



AUTOPAX PASSENGER SERVICES (SOC) LTD

CONTRACT FOR THE PROVISION OF

TENDER NUMBER :

SERVICE PROVIDER :

NATURE OF WORK :

LOCALITY OR PLACE :

DATE OF ACCEPTANCE OF TENDER :

DATE OF COMMENCEMENT OF TENDER :

DATE OF COMPLETION CONTRACT PERIOD :

CONTRACT PRICE :



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1. DEFINITIONS AND INTERPRETATIONS

IN THIS CONTRACT (AS HEREINAFTER DEFINED) THE FOLLOWING WORDS, DEFINITIONS AND EXPRESSIONS SHALL HAVE THE MEANINGS HEREBY ASSIGNED TO THEM EXCEPT WHERE THE CONTEXT OTHERWISE CONTEXT REQUIRES

- 1.1 "Applicable Laws" means the Constitution of the Republic of South Africa, Act No.108 of 1996, 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;
- 1.2 "Bill of Quantities" means the bill of quantities submitted by the Contractor as part of the Contractor's Bid;
- 1.3 "BBBEE" means Broad Based Black Economic Empowerment as defined in the Broad Based Black Economic Empowerment Act No.53 of 2003;
- 1.4 "BBBEE Status" means the composition, ownership, make up, level and any other criterion of measurement of BBBEE as indicated in the RFQ.
- 1.5 "Business Day" means any day other than a Saturday, Sunday or public holiday in South Africa, within the meaning of the Public Holidays Act, 1994;
- 1.6 "Chief Executive Officer" means (i) the chief executive officer of the Contractor and (ii) the group chief executive officer of PRASA / division chief executive officer / subsidiary chief executive officer of the Employer – whichever is applicable;
- 1.7 "Chief Procurement Officer" means the chief procurement officer of the Employers
- 1.8 "Commencement Date" means date on which the contract start;
- 1.9 "Contract" means this contract and all Annexures thereto;
- 1.10 "Contractor" means_ SERVICE PROVIDER
- 1.11 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 Contractor.

1.12 the Contractor ceases to carry on business; and

1.13 the Contractor commits a breach of any of its material obligations under this Contract;

1.14 "**Service Provider's Bid**" means the documents submitted by the Contractor to the Employer in response to the RFQ or Request for Quotation which is attached hereto as Annexure "E" to this Contract;

1.15 "**Contract Price**" means the amount set out in clause 23.6 payable by the Employer to the Contractor in terms of this Contract, subject to such addition thereto or deduction therefrom as may be made from time to time under the provisions of the Contract;

1.16 "**Contract Period**" means a period of one year, being the period agreed between the Parties for the service provider to complete the Services, beginning on the Commencement Date;

1.17 "**Day**" means a calendar day;

1.18 "**Employer**" means the Autopax Passenger Services, a subsidiary of Passenger Railway Agency of South Africa established in terms of the Legal Succession to the South African Transport Services Act 9 of 1989 and the legal successors in title thereto;

1.19 "**Good Industry Practice**" means applying, in relation to the manner in which the Services are performed and the services 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, irrespective of whether or not it is conducted by or on behalf of an organ of state or the private sector;

1.20 "**Group Chief Executive Officer**" means the group chief executive officer of the Employer;

1.21 "**Party**" means the service provider and the Employer, collectively referred to as the "Parties";



1.22 **“Project Manager”** means the person appointed by the Employer to be the project manager for the Project, it being agreed that the Employer shall procure that such project manager discharges the duties, functions and responsibilities required of it in terms of this Contract;

1.23 **“Restricted Enterprise”** means an entity restricted from contracting with the Employer 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;

1.24 **“Request for Tender” or “RFQ”** means the request for tender issued by the Employer for the appointment of a service provider for the Project, as set out in Annexure “E” to this Contract;

1.25 **“Request for Quotation”** means the request for quotation issued by the Employer for the appointment of a Contractor for the Project, as set out in Annexure “E” to this Contract;

1.26 **“Scope of Services”** means the Services which are to be provided by the service provider to the Employer in terms of the terms and conditions of this Contract;

1.27 **“Services”** means the services to be provided by the service provider or in terms of this Contract in connection with the Project, as set out in Annexure “B” of this Contract;

1.28 **“Service Levels”** means the Service levels set out in clause 10

1.29 **“Signature Date”** means the date of signature of this Contract by the last Party signing;

1.30 **“South Africa”** means the Republic of South Africa;

1.31 **“Subcontractors”** means any person named in the Contract as a subcontractor as listed in Annexure “C” of this Contract and the legal successors in title to each of these persons;

1.32 **“Writing”** means any hand-written typed or printed communication including facsimiles, electronic communication or any similar communication resulting in a permanent record. The terms “in writing” and “written” shall have corresponding



1.33 "**Work**" means all works to be undertaken for the Services in this Contract.

