



APPLICATION DOCUMENT: HPCSA 03/2020

INVITATION FOR APPOINTMENT OF LEGAL SERVICE PROVIDERS TO THE PANEL OF THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA FOR A PERIOD OF FIVE (5) YEARS

Situated at: 553 Madiba Street, Arcadia, Pretoria

**Deadline for application submission: 03 March 2020 at 12H00
(South African Standard Time)**

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PART 1 – GENERAL APPLICATION INFORMATION

APPLICATION ADVERTISED	08 February 2020
APPLICATION CLOSING DATE/TIME	03 March 2020 (12h00)
BRIEFING SESSION / SITE VISIT	[N/A]
VENUE FOR BRIEFING SESSION / SITE VISIT	[N/A]
APPLICATION BOX & ADDRESS	Application Box, Reception Area HPCSA Main Building 553 Madiba Street Arcadia, Pretoria 0001 If the application offer is too large to fit into the above-mentioned box or the box is full, please enquire at the Reception.
HPCSA APPLICATION REPRESENTATIVES	Ms. Livhuwani Makhanthisa Tel No: +27 12 338 3919 email: Tenders@hpcsa.co.za
APPLICATION FEE:	N/A.
OPENING OF APPLICATIONS: TIME	HPCSA Main Building, 553 Madiba Street 03 March 2020 @ 12:00
PREFERENCE SYSTEM (Preferential Procurement Regulations, 2017)	80/20 (fees are provided)

PART 2 - DETAILS OF APPLICANT

2.1 Type of Entity (Please tick one box)

- Individual / Sole Proprietor
 Close Corporation
 Company
 Partnership or Joint Venture or Consortium
 Trust
 1. Other:

2.2 Required Details (Please provide applicable details in full):

Name of Company / Close Corporation or Partnership / Joint Venture / Consortium or Individual /Sole Proprietor	
Trading as (if different from above)	
Company / Close Corporation registration number (if applicable)	
Postal address	Postal Code _____
Physical address (Chosen domicilium citandi et executandi)	Postal Code _____
Contact details of the person duly authorised to represent the applicant	Name: Mr/Ms _____ (Name & Surname) Telephone:(____) _____ Fax:(____) _____ Cellular Telephone: _____ E-mail address: _____
Income tax number	
VAT registration number	
SARS Tax Compliance Status PIN	

PART 3 – FORM OF OFFER AND ACCEPTANCE

APPLICATION NO: HPCSA 03/2020 APPOINTMENT OF LEGAL SERVICES

PART A (TO BE FILLED IN BY APPLICANT):

Required Details (Please provide applicable details in full):

Name of Applicant	
Trading as (if different from above)	

AND WHO IS represented herein by:(full names of signatory) _____

duly authorised to act on behalf of the applicant in his capacity as: (title/ designation) _____

HEREBY AGREES THAT by signing the *Form of Offer and Acceptance*, the applicant:

1. confirms that it has examined the documents listed in the Index (including Schedules and Annexures) and has accepted all the Conditions of Application;
2. confirms that it has received and incorporated any and all notices issued to applicants issued by the HPCSA;
3. confirms that it has satisfied itself as to the correctness and validity of the application offer; that the price(s) and rate(s) offered cover all the goods and/or services specified in the application documents; that the price(s) and rate(s) cover all its obligations and accepts that any mistakes regarding price(s), rate(s) and calculations will be at its own risk;
4. offers to supply all or any of the goods and/or render all or any of the services described in the application document to the HPCSA in accordance with the:
 - a. terms and conditions stipulated in this application document;
 - b. specifications stipulated in this application document; and
5. accepts full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on it in terms of the Contract.

Signature(s)

Print name(s):
On behalf of the applicant (duly authorised)

Date

APPLICATION NO: HPCSA 03/2020 APPOINTMENT OF LEGAL SERVICES

PART B (TO BE FILLED IN BY THE HPCSA)

By signing this *Form of Offer and Acceptance* the HPCSA (also referred to as the 'Purchaser'):

1. accepts the offer submitted by **(DETAILS OF SUCCESSFUL APPLICANTS, ALSO REFERRED TO AS THE "SUPPLIER")** _____, thereby concluding a contract with the supplier for a contract period from date of commencement of contract not exceeding 60 months;
2. undertakes to make payment for the goods/services delivered in accordance with the terms and conditions of the Contract.

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 20____
(PLACE) (DD) (MM) (YY)

Signature(s) and stamp of
Executive Director or his/ her delegated authority

Print name(s):
(duly authorised in terms of the
System of Delegations as approved
by Council)

Schedule of Deviations

Notes:

- a) The extent of deviations from the application documents issued by the HPCSA before the application closing date is limited to those permitted in terms of the conditions of application.
- b) An applicants' covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
- c) Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the application documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
- d) Any change or addition to the application documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

a) Subject
Details
.....
.....
.....

b) Subject
Details
.....
.....
.....

c) Subject
Details
.....
.....
.....

d) Subject
Details
.....
.....
.....

