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## STANDARD TEMPLATE

<b>TERMS OF REFERENCE</b>	
<b>Title:</b>	Consultancy Services to Provide Legal Advisory and Support under a Framework Agreement for 3 – Years (Legal Firm)
<b>Contract type:</b> <i>(Individual or firm)</i>	Framework Agreement
<b>Directorate &amp; Division</b>	Office of the CEO
<b>Contact Person:</b>	Principal Legal Officer/ Legal Unit/OCEO
<b>Procurement Number</b>	Procurement Number.: 43/AUDA/OCEO/LEGAL/CQS/2024

### **BACKGROUND**

The African Union Commission (AUC), headquartered in Ethiopia, was established as a unique Pan African continental body, and is charged with spearheading Africa's rapid integration and sustainable development by promoting unity, solidarity, cohesion and cooperation among the peoples of Africa and African States as well as developing a new partnership worldwide. Within the African Union, the New Partnership for Africa's Development (NEPAD) was adopted in 2001 in Lusaka, Zambia, aimed primarily at poverty alleviation and the promotion of economic growth and sustainable development in Africa.

As NEPAD was integrated into the structures and processes of the African Union, the NEPAD Planning and Coordinating Agency (NPCA) was established by the Decision of the 14<sup>th</sup> AU Assembly of February 2010 to serve as the technical body of the African Union. In June 2018, at the 31<sup>st</sup> Ordinary Session of the Assembly of African Union Heads of State and Government in Nouakchott, Mauritania, a decision was taken to transform the NEPAD Planning and Coordination Agency into the African Union Development Agency-NEPAD (AUDA-NEPAD). The mandate of AUDA-NEPAD is to: a) Coordinate and Execute priority regional and continental projects to promote regional integration towards the accelerated realisation of Agenda 2063, and b) Strengthen the capacity of African Union Member States and regional bodies, advance knowledge-based advisory support, undertake the full range of resource mobilisation and serve as the continent's technical interface with all Africa's development stakeholders and development partners.

The AUDA-NEPAD is thus an African-owned and led continental agency, spearheading Agenda 2063.

### **RATIONALE**

The African Union Development Agency - New Partnership for Africa's Development (AUDA-NEPAD) is seeking to engage the services of a law firm to complement its existing legal capacity by providing comprehensive services and guidance in navigating complex legal issues and ensuring compliance with applicable laws, regulations, policies, and processes.

The law firm must be well-versed in the landscape relevant to the operations of AUDA-NEPAD as well as the functioning of an international organization. The law firm must be capable of representing

AUDA-NEPAD in any legal case in civil, commercial and contract laws. This is important because AUDA-NEPAD operates in a complex legal environment and may face legal challenges from time to time. Furthermore, the law firm must have a proven track record of representing clients in legal cases, including litigation, arbitration, and mediation.

### **THE OBJECTIVE OF THE ASSIGNMENT**

The law firm's role is to provide comprehensive legal support to safeguard the organization's interest and facilitate its smooth operations within the boundaries of applicable laws and regulations. That further covers the proactive identification of sources of potential legal risks in the commercial and contractual obligations of the institution.

### **SCOPE OF WORK, ACTIVITIES AND TASKS**

The precise scope of work for the law firm shall include but not limited to public international law, internal administrative law of the African union, and as well as private international law.

In addition to the areas of laws listed above, the Law firm is expected to provide legal advice and support to the AUDA-NEPAD Legal Unit in all legal matters, including compliance with relevant laws, regulations and policies and dispute mechanism.

**The law firm shall, when required and upon the Legal Unit specific request:**

**1. Provide Legal advice and Consultation:**

- a. Offer expert legal advice and consultation on a wide range of legal areas relevant to the organization's operations;
- b. Timely provision of legal opinions and memoranda on a wide range of legal areas as requested;
- c. Support the Legal Unit, when required, to understand and comply with applicable laws, regulations, and international frameworks;
- d. Review, analyse and provide guidance on AU rules, regulations and policies and practices to ensure compliance with the applicable regulations;
- e. Provide guidance on legal rights, obligations, and risks associated with AUDA-NEPAD's activities, projects, and initiatives; and
- f. Undertake an in-depth analysis of all associated legal issues, assess potential impacts and present practical solutions to help AUDA-NEPAD make informed decisions.

**2. Contractual matters:**

- a. Assist in drafting, reviewing, analysing, and negotiating contracts and other legal documents, to protect AUDA-NEPAD's interests;
- b. Ensure that contractual arrangements comply with relevant laws, regulations, and internal policies; and
- c. Advise on contract interpretation, performance, and dispute resolution.

**3. Dispute Resolution:**

- a. Support AUDA-NEPAD in managing and resolving legal disputes, including mediation, arbitration, and litigation, with regular updates to AUDA-NEPAD on the status of such proceedings;
- b. Drafting of all the required legal documents and pleadings, submissions, narratives, key findings and related documents including affidavits, complaints, counterclaims, crossclaims, witness statements, discovery documents, motions for appeal and related documents, legal opinions, briefs, and settlement agreements among others. Engage in negotiations and settlement discussions on behalf of AUDA-NEPAD

- c. Collaborate with opposing counsel and other stakeholders, if required, in complex dispute resolution processes.

