CONSULTANCY AGREEMENT

FOR

FOR IN-DEPTH ESG ASSESSMENT

RFP NUMBER :XX

CONSULTANT	**: XX**
NATURE OF WORK	: **PROFESSIONAL SERVICES**
LOCALITY	: **HEAD OFFICE**
START DATE	**: XX**
DATE OF COMPLETION	: **XX**
CONTRACT VALUE	**: XX**

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1. DEFINITIONS

In this Agreement, the following words and expressions shall have the meaning assigned to them below and cognate expressions shall have a corresponding meaning, unless inconsistent with the context:

1.1. "**Agreement**" shall mean this agreement together with all the annexures attached hereto;

1.2. "**Applicable Law**" shall mean the Constitution and all applicable statutes, regulations, codes of good practice, sector codes, industry charters, ordinances, by-laws, rules (including rules of court) and other secondary legislation, directives, practice notes having force of law in South Africa or the province of Gauteng in which the Project is conducted, and the common law arising out of judicial decisions, notifications and with which the Parties are bound to comply;

1.3. "**Business Day**" shall mean any day except Saturday, Sunday or proclaimed public holiday in South Africa;

1.4. "**BBBEE**" shall mean Broad Based Black Economic Empowerment as defined in Act 53 of 2003;

1.5. "**Change in Law**" shall mean the coming into effect after Signature Date of this Agreement of any Law, or any amendment or variation to any Law other than any Law that on or before Signature Date has been published in a draft bill;

1.6. "**Confidential Information**" shall mean all confidential information owned exclusively by either Party relating to its business or operations and including, but without being limited thereto, information relating to technical know-how and data, drawings, methods, processes and procedures, and other information, which comes into possession or under the control of the other party in any manner whatsoever, in the course of this Agreement;

1.7. "**Consents**" shall mean all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licenses, permissions required

to be issued by or made with any Responsible Authority in connection with the performance of the Services;

1.8. "**Constitution**" shall mean the Constitution of the Republic of South Africa;

1.9. "**Consultant**" shall **means XX** company duly registered in accordance with the Companies Act of 2008 and having the registration number **XX**

1.10. "**Consultants Bid**" shall mean the bid submitted by the Consultant in response to the RFP;

1.11. "**Contract Price**" mean an amount of ***Rxxx (xxx)*** inclusive of VAT, payable to the Contract in accordance clause 9 of this Agreement;

1.12. **Consultant Default"** means any of the following events or circumstances:

1.12.1. any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 2008) being entered into by or in relation to the Consultant;

1.12.2. a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any, winding-up, execution or other process being levied or enforced upon the whole or any material part of the assets of the Consultant;

1.12.3. the Consultant ceases to carry on business;

1.12.4. the Contract fails to secure the issue of the Certificate of Occupation within a period of 20 (twenty) days from the Project Completion Date;

1.12.5. the Consultant commits a breach of any of its material obligations under this Agreement; and /or

1.12.6. the Consultant abandons the Works for a period of longer than ten (10) Business Days (other than as a consequence of a breach by the Consultant of its obligations under this Agreement).

1.12.7. the aggregate penalties payable by the Consultant under clause 10 (Delay, Recovery and Penalties) reach 20% (twenty per cent) of the Contract Price.

1.13. "**Completion Date**" shall mean the last day of the **XXX** from Effective Date subject to clause 5 "Duration" and Clause 22 "Variation";;

1.14. "**Effective Date**" shall mean the **XXX**;

1.15. "**Force Majeure**" shall mean any of the events listed in clause 17 which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement;

1.16. "**Good Industry Practice**" shall mean applying, in relation to the manner in which the Works are performed and the services are rendered, the standards, practices, methods and procedures conforming to Applicable Law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;

1.17. "**Intersite**" shall mean Intersite Asset Investments, a wholly owned subsidiary of PRASA.

1.18. "**Milestone Programme**" shall mean the milestone programme and delivery plan contained in Annexure C, as updated in accordance with this Agreement;

1.19. "**Occupational Health and Safety Act**" shall mean the Occupational Health and Safety Act, 85 of 1993;

1.20. "**Parties**" shall mean the Consultant and Intersite;

1.21. "**PRASA**" shall mean the Passenger Rail Agency of South Africa a public entity established in terms of the Legal Succession to the South African Transport Services Act 9 of 1989;

1.22. "**Intersite's Default**" shall mean if the following occurs:

1.22.1. Intersite fails to make the payment in accordance with the provisions of Annexure B; and

1.22.2. Intersite commits a breach of any material term of this Agreement.

1.23. "**Professional Indemnity Insurance**" means insurance meeting clause 12 with a minimum limit of R5,000,000.00 per claim and in the aggregate, and not a contractual maximum on liability.