By the duly authorized representatives signing this agreement, the HPCSA and the applicants agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to this application document and addenda thereto as listed in the returnable schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the applicants and the HPCSA during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the application documents and the receipt by the applicants of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

PART 4 - ADMINISTRATIVE INFORMATION

4.1 Background

The Health Professions Council of South Africa (HPCSA) is a statutory body established under the Health Professions Act 56 of 1974 and is mandated to regulate the health professions in the Republic of South Africa and functions through 12 Professional Boards operating under its auspices. The Professional Boards control the professions falling within their ambit under the overarching coordination and guidance of the HPCSA and are responsible for:

- Setting standards for the Education, training and registration and practice of all health professions registered under the Act;
- Fostering compliance with the standards set;
- Ensure ongoing continuing professional development by practitioners; and
- Investigate complaints lodged against practitioners registered under the Act.

The HPCSA is also responsible for the coordination of the Road Accident Fund Appeal Tribunal in terms of the Road Accident Fund Act, 1996 (Act No. 56 of 1996). The Road Accident Fund Appeal Tribunal is mainly responsible for the adjudication of disputes relating to seriousness of injuries and emanating from the Road Accident Fund.

4.2 Purpose

The Health Professions Council of South Africa (HPCSA) is in the process of appointing Legal Service Providers based in all Major centres e.g. (Johannesburg, Pretoria, Polokwane, Middleburg, Durban; Pietermaritzburg, Cape Town; Port Elizabeth; East London, Grahamstown (Makanda), Mthata, and Bloemfontein). The HPCSA intends to appoint suitably qualified Legal Service providers for a period of five (5) years.

To be considered for the next steps after the RFP's, Suppliers must submit a complete response that substantially satisfies all requirements as stated in this RFP.

4.3 HPCSA Terms & Conditions of the Application

The HPCSA reserves the right without furnishing any reasons whatsoever, to cancel, withdraw or re-advertise, or to appoint or not to appoint any of the Legal Service Provider.

Successful applicants will be required to enter into service level agreements with the HPCSA.

Applications should be submitted in a sealed package marked, "**HPCSA 03/2020**"

All applications should consist of one (1) original document and USB. The sealed envelope must be placed in the application box at the Main Reception area of the HPCSA Building, 553 Madiba Street, Arcadia, 0002, South Africa.

No applications received by, mail, e-mail or facsimile will be considered.

Where an application is not submitted at the time of the application closing date, such an application will not be assessed.

The HPCSA is entitled to amend any application condition, validity period, specification, or extend the return date of such an application before the closing date. All applicants, to whom the application documents have been issued, will be advised in writing of such amendment or of extensions, promptly.

4.4 Retention of Applications

All applications submitted shall become the property of the HPCSA. The HPCSA will make all reasonable efforts to maintain applications in confidence. Proprietary information should be identified in each application.

4.5 Cancellation and re-invitation of bids

The decision to cancel a bid will be published in the same media in which the original bid invitation was advertised.

4.6 Vendor Communications

During the application period, communications between applicants and the HPCSA will only be in writing through email for any queries and questions. All communications, correspondence, documentation, manuals, applications, presentations, demonstrations etc., must be in English. All questions concerning the Application must refer to the Application page number, section and paragraph. All questions and correspondence must only be directed to the authorised HPCSA Application Representatives, listed in PART 1 of the application.

4.7 Prime Contractor Relationship

The HPCSA intends to contract only with an identified vendor known as the Prime Contractor when the Application is issued. Subcontracting assignments will be allowed. The subcontractors should adhere to the same requirements as set out for the Prime Contractor. In the event of a subcontracting arrangement, the Prime Contractor assumes all responsibility for delivery, installation, maintenance and any support service including documentation that is supplied by the subcontractor.

4.8 Response Validity Period

Application responses will be valid for a period of 90 days after the closing date.

4.9 Fee Section

Successful service providers will be paid the fees referred to in **Annexure F**.