2. INTERPRETATIONS

2.1 This contract shall be interpreted according to the following provisions, unless the context requires otherwise –



3. 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 CONTRACT;

- 3.1 references to "month" shall be to a calendar month;
- 3.2 The headings of clauses, sub-clauses and schedules are included for convenience only and shall not affect the interpretation of this contract;
- 3.3 The common or statute law shall determine whether any person acting or purporting to act on behalf of the employer, project manager or service provider is duly authorised, save to the extent that a party shall, by written notice to each of the others, designate a person or the holder of any office, to the exclusion of another person or holder of office, to have such authority, or to limit in any way, or terminate the authority of such designated person or holder of office.
- 3.4 The marginal notes or headings in this contract shall not be deemed to be part thereof nor be taken into consideration in the interpretation or construction of the contract.

4. GENERAL PROVISIONS

- 4.1 The law which is to apply to the Contract, and according to which the Contract is to be interpreted, shall be the law of South Africa.
- 4.2 The language of the Contract and of written communications shall be English.
- 4.3 In the event that the service provider and the Employer conclude a supplementary contract, the additional work executed in terms of such a contract shall not be taken to be a variation or addition under clause 29.6, but to be a separate contract. The value of such additional work shall, for the purposes of clause 29.7, not be taken into account for this contract, but it shall be taken into account for the separate contract concluded in terms of the supplementary contract.
- 4.4 Except where otherwise provided in this Contract, the service provider shall retain the



copyright and other intellectual property rights in documents supplied by it to the Employer or Project Manager under this Contract.

4.5 The Service provider shall be deemed to have given the Employer a non-terminable, non-transferable, non-exclusive, royalty-free licence to copy, use and communicate the Service Provider's documents provided to it by the Service Provider under this Contract, for the purposes of further work required to the Services.

5. INTRODUCTION

- 5.1 The employer issued a request for quotation for provision of
- 5.2 The Service Provider has submitted the Bid and the Employer appointed the Service Provider to provide the Services of.....

6. PRIORITY OF DOCUMENTS

- 6.1 The documents forming the contract are to be taken as mutually explanatory of one another. for the purposes of interpretation, the priority of such documents shall be in accordance with the following sequence -
- 6.2 the Contract, Annexures and schedules thereto;
- 6.3 The Service Provider's Bid.

7. DURATION OF CONTRACT

- 7.1 This Contract shall come into force and effect on the Commencement Date and shall endure for the period agreed, where after it shall automatically terminate, provided that the Employer may, on notice given to the Service Provider not less than 01 (one) months prior to the expiry date of the Contract Period, extend this Contract for a period to be determined by the Employer, during which period the Employer may terminate this Contract on 30 (thirty) days' notice to the Service Provider.



7.2

8. SCOPE OF SERVICES

- 8.1 The Service provider shall undertake the services in accordance with good industry practice and the scope of services set in Autopax's RFQ document and this contract.
- 8.2 The Services to be undertaken by the Service Providers shall include
.....

9. SUPPLY OF SERVICES

- 9.1 The service provider will use adequate numbers of appropriately skilled, qualified and experienced personnel and all equipment, assets and other resources necessary to provide the services. The service provider will throughout the contract period consider the requirements of the employer and apply its expertise to ensure that it renders the services in a manner which, in its expert judgment, meets the needs of the employer.
- 9.2 Where the performance of the service requires the service provider to liaise or co-operate with the employer's personnel or other service providers rendering services to the employer, the service provider must give its full co-operation and deal with all such persons in a professional and courteous manner. the employer will in turn procure the co-operation of its personnel and other service providers in their interactions with the service provider.
- 9.3 The service provider shall provide the services applying good industry practice.
- 9.4 All services costs shall conform to agreed prices.