1.24. "**Project Term**" shall mean a period of ***24*** **months** from Effective Date subject to clause 5 "Duration" and Clause 22 "Variation";

1.25. "**Public Entity**" shall mean a public entity as defined in the Public Finance Management Act, of 1999;

1.26. "**Responsible Authority**" shall mean any ministry, any minister, any organ of state, any official, any official in the public administration or any other governmental or regulatory department, commission, department, entity, service utility, board of directors, committee, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;

1.27. "**Restricted Enterprise**" shall mean an entity restricted from contracting with Intersite or any other Public Entity as a result of being listed either on the register for tender defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt Activities Act 12, of 2004; or any other relevant applicable Law;

1.28. "**RFP**" shall mean the request for proposal issues by Intersite on **XX**

1.29. "**Services**" shall mean services to be provided by the Consultant as listed in clause 9 of this Agreement;

1.30. "**Signature Date**" shall mean the date of signature of this Agreement by the last party signing;

1.31. "**South Africa**" shall mean the Republic of South Africa;

1.32. "**SubConsultant**" shall mean the subConsultant appointed by the Consultant subject to the provisions of clauses of this Agreement;

1.33. "**Variation**" shall mean any approved change to the scope of services, price, payment arrangements or contractual dates. The aggregate increase in Contract price under ordinary variations shall not exceed 10% of the original awarded Contract price. "Any

variation within the 10% limit remains subject to the applicable legal and governance requirements and approval by the duly authorised delegated authority."

2. INTERPRETATION

This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

2.1. references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement;

2.2. references to "Month" shall be to a calendar month;

2.3. references to "Parties" shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees;

2.4. references to a "person" shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organization, association or partnership, whether or not having separate legal personality;

2.5. references to any "Responsible Authority" or any public or professional organization shall include a reference to any of its successors or any organization or entity, which takes over its functions or responsibilities;

2.6. references to "clauses", "sub-clauses" and "Schedules" are references to the clauses, sub-clauses and Annexures of this Agreement;

2.7. the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Agreement;

2.8. the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party

was responsible for or participated in the preparation or drafting of this Agreement or any part of it;

2.9. words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;

2.10. references to “this Agreement” shall include this Agreement as amended, varied, novated or substituted in writing from time to time;

2.11. any reference to any enactment, order, regulation or similar instrument shall be construed as a reference to enactment, regulation or instrument as amended, re enacted or replaced from time to time;

2.12. 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 which is not a Business Day in which case the last day shall be the immediately following Business Day; and references to “written” do not include communications by way of electronic mail.

3. INTRODUCTION

3.1. Intersite issued the RFP for the development of an ESG Framework and an in-depth ESG assessment, with optional efficient reporting tools and mechanisms as described in Annexure A.

3.2. Following a lawful award and the necessary approvals, Intersite appoints the Consultant to provide the awarded Services on the terms of this Agreement. The draft tender form alone does not constitute an appointment or authorise commencement.

4. INCONSISTENCY

4.1. The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

4.1.1. This Agreement, including Annexure A (Scope of Services), Annexure B (Payment Schedule) and Annexure C (Milestone Programme (Delivery Plan));

4.1.2. the RFP; and

4.1.3. the Consultant's Bid.

4.2. The priority in clause 4.1 governs inconsistencies, but shall not validate an unlawful departure from the approved procurement or enlarge the awarded scope. The Consultant must promptly notify Intersite of any discrepancy and seek written clarification before performing affected work. Any substantive change requires clause 23 (Variations) approval. Unresolved disputes are dealt with under clause 20 (Dispute Resolution).

5. DURATION

5.1. This Agreement shall commence on the Effective Date and remain in force for 24 months, ending on the Completion Date recorded in Annexure C, unless terminated earlier or extended in accordance with this Agreement. The Effective Date and Completion Date shall be completed and agreed before signature.

5.2. Any extension of the duration of this Agreement shall be valid only if approved by the duly delegated authority and recorded in a written amendment signed by duly authorised representatives of both Parties before the Agreement expires, in accordance with the Variation Clause. Approval of a deliverable, payment, revised milestone programme or delay recovery plan shall not, by itself, extend the duration of this Agreement or waive any rights arising from delay or breach.

