



## **EXHIBIT SS 8**

**MFANIMPELA MOSES  
DINGISWAYO**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

2<sup>nd</sup> floor, Hillside House  
17 Empire Road,  
Parktown  
Johannesburg  
2193  
Tel: (010) 214 to 0651  
Email: [inquiries@sastatecapture.org.za](mailto:inquiries@sastatecapture.org.za)  
Website: [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

---

**INDEX: EXHIBIT SS 8**

---

#	Pages	Pages
1.	Affidavit of Mfanimphe Moses Dingiswayo	001 to 026
2.	Annexure "MMD1"	027 to 031
3.	Annexure "MMD2"	032 to 041
4.	Annexure "MMD3"	042 to 044
5.	Annexure "MMD4"	045 to 057
6.	Annexure "MMD5"	058 to 073
7.	Annexure "MMD6"	074 to 082
8.	Annexure "MMD7"	083 to 090
9.	Annexure "MMD8"	091 to 092
10.	Annexure "MMD9"	093 to 098
11.	Annexure "MMD10"	099 to 114
12.	Annexure "MMD11"	115 to 120
13.	Annexure "MMD12"	121 to 124

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

---

**AFFIDAVIT**

---

I, the undersigned,

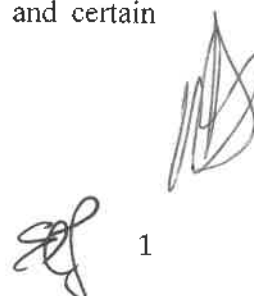
**MFANIMPELA MOSES DINGISWAYO**

do hereby make oath and state that:

- 1 I am an adult male employed as the General Manager: Group Legal Services by the Passenger Rail Agency of South Africa ("PRASA"). I started my employment at PRASA and in this role on 2 September 2013.
- 2 The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my knowledge and belief both true and correct.

***Purpose***

- 3 The purpose of this affidavit is to furnish information to the State Capture Commission ("the Commission") on the dealings between PRASA and certain



1

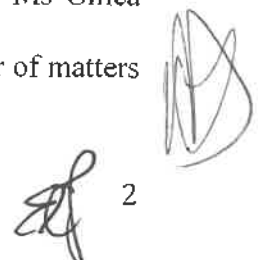
## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

entities and individuals that have been and still are a matter of deep concern for me and many others at PRASA.

4 At the outset, I should point out that it has long been known at PRASA that there are certain persons and entities that have wielded undue influence over some of the most senior persons at PRASA, starting with its former Group Chief Executive Officer ("Group CEO"), Mr Lucky Montana. It is equally well known that if you crossed Mr Montana's path or attempted to ensure that things were done lawfully and properly insofar as these entities and individuals are concerned he ruthlessly abused his powers and even arrogated to himself powers that he did not possess. And, when the Courts and other tribunals intervened to set right his wrongs, it was no skin off his back. This is because it was always at the expense of PRASA, which would be required to pay quite hefty amounts in back pay and compensation for the unfair treatment that Mr Montana visited on employees. On this issue, as I detail hereunder, I speak from experience.

5 Being in Group Legal Services, I was often required to deal with the maladministration that was so pervasive at PRASA. I do not make this observation lightly: in her Report released in August 2015 and entitled Derailed, the then Public Protector, Ms Thuli Madonsela, concluded that there was rampant maladministration at PRASA. And, our courts have found that a contract valued at some R3,5 billion had been concluded corruptly.

6 I am aware that the Group Executive: Legal, Risk and Compliance, Ms Onica Martha Ngoye, has made an affidavit in which she deals with a number of matters





2

## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

that are before our Courts. I am familiar with all those matters, as Ms Ngoye and I often worked together on them.

- 7 I confirm the correctness of what Ms Ngoye says, in respect of the matters on which we worked together. In addition, I confirm the correctness of what Ms Ngoye says in respect of the meetings of the Board. On account of the fact that I was the acting Group Secretary, I attended those meetings in that capacity. [I was acting Group Secretary from 25 March 2019 to 29 August 2019.
- 8 In light of the fact that Ms Ngoye has dealt with many of the Court matters that are relevant to this Commission's investigations, it is not my intention to address them in any detail in this affidavit. I will consider them generally and collectively where I am of the view that what I say will be of assistance to the Commission.
- 9 However, there is one specific matter in respect of which I wish to give details, as it illustrates quite graphically the manner in which PRASA operated during the period when Mr Montana was its Group CEO.
- 10 The matter concerns PRASA's dealing with an entity called Prodigy Business Services (Pty) Limited ("Prodigy"). In doing so, I will focus on the interactions between Group Legal Services and other PRASA officials in relation to the handling of this matter.
- 11 I should perhaps begin by placing on record the following matters.

## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

- 11.1 First, PRASA, being an organ of state as defined in the Constitution, is required to scrupulously comply with section 217 of the Constitution, which requires that goods and services must be procured in accordance with a system that is fair, equitable, transparent competitive and cost effective. In addition, PRASA must comply with the applicable provisions of other statutory and regulatory measures relating to such procurement, such as the the Public Finance Management Act, No 1 of 1999, and applicable Treasury Regulations and Guidelines.
- 11.2 Second, it is now a matter of public record that Mr Montana had been employed in the following state departments before joining PRASA: the Department of Public Enterprises and the Department of Transport. He headed PRASA from about July 2006 when he joined it. He left in July 2015.
- 11.3 Third, Prodigy is a Johannesburg-based registered private company. It had entered into a number of contracts with PRASA to provide training and other related services. [PRASA has since placed the validity of those contracts in dispute.]
- 11.4 Fourth, a document that was annexed to Prodigy's payment application, which is annexed as **MMD1**, reflects that Prodigy was registered on 19 June 2006, with a Ms Nerishni Shunmugan being a director. Some five years later, Mr Chockalingam Moodley, who is



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

known as Mr “Roy Moodley”, was appointed as a director. He however resigned as such on 1 March 2012.

11.5 Fifth, in about 2018, Mr Moodley was involved in an attempt to convince PRASA to pay monies that were alleged to be owing to Prodigy. Therefore the persons who have represented Prodigy at PRASA in relation to the agreements purportedly concluded between PRASA and Prodigy were Ms Shunmugan and Mr Moodley.

11.6 Sixth, as pointed out by Ms Ngoye, Mr Moodley is alleged to have benefited or alleged to be related to other entities that benefited from PRASA contracts that were concluded irregularly. Among the entities of which I am aware are: Royal Security (Pty) Limited, Siyangena Technologies (Pty) Limited and Strawberry Worx (Pty) Limited (“Strawberry Worx”).

11.7 Seventh, PRASA has applied to the High Court to review the different agreements purportedly concluded between it and Prodigy. That issue is accordingly before the Court. It is not my intention to canvass that issue in these proceedings.

12 I wish to set out in brief the manner in which the agreements were concluded and how, when I raised questions about the validity of one of the agreements Mr



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

Montana dismissed me and thereafter Ms Ngoye who had questioned the fairness of my dismissal.

- 13 I also point out that, after Mr Montana left PRASA, the whole issue was investigated by Mr Jabulisa Majola, who thereafter compiled a report. A copy of his report is annexed as **MMD2**.
- 14 Before I refer to specific aspects of the Majola Report, it will be helpful for me to outline how the contracts came into being. In brief, the various developments and processes may be summarized as follows.

- 14.1 On 10 June 2010, Ms Shunmugam sent a letter to Mr Montana proposing some form of “partnership”. The letter is annexed as **MMD3**. Mr Montana noted on the letter that the proposal should be accepted in writing and an MOU be concluded. A partnership agreement between Prodigy and PRASA was signed by the two on 11 October 2010. A copy is annexed as **MMD4**. Thereafter, on 30 August 2011, an addendum was concluded, with Mr Mphefo now signing on behalf of PRASA. A copy is annexed as **MMD5**. On 31 October 2012, a further aspect was added to the agreement, with Mr Montana again representing PRASA. This aspect is annexed as **MMD6**. In effect, this part of the contract required PRASA to pay Prodigy R24 000 per learner for a a five-day course! Be that as it may, on 10 May 2015, PRASA and Prodigy entered into an SLA.





## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

This was signed on behalf of PRASA by a Ms Ntlomo Koka representing PRASA. A copy of the SLA is annexed as **MMD7**.

14.2 In about February or March 2015, I was asked by the Contracts Manager at SCM, Mr. Sidney Khuzwayo, to draft an agreement to reinstate and extend two of the earlier contracts. After reviewing the matters, I raised a number of compliance issues. However, on 1 April 2015, Prodigy sent an email to the office of the CEO asking about outstanding payments.

14.3 I later raised questions about certain issues relating to the drafting of the proposed agreement and said until these were addressed I would not begin drafting the agreement.

14.4 On 10 April 2015, Prodigy sent a further email, this time setting out the what the thrust and purposes of the agreements were. The email is instructive as it shows that Ms Shunmugam was aware of what had been going on internally at PRASA.

14.5 On 18 April 2015 I was provided with a draft of an SLA that had been sent to me by Ms. Nonhlanhla Kondowe. I set out my concerns in an email, which I sent to, amongst others, Ms. Kondowe. I also sent this email to the then Group Chief Procurement Officer, Mr Josephat Phungula.





## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

14.6 It appears that there was general acceptance that the contracts were invalid, but a view was put forward that Prodigy was “innocent” and that PRASA should therefore proceed with the transaction. On 18 May 2015, Mr Montana sent an email contending that there was nothing wrong with the extension of the contract and alleged that “certain contracts” were being targeted and a “dirty campaign” was being waged against him. A copy of his email is annexed as **MMD8**. For the record, I dispute these allegations.

14.7 At about 19h00 on the following day, that is 19 May 2015, Mr Montana’s PA, Ms Itumeleng Kgosana, phoned me to say Mr Montana wished to see me urgently. I asked if it could wait until the following day. She phoned back to say he wished to see me personally that evening. Before going to the meeting with Mr Montana, I called Ms Ngoye and told her about the meeting.

14.8 I arrived at Mr Montana’s office and sat to meet with him. He thanked me for coming back to work from home and made light of this by chuckling. He then indicated to me that he had been told that I was one of the people that were working against the interests of PRASA on a number of matters and that I was abusing my position as one of the legal advisors of PRASA. He cited as an example that I had told PRASA employees to cancel some tender. I indicated to

  
8

## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

him that, in my position, I had no powers to tell people to cancel any tender and that I had not given any such advice.

14.9 Mr Montana told me that he was not interested in what I had to say and that the only thing that he had called me for was to tell me that I no longer worked at PRASA.

14.10 Mr Montana also accused me of leaking documents to the Board. This was a very strange accusation as the Board had been reconstituted about 10 months before this meeting, I knew none of the Board members, my daily duties did not expose me to the Board and I had not even shared any documents with the Board. In any event, I do not know how one could possibly leak PRASA documents to the PRASA Board as the Board is, by law, is the accounting authority.

14.11 Mr Montana went on to say that the only thing that he could discuss with me was how much I would accept for my contract to be terminated. I responded that if he had decided to terminate my employment I will have to deal with that and that I was not going to be party to an unlawful termination of my own employment. Mr Montana told me that I could wait for my letter of termination or indicate where I would like to have it delivered. I responded that I would fetch my letter when I fetched my personal belongings the next day.



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

14.12 This meeting was a very short meeting; I had driven for 30 minutes, one way, for a meeting of about 5 minutes.

14.13 I left Mr Montana's and called Ms. Ngoye to tell her that I had been unfairly dismissed. Ms Ngoye found this outrageous. She insisted that we meet so that I could properly explain what had happened. We met and I told her about my strange meeting with Mr Montana. She immediately called him. They had a brief but heated discussion. She told me that she has agreed to meet Mr Montana the next day to discuss my dismissal. What appeared to make the discussion heated was that Mr Montana could not say what I had done to deserve this treatment.

14.14 The following day, after her meeting with Mr Montana, Ms Ngoye told me she had also been dismissed on the spot by Mr. Montana, as he viewed her questioning his decision to dismiss me as insolence. He did not give her his reasons for dismissing me. Her meeting with Mr Montana was also a short one.

14.15 I submit that the reaction of Mr Montana was of one who had suffered a bout of temporary irrationality or someone who was overly invested in showing that his word was final or someone who was overly invested in this transaction and was intolerant of anyone who saw the screaming irregularities in the transaction. There is no





## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

reason why Mr Montana insisted on the involvement of Group Legal Services in the drafting of the contract. This would not have been the first agreement that he would have signed without the input of Group Legal Services. This was one of the findings of the Public Protector in her report entitled “Derailed”.

14.16 Ms Ngoye and I wrote to PRASA’s Board of PRASA telling it of the events of 19 and 20 May 2015 and that we had referred the unfair dismissals to the CCMA. The Board’s Chairperson, Mr Popo Molefe told us that he had prevailed upon Mr Montana to follow the law in applying discipline and that Mr Montana agreed to reinstate us. However, Mr Montana suspended us a week after our reinstatement. This suspension was lifted during August 2015 after an investigation by the then acting Group CEO, Mr Nathi Khena, found no evidence of misconduct on my part.

14.17 Reverting to the SLA, on 29 May 2015, Ms Ntlomo Koka signed the SLA. As far as I was aware, Ms Koka had not been involved in the drafting of the contract between March and the day I was dismissed. She was also not authorised to sign the SLA. Curiously, the SLA does not have any of the essential terms that should be contained in an agreement of this nature, for example, the number of employees to be trained, the frequency of the training and the cost of the training. The absence of these terms rendered the agreement

  
11

## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

unenforceable. The SLA was also at variance with instructions I had received from the SCM department.

14.18 After our dismissal and subsequent reinstatement, other PRASA employees who did not support the contract were also placed on suspension. They however returned to work after Mr. Montana left PRASA without any charges being proffered against them. Among them were Mr Khuzwayo and Mr Allan Gangiah, a manager in the training unit of the HCM Department who refused to requisition payment of the invoices issued by Prodigy.

14.19 Insofar as payments to Prodigy are concerned, I note the following: some employees went to great lengths to facilitate payment to Prodigy and they took steps to ensure that Group Legal Services was not included in the processes; on the other hand, some employees, even from outside Group Legal Services, took steps to ensure that there were no irregular or unlawful payments to Prodigy.

14.20 In December 2017, the then acting Group Chief Financial Officer, Ms Yvonne Page, called me to say that representatives of Prodigy had suddenly pitched up at the Finance Department and had demanded that she do a reconciliation of what amount was owing to Prodigy and to make immediate payment. Ms Page asked me about the status of the litigation. I told her that Prodigy had abandoned the litigation and that she should accordingly tell them to prosecute the



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

litigation further if they wished to be paid. Ms Page did not pay them. Ms Page told me that the Prodigy representatives had gone to the office of the then acting Group CEO, Mr Cromet Molepo, before going to her office.

14.21 During or about September 2017, Ms. Shunmugan asked to meet Mr Holele to discuss the issue of payment. However, it was not Ms Shunmugan who attended, but Mr Moodley. Mr Holele and Mr Jacob Rakgoathe, a General Manager: Group Compliance, represented PRASA. Mr Holele will deal with what happened at the meeting.

14.22 On 15 December 2017 a News24 report said:

*"Documents seen by News24 confirm that, in June 2015, Prodigy transferred about R4,5m to Hail Way Trading, a company of which [Mr Roy] Moodley is the sole director. Hail Way Trading is the same company to which Siyangena channeled the bulk of the above mentioned R550m."*

14.23 The article, which is annexed as **MMD9**, went on to say: Ms Shunmugan had said: News24's information was "inaccurate and false", she did not answer their "detailed queries about Prodigy's payment to Moodley's company".

14.24 As I have pointed out, the question of the validity of the Prodigy contract is before the High Court. So is PRASA's obligation to pay



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

what Prodigy alleges PRASA owes it. In the circumstances, no legitimate purpose will be served in setting out PRASA's contentions on these matters.

14.25 I point out however that the matters raised above about Prodigy illustrates part of how the capture of PRASA was implemented. When employees stand for what is proper, they are disciplined and often dismissed. Even when a matter is referred to the Courts, attempts are made to secure payments by "negotiations" or threats. Often they succeed as a result of the assistance given by some employees to the capturers. Notwithstanding the departure of Mr Montana, there are still many employees at PRASA who side with and assist the capturers.

15 On 17 September 2017, Mr Jabulisa Majola ("Mr Majola"), an acting manager of PRASA's Corporate Security Investigations, compiled a report which comprehensively detailed the failure to comply with PRASA's SCM Policy and flagrant breaches of the law when PRASA concluded and/or approved the agreements between PRASA and Prodigy. The report is annexed as MMD2.

16 Mr Majola interviewed several employees of PRASA who had taken part in either the conclusion of the impugned agreements and/or organised and/or attended the training provided by Prodigy. On the basis of the aforementioned interviews and investigations, Mr Majola compiled the Majola report which demonstrates the flaws and irregularities in the process followed in the conclusion of the impugned





## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

agreements. The report also sets out and details the basic flaws in the so-called training of PRASA employees undertaken by Prodigy. The golden thread running through what Mr Majola was told is that the agreements between PRASA and Prodigy were characterised by irregularities and failure to comply and adhere to PRASA's SCM Policy and the normal management of contracts of this nature.

- 17 Ms Thandeka Buthelezi ("Ms Buthelezi") was employed as PRASA's Customer Services Executive Manager. In her capacity as a Customer Service Executive, she was the end-user of the services. Being unhappy about how the contracts with Prodigy were managed, she compiled a memorandum to Mr Montana recording her concerns and instances of contractual contraventions by Prodigy. Her memorandum is an annexure to the Majola Report. Regrettably, Mr Montana did not respond to the Memorandum. (I simply record that this was some time before I was dismissed for raising concerns about the extension of the contract.)
- 18 There are other instances of flagrant breach of the PFMA. For example, Prodigy was not an accredited provider of train drivers. Despite this, Prodigy charged PRASA for the development of training for the train drivers. More worryingly, its charged PRASA penalties for non-attendance by employees. These penalties were clearly in contravention of the PFMA and constituted fruitless and wasteful expenditure.
- 19 Based on the foregoing, I submit that PRASA is under a duty to press for the setting aside of the contracts and resisting Prodigy's claims for payment from PRASA. I further submit that Prodigy was favoured because Mr Roy Moodley exercised such



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

undue influence with Mr Montana and other senior employees who supported the manner in which Mr Montana ran PRASA – for the benefit of certain individuals and entities he was close to.

- 20 One of the other group of entities was the S-Group or the Siyaya Group. I consider PRASA's dealings with this group in the next section of this affidavit.

**The Siyaya Group**

- 21 The Siyaya Group of Companies are owned by Mr Makhensa Mabunda. The entity that received a lot of work from PRASA is Siyaya Consulting Engineers (Pty) Limited ("Siyaya Engineers"), which was registered in 2006. It is now in liquidation.
- 22 It is a matter of public record that Mr Montana and Mr Mabunda had worked together at the Department of Public Enterprises and thereafter at the Department of Transport.
- 23 Siyaya Engineers was one of three parties that had entered into a Memorandum of Understanding. Significantly, the other two parties were state-owned: PRASA and DBI (Deutsche Bahn International GmbH, a subsidiary of the German state-owned rail operator). Quite how Siyaya became a party to the MOU is a mystery. I say this because of the following. First, the MOU is undated. Second, there is no good reason why a private company should be included in an MOU with two state-owned entities. Third, if a private company is included in the MOU, it should have been selected after an open and fair process, I have not come across any information that





## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

shows that the selection of Siyaya was preceded by any fair or proper process.

Fourth, it did not have the requisite skills and experience to add any value to the contract.

- 24 Be that as it may, according to PRASA records, Siyaya was paid just under R1 billion for services it purportedly rendered.
- 25 On 15 July 2015, the then Board of PRASA resolved to release Mr Montana from serving his notice period and to pay him *in lieu* of him serving notice.
- 26 Shortly after this, in September 2015, three summonses were served on PRASA under the following North Gauteng High Court case numbers: 73933/2015, 73934/2015 and 74281/2015 during September 2015. The agreements on which the first two claims were based had been signed by Mr Montana, and the one on which the third claim was based had been signed by Mr Daniel Mthimkulu. Mr Mthimkulu held out that he had a doctorate, when his highest qualification was matric.
- 27 The following year, and whilst the above three matters were pending, the Siyaya Group made two further claims in case numbers: 47597/2016 and 47598/2016. These summonses were issued around June 2016. The agreements that form the basis of these claims were signed by Mr Montana.
- 28 The attorneys who represented the Siyaya Companies in the above matters were Mathopo Attorneys.
- 29 The procedure followed when PRASA is served with a summons is as follows:



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

Group Legal Services identifies the business unit or division to which the summons relates to and sends it to the unit or division with a request for instructions. Based on instructions we received, PRASA was not liable. We accordingly defended the actions.

30 Siyaya Consulting Engineers was voluntarily liquidated on 27 March 2017. The liquidators thereafter sought an undertaking that we would pay for services that the company would continue to render. In response, we demanded various assurances, which were not furnished.

31 When the actions had reached the pre-trial stage, PRASA pressed for discovery. Siyaya's liquidators failed to provide the necessary documents.

32 The parties then agreed to refer the matters to arbitration to expedite the finalisation of the disputes. In addition, some of the agreements in issue had arbitration clauses. The referral to arbitration did not assist much as Siyaya still struggled to produce the documents that were required by PRASA. It was agreed however that the arbitration would be held between 11 to 22 September 2017.

