

## **PURCHASE AND MAINTENANCE AGREEMENT**

entered by and between

### **PASSENGER RAIL AGENCY OF SOUTH AFRICA**

A public entity established in terms of legal Succession to the South African Transport Services Act 9 of 1989, herein represented by Mr. Hishaam Emeran, in his capacity as Group Chief Executive Officer of **PRASA**, with principal place of business is PRASA Umjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg, 2001)

**(Hereinafter referred to as PRASA)**

**and**

**(Hereinafter referred to as the SUPPLIER)**

**FOR THE SUPPLY OF 30 NEW LONG-DISTANCE COACHES ON AN OUTRIGHT SALE BASIS FOR DELIVERY AND ANCILLIARY BOLT ON MAINTENANCE.**

**1. BACKGROUND AND CONTEXT**

- 1.1 PRASA Long Distance Passenger Transport (LDPT) road-based transport operation requires reliable, cost-effective revenue generating assets acceptable to and competitive on the long-distance market, to fulfil its mandate.
- 1.2 Following a request for proposal (RFP) process for the appointment of a suitable service provider for the manufacturing, supply, delivery and maintenance on intercity coaches under tender number , PRASA duly appointed the Supplier.
- 1.1 The Supplier is duly appointed for the Manufacturing, Supply, Delivery and Servicing of intercity coaches for a delivery period of seventy-two (72) months on an outright sale basis and as governed by the terms and conditions of this Agreement.

- 1.2 The Supplier is further duly appointed for rendering maintenance of the coaches upon the terms and conditions set out in this Agreement.
- 1.3 Now, therefore, it is agreed that PRASA appoints the Supplier to supply intercity coaches and perform the Services on the terms and conditions set out in this Agreement.

## 2. DEFINITIONS

- 2.1. Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:
  - 2.1.1. **Acceptance date** means the date on which the Intercity Coaches are accepted in terms of the unit acceptance procedure by PRASA in terms of this Agreement.
  - 2.1.2. **AFSA** means the Arbitration Foundation of South Africa;
  - 2.1.3. **Agreement** means this purchase and maintenance agreement between PRASA and the Supplier together with all the annexures attached hereto;
  - 2.1.4. **Aggrieved Party** means someone who has been negatively affected by the actions of another person or by a court's decision;
  - 2.1.5. **Body Maintenance Schedule** means is a guideline outlining when routine checks and replacements should be performed.
  - 2.1.6. **Bolt-On Maintenance** means the maintenance Services to be provided by the Supplier for the ongoing maintenance of the Intercity Coaches and the provision of repair coverage beyond standard warranty and as further described in the Services Specification.

2.1.7. **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.1.8. **Commencement Date** means subsequent date of the last party signing the purchase and maintenance Agreement;

2.1.9. **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party.

Party (intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises), or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

- a) information relating to methods of operation, data and plans of the disclosing Party;
- b) the contents of this Agreement;
- c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- d) any information disclosed by either Party, and which is clearly marked as being confidential or secret;
- e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- f) information relating to the past, present and future research, and development of the disclosing Party;
- g) information relating to the business activities, business relationships, products, services, customers, clients, and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

- h) information contained in the software and associated material and documentation belonging to the disclosing Party;
  - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications, and processes;
  - j) Copyright works;
  - k) commercial, financial, and marketing information;
  - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery, and equipment of the disclosing Party;
  - m) plans, designs, concepts, drawings, functional and technical requirements, and specifications of the disclosing Party;
  - n) information concerning faults or defects in Goods, equipment or the incidence of such faults or defects; and
  - o) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.1.10. **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the various categories of works;
- 2.1.11. **CEO** means the Group Chief Executive Officer, of PRASA
- 2.1.12. **Data** means all data, databases, documents, information, graphics, text, or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;
- 2.1.13. **Defaulting Party** means a Party identified to be in breach of this Agreement;

- 2.1.14. **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.1.15. **Franchise Executive** - means the Franchise Executive of the Supplier;
- 2.1.16. **Intercity Coaches** means the products to be supplied, delivered and maintained by the Supplier and as further specified in this Agreement.
- 2.1.17. **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trademarks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.1.18. **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to PRASA either Parties' field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.1.19. **Maintenance Contract** – will be entered into between the Supplier and PRASA;
- 2.1.20. **Parties** mean the Parties to this Agreement, being PRASA and the Supplier, together with their subsidiaries, divisions, business units, successors-in-title, and assigns;
- 2.1.21. **Party** means either one of these Parties;
- 2.1.22. **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products, or processes in all fields of technology;

