**AUCTION AGREEMENT**

BETWEEN

**PRASA AND \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

CONTRACT NUMBER :

AUCTIONEER :

NATURE OF WORK : AUCTION SERVICES

LOCALITY : NATIONAL

DATE OF ACCEPTANCE :

OF TENDER

EFFECTIVE DATE :

EXPIRY/COMPLETION DATE :

CONTRACT RATES : \_\_\_ % BUYERS COMMISSION INCLUDING VAT AND OTHER CONTINGENCIES

**TABLE OF CONTENTS**

[**1.** **DEFINITIONS** 4](#_Toc390781090)

[**2.** **INTERPRETATION** 7](#_Toc390781091)

[**3.** **INTRODUCTION** 8](#_Toc390781092)

[**4.** **INCONSISTENCY** 9](#_Toc390781093)

[**5.** **DURATION** 10](#_Toc390781094)

[**6.** **REPRESENTATION AND WARRANTIES** 10](#_Toc390781095)

[**7.** **PRASA Warranties** 11](#_Toc390781096)

[**8.** **CO-OPERATION** 11](#_Toc390781097)

[**9.** **SERVICES** 11](#_Toc390781098)

[**10.** **PAYMENT** 12](#_Toc390781099)

[**11.** **INVOICING** 12](#_Toc390781100)

[**12.** **INSURANCE** 12](#_Toc390781101)

[**13.** **PLACE WHERE SERVICES WILL BE RENDERED** 12](#_Toc390781102)

[**14.** **PENALTY FOR DELAY** 12](#_Toc390781103)

[**15.** **BREACH** 12](#_Toc390781104)

[**16.** **TERMINATION** 14](#_Toc390781105)

[**17.** **FORCE MAJEURE** 14](#_Toc390781106)

[**18.** **NOTICES AND LEGAL SERVICE** 15](#_Toc390781107)

[**19.** **CONFIDENTIALITY** 16](#_Toc390781108)

[**20.** **DISPUTE RESOLUTION** 17](#_Toc390781109)

[**21.** **GOVERNING LAW AND CONSENT TO JURISDICTION** 18](#_Toc390781110)

[**22.** **COSTS AND EXPENSES** 19](#_Toc390781111)

[**23.** **VARIATIONS** 19](#_Toc390781112)

[**24.** **SEVERABILITY** 20](#_Toc390781113)

[**25.** **COUNTERPARTS** 19](#_Toc390781114)

[**26.** **ENTIRE AGREEMENT** 19](#_Toc390781115)

[**27.** **LIMITATION OF LIABILITY** 19](#_Toc390781116)

[**28.** **CESSION OR DELEGATION** **AND SUBCONTRACTING** 22](#_Toc390781117)

[**29.** **PUBLIC RELATIONS AND PUBLICITY** 22](#_Toc390781118)

[**30.** **INDEPENDENT STATUS** 22](#_Toc390781119)

