

DRAFT CONTRACT - SERVICE LEVEL AGREEMENT – ANNEXURE 1

Entered into by and between

**PASSANGER RAIL AGENCY OF SOUTH AFRICA
(PRASA)**

Registration Number: **[INSERT]**

and

THE BROKER

Registration Number: **[INSERT]**

TABLE OF CONTENTS

1. INTERPRETATION	3
2. DEFINITIONS	4
3. APPOINTMENT AND DURATION.....	10
4. AGREEMENT STRUCTURE AND CONFLICT.....	10
5. PRASA'S AFFILIATE/S	11
6. PRASA's OBLIGATIONS	11
7. CONTRIBUTIONS AND PREMIUMS	12
8. BROKER'S OBLIGATIONS	13
9. SUB-CONTRACTING	15
10. INDEMNITIES.....	16
11. INTELLECTUAL PROPERTY RIGHTS	16
12. PROTECTION OF PERSONAL INFORMATION.....	20
13. CONFIDENTIAL INFORMATION AND DATA SECURITY	24
14. RETURN AND DESTRUCTION OF CONFIDENTIAL INFORMATION	26
15. AUDIT RIGHTS OF PRASA AND REGULATORS	27
16. WARRANTIES.....	27
17. LIMITATION OF LIABILITY	28
18. INSURANCE	29
19. BREACH.....	29
20. TERMINATION	30
21. TERMINATION ASSISTANCE	31
22. FORCE MAJEURE	31
23. DISPUTE RESOLUTION	32
24. DOMICILIUM CITANDI ET EXECUTANDI	34
25. CESSION AND ASSIGNMENT	35
26. GENERAL	35
27. SEVERABILITY	37
28. VARIATION, SUSPENSION, DELETION, AMENDMENT OR MODIFICATION	37

[Update by listing further Annexures as applicable]

THE PARTIES AGREE AS FOLLOWS –

1. INTERPRETATION

In the Agreement (hereinafter defined) –

- 1.1. clause headings are for convenience and are not to be used in the interpretation of the Agreement;
- 1.2. no provision will be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured or drafted such provision;
- 1.3. unless the context indicates a contrary intention, an expression which denotes –
 - 1.3.1. any gender includes the other genders;
 - 1.3.2. a natural person includes a juristic person and *vice versa*; and
 - 1.3.3. the singular includes the plural and *vice versa*;
- 1.4. any reference to “days” will be construed as being a reference to calendar days unless qualified by the word “business” in which instance a “business day” will be any day other than a Saturday, Sunday and or a public holiday as gazetted by the government of the Republic of South Africa;
- 1.5. unless specifically otherwise provided, the number of days prescribed excludes the first and includes the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day;
- 1.6. any reference to “business hours” will be construed as being the hours between 08h00 and 17h00 on any business day;
- 1.7. the use of the words “including”, or “include/s without limitation” followed by a specific example/s will not be construed as limiting the meaning of the general wording preceding it;

- 1.8. a reference to any statutory enactment will be construed as a reference to that enactment as to the date of signature of the Agreement, as amended or substituted or re-enacted from time to time and includes all regulations to such enactment and /or any subordinated legislation made from time to time under such enactment;
- 1.9. where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail, unless the context indicates a contrary intention;
- 1.10. any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 2 or elsewhere within the Agreement, will be given effect to as if it were a substantive provision within the body of the Agreement;
- 1.11. any reference to “person” means an identifiable natural or juristic person; and
- 1.12. any reference in the Agreement to a Party will, if such Party is liquidated, sequestrated or placed under business rescue, be applicable also to and binding upon that Party’s liquidator, trustee or business rescue practitioner.

2. DEFINITIONS

The following words bear the following meanings –

- 2.1. **“Act”** means the Medical Schemes Act No 131 of 1998, together with the Regulations thereto (the Regulations) as amended from time to time;
- 2.2. **“Agreement”** means the Services Level Agreement, Transaction Document/s and Annexures (if any);
- 2.3. **“Annexure”** means any Annexure to the Agreement including any Annexures to the Annexures;
- 2.4. **“Affiliate”** means any other entity which is a division of PRASA or a subsidiary, and or a holding company or a subsidiary of the holding company of such entity and or controls, is controlled by or is under common control of such entity. With regard to this definition the terms “*subsidiary*” and “*holding company*” will have the meaning assigned thereto in the Companies Act, of 2008, provided that they will also include any foreign entity which, had it been registered in terms of that Act, would fall within the ambit of such term;

- 2.5. **“Applicable Law”** means all legal and regulatory requirements and enactments in the Republic of South Africa and any other jurisdiction from which the Services are provided and or which may be applicable in relation to the Services and the activities of PRASA and the Broker, including applicable anti-bribery law (which is any bribery, fraud, kickback or other similar anti- corruption law of any relevant country), or similar legislation;
- 2.6. **“Authorized Sub-Contractor”** means a third party approved by PRASA in writing in terms of **clause 9.1** with whom the Broker contracts to provide some or all of the Services under the Agreement;
- 2.7. **“Background IP”** means any Intellectual Property which was owned or controlled by a Party prior to the Effective Date, or created, conceived of or procured by a Party independently;
- 2.8. **“BEE rating”** means the rating status of enterprises in terms of broad-based black economic empowerment compliance provided for in the Broad-Based Black Economic Empowerment Act No 53 of 2003;
- 2.9. **“Broker”** means the Broker, the Broker is an authorized financial services provider (**FSP number**) and is accredited by the South African Council for Medical Schemes (ORG 3909);
- 2.10. **“Confidential Information”** means data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and or proprietary to either Party provided or disclosed in confidence, or which may come to the knowledge of the other Party by whatsoever means. The Confidential Information will include the following even if it is not marked as being “confidential,” “restricted” or “proprietary” (or any similar designation) –
- 2.10.1. information relating to Data Subjects, business activities and relationships;
- 2.10.2. technical, scientific, commercial, financial and market information, methodologies, formulae and trade secrets; processes, process maps, functional and technical requirements and specifications, and the data relating thereto;

- 2.10.3. Intellectual Property, including third party Intellectual Property, as the context may indicate; and
- 2.10.4. Personal Information;
- 2.11. “**Costs**” means the money due for the Services as set out in the Transaction Document annexed to this Service Level Agreement as **Annexure B**;
- 2.12. “**Cyber incident**” means any observable occurrence in an information system that jeopardizes the cybersecurity of an information system, or the information processed, store or transmitted by the system; or violates the security policies, security procedures or acceptable use policies, whether resulting from malicious activity or not;
- 2.13. “**Data Subjects**” means PRASA’s Affiliates, customers, Staff, ex-Staff and any other person/s to whom Personal Information relates;
- 2.14. “**Data Exporter**” means the person who transfers the Personal Information to the Data Importer who, for purposes of this Agreement, shall be **PRASA**;
- 2.15. “**Data Importer**” means the person who agrees to receive from the Data Exporter, the Data Subject’s Personal Information intended for processing on the Data Exporter’s behalf after the transfer in accordance with the Data Exporter’s instructions and the terms of this Agreement (for purposes of this Agreement Data Importer shall be the **Broker and/or Medical Aid Administrator**);
- 2.16. “**Deliverable**” means any deliverable or Material provided by the Broker to PRASA;
- 2.17. “**Developed IP**” means any subject matter developed, created or comes into existence during the term of this Agreement through the activities of a Party in pursuit of the Services and/or the Deliverables in which any Intellectual Property subsists or is embodied, or any improvements, changes, enhancement or derivatives, modifications or similar adjustment to such subject matter during or after the term of the Agreement;
- 2.18. “**Documentation**” means the documentation (and all updates thereto) that PRASA reasonably requires to be provided by the Broker relating to the Services and/or the Deliverables;

- 2.19. **“Effective Date”** means the date of Signature of this Service Level Agreement;
- 2.20. **“FAIS Act”** means the Financial Advisory and Intermediary Services Act 37 of 2002, as amended from time to time;
- 2.21. **FSCA**” means the Financial Sector Conduct Authority;
- 2.22. **“Health Care Consultants”** means the Broker’s Staff identified as such in a Transaction Document;
- 2.23. **“Income Tax Act”** means the Income Tax Act, 58 of 1962, as amended from time to time;
- 2.24. **“Insurer”** means the applicable Insurance Company who underwrites the risk benefit on behalf of PRASA’s Staff;
- 2.25. **“Intellectual Property”** or **“IP”** means all intellectual property rights owned by either Party subsisting anywhere in the world and relating to the Services and/or the Deliverables, which is in any way capable of protection in law (whether registered or not), including without limitation, any patent , design, trade mark (whether or not registered), or copyright and related rights (including copyright in software, source code, object code and computer algorithms); database rights, patents, designs, confidential information , and all proprietary rights in and to ownership of any idea, discovery, artwork, design, concept, technique or improvement, industry information, know how, system, methodology, data model, report, correspondence, documentation, flow chart, table, calculation, spread sheet, schematic plan, photograph, presentation or invention (whether patented or not) and all other intellectual and industrial property rights which subsist or will subsist now or in the future anywhere in the world whether registered or not or capable of registration or not, including all applications for and the right to apply for, claim priority and be granted any such rights; any renewals, extensions or restorations, and divisional, continuation and reissued applications of any such rights;
- 2.26. **“IP Owner”** means the Party determined to be the proprietor of an Intellectual Property right in any given circumstance or within the context of a specific clause of this Agreement;
- 2.27. **“IT incident”** means an event, occurrence or circumstance that is not expected or planned as part of normal operations of the Broker and has an effect of disrupting the normal operations of PRASA’s services;