- 2.1.23. **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.1.24. **Premises** means the PRASA Harmony Depot, a facility located at Harmony Street, Coronation Ville, Johannesburg;
- 2.1.25. **Price(s)** means the agreed Price(s) for the Intercity Coaches to be purchased from the Supplier by PRASA, as detailed in the Pricing Schedule attached hereto marked **Annexure A**, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;
- 2.1.26. **Product(s)** means the Intercity Coaches to be sold and delivered to PRASA by the Supplier, as further described in **Annexure B** pursuant to the Services Specification and/or Purchase Order;
- 2.1.27. **Purchase Order(s)** means official orders issued by an operating division of PRASA to the Supplier for the supply of Intercity Coaches or Services, signed by an authorised PRASA representative and given to the Supplier as confirmation of PRASA's order for Products, which Purchase Order will detail a description of the Product/s required, the volume of the Product/s required, the cost of the Product/s ordered, and the anticipated delivery date, and any additional requirements relevant to the order;
- 2.1.28. **Services** means the services to be performed by the Supplier for PRASA, which are set out and described in the relevant Services Specification and any further Services Specification/s agreed upon and signed by the Parties.
- 2.1.29. **Services Specification** means the documents agreed upon and signed off by the Parties substantially in the form of **Annexure , Annexure, Annexure** and **Annexure** attached hereto detailing the repair and maintenance and detailing, as applicable, the Services required to be delivered, methods for measuring the Services delivered, the names and designations of the resources which the Supplier intends to appoint to perform the required Services, the Supplier's fee

for performing the Services, the volume and cost of any product/s to be delivered, the commencement date and anticipated duration of the performance of the Services, and any other information relevant to the performance of the Services.

- 2.1.30. **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.1.31. **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier and any third party, other than the OEM's and their approved and appointed dealers and agents.
- 2.1.32. **Subcontractor** means the third party with whom the Supplier enters into a Subcontract;
- 2.1.33. **Supplier means** , a private company with limited liability and registration number , incorporated under the laws of the Republic of South Africa;
- 2.1.34. **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- 2.1.35. **Trademarks** mean registered Trademarks, Trademark applications, and include any sign or logo, or combination of signs and/or logos capable of distinguishing the Intercity Coaches or services of PRASA;
- 2.1.36. **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 2.1.37. **VAT Act** means the Value Added Tax Act, No. 89 of 1991, as may be amended from time to time.

### 3. INTERPRETATION

- 3.1. Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2. Any term, word or phrase used in this Agreement, other than those defined under the clause heading “Definitions” shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3. A reference to the singular incorporates a reference to the plural and vice versa.
- 3.4. A reference to natural persons incorporates a reference to legal persons and vice versa.
- 3.5. A reference to a particular gender incorporates a reference to the other gender.

#### **4. APPOINTMENT AND DURATION**

- 4.1. PRASA hereby appoints the Supplier to supply the Intercity Coaches and perform the Services, and deliver the Intercity Coaches on the terms and conditions recorded herein, and the Supplier accepts this appointment.
- 4.2. This Agreement will commence on the Commencement Date and will endure for a period of 72 (seventy-two) months or until terminated by PRASA on 30 (thirty) days’ written notice to the Supplier or in terms of the provisions below. Termination of

this Agreement pursuant to this clause will not serve to terminate any Services Specification or Purchase Order already in progress, and the Supplier will be required to complete performance thereunder, as applicable, notwithstanding termination of this Agreement.

- 4.3. Notwithstanding this clause 4, any provisions herein relating to confidentiality, and if applicable, restraints, will endure beyond the termination of this Agreement.
- 4.4. This Agreement will supersede and replace the provisions of any previous new long-distance coach supply agreement, or terms and conditions between the Parties. This Agreement will further be read in addition to any confidentiality agreement signed, or to be signed between the Parties, and will not replace or amend such agreement. In the event of any conflict between this Agreement and any other agreement, the provisions of this Agreement will be the more restrictive provisions that prevail.
- 4.5. Time will be of the essence and the Supplier will perform its obligations under this Agreement in accordance with the timeframe(s) set out in the Service Specification and/or Purchase Order, save that the Supplier will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by PRASA and it has used its best endeavours to advise PRASA of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