10. SERVICE PROVIDER'S WARRANTIES



10.1 The Service Provider warrants that as at the Signature Date -

- 10.2 it is a limited liability company, duly incorporated and validly existing under the Applicable Laws and has taken all necessary actions to authorise its execution of and to fulfilment of its obligations under this Contract;
- 10.3 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the knowledge of the Service Provider as at the Signature Date, threatened against it or the Subcontractors, which is likely to have a material adverse effect on the ability of the Service Provider to provide the Services;
- 10.4 the Service Provider is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Services;
- 10.5 no proceedings or any other steps have been taken or, to the knowledge of the Service Provider, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of the Service Provider, or under business rescue; or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;
- 10.6 its obligations under this Contract are legal, valid, binding and enforceable against it in accordance with the terms of this Contract;
- 10.7 all information disclosed by or on behalf of the service provider at any time up to the Signature Date and up to the end of the Contract Period and, in particular, when submitting the Contractor's Bid prior to the award of this Contract to the service provider, is true, complete and accurate in all material respects and the service provider is not aware of any material facts or circumstances not disclosed to the Employer which would, if disclosed, be likely to have an adverse effect on the Employer's decision (acting reasonably) to award this Contract to the service provider;
- 10.8 it will use reasonable care and skill in carrying out its obligations under this Contract;
- 10.9 it is not a Restricted Enterprise;
- 10.10 In being awarded its appointment under this Contract, it did not engage, either directly or indirectly, or in any manner participate in the perpetration of a corrupt activity as defined in terms of the Prevention and Combating of Corrupt Activities Act Number

11. EMPLOYER'S WARRANTIES

- 11.1 The Employer hereby warrants that -
- 11.2 the execution and performance of this Contract by the Employer 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 Employer as at the Signature Date;
- 11.3 it has taken all necessary actions to authorise the execution and the fulfilment of its obligations under this Contract; and
- 11.4 its obligations under this Contract are legal, valid, binding and enforceable against it, in accordance with the terms of this Contract.

12. INDEMNITIES

- 12.1 The Service Provider, in relation to the services -
- 12.2 indemnifies the Employer against any liability in respect of damage to, or physical loss of the property, or injury to or death of any person; and
- 12.3 Shall be liable to the Employer for damage to or physical loss of all property of the Employer, arising directly from the execution of the Services.
- 12.4 The Service Provider shall not be liable in respect of -
- 12.5 the permanent use or occupation of land by reason of the Services or any part thereof;
- 12.6 any nuisance, disturbance or interference arising necessarily by reason of the construction of the Services;
- 12.7 interference, whether temporary or permanent, with any servitude or any other right which is the unavoidable result of the construction of the Services in accordance with the Contract; or
- 12.8 death of, or any injuries or damage to persons or property resulting from any act,



omission or neglect of the Employer, its agents, employees or other Service Providers (not being employed by the Service Provider).

13. ASSIGNMENT AND SUBCONTRACTING

13.1 The Service Provider shall not assign the contract or any part thereof, or any obligation under the contract, or cede any right or benefit there under without the written consent of the employer, which consent shall not be unreasonably withheld.

13.2 Subcontracting

13.2.1 THE SERVICE PROVIDER SHALL NOT SUBCONTRACT THE WHOLE CONTRACT AND SHALL ONLY SUBCONTRACT A PORTION OF THE SERVICES SUBJECT TO THE WRITTEN APPROVAL OF THE EMPLOYER OR UNLESS STIPULATED AS A PRE-REQUISITE OF THE TENDER.

13.2.2 THE SERVICE PROVIDER SHALL BE LIABLE FOR THE ACTS, DEFAULTS AND NEGLIGENCE OF ANY SUBCONTRACTOR, ITS AGENTS OR EMPLOYEES AS FULLY AS IF THEY WERE THE ACTS, DEFAULTS OR NEGLIGENCE OF THE SERVICE PROVIDER.

13.2.3 THE CONTRACTUAL RELATIONSHIP BETWEEN THE SERVICE PROVIDER AND ANY SUBCONTRACTORS SELECTED BY THE SERVICE PROVIDER IN CONSULTATION WITH THE EMPLOYER IN ACCORDANCE WITH THE REQUIREMENTS OF AND A PROCEDURE SET OUT IN THIS CONTRACT, SHALL BE THE SAME AS IF THE SERVICE PROVIDER HAD APPOINTED THE SUBCONTRACTOR WITHOUT CONSULTATION WITH THE EMPLOYER.

13.2.4 ANY APPOINTMENT OF A SUBCONTRACTOR IN ACCORDANCE WITH CLAUSE 13.2.2 SHALL NOT AMOUNT TO A CONTRACT BETWEEN THE EMPLOYER AND THE SUBCONTRACTOR, OR ANY RESPONSIBILITY OR LIABILITY ON THE PART OF THE EMPLOYER TO THE SUBCONTRACTOR AND SHALL NOT RELIEVE THE SERVICE PROVIDER FROM ANY LIABILITY OR OBLIGATION UNDER



THE CONTRACT.