- 2.28. **“Long-Term Insurance Act”** means the Long-Term Insurance Act, 52 of 1998, as amended from time to time;
- 2.29. **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damage, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
- 2.30. **“Medical Scheme”** means the duly appointed medical scheme that provides healthcare benefits to PRASA’s Staff;
- 2.31. **“Medical Scheme Administrator”** means the administration company appointed by the Medical Scheme to provide administration services in respect of contributions and claims;
- 2.32. **“Material”** means all forms of the written word, images, audio recordings and audio-visual recordings, regardless of how such is captured or recorded and the media on which it is recorded, whether it is tangible or intangible, whether it is machine readable or directly accessible by humans and includes but is not limited to all written and printed material, devices, logos, artworks, micro-graphic and other reproductions, depictions and pictorial material, software code and machine readable data and information;
- 2.33. **“Material Incident”** means a disruption of a business activity, process or function which has, or is likely to have, a severe and widespread impact on PRASA’s operations, or services to its clients;
- 2.34. **“Parties”** means the parties to the Agreement being PRASA and the Broker;
- 2.35. **“PRASA”** means the Passenger Rail Agency of South Africa, a state-owned agency which is an implementing arm of the National Department of Transport (the sole shareholder) and is primarily focused on the mandate as stated in the Legal Succession Act of the South African Transport Services (SATS) Act of 1989, as amended and having its principal place of business Umjantshi House, 30 Wolmarans Street, Braamfontein, Republic of South Africa;
- 2.36. **“Personal Information”** has the meaning set out in POPIA, and includes Special Personal Information and relates only to the Personal Information of which PRASA is the Responsible Party;

- 2.37. **“POPIA”** means the Protection of Personal Information Act No. 4 of 2013;
- 2.38. **“Processing”** or **“Process”** has the meaning set out in POPIA;
- 2.39. **“Relationship Manager”** means an individual designated by each Party in writing to the other to whom all communications and notices regarding the Agreement will be addressed, the first one being the Representative as reflected in the Schedule and any subsequent or alternative ones as set out in the applicable Transaction Document;
- 2.40. **“Representative”** means an Executive of each of the Parties as reflected on the Schedule;
- 2.41. **“Responsible Party”** means PRASA who, alone or in conjunction with others, determines the purpose of and means for Processing Personal Information;
- 2.42. **“Schedule”** means the covering Schedule reflecting information regarding the Parties and the Agreement;
- 2.43. **“Services”** means the services that the Broker undertakes to perform for PRASA in respect of their Staff’s healthcare and wellness requirements in terms of the applicable medical scheme rules;
- 2.44. **“Service Levels”** means the service levels set out in this Service Level Agreement;
- 2.45. **Services Level Agreement** means this services level agreement and Schedule, including any Annexure that is not a Transaction Document or an Annexure to a Transaction Document;
- 2.46. **“Short-Term Insurance Act”** means the Short-Terms Insurance Act, 53 of 1998, as amended from time to time;
- 2.47. **“Staff”** means all employees of PRASA as the context may indicate, including all employees of Affiliates of PRASA, including of all fixed term contractors;
- 2.48. **“Special Personal Information”** has the meaning ascribed thereto in Section 26 of POPIA and for purposes of this Agreement it also means the information that would be completed by Data Importer as set out in **Annexure C**, attached hereto;

- 2.49. **“Sub-Processor”** means any approved subcontractor of the Data Importer who is contracted by the Data Importer to receive from the Data Importer or an authorized agent or representative of the Data Importer, Personal Information exclusively intended for processing activities to be carried out on behalf of the Data Exporter in accordance with the terms of this Agreement and the terms of the written subcontracting agreement between the Sub-Processor and the Data Importer;
- 2.50. **“Transaction Document”** means any document executed by the Parties substantially in the form of **Annexure A** for Services, **Annexure B** for Costs and **Annexure C** Personal Information;
- 2.51. **“VAT”** means value added tax levied in terms of the Value Added Tax, Act 89 of 1991.

3. **APPOINTMENT AND DURATION**

- 3.1. PRASA appoints the Broker, and the Broker accepts such appointment, to perform the Services, on the terms and conditions contained in the Agreement for the period as specified in the Bid documents.
- 3.2. This Service Level Agreement will commence on the Effective Date and continue until terminated in accordance with its provisions.
- 3.3. Signature of this Agreement shall constitute confirmation that the contents of this Agreement have been agreed by all parties concerned.
- 3.4. Each Transaction Document will commence on the commencement date and endure for the period as set out therein, unless terminated in accordance with the provisions of the Service Level Agreement.

4. **AGREEMENT STRUCTURE AND CONFLICT**

- 4.1. This Service Level Agreement sets out the general terms and conditions relating to the Services.
- 4.2. The Parties will conclude a Transaction Document in respect of each and every separate engagement for Services. Any work undertaken by the Broker which is not set out in an executed Transaction Document will be at the Broker’s risk and cost.

- 4.3. A Transaction Document may amend the terms and conditions of the Service Level Agreement only with respect to the Services contemplated in and for the duration of, such Transaction Document.
- 4.4. In the event of a conflict or inconsistency between the documents comprising the Agreement other than as contemplated in 4.3, such conflict or inconsistency will be resolved in the order of precedence as follows (i) the Service Level Agreement; (ii) any Annexure to the Service Level Agreement that is not a Transaction Document; (iii) a Transaction Document; and (iv) any Annexure to a Transaction Document, unless the relevant Annexure or Transaction Document is expressly stated to take precedence over the Service Level Agreement.

5. **PRASA'S AFFILIATE/S**

- 5.1. The Affiliate will be entitled to benefit under the Service Level Agreement, provided that the Affiliate concludes a Transaction Document with the Broker in relation to specific Services. The Transaction Document will clearly indicate that it is concluded pursuant to the Service Level Agreement.
- 5.2. Once the Affiliate has concluded a Transaction Document, all rights and obligations emanating from the Services Level Agreement will be valid and binding between the Affiliate and the Broker as Parties, as if they are signatories to the Services Level Agreement.
- 5.3. PRASA will not be liable for the Costs incurred by any of its Affiliates that have concluded a Transaction Document with the broker and the Broker's only recourse for payment of such Costs will be against the relevant Affiliate, if applicable.

6. **PRASA's OBLIGATIONS**

- 6.1. PRASA undertakes to timeously: -
- 6.1.1. ensure that the Broker, the Medical Scheme Administrator, and / or any other necessary parties are provided with all required information and / or documentation necessary to facilitate the Broker performing the Services stipulated in **Annexure A**;

- 6.1.2. do everything reasonably necessary to appoint appropriate third-party service providers (where applicable), and to select an appropriate Medical Scheme structure in consultation with the Broker;
- 6.1.3. submit, on a monthly basis, their Staff's particulars to the Medical Scheme Administrator and / or Insurer in the prescribed electronic format and / or as required in terms of this Service Level Agreement and / or prevailing legislation;
- 6.1.4. deduct all monthly contributions and / or premiums due by, or on behalf of, their Staff in respect of the benefits and / or health cover, and to pay these amounts over (on behalf of their Staff) to the Medical Scheme Administrator and / or Insurer within the stipulated and legislated timeframes;
- 6.1.5. deduct all relevant taxes due, by or on behalf of, their Staff in respect of the benefits and / or health cover, and to pay these amounts over (on behalf of their Staff) to the South African Revenue Services;
- 6.1.6. circulate and distribute directly to their Staff, all member communications relating to any changes regarding the annual rates and benefits, as well as any other pertinent information;
- 6.1.7. take all necessary steps, where required to trace any dependants of a deceased Staff member, and to furnish such information to the Broker and / or the Medical Scheme Administrator and / or the Insurer;
- 6.1.8. take all necessary steps to comply with applicable prevailing local legislation and regulations.

7. CONTRIBUTIONS AND PREMIUMS

- 7.1. Under no circumstances will the Broker handle the Medical Scheme contributions and/or insurance premiums or any other contribution towards healthcare products.
- 7.2. All contributions and/or insurance premiums will be payable by PRASA directly to the Medical Scheme Administrator and/or Insurer in terms of Section 26(7) of the Act.

