

[PRASA/CITY TO CITY]

CONTRACT

Between

CITY TO CITY A DIVISION OF PRASA

(Herein referred to as PRASA)

And

(Herein referred to as the [SUPPLIER])

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1 INTERPRETATION

1.1 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meaning.

- | | |
|---------------------------------------|---|
| 1.1.1 “Commencement Date” | shall mean the date specified in this Contract as the commencement date. |
| 1.1.2 “Contract” | shall mean this contract; the tender and all schedules attached hereto, THE PERFORMANCE BASED ATTACHMENT DOCUMENT, the letter of acceptance together with all other documents which the parties have agreed in writing that shall form part of this contract. The terms “Contract” and “Agreement” may be used interchangeably but shall have the same meaning. |
| 1.1.3 “Contract Price” | The price shall mean the fixed amount contained in the notice to proceed letter issued by PRASA to the SUPPLIER. |
| 1.1.4 “Site” | shall mean the area where the SUPPLIER is contracted to perform the services as contained in this Contract. |
| 1.1.5 “PRASA” | shall mean the Passenger Rail Agency of South Africa. |
| 1.1.6 “PRASA’s Representative” | shall mean PRASA Supply Chain Manager or such other person as may be appointed from time to time by PRASA and who has the necessary authority to represent PRASA; |
| 1.1.7” Parties” | shall mean the parties to this Agreement, being [SUPPLIER] and PRASA. |
| 1.1.8 “Personnel/ employee” | shall mean any employee of [SUPPLIER] carrying out duties at the Site on behalf of the SUPPLIER in terms of this Contract; |

1.1.9 "SUPPLIER"

shall mean **[SUPPLIER]**.

1.1.10 "Tender"

shall mean the SUPPLIER's priced and detailed offer to PRASA and as duly accepted by PRASA for provision of the services detailed in this Contract.

1.2 Words importing the singular shall include the plural and vice versa and words importing one gender shall include the other gender, any reference to a natural person shall include a body corporate, firm or association and vice versa.

1.3 The headnotes / clause headings to the paragraphs in this Agreement are for reference purposes only and shall not affect the interpretation of any part of this Agreement.

2 GENERAL DESCRIPTION

This Agreement shall be for _____ (description) in accordance with the requirements of this Contract ("Goods/**Services**").

3 APPOINTMENT

- 3.1 PRASA appoints the SUPPLIER to perform the Services and the SUPPLIER accepts the appointment on the terms and conditions set out in this Contract.
- 3.2 The SUPPLIER agrees to perform the Services.
- 3.3 The SUPPLIER shall under no circumstances be entitled to sub-contract the Services unless the SUPPLIER has received written permission from PRASA to do so.
- 3.4 The SUPPLIER shall, at its own risk and expense, provide the Personnel, equipment, tools, materials and consumables required to execute the Services.
- 3.5 The SUPPLIER shall be responsible for the quality and quantity of all workmanship provided in terms of this Agreement and warrants that all workmanship shall be of good quality in line with general and acceptable principles of good workmanship and practice.

4 CONTRACT TERM

- 4.1 Notwithstanding the date of signature of this agreement, this contract shall be deemed to have commenced on the last signature date and shall continue for a period of _____ months .
- 4.2 This Contract may, at the sole discretion of PRASA, be renewed on the same terms and conditions, subject to any agreed variation in the amount payable for the Services to be performed. Either Party may terminate this contract by giving no less than one month written notice of such termination. Any renewal of this Agreement shall be in writing and always subject to PRASA SCM policies.
- 4.3 Nothing in clause 4.2 of this Agreement shall give any right or expectation that this Contract will be renewed, nor places any obligation on PRASA to renew the Contract.

5 FIXED CONTRACT PRICE & INVOICING

- 5.1. The Contract is for the fixed amount of (VALUE)] inclusive of VAT, paid in accordance with the payment schedule attached hereto as Annexure B and shall not varied without following PRASA supply chain management processes. The amount of _____
- 5.2. The Contract value shall only be varied if PRASA has requested a variation of scope having fully complied with the supply chain management process. Any variation that does not fully comply with the supply chain management policy and process shall be invalid.
- 5.3. It is incumbent upon the SUPPLIER to ensure that the supply management process outlined in clause 5.2 has been complied with before the SUPPLIER effect any variation of scope of work. The SUPPLIER must demand proof of the process outlined in clause 5.2 before effecting any instruction to vary the scope of the work.
- 5.4. The SUPPLIER shall issue to PRASA invoices in accordance to payment schedule in Annexure C attached hereto and the invoices shall:

- 5.4.1. Indicate the VAT number of the SUPPLIER;
- 5.4.2. Indicate the full details of the SUPPLIER and bank account;
- 5.4.3. Be a valid tax invoice in accordance with the requirements of the South African Revenue Services; and
- 5.4.4. Indicate the vendor number provided to the SUPPLIER by PRASA.