13.3 Procedure for appointment of Subcontractors

- 13.3.1 In the event that the Service Provider wishes to appoint subcontractors or replace any one of the subcontractors, it shall -
- 13.3.2 consult with the Employer regarding such proposed subcontractor, including providing details as to such subcontractor's experience, financial standing; empowerment credentials and registered and compliant on the National Treasury Central Supplier Data-base;
- 13.3.3 obtain the Employer's written consent prior to contracting with any proposed subcontractor, which consent shall not be unreasonably withheld; and
- 13.3.4 in respect of the replacement of a Subcontractor procure that the terms and conditions upon which any replacement subcontractor is appointed are substantially the same as those on which the Subcontractor was appointed, and provide the Employer with a copy of the duly executed contract with any such proposed subcontractor.
- 13.3.5 Every Subcontractor shall enter into a subcontracting agreement with the Service provider which shall provide that -
- 13.3.6 such Subcontractor shall undertake the same obligations to the service provider in respect of the subcontract as those by which the Service provider is bound in respect of the contract;

14. BASIS OF CONTRACT



- 13.1 The Employer shall have made available to the Service Provider, as part of or available data by reference in the RFT or Request for Quotation, data relevant to the Services obtained by or on behalf of the Employer, but the Contractor shall be responsible for its own interpretation thereof and deductions thereof.
- 13.2 The Service Provider shall be deemed to have obtained attainable information on risks, contingencies and all other information regarding circumstances which may influence or affect the Services.

15. SERVICE PROVIDER'S GENERAL OBLIGATIONS

15.1 Extent of obligations and liability

15.2 The Service Provider's general obligations under the Contract shall include the provision of the Services at its own expense, including all labour, equipment, tools, material, transport, consumables, stores, services, samples and Temporary Services, and everything, whether of a temporary or permanent nature, required in and for the rendering Services. The Service Provider shall remedy any defects in the Services and the completed Services must be fit for the purpose for which the Services are intended as defined in the RFT and in this Contract.

15.3 Legal provisions

15.4 The Service Provider shall, in fulfilling the Contract, comply with Applicable Laws.

15.5 If required, the Service Provider shall provide proof to the Project Manager that it is in good standing with respect to duties, taxes, levies and standing contributions required in terms of the Applicable Laws.

15.6 Notices and Fees

15.7 The Service Provider shall in the execution of the Services comply with the provisions of, and give all notices and pay all fees, taxes, levies and other charges required to be given or paid in terms of -

15.8 applicable law, and

15.9 The conditions imposed by any other body or person stated in this Contract.

15.10 The Service Provider indemnifies the Employer against any liability for any breach of



the provisions of clause 15.7.

15.11 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Contract 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 -

15.11.6 IF TO THE EMPLOYER AT:

Address: **UMJANTSHI HOUSE**

30 WOLMARANS STREET

BRAAMFONTEIN, JOHANNESBURG

Attention: **Supply Chain Department**

Postal address: **P O BOX 1907**

PRETORIA

0001

15.11.7 FACSIMILE NUMBER: N/A

15.11.8 TELEPHONE NUMBER: 011 013 0157

15.11.9 IF TO THE SERVICE PROVIDER:

15.12 Address:

15.13 Attention:

15.14 Postal address:

15.14.1 TELEPHONE NUMBER: +27 []

15.14.2 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.

15.14.3 ANY NOTICE OR OTHER COMMUNICATION GIVEN BY ANY PARTY TO THE OTHER PARTY WHICH -

- 15.14.3.1 is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be refutably presumed to have been received by the addressee at the time of delivery; or
- 15.14.3.2 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.

15.14.4 THE PROVISIONS OF THIS CLAUSE 15.6 SHALL NOT INVALIDATE ANY NOTICE OR OTHER COMMUNICATION ACTUALLY GIVEN AND RECEIVED OTHERWISE THAN AS DESCRIBED IN THOSE PROVISIONS.

15.14.5 THE PARTIES CHOOSE THEIR RESPECTIVE PHYSICAL ADDRESSES IN CLAUSE 15.11 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 DOMICILIO 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 DOMICILIO CITANDI ET EXECUTANDI.