## **5. FEES**

- 5.1. Once agreed and recorded in the Services Specification and/or Purchase Order, as applicable, the Supplier may not adjust its fees or charges for the Product/s and/or Services, unless otherwise agreed to in writing by PRASA.
- 5.2. Payment to the Supplier will be effected by PRASA in arrears, not later than 30 (thirty) days after PRASA receives an accurate, detailed VAT Invoice provided by the Supplier after proper and full completion of the Services, or delivery of the Product/s.
- 5.3. PRASA may reimburse the Supplier for additional expenses necessarily incurred by the Supplier in the performance of the required Services, provided that:
  - 5.3.1. Such additional expense were unexpected and could not have been reasonably anticipated by the Supplier at the time of submission of its quotation or proposal;
  - 5.3.2. The supplier provides PRASA with written reasons for the necessity of such additional expenses, no less that 45 (forty-five) calendar days before such expenses are anticipated to be incurred;
  - 5.3.3. Such expenses, including the cost thereof, are approved in writing in advance of being incurred by the Supplier by an authorised representative of PRASA; and
  - 5.3.4. Official documentation showing the incurrence of such expense is furnished to PRASA, whereby such documentation is required to be received by PRASA before payment is made for such expenses.

## **6. MAINTENANCE OF THE BUSES**

- 6.1. The Supplier shall be responsible for the full maintenance of the provided Products on the terms and conditions of this Agreement.

- 6.2. The bolt-on, full maintenance and provision of the Services shall be charged and payable per kilometer operated, monthly, for the period of 72 months or        kilometers (inclusive of roadside assistance and tow-in, as well as full bus-body maintenance) whichever comes first. Tyre management and tyre breakdowns shall be specifically excluded.
- 6.3. The Bolt-On Maintenance Services Fees shall be charged as per the Services Specifications document contained in this Agreement (Attached hereto as **Annexure** ).
- 6.4. The Parties hereby agree that in the event of the cost of repairing any damage to Intercity Coaches, where the cost of repair is less than the insurance excess, the Supplier shall effect such repair at its own cost and such repair shall be done within 7 (seven) working days from the date of the damage provided that the body parts are available and further that minor body damage, specifically scratches and minor fibre repairs must be fixed within 5 (five) days from the time of damage.

## 7. DURATION/TERM AND CANCELLATION

- 7.1. Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is the subsequent date of the last party signing the purchasing and maintenance Agreement and the duration shall be for a 72 month (seventy-two) period, unless this Agreement is extended at PRASA's option for a further period to be agreed by the Parties.
- 7.2. PRASA may cancel this Agreement by giving 30 (thirty) calendar days prior written notice thereof to the Supplier, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders and/or Service Specification(s) which have been placed prior to the date of such cancellation.

## **8. PRASA'S OBLIGATIONS**

- 8.1. PRASA undertakes to promptly comply with any reasonable request by the Supplier for information, including information concerning PRASA's operations and activities, which relates to the Products and/or Services as may be necessary for the Supplier to provide the Products and/or Services. However, PRASA's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Supplier of its confidentiality obligations under this Agreement.
- 8.2. The Supplier shall give PRASA reasonable notice of any information it requires. PRASA agrees to provide the Supplier or its Personnel such access to and use of its facilities as is necessary to allow the Supplier to perform its obligations under this Agreement.

## 9. OBLIGATIONS OF THE SUPPLIER

- 9.1. The Supplier shall make use of its best endeavours to properly, professionally and correctly deliver the Products and/or Services with all deliverables met timeously, in accordance with PRASA's reasonable requirements. Furthermore, the Supplier shall ensure the following:
- 9.1.1. respond promptly to all complaints and enquiries from PRASA;
  - 9.1.2. inform PRASA immediately of any dispute or complaint arising in relation to the delivery of the Intercity Coaches;
  - 9.1.3. conduct its business in a professional manner which will reflect positively upon the Supply of the Products and/or the Services;
  - 9.1.4. keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Products and/or Services and keep such records for at least 5 (five) years from the date of each such transaction.
  - 9.1.5. obtain, and always maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Products and/or Services.
  - 9.1.6. observe and ensure compliance with all requirements and objectives as agreed to in response to the RFP. The general purpose of the Supplier Integrity Pact is to agree to avoid all forms of dishonesty, fraud, and corruption by following a system that is fair, transparent, and free from any undue influence prior to, during and after the currency of the procurement event leading to this Agreement.
  - 9.1.7. comply with all applicable legislation and regulations, demonstrate sound environmental performance, and have an environmental management policy which ensures that the Products and/or Services are procured, supplied, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and

9.1.8. ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Supplier fail to present PRASA with such renewals as they become due, PRASA shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which PRASA may have for damages against the Supplier.