33 In the meantime, the liquidators decided to institute an enquiry in terms of section 417 and 418 of the Companies Act.

34 The liquidators subpoenaed a number of PRASA employees (past and present) to this enquiry to inquire into whether the services had indeed been rendered.

35 As regards, the arbitration, according to the pre-arbitration minute, the Siyaya



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

Companies were required to file trial bundles by 25<sup>th</sup> August 2017. This did not happen. PRASA made applications to compel the filing of the pre-trial processes to no avail.

36 The term of office of the Molefe Board ended on 31 July 2017. It was only on 17 October that Minister Mr Maswanganyi appointed a Board – until further notice. But he appointed only an Interim Board. Its members were: Ms Nana Makhubele SC, Dr Natalie Scheepers, Professor John Maluleke and Ms Magdalene Reddy. Thus PRASA had not had a Board from 31 July 2017 to 16 October 2017. This was around the time that the audit report should have been finalised. One would have expected that the most pressing issue for the Board would be the finalisation of the audit.

37 Instead, hardly a month after the Interim Board was appointed, the Chairperson started making enquiries about the litigation between the Siyaya Companies and PRASA.

38 Following her inquiries, the following happened: PRASA's lawyers were told not to interact with Group Legal Services for instructions on the matters; a secret settlement was reached with the Siyaya Companies; the secret settlement agreement was made an award by the arbitrator, an application for the making of the award an order of court was granted against PRASA by default; PRASA's banking account was attached and about R59 million deposited into the sheriff's account; the default judgment was rescinded and the attached money was released.



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

39      Significantly, no further steps taken were by the Siyaya companies to prosecute their claim against PRASA.

40      One thing that struck me about the developments was the approach of other members of the Interim Board to what the Chairperson was doing.

41      In summary, this is what the Chairperson did.

41.1      First, on 14 November 2017, she met with Ms Ngoye to enquire about the cases involving the Siyaya Group. Following a request from Ms Ngoye, I asked PRASA's then lawyers in these matters to prepare a report. A report dated 21 November 2017 was prepared. I annex it as **MMD10**. It was shared with Ms Makhubele.

41.2      Second, Ms Makhubele responded with a memorandum of her own. A copy of her memorandum is annexed as **MMD11**. In the memorandum she said: she was in possession of an interim report of the Commissioner in the insolvency inquiry; and that the report indicated that PRASA employees who had testified had made "major concessions in respect of PRASA's liability.

41.3      Third, she asked for written reports from the employees "to confirm their testimony". However, they were required to produce this without being furnished with a transcript of their testimony. The reports compiled by the two employees who were asked to furnish



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

reports indicate they did not make concessions.

41.4 Fourth, on 30 November 2017, I prepared a further memorandum in which I pointed out the following. The delays in the litigation and the indulgences requested were at the instance of the Siyaya Companies and the liquidators. The liquidators appeared to have given preference to proceedings that would not result in a binding outcome (the s 417 and 418 Enquiry) instead of preparing for the arbitration which would have produced a binding outcome. I also pointed out to Ms. Makhubele that there was a strong suspicion of the underlying agreements having being concluded on the basis of a fraudulent misrepresentations. I sent this memorandum and the reports of the two employees to Ms Makhubele.

41.5 Fifth, and surprisingly given my memorandum and the two reports, on the following day, that is 1 December 2017, the Board held a special meeting which resolved, amongst others, to suspend the panel of attorneys. A copy of the resolution is annexed as **MMD12**. Significantly, no mention is made about the Siyaya litigation; this suggested a possibility of Ms. Makhubele pursuing this matter without the involvement and/or knowledge of the Board.

42 On 15 December 2017, I called Mr Mogashoa of Diale Mogashoa Inc, PRASA's then attorneys in the Siyaya matters, to enquire what the latest was in the matter. He told me that he had been barred by Ms Makhubele from communicating with



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

Group Legal Services on the matter. I then ended the call.

- 43 On 9 February 2018, #UniteBehind wrote to Ms Makhubele demanding an undertaking that PRASA would not make any payments to the Siyaya Companies because of evidence of “a corrupt relationship between Mr Mabunda and Mr Montana”. A copy was sent to me. I do not know whether Ms Makhubele responded to this letter.
- 44 In early March 2018, I heard from a colleague that Mr Mabunda had promised to make payment to that colleagues’ client from monies to be paid by PRASA pursuant to an application to make an arbitration award an order of court. I immediately called Mr. Mogashoa and asked him to furnish me with the copies of the application papers. He also expressed relief as he had been requesting instructions from PRASA but had not got any.
- 45 After I got the papers, I discussed the matter with Ms Ngoye. We immediately instructed Bowman Gilfillan to enter a notice to oppose the application, which had been set down for 9<sup>th</sup> March 2018. Surprisingly, the attorneys representing the liquidators were still Mathopo Attorneys, the attorneys who had represented Siyaya Engineers before its was liquidated.
- 46 Mathapo Attorneys challenged the authority of Bowman Gilfillan to act on behalf of PRASA. A power of attorney signed by Ms Ngoye was filed to counter this. After receiving this power of attorney, Mathopo Attorneys wrote to Bowman Gilfillan to indicate that they were in possession of a text message that had been





## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

received from Ms Makhubele to the effect that Bowmans did not have the authority to represent PRASA. I communicated this to the Board on 8 March 2018 and told the member of the Board about the application that was set down for the next day. No member of the Board responded to the e-mail notwithstanding that they must have been aware that something untoward to PRASA was in progress.

47 I point out that Ms Ngoye sent a similar email to Minister Blade Nzimande, who had just been appointed Minister of Transport. No response was received from him at that time.

48 On 9 March 2018, acting Judge Holland-Muter ruled that PRASA's lawyers did not have the authority to represent PRASA and entered default judgment against PRASA.

49 What happened in Court was bizarre. Mr Botes SC, for the Siyaya Companies, had in his possession a letter on the PRASA letterhead. The letter, which was addressed to Diale Mogashoa Attorneys, instructed them to capitulate to the Siyaya's claims. It is a letter recording the conclusion of a "settlement agreement" (which, to me, appeared to be a capitulation), that led to the arbitration award being made and the application for the award being made an order of court. How the other side's counsel came to be in possession of a privileged letter escapes me.

50 We informed Group EXCO, the Board and the Minister that judgment had been entered against PRASA. In the meantime, the lawyers of the Siyaya Companies instructed the sheriff to attach PRASA's banking account and about R59 million



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

was removed from PRASA's banking account. We informed Group EXCO, the Board and the Minister of this as well. The Minister called for a meeting with Ms Makhubele, the then acting CEO, Mr Molepo, and Mr Zide, the then Company Secretary, Ms Ngoye and me.

51 The meeting was held on 12 March 2018. Ms Makhubele was told to compile a report for the Minister on what, according to her, had happened. Ms Ngoye and I were asked to prepare our own report. We filed our report timeously – on 16 March 2018. We were told that Ms Makhubele resigned from the Board of PRASA with effect from the due date of her report, also 16 March 2018.

52 On the strength of our report, the Minister instructed PRASA to attend to take the requisite steps to have the default judgment of Holland-Muter AJ rescinded and to also recover PRASA's money.

53 The following steps were then taken.

53.1 First, an order was sought to interdict the Sheriff from paying over money from the attached account to the SIYAYA Companies, pending the outcome of an application to rescind the default judgment. Siyaya initially opposed the application, but on the day of the hearing did not pursue its opposition. The application was granted.

53.2 Second, an application was launched to rescind the default judgment granted by Holland-Muter AJ. The Siyaya Companies did not file



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

papers. The rescission application was granted by Tuchten J. The sheriff was then asked to return the funds that were removed from PRASA's banking account.

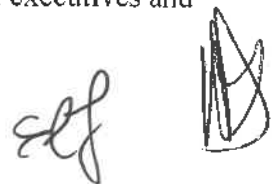
**Conclusion**

54 I submit that what I have set out above demonstrates the following.

54.1 First, at critical times the Siyaya Companies failed to defend or oppose matters or pursue their claims in a manner that would bring finality to the litigation. However, they had PRASA officials, past and present, and officials who were outside of PRASA (the Department of Transport being a case in point) actively assisting them to secure payment of moneys they claimed were owing to them.

54.2 Second, at times, Boards of public entities prefer to unite as a body, even if this is to the detriment of the public entity. In the Siyaya matters, the Interim Board was under a duty to protect PRASA's interests. Instead, they elected to unite behind a Chairperson against whom there was evidence that she was acting contrary to the interests of PRASA.

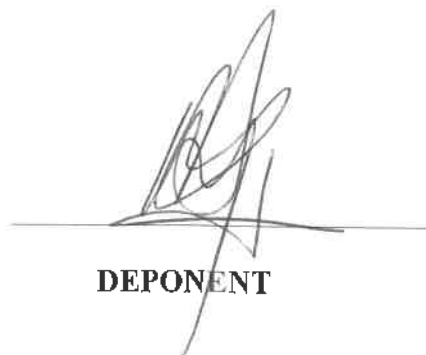
55 Personally, I do not believe that all members of all the Boards of public entities like PRASA were participants in State Capture. Nor do I believe that all executives and



## FOR STATE CAPTURE COMMISSION PURPOSES ONLY

officials of public entities that were victims of State Capture were corrupt.

- 56 However, I am certain that the most important enabler of State Capture is the apathy of good people. Some 150 years ago, in 1867, John Stuart Mill in 1867 cautioned: "Bad men need nothing more to compass their ends than that good men (and women) should look on and do nothing."



DEPONENT

I certify that the above affidavit was signed and sworn to before me at Pretoria this 18 of February 2020 by the deponent after he declared that he knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath which the deponent has taken in respect thereof is binding on the deponent's conscience, and that the contents of this affidavit are true and correct.



COMMISSIONER OF OATHS

**EARL LIWALAM JAFTA**  
PRACTISING ATTORNEY RSA  
COMMISSIONER OF OATHS  
Unit C-C50 BLOCK C BROOKLYN  
OFFICE PARK  
BROOKLYN, PRETORIA

# MMD1

## Company Report

MMD1

windeed  
information is our business

Date requested 2016/09/29 11:08  
 Reference Information source Companies and Intellectual Property Commission



This report is compiled exclusively from the very latest data directly supplied to WinDeed by the Companies and Intellectual Property Commission (CIPC).

## COMPANY SUMMARY

Name PRODIGY BUSINESS SERVICES  
 Status IN BUSINESS  
 Registration number 2006/018844/07  
 Registration date 2006/06/19

## DIRECTOR AND OTHER SUMMARY

ACTIVE			
Name	ID Number	Type	Status
SHUNMUGAM, NERISHNI	7009080163086	DIRECTOR	ACTIVE
INACTIVE			
Name	ID Number	Type	Status
MOODLEY, CHOCKALINGAM	6402095117084	DIRECTOR	RESIGNED

## AUDITOR SUMMARY

RAMATHE KZN  
 R F GAGIANO  
 R F GAGIANO

## COMPANY INFORMATION

Enterprise name	PRODIGY BUSINESS SERVICES	Status	IN BUSINESS
Registration number	2006/018844/07	Enterprise type	PRIVATE COMPANY
Tax number	9493447842	Business start date	2006/06/19
Short name	-	Registration date	2006/06/19
Translated name	-	Financial year end	2
Old reg. number	-	Fin effective date	2006/06/19
Conv. company No	-	CK date received	-
Region	GAUTENG	CK date	-
Country	UNKNOWN	Date of type	2006/06/19
Country of origin	-		
Issued shares	-		
Issued capital	-		
Authorized shares	-		



Authorized capital	-
Industry code	0
Industry	PRIVATE HOUSEHOLDS, EXTERRITORIAL ORGANISATIONS, REPRESENTATIVES OF FOREIGN GOVERNMENTS AND OTHER ACTIVITIES NOT ADEQUATELY DEFINED
Principal business	BUSINESS SERVICES
Registered address	FREDMAN TOWERS - GROUND FLOOR, 13 FREDMAN DRIVE, CNR BUTE LANE, GAUTENG, 2196
Postal address	P O BOX 781784, SANDTON, GAUTENG, 2146

**DIRECTORS AND OTHER (2)****SHUNMUGAM, NERISHNI**

Initials	N	Status	ACTIVE
ID/Passport number	7009080163086	Type	DIRECTOR
Date of birth	1970/09/08	Appointment date	2006/06/19
Profession	BUSINESS OWNER	Resignation date	-
Country of residence	SOUTH AFRICA	Member size (%)	0.00
Residential address	1 ACACIA STREET, CEDAR LAKES, FOURWAYS, 2024	Member contribution (R)	0.00
Postal address	P O BOX 2136, RIVONIA, 2128		

**MOODLEY, CHOCKALINGAM**

Initials	C	Status	RESIGNED
ID/Passport number	6402095117084	Type	DIRECTOR
Date of birth	1954/02/09	Appointment date	2011/06/22
Profession	BUSINESS OWNER	Resignation date	2012/03/01
Country of residence	SOUTH AFRICA	Member size (%)	0.00
Residential address	39 WESSELS ROAD, RIVONIA, GAUTENG, 2128	Member contribution (R)	0.00
Postal address	P O BOX 2136, RIVONIA, GAUTENG, 2128		

**SECRETARY COMPANIES AND CCS (NONE)****COMPANY SECRETARY NATURAL PERSONS (NONE)****BOTH DIRECTOR / OFFICERS (NONE)****ALTERNATIVE DIRECTORS (NONE)****OFFICERS (NONE)****LOCAL MANAGERS (NONE)****TRUSTS (NONE)**

**AUDITORS (3)****RAMATHE KZN**

Profession code	THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS	Status	CURRENT
Profession number	919179E	Profession	AUDITOR
Reg. entry date	-	Start date	-
Expiry date	-	End date	-
Reference number	-	CM31 completed	-
Fine letter	-	CM31 received	-
Physical address	SUITE 104, LUPIN HOUSE, 101 DR.R.D. NAIDU DRIVE, ASHERVILLE, 4091		
Postal address	P O BOX 37324, OVERPORT, 4057		

**R F GAGIANO**

Profession code	CHARTERED ACCOUNTS	Status	NAME CHANGE
Profession number	-	Profession	AUDITOR
Reg. entry date	-	Start date	-
Expiry date	-	End date	2008/03/10
Reference number	-	CM31 completed	-
Fine letter	-	CM31 received	-
Physical address	GROUND FLOOR, FREDMAN TOWERS, 13 FREDMAN DRIVE, BUTE LANE, 2196		
Postal address	P O BOX 781784, SANDTON, 2146		

**R F GAGIANO**

Profession code	CHARTERED ACCOUNTS	Status	RESIGN
Profession number	925114	Profession	AUDITOR
Reg. entry date	2008/03/10	Start date	2008/03/10
Expiry date	-	End date	2015/05/25
Reference number	-	CM31 completed	2008/03/10
Fine letter	-	CM31 received	2008/03/10
Physical address	FREDMAN TOWERS - GROUND FLOOR, 13 FREDMAN DRIVE, CNR BUTE LANE, SANDOWN, 2196		
Postal address	P O BOX 781784, SANDTON, 2146		

**CAPITAL INFORMATION**

Type	No of Shares	Parl Value	Capital Amount (R)	Capital Premium
AUTHORIZED ORDINARY	0	0	1.00	0

**HISTORY**

Effective Date	Change Type
2016/06/28	CO/CC ANNUAL RETURN (COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 536504440)
2015/08/11	AUDITOR/ACC OFFICER CHANGE (NOTICE OF CHANGE OF AUDITOR AND R F GAGIANO - RESIGNED)
2015/08/11	AUDITOR/ACC OFFICER CHANGE (CHANGE RECORDNAME : = RAMATHE KZNSTATUS : = CURRENT)
2015/06/26	RE-INSTATE APPLICATION (COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 527533594)

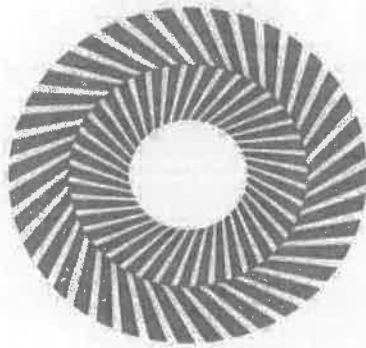


2015/05/20	AR IN DEREGISTRATION (ANNUAL RETURN NON COMPLIANCE - IN PROCESS OF DEREGISTRATION LAST PAYMENT FOR AR YEAR/MONTH IS 2012/6.)
2015/05/20	AR IN DEREGISTRATION (ANNUAL RETURN NON COMPLIANCE - IN PROCESS OF DEREGISTRATION LAST PAYMENT FOR AR YEAR/MONTH IS 2012/6.)
2013/03/12	DIRECTOR/MEMBER/SECRETARY/TRUST/BOTH DIRECTOR AND OFFICER (CHANGE RECORDSURNAME = MOODLEYFIRST NAMES = CHOCKALINGAMSTATUS = RESIGNED)
2013/03/12	DIRECTOR/MEMBER/SECRETARY/TRUST/BOTH DIRECTOR AND OFFICER (CHANGE RECORDSURNAME = SHUNMUGAMFIRST NAMES = NERISHNISTATUS = ACTIVE)
2013/03/04	RE-INSTATE APPLICATION (NO INFORMATION TO DISPLAY)
2013/01/11	AR IN DEREGISTRATION (ANNUAL RETURN NON COMPLIANCE - IN PROCESS OF DEREGISTRATION LAST PAYMENT FOR AR YEAR/MONTH IS 2009/6.)
2011/06/22	DIRECTOR/MEMBER/SECRETARY/TRUST/BOTH DIRECTOR AND OFFICER (NEW RECORD SURNAME = MOODLEYFIRST NAMES = CHOCKALINGAMSTATUS = ACTIVE)
2010/02/19	RE-INSTATE APPLICATION (ANNUAL RETURN NON COMPLIANCE - CANCELLATION OF DEREGISTRATION)
2009/11/13	AR IN DEREGISTRATION (ANNUAL RETURN NON COMPLIANCE - DEREGISTRATIONREGISTRATION DATE: 19/06/2006AR DUE DATE: 01/06/2007AR LATE DATE: 01/08/2007DEREGISTRATION COMMENCE DATE: 01/02/2008DEREGISTRATION ACTION DATE: 13/11/2009)
2008/03/31	POSTAL ADDRESS CHANGE (P O BOX 781784SANDTON2146)
2008/03/31	REGISTERED ADDRESS CHANGE (FREDMAN TOWERS - GROUND FLOOR13 FREDMAN DRIVECNR BUTE LANESANDOWN2196)
2008/03/10	AUDITOR/ACC OFFICER CHANGE (R F GAGIANOFREDMAN TOWERS - GROUND FLOOR13 FREDMAN DRIVECNR BUTE LANESANDOWN2196P O BOX 781784SANDTON2146STATUS : NAME CHANGE)
2008/03/10	AUDITOR/ACC OFFICER CHANGE (FREDMAN TOWERS - GROUND FLOOR13 FREDMAN DRIVECNR BUTE LANESANDOWN2196P O BOX 781784SANDTON2146STATUS : CURRENT)
2006/06/19	DIRECTOR/MEMBER/SECRETARY/TRUST/BOTH DIRECTOR AND OFFICER (CHANGED RECORD SURNAME = SHUNMUGAMFIRST NAMES = NERISHNISTATUS = ACTIVE)

Disclaimer: This report contains information gathered from our suppliers and we do not make any representations about the accuracy of the data displayed nor do we accept responsibility for inaccurate data. WinDeed will not be liable for any damage caused by reliance on this report. This report is subject to the terms and conditions of the WinDeed End User Licence Agreement (EULA).

# MMD2

Be moved



PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

CORPORATE SECURITY INVESTIGATIONS

**PROGRESS REPORT:**

**DEPARTMENT: CORPORATE HCM AND SCM.**

**SUBJECT: PRASA/PRODIGY TRAINING CONTRACT.**

**DIVISION: ALL DIVISIONS.**

**10 JANUARY 2017**

## 1. INTRODUCTION AND BACKGROUND

- 1.1. The preliminary investigation report has already been submitted in respect of this matter dated September 2017. It dealt with quite a number of issues and it also indicated that the investigation process was massive as it included employees in the entire PRASA business with some of them no more in the employ of the company.
- 1.2. There are PRASA employees who were part of this training project who were reluctant to submit or deposit statements because of fear of victimisation and some even stating that it would be carrier limiting from their side to give evidence or statements in respect of this investigation.
- 1.3. Due to the difficulty in getting all the statements from relevant company witnesses, this report could not deal extensively with the employees who are responsible for the contravention of company policies as well as Supply Chain Management (SCM) procedures.
- 1.4. It should also be noted that there witnesses who were key in the whole process who are no more employees of the company and that includes the ex GCEO, Mr. Lucky Montana as well as ex PRASA Tech CEO, Mr. Saki Zamxaka.
- 1.5. This report deals mainly with the crucial aspects of the scope of investigation mentioned in the preliminary report which seeks to ascertain whether any more money should paid in favour of the service provider being Prodigy as well as the fact that all the money that has since been paid to the service provider was duly to be paid as prescribed by SCM policy, PFMA and Treasury documents (See 2.4 and 2.6 of the scope).

