

## **Annexure C3.2: Scope of work.**

### **1. PURPOSE**

- 1.1 The purpose of this memorandum is to request for the approval of the scope of work for the appointment of the Panel of Legal Practitioners for Rand Water for a period of 5 (five) years.

### **2. BACKGROUND**

- 2.1 The Group Legal Services appointed a Panel of Attorneys for the provisions of legal services to Rand Water on or about 2020 (“**the Current Panel**”). The term for the appointed Panel of Attorneys will come to an end on or about March 2023. GLS will, with effect from the expiry date, require a new panel of Legal Practitioners who will assist Rand Water in handling Rand Water’s legal matters as detailed below.
- 2.2 In terms of the current Delegation of Authority adopted by the Board of Rand Water in April 2021, as amended, the Shared Services Business Unit (Legal and Risk) is delegated to defend and/or institute legal action for and against Rand Water. This entails the provision of strategic legal advisory services to the Rand Water Group and which ensures that all foreseeable legal risks are identified and mitigated on a day to day operational and strategic activities of Rand Water. GLS provide different types of legal advisory work and the services are provided by highly qualified & skilled employees who are also a qualified legal representatives working as Rand Water’s internal legal counsel and the employees works and are expected to work hand-in-hand with the appointed external Legal Practitioners in providing legal advisory services and in protecting Rand Water Group’s legal interest.
- 2.3 Furthermore, in order to ensure that the financial allocation to be used by GLS in defending Rand Water’s legal interest in a more cost efficient and economic manner, Rand Water should consider strategising and aligning its processes of appointing Legal Practitioners with a newly proposed Panel of Legal Practitioners in line with the latest development brought about as a result of the enactment of the Legal Practice Act 28 of 2014 (“**the LPA**”) as will briefly be discussed below. This will ensure that

Rand Water is aligns its processes with legal developments in terms of the enabling legislation.

- 2.4 The Panel of Legal Practitioners will be required to provide effective, efficient and quality legal services as and when required by Rand Water. The type of legal services to be provided by the new Panel of Legal Practitioners is detailed in a detailed scope of work as detailed hereunder.
- 2.5 In light thereof, Rand Water wishes to invite interested parties to express their interest in being registered onto the database of Rand Water's Panel of Legal Practitioners.

### **3. GENERAL INFORMATION**

#### **3.1 *The duration of the Panel***

The new Panel will commence from the date of appointment of the Panel of Legal Practitioners by Rand Water and will continue for a period of 3 (three) years thereafter unless same is renewed at the sole discretion of Rand Water in line with the relevant legislative framework

#### **3.2 *The general conditions of appointed panel.***

The general terms and conditions stipulated in the bid will apply and **the specific terms will be contained in the Service Level Agreement to be concluded with a Legal Practitioner(s) in respect of each matter** and which will be entered into with the successful bidders. No service provider will be allowed to litigate against Rand Water provided that the service provider is in the Panel of Legal Practitioners. This will ensure that conflict of interest is avoided at all times. Typical terms which will be included in the specific terms and conditions is outlined in the scope of work below.

### **4. GENERAL INFORMATION ON THE APPOINTMENT OF THE PANEL FOR LEGAL PRACTITIONERS**

#### **4.1 *Types of Legal Practitioners as prescribed by the Legal Practice Act***

- 4.1.1 The legal position as was known under previous legal regime have been brought to an end by the LPA. Previously, and in terms of both the repealed Attorneys Act 53 of 1979 as well as the Advocate's Act 74 of 1964, only

Attorneys were allowed to receive instructions, directly from the public for legal representation. Advocates were strictly not allowed to receive an instruction directly from the public. This implied that Advocates could only provide legal assistance to a client provided that such Advocate was briefed (instructed) by an Attorney. This resulted in a client incurring or having to incur an exorbitant amount of legal costs as the client had to pay both the Attorneys and an Advocate.

4.1.2 The legal position has, to a certain extent, changed with the introduction of the LPA. The previous position has been partially maintained in the LPA. However, a new mechanism has also been created by the LPA in terms of which certain types of Advocates may operate in a similar manner as Attorneys. This means that there are now three types of Legal Practitioners, namely: (1) Legal Practitioners who practice as Attorneys, (2) Legal Practitioners who practices as Trust Accounts Advocates and (3) Legal Practitioners who practices as Traditional Advocates. The below table is a brief explanation of different types of Legal Practitioners:

TYPE OF A LEGAL PRACTITIONER UNDER LPA	PREVIOUSL LEGAL POSITION	CURRENT LEGAL POSITION UNDER THE LPA
<b>LEGAL PRACTITIONER PRACTISING AS ATTORNEYS</b>	Could accept instruction directly from the public( clients).	Can accept instructions directly from the public (clients).
<b>LEGAL PRACTITIONER PRACTISING AS TRUST ACCOUNT ADVOCATES</b>	<b>Did not exist under the previous regime.</b>	Can accept instructions directly from the public (clients) without involvement of Attorneys.

