

## **CONTRACT**

**Between**

**PRASA CRES CORPORATE REAL ESTATE SOLUTIONS (“PRASA CRES”)**

**(A DIVISION OF PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA))**

**(Herein referred to as PRASA CRES)**

**And**

**CONTRACTOR NAME :**

**Registration number:**

**(Herein referred to as the Contractor)**

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## 1 INTERPRETATION

1.1 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meaning;

- 1.1.1 "Commencement Date" shall mean the date **XXXXXXXX 2022**"
- 1.1.2 "Contract" shall mean this contract, the tender and all schedules attached hereto, THE PERFORMANCE BASED ATTACHMENT DOCUMENT, the letter of acceptance together with all other documents which the parties have agreed in writing that shall form part of this contract.
- 1.1.3 "Contract Price" The price shall mean the fixed amount contained in the notice to proceed letter issued by PRASA CRES to the contractor.
- 1.1.4 "Contractor" shall mean **CONTRACTOR NAME**, or any other third party employed or hired by the said Contractor for the performance of this Agreement.
- 1.1.5 "Work" shall mean the work to be executed by the contractor as set out in Annexure "A" herein.
- 1.1.6 "Site plan" shall mean the plan indicating the work to be executed by the contractor in terms of Annexure "A" herein.
- 1.1.7 "Site" shall mean the area where the contractor is contracted out to perform his services.
- 1.1.8 "PRASA CRES" shall mean the Corporate Real Estate Solutions division of the Passenger Rail Agency of South Africa.
- 1.1.9 "PRASA CRES's Representative" shall mean PRASA CRES Supply Chain Manager or such other person as may be appointed from time to time by PRASA CRES and who has the necessary authority to represent PRASA CRES;
- 1.1.10 "Parties" shall mean the parties to this Agreement, being **CONTRACTOR NAME and PRASA CRES**

- 1.1.11 "Personnel/ employee" shall mean any employee **CONTRACTOR NAME** carrying out duties at the Site on behalf of the Contractor in terms of this Agreement;
- 1.1.12 "Tender" shall mean the contractors priced and detailed offer to PRASA CRES in respect of the work attached hereto as Annexure "B"
- 1.2 Words importing the singular shall include the plural and vice versa and words importing one gender shall include the other gender, any reference to a natural person shall include a body corporate, firm or association and vice versa.
- 1.3 The headnotes / clause headings to the paragraphs in this Agreement are for reference purposes only and shall not affect the interpretation of any part of this Agreement.

## **2 GENERAL DESCRIPTION**

This Agreement shall be for "**SERVICE PROVIDER FOR MAINTENANCE SUPPORT OF HVAC SYSTEMS AND INFRASTRUCTURE FOR UMJANTSHI HOUSE; GAUTENG NERVE CENTRE AND SHOSHOLOZA MEYL**". for the performance of the services outlined in Annexure "A" and "B", in accordance with the requirements of this agreement.

## **3 APPOINTMENT**

- 3.1 PRASA CRES appoints the contractor on an "as and when" required basis to perform the work and the contractor accepts the appointment on the terms and conditions set out in this contract.
- 3.2 The contractor agrees to perform the work.
- 3.3 The contractor shall under no circumstances be entitled to sub-contract the work unless the contractor has received written permission from PRASA CRES to do so.
- 3.4 The Contractor shall, at its own risk and expense, provide the Personnel, equipment, tools, materials, and consumables required to execute the Services.
- 3.5 The Contractor shall be responsible for the quality and quantity of all workmanship provided in terms of this Agreement and the fact that PRASA CRES has not objected to any workmanship provided by the Contractor, even after having inspected it, shall not relieve the Contractor of its responsibility regarding such workmanship.