9.2. The Supplier acknowledges and agrees that it shall always:

9.2.1. render the supply of the Products and/or Services and perform all its duties with honesty and integrity;

9.2.2. communicate openly and honestly with PRASA regarding the supply and performance of the products and/or Services and demonstrate a commitment to effecting the supply at least to the required standards;

9.2.3. endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;

9.2.4. use its best endeavours and make every diligent effort to meet agreed deadlines;

9.2.5. practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;

9.2.6. treat all enquiries from PRASA in connection with the supply of the Products and/or Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier will advise PRASA of the delay and the reasons therefor and will keep PRASA informed of progress made regarding the enquiry;

9.2.7. when requested by PRASA, provide clear and accurate information regarding the Supplier's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;

- 9.2.8. not allow a conflict of interest to develop between its own interests (or the interests of any of its other customers) and the interests of PRASA;
- 9.2.9. not accept or offer, nor allow, induce, or promote the acceptance or offering of any gratuity, enticement, incentive, or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- 9.2.10. not mislead PRASA or its officers, employees, and stakeholders, whether by act or omission;
- 9.2.11. not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish PRASA's reputation or business image;
- 9.2.12. immediately report to PRASA any unethical, fraudulent, or otherwise unlawful conduct of which it becomes aware in connection with PRASA or the supply of the Products and/or Services to PRASA;
- 9.2.13. ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Supplier shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
- 9.2.14. not victimise, harass, or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation, or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training;
- 9.2.15. shall ensure that its employees, agents, and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

## 10. SUPPLIER WARRANTIES

10.1. The Supplier warrants that:

- 10.1.1. its performance hereunder will be in accordance with all applicable laws, and that it has complied and will continue to comply with all of its statutory obligations;
- 10.1.2. the Supplier's performance hereunder will not violate any agreement or obligation between the Supplier and a third party;
- 10.1.3. any Services as delivered to PRASA under an applicable Services Specification; do not infringe any copyright, patent, trade secret, or other proprietary right held by, or which is the subject of a pending application filed by any third party;
- 10.1.4. Services provided by the Supplier will: be performed in a professional manner; be performed substantially in accordance with the requirements and specifications on the applicable Services Specification, be of a high grade, nature, and quality; and be free and clear of any liens, encumbrances or claims;
- 10.1.5. the Services will either be originally created by the Supplier, or the Supplier will obtain all necessary rights to the Services, as applicable;
- 10.1.6. any Products delivered to PRASA that are found to be defective, will be returned as soon as possible after PRASA becomes aware of the defect; but no later than 6 (six) Months after the date of delivery of the Product or within the period of the manufacturer's warranty, whichever is the later date. Products that were defective as at time of delivery, including defects that may only become apparent under operation of the Product, will be returned at the Supplier's cost for repair within a reasonable time;

- 10.1.7. the Supplier indemnifies and holds PRASA harmless from any and all claims brought by any party for breach of these warranties, and against any claims of whatsoever nature and howsoever arising out of the acts or omissions of the Supplier whether negligent, intentional or otherwise;
- 10.2. The Supplier warrants, represents and undertakes that it has the full power and authority to enter into and perform this Agreement.
- 10.3. The warranty, representation and undertaking in clause shall be deemed to be given by the Supplier on a continuing basis throughout the term of this Agreement.

#### **11. SUBCONTRACTING (refer to clause 2.1.32)**

- 11.1. The Supplier may only enter a subcontracting arrangement or replace a subcontractor with the approval of PRASA.
- 11.2. Where the Supplier seeks to replace a subcontractor, PRASA shall be entitled to obtain representations or input from the initial subcontractor who was part of the tender process whose credentials were used in the Supplier's tender submission. PRASA shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the subcontractor. The subcontracting arrangement or contract remains between the Supplier (main contractor) and the subcontractor.
- 11.3. Should PRASA approve the Supplier's subcontracting arrangement, the Supplier and not the Sub-contractor will at all times be held liable for performance in terms of its contractual obligations.

- 11.4. The Supplier may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 11.5. The Supplier may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Supplier.