6. REPRESENTATION AND WARRANTIES

6.1. The Consultants warranties

6.2. The Consultant hereby warrants that:

6.2.1. it is duly constituted and validly existing under South African law and has all necessary authority and capacity to execute and perform this Agreement;

6.2.2. its obligations under this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement;

6.2.3. all information disclosed by or on behalf of the Consultant at any time up to the Signature Date and up to the end of the Project Term and, in particular, during the bid process preceding the award of this Agreement to the Consultant, is true, complete and accurate in all material respects and the Consultant is not aware of any material facts or circumstances not disclosed to Intersite which would, if disclosed, be likely to have an adverse effect on Intersite's decision (acting reasonably) to award this Agreement to the Consultant;

6.2.4. 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 the Consultant as at the Signature Date;

6.2.5. no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Consultant as at the Signature Date having made all reasonable enquiries, threatened against it or to the best of its knowledge any of its Sub contractor, which is likely to have a material adverse effect on the ability of the Consultant to undertake the Works;

6.2.6. the Consultant is not subject to any obligation, non-compliance with which is likely to have a material adverse effect on its ability to undertake the Works;

6.2.7. no proceedings or any other steps have been taken or, to the best of the knowledge of the Consultant having made all reasonable enquiries, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of Consultant or any (or all) of its Sub contractor, or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;

6.2.8. it will use reasonable care and skill in carrying out its obligations under this Agreement;

6.2.9. it is not a Restricted Enterprise; and

6.2.10. it has not engaged in corruption, collusion, fraud, misrepresentation or an undisclosed conflict of interest in obtaining this appointment, including any offence under the Prevention and Combating of Corrupt Activities Act 12 of 2004; it shall maintain this standard and promptly disclose and manage actual or potential conflicts throughout the Services; and

6.2.11. it maintains the insurance required by clause 13 and has the qualified personnel, resources, approvals and rights necessary to perform the Services.

7. INTERSITE Warranties

7.1. Intersite hereby warrants that:

7.1.1. it has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement; and

7.1.2. its obligations under this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement.

8. CO-OPERATION

8.1. Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations in terms of this Agreement.

9. SERVICES

9.1. The Consultant shall provide the Services in accordance with Good Industry Practice and this Agreement.

9.1.1. The detailed scope of Services is contained in Annexure A, and the timelines and milestones for delivery of those Services are contained in the Milestone Programme in Annexure C.

10. DELAY, RECOVERY AND PENALTIES

10.1. The Consultant shall continuously monitor its performance against the timelines, milestones and programme contained in the Milestone Programme in Annexure C A and Annexure B and shall remain solely responsible for identifying and managing any risk of delay attributable to it.

10.2. If the Consultant becomes aware, or reasonably ought to become aware, of any actual or anticipated delay, it shall immediately notify Intersite in writing and provide details of the cause and extent of the delay, its effect on the milestones and overall Milestone Programme in Annexure Cprogramme, and a recovery plan setting out the corrective measures to be implemented. Any failure by the Consultant to provide such notice shall not excuse the delay or limit any right or remedy of Intersite.

10.3. If the Consultant fails to achieve a contractual milestone in Annexure C by its due date for reasons solely attributable to the Consultant, Intersite may issue written notice requiring the Consultant, within 5 (five) Business Days after receipt of the notice, to recover the delay and eliminate its impact on the overall Milestone Programme.

10.4. If the Consultant fully recovers the delay and demonstrates to the reasonable satisfaction of Intersite that the delay will have no impact on the overall Milestone Programme in Annexure Cprogramme within the period specified in clause 10.3, the matter shall be regarded as remedied, the existing Milestone Programmeprogramme shall remain in force and no penalty shall apply.

10.5. If the Consultant fails to remedy the delay in accordance with clause 10.4, it shall be liable for a penalty equal to 0.25% (zero comma two five per cent) of the Contract Value for each Business Day of delay, calculated from the Business Day immediately following the original due date of the delayed milestone in Annexure C until the delay and its impact on the overall Milestone Programmeprogramme have been fully recovered, or until the applicable milestone is completed and accepted and the revised Milestone Programmeprogramme is approved by Intersite, whichever occurs first.