## 4 CONTRACT TERM

- 4.1 Notwithstanding the date of signature of this agreement, this contract shall be deemed to have commenced on the **XXXXX2022 till XXXX 2024** for a period of three years or the utilisation of funds stated in clause 5.1. PRASA CRES may, at its sole discretion, elect to extend on the same terms and conditions but shall be under no obligation to do so.
- 4.2 This contract, at the sole discretion of PRASA CRES, shall be renewed on the same terms and conditions, subject to any agreed variation in the amount payable for the work to be performed. Either party may terminate this contract by giving no less than one month written notice of such termination. Any renewal of this agreement shall be in writing and in accordance with the PRASA CRES procurement processes and policies.
- 4.3 Nothing in clause 4.2 of this agreement shall give any right or expectation that this contract will be renewed, nor places any obligation on PRASA CRES to renew the contract.

## 5 CONSIDERATIONS

- 5.1 The contractor shall be limited to a maximum value of **R XXXXXXXX total fixed amount and also basing it on your rate quoted in the quotation document for SERVICE PROVIDER FOR MAINTENANCE SUPPORT OF HVAC SYSTEMS AND INFRASTRUCTURE FOR UMJANTSHI HOUSE; GAUTENG NERVE CENTRE AND SHOSHOLOZA MEYL. (24 Months With An Option To Extend For A Further One (1) Year 'AS AND WHEN) whichever comes first. 24 hours; seven days a week including public holidays.** The contract shall be as per agreed value as per the initial appointment letter.

### 5.2 Invoicing and Payment

- 5.2.1 Prasa Cres shall pay the Contractor the stipulated amount in the relevant schedule or Work order subject to the terms and conditions of the Agreement.
- 5.2.2 Prasa Cres shall pay such amounts to the Contractor, upon receipt of a correct and undisputed invoice together with the supporting documentation as specified in the Annexure A.

- 5.2.3 The contractor shall submit the quotation and all other supporting documents within 24 hours after executing the job.
- 5.2.4 Upon receipt of the Purchase order the contractor shall submit to PRASA CRES an invoice and a statement specifying the works performed within 7 days of completing the works on site and detailing the amount due and payable to the contractor, where applicable value added tax shall be shown separately in each invoice. The invoice shall include PRASA CRES.
- 5.2.5 PRASA CRES shall pay the amount payable to the contractor no later than 30 days of submission of the invoice. Any credit notes deductible in terms of penalties and or fines imposed in terms of the contract will be affected in the subsequent month.
- 5.2.6 Quotations for any corrective work required shall be submitted to PRASA CRES and on the approval of such quotations the Contractor will correct or repair accordingly.
- 5.2.7 The contractor shall provide photos and relevant certificates of before/during and after work completed with claim submitted. Photos and all evidence of completed work can be submitted electronically.

### **5.3 Penalties for Non-compliance**

Penalty for poor quality of work shall be imposed subject to non-compliances of the contractor. The decision regarding Penalty & Imposing Penalty shall be of **Prasa Cres**. This is in addition to the proportional amount to be deducted for non-completion or not carrying out the work.

- 5.3.1 In case Prasa Cres finds that the contractor's team is executing any **electrical** activities without a qualified Artisan the penalty up to **R1000.00** per incident /site will be imposed.
- 5.3.2 In the event that an appointed Contractor as per the General provisions of this As and When agreement fails to adhere to the priority levels as prescribed PRASA CRES Facilities department the penalty up to **R 2000** per incident /site will be imposed and if this provision is continually violated the contract will be terminated.
- 5.3.3 If, during inspection, the Personnel are not found in proper PPE (Personnel protective equipment) a penalty up to **R 200** per employee per day will be imposed.
- 5.3.4 In case of unavailability of proper tools for executing work the penalty up to **R1000.00** per day will be imposed.

### **5.4 Maintenance**

5.4.1 All planned work will be carried out during normal working hours. Visits to the premises will be as scheduled for the contractor to carry out maintenance work as per the specification. Sites have visitors' book which is to be properly completed by the Contractor on every visit and the reason for the visit recorded in the book.

5.4.2 The Contractor shall produce and issue to PRASA CRES a written report or service sheet of any testing, inspection, examination, investigation and/or assessment undertaken and execution of any repairs by the Contractor. Reports will highlight:

- the type of work or service done;
- problems experienced;
- results of inspection;
- faults found and their priority thereof.

