

Consultancy Agreement

for

THE APPOINTMENT OF CONSULTING FIRM TO IMPLEMENT CONDITIONS AS STATED IN WATER USE LICENCE WUL 03/A23A/356

CONTRACT NUMBER : *[insert tender number]*

CONSULTANT : *[insert name of consultant in full]*

NATURE OF WORK : *Environmental Consulting*

LOCALITY : *Between Eerste Fabrieke and Greenview Station*

COMMENCEMENT DATE : *[insert date for the start of this contract]*

COMPLETION DATE : *[insert date that this Agreement will terminate]*

CONTRACT VALUE : *[R insert amount} (____) inclusive of VAT*

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1. DEFINITIONS

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

- 1.1. **“Agreement”** shall mean this agreement together with all the annexures attached hereto;
- 1.2. **“Applicable Law”** shall mean the Constitution and all applicable statutes, regulations, codes of good practice, sector codes, industry charters, ordinances, by-laws, rules (including rules of court) and other secondary legislation, directives, practice notes having force of law in South Africa or the province of Gauteng in which the Project is conducted, and the common law arising out of judicial decisions, notifications and with which the Parties are bound to comply;
- 1.3. **“Business Day”** shall mean any day except Saturday, Sunday or proclaimed public holiday in South Africa;
- 1.4. **“BBBEE”** shall mean Broad Based Black Economic Empowerment as defined in Act 53 of 2003;
- 1.5. **“Change in Law”** shall mean the coming into effect after Signature Date of this Agreement of any Law, or any amendment or variation to any Law other than any Law that on or before Signature Date has been published in a draft bill;
- 1.6. **“Completion Date”** shall mean the last day of the **[insert the date]** from Effective Date;
- 1.7. **“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;

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- 1.8. “**Consents**” shall mean all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licenses, permissions required to be issued by or made with any Responsible Authority in connection with the performance of the Services;
- 1.9. “**Constitution**” shall mean the Constitution of the Republic of South Africa;
- 1.10. “**Consultant**” shall means *[insert name of Consultant]* a company duly registered in accordance with the Companies Act of 2008 and having the registration number *[insert company number]*;
- 1.11. “**Consultants Bid**” shall me the bid submitted by the Consultant in response to the RFP;
- 1.12. “**Contract Price**” mean an amount of *[insert contract price, insert amount in words]* inclusive of VAT, payable to the Contract in accordance clause 9 of this Agreement;
- 1.13. “**Consultant Default**” means any of the following events or circumstances:
- 1.4.1. any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 2008) being entered into by or in relation to the Consultant;
 - 1.4.2. a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any, winding-up, execution or other process being levied or enforced upon the whole or any material part of the assets of the Consultant;
 - 1.4.3. the Consultant ceases to carry on business;
 - 1.4.4. the Contract fails to secure the issue of the Certificate of Occupation within a period of 20 (twenty) days from the Project Completion Date;

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- 1.4.5. the Consultant commits a breach of any of its material obligations under this Agreement; and /or
- 1.4.6. the Consultant abandons the Works for a period of longer than ten (10) Business Days.
- 1.14. **“Effective Date”** shall mean the [*insert date for the contract to start or services to resume*];
- 1.15. **“Force Majeure”** shall mean any of the events listed in clause 18 which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement;
- 1.16. **“Good Industry Practice”** shall mean applying, in relation to the manner in which the Works are performed and the services are rendered, the standards, practices, methods and procedures conforming to Applicable Law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;
- 1.17. **“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 and the common law arising out of judicial decisions, notifications and with which the Parties are bound to comply;
- 1.18. **“Occupational Health and Safety Act”** shall mean the Occupational Health and Safety Act, 85 of 1993;
- 1.19. **“Parties”** shall mean the Consultant and PRASA;
- 1.20. **“PRASA”** shall mean the Passenger Rail Agency of South Africa a public entity established in terms of the Legal Succession to the South African Transport Services Act 9 of 1989;
- 1.21. **“PRASA’s Default”** shall mean if the following occurs:

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- 1.4.1. PRASA fails to make the payment in accordance with the provisions of Annexure B; and
- 1.4.2. PRASA commits a breach of any material term of this Agreement.
- 1.22. **“Professional Indemnity Insurance”** means the professional indemnity insurance of the Consultant which shall have maximum liability cover of ***[insert the Rand value of PI cover required that is twice the amount of contract fee and not less than R20 million]*** Annexure C;
- 1.23. **“Project Term”** shall mean a period of ***[insert the number of months for the contract period]*** months from Effective Date;
- 1.24. **“Public Entity”** shall mean a public entity as defined in the Public Finance Management Act, of 1999;
- 1.25. **“Responsible Authority”** shall mean any ministry, any minister, any organ of state, any official, any official in the public administration or any other governmental or regulatory department, commission, department, entity, service utility, board of directors, committee, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;
- 1.26. **“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;
- 1.27. **“RFP”** shall mean the request for proposal issues by PRASA on [●];
- 1.28. **“Services”** shall mean services to be provided by the Consultant as indicated in Clause 9 and Schedule A of this Agreement;
- 1.29. **“Signature Date”** shall mean the date of signature of this Agreement by the last party signing;

- 1.30. “**South Africa**” shall mean the Republic of South Africa;
- 1.31. “**Sub-Consultant**” shall mean the Sub-Consultant appointed by the Consultant subject to the provisions of clauses of this Agreement;
- 1.32. “**Variation**” shall mean any variations or extension of the scope of the Services and such Variation shall be limited cumulatively to 10% of the Contract Price.

2. INTERPRETATION

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

- 2.1. references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement;
- 2.2. references to “Month” shall be to a calendar month;
- 2.3. references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees;
- 2.4. references to a “person” shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organization, association or partnership, whether or not having separate legal personality;
- 2.5. references to any “Responsible Authority” or any public or professional organization shall include a reference to any of its successors or any organization or entity, which takes over its functions or responsibilities;
- 2.6. references to “clauses”, “sub-clauses” and “Schedules” are references to the clauses, sub-clauses and Annexures of this Agreement;
- 2.7. the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Agreement;

- 2.8. the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it;
- 2.9. words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;
- 2.10. references to “this Agreement” shall include this Agreement as amended, varied, novated or substituted in writing from time to time;
- 2.11. any reference to any enactment, order, regulation or similar instrument shall be construed as a reference to enactment, regulation or instrument as amended, re enacted or replaced from time to time;
- 2.12. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day shall be the immediately following Business Day; and references to “written” do not include communications by way of electronic mail.

3. INTRODUCTION

- 3.1. On ***[insert date of issue of tender or invitation for quotation]***, PRASA issued a tender for appointment of a Consultant for provision of the Services.
- 3.2. PRASA hereby appoints the Consultant to provide the Services in accordance to the terms and conditions of this Contract Agreement.

4. INCONSISTENCY

- 4.1. The documents forming the Agreement between the Parties 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:

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- 4.4.1. This Agreement and Annexures thereto;
 - 4.4.2. the RFP;
 - 4.4.3. the Consultant's Bid; and
 - 4.4.4. Letter of appointment of the Consultant.
- 4.2. If an ambiguity or discrepancy is found in the documents, the agreement will take precedence.

5. DURATION

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

6. REPRESENTATION AND WARRANTIES

6.1. The Consultants warranties

The Consultant hereby warrants that:

- 6.4.1. 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;
- 6.4.2. its obligations under this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement;
- 6.4.3. all information disclosed by or on behalf of the Consultant at any time up to the Signature Date and up to the end of the Project Term and, in particular, during the bid process preceding the award of this Agreement to the Consultant, is true, complete and accurate in all material respects and the Consultant is not aware of any material facts or circumstances not disclosed to PRASA which would, if disclosed, be likely to have an adverse effect on PRASA's decision (acting reasonably) to award this Agreement to the Consultant ;

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- 6.4.4. the execution and performance of this Agreement does not and will not contravene any provision of its constitutive documents as at the Signature Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Consultant as at the Signature Date;
- 6.4.5. no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Consultant as at the Signature Date having made all reasonable enquiries, threatened against it or to the best of its knowledge any of its Sub contractor, which is likely to have a material adverse effect on the ability of the Consultant to undertake the Works;
- 6.4.6. the Consultant is not subject to any obligation, non-compliance with which is likely to have a material adverse effect on its ability to undertake the Works;
- 6.4.7. no proceedings or any other steps have been taken or, to the best of the knowledge of the Consultant having made all reasonable enquiries, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of Consultant or any (or all) of its Sub contractor, or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;
- 6.4.8. it will use reasonable care and skill in carrying out its obligations under this Agreement;
- 6.4.9. it is not a Restricted Enterprise; and
- 6.4.10. 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
- 6.4.11. notwithstanding the terms of any insurances provided to PRASA, it has all the insurances required in its sector to ensure that the rights of PRASA are comprehensively protected.

7. PRASA WARRANTIES

7.4.1. PRASA hereby warrants that:

- 7.4.2. it has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement; and
- 7.4.3. its obligations under this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement.

8. 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.