<p><b>LEGAL PRACTITIONER PRACTISING AS OLD TRADITIONAL ADVOCATE</b></p>	<p>Not allowed to accept instructions directly from client.</p>	<p>Not allowed to accept instructions directly from client.</p>
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4.1.3 It is evident that in terms of the LPA, both Attorneys and Trust Accounts Advocates are entitled to accept instructions directly from clients in terms of the LPA and the Regulations. This implies that Rand Water may, provided that the scope is approved, approach either Attorneys or Advocates with a Trust Account directly for legal services provided that such the Attorneys or a Trust Account Advocates have been appointed into the Rand Water Panel of Legal Practitioners.

4.1.4 The primary requirements which a Legal Practitioner must comply with prior to having its bid considered for inclusion into a Rand Water Panel for Legal Practitioners is that a Legal Practitioner must (1) **have a valid Legal Practitioners Fidelity Fund certificate**, (2) **have Trust Account registered in terms of the LPA with a financial institution**, (3) **be in good standing with the Legal Practice Council of South Africa**. Other requirements as prescribed in terms of the Rand Water Supply Chain Policy and other public procurement legislation must also be complied with.

4.1.5 The inclusion of Trust Account Advocates in the Panel for Legal Practitioners will yield certain benefits for Rand Water. Some of the benefits identified by GLS relates to capping of legal fees payable to Legal Practitioners. GLS understand that there are certain types of instructions which does not, at all, require the service of an Attorney. Rand Water may, instead of approaching an Attorney for services which have to be rendered by Advocates, may directly make use of the services of a Trust Account Advocates. The types of instructions where a Trust Account Advocate may be used is for a provision of specialised legal opinion in the area which a Trust Account Advocate may be able to advice on.

4.1.6 An example of how the costs may be reduced is reflected in the following example. Rand Water requires a legal opinion on termination of a contract. Ordinarily, Rand Water would appoint an Attorney, who, in turn, would appoint an Advocate. An Attorney would charge a fee for i.e. consultation, perusal of papers and for preparing a brief (instruction to Advocate). The fee for the 3 (three) items may be more than R 100 000 before an Advocate can charge their fee for perusal, further consultation and for preparing the opinion. This result in Rand Water paying an exorbitant amount before the opinion can even be provided.

4.1.7 On the other hand, if Rand Water make use of a Trust Account Advocate, there will be no need to involve an Attorney and therefore Rand Water will only pay a Trust Account Advocate which will obviously result in capping on legal fees.

## **5. WHO MAY RESPOND TO THE REQUEST FOR BID**

### **5.1 *For Legal Practitioners who are practising as Attorneys, Conveyancer and Notaries***

5.1.1 The following Legal Practitioners who are practising as Attorneys are eligible to submit Request for Bid provided that they meet the following requirement:

**5.1.1.1** Legal Practitioners who are practising and enrolled with the LPC as Attorneys in terms of the provisions of the LPA; and

**5.1.1.2** Legal Practitioners who are in good standing with the LPC; and

**5.1.1.3** Legal Practitioner in possession of a Trust Account; and

**5.1.1.4** Legal Practitioners who are in possession of a valid Legal Practitioners Fidelity Fund Certificate.

### **5.2 *For Legal Practitioners who are practising as Trust Account Advocates***

5.2.1 The following Legal Practitioners who are practising as Trust Account Advocates are eligible to submit Request for Bid provided that the following requirements are met:

5.2.1.1 Legal Practitioners who are practising and enrolled with the Legal Practice Council (“LPC”) as Trust Account Advocates in terms of the LPA; and

5.2.1.2 Legal Practitioners who are in good standing with the LPC; and

5.2.1.3 Legal Practitioner in possession of a Trust Account; and

5.2.1.4 Legal Practitioners who are in possession of a valid Legal Practitioners Fidelity Fund Certificate.

5.2.2 ensure compliance with the provisions of LPA insofar as it relates to Advocates who acknowledge receipt of instructions directly from clients. In this regard, a Trust Account Advocate will have to ensure that a mandate letter or a Service Level Agreement is signed with Rand Water prior to rendering of legal services.

## 6. THE SCOPE OF WORK

6.1 Rand Water require services of Legal Practitioners to provide legal assistance in a specialised areas of law. The bidders are required to have a specialised knowledge of law of any of the below-mentioned areas of law. Rand Water may, in addition to the identified areas of law, require assistance in respect of any other matter as and when there is a need.

6.2 The successful bidders will be required to provide Rand Water with effective, efficient, competent, quality and reliable legal services as and when required by Rand Water and as and when the Legal Practitioners are requested to assist Rand Water in the below-mentioned areas of law which areas are not a closed list.