## **12. PAYMENT TO SUB-CONTRACTORS**

- 12.1. Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by PRASA. Furthermore, this clause does not bestow any right or legitimate expectation on the Supplier to demand that PRASA pay its sub-contractor directly.
- 12.2. The Supplier remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.
- 12.3. This clause does not establish any contractual relationship between PRASA and any sub- contractor of the Supplier, whatsoever.

## **13. B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS**

### **13.1. B-BBEE Scorecard**

- a) PRASA fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Supplier shall submit to PRASA's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Supplier undertakes to notify and provide full details to PRASA in the event there is:
  - i. change in the Suppliers' B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
  - ii. corporate or internal restructure or change in control of the Supplier which has or likely to impact negatively on the Supplier's/ Supplier's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Supplier undertakes to provide any B-BBEE data (underlying data relating to the Supplier which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Supplier B-BBEE status) which PRASA may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier Default and may be dealt with in accordance with the provisions of clause 20.

## 14. INVOICES AND PAYMENT

- 14.1. PRASA shall pay the Supplier the amounts stipulated in each Purchase Order and/or Service Specification, subject to the terms and conditions of this Agreement.
- 14.2. PRASA shall pay such amounts to the Supplier upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, 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 Supplier for the delivery of the Products and/or Services ordered, in terms of clause below.
- 14.3. PRASA may, pending an investigation, withhold any payments to the Supplier, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Supplier is involved or was aware that the contract transgressed any legislation.
- 14.4. All Prices set out in this Agreement and the **Annexure** of requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR. Unless otherwise provided for in the **Annexure** , as appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement.

**14.5.** The prices as per Annexure A, are also reflected below;

- 14.6. Payment against such month-end statement shall be made by PRASA within 30 (thirty) calendar days after date of receipt by PRASA of the suppliers' statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- 14.7. Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Supplier shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

## **15. PRICE ADJUSTMENTS**

- 15.1. The Supplier shall keep full and accurate records of all costs associated with the supply of the Products and/or Services to PRASA in a form to be approved in writing by PRASA.

## **16. THIRD PARTY INDEMNITY**

- 16.1. The Supplier hereby indemnifies and shall hold PRASA harmless against any direct damages suffered by or claims arising against PRASA., and PRASA shall indemnify and hold the Supplier harmless from similar claims or damages.

## **17. INSPECTION APPLICABLE TO INTERCITY COACHES**

- 17.1. PRASA reserves the right to arrange for the inspection of all Intercity Coaches forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be conducted, the relevant Purchase Order(s) shall be endorsed accordingly.

- 17.2. When inspection at the Supplier's works or warehouse is specified, PRASA's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Intercity Coaches which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of this Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.
- 17.3. The Supplier shall provide any local utilized inspection gauges, measuring and test equipment to ensure that the requirements of this Agreement are satisfied. All local gauges, templates, tools, and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by PRASA. This certificate shall not be more than 12 (twelve) months old.
- 17.4. The Supplier shall prepare and supply, without charge to PRASA, all locally available test pieces, samples, and specimens; shall provide all labour and apparatus for conducting tests and analyses in accordance with the terms of this Agreement or Purchase Order and render all reasonable assistance in making such tests and analyses.
- 17.5. All special rules governing gauging, testing, analysis, and other inspection procedures shall be adhered to strictly in accordance with the terms of this Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- 17.6. Inspection will be arranged by the Staff of PRASA, as indicated in the Purchase Order(s).
- 17.7. When Intercity Coaches are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote PRASA's Agreement or

Purchase Order number. 7 (seven) Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by PRASA to conduct such inspection.

- 17.8. PRASA shall have the right to recover from the Supplier the cost of inspection of any Intercity Coaches that have been rejected by its authorised inspector.

## **18. DEFECTIVE INTERCITY COACHES**

18.1. Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of PRASA either in South Africa or overseas, Intercity Coaches will be accepted at the place of delivery or at the port of shipment, as specified in this Agreement, only as regards outward condition of packages and PRASA retains the right to reject the Intercity Coaches supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective. If Intercity Coaches are rejected owing to latent defects becoming apparent or other preparation necessary on the part of PRASA before they can be put into use, the Supplier shall bear all expenses incurred by PRASA in conducting such necessary operations. If such Intercity Coaches are rejected, the Supplier will pay the following costs:

- a) for Intercity Coaches purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Intercity Coaches have been rejected by PRASA plus handling charges and storage, for Intercity Coaches manufactured overseas,
- b) the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Intercity Coaches have been rejected by PRASA including handling charges, storage, landing charges, customs duty, and surcharges, if leviable.