## 2. SCOPE OF INVESTIGATION

- 2.1. To interview the managers who were part of the PRASA/Prodigy Training Project and establish what happened when the project started, when it was underway as well as now that there is so much confusion around payments.
- 2.2. To establish if there was a proper SCM/Tender process as prescribed by the company policy when this project was introduced into the PRASA system.
- 2.3. To establish if there was appropriate or sufficient budget for the project when it was introduced into the PRASA system.
- 2.4. To establish if there was a legal and binding contract between PRASA and Prodigy for the training which was provided to employees?



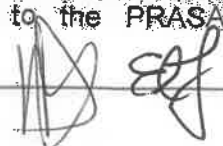


- 2.5. To establish if there was proper consultation with stake holders mainly the end users when the project was introduced as well as the fact that did the project talk to the business demands of the subsidiaries where it was implemented.
- 2.6. To establish if the service provider, Prodigy was entitled to money which has been paid to them as well as the money which they were demanding in terms of the work done as well as compliance.

### 3. STATEMENTS AND DOCUMENTS OBTAINED

- 3.1. Ms. Thandeka P. N. Buthelezi, Customer Services Executive Manager, deposited a statement and stated that she was introduced in the PRASA/Prodigy Training Programme by then Group HCM Executive Manager, Mr. Mphefo Ramutloa or Group Executive Manager in the office of the GCEO, Mr. Tiro Hlelele. (see attachment AA1)
- 3.2. Ms. Buthelezi further stated that she had good understanding of the services or training which Prodigy was supposed to provide. Training modules were developed in their stake holder's meetings.
- 3.3. Ms. Buthelezi further stated that the training started with the Level 4 and Level 5 training which was followed by the "My Station Programme" which was targeting the station managers, supervisors and all the grades below the supervisory level.
- 3.4. Ms. Buthelezi stated that she recalls that the management grade Partnership Agreement was signed by then GCEO, Mr. Lucky Montana and the addendum to the partnership was signed by then Group HCM, Mr. Mphefo Ramutloa.
- 3.5. Ms. Buthelezi stated that she remembers that the PRASA/Prodigy training contract went beyond its expiry date which was 31/12/2013. The contractual matters were handled at Corporate Office. Customer Services was responsible for the execution of the Project and coordinating with the regions.
- 3.6. Ms. Buthelezi further stated that there were delays and a number of challenges resultant from the attitude of the service provider not resolving issues that were raised with them in meetings.
- 3.7. Ms. Buthelezi stated that she got frustrated with the behaviour and attitude of the service provider as they wanted to dictate on how things should be done and most of their assertions were wrong and un-procedural.
- 3.8. Ms. Buthelezi further stated that the relationship between her department and Prodigy got strained to a point where she had no option but to report that to then GCEO, Mr. Lucky Montana.
- 3.9. Ms. Buthelezi stated that she wrote a Memorandum to then GCEO, Mr. Lucky Montana, dated 12/12/2012 titled "PRASA MYSTATION WORKSHOP INVOICES RECONCILIATION: 01 NOVEMBER 2011 – 31 OCTOBER 2012". In that memorandum she listed even the contractual contravention by Prodigy and Mr. Montana did not respond to that memorandum. (see attachment AA2)

- 3.10. Ms. Buthelezi concludes by stating that she was not happy with the pricing of Prodigy as she found it to be unreasonable, irrational and not market related. There was an agreement that as part of the price (R24 000 per learner) will include a yearly international benchmarking trip which will afford the 10 top learners an opportunity to different countries as exposure to different rail environments. These are some of the agreements which were not honoured by Prodigy.
- 3.11. Ms. Valerie Jonathan, Customer Services Senior Manager, deposited a statement stating that whilst she was working at Rail Head Office she got involved with the training project which was provided by Prodigy and the time she was at Customer Services through secondment. (see attachment AA3)
- 3.12. Ms. Jonathan stated that she was tasked with coordinating this project which had two programmes, being the NQF 4 and 5 for managers as well as the My Station programme which was meant for junior staff.
- 3.13. Ms. Jonathan stated that she was also given the responsibility of rolling out the programme to the regions. She mentions that as Rail Head Office, they were given the number of learners (3 000) to make available for the life span of the programme which was about 20 learners per week. The duration of attendance of the learners was supposed to be 5 days per week excluding weekends.
- 3.14. Ms. Jonathan further states that she did submit her training plan for the financial year 2015/16 and it did not include this course or training for the MLPS employees, moreover procedurally the Line Manager/End User submits the development plan and requests for the department. She also stated that as much as she was not comfortable with what was happening, she had to comply with the instruction of her senior being Mr. Mthura Swartz.
- 3.15. Ms. Jonathan states that the desired numbers of learners per week were a huge challenge to achieve and moreover they still had to engage the regions as they could not just impose the numbers on them without proper engagements.
- 3.16. Ms. Jonathan further states that, as Rail Head Office, they were aware of the challenges which customer services in the regions was faced with including shortage of staff and that resulted in the decline of the customer satisfaction index. It was imaginable to take staff away from access points.
- 3.17. Ms. Jonathan stated that they did inform Prodigy that they could not afford to have more than one training session per region per month. She further stated that Prodigy never made an effort to entertain their concern instead they (Prodigy) were just pushing for numbers.
- 3.18. Ms. Jonathan stated that they eventually created their own schedule which was talking to the number of learners which they could make available and still provide effective operations. The schedule which they created was presented to Prodigy.
- 3.19. Ms. Jonathan also stated that she was personally not happy with the overall quality of the course for two simple reasons and that being the quality of the training material which was poor and clearly information which was uploaded from internet. The second one being that the information of the study material which was uploaded from the internet was irrelevant to the PRASA





environment and we had to improve it with our inputs to make it relevant to the business.

- 3.20. Ms. Jonathan also mentioned that she has seen the PRASA/Prodigy contract and read it. She stated that she noticed a number of things contained in that contract which Prodigy did not comply with i.e. Prodigy had to regularly review the training material and improve it but that never happened, there was supposed to be skills auditing included in the package but that did not happen, Prodigy had to do the "on site monitoring" of the learners and that never happened, Prodigy was supposed to provide overseas trips for the learners which never happened and Prodigy was supposed to conduct the "Train the trainer" programme which they never did.
- 3.21. Ms. Jonathan concludes by stating that she distanced herself from the training of the unemployed youth issue because she was not part of that however she did receive a list of 13 Fixed Term Contract Workers (FTCW) from KZN with names. She mentioned that her personal opinion will be that PRASA did not get value for money from this programme.
- 3.22. Ms. Bulelwa Brenda Jacobs, E. Cape Customer Services Manager deposited a statement and stated that she got involved with the PRASA/Prodigy training programme as per the instruction or directive of her then line manager Ms. Bulelwa Botshiwe if not Daisy Daniel. (see attachment AA4)
- 3.23. Ms. Jacobs further stated that the roles and responsibilities bestowed on her at the time were to facilitate the attendance of learners in the region to this course which was in East London.
- 3.24. Ms. Jacobs stated that the course was attended by Protection Services and Customer Services staff because of them being the interface with customers. She further stated that there was drastic drop in the complaints by customers against mainly protection services staff after they had attended the My Station training programme.
- 3.25. Ms. Jacobs stated that it was difficult to provide the desired learners' numbers for the training and still run effective operations but then the number of learners per training session was imposed to them by Rail Head Office.
- 3.26. Ms. Jacobs concludes by stating that they did experience the challenge of absenteeism by learners during the course but that was beyond control and she is also aware that the company would be penalised for that. She also stated that she knows nothing about the training of the unemployed youth under the My Station programme.
- 3.27. Mr. Ayanda Mentile, E. Cape Customer Services Area Manager, deposited a statement and stated that he was introduced to the PRASA/Prodigy training project in 2011/12. He also mentioned that he did attend the My Station training course in East London which lasted for 5 days. (see attachment AA5)
- 3.28. Mr. Mentile stated that the My Station programme taught them how to treat customers with care and respect. It also made them aware that the customers do not know the internal departments such as cleaning services, customer services, protection services etc.

- 3.29. Mr. Mentile further stated that he knows nothing about the training of the unemployed youth by Prodigy. He also does not know the cost details of the course as such information was never presented to him.
- 3.30. Mr. Mentile concludes by stating that the number of learners per course was given or provided to the region by Rail Head Office without discussion or engagement and the region did not take part in the planning stage. He mentioned that the number of learners to be availed for the course was difficult to put together.
- 3.31. **Payment Schedule:** the schedule for the total payments was obtained from Corporate Finance, Mr. Thabiso Phori. The schedule shows that a total of **R132.7 million** has since been paid to Prodigy in respect of this training. (see attachment AA6)
- 3.32. The schedule contains an email message that stating that R 111 million was paid to Prodigy from PRASA Corporate coffers whilst R21.6 million was paid to Prodigy from PRASA Technical coffers.
- 3.33. **Memorandum dated 12/12/2012, written by Rail Executive Manager, Ms. Buthelezi to then GCEO, Mr. L. Montana:** it confirms the difficulty which the business had in providing the required number of learners to prodigy for this programme and it also registers the solution which would cover for non-attendance (Par.1).
- 3.34. The memorandum also indicates that Ms. Buthelezi as the main stake holder on behalf of PRASA, did not know about the penalty regime should less than 20 scheduled learners attend (par. 2).
- 3.35. The memorandum also indicates that the number of learners receiving the training by Prodigy had already exceeded the contractual number and still counting (par. 3).
- 3.36. The memorandum also lists a large number of contractual contraventions by Prodigy (par.4) which includes unreasonable failure by Prodigy to honour or attend weekly planning meetings (bullet 6) as well as using unqualified and non-South African facilitators (bullet 7).
- 3.37. The memorandum also provides the attendance reconciliation of the learners between 2011 and 2012 which the author uses to support her dispute of the submitted invoices by Prodigy (see last sentence on page 2).
- 3.38. The memorandum concludes by emphasising the fact that the problems of the project emanate from the fact that as end users, they were never consulted during the planning phase and the situation is worsened by Prodigy attitude of wanting to dictate terms to the regions (par. 6). There are five (5) invoices attached to the memorandum which according to the author are in dispute.

#### 4. Findings

- 4.1. According to the statements of Nelson Mphahlane, Allan Gangiah and Ernest Phakathi, the service provider Prodigy was not on the PRASA Data Base before 2010. (see attachment AA7, AA8 and AA9)
- 4.2. It is evident that there was no tender process followed to bring Prodigy into the PRASA system for the training project and all decisions which were made and taken in respect of this project were in favour of the service provider.



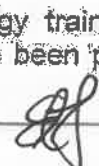

- 4.3. It is evident that Prodigy's pricing of their services to PRASA was continuously exuberant and not market related especially the R9mil just for designing MLPS training material (mentioned in Mr. Nelson Mphahlane statement) as well as the R300 000.00 for the board with their logo which they installed at the Braamfontein Centre of Excellence (Par. 6 statement of Mr. Allan Gangiah).
- 4.4. Furthermore, according to the statement of Mr. Gangiah (Par.10), Prodigy's pricing was approved/accepted by Mr. Montana whilst management has engaged Transport Education Training Authority (TETA) for advice on pricing of such a programme. TETA's advice on the matter came with far low pricing than that of Prodigy and by then Prodigy's unreasonable and irrational pricing had already been accepted.
- 4.5. The facts contained in the statement of Mr. Gangiah are well supported by the statement of Mr. Ernest Phakathi where he stated that his roles as Training and Development manager were paralysed by the irregularities in the PRASA/ Prodigy training programme.
- 4.6. According to Prodigy/ MLPS invoice dated 31/07/2015, Prodigy trained 52 unemployed youth for 3 days from 13 to 15 July 2015. They charged PRASA/MLPS same price (R24 000.00 per learner) as the five days' course which they presented to the PRASA employees.
- 4.7. According to the "RECOMMENDATION REPORT" which was written by then GCPO Mr. Josephat Phungula to then GCEO Mr. Lucky Montana (second paragraph under Discussion), signed on 08/02/2015 and on 12/02/2017, Prodigy had issued penalty invoices to PRASA to the value of R7.6mil and Prodigy is demanding that PRASA settle at least R2.1mil of that amount. This amount to wasteful expenditure. (see attachment AA10)
- 4.8. It is evident that concerns over the relevance of the training to the PRASA business were raised by a number of managers including Mr. Nelson Mphahlane, Ernest Phakathi and Allan Gangiah to name but few and instead of dealing and addressing those concerns Prodigy presented mainly by Ms. Nerishni Shunmugam would disappear from meetings and the shifting around of PRASA co-ordinators would be next.
- 4.9. Ms. Nonhlanhla Kondowe also mentions that after she was told by then PRASA Technical CEO Mr. Saki Zamxaka to be part of the project, there were numerous meetings between PRASA and Prodigy. However, Prodigy disappeared from follow up meetings without any reason provided and those meetings would continue without Prodigy (Par. 6). (see attachment AA11)
- 4.10. The behaviour and attitude of Prodigy mentioned above in Par. 4.5 and 4.6 is direct contravention of the contract which was signed by the two parties on 15/10/2010 paragraph 5.1.6 which reads "should the provider encounter any problem or identify any trend in relation to any of the services it provides in terms of this agreement to PRASA or any component thereof, it must report such matter to PRASA in writing without delay. Thereafter the parties will agree on a concrete corrective measure to be taken to address or pre-empt the problem, as the case may be". This is emphasised again in the same partnership agreement in Par. 16.1.
- 4.11. It is evident from the statement of Messrs. Nelson Mphahlane, Daisy Daniel and Allan Gangiah that Prodigy's Ms. Shunmugam was always trying to

dictate to them as how things should be done and they did not agree with her as most if not all the things she presented were irrational and un-procedural. (see attachment AA12)

- 4.12. Mr. Nelson Mphahlane stated that he was not impressed with the draft proposal of Prodigy as it was irrelevant to the PRASA rail system and instead it was talking about India trains and signal which is non-existent in this country and Mr. Allan Gangiah concurs with this fact in his statement.
- 4.13. Mr. Mphahlane raised concern over the number of employees/learners which were to be released for the training whilst still maintaining effective running of trains and his sentiments are equally shared by Mr. Allan Gangiah as well as Ernest Phakathi.
- 4.14. It is also evident that there is no End-User who requested this training programme which was provided by Prodigy and as stated in the statement of Ms. Daisy Daniel that a Training Plan for 2015/16 was submitted and it did not include this programme.
- 4.15. It is evident from the statements obtained that it was deliberate not to follow SCM Tender process to employ the services of Prodigy to conduct training for PRASA and there would be constant communication breakdown between PRASA managers and Prodigy and that is the reason Mr. Montana brought Ms. Nonhlanhla Kondowe to rescue the process (Par.7 of Ms Kondowe statement).
- 4.16. Mr. Nelson Mphahlane mentioned in his statement that the Prodigy modules were direct "GOOGLE" work which did not even talk to the business demands of PRASA and this is supported by Mr. Gangiah statement (Par.11) where he stated that even Ms. Valerie Jonathan did raise similar concern.
- 4.17. It is evident that more than the fact that Prodigy came with "GOOGLE" material which did not talk to PRASA business requirements in terms of training; they also brought a "one-size fits all" training schedule which did not benefit the business and its employees.
- 4.18. It is evident that former GCEO, Mr. Lucky Montana was determined to have Prodigy conducting training for PRASA regardless of company policies and tendering procedure.

## 5. CONCLUSION

- 5.1. There is a number of witnesses who are yet to be interviewed and submit statements to this matter. From statements obtained, it is clear that former PRASA Technical CEO Mr. Saki Zamxaka's statement would be critical to this matter.
- 5.2. There is a host of documents and records still to be retrieved from different offices/employees in order to complete this investigation as per the scope.
- 5.3. There is a need to audit all the invoices from Prodigy in terms of dates and signatures to identify the managers who are responsible for wrong doings and irregular approval.
- 5.4. There is a general feeling from some managers that Prodigy training of PRASA employees was not worth the money which they have been paid to them as it did not benefit the business in anyway.



- 5.5. Although the investigation process has not been completed, it is confirmed through the statements obtained that there was no SCM/Tender process followed to employ the services of Prodigy for this training programme.
- 5.6. Ms. Nerishni Shunmugam has been contacted on a number of occasions for a meeting so that she could present her side of the matter and submit a presentation to clarify the issues in dispute and she wrote a letter via BBM Attorneys, dated 13/09/2017 stating that she is not willing to give an interview.
- 5.7. Ms. Shunmugam's reluctance to be interviewed for the purpose of this investigation appears to be in contravention of the "Partnership Agreement" which she signed together with Mr. Lucky Montana (and other witness) dated 11/10/2010, 6.1 (the provider will provide internal auditors of PRASA with all necessary support, facilities and access to information pertaining to PRASA and these services in accordance with legislative requirements. Appropriate assurances, will on request be provided to PRASA's internal auditors regarding the controls instituted in respect of the provider systems, which provide services to or interface with PRASA)

**NB:** For the preliminary report statements and attachments will be made available only on request.

.....  
**Compiled by: Jabulisa Majola**  
**Acting Manager**  
**Corporate Security Investigations**

**Date 27 September 2017.**

**Place Braamfontein**



# MMD3

**PRODIGY****MMD3**Accredited RPL and Assessment Centre  
Services SETA: Decision Number 1520

Passenger Rail Agency of South Africa  
c/o Mr. Tsepo L. Montana  
30 Wolmarans Street  
Johannesburg  
2001

10 June 2010

Dear Sir,

*Tiro/Mphahlele*

*The proposal from Prodigy  
is accepted. We should  
enter into a partnership  
with Prodigy Business Ser-  
vices Ltd. We need a formal  
memo in that effect. kin*

**RE: Piloting of Centre of Excellence Model and Learnership Implementation**

Further to discussions held from March 2010 with respect to the Centre of Excellence model, Prodigy hereby confirms that it is able to provide PRASA with 300 funded learnerships that will fast track the piloting of the Centre of Excellence model.

Prodigy has been awarded bursary funding for 300 learnerships from the Services SETA via the Discretionary Grant process. A copy of the bursary contract accompanies this letter. Prodigy hereby cedes these bursaries to PRASA in order to initiate the piloting of the Centre of Excellence. The 300 learnerships will be learnerships that reside with Services SETA and for which Prodigy has accreditation. A list of applicable qualifications accompanies this letter.

The value to PRASA of the 300 funded learnerships is of the order of R28,800,000.00 in training grants and tax allowances. PRASA would be able to claim the full R60,000.00 tax allowance per learner, totaling R18,000,000.00 for the 300 learners. This is in accordance with Section 12H of the Income Tax Act.

*prepare a  
letter for  
my signature  
acknowledge  
receipt  
and confirm  
our  
acceptance  
of the  
proposal  
from  
Prodigy.*

*[Signature]  
10/06/10*

*[Signature]*

# PRODIGY

Accredited RPL and Assessment Centre  
Services SETA: Decision Number 1520



In return PRASA will appoint Prodigy to manage the implementation of the 900 PRASA learnerships and other related training and learning interventions via the Centre of Excellence. These interventions will also include Recognition of Prior learning and will be aligned to scarce and critical skills required by PRASA. The 2008/09 PRASA annual report indicates that 866 learnerships were implemented in that period. Further the annual report also indicates that PRASA spent 6,22% of staff costs (R130,000,000.00) on training and training related activities. This substantiates both the need and viability of piloting the Centre of Excellence.

It should be further noted that the Centre of Excellence can be further sustained through secondary funding from TETA, Department of Transport, Expanded Public Works Programme and/or the National Skills Fund. Should Prodigy be awarded the contract to pilot the Centre of Excellence model, it would assist PRASA in accessing the aforementioned funding windows.

The piloting of the Centre of Excellence will be a catalyst to entrenching PRASA as a global leader in the transport sector. The Centre of Excellence model is aligned to the Change Management strategy of PRASA as well as to Government's new ethos of public service delivery.

Should you have further queries, please feel free to contact me.

Yours Sincerely,

N Shunmugam

Director: Prodigy Business Services

# MMD4



## PARTNERSHIP AGREEMENT

**MADE AND ENTERED INTO BY AND BETWEEN**

**PASSENGER RAIL AGENCY OF SOUTH AFRICA** (hereinafter referred to as "**PRASA**") and herein represented by **TSHEPO LUCKY MONTANA** being duly authorized hereto)

**AND**

**PRODIGY BUSINESS SERVICES (Pty) Ltd.**

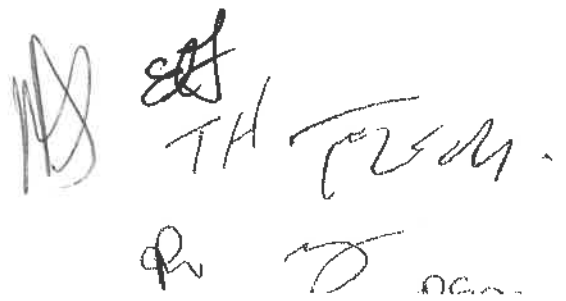
**Registration No. 2006/018844/07**

**Accreditation No. 1520**

(hereinafter referred to as "**The Provider**") and herein represented by **NERISHNI SHUNMUGAM** being duly authorized hereto)

For

- The provision of Grant (Bursary) Funding valued at R10.8 million for 300 Learnerships to PRASA, which Prodigy has secured from the Services Sector Education and Training Authority(SSETA);
- PRASA to appoint Prodigy to Pilot the Centre of Excellence Model and Learnership Implementation at PRASA.



Handwritten signatures and initials, including "TH" and "TLM", are visible at the bottom right of the document.