6.3 **All bidders will be required to indicate their areas of speciality and of which they intend to assist Rand Water with as and when required. In this regard, Legal Practitioners must tick the appropriate area in the areas provided below as will be indicated in further in the tender document. The table below indicates the areas of Rand Water’s interest of which Legal Practitioners may select from. It is important to note that Legal Practitioners will be required to submit a letter of reference for each of the category to which they intend rendering services to Rand Water as a returnable document.**

PROPERTY LAW/ ENVIRONMENTAL LAW & RELATED AREAS	COMMERCIAL LAW	OTHER
<p>General and specialised law of property</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>General as well as a specialised contract law.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>Labour Law and related fields</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>Conveyancing practice and related areas</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>Public Procurement Law and Administrative Law</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>Policy drafting, review and interpretation</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>Expropriations</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>Construction and Engineering Law</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>Debt collection and credit. This will be done as per the terms relating to debt recovery as briefly explained below and further on the terms and conditions of the Service Level Agreement to be concluded with a successful bidder for each matter which is allocated to such a bidder.</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>Constitutional Law and Administrative Law</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>Information and Communications Technology Law / Cyber Law</p>	<p>Legislative review and drafting</p> <p style="text-align: center;"><input type="checkbox"/></p>

Litigation in all areas of property law  <input type="checkbox"/>	Litigation in all areas of commercial law  <input type="checkbox"/>	
Servitudes registrations, Wayleaves and Encroachment removals  <input type="checkbox"/>	Intellectual Property  <input type="checkbox"/>	
Water Sector Law, Mining and related areas of law  <input type="checkbox"/>	Competition Law  <input type="checkbox"/>	
	Tax, Financial Markets, Project Finance, Derivative  <input type="checkbox"/>	
	Insolvency, including liquidations, winding-up, Judicial Management and Business rescue  <input type="checkbox"/>	
	Pension Fund related legal issues  <input type="checkbox"/>	

6.4 The type of legal services which may be required from successful Legal Practitioners include services relating to the following in respect of each areas of law mentioned or not mentioned in the table below:

6.4.1 advising and representing Rand Water in any litigation and at any forum (various Courts, arbitrations and other forums and tribunals) which matters may

be brought against Rand Water or which matters may be initiated by Rand Water in execution of its statutory as well as the Constitutional mandate or when protecting its legal interests;

- 6.4.2 preparing pleadings, notices and other legal documents either during litigations or during provision of any type of legal work to Rand Water;
  - 6.4.3 to review, draft, negotiate and advise on a specialised area of contract law;
  - 6.4.4 represent Rand Water on labour matters and related legal matters;
  - 6.4.5 preparations of legal opinion on the above and other areas of law as and when required by Rand Water;
  - 6.4.6 to assist Rand Water with credit and debt recovery processes by defaulting customers; and
  - 6.4.7 attending to any other matters in respect of any legal issues which Rand Water or its subsidiaries may encounter during its operations.
- 6.5 It is not a requirement that the bidder need to have all of the above set of fields of practice. **Bidders who do not select the areas of interest will not be considered for inclusion in the Panel of Legal Practitioners.**

6.6 Below are a brief descriptions of the primary areas of law which Rand Water may require assistance of. As indicated above, the list is not a closed list:

6.7 ***Rand Water's Specialised areas of law***

6.7.1 **General Commercial**

**6.7.1.1** The appointed Legal Practitioners will be required to attend to assisting Rand Water with advice and litigation in general commercial law such as contract related legal issues as well as to defend Rand Water in any commercial legal issue which may emanate from a general commercial and contracting legal matters.

Law Firms specialising in this area are required to have an in-depth practical knowledge of commercial law in the area of contracting as well as a strong knowledge of civil litigation procedures applicable in any tribunal including but not limited to Courts, arbitration and other appropriate forums.

## **6.7.2 Construction and Engineering Law**

**6.7.2.1** The appointed Legal Practitioners will be required to attend to assisting Rand Water with advice and litigation in a specialised areas of commercial law such as construction and engineering law.

**6.7.2.2** The Legal Practitioners are required to have a strong knowledge in the entire area of construction and engineering law, and the related regulatory environment, but not limited to the knowledge of the standard forms of contract, including primarily FIDIC, the NEC, the General Conditions of Contract, and the JBCC; and

**6.7.2.3** The Law Firms must have a strong legislative knowledge in Construction Industry Development Board Act, 2000, Construction industry Development Regulations, 2004 (as amended), CIDB's Code of Conduct for all parties engaged in Construction Procurement and CIDB's Inform Practice Notes).

## **6.7.3 Intellectual Property**

**6.7.3.1** The day to day activities inclusive of the construction, scientific and other areas of Rand Water may have lot of intellectual property aspects which will require a specialise and accredited legal practitioners to assist Rand Water with regard to any intellectual property related legal aspects. These may include but not limited to the following:

6.7.3.1.1 Innovative ideas created by Rand Water's employees and service providers in dealing with Rand Water;

6.7.3.1.2 Search existence of registered IP;

6.7.3.1.3 Register new IP on innovative ideas and designs;

- 6.7.3.1.4 Monitor & protect by available legal recourse detected IP infringements;
- 6.7.3.1.5 Keeping & managing a proper register of IP owned by Rand Water;
- 6.7.3.1.6 Provide legal opinions and draft governing policies/frameworks, as and when required; and
- 6.7.3.1.7 Any other intellectual property or related legal matter.