7 LIMITATION OF LIABILITY

- 7.1 The SUPPLIER shall be liable for all the acts and omissions of its employees in execution of the work and any other obligations of the SUPPLIER in terms of this Contract.
- 7.2 The SUPPLIER hereby indemnifies and holds PRASA harmless from:
 - 7.2.1.1 Any liability in respect of damage to property whether movable or immovable,
 - 7.2.2 Any liability in respect of the loss of any property belonging to the SUPPLIER or a third party,
 - 7.2.3 Any liability in respect of death, unlawful arrest, injury illness or disease of any personnel of the SUPPLIER; and
 - 7.2.4 Any legal expenses or expenditure reasonably incurred by PRASA in connection with any claims or actions emanating from any cause attributable or connected to the Services performed by the SUPPLIER in terms of this Contract and is limited to 10% of the Contract Price.
- 7.3 Clause 7.2 only applies where the damage or loss, liability or legal expense as the case may be is caused by any act or omission by the SUPPLIER its employees or its agents notwithstanding the nature of the relationship between the SUPPLIER and its Personnel, the SUPPLIER hereby assumes vicarious liability for the actions of such persons as if such persons were employees of the SUPPLIER.
- 7.4 The SUPPLIER accepts, and shall have, no responsibility, liability and/or accountability for the acts and/or neglects of any Suppliers and/or PRASA and/or PRASA employees.

8 UNDERTAKINGS AND WARRANTIES

Further to the warranties and guarantees given elsewhere in this Contract;

- 8.1 The warranties in this Contract are given as at the Commencement Date,
- 8.2 Each warranty shall also be seen as an undertaking which shall continue to remain in force for the duration of this Contract,
- 8.3 Where appropriate the warranties are representations and undertakings in favour of PRASA,
- 8.4 Each of the warranties shall be qualified to the extent that the SUPPLIER has made written disclosure against any warranty at the time of submitting the tender,
- 8.5 The SUPPLIER warrants that:
 - 8.5.1 All members of its Personnel shall have the qualifications and experience which could reasonably be expected of a person performing the duties assigned to that person and warrants that all such persons will be competent to perform the duties assigned to them in a professional manner;
 - 8.5.2 The information submitted by it in its tender for the Services is true and correct and that such information will form part of this Agreement.
 - 8.5.3 It complies with all the relevant legislation applicable to it in the form of statutes, ordinances, bylaws, regulations or otherwise in force from time to time, which apply in relation to its employees;
 - 8.5.4 It complies with all laws, regulations ordinances, by laws in force from time to time which apply to the type of manner in which it conducts the Services.
 - 8.5.5 It conducts its tax affairs in an orderly and lawful manner and complies with all laws and directives relating to its tax situation; the SUPPLIER grants PRASA the right to approach SARS should the need arise to do so.
 - 8.5.6 It complies with its commitment in terms of black economic empowerment and development programme.
 - 8.5.7 Any breach of the above warranties, or any failure to observe the undertakings given shall amount to a material breach for the purposes of this Contract.

8.6 PRASA hereby warrants that:

- 8.6.1 it has taken all necessary actions to authorise its execution of and to fulfil its obligations under and in terms of this Agreement;
- 8.6.2 the execution and performance of this Agreement does not and will not contravene any provision of its constitutive documents as at the Signature Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on PRASA as at the Signature Date;
- 8.6.3 it is not subject to any obligation, non-compliance with which is likely to have a material adverse effect on its ability to perform its obligations in terms of this Agreement; and
- 8.6.4 its obligations under and in terms of this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement.

9 OBLIGATIONS OF THE SUPPLIER

Without derogating from the remaining obligations of the SUPPLIER as set out in this Agreement, the SUPPLIER shall:

- 9.1 Manage and co-ordinate the day-to-day activities of its employees;
- 9.2 upon reasonable request furnish PRASA with employment criteria and any other documentation relating to its employees;
- 9.3 develop a formal procedure aimed at ensuring the efficient conduct of all day-to-day activities necessary for the successful rendering of the Services;
- 9.4 ensure that its employees exercise the utmost degree of good faith, skill and care in all matters relating to the Services;

