



## **SERVICE LEVEL AGREEMENT**

**Entered into between:**

**ROAD ACCIDENT FUND (“*THE FUND*”)**

**and**

**..... (“*THE FIRM*”)**

## Contents

### SCHEDULE

1. THE PARTIES .....	7
2. INTERPRETATION AND DEFINITIONS .....	7
3. RECORDAL .....	11
4. GOVERNING PRINCIPLES .....	12
Good faith .....	12
Mutual trust .....	12
Ethical dealings .....	13
Protection of Public Funds .....	13
Accountability and reporting .....	13
5. PROCEDURAL REQUIREMENTS AND DOCUMENTS .....	14
6. WARRANTIES .....	15
7. DURATION .....	16
8. ACTING AGAINST THE FUND .....	16
9. FURNISHING OF INSTRUCTIONS .....	17
Actions arising out of the provisions of the Act .....	17
10. SUSPENSION OF NEW INSTRUCTIONS .....	18
Reasons for Suspension .....	18
Period of Suspension .....	18
Process of Suspension .....	19
Disputes arising from Suspension .....	19
Relationship between the Parties during the period of Suspension .....	20
11. TERMINATION OF THE SERVICE LEVEL AGREEMENT BY THE FUND .....	20
Reasons for Termination .....	21
Process of Termination .....	22

Disputes arising from Termination of the Service Level Agreement by the Fund .....	22
Relationship after Termination of the Service Level Agreement by the Fund .....	23
12. TERMINATION OF THE SERVICE LEVEL AGREEMENT BY THE FIRM .....	24
Process of Termination .....	24
Relationship after Termination of the Service Level Agreement by the Firm .....	24
13. HANDOVER.....	25
Procedure upon receipt of Notice of Termination.....	25
Procedure in respect of costs after Termination of the Service Level Agreement .....	27
Dispute resolution in respect of costs after Termination of the Service Level Agreement .....	28
14. INSURANCE IN RESPECT OF A FIRM APPOINTED TO THE HIGH COURT PANEL.....	29
15. DISPUTE RESOLUTION & ESCALATION.....	29
16. SCOPE OF WORK .....	31
17. PAYMENT.....	31
18. PENALTY FOR MALPERFORMANCE .....	33
19. REPORTING.....	34
20. CONTRACT MANAGEMENT .....	37
21. MEASUREMENT OF RESULTS .....	37
22. GIFTS, INDUCEMENTS AND REWARDS .....	38
23. CONFIDENTIAL INFORMATION .....	38
24. DOMICILIUM CITANDI ET EXECUTANDI .....	39
25. MISCELANEOUS.....	40
26. SPECIAL TERMS AND CONDITIONS.....	41
27. ORDER OF PRECEDENCE.....	42
28. DELETIONS, REVISIONS AND ADDITIONS TO ANNEXURE A .....	42
 ANNEXURE A: RAF SPECIAL CONDITIONS OF CONTRACT.....	 44
1. INTERPRETATION AND DEFINITIONS .....	44
2. RECORDAL .....	46

3. NON-PERFORMANCE OF THE FIRM.....	47
4. PAYMENT.....	47
5. CONFIDENTIAL INFORMATION .....	48
6. INTELLECTUAL PROPERTY RIGHTS .....	50
7. WARRANTIES .....	50
8. CESSION AND ASSIGNMENT .....	51
9. NON-EXCLUSIVE AGREEMENT .....	51
10. CONTRACTUAL RELATIONSHIP – COMMUNICATIONS WITH NEWS MEDIA AND CONSENSUAL EFFORTS AT RESOLUTION .....	51
11. RELATIONSHIP.....	52
12. LIMITATION OF LIABILITY AND INDEMNIFICATION .....	52
13. INSURANCE .....	53
14. SAFETY AND SECURITY.....	53
15. CANVASSING, GIFTS, INDUCEMENTS AND REWARDS .....	54
16. MEETINGS .....	54
17. COMPLIANCE WITH LAWS AND TAX OBLIGATIONS .....	54
18. BREACH.....	56
19. TERMINATION .....	56
20. DISPUTE RESOLUTION .....	57
21. ARBITRATION OF DISPUTES .....	58
22. DOMICILIUM AND NOTICE ADDRESS.....	59
23. NOTICE .....	59
24. GENERAL CONTRACT PROVISIONS .....	60
 ANNEXURE B: SCOPE OF WORK AND PROCEDURE.....	 63
1. ACKNOWLEDGEMENT OF INSTRUCTIONS FURNISHED IN TERMS OF THE SERVICE LEVEL AGREEMENT .....	63
2. CORRESPONDENCE.....	63

3. PROVISION OF DOCUMENTS .....	63
4. APPLICATIONS, PLEADINGS AND NOTICES.....	65
5. EXCEPTIONS AND SPECIAL PLEAS .....	65
6. MERITS .....	65
7. QUANTUM.....	66
8. INITIAL ASSESSMENT REPORT .....	66
9. FOLLOW UP REPORTS.....	67
10. FINAL ASSESSMENT REPORT .....	68
11. REQUESTS FOR INSTRUCTIONS .....	69
12. OFFERS OF SETTLEMENT .....	70
13. PLAINTIFFS' BILLS OF COST .....	70
14. NOTIFICATION OF TRIAL DATES .....	71
15. NOTICES OF INTENTION TO AMEND CLAIM.....	73
16. INSTRUCTIONS TO ASSESSORS.....	74
17. INSTRUCTIONS TO EXPERT WITNESSES .....	74
18. BRIEFING OF COUNSEL .....	75
19. FEES AND DISBURSEMENTS.....	76
Disbursements incurred to expert witnesses, counsel and assessors .....	76
Other Disbursement .....	78
Legal Costs – Magistrate Court Claims .....	78
Legal Costs – High Court Claims .....	80
ANNEXURE C: FEE STRUCTURE .....	83
1. GENERAL FEE STRUCTURE .....	83
2. CALCULATION OF FEES ALLOWED.....	83
<u>ANNEXURE D: ADVOCATES' FEES.....</u>	<u>85</u>
1. GENERAL GUIDELINES FOR ADVOCATES' FEES .....	85

2. RAF TARIFF OF FEES ALLOWED FOR ADVOCATES.....	85
--------------------------------------------------	----

<u>ANNEXURE E: SCHEDULE OF PENALTIES.....</u>	87
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ANNEXURE F: NOTIFICATION OF COURT ORDERS AND ARBITRATION AWARDS.....	89
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## **SERVICE LEVEL AGREEMENT**

### **Schedule**

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

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

#### **1. THE PARTIES**

1.1. The **Parties** hereto are:

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, with its principal place of business at EcoGlades 2, 420 Witch hazel Avenue, Centurion, Pretoria, herein represented by Eugene Watson in his capacity as Acting Chief Executive Officer, duly authorised in terms of the **Road Accident Fund** Delegation of Authority and Approval Framework dated 21 May 2011.)

and

..... ("the **Firm**")

(represented by ....., duly authorised thereto, and in his capacity as .....) )

#### **2. INTERPRETATION AND DEFINITIONS**

2.1. The headings to the clauses are for the purpose of convenience and reference only and shall not be used in the interpretation of or to modify the terms of this **Service Level Agreement**, nor any clause thereof.

- 2.2. Words importing:
- 2.2.1. the singular include the plural and visa versa;
  - 2.2.2. natural persons include legal persons and visa versa; and
  - 2.2.3. any one gender includes the other gender.
- 2.3. This **Service Level Agreement** shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 2.4. The rule of construction that the **Service Level Agreement** shall be interpreted against the party responsible for the drafting or preparation of the **Service Level Agreement** shall not apply to this **Service Level Agreement**.
- 2.5. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.6. Terms other than those defined within the **Service Level Agreement** will be given their plain English meaning and those terms, acronyms, abbreviations and phrases known in the relevant profession to which this **Service Level Agreement** applies shall be interpreted in accordance with their generally known meanings in such profession.
- 2.7. 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.
- 2.8. The **Parties** shall initial the annexures for the purposes of identification and the same shall form part of this **Service Level Agreement** as if specifically included herein.
- 2.9. The expiration or **Termination** of this **Service Level Agreement** shall not affect those provisions of this **Service Level 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.



2.10. The following words bear the meaning set out below and cognate expressions bear a like meaning:

- 2.10.1. **Act** means the **Road Accident Fund** Act, 1996 (Act No. 56 of 1996), as amended by the **Road Accident Fund** Amendment Act, 2005 (Act No. 19 of 2005) and includes amendments to the **Act** and any successor/s in title to such statute.
- 2.10.2. **CEO** means the employee of the **Fund** holding the position of Chief Executive Officer of the **Fund** or his duly authorised delegate, or his successor in title.
- 2.10.3. **Contracts Manager** means the employee of the **Fund** holding the position of **Contracts Manager** of the **Fund**, or his successor in title.
- 2.10.4. **Corporate Legal Services Department** means the department at the **Fund** designated to provide the **Fund** with legal advice on aspects relating to the business of the **Fund**.
- 2.10.5. **Day / s** shall mean calendar day / s, unless specifically stated to the contrary.
- 2.10.6. **Effective Date** means 15 August 2012, or such other date as agreed between the **Parties**, in writing, irrespective of the **Date of Signature** hereof.
- 2.10.7. **Firm** means....., located at .....  
....., Johannesburg.
- 2.10.8. **Fund** means the **Road Accident Fund**, a public entity established in terms of section 2 (1) of the **Road Accident Fund** Act, 1996 (Act No. 56 of 1996), as well as its successor in title or any other juristic person to whom the **Fund's** rights and obligations may be assigned and devolve upon.
- 2.10.9. **Head Office** means EcoGlades 2, 420 Witch hazel Avenue, Centurion, Pretoria, or any other address designated by the **Fund** from time to time.
- 2.10.10. **High Value Department** means, for the time being, the department at the **Fund** designated to manage certain claims in which the estimated liability (excluding the value of future hospital, medical and related expenses and legal costs) is in excess of R1 million, or such other amount as notified by the **Fund** from time to time, or such other department determined by the **Fund** from time to time.
- 2.10.11. **Lead Attorney** means the attorney at the **Firm** primarily responsible for the provision of **Services** to the **Fund** and shall be a person who has been admitted to a High Court of South Africa for at least 5 (five) years prior to the **Signature** of this **Service Level Agreement**.
- 2.10.12. **Medical Services Department** means, for the time being, the department at the **Fund** designated to manage undertakings issued in terms of Sections 17(4)(a) and (b) of the **Act**, or such other department determined by the **Fund** from time to time.

- 2.10.13. **COO** means the employee of the **Fund** holding the position of Chief Operations Officer of the **Fund**, or his duly authorised delegate, or his successor in title.
- 2.10.14. **Panel of Attorneys** means the firms of attorneys appointed regionally to provide the **Services** to the **Fund**. To avoid doubt, the **Firm** acknowledges that the **Fund** may have more than one **Panel of Attorneys** at one time, and that this appointment is specific to the **Panel of Attorneys** as specified in clause 3 below.
- 2.10.15. **Panel Attorney** means a firm duly appointed to the **Panel of Attorneys** of the **Fund**.
- 2.10.16. **Professional Person** means a person employed by the Panel Attorney, and holding the position of Director, Partner, or Professional Assistant, or other like position, and who is admitted to practice as an attorney.
- 2.10.17. **Regional Manager** means an employee of the **Fund** holding the position of **Regional Manager** at the **Fund**, or his successor in title.
- 2.10.18. **Regional Office** means the Cape Town, Durban, Johannesburg, Pretoria, Centurion, East London offices of the **Fund**, or such other offices as determined by the **Fund** from time to time.
- 2.10.19. **Service Level Agreement** means the **Service Level Agreement** set out in this document, together with all annexures hereto, as well as any directives issued by the **Fund** from time to time.
- 2.10.20. **Services** means primarily but not exclusively:
- 2.10.20.1. The defending and institution of actions arising out of the provisions of the Act;
  - 2.10.20.2. The provision of advice on costs and/or opposing taxations of bills presented as a result of claims instituted in terms of the **Act**;
  - 2.10.20.3. Instituting and defending general litigation and applications on behalf of the **Fund**;
  - 2.10.20.4. Opposing or instituting actions in terms of Labour Law, and representing the **Fund** in related forums; and
  - 2.10.20.5. The provision of general legal advice and opinions when requested to do so relating to areas of the Law other than compulsory motor vehicle insurance, and opposing or instituting legal proceedings.
- 2.10.21. **Signed / Signature** means a hand-written **Signature**, excluding any **Signature** appended by electronic communication.
- 2.10.22. **Supplier Claims Department** means the department at the **Road Accident Fund** designated to manage claims lodged in terms of Section 17(5) of the **Act**.

2.10.23. **Suspension** means the temporary withholding of new instructions to the **Panel Attorney** as detailed in clause 10 below.

2.10.24. **Termination** shall have the meaning as described in clause 11 of this **Service Level Agreement**.

### 3. RECORDAL

3.1. The **Fund** hereby appoints the **Firm** to its (High Value / High Court / Magistrates' Court) **Panel of Attorneys** to perform the **Services** subject to the terms and conditions of this **Service Level Agreement** and in accordance with all annexures and directives that may be issued by the **Fund** from time to time.

3.2. The **Firm** hereby accepts the appointment and undertakes to perform all **Services** subject to the terms and conditions of this **Service Level Agreement** and in accordance with all annexures and directives that may be issued by the **Fund** from time to time.

3.3. In the event of the **Firm** having more than one office, only the office located at the address reflected in this **Service Level Agreement** is appointed to the **Fund's Panel of Attorneys**.

3.4. This **Service Level Agreement** serves to record the **Service Level Agreement** between the **Parties** and to regulate all aspects of the **Services** to be supplied by the **Firm** and the general business relationship between the **Parties**.