PART 5 – TERMS OF REFERENCE (SPECIFICATION)

5.1 Competency requirements

Applications must, inter alia, have experience and /or expertise in the following matters:

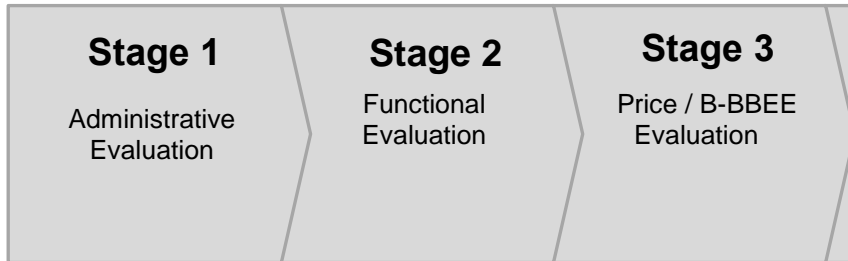
- Civil and Criminal Litigation in the magistrate's Court and High Court. Med Law,
- Knowledge of and experience in applicable Health Legislation, including the Health Professions Act, 56 of 1974 and its governing regulations,
- Experience in the provision of legal opinions,
- Medico legal experience,
- Experience in labour Law and related process,
- Experience in conducting professional conduct Inquiries,
- Knowledge and experience in the Road Accident Fund litigation.

5.2 Duration of contract

Successful applicant will be required to enter into a service level agreement for a period of five (5) years from the date of appointment.

PART 6 - EVALUATION PROCESS

- This application will be evaluated in accordance with the Preferential Procurement Regulations of 2017. The HPCSA will use a staged approach to evaluate the bids. The requirements of any given stage must be complied with prior to progression to the next stage. The HPCSA reserves the right to disqualify bidders without requesting any outstanding document/information.
- The stages are outlined in the diagram below and further detailed in the paragraphs that follow.



Stage 1: Administrative Evaluation

During this stage of the evaluation the bidders will be evaluated on whether they:

- Complied with all the conditions of application; and
- Submitted all mandatory documentation required.

A bidder who fails to comply with all the criteria below will be disqualified at this stage and will not be considered any further

The required mandatory administrative documentation includes the following:

Mandatory Document	Checklist
Duly completed HPCSA supplier declaration form (Certified by Commissioner of Oath) Annexure A	
Professional registration certificates with the Legal Practice Council (certified)	
A Company or Legal Practitioner Profile	
Copy of Financial Statements	
Proof that the bidder’s tax affairs are in order with SARS (e.g. Tax Clearance Certificate/ Status Pin number document)	
SBD4 – Declaration of Interest see Annexure B	
SBD8 – Declaration of bidders past Supply Chain Management Practices Annexure C	

Stage 2: Functional Evaluation

Bidders who qualified for the previous stage(s) of the Evaluation will then be evaluated in terms of the functional requirements.

Scoring Criteria

All bidders who met all the mandatory requirements will now be evaluated further on functionality. A *minimum score of 70 points out of 100* will be required to pass the Functional Evaluation stage.

The HPCSA will analyse and assess functional capability and therefore the bidder should demonstrate the following:

TECHNICAL EVALUATION CRITERIA						
CRITERIA					SUB-CRITERIA	MAX POINTS
Compliance with the requirements of the Legal Practice Council established in terms of the Legal Practice Act, 2014 (Act No. 28 of 2014) (provide certificate of registration with legal practice council)						40
Experience of the Firm or Legal Practitioner (Years of Practice) Proof should be in a form of a profile of a firm or Legal Practitioner.						40
0-3 years	3-5 years	5-10 years	10 years +			
0	20	30	40			
Reference letters						20
1 letter		2 letters		3 letters and above		
5		10		20		
TOTAL						100

All bids that qualify for this stage of the evaluation process are considered acceptable bids/applications and will then be evaluated on Price (fees provided) and B-BBEE.

Stage 3: Price and B-BBEE (Fees provided only BBEE will be considered)

Only bidders that passed the Functional Evaluation stage will be evaluated on preference (B-BBEE). The 80/20 preference point system will be applicable for this application. The qualifying bids are evaluated in terms of 80/20 preference points systems, where 80 points must be used for price only and the 20 are used for B-BBEE as per PPPFA.

Preference Scores

A bidder will only be awarded points for preference, provided:

- The bidder has completed and signed the Preference Points Claim Form (SBD 6.1 **Annexure E**);
- The bidder:
 - Submitted a valid B-BBEE status level certificate issued by a SANAS accredited B-BBEE agency; or
 - Submitted an affidavit stating the B-BBEE status level in the case of an EME and QSE;
 - A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
 - A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such B-BBEE scorecard is prepared for each and every separate bid.

In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to an applicant for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system) For procurement, up to R50 million
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2

Non-compliant contributor	0
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80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:

80/20

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

- P_s = Points scored for price of application under consideration
- P_t = Price of application under consideration
- P_{min} = Price of lowest acceptable application

PART- 7 SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract are applicable to this Contract:

- The agreement shall remain in force for period of five (5) years.
- The fees agreed upon and charged in this contract and any other monies owing by the HPCSA to the Legal Service Provider shall be payable within thirty days of receipt of invoices.
- A Service Level Agreement to ensure that optimal service levels are maintained throughout the duration of the contract will be signed by the legal service provider. In terms of this agreement, punitive measures shall be applicable in the event of non-satisfactory, delayed service or non-adherence to agreed time limits.
- Should the HPCSA be of the opinion that the Service Provider does not deliver services of an acceptable standard, the Council may cancel the agreement by notice in terms of a cancellation clause and the Legal Service Provider shall have no recourse thereafter.