10.6. Penalties shall apply only to delays solely attributable to the Consultant and shall not apply to any delay caused by Intersite, an approved Variation, Force Majeure, or any other event expressly excusing the Consultant under this Agreement. Where delays overlap, the same Business Day shall not be counted more than once.

10.7. The aggregate penalties imposed under this Agreement shall not exceed 20% (twenty per cent) of the Contract Value. Intersite may deduct any penalty from amounts due to the Consultant or recover it as a debt. The imposition or recovery of a penalty shall not relieve the Consultant of its obligation to perform the Services.

10.8. Where a delay remains after the remedy period, the Consultant shall submit a revised Milestone Programmeprogramme for approval by Intersite. Once approved, the revised Milestone Programme shall replace Annexure C. Intersite may adjust the remaining milestones, Completion Date and duration of this Agreement to reflect the actual impact of the delay. Such adjustment shall not constitute a Variation under clause 22, shall not require separate approval or amendment solely to extend the duration, shall not increase the Contract Value and shall not waive any penalty or other right arising from the delay.

10.9. If aggregate penalties reach 20% (twenty per cent) of the Contract Value, this shall constitute a Consultant Default and Intersite may terminate this Agreement in accordance with clause 15.

10.10. The Parties acknowledge that the penalties provided for in this clause are a genuine pre-estimate of the loss likely to be suffered by Intersite as a result of delay and are not intended to operate as a punishment. The imposition, payment or recovery of any penalty shall be without prejudice to Intersite’s right to claim proven damages or exercise any other right or remedy available under this Agreement or at law; provided that any penalty paid, deducted or recovered in respect of the same loss shall be credited against the amount of damages recoverable, and Intersite shall not recover more than once for the same loss.

11. PAYMENT

11.1. The payments for Services shall be paid in accordance with the Payment Schedule which is Annexure "B" of this Agreement.

11.2. Payment shall be made into the Consultants bank account set out in the invoice.

11.3. Intersite shall pay valid, undisputed invoices for accepted deliverables within 30 (thirty) calendar days after receipt, subject to any mandatory shorter period under Applicable Law. Intersite shall promptly identify disputed amounts and reasons and pay the undisputed balance when due. The same amount shall not be invoiced twice.

12. INVOICING

12.1.1. The Consultant shall issue to Intersite invoices in accordance to Payment Schedule and the invoices shall:

12.1.2. Indicate the VAT number of the Consultant;

12.1.3. Indicate the full details of the Consultant and bank account;

12.1.4. Be a valid tax invoice in accordance with the requirements of the South African Revenue Services; and

12.1.5. Indicate the vendor number provided to the Consultant by Intersite.

13. INSURANCE

13.1. The Consultant shall maintain Professional Indemnity Insurance from an insurer licensed and authorised in South Africa, with a minimum indemnity limit of R5,000,000.00 per claim and in the aggregate throughout the Project Term and for at least 24 months after completion or termination. Cover shall include professional errors, omissions, negligence, misrepresentation and breach of duty, and all personnel and SubConsultants engaged in the Services, without exclusions materially limiting cover for the procured Services. Evidence of cover and, on request, the schedule and relevant terms shall be provided before award and on renewal or request. The Consultant shall immediately notify Intersite of cancellation, non-renewal, material restriction or exhaustion of cover and promptly secure compliant replacement cover. Failure to maintain cover is a material breach dealt with under the Breach and Termination clauses. Insurance does not limit contractual liability.

14. PLACE WHERE SERVICES WILL BE RENDERED

14.1. The Consultant will perform most services in accordance with this contract at a location of consultant's discretion. In addition, the consultant will perform services on the telephone and at such other places as necessary to perform these services in accordance with this agreement.

15. BREACH

15.1. A Party alleging a material breach shall give written notice identifying the breach and requiring remedy within 7 (seven) Business Days. If it cannot reasonably be fully remedied in that period, the defaulting Party must commence remedy within that period and obtain written agreement to a reasonable completion period. Failing remedy, the aggrieved Party may require performance or terminate under clause 16 and claim available damages, subject to clause 10. The specific five-Business-Day delay process in clause 10 governs delay penalties; it does not remove termination rights for a material unremedied delay. Urgent protective relief remains available.

16. TERMINATION

16.1. Subject to the provisions of clause 15 this Agreement may be terminated by either Party following the occurrence of either the Consultant Default or Intersite's Default.

16.1.1. If Termination is as a result of an Intersite Default the Consultant shall be entitled to payment for all the Services undertaken by the Consultant up to the date of termination, which Services must first be approved by Intersite.