8. BROKER'S OBLIGATIONS

- 8.1. The Broker warrants that it is fit and proper to render the services and that it shall maintain such status by being accredited and licensed in terms of the FAIS Act at all times.
- 8.2. The Broker shall appoint a Relationship Manager who is responsible for, amongst other obligations, the management and co-ordination of the Services in liaison with PRASA's Relationship Manager.
- 8.3. The Broker will appoint Health Care Consultants to perform the Services in a manner satisfactory to PRASA and stipulate the full names and qualifications of Health Care Consultants in the Transaction Document.
- 8.4. The services will be performed by a sufficient number of professional service providers who have the skill and experience required to perform the services;
- 8.5. PRASA retains the right to object to any member of the Health Care Consultants, in which case the Broker will provide alternative Health Care Consultants or procure that the Authorized Sub-Contractor, if applicable, provide alternative Health Care Consultants.
- 8.6. The Broker will advise PRASA in writing in advance if any of the Broker's Health Care Consultants engages in any work with the competitor of PRASA in any capacity for the duration of the Agreement. PRASA shall have an absolute discretion to request recusal of the specific Health Care Consultant personnel from any PRASA work.
- 8.7. The Broker will not remove or re-assign Health Care Consultant (unless such individual was suspended, dismissed, has resigned from such position; or no longer has the accreditation, regulatory approval or capacity as may be required to act in such position), until a suitable replacement has been appointed.
- 8.8. Where the Broker is required to perform any of the Services at a PRASA or Affiliate's premises, the Broker will ensure that after completion of the Services, the PRASA or Affiliate's premises is reinstated to the condition prevailing on the date prior to commencement of the Services.

- 8.9. The Broker, its Staff and Authorized Sub-Contractors shall at all times comply with all Applicable Laws including relevant labour laws and PRASA's policies standards, procedures, guidelines and rules relating to health, safety and security when on PRASA premises.
- 8.10. In the performance of its obligations, as provided for by this Agreement, the Broker undertakes to comply and ensure compliance with all local, statutory, governmental and other laws and regulations in force and of application to the Broker, its employees, contractors and other persons or institutions subject to its control for the purposes of this Agreement.
- 8.11. The broker undertakes to indemnify PRASA against any loss, damages or punitive fines that it may suffer or have imposed on it by reason of its failure to comply with the provisions of clause 8.9 and to take out any professional indemnity insurance for all professional service providers and key persons for the purposes of rendering the services provided for in terms of this Agreement.
- 8.12. The Broker agrees in terms of Section 37(2) of the Occupational Health and Safety Act, 1993, ("**OHASA**") to –
- 8.12.1. comply with OHASA and accept sole responsibility for all health and safety matters relating to the provision of the Services; and
- 8.12.2. ensure that neither PRASA's Staff's nor any third party's health and safety is endangered in any way by the Broker's activities or conduct when providing the Services.
- 8.13. The Broker will within 15 (fifteen) days of becoming aware thereof, notify PRASA of any relevant changes in Applicable Law of any competent authority or industry body that may relate to or have an impact on the Broker's provision of the Services or the Broker's relationship with PRASA.
- 8.14. The Broker will procure that its Staff and Authorized Sub-Contractors, if applicable, perform the Services at all times with due care and diligence in accordance with industry best practices and the highest professional and ethical standards and in conformance with the highest standards PRASA has set for itself which aligns with its client-centred commitment i.e. treating customer fairly.

- 8.15. The Broker will always meet or exceed the applicable Service Levels and will procure that Authorized Sub-Contractors at all times meet or exceed the applicable Service Levels.
- 8.16. If at any time any failure to meet any Service Level occurs, or if in the reasonable opinion of the Broker, is likely to occur, the Broker will notify PRASA of the failure or potential failure and of the steps that the Broker will take to fully remedy the failure or, as applicable, to prevent the failure from occurring, provided that PRASA's rights and remedies in terms of the Agreement and common law in general will remain reserved.
- 8.17. The Broker will not, without the relevant third party's prior written consent use a third party's Personal Information, Intellectual Property, or Confidential Information in the provision of the Services.
- 8.18. The Broker will always perform all such actions incidental and necessary to the provision of the Services at no additional cost, even if such actions are not separately listed as a Service.
- 8.19. The Broker will maintain (or improve) its BEE rating provided as at the Effective Date and advise PRASA in writing of the improved rating.
- 8.20. The Broker will notify PRASA as soon as practically possible but not later than one day, following the discovery of a Material Incident, IT Incident and/or Cyber Incident on its systems, that may affect, disrupt or violate PRASA's operations, systems, and policies.

9. **SUB-CONTRACTING**

- 9.1. The Broker may not sub-contract its obligations without the prior written consent of PRASA, which consent will be subject to PRASA's relevant risk assessment.
- 9.2. The Broker will always remain -
 - 9.2.1. PRASA's sole point of contact regarding the Services; and
 - 9.2.2. responsible to PRASA for the fulfilment of all the obligations so sub-contracted.

- 9.3. The provisions of the Agreement will *mutatis mutandis* apply to all Authorized Sub-contractors. PRASA will have the right to revoke its approval of an Authorized Sub-Contractor and direct the Broker to replace such Authorized Sub-Contractor upon 30 (thirty) days' notice, if –
- 9.3.1. the Authorized Sub-Contractor's performance is materially deficient; or
 - 9.3.2. *bona fide* doubts exist concerning the Authorized Sub-Contractor's ability to render future performance because of changes in the ownership, management, and or the financial condition of the Authorized Sub-Contractor; or
 - 9.3.3. there have been material misrepresentations by the Broker regarding the Authorized Sub- Contractor.

10. INDEMNITIES

The Broker hereby indemnifies and holds PRASA harmless against all and any Losses (including fines and penalties levied or awarded by any regulator or tribunal against PRASA or any of its Affiliates) that PRASA may suffer or incur as a result of -

- 10.1. the Broker's failure to comply with any Applicable Law;
- 10.2. any infringement or alleged infringement of any third party's (including Staff's) Intellectual Property rights as a result of the provision of the Services by the Broker to PRASA or any of its Affiliates; and
- 10.3. the Broker's infringement of any Personal Information rights or Confidential Information rights as set out in the Agreement;
- 10.4. PRASA reserves the right to institute civil proceedings to recover any damages occasioned by the negligence of the Brokers employees, sub-contractors and or agents.

11. INTELLECTUAL PROPERTY RIGHTS

Ownership

- 11.1. The rights in and to all Background IP shall be and remain vested with the Party who owns or holds such Background IP and nothing in this Agreement grants or purports to

grant or shall be interpreted to imply the granting of any right, title or interest of whatever nature to a Party in the Background IP of the other Party otherwise than as provided for in this Agreement.

- 11.2. The Parties agree that in the event that Developed IP is developed, created or enhanced, that Party shall, within ninety (90) days of such subject matter being developed, created or having come into existence, disclose such subject matter in writing to the other Party. PRASA shall assess such subject matter and make a determination whether such Developed IP should be the basis of a trademark application or any other form of IP registration.
- 11.3. The Parties agree that any and all Developed IP, including Documents and Material, shall be owned by PRASA, unless otherwise agreed to between the Parties in writing and signed by both Parties.
- 11.4. In order to give effect to the intention of the Parties as set out in clause 11.3 above, the Broker hereby assigns to PRASA, with effect from the Effective Date or otherwise the date of the Developed IP, Document and Material coming into existence, the full right, title and interest in and to the Developed IP, or such share as otherwise agreed upon in writing between the Parties. The Broker further agrees to sign any document and do all things as may be reasonably necessary to record or perfect this assignment, cession, transfer and making over of the Developed IP at any time during the term of the Agreement or in the future, including executing any such documents as may be required to file and prosecute applications to record the assignment with any authority.
- 11.5. To the extent that the assignment of Developed IP in clause 11.4 includes any trade marks, such assignment shall be deemed to include goodwill and the Broker hereby waives in favour of PRASA and its successors in title all moral rights in respect of any Developed IP in which copyright subsists and assigned to PRASA in terms of clause 11.4.
- 11.6. In the event that PRASA decides that Developed IP should be the basis of a trademark application or other form of protection, the Broker agrees to execute such deeds and documents and do such things (and procure its employees to enter into such deeds and documents and do such acts and things) as may be necessary for the obtaining of trade mark or other protection and thereafter for the maintenance of such trade mark or other protection in accordance with the ownership principles set out in this Agreement.

