment will be made by the end of the month on condition that the documentation listed in 4.2 and 4.3 above is furnished to the Fund by the 1st (first) calendar day of the month.

4.6. If an invoice and supporting documentation is submitted to the Fund after the 1st (first) calendar day of the month it shall only be paid by the end of the following month.

4.7. Should the documentation be incomplete, incorrect or late (see clauses 4.1 – 4.6 above), payment shall only be effected once the correct and complete documents are received and shall be made in terms of the provisions of 4.5 and 4.6 above. No penalty interest shall be permitted to be charged by the Firm in this event.

4.8. Payment shall be effected by electronic bank transfer or any other method of payment decided to be used by the Fund from time to time and at the Fund's sole discretion.

4.9. Any special or unusual expenses incurred by the Firm at the Fund's specific written request must be charged by the Firm at cost to the Fund. The Fund may inspect expense vouchers at any reasonable time. The Fund shall at its own cost verify any such special or unusual expenses.

4.10. Value Added Tax (VAT) shall be charged on all invoices, which must include the Firm's VAT registration number, in terms of the Value Added Tax legislation applicable in the Republic of South Africa.

5. CONFIDENTIAL INFORMATION

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- 5.1. The parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any parties, including any of their employees, agents, consultants and sub-contractors directly, unless the parties are involved with the execution of this Agreement and then only on a need to know basis.
- 5.2. The parties shall prevent disclosure of the Confidential Information, except as may be required by law.
- 5.3. The parties agree that they shall protect each other's Confidential Information using the same standard of care that each party applies to safeguard its own Confidential Information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
- 5.4. Within thirty (30) days after the termination of this Agreement, for whatever reason, the receiving party of Confidential Information shall return same or at the discretion of the disclosing party of such Confidential Information, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.
- 5.5. The disclosing party of Confidential Information may at any time request the receiving party of such Confidential Information to return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement, and may in addition request the receiving party to furnish a written statement to the effect, that upon such return, the receiving party has not retained in its possession or under its control either directly or indirectly any such material.
- 5.6. As an alternative to the return of the material contemplated in 5.5 above, the receiving party shall at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed.
- 5.7. The receiving party shall comply with the request in terms of clauses 5.5 and 5.6, within fourteen (14) days of receipt of same.
- 5.8. It is recorded that the following information shall, for the purpose of this Agreement, not be considered to be Confidential information:
 - 5.8.1. Information known to either of the parties prior to the date that it was received by the other party; or
 - 5.8.2. Information known to the public or generally available to the public prior to the date that it was disclosed by either of the parties to the other; or

5.8.3. Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the parties to the other, through no act or failure to act on the part of the recipient of such Information; or

5.8.4. Information which either of the parties, in writing, authorises the other to disclose.

5.9. For the avoidance of any doubt, no provision of this Agreement should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the Confidential Information in the event that the receiving party receives the request for the whole or any part of the confidential information in terms of the provisions of the Promotion to Access to Information Act No. 2 of 2000.

5.10. Breach of these obligations shall, without prejudice to any other rights that the parties have in law and or in terms of this Agreement entitle the Fund to recover damages from the Firm.

6. INTELLECTUAL PROPERTY RIGHTS

6.1. Where the Firm's services and/or products supplied to the Fund in terms of this Agreement include Intellectual Property Rights which require to be protected, this is acknowledged by the Fund.

6.2. Where certain information pertaining to the Firm's Intellectual Property Rights is disclosed to the Fund and any of its employees and consultants, such information shall be treated as Confidential Information and afforded the protection in terms of clause 5. above.

7. WARRANTIES

7.1. Where the Firm's products and/or services supplied to the Fund in terms of this Agreement include or come with certain warranties or guarantees, these shall be incorporated into this Agreement as if specifically mentioned and the Fund shall receive the full benefits thereof.

7.2. All representations made by the Firm in this regard whether in writing or verbally shall be deemed to be incorporated into this Agreement as if specifically stated.