18.2. If PRASA requires rejected Intercity Coaches to be rectified, the Supplier shall, when called upon to do so, arrange with the designated Experts for the prompt rectification of the Intercity Coaches within the prescribed manufacturing lead times for such Intercity Coaches. If Intercity Coaches are found to be defective but the defects are, in the opinion of PRASA, not of so serious a nature as to warrant total rejection of the Intercity Coaches, the Supplier shall, when called upon to do so, liaise with the specialist departments to remedy or make good such defects at their own cost, or PRASA may remedy or make good such defects at the request of the Supplier.

## **19. TOTAL OR PARTIAL FAILURE TO PERFORM**

19.1. In the case of Intercity Coaches to be specially manufactured for it, if PRASA at any time ascertains that:

- a) no manufacturing of the Intercity Coaches specified in a Purchase Order has commenced and there is little or no prospect, in PRASA's opinion, that manufacturing will commence within a reasonable time; or
- b) delivery of any of the Intercity Coaches is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s), then PRASA may, irrespective of the cause of the delay, by notice to the Supplier, cancel as from a future date specified in such notice the whole or any part of this Agreement or Purchase Order in respect of which the Intercity Coaches to be supplied have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.

19.2. The Supplier shall thereupon, as soon as possible after such date, deliver to PRASA the Intercity Coaches (if any) already completed, and payment for the part performance shall be made on a pro rata basis, provided the uncompleted part is not an integral or essential part of the completed Intercity Coaches. Where an integral or essential part of the work has not been

completed, the amount to be paid to the Supplier will be calculated based on PRASA's enrichment. The Supplier shall, wherever practicable, supply PRASA with the necessary drawings and/or specifications to enable it to complete the work.

- 19.3. Whenever the Supplier fails or neglects to execute the work or to deliver any portion of the Intercity Coaches as required by the terms of this Agreement or Purchase Order, or if any Intercity Coaches are rejected on any of the grounds mentioned in clause 18 [Defective Intercity Coaches], PRASA may cancel this Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Intercity Coaches, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

## **20. RIGHTS ON CANCELLATION**

- 20.1. If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 19 [Total or Partial Failure to Perform], PRASA may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Intercity Coaches in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Intercity Coaches and the Price (if the latter was lower) as well as any costs and expenses (including any additional transport costs) which PRASA may have had to incur in consequence of the Supplier's default.

## **21. BREACH AND TERMINATION**

- 21.1. Termination in accordance with the Term and Cancellation shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

- 21.2. On termination of this Agreement, the Supplier will immediately deliver up, and procure that its Personnel will immediately deliver up to PRASA, all Deliverables and property belonging to which may be in the possession of, or under the control of the Supplier, and certify to PRASA in writing that this has been done.
- 21.3. To the extent that any of the Deliverables are in electronic form and contained on non-detachable storage devices, the Supplier will provide PRASA with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 21.4. In the event that this Agreement is terminated by the Supplier under clause (Term and Cancellation), or in the event that a Work Order is terminated by PRASA under (Breach and Consequences of Termination), PRASA will pay to the Supplier all outstanding Fees (apportioned on a pro rata basis) relating to the work undertaken by the Supplier up until the date of such termination. PRASA will also pay the costs of any Intercity Coaches and materials ordered by the Supplier in relation to such work for which the Supplier has paid or is legally obliged to pay, in which case, on delivery of such Intercity Coaches or materials, the Supplier will promptly deliver such Intercity Coaches and materials to PRASA or as it may direct.
- 21.5. If the Supplier commits a material breach of this Agreement and fails to remedy such breach within 30 (thirty) calendar days of written notice thereof, the other Party, shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 21.6. PRASA and the Supplier may terminate this 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:

- a) a voluntary arrangement or composition or reconstruction of its debts;
- b) its winding-up or dissolution;
- c) the appointment of a liquidator, trustee, receiver, administrative receiver, or similar officer;
- d) any similar action, application or proceeding in any jurisdiction to which it is subject.