- 11.7. The Broker shall, at the request of PRASA, give its full cooperation and support to PRASA and sign all documentation in any action, claim or proceedings brought or threatened in respect of the Developed IP and PRASA shall meet the pre-agreed expenses incurred by the Broker in giving such assistance.
- 11.8. The Parties shall not be entitled to make use of the corporate name or any other trademark owned or otherwise used by the other Party in any way and nothing in this Agreement grants or purports to grant or implies the granting to a Party any right to use the corporate name or trademarks owned or otherwise used by the other Party.
- 11.9. The IP Owner shall throughout the term of this Agreement at its own expense take reasonable steps to protect the Intellectual Property and maintain all statutory registrations of any item of the Intellectual Property in force and each Party shall pay all filing, maintenance and renewal and any other fees necessary for this purpose for its own Intellectual Property.
- 11.10. No Party shall do or cause to be done, any act or thing which contests, or which has the effect of impairing or tending to impair, the validity, enforceability, integrity, repute or distinctive character of the Background Intellectual Property or the Developed IP, or the respective Party's proprietorship thereof.

General IP Licence

- 11.11. The Parties hereby agree that in order to give effect to this Agreement and discharge any of their obligations, each IP Owner hereby grants the other Party a non-exclusive, royalty free, sub-licensable but non-transferrable licence to exploit its Intellectual Property for the duration of this Agreement in the territory for the purpose only of discharging its obligations under this Agreement.
- 11.12. The licence granted in terms of clause 11.11 shall terminate automatically upon termination of this Agreement.
- 11.13. The licence granted in terms of clause 11.11 shall be sub-licensable but only within the respective Parties' groups and its service providers, and then only to the extent that the Party is strictly required to grant such sub-licences in order to enjoy the benefits of the licence granted to it in terms of clause 11.11.

- 11.14. Any goodwill accruing as a result of use of an IP Owner's trademarks under the licence granted in clause 11.11, shall accrue in favour of the IP Owner of that trademark.

Protection of the Intellectual Property

- 11.15. Each Party shall notify the other Party promptly in writing, giving full particulars, if any of the following matters come to its attention -
- 11.15.1. any actual, suspected or threatened infringement of any of the Intellectual Property included in this Agreement;
 - 11.15.2. any claim made or threatened that exploitation of the Intellectual Property included in this Agreement infringes the rights of any third party;
 - 11.15.3. any person applies for, or is granted, a trademark or a patent by reason of which that person may be, or has been, granted rights that conflict with any of the licensed rights granted under this Agreement;
 - 11.15.4. any other form of attack, charge or claim to which the Intellectual Property included in this Agreement may be subject, (each a "**Relevant Infringement**").
- 11.16. Before starting any legal action in respect of any Relevant Infringement, the Parties shall consult as to the advisability of the action or settlement, its costs, chance of success and effect on the good name of the Parties, the necessity to protect rights in the Services and the Deliverables (*including the right to commercialize and how the action should be conducted*). The IP Owner will have the first right, but not the obligation, to take appropriate action against any person or entity directly or contributorily engaged in or inducing a Relevant Infringement whether through the institution of legal proceedings or otherwise.
- 11.17. Where the IP Owner notifies the other Party in writing that it does not intend to take action with respect to a Relevant Infringement, the other Party will have the right, but not the obligation, at its sole expense to take appropriate action whether through the institution of legal proceedings or otherwise, against any person or entity directly or contributorily engaged in or inducing the Relevant Infringement with respect to any of the Intellectual Property.

- 11.18. Without prejudice to the foregoing, where the Parties determine to take joint action against any person or entity directly or contributorily engaged in or inducing a Relevant Infringement whether through the institution of legal proceedings or otherwise, the Parties shall fully cooperate with each other in relation to such action and shall not unreasonably refuse a request of the other Party in relation to how such action is to be conducted. The Parties shall share evenly the costs and expenses relating to such a joint action and any recoveries or settlements arising from such a joint action, unless agreed otherwise.
- 11.19. The Parties will provide each other with all reasonable assistance requested by the other Party, at the expense of the requesting Party, for the purposes of any infringement action a Party may bring in accordance with clause 11.16 or clause 11.17.
- 11.20. If any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a Party, alleging infringement of third party that Party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.

12. PROTECTION OF PERSONAL INFORMATION

- 12.1. If the Broker has access to, stores (including in digital form), or communicates (including any digital communication) Personal Information relating to the Data Subjects, the Broker will –
- 12.1.1. treat the Personal Information as strictly confidential;
 - 12.1.2. not disclose the Personal Information to any third party, unless such disclosure is authorized by PRASA in writing;
 - 12.1.3. ensure that any person that has lawful access to the Personal Information has signed a legally binding confidentiality undertaking document for non-disclosure;
 - 12.1.4. take appropriate, technical and organizational measures to ensure the integrity of the Personal Information and to ensure that it is secured and protected against unauthorized or unlawful Processing, accidental loss, destruction or damage, alteration, disclosure or access by –

12.1.4.1. having regard to -

12.1.4.1.1. any requirement set forth in law, or stipulated in industry rules or in codes of conduct or by a professional body; and

12.1.4.2. taking all necessary steps to -

12.1.4.2.1. at least every 12 (twelve) months, identify all internal and external risks to the Personal Information and provide PRASA with a detailed written audit report within 30 (thirty) days of having completed its investigations, regardless as to whether the frequency of such investigations is 12 (twelve) monthly or more frequently;

12.1.4.2.2. implement and maintain appropriate safeguards against the risks identified;

12.1.4.2.3. regularly verify that the safeguards have been implemented effectively and where there has been a change of Broker's environment regarding cyber or privacy during the tenure of the Agreement, provide a written report to PRASA within 2 (two) days after completion or change of environment thereof;

12.1.4.2.4. to accord the same levels of privacy and confidentiality of a natural person who is the Data Subject to that of a juristic person who is the Data Subject. And comply with any audit requirements in respect of the Personal Information imposed by PRASA.

12.2. **Notification of a security breach**

The Broker will-

12.2.1. notify PRASA's Information Officer or PRASA Relationship Manager by sending an email to [INSERT EMAIL] (as referred to in the PRASA Group PAIA (Promotion to Access of Information) Manual as posted on PRASA's website) immediately but no later than 24 hours of becoming aware or suspecting any unauthorized or unlawful use, disclosure or Processing of Personal Information;

12.2.2. at its own cost, take all necessary steps to mitigate the extent of the loss or compromise of the Personal Information and restore the integrity of the affected information systems as quickly as possible, and will –

- 12.2.2.1. provide PRASA with any and all necessary information that PRASA may request pursuant the security breach and to assist PRASA to meet any regulatory requirements and obligations in respect of the Personal Information;
- 12.2.2.2. in consultation with PRASA and where required by law, notify any legally mandated authority or Data Subjects; and
- 12.2.2.3. assist PRASA (in any format as will be required by PRASA from time to time) to comply with any requests for access to Personal Information from Data Subjects.

12.3. **Permitted Processing of Personal Information**

The Broker will only Process the Personal Information of Data Subjects–

- 12.3.1. with PRASA's express written instructions (as may be set forth in a Transaction Document) and will not conduct any related or further Processing activities for any other reason whatsoever without the express written consent of PRASA or as permitted by the law; and
- 12.3.2. subject to the provisions of clause 12.3.1 and the provisions of the Promotion of Access to Information Act 2 of 2002, by engaging and communicating solely with PRASA, and is not permitted to disclose to any Data Subject that it is Processing, has Processed or intends to Process the Personal Information of such Data Subject unless it has obtained the prior written consent of PRASA.
- 12.3.3. Sub-Processing of Personal Information.
 - 12.3.3.1. The Broker shall not subcontract any of its processing operations performed on behalf of PRASA under this Agreement without PRASA's prior written consent. Where the Broker subcontracts its obligations under this Agreement, with the consent of PRASA, the Brokers shall do so, upon concluding a written agreement with the Sub-Processor, which imposes the same obligations on the Sub-Processor as are imposed on the Broker under this Agreement. Where the Sub-Processor fails to fulfil its data protection obligations under such written agreement the Broker shall remain fully liable to PRASA for the performance of the Sub-Processor's obligations under such agreement.

- 12.3.3.2. The Broker shall keep the list of Sub-Processing agreements concluded and share the list as well as the copies of such Sub-Processing agreements with PRASA. The Broker shall immediately advise PRASA in writing, in the event of termination of such Sub- Processing agreements.

12.4. Disclosure required by Applicable Law or Court Order

If the Broker is required to disclose the Personal Information by Applicable Law or court order, the Broker will –

- 12.4.1. advise PRASA thereof prior to disclosure, if possible; if prior disclosure is not possible, the Broker will advise PRASA immediately after such disclosure;
- 12.4.2. to the extent that it lawfully and reasonably practically can, take such steps as necessary to limit the extent of the disclosure;
- 12.4.3. afford PRASA a reasonable opportunity, if possible and permitted, to intervene in the proceedings; and
- 12.4.4. comply with PRASA's requests as to the manner and terms of any such disclosure, if possible and permitted.