## 1 PARTIES

The parties to this agreement are the following:

### 1.1 PRASA

Passenger Rail Agency of South Africa

### 1.2 The Provider

Prodigy Business Services (Pty) Ltd



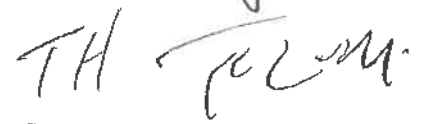
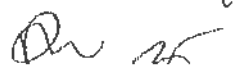
## 2 PURPOSE OF THE CONTRACT

A Partnership agreement between PRASA and Prodigy Business Services (PTY) LTD whereby Prodigy avails (Grant) Bursary Funding valued at R10.800.360.00 for 300 Learnerships to PRASA, which Prodigy has secured from the Services Sector Education and Training Authority (SSETA), and PRASA appoints Prodigy to Pilot the Centre of Excellence Model and Learnership Implementation at PRASA.

## 3 PAYMENTS

The cost of the services provided in terms of this agreement is calculated at Ten Million, Eight Hundred Thousand Three Hundred and Sixty Rands only (**R10,800,360.00**) (VAT inclusive).

- 3.1 Any variation on the contract price must be agreed to by all parties in writing and signed before such additional expenses are incurred.
- 3.2 For the Services provided to PRASA by the Provider, PRASA will pay the Provider the fees set out in Annexure A of this Agreement within 10 (ten) days of the payment due date.
- 3.3 The Provider will submit to PRASA a value-added tax invoice in the prescribed format, and containing the particulars, required by law for all requests for payments.
- 3.4 Payment in respect of the products and / or services provided by the Provider in terms of this agreement shall be made in terms of the relevant clauses in contained in Annexure A and attached hereto.

 TH    


- 5.1.1** Products and/or services to PRASA as specified in Annexure A hereto and initialled by the parties for identification purposes.
- 5.1.2** the provisions of relevant legislation governing the activities of public entities;
- 5.1.3** the Constitution of the PRASA;
- 5.1.4** the terms and conditions of this Agreement;
- 5.1.5** The Public Finance Management Act; and
- 5.1.6** The Preferential Policy Procurement Framework Act

Should the Provider encounter any problem or identify any trend in relation to any of the Services it provides in terms of this Agreement to PRASA or any component thereof, it must report such matter to PRASA in writing without delay. Thereafter, the Parties will agree on corrective measures to be taken to address or pre-empt the problem, as the case may be

## **5.2 Obligations of PRASA**

- 5.2.1** PRASA shall appoint Prodigy to pilot the Centre of Excellence at PRASA and learnership Implementation at PRASA.
- 5.2.2** PRASA shall in terms of Annexure A hereto make payment of amounts due to The Provider in accordance with this agreement. The Provider will undertake to invoice PRASA according to the dates as per Annexure A.
- 5.2.3** In order to enable the Provider to provide the Services, PRASA shall allow the Provider reasonable access to all necessary PRASA data and documentation.
- 5.2.4** PRASA shall ensure that any party over which it has direct control performs its duties and functions as may be reasonably required by The Provider to enable The Provider to comply with its obligation to provide the Services as detailed in Annexure A.
- 5.2.5** Without derogating from the generality of clauses 5.2.1 and 5.2.2, PRASA shall provide The Provider with all assistance reasonably

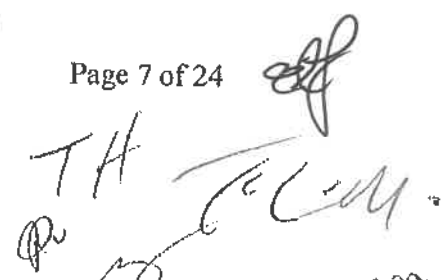
- 5.3.5** Keep up to date the records of learning and periodically discuss progress with the learner
- 5.3.6** The Employer must apply the same disciplinary, grievance and dispute resolution procedures to the learner as to other employees

## **6 AUDITS**

- 6.1** The Provider will provide the internal auditors of PRASA with all necessary support, facilities and access to information pertaining to PRASA and these Services in accordance with legislative requirements. Appropriate assurances, will on request be provided to PRASA's internal auditors regarding the controls instituted in respect of The Provider systems, which provide Services to or interface with PRASA.
- 6.2** If any audit results in a finding that The Provider is not, insofar as it is applicable, rendering the Services in terms of GAAP and the Public Finance Management Act, The Provider shall, at its cost and expense, promptly take all actions required to achieve such compliance, and any resultant audit costs incurred by the PRASA in this regard shall be paid by The Provider.

## **7 PARTY REPRESENTATIVES**

- 7.1** For the duration of this agreement, the parties shall each nominate and maintain at least 1 (one) representative, as the single point of contact between the parties, to regulate and control the implementation and performance of the parties under this agreement. Such nominated representative may be changed by the party appointing him or her by giving at least 7 (seven) days prior written notice to the other party.
- 7.2** The nominated representatives shall meet as regularly as may be agreed between the parties.



Annexure B, including the provision of the necessary security, backup, offsite storage and disaster recovery services and testing.

## **11 COPYRIGHT**

**11.1** The parties acknowledge that the copyright and exclusive right of use of all materials specifically supplied by either party with regard to the product or service in terms of this agreement is the sole property of the supplying party or sole property of the third party from which either party/supplying party has obtained usage rights;

**11.2** Future copyright and exclusive right of use of all materials created in terms of this agreement is the sole property of The Provider except the copyright and exclusive right of use of all materials created in terms of this agreement for PRASA such shall be the sole property of PRASA. The Provider must procure from all contractors and sub-contractors (as specifically allowed by this contract) used by It in terms of this agreement, an assignment of copyright and exclusive right of use of materials created by those contractors and subcontractors.

**11.3** The Provider warrants that to the best of its knowledge the materials that are created in terms of this agreement and the services that are provided in terms hereof shall not constitute an infringement of any copyright.

## **12 TRADEMARKS, TRADE NAMES AND PUBLICITY**

**12.1** The Provider shall not, without the prior written consent of PRASA, use, remove or cover the names, services marks, trademarks, logos or other corporate identifications of PRASA or its licensors.

**12.2** The Provider shall not publicise the contents of this agreement or its existence without the prior written consent of PRASA first having been received which consent shall not be unreasonably withheld.



Page 9 of 24



- 13.5** The disclosing party may, at any time by way of written notice to the receiving party, require the receiving party to return or destroy any material containing, pertaining to or relating to confidential information and to expunge such confidential information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the receiving party to furnish a written statement (certified as correct by a director of the receiving party) to the effect that, upon such return, the receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material. The receiving party shall comply with all requirements in terms of this clause 13 within 7 (seven) days of receipt of written notice thereof.
- 13.6** The obligations of the receiving party pursuant to the provisions of this agreement shall not apply to any information that:
- 13.6.1** is known to or in the possession of the receiving party prior to disclosure thereof by the disclosing party;
  - 13.6.2** is or becomes publicly known, otherwise than pursuant to a breach of this agreement by the receiving party;
  - 13.6.3** is acquired or developed independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this agreement;
  - 13.6.4** is disclosed by the receiving party to satisfy the order of a Court of competent jurisdiction or to comply with provisions of any law or regulations in force from time to time, provided that in these circumstances, the receiving party shall advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interest in this regard; Provided further that the receiving party shall disclose only that portion of the information which it is legally required to disclose and the receiving party shall use its reasonable endeavours to protect

**14.6** Should the audit reveal that The Provider is not in compliance with its BEE policy, and/or its Employment Equity Policy, PRASA shall be entitled but not obliged to terminate this agreement, without prejudice to its rights under the agreement or at law.

**14.7** Should The Provider's BEE rating (including its Employment Equity Policy) change, the Provider shall in writing notify PRASA thereof within 14 (fourteen) days, of such change occurring.

## **15 BREACH**

Should either Party ("the Defaulting Party") commit a breach of any of the provisions hereof, then the other Party ("the Aggrieved Party") shall be obliged to give the Defaulting Party 7 (seven) days written notice to remedy the breach. If the defaulting Party fails to comply with such notice, the Aggrieved Party shall notwithstanding any prior waiver and without prejudice to any other remedy which the aggrieved party may have at law, be entitled to:

**15.1** cancel the agreement and recover from the Defaulting Party such damages as he may have suffered under the circumstances, including but not limited to repayment to the aggrieved party of all monies received by the defaulting Party in terms of this agreement, or;

**15.2** claim specific performance by enforcing the terms and conditions of this agreement;

## **16 DISPUTE RESOLUTION**

All parties accept that disputes may arise between them during the course of this agreement

**16.1** All parties endeavour to resolve issues amicably. Should this fail, either party may write a letter to the other party outlining issues in dispute and request a dispute resolution mechanism to be implemented as set out in 16.2 and 16.3.

**19 WHOLE AGREEMENT**

This Agreement, together with Annexure A and B hereto, constitutes the whole and entire agreement between the parties with regard to the subject matter hereof and there are no agreements, representations or warranties between the parties other than those specifically set forth herein.

**20 DOMICILIA AND NOTICES**

- 20.1 The parties choose as their nominated addresses for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communications of whatever nature, the following addresses:

**PRASA**

**Physical Address:** Umjantshi House  
30 Wolmarans Street  
Braamfontein  
Johannesburg

**Postal Address:** Private Bag X101  
Braamfontein  
2017

**Tel:** 011 773 1600

**Fax No:** 011 774 6299

**E-mail:** lmontana@prasa.com

**THE PROVIDER****PRODIGY BUSINESS SERVICES (PTY) Ltd.**

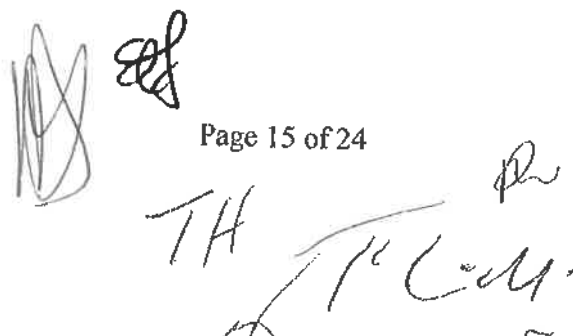
**Physical Address:** 39 Wessels Road  
Rivonia  
2128

**Postal Address:** P.O. Box 2136  
Rivonia  
2128

**Tel:** (011) 234 9730/1

**Facsimile No:** 0866 131 309

**Email:** nerishni@skillsmatters.com



Handwritten signatures and initials are present at the bottom right of the page, including a large signature, the initials 'TH', and other scribbles.



22.2. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they shall operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses do not expressly provide for this.

### **23. CESSION AND DELEGATION**

The Provider and PRASA shall not cede any of its rights or delegate any of its obligations in terms of this contract without the prior written consent of PRASA or the Provider, which consent shall not be unreasonably withheld.

### **24. NO SUB-CONTRACTING**

Save as provided to the contrary in terms hereof, the Provider shall not sub-contract the provision of services or products in terms of this agreement or any part of such services a products without the prior written approval of PRASA, which approval shall not be unreasonably withheld. Despite any approval granted by PRASA in terms of this clause, The Provider remains solely liable for the performance of its obligations under this agreement. Accordingly payment of all invoices shall only be made by PRASA to The Provider.

### **25. NON EXCLUSIVITY**

Nothing in this contract shall be construed as creating an exclusive relationship between the Provider and PRASA and the Provider may provide services of a similar or identical nature to other organisations or individuals who may require such service from time to time.

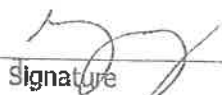
### **26. POACHING OF PERSONNEL**

Neither Party shall, without the prior written consent of the other during the currency of this Agreement or for the period of 6 (six) months thereafter, engage, employ or otherwise solicit for employment whether directly or indirectly, any person who, during the currency of this Agreement, was an employee, representative, agent, consultant, or member of the personnel of the other Party and who was involved in the provision or acquisition of Services in terms thereof.

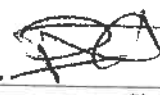


- 29.1.2. Any act or omission of any or all of the Provider's members, employees, agents, representatives, and/or suppliers;
- 29.1.3. Any damage to, loss of, and/or destruction of property belonging to or in the possession of a third party, harm, loss, theft, or destruction to property belonging to, in the possession of, and/or under the control of the PRASA;
- 29.1.4. Any harm, injury or death suffered or sustained by a third party, where such harm arises from, is connected to or is caused by an act or omission of the Provider's employees, agents, representatives, or by an act of any third party where such act occurs or within the proximity of any employee, agent, representative of the Provider and such employee, agent, representative could or should have prevented same from occurring.
- 29.2. Such indemnity shall extend also to all expenditure, disbursements, and all legal costs on an Attorney and Own-Client basis which may be incurred by the PRASA as a result of such loss, liability, damage or claim including without limitation the cost of opposing any action, motion, or prosecuting any appeal, and the cost of obtaining professional opinion relating to any aspect of same, as well as but not limited to any of the following:
- 29.2.1. Any damage to PRASA's property, whether movable or immovable
- 29.2.2. Loss, harm, or destruction of property belonging to PRASA, whether movable or immovable
- 29.2.3. Liability in respect of any damage, loss, harm or destruction of property, whether moveable or immovable, belonging to the third party and/or third parties
- 29.2.4. Liability in respect of death, injury, unlawful/wrongful arrest, malicious prosecution, assault, defamation, unlawful search, illness or disease to the third party, the PRASA employees and/or third parties.
- 30. INSURANCE**
- 30.1. It is in the best interest of the contractor to obtain the necessary insurance cover commensurate with the risk it is exposed to. It is further important to note that the contractor remains vicariously liable for all the actions and omissions of its

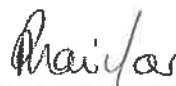
**31. SIGNATORIES****On behalf of the Provider**

  
 Signature \_\_\_\_\_  
 Designation - DIRECTOR  
 Designation - duly authorised hereto  
 THUS DONE AND SIGNED AT Revoniat ON THIS THE 15<sup>th</sup> DAY OF  
OCTOBER 2010, IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

**AS WITNESSES**

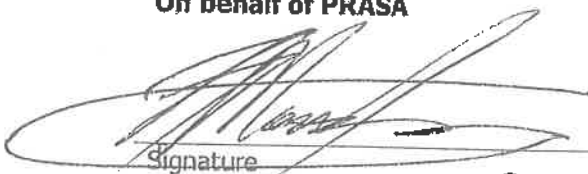
1.   
 Signature \_\_\_\_\_

Learner Admin Manager  
 Designation \_\_\_\_\_

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

PROJECT MANAGER  
 Designation \_\_\_\_\_

**On behalf of PRASA**

  
 Signature \_\_\_\_\_  
 Designation - Group CEO  
 Designation - duly authorised hereto  
 THUS DONE AND SIGNED AT BRAEMONTON ON THIS THE 11<sup>th</sup> DAY OF  
OCTOBER 2010, IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

**AS WITNESSES**

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

GE! Office of GCEO  
 Designation \_\_\_\_\_

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

\_\_\_\_\_  
 Designation \_\_\_\_\_

**33. ANNEXURE B****Piloting of Centre of Excellence Model and Learnership Implementation****33.1 PRASA Centre Of Excellence**

Activities	Deliverables	Unit Cost	Units	Total PRASA contribution	Payment Date
Pre-Planning Phase	Pre Planning Meeting 1: PRASA Thandeka Buthelezi (TB) and Prodigy Nerishni Shunmugam (NS)	R 300,000.00	1	R 300,000.00	19-Nov-10
	Pre Planning Meeting 2: Minutes of Meeting with TB and Valerie Jonathan (VJ)				
	Formulation of MS project plan				
	Preparation for Tele-conference: Pre-Assessment & Registration form, brochures, Telecon agenda, skills questionnaires. Identification of relevant qualifications: Station Precinct Managers: Management NQF 4 and Corridor Managers: Management NQF 5				
	Finalisation of Prodigy-PRASA Contract and payment schedule				
Phase: Investigative (customisation of RPL material)	Planning Workshop 1: (Teleconference with Thandeka Buthelezi (TB)/ Valerie Jonathan (VJ) and Team) - Alignment of Job Descriptions to Qualifications (Workshop agenda and skills questionnaires)	R 300,000.00	1	R 300,000.00	26-Nov-10
	Customisation of training material				
	Planning Workshop 2: Meeting between Prodigy and TB - Presentation of customised material and sign-off by PRASA				
	Planning Workshop 3: Prodigy and PRASA CEO and TB - Presentation of balanced scorecard and Mngt programme				
Phase: Communication of CoE and RPL Roll-Out	Develop branding related to Centre of Excellence. Logo, pay-off line, web-link on Intranet	R 562,000.00	1	R 562,000.00	03-Dec-10
Phase: Innovation: Design and Establishment of PRASA Centre of Excellence (CoE)	Storyboard design of CoE	R4,000,000.00	1	R4,000,000.00	03-Dec-10
	Presentation and sign off of storyboard to PRASA				
	Selection of CoE site				
	Implement CoE at PRASA Head Office: A physical Centre of Excellence established. This will include 50 PCs, 2 touch-screen terminals, 100 learner stations, 4 proximas	R3,700,000.00	1	R3,700,000.00	28-Jan-11
	Learners to be provided with netbooks to be utilised during the sessions: Gauteng. (50 netbooks)	R 400,000.00	1	R 400,000.00	26-Nov-11
Phase: Skills Audit Diagnostic	Review 350 PRASA Station Level employee job descriptions (clustered into functional competences). Develop diagnostic tools via personal interviews	R 212,000.00	1	R 212,000.00	18-Mar-11
	Report and production of skills audit questionnaires. Review and approval of questionnaire by PRASA.				
Project Closure	Final Consolidated Report on the use of the CoE: post review and recommendations				
Sub-Total				R 9,474,000.00	
VAT				R 1,326,360.00	
Total				R10,800,360.00	

# MMD5

MMD5

**ADDENDUM TO PARTNERSHIP AGREEMENT**

**MADE AND ENTERED INTO BY AND BETWEEN**

**PASSENGER RAIL AGENCY OF SOUTH AFRICA** (hereinafter referred to as "**PRASA**")  
and herein represented by  
**MPHEFO RAMUTLOA** being duly authorized hereto)

**AND**

**PRODIGY BUSINESS SERVICES (Pty) Ltd.**  
Registration No. 2006/018844/07  
Accreditation No. 1520

(hereinafter referred to as "**The Provider**") and herein represented by **NERISHNI SHUNMUGAM** being duly authorized hereto)



## Table of Contents

1	PARTIES.....	3
2	PURPOSE OF THE ADDENDUM .....	3
3	PAYMENTS .....	4
4	DURATION OF THE CONTRACT ADDENDUM .....	4
5	OBLIGATIONS .....	4
6	AUDITS .....	6
7	PARTY REPRESENTATIVES .....	6
8	INDEPENDENT CONTRACTORS .....	6
9	INTELLECTUAL PROPERTY RIGHTS .....	7
10	SECURITY, BACK-UP & DISASTER RECOVERY .....	7
11	COPYRIGHT .....	7
12	TRADEMARKS, TRADE NAMES AND PUBLICITY .....	7
13	CONFIDENTIALITY AND NON-DISCLOSURE .....	7
14	BLACK ECONOMIC EMPOWERMENT AND EMPLOYMENT EQUITY POLICY .....	9
15	BREACH .....	10
16	DISPUTE RESOLUTION .....	10
17	IMPLEMENTATION .....	11
18	WAIVER .....	11
19	WHOLE AGREEMENT .....	11
20	DOMICILIA AND NOTICES .....	11
21	SEVERABILITY .....	12
22	SURVIVING CLAUSES .....	13
23	CESSION AND DELEGATION .....	13
24	NO SUB-CONTRACTING .....	13
25	NON EXCLUSIVITY .....	13
26	POACHING OF PERSONNEL .....	14
27	JURISDICTION .....	14
28	RULE OF CONSTRUCTION NOT APPLICABLE .....	14
29	INDEMNITY .....	14
30	INSURANCE .....	15
31	SIGNATORIES .....	16

## 1 PARTIES

The parties to this agreement are the following:

### 1.1 PRASA

Passenger Rail Agency of South Africa

### 1.2 The Provider

Prodigy Business Services (Pty) Ltd

## 2 PURPOSE OF THE ADDENDUM

A Partnership agreement between PRASA and Prodigy Business Services (PTY) LTD was concluded on the 15<sup>th</sup> of October 2010. The deliverables to this partnership agreement have been fulfilled.

Now that the pilot phase has been completed, the derived positive impact of the learning intervention conducted by prodigy Business Services Pty Ltd should not be lost. Given the transformation mandate PRASA to be the most efficient public transporter of South Africans, it has been agreed by PRASA that the station and corridor management programme conducted by prodigy Business Services Pty Ltd should be extended to the PRASA frontline and similar workers employed at regions, stations and other areas of PRASA. These individuals would include employees from PRASA Rail, Autopax as well as any other division or subsidiary within and of PRASA. In order to maintain sustained and ongoing continual professional development within PRASA and its subsidiaries, it has been agreed that Prodigy Business services Pty Ltd will implement the following interventions over a three year period. The first component will be the MyStation Frontline Customer service Training Programme which targets the core component of PRASA's business i.e. the interface with PRASA commuters.

Thus Prodigy Business services Pty Ltd will be afforded the partnership to implement Continual Professional Development for PRASA and its subsidiaries. following will be implemented:

- ① 1. Implementation of a PRASA customer service (PRASA MyStation) frontline worker programme: 3,000 employees: 5 days of training and 5 days of workplace mentorship and coaching.
2. Implementation of a PRASA customer service (PRASA MyStation) frontline worker programme: 6,000 employees: 5 days of training and 5 days of workplace coaching and mentorship.
- ③ 3. Continual Professional Development of 5 days of training for station and corridor management.