3.5. The Terms of Reference or Specifications of the **Services** to be supplied to the **Fund** are those contained in the **Fund's** Request for Tender Ref: ....., and any additions or amendments thereto furnished to the **Firm** in the Tender process. It is recorded that the **Firm** accepted these provisions and on the basis thereof submitted its Tender and any supplementary information thereto.

3.6. Such Terms of Reference or Specifications are incorporated into the provisions of this **Service Level Agreement** as if specifically mentioned and are binding and enforceable on the **Parties**.

3.7. In the event of any of the provisions of the **Fund's** Request for Tender and any additions or amendments thereto furnished to the **Firm** in the Tender process ("the Tender Documents"), including the Terms of Reference or Specifications mentioned in clause 3.5 above, being in conflict with the provisions of this **Service Level Agreement**, the provisions of this **Service Level Agreement** (including the Annexures to this **Service Level Agreement**) shall prevail.

3.8. It is recorded that the further Annexures to this **Service Level Agreement** are as follows:

3.8.1. **ANNEXURE A** : RAF Special Conditions of Contract ("SCC")

3.8.2. **ANNEXURE B** : Scope of Work

3.8.3. **ANNEXURE C** : Fees Schedule

3.8.4. **ANNEXURE D** : Advocate's Fees

3.8.5. **ANNEXURE E** : Schedule of Penalties

3.8.6. **ANNEXURE F** : Notification of Court Orders

#### **4. GOVERNING PRINCIPLES**

The relationship between the **Parties** shall at all times be governed by, and in the spirit of the following guiding principles:

##### **4.1. Good faith**

The **Parties** shall at all times deal with each other in a manner which is fair and honest, and not act in any way to the detriment of the other party, where such detriment could reasonably have been avoided by the exercise of reasonable care.

##### **4.2. Mutual trust**

A party shall not conduct itself in its dealings with the other and third **Parties** in a manner that will destroy or seriously damage the relationship of trust and confidence between the **Parties** and thereby detrimentally prejudice the interests of the other party.

The **Firm** shall through its best endeavours and in all its dealings, protect the reputation, image and interests of the **Fund**.

#### 4.3. Ethical dealings

The **Firm** shall at all times act in accordance with the professional and ethical rules of the legal professions and shall adhere to ethical standards required of it by virtue of the professional nature of its business.

The **Parties** shall:

- a) timeously recognise and deal with potential conflicts of interest;
- b) co-operate fully in the elimination of fraud and corruption within their spheres of control; and
- c) protect the financial integrity of the **Fund** by being scrupulous with their use of the financial resources of the **Fund**, as these finances are derived from public sources, and are intended for the social betterment of the people of the Republic of South Africa.

#### 4.4. Protection of Public Funds

The **Firm** acknowledges that the cost of delivering compensation is unacceptably high, and therefore the Firm as a whole, and in particular all the staff of the Firm who will deal with the Fund, shall ensure that:

- a) the **Fund** receives service and / or advice which is suitable and appropriate to the circumstances, and which meets the requirements of the **Fund**;
- b) the **Fund** receives service and / or advice which is of the highest quality available in the market;
- c) it maintains the necessary levels of skill within the **Firm** to continuously provide the **Fund** with the best quality of service;
- d) it persistently pursues the successful discharge of **the Services** in order to ensure a positive outcome for the **Fund**;
- e) it will not overcharge the **Fund** for the **Services** provided; and
- f) matters are finalised as speedily and cost effectively as possible.

#### 4.5. Accountability and Reporting

The **Parties** shall ensure that effective measures exist to report regularly to each other on issues of mutual interest.

The **Firm** further acknowledges that it will be answerable for its actions and the actions of its employees. For this purpose, the **Firm** shall at all times report to the **Fund** in an open and transparent fashion.

## **5. PROCEDURAL REQUIREMENTS AND DOCUMENTS**

5.1. Within 10 (ten) **Days** of **Date of Signature** of this **Service Level Agreement**, the **Firm** undertakes to deliver in writing to the **Contracts Manager** either by hand, or by e-mail, the following:

5.1.1. In respect of each **Professional Person** who will be rendering **Services** to the **Fund** on behalf of the **Firm**:

- 5.1.1.1. Full names;
- 5.1.1.2. Professional qualifications;
- 5.1.1.3. Date of admission as an Attorney of the High Court;
- 5.1.1.4. Cell phone number; and
- 5.1.1.5. E-mail address.

5.1.2. In respect of each candidate attorney who will be rendering **Services** to the **Fund** on behalf of the **Firm**:

- 5.1.2.1. Full names; and
- 5.1.2.2. Professional qualifications.

5.1.3. In respect of the **Lead Attorney** and each director / partner of the **Firm**:

- 5.1.3.1. Full names;
- 5.1.3.2. Professional qualifications;
- 5.1.3.3. Date of admission as an Attorney of the High Court;
- 5.1.3.4. Position in the **Firm**;
- 5.1.3.5. Cell phone number; and
- 5.1.3.6. E-mail address.

5.2. The **Firm** hereby consents to and authorises the **Fund** to conduct credit checks on the **Firm** and on each **Professional Person** and candidate attorney of the **Firm** who will be rendering **Services** to the **Fund**.

- 5.2.1. The **Firm** agrees to obtain the requisite consents from each **Professional Person** and candidate attorneys of the **Firm** who will be responsible for rendering **Services** to the **Fund**, so as to enable the **Fund** to conduct credit checks on such persons.
- 5.3. The **Firm** hereby consents to and authorises the **Fund** to conduct criminal checks on each **Professional Person** and candidate attorney of the **Firm** who will be responsible for rendering **Services** to the **Fund**, and further agrees to obtain the necessary consents from such persons.
- 5.4. The **Fund** has the right, based on information obtained from the credit and criminal checks, to instruct the **Firm** that a **Professional Person** or candidate attorney may not render **Services** to the **Fund**.
- 5.5. In the event of the **Lead Attorney** or any other **Professional Person** in the employ of the **Firm** leaving the **Firm**, the **Firm** shall notify the **Contracts Manager** in writing either by hand, or by e-mail, not less than 30 (thirty) **Days** prior to such person leaving the **Firm**.
- 5.6. Within 30 (thirty) **Days** of **Date of Signature** of this **Service Level Agreement**, and thereafter on or before 31 March of each succeeding year, the **Firm** undertakes to deliver in writing to the **Contracts Manager** either by hand or by e-mail, the following:
- 5.6.1. Certificate of good standing issued by the relevant Law Society;
  - 5.6.2. A valid BEE Rating Certificate issued by a rating company listed with the South African National Accreditation System, or a valid Exempted Micro Enterprise Certificate;
  - 5.6.3. Valid Fidelity **Fund** Certificate issued by the relevant Law Society in respect of each **Professional Person** of the **Firm**.
- 5.7. Where any of the documents referred to above are delivered via e-mail, the **Fund** reserves the right to call for the original of such document.

## **6. WARRANTIES**

- 6.1. The **Firm** hereby warrants that:

- 6.1.1. Unless authorised by the **Fund**, the **Services** required by the **Fund** shall at all times be performed by a **Professional Person** in the direct employ of the **Firm** and/or by such other persons who are in the direct employment of the **Firm** and under direct supervision and control of a **Professional Person**;
- 6.1.2. No litigation, arbitration or administrative proceedings are pending or threatened against the **Firm** which would have an adverse effect upon its financial condition or business, nor its ability to perform its obligations under this **Service Level Agreement**;
- 6.1.3. The **Lead Attorney** and other **Professional Persons** who will be rendering **Services** to the **Fund** are in the full time employ of the **Firm**; and
- 6.1.4. Each **Professional Person** rendering **Services** to the **Fund** shall for the duration of this **Service Level Agreement** have valid Fidelity Fund Certificates issued by the relevant Law Society.

## **7. DURATION**

- 7.1. This Service Level Agreement shall take effect on the **Effective Date**.
- 7.2. Subject to clauses 12 below, this **Service Level Agreement** shall endure for a period of 36 (thirty six) months from the **Effective Date**.
- 7.3. The **Fund** reserves the right in its sole discretion to extend the term of this **Service Level Agreement** for such further period as it deems fit and necessary in the circumstances.

## **8. ACTING AGAINST THE FUND**

- 8.1. The **Firm** agrees that from the **Effective Date**, it shall not act in any way which may give rise to a conflict of interests in relation to the **Fund** or the **Services** to be rendered in terms of this **Service Level Agreement**.
- 8.2. From the **Effective Date** of this **Service Level Agreement** the **Firm** may not accept any instruction to submit claims against the **Fund**, prosecute actions against the **Fund**, defend actions instituted by the **Fund** or in any way act against the **Fund**.



- 8.3. In addition to paragraph 8.1 above, in instances where the **Firm** accepted an instruction to act against the **Fund** prior to the **Effective Date** of this **Service Level Agreement**, the **Firm** shall terminate such mandate/s within a period of 30 (thirty) **Days** from the **Effective Date** of this **Service Level Agreement**.

## **9. FURNISHING OF INSTRUCTIONS**

### **9.1. Actions arising out of the provisions of the Act**

- 9.1.1. The **Fund** will from time to time appoint the **Firm** to:
- 9.1.1.1. defend or institute actions arising out of the provisions of the **Act**; and
  - 9.1.1.2. lodge or oppose appeals in actions arising out of the provisions of the **Act**; and
  - 9.1.1.3. furnish advice on costs and/or tax or oppose taxations of bills presented as a result of claims instituted in terms of the **Act**.
- 9.1.2. Such instructions will be furnished by the Regional Offices, the High Value Department, the Supplier Claims Department, the Medical Services Department and the Corporate Legal Services Department and any other department that the Fund may from time to time create.
- 9.1.3. The **Fund** reserves the right to determine the manner in which instructions will be allocated between **Panel Attorneys**. In the furnishing instructions, the **Fund** will consider inter alia:
- 9.1.3.1. The need to keep claims arising from the same motor vehicle accident with the same **Panel Attorney**;
  - 9.1.3.2. The fact that a **Panel Attorney** is under **Suspension** in terms of clause 10 below;
  - 9.1.3.3. The fact that a claim involves a point of law that has previously been considered by a **Panel Attorney**;
  - 9.1.3.4. Where, in the view of the **Fund**, the value and/or complexity of the claim warrant a particular **Panel Attorney** being instructed;
  - 9.1.3.5. The performance of a particular **Panel Attorney**; and
  - 9.1.3.6. Any other consideration which the **Fund** may deem to be relevant.

- 9.1.4. Instructions will usually be allocated between **Panel Attorneys** located within the area of the Court having jurisdiction. The **Fund** may however allocate instructions to a **Panel Attorney** outside of the area of the Court having jurisdiction, if the **Fund** determines that good reasons exist to do so.
- 9.1.5. In instances where the **Fund** does not have **Panel Attorneys** within the area of the Court having jurisdiction, instructions will be allocated to **Panel Attorneys** located within the area of the **Regional Office** or Department managing the claim.

## 10. SUSPENSION OF NEW INSTRUCTIONS

10.1. The **Fund** may at any time on good cause suspend furnishing new instructions to the **Firm**.

### 10.2. Reasons for Suspension

- 10.2.1. In deciding to suspend instructions, the **Fund** will have regard to, amongst others, the following:
- 10.2.1.1. A breach or breaches of the terms of this **Service Level Agreement**;
  - 10.2.1.2. The capacity of the **Firm**;
  - 10.2.1.3. The level of service delivery by the **Firm** or any of the **Professional Persons** in its employ;
  - 10.2.1.4. The performance of the **Firm** in terms of clause 21 below;
  - 10.2.1.5. Changes in ownership and/or management of the **Firm** that may affect the **Firm's** BBBEE rating adversely;
  - 10.2.1.6. A violation by the **Firm** of the Governing Principles contained in clause 4 above; and
  - 10.2.1.7. Any other reason which in the **Fund's** opinion will warrant the **Suspension** of new instructions to the **Firm**.

### 10.3. Period of Suspension

- 10.3.1. The initial period of **Suspension** will be determined by the **Fund** but shall be no less than 3 (three) months.

- 10.3.2. 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 its best interests.
- 10.3.3. At any time during or after the period of **Suspension**, the **Fund** may terminate the **Service Level Agreement** in accordance with clause 11 below.

#### 10.4. Process of Suspension

- 10.4.1. Notice of **Suspension and the duration of the initial period for which instructions** are to be suspended, will be delivered to the **Lead Attorney** in writing by the **Fund's Contracts Manager** and shall contain the reason/s for instructions being suspended.
- 10.4.2. The **Suspension** will become effective on the same **Day** that the notice referred to in clause 10.4.1 above is delivered to the **Firm**.
- 10.4.3. In the event of the initial period of **Suspension** being extended by the **Fund**, this will be conveyed to the **Lead Attorney** by the **Fund's Contracts 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.

#### 10.5. Disputes arising from Suspension

- 10.5.1. Within 5 (five) **Days** of receipt of either of the notices referred to in clause 10.4 above, the **Lead Attorney** may deliver to the **Fund's Contracts Manager** a written response to such notice, addressing the reason/s for the **Suspension** or the extension of the **Suspension** period.
- 10.5.2. The **COO** will consider and review all relevant factors and within 10 (ten) **Days** of receipt of the response contemplated in clause 10.5.1 above, will in writing notify the **Lead Attorney** whether:
- 10.5.2.1. the initial or extended **Suspension** period will remain in effect; or
  - 10.5.2.2. the initial or extended **Suspension** period will be varied, in which event the **Firm** will be advised of the new period of **Suspension**.