16. CHANGE IN CONTROL AND BBBEE

- 16.1 The Service Provider shall not, during the term of this Contract, be allowed to proceed



with any of the following matters without the prior written consent from the Employer's Chief Procurement Officer and Group Chief Executive Officer -

16.1.1 ANY TRANSFER OF ANY AMOUNT OF SHARES OF THE SERVICE PROVIDER;

16.1.2 ANY CHANGE IN THE COMPOSITION OF THE SERVICE PROVIDER.

16.1.3 ANY CHANGE IN THE OWNERSHIP OF THE SERVICE PROVIDER.

16.1.4 ANY MATERIAL CHANGE IN THE CONSTITUTION, MEMORANDUM, ARTICLES OF ASSOCIATION OR MEMORANDUM OF INCORPORATION OR SIMILAR DOCUMENT PROVIDING FOR THE CREATION, FORMATION OR INCORPORATION OF THE SERVICE PROVIDER OR

16.1.5 ANY CHANGE ON THE BBBEE COMPONENT OF THE CONTRACTOR.

16.2 provided that the service provider shall not require any approval and/or consent of the Employer and/or Employer's Chief Procurement Officer and Group Chief Executive Officer where any change as contemplated in clause 16.1.1 to 16.1.5 Employers not have impact of the BBBEE Status of the Contractor.

16.3 Breach of clause 16 by the Service Provider shall result in immediate termination of the Contract by the Employer.

17. SERVICE PROVIDER'S SUPERINTENDENCE

17.1 The Service Provider shall provide all necessary superintendence during the execution of the Services.

17.2 The Service Provider's manager shall have authority to receive, on behalf of the Service Provider, all oral or written communications from the Project Manager or the Project Manager's Representative.

18. TIME AND RELATED MATTERS



18.1 Commencement of the Services

18.2 Following the Commencement Date, and on the Project Manager's instruction, the Service Provider shall, save as may be otherwise provided in the Contract or legally or physically impossible, commence executing the Services. Such instruction shall be subject to the submission by the Service Provider, and approval by the Project Manager, of documentation required before commencement with Services execution which information shall be as follows -

18.3 any Consents required;

18.4 The documentation referred to in clause 18.2 above shall be made available within 30 (thirty) days from the Commencement Date.

18.5 If the documentation referred to in clause 18.2 is not submitted within the number of days stipulated in clause 18.4 from the Commencement Date, or is found to be unacceptable, the Employer may terminate the Contract on written notice to the Service Provider.

18.6 If the Project Manager's instruction to commence executing the Services, or to resubmit documentation, is not received by the Service Provider within 7 (seven) days from the actual date of submission of the documentation referred to in clause 18.2, commencement of the Services shall be deemed to be on the expiry of such 7 (seven) days.

19. SUPERVISION

19.1 The function of the Project Manager is to control, manage and administer the Contract acting on instructions of the Employer, in accordance with the provisions of the Contract.

19.2 Whenever the Project Manager intends, in terms of the Contract, to exercise any discretion or make or issue any ruling, contract interpretation or price determination, he shall first consult with the Service Provider and the Employer in an attempt to reach agreement. Failing agreement, the Project Manager shall act impartially and equitably and shall make a decision in accordance with this Contract, taking into account all relevant facts and circumstances.

19.3 The Project Manager will provide overall technical superintendence of the Services



and may direct the Contractor in terms of the provisions of this Contract or in respect of any measures which the Project Manager may require for the operations of the Employer on the safety of trains, the property and workmen of the Employer, and for the safety of other property and persons. The Service Provider shall carry out the directions of the Project Manager. The superintendence exercised by the Project Manager, including any agreement, approval, refusal or withdrawal of any approval given, shall not relieve the Service Provider of any of his duties and liabilities under the Contract, and shall not imply any assumption by the Employer or by the Project Manager of the legal and other responsibilities of the Service Provider in carrying out the Services.

- 19.4 The Project Manager may delegate to any deputy or other person, any of his duties or functions under the Contract. On receiving notice in Writing of such delegation, the Service Provider shall recognise and obey the deputy or person to whom any such duties or functions have been delegated as if he were the Project Manager.
- 19.5 The Service Provider shall exercise supervision over the Services at all times when work is performed or shall be represented by an agent having full power and authority to act on behalf of the Service Provider. Such agent shall be competent and responsible and have adequate experience in carrying out work of a similar nature to the Services, and shall exercise personal supervision on behalf of the Service Provider. The Project Manager shall be notified in Writing of such appointment which will be subject to his approval.
- 19.6 The Service Provider or the Service Provider's Site Agent shall be available on the Site at all times while the Services are in progress to receive the orders and directions of the Project Manager.
- 19.7 If the Service Provider is dissatisfied with any order or instruction of the Project Manager's representative, or any other person appointed by the Project Manager to act on his behalf, he shall be entitled to refer the matter to the Project Manager who shall promptly confirm, reverse or vary such order or instruction.
- 19.8 If by reason of a failure by the Project Manager, after his receipt of written notice from the Service Provider in terms of clause 23.8.3, to comply in good time with the provisions of clause 23.8.4, the Contractor suffers delay to Practical Completion and, he shall be entitled to make a claim for additional time in accordance with clause 32, for which purpose the time limit of 28 (twenty eight) days shall