#### **6.7.4 Public Procurement Law**

**6.7.4.1** Rand Water is an organ of state and therefore is required to comply with the applicable legislative framework when procuring goods and services required on its day to day operations. Public Procurement Laws forms a fundamental basis of Rand Water and the Legal Practitioners to be appointed must, depending on their area of speciality, have a strong knowledge of Public Procurement Law. The Legal Practitioners must have a knowledge and expertise in areas such as Public Finance Management 1 of 1999, its Regulations, Guidelines, Interpretation Notes and Practice Notes as issued by the relevant treasury, Preferential Procurement Policy Framework Act 5 of 2000 and the applicable Regulations and Guidelines, Promotion of Administrative Justice Act as well as the Promotion of Access to Information Act 3 of 2000.

#### **6.7.5 Specialised contract drafting and advice**

**6.7.5.1** Rand Water may, as and when necessary, require assistance with preparations of a specialised types of contracts such as the following:

- 6.7.5.1.1 Service Level Agreements;
- 6.7.5.1.2 Lease Agreements;
- 6.7.5.1.3 Revision of Tender terms and conditions;
- 6.7.5.1.4 Information and communications Technology Agreement;
- 6.7.5.1.5 Consultancy Agreements;
- 6.7.5.1.6 Public-Private Partnerships Agreements;

- 6.7.5.1.7 Implementing Agents Agreements or Protocols;
- 6.7.5.1.8 Specialised Funding Agreement;
- 6.7.5.1.9 Credit Facility Agreement; and
- 6.7.5.1.10 Other types of Agreements as and when necessary.

## **6.7.6 Financial Markets Law**

**6.7.6.1** The financial market law is becoming an area of law of concern for most entities. Rand Water takes part in borrowings and therefore a strong understanding of all aspects of financial markets law is required. The Legal Practitioners interested in bidding for the area of law relating to financial markets is required to have a strong knowledge of the following piece of legislation:

- 6.7.6.1.1 Financial Markets Act;
- 6.7.6.1.2 The National Credit Act
- 6.7.6.1.3 Credit Agencies Act;
- 6.7.6.1.4 JSE's listing requirements and Rules;
- 6.7.6.1.5 PFMA on Public Entities' limitations on borrowings;
- 6.7.6.1.6 Any other applicable legislative framework.

**6.7.6.2** Rand Water will also require law firms to have a technical and legal ability to advice and draft related documents in this area of law which include but not limited to:

- 6.7.6.2.1 Programme Memorandum for the issuance of long term securities (e.g. Bonds, Notes, etc.);
- 6.7.6.2.2 Subscription Agreement, Programme Agreement with Issuer, Arranger & Dealers, etc.;
- 6.7.6.2.3 Lodgements with regulatory bodies and seeking necessary approvals in terms of the PFMA.

### **6.7.7 Labour and Employment Law**

Rand Water also require an expertise in labour and employment law matters are required, more specifically:

- 6.7.7.1** Ability to prosecute senior level employees in disciplinary hearings;
- 6.7.7.2** Advise on procedural and substantive issues relating to disciplinary hearings conducted;
- 6.7.7.3** Advise on disciplinary codes, policies and governing legislation;
- 6.7.7.4** Representation at the CCMA, Labour Court and Labour Appeal Court;
- 6.7.7.5** Negotiation and settlement of labour disputes whether with individual employees or the bargaining unit represented by a union;
- 6.7.7.6** Provision of Legal Opinion;
- 6.7.7.7** Investigation of alleged misconduct.

### **6.7.8 Business Rescue and Liquidation aspects**

Rand Water sometimes encounters problems in respect of service providers or customers who either become insolvents and either undergoes liquidations or at times, a business rescue process. Rand Water therefore require services of a Laws to assist in the following areas of insolvency law:

- 6.7.8.1** Liquidation enquiries in terms of the Companies Act 71 of 2008;
- 6.7.8.2** Lodgement of claims against debtors during liquidation process;
- 6.7.8.3** Business rescue advices and lodgement of claims during the proceedings; and
- 6.7.8.4** Any other insolvency legal issues either against Rand Water's services providers or other individuals against whom Rand Water have or may have a claim.
- 6.7.8.5** Legal Practitioners will be required to assist Rand Water in obtaining legal opinions and/or pursue litigation within the insolvency/liquidation process/business rescue. A thorough knowledge of the nature and

effect of insolvency/liquidation/ business rescue legislation and case law is required.