SERVICE LEVEL AGREEMENT

Between

THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

("the HPCSA")

And

.....(**"the FIRM"**)

SERVICE LEVEL AGREEMENT:

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SERVICE LEVEL AGREEMENT: PROVISION OF LEGAL SERVICES

1. PARTIES

The Parties to this Agreement are:

1.1. HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

And

.....(**“the Firm”**)

2. BACKGROUND

It is hereby recorded that-

- 2.1. The mandate of the HPCSA is to enhance the quality of health by developing strategic policy frameworks for effective co-ordination and guidance of the twelve professional boards in setting healthcare standards for training and discipline amongst health practitioners registered with it.
- 2.2. The HPCSA requires the services of an experienced law firm.
- 2.3. The HPCSA and the Firm now wish to regulate their relationship with regard to the rendering of the legal services by **the Firm** and related matters in this Agreement.

3. INTERPRETATION

3.1. In this Agreement, unless otherwise specified or the context clearly indicates the contrary, the following words and expressions shall have the meanings assigned to them below and related words and expressions shall have corresponding meaning:

- 3.1.1. **“Agreement”** - this written Agreement between the HPCSA and the Firm and any annexures thereto;

- 3.1.2. **“Advocate”** – any person duly admitted to practice as an Advocate in any part of the Republic of South Africa;
 - 3.1.3. **“Attorney** – any person duly admitted to practice as an attorney in any part of the of the Republic of South Africa;
 - 3.1.4. **“Business Day”** – a day other than a Saturday, Sunday or official public holiday in South Africa;
 - 3.1.5. **“the HPCSA”** – Health Professions Council of South Africa, established in terms of section 2 of the Health Professions Act , 1974 (Act No 56 of 1974), as amended, with its principal business address at 553 Madiba Street, Pretoria;
 - 3.1.6. **“Commencement Date”** – the last date of signature of this Agreement;
 - 3.1.7. **“the Firm”**- a firm of attorneys, or Advocates (where applicable) practicing as such in the Republic of South Africa, with its principal place;
 - 3.1.8. **“Prevailing Legislation”** – any legislation, regulation, rules, by-laws, policy, or directive document in the Republic of South Africa presently in existence or coming into existence after the Commencement Date which is of relevance to the rendering of the services in terms hereof;
 - 3.1.9. **“Services”** – legal and related services to be rendered by the Firm to the Council in terms of this Agreement;
- 3.2. Any reference to-
- 3.2.1. the singular shall include the plural and vice versa.
 - 3.2.2. any gender shall include the other genders.
 - 3.2.3. the natural persons shall include legal persons and vice versa.

- 3.3. Any reference to an enactment is to that enactment as at the date of signing hereof and as amended or re-enacted from time to time.
- 3.4. The headings of clauses in this Agreement are for reference purpose only and shall not be taken into account in construing the contents hereof.
- 3.5. If any word or phrase is defined in any clause hereunder, that word or phrase shall bear the same meaning throughout the remainder of this Agreement.
- 3.6. If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 3.7. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day other than a Business Day, in which case the last day shall be the immediately following Business Day.
- 3.8. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 3.9. Where any term is defined within the context of a particular clause in this Agreement, it shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause.
- 3.10. The expiration or termination of this Agreement shall not affect such of the provision contained herein which expressly provide that they will operate after such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide.

3.11. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting or preparation of this Agreement, shall not apply.

4. APPOINTMENT

The HPCSA hereby appoints **the firm**, which appointment **Firms** hereby accepts, to render the services to the HPCSA as described in clause 5.1 below.

5. DURATION AND TERMINATION

5.1. This Agreement shall, notwithstanding the date of signature hereof, come into effect on the Commencement Date and shall remain in force for a period of five (5) years calculated from the date of signature hereof.

5.2. Notwithstanding the provisions of clause 5.1 above, **the Firm accepts** that as a result of the special nature of the working relationship envisaged in this Agreement, the HPCSA shall be entitled to terminate this Agreement should **the Firm** or a member of its staff conduct himself/herself in any manner that may adversely affect this working relationship, including but not limited to:

5.2.1. making any false statements or representations relating to obligations arising from this Agreement;

5.2.2. over-reaching;

5.2.3. falsifying any documents or records relating to obligations arising from this **Agreement**;

5.2.4. being struck from the roll of Attorneys by the Legal Practice Council; and

5.2.5. being suspended from practicing for a period exceeding six (6) months.