- 9.5 In the event of any of its employees allocated to be at the Site not being available to render the Services in terms of this Agreement, provide a competent replacement for such a person within one (1) week after being informed by PRASA of that person's non availability. The SUPPLIER shall ensure that the rendering of the Services is not compromised by any of the circumstances contemplated in this clause;
- 9.6 ensure that all its duties are performed in accordance with the Occupational Health and Safety Act, 1993 (Act no. 85 of 1993) and adhere to all safety rules and regulations as laid down by the Department of Labour;

10 OBLIGATIONS OF PRASA

PRASA shall:-

- 10.1 upon receipt of the invoice, statement and signed-off milestone on time, PRASA shall make payment of all amounts due and payable to the SUPPLIER after been verified by a PRASA representative working along with the SUPPLIER;
- 10.2 Make sitting space available to the SUPPLIER where such facility is available on site. Where no facility is available PRASA is under no obligation to make such facility available.

11 DISPUTES

- 11.1 If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of arbitration. The reference to negotiation is a precondition to the Parties having the dispute resolved by arbitration.
- 11.2 Within ten Business Days following notification by one Party to the other of a dispute, the Parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the Parties for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.
- 11.3 In the event of the negotiation between the designated representatives not resulting in an agreement signed by the Parties resolving the matter within 15

Business Days, the Parties must refer the dispute for resolution by way of arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa (AFSA).

- 11.4 The period for negotiation may be shortened or lengthened by written agreement between the Parties.
- 11.5 Each Party agrees that the arbitration will be held as an expedited arbitration in Sandton in accordance with the then current rules for expedited arbitration of AFSA by one arbitrator appointed by agreement between the Parties, including any appeal against the arbitrator's decision. If the Parties cannot agree on the arbitrator or appeal arbitrators within a period of ten Business Days after the referral of the dispute to arbitration, the arbitrator and the appeal arbitrators shall be appointed by the Secretariat of AFSA.
- 11.6 The provisions of this clause 11 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process.
- 11.7 This clause 11 is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if this Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

12 BREACH OF AGREEMENT

- 12.1 Should either Party commit a breach of any term of this Agreement or fail to comply with the true intent, meaning and spirit thereof, then and in such event the affected Party shall be entitled to instruct the other in writing to remedy such failure or default within 7 (seven) days of written notice thereof and should such Party fail to comply with the instructions within the time prescribed therein then the so affected Party shall be entitled in its sole discretion and without prejudice to any of its rights under this Agreement or other remedy for breach of Contract -
 - 12.1.1 To terminate this Agreement forthwith and claim damages, which shall include legal costs on an own attorney/client basis; or
 - 12.1.2 To request specific performance and claim damages, which shall include legal costs on an own attorney/client basis.
- 12.2 Despite the provisions of paragraph 12.1 above, in the event that any breach of the provisions of this Contract poses any immediate threat or damage to

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Initials 1 PRASA:

Initials 2 SUPPLIER:

person or property, the other party shall be entitled to cancel this contract with 48 hours' notice to the defaulting party

13 JURISDICTION

The Parties consent to the non-exclusive jurisdiction of the high court notwithstanding the quantum of any claim or dispute.

14 CONFIDENTIALITY

- 14.1 Both Parties acknowledge that the details of this Agreement and any communication between the Parties arising out of or in connection with this Agreement are strictly confidential and shall not be disclosed to any third party (whether before or after the termination date of this Agreement) without the prior written approval of the other Party, who shall have the right to grant or refuse such consent in its absolute discretion.
- 14.2 The SUPPLIER must ensure that its own personnel are well trained and informed with regard to confidentiality undertaking while working in the premises of PRASA, where the SUPPLIER's personnel has disclosed any confidential information of PRASA to the public without authority from PRASA and such information has caused a loss or damaged PRASA negatively, such loss if financially will be transferred to the SUPPLIER's cost should any loss occur in respect of the image/goodwill of PRASA, it will be within the rights of PRASA whether to apply clause 12 (breach of agreement) or apply a penalty deductible from any amount due to the SUPPLIER.

15. POPIA COMPLIANCE AND DATA PROTECTION

15.1 The parties agree and acknowledge that all data provided by PRASA to the service provider, or to which the Service Provider may be exposed, shall constitute confidential information and where applicable, intellectual property belonging to PRASA, and must not be disclosed unless required by law or in the course of the proper performance of the service provider's duties.

15.2 The performance of the service provider's obligations in terms of this agreement shall be strictly in compliance with the Protection of Personal Information Act, 2013 (POPIA) and all other laws, policies, and procedures relating to the protection, storage, handling, privacy, processing, and destruction of Personal Information.