21.7. PRASA may terminate this 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.

21.8. Notwithstanding this clause, PRASA or the Supplier may cancel this Agreement without cause by giving 30 (thirty) calendar days prior written notice thereof to the Supplier, or The provisions of clauses [Definitions], [Warranties], [Rights on Cancellation], [Confidentiality], [Limitation of Liability], [Intellectual Property Rights], [Dispute Resolution] and [Governing Law] shall survive termination or expiry of this Agreement.

## 22. **CESSION**

22.1. Upon written notice to the Supplier, PRASA shall be entitled:

- a) to appoint PRASA's financier of the Intercity Coaches as first payer under this Agreement, without transferring the ultimate responsibility for payment which will remain with PRASA; and
- b) to cede, assign and transfer its right, title and interest in the Intercity Coaches to such financier as part of the funding consideration for the Intercity Coaches.

22.2. The Supplier is not entitled to cede, delegate, assign, Subcontract or in any other manner dispose of any of its rights or obligations in terms of this Agreement without the prior written consent of PRASA, which consent shall not be withheld or delayed unreasonably.

### **23. FORCE MAJEURE**

23.1. Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. PRASA may however rely on strikes, industrial dispute, and riots as a ground of force majeure.

23.2. Each Party will take all reasonable steps by whatever lawful means that are available to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement to accommodate the new circumstances caused by the act of force majeure. If a Party fails to agree with such modifications proposed by the other Party within 90 [ninety] calendar days of the act of force majeure first occurring, either Party may thereafter terminate this Agreement with immediate notice.

### **24. PROTECTION OF PERSONAL INFORMATION**

24.1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"):

- a) consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA;

- b) PRASA will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:
- i. Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
- c) PRASA agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Supplier consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage, destruction, de-identification and publishing of personal information by PRASA and/or its authorised appointed third parties; and
- d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:
- i. they process personal information only for the express purpose for which it was obtained;
  - ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
  - iii. Personal information is provided only to authorised personnel who strictly require the personal information to conduct the Parties' respective obligations under this Agreement;
  - iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
  - v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;
  - vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity, and

authenticity of all information in their possession or under their control in terms of this Agreement;

- vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
- viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure, or access.

24.2. The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.

24.3. Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorised third parties who process personal information.

24.4. The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity, and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any

analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.

- 24.5. The Parties shall conduct regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.
- 24.6. The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any individual or organisation.
- 24.7. Personal Information security breach:
- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.

- b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
- c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
- d) The Parties undertake to co-operate in any investigations relating to security which is conducted by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

## **25. CONFIDENTIALITY**

25.1. The Parties hereby undertake the following with regard to Confidential Information:

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

- c) not to make any notes, sketches, drawings, photographs, or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by PRASA, or otherwise determine the composition, structure, or cause to permit these tasks to be conducted except in the performance of its obligations pursuant to this Agreement;
- e) not to exercise less care to safeguard each other's Confidential Information than the Parties exercises in safeguarding their own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the

confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

25.2. The duties and obligations with regard to Confidential Information in this clause 25 shall not apply where:

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; or
- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

25.3. This clause 25 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 6 [six] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Supplier by PRASA pursuant to this Agreement shall be returned to PRASA including,

without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

## **26. INSURANCES**

- 26.1. Without limiting the liability of the Supplier under this Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by PRASA, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Supplier.
- 26.2. The Supplier shall arrange insurance with reputable insurers and will produce to PRASA evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- 26.3. Subject to clause 26.4 below, if the Supplier fails to effect adequate insurance under this clause 26, it shall notify PRASA in writing as soon as it becomes aware of the reduction or inadequate cover and PRASA may arrange or purchase such insurance on behalf of the Supplier. The Supplier shall promptly reimburse PRASA for any premiums paid provided such insurance protects the Supplier's liability. PRASA assumes no responsibility for such insurance being adequate to protect all of the Supplier's liability.
- 26.4. In the event that the Supplier receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 26.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Supplier shall immediately notify PRASA in writing of such termination and/or unavailability, whereafter either the Supplier or PRASA may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

## 27. LIMITATION OF LIABILITY

- 27.1. The Supplier's liability under this clause 27 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Intercity Coaches or ancillary Services, including the quality of the Intercity Coaches or ancillary Services or any materials delivered pursuant to this Agreement.
- 27.2. Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence, [including its employees, 'agents' or Subcontractors' negligence]; or
  - b) fraud or theft.
- 27.3. The Supplier shall indemnify and keep PRASA indemnified from and against liability for damage to any PRASA property [whether tangible or intangible] or any other loss, costs or damage suffered by PRASA to the extent that it results from any act of or omission by the Supplier or its Personnel in connection with this Agreement. The Supplier's liability arising out of this clause 27.3 shall be limited to direct damages.
- 27.4. Subject always to clauses 27.1 and 27.2 above, the liability of either the Supplier or PRASA under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Purchase Order to which the Default(s) relates.
- 27.5. Subject to clauses 27.1 to 27.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third-party claims.