6. INDEPENDENT PARTIES AND GOOD FAITH

- 6.1. The Parties shall at all times show the utmost good faith in their dealings with each other in respect of the performance of their obligations under this Agreement and otherwise in connection with this Agreement.
- 6.2. Notwithstanding anything to the contrary in this Agreement, the Parties shall at all times be independent contracting Parties and neither Party shall be-
 - 6.2.1. the partner of the other;
 - 6.2.2. the agent or representative of the other, unless specifically so provided in this Agreement or otherwise in writing;
 - 6.2.3. the employee of the other.
- 6.3. Accordingly neither Party shall have the authority, or purport to have the authority, to bind the other Party by any representations, statements or Agreements of any nature whatsoever, unless specifically instructed in writing by the other Party.

7. SERVICES TO BE RENDERED BY THE FIRM

- 7.1. The Firm shall render a broad range of legal services to the HPCSA, which services shall include, but not be restricted to:
 - 7.1.1. providing legal advice and opinions;
 - 7.1.2. negotiating and drafting of legal documents, including contracts;
 - 7.1.3. conducting litigation; and
 - 7.1.4. drafting of legislation.

- 7.2. **The Firm** undertakes to render the legal services on a professional and cost-efficient way and to use its best endeavors to adhere to agreed deadlines for rendering of the services.
- 7.3. Upon the allocation of work, **the Firm** undertakes to proceed with its mandate in accordance with and in strict adherence to the terms of this Agreement and Prevailing Legislation. This means that **the Firm** shall amongst others:
- 7.3.1. comply with the professional and ethical rules applicable to the legal profession;
 - 7.3.2. adhere to the HPCSA's policies and procedures as may have been communicated to the Firm from time to time;
 - 7.3.3. ensure that the interests of the HPCSA are always protected;
 - 7.3.4. dedicate to all HPCSA's matters, personnel with experience and expertise in the field(s) of legal practice in order to give effect to the instructions of the HPCSA.
- 7.4. Where no time limits are agreed to, the services will be rendered within a reasonable period and where necessary, in accordance with Prevailing Legislation.
- 7.5. **The Firm** shall not settle any claim or litigation by or against the HPCSA without the necessary written approval of the HPCSA.
- 7.6. Where there is a need to appoint Counsel, **the Firm** shall appoint such Counsel with the written approval of the HPCSA. In such instances, **the Firm's** role shall be limited to recommending Counsel.
- 7.7. Candidate Attorneys will not be allowed to work on any of the HPCSA's matters without the supervision of an Attorney.

7.8. **The Firm** shall furnish the HPCSA with regular progress reports, or as may be agreed to by the Parties in writing, indicating the status and the progress made in the HPCSA's matters and any such information as the HPCSA may, from time to time, reasonably require in relation to the services.

7.9. **The Firm** undertakes-

7.9.1. to comply with the HPCSA's internal policies, procedures and processes when dealing with the HPCSA's matters and to take all reasonable care and precautions to safe guard such matters;

7.9.2. that it shall employ adequate number of suitably qualified and experienced staff to render the services and to ensure proper compliance by **the Firm** with all its obligations in terms of this Agreement;

7.9.3. not to directly engage in-the conducting of or advising on any litigation between a third Party and the HPCSA (whether such third Party acts in the capacity of plaintiff, defendant, applicant, respondent, appellant or in any other capacity whatsoever) including but not limited to -

7.9.3.1. the providing of any legal advice or opinions to any third Party which would result in **the Firm** advising such third Party to exercise any rights against the HPCSA;

7.9.3.2. the negotiating or drafting of any legal documents upon instruction of any third Party (including, but not limited to contracts) in matters to which the HPCSA is a Party,

unless a prior written consent of the HPCSA has been obtained (which consent shall not be unreasonably withheld). Notwithstanding the foregoing constraints **the Firm** may advise any third Party on compliance with the Prevailing Legislation.

7.10. **The Firm** appoints Mras a liaison person with the HPCSA. In the event that Mr.....is unable to attend any meetings with the HPCSA, **the Firm** shall be entitled to second any director within its ranks as an alternate to attend such meeting in the stead of Mr.....

8. OBLIGATIONS OF THE HPCSA

8.1. The HPCSA shall: -

8.1.1. timeously submit its written instructions to **the Firm**; and

8.1.2. provide **the Firm** with the details of the relevant official who shall be duly authorized to sign and execute any document on behalf of the Firm in the performance of the services.

9. FEES

9.1. In consideration for the rendering of services, the HPCSA will pay, to **the Firm**, the fees referred to in Annexure "A".

9.2. The aforementioned fees exclude value added tax and disbursements incurred in the execution of the services and shall be reviewed annually (on a twelve (12) months basis) from the Commencement Date.

9.3. In unique circumstances, billing rates and disbursement rates shall be negotiated and agreed upon at the outset of a specific request for services.