16.2. If termination is as a result of the Consultant Default the following shall occur:

16.2.1. The Consultant shall pay any damages that Intersite might have suffered due to the default.

16.3. Notwithstanding any other clause in this Agreement, Intersite may terminate for convenience on 30 (thirty) calendar days' written notice. It shall pay for conforming Services completed and accepted up to termination and evidenced, unavoidable third-party commitments expressly authorised in advance, subject to mitigation and the remaining Contract Price. No fee or profit is payable for unperformed Services or an unexercised option.

16.4. Notwithstanding clause 15 or any other clause in this Agreement, if the Consultant commits any breach as contemplated in clauses 27.5.1 to 27.5.5, it shall entitle Intersite to terminate this Agreement with immediate effect.

17. FORCE MAJEURE

17.1. In the event of any acts of God, war, war-like operation, rebellion, riot, civil commotion, lockout, interference of trade unions, sonic shock waves caused by aircraft or other aerial devices or action taken beyond or outside the reasonable control of the Parties hereto preventing them or any one of them from the performance of any obligation hereunder, then the Party affected by such force majeure shall immediately notify the other Party forthwith as to the nature and extent of the circumstances in question.

17.2. Where a Party is (or claims to be) affected by an event of Force Majeure:

17.2.1. it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

17.2.2. it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations.

17.3. The Party claiming relief shall serve written notice on the other Party within 5 (five) days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

17.4. A subsequent written notice shall be served by the Party claiming relief on the other Party within 5 (five) days, or such longer period as may be agreed between the Parties, which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken

by that Party to mitigate the effect of Force Majeure event and an estimate of the period of time required to overcome it (and/or its effects).

17.5. The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.

17.6. If, following the issue of any notice referred to in clause 17.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.

17.7. If the Force Majeure event persist, for a period of more than 20 (twenty) days either Party may terminate this Agreement.

18. NOTICES AND LEGAL SERVICE

18.1. All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient Party at its relevant address set out below:

18.1.1. if to Intersite at:

Address:	Umjantshi House 30 Wolmarans Braamfontein Johannesburg
Attention:	Legal Department
Postal address:	Private Bag X101 Braamfontein 2017
Facsimile number:	011 085-7002

Telephone number: 011 085-7002

18.1.2. if to The Consultant:

Address: **XX**

Attention: ***XX***

Email address: **XX**

Facsimile number: **XX**

Telephone number: **XX**

18.2. Either Party may, by written notice to the other Party, change any of the addresses at which or the designated person for whose attention those notices or other communications are to be given.

18.3. Any notice or other communication given by any Party to the other Party which:

18.3.1. is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (seventh) day after the date of posting; or

18.3.2. is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or

18.3.3. is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.

18.4. The previous provisions of this clause 18 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.

18.5. The Parties choose their respective physical addresses in clause 18.1 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing to be its new *domicilium citandi et executand*.

19. CONFIDENTIALITY

19.1. Each Party shall keep all Confidential Information of the other Party confidential while this Agreement remains in force and for a period of 7 (seven) years after it terminates for any reason. Each Party shall also use reasonable endeavours to prevent its employees, agents and SubConsultant from making any disclosure to any person of any Confidential Information of the other Party while this Agreement remains in force and for a period of seven years after it terminates for any reason.

19.2. Disclosure is permitted to approved personnel who need the information to perform in terms of this Agreement and are bound by appropriate confidentiality duties; and where required by law, court order, audit, a competent regulator or lawful public-sector oversight. The parties are to give prior notice of compulsory disclosure where lawful and practicable. Confidentiality does not restrict protected disclosures or lawful reporting of wrongdoing. Information demonstrably public without breach, lawfully received without restriction or independently developed is excluded. Personal information and trade secrets remain protected for as long as applicable law or their nature requires.

19.3. Where the Consultant processes personal information on Intersite's behalf, it acts only on documented lawful instructions and for the Services. It shall comply with POPIA, including appropriate technical and organisational safeguards. It shall restrict access, use secure storage and transfer, and ensure approved sub-operators are bound by equivalent written duties while remaining responsible for them.

19.4. The Consultant shall notify Intersite immediately upon reasonable grounds to believe information has been accessed or acquired by an unauthorised person, preserve

evidence, mitigate the incident and cooperate with investigation and legally required notifications. No offshore transfer, external hosting, secondary use or upload to public AI services is permitted without prior written authority and compliance with Applicable Law, including section 72 of POPIA where relevant.