15.3 The service provider hereby warrants, represents and undertakes in favour of PRASA that:

- a) It shall at all times strictly comply with all applicable laws and with all the provisions and requirements of any PRASA data protection policies and procedures which may be in force from time to time
- b) It shall only process personal information where it is lawful and in a reasonable manner that does not infringe the processing conditions and privacy of the data subject
- c) It shall only process personal information in order to perform in terms of the contract or in order to comply with an obligation imposed by law or where the processing protects the legitimate interests of the Data subject. It shall not at any time process data for any purpose other than with the express prior written consent from PRASA, and to the extent necessary to provide the services to PRASA
- d) It shall only process personal information, taking into account the purpose, it is deemed adequate, relevant and not excessive.

15.4 The service provider shall take reasonable and appropriate technical and organisational measures to prevent the loss of, or damage to or unauthorised destruction of data and the unlawful access to, or processing of data. The measures taken must at all times be of a minimum standard required by all Applicable Laws and be of a standard no less than the standards which are in compliance with the industry best practice for the protection, control and use of data.

15.4.1 The service provider shall inform PRASA as soon as reasonably possible in the event of an unlawful or unauthorised access, disclosure, copying, destruction or amendment to the personal information or if it is suspected. Such notification shall have sufficient information to enable PRASA to take necessary action and/or report appropriately.

15.5 The service provider agrees to keep complete, accurate and up to date records and to give effect to a data subject's right to correct, request access to or object to the processing of their personal information (where applicable)

15.5 The service provider agrees to only delete Personal Information on the written instruction of PRASA and refer all destruction and deletion requests to PRASA for final instructions

15.6 The service provider shall take steps to identify all reasonably foreseeable internal and external risks posed to data under the service provider's care and shall establish and maintain appropriate safeguards against any risk identified.

15.7 In the event of a breach or suspected breach emanating from failure to adhere to POPIA, such breach or suspected breach shall amount to a material breach and PRASA reserves the

right to immediately cease providing the service provider with further Confidential and/or Personal information and this action shall not constitute a breach of the agreement.

15.7 This data protection clause is severable from the rest of this agreement and shall remain valid and binding on the parties, notwithstanding any termination

16. VARIATIONS

16.1 PRASA has the right to propose Variations to the Services in accordance with this clause.

16.2 If PRASA requires a Variation to the Scope of Services it must serve a notice in writing to the SUPPLIER detailing the requested Variation ("Variation Proposal").

16.3 The Variation Proposal must set out the Variation required in sufficient detail as to enable the SUPPLIER to calculate the cost of the Variation Proposal;

16.4 As soon as practicable and in any event within 5 (five) Business Days after having received the Variation Proposal, the SUPPLIER shall deliver to PRASA:

- 16.4.1 the estimated costs of the Variation Proposal; and
- 16.4.2 the impact of the Variation Proposal on the Project timelines.

16.5 As soon as practicable and in any event within 5 (five) Business Days after receiving the information from the SUPPLIER regarding the impact of the Variation Proposal on the Project timelines and the costs, PRASA shall:

- 16.5.1 confirm its intention in writing to proceed with the Variation Proposal and enter into any documents to amend the contract as is necessary to give effect to the Variation Proposal or withdraw the Variation Proposal.

17 FORCE MAJEURE

17.1 Notwithstanding anything to the contrary herein contained, should either of the Parties be prevented from fulfilling in whole or in part its obligations in terms of this Agreement, whether such prevention arises from, an Act of God, war, civil commotion, strikes, lockouts, revolutions, fires, explosions, floods, political disturbances, acts of any Governmental or local authority, or any other cause whatsoever over which that Party has no reasonable control ("force majeure"), such Party shall be exempted from liability to the extent and for the

period it is thereby prevented from fulfilling its obligations. The Party so prevented from fulfilling its obligations hereunder shall immediately notify the other to that effect in writing, giving a full and complete explanation of the circumstances responsible for such failure or occurrence as well as the estimated duration thereof and, if applicable, the action(s) such Party is taking or proposes to take to remove the said circumstances with the least possible delay as well as the action(s) to be taken to prevent future recurrences.

17.2 Should the SUPPLIER, due to force majeure, not be able to supply the Services, then PRASA shall be entitled -

17.2.1 To a reduction of the Contract Price on a pro rata basis; and

17.2.2 To appoint any other person to execute the Services until such time that the SUPPLIER is able to render the Services.

17.3 Should such occurrence continue for a period of thirty (30) days or longer, either Party may terminate this Agreement, unless the Parties agree to continue on such new terms and conditions acceptable to both Parties.