- 10.5.3. In the event of the **Firm** remaining dissatisfied with the decision of the **COO**, the **Lead Attorney** may, within 3 (three) **Days** of receipt of the notification referred to in clause 10.5.2 above, in writing request a meeting with the **CEO** and **COO** to discuss the **Suspension**.
- 10.5.4. Such meeting will be held within 10 (ten) **Days** from receipt of the request referred to in clause 10.5.3 above, or such longer period as agreed to between the **Parties**.
- 10.5.5. Within 3 (three) **Days** of the meeting being held, the **CEO** will notify the **Lead Attorney** of the decision regarding the **Suspension**.
- 10.5.6. Instructions to the **Firm** will remain suspended during the process contemplated in this clause 10.
- 10.5.7. Clause 15 of this **Service Level Agreement** shall not apply to the **Suspension** and the decision of the **CEO** will be final.

#### 10.6. Relationship between the Parties during the period of Suspension

- 10.6.1. All the terms of this **Service Level Agreement** will remain of full force and effect for the duration of the period of **Suspension**.
- 10.6.2. The **Firm** shall ensure that all instructions received by the **Firm** before the **Suspension** is dealt with in a professional and ethical manner.
- 10.6.3. The **Firm** shall also ensure that the service standards expected of the **Firm** before the **Suspension** are maintained during the period of **Suspension**.

### 11. TERMINATION OF THE SERVICE LEVEL AGREEMENT BY THE FUND

- 11.1. The **Fund** may at any time terminate this **Service Level Agreement** by giving 30 (thirty) **Days** written notice to the **Firm**.

## 11.2. Reasons for Termination

- 11.2.1. In deciding to terminate this **Service Level Agreement**, the **Fund** will have regard to, amongst others, the following:
- 11.2.1.1. a breach or breaches of the terms of this **Service Level Agreement**;
  - 11.2.1.2. the **Firm** failing to uphold the attorney/client relationship;
  - 11.2.1.3. the **Firm** acting against the **Fund**;
  - 11.2.1.4. operational requirements of the **Fund**;
  - 11.2.1.5. an attorney or candidate attorney employed by the **Firm** being found guilty of a fraudulent act;
  - 11.2.1.6. an attorney delivering **Services** to the **Fund** being suspended by a Law Society for any reason;
  - 11.2.1.7. the **Firm** failing to provide the **Fund** with Fidelity Fund certificates as required in terms of clause 5.6 above;
  - 11.2.1.8. the **Firm** failing to provide the **Fund** with a BBBEE rating as required in terms of clause 5.6 above;
  - 11.2.1.9. 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**;
  - 11.2.1.10. a de bonis propriis cost order being granted against the **Firm** in a matter in which the **Firm** has been instructed by the **Fund**;
  - 11.2.1.11. 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;
  - 11.2.1.12. a Court making a finding to the effect that the **Firm**, or any of the Professional Persons 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**;
  - 11.2.1.13. a judgement 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 judgement being that the **Firm** failed to timeously enter an Appearance to Defend;
  - 11.2.1.14. a judgement by default being granted against the **Fund** due to the **Firm's** failure to deliver a Plea;

- 11.2.1.15. 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, as required in terms of Annexure B;
- 11.2.1.16. 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 allocator of the Taxing Master within 3 (three) **Days** of the allocator being **signed** by the Taxing Master, as required in terms of Annexure B;
- 11.2.1.17. the **Firm** being instructed to oppose a taxation of a Bill of Costs and failing to do so;
- 11.2.1.18. the capacity of the **Firm**;
- 11.2.1.19. the level of service delivery by the **Firm**;
- 11.2.1.20. the performance of the **Firm** in terms of clause 21 below;
- 11.2.1.21. the **Firm** receiving penalties as outlined in **Annexure E** in 2 consecutive months;
- 11.2.1.22. changes in ownership and/or management of the **Firm** that may affect the **Firm's** BBBEE rating;
- 11.2.1.23. any other reason which in the **Fund's** opinion will warrant the **Termination** of the **Service Level Agreement**; and
- 11.2.1.24. a violation by the **Firm** of the Governing Principles contained in clause 4 above, particularly, but not limited to the principle of Trust.

### 11.3. Process of Termination

- 11.3.1. Notice of **Termination** of the **Service Level Agreement**, will be delivered to the **Lead Attorney** in writing by the **Fund's Contracts Manager** and shall contain the reason/s for the **Termination** of the **Service Level Agreement**.
- 11.3.2. The **Termination** of the **Service Level Agreement** will become effective on the 31<sup>st</sup> **Day** following the receipt by the **Firm** of the notice referred to in this clause.

### 11.4. Disputes arising from Termination of the Service Level Agreement by the Fund

- 11.4.1. Within 5 (five) **Days** of receipt of the notice referred to in clause 11.3 above, the **Lead Attorney** may deliver to the **Fund's** designated **Contracts Manager** a written

response to such notice, addressing the reason/s for the **Termination** of the **Service Level Agreement**.

11.4.2. The representation made by the **Firm** will be considered by the **CEO** and within 10 (ten) **Days** of receipt of the response referred to in clause 11.4.1 above, the **CEO** will in writing notify the **Lead Attorney** if the **Fund** confirms the **Termination** of the **Service Level Agreement**.

11.4.3. In the event of the **Firm** remaining dissatisfied with the decision of the **CEO**, the **Lead Attorney** may, within 3 (three) **Days** of receipt of the letter referred to in clause 11.4.2 above, in writing request a meeting with the **CEO** to discuss the **Termination** of the **Service Level Agreement**.

11.4.4. Such meeting will be held within 10 (ten) **Days** from receipt of the request referred to clause 11.4.3 above, or such longer period as agreed to between the **Parties**.

11.4.5. Within 3 (three) **Days** of the meeting being held, the **CEO** will notify the **Lead Attorney** of the **Fund's** decision regarding the **Termination** of the **Service Level Agreement**.

11.4.6. In the event of the **Firm** remaining dissatisfied with the decision of the **CEO**, the **Firm** may refer the dispute for arbitration in terms of clause 15 below.

#### 11.5. Relationship between the Parties after Termination of the Service Level Agreement by the Fund

11.5.1. The **Firm**, upon receipt of a notice contemplated under clause 11.1 above, shall be deemed to be under **Suspension** as contemplated in clause 10 above for the duration of the 30 (thirty) **Days** notice period contemplated in clause 11.1 above.

11.5.2. During this 30 (thirty) **Days** notice period, all the terms of clause 10.6 above shall apply to the **Firm**.

- 11.5.3. 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 for handover to the **Fund** as contemplated in clause 13 below.
- 11.5.4. The **Firm** shall also ensure that the service standards expected of the **Firm** before the **Termination** of the **Service Level Agreement** is maintained during the period of deemed **Suspension**.
- 11.5.5. The governing principles of good faith, mutual trust and ethical dealings shall endure after **Termination** of the **Service Level Agreement**.
- 11.5.6. Once the Service Level 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.

## **12. TERMINATION OF THE SERVICE LEVEL AGREEMENT BY THE FIRM**

- 12.1. The **Firm** may terminate the **Service Level Agreement** by giving the **Fund** 60 (sixty) **Days** notice in writing.

### **12.2. Process of Termination**

- 12.2.1. Notice of **Termination** of the **Service Level Agreement** by the **Firm** will be delivered in writing to the **Fund's** designated **Contracts Manager** and shall contain the reason/s for the **Termination** of the **Service Level Agreement**.
- 12.2.2. The **Termination** of the **Service Level Agreement** will become effective on the 61<sup>st</sup> **Day** following the receipt by the **Fund** of the notice referred to in clause 12.2.1.

### **12.3. Relationship between the Parties after Termination of the Service Level Agreement by the Firm**

- 12.3.1. The **Firm**, upon receipt by the **Fund** of a notice contemplated under clause 12.1 above, shall be deemed to be under **Suspension** as contemplated in clause 10



above for the duration of the 60 (sixty) **Days** notice period contemplated in clause 12.1 above.

12.3.2. During this 60 (sixty) **Days** notice period, all the terms of clause 10.6 above shall apply to the **Firm**.

12.3.3. During the 60 (sixty) **Days** notice period, the **Firm** shall prepare all unfinalised files for handover to the **Fund** as contemplated in clause 13 below.

12.3.4. The **Firm** shall also ensure that the service standards expected of the **Firm** before the **Termination** of the **Service Level Agreement** is maintained during the period of deemed **Suspension**.

### 13. HANDOVER

13.1. Upon **Termination** of the **Service Level Agreement** by either the **Fund** or the **Firm**, the **Firm** will be obliged to hand over all unfinalised files to the **Fund**.

13.2. The **Firm** waives any and all rights of retention over documents in respect of any work done by it on behalf of the **Fund**.

#### 13.3. Procedure upon receipt of Notice of Termination

13.3.1. Immediately on notice of **Termination** being given by either of the **Parties**, the **Firm** shall commence preparations for handover of the unfinalised files.

13.3.2. The **Firm** shall within 5 (five) **Days** of notice of **Termination** provide the **Fund** with a list of matters on which trial dates have been allocated. This list shall be in Microsoft Excel format and shall contain the following information:

- 13.3.2.1. Claim number;
- 13.3.2.2. Link number;
- 13.3.2.3. Claimant's initials and surname;
- 13.3.2.4. Claimant's attorney;
- 13.3.2.5. Claimant's attorney's reference number;

- 13.3.2.6. Court;
- 13.3.2.7. Case number;
- 13.3.2.8. Trial date;
- 13.3.2.9. Amount claimed;
- 13.3.2.10. Experts instructed;
- 13.3.2.11. Previous trial dates; and
- 13.3.2.12. Interim Payments.

13.3.3. Within 10 (ten) **Days** of notice of **Termination**, the **Firm** shall provide the **Fund** with a list of all unfinalised matters in the **Firm's** possession. This list shall be in Microsoft Excel format and shall contain the following information:

- 13.3.3.1. Claim number;
- 13.3.3.2. Link number;
- 13.3.3.3. Claimant's initials and surname;
- 13.3.3.4. Claimant's attorney;
- 13.3.3.5. Claimant's attorney's reference number;
- 13.3.3.6. Court;
- 13.3.3.7. Case number;
- 13.3.3.8. Trial date (if applicable);
- 13.3.3.9. Amount claimed;
- 13.3.3.10. Status of claim;
- 13.3.3.11. Experts instructed;
- 13.3.3.12. Previous trial dates;
- 13.3.3.13. Interim Payments; and
- 13.3.3.14. Estimate of **Firm's** outstanding fees.

13.3.4. Within 30 (thirty) **Days** of notice of **Termination**, the **Firm** shall prepare Notices of Withdrawal as Attorneys of Record in triplicate for all unfinalised matters in the **Firm's** possession. These Notices of Withdrawal as Attorneys of Record shall immediately be handed over to the **Fund** for service and filing thereof by the newly appointed **Panel Attorney**.

13.3.5. Within 30 (thirty) **Days** of notice of **Termination**, the **Firm** shall make copies of the files of all unfinalised matters in the **Firm's** possession. The original files shall be delivered by hand to the **Fund** at the **Regional Office** closest to the offices of the

**Firm**, and **signed** for by the **Regional Manager** of that **Regional Office**. The files shall be accompanied by:

- 13.3.5.1. a list of all matters handed over, similar in form to the list referred to in clause 13.3.2; and
- 13.3.5.2. a written confirmation by the **Lead Attorney** that all unfinalised files have been handed over, and that no documents or files have been withheld.

#### 13.4. Procedure in respect of costs after *Termination of the Service Level Agreement*

- 13.4.1. Within 90 (ninety) **Days** of notice of **Termination**, but not before the date on which the files are handed over as contemplated in clause 13.3, the **Firm** shall present the **Fund** with Bills of Cost in respect of each matter handed over to the **Fund**.
- 13.4.2. These Bills of Cost shall be delivered by hand to the **Fund** at the **Regional Office** closest to the offices of the **Firm**, and **signed** for by the **Regional Manager** of that **Regional Office**.
- 13.4.3. The Bills of Cost shall be accompanied by:
  - 13.4.3.1. a list of all matters on which Bills are presented, similar in form to the list referred to in clause 13.3.2;
  - 13.4.3.2. a written confirmation by the **Lead Attorney** that the Bills represent the full value of outstanding fees and disbursements due to the **Firm**; and
  - 13.4.3.3. a consolidated statement of account of outstanding fees and disbursements due to the **Firm**.
- 13.4.4. From date of receipt of the **Firm's** Bills of Cost and associated documentation as contemplated in clause 13.4.3 above, the **Fund** shall have 90 (ninety) **Days** within which to make payment of the outstanding fees as reflected in the consolidated statement of account referred to in clause 13.4.3.3 above.
- 13.4.5. The Bills of Cost shall be prepared in accordance with the fee structure governing this **Service Level Agreement** during its subsistence.

13.5. Dispute resolution in respect of costs after Termination of the Service Level Agreement

- 13.5.1. In the event that the **Fund** disputes any amount claimed by the **Firm**, the **Fund** shall notify the **Firm** in writing of such dispute. The notification shall be delivered by hand, by fax or by e-mail to the **Lead Attorney**.
- 13.5.2. The notification shall indicate the following:
- 13.5.2.1. the specific matter to which the dispute relates;
  - 13.5.2.2. whether the dispute relates to the entire Bill of Costs, alternatively which specific item on the Bill of Costs the dispute relates to; and
  - 13.5.2.3. the amount that the **Fund** proposes to pay in respect of the specific Bill of Costs.
- 13.5.3. The **Firm** shall notify the **Fund** in writing within 10 (ten) **Days** of receipt of the **Fund's** counteroffer whether it accepts the **Fund's** cost assessment.
- 13.5.3.1. If the **Firm** accepts the **Fund's** assessment, the **Fund** shall make payment of the assessed amount within 30 (thirty) **Days** of receipt of the **Firm's** notice of acceptance.
  - 13.5.3.2. If the **Firm** does not accept the assessment, the **Firm** shall forthwith set the disputed Bill of Costs down for taxation with the Taxing Master for the Court with jurisdiction over the matter.
- 13.5.4. The Taxing Master shall tax the Bills of Cost in accordance with the fee structure governing this **Service Level Agreement** during its subsistence.
- 13.5.5. Each party shall bear its own costs relating to the taxation of the Bills of Cost. Neither of the **Parties** shall be entitled to a drawing or attendance fee.
- 13.5.6. The decision by the Taxing Master shall be final and binding on the **Parties**.
- 13.5.7. The **Fund** shall make payment of the taxed amount within 30 (thirty) **Days** of the date of the Taxing Masters alocator.
- 13.5.8. The **Fund** shall not be liable to pay interest on any agreed or taxed costs.