commence after the Service provider became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Service Provider and approved by the Project Manager, the Service Provider shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed.

20. MONTHLY PROGRESS MEETINGS: EMPLOYER/SERVICEPROVIDER OBLIGATION

- 20.1 Monthly progress meetings shall be convened by and between the Employer and the Service Provider if required, in order to review the following -
- 20.2 The above-mentioned progress meetings shall be arranged from time to time by mutual agreement by and between the Employer and the Service Provider.

21. DELAYS ATTRIBUTABLE TO THE EMPLOYER

- 21.1 If the Contractor fails to comply with any agreed time schedule referred to in clause 10 as a result of failure or delay on the part of the Employer, its agents, employees or other contractors (not employed by the Contractor) in fulfilling any necessary obligations in order to enable the Services to proceed in accordance with the Contract, the Contractor shall be entitled to claim extra time incurred by it in performing the Services. The Contractor shall make such claim within 28 (twenty eight) days of such failure by the Employer to meet its contractual obligations. The Contractor's claim shall be submitted to the Project Manager stating in detail such failure by the Employer.

22. SUSPENSION OF THE SERVICES



- 22.1 The Service Provider shall, on the written order of the Project Manager stating the cause for suspension (other than force majeure in terms of clause 25), suspend the progress of the Services or any part thereof for such time or times and in such manner as the Project Manager shall order and shall, during such suspension, properly protect the Services as far as is necessary unless such suspension is by reason of some default or breach of the Contract by the Service Provider
- 22.2 If the progress of the Services or any part thereof is so suspended for more than 84 (eighty four) Days in total, the Service Provider may deliver a written notice to the Project Manager requiring permission to proceed with the Services or that part thereof in respect of which progress is suspended.
- 22.3 If such permission is not granted within 28 (twenty-eight) Days after the Project Manager's receipt of the written notice, the Service Provider may, by a further written notice to the Employer, elect to treat the suspension, where it affects the whole Services, as a repudiation of the Contract by the Employer.

23. PAYMENT TO SERVICE PROVIDER



23.1 As consideration for the provision of the services, the employer shall pay the Service Provider subject to the terms and conditions of the contract.

23.2 The employer shall pay the Service Provider the amounts stipulated in each purchase order, subject to the terms and conditions of the Service Provider.

23.3 employer shall pay such amounts to the Service Provider upon receipt of a valid and undisputed tax invoice together with the supporting documentation, as specified in the schedule of requirements appended hereto, once the valid and undisputed tax invoices or such portions of the tax invoices which are valid and undisputed become due and payable to the contractor for the delivery rendering of the services.

23.4 The employer will verify the invoices and authorize payment on condition that all services had been rendered according to the agreement.

23.5 All tax invoices shall be paid within thirty (30) days from the date of issue of the valid statement by the Service Provider.

23.6 Contract Price

23.6.1 **THE CONTRACT PRICE FOR THE SERVICES FOR THE CONTRACT PERIOD IS A VALUE NOT EXCEEDING**

23.6.2 **A VALUE NOT EXCEEDING (INCLUDING VAT).**

23.7 Payment in Applicable Currencies

23.7.1 **PAYMENT OF ALL AMOUNTS DUE AND PAYABLE EITHER TO THE SERVICE PROVIDER OR EMPLOYER SHALL BE IN SOUTH AFRICAN RAND.**

24. BREACH AND TERMINATION

24.1 If either Party [the Defaulting Party] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter the Aggrieved Party], shall be entitled, in addition to any other rights and remedies that it may have in terms of the



Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

24.2 Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:

24.3 a voluntary arrangement or composition or reconstruction of its debts.

24.4 its winding-up or dissolution;

24.5 the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;

24.6 any similar action, application or proceeding in any jurisdiction to which it is subject.