5.4.3 PRASA CRES reserves the right to conduct an independent safety and quality audit to be carried out on the work completed by the contractor. The contractor shall provide his own quality controls to ensure compliance with the specifications and any changes to legislation or regulations applicable. Possible modernisation products to upgrade or to improve the reliability and performance of the installation will be brought to PRASA CRES for consideration.

## **5.5 Contract Performance**

5.5.1 The contractor will sign a service level agreement with the PRASA-CRES. The performance of the Contractor will be discussed on the monthly basis at meetings scheduled to sit at PRASA CRES offices. Performance Items to be discussed will include:

- the number of breakdowns for specific period
- the turnaround time to attend to emergency callouts.
- planned vs. actual progress.
- submission of reports, invoices and other administration duties
- payment of invoices

## **5.6 Material**

5.6.1 The contractor is responsible for supply of all material required to repair the faults as per job cards /work order.

5.6.2 PRASA CRES reserves the right to conduct market analysis. Should Prasa Cres exercise this option, where a tenderer offers a price that is deemed not to be viable to supply goods or services as required, written confirmation will be made with the tenderer if they will be able to deliver on the price.

5.6.3 Prasa Cres Maintenance Manager /Supervisor reserve the right to query price of any material that is on the material list. He /she may request that the contractor justifies a copy of the material purchased, invoices or actual quotes from reputable suppliers.

5.6.4 All material belonging to PRASA CRES and is removed by the Contractor is to be returned to PRASA CRES unless otherwise stated.

***NB: The contractor material supplier must be a reputable material supplier and only market related material prices will be accepted by PRASA.***

5.7 The Contractor shall respond to call-backs during normal hours, after hours and public holidays, unless the Contractor is prevented from doing so by causes beyond their control as referred in Clause 16.

5.8 The response time for calls on any work that needs to be done should be within an hour.

## **5.9 Safety**

5.9.1 The contractor shall ensure that all its duties are performed in accordance with the Occupational Health and Safety Act, 1993 (Act no. 85 of 1993) and adhere to all safety rules and regulations as laid down by the Department of Labour.

5.9.2 The Contractor must prepare and submit a complete occupational health & safety file to the Project Manager within 7 days after acceptance of Appointment letter. The Project Manager will then submit the Occupational Health & Safety file to the Risk Department for approval before the commencement of the works.

5.9.3 The Contractor is expected to conduct the medical examinations for all their employees before commencement of work and these medical examinations must be carried out by a registered Occupational Health practitioner. All costs associated will be for the Contractor's account.



## **6 EQUIPMENT, WATER & ELECTRICITY**

- 6.1 The Contractor shall equip each member of its Personnel with all the equipment and training that is necessary for efficiently providing the Services.
- 6.2 The contractor is required to supply, store (on the relevant site only if such storage is available) and safeguard all material and equipment required for the work it will perform in terms of the contract.
- 6.3 The contractor may use water and electricity required for the work at no charge, from the existing supply point on the relevant site, if and where available.

## **7 LIMITATION OF LIABILITY**

- 7.1 The contractor shall be liable for all the acts and omissions of its employees in execution of the work and any other obligations of the contractor in terms of this contract.
- 7.2 The contractor hereby indemnifies and holds PRASA CRES harmless from:
  - 7.2.1 Any damage to any property managed by PRASA CRES whether movable or immovable,
  - 7.2.2 The loss of property belonging to PRASA CRES,
  - 7.2.3 Any liability in respect of damage to property whether movable or immovable,
  - 7.2.4 Any liability in respect of the loss of any property belonging to a third party,
  - 7.2.5 Any liability in respect of death, unlawful arrest, injury illness or disease of any person and
  - 7.2.6 Any legal expenses or expenditure reasonably incurred by PRASA CRES in connection with any claims or actions emanating from any cause attributable or connected to the work which is performed by the contractor in terms of this contract.

Clause 7.2 only applies where the damage or loss, liability or legal expense as the case may be is caused by any act or omission by the contractor its employees or its agents notwithstanding the nature of the relationship between the Contractor and the persons (the Personnel) referred to in 3.4 above, the Contractor hereby assumes vicarious liability for the actions of such persons as if such persons were employees of the Contractor.