7.3. Where a dispute arises regarding the terms and conditions of such warranties or guarantees and the representations made by the Firm, then the standard practice of the Firm in giving such warranties in the normal course of its business shall be deemed to apply as the minimum warranty or guarantee benefits due to the Fund.

7.4. The particular terms and conditions of such warranties or guarantees may be recorded in the Schedule. In the event of a conflict between the provisions contained in the Schedule and the

provisions contained in the SCC pertaining to such warranties or guarantees, the provisions of the Schedule shall prevail.

8. CESSION AND ASSIGNMENT

The Firm shall not cede, assign, abandon or transfer any of its rights and/or obligations in terms of this Agreement (whether in part or in whole) or delegate any of its obligations in terms of this Agreement, without the prior written consent of the Fund.

9. NON-EXCLUSIVE AGREEMENT

The Fund is not obliged to make exclusive use of the Firm as a Firm. Nothing in this Agreement shall be interpreted as precluding the Fund from procuring similar or equivalent products or service from other Firms.

10. CONTRACTUAL RELATIONSHIP – COMMUNICATIONS WITH NEWS MEDIA AND CONSENSUAL EFFORTS AT RESOLUTION

10.1. The Firm may not make a statement or furnish any information or cause any information to be furnished to any news media, on or regarding any matter relating to the contractual relationship between the parties, except with the prior written permission of the Chief Executive Officer of the Fund.

10.2. The parties agree that they shall inform each other as soon as possible about any problem relating to the contractual relationship between them that either of them may experience, and further that they shall make all reasonable effort to resolve any such problem consensually.

11. RELATIONSHIP

This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purpose whatsoever and neither of the parties shall be entitled to act on behalf of, or to represent, the other unless duly authorised thereto in writing.

12. LIMITATION OF LIABILITY AND INDEMNIFICATION

12.1. The Fund shall not be liable for any damages arising out of any injuries sustained by the Firm's employees, consultants, agents, representatives or sub-contractors whilst such persons are on any premises or in any vehicle owned or used by the Fund or arising out of any damage or loss of any

property belonging to such persons on or in such premises or property, whether such injury or damage or loss is caused by the negligence by the Fund or any of its employees, consultants, agents, representatives or sub-contractors or by any other cause whatsoever.

12.2. The Firm indemnifies the Fund against any claims that may arise from the performance of their functions and actions in terms of this Agreement and that of their employees, consultants, agents, representatives or sub-contractors.

12.3. Each party hereby indemnifies the other party against all damages, losses or liabilities caused due to an event which is at its risk or due to that party's negligence, either contractually or delictually. The liability of each party to indemnify the other party shall be reduced proportionally if the event at the other party's risk or negligence contributed to the damage, loss or liability.

12.4. The Firm shall ensure that it and its employees, consultants, agents, representatives and sub-contractors concerned do not in any way infringe or allow any infringement of any other party's Intellectual Property Rights in the performance of this contract, and the Firm hereby indemnifies and holds the Fund harmless from and against any claims arising against the Fund as a result of any such infringements by the Firm of such Intellectual Property Rights.

13. INSURANCE

13.1. Without limiting the Firm's liabilities or responsibilities in terms of the Agreement, the Firm shall provide insurance to cover its liabilities and responsibilities in terms of the Agreement.

13.2. Notwithstanding anything elsewhere contained in the Agreement, the Firm shall provide at least:

13.2.1. Insurance in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. The Firm shall upon request from the Fund submit proof to the satisfaction of the Fund that the Firm is insured under the Compensation for Occupational Injuries and Diseases Act by providing the Fund with adequate proof stating that it has paid all assessments due;

13.2.2. Insurance covering legal liability in respect of claims for death or/and injury to persons or loss of/and damage to third party property;

13.2.3. Motor vehicle liability insurance in respect of all motor vehicles brought onto the premises of the Fund.

13.3. The Fund shall have the right to examine the policies maintained by the Firm at any time during the term of the Agreement.