12.5. Separation of Personal Information

- 12.5.1. Any Processing of Personal Information will be conducted separately from Personal Information, data and property relating to the Broker or any third party and may not be combined or merged with information of another party unless such combination or merging takes place for credit vetting purposes.
- 12.5.2. The Broker will ensure that all Authorized Sub-contractors who Process Personal Information of Data Subjects will be bound by the provisions of this clause 12 in relation to the protection of Personal Information and they will also not amend, modify, merge or combine such Personal Information.

12.6. Cross Border Transfer of Personal Information

- 12.6.1. The Broker will ensure that no Personal Information is transferred and/or Processed outside of the Republic of South Africa unless PRASA has given prior written consent to such transfer and/or Processing of Personal Information.

- 12.6.2. Where PRASA has given prior written consent to the transfer and/or Processing of Personal Information to the Broker as set out in clause 12.6.1, the Broker shall ensure that such transfer or Processing is always subject to the provisions of this Agreement and the Applicable Law.

13. **CONFIDENTIAL INFORMATION AND DATA SECURITY**

- 13.1. The Parties agree and undertake in favour of each other to keep the Confidential Information confidential, except as permitted (i) by the Agreement (ii) by prior written consent, (iii) by law, or (iv) if the Confidential Information is in the public domain. The Parties will protect each other's Confidential Information in the manner of a reasonable person protecting his/her own Confidential Information.
- 13.2. The confidentiality obligations in terms of this clause 13, with respect to each item of Confidential Information, shall commence on the date on which such information is disclosed or otherwise received and shall endure indefinitely after the termination of this Agreement for as long as the Confidential Information remains confidential.
- 13.3. Neither Party will use or permit the use of the Confidential Information for any purpose other than for the purpose of this Agreement and in particular not to use or permit the use of the Confidential Information whether directly or indirectly to obtain a commercial, trading, investment, financial or other advantage over the other Party or otherwise use it to the detriment of the other Party.
- 13.4. The Parties shall not copy or reproduce the Confidential Information by any means without the prior written consent of the Disclosing Party, it being recorded that any such copies shall be and remain the property of the Disclosing Party. The Parties may disclose Confidential Information to attorneys or auditors, provided that such disclosure is reasonably required for purposes of conducting that Party's business activities and the Party will ensure that the recipient of the Confidential Information maintains the confidentiality.
- 13.5. Each Party shall ensure that its employees or contractors engaged in terms of this Agreement are under an equivalent obligation of confidentiality to that imposed by this Agreement on the Parties and shall use commercially reasonable efforts to ensure that no employees or contractors shall be in breach of any such obligation and that any employee or contractor who is in breach is prevented from continuing such breach.

- 13.6. In the event that either Party is required to disclose the Confidential Information by law, the Party receiving the request to disclose information will –
 - 13.6.1. advise the other Party prior to disclosure, if possible;
 - 13.6.2. take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;
 - 13.6.3. afford the other Party a reasonable opportunity, if possible, to intervene in the proceedings; and
- 13.7. comply with the other Party's requests as to the manner and terms of any such disclosure. The Broker may receive or have access to PRASA Confidential Information and will therefore adopt appropriate technical and organizational security measures, including but not limited to -
 - 13.7.1. prevent any unauthorized person from having access to computer systems processing or storing PRASA Confidential Information, and especially -
 - 13.7.1.1. unauthorized reading, copying, alteration or removal of storage media;
 - 13.7.1.2. unauthorized data input as well as any unauthorized disclosure, alteration or erasure of stored PRASA Confidential Information; and
 - 13.7.1.3. unauthorized use of data-processing systems by means of data transmission facilities;
 - 13.7.2. ensure that authorized users of a data-processing system can access only PRASA Confidential Information to which their access rights refer;
 - 13.7.3. record what PRASA Confidential Information has been communicated, when and to whom;
 - 13.7.4. ensure that PRASA Confidential Information being processed on behalf of third parties can be processed only in the manner prescribed by PRASA or the third party;

- 13.7.5. ensure that, during communication of PRASA Confidential Information and transport of storage media, the data cannot be read, copied or erased without authorization; and
- 13.7.6. design its organizational structure in such manner so as to comply with industry best practice data protection requirements.
- 13.8. The security measures set out above must be recorded in a plan to be presented to PRASA on demand.
- 13.9. The content and existence of this Agreement constitutes Confidential Information and shall be treated as such in terms of this Agreement.
- 13.10. The obligations in this clause will endure notwithstanding termination of the Agreement.

14. RETURN AND DESTRUCTION OF CONFIDENTIAL INFORMATION

- 14.1. The Broker will immediately return and/or destroy any Confidential Information in its possession or control or that which is in possession or control of its Authorized Sub-Contractors/ Sub-Processor, obtained from PRASA, once such Confidential Information has served its purpose in accordance with the POPIA and/or any other equivalent legislation.
- 14.2. PRASA may, at any time, request the Broker to immediately return and/or destroy Confidential Information obtained from PRASA at the Broker's possession or control, and/or possession or control of Authorized Sub-Contractor/Sub-Processor notwithstanding that such Confidential Information has not yet served the purpose it was acquired for.
- 14.3. The Broker will immediately, but no later than 5 (five) days following the events in 14.1 and 14.2, furnish PRASA with a written confirmation and/or destruction certificate confirming the return and/or destruction of the Confidential Information. The Broker shall ensure that destruction of data occurs in such a way that the data cannot be recovered.
- 14.4. The Broker shall fully co-operate with PRASA in managing any risk associated with Confidential Information shared with the Broker.

15. **AUDIT RIGHTS OF PRASA AND REGULATORS**

- 15.1. PRASA and/or its agents and or its internal or external auditors will have the right to audit the Broker at any time in order to determine whether the Broker complies with the terms and conditions of the Agreement. Such audit rights include but shall not be limited to the right of access to systems, procedures and software, vulnerability testing of systems, procedures and software, and inspection of the physical security of the Brokers' Premises. The Broker will offer reasonable assistance and co-operation to PRASA and/or its agents and or its internal or external auditors in the carrying out of such auditing exercise.
- 15.2. To the extent that the Broker engages an independent auditor to conduct an audit of its operations, the Broker agrees to provide PRASA with the relevant copies of the audit reports of all such audit exercises upon request.
- 15.3. The Broker acknowledges that as a state-owned agency PRASA must comply with directives and guidelines from the South African Reserve Bank (SARB) and other regulators. Accordingly, any of PRASA regulators, including the SARB, will have the same audit rights as PRASA contemplated in this clause 15. In the event that a regulator seeks to conduct an audit of the Broker, the Broker will inform PRASA to the extent allowed in law.

16. **WARRANTIES**

The Broker represents and warrants that from the Effective Date -

- 16.1. It has the necessary expertise, qualifications, professional registrations, authorizations, resources, systems, and ability to provide the Services at the required standard and within the required time periods;
- 16.2. It has the required accreditation, or as may be necessary to provide the Services set out in the respective Transaction Documents, and or has made application for such accreditation and will have such accreditation when necessary to provide the Services;
- 16.3. It has the level BBBEE contributor **rating as set out in the Bid document** as at the Effective Date. The Broker will notify PRASA in writing no later than 5 (five) business days from the date of change in the event of any change to its BBBEE contributor level;

- 16.4. It has full capacity and authority to enter into and perform its obligations under the Agreement in terms of its constitutive documents and Applicable Law, and is not subject to any legal/contractual restrictions or limitations in this regard;
- 16.5. No proceedings have commenced or are threatened against it which would or could potentially restrain the Broker from entering into the Agreement or from providing the Services;
- 16.6. It will comply with Applicable Law and will not (and will procure that its Staff will not) under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, or provide a benefit or other advantage to any of PRASA's Staff or any other person on behalf of PRASA;
- 16.7. It has not been induced to enter into the Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in the Agreement;
- 16.8. It will always perform the Services in the most cost-effective manner consistent with the level of quality and performance required by PRASA;
- 16.9. It will always perform the Services in a manner that does not infringe or constitute an infringement or misappropriation of any Intellectual Property or other proprietary rights of any third party; and
- 16.10. It has the rights required to meet its obligations in terms of the Agreement.

17. LIMITATION OF LIABILITY

- 17.1. In the event of a breach of any of the provisions of the Agreement, the Broker will be liable to PRASA for all Losses sustained by PRASA, as a result of such breach.
- 17.2. PRASA will not in any way whatsoever, be liable to the Broker or any third party for any indirect, special and or consequential Losses, sustained by the Broker or a third party.
- 17.3. Neither Party's direct or indirect liability is limited to fraud or theft by it or its Staff, death or personal injury caused by the Broker or its Staff or Authorized Sub-Contractors or any liability arising from breach of, or indemnity given in respect of a Party's obligations, in relation to Confidential Information, Intellectual Property rights and Applicable Law.