## **8 UNDERTAKINGS AND WARRANTIES**

Further to the warranties and guarantees given elsewhere in this contract;

- 8.1 The contractor gives PRASA CRES in connection with the tender all the warranties and undertakings set out in paragraph 8.6 herein,
- 8.2 The warranties are given as at the commencement date,
- 8.3 Each warranty shall also be seen as an undertaking which shall continue to remain in force for the duration of this contract,
- 8.4 Where appropriate the warranties are representations and undertakings in favour of PRASA CRES,
- 8.5 Each of the warranties shall be qualified to the extent that the contractor has made written disclosure against any warranty at the time of submitting the tender,
- 8.6 The contractor warrants that:
  - 8.6.1 All members of its Personnel shall have the qualifications and experience which could reasonably be expected of a person performing the duties assigned to that person and warrants that all such persons will be competent to perform the duties assigned to them in a professional manner;
  - 8.6.2 the information submitted by it in its tender for the Services is true and correct and that such information will form part of this Agreement. The tender documentation referred to in this clause is attached hereto as Annexure “B”;
  - 8.6.3 it complies with all the relevant legislation applicable to it in the form of statutes, ordinances, bylaws, regulations or otherwise in force from time to time, which apply in relation to its employees;
  - 8.6.4 it complies with all laws, regulations ordinances, by laws in force from time to time which apply to the type of manner in which it conducts its works;
  - 8.6.5 it conducts its tax affairs in an orderly and lawful manner and complies with all laws and directives relating to its tax situation; the contractor grants PRASA CRES the right to approach SARS should the need arise to do so.
  - 8.6.6 it complies with its commitment in terms of black economic empowerment and development programme.
  - 8.6.7 Any breach of the above warranties, or any failure to observe the undertakings given shall amount to a material breach for the purposes of clause 13 of this contract.

## **9 PUBLIC LIABILITY INSURANCE**

- 9.1 On or before the signature of this Agreement, the Contractor shall take out a Public Liability Insurance Policy with a compensation limit of not less than R500 000.00.
- 9.2 The Contractor shall, within 7 days after the effective date, provide the PRASA CRES with a copy of the policy referred to in clause 9.1.
- 9.3 The Contractor shall ensure that the insurance policy referred to in this clause 9.1 remains in full force and effect for the duration of this Agreement and may not be cancelled or terminated without the prior written consent of PRASA CRES.
- 9.4 the contractor shall:
  - 9.4.1 pay the premiums of the policy promptly on the due dates;
  - 9.4.2 submit proof of payment to PRASA CRES if requested to do so, and
  - 9.4.3 not do or cause to be done any act or omission that may affect the validity of the policy or cause cancellation.
- 9.5 Should the contractor submit a claim under the policy, it shall be responsible for payment of all access payments and or other costs claimed by the contractor.

## **10 OBLIGATIONS OF THE CONTRACTOR**

Without derogating from the remaining obligations of the Contractor as set out in this Agreement, the Contractor shall:

- 10.1 Manage and co-ordinate the day to day activities of its employees;
- 10.2 upon reasonable request furnish PRASA CRES with employment criteria and any other documentation relating to its employees;
- 10.3 develop a formal procedure aimed at ensuring the efficient conduct of all day to day activities necessary for the successful rendering of the Services.
- 10.4 in addition to all the items listed in Annexure "B" under "Specifications", at its cost supply all tools, material, and Equipment etc., required to fulfil the contract;
- 10.5 ensure that its employees exercise the utmost degree of good faith, skill and care in all matters relating to the Services.
- 10.6 furnish its employees with uniform and employee identification cards, which shall be worn by the Personnel at all times whilst on duty.
- 10.7 respond promptly to all complaints and enquiries from Prasa Cres ;
- 10.8 capacity allocations in accordance with the Service to be provided;

- 10.9 all work to be performed and Services rendered under this Agreement shall comply with industry norms and best practice acceptable within the Services industry and shall be executed by the Service Provider to the total satisfaction of the Prasa Cres.
- 10.10 the contractor shall provide suitably qualified and trained employees to provide the Services to Prasa in terms of this Agreement, and shall allocate, in its discretion employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the contractor shall not negatively impact on the provision of the Services by the Contractor to Prasa Cres and shall allocate employees with the technical skill and knowledge onsite at the Prasa Cres sites at all times during normal and abnormal hours, if Prasa Cres requires the service.
- 10.11 The frequency of the servicing and repairs of different items shall be as set out in Annexure "A".