9.4. **The Firm** shall prepare and present to the HPCSA an original tax invoice of fees for services rendered and all disbursements incurred in terms of this Agreement. The invoice shall contain and detail all charges, costs and disbursements related to the services rendered and shall be delivered to the Council for approval and payment.

- 9.5. Should any of the instructions necessitate incurring extraordinary fees and disbursements, Council's prior approval will be obtained before such expenses are incurred. Where Counsel or correspondents have been briefed, proof of Counsel's and the correspondent's' fees must also be attached to the tax invoice.
- 9.6. the Council undertakes to pay all invoices strictly within thirty (30) days after receipt of the invoice.

10. SECURITY REQUIREMENTS

- 10.1. **The Firm** shall, in the performance of this Agreement, comply with the security requirements and regulations of the HPCSA.
- 10.2. Such security requirements and regulations include, *inter alia*, the right to search the person of **the Firm** and any container in the possession of **the Firm** and any vehicle driven by **the Firm**, whilst **the Firm** is on the site or premises of the HPCSA or to conduct security screening on any key member of **Firm** who may engage with the HPCSA.
- 10.3. **The Firm**, hereby irrevocably agrees to submit to such searches and consents to such searches by the HPCSA or any person duly appointed by the HPCSA to undertake such searches.

11. INTELLECTUAL PROPERTY RIGHTS

Any intellectual property including, copyright, patents or trademarks that may accrue to **the Firm** arising from any work or products created as a result of the performance under this Agreement, shall vest in the HPCSA and **the Firm** herewith irrevocably cedes all such rights to the HPCSA, provided that the HPCSA has paid **the Firm** for services rendered in respect of such intellectual property.

12. CONFIDENTIAL INFORMATION

- 12.1. In this clause the following words shall have the following meaning unless the context otherwise indicate:
- 12.1.1. **“the Disclosing Party”** – the Party disclosing Confidential Information;
- 12.1.2. **“the Receiving Party”** – the Party to which Confidential Information is disclosed;
- 12.1.3. **“Confidential information”** – information, technical data, or know-how including but not limited to the Parties’ research, products, software services development, inventions, processes, designs, marketing or finances, disclosed by the Disclosing Party to the Receiving Party either directly, indirectly, in writing or orally. It shall furthermore include, but not limited to all materials marked as “Confidential”.
- 12.2. The Receiving Party agrees not to disclose Confidential information of the Disclosing Party to any person or entity and agrees to use good efforts to prevent inadvertent disclosure of Confidential information of the other Party with at least the degree of care that it treats similar material of its own.
- 12.3. All materials, including without limitation, documents, designs, software, listings and source code, furnished to the Receiving Party by the Disclosing Party shall remain the property of the Disclosing Party.
- 12.4. The Receiving Party shall refrain from making any copies of any Confidential information of the Disclosing Party without prior written consent of the Disclosing Party and the Receiving Party shall return to the Disclosing Party, promptly at its request, all Confidential information.
- 12.5. For the purpose of the Agreement Confidential Information shall not include:

- 12.5.1. Information which was in the Receiving Party's possession at the time of disclosure and which was not acquired from the Disclosing Party.
- 12.5.2. Information which had entered the public domain at the time of disclosure or which after disclosure enters the public domain, in either case through no action or fault of the Receiving Party.
- 12.5.3. Information which was developed independently by the Receiving Party before or, if unrelated to the information disclosed, subsequent to the date of disclosure.
- 12.5.4. Information which was independently received before the date of disclosure by the Receiving Party from a third Party having the right to disclose the same; or
- 12.5.5. Information which is published or otherwise made known to the public by the Disclosing Party.
- 12.5.6. The burden of providing any exemption provided for in this Agreement shall rest on the Receiving Party.

13. INDEMNITY

- 13.1. Each Party ("the Defaulting Party") indemnifies the other Party ("the Innocent Party") in respect of any liabilities, losses, charges, damages, costs claims, demands or proceedings whatsoever in respect of personal injury to or the death of any person whatsoever or consequent upon loss of or damage to any property whatsoever of any person which may arise as a result whether directly or indirectly, of the failure by the Defaulting Party to fulfil its obligations in terms of this Agreement, howsoever arising (whether in consequence of an act of commission or omission on the part of or attributable to the subcontractors, professional consultants or any other person connected with the Defaulting

Party or for whom Defaulting Party is vicariously liable), but excluding any negligent act or omission by the Innocent Party or its servants.

- 13.2. The **Firm** hereby warrants that it possesses, as at the date of appointment, professional indemnity insurance against any liability that it may incur in terms of this Agreement. The **Firm** shall, upon demand by the HPCSA, be obliged to furnish proof of such indemnity insurance to the HPCSA.