19.5. Before personal-data access, the Parties shall document processing purposes, information categories, affected data subjects, authorised systems, access roles, locations and retention arrangements. On completion or instruction, the Consultant shall return or securely delete data and certify compliance, except for legally required restricted archival copies. Intersite retains responsibility for its own lawful processing, notices and authorisations.

20. DISPUTE RESOLUTION

20.1. Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 (ten) Business Days of such dispute arising.

20.2. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to arbitration, which proceedings shall be held in Johannesburg in accordance with the Arbitration Foundation of South Africa Rules.

20.3. This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.

20.4. This clause is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

20.5. This clause shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

21. GOVERNING LAW AND CONSENT TO JURISDICTION

21.1. This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is the Parties irrevocably consent to the non-exclusive jurisdiction of the North Gauteng High Court.

22. COSTS AND EXPENSES

22.1. Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

23. VARIATIONS

23.1. Intersite has the right to propose Variations to the Services in accordance with this clause 22.

23.1.1. All Variations shall only be valid if approved by the Chief Executive Officer of Intersite and reduced in writing.

23.1.2. If Intersite requires a Variation to the Scope of Services it must serve a notice in writing to the Consultant detailing the requested Variation ("Variation Proposal").

23.2. The Variation Proposal must set out the Variation required in sufficient detail as to enable the Consultant to calculate the cost of the Variation Proposal.

23.3. As soon as practicable and in any event within 5 (five) Business Days after having received the Variation Proposal, the Consultant shall deliver to Intersite:

23.3.1. the estimated costs of the Variation Proposal; and

23.3.1.1.1. the impact of the Variation Proposal on the Project timelines, milestones and Milestone Programme in Annexure C.

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

23.3.1.1.3. confirm its intention in writing to proceed with the Variation Proposal, approve the corresponding revised Milestone Programme which shall replace Annexure C, and enter into any documents necessary to amend the Agreement and give effect to the Variation Proposal; or

23.3.2. withdraw the Variation Proposal.

24. SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under any Law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under any Law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force.

25. COUNTERPARTS

This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Agreement for all purposes.

26. ENTIRE AGREEMENT

26.1. Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

26.2. Each of the Parties acknowledges that:

26.2.1. it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly contained in or referred to in this Agreement, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Agreement; and

26.2.2. this clause 26 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under any Law governing this Agreement.

27. LIMITATION OF LIABILITY

27.1. Under no circumstances shall either Party be liable for any indirect, consequential or like damages which may arise pursuant to this Agreement.

27.1.1. General indemnity: To an extent that it relates to the Services, the Consultant indemnifies and shall keep Intersite indemnified at all times against all losses sustained by Intersite in consequence of any:

27.1.2. loss of or damage to property;

27.1.3. breach of a statutory duty arising under applicable law;

27.1.4. claim for or in respect of the death or personal injury of any individual; or

27.1.5. any breach by the Consultant of any warranties given by it in this Agreement;

27.1.6. including, without limitation, any legal fees or costs, arising in connection with the performance or non-performance of any Services;

27.1.6.1. save to the extent caused by the negligence or wilful misconduct of Intersite or by a breach by Intersite of an express provision of this Agreement.

27.1.7. The Consultant indemnifies and shall keep Intersite indemnified at all times against all losses sustained by Intersite in consequence of any claim or action whatsoever instituted against Intersite by a sub-Consultant of the Consultant. In the event that the Consultant or any of its sub-Consultants rendering the Services to Intersite become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Consultant shall immediately inform Intersite thereof and, on request, supply Intersite with a copy of any award made pursuant to such proceedings or agreement and any documentation that Intersite may request in respect thereof.

28. CESSION OR DELEGATION AND SUBCONTRACTING

28.1. Neither Party shall cede or delegate any right or obligation under this contract nor enter into any sub-contract of whatever nature for the execution therefore or part thereof without the prior written consent of the other.

28.2. Should the Consultant apply to cede or assign the whole portion of the contract, the circumstances shall be reported to Intersite. Intersite shall be notified immediately of the Seller's intention to cede and/or assign its business. The name(s) of the new company and its directors shall be furnished to Intersite together with any other

information reasonably required by Intersite. No consent may substitute for any required procurement or delegated approval.