## **11 OBLIGATIONS OF PRASA CRES**

PRASA CRES shall:-

- 11.1 upon receipt of the invoice/ statement make payment of all amounts due and payable to the contractor;
- 11.2 Make storage space available to the Contractor where such storage facility is available on site. Where no facility is available PRASA CRES is under no obligation to make such facility is available.

## **12 DISPUTES**

- 12.1 Should a dispute arise between the Parties regarding the construction, meaning or effect of this Agreement or pertaining to the rights, obligations or liabilities of either of the Parties, then such dispute shall, if no amicable agreement is arrived at, be determined by arbitration in terms of the provisions of the Arbitration Act, Act No 42 of 1965 now in force or any amendments or Act passed in substitution thereof.
- 12.2 The arbitrator shall be appointed by agreement between the Parties or in the event that the Parties are unable to agree on an arbitrator, the nominee of the President of the Law Society of the Northern Provinces shall be appointed as arbitrator.
- 12.3 The parties shall be equally responsible for the fees payable.
- 12.4 The decision of the arbitrator is final and binding on the parties.

### **13 BREACH OF AGREEMENT**

- 13.1 Should either Party commit a breach of any term of this Agreement or fail to comply with the true intent, meaning and spirit thereof, then and in such event the affected Party shall be entitled to instruct the other in writing to remedy such failure or default within 7 (seven) days of written notice thereof and should such Party fail to comply with the instructions within the time prescribed therein then the so affected Party shall be entitled in its sole discretion and without prejudice to any of its rights under this Agreement or other remedy for breach of contract -
- 13.1.1 To terminate this agreement forthwith and claim damages, which shall include legal costs on an own attorney/client basis; or
- 13.1.2 To request specific performance and claim damages, which shall include legal costs on an own attorney/client basis.
- 13.2 Despite the provisions of paragraph 13.1 above, in the event that any breach of the provisions of this contract poses any immediate threat or damage to person or property, the other party shall be entitled to cancel this contract with 48 hours' notice to the defaulting party.

### **14 JURISDICTION**

Without prejudice to PRASA CRES's rights to institute any action or proceedings in any division of the High Court having jurisdiction, the contractor hereby consents to the jurisdiction of the Magistrate's Court in respect of any action or proceedings against it by PRASA CRES in connection with this contract, notwithstanding that the action or proceedings would otherwise be beyond that jurisdiction.

### **15 CONFIDENTIALITY**

Both Parties acknowledge that the details of this Agreement and any communication between the Parties arising out of or in connection with this Agreement are strictly confidential and shall not be disclosed to any third party (whether before or after the termination date of this Agreement) without the prior written approval of the other Party, who shall have the right to grant or refuse such consent in its absolute discretion.

### **16 FORCE MAJEURE**

- 16.1 Notwithstanding anything to the contrary herein contained, should either of the Parties be prevented from fulfilling in whole or in part its obligations in terms of this Agreement, whether such prevention arises from, an Act of God, war, civil commotion, strikes, lockouts, revolutions, fires, explosions, floods, political disturbances, acts of any Governmental or local authority, or any other cause whatsoever over which that Party has no reasonable control ("force majeure"), such Party shall be exempted from liability to the extent and for the period it is thereby prevented from fulfilling its obligations. The Party so prevented from fulfilling its obligations hereunder shall immediately notify the other to that effect in writing, giving a full and complete explanation of the

circumstances responsible for such failure or occurrence as well as the estimated duration thereof and, if applicable, the action(s) such Party is taking or proposes to take to remove the said circumstances with the least possible delay as well as the action(s) to be taken to prevent future recurrences.