9. SERVICES

- 9.1. The Consultant shall provide the Services in accordance with Good Industry Practice and this Agreement.
- 9.2. The detailed scope of Services and the timelines for the provisions of those services to be provided by the Consultant is detailed in the Scope of Services Schedule A.
- 9.3. The Services to be undertaken by the Consultant shall include the following:
 - 9.4. Conduct a detailed audit on compliance with the conditions of the licence.
 - 9.5. Prepare a report based on the findings of the detailed audit on compliance and submit to PRASA for comments and approval.
 - 9.6. Once PRASA comments are incorporated into the report, submit final report to the Department of Water and Sanitation Regional Head with all the supporting documentation by end of September 2022.
 - 9.7. Attend to all the comments received from the Department of Water and Sanitation.
 - 9.8. Once Department of Water and Sanitation has approved the report, prepare a close-out report and submit to PRASA.

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9.9. Conduct annual audits on compliance with the conditions of the licence for the next three (3) years and submit to the Regional Head for comments.

9.10. The winning bidder must carry out two audits so that any items that need to be attended to can be done prior to the final report being submitted to the Department (DWS) for that year. The audits must be 6months apart.

10. PAYMENT

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

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

10.3. PRASA shall effect payment 30 (thirty) days after receipt of such an invoice.

11. INVOICING

11.1. The Consultant shall issue to PRASA invoices in accordance to Payment Schedule and the invoices shall:

11.4.1. Indicate the VAT number of the Consultant;

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

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

11.4.4. Indicate the vendor number provided to the Consultant by PRASA.

12. JOINT AND SEVERAL LIABILITY

12.1. If the Consultant constitutes (under Applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons -

12.2. these persons shall be deemed to be jointly and severally liable to the PRASA for the performance of the Services;

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12.3. these persons shall notify the PRASA of their leader who shall have authority to bind the Consultant and each of these persons; and

12.4. the Consultant shall not alter its composition or legal status without the prior consent of the PRASA.

13. INSURANCE

The Consultant confirms that it maintains Professional Indemnity Insurance with a well-established insurance office or a reputable underwriter. The Consultant undertakes to maintain such insurance for up to a period of 1 year after the Project Term. The Professional Indemnity taken out by the Consultant is attached hereto and marked Annexure D.

14. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

14.1. All the reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software applications and support registrations or materials obtained, compiled or prepared by the Consultant during the Project Term shall become the exclusive property of PRASA. Until the Completion Date, the Consultant shall provide all such documents and data to PRASA, and shall not use them for purposes not connected with the contract, without PRASA's prior written approval.

14.2. The Consultant shall not publish any articles related to the performed services and shall not make reference to them during the performance of services to other beneficiaries, and shall not disclose the information obtained from PRASA, without PRASA's prior written consent.

14.3. Any results or rights, including copyrights and other intellectual or industrial property rights obtained under this Agreement shall become the exclusive property of PRASA, who may use, publish, assign or transfer them at its discretion, without any geographic or other restrictions, except for the case when the intellectual or industrial property rights already exist.

15. PLACE WHERE SERVICES WILL BE RENDERED

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

16. 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.

17. TERMINATION

- 17.1. Subject to the provisions of clause 17 this Agreement may be terminated by either Party following the occurrence of either the Consultant Default or PRASA's Default.
- 17.2. If Termination is as a result of a PRASA Default the Consultant shall be entitled to payment for all the Services undertaken by the Consultant up to the date of termination which Services must firstly be approved by the PRASA.
- 17.3. If termination is as a result of the Consultant Default the following shall occur:
 - 17.4.1. The Consultant shall pay any damages that PRASA might have suffered due to the default.

- 17.4. Notwithstanding any other clause in this Agreement, PRASA shall be entitled to give the Consultant a 30 days notice of termination of this Agreement.
- 17.5. In the event of a termination as contemplated in this clause, save for payment/reimbursement for work already done, the Consultant shall have no claim whatever based on enrichment, or reimbursement, or any other claim of any nature whatsoever, against PRASA in respect of or arising from or connected to termination contemplated in this clause. The termination as contemplated shall not constitute a dispute and shall not be subject to any mediation or arbitration as per clause 17.4.
- 17.6. Notwithstanding the clause 16 or any other clause in this Agreement if the Consultant commits any breach as contemplated in clauses 29.4.1 to 29.4.5 to it shall entitle PRASA to terminate this Agreement with immediate effect.