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. “**Agreement**” shall mean this agreement together with all the annexures attached hereto;
  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;
  3. “**Business Day**” shall mean any day except Saturday, Sunday or proclaimed public holiday in South Africa;
  4. “**BBBEE**” shall mean Broad Based Black Economic Empowerment as defined in Act 53 of 2003;
  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;
  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;
  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;
  8. “**Constitution**” shall mean the Constitution of the Republic of South Africa;
  9. “**AUCTIONEER**” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a company duly registered in accordance with the Companies Act of 2008 and having the registration number *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*
  10. “**Auctioneer Bid**” shall mean the bid submitted by the Auctioneer in response to the RFQ/RFP;
  11. **Contract Rates**” mean quoted rates of \_\_\_\_\_\_\_ % Buyers Commission including VAT and other contingencies.
  12. **Auctioneer Default**" means any of the following events or circumstances:
      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;
      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;
      3. the Auctioneer ceases to carry on business;
      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;
      5. the Auctioneer commits a breach of any of its material obligations under this Agreement; and /or
      6. the Auctioneer abandons the Services for a period of longer than ten (10) Business Days (other than as a consequence of a breach by the Auctioneer of its obligations under this Agreement).
  13. “**Completion Date**” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
  14. “**Effective Date**” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
  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;
  16. “**Good Industry** Practice” shall mean applying, in relation to the manner in which the Services 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;
  17. “**Occupational Health and Safety Act**” shall mean the Occupational Health and Safety Act, 85 of 1993;
  18. “**Parties**” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and PRASA;
  19. “**PRASA**” shall mean 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;
  20. Prasa“**s Default**” shall mean if the following occurs:
      1. Prasa fails to make the payment in accordance with the provisions of Annexure B; and
      2. Prasa commits a breach of any material term of this Agreement
  21. “**Project Term**” shall mean a period of *one*year from Effective Date;
  22. “**Public Entity**” shall mean a public entity as defined in the Public Finance Management Act, of 1999;
  23. “**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;
  24. “**Restricted Enterprise**” shall mean an entity restricted from contracting with Prasa 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;
  25. “**RFQ**” shall mean the request for quotation issued by PRASA
  26. “**Services**” shall mean services to be provided by the Auctioneer as listed in clause 9 of this Agreement;
  27. “**Signature Date**” shall mean the date of signature of this Agreement by the last party signing;
  28. “**South Africa**” shall mean the Republic of South Africa;
  29. “**subconsultant**” shall mean the sub-Auctioneer appointed by the Auctioneer subject to the provisions of clauses of this Agreement;
  30. “**Variation**” shall mean any variations or extension of the scope of the Services and such Variation shall be limited to 15% of the value of this Agreement.

1. **INTERPRETATION**

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

* 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. references to “Month” shall be to a calendar month;
  3. references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees;
  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;
  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;
  6. references to “clauses”, “sub-clauses” and “Schedules” are references to the clauses, sub-clauses and Annexures of this Agreement;
  7. the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Agreement;
  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;
  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;
  10. references to “this Agreement” shall include this Agreement as amended, varied, novated or substituted in writing from time to time;
  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;
  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.

1. **INTRODUCTION**
   1. PRASA issued anRFP for appointment of Auctioneer for provision of Auctioning Services.
   2. PRASA would like to appoint an Auctioneer to provide the Auction Services in accordance with the terms and conditions of this Contract Agreement.
2. **INCONSISTENCY**
   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:
      1. This Agreement and Annexures thereto;
      2. the RFQ/RFP; and
      3. the Auctioneer’s Bid.
   2. If an ambiguity or discrepancy is found in the documents, the Parties shall endeavor to resolve the matter failing which they can refer the matter to arbitration in terms of this Agreement.
3. **DURATION**

5.1 This Agreement shall commence on the Effective Date and shall terminate at the end of the Completion Date.

5.2 Parties agrees that there shall be no expectation of future renewal of this Agreement. Any decision to renew shall rest exclusively with Prasa.

5.3 Should Parties decide to renew the Agreement it shall be done on such terms as the parties may agree to in writing. Such renewal shall not constitute a basis for Auctioneer to claim renewal in future.

1. **REPRESENTATION AND WARRANTIES**
   1. **The Auctioneer warranties**

The Auctioneer hereby warrants that:

* + 1. it is a limited liability company, duly incorporated and validly existing under the laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement;
    2. its obligations under this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement;
    3. all information disclosed by or on behalf of the Auctioneer 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 Auctioneer is not aware of any material facts or circumstances not disclosed to PRASA which would, if disclosed, be likely to have an adverse effect on PRASA’s decision (acting reasonably) to award this Agreement to the Auctioneer;
    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 Auctioneer as at the Signature Date;
    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 Auctioneer 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 Auctioneer to undertake the Services;
    6. the Auctioneer is not subject to any obligation, non-compliance with which is likely to have a material adverse effect on its ability to undertake the Services;
    7. no proceedings or any other steps have been taken or, to the best of the knowledge of the Auctioneer 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 Auctioneer 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;
    8. it will use reasonable care and skill in carrying out its obligations under this Agreement;
    9. it is not a Restricted Enterprise; and
    10. in being awarded its appointment under this Agreement, it did not engage, either directly or indirectly, or in any manner participate in the perpetration of a Corrupt Activities Act 12 of 2004;.and
    11. it has all the insurances required in its sector.