13.6. The **Firm** acknowledges that the **Fund** will instruct new **Panel Attorneys** to deal with the unfinalised files contemplated in clause 13.1 above. For this purpose, the **Firm** undertakes to co-operate fully with the **Fund** and the newly appointed **Panel Attorney** in order to facilitate smooth hand over of the files, and to minimise the risk to the **Fund**.

#### **14. INSURANCE IN RESPECT OF A FIRM APPOINTED TO THE HIGH COURT / HIGH VALUE PANEL OF ATTORNEYS**

14.1. The **Firm**, if appointed to the **Fund's** High Court / High Value **Panel of Attorneys** shall maintain, at no additional cost to the **Fund**, a Professional Liability Insurance Policy to the value of at least R20 000 000.00 (Twenty Million Rand).

14.2. Within 60 (sixty) **Days** from **Signature** of this **Service Level Agreement**, the **Firm** shall provide the **Fund's Contracts Manager** with proof, in a form acceptable to the **Fund**, of the Professional Liability Insurance Policy, and thereafter within 60 (sixty) **Days** of each anniversary of this **Service Level Agreement**.

#### **15. DISPUTE RESOLUTION & ESCALATION**

15.1. Should any dispute arise between the **Parties** in connection with the interpretation or application of the provisions of this **Service Level Agreement** or its breach, or **Termination**, or any other matter but excluding **Suspension** and cost issues, such dispute will, unless resolved between the **Parties**, be referred to and be determined by arbitration in terms of this clause, as expediently as may be reasonably possible.

15.2. Either party to this **Service Level Agreement** may demand that a dispute be determined in terms of this clause by written notice to the other party, provided that any and all dispute resolution measures referred to in this **Service Level Agreement** has been exhausted.

15.3. Written demand for a dispute to be referred to arbitration will be delivered:

15.3.1. By the **Firm** to the **Fund's Contracts Manager** by hand; or

15.3.2. By the **Fund** to the **Lead Attorney** by fax.

15.4. The **Parties** shall be entitled to legal representation during the arbitration process.

15.5. The arbitration will be held:

15.5.1. In Johannesburg, with only the **Parties** and their legal representatives being present; and

15.5.2. In accordance with the formalities and procedures settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible.

15.6. A single arbitrator will be appointed by agreement between the **Parties**. The arbitrator will be an advocate of no less than 7 (seven) years experience, acceptable to both **Parties**.

15.7. Should the **Parties** fail to agree on an arbitrator within 5 (five) **Days** after the arbitration was demanded, the arbitrator will be appointed at the request of either party by the Chairman for the time being of the Johannesburg Bar Council, its successor in title or assigns.

15.8. Each party shall be liable to pay an equal share of the arbitration costs, subject to the provisions of clause 15.10 below.

15.9. The decision of the arbitrator will be final and binding on the **Parties**.

15.10. The arbitrator will be entitled to make such award, including an award for specific performance, damages or a penalty or otherwise as he, in his sole discretion, may deem fit and appropriate and to deal as he deems fit with the question of costs, including, if applicable costs, on the attorney and client scale and his own fees.

15.11. This arbitration clause does not prohibit a party from seeking relief in a dispute where urgency can be proved, and where, as a result, application can be made for an urgent interdict, urgent declaratory order or other urgent relief to any Court of competent jurisdiction, on condition that such urgent relief is only of an interim nature pending the final determination by the arbitrator.

15.12. The provisions of this clause:

- 15.12.1. constitute an irrevocable consent by both **Parties** to any proceedings in terms hereof and no party will be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions; and
- 15.12.2. are severable from the rest of this **Service Level Agreement** and will remain in effect despite the **Termination** of or invalidity of the **Service Level Agreement**.

## 16. SCOPE OF WORK

- 16.1. The Scope of Work and Procedure is set out in Annexure B to this **Service Level Agreement** and may be supplemented or revised by the **Fund** through the issuing of Directives.
- 16.2. Any Directive issued by the **Fund** in terms of this clause will form part of the **Service Level Agreement**.
- 16.3. When the **Firm** is instructed in matters not arising out of the provisions of the **Act**, the **Parties** may by agreement revise Annexure B.

## 17. PAYMENT

- 17.1. The **Fund** shall pay the **Firm** for the due, full and proper performance and fulfilment by the **Firm** of its obligations referred to in clause 16 above.
- 17.2. The pricing of this **Service Level Agreement** as contained in annexure C is:
- 17.2.1. exclusive of VAT;
  - 17.2.2. inclusive of all other taxes and duties which are levied or charged by any revenue authority (including, without limitation, the South African Revenue Services);
  - 17.2.3. exclusive of all disbursements; and
  - 17.2.4. fixed.
- 17.3. In respect of Magistrates' Court matters, the **Firm** shall only invoice the **Fund** on completion of the matter by virtue of settlement, judgment or withdrawal of the claim by the Plaintiff, and in accordance with the fee structure set out in Annexure C.

- 17.4. In respect of High Court and Arbitration matters, the **Firm** shall only invoice the **Fund** on completion of the matter by virtue of settlement, judgment or withdrawal of the claim by the Plaintiff, and in accordance with the fee structure set out in annexure C, provided that the **Firm** may invoice the **Fund** before finalisation of the matter in the following instances:
- 17.4.1. where merits and quantum were separated, and the issue of merits has been finalised; and
- 17.4.2. where the trial or arbitration was postponed.
- 17.5. Payment of invoices shall be subject to the review and sign off by the **Fund**, which sign off shall not be unreasonably withheld.
- 17.6. The **Firm** shall ensure that 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 a specific claim.
- 17.7. Payment shall be made to the **Firm** in accordance with the provisions of clause 19 of Annexure B
- 17.8. The fees charged by counsel for work arising out of the provisions of the **Act**, shall be in accordance with the tariff set out in Annexure D hereto. Any fee in excess of this tariff must be approved in writing by the **Regional Manager** in advance of counsel being briefed.
- 17.9. The tariff of fees charged for work other than that arising out of the provisions of the **Act**, shall be agreed upon in writing between the **Firm** and the **CEO** at the time the **Firm** is instructed. Any written instructions to perform work, other than work referred to in clause 9.1 above, shall be deemed to be incorporated into this agreement, and shall be read as an addendum to this agreement.
- 17.10. No collapse fee will be allowed for counsel, unless the written consent of the **Regional Manager** is obtained in advance.
- 17.11. No travelling fees will be allowed for candidate attorneys, attorneys and/or counsel when travelling to Court, unless the court is more than 60 kilometres from the office of the **Firm** or the chambers of counsel.



17.12. No parking fees will be charged by the **Firm** or counsel when attending court.

17.13. Both **Parties** acknowledge that the charges specified in this **Service Level Agreement** and the annexures thereto are intended to compensate the **Firm** fully for all **Services** /Deliverables to be performed or provided by the **Firm** pursuant to this **Service Level Agreement**. Accordingly, the **Fund** will not be obligated to pay the **Firm** any amounts in addition to those specifically described in the **Service Level Agreement**, unless there is an agreed change in the scope of the **Services**/ Deliverables, or a change in applicable law to which additional charges apply and have been approved in writing by the **Fund**, or additional **Services** and/or Deliverables are required by the **Fund**.

## 18. PENALTY FOR MALPERFORMANCE

18.1. In the event of the **Firm** breaching any provision of the **Scope of Work and Procedure** (Annexure B), the **Fund** will have the option to impose a penalty on the **Firm** in respect of the breach.

18.2. The **Firm** acknowledges that the **Fund** suffers prejudice when the **Firm** fails to timeously perform its obligations in terms of the **Scope of Work and Procedure**.

18.3. The extent of the penalty will be commensurate with the period by which the **Firm** delays in its performance.

18.4. The penalty shall not exceed 30% of the total assessed costs (inclusive of fees and disbursements) in respect of the matter to which the breach relates.

18.5. A **Penalty Notice** will be delivered to the **Firm** by the **Fund's Contracts Manager** or **Regional Manager** and will convey the percentage to be imposed as a penalty and the reasons for a penalty being imposed.

18.6. Within 5 (five) **Days** of receipt of the **Penalty Notice**, the **Firm** may deliver to the **Fund's Contracts Manager** or **Regional Manager** a written response to such notice, addressing the **Fund's** reason/s for the penalty and motivating as to why a penalty should not be imposed.

- 18.7. The **Fund's Contracts Manager** or **Regional Manager** will consider all relevant facts, including the response and motivation from the **Firm**, and will deliver a written reply to the **Firm** within 20 (twenty) **Days** of receipt of the response referred to in paragraph 18.6 above.
- 18.8. Within 5 (five) **Days** of receipt of the response referred to in clause 18.7 above, the **Firm** may deliver to the **COO** a written response, addressing the **Fund's** reason/s for the penalty and motivating as to why a penalty should not be imposed.
- 18.9. The **COO** will consider all relevant facts, including the response and motivation from the **Firm**, and will deliver a written reply to the **Firm** within 20 (twenty) **Days** of receipt of the response referred to in paragraph 18.8 above.
- 18.10. The decision by the **COO** will be final.
- 18.11. A schedule detailing the penalties is attached hereto as Annexure E.
- 18.12. The **Firm** confirms that these penalties are reasonable.
- 18.13. Without prejudice to any other rights that the **Fund** may have in law, the **Fund** shall be entitled to recover damages from the **Firm** in lieu of the prescribed penalty.
- 18.14. In addition to the penalties outlined herein, the **Fund** has the right, based on the objective assessment of the work performed by a specific **Professional Person** or candidate attorney, to instruct the **Firm** that such a **Professional Person** or candidate attorney may not render **Services** to the **Fund**.

## 19. REPORTING

- 19.1. In addition to the general feedback as stipulated in Annexure B, **Quarterly Status Reports** must be furnished to the **Fund** by the **Firm** on the following dates:
- 19.1.1. 15 January of each year;
  - 19.1.2. 15 April of each year;
  - 19.1.3. 15 July of each year; and
  - 19.1.4. 15 October of each year.

- 19.2. In the event of the day referred to in 19.1.1 to 19.1.4 above being a Saturday, Sunday or public holiday, the **Quarterly Status Reports** will be delivered on the first business day thereafter.
- 19.3. Separate **Quarterly Status Reports** will be furnished in respect of:
- 19.3.1. each Regional Office;
  - 19.3.2. BAU
  - 19.3.3. the Supplier Claims Department;
  - 19.3.4. the High Value Department; and
  - 19.3.5. the Medical Services Department.
- 19.4. The reports will be delivered by electronic mail to the addresses provided to the **Firm** from time to time in respect of each relevant office or department.
- 19.5. The **Fund** may from time to time give the **Firm** notice of new electronic mail addresses to which the Monthly Status Reports must be delivered.
- 19.6. In the **Quarterly Status Reports** the **Firm** will report on each open (unfinalised) claim and each claim finalised during the month preceding the reporting date.
- 19.7. **Quarterly Status Reports** must be submitted in Microsoft Excel format, and shall contain the following information:
- 19.7.1. Open (Unfinalised Claims):
    - 19.7.1.1. Link number;
    - 19.7.1.2. Serial number;
    - 19.7.1.3. The Firms reference number;
    - 19.7.1.4. Date of accident;
    - 19.7.1.5. Date claim lodged;
    - 19.7.1.6. Date Firm instructed;
    - 19.7.1.7. Date Firm received the Fund's file content;
    - 19.7.1.8. Heads of damages claimed and amount claimed per head of damage;
    - 19.7.1.9. Contact person at Firm;
    - 19.7.1.10. Plaintiff's attorney;
    - 19.7.1.11. Plaintiff's full names;

- 19.7.1.12. Plaintiff's ID number;
- 19.7.1.13. Plaintiff's contact details;
- 19.7.1.14. Date of any interim payments and amount/s paid;
- 19.7.1.15. Liability settled or outstanding and if outstanding, a brief description of merits;
- 19.7.1.16. Information or documents still required in respect of merits;
- 19.7.1.17. Information or documents still required in respect of quantum
- 19.7.1.18. Expert witnesses appointed by Firm and area of specialty;
- 19.7.1.19. Expert witnesses appointed by Plaintiffs attorney and area of specialty;
- 19.7.1.20. Estimate of quantum;
- 19.7.1.21. Date tender/s made and amount tendered;
- 19.7.1.22. Date/s when matter previously set down for trial;
- 19.7.1.23. Trial date.

19.8. Simultaneously with the Quarterly Status Reports, the Firm shall provide the Fund the following information:

- 19.8.1. The extent to which service levels have or have not been met during the quarter;
- 19.8.2. Details of any failure to meet service levels; and
- 19.8.3. The workload of all Professional Persons dealing with Fund matters, ie number of files in his portfolio and number of matters on trail.

19.9. The **Fund** may during the term of this **Service Level Agreement** implement new IT technologies which may necessitate a change in the format in which the **Firm** must submit reports to the **Fund** will receive the reports. The **Firm** undertakes to abide by any change in reporting format as required by the **Fund**.

19.10. In addition to the reports outlined above, the **Fund** may at any time require the **Firm** to report more frequently, or on matters not dealt with above.

19.11. The **Firm** recognizes that the **Fund** is entitled to any and all information held by the **Firm** relating to the claims handled by the **Firm** on behalf of the **Fund**.