18. FORCE MAJEURE

- 18.1. 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.
- 18.2. Where a Party is (or claims to be) affected by an event of Force Majeure:
- 18.4.1. 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

- 18.4.2. 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.
- 18.3. 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.
- 18.4. 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).
- 18.5. 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.
- 18.6. If, following the issue of any notice referred to in clause 18.4, 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.
- 18.7. If the Force Majeure event persist, for a period of more than 20 (twenty) days either Party may terminate this Agreement.

19. NOTICES AND LEGAL SERVICE

- 19.1. 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:

19.4.1. if to PRASA at:

Address: PRASA House
1040 Burnette Street
Hatfield
Pretoria

Attention: Legal Department

Postal address: Private Bag X101
Braamfontein
2017

Facsimile number: 011 773 1600

Telephone number: 011 774 6001

19.4.2. if to The Consultant:

Address:

Attention: ***[insert Consultants Contact Details]***

Postal address:

Facsimile number: [●]

Telephone number: [●]

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

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

19.4.1. 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

19.4.2. 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

19.4.3. 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.

19.4. The previous provisions of this clause 19 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.

19.5. The Parties choose their respective physical addresses in clause 19.1 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*.

20. CONFIDENTIALITY

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

- 20.2. The disclosures permitted in the definition of Confidential Information may only be made subject to obtaining appropriate confidentiality restrictions con confidentiality restrictions consistent with the provisions of this clause from the intended recipients.

21. DISPUTE RESOLUTION

- 21.1. 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.
- 21.2. 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.
- 21.3. 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.
- 21.4. This clause is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 21.5. This clause shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

22. 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.

23. 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.

24. VARIATIONS

- 24.1. PRASA has the right to propose Variations to the Services in accordance with this clause 24.
- 24.2. All Variations shall only be valid if approved by the Group Chief Executive Officer of PRASA and reduced in writing.
- 24.3. If PRASA requires a Variation to the Scope of Services it must serve a notice in writing to the Consultant detailing the requested Variation ("**Variation Proposal**").
- 24.4. The Variation Proposal must set out the Variation required in sufficient detail as to enable the Consultant to calculate the cost of the Variation Proposal.
- 24.5. As soon as practicable and in any event within 5 (five) Business Days after having received the Variation Proposal, the Consultant shall deliver to PRASA:
- 24.4.1. the estimated costs of the Variation Proposal; and
 - 24.4.2. the impact of the Variation Proposal on the Project timelines.
 - 24.4.3. As soon as practicable and in any event within 5 (five) Business Days after receiving the information from the Consultant regarding the impact of the Variation Proposal on the Project timelines and the costs, PRASA shall:
 - 24.4.4. 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
 - 24.4.5. withdraw the Variation Proposal.

25. 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.

26. 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.

27. ENTIRE AGREEMENT

27.1. 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.

27.2. Each of the Parties acknowledges that:

27.4.1. 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

27.4.2. this clause 27 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.

28. LIMITATION OF LIABILITY

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

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

28.4.1. loss of or damage to property;

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

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

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

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

28.4.6. 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.

28.3. The Consultant indemnifies and shall keep PRASA indemnified at all times against all losses sustained by PRASA in consequence of any claim or action whatsoever instituted against PRASA by a sub-Consultant of the Consultant. In the event that the Consultant or any of its sub-Consultants rendering the Services to PRASA, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Consultant 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.

29. CESSION OR DELEGATION AND SUBCONTRACTING

29.1. 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.

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- 29.2. Should the Consultant apply to cede or assign the whole portion of the contract, the circumstances shall be reported to PRASA. PRASA shall be notified immediately of the Seller's intention to cede and/or assign its business. The name(s) of the new company and its directors shall be furnished to PRASA together with any other information reasonably required by PRASA.
- 29.3. Under no circumstances shall it be taken for granted that PRASA will approve of the session and/or assigning if PRASA has not been provided with all the relevant details.
- 29.4. The Consultant may sub-contract any of its obligations in terms of this Agreement to a third party, provided that:-
- 29.4.1. such sub-contracting shall not absolve the Consultant from the responsibility for complying with its obligations in terms of this Agreement and the Consultant hereby indemnifies and holds PRASA harmless against any loss, harm or damage which PRASA may suffer as a result of such sub-contracting;
 - 29.4.2. such sub-contracting shall not have the effect of diluting or circumventing the provisions of the Consultant Bid Submission and this Agreement;
 - 29.4.3. the Consultant shall at all times remain the sole point of contact for PRASA in respect of the acquisition of services by PRASA; and
 - 29.4.4. no such sub-contracting shall have any effect on the Tender Amount payable by PRASA to the Consultant in terms of this Agreement.
- 29.5. The Consultant shall during the term of this agreement not be allowed to proceed with any of the following matters prior to receiving written consent of PRASA's Chief Procurement Officer and Group Chief Executive Officer:
- 29.4.1. any transfer of any amount of shares of the Consultant;
 - 29.4.2. any change in the composition of the Consultant;
 - 29.4.3. any change in the ownership of the Consultant;