1. **PRASA Warranties**
   * 1. PRASA hereby warrants that:
     2. it has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement; and
     3. its obligations under this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement.
2. **CO-OPERATION**

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

1. **SERVICES**
   1. The Auctioneer shall provide the Services in accordance with Good Industry Practice and this Agreement.
   2. The detailed scope of Services to be provided by the Auctioneer is detailed in the Annexure A Specification for Auction Services.
2. **PAYMENT** 
   1. The payments for Services shall be paid in accordance with the agreed times listed on Annexure A Specification for Auctioning Services.
   2. Payment shall be made into the PRASA bank account.
   3. The Auctioneer shall effect payment of the proceeds of the auction within Seventy-Two hours (72hrs) after the sale.
   4. Prices charged by the Auctioneer for the Services rendered under and for the entire duration of this Agreement shall not exceed the Contract Price.
   5. All services charges invoiced by the Auctioneer will include VAT and disbursement.
3. **PLACE WHERE SERVICES WILL BE RENDERED**

The Auctioneer will perform services on the online platform and at such other places as necessary to perform these services in accordance with this agreement.

1. **PENALTY FOR DELAY**
   1. If the Auctioneer fails to complete the Services within the time as stipulated in this Agreement for completion of Services or a part or portion of Services, the Auctioneer shall be liable to PRASA for an amount calculated at 0.5% of the Contract Price per delayed day per order, which shall be paid for every day which shall elapse between the time due to completion of the relevant Services. However, the total amount due under this sub-clause shall not exceed the maximum of 10% of the Contract Price.
   2. The imposition of such penalty shall not relieve the Auctioneer from its obligation to complete Services or from any of its obligations and liabilities under the Agreement,
   3. PRASA may set off or deduct from the fees due to the Auctioneer any penalty amounts due and owing by the Auctioneer in terms of clause 12.1.
2. **BREACH**

If any Party breaches any material provision or term of this Agreement (other than those provisions which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 7 (seven) days of receipt of written notice from an aggrieved Party/ies requiring it to do so (or if it is not reasonably possible to remedy the breach within 7 (seven) days, within such further period as may be reasonable in the circumstances provided that the Party in breach furnishes evidence within the period of 7 (seven) days, reasonably satisfactory to the aggrieved Party/ies, that it has taken whatever steps are available to it to commence remedying the breach), then the aggrieved Party/ies shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to claim specific performance of any obligation whether or not the due date for performance thereof has arrived, and without prejudice to the aggrieved Party's or Parties' rights to claim damages.

1. **TERMINATION**
   1. Subject to the provisions of clause 114 this Agreement may be terminated by either Party following the occurrence of either the Auctioneer Default or PRASA’s Default.
   2. If Termination is as a result of PRASA Default the Auctioneer shall be entitled to payment for all the Services undertaken by the Auctioneer up to the date of termination which Services must firstly be approved by PRASA.
   3. If termination is as a result of the Auctioneer Default the following shall occur:
      1. The Auctioneer shall pay any damages that PRASA might have suffered due to the default.
      2. Notwithstanding any other clause in this Agreement, PRASA shall be entitled to give the Auctioneer a 14 days’ notice of termination of this Agreement.
      3. Notwithstanding the clause 15 or any other clause in this Agreement if the Auctioneer commits any breach it shall entitle PRASA to terminate this Agreement with immediate effect.
2. **FORCE MAJEURE**
   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.
   2. Where a Party is (or claims to be) affected by an event of Force Majeure:
      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
      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.
   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.
   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).
   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.
   6. If, following the issue of any notice referred to in clause 15.4, 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.
   7. If the Force Majeure event persist, for a period of more than 20 (twenty) days either Party may terminate this Agreement.
3. **NOTICES AND LEGAL SERVICE**
   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:
      1. if to PRASA at:

Address: UMJANTSHI HOUSE

30 WOLMARANS STREET

BRAAMFONTEIN, SOUTH AFRICA

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Postal address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Facsimile number:

Telephone number:

* + 1. if to The Auctioneer:

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: :………………………………..