19.12. The **Firm** acknowledges that the failure to comply with any of its reporting obligations constitutes a material breach of its obligations in terms of this **Service Level Agreement**, and may warrant **Suspension** or **Termination** of the **Service Level Agreement**.

## 20. CONTRACT MANAGEMENT

20.1. The **Parties** acknowledge the need for proper monitoring of their obligations in terms of this **Service Level Agreement**.

20.2. The **Firm** undertakes to at all times have a dedicated person assigned to the **Fund** as a contact in respect of Contract Management issues.

20.3. To this end the **Firm** designates the following persons as ultimately responsible for the Contract Management of this **Service Level Agreement**.

20.3.1. Lead Attorney

20.3.2. Name:

20.3.3. Tel. No.:

20.3.4. E-mail:

20.3.5. Dedicated Resource

20.3.6. Name:

20.3.7. Position:

20.3.8. Tel. No.:

20.3.9. E-mail:

20.4. In order to facilitate effective contract management, the Firm shall quarterly, or at such other intervals as determined by the Fund, attend meetings with the Fund's designated Contract Manager in order to discuss contract management issues.

20.4.1. The Firm shall not be entitled to raise a fee for attendance of these meetings.

## 21. MEASUREMENT OF RESULTS

21.1. It is imperative to the **Fund** that all legal matters are dealt with in an efficient and cost effective manner. The **Fund** will evaluate the performance of the **Firm** on an ongoing basis by using a variety of indicators. The key performance indicators that will be used to measure the **Firm** will include, but will not be limited to:

21.1.1. Cost Effectiveness: Legal costs as a percentage of the compensation paid.

21.1.2. Estimate Ratio: Amount paid as a percentage of the estimated liability.

- 21.1.3. Tender Ratio: Amount paid as a percentage of the amount first tendered.
- 21.1.4. Time Efficiency: Time taken to settle the claim from date of instruction.
- 21.1.5. Trial Preparedness: Number of **Days** before trial that claim settled.
- 21.1.6. Work flow: Number of claims finalised as a percentage of number of instructions received.
- 21.1.7. Resource Performance: Number of successfully litigated matters.

## 22. GIFTS, INDUCEMENTS AND REWARDS

- 22.1. 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.
- 22.2. Such an act shall constitute a material breach of the **Service Level Agreement** and the **Fund** shall be entitled to terminate the **Service Level Agreement** forthwith, without prejudice to any of its rights in terms of this **Service Level Agreement** or in law.

## 23. CONFIDENTIAL INFORMATION

- 23.1. Notwithstanding and without limitation to the common law relationship between the **Parties** regarding the confidential nature of information made available to the **Firm**, the **Firm** acknowledges and accepts that it will have access to and become possessed of, amongst others, client information, financial information, statistics, operating methods, procedures, templates, manuals, processes and procedures relating to the financial and operations of the **Fund** and which are of crucial importance in the conduct of the business of the **Fund** (hereinafter referred to as "Confidential Information").
- 23.2. The **Firm** accepts that it is reasonable for the **Fund** to protect its rights in and to the Confidential Information.
- 23.3. The **Parties** accept and acknowledge that disclosure of the Confidential Information could, if disseminated to or used by any person without prior authorisation of the **Fund**, cause the **Fund** to suffer material harm.

23.4. The **Firm** undertakes that:

- 23.4.1. it will not use the Confidential Information other than for purposes of the **Service Level Agreement**;
- 23.4.2. it will not disclose any portion of the Confidential Information to any third party other than to persons who are required to obtain such information by virtue of being appointed to provide a professional service in the evaluation process of the claim or to Court in terms of the Rules of Court; and
- 23.4.3. it will procure all persons in its employ and any third party it may appoint who will have access to the Confidential Information as a result of such appointment, to bind themselves to the provisions of this clause.

23.5. This entire clause shall survive the **Termination** of this **Service Level Agreement** for whatever reason and remain binding on the **Firm** indefinitely.

## 24. DOMICILIUM CITANDI ET EXECUTANDI

24.1. The **Parties** hereby choose their domicilium citandi et executandi for all purposes of this **Service Level Agreement**, whether in respect of court process, notices or other documentation or communications of whatsoever nature, the following address:

24.1.1. The **Fund**:

38 Ida Street  
Menlo Park  
Pretoria

24.1.2. The **Firm**:

24.2. Any notice or communication required or permitted to be given in terms of this **Service Level Agreement** shall be valid and effective only in writing.

24.3. Notice will be deemed to be given:

- 24.3.1. 7 (seven) **Days** after posting by registered mail;
- 24.3.2. if delivered by hand, at the time of delivery;
- 24.3.3. on dispatch of successful transmission and receipt by facsimile; or
- 24.3.4. on dispatch of successful transmission by e-mail with a delivery receipt.

24.4. Either party may by notice to the other party change its domicilium citandi et executandi to another physical address by giving notice in writing to the other party, provided that the change shall become effective from the seventh **Day** after the receipt of the notice by the party receiving such.

## 25. MISCELLANEOUS

25.1. This **Service Level Agreement** constitutes the whole agreement between the **Parties** and there are no promises, terms, conditions or obligations, oral or written, express or implied, other than those contained in this **Service Level Agreement**. All the representations, undertakings, warranties or guarantees (“the representations”) made by the **Parties** are contained in this **Service Level Agreement**.

25.2. Any representations not contained in this **Service Level Agreement** shall not be binding on the **Parties** and shall be without any force or effect. Any provision at variance with the terms and conditions of this **Service Level Agreement** shall not be binding on the **Parties** and shall be without any force or effect.

25.3. This **Service Level 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 **Service Level Agreement** that are binding on the **Parties**.

25.4. Save for Directives issued by the **Fund** from time to time, no amendment, addition, or neither variation, nor any extension of time, waiver, relaxation or **Suspension** of any of the provisions or terms of this **Service Level Agreement** shall have any force or effect unless same have been reduced to writing and **signed** by both **Parties** to this **Service Level Agreement**. Any such extension, waiver, relaxation, or **Suspension** which is so given or made shall be strictly construed as relating to the specific matter in respect whereof it was made or given.



- 25.5. No extension of time or waiver, relaxation or **Suspension** of any of the provisions or terms of this **Service Level Agreement** shall operate as an estoppel against any party in respect of its rights under this **Service Level Agreement** nor shall it operate so as to preclude such party thereof from exercising its rights strictly in accordance with this **Service Level Agreement**.
- 25.6. If any provision of this **Service Level Agreement** is unenforceable at law, such provision shall be severed from the remaining provisions of this **Service Level Agreement** and the remaining provisions of this **Service Level Agreement** shall not be affected and shall remain of full force and effect.
- 25.7. 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 **Service Level Agreement** and perform in terms of this **Service Level Agreement**, and that this **Service Level 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 **Service Level Agreement**.

## 26. SPECIAL TERMS AND CONDITIONS

- 26.1. 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 **Service Level Agreement**, the **Firm** undertakes to:
- 26.1.1. provided that the unjustifiable actions of the **Fund** does not prevent the **Firm** from performing its obligations under this **Service Level Agreement** and barring any force majeure event:
    - 26.1.1.1. the **Firm** shall at all times supply the **Services** with promptness, diligence, in a professional manner and with all due care, skill and expertise; and
    - 26.1.1.2. it shall render the **Services** within the agreed timelines.
  - 26.1.2. 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

26.1.3. 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**.

26.2. Notwithstanding anything seemingly to the contrary contained in this **Service Level Agreement**, a breach by the **Firm** of any of the provisions specified in clause 26.1 above shall constitute a material breach of this **Service Level Agreement** which will entitle the **Fund** to require the **Firm** to rectify the breach within 5 (five) **Days**, failing which, without prejudice to any other remedies the **Fund** may have in law, the **Fund** may terminate this **Service Level Agreement** summarily.

## 27. ORDER OF PRECEDENCE

27.1. In the event of any of the provisions of this **Service Level Agreement**, or any Annexure to this **Service Level Agreement**, or addendum or any Tender Document being in conflict with each other, the conflict shall be resolved in accordance with the following order of precedence:

27.1.1. this Schedule and Annexure B takes precedence over Annexure A; and

27.1.2. Annexure A takes precedence over the Government Procurement Special Conditions of Contract and all other annexures to this Service Level Agreement.

## 28. DELETIONS, REVISIONS AND ADDITIONS TO ANNEXURE A

28.1. The **Parties** agree to delete the current clause 3.1 and 3.2 of Annexure A.

28.2. The **Parties** agree to substitute the current clause 3.3 of Annexure A for the following:

“Should the Firm fail to meet the set performance standards (as objectively considered), the **Fund** shall be entitled to cancel any outstanding payment due to the **Firm** with regards to the deliverable in terms of this **Service Level Agreement**.”

28.3. The **Parties** agree to substitute the current clause 7.2 of Annexure A for the following:

“All written representations made by the Firm in this regard shall be deemed to be incorporated into this **Service Level Agreement**.”

28.4. The **Parties** agree to delete the current clause 11 of Annexure A.

Signed at Pretoria on this \_\_\_\_ day of \_\_\_\_\_ 2012.

\_\_\_\_\_  
For: **ROAD ACCIDENT FUND**  
Name: EUGENE WATSON  
Capacity: CEO

\_\_\_\_\_  
Witness  
Name:

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2012.

\_\_\_\_\_  
For:  
Name:  
Capacity:

\_\_\_\_\_  
Witness  
Name:

## ANNEXURE A

### ROAD ACCIDENT FUND

### SPECIAL CONDITIONS OF CONTRACT (“SCC”)

#### 1. INTERPRETATION AND DEFINITIONS

1.1. In this **Service Level Agreement**, unless clearly inconsistent with or otherwise indicated by the context of the **Service Level 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. “The **Firm**” means the party described in the Schedule of the **Service Level Agreement**, or in lieu of a **Service Level 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 **Service Level 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 **Service Level 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 **Service Level Agreement**, shall not apply.
- 1.9. The clause headings in this **Service Level 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 **Service Level Agreement** will be given their plain English meaning, and those terms, acronyms, abbreviations and phrases known in the relevant industry to which this **Service Level 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.
- 1.17. The expiration or **Termination** of this **Service Level Agreement** shall not affect those provisions of this **Service Level 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 **Service Level Agreement**.
- 1.19. This **Service Level 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 **Service Level Agreement** between the **Fund** and the **Firm**, or in lieu of a **Service Level Agreement**, constitutes part of the Purchase Order issued by the **Fund** to the **Firm** (whichever is applicable)
- 2.2. All references to the **Service Level Agreement** are references to the **Service Level 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 1<sup>st</sup> (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:
    - 4.4.1.1. Account Holder and any Trading Names
    - 4.4.1.2. Bank Name
    - 4.4.1.3. Branch Name
    - 4.4.1.4. Branch Code
    - 4.4.1.5. Account Number
    - 4.4.1.6. 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 1<sup>st</sup> (first) calendar **Day** of the month.
- 4.6. If an invoice and supporting documentation is submitted to the **Fund** after the 1<sup>st</sup> (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**

- 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 **Service Level 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 **Service Level Agreement** include or come with certain warranties or guarantees, these shall be incorporated into this **Service Level 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 **Service Level 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**

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

## **9. NON-EXCLUSIVE AGREEMENT**

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

11.1. 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 **Service Level 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 **Service Level Agreement**, the **Firm** shall provide insurance to cover its liabilities and responsibilities in terms of the **Service Level Agreement**.
- 13.2. Notwithstanding anything elsewhere contained in the **Service Level 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 of/or injury to persons or loss of/or 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 **Service Level 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 **Service Level 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 **Service Level 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

19.1. **The Fund** may terminate this Agreement, or suspend its operation, in whole or in part, at any time and at **the Fund’s** sole discretion, by giving not less than 1 (one) month’s written notice to **the Firm**.

19.2. **The Fund** when giving notice under clause 19.1 shall, in the written notice, specify the extent of the termination or suspension, and the **Effective Date** of such termination or suspension.

19.3. **The Firm**, upon receipt of a notice contemplated under clause 19.1 shall discontinue the supply of all services or goods under this Agreement, to the extent specified, and on the date specified in the notice.



- 19.4. In the event of the termination or suspension, in whole or in part, of this Agreement by **the Fund** under this clause 19, **the Fund** shall pay **the Firm** for services or goods already supplied by **the Firm** under this Agreement, up to and including the date of termination or suspension specified in the notice.
- 19.5. **The Fund** shall not be liable for any consequential loss resulting from the termination or suspension of this Agreement by **the Fund** under this clause 19, including, without limitation, any loss of profits or any costs associated with the termination or suspension of any sub-contracts entered into by **the Firm**.
- 19.6. Termination or suspension of the Agreement under this clause 19 shall be without prejudice to any rights that may have accrued to either of the **Parties**, in respect of goods or services delivered before the date of termination or suspension, specified in the notice. It is specifically agreed that, upon termination or suspension of this Agreement under clause 19, no rights shall accrue to either party in respect of goods or services not yet delivered under the Agreement.

## 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, or any other matter whatsoever, then and in such event, such a dispute shall be resolved by way of arbitration.

21.9. This clause 21 read with clause 20 above is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause.

## 22. DOMICILIUM AND NOTICE ADDRESS

22.1. 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

- 24.1.1. This **Service Level 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 **Service Level Agreement** that are binding on the **Parties**.
- 24.1.2. This **Service Level Agreement** constitutes the sole and entire agreement between the **Parties**.
- 24.1.3. All the representations, undertakings, warranties or guarantees ("the representations") made by the **Parties** are contained in this **Service Level Agreement**. Any representations not contained in this **Service Level Agreement** shall not be binding on the **Parties** and shall be without any force or effect.
- 24.1.4. The provisions of clause 7 above shall be excluded here from, where applicable.