27.6. If for any reason the exclusion of liability is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 27.3 above.

27.7. Nothing in this clause shall be taken as limiting the liability of the Parties in respect of clauses 25 [Confidentiality] and 28 [Intellectual Property Rights].

## **28. INTELLECTUAL PROPERTY RIGHTS**

### **28.1. Title to Confidential Information**

28.1.1. PRASA will retain all right, title and interest in and to its Confidential Information and Intellectual Property and the Supplier acknowledges that it has no claim of any nature in and to the Confidential Information and Intellectual Property that is proprietary to PRASA. For the avoidance of doubt all the Supplier's Intellectual Property shall remain vested in the Supplier.

28.1.2. PRASA shall grant to the Supplier an irrevocable, royalty free, non-exclusive licence to use PRASA's Intellectual Property only for the Permitted Purpose. This licence shall not permit the Supplier to sub-license to other parties.

28.1.3. The Supplier shall grant to PRASA an irrevocable, royalty free, non-exclusive licence to use the Supplier's Intellectual Property for the Permitted Purpose. This licence shall not permit PRASA to sub-license to other parties.

28.1.4. The Supplier shall grant PRASA access to the Supplier's Intellectual Property on terms which shall be bona fide negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

28.1.5. The above shall not pertain to any software licenses procured by the Supplier from third parties and used in the supply of the Intercity Coaches.

## **28.2. Unauthorised Use of Confidential Information**

28.2.1. The Supplier shall not authorise any party to act on or use in any way any Confidential Information belonging to PRASA whether or not such party is aware of such Confidential Information, and shall promptly notify PRASA of the information if it becomes aware of any party so acting, and shall provide PRASA the information with such assistance as PRASA reasonably requires, at PRASA's cost and expense, to prevent such third party from so acting.

## **29. NON-WAIVER**

29.1. Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not in any manner be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

29.2. Such failure or neglect shall not in any manner affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

## **30. PARTIAL INVALIDITY**

30.1. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

## **31. DISPUTE RESOLUTION**

- 31.1. Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation between the CEO and Franchise Executive within 10 [ten] Business Days of such dispute arising.
- 31.2. 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.
- 31.3. Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 31.4. 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 31.
- 31.5. This clause 31 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 31.6. This clause 31 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## **32. ADDRESSES FOR NOTICES**

- 32.1. The Parties to this Agreement select the physical addresses and fax numbers, as detailed hereafter, as their respective addresses for giving or sending any notice provided for or required in terms of this Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other:

**PRASA**

For legal notices

Umjantshi House

30 Wolmarans Street

Braamfontein

Johannesburg

Fax No: \_\_\_\_\_

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

For commercial notices:

**Address of the Supplier**

Fax No: \_\_\_\_\_

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

32.2. Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.

32.3. Any notice shall be deemed to have been given:

- a) if hand delivered, on the day of delivery;
- b) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or should no postal facilities be available on that date, on the next Business Day; or
- c) if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or should no postal facilities be available on that date, on the next Business Day.

### **33. WHOLE AND ONLY AGREEMENT**

- 33.1. The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.
- 33.2. The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatsoever between them, with regard to the subject matter dealt with in this Agreement, any annexures appended hereto.

### **34. AMENDMENT AND CHANGE CONTROL**

- 34.1. Any amendment or change of any nature made to this Agreement, thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the parties. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.
- 34.2. In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 31 [Dispute Resolution].

### **35. GENERAL**

#### **35.1. Governing Law**

- 35.1.1. This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

#### **35.2. Change of Law**

35.2.1. In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Supplier and PRASA cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 31 [Dispute Resolution] above.

### 35.3. Counterparts

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.

## 36. DATABASE OF RESTRICTED SUPPLIER

36.1. The process of restriction is used to exclude a company/person from conducting future business with PRASA and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners, or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. PRASA reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_ 2026.

\_\_\_\_\_

On behalf of PRASA

WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_ 2026

\_\_\_\_\_

On behalf of

WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

## ANNEXURES