18. CESSION

18.1 SUPPLIER shall not cede, assign, or make over this Agreement or any part thereof or any of its rights, benefits, duties or obligations hereunder to any other person without prior written consent of PRASA, which consent shall not unreasonably be withheld or delayed.

19. INDEMNIFICATION

19.1 The SUPPLIER irrevocably and unconditionally indemnifies and holds PRASA free and harmless against all actions, suits, demands, claims, costs or expenses, whatsoever, arising directly, indirectly or consequently out of any act or omission of the SUPPLIER in terms of this Agreement.

20. INSOLVENCY

20.1 Should an application be made for the surrender or sequestration of a Party's estate, or should an order be issued, whether provisional or final, for the sequestration of a Party's estate, or should a Party enter into or propose any

deed of assignment to any of its creditors for settlement of its debts, or if execution is issued against a Party by virtue of any Judgement, or if a Party commits any act of insolvency, or, being a legal entity, is placed under Judicial management, or commences to be wound up in a liquidation that is not merely a voluntary liquidation for the purpose of reconstruction, then the other Party may, without prejudice to any of its rights in terms of this Agreement or common law, forthwith terminate this Agreement.

21 GENERAL

- 21.1 This Contract (as defined), including all attached annexures, constitutes the sole record of the Agreement between the parties in regard to the subject matter of this Agreement.
- 21.2 No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 21.3 No addition to, variation or consensual cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of all the Parties.
- 21.4 No indulgence which any of the Parties (the grantor) may grant to any other or others of them (the grantee(s)) shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future.
- 21.5 The Parties undertake at all times to do such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such action and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.
- 21.6 If for any reason any clause in this Contract becomes void or unenforceable it shall be severable from the remainder of this Contract which shall remain in full force and effect
- 21.7 This Contract shall for all purposes, be construed in accordance with the laws of the Republic of South Africa.

22. DOMICILIUM CITANDI ET EXECUTANDI

22.1 The parties hereto choose *domicilia citandi et executandi* the following physical addresses, and for purposes of giving of or sending any notice provided for or required under this Agreement:

PRASA:

PHYSICAL ADDRESS: 30 WOLMARANS STR, JOHANNESBURG

FOR ATTENTION: [_____]

[SUPPLIER]

PHYSICAL ADDRESS:

TEL: _____

FOR ATTENTION: []

22.2 Either party hereto shall be entitled to change its *domicilium* from time to time, provided that any *domicilium* selected by it shall be situated in the Republic of South Africa, shall be an address other than a box number and any such change shall only be effective upon receipt of notice in writing by the other party of such change.

22.3 A notice sent by one party to another party shall be deemed to be received:

22.3.1 on the same day, if delivered by hand;

22.3.2 on the same day, if sent by telefax, (provided the original is immediately posted by prepaid registered mail) or cablegram;

22.4 on the seventh day after posting, if sent by prepaid registered mail.

23. Penalty for Delay

23.1 If the Service Provider fails to complete the Services within the time as stipulated in annexure A of this Contract for completion of Services or a part or portion of Services, the

Service Provider shall be liable (for penalty) to the Employer for an amount calculated at 0.5% of the Contract Price per delayed Day, which shall be paid for every Day which shall elapse between the time for due completion and completion of the relevant Services. However, the total amount due under this sub-clause shall not exceed the maximum of 10% of the Contract Price. If the penalty payable by the Service Provider has reached 10% of the Contract Price, any subsequent breach shall become a material breach and the PRASA shall be entitled to terminate the contract with immediate effect.

23.2 The imposition of such penalty shall not relieve the Service Provider from its obligation to complete Services or from any of its obligations and liabilities under the Contract,

PRASA may set off or deduct from the fees due to the Service Provider any penalty amounts due and owing by the Service Provider in terms of clause 22.1

24. SIGNATURE

24.1 SIGNED by PRASA at _____ on this ____ day of _____ 2024 in the presence of the undersigned witnesses;

.....
(Name) (Signature)

Witnesses:

1
(Name) (Signature)

2
(Name) (Signature)

Who warrants that he/she is duly authorised

24.2 SIGNED by SUPPLIER: ____ at _____ on this ____ day of _____ 2024 in the presence of the undersigned witnesses

.....

(Name)

.....

(Signature)

Witnesses:

1

(Name)

.....

(Signature)

2

(Name)

.....

(Signature)

Who warrants that he is duly authorised.

ANNEXURE A

SCOPE OF SERVICES

ANNEXURE B
PAYMENT SCHEDULE

ANNEXURE C
SERVICE LEVEL AGREEMENT

SERVICE LEVEL AGREEMENT (SLA)
SERVICES
BETWEEN PRASA AND SUPPLIER