14. CESSION AND SUB-CONTRACTING

- 14.1. **The Firm** shall not be entitled to cede, delegate, transfer or otherwise assign its rights or obligations under this Agreement to any third Party without the prior written consent of the Council.
- 14.2. **The Firm** shall not be entitled to sub-contract any of the services in terms of this Agreement, except with the prior written consent of the Council, and on such terms and conditions as may be stipulated by the HPCSA.

15. BREACH

Should any Party (“the Defaulting Party”) breach any terms of this Agreement, the other Party (“the Innocent Party”) shall notify the defaulting Party in writing to remedy such breach, and should the defaulting Party fail to do so within seven (7) days of receipt of such notification, the innocent Party shall without prejudice and in addition to any other remedies it may have, be entitled to:

- 15.1. cancel this Agreement and to claim damages from the defaulting Party; or
- 15.2. claim specific performance of any or all the terms and conditions of this Agreement.

16. DISPUTE RESOLUTION

- 16.1. Any dispute arising from or in connection with this Agreement, its validity, the Parties' rights and/or obligations thereunder or its termination shall in the first instances be referred to the senior representatives of the Parties or their respective nominees with a view of reaching amicable resolution of the dispute.
- 16.2. Should the senior representatives or their respective nominees be unable to resolve the dispute within fourteen (14) days after the dispute has been referred to them in terms of clause 16.1, or within such period as may have been agreed to by the Parties in writing, such dispute shall be referred to arbitration as provided for in clause 17 below.

17. ARBITRATION

- 17.1. Should any dispute arise between the Parties in connection with, and without limitation –
- 17.1.1.the formation or existence of;
 - 17.1.2.the implementation of;
 - 17.1.3.the interpretation or application of the provisions of;
 - 17.1.4.the Parties' respective rights and obligations in terms of or arising out of this Agreement or the breach or termination of;
 - 17.1.5.the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;
 - 17.1.6.any documents furnished by the Parties pursuant to the provisions of;
 - 17.1.7.anything else arising directly or indirectly from this Agreement or relates in any way to any matter affecting the interests of the Parties to the dispute,

such a dispute shall be referred to and be determined by arbitration in terms of this clause 17.

17.2. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of arbitrator.

17.3. Save as provided in clauses 17.1 and 17.2, neither Party shall be entitled to institute any legal proceedings against the other in connection with any dispute referred to in clause 17.1 unless and until such dispute has been submitted to arbitration as provided for herein and such legal proceedings are not otherwise prohibited in accordance with the provisions of this clause.

17.4. Any Party to this Agreement may demand that a dispute be determined in terms of this clause by written notice to the other Party.

17.5. The arbitration shall be held –

17.5.1. in Pretoria;

17.5.2. applying the law of the Republic of South Africa;

17.5.3. with only the legal and other representatives of the Parties to the dispute present thereat;

17.5.4. in terms of the arbitration Act No 42 of 1965 (as amended) except as otherwise provided for in this clause 17;

17.5.5. with the intention that the arbitration shall be held and completed as soon as possible.

17.6. Should the Parties fail to agree on an arbitrator within fourteen (14) days after giving of notice in terms of clause 17.4, the dispute shall be referred –

17.6.1. to a practicing advocate of the Pretoria or Johannesburg Bar or a practicing attorney of Pretoria with at least ten (10) years practical experience and appointed by the President of the Legal Practice Council,

if the disputing Parties agree that the dispute is a dispute in respect of a legal matter;

17.6.2. to a practicing chartered accountant of Pretoria or Johannesburg with at least ten (10) years practical experience, appointed by the President of the Gauteng Association of Chartered Accountants, if the disputing Parties agree that the dispute is a dispute in respect of an accounting matter;

17.6.3. to a practicing advocate of the Pretoria or Johannesburg Bar or a practicing attorney of Pretoria or Johannesburg with at least ten (10) years practical experience and appointed by the President of the Law Society of Northern Provinces, if the Parties cannot agree whether the dispute is to be dealt with under clauses 17.6.1 or 17.6.2.

17.7. The arbitrator shall have the power to fix all procedural rules for the holding of the arbitration, including discretionary powers to make orders as to any matters which he may consider proper in the circumstances of the case with regard to submissions, pleadings, discovery, inspection of documents, examination of witnesses and any other matter relating to the conduct of the arbitration. The arbitrator may receive and act on all such evidence, whether oral or written, strictly admissible or not, as he in his discretion may deem fit.

17.8. The award of the arbitration shall be final and binding upon all the Parties to the dispute (who hereby agree to carry out the award). The Parties hereby exclude all rights of appeal which might otherwise be conferred on them by law.

17.9. The arbitrator's award may be made an order of any court of competent jurisdiction.

17.10. The Parties agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not disclose same to anyone except for the purposes of the arbitration proceedings in terms of this clause, any review thereof and obtaining an order in terms of clause 17.9.