- 24.1.5. Any provision at variance with the terms and conditions of this **Service Level 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 **Service Level 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 **Service Level 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 **Service Level Agreement** or any enforcement of any rights arising from this **Service Level 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 **Service Level 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 **Service Level Agreement**.

#### 24.3. Severability

- 24.3.1. If any term, condition or performance, or any part thereof, in this **Service Level 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 **Service Level 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 **Service Level Agreement** so amended shall remain in force and effect.
- 24.3.2. If any provision of this **Service Level 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 **Service Level Agreement**, and shall not in any way affect the validity and

enforceability of the rest of the provisions of this **Service Level Agreement** and the **Service Level Agreement** as a whole.

#### 24.4. Warranty of Authority

24.4.1. 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 **Service Level Agreement** and perform in terms of this **Service Level Agreement**, and that this **Service Level 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 **Service Level Agreement**.

#### 24.5. Costs

24.5.1. 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 **Service Level Agreement** and the entire transaction.

## ANNEXURE B

### SCOPE OF WORK AND PROCEDURE

#### 1. ACKNOWLEDGEMENT OF INSTRUCTIONS FURNISHED IN TERMS OF THE SERVICE LEVEL AGREEMENT

- 1.1. The **Firm** must acknowledge receipt of instructions in writing within 1 (one) business **Day** of receipt thereof.
- 1.2. If the instruction is to defend an action instituted against the **Fund**, the **Firm** must provide the **Fund** with a copy of the served Notice of Intention to Defend within 3 (three) business **Days** from the date of the instruction.

#### 2. CORRESPONDENCE

- 2.1. All correspondence sent to the **Fund** must reflect the **Fund's** claim and link numbers.
- 2.2. Correspondence delivered to the **Fund** after a trial date or arbitration hearing date has been allocated, must also reflect the date of trial or arbitration hearing.
- 2.3. The **Firm** shall at all times maintain an operational IT capability as required by the **Fund** and shall inform the **Fund** within 24 (twenty four) hours of any breakdown or other issue which may impact fax, e-mail or telephonic communication between the **Firm** and the **Fund**.

#### 3. PROVISION OF DOCUMENTS

- 3.1. Within 5 (five) **Days** of the **Fund** furnishing instructions in terms of paragraph 9 of the **Schedule**, the **Fund** will provide the **Firm** with a copy of the **Fund's** file.
  - 3.1.1. In the event of the **Firm** not receiving copies of the **Fund's** file content within the time period mentioned in sub-paragraph 3.1 above, the **Regional Manager** of the region from which the instruction was received must be notified of this in writing.

- 3.1.2. If the claim is managed by the **Medical, Supplier or High Value Departments**, the written notification must be sent to the Manager of such department.
- 3.1.3. Such written notification must be sent by electronic mail.
- 3.2. If copies of the file contents are not received within 5 (five) **Days** from date of the written notification being sent in terms of sub-paragraph 3.1 above, the **Firm** must notify the **COO** by electronic mail of the **Fund's** failure to deliver the file content.
- 3.3. Unless an earlier time period is specified in this Annexure, the **Firm** must provide the **Fund** with copies of all pleadings, applications and notices within 5 (five) **Days** of such being served.
- 3.4. The **Firm** must provide the **Fund** with copies of all reports of experts instructed on behalf of the **Fund** within 5 (five) **Days** of such reports being received by the **Firm** from the expert.
- 3.5. A copy of the minutes of a pre-trial conference will be delivered to the **Fund** within 3 (three) **Days** of such pre-trial conference being held, unless the pre-trial conference is held less than 10 (ten) court **Days** before trial or the arbitration hearing, in which event the minutes of the pre-trial conference must be delivered to the **Fund** on the business **Day** following the pre-trial conference.
- 3.6. Copies of Court Orders and Arbitration Awards must be furnished by the **Firm** to the **Fund** within 3 (three) **Days** of such order being handed down. Notification of Court Orders and Arbitration Awards must be done on the template attached hereto as Annexure F.
- 3.7. The **Firm** must provide the **Fund** with a copy of taxed bills of costs within 3 (three) **Days** of the date of the Taxing Masters allocator.
- 3.8. The **Firm** must provide the **Fund** with a copy of settled bills of costs within 3 (three) **Days** of the date of settlement.
- 3.9. In the event of the **Fund** instructing the **Firm** to obtain a written opinion from counsel, a copy of such opinion shall be furnished to the **Fund** within 3 (three) **Days** of such opinion being received from counsel.



#### **4. APPLICATIONS, PLEADINGS AND NOTICES**

- 4.1. The minimum time periods specified in the Rules of Court and the Arbitration Rules for the Arbitration of Disputes in **Road Accident Fund** Claims for the delivery of applications, notices and pleadings must be adhered to.

#### **5. EXCEPTIONS AND SPECIAL PLEAS**

- 5.1. The **Firm** shall not take exception to a Plaintiff's Particulars of Claim and/or Notice of Intention to Amend or deliver a Special Plea unless the prior approval of the **Fund** is obtained.
- 5.2. In the event of the **Firm** being of the view that Particulars of Claim and/or Notice of Intention to Amend are excipiable, or that a Special Pleas should be delivered, this must be conveyed to the **Fund** at least 5 (five) **Days** before the Plea is due to be delivered.
- 5.3. The **Fund** will furnish the **Firm** with instructions within 1 (one) **Day** from receipt of the request for instructions.
- 5.4. In the event of instructions not being received from the **Fund** within 1 (one) **Day** of the request for instructions referred to in paragraph 5.3 above being delivered, the **Firm** may proceed with the exception or the special plea, and should provide the **Fund** with written confirmation to that effect.

#### **6. MERITS**

- 6.1. No concession of liability or settlement thereof on the basis of an apportionment or any other aspect of the claim may be made without the prior written authority of the **Fund**.
- 6.2. Consultations with the insured driver and all other witnesses relevant to the issue of merits must be held within a period of 2 (two) months from the **Firm** receiving the file contents of the **Fund** in terms of sub-paragraph 3.1 above.

- 6.3. Prior written instructions must be obtained from the **Fund** for an inspection in loco or consultation to be held if the place where the inspection or consultation is more than 100 kilometres from the **Firm**.
- 6.4. Instructions to separate merits and quantum must be obtained in writing from the relevant **Regional Manager** and in matters being managed by the **High Value Department**, or where the estimated liability of the **Fund** is in excess of R1 million (excluding the value of future medical, hospital and related expenses), from the manager of that department.

## **7. QUANTUM**

- 7.1. Quantum investigations will be conducted by the **Firm** in a pro-active rather than a re-active manner.
- 7.2. In matters where it is appropriate to instruct expert witnesses, the **Firm** will, subject to the provisions of paragraph 17 of this Annexure, endeavour to mutually agree with the Plaintiff on the experts to be instructed.

## **8. INITIAL ASSESSMENT REPORT**

- 8.1. Within 6 (six) weeks of receiving the **Fund's** file of paper referred to in paragraph 3 of this Annexure, the **Firm** will provide the **Fund** with an Initial Assessment Report which will serve as a roadmap for the management of the claim. This report must be headed **Initial Assessment Report**.
- 8.2. The **Initial Assessment Report** will be based on the documents to hand and must be in a preliminary manner and must:
- 8.2.1. address the issues of prescription, jurisdiction, substantive compliance, locus standi, liability and quantum and indicate which issues are in dispute. The **Fund** may, when instructing the **Firm**, direct that one or more of the aforementioned issues need not be addressed in the Initial Assessment Report;
  - 8.2.2. address any relevant points of law;
  - 8.2.3. detail additional documentation that must be sourced in order to assess the claim;

- 8.2.4. provide recommendations on consultations, inspections, experts to be appointed and issues that require additional investigation; and
  - 8.2.5. address all other aspects of the claim that are relevant for purposes of assessing the **Fund's** liability and extent thereof.
- 8.3. If having considered all the documents to hand it is considered by the **Firm** that sufficient information is available to deliver an offer of settlement, instructions to make an offer will be requested from the **Fund**.

## **9. FOLLOW UP REPORTS**

- 9.1. Subject to what is stated in paragraph 9.2 below, the **Firm** will, following the provision of the Initial Assessment Report, furnish written reports to the **Fund** on a regular basis, or as and when requested.
- 9.2. In addition to regular follow up reports being furnished, reports as specified below must be furnished to the **Fund**:
- 9.2.1. within 1 (one) **Day** of a Notice of Bar being received, which report must provide an explanation as to why the Plea was not delivered timeously and a copy of the Notice of Bar must be attached to the report;
  - 9.2.2. within 10 (ten) **Days** of receipt of a Notice of Set Down for Trial, which report must address the issues in dispute and fully detail all steps that must be taken to place the **Fund** in a position to deliver an offer of settlement and/or proficiently defend the claim in Court;
  - 9.2.3. within 5 (five) **Days** of an Application for an Interim Payment being received, which reports must summarize the relief being sought, assess the merits of the application and advise the **Fund** on an offer to be made, if appropriate;
  - 9.2.4. within 5 (five) **Days** of an Application for the appointment of a curator ad litem or curator bonis being received, which reports must summarize the relief being sought, assess the merits of the application and advise the **Fund** on whether the order should be consented to or the application opposed. In the event of such application being received less than 20 **Days** before the date on which a trial date has been allocated, the report must be furnished within 1 (one) business **Day** from date of service of the application;

- 9.2.5. within 2 (two) **Days** of any Application to Compel being received, which report must summarize the relief being sought, assess the merits of the application and advise the **Fund** on the appropriate manner to deal with the application. In addition, such report must provide an explanation as to why the **Fund** did not timeously perform the action that is being compelled;
- 9.2.6. within 5 (five) **Days** of being notified (either through correspondence or by way of an application) that the Plaintiff intends to apply for a separation of merits and quantum. In the event of such notification being received less than 20 **Days** before the date on which a trial date has been allocated, the report must be furnished within 1 (one) business **Day** of the **Firm** receiving the correspondence or application;
- 9.2.7. within 10 (ten) **Days** of being notified (either through correspondence or by way of notice) that the Plaintiff intends to amend the Claim. In the event of such notification being received less than 20 **Days** before the date on which a trial date has been allocated, the report must be furnished within 1 (one) **Day** of the **Firm** receiving the correspondence or notice; and
- 9.2.8. no later than 5 (five) **Days** before the holding of a pre-trial conference, which report must:
  - 9.2.8.1. specify the date of the pre-trial conference;
  - 9.2.8.2. state the name of the **Professional Person** and if applicable the name of the advocate who will attend the pre-trial conference on behalf of the **Fund**;
  - 9.2.8.3. list the admissions that will be required from the Plaintiff;
  - 9.2.8.4. mention any aspects of prejudice that will be raised on behalf of the **Fund**; and
  - 9.2.8.5. list all enquiries that will be directed to the Plaintiff.

## 10. FINAL ASSESSMENT REPORT

- 10.1. No later than 25 (twenty five) **Days** before the date allocated for trial, the **Firm** will provide the **Fund** with a Final Assessment Report, which report shall be headed Final Assessment Report.
- 10.2. In such report the **Firm** will:
  - 10.2.1. address each issue that remains in dispute;

- 10.2.2. in the event of an offer of settlement not having been made, or of it is considered that a previous offer should be revised, motivate the recommended offer of settlement to be made to the Plaintiff;
- 10.2.3. request instructions to brief counsel on trial, if counsel has not yet been instructed;
- 10.2.4. list all expert witnesses to be called by the Plaintiff and Defendant and summarize the areas of agreement and disagreement;
- 10.2.5. provide an estimated duration of the trial; and
- 10.2.6. address all other relevant issues.

10.3. In the event of the Plaintiff delivering expert reports subsequent to the period referred to in paragraph 10.1 above, the **Firm** will, within 2 (two) **Days** of receiving such expert reports, furnish a Revised Final Assessment Report:

- 10.3.1. attaching the expert notice/s and reports;
- 10.3.2. summarizing the opinions of the expert/s; and
- 10.3.3. providing a revised recommendation on tender, if applicable.

## 11. REQUESTS FOR INSTRUCTIONS

11.1. Where instructions are required, the **Fund** will furnish such instructions within 20 (twenty) **Days** from receiving a written request for such.

11.2. If instructions are required within a shorter period of time, the correspondence requesting such instructions will:

- 11.2.1. be clearly marked as “Urgent Instructions Required”;
- 11.2.2. be delivered by hand, courier or electronic mail to the **Fund**; and
- 11.2.3. specify the period of time in which the instruction/s is required and explain the reason for urgency.

11.3. If the **Firm** does not receive instructions within the period referred to in paragraph 11.1 or the shorter period referred to in 11.2 above, the **Firm** must in writing notify the relevant **Regional Manager**.

- 11.4. If the original request for instructions was on the basis of 11.2 above, the **Firm** must in the written notification to the **Regional Manager**, record by when the instruction must be furnished.
- 11.5. If instructions are not received within 15 (fifteen) **Days** from delivery to the **Fund** of the notification referred to in 11.3 above, or within the time specified if the request for an instruction is urgent, the **Firm** must in writing notify the **COO**.

## **12. OFFERS OF SETTLEMENT**

- 12.1. In matters in which liability is not repudiated by the **Fund**, offers of settlement in respect of both merits and quantum must be made as soon as is reasonably possible after the **Firm** has been instructed in terms of clause 9 of the **Schedule**.
- 12.2. The **Firm** must in advance obtain written instructions to deliver an offer of settlement.
- 12.3. Offers of settlement must be delivered to the Plaintiff at least 15 (fifteen) days before trial, unless the pre-trial conference is held more than 15 (fifteen) days before trial, in which even the offer of settlement must be delivered on the day of the pre-trial conference.
- 12.4. A copy of the offer must be delivered to the **Fund** within 5 (five) **Days** of the offer being served.
- 12.5. If an offer of settlement is accepted, a copy of the notice of acceptance must be furnished to the **Fund** within 3 (three) **Days** of service of such notice.