14. SAFETY AND SECURITY

14.1. The Firm agrees to comply with the Fund's security and safety procedures. Without limiting the generality thereof the Firm must specifically comply with the Occupational Health and Safety Act.

14.2. The Fund shall be entitled to request the Firm to remove any employee, agent, consultant or subcontractor from its team if the Fund is of the opinion that such a person is a security or safety risk or that the conduct of such a person is detrimental to the relationship between the parties. Such a person must be removed by the Firm within the time period stipulated by the Fund. The Firm indemnifies the Fund against any claims that might arise due to such removal.

15. CANVASSING, GIFTS, INDUCEMENTS AND REWARDS

15.1. The Firm shall not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of the Fund's employees, consultants or sub-contractors.

15.2. Such an act shall constitute a material breach of the Agreement and the Fund shall be entitled to terminate the Agreement forthwith, without prejudice to any of its rights in terms of this Agreement or in law.

16. MEETINGS

16.1. If the nature of the goods or services supplied to the Fund dictate it, authorised representatives of the parties must attend periodic meetings at such intervals as such representatives may agree from time to time but in any event not less than once every two weeks. The meetings shall take place at the location and at such times as the representatives may agree.

16.2. Each party's representatives shall be entitled to place such items which they intend discussing at a meeting on the agenda for the meeting and shall give the representatives of the other party notice of all such items by no later than 16h00 two (2) days preceding the day on which the meeting is to be held.

16.3. The Firm shall not be entitled to payment from the Fund for time spent attending the aforementioned meetings.

17. COMPLIANCE WITH LAWS AND TAX OBLIGATIONS

17.1. The Firm warrants that it complies with all laws and regulations applicable to it, with its legal obligations pertaining to its business in general and to its obligations contained in this Agreement as well as with all applicable requirements of any government department (whether national, provincial or local), other public authorities and regulating bodies (whether statutory or voluntary); and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained.

17.2. The Firm warrants that any of its undertakings in terms of this Agreement do not constitute a contravention in terms of any statute, statutory regulation, other law or regulating body's rules that it is bound by; and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so.

17.3. The Firm furthermore specifically warrants that it complies with all of its obligations in terms of all tax laws and regulations applicable to it, including but not limited to all of its obligations pertaining to the payment of income tax, capital gains tax, employees tax (PAYE and SITE), value added tax, skills development levies, unemployment insurance fund levies, workmen's compensation fund levies, regional services council levies and all other taxes and levies payable both now or in the future and whether it is liable in the Republic of South Africa or other jurisdictions; and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so.

17.4. The Firm warrants that it is well acquainted with its obligations as contemplated in 17.1 – 17.3, above and undertakes to take all reasonable and necessary steps to remain so.

17.5. The Firm specifically warrants that it is well acquainted with its obligations as a taxpayer, provisional taxpayer, employer, employee, labour broker, personal service company, personal service trust and the like (as the case may be) and its income tax, employees taxes and levies (SITE, PAYE, UIF, SDL, others) and other tax implications and obligations in terms of the Income Tax Act as a whole and specifically the Fourth Schedule thereto, and their successor/s in title.

17.6. Any specific warranties given by the Firm in clause 17. above shall not in any way limit or affect the generality of the warranties and undertakings given in this clause. Such specific warranties and undertakings are merely included for the sake of additional clarity.

18. BREACH

18.1. In the event of either one of the parties (the "defaulting party") committing a breach of any of the provisions of this Agreement and failing to remedy such breach within a period of fourteen (14) days

after receipt of a written notice from the other party (the "aggrieved Party") calling upon the defaulting party to remedy the breach complained of, then the aggrieved party shall be entitled at their sole discretion and without prejudice to any of their other rights in law and/or in terms of this Agreement, either to: -

- 18.1.1. Claim specific performance in the terms of the Agreement;
- 18.1.2. Cancel the Agreement forthwith and without further notice and recover damages from the defaulting party.