#### **DELIVERABLES**

Upon request on need basis, the successful firm will be required to submit the following deliverables from time to time:

1. Draft Report on the methodology and approach in accordance with the case submitted; and
2. Final Report on the conclusion of the case.

#### **TIMEFRAME OF THE ASSIGNMENT**

- a) Framework contract of 36 months (3 years) subject to satisfactory performance measures.
- b) The appointment of a successful firm does not guarantee the assignment of work regularly.
- c) The successful firm will be assigned work as and when required.
- d) Assignment of work will be initiated through an engagement letter with specific details of the assignment to the Law Firm.

#### **REPORTS**

Periodic reports on all matters being handled (ongoing & completed) on behalf of AUDA-NEPAD

#### **SUBMISSION & APPROVAL OF REPORTS**

The AUDA-NEPAD Legal Unit is the focal point for receiving and approving of all reports related to the assignment.

#### **LANGUAGE REQUIREMENTS**

All reports will be in English.

#### **CONSULTANCY FEES**

- a. Assignment will be paid on a lump sum fee based on assigned work as and when required; and
- b. Proposals must include a pricing schedule that indicates the hourly rate applicable to the billings of the lawyer(s) assigned to the each task.

#### **GOVERNANCE, SUPPORT, AND FACILITIES TO BE PROVIDED BY AUDA-NEPAD**

- a. The bidder is responsible for all costs incurred in the preparation and submission of the proposal; and
- b. The successful bidder will use its own premises and equipment.

#### **PROPOSED PAYMENT SCHEDULE**

Payment shall be made based on approved invoices within 30 working days from the date of such approval.

#### **QUALIFICATION AND WORK EXPERIENCE REQUIRED FOR KEY EXPERTS<sup>i</sup>**

##### **Experience of the Law Firm:**

Fifteen (15) years of experience in international law, public international law, regional integration, constitutional law and international trade law. The Law firm shall have:

1. Strong knowledge and understanding of international legal frameworks, conventions, treaties, and customary international law;

2. Experience in dealing with cross-border legal issues and conflicts of laws;
3. Familiarity with the laws of international organizations, their governance structures, and their legal obligations;
4. Experience in negotiating and drafting complex agreements, including international contracts, construction contracts, sub-delegations, sub-grants, grants; e.t.c;
5. Experience in cross-border employee transfers, secondments, and international labour standards and managing complex cross-border legal proceedings;
6. Expertise in dispute resolution mechanisms, including negotiation, mediation, arbitration, and litigation and in handling international disputes
7. Capacity to handle diverse and complex Employee Relation matters;
8. Experience in South African labour law and employment law jurisprudence as well as International Laws and principles for purposes of providing legal opinions; and
9. Excellent knowledge of international arbitration rules, such as those established by the United Nations Commission on International Trade Law (UNCITRAL).

**Mandatory Requirements:**

1. Deep knowledge and comprehensive understanding of the African Union Rules, procedures, policies and systems; and
2. Extensive knowledge of the operational systems and laws of International Organisations and the United Nations frameworks.

**Key Experts:**

1. **Expert 1:** LL.M. (Master of Laws) Degree or equivalent Postgraduate Studies in International Law with demonstrated expertise and specialization in international law through academic coursework, advanced degrees, or relevant certifications is highly desirable:
  - Comprehensive understanding of international legal frameworks, including international treaties, conventions, customary international law, and the legal systems of various countries;
  - Practical ten (10) years' experience in handling international legal issues, such as international negotiations, contracts, and dispute resolution;
  - Experience in drafting and negotiating complex agreements, including international contracts, construction contracts, sub-delegations, sub-grants, grants; e.t.c;
  - Demonstrated experience in advising governmental or intergovernmental organizations, and non-governmental organizations;
  - Experience with international courts and tribunals, such as those established by the United Nations Commission on International Trade Law (UNCITRAL); and
  - Successful completion of the bar examination and admission to the bar association in South Africa (proof of admission to the South Africa Bar) with good standing and a current practicing certificate
  
- **Expert 2:** LL.M. (Master of Laws) degree or equivalent postgraduate studies with specialization in Commercial/Contract law:
  - Demonstrative ten (10) years' experience in advising international organisations on contractual agreements;
  - In-depth knowledge of International Organisations and the Privileges and Immunities related thereto; and
  - Successful completion of the bar examination and admission to the bar association in South Africa (proof of admission to the South Africa Bar).

**Copyrights**

As the matter is sensitive and highly confidential, all reports, exchanges verbal or in writing including assignments of work and information shared to assist in the fulfilment of the assignment, shall, remain the property of the AUDA-NEPAD at all times.

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