24.7 Employer may terminate the Agreement at any time within 2 [two] months of becoming aware of a change of control of the Supplier by notice in writing to the Supplier. For the purposes of this clause, control means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

24.8 Notwithstanding this clause 20, AUTOPAX may cancel the Agreement:

24.9 without cause by giving 30 [thirty] calendar days prior written notice thereof to the Supplier, or

24.10 by notice in writing to the Supplier, where the Supplier fails to provide Employer with a valid Tax Clearance Certificate issued by the South African Revenue Service at any time during the currency of the Agreement.

24.11 The provisions of clauses 2 [Definitions], 14 [Warranties], 19 [Rights on Cancellation], 24 [Confidentiality], 26 [Limitation of Liability], 27 [Intellectual Property Rights], 30 [Dispute Resolution] and 34.1 [Governing Law] shall survive termination or expiry of the Agreement.

24.12 This Contract may be terminated by either Party by giving a 30 (thirty) days' notice or



following the occurrence of either the Contractor's Default or Employer's Default.

24.13 If termination is as a result of the Employer's Default, the Contractor shall be entitled to payment for all the Services undertaken by the Contractor up to the date of termination.

25. FORCE MAJEURE

25.1 Definition of Force Majeure

25.2 In this clause 25, "Force Majeure" means an exceptional event or circumstance -

25.3 which is beyond a Party's control,

25.4 which such Party could not reasonably have provided against before entering into the Contract,

25.5 which, having arisen, such Party could not reasonably have avoided or overcome, and

25.6 which is not substantially attributable to the other Party.

25.7 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions 25.3 to 25.6 above are satisfied -

25.8 war, hostilities (whether war be declared or not), invasion, act of foreign enemies;

25.9 rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;

25.10 munitions of war, explosive Materials, ionising radiation or contamination by radioactivity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and

25.11 Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

25.12 Notice of Force Majeure

25.13 If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within



14 (fourteen) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

25.14 The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

25.15 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

25.16 Duty to Minimise Delay

25.17 Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

25.18 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

25.19 Consequences of Force Majeure

25.20 If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure of which notice has been given under sub-clause 25.12, and suffers delay and/or incurs additional costs by reason of such Force Majeure, the Contractor shall be entitled, subject to sub-clause 32 to -

25.21 an extension of time for any such delay, if completion is or will be delayed, under sub-clause 27, and

25.22 if the event or circumstance is of the kind described in of sub-clauses 25.8 to 25.11 , payment of any such additional cost.

25.23 After receiving this notice, the Parties shall proceed in accordance with clause 25.12 to agree or determine these matters.

25.24 Optional Termination, Payment and Release

25.25 If the execution of substantially all the Services is prevented for a continuous period of 84 (eighty four) Days by reason of Force Majeure of which notice has been given under sub-clause 25.12, or for multiple periods which total more than 140 (one hundred and forty) days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In such event, the termination shall take effect 7 (seven) days after the notice is given, and



the Contractor shall proceed in accordance with Sub-Clause 25.30 [Cessation of Work and Removal of Contractor's Equipment].

25.26 Upon such termination, the Project Manager shall determine the value of the Work done to date and issue a payment certificate to the Contractor which shall include -

25.27 The amounts payable for any work carried out for which a price is stated in the Contract;

25.28 The cost of equipment and materials ordered for the Services which have been delivered to the Employer, such equipment and materials shall become the property of (and be at the risk of) the Employer when paid for in full by the Employer, and the Contractor shall place the same at the Employer's disposal;

25.29 Any other costs or liabilities which in the circumstances were reasonably incurred by the Contractor in the expectation of completing the Services; and

25.30 The cost of removal of Temporary Services and Contractor's Equipment from the Site and the return of these items to the Contractor.

25.31 Release from Performance under the Law

25.32 Notwithstanding any other provision of this clause 25.32, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance -

25.33 The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

25.34 The sum payable by the Employer to the Contractor shall be the same as would have been payable under sub-clause 25.24 [Optional Termination, Payment and Release] if the Contract had been terminated under sub-clause 25.24.

26. DISPUTE RESOLUTION

26.1 Should any dispute of whatsoever nature arise between the Parties concerning the



Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

- 26.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 26.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 26.4 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 30.
- 26.5 This clause 30 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.
- 26.6 This clause 30 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

27. PUBLIC RELATIONS AND PUBLICITY



- 27.1 The Contractor acknowledges that certain information pertaining to the Services is required to be disclosed in accordance with the statutory reporting obligations of the Employer as it may be required to publish from time to time in response to enquiries from -
- 27.2 Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act, of 1999.
- 27.3 the Auditor-General under the Public Audit Act, of 2004; and
- 27.4 Persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.
- 27.5 Subject to clause 28, neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract without the prior approval of the other Party, such consent not to be unreasonably withheld.