## **13. PLAINTIFFS' BILLS OF COST**

- 13.1. A Notice of Taxation and/or Bill of Costs served on the **Firm** must be delivered to the **Fund** within 3 (three) **Days** from receipt.

- 13.2. Together with the Notice of Taxation or Bill of Costs referred to in paragraph 13.1 above the **Firm** will provide the **Fund** with its recommendation on settlement in respect of the Bill of Costs.
- 13.3. In the event of the **Firm** not receiving instructions from the **Fund** within 5 (five) days of the notice referred to in paragraph 13.2 above, the **Firm** shall tender the recommended amount.
- 13.4. If the tender is not accepted by the Plaintiff, the **Firm** shall oppose the taxation of the Bill of Costs.
- 13.5. If the **Firm** intends making use of the services of a Cost Consultant to attend to the taxation of the Bill of Costs, the **Firm** shall provide the **Fund** with the names of 3 (three) cost consultants, and the **Fund** shall select one, or recommend a different cost consultant.
- 13.6. Within 3 (three) days of the settlement of the Bill of Costs, or the Taxing Master's allocator, the **Firm** must report to the **Fund** in writing the details of the settlement, and provide the **Fund** with a copy of the settled Bill of Costs or Taxing Master's allocator.
- 13.7. The **Firm** shall only be entitled to charge the **Fund** 10% of the amount saved on the Bill of Costs as their fee for settling or taxing the Bill of Costs.

#### **14. NOTIFICATION OF TRIAL DATES**

- 14.1. Copies of Notices of Set Down for Trial or arbitration must be delivered to the **Fund** within 3 (three) **Days** of such notices being served on the **Firm**.
- 14.2. On the first Friday following the end of each month, the **Firm** must furnish the **Fund** with information of all matters in which trial dates and arbitration hearing dates have been allocated. In the event of the first Friday following the end of the month being a public holiday, the information referred to above will be delivered on the first business **Day** thereafter.
- 14.3. This information must be furnished in an Excel Workbook containing 2 (two) spreadsheets, providing the **Fund** with details of:

- 14.3.1. All matters in which Notices of Set Down for Trial were received during the preceding month. (Spreadsheet 1)
- 14.3.2. All matters in which trial dates have been allocated and which are not reflected in Spreadsheet 1. (Spreadsheet 2)
- 14.3.3. **Firms** on the **Fund's** Panel for the Western Cape will also provide the Cape Town **Regional Office** with a third spreadsheet containing details of all matters set down for Arbitration in terms of the Arbitration Pilot Project.
- 14.3.4. Each Spreadsheet must contain the name of the **Firm** and must be headed as follows:
  - 14.3.4.1. Spreadsheet 1: NEW TRIAL DATES.
  - 14.3.4.2. Spreadsheet 2: TRIAL DATES ALLOCATED PRIOR TO PRECEDING MONTH
  - 14.3.4.3. Spreadsheet 3: ARBITRATION HEARING DATES

14.4. Spreadsheets 1 (one) and 2 (two) must be divided into 7 (seven) sections, namely Cape Town **Regional Office**, Durban **Regional Office**, East London **Regional Office**, Johannesburg **Regional Office**, Pretoria **Regional Office**, **High Value Department** and **Supplier Claims Department** and trial dates must be listed under the relevant **Regional Office** or department that is managing the claim.

14.5. The Trial Date Notification Excel Workbook must be delivered by electronic mail to the **Regional Offices**, the **High Value Department** the **Supplier Claims Department** and the **COO**.

14.6. The **Fund** may from time to time give the **Firm** notice of new addresses to which the Trial Notification Excel Workbook must be delivered.

14.7. The spreadsheets will be submitted in the following format:

SPREADSHEET 1: NEW TRIAL DATES

Claim & Link Number	Date of Instruction	Court	Trial Date	Date of receipt of Notice of Set Down	Plaintiff's Attorney	Claimed Amount (per Head of Damages)



## SPREADSHEET 2 ALL TRIAL DATES ALLOCATED PRIOR TO PRECEDING MONTH

Claim & Link Number	Date of Instruction	Court	Trial Date	Plaintiff's Attorney	Claimed Amount (per Head of Damages)

## SPREADSHEET 3: ARBITRATION HEARING DATES

Claim & Link Number	Date of Instruction	Court	Arbitration Hearing Date	Date of receipt of Notice of Set Down	Plaintiff's Attorney	Claimed Amount (per Head of Damages)

## 15. NOTICES OF INTENTION TO AMEND CLAIM

15.1. When the Plaintiff delivers a Notice of Intention to Amend the Claim, the **Firm** must provide the **Fund** with a copy of such notice within 3 (three) **Days** the notice being served.

15.2. In the event of the Notice of Intention to Amend increasing the damages claimed to an amount in excess of R5 million, a copy of the notice, together with a covering letter from the **Firm** must, within the same time period referred to in paragraph 15.1 above, be sent to the **Regional Manager** and the **COO**. The covering letter must contain:

- 15.2.1. the claim and link numbers;
- 15.2.2. the date of trial or arbitration hearing, if applicable;
- 15.2.3. the amount claimed for each head of damages at the time summons was issued;
- 15.2.4. details of any previous amendments to the damages claimed; and
- 15.2.5. the **Firm's** estimate of the **Fund's** liability for each head of damage.

15.3. The **Fund** may from time to time give the **Firm** notice of new e-mail addresses to which the notifications must be delivered.

## 16. INSTRUCTIONS TO ASSESSORS

- 16.1. The **Firm** will obtain instructions in advance from the **Fund** to instruct an assessor and an assessor shall not be engaged without the prior written authorisation of the **Fund**.
- 16.2. The **Fund** will select the assessor to be engaged. Such selection may, at the sole discretion of the **Fund**, be made in consultation with the **Firm**.
- 16.3. In the event of paragraphs 16.1 and 16.2 not being complied with when an assessor is instructed, the **Fund** will not be liable for any the fees and disbursements charged by such assessor.

## 17. INSTRUCTIONS TO EXPERT WITNESSES

- 17.1. The **Firm** will obtain instructions in advance from the **Fund** to instruct expert witnesses or obtain follow-up reports from expert witnesses and no expert witness shall be engaged without the prior written authorisation of the **Fund**.
- 17.2. The **Fund** will select the expert/s to be engaged. Such selection may, at the sole discretion of the **Fund**, be made in consultation with the **Firm**.
- 17.3. In the event of paragraphs 17.1 and 17.2 not being complied with when an expert witness is instructed, the **Fund** will not be liable for any the fees charged by such expert witness.
- 17.4. Where applicable, expert witnesses must be instructed within 3 (three) months of the **Firm** being instructed in terms of paragraph 6 of the **Service Level Agreement**.
- 17.5. Expert reports obtained on behalf of the **Fund** must be received by the **Firm** no later than 2 (two) months before the date of trial, except in circumstances where an amendment to the claim requires additional experts to be instructed, and such amendment is received less than 2 (two) months before the date of trial.

## 18. INSTRUCTING CORRESPONDENT ATTORNEYS

- 18.1. In the event of an action having been instituted, or requiring to be instituted in a court outside the jurisdiction of the **Firm**, the **Firm** may instruct a correspondent attorney subject to the following:
- 18.1.1. In selecting the correspondent attorney, the **Firm** must have regard to and apply affirmative procurement principles;
  - 18.1.2. The **Firm** must notify the **Fund** of the name of the correspondent attorney within 5 (five) days of such attorney being appointed;
  - 18.1.3. Correspondent attorneys must be appointed on the basis that they will only receive, serve, file and forward pleadings, notices and correspondence to the **Firm**. Correspondent attorneys may not draft any notices or pleadings, appear at meetings or in court, or enter into any negotiations with a Plaintiff's attorney on behalf of the RAF;
  - 18.1.4. Correspondent attorneys will be instructed on the basis that the tariff of fees is set out in Annexure C hereto;
  - 18.1.5. Bills of costs will not be submitted by the correspondent attorney directly to the **Fund**. Such Bills of Costs must be furnished by the correspondent attorney to the **Firm** and submitted by the **Firm** to the **Fund**. The **Fund** will pay the assessed fees and disbursements of the correspondent attorney to the Firm and not directly to the correspondent attorney.

## 19. BRIEFING OF COUNSEL

- 19.1. The **Firm** will obtain instructions from the **Fund** to brief counsel. Written instructions to be brief counsel must be sought from the Fund at least 15 (fifteen) days before the trial date or the date an application is set down for hearing.
- 19.2. Counsel will be briefed in accordance with the tariff set out in **Annexure D**. Any deviation from this tariff must be requested in writing and approved in advance by the COO.
- 19.3. When briefing counsel the **Firm** will have to give preference to historically disadvantaged individuals.

- 19.4. Should the **Fund** fail to instruct the **Firm** within 5 (five) days of the written request by the **Firm** to instruct counsel in terms of 19.1 above, the **Firm** may proceed to instruct counsel, and shall notify the **Fund** within 2 (two) days of the name of the counsel instructed.
- 19.5. In the event of paragraphs 19.1 not being complied with when counsel is briefed, the **Fund** will not be liable for any of the fees charged by such counsel.
- 19.6. Counsel will not be instructed in the Magistrates' Court, unless the written consent of the **Regional Manager** is obtained in advance, provided that if the claim is managed by the **Supplier Claims Department** or the **High Value Department**, such consent must be obtained from the manager of that department.
- 19.7. When counsel is instructed on trial, the **Firm** shall not, without the prior written approval of the **Fund**, brief counsel to provide written opinions on any aspect of the claim, including but not limited to opinions on liability and/or quantum or to draft or settle any notices, applications and/or pleadings.
- 19.8. The written consent referred to in paragraph 19.7 above, must be obtained from the **Regional Manager** of the region where the claim is managed, provided that if the claim is managed by the **Supplier Claims Department** or the **High Value Department**, such consent must be obtained from the manager of that department.

## **20. FEES AND DISBURSEMENTS**

### **20.1. Disbursements incurred to expert witnesses, counsel and assessors**

- 20.1.1. By the 22<sup>nd</sup> **Day** of each month, the **Firm** will provide the **Fund** with a consolidated statement of account listing the outstanding invoices received from expert witnesses, counsel and assessors.
- 20.1.2. This will be headed Monthly Consolidated Disbursement Statement of Account.
- 20.1.3. The Monthly Consolidated Disbursement Statement of Account will reflect:
- 20.1.3.1. The name of the person/entity who rendered the service;

- 20.1.3.2. The amount due in respect of each invoice; and
- 20.1.3.3. The claim and link numbers.
- 20.1.4. The originals of all invoices will be attached to the statement of account, except if the original invoices have already been submitted to the **Fund** previously.
- 20.1.5. Each invoice should also be accompanied by written proof of the **Fund's** instruction to appoint the expert witness, counsel or assessor.
- 20.1.6. The consolidated statement account and accompanying invoices must be delivered to the **Regional Office** of the **Fund** by hand, docex or courier. The **Fund** may from time to time give the **Firm** notice of a different person to whom the documentation must be delivered.
- 20.1.7. Within a period of 30 (thirty) **Days** from date of receipt of the statement of account and original invoices or copies as referred to in sub-paragraph 19.1.4 above, the **Fund** will effect payment of such invoices, alternatively in writing notify the **Firm** of any query relating to one or more of such invoices. The **Firm** will respond to all queries within a period of 10 (ten) **Days** from receipt thereof.
- 20.1.8. In the event of a query raised by the **Fund** being addressed to its satisfaction, payment of the invoice/s queried will be made within 15 (fifteen) **Days** of the **Fund** receiving the response referred to in paragraph 20.1.7 above.
- 20.1.9. In the event of a query not being addressed to the satisfaction of the **Fund**, the **Fund** will, within 15 (fifteen) **Days** of receiving the response referred to in paragraph 20.1.7 above, pay the amount for which it accepts liability, alternatively inform the **Firm** in writing that it repudiates liability for the invoice/s.
- 20.1.10. Payments for assessors and expert fees will be made directly to the assessor or expert who submitted the invoice, while payment of fees of counsel will be made to the **Firm**.
- 20.1.11. The **Firm** will be notified by the **Fund** of payments made directly to assessors and experts.

## 20.2. Other Disbursement

- 20.2.1. In the event of the **Firm** incurring disbursements in excess of R1 000.00 (One thousand Rand) to a person or entity other than one referred to in paragraph 20.1.1 above, the **Firm** may include such invoices in the Monthly Consolidated Disbursement Statement of Account referred to in sub-paragraph 20.1.2 above.
- 20.2.2. The original invoice from the person or entity referred to in paragraph 20.2.1 above must be attached to the statement of account.
- 20.2.3. Each invoice should also be accompanied by written proof of the **Fund's** instruction to incur the expense.
- 20.2.4. Within a period of 30 (thirty) **Days** from date of receipt of the statement of account and original invoice, the **Fund** will effect payment of such invoices, alternatively in writing notify the **Firm** of any query relating to one or more of such invoices. The **Firm** will respond to all queries within a period of 10 (ten) **Days** from receipt thereof.
- 20.2.5. In the event of a query raised by the **Fund** being addressed to its satisfaction, payment of the invoice/s queried will be made within 15 (fifteen) **Days** of the **Fund** receiving the response referred to in paragraph 20.2.4 above.
- 20.2.6. In the event of a query not being addressed to the satisfaction of the **Fund**, the **Fund** will, within 15 (fifteen) **Days** of receiving the response referred to in paragraph 20.2.4 above, pay the amount for which it accepts liability, alternatively inform the **Firm** in writing that it repudiates liability for the invoice.