18.2. In the event of the defaulting party being in breach of any provision of this Agreement and the aggrieved party having to take legal action / dispute resolution action against the defaulting party as a result thereof (see the arbitration clause 21. below), the defaulting party shall be liable to pay the aggrieved party's legal costs as well as all expenses which have reasonably been incurred in having to take such legal action, which expenses will include but not be limited to private investigators fees, tracing agents fees, forensic auditors fees, valuation fees and such similar professional fees in terms of any court order, arbitration award or settlement agreement (whether legal action was instituted in by way of arbitration, in a court of law or other forum, or was resolved prior to any such action having to be taken).

19. TERMINATION

REFER TO CLAUSE 17 AND CLAUSE 18 OF THE SCHEDULE.

20. DISPUTE RESOLUTION

20.1. All disputes concerning or arising out of this Agreement exists once a party notifies the others in writing of the nature of the dispute and requires the dispute to be resolved under this clause. The parties must refer any dispute to be resolved by:

- 20.1.1. Negotiation, in terms of clause 20.4; failing which
- 20.1.2. Mediation, in terms of clause 20.5; failing which
- 20.1.3. Arbitration, in terms of clause 21.

20.2. Clause 20.1 shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of the dispute resolution process contemplated in clause 20.1, for which purpose the parties Irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.

20.3. Clause 20.1 constitutes the irrevocable consent of the parties to the dispute resolution proceeding in terms hereof and neither of the parties shall be entitled to withdraw there from or to claim at any negotiation, mediation or arbitration proceedings that they are not bound by the dispute resolution provisions of this Agreement.

20.4. Within ten (10) days of notification, the parties must seek an amicable resolution to the dispute by referring the dispute to designated and authorized representatives of each of the parties to negotiate and resolve the dispute. If an amicable resolution to the dispute is found the authorized representatives of the parties must sign, within the ten (10) day period, an agreement confirming that the dispute has been resolved.

20.5. If negotiation in terms of clause 20.4 fails, the parties must, within fifteen (15) days of the negotiations failing, refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

20.6. The periods for negotiation (specified in clause 20.4) or for referral of the dispute for mediation (specified in clause 20.5), may be shortened or lengthened by written agreement between the parties.

21. ARBITRATION OF DISPUTES

21.1. In the event of the mediation contemplated in clause 20.5 failing the parties shall refer the dispute, within fifteen (15) days of the mediation failing, for resolution by expedited arbitration under the current rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

21.2. A single arbitrator shall be appointed by agreement between the parties within ten (10) days of the dispute being referred for arbitration, failing which the arbitrator shall be appointed by the Secretariat of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).

21.3. At all times, every reasonable effort shall be made to ensure that such arbitrator has the necessary technical skills to enable him to adjudicate the dispute in a satisfactory manner.

21.4. The arbitration shall be held at Sandton, South Africa, in English.

21.5. The South African law shall apply.

21.6. The parties shall be entitled to legal representation.

21.7. The award of the arbitrator shall be final and binding on the parties, who hereby agree to give effect to the award. Either party shall be entitled to have the arbitrator's award made an order of court at the cost of the party requesting same.

21.8. Should any dispute arise between the parties whether in regard to the interpretation of the provisions of this Agreement, a breach of any of its provisions, a variation or cancellation thereof, then and in such event, such a dispute shall be resolved by way of arbitration.

22. DOMICILIUM AND NOTICE ADDRESS

The parties each choose their *domicilium citandi et executandi* as the address where they will receive service of all legal process and notices at the respective physical addresses given in the Schedule or the Purchase Order (whichever is applicable).

23. NOTICE

23.1. All notices, correspondence and any other communication between the parties shall be made in writing and shall be sent by hand delivery, by registered post, by facsimile transmission or by e-mail with a 'read receipt'.