18. **INSURANCE**

The Broker will maintain sufficient insurance to cover its liabilities in terms of the Agreement and if specifically required by PRASA due to the nature of the Services provided by the Broker, such insurance as agreed and set out in the **Bid Document**. The Broker will provide a copy of such insurance policy to PRASA upon request.

19. **BREACH**

- 19.1. Unless provided otherwise in the Agreement, if either Party commits a breach and fails to remedy such breach within 7 (seven) days of written notice, the notifying Party will be entitled to terminate the Agreement, without prejudice to any rights which such Party may have.
- 19.2. If (i) a Causal Event (as defined below) occurs in respect of the Broker; or (ii) the Broker fails to adhere to any Applicable Laws; or (iii) the Broker breaches any term or condition of any licence, authorization or consent required for the provision of the Services which breach PRASA, in its sole discretion, considers to be prejudicial or potentially prejudicial to PRASA, then PRASA will be entitled to immediately terminate the Agreement and or any or Transaction Document on written notice to the Broker, in which event such termination will be without any liability to PRASA and without prejudice to any claims which PRASA may have for Losses against the Broker.
- 19.3. For purposes of the Agreement, a "Causal Event" means -
 - 19.3.1. a compromise, scheme of arrangement or composition by the Broker with any or all of its creditors;
 - 19.3.2. liquidation of the Broker, whether provisionally or finally or the commencement of business rescue of the Broker;
 - 19.3.3. a default or cessation, or a reasonable prospect of default or cessation (as the case may be), of the Broker's normal line of business;
 - 19.3.4. the commission of any act or any omission which is an act of insolvency by an individual in terms of the Insolvency Act of 1936, or the existence of circumstances which would allow for the winding up of the Broker in terms of the Companies Act of 2008, and or in terms of Section 68 of the Close Corporations Act of 1984, as the case may be;

- 19.3.5. disposal by the Broker of a material portion of its undertaking or assets;
- 19.3.6. any change of control of the Broker: A “change of control” will be deemed to have occurred in circumstances where, subsequent to the Effective Date, any person (whether natural, juristic, or otherwise) acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision-making process or management of the Broker as contemplated in the Companies Act of 2008; or
- 19.3.7. conduct or alleged conduct by the Broker, or the association or alleged association of the Broker to a third party, which in PRASA’s sole discretion has potential to result in reputational risk to PRASA, provided that the Causal Events will be deemed to be Causal Events if PRASA, considers such events, in its total and absolute discretion, to be detrimental to it for sound business reasons.

20. TERMINATION

- 20.1. Notwithstanding the other grounds for termination referred to in this Agreement, and without prejudice to any right of the relevant party, this Agreement may immediately be terminated by a party if the other party:
 - 20.1.1. ceases to carry on business;
 - 20.1.2. is wound up, is placed under liquidation, is sequestrated, placed under business rescue proceedings, placed under an order of judicial management or under any other legal disability, either provisionally or finally; or
 - 20.1.3. materially breaches the terms of this Agreement;
- 20.2. PRASA may terminate this Service Level Agreement or any Transaction Document in whole or in part without cause or incurring liability at any time by giving the Broker at least 30 (thirty) day’s prior written notice designating the termination date. PRASA’s rights in terms of this clause will not be affected by any *force majeure* event.
- 20.3. The termination of one Transaction Document will not affect the validity of any other Transaction Document, unless stated to the contrary in a Transaction Document. All Transaction Documents will however terminate upon termination of the Service Level Agreement for whatsoever reason.

21. TERMINATION ASSISTANCE

At termination (with or without cause) of the Agreement or any part thereof, the Broker will, at the request of PRASA, make itself available to provide all such reasonable time, assistance and services at no extra cost to PRASA in order to ensure an orderly wind-down and termination of the Service Level Agreement or a Transaction Document, as the case may be, for such time period as reasonably requested by PRASA. The Broker will co-operate fully, assist in a smooth handover to any new Broker and act in good faith and in the best interest of PRASA in doing so

22. FORCE MAJEURE

22.1. No Party will be liable to the other for any Losses resulting from non-performance of its obligations if and to the extent that such non-performance is caused by events not within the control of such Party; provided that such non-performance could not have been prevented by reasonable precautions. "Reasonable precautions" by way of example includes making provision for alternative electrical power during temporary electrical power outages in order for each Party to continue performing its obligations.

22.2. If any event under clause 22.1, in PRASA's sole discretion, substantially prevents performance of the Services then at PRASA's option: (i) PRASA may procure such Services from an alternate source; or (ii) PRASA may terminate the Agreement, or any portion thereof without liability and, to the extent applicable, the charges payable under the Agreement will be equitably adjusted to reflect those terminated Services.

22.3. Should either Party (the "Invoking Party") be prevented from fulfilling any of its obligations in terms of this Agreement as envisaged in 22.1 and or a result of any act of God, strike, war, riots, fire, flood, legislation, insurrection, sanctions, trade dispute or economic embargo or any similar cause beyond the reasonable control of such invoking Party (any such event hereinafter called "*force majeure*") then -

22.3.1. the invoking Party will forthwith give written notice thereof to the other Party:

22.3.1.1. specifying the cause and anticipated duration of the *force majeure*; and

22.3.1.2. promptly upon termination of the *force majeure*, stating that such *force majeure* has terminated;

- 22.3.2. performance of any such obligations will be suspended from the date on which notice is given in terms of sub-clause 22.3.1.1 until the date on which notice is given in terms of sub-clause 22.3.1.2.
- 22.4. The Invoking Party will not be liable for any delay or failure in the performance of any obligation hereunder, or loss or damage due to or resulting from the *force majeure* during the period referred to in sub-clause 22.3.1 above, provided that -
- 22.4.1. the Invoking Party uses and continues to use its best efforts and takes all reasonable steps to perform such obligation and provides the necessary notices as specified in clause 22.3.1; and
- 22.4.2. if the *force majeure* continues for more than 30 (thirty) days, the other Party will be entitled to cancel this Agreement on the expiry of such period with immediate effect on written notice but will not be entitled to claim damages against the Invoking Party as a result of the delay or failure in the performance of any obligations hereunder due to or resulting from the *force majeure*, except as otherwise provided in this Agreement.
- 22.5. The provisions of this clause 22 does not derogate from PRASA's rights in terms of clause 20.

23. **DISPUTE RESOLUTION**

- 23.1. In the event of a dispute, the Parties will, within 30 (thirty) days of the occurrence of such a dispute, attempt to resolve such dispute at a meeting of the Parties' Representatives or their representatives (other than the Relationship Managers) before referring the matter to arbitration.
- 23.2. Should the Parties fail to resolve the dispute as contemplated in clause 23.1, either Party may refer the matter to arbitration in accordance with the provisions of this clause 23.
- 23.3. The Parties will agree on the arbitrator within 10 (Ten) days of a Party calling for an arbitration in terms of 23.2.

- 23.4. Failing agreement, the arbitrator will be nominated by the Arbitration Foundation of Southern Africa (“AFSA”) and be appointed by the Parties on terms of reference agreed to by the Parties. Should AFSA not be in existence at the time, the nomination will be made by the chairperson for the time being of the Johannesburg Bar Council. The Arbitration will be held in Johannesburg and conducted in English.
- 23.5. The arbitration will be held in accordance with the rules of AFSA, or if AFSA is not in existence at the time, in accordance with the formalities and procedures agreed to between the parties and settled by the arbitrator, which will be in an informal and summary manner, that is, it will not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and otherwise subject as aforesaid of the Arbitration Act, 1965 of the Republic of South Africa and any statutory modification or re-enactment thereof.
- 23.6. The Arbitrator will be entitled to -
- 23.6.1. investigate or cause to be investigated any matter, fact or thing which he/she considers necessary or desirable in connection with any matter referred to him/her for decision;
- 23.6.2. decide the matters submitted to him/her according to what he/she considers just and equitable in all the circumstances, having regard to the purpose of the Agreement; and
- 23.6.3. make such award, including an award for specific performance, an interdict, damages, penalty, or the costs of arbitration or otherwise as he/she in his/her discretion may deem fit and appropriate.
- 23.7. The arbitration will be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- 23.8. The Parties irrevocably agree that -
- 23.8.1. either Party may appeal against the decision in the arbitration proceedings within a period of 20 (twenty) days after the arbitrator’s ruling has been handed down by giving written notice to that effect to the other Party;

- 23.8.2. the appeal will be dealt with in accordance with the rules of AFSA by a panel of 3 (three) arbitrators, appointed by the Parties and alternatively by AFSA in the event of the Parties being unable to reach agreement within 7 (seven) business days;
- 23.8.3. the decision of the arbitrator will be final and binding upon the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged or upon the issue of determination of the appeal panel, as the case may be;
- 23.8.4. subject to clause 23.8.1, the decision of the arbitrator will be carried into effect;
- 23.8.5. subject to clause 23.8.1, the decision of the arbitrator may be made an order of any court of competent jurisdiction;
- 23.9. Nothing contained in this clause shall preclude any Party from seeking interim relief from any competent court having jurisdiction pending the institution of any arbitration proceedings.
- 23.10. The Broker agrees to continue performing its obligations while any dispute is being resolved except to the extent that the issue in dispute precludes performance. Dispute over payment will not be deemed to preclude performance.
- 23.11. The provisions of this clause shall constitute an irrevocable consent, on the part of the parties, to the resolution of this dispute in the manner provided for herein.