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- 29.4.4. any material change in the constitution, memorandum, articles of association of similar document providing for the creation, formation or incorporation of the Consultant; or
 - 29.4.5. any change on the BBBEE component of the Consultant
- 29.6. provided that the Consultant shall not require any approval and/or consent of the PRASA and/or PRASA's Chief Procurement Officer and Group Chief Executive Officer where any change as contemplated in clauses 29.4.1 to 29.4.5 any transfer of any amount of shares of the Consultant; to any change on the BBBEE component of the Consultant does not have impact of the BBBEE status of the Consultant.

30. PUBLIC RELATIONS AND PUBLICITY

- 30.1. The Consultant 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:
- 30.4.1. Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act; and
 - 30.4.2. the Auditor-General under the Public Audit Act; and
 - 30.4.3. persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.
- 30.2. Subject to clause 30.1 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.

31. PENALTY FOR DELAY

- 31.1 If the Consultant fails to complete the Services within the time stipulated in this Contract for completion of Services or a part or portion of Services, the

Consultant shall be liable to the Employer 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 for due completion and completion of the relevant Services. However, the total amount due under this sub-clause shall not exceed the maximum of 10% of the Contract Price.

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

31.3. The Employer may set off or deduct from the fees due to the Contractor any penalty amounts due and owing by the Contractor in terms of clause 31.1

31.4.1. Penalties for replacing the main experts

31.4.2. The Consultant is fully responsible for fulfilling their tasks using the Main Experts described in the Terms of Reference and listed in Annexure D.

31.4.3. The Consultant will not replace the Main Experts that were included in their offer without the written agreement of the Client Representative.

31.4.4. If it is required to replace an expert, the proposed expert has to have at least the same qualification and experience as the one to be replaced. If the Consultant cannot find a replacement with equivalent qualifications and experience, PRASA could decide either to cancel the contract if the services provided are likely to be negatively affected, or to accept the replacement under the following conditions:

31.4.5. At the first replacement of one of the Main Experts at the Consultant request, a deduction of 10% of the rate of that respective position will be applied. Furthermore, if the CV of the proposed Main Expert is considered inferior to the actual one, a further reduction in rate will be applied correspondent with the percentage of the low standard evaluated in the CV of the proposed Main Expert. For the second and following replacements of a Main Expert, a 10% reduction of the respective rate will be applied, and another rate reduction

proportional with the lower standard evaluated in the CV of the proposed Main Expert.

- 31.4.6. The additional costs incurred due to the replacement of the Main Experts are the Consultant responsibility. Consultant must propose a new Main Expert to PRASA in maximum 15 calendar days from the departing of the actual Main Expert. If the Consultant did not come with a proposal for replacing the departed Main Expert in this period, PRASA could apply 0.025% from the value of the contract, per day.

32. INDEPENDENT STATUS

32.1. 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.

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

- 32.3. The Consultant shall comply with all employment legislation.

- 32.4. The Consultant warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its sub-Consultants and its relationship with 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 Consultant warrants that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the Consultant shall immediately take all steps to remedy such contravention. If PRASA advises the Consultant of any contravention of such legislation in writing, the Consultant shall, within 10 (ten) days after receipt of such notice, take all steps

necessary to remedy such contravention and shall keep PRASA informed regarding the steps taken and the implementation and the result thereof.

- 32.5. The Consultant warrants that it is conversant with section 198(4) of the Labour Relations Act and warrants further that any the services supplied by the Consultant shall be as an independent Consultant as defined in the Labour Relations Act and the Occupational Health and Safety Act, 1993 and will render the Services as such. The Consultant hereby indemnifies and holds PRASA harmless against any claim or action whatsoever in terms of section 198(4) of the Labour Relations Act, instituted against PRASA by a Consultant of the Consultant. In the event that the Consultant or any of its Consultant s rendering a service to PRASA, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Consultant 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.

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SIGNED at _____ on _____ 2022

For: **PRASA**

DIRECTOR

Who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____

SIGNED at _____ on _____ 2022

For: **Consultant**

DIRECTOR

who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____

ANNEXURE A - SCOPE OF SERVICES

ANNEXURE B - PAYMENT SCHEDULE

ANNEXURE C – PROFESSIONAL INDEMNITY INSURANCE

ANNEXURE D- MAIN EXPERTS