23.2. If notice is given by way of e-mail it must be with a 'read receipt', such notice shall be deemed to be received 1 (one) day after sending.

23.3. If notice is given by way of facsimile transmission, such notice shall be deemed to be received 1 (one) day after sending.

23.4. If notice is given by registered post, such notice shall be deemed to be received 7 (seven) days after sending.

23.5. If notice is given by hand delivery, such notice shall be deemed to be received after delivery.

23.6. Any legal process shall be served at the parties' chosen *domicilium citandi et executandi* addresses.

23.7. Any changes to the parties' notice addresses and *domicilium* addresses as furnished in the Schedule shall be given in writing and shall be deemed to apply upon the date of receipt of such notice.

24. GENERAL CONTRACT PROVISIONS

24.1. Entire Contract

This Agreement replaces all previous agreements with a similar content between the Firm and the Fund. There are no prior or parallel agreements with a similar subject matter to this Agreement that are binding on the parties.

24.1.1. This Agreement constitutes the sole and entire agreement between the parties.

24.1.2. All the representations, undertakings, warranties or guarantees ("the representations") made by the parties are contained in this Agreement. Any representations not contained in this Agreement shall not be binding on the parties and shall be without any force or effect.

24.1.2.1. The provisions of clause 7. above shall be excluded here from, where applicable.

24.1.2.2. Any provision at variance with the terms and conditions of this Agreement shall not be binding on the parties and shall be without any force or effect.

24.2. Amendments and Latitude

24.2.1. No amendment or variation of this Agreement (including this clause), whether by addition, deletion, waiver, novation or consensual cancellation shall be binding on the parties and shall be without any force or effect unless reduced to writing and signed by the parties to this Agreement.

24.2.2. No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation in this Agreement or any enforcement of any rights arising from this Agreement and no single or partial exercise of any right by any party, shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or estop such a party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision of this Agreement.

24.3. Severability

24.3.1. If any term, condition or performance, or any part thereof, in this Agreement (the "provision") is determined to be invalid, illegal, unlawful or unenforceable to any extent, then that provision shall be removed from the remaining provisions of this Agreement, or amended to make it valid, legal, lawful or enforceable (as the case may be), in such a manner as to leave the amended agreement substantially the same in essence, and the Agreement so amended shall remain in force and effect.



24.3.2. If any provision of this Agreement is determined to be invalid, illegal, unlawful or unenforceable to any extent as contemplated in 24.3.1 above, such a provision shall be deemed to be severable from the rest of the provisions of this Agreement, and shall not in any way affect the validity and enforceability of the rest of the provisions of this Agreement and the Agreement as a whole.

24.4. Warranty of Authority

The Fund and the Firm warrant to each other that their respective signatories and representatives have the power, authority and legal right to conclude and sign this Agreement and perform in terms of this Agreement, and that this Agreement has been duly authorised by all necessary actions of their respective governing organs and management, as the case may be, and constitutes valid and binding obligations on them in accordance with the provisions of this Agreement.

24.5. Costs

Each party shall pay their own legal and other consulting and advisory fees and related expenses incurred in regard to the negotiation, drafting, preparation and finalisation of this Agreement and the entire transaction.

SR *John*
John

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 1587612

In the matter between:

MABUNDA INCORPORATED	1 st Applicant
KEKANA HLATSWAYO INCORPORATED	2 nd Applicant
NOKO MAIMELA INCORPORATED	3 rd Applicant
MAPONYA INCORPORATED	4 th Applicant
T M CHAUKE INCORPORATED	5 th Applicant
NINGIZA HORNER INCORPORATED	6 th Applicant
TASNEEM MOOSA INCORPORATED	7 th Applicant
BORMAN DUMA ZITHA ATTORNEYS	8 th Applicant
MKHONTO NGWENYA INCORPORATED	9 th Applicant
MADUBA ATTORNEYS INCORPORATED	10 th Applicant
IGBAL MOHAMMED ATTORNEYS	11 th Applicant
TKN INCORPORATED	12 th Applicant
DEV MAHARAJ & ASSOCIATES	13 th Applicant
SARAS SAGATHEVAN ATTORNEYS	14 th Applicant