24. **DOMICILIUM CITANDI ET EXECUTANDI**

24.1. **General correspondence**

For general correspondence, the Recipient and an authorized PRASA representative will expressly or implicitly communicate addresses. This communication does not have to be in writing, but if it is, it does not have to be signed.

24.2. **Legal notices**

- 24.2.1. The Parties choose the following addresses as their *domicilia citandi et executandi* to receive written legal notices, for example letters of demand as well as court and alternative dispute resolution documents:

- 24.2.1.1. PRASA: Group Legal, PRASA XXXXXXXXXXXXXXXX
- 24.2.1.2. The BROKER : the last known physical address given to PRASA, or the last known email address.
- 24.2.2. Each Party accepts that if they send a legal notice to the other Party, unless the contrary is proved, the Parties will consider it received:
 - 24.2.2.1. on the date of delivery if the legal notice was delivered by hand during ordinary business hours; and
 - 24.2.2.2. within seven days of the posting date if the legal notice was delivered by registered post.
- 24.2.3. In the case of email service, if the recipient of the legal notice does not acknowledge service within three days, the other Party must serve the legal notice by hand at the physical address.
- 24.2.4. If the date of delivery falls on a weekend or public holiday, the legal notice will be considered received on the next business day.
- 24.2.5. A Party can change its address in 24.2.1 to another physical address (not a post box number) or email address by giving the other Party written notice. The change will be effective seven days after the receipt of the notice as contemplated in 24.2.2.
- 24.2.6. A written notice that any Party receives will be adequate notice to that Party. This will be so even if the notifying Party did not send the notice to or did not deliver it at the other Party's chosen address as set out above.

25. **CESSION AND ASSIGNMENT**

The Broker will not be entitled to cede or assign any of its rights or obligations (in part or wholly) in this Agreement, to any other person without PRASA's prior written consent which consent will not be unreasonably withheld.

26. **GENERAL**

- 26.1. **Non-solicitation:** The Broker will not without the prior written consent of PRASA, either during or within 24 (twenty-four) months after termination of a Transaction Document,

actively solicit for employment, any person who, at any time during the duration of a Transaction Document was a PRASA Staff member who was directly involved with any activity relating to the Transaction Document.

- 26.2. **Advertising and marketing:** The Broker will not issue any advertisement or statement in connection with the Agreement or otherwise disclose the existence of the Agreement or the subject matter thereof to any other person without the prior written consent of PRASA, which consent can only be provided by a PRASA executive employee, in charge of the PRASA division to which the Services are being rendered, in conjunction with PRASA's Group Legal division. PRASA can withdraw its consent at any time. The Broker may not use any trademark or any other Intellectual Property of PRASA or refer to PRASA as a customer/client, for the Broker's marketing purposes or to endorse any goods or services of the Broker without PRASA's written consent.
- 26.3. **Waiver:** No change, waiver or discharge ("waiver") of the terms and conditions of the Agreement will be valid unless in writing and signed by an authorized representative of the Party against which such waiver is sought to be enforced. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right under the Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude any further exercise thereof or the exercise of any other right.
- 26.4. **Applicable Law:** The Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa.
- 26.5. **Whole agreement and amendment:** The Agreement constitutes the whole of the agreement between the Parties relating to the subject matter hereof and no amendment, including this clause or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties authorized representatives.
- 26.6. **Counterparts:** The Agreement or a Transaction Document or Annexure may be executed in one or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same Agreement or Transaction Document or Annexure, as the case may be, as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.
- 26.7. **Relationship between the Parties:** The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership or agency and that

neither Party is in any manner entitled to make or enter into binding agreements of any nature on behalf of the other Party.

- 26.8. **Survival:** The termination of the Agreement will not affect such of the provisions as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for such survival.
- 26.9. **Implementation and covenant of good faith:** The Parties warrant to each other that they have taken or caused to be taken all steps, actions and corporate proceedings necessary to cause the Agreement to be binding on themselves. Either Party will, if requested by the other Party, furnish to the latter sufficient evidence of the authority of the person or person who will, on behalf of the Party so requested, take any action or execute any documents required or permitted to be taken or executed by such person under the Agreement. Each Party agrees that, in its respective dealings with the other Party under or in connection with the Agreement, it will act in good faith.
- 26.10. **Legal costs:** Each Party will bear and pay its own costs of or incidental to the drafting, preparation and execution of the Agreement.

27. **SEVERABILITY**

The Parties agree that each clause of this Agreement shall be severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be and continue to be of full force and effect.

28. **VARIATION, SUSPENSION, DELETION, AMENDMENT OR MODIFICATION**

No variation, suspension, deletion, extension, amendment or modification of this Agreement shall be of any force or effect, unless recorded in writing and signed by the parties.

Signed at _____ on _____
(Place) (Date)

Signed on behalf of the Client by _____
He/she being duly authorised thereto. (Please print Name and Surname)

Signed _____

Signed at _____ on _____
(Place) (Date)

Signed on behalf of the Broker by _____
He/she being duly authorised thereto. (Please print Name and Surname)

Signed _____

ANNEXURE A - SERVICES

1. INTRODUCTION

- 1.1 The Medical Scheme Broker will be required to understand the PRASA business and environment, understand (within legal prescripts) the state of the PRASA employees' health and wellness and their needs as well as be required to contribute towards developing and implementing the PRASA employee benefits strategy over the next three years.
- 1.2 The successful bidder will be expected to conduct risk analyses and health care assessments for interested employees, in order to weigh up the most appropriate medical scheme options, based on the employee's budget and specific requirements.

2. SCOPE OF WORK

2.1 The Medical Scheme Broker will be required to:

- 2.1.1 Provide a service to PRASA employees, advising them of medical scheme options and health plans.
- 2.1.2 Continuously evaluate the effectiveness and relevance of the Employer selected medical scheme(s).
- 2.1.3 Schedule monthly meetings with the relevant PRASA stakeholders to discuss medical scheme matters and advise on ways to enhance service delivery and any current matters/issues.
- 2.1.4 Monitor the effectiveness and service delivery of the administrative support that is provided to the PRASA by the Medical Scheme/s through their dedicated Administrator.
- 2.1.5 Work with the relevant PRASA stakeholders and the appointed Employee Assistance Programme (EAP) Service Provider to formulate, develop and implement an effective Wellness and Medical Scheme Strategy.

2.2 Areas of Focus:

- 2.2.1 This service will cover the entire PRASA, all PRASA Divisions and Subsidiaries for all employees inclusive of fixed term contractors in the following areas:
- 2.2.2 Medical Scheme membership management of PRASA
- 2.2.3 Electronic/ Telephonic accessibility for PRASA employees and pensioners queries/application.
- 2.2.4 Marketing and Communication
- 2.2.5 Strategic Services
- 2.2.6 Reporting
- 2.2.7 Programme Management

2.3 Medical Scheme Membership Management of PRASA should include, but not be limited to:

- 2.3.1 Minimum 1X consultant(s) onsite dedicated to PRASA to provide member advice and process membership movement. The consultant will be responsible for the monthly Medical Scheme billing and reconciliations with medical schemes and payroll, this resource should be available at PRASA Gauteng Head office and might be required to rotate to other locations.
- 2.3.2 Call Centre/Help desk services accessible for PRASA employees.
- 2.3.3 Escalated query assistance.
- 2.3.4 Site visits in all 9 provinces to address member queries.
- 2.3.5 Bidder is required to participate in annual road shows in all nine (9) provinces for year-end reviews, funded by the Medical Scheme Broker.
- 2.3.6 Bidder should be able to conduct at least one (1) annual Wellness Day in the major PRASA sites nation-wide, at the cost of the bidder for non-Medical Scheme members.
- 2.3.7 Induction of new members.
- 2.3.8 Preferable, experience in facilitating and implementing a 24/7 employee assistance and trauma response through Call Centre or Help Desk.

2.4 Call Centre Accessibility for PRASA Employees and Pensioners queries/application with respect to:

- 2.4.1 Benefit/contribution comparisons and projected costing 2) Application and membership amendment requirements
- 2.4.2 Underwriting queries
- 2.4.3 Prior authorization process
- 2.4.4 Claim Resolution
- 2.4.5 Dispute resolution

2.5 Marketing and Communication

- 2.5.1 Bidder must provide communication to the employees of PRASA and its pensioners, this includes newsletters, current topics etc. Bidders must provide posters/pamphlets/brochures to keep the PRASA' employees and their dependents informed.