Page 3 of 17



4. Autopax Contact Centre, Customer Service and Professional Driver Training: Budget and learner numbers to be discussed with Autopax or PRASA Group CEO or other representative.

### 3 PAYMENTS

The service provider will submit a cost of the services to be provided in terms of this addendum, and once PRASA has accepted the costs proposed only then will this addendum be implemented, with the components outlined in paragraph 2 above.

### 4 DURATION OF THE CONTRACT ADDENDUM

- 4.1 This project, which is part 1 of a 3-part implementation, shall commence on the 1<sup>st</sup> September 2011 and will terminate/expire by 31<sup>st</sup> December 2013.

### 5 OBLIGATIONS

#### 5.1 Obligations of the Provider

During the currency of this Agreement, the Provider shall provide the Services to the PRASA in accordance with: -

- 5.1.1 Products and/or services to PRASA as specified in Annexure A hereto and initiated by the parties for identification purposes.
- 5.1.2 the provisions of relevant legislation governing the activities of public entities;
- 5.1.3 the Constitution of the PRASA;
- 5.1.4 the terms and conditions of this Agreement;
- 5.1.5 The Public Finance Management Act; and
- 5.1.6 The Preferential Policy Procurement Framework Act

Should the Provider encounter any problem or identify any trend in relation to any of the Services it provides in terms of this Agreement to PRASA or any component thereof, it must report such matter to PRASA in writing without delay. Thereafter, the Parties will agree on corrective measures to be taken to address or pre-empt the problem, as the case may be.

#### 5.2 Obligations of PRASA

- 5.2.1 PRASA shall appoint Prodigy to implement the MyStation Programme at PRASA.
- 5.2.2 PRASA shall in terms of Annexure A hereto make payment of amounts due to The Provider in accordance with this agreement. The Provider will undertake to invoice PRASA according to the schedule as per Annexure A.



- 5.2.3 In order to enable the Provider to provide the Services, PRASA shall allow the Provider reasonable access to all necessary PRASA data and documentation.
- 5.2.4 PRASA shall ensure that any party over which it has direct control performs its duties and functions as may be reasonably required by The Provider to enable The Provider to comply with its obligation to provide the Services as detailed in Annexure A.
- 5.2.5 Without derogating from the generality of clauses 5.2.1 and 5.2.2, PRASA shall provide The Provider with all assistance reasonably required by The Provider from time to time to enable The Provider to comply with its obligations in terms of this Agreement.

If requested by The Provider, but without absolving The Provider from any of its Service provision obligations, PRASA will utilise its best efforts to facilitate compliance and/or co-operation from other 3rd (third) parties with whom The Provider need to interact in order to deliver the required contracted Services.

### 5.3 Obligations to the Employer (PRASA)

- 5.3.1 The Employer must comply with its duties of the Act and all applicable legislation including:
- Basic Conditions of Employment Act (No.75 of 1997)
  - Labour Relations Act (No.66 of 1995)
  - Employment Equity Act (NO.55 of 1998)
  - Occupational Health and Safety Act (No.85 of 1993)
  - Compensation for Occupational Injuries and Diseases Act (NO.130 of 1993)
- 5.3.2 Provide the Learner with appropriate training in the work environment to achieve the relevant outcomes required by the learnership
- 5.3.3 The Employer must provide the Learner with adequate supervision at work
- 5.3.4 The Employer must release the Learner during normal working hours to attend off-the-job education and training required by the learnership
- 5.3.5 Keep up to date the records of learning and periodically discuss progress with the learner
- 5.3.6 The Employer must apply the same disciplinary, grievance and dispute resolution procedures to the learner as to other employees
- 5.3.7 Should the Employer cancel training sessions 5 working days prior to the planned implementation date, then the cost of such cancellation will be borne by the employer
- 5.3.8 The employer will be responsible for learner accommodation and catering




- 6.1 The Provider will provide the internal auditors of PRASA with all necessary support, facilities and access to information pertaining to PRASA and these Services in accordance with legislative requirements. Appropriate assurances, will on request be provided to PRASA's internal auditors regarding the controls instituted in respect of The Provider systems, which provide Services to or interface with PRASA.
- 6.2 If any audit results in a finding that The Provider is not, insofar as it is applicable, rendering the Services in terms of GAAP and the Public Finance Management Act, The Provider shall, at its cost and expense, promptly take all actions required to achieve such compliance, and any resultant audit costs incurred by the PRASA in this regard shall be paid by The Provider.
- 7.1 For the duration of this agreement, the parties shall each nominate and maintain at least 1 (one) representative, as the single point of contact between the parties, to regulate and control the implementation and performance of the parties under this agreement. Such nominated representative may be changed by the party appointing him or her by giving at least 7 (seven) days prior written notice to the other party.
- 7.2 The nominated representatives shall meet as regularly as may be agreed between the parties.

## **8 INDEPENDENT CONTRACTORS**

The parties shall act as independent contractors for all purposes under this agreement. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other party, or both parties as joint ventures or partners for any purpose. Save as expressly stated herein to the contrary, neither party shall be responsible for the acts or omissions of the other party, and neither party shall have authority to speak for, represent or obligate the other party in any way without the prior written approval of the other party.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All intellectual property resulting from the execution of this contract as described in Annexure A shall be the sole and exclusive property of the Provider. The Provider shall be entitled to register copy right in respect of such intellectual property.
- 9.2 Nothing in this agreement or Annexure A hereto shall restrict The Providers use of ideas, concepts, know-how, methods or techniques developed in relation to the services or products referred to in this agreement or Annexure A hereto.
- 9.3 The above provisions:






9.3.1 Excludes Intellectual property that currently exists and has been developed by the Provider prior to the commencement of this contract. The ownership of such intellectual property will remain with the Provider.

9.3.2 Intellectual property developed exclusively for PRASA, the ownership of such Intellectual property shall reside with PRASA.

9.3.3 Intellectual property that currently exists and has been developed by PRASA prior to the commencement of this agreement, the ownership of such intellectual property will remain with PRASA.

## **10 SECURITY, BACK-UP & DISASTER RECOVERY**

In respect of any IT systems provided by the Provider, the Provider shall comply with the security, back-up and disaster recovery requirements as set out in Annexure B, including the provision of the necessary security, backup, offsite storage and disaster recovery services and testing.

## **11 COPYRIGHT**

11.1 The parties acknowledge that the copyright and exclusive right of use of all materials specifically supplied by either party with regard to the product or service in terms of this agreement is the sole property of the supplying party or sole property of the third party from which either party/supplying party has obtained usage rights;

11.2 Future copyright and exclusive right of use of all materials created in terms of this agreement is the sole property of The Provider except the copyright and exclusive right of use of all materials created in terms of this agreement for PRASA such shall be the sole property of PRASA. The Provider must procure from all contractors and sub-contractors (as specifically allowed by this contract) used by it in terms of this agreement, an assignment of copyright and exclusive right of use of materials created by those contractors and subcontractors.


11.3 The Provider warrants that to the best of its knowledge the materials that are created in terms of this agreement and the services that are provided in terms hereof shall not constitute an infringement of any copyright.

## **12 TRADEMARKS, TRADE NAMES AND PUBLICITY**

12.1 The Provider shall not, without the prior written consent of PRASA, use, remove or cover the names, services marks, trademarks, logos or other corporate identifications of PRASA or its licensors.

12.2 The Provider shall not publicise the contents of this agreement or its existence without the prior written consent of PRASA first having been received which consent shall not be unreasonably withheld.

## **13 CONFIDENTIALITY AND NON-DISCLOSURE**



- 13.1 For the purpose of this clause 13, "receiving party" shall mean that party receiving the other's confidential information and "disclosing party" shall mean that party disclosing its confidential information to the other.
- 13.2 The receiving party may disclose the confidential information only to its officers and employees and then only such officers and employees to whom such disclosure is reasonably necessary; provided that the receiving party shall ensure compliance by such officers and employees to whom such disclosure has been made, with the terms of this agreement and in particular the provisions of this clause 13.
- 13.3 The receiving party agrees:
- 13.3.1 not to disclose the confidential information to any third party of any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this agreement.
- 13.3.2 not to utilise, employ, exploit or in any other manner whatsoever use the confidential information disclosed pursuant to the provisions of this agreement for any purpose whatsoever other than strictly in relation to this agreement and Annexure A hereto.
- 13.3.3 that the unauthorised or unlawful use or disclosure of the confidential information may cause irreparable loss, harm and damage to the disclosing party. Accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, action, expense, claim, harm or damage, of whatsoever nature, suffered or sustained by the disclosing party pursuant to a breach by the receiving party or any of its officers or employees to whom disclosure is made in terms of this agreement of the provisions of this agreement.
- 13.4 The receiving party agrees to protect the confidential information of the disclosing party by using the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorised disclosure of such confidential information.
- 13.5 The disclosing party may, at any time by way of written notice to the receiving party, require the receiving party to return or destroy any material containing, pertaining to or relating to confidential information and to expunge such confidential information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the receiving party to furnish a written statement (certified as correct by a director of the receiving party) to the effect that, upon such return, the receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material. The receiving party shall comply with all requirements in terms of this clause 13 within 7 (seven) days of receipt of written notice thereof.





13.6 The obligations of the receiving party pursuant to the provisions of this agreement shall not apply to any information that:

13.6.1 is known to or in the possession of the receiving party prior to disclosure thereof by the disclosing party;

13.6.2 is or becomes publicly known, otherwise than pursuant to a breach of this agreement by the receiving party;

13.6.3 is acquired or developed independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this agreement;

13.6.4 is disclosed by the receiving party to satisfy the order of a Court of competent jurisdiction or to comply with provisions of any law or regulations in force from time to time, provided that in these circumstances, the receiving party shall advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interest in this regard: Provided further that the receiving party shall disclose only that portion of the information which it is legally required to disclose and the receiving party shall use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;

13.6.5 is disclosed to a third party pursuant to the prior written authorisation from the disclosing party.

#### 14 BLACK ECONOMIC EMPOWERMENT AND EMPLOYMENT EQUITY POLICY

14.1 PRASA and The Provider agree that it is an express material term of this Contract that The Provider is a Black Economic Empowered entity at the time of the conclusion of this agreement and shall be so at all times material hereto, more particularly throughout the duration or any extension of this agreement. The definition of a Black Economic Empowered entity is a company that has more than 26% of BEE equity. Any breach of this express material term shall entitle PRASA, notwithstanding the provisions of clause 15 hereof, to immediately cancel this agreement without notice and without prejudice to any of its rights under this agreement or at law.

14.2 The Provider expressly warrants that it is Black Economic Empowered entity and undertakes to furnish PRASA with the necessary proof in this regard.





- 16.2 Referral of disputes to a joint committee of the parties. Any dispute which arises shall be referred to a joint committee consisting of at least the Chief Executive Officer of PRASA plus one other nominated by the Chief Executive Officer of the PRASA and the Lead Partner from the Provider plus one nominated by the Lead Partner from the Provider, who will endeavour to resolve the dispute within 10 (ten) days of the dispute having been referred to them.
- 16.3 Should the joint committee fail to resolve the dispute; either party to the dispute will be entitled to refer the dispute to be adjudicated by a competent Court of law within the Republic.

## 17 IMPLEMENTATION

- 17.1 The parties hereby bind themselves to pass all such resolutions and to perform all such acts as may be necessary to give effect to the provisions of this agreement.
- 17.2 The provider shall at all times, possess and have appropriate knowledge, skills in terms of this agreement. The provider is further obliged to use and adopt reasonable, professional techniques and standards and provide the services with due care, skill and delegation.

## 18 WAIVER

- 18.1 No waiver of any of the terms or conditions of this agreement shall be binding for any purpose unless expressed in writing and signed by the party giving the same and any such waiver shall be effective only in the specific instance and for the purpose given.
- 18.2 No failure or delay on the part of a party in exercising any right, power or privilege shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

## 19 WHOLE AGREEMENT

This Agreement, together with Annexure A and B hereto, constitutes the whole and entire agreement between the parties with regard to the subject matter hereof and there are no agreements, representations or warranties between the parties other than those specifically set forth herein.

## 20 DOMICILIA AND NOTICES

- 20.1 The parties choose as their nominated addresses for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communications of whatever nature, the following addresses:






**PRASA**

**Physical Address:** Umfantsi House  
30 Wolmarans Street  
Braamfontein  
Johannesburg

**Postal Address:** Private Bag X101  
Braamfontein  
2017

**Tel:** 011 773 1600  
**Fax No:** 011 774 6299  
**E-mail:** [mr@mufloa@prasa.com](mailto:mr@mufloa@prasa.com)

**THE PROVIDER****PRODIGY BUSINESS SERVICES (PTY) Ltd.**

**Physical Address:** 39 Wessels Road  
Rivonia  
2128

**Postal Address:** P.O. Box 2136  
Rivonia  
2128

**Tel:** (011) 234 9730/1  
**Facsimile No:** 0866 131 309  
**Email:** [nerishai@skillsmatters.com](mailto:nerishai@skillsmatters.com)

20.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

20.3 Any party may by notice to the other party, change its nominated address to another physical address in South Africa, provided that the change shall become effective on the seventh day after the date of receipt of the notice by the other party.

20.4 Any notice given by one party to the other in terms of this agreement must be given by hand, or given by pre-paid registered post or by facsimile to the domicile chosen by the addressee in terms of clause 20.1 and shall be presumed, until the contrary has been proved, to have been received by the addressee on the date on which the same was delivered, if delivered by hand; on the seventh (7th) day after the date of posting, if sent by pre-paid registered post; or on the first business day following the date of despatch, if sent to the addressee's facsimile number.

**21 SEVERABILITY**

Should any part of this Agreement for any reason be declared invalid or unenforceable for any reason, such part shall be deemed modified to the extent necessary to make it valid and operative and in a manner most closely representing the intention of the parties, or if it cannot be so modified, then eliminated, and such

elimination shall not affect the validity of any remaining portion, which shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including therein any such part or portion which may, for any reason, be hereafter declared invalid.

## **22 SURVIVING CLAUSES**

22.1. Clauses that by their very nature are intended to survive termination and expiration of this Agreement shall survive such termination and expiration. Such clauses include, but are not limited to:

- . Clause 9 Intellectual Property Rights
- . Clause 11 copyright
- . Clause 12 Trademarks, trade names and publicity
- . Clause 13 Confidentiality and non-Disclosure

22.2. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they shall operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses do not expressly provide for this.

## **23. CESSION AND DELEGATION**

The Provider and PRASA shall not cede any of its rights or delegate any of its obligations in terms of this contract without the prior written consent of PRASA or the Provider, which consent shall not be unreasonably withheld.

## **24. NO SUB-CONTRACTING**

Save as provided to the contrary in terms hereof, the Provider shall not sub-contract the provision of services or products in terms of this agreement or any part of such services or products without the prior written approval of PRASA, which approval shall not be unreasonably withheld. Despite any approval granted by PRASA in terms of this clause, The Provider remains solely liable for the performance of its obligations under this agreement. Accordingly payment of all invoices shall only be made by PRASA to The Provider.

## **25. NON EXCLUSIVITY**

Nothing in this contract shall be construed as creating an exclusive relationship between the Provider and PRASA and the Provider may provide services of a similar or identical nature to other organisations or individuals who may require such service from time to time.

**26. POACHING OF PERSONNEL**

Neither Party shall, without the prior written consent of the other during the currency of this Agreement or for the period of 6 (six) months thereafter, engage, employ or otherwise solicit for employment whether directly or indirectly, any person who, during the currency of this Agreement, was an employee, representative, agent, consultant, or member of the personnel of the other Party and who was involved in the provision or acquisition of Services in terms thereof.

**27. JURISDICTION**

- 27.1. For the purpose of all proceedings hereunder the parties consent to the jurisdiction of the High Court having jurisdiction under Section 28 of the Magistrate's Court Act of 1944 as amended, notwithstanding that such proceedings are otherwise beyond such jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to Section 45 of the Magistrate's Court Act of 1944 as amended.
- 27.2. Notwithstanding 28.1 above, PRASA shall have the right at PRASA's sole option and discretion to institute proceedings in any other competent Court, which has jurisdiction.

**28. RULE OF CONSTRUCTION NOT APPLICABLE**

Any rule of Construction that this contract shall be interpreted against the party responsible for the drafting or preparation of the contract shall not apply.

**29. INDEMNITY**

- 29.1. The Provider hereby indemnifies and holds harmless PRASA against any loss, liability, damage, harm, which PRASA may suffer and/or any claim which may be brought against PRASA whether it be a claim by the Provider, the Provider's members, employees, agents or representatives, or by any third party, or the estate of such a person or entity; arising from or connected directly or indirectly to:
- 29.1.1. The Provider's performance, non-performance or mal-performance of any of the terms of this agreement (including and without limitation to the provision, performance, rendering or supply of the Services, and the breach of any warranty contained in this agreement, or the use or occupation of the Premises, and/or the Service Area, or the Provider not having disclosed any fact or circumstance material to this agreement, or the provider not having the necessary authority of approvals to enter into this agreement); and/or
- 29.1.2. Any act or omission of any or all of the Provider's members, employees, agents, representatives, and/or suppliers;






29.1.3. Any damage to, loss of, and/or destruction of property belonging to or in the possession of a third party, harm, loss, theft, or destruction to property belonging to, in the possession of, and/or under the control of the PRASA;

29.1.4. Any harm, injury or death suffered or sustained by a third party, where such harm arises from, is connected to or is caused by an act or omission of the Provider's employees, agents, representatives, or by an act of any third party where such act occurs or within the proximity of any employee, agent, representative of the Provider and such employee, agent, representative could or should have prevented same from occurring.

29.2. Such indemnity shall extend also to all expenditure, disbursements, and all legal costs on an Attorney and Own-Client basis which may be incurred by the PRASA as a result of such loss, liability, damage or claim including without limitation the cost of opposing any action, motion, or prosecuting any appeal, and the cost of obtaining professional opinion relating to any aspect of same, as well as but not limited to any of the following:

29.2.1. Any damage to PRASA's property, whether movable or immovable

29.2.2. Loss, harm, or destruction of property belonging to PRASA, whether movable or immovable

29.2.3. Liability in respect of any damage, loss, harm or destruction of property, whether moveable or immovable, belonging to the third party and/or third parties

29.2.4. Liability in respect of death, injury, unlawful/wrongful arrest, malicious prosecution, assault, defamation, unlawful search, illness or disease to the third party, the PRASA employees and/or third parties.

### 30. INSURANCE

30.1. It is in the best interest of the contractor to obtain the necessary insurance cover commensurate with the risk it is exposed to. It is further important to note that the contractor remains vicariously liable for all the actions and omissions of its employees, agents acting within the course and scope of their duties and employment even on the premises of the Client.

30.2. The Contractor shall provide, but not limited to, following insurances and maintain same for the duration of the contract;

30.2.1. The Employer's Common Law liability Insurance;

30.2.2. The Compensation for occupation Injuries and Diseases Act, No 130 of 1993, the Contractor shall produce proof of its registration of good standing with the Compensation Commissioner in terms of the Act;

30.2.3. Insurance for its assets against any damage, loss, theft and/or destruction irrespective of whether such damage, loss, theft and/or destruction arise through its negligence or not.

Page 15 of 17

30.2.4. Professional Indemnity Insurance

30.2.5. Public Liability Insurance

**31. SIGNATORIES**

On behalf of the Provider



Signature

DIRECTOR

Designation - duly authorised hereto

THUS DONE AND SIGNED AT Kempton Park ON THIS THE 30 DAY OF  
AUGUST 2011, IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

**AS WITNESSES**

1.

Signature

Designation

2.

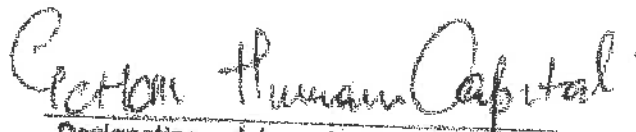
Signature

Designation

On behalf of PRASA



Signature



Designation - duly authorised hereto

THUS DONE AND SIGNED AT Kempton Park ON THIS THE 30 DAY OF  
AUGUST 2011, IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

**AS WITNESSES**

1.

Signature

Designation

2.

Signature

Designation



# MMD6



MMD6

**ANNEXURE A  
OF ADDENDUM TO PARTNERSHIP AGREEMENT**

**MADE AND ENTERED INTO BY AND BETWEEN**

**PASSENGER RAIL AGENCY OF SOUTH AFRICA** (hereinafter  
referred to as "**PRASA**") and herein represented by  
**Tshepo Lucky Montana** being duly authorized hereto)

**AND**

**PRODIGY BUSINESS SERVICES (Pty) Ltd.**  
**Registration No. 2006/018844/07**

(hereinafter referred to as "**The Provider**") and herein represented by  
**NERISHNI SHUNMUGAM** being duly authorized hereto)

## 1 PURPOSE OF ANNEX A

Annexure A has reference to the addendum to the partnership agreement signed between Prodigy and PRASA on the 30<sup>th</sup> of August 2011. This annex is not a variation but a clarification, thus not altering the terms of the partnership agreement. In particular the annex serves to regularize and define the specific terms and conditions of the addendum, in particular with reference to:

1. The timeframes for the 3 phase PRASA MyStation programme
2. The per learner cost for the MyStation Programme for the first 3000 learners
3. The monthly invoicing schedule for the first 3000 PRASA employees
4. The cost of cancellations

## 2 The Timeframe for the PRASA MyStation Programme

On August 30th 2011, the partnership agreement was extended and signed to include the implementation of the PRASA MyStation Frontline Customer Service Excellence Programme. The cost and deliverables matrix is attached

The 1<sup>st</sup> phase of the 3-phase partnership agreement is for a minimum of 3000 PRASA employees commencing 1<sup>st</sup> September 2011 and to be completed by 31<sup>st</sup> March 2014. (The partnership agreement had stated that this should be completed by September 2013, however the end date for the first 3000 has been extended to March 2014 to accommodate for PRASA's financial year end.)