SHEREEN MEERSINGH & ASSOCIATES	15 th Applicant
SMITH TABATA ATTORNEYS	16 th Applicant
PULE INCORPORATED	17 th Applicant
BRIAN RAMABOA ATTORNEYS	18 th Applicant
GOVINDASAMY, NDZINGI & GOVENDER INC	19 th Applicant
HAMMAN-MOOSA INC	20 th Applicant
MATHOBO RAMBAU SIGOGO ATTORNEYS	21 st Applicant
MAYAT NURICK LANGA INC	22 nd Applicant
SC MDHLULI ATTORNEYS INCORPORATED	23 rd Applicant
HAJRA PATEL INC	24 th Applicant
Z & Z NGOGODO INC	25 th Applicant
TWALA ATTORNEYS	26 th Applicant
SANGHAM INCORPORATED	27 th Applicant
RACHOENE ATTORNEYS	28 th Applicant
ZUBEDAK K SEEDAT & CO INCORPORATED	29 th Applicant
DUDUZILE HLEBELA INC	30 th Applicant
MOCHE INCORPORATED	31 st Applicant
MARIVATE ATTORNEYS	32 nd Applicant
MGWESHE NGQELENI INC	33 rd Applicant
LEKHU PILSON ATTORNEYS INC	34 th Applicant

AK ESSACK, MORGAN NAIDOO & COMPANY	35th Applicant
MOLABA ATTORNEYS	36th Applicant
NAIDOO MAHARAJ INC	37th Applicant
HARKOO BRIJLAL & REDDY INC	38th Applicant
MATHIPANE TSEBANE ATTORNEYS	39th Applicant
MORARE THOBEJANE INCORPORATED ATTORNEYS	40th Applicant
NOMPUMELELO HADEBE INC	41st Applicant
MBOWENI AND PARTNERS INC	42nd Applicant

And

ROAD ACCIDENT FUND	Respondent
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CONFIRMATORY AFFIDAVIT

I,

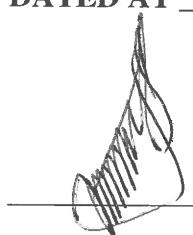
VICTOR SONGELWA

Do hereby make oath and say that:



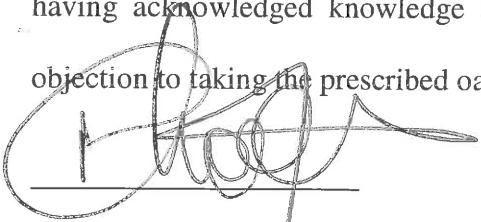
1. I am an adult male Chief Financial Officer employed by the Road Accident Fund with my place of employment at 420 Witch Hazel Road, Eco Glades, Centurion, Pretoria.
2. The content which falls within my personal knowledge and is both true and correct.
3. I have read the affidavit by **COLLINS PHUTJANE LETSOALO** and confirm the contents thereon as far as they relate to me.

DATED AT PRETORIA ON THIS DAY 17TH MARCH 2020



DEPONENT

Thus signed and sworn to at **PRETORIA** on this the 17th day of **MARCH 2020**. The deponent having acknowledged knowledge and understanding to the content of this affidavit, has no objection to taking the prescribed oath and considers the oath as binding on the conscience.



COMMISSIONER OF OATH

NAME:

ADDRESS:

CAPACITY:

AREA:

HM CHAANE

**HM CHAANE ATTORNEYS INC
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA**

16 Pieter Street, Building 07, Manhattan Office Park
Technopark, Highveld, Centurion, 0157

**HM CHAANE ATTORNEYS INC
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
HM CHAANE ATTORNEYS INC
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA**

HM CHAANE