#### **6.7.9 General Property Law**

Considering the core business of Rand Water, it is essential that Legal Practitioners should also be skilled and qualified to render specialised services that relate to: the following:

##### **6.7.9.1 Servitude Registration and Access to Servitudes.**

6.7.9.1.1 Rand Water negotiates and register (i.e. acquires) servitudes when constructing pipelines and other necessary infrastructure to ensure the protection of Rand Water services and infrastructure. Therefore, the appointed Legal Practitioners will be required to assist Rand Water in the process of registering the servitude.

6.7.9.1.2 The Legal Practitioners will further be required have strong knowledge and skills to be able to attend to assist Rand Water with legal advice and running the ligation process in the circumstances where the property owner refuse access to their properties and encroachments.

##### **6.7.9.2 Leasing of Property**

6.7.9.2.1 Rand water, every so often engage in lease agreements whereby Rand Water leases out certain Rand Water's properties to other entities and/or whereby Rand Water lease certain properties from other entities. The Legal Practitioners interested in bidding for the area of law relating to leasing are required to have strong knowledge and expertise in the following area of law and legislations:

- a. Property Law;
- b. The Rental Housing Act;

##### **6.7.9.3 Encroachment on Property**

6.6.9.3.1. Rand Water frequently encounters problems as a result of both formal and informal encroachments on the Rand Water servitudes which exposes both the Rand Water services and the lives of the encroachers at risk. The appointed firm of Legal Practitioners is required to have

strong knowledge and expertise to assist Rand Water with legal advice and running the litigation process in cases where there are encroachers.

#### **6.7.9.4 Expropriation**

6.7.9.4.1 Rand Water resorts to expropriation where land owners do not want to grant RW a servitude to lay pipelines or construct reservoirs and other necessary infrastructure. The firm of Legal Practitioners interested in bidding to the specialised area of law related to expropriation must have been qualified and with strong knowledge and expertise in that area of law in order to be capable to assist Rand Water with legal advice and running litigation process in relation to expropriation and give effect to the expropriation notice from the Minister.

6.7.9.4.2 The Legal Practitioners must further have strong knowledge and expertise in the following areas of law and legislations:

- a. Property Law;
- b. Expropriation Act 63 of 1975
- c. Spatial Planning and Land Use Management Act (SPLUMA)
- d. Promotion of Administrative Justice Act 3 of 2000 (PAJA)

#### **6.7.9.5 Continued administration, monitoring & protection of property rights.**

6.7.9.5.1 As Rand Water acquires servitudes in effort to protect Rand Water services and infrastructure, the appointed Legal Practitioners are also required to assist Rand Water in doing same and hence required to have strong knowledge and expertise in the following areas of law and legislations:

- a. Environmental and Property Law
- b. Critical Infrastructure Protection Act
- c. The Criminal Law Amendment Act

#### **6.7.10 Environmental and Aspects of Water Law**

Environmental Law as well as water law forms and integral part of Rand Water's day to day operations. Legal Practitioners who are interested to bid

under this category are required to have strong knowledge and expertise in the following:

#### **6.7.10.1 Mining Applications**

**6.7.10.1.1** Rand Water regularly receives mine applications to assess and to provide comments whether or not the concerned application affects and compromise Rand Water services and/or infrastructure. It is therefore required that the appointed Legal Practitioner must have strong knowledge and expertise in the field of Mining Law and the governing legislations such as the Spatial Planning and Land Use Management Act and Critical Infrastructure Protection Act.

#### **6.7.11 Other areas of law and legal work**

Rand Water will, as and when, require legal assistance on other areas of law and legal work such as drafting of legal opinions.

#### **6.7.12 DEBT COLLECTION**

**6.7.12.1.1** Rand Water enters into Bulk Water Supply Contracts and General Water Supply Conditions (“Contracts”) with the various Customers, mostly with Municipalities for the supply of bulk water. In terms of the above mentioned Contracts, Rand Water will supply bulk water to and implement projects for the Customer in exchange of an agreed fee. In some instances, the customers fail to make payments for the services rendered by Rand Water and this necessitate it for Rand Water to collect all the monies owed and due to Rand Water. As a result, the appointed Legal Practitioners must have strong knowledge and expertise in matters related to debt collection.

**6.7.12.1.2** Furthermore, Rand Water have other contracts with service providers such as service providers who are appointed under construction projects. Certain monies may be due to Rand Water flowing from these projects and as such, Rand Water requires a services of Law Firms specialising in debt recovery. The Law Firm must have relevant debt recovery experience and must have the required resources in dealing with debt recovery. Law Firms will collect Rand Water’s debt subject to the following:

- (a) Legal Practitioners shall only charge amount not more than 10% collection amount on any amount which the Law Firm may have successfully collected at any given time. Rand Water will, in respect of each matter, determine the percentage which may be charged by a practitioner which percentage will not be more than 10% of the collected amount.
- (b) Legal Practitioners shall, in respect of soft debt, use other recovery methods not related to litigation in recovering any amount due and the Law Firms shall only be entitled to 10% of the recovered amount. Law Firms cannot charge or bill Rand Water in respect of any services rendered relating to soft debt recovery services.
- (c) Soft debt recovery services relate to the services where the amount involved is below a certain threshold as may be determined by Rand Water from time to time. Rand Water will indicate
- (d) In respect of hard debt recovery services, a Law Firm must first resort to recovering the amount due following a non-litigious methods and shall only be entitled to payment not exceeding 5% of the recovered amount.
- (e) Should there be a need for a matter to proceed to litigation, Law Firms shall only charge a professional fee provided that such a fee shall only be limited to party and party costs. In this regard, Law Firms shall only charge for professional services on a party and party scale and the applicable Tariffs shall apply.
- (f) Law Firms shall only proceed to litigation only when Rand Water have given a clear instruction to proceed. Should a Law Firm Proceed to litigation without a prior written approval from Rand Water, the Law Firm shall only be entitled to a 5% of the collected amount and nothing more.
- (g) A separate Service Level Agreement shall be entered into regulating the terms and conditions of the percentage to be charged by a Legal Practitioner and other aspects relating to debt collections.

## 7. CATEGORIES OF LEGAL PRACTITIONERS

7.1 Legal Practitioners must bid in a specific category where they qualify. There are three categories where each firms must bid, namely:

<b>CATEGORIES OF LEGAL PRACTITIONERS / LAW FIRMS</b>			
Category one	Firms/Legal Practitioners		This consist of Law Firms or Trust Account Advocates with a minimum of 1 and maximum of 5 years of experience practising in their area of speciality relevant to Rand Water operations
Category two	Firms/Legal Practitioners		This consist of Law Firms or Trust Account Advocates with a minimum of 5 and maximum of 10 years of experience practising in their area of speciality relevant to Rand Water operations
Category thee	Firms/Legal Practitioners		This consist of Law Firms or Trust Account Advocates with a minimum of 10 years and above experience practising in their area of speciality relevant to Rand Water operations

7.2 Rand Water may, depending on the complexity of a matter, require that a Legal Practitioner or a Law Firm work with a Small Law Firm or a Junior Legal Practitioner or a Junior Advocate in order to empower the Small Law Firms or Junior Legal Practitioners or Junior Advocate.

7.3 The Service Level Agreement or terms of engagement will regulate the matter in which the working relations between Rand Water and the respective law firms will be achieved.

7.4 Failure to indicate a category will result in the exclusion from the Panel of Legal Practitioners.

7.5 **Each Legal Practitioner(s) will be required to submit a letter of confirmation as a returnable document from the Legal Practice Council indicating the number of years in terms of which a Legal Practitioner(s) have been practising.**

**8. CLASSIFICATION OF MATTERS**

8.1 Rand Water will use the below guideline in order to determine which category of law firm will a Legal Practitioner be briefed for a specific case and also to determine how should big Law Firms or Senior Legal will be partnered with small Law Firms or Junior Legal Practitioners. Complexity of a case, as assessed by Rand Water, will be used to achieve the allocation of work and also for regulating the engagement between Legal Practitioners.

<b>CLASSIFICATION OF MATTERS</b>	
More complex cases	These are matters which are more complex in nature and which also involved a large quantum or if the matter is such that the principle which will be set may have a severe impact on Rand Water's operations using Rand Water's significant and materiality framework.
Medium complex cases	These are matters which are not too complex and the quantum involved is not large and the principle may not have a significant impact on Rand Water using Rand Water's significant and materiality framework.
Less complex cases	These are matters which are not complex and will definitely not result in a legal principle which will affect Rand Water's operations.

## **9. COST SAVING MECHANISM**

### **9.1 Making use of Trust Account Advocates for certain matters**

9.1.1 As indicated above, the LPA has been enacted in order to transform the Legal Profession and to further reduce legal fees payable by the clients. The introduction of the new categories of Advocates in the LPA is intended to alleviate a burden and hardship experienced by clients in relation to the exorbitant amount payable by clients on legal fees.

9.1.2 The LPA now enable a client to directly approach clients without first passing by the Attorneys. Rand Water, from time to time, appoint a Law Firm with the intention of i.e. procuring a legal opinion on a technical legal issue from an Advocate but Rand Water would first approach the services of an Attorney in order to make use of an Advocate. This was based on the previous instruction and briefing pattern as dictated by the previously legal regime which have since been repealed.

9.1.3 Rand Water is now able to approach Trust Account Advocates in respect of matters which Rand Water may require assistance with without first approaching an Attorney. Rand Water will use these types of Advocates to procure urgent opinions without first approaching an Attorney. If Trust Account Advocates can bid for work and be included in the new Panel of Legal Practitioners, Rand Water will make use of them. This will save a lot on legal fees and also on time.

### **9.2 Legal fees**

9.2.1 As soon as a legal matter arises, Rand Water's Litigation Management Committee must first sit and agree on whether or not a fixed tariffs of fees should be used in respect of a particular matter. The first option should first be to apply the fixed tariffs. Depending on the factors below, the Litigation Management Committee will then make a decision on whether or not to agree on fees not based on the fixed tariffs.