28.3. Under no circumstances shall it be taken for granted that Intersite will approve of the cession and/or assignment if Intersite has not been provided with all the relevant details.

28.4. The Consultant may sub-contract any of its obligations in terms of this Agreement to a third party, provided that:-

28.4.1.1.1. such sub-contracting shall not absolve the Consultant from the responsibility for complying with its obligations in terms of this Agreement and the Consultant hereby indemnifies and holds Intersite harmless against any loss, harm or damage which Intersite may suffer as a result of such sub-contracting;

28.4.2. such sub-contracting shall not have the effect of diluting or circumventing the provisions of the Consultant Bid Submission and this Agreement;

28.4.2.1. the Consultant shall at all times remain the sole point of contact for Intersite in respect of the acquisition of services by Intersite; and

28.4.2.2. no such sub-contracting shall have any effect on the Tender Amount payable by Intersite to the Consultant in terms of this Agreement.

28.4.3. The Consultant shall during the term of this Agreement not be allowed to proceed with any of the following matters prior to receiving written consent of Intersite's Chief Executive Officer:

28.4.4. any transfer of any amount of shares of the Consultant;

28.4.5. any change in the composition of the Consultant;

28.4.6. any change in the ownership of the Consultant;

28.4.7. any material change in the constitution, memorandum, articles of association of similar document providing for the creation, formation or incorporation of the Consultant; or

28.4.8. any change on the B-BBEE component of the Consultant

28.5. provided that the Consultant shall not require any approval and/or consent of Intersite and/or Intersite's Chief Executive Officer where any change as contemplated in

clauses 27.5.1 to 27.5.5 does not have an impact on the B-BBEE status of the Consultant.

29. PUBLIC RELATIONS AND PUBLICITY

29.1. The Consultant acknowledges that certain information pertaining to the Project is required to be disclosed in accordance with the statutory reporting obligations of Intersite as it may be required to publish from time to time in response to enquiries from:

29.1.1. Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act; and

29.1.2. the Auditor-General under the Public Audit Act; and

29.1.3. persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.

29.2. Subject to clause 29.1 neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior approval of the other Party, such consent not to be unreasonably withheld.

30. INDEPENDENT STATUS

30.1. No Partnership.

30.1.1. Nothing in this Agreement shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party.

30.2. It is recorded that it is the intention of the parties to exclude all legal consequences of a partnership.

30.3. The Consultant shall comply with all employment legislation.

30.4. The Consultant warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its sub-Consultants and its relationship with Intersite. This includes, but is not limited to, the Labour Relations

Act, 1995, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force or which may come into force during the currency of this Agreement. The Consultant warrants that it is not and will not in future be in contravention of any of the provisions of any such legislation and, in the event of such contravention, the Consultant shall immediately take all steps to remedy such contravention. If Intersite advises the Consultant of any contravention of such legislation in writing, the Consultant shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep Intersite informed regarding the steps taken and the implementation and the result thereof.

30.4.1. The Consultant warrants that it is conversant with section 198(4) of the Labour Relations Act and warrants further that any services supplied by the Consultant shall be as an independent Consultant as defined in the Labour Relations Act and the Occupational Health and Safety Act, 1993 and will render the Services as such. The Consultant hereby indemnifies and holds Intersite harmless against any claim or action whatsoever in terms of section 198(4) of the Labour Relations Act, instituted against Intersite by a Consultant of the Consultant. In the event that the Consultant or any of its Consultants rendering a service to Intersite becomes involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Consultant shall immediately inform Intersite thereof and, on request, supply Intersite with a copy of any award made pursuant to such proceedings or agreement and any documentation that Intersite may request in respect thereof.

30.4.1.1. under a bargaining council, then the Consultant shall immediately inform Intersite thereof and on request supply Intersite with a copy of any award made pursuant to such proceedings or agreement and any documentation that Intersite may request in respect thereof.

SIGNED at on 202_

For: Intersite

Name_____ Signature_____

Who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____

SIGNED at on 202_

For: Intersite

Name_____ Signature_____

Who warrants that he is duly authorised

SIGNED at on 202_

For: **Consultant**

Name_____ Signature_____

DIRECTOR

who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____

ANNEXURE A (ATTACHED) - SCOPE OF SERVICES

ANNEXURE B (ATTACHED) – PAYMENT SCHEDULE

ANNEXURE C (ATTACHED) – MILESTONE PROGRAMME (DELIVERY PLAN)