16.2 Should the Contractor, due to force majeure, not be able to supply the Services, then PRASA CRES shall be entitled -

16.2.1 To a reduction of the Contract Price on a pro rata basis; and

16.2.2 To appoint any other person to execute the Services until such time that the Contractor is able to render the Services.

16.3 Should such occurrence continue for a period of thirty (30) days or longer, either Party may terminate this Agreement, unless the Parties agree to continue on such new terms and conditions acceptable to both Parties.

## **17 CESSION**

Neither Party shall cede, assign, sublet or make over this Agreement or any part thereof or any of its rights, benefits, duties or obligations hereunder to any other person without the written consent of the other Party, which consent shall not unreasonably be withheld or delayed to the detriment of either Party.

## **18 INDEMNIFICATION**

The Contractor irrevocably and unconditionally indemnifies and holds PRASA CRES free and harmless against all actions, suits, demands, claims, costs or expenses, whatsoever, arising directly, indirectly or consequently out of any act or omission of the Contractor in terms of this Agreement.

## **19 INSOLVENCY**

Should an application be made for the surrender or sequestration of a Party's estate, or should an order be issued, whether provisional or final, for the sequestration of a Party's estate, or should a Party enter into or propose any deed of assignment to any of its creditors for settlement of its debts, or if execution is issued against a Party by virtue of any Judgement, or if a Party commits any act of insolvency, or, being a legal entity, is placed under Judicial management, or commences to be wound up in a liquidation that is not merely a voluntary liquidation for the purpose of reconstruction, then the other Party may, without prejudice to any of its rights in terms of this Agreement or common law, forthwith terminate this Agreement.

## **20 GENERAL**

20.1 This contract document, including all attached annexures, constitutes the sole record of the Agreement between the parties in regard to the subject matter of this Agreement.

- 20.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 20.3 No addition to, variation or consensual cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of all the parties.
- 20.4 No indulgence which any of the parties (the grantor) may grant to any other or others of them (the grantee(s)) shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future.
- 20.5 The parties undertake at all times to do such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such action and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.
- 20.6 If for any reason any clause in this contract becomes void or unenforceable it shall be severable from the remainder of this contract which shall remain in full force and effect
- 20.7 This contract shall for all purposes, be construed in accordance with the laws of the Republic of South Africa.

## **21 DOMICILIUM AND NOTICES**

- 21.1 The parties hereto choose *domiciliacitandietexecutandi* the following physical addresses, and for purposes of giving of or sending any notice provided for or required under this Agreement:

### **PRASA CRES:**

PHYSICAL ADDRESS:

30 Wolmarans street

Braamfontein

Johannesburg

FOR ATTENTION:

Supply Chain Management

### **CONTRACTOR NAME**

PHYSICAL ADDRESS:

Tel:

FOR ATTENTION:

MR / MRS XXXXXXXX

- 21.2 Either party hereto shall be entitled to change its *domicilium* from time to time, provided that any *domicilium* selected by it shall be situated in the Republic of South Africa, shall be an address other than a box number and any such change shall only be effective upon receipt of notice in writing by the other party of such change.
- 21.3 A notice sent by one party to another party shall be deemed to be received:
- 21.3.1 on the same day, if delivered by hand;
  - 21.3.2 on the same day, if sent by telefax, (provided the original is immediately posted by prepaid registered mail) or cablegram;
  - 21.3.3 on the seventh day after posting, if sent by prepaid registered mail.



## 22 SIGNATURE

22.1 SIGNED by PRASA CRES Limited at \_\_\_\_\_ on this \_\_\_\_ day  
of \_\_\_\_\_ 2022 in the presence of the undersigned witnesses;

.....  
(Name) (Signature)

Witnesses:

1 .....  
(Name) (Signature)

2 .....  
(Name) (Signature)

Who warrants that he is duly authorised

22.2 SIGNED by \_\_\_\_\_ at \_\_\_\_\_ on this \_\_\_\_ day  
of \_\_\_\_\_ 2022 in the presence of the undersigned witnesses

.....  
(Name) (Signature)

Witnesses:

1 .....  
(Name) (Signature)

2 .....  
(Name) (Signature)

Who warrants that he is duly authorised