9.2.2 The factors which the Committee will have to take into account in making a decision include the following: (1) the volume and importance of work to be

executed, (2) complexity of the matter, (3) skills and specialised knowledge required, (4) the volume of documents to be perused, (5) the time likely to be spent by a legal practitioner, (6) the amount of money involved, (7) the seniority and experience.

### 9.3 **Types of costs payable**

9.3.1 In respect of each matter in terms of which Rand Water intends to appoint an external Law Firm, the Litigation Management Committee will first meet and agree on the technicality of the matter and agree on the type of legal costs to be applied. The Committee may, depending on the technicality of the matter, agree to costs in the following sequence:

#### 9.3.2 ***Fixed tariffs\_ Party and Party***

**9.3.2.1** Rand Water may first apply a party and party cost in respect of the matters. Party and party costs are subject to court tariffs and is prescribed by law and charged according to fixed scales. Different tariffs apply in respect of both the Magistrates Court matters and High Court matters.

#### 9.3.3 ***Attorney and Client Costs***

**9.3.3.1** Rand Water will reserve its rights to make use of the Attorney and Client's costs and this may be applied depending on the technicality of the matter. Attorney and client costs include party and party costs, as well as other legal costs, inclusive of charges for attendances between Rand Water and the Law Firm. Should Rand Water intend to make use of the Attorney and Client Cost, same must be captured in the letter of appointment and further be regulated in the service level agreement or letter of engagement to be concluded with each Law Firm.

#### 9.3.4 ***Attorney and Own Client Costs***

**9.3.4.1** The third category which may, under exceptional circumstance, be applied is the Attorney and Own Client scale. Attorney and Own Client Costs are the actual fees which may be payable by Rand Water to a

Legal Practitioners in terms of their fee agreement. These typical fees are entirely not based on tariffs. Rand Water should, prior to making use of the Attorney and Own Client scale, agree to same in terms of a letter of engagement or mandate or in the Service Level Agreement to be signed with a Legal Practitioner. In the absence of this, Rand Water will make use of either Party and Party or Attorney and Client scale.

9.3.5 **Rand Water will, in respect of each matter, include in the Service Level Agreement whether party and party costs, attorney and client cost or attorney and own client cost will be used.**

## **10. SKILLS TRANSFER - TRAINING TO RAND WATER'S IN-HOUSE LEGAL COUNSEL OR TO RAND WATER BUSINESS UNITS**

10.1 GLS is expected, as the Rand Water's assurance providers, to stay abreast with legal developments in all areas of Rand Water's interest as well as in all areas of law in general. Legal Practitioners will sometimes be required to provide training to Rand Water's internal in-house legal counsel on a pro bono basis. Rand Water may request a Legal Practitioner to provide workshops and training programmes in respect of the areas of law indicated in the table below.

10.2 Legal Practitioners may, on their own initiatives, propose and provide workshops to Rand Water's in-house Legal-Counsel on the above areas of law of Rand Water's interest.

10.3 Legal Practitioners may, in addition, be requested to provide workshops and training to Rand Water's business units.

10.4 **The Service Level Agreement to be entered into between Rand Water and Legal Practitioners will include an obligation to provide workshops or training programmes to Rand Water's internal Legal Counsel.**

## **11. LEGAL PRACTITIONERS TRAINING PROGRAMME (FOR CANDIDATE ATTORNEYS AND PUPILS)**

11.1 Rand Water appoint, through the Capacity Building Department, LLB graduates who are trained as corporate Legal Advisors. The Rand Water Graduate Training Programme is a two year programme which is aimed at empowering graduates from

previously disadvantage background. These graduates are placed on a two-year term contract and at the expiry of their term are then set off to seek formal and permanent employment elsewhere using the skill they have attained whilst at Rand Water.

- 11.2 The purpose of the training programme is to also capacitate Rand Water as part of the succession planning and also to train legal graduates for the entire water sector. Rand Water have, over the previous few years, had a number of graduates and majority of these graduates have demonstrated an intention of being admitted as Attorneys or Advocates. The Rand Water training programme is not recognised for the purposes of admission either as attorneys or advocates as only Law Firms and Legal Aid clinics are recognised for the purposes of offering the required training.
- 11.3 Rand Water Legal services has explored a number of options which can be used for the purposes of assisting the graduates to get admitted either as Attorneys or Advocates. The following options are available:
- 11.4 **Secondment of graduates to the Legal Practitioners rendering Legal Services to Rand Water**

11.4.1 The first option which Rand Water will use to assist its graduates is to second the graduates to the Legal Practitioners who will assist Rand Water with Legal Services. This will require that Rand Water enters into a Service Level Agreements with Legal Practitioners receiving work from Rand Water in terms of which the Legal Practitioners will accept responsibilities to register the Candidate Attorneys or Pupils. In order for the programme to be viable, Rand Water should offer the graduates a three year programme with each graduate spending the first year at the Law Firm and thereafter join Rand Water into its two year graduate training programme. Graduate will thereafter enrol for the Practical Legal Training Programme which is a part time legal practice course and which is recognised as a one year of articles which will therefore cater for the other year which a graduate will have missed at a Law Firm. In addition, Graduates will also write their admission exams any time during the 3 (three) year programme.