The costing and timeframe for the remaining 2 phases (6000 PRASA employees) must be agreed to in writing by the 31<sup>st</sup> March 2013.

## 3 Detailed per learner costing

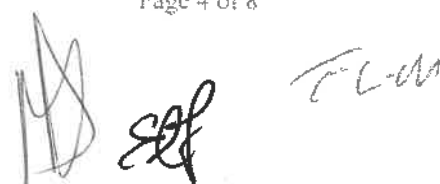
Project Activities	Deliverables	Resp
<b>Phase: Planning/ Pre-Implementation</b>		
Project inception discussions/meetings between Prodigy and PRASA 2011-March 2014	Planning framework/ GANNT	Prodigy
PRASA frontline learner selection - high level - occupational groupings (3000 candidates identified - access controllers, ticket clerks, conductors, drivers, security guards). Coaching sessions also planned	PRASA Frontline Learner Database	PRASA
Prodigy internal planning and weekly operations meetings. Development of resource matrix, scheduling and logistical management. Quality assurance, obtaining daily attendance registers and submitting to PRASA, attendance reconciliation, review of facilitator evaluation,	Reports Operations Resource Matrix Attendance Recon Facilitator Reports Learner Evaluation Forms (aggregate captured)	Prodigy

Project Activities	Deliverables	Resp
and reports.		
Project management: contingency planning, risk assessment, project efficacy, management of Prodigy team, high level meetings with PRASA client	Project reports and project success indicators	Prodigy
<b>Phase: Investigative (customisation of training material - Customer Services)</b>		
Prodigy-PRASA MyStation Strategy Workshops: Prodigy sessions to present the appropriate unit standards for the customer service training for frontline staff. Prodigy will present its generic frontline service programme which will be workshopped with PRASA and then customised for frontline PRASA rail customer services	Skills programme Key outputs and outcomes finalised on basis of workshop with PRASA: this will then form the foundation for the MyStation Customer Services programme Developed	Prodigy
Develop customised PRASA MyStation Skills Programme based on outputs from workshops. The PRASA MyStation skills programme will be based on Prodigy's accredited frontline programme that comprises unit standards from GETC: Transport NQF 1, NC Professional Driver NQF 3, NC Rail Transport Passenger Services NQF 3	Draft Customised PRASA MyStation Skills Programme Developed: comprising of the following unit standards: see attached worksheet	Prodigy
Prodigy Training Material Workshop 2: Meeting between Prodigy and PRASA - Presentation of customised material	Customised MyStation programme Formulated as work in progress	Prodigy
Changes effected as required	MyStation Skills Programme amended	
Presentation of customised material and sign-off by PRASA	Training material signed off: learner workbook, learner workplace coaching logbook, facilitator guide, mentor guide, handouts, assessor pack	Prodigy & PRASA
Redraft of the MyStation Programme, central facilitator induction, purchase of videos, redesign of presentation		Prodigy with PRASA input
Development of a little pocket booklet on salient aspects of customer service	MyStation booklet/ Z Card (printing and design to be done by PRASA)	Prodigy
<b>Phase: Communication of PRASA MyStation Customer Service Frontline Programme</b>		
Development of communication content for MyStation Customer Service Programme	PRASA MyStation Communication content developed (PRASA corporate: PRASA Website) and Communication tailored for frontline workers (letters)	Prodigy
Preparation of regional management presentation, and presentation to regional managers across all provinces, done by Prodigy project leader with PRASA.	Regional management presentation and the presentation thereof to regions	Prodigy




T-L-001


Project Activities	Deliverables	Resp
SMSs to each learner during peak times to remind them of key learning actions		Prodigy
Communiqué regarding project	OnTrack	Prodigy and PRASA
<b>Phase: PRASA MyStation Customer Service Skills Programme Implementation Preparatory Phase</b>		
PRASA frontline Learner registration and screening records captured onto Prodigy PEDEX Learner Management System. All National Learner Record Database fields to be captured to ensure that correct learner information is transferred to the SETA.	Learner Management System	Prodigy
PRASA MyStation Customer Services Programme Finalised for roll-out	Final Customised PRASA MyStation Customer service Skills Programme developed	Prodigy
<b>Phase: PRASA MyStation Customer Service Skills Programme Implementation Engagement Phase</b>		
Content Phase: Implementation of PRASA MyStation Customer Service Skills Programme Training Sessions. The theoretical session is five days - 149 groups of 20 learners each (we have accommodated for more groups). This will be a 10 day programme conducted over a 3-6 month period i.e. each learner must complete the programme in a maximum of 6months. To be completed September annually.	Attendance registers Facilitator reports Daily and weekly emails Learner Evaluation Forms Learner Portfolios of Evidence Facilitator Reports	Prodigy
Assessment of learner POE's by a registered constituent SETA assessor/ subject matter expert.	Assessor results per learner	Prodigy
Remediation conducted with individual learners based on the assessor feedback	Assessor results per learner	Prodigy
Moderation of learner POE's by a registered constituent moderator	Moderator results per learner	Prodigy
Uploading of learner results firstly onto Prodigy LMS and then onto the SETA MIS, printing of the assessment, moderation and quality assurance documentation, verification preparation and external moderation	Management Information System	Prodigy
Experiential Phase: Each of the MyStation learners to conduct post training workplace based customer service assignments and record these activities into a learner diary. This diary will fulfill the workplace requirement of the skills programme training. This serves to reinforce the training	Workplace reinforcement/ Learner Support Diary and Workplace Post Training Impact Reports. Physical onsite mentorship of learners via site visits. Each learner will have a visit by a mentor at the station post the theoretical training.	Prodigy
Facilitators to take photos	Photos	



Handwritten signatures and initials, including a large stylized signature, the word 'self', and the initials 'FLM'.

Project Activities	Deliverables	Resp
<b>Phase: MyStation International Customer Service Recognition Trip</b>		
Development of criteria, consolidating the performance scores across all regions and for all learners, shortlisting learners for PRASA, formulation of reports for rationale for choosing learners		Prodigy and PRASA
International summary report on best practicing rail passenger countries as well as countries with best practicing companies: proposed selection of country to visit.		Prodigy
Arrangements with international companies to host PRASA on site visits, interviews, case studies, presentations. This is not a trip so participants will be required to complete case studies, write a best practice report on lessons learnt and to be applied to PRASA and will be required to present to PRASA on return.		Prodigy with PRASA assistance
<b>Phase: Project Closure</b>		
Final consolidated report: findings, learning areas and gaps, SWOT, etc. aggregated by learning programme and region	Close out report.	Prodigy
<b>Project Disbursements</b>		
MyStation material: Print learner workbooks, workplace coaching logbook, facilitator packs, assessment packs, evaluation forms, attendance registers, metal badges for all completed PRASA learners	All material, badges, bags, booklets	Prodigy (subcontracted)
Portfolio transportation costs - courier costs for POE's to and from training venues and then back to learners after verification	POE's delivered and collected from training venues.	Prodigy (subcontracted)
Disbursements are absorbed in the programme, this includes subsistence for facilitators, telephone, internet, 3G, travel, accommodation, over-time, cameras for all facilitators, each facilitator has a proxima and laptop		
<b>Additional Deliverables included</b>		
Unemployed learners: Prodigy will require ten days at minimum (only for learners that do not have sufficient workplace experience) for the theory and 5 days for facilitated workplace coaching	The additional days for theory and remediation is contained in this costing	Prodigy and PRASA to identify learners
Catering	Morning Tea, mid morning tea, Lunch,	Prodigy
Additional work on material	This is ongoing	Prodigy
Changes to customise for Autopax: case studies and assignments to be redone		Prodigy
Two trips to stations for coaching and remediation		Prodigy
<b>Cost per learner</b>		R24 000,00
<b>Cost for 3000 learners</b>		R72 000 000,00







#### 4 LEARNER COST OF THE PRASA MYSTATION PROGRAMME

The per learner cost of the 1<sup>st</sup> phase of the programme is R24 000.00 (excluding VAT).

An Invoicing Schedule for the first 3000 learners is attached in Section 5. A minimum of 100 learners per month must be done to ensure that Prodigy is able to retain the facilitators and support staff for the implementation of this programme; as well as ensuring that the project has the derived impact and momentum.

Invoicing will be on a monthly basis, based on training completed with a minimum of 100 learners per month. The invoice will be submitted on the last day of the month to the Group Executive: Human Resources. The GE: HR will have 2 working days to verify the invoice. After 2 working days, if no response is received, the invoice is deemed to have been accepted by PRASA, and the invoice is payable within 30 days of acceptance.

#### 5 INVOICING SCHEDULE – PHASE 1 OF 3 PRASA MYSTATION PROGRAMME

Date	Number of Learners	Total Cost incl VAT
1 <sup>st</sup> September 2011 to 30 <sup>th</sup> June 2012	599	R16,388,640.00
July 2012	58	R1,586,880.00
August 2012	120	R3,283,200.00
September 2012	120	R3,283,200.00
October 2012	120	R3,283,200.00
November 2012	120	R3,283,200.00
December 2012	100	R2,736,000.00
January 2013	120	R3,283,200.00
February 2013	120	R3,283,200.00
March 2013	120	R3,283,200.00
April 2013	120	R3,283,200.00
May 2013	120	R3,283,200.00
June 2013	120	R3,283,200.00
July 2013	120	R3,283,200.00



Date	Number of Learners	Total Cost incl V.A.T
August 2013	120	R3,283,200.00
September 2013	120	R3,283,200.00
October 2013	120	R3,283,200.00
November 2013	120	R3,283,200.00
December 2013	100	R2,736,000.00
January 2014	120	R3,283,200.00
February 2014	120	R3,283,200.00
March 2014	103	R2,818,080.00
<b>Total Cost</b>	<b>3,000</b>	<b>R82,080,000.00</b>

## 6 COST OF CANCELLATIONS

The partnership agreement states that PRASA will pay the full cost of cancellations. It has been agreed that PRASA will pay for cancellations as follows:

1. Should a session be cancelled 5 working days or less, the full cost of 20 learners at R24 000.00 will be charged.
2. Should a session have 1 - 5 learners absent, the absent learners will be charged at 25%.
3. Should a session have more than 5 learners absent, Prodigy will charge PRASA 50% of the full cost for the learners absent.
4. Should a learner miss the scheduled coaching session (and the extra session as per Prodigy value-add), Prodigy will charge PRASA 15% of the cost per learner.

A separate reconciliation of cancellations will be done and invoiced monthly. PRASA will have two days to verify cancellations. If Prodigy does not obtain feedback from PRASA, it will be deemed that the invoice has been accepted.

## 7 SIGNATORIES

**On behalf of the Provider**

Signature

Designation - duly authorised hereto

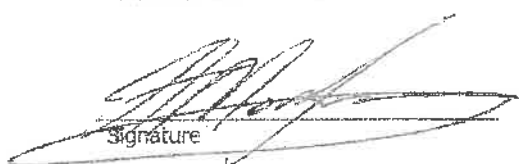
THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_  
2012, IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

**AS WITNESSES**

1. \_\_\_\_\_  
Signature \_\_\_\_\_ Designation \_\_\_\_\_

2. \_\_\_\_\_  
Signature \_\_\_\_\_ Designation \_\_\_\_\_

**On behalf of PRASA**

  
Signature

GROUP CEO  
Designation - duly authorised hereto

THUS DONE AND SIGNED AT HATFIELD ON THIS THE 21<sup>st</sup> DAY OF  
OCTOBER 2012, IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

**AS WITNESSES**

1. \_\_\_\_\_  
Signature \_\_\_\_\_ Designation \_\_\_\_\_

2. \_\_\_\_\_  
Signature \_\_\_\_\_ Designation \_\_\_\_\_





# MMD7



## Service Level Agreement

ANNEXURE TO PARTNERSHIP AGREEMENT

ENTERED INTO BY AND BETWEEN

**PRASA LEARNING AND DEVELOPMENT DEPARTMENT** (hereinafter referred to as "**PRASA**" and herein represented by **NTLOMO KOKA**, General Manager, PRASA Learning & Development being duly authorized hereto)

AND

**PRODIGY BUSINESS SERVICES (Pty) Ltd.**  
Registration No. 2006/018844/07

(hereinafter referred to as "**The Provider**" and herein represented by **NERISHNI SHUNMUGAM** being duly authorized hereto)

TS  
Page 1 of 7  
ASN  
17

## 1. Introduction

This service level agreement annexure is entered into between PRASA and Prodigy Business Services (PTY) LTD to ensure that a quality management system is in place for the period specified in the addendum as approved by the Group CEO in 2015, which conforms to Scope of Work requirements contained in the partnership agreement.

The management of both parties is totally committed to providing a quality service and ensuring that the skills interventions are successfully implemented within PRASA.

The service level agreement is binding on both parties and is mutually accepted by the respective organisations.

## 2. Service Statement

This agreement is to outline the provision of the MyStation Learning and Development Intervention for employees within PRASA (ALL DIVISIONS AND SUBSIDIARIES) providing Support for both the organisation, its employees and unemployed youth.

- To understand the impact of customer service and service excellence on:
  - The Organisation and Individuals – "the employee"
- Employees' roles and responsibilities in ensuring service excellence
- To entrench the new behaviour in effective customer service delivery
- To articulate the connections between new behaviours and business success
- To ensure that a change infrastructure exists to support all modernisation projects
- Ensure that all employees that have attended the programme, complete all aspects of the programme and meet the qualification requirements that have been agreed to between the parties (as in the past)
- Align the programme, where necessary, to meet the needs of PRASA division/subsidiary

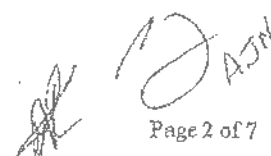
This agreement aims to propagate sound working relationships between the respective parties as well as minimising the impact of delays and or misunderstandings.

The responsibility of Human Capital Management Department and Prodigy is to ensure the successful implementation of, adherence to, and dissemination of the provisions of this agreement.

The service provider will be tasked to assist the organization with crafting the most effective training strategies through the MyStation to ensure that it drives PRASA's key strategic objectives of service excellence, ensuring that employees understand their individual contribution to the success of the organisation. Prodigy's offering will be in line with the partnership agreement to include station and corridor management development, frontline staff development which includes customer service, protection service, operations and technical staff and any other PRASA staff that may require Prodigy's offering.



T.S.



A.J.M.  
Page 2 of 7



Service level agreement between PRASA and Prodigy

### 3. SERVICE DISCRIPTION

	Service Description (Deliverable)	Performance Measures (Measurable outcomes)	Timelines	Monitoring Cycle	Norms (Baseline Requirements)
	PRASIGY Responsibility (Service Provider)	PRASA Responsibility (Company/Client)			
3.1	Develop training Material for PRASA (any division, department or subsidiary requiring the service) using the My Station concept				
3.1.1	<ul style="list-style-type: none"> <li>Conduct training needs alignment for PRASA (divisions, departments and subsidiaries)</li> <li>Develop training material based on best practice, incorporating PRASA Standard Operating Practices</li> <li>Align the MyStation programme to PRASA Values, ensuring employee awareness and understanding of the organisational values</li> <li>Align the training program and modules to accreditation, to enable PRASA to claim from TETA</li> </ul>	Provide all required information with regard to the learning material, PRASA policies, procedures and standards  Submit training plan to TETA  Manage submissions to TETA, Claim grants from TETA	End May 2015	Monthly meetings to monitor progress	The MyStation programme for PRASA departments/ subsidiaries operations will be used as the baseline when developing and customising training material for the various PRASA end users.  The approved MyStation program will be the model used to implement the respective training.



## Service level agreement between PRASA and Prodigy

	Service Description (Deliverable)	Performance Measures (Measurable outcomes)	Timelines	Monitoring Cycle	Norms (Baseline Requirements)
	PRASAs Responsibility (Service Provider)	PRASAs Responsibility (Company/Client)			
3.2	Develop and consolidate a schedule of all planned My Station training and development				
3.2.1	Develop an implementation framework and plan for the MyStation program  Allocate resources and keep to the PRASA training schedule s developed by PRASA.	Effective Communication systems in place. Training Schedules to be done with PRASA operations See schedule of first cohort of identified MLPS employees for May 2015 to December 2015. Other schedules will be done similarly.	May- June 2015, to and then annually for the duration of the contract/addendum to the contract	Effective use of the training schedule • Bi weekly meetings held with the project manager at corporate Monthly Steering Committee Meetings	Training schedules as per WSP/ATR
3.2.3	Provide training to PRASA Employees and unemployed youth nationally based on numbers supplied	Ensure that learners are released on time for training  Ensure that the	As per weekly meetings	• Monthly	Operational schedules

## Service level agreement between PRASA and Prodigy

Service Description (Deliverable)		Performance Measures (Measurable outcomes)	Timelines	Monitoring Cycle	Norms (Baseline Requirements)
3.2	PRASIDY Responsibility (Service Provider)	PRASA Responsibility (Company/Client)			
	Ensure that training planned, scheduled and confirmed in advance (2 weeks confirmations, cancellations as per clause 6 of Annexure A).	Service provider is advised in advance (2 weeks) if the will be cancellations or rescheduling of training			
3.2.4	Daily and weekly attendance registers. Daily updates to PRASA to ascertain variances to ensure that the training is implemented as per plan	Manage the operational implementation in line with plans	May 2015	Monthly Steercom Meetings	
3.2.5	Management of learner support for all identified divisions of PRASA  Provide continuous assistance to complete POEs and where required on the job mentoring and coaching for learners inline with the MyStation program  Facilitate and monitor learner POE upload to TETA	Provide resources when requested  Ensure that learners submit POE (Portfolios of Evidence) on time  Allow for on the job learner coaching and mentoring	May 2015 – Last date as specified in the addendum.		
3.3	Graduation and Certification				
3.3.1	On completion learners will be	Avail employees for	Annually	Monthly Steercom	Previous

Service level agreement between PRASA and Prodigy

Service Description (Deliverable)	Performance Measures (Measurable outcomes)	Timelines	Monitoring Cycle	Norms (Baseline Requirements)
<b>PRASAs Responsibility (Service Provider)</b> provided with certificates/statements of results stating program, qualification and employees details etc. Provide PRASA with a plan for the graduation ceremony Facilitate/Co-manage to the graduation celebration event	<b>PRASAs Responsibility (Company/Client)</b> the certification ceremony Provide platform for communication, Marketing and Comms department to be available for the project Prasa to identify graduation committee Prasa to identify and confirm budget for the ceremony			
	Ceremony and certification		Graduation Committee meetings quarterly	MyStation graduations ceremonies and programs

*[Handwritten signature]*

S.I. *[Handwritten signature]*  
 2 JUN 0

*[Handwritten signature]*

## Service level agreement between PRASA and Prodigy

## 4. PROJECT COSTS

The Provider agrees to keep the cost per learning intervention and not increase the cost per learner. A learning intervention will be five days of training followed by assistance to complete the POE requirements.

## 5. NON-COMPLIANCE WITH SERVICE LEVEL AGREEMENT

Where the deliverables are not met these must be handled via the steering committee meetings and as per contract. The Provider must be notified timeously of poor performance/non-delivery so that it may be immediately remedied, will be given adequate time not more than 30 days to remedy the situation.

## 6. REVIEW

Review will take place at twelve monthly intervals. All parties must sign the Service Level Agreement Review Sheet in order for this agreement to remain valid. The practice of tolerating situations where processes are allowed to continue while this agreement has lapsed is discouraged, however, as a rule, no process shall cease as a result of this SLA being invalid. Rather, this SLA shall be revised as soon as possible.

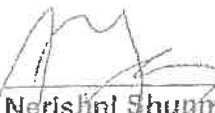
## 7. CONTINGENCIES

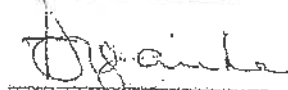
Where a situation arises and there is a lack of resources to comply with this SLA, the training will be conducted for unemployed as per the contract, the numbers will be managed as per contract.

## 8. CONSTRAINTS

It is agreed that where services are reliant on other parties ie Shared Service Centre, with regard to service deliverables, no corrective action will be raised.

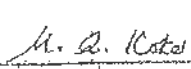
Signed at HATFIELD on 10<sup>th</sup> MAY 2015


  
Nerishni Shunmugam  
Prodigy Business Services (PTY) LTD  
Date: 10/05/2015

  
Witness

Prodigy

Date: 10/05/2015

  
Ntlobo Koka  
General Manager  
Learning & Development  
Human Capital Management  
PRASA  
Date: 29 May 2015

  
Witness  
PRASA

Date: 29 May 2015





T.S

ASN  
10/2



# MMD8



MMD8

**Verda van den Berg{METROHO}**

**From:** Lucky Montana {PRASA CORP}  
**Sent:** 18 May 2015 03:14 PM  
**To:** Nonhlanhla Kondowe; Fani Dingiswayo; Sidney Khuzwayo  
**Cc:** Ramagoganye Ngakane {PRASA CORP}; Boitumelo Kgosana; Moffet Mofokeng; Pearl Munthali {PRASA CORP}; Josephat Phungula; Martha Ngoye  
**Subject:** My Station Programme - Prodigy

Dear Nonhlanhla

There is nothing wrong with the appointment of Prodigy nor with the extension of their contract. I am not surprised because this is part of a much bigger agenda, which has targeted certain contracts and appointments and to project these as being irregular. Some of the contracts had already been leaked to external auditors and the media as part of a strategy to discredit the Group CEO and create a cloud before he steps down at the end of the year.