## 20.3. Legal Costs – Magistrate Court Claims

- 20.3.1. No earlier than 10 (ten) **Days** after the finalisation of a Magistrates Court matter but within 2 (two) months of such a matter being finalised, the **Firm** will provide the **Fund** with a Consolidated Statement of Account drawn in terms of Annexure C of this **Service Level Agreement**.

- 20.3.2. This will be headed Monthly Consolidated Statement of Account Magistrate Court Matters.
- 20.3.3. The Monthly Consolidated Disbursement Statement of Account referred to in the above paragraph must, in respect of each matter, reflect:
- 20.3.3.1. the link and claim numbers of the each matter; and
  - 20.3.3.2. the total fees and disbursement being claimed.
- 20.3.4. The following documents must be attached to the account:
- 20.3.4.1. tax Invoices issued by the **Firm** for each matter reflected on the account;
  - 20.3.4.2. original invoices or other supporting documentation relating to outstanding disbursements. (Disbursements that have been paid or accounted for in a Monthly Consolidated Disbursement Statement of Account must not be reflected); and
  - 20.3.4.3. written proof of instruction by the **Fund** in respect of the specific disbursement.
- 20.3.5. The statement of account and accompanying documentation will be delivered to the **Regional Office** of the **Fund** where the matter is dealt with by hand, docex or courier.
- 20.3.6. Within a period of 30 (thirty) **Days** from date of receipt of the Statement of Account and supporting documentation, the **Fund** will effect payment to the **Firm**, alternatively in writing notify the **Firm** of any queries relating to account.
- 20.3.7. The **Firm** will respond to all queries within a period of 10 (ten) **Days** from receipt thereof.
- 20.3.8. In the event of a query raised by the **Fund** being addressed to its satisfaction, payment of the Statement of Account will be made within 15 (fifteen) **Days** of the **Fund** receiving the response referred to in paragraph 20.3.7 above.
- 20.3.9. In the event of a query not being responded to or not being addressed to the satisfaction of the **Fund**, the **Fund** will, within 15 (fifteen) **Days** of receiving the

response referred to in paragraph 20.3.7 above, pay the amount for which it accepts liability.

#### 20.4. Legal Costs – High Court Claims

- 20.4.1. Within 3 (three) months of a High Court claim being finalised, the **Firm** will provide the **Fund** with Bill of Costs drawn in terms of Annexure C of this **Service Level Agreement**.
- 20.4.2. All outstanding disbursement will be reflected in the Bill of Costs and original Tax Invoices relating to such disbursements will be attached to the Bill of Costs.
- 20.4.3. The Bill of Costs and accompanying documentation will be delivered by hand, docex or courier to:
  - 20.4.3.1. The **Regional Manager** at the **Regional Office** where the claim was finalised; or
  - 20.4.3.2. To the Manager of the Suppliers Claims Department if that department finalised the claim; or
  - 20.4.3.3. To the Manager of the **High Value Department** if that department finalised the claim.
- 20.4.4. The Bill of Costs will be assessed by the **Fund** within 2 (two) months from date of receipt of the Bill.
- 20.4.5. Within 10 (ten) **Days** from date of assessment, the **Fund** will notify the **Firm** in writing of the amount for which the Bill has been assessed and provided details of all amounts that have been disallowed and/or reduced.
- 20.4.6. Payment of the assessed amount will be paid within 1 (one) month from date of assessment.
- 20.4.7. If the **Firm** disputes all or any of the amounts disallowed or reduced, the **Firm** will, within 10 (ten) **Days** from receiving the notice referred to in paragraph 20.4.5 above, in writing request a meeting with the person who assessed the Bill of Costs and the manager of the Department.



- 20.4.8. The meeting will take place within 15 (fifteen) **Days** of the request for a meeting.
- 20.4.9. If the dispute is not resolved at the meeting, or if the meeting is not held within the 15 (fifteen) **Day** period referred to above, the **Firm** may address a letter to the **COO** detailing as to why the disallowed/ reduced amounts are queried. Such letter must be delivered to the **COO** within 10 (ten) **Days** after the expiry of the 15 (fifteen) **Day** period referred to in paragraph 20.4.8 above, or within 10 (ten) **Days** after the meeting taking place.
- 20.4.10. The **COO** will consider the matter and may call for oral or written representations from the Cost Officer who assessed the Bill of Costs and/or the relevant Manager.
- 20.4.11. The **COO** will notify the **Firm** in writing of his decision regarding the queried amounts within 20 (twenty) **Days** from receiving the letter referred to in paragraph 20.4.9 above.
- 20.4.12. Any additional payment that is due to the **Firm** having regard to the decision of the **COO** will be made within 20 (twenty) **Days** from date of the notice from the **COO** to the **Firm** referred to in paragraph 20.4.11 above.
- 20.4.13. The **Firm** will, by the 22<sup>nd</sup> **Day** of each month, or the first business **Day** thereafter, provide the **Fund** with a consolidated statement of account listing outstanding payments in respect of High Court matters where the assessment process has been finalised.
- 20.4.14. This will be headed Monthly Consolidated Statement of Account: High Court Matters.
- 20.4.15. The Monthly Consolidated Disbursement Statement of Account referred to in the above paragraph must, in respect of each matter, reflect:
- 20.4.15.1. the link and claim numbers; and
  - 20.4.15.2. the total fees and disbursement due and payable as per the assessment of the Bill of Costs.

20.4.16. The following documents must be attached to the account:

- 20.4.16.1. Tax Invoices issued by the **Firm** for each matter reflected on the account;
- 20.4.16.2. original invoices or other supporting documentation relating to outstanding disbursements. (Disbursements that have been paid or accounted for in a Monthly Consolidated Disbursement Statement of Account must not be reflected); and
- 20.4.16.3. written proof of instruction by the **Fund** in respect of the specific disbursement.

20.4.17. The statement of account and accompanying documentation will be delivered to the **Regional Office** of the **Fund** where the matter is dealt with by hand, docex or courier.

20.4.18. The **Fund** may from time to time give the **Firm** notice of a different person to whom the documentation must be delivered.

20.4.19. Within a period of 30 (thirty) **Days** from date of receipt of the consolidated monthly statement of account, the **Fund** will effect payment of the assessed amount.

## ANNEXURE C

### FEE STRUCTURE FOR ATTORNEYS' FEES

#### 1. GENERAL FEE STRUCTURE

Subject to the terms of this **Service Level Agreement** the **Firm** shall be entitled to fees in respect of the due, full and proper performance of its obligations set out in the **Service Level Agreement**.

##### 1.1. High Court Litigation

Unless specifically provided otherwise, and subject to the guidelines set out in paragraph 2 below, the **Firm** shall be entitled to base its fees on the tariff as set out in rule 70 of the Supreme Court Uniform Rules of Court, as amended from time to time.

Attorneys appearing personally in the High Court shall not be entitled to charge the fees of an advocate.

##### 1.2. Magistrates' Court Litigation

Unless specifically provided otherwise, and subject to the guidelines set out in paragraph 2 below, the **Firm** shall be entitled to base its fees on the tariff as set out in table A of annexure 2 to the Magistrates' Courts Rules of Court, as amended from time to time.

#### 2. CALCULATION OF FEES ALLOWED

2.1. The final fee to which the **Firm** will be entitled will depend on the stage at which the matter is settled or finalised, and will be computed on the basis as set out in the table below:

<u>STAGE</u>	<u>PERCENTAGE ENTITLEMENT</u>
Before Close of Pleadings	100%
After Close of Pleadings, but before Discovery is due in terms of the Court rules	90%
After Discovery, but before Notice of Set Down is received	80%
After Notice of Set Down, but before Trial	70%

- 2.2. In arriving at the final amount payable to the **Firm**, the following procedure is to be followed:
- 2.2.1. The **Firm** shall draw its Bill of Costs on the tariff set out in paragraph 1 above.
  - 2.2.2. Depending on the stage at which the matter is finalised, the total fees (excluding disbursements) (gross fees) indicated on the Bill of Costs will be multiplied by the percentage to which the **Firm** is entitled as indicated in the table under paragraph 2.1 above.
  - 2.2.3. The amount calculated in paragraph 2.2.2 above (nett fees) will be added to the disbursements to arrive at the final amount payable to the **Firm**, subject to the subtraction of any penalties due by the Firm in terms of clause 18 of the **Schedule**.

## ANNEXURE D

### ADVOCATES' FEES

#### 1. GENERAL GUIDELINES FOR ADVOCATES' FEES

- 1.1. When a **Firm** requires the services of an advocate, the **Firm** shall endeavour to make use of the services of advocates who are willing to perform work for the **Fund** on the terms and tariffs set out in this **Service Level Agreement**.
- 1.2. Where the **Firm** deems it necessary to exceed these guidelines, the written consent of the **Regional Manager** of the **Regional Office** where the matter is managed shall be obtained prior to briefing the advocate.

#### 2. RAF TARIFF OF FEES ALLOWED FOR ADVOCATES

	JUNIOR COUNSEL				SENIOR COUNSEL
	0 – 3 YEARS	3 – 5 YEARS	5 – 10 YEARS	10+ YEARS	
DAY FEE (ON TRIAL)	R9 000.00	R11 000.00	R13 000.00	R15 000.00	R18 000.00
HOURLY FEE (PREPARATION)	R900.00	R1 100.00	R1 300.00	R1 500.00	R1 800.00
POSTPONEMENT	R900.00	R1 100.00	R1 300.00	R1 500.00	
ATTENDING TO MAKE SETTLEMENT AN ORDER OF COURT	R900.00	R1 100.00	R1 300.00	R1 500.00	

- 2.1. Where a matter is postponed or settled before the trial date, counsel will be entitled to a portion of the normal Day Fee for the first day of the trial on the following basis:
- 2.1.1. If the matter is settled or postponed not more than 3 (three) **Days** prior to the date of hearing: 90% of the normal Day Fee;
  - 2.1.2. If the matter is settled or postponed more than 3 (three), but less than 6 (six) **Days** prior to the date of hearing: 60% of the normal Day Fee;
  - 2.1.3. If the matter is settled or postponed more than 6 (six) **Days**, but less than 10 (ten) **Days** prior to the date of hearing: 40% of the normal Day Fee;
  - 2.1.4. If the matter is settled or postponed more than 10 (ten) **Days** prior to the date of hearing: Nil.

## ANNEXURE E

### SCHEDULE OF PENALTIES

<u>ITEM</u>	DAYS DELAY VS PENALTY AS PERCENTAGE OF CAPITAL AMOUNT *									
	1	2	3	4	5	6	7	8	9	10+
<b><u>PLEADINGS</u></b>										
Delivery of Appearance to Defend to Plaintiff	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%	1.0%
Delivery of Plea to Plaintiff	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%	1.0%
Delivery of Tender to Plaintiff at least 15 days before trial	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
<b><u>DELIVERY OF DOCUMENTS TO FUND</u></b>										
Initial Assessment Report	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%	1.0%
Final Assessment Report	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
Notice of Set Down	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%	1.0%
Pre-Trial Minutes	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%	1.0%
Court Order / Settlement Documents	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%	2.25%	2.50%

<u>ITEM</u>	DAYS DELAY VS PENALTY AS PERCENTAGE OF PLAINTIFF'S TAXED COSTS									
	1	2	3	4	5	6	7	8	9	10+
Delivery of Notice of Opposition of Bill of Costs	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
<b><u>DELIVERY OF DOCUMENTS TO FUND</u></b>										
Plaintiff's Bill of Costs	0.2%	0.4%	0.6%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%
Settlement of Bill of Costs	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%	2.25%	2.50%
Taxing Master's Allocator	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%	2.25%	2.50%

- \* “Capital Amount” means the amount representing the capital portion of the claim (after apportionment) for which the claim is settled or judgment is given.
- \* Penalties in respect of any one matter shall not exceed, in aggregate, 30% of the ***Firm’s*** Bill of Costs in respect of the matter to which the penalty relates.



## ANNEXURE F

### NOTIFICATION OF COURT ORDERS AND ARBITRATION AWARDS

THE CHIEF EXECUTIVE OFFICER  
**ROAD ACCIDENT FUND**  
 DEPARTMENT:  
 ATT:

CLAIM NUMBER:  
 PLAINTIFF:  
 DATE OF TRIAL:

#### 1. OUTCOME & LIABILITY

We confirm that the above matter was on the trial roll / arbitration on .

The outcome of the matter was the following:

Matter proceeded to trial and judgment was granted	
Matter was settled and the settlement was made an order of Court	
Matter proceeded to arbitration and an award was granted	

The RAF is liable to compensate the Claimant for % of the damages suffered by the Claimant.

#### 2. CAPITAL

The capital is due for payment on or before . The amount to be paid is R , which amount is made up as follows:

GENERAL DAMAGES	
PAST MEDICAL EXPENSES	
FUTURE MEDICAL EXPENSES	
PAST LOSS OF SUPPORT	
FUTURE LOSS OF SUPPORT	
PAST LOSS OF INCOME	
FUTURE LOSS OF INCOME	
FUNERAL COSTS	
SUB-TOTAL	
LESS APPORTIONMENT	
SUB-TOTAL	
LESS WCC	
LESS INTERIM PAYMENTS	
TOTAL PAYABLE	

### 3. UNDERTAKING FOR FUTURE MEDICAL EXPENSES

The Claimant will be entitled to a statutory undertaking in terms section 17(4)(a) / section 17(4)(b) / a contractual undertaking *(delete whichever is not applicable)* which undertaking shall be limited to     % of the proven expenses.

### 4. LEGAL COSTS

The Claimant will be entitled to payment of the agreed or taxed party and party High Court / Magistrates' Court costs. *(delete whichever is not applicable)*.

### 5. BANKING DETAILS

Payment of the capital and costs are to be made to the account of the Claimant's attorneys of record. Their details are the following:

Attorney's name	
Attorney's reference	
E-mail	
Fax number	
Bank	
Account number	
Branch code	

### 6. ADDITIONAL COMMENTS