11.4.2 The other option is to have graduates employed into the two year programme. Rand Water will have to enter into a Service Level Agreement with law firms doing business with Rand Water and also include a responsibility by the Legal

Practitioners to employ Rand Water Graduate upon completion of the two-year obligation at Rand Water. Graduates will only be released to work with a Legal Practitioner upon completion of the 2 (two) year programme.

#### 11.5 **Training of graduates to be Advocates**

11.5.1 In order to provide a platform for the training of Rand Water Graduates as Advocates, Rand Water may either (1) enter into a Service Level Agreement with Trust Account Advocates who will be expected to mentor Rand Water's Graduates upon completion of the 2 (two) years at Rand Water or (2) establish relationships with Advocates who will be briefed by Rand Water to accept a responsibility to mentor candidate pupils as required in terms of the LPA.

11.6 As a result, Law Firms and Trust Account Advocates who will bid for Rand Water work will be required, as part of their socio-economic development, to respond to additionally provide a statement that will set out:

11.6.1 how they will incorporate or mentor the Rand Water Graduates in ensuring that the Graduates are admitted either as Attorneys or Advocates;

11.6.2 how such graduates will be given the necessary training in terms of the LPA, in order that they can be admitted as Attorneys or Advocates;

11.6.3 a statement that the training programme will be for 12 months and also that the Law Firm or Trust Account Advocate will assist graduate(s) with preparation of the required admission papers.

11.7 **The Service Level Agreement to be entered into between Rand Water and Legal Practitioners will include an obligation to provide training programmes to Rand Water's appointed graduates as and when required by Rand Water.**

#### 12. **SPECIFIC CONDITIONS TO BE INCORPORATED INTO THE SERVICE LEVEL AGREEMENT PER "ANNEXURE B"**

12.1 Rand Water will require each Law firm to sign, as part of acceptance of the terms and conditions of rendering legal services to Rand Water, terms and conditions in the form of a Service Level Agreement which will be annexed to tender as an Annexure Which Service Level Agreement will include the following:

- 12.1.1 Service delivery levels and quality of the work will be a measure of appointment and retention in the panel;
- 12.1.2 applicable fee (per the scale indicated above) to be charged by each practitioner in respect of the legal matter of which the Legal Practitioner will render on behalf of Rand Water;
- 12.1.3 Rand Water will apply a rotation principle in line with the National Treasury Regulations regarding rotation of suppliers.
- 12.1.4 Legal Practitioner to whom the work has been allocated may not cede, assign or sub-contract any part thereof to any person unless with the written consent of Rand Water or as may be required by the applicable laws, for instance, in cases where correspondent attorneys may be necessary;
- 12.1.5 Fees shall be charged in accordance with Rand Water's Service Level Agreement and Milestones mentioned therein. The Service Level Agreement will be signed with the successful bidders;
- 12.1.6 There will be no guarantee that attorneys will receive instructions if they are appointed onto Rand Water's panel;
- 12.1.7 All instruction(s) to the panel attorneys shall be given, in writing, by duly authorized representative of Rand Water.
- 12.1.8 The panel will be reviewed on a 1 yearly basis and attorneys or advocates on the panel will have to resubmit their proposals at each instance of review;
- 12.1.9 Rand Water shall be entitled, in its discretion, to remove a firm of attorneys from the panel before the expiry of the said 1-year period by written notice and recall all the files in the possession of the said law firm.
- 12.1.10 The Legal Practitioner must have a relevant experience as a practising Legal Practitioner.
- 12.1.11 All copyright and intellectual property rights that may result as consequences of the work to be performed will be become the property of Rand Water;

- 12.1.12 Legal Practitioners must hand over all documents and information in a format acceptable to Rand Water, including copies thereof, that it received from Rand Water, that it had access or that it developed during the assignment immediately after completion of the assignments or termination of contract;
- 12.1.13 Legal Practitioners shall deliver to Rand Water, on completion of an assignment, any security devices, passwords or protective mechanisms to the soft versions of documents that were written and Rand Water will have the right to amend and change these without obligation whatsoever to the firms of attorneys upon completion of the assignment;
- 12.1.14 Rand Water reserves the right to appoint Legal Practitioners outside the panel of legal practitioners but in compliance with the CSD panel of service providers;
- 12.1.15 The obligations to provide training workshops to Rand Water's internal Legal Counsel or to Rand Water employees as and when required or as and when necessary
- 12.1.16 The obligations by the Legal Practitioners to provide a recognised training programme to Rand Water Law Graduates for a period not exceeding 02 years.
- 12.1.17 Other boiler plate clauses to be inserted as part of the terms and conditions.