Postal address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. 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.
  2. Any notice or other communication given by any Party to the other Party which:
     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
     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
     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.
  3. 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.
  4. 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*.

1. **CONFIDENTIALITY**
   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 Sub Auctioneer 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.
   2. The disclosures permitted in the definition of Confidential Information may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this clause from the intended recipients.
2. **DISPUTE RESOLUTION**
   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.
   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.
   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.
   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.
   5. This clause shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.
3. **GOVERNING LAW AND CONSENT TO JURISDICTION**

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.

1. **COSTS AND EXPENSES**

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

1. **VARIATIONS**
   1. PRASA has the right to propose Variations to the Services in accordance with this clause 21.
   2. All Variations shall only be valid if approved by the Chief Executive Officer of PRASA and reduced in writing.
   3. If PRASA requires a Variation to the Scope of Services, it must serve a notice in writing to the Auctioneer detailing the requested Variation (“**Variation Proposal**”).
   4. The Variation Proposal must set out the Variation required in sufficient detail as to enable the Auctioneer to calculate the cost of the Variation Proposal.
   5. As soon as practicable and in any event within 5 (five) Business Days after having received the Variation Proposal, the Auctioneer shall deliver to PRASA:
      1. the estimated costs of the Variation Proposal; and
      2. the impact of the Variation Proposal on the Project timelines.
      3. As soon as practicable and in any event within 5 (five) Business Days after receiving the information from the Auctioneer regarding the impact of the Variation Proposal on the Project timelines and the costs, PRASA shall:
      4. confirm its intention in writing to proceed with the Variation Proposal and enter into any documents to amend the Agreement as is necessary to give effect to the Variation Proposal; or
      5. withdraw the Variation Proposal.
   6. No variation orders shall exceed 15% (15 percent) of the Contract Price as required by the PRASA procurement policies.
2. **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.

1. **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.