17.11. The provisions of this clause –

17.11.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

17.11.2. constitute a separate Agreement, severable from the rest of this Agreement and shall remain in effect despite termination of or invalidity for any reason of this Agreement.

18. DOMICILIA AND NOTICES

18.1. The Parties hereby select for all purposes of this Agreement as their respective *domicil/a citandi et executandi* the addresses mentioned next to their names in clause 3 hereof or any such other address as the Parties may notify each other of in writing from time to time, for the delivery of all notices and/or processes thereto.

18.2. Any notice addressed by any Party to the other Party shall –

18.2.1. if delivered by hand at the address of its *domicilium* in terms of this clause, be deemed to have been duly received by the addressee on the date of delivery;

18.2.2. if posted by prepaid registered post to the addressee's *domicilium* in terms of this clause, be deemed to have been received by the addressee on the fifth day following the date of such posting; or

18.2.3. if emailed to the addressee's *domicilium* in terms of this clause, be deemed to have been received by the addressee twenty-four (24) hours after the date of dispatch.

18.3. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission or any form of electronic communication shall be adequate written notice or communication to such Party.

19. GENERAL

19.1. The Parties hereby acknowledge that the Agreement concluded between them constitutes the entire Agreement between them and that no other conditions, stipulations, warranties nor representations whatsoever, have been made by any Party or that Party's agent, other than as specifically included herein.

19.2. If any of the terms of this Agreement are to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms which will continue to be valid and enforceable.

19.3. No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of any payment provided for in this Agreement or the performance of any other obligation shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of or otherwise affect any of that Party's rights in terms of or arising from this Agreement, or prevent such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

19.4. The Parties agree that no variation of, addition to, consensual cancellation or novation of this Agreement in its entirety or of any term or condition thereof shall be of any force or effect, unless such amendment or cancellation is reduced to writing and signed by all the Parties or their authorized representatives hereto.

SIGNED aton this day of2020.

AS WITNESSES:

1. _____

_____ on
behalf of the **Health Professions
Council of South Africa**, duly
authorized thereto

2. _____

SIGNED aton this day of2020.

AS WITNESSES:

3. _____

_____ on
behalf of....., duly
authorized thereto

4. _____

ANNEXURE A



SUPPLIER DECLARATION FORM

Health Professions Council of South Africa

This form must be completed and submitted with APPLICATION:

**Health Professions Council of South Africa
P O Box 205
PRETORIA
0001**

**553 Madiba (previously known as Vermeulen) Street
Arcadia
PRETORIA
0007**

Please complete the form fully and use a black pen. Illegible or incomplete forms will be rejected.

Direct enquiries to Procurement Officer

Tel 012 338 3919

Email: Tenders@hpcsa.co.za

**PLEASE KEEP COPIES OF REGISTRATION FORM AND ALL DOCUMENTATION SUBMITTED FOR
YOUR RECORDS AS NO COPIES WILL BE MADE BY THE COUNCIL**

First name

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Surname

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Identification number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Capacity

D	P	M	R	O
---	---	---	---	---

M F (sex)

--	--

HDI status

H	W	D

First name

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Surname

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Identification number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Capacity

D	P	M	R	O
---	---	---	---	---

M F (sex)

--	--

HDI status

H	W	D

Certification of correctness of information supplied in this document

1. The information supplied is correct.
2. All copies of relevant information are attached.

Personal information in block letters

Name

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Surname

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Telephone

Capacity

On behalf of the (supplier's Name)

Signed and sworn to before me at _____ on this the _____ day of 2020 by the Deponent, who has acknowledged that he / she knows and that understands the contents of this Affidavit, that it is true and correct to the best of his /her knowledge and that he /she has no objection to taking the prescribed oath, and that the prescribed oath will be binding on his/her conscience.

Signature: Applicant on behalf of supplier

Signature: Commissioner of Oath

Commissioner of Oath Official Stamp

SUPPLIER QUESTIONNAIRE

In assessing the company's application, the HPCSA application committee will consider the information provided as outlined in all the sections of this application document.

ANNEXURE B. SERVICES		
1.	Where are your offices located?	
2.	Number of years in business?	
3.	Are you involved in any community development programmes – if yes, please give details	
4.	Are you prepared to negotiate on price?	
5.	Do you accept payment <i>via</i> EFT?	
6.	Acceptance of the practise that the HPCSA will pay within an agreed time frame (30 Days term) as per the agreed price with the successful bidder upon receipt of a valid tax invoice	

QUESTIONNAIRE COMPLETED BY:

NAME:

SIGNATURE:

DATE:

COMPANY STAMP

ANNEXURE B SBD 4

ANNEXURE C SBD 8

ANNEXURE D SBD 9

ANNEXURE E SBD 6.1

ANNEXURE F FEES