28. CONFIDENTIALITY

- 28.1 Each Party ("the Receiving Party") must treat and hold as confidential all information, which they may receive from the other party ("the Disclosing Party") or which becomes known to them concerning the Disclosing Party during the subsistence of this Contract and any extension thereof.
- 28.2 The confidential information of the disclosing Party shall, without limitation, include-
- 28.3 software and associated material and documentation, including information contained therein.
- 28.4 all information relating to -

28.4.1 THE DISCLOSING PARTY'S PAST, PRESENT AND FUTURE RESEARCH AND DEVELOPMENT.



28.5 the Disclosing Party's business activities, products, services, customers and Employers, as well as its technical knowledge and trade secrets.

28.6 the terms and conditions of this Contract; and

28.7 Service Provider's data.

28.8 The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its confidential information -

28.9 it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Contract.

28.10 it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorized disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof.

28.11 subject to the right to make the confidential information available to their Personnel under clause 28.9 above, they will not at any time, whether during this Contract or thereafter, either use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties;

28.12 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when no longer required for the purposes of this Contract.

28.13 Upon termination or expiry of this Contract, the Receiving Party will deliver to the Disclosing Party, or at the Disclosing Party's option, destroy all originals and copies of the Disclosing Party's confidential information in its possession.

28.14 The foregoing obligations shall not apply to any information which -

28.15 is lawfully in the public domain at the time of disclosure.

28.16 subsequently and lawfully becomes part of the public domain by publication or



28.17 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or

28.18 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

28.19 Nothing in this Clause shall preclude the Parties from disclosing the confidential information to their professional advisors or financiers in the bona fide course of seeking finance, business and professional advice.

28.20 Each Party hereby indemnifies the other Party against any loss or damage, which one Party may suffer as a result of a breach of this Clause by the other Party or its Personnel.

28.21 The provisions of this clause 28 are severable from the rest of the provisions of this Contract and shall survive its termination and continue to be of full force and effect for a period of 2 (two) years after the date of termination. Notwithstanding the aforementioned, the obligation to keep confidential business and trade secrets shall remain in force for an unlimited period of time.

29. LIMITATION OF LIABILITY



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

29.2 Furthermore, and notwithstanding anything to the contrary herein, the maximum total liability of the Parties to the Employer for any loss or damage suffered by the Employer, its agents, employees or sub-contractors, whether in contract, derelict or otherwise, from any cause whatsoever, and whether in relation to damages, penalties or indemnities or otherwise, shall not exceed twice the Contract Price.

29.3 Subject to the aforesaid, and to the extent that it relates to the Services, the Contractor indemnifies and shall keep Employer indemnified at all times against all losses sustained by Employer in consequence of any -

29.4 loss of or damage to property.

29.5 breach of a statutory duty arising under applicable law.

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

29.7 any breach by the service provider of any warranties given by it in this Contract.

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

29.9 Save to the extent caused by the negligence or wilful misconduct of Employer or by a breach by Employer of an express provision of this Contract.

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

30. ENTIRE AGREEMENT



30.1 Except where expressly provided otherwise in this Contract, this Contract 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 Contract.

30.2 Each of the Parties acknowledges that -

30.3 It does not enter into this Contract 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 Contract or not) except those expressly contained in or referred to in this Contract, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Contract; and

30.4 This clause 30 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract, which was induced by fraud, for which the remedies available shall be all those available under any Law governing this Contract.

31. SEVERABILITY

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

32. INDEPENDENT STATUS

32.1 Nothing in this Contract 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.

33. INDEPENDENT ADVICE



33.1 Each of the Parties hereby respectively agrees and acknowledges that -

33.2 it has been free to secure independent legal advice as to the nature and effect of each provision of this Contract and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

33.3 Each provision of this Contract (and each provision of the Annexures) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Contract.

34. COUNTERPARTS

This Contract 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 Contract for all purposes.

SIGNED at Johannesburg on _____ 2023

The Service Provider:

For: Service Provider

PRINT NAME

Who warrants that he is duly authorised



AS WITNESSES:

1. _____

2. _____

SIGNED at Johannesburg on _____

The Employer: AUTOPAX PASSENGER SERVICES (SOC) LTD

For: THE EMPLOYER

PRINT NAME

Who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____