1. **ENTIRE AGREEMENT**
   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.
   2. Each of the Parties acknowledges that:
      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
      2. this clause 24 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.
2. **LIMITATION OF LIABILITY**
   1. Under no circumstances shall either Party be liable for any indirect, consequential or like damages which may arise pursuant to this Agreement.
   2. General indemnity: To an extent that it relates to the Services, the Auctioneer indemnifies and shall keep PRASA indemnified at all times against all losses sustained by PRASA in consequence of any:
      1. loss of or damage to property;
      2. breach of a statutory duty arising under applicable law;
      3. claim for or in respect of the death or personal injury of any individual; or
      4. any breach by the Auctioneer of any warranties given by it in this Agreement;
      5. including, without limitation, any legal fees or costs, arising in connection with the performance or non-performance of any Services;
      6. save to the extent caused by the negligence or wilful misconduct of PRASA or by a breach by PRASA of an express provision of this Agreement.
   3. The Auctioneer indemnifies and shall always keep PRASA indemnified against all losses sustained by PRASA in consequence of any claim or action whatsoever instituted against PRASA by a sub-Auctioneer of the Consultant. In the event that the Auctioneer or any of its sub- Auctioneers rendering the Services to PRASA, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Auctioneer shall immediately inform PRASA thereof and on request supply PRASA with a copy of any award made pursuant to such proceedings or agreement and any documentation that PRASA may request in respect thereof.
3. **CESSION OR DELEGATION** **AND SUBCONTRACTING**
   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.
   2. Should the Auctioneer apply to cede or assign the whole portion of the contract, the circumstances shall be reported to the PRASA. The PRASA shall be notified immediately of the Auctioneer’s intention to cede and/or assign its business. The name(s) of the new company and its directors shall be furnished to the PRASA together with any other information reasonably required by the PRASA.
   3. Under no circumstances shall it be taken for granted that the PRASA will approve of the session and/or assigning if the PRASA has not been provided with all the relevant details.
   4. The Auctioneer may sub-contract any of its obligations in terms of this Agreement to a third party, provided that: -
      1. such sub-contracting shall not absolve the Auctioneer from the responsibility for complying with its obligations in terms of this Agreement and the Auctioneer hereby indemnifies and holds PRASA harmless against any loss, harm or damage which PRASA may suffer as a result of such sub-contracting;
      2. such sub-contracting shall not have the effect of diluting or circumventing the provisions of the Auctioneer Bid Submission and this Agreement;
      3. the Auctioneer shall at all times remain the sole point of contact for PRASA in respect of the acquisition of services by PRASA; and
      4. no such sub-contracting shall have any effect on the contract price payable by PRASA to the Auctioneer in terms of this Agreement.
   5. The Auctioneer shall during the term of this agreement not be allowed to proceed with any of the following matters prior to receiving written consent of PRASA’s Chief Executive Officer:
      1. any transfer of any number of shares of the Auctioneer;
      2. any change in the composition of the Auctioneer;
      3. any change in the ownership of the Auctioneer;
      4. any material change in the constitution, memorandum, articles of association of similar document providing for the creation, formation or incorporation of the Auctioneer; or
      5. any change on the BBBEE component of the Auctioneer
   6. provided that the Auctioneer shall not require any approval and/or consent of the PRASA and Chief Executive Officer where any any transfer of any amount of shares of the Consultant; to any change on the BBBEE component of the Auctioneer does not have impact of the BBBEE status of the Consultant.
4. **PUBLIC RELATIONS AND PUBLICITY**
   1. The Auctioneer acknowledges that certain information pertaining to the Project is required to be disclosed in accordance with the statutory reporting obligations of PRASA as it may be required to publish from time to time in response to enquiries from:
      1. Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act; and
      2. the Auditor-General under the Public Audit Act; and
      3. persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.
   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.
5. **INDEPENDENT STATUS**
   1. No Partnership.

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.

* 1. It is recorded that it is the intention of the parties to exclude all legal consequences of a partnership.
  2. The Auctioneer shall comply with all employment legislation.
  3. The Auctioneer warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its sub-Auctioneers and its relationship with PRASA. 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 Auctioneer 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 Auctioneer shall immediately take all steps to remedy such contravention. If PRASA advises the Auctioneer of any contravention of such legislation in writing, the Auctioneer shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep PRASA informed regarding the steps taken and the implementation and the result thereof.
  4. The Auctioneer warrants that it is conversant with section 198(4) of the Labour Relations Act and warrants further that any the services supplied by the Auctioneer shall be as an independent Auctioneer as defined in the Labour Relations Act and the Occupational Health and Safety Act, 1993 and will render the Services as such. The Auctioneer hereby indemnifies and holds PRASA harmless against any claim or action whatsoever in terms of section 198(4) of the Labour Relations Act, instituted against PRASA by an Auction Agent of the Auctioneer. In the event that the Auctioneer or any of its Auctioneers rendering a service to PRASA, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Auctioneer shall immediately inform PRASA thereof and on request supply PRASA with a copy of any award made pursuant to such proceedings or agreement and any documentation that PRASA may request in respect thereof.

SIGNED at Johannesburg on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2025

For: AUCTIONEER

PRINT NAME

Who warrants that he is duly authorised

AS WITNESSES NAME AND SIGNATURE :

1.

2.

SIGNED at Johannesburg on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For: PRASA

PRINT NAME

Who warrants that he is duly authorised

AS WITNESSES:

1.

2.