- 2.5.2 Provision of early warning communications to PRASA' employees about possible changes to legislation, benefits, rules and regulation of any of the PRASA accredited medical schemes.
- 2.5.3 Induction and General Awareness (Continuous on-site sessions) especially regarding year end updates linked to times when medical schemes normally announce their changes to rules, benefits, and options. The road shows will be at the cost of the broker.
- 2.5.4 Annual road shows to communicate Medical Scheme changes and facilitate option selection:
- 2.5.5 Advice to employees considering affordability and what the best options would be for each employee within the income bracket.
- 2.5.6 Advice in several official languages, with due consideration to the demographic areas. The road shows will be at the cost of the broker.

2.6 **Accessibility Strategic Services**

- 2.6.1 Bidder should provide strategic services, but not limited to:
 - 2.6.1.1 Year-end revision process.
 - 2.6.1.2 Review of profile members,
 - 2.6.1.3 Management of the post-retirement provision and database. Ensuring the data is checked against the Home Affairs website. The bidder must provide the annual AS19 valuation conducted by an actuary at the Medical Brokers cost.
 - 2.6.1.4 Scheme and option comparisons.
 - 2.6.1.5 Legislative review and update(s);
 - 2.6.1.6 Market trend analysis and forecasting including review of Medical Scheme Offering at PRASA versus the market (Incorporating medical aids Performance and Solvency measures)
 - 2.6.1.7 Industry developments.
 - 2.6.1.8 Broker must be able to support PRASA with the sourcing of Primary Health Care services.
 - 2.6.1.9 Review of recognized medical schemes.
 - 2.6.1.10 Implementation of Primary Health Care services in line with PRASA Procurement policy.
 - 2.6.1.11 Participate at various wellness events.
 - 2.6.1.12 Ensure PRASA is involved in strategic and stakeholder meetings and workshops, Communication strategy recommendations and planning.

2.7 Accessibility Reporting

- 2.7.1 Reporting should include, but not limited to:
 - 2.7.1.1 Reporting quarterly and annually on the membership movement, identified challenges, advice on different options available.
 - 2.7.1.2 Risk management and identified lessons learnt reports.
 - a. Benchmark review of current schemes to evaluate suitability for PRASA employees.
 - b. Website with information on recognized medical schemes.
 - c. Notices to employees and pensioners and documented advice subject to approval by PRASA.
 - d. Individual correspondence with employees and pensioners.
 - e. Reporting monthly on the “proof “of existence for pensioners by checking the Home Affairs website.
 - f. Management of the post-retirement data base by checking the Home Affairs website to make sure payment is not made to deceased retirees. (Post-retirement medical aid contribution)

2.8 Accessibility Programme Management

- 2.8.1 The Service Provider is expected to manage the administration of membership as well as change requests.
- 2.8.2 The Service Provider needs to work closely with HR offices at all PRASA’ regions.
- 2.8.3 Actively resolve claims resolutions
- 2.8.4 The Service Provider will have to facilitate the application for membership or change of membership process and ensure that all relevant documentation has been completed correctly by applicants and submitted.
- 2.8.5 The Service Provider must monitor progress and react to enquiries made by applicants.
- 2.8.6 The Service Provider must protect confidentiality of members in terms of medical scheme related issues/inquiries.
- 2.8.7 The Service Provider must have the capacity to service all of PRASA’s sites across the country.
- 2.8.8 The Service Provider must ensure that a dedicated functional/operational structure will be appointed to manage this contract.

- 2.8.9 The scope of work must comply with PRASA Health and Safety Protocols including Covid 19 related matters.
- 2.8.10 The Medical Scheme Broker to provide:
 - 2.8.10.1 New member applications
 - 2.8.10.2 Amendments to existing memberships
 - 2.8.10.3 Cancellation of memberships
 - 2.8.10.4 Facilitate claim processes and queries.
 - 2.8.10.5 Actively manage fraudulent claims by informing the employer and addressing the matter with the employee.
 - 2.8.10.6 Educate member base to manage their Medical Scheme effectively.
 - 2.8.10.7 Manage Service level agreements and ensure they adhere to required standards.

2.9 **Services provided to PRASA Employees**

- 2.9.1 The Medical Scheme Broker to the PRASA will be required to introduce a number of processes and tools that will assist employees with the selection of the most suitable plan options.
- 2.9.2 The Health Care provider will be required to assist with in-house awareness campaigns to inform employees on medical Scheme related matters.
- 2.9.3 The designated consultant assigned to the PRASA should be able to:
- 2.9.4 Analyse an employee's current situation and be able to provide better benefit options based on their current health profile as employee's health care needs may change.
- 2.9.5 Provide efficient and effective communication and education critical to the perception an employee has of the medical scheme.
- 2.9.6 Report on and monitor the claims processing efficiencies of the medical scheme administrator with regard to both initial and escalated / problematic claims.
- 2.9.7 Provide weekly / monthly face to face consultations where employees are assisted with:
 - 2.9.7.1 Solving their problematic claims by submitting the query to the medical scheme, monitoring the progress and provide feedback to the employee.
 - 2.9.7.2 Be able to analyze an employee's health history and on this basis be able to recommend the most appropriate medical Scheme plan option.
 - iii. Educate employees on how to utilise their medical Scheme more effectively.
 - iv. The consultant must be able to negotiate on behalf of the PRASA employee if there is a dispute about a specific claim.

- v. The Medical Scheme broker will be required to be at the PRASA offices provide face to face sessions with its employees.
- vi. The frequency of these sessions will be negotiated with the employee benefits office.

2.10 Assistance to the PRASA Employee Benefits Team:

- 2.10.1 Provide support with management of Service Level Agreements with medical schemes.
- 2.10.2 Provide a dedicated consultant / administrator who will assist the PRASA Employee benefits team with medical scheme queries.
- 2.10.3 Provide guidance and training to our Human Capital Administrators on the different administrative processes.
- 2.10.4 Provide monthly progress reports on each aspect of administration (e.g. new membership, addition of dependent, cancelation of membership, membership continuation etc.);
- 2.10.5 Medical Scheme Broker to follow up with employees if required to ensure relevant requirements are met for resolution of any queries.
- 2.10.6 Present year end sessions on annual basis to employees at each of the regional centres.
- 2.10.7 Present medical scheme education at employee orientation sessions.
- 2.10.8 Provide support and advisory service on the processes of incapacity due to ill-health process.
- 2.10.9 Provide guidance and support with employee health care communication strategy and annual year planner linked to hot topics; and
- 2.10.10 Provide support for any on-line system.

2.11 Employee Wellness Programme

- 2.11.1 The Medical Scheme Broker will be required to participate in the design and implementation of the PRASA Wellness Programme and events during the course of the year together with the PRASA appointed EAP service provider.
- 2.11.2 The PRASA welcomes new and industry-related wellness strategies and will expect the Medical Scheme Broker to keep the organisation up to date with trends and peer practices.

2.12 Accessibility Value Added Services

- 2.12.1 The Broker is to conduct annual reviews regarding the increases and benefit updates.
- 2.12.2 The Broker is to ensure that the membership base is authenticated annually.
- 2.12.3 The Broker is to ensure that the pricing of the products is competitive, and market related and in keeping with industry trends.
- 2.12.4 The Broker must be able to assist and guide on applicable mobile apps, communication platforms to engage PRASA members to improve their health and wellness.
 - i Nutritional advice
 - ii Fitness activities
 - iii Mental wellbeing

ANNEXURE B – COSTS

- 1.1 The Broker undertakes to ensure that the Services rendered in accordance with this Agreement, are rendered in terms of Section 65 of the Act.
- 1.2 The Broker will provide PRASA with a copy of the written agreement entered into between the Broker and the medical scheme concerned in terms of Section 28 of the Act.
- 1.3 Commission for consulting Services and advice is payable to the Broker by the Medical Scheme Administrator (on behalf of the Medical Scheme) and is subject to the maximum scales as contained in the Regulations to the Act.
- 1.4 Remuneration of the Broker clearly provides for payment by the medical scheme on a monthly basis, and upon receipt by the scheme of the relevant monthly contributions as per Regulation 28(5)(6).
- 1.5 The Broker is also entitled to receive commission on health products as detailed under the Short-Term Insurance Act, the Long-Term Insurance Act and the Occupational Health and Safety Act. This commission is payable to the Broker by the Insurer and is subject to the maximum scales as contained in the Regulations to the aforementioned Acts.
- 1.6 The commissions earned in 1.3 and 1.5 above are dependent on the benefit structure premium and / or number of employees. More detailed information on commission earned can be provided upon request.
- 1.7 Notwithstanding the above provisions, should the benefit structure, premium and / or number of employees change, a revised fee structure may be negotiated by the Parties.