This is a well coordinated strategy that started in November 2014 when I went on leave. I will at the most appropriate time act against all those who are involved in this dirty campaign. The investigation they are starting is unlawful and part of a plot I am well aware of.

The extent of opportunism by some of our managers really amazes me. A Manager like Sidney Khuzwayo should start first by cleaning the many irregular appointments he has party to within SCM which I have been trying to address and even explaining some of these to the Office Public Protector. Some of the Managers are excited by the new Board and are feeding all sorts of wrong information so that they could carry favour with the Board. They will be the biggest losers at the end of this process.

The decision to partner with Prodigy on the training of customer services remains sound and the extension of the contract is still in order.

Please allow them to continue with their strategy which is bound to fail.

Kind regard

Lucky Montana

Sent from Samsung tablet



# MMD9



## **EXCLUSIVE: ANC delegate and Zuma 'keeper' Moodley scores Prasa millions**

2017-12-15 16:30

Pieter-Louis Myburgh

# news24

## **Breaking News. First**



Roy Moodley registering as a delegate for the ANC's 2017 elective conference on Friday. (PIC: Supplied)

Johannesburg - Roy Moodley, the controversial Durban businessman who once allegedly paid President Jacob Zuma a salary, received questionable "fees" from yet another contractor to the Passenger Rail Agency of South Africa (Prasa).

News24's latest revelation adds fuel to long-held suspicions that Moodley has been acting as a gatekeeper to lucrative Prasa contracts, much like the Guptas have allegedly been doing at state-owned companies like Eskom and Transnet.

Moodley was spotted on Friday registering for the ANC's 54th elective conference at the registration centre for delegates at the University of Johannesburg. A picture of Moodley shaking hands with Jessie Duarte, the ANC's deputy secretary general, circulated on social media on Friday.

Bheki Ntshangase, the chairperson of the ANC's Durban region, confirmed that Moodley was attending the elective conference in his capacity as a member of the South African National Civic Organisation (Sanco).

We can today reveal that Prodigy Business Services, a provider of training and skills services, made at least one payment of more than R4m to one of Moodley's companies in 2015.

The payment was made after Prodigy had earlier secured a contract from Prasa that would ultimately earn the company R82m.

This follows News24's revelation in August 2016 that local electronics and security firm Siyangena Technologies made payments to companies linked to Moodley totaling a staggering R550m.

**Read: EXCLUSIVE: Zuma friend's R550m bonanza**

The payments came after Siyangena clinched Prasa contracts in 2011 and 2013 together valued at about R4bn.

Moodley did not respond to News24's queries about the payment. He did not answer phone calls and failed to respond to emails and WhatsApp messages.

Nerishni Shunmugam, Prodigy's managing director, said News24's information was "inaccurate and false". However, Shunmugam did not answer our detailed queries about Prodigy's payment to Moodley's company.



*The Prodigy Business Academy in Johannesburg's CBD. (PIC: Pieter-Louis Myburgh, News24)*

Shunmugam also demanded that News24 provide her with the details of our sources for this story.

Author and investigative journalist Jacques Pauw recently revealed in his book *The President's Keepers* that Moodley had paid Zuma a salary of R1m a month for four months into Zuma's first tenure as president in 2009. This additional income was not declared to the South African Revenue Service (Sars), according to Pauw's book.

Documents seen by News24 confirm that, in June 2015, Prodigy transferred about R4.5m to Hail Way Trading, a company of which Moodley is the sole director. Hail Way Trading is the same company to which Siyangena channeled the bulk of the above-mentioned R550m.

*ef* *PS*

For a company that has been earning hundreds of millions of rand in revenue from Prasa contractors, Hail Way Trading shows few signs of being a bona fide company with actual employees or its own business premises.

The company has no website, whilst the address used for registration purposes at the Companies and Intellectual Property Commission (CIPC) is the same one used for Moodley's Royal Security, another beneficiary of Prasa contracts.

Hail Way Trading seems to have kept the filing of its annual returns up to date, but a CIPC note from 2015 stated that there was "no valid SMS or email address for [the] enterprise".

### **Prodigy contract probed**

One of Prodigy's executives, Varish Ganpath, is a known associate of Moodley. Ganpath has featured in media reports that detailed how Moodley allegedly abused his relationship with members of Durban's police fraternity.

The Witness recently reported that after Moodley and Ganpath had become embroiled in a spat over money with another Durban-based businessman, the latter was arrested on several occasions by Colonel Reuben Govender, a detective allegedly linked to Moodley.

Govender is the same policeman who recently tried to criminally charge Pauw and this reporter before the SAPS' provincial leadership removed him from these investigations.

News24 has reliably learnt that Prasa paid Prodigy R82m between 2011 and 2016. According to Prasa's 2015-'16 annual report, Prodigy was appointed to teach Prasa staff "customer services skills" through a programme called "My Station".

But a leaked document from one of a series of probes into Prasa's expenditure under former CEO Lucky Montana, which was recently published by GroundUp and #UniteBehind, indicates that Prasa flouted several of its own procurement rules and policies when it awarded the contract to Prodigy.

According to an investigation report by TGR Attorneys, one of the documents published by GroundUp, the Prodigy contract was characterised by a concerning absence of key documentation and processes that normally need to be filed and completed for such public expenditure.

### **The TGR report found that:**

- Prasa did not follow an open and competitive tender process for the contract;
- Prasa did not seem to be in possession of documents that confirmed in writing what Prasa's maximum expenditure on the contract would be;
- none of the individuals involved in the contract had signed declarations of interest; and






- Prasa could not even supply the investigators with the full tender document for the contract in question, among other findings.



*Roy Moodley with President Jacob Zuma. It is not clear when or where this picture was taken. (PIC: Supplied)*

The TGR report also implicates Montana. The former Prasa CEO signed a recommendation report in December 2012 for the extension of Prodigy's "My Station" contract for another two years and at a value of R30m.

The programme was put on halt in 2015 following a decision by the Prasa board, led by then chairperson Popo Molefe, to probe all Prasa contracts valued at above R10m.

The decision was preceded by the release of former Public Protector Thuli Madonsela's damning Derailed report into the horrific financial mismanagement at Prasa.

"Training . . . did not proceed due to contractual matters that are being addressed by the legal department. Cash constraints in Prasa also impacted the ability to continue with this programme," Prasa's 2015-16 annual report described the status of Prodigy's "My station" initiative.

Moodley is not listed as one of Prodigy's directors, but he is tied to the company in several ways. Apart from the R4.5m Prodigy transferred to Hail Way in 2015, and Moodley's and Ganpath's above-mentioned battle with the Durban businessman, Moodley himself was once introduced by former transport minister Sibusiso Ndebele as Prodigy's CEO.

This was at a ceremony held in celebration of the first 300 Prasa employees to have graduated from the "My Station" programme in 2011. Ndebele's speech is available on **Arrive Alive's website**.

News24 has also learnt that Moodley was copied into email exchanges between Ganpath and senior Prasa employees relating to the Prodigy contract before the deal was concluded in 2011.

etf

MS

Shunmugam accused this journalist and Naspers, which owns News24 through Media24, of driving a campaign aimed at "prevent[ing] black owned businesses from prospering".

"Naspers must obtain high court authorisation that permits me to respond to queries relating to third parties and other companies. Where is the consent of the court?" Shunmugam said in an emailed response.

"Pieter-Louis Myburgh is engaged in lazy journalism which has a very weak foundation. I need to know the individuals that have engaged with Pieter-Louis Myburgh, so that the common law can prevail. If these sources are convinced of the integrity of their information, then reveal this," added Shunmugam.

"Once again, reveal your sources and send me tangible references of your information. Otherwise [the] report is baseless and impotent," she concluded.

Nana Zenani, Prasa's spokesperson, said the Prasa officials who could provide information about the Prodigy contract were already on holiday.

Handwritten signature and initials in black ink. The signature is a stylized, cursive 'S' followed by a large 'M'. To the right of the signature are the initials 'SLJ'.

# MMD10



**PHYSICAL**  
Brookfield Office Park  
South Block  
272 Bronkhorst Street  
New Muckleneuk  
Brooklyn  
Pretoria 0181

**POSTAL**  
Postnet  
Office Suite 101  
Private Bag X15  
Menlo Park  
0102  
Docax 49 Brooklyn

**DIRECT**  
Tel: (012) 346 6436/5939  
Fax: (012) 346 5962  
Fax to E-mail: 086 260 7135  
Email: info@dm-inc.co.za  
Web: www.dm-inc.co.za

**PRASA HOUSE**  
**1040 BURNETT STREET**  
**HATFIELD**  
**PRETORIA**

OUR REF: M MOGASHOA/NAM/MB/PRASA  
YOUR REF: F DINGISWAYO/S MOKOTEDI

PER EMAIL: FANI.DINGISWAYO@PRASA.COM  
SMOKOTEDI@PRASA.COM

ATTENTION: MR. FANI DINGISWAYO  
MRS. SHUMI MOKOTEDI

Dear Sir/ Madam,

21 November 2017

<b>SUBJECT:</b>	<b>REPORT ON PROGRESS ON SIYAYA FILES</b>
<b>MATTERS:</b>	<b>SIYAYA // PASSENGER RAIL AGENCY OF SOUTH AFRICA</b>
<b>CASE NUMBERS:</b>	<b>73934/2015, 73933/2015, 74281/2015, 77333/2015 47597/2016, 57598/2016</b>
<b>ARBITRATION DATE:</b>	<b>POSTPONED SINE DIE</b>
<b>ARBITRATOR:</b>	<b>RETIRED JUDGE FD BRAND</b>

## 1. INTRODUCTION

- 1.1 We refer to the above matters and provide herewith our report in respect of same.
- 1.2 The purpose of this report is to provide client with an update on the background of the Siyaya Summons our office has been instructed to defend, the status of the files and as well prospects of PRASA successfully defending these matters.
- 1.3 Kindly be advised that this report is only intended for the purposes as indicated in paragraph 1.2 above, and it in no way constitutes an opinion for purposes of advising PRASA on how to best proceed in defending this matter.

## 2. SUMMARY OF THE BACKGROUND ON EACH FILE

### 2.1 CASE NO. 73934/2015 : SIYAYA DB CONSULTING ENGINEERS (PTY) LTD // PRASA

- 2.1.1 We received this instruction to defend this matter on or about 01 October 2015.

Directors: Madings Mogashoa, Donald Diale  
Senior Associates: Niendo Makuyana, Busisiwe Mqinigrana, Yagashen Pillay, Mari Wilenech, Thabo Minamadi  
Molebogeng Masikoe, Kobus de Beer, Calvin Selane, Geraldine Burger, Kenelwe Makwela  
Associates: Mphahlele Segothe, Precious Muleudzi, Kumeleleng Papo  
Nondumiso Dlamini, Mufesi Munyanga, Tshifhele Ntshisaku  
Finance Manager: Karen Greyling Office Manager: Neliswa Thabathe

## DIALE MOGASHOA ATTORNEYS

2.1.2 The Plaintiff alleges, in his particulars of claim dated 09 September 2015, that:

*"on or about 8 September 2014 at Braamfontein, Johannesburg, the Plaintiff represented by its Managing Director, Makhensa Mabunda, and the Defendant represented by its Group CEO, Lucky Tshepo Montana, concluded a written consultancy agreement for the PRASA RAIL INFRASTRUCTURE REHABILITATION PROGRAM PHASE II".*

2.1.3 Further that, the terms of the agreement were that:

*"5.1 The contract price was R 28 819 200.00 inclusive of VAT( clause 1.11).*

*5.2 the effective date was 1 September 2014 (clause 1.14).*

*5.3 The completion date was the last day of the 12 months from the effective date(clause 1.23).*

*5.4 Project terms was defined as a period of 12 months from the effective date (clause 1.22).*

*5.5 services was defined as the services to be provided by the Defendant as listed in clause 9 of the agreement (clause 1.26).*

*5.6 The Defendant appointed the Plaintiff to provide the services (clause 13).*

*5.7 The agreement would commence on the effective date for the provision and would terminate at the end of the completion date (clause 5)*

*5.8 The detailed scope of services and the timeline for the provision of those services by the Plaintiff was detailed in the scope of service schedule 'A' to the agreement (clause 9.2).*

*5.9 Payment for the services would be in accordance with the payment schedules which was annexure 'B' of the agreement (clause 10.1).*

*5.10 Payment for the services would made into Plaintiff's bank account set out in the invoice (clause 10.2).*

*5.11 The Defendant would effect payment within 60 days after receipt of such invoice (clause 9.3).*

*5.12 The Plaintiff would issue the Defendant invoices in accordance to payment schedules and the invoices would:*

*5.12.1 indicate the VAT number of the Plaintiff;*

*5.12.2 indicate the full details of the Plaintiff and bank account;*

*5.12.3 be a valid tax invoice in accordance with the requirements of the South African Revenue Service; and*

*5.12.4 indicate the vendor number provided to the Plaintiff by the Defendant.*

*5.13 The Defendant chose the domicilium citandi et executandi at PRASA House, 1040 Burnett Street, Hartfield Pretoria (clause 18.1)".*

2.1.4 Further that:

*esf*  
*kmm*  
*[Signature]*



DIALE MOGASHOA ATTORNEYS

*"During December 2014, the Plaintiff represented by Andreas Matthee and the Defendant represented by Portia Xaba agreed on a written variation to the Consultancy Agreement"... The variation is constituted by the amended scope of service in 'POC2' and the amended payment schedule on 'POC3'.*

- 2.1.5 The Plaintiff further alleges that he rendered services to the Defendant as per the amended scope of service and to which they have not received payment, despite the lapse of 60 days from date of receipt of its invoices. The Plaintiff alleges that the Defendant is indebted to the Plaintiff in the amount of R 7 098 481, 66, with interest at the rate of 9% per annum.
- 2.1.6 The Plaintiff, on the 1<sup>st</sup> of October 2015, filed an application for summary judgement, which application was opposed by the Defendant. The application was heard on the 18<sup>th</sup> of November 2015, and the court made a ruling in favour of the Defendant on the 1<sup>st</sup> of December 2015. A copy of the relevant court order granting the Defendant leave to defend this matter is attached herewith for your ease of reference.
- 2.1.7 On the 9<sup>th</sup> of February 2016, Defendant served upon Plaintiff its notice of exception based on a number of grounds. A copy of the notice indicating the grounds upon which Defendant relied is attached herewith for your ease of reference. The exception was heard on the 3<sup>rd</sup> of May 2017 and dismissed by Judge Van der Westhuizen AJ on the basis that plaintiff has sufficiently made out an answerable case. A copy of the relevant judgement is attached herewith for your records.
- 2.1.8 On the 26<sup>th</sup> of June 2016, Defendant served its plea, which was at the time a bare denial plea. On the 20<sup>th</sup> of March 2017, Defendant amended its plea by replacing its previous plea of the 26<sup>th</sup> of June 2016.
- 2.1.9 The amended plea raised the issue of jurisdiction in that clause 20 of the agreement upon which Plaintiff relies upon provides that disputes between parties must be referred to arbitration and that the present dispute had not been referred to arbitration.
- 2.1.10 The second defence raised in the plea is that the services indicated to have been rendered on the invoices upon which the Plaintiff relies are not of any of the services listed in annexure 'POC3'. In other words, the payments claimed for by Plaintiff under these summons are not authorised by the consultancy agreement upon which the Plaintiff relies, and on that basis Defendant is not liable to the Plaintiff on such amounts.
- 2.1.11 The third defence raised in the plea is that the Plaintiff is not entitled interest because they did not demand payment of such various amounts on the dates alleged in its particulars of claim, and therefore they are not entitled to interest with effect from those dates.
- 2.1.12 The defence also relied on clause 11.1 of the consultancy agreement to allege that:

*"The invoices upon which the plaintiff relies are not in accordance with the payment schedule contemplated in clause 11.1 of the consultancy agreement due to the fact that the amounts claimed therein are not the amounts provided for in the payment schedule contained in Annexure B to the consultancy agreement.*

*In the premises, insofar as the amounts claimed by the plaintiff are not in accordance with the amounts provided for in the payment schedule contained in annexure B to the consultancy agreement, the defendant pleads that the plaintiff is in law not entitled to claim such amounts.*

kim

DIALE MOGASHOA ATTORNEY

*terms of the consultancy agreement and the defendant is therefore not liable to the plaintiff in terms of the consultancy agreement upon which the plaintiff relies."*

2.1.13 The defence also relied on the fact that clause 1.12.4 of the consultancy agreement created reciprocal obligations between the parties. The clause provides that the plaintiff commits an event of default if it does not deliver a certificate of occupation within a period of 20 days from the project completion date. The plaintiff has not delivered the certificate of occupation referred to in clause 1.12.4 of the consultancy agreement and it is for this reason not in law entitled to enforce the consultancy agreement against the defendant.

2.1.14 The plea also contested the lawfulness of the variation of the consultancy agreement to the extent that it is contemplated in clause 23 of the agreement.

2.1.15 Lastly, the plea dealt with Defendant's denial of the fact that the services the Plaintiff alleges to have rendered are in consonant with the services listed in POC2 of its particulars of claim.

1.16 The Plaintiff then proceeded to place this matter down for a hearing on the trial roll of the 16<sup>th</sup> of November 2016. The trial on this aforementioned date was postponed *sine die*, with costs reserved, and on the basis that:

2.4.16.1 this matter was not ripe for trial in that Plaintiff had not adequately replied to Defendant's notice in terms of Rule 35(3);

2.4.16.2 that an expert notice prepared by the Plaintiff was not filed timeously in terms of the court rules, and as a result prejudiced the Defendant in properly defending this matter;

2.4.16.3 a further pre-trial conference needed to be held between the parties to eliminate issues in dispute and issues not in dispute in the parties' final preparation for the trial; and

2.4.16.4 Further, it was not necessary for the Plaintiff to furnish the Defendant with security for costs.

17 The Plaintiff then proceeded to place this matter on the trial roll of the 3<sup>rd</sup> of May 2017. Parties then entered into an agreement wherein all these matters, save for the matter with case number 77333/2015, were consolidated and referred to arbitration, and same was noted in the court order of the 3<sup>rd</sup> of May 2017. A copy of same is attached herewith for your ease of reference.

## 2.2 CASE NO. 73933/2015 : SIYAYA DB CONSULTING ENGINEERS (PTY) LTD // PRASA

2.2.1 We received instructions to defend this matter on 25 September 2015.

2.2.2 The Plaintiff in this matter alleges that:

"On or about 4 December 2013 and at Braamfontein, Johannesburg, the Plaintiff represented by its Managing Director, Makhensa Mabunda, and the Defendant represented by its Chief Executive Officer, entered into a written Accelerated Infrastructure Refurbishment Project Consulting Agreement..."

2.2.3 The Plaintiff alleges further that:

kim

## DIALE MOGASHOA ATTORNEYS

*"5.1 The contract price was R 24 978 000.00 inclusive of VAT (clause 1.9).*

*5.2 The effective date was 26 April 2013 (clause 1.13).*

*5.3 The completion date was the last day of the 12 months from the effective date (clause 1.12).*

*5.4 Services were defined as the services to be provided by the Plaintiff as listed in clause 8 of the agreement (clause 1.25).*

*5.5 Project terms was defined as a period of 12 months from the effective date (clause 1.21).*

*5.6 The Defendant appointed the Plaintiff to provide the services (clause 3.2).*

*5.7 The agreement would commence on the effective date and would terminate at the end of the project term (clause 5).*

*5.8 The Plaintiff would provide the engineering consulting services with regard to the upgrading and rehabilitation of the parts of permanent way and formation, overhead traction equipment, substations, train authorisation systems (signalling), telecommunication systems, Rolling Stock and Rolling Stock Maintenance Facilities (clause 8.1).*

*5.9 The detailed scope of work to be provided by the Plaintiff was detailed in the Scope of Service Schedule 'A' to the agreement (clause 8.2), which scope of work provided inter alia for certain options being inter alia option 3, Frameworks Contracts for Perway Material, On-track machine Supplier and Contractor Development.*

*5.10 Payment for the Service should be in accordance with the payment Schedule which was Annexure 'B' of the Agreement (clause 9.1).*

*5.11 Payment would be made into the Plaintiff's bank account set out in the invoice (clause 9.2).*

*5.12 The Defendant would effect payment within 30 days after receipt of such invoice (clause 9.3)."*

*the remainder of the terms of the contract are similar as the ones indicated in para 5.12 of the Consultancy agreement here-above.*

**2.2.4** The Plaintiff further alleges that they rendered services and furnished the Defendant with invoices in accordance with Annexure 'B' of the Agreement, and that the Defendant failed to effect the payments for those invoices. It is as a consequence of the aforementioned breach of agreement that the Plaintiff then alleges that the Defendant is indebted to it in the amount of R 8 0950.00, with interest at the rate of 9% per annum from 25 March 2015 to the date of payment.

**2.2.5** The Plaintiff, on the 1st of October 2015, filed an application for summary judgement, which application was opposed by the Defendant. The application was scheduled to be heard on the 11<sup>th</sup> of November 2015, however on the 10<sup>th</sup> of November 2015 the parties entered into an agreement that Defendant would be granted leave to defend this matter, with costs reserved. There was an agreement further that Plaintiff would remove the motion application from the roll of the 11<sup>th</sup> of November 2015. A copy of the relevant court order granting the Defendant leave to defend this matter is attached herewith for your ease of reference.

kim

*[Handwritten signature]*

DIALE MOGASHOA ATTORNI

- 2.2.6 On the 9<sup>th</sup> of February 2016, Defendant served upon Plaintiff its notice of exception based on a number of grounds. A copy of the notice indicating the grounds upon which Defendant relied is attached herewith for your ease of reference. The exception was heard on the 5<sup>th</sup> of May 2016 and dismissed by Judge Van der Westhuizen AJ on the basis that plaintiff has sufficiently made out an answerable case. A copy of the relevant court order is attached herewith for your records.
- 2.2.7 On the 26<sup>th</sup> of June 2016, Defendant served its plea, which was at the time a bare denial plea. On the 20<sup>th</sup> of March 2017, Defendant amended its plea by replacing its previous plea of the 26<sup>th</sup> of June 2016.
- 2.2.8 The amended plea raised the issue of jurisdiction in that clause 19 of the agreement upon which Plaintiff relies upon provides that disputes between parties must be referred to arbitration and that the present dispute had not been referred to arbitration.
- 2.2.9 The defendant also denied that the agreement was entered into by its Chief Executive Officer and as well the correctness of clause 3.2 of the agreement.
- 2.2.10 The plea also alleges that the Defendant is not liable to the Plaintiff due to the fact that Plaintiff failed to provide it with an occupation certificate as contemplated in clause 1.11 of the agreement.
- 2.2.11 The Defendant disputed its liability to the Plaintiff in that:
- "The invoices upon which the plaintiff rely are not consistent with the provisions of clause 2 of Annexure B to the agreement in that:*
- 2.12.1 *they do not set out the work for which the amounts are claimed;*
- 2.12.2 *they are not for any of the amounts listed in clause 2.1 of Annexure B to the agreement;*
- 2.12.3 *they are not for 25% of the contract price as provided for in clause 2.2 of Annexure B to the agreement; and*
- 2.12.4 *they are not accompanied by the deliverables prescribed for each of the invoices provided for in clause 2.2 of Annexure B to the agreement."*
- 2.2.12 The Defendant also denied that Plaintiff rendered the services provided for in clause 8 of the agreement read with Schedule A of the agreement.
- 2.2.13 The Defendant also challenges the Plaintiff's claim that it is entitled to interest as at 25 March 2015 as no case had been made in its particulars of claim for the interest to be paid with effect from that date.

kim



## DIALE MOGASHOA ATTORNEYS

2.2.14 The Plaintiff then proceeded to place this matter on the trial roll of the 14th of November 2016. On the 11th of November 2016, parties entered into an agreement to postpone the hearing of the 14th of November 2016, with costs reserved.

2.2.15 On the 3rd of May 2017 this matter was then consolidated and referred arbitration with four other matters with summons instituted by Plaintiff against the Defendant as indicated in paragraph 2.1.17 here-above.

## 2.3 CASE NO. 74281/2015 SIYAYA DE CONSULTING ENGINEERS (PTY) LTD // PRASA

2.3.1 We received instructions to defend this matter on 23 September 2015.

2.3.2 The Plaintiff, in its particulars of claim dated 09 September 2015, alleges that:

"During about 4 March 2013 at Braamfontein, Johannesburg, the Plaintiff represented by its Managing Director Makhensa Mabunda, and the Defendant represented by Dr. Daniel Mthimkhulu, Head of PRASA Engineering Services, concluded an oral agreement ('the Material Management and Coding Agreement').

2.3.3 Further that, the material express alternatively tacit terms of the Material Management and Coding Agreement were:

*"5.1 the Defendant appointed the plaintiff to render certain material management and coding services to the Defendant, being services referred to in the document prepared by the Defendant subsequent to the conclusion of the Material Management and Coding Agreement titled 'PROJECT CHARTER MATERIAL MANAGEMENT AND CODING PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) PROJECT CHARTER - YEAR 1 MATERIAL MANAGEMENT AND CODING ROLLING STOCK INFRASTRUCTURE (YEAR 1)' ('the Material Management and Coding Project Charter'), recorded under the following headings and detailed further in the Material Management and Coding Project Charter:*

*5.1.1 '2. Overview of Project: Scope and Objectives', in particular 'Siyaya is expected to review the Material Management strategy as well as processes, define, recommend and establish the IT Master DATA setup requirements for an accurate and transparent material management system within a 3 year contract period'.*

2.3.4 Plaintiff alleges further that the Material Management and Coding Agreement would be 3 years from 1 May 2013 to 31 October 2016, and that the total fee for services rendered would be R 16 999 322.00 inclusive of VAT.

2.3.5 The Plaintiff alleges further that during May 2014 and at Braamfontein, Johannesburg, Mr. Mabunda and Dr. Mthimkhulu concluded an oral agreement ('the Data Cleansing Agreement'). That, the material, express, alternatively tacit terms of the Data Cleansing Agreement were that:

*"the Defendant appointed Plaintiff to render certain data cleansing services referred to in the document prepared by Defendant subsequent to the conclusion of the Data Cleansing Agreement titled 'PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) PROJECT CHARTER PROJECT INITIATION DOCUMENT (CHARTER) DATA CLEANSING PROJECT ROLLING STOCK AND INFRASTRUCTURE' ('the Data Cleansing Project Charter'), being the services recorded under the following headings and detailed further in the Data Cleansing Project Charter..."*

kim

CE



## DIALE MOGASHOA ATTORNEYS

- 2.3.6 It is as a result of these agreements that Plaintiff now claims that they have rendered service to the Defendant, and for whose services the Defendant has failed to pay. Plaintiff alleges that the Defendant is indebted to it to a sum of R 17 628 118.59.
- 2.3.7 The Plaintiff, on the 1st of October 2015, filed an application for summary judgement, which application was opposed by the Defendant. The application was scheduled to be heard on the 11th of November 2015; however on the 10th of November 2015 the parties entered into an agreement that Defendant would be granted leave to defend this matter, with costs reserved. There was an agreement further that Plaintiff would remove the motion application from the roll of the 11th of November 2015.
- 2.3.8 On the 9th of February 2016, Defendant served upon Plaintiff its notice of exception based on a number of grounds. A copy of the notice indicating the grounds upon which Defendant relied is attached herewith for your ease of reference. The exception was later abandoned as Plaintiff indicated that they would be amending their particulars of claim. We attach herewith a copy of such amended particulars of claim for your records.
- 2.3.9 On the 27<sup>th</sup> of July 2016, the Defendant filed its plea to Plaintiff's amended particulars of claim.
- 2.3.10 The plea denied the conclusion of the alleged oral agreements between the Plaintiff and its representatives. In the alternative, it alleged that:
- "2.1.2.1 Mtimkulu was not duly authorised by the defendant to conclude the agreement on behalf of the defendant;*
- 2.1.2.2 the defendant did not at any time represent to the plaintiff that Mtimkulu was authorised to conclude the agreement on its behalf;*
- 2.1.2.3 the defendant is in law not bound by the agreement and the agreement is in law not enforceable against it;*
- 2.1.2.4 the plaintiff ought to have attached to its particulars of claim the written part of the agreement and its failure to do so is prejudicial to the formulation of the defendant's defence..."*
- 2.3.11 In addition, the Defendant pleaded that the project charter attached as POC1 of the amended particulars of claim was not prepared by it, that no agreement was reached between parties regarding its contents, that Plaintiff had no capacity and skills to render the services indicated therein, and that Plaintiff did not render any of the services for which payment is claimed.
- 2.3.12 The Defendant also admitted receipt of Plaintiff's invoices but pleaded that the Plaintiff did not render services for which the invoices were rendered, and that Plaintiff did not deliver the deliverables contemplated in such invoices. It is pleaded further that, some of the invoices submitted by the Plaintiff do not fall under any of what the Plaintiff alleges was the scope of works as contemplated in POC1 and POC2.
- 2.3.13 The Plaintiff then proceeded to enrol this matter for hearing on the trial roll of the 1<sup>st</sup> of December 2016. This matter was subsequently removed from the roll by agreement between parties, with costs reserved.

him

DIALE MOGASHOA ATTORNEYS

2.3.14 The Plaintiff then re-enrolled this matter on the trial roll of the 11<sup>th</sup> of May 2017.

2.3.15 On the 3rd of May 2017 this matter was then consolidated and referred arbitration with four other matters with summons instituted by Plaintiff against the Defendant as indicated in paragraph 2.1.17 here-above.

2.4 **CASE NO. 47598/2016 SIYAYA DB CONSULTIGN ENGINEERS (PTY) LTD // PRASA**

2.4.1 We received instructions to defend this matter on 29 June 2016.

2.4.2 The Plaintiff, in his particulars of claim dated 01 June 2016, alleged that:

*"on 31 March 2011, at Braamfontein, Johannesburg, the Plaintiff, DB International GmbH and the Defendant concluded a written Memorandum of Understanding ('MoU') in terms whereof they agreed to co-operate according to the terms of the MoU, in the field of integrated passenger and railway operations on the basis of the specific agreements for the benefit of the parties in order to improve various initiatives of technical and strategic co-operation in the following projects..."*

2.4.3 The Plaintiff alleges further that pursuant to the conclusion of the MoU, the parties entered into a written agreement on the 30<sup>th</sup> of July 2013, with the Plaintiff duly represented by Ms Solani Bvuma and the Defendant by Mr. Luck Montana.

2.4.4 Further that:

*"In carrying out its obligations in terms of the consultancy agreement Plaintiff carried out additional work in relation to the Salt River region which was informed by the following factual averments:*

*15.1 at the Salt River Steering Committee meeting on 22 January 2014, the region flagged that end user requirements that the design team had adopted from the concept did not cover their requirements on the ground;*

*15.2 the region compiled a detailed user requirements schedule which was revised and later promulgated on 6 February 2014;*

*15.3 design works that had been accomplished before the above date were omitted and a new design approach was adopted;*

*15.4 the user requirements could not be accommodated in the existing administrative buildings. Options were investigated and the preferred option was to construct a new building to accommodate all administrative functions under one roof."*

2.4.5 The Plaintiff alleges further that it accommodated these additional requirements at Salt River region, committed resources and incurred an amount of R 15 371 739.87 in order to complete the design. Further that they submitted two memoranda in support of variation orders number 28 and 29, which the Defendant rejected on the basis that they do not comply with clause 9 of its governing procedures.

2.4.6 It is a consequence of these services rendered as well as the rejected variation orders that Plaintiff now claims an amount of R 15 371 739.87 from the Defendant.

kim.

DIALE MOGASHOA ATTORNEYS

2.4.7 On the 22nd of August 2016, the Defendant filed its plea.

2.4.8 The Defendant's plea indicated that:

*"In the light of the fact that the validity period of the consultancy agreement between the plaintiff and the defendant commenced on 15 July 2013, it follows that such validity period came to an end by no later than 28 February 2014.*

*3.3.2 In the premises, there was no longer an agreement between the plaintiff and the defendant in terms of which the plaintiff could lawfully render services to the defendant and in terms of which the defendant would be obliged to make payment to the defendant due to the fact that the consultancy agreement upon which the plaintiff relies had come to an end by the effluxion of time by no later than 28 February 2014. Accordingly, the defendant is not, in terms of the consultancy agreement upon which the plaintiff relies, liable to the defendant for any services allegedly rendered by the plaintiff after 28 February 2014 or for the damages claimed in these proceedings."*

2.4.9 The plea also denies that the Plaintiff ever carried out additional scope of work which was not contemplated in the consultancy agreement upon which the Plaintiff relies, alternatively that the work that Plaintiff alleges to have carried out was authorised by the Defendant. The Defendant also denies that Plaintiff ever presented a concept design to the deport steering committee.

2.4.10 The plea also raised a defence that by the time the motivations referred to in Plaintiff's particulars of claim were submitted, the term from the consultancy agreement had lapsed and that it was no longer competent for the Plaintiff to submit the motivation/variation orders.

2.4.11 The plea also alleges that the plaintiff acted in an unreasonable and negligent manner in believing that the services were rendered as contemplated in the consultancy agreement in that the variation orders were not authorised by the Defendant, and that Plaintiff failed to realise that the consultancy agreement contract had lapsed.

1.12 On the 3rd of May 2017 this matter was then consolidated and referred arbitration with four other matters with summons instituted by Plaintiff against the Defendant as indicated in paragraph 2. 1.17 here-above.

## 2.5 CASE NO. 47597/2016: SIYAYA RAIL SOLUTIONS (PTY) LTD // PRASA

2.5.1 We received instructions to defend this matter on 29 June 2016.

2.5.2 The Plaintiff, in his particulars of claim dated 15 June 2016, alleges that:

*"On 29 January 2013 the Defendant issued a request for proposal wherein it sought to engage consultancy services for the supervision of the works:*

*3.1 installation of all the digital radio system components along the railway track of each region, including the electrical design as well as the erecting of mass poles for the RF (Radio Frequency) components and associated buildings;*

*3.2 the assistance with the application to ICASA, the regulating authority in South Africa for the required license and frequency spectrum for the digital radio system;*

kim



DIALE MOGASHOA ATTORNEY

*3.3 associated civil, electrical and telecommunication works."*

2.5.3 The Plaintiff further alleges that it submitted its bid to the Defendant and that on the 4<sup>th</sup> of September 2013, the Plaintiff was informed that its bid was successful.

2.5.4 Further that, that the Plaintiff duly represented by its Managing Director Ms Solani Bvuma and the Defendant represented by its Chief Executive Officer entered into a written consultancy agreement which was signed on 20 March 2014. The Plaintiff alleges however that it carried out its obligations in terms of the agreement from the date of its appointment, being 4<sup>th</sup> September 2014, notwithstanding the fact that there was at that time no signed agreement.

2.5.5 Further that, the parties agreed that the Plaintiff would render services to the Defendant in terms of the aforementioned agreement whose contract price was an amount of R 69 000 000.00, inclusive of VAT.

2.5.6 The Plaintiff alleges further that:

*" on 25 September 2013 and subsequent to Plaintiff's appointment referred to in para 5, the Plaintiff duly represented by its Chief Executive officer Makhensa Mabunda and the Defendant duly represented by Sonic Baltac, the parties agreed to extend the scope of services to be rendered by the Plaintiff ("additional service agreement") which additional service fell outside the scope of services as envisaged in the written consultancy agreement.*

*The additional services agreement was partly oral and partly written, the written portion of the agreement recorded in the correspondence by Plaintiff dated 22 January 2014 and confirmed by the Defendant representative on 23<sup>rd</sup> January 2014. A copy of the written portion of the agreement is annexed hereto marked 'S3'.*

*The material, express alternatively tacit and further alternatively implied terms of the additional service agreement (both oral and written) were agreed to as follows:*

*13.1 the Plaintiff to revise the system architecture proposed by the HAUWEI-Altech Matomo Consortium (HAC) to comply with the Defendant's GSM-R operational requirements;*

*13.2 the Plaintiff was required to work and engage the HAC to change and optimise their design;*

*13.3 the Plaintiff was required to evaluate the HAC revised proposal to ensure that it meets the Defendant's requirements;*

*13.4 the Plaintiff was required to ensure that the system is upgradable for future requirements;*

*13.5 the Plaintiff was required through revising the proposal of the HAC and engaging the HAC, to ensure that essential post completion services are included....*

2.5.7 The Plaintiff alleges further that HAC submitted to the Defendant a variation order and which the Plaintiff assessed in terms of the additional service agreement and upon discharge of its obligation in terms of the agreement. The Plaintiff then produced a detailed report setting out the services it had rendered in terms of this agreement. The Plaintiff then invoiced the Defendant an amount of R 21 626 138.00.

kim

## DIALE MOGASHOA ATTORNEYS

- 2.5.8 It is as a result of this breach of agreement that Plaintiff now claims that the Defendant is indebted to it to an amount of R 21 626 138.00.
- 2.5.9 On the 22<sup>nd</sup> of August 2016, the Defendant filed its plea.
- 2.5.10 The Defendant's plea disputed the fact that Plaintiff's current claim is based on the consultancy agreement and same is therefore irrelevant for purposes of these proceedings.
- 2.5.11 The plea further denied the conclusion of the additional service agreement, and in the alternative, pleaded that:
- "In the event that it is found that the additional services agreement was concluded between the plaintiff and the defendant, then in that event, the defendant pleads as follows:*
- 3.1.3.1 the conclusion of the additional services agreement was not duly authorised by the defendant;*
- 3.1.3.2 Sonic Baltac was not duly authorised to conclude the additional services agreement;*
- 3.1.3.3 the defendant did not at any stage represent to the plaintiff that Sonic Baltac was duly authorised to conclude the additional services agreement referred to in paragraph 11 of the plaintiff's particulars of claim; and*
- 3.1.3.4 the additional services agreement upon which the plaintiff relies is not valid and binding upon the defendant and it is in law unenforceable against the defendant due to the fact that its conclusion was not duly authorised by the defendant."*
- 2.5.12 The Defendant also alleged that the contents of annexure 'S3' of Plaintiff's particulars of claim does not indicate or suggest the alleged conclusion of a written agreement, and that same cannot be construed to constitute a written agreement.
- 2.5.13 The Defendant's plea admits that HAC did not submit a variation order but Defendant denies that same is linked to the alleged additional service agreement.
- 2.5.14 The Defendant also denied the Plaintiff ever submitted a report setting out services rendered and that the invoices submitted by the Plaintiff were ever adequately explained by the Plaintiff.
- 2.5.15 The defendant denies that it made any representations relating to approvals, authorisations and variations in relation to services allegedly rendered by the plaintiff.
- 2.5.16 On the 3rd of May 2017 this matter was then consolidated and referred arbitration with four other matters with summons instituted by Plaintiff against the Defendant as indicated in paragraph 2.1.17 here-above.
- 2.6 CASE NO. 77333/2015 SIYAYA DB CONSULTING ENGINEERS (PTY) LTD / PRASA
- 2.6.1 We received instruction to defend this matter on 25 September 2015.
- 2.6.2 The Plaintiff, in his particulars of claim dated 22 September 2015, alleges that:

kim





## DIALE MOGASHOA ATTORNEYS

*"on or about 31 May 2011 at Brramfontein, Johannesburg, the Plaintiff represented by its Managing Director, Makhensa Mabunda, and the Defendant represented by its Group Chief Executive Officer, Lucky Tshepo Montana concluded a written agreement ("the agreement")."*

2.6.3 Further that the agreement also indicated that:

" 6.1 the subject matter of the agreement was the performance of services of Technical Assistance for the Supervision of National Re-signalling Project, Stage 1, Phase 1 - 5, reference number H0/INF(S)203/06/2010 ("the services").

2.6.4 The Plaintiff alleges further that the 13<sup>th</sup> of August 2014, an at Pretoria a written addendum to the agreement was concluded, wherein the scope of the work as provided for in the addendum was increase, the contract value was increased from R 61 172 864.00 to R 98 500 000.00, and the completion date of the contract revised to the 31<sup>st</sup> of July 2019.

2.6.5 The Plaintiff further alleges that they rendered services, to the Defendant and for benefit of the Defendant, and produced invoices for payment by the Defendant. The Defendant failed to make such payments. It is as a result of such conduct that the Plaintiff now claims for a sum of R 8 3374 893.31 as well as penalties in the sum of R 27 144.44.

2.6.6 The Plaintiff, on the 1st of October 2015, filed an application for summary judgement, which application was opposed by the Defendant. The application was scheduled to be heard on the 18<sup>th</sup> of November 2015. The matter was then postponed to the 20<sup>th</sup> of November 2015 to be presided over by Judge Kubishi. On the 25<sup>th</sup> of January 2016 judgement was delivered in terms of which Plaintiff was refused summary judgement. A copy of the judgement is attached herewith for your records.

2.6.7 On the 18th of February 2016, Defendant served upon Plaintiff its notice of exception based on a number of grounds. A copy of the notice indicating the grounds upon which Defendant relied is attached herewith for your ease of reference. The exception was heard on the 3<sup>rd</sup> of May 2016. The application was removed from the opposed motion roll on the 7<sup>th</sup> of April 2016.

2.6.8 On the 13<sup>th</sup> of April 2016 we received correspondence from our opponents who informed us that their client had been paid the full amount that they were claiming, and prosed that the Defendant tenders the cost of the proceedings. We thereafter sought instruction from client to no avail.

2.6.9 We, on the 13<sup>th</sup> of June 2016 addressed a letter to PRASA to advise that we still await their instructions regarding tendering costs of this matter, and that we will proceed to render our invoice and close the file as there was no longer any notable activity on the file.

### 3. ARBITRATION AND INQUIRY PROCEEDINGS:

3.1.1 As agreed to on the court order of the 3<sup>rd</sup> of May 2017, five of these matters were referred to arbitration with retired Judge FDJ Brand elected to preside as an arbitrator therein.

3.1.2 On the 26<sup>th</sup> of June 2017, parties held a pre-arbitration hearing in the Presence of Judge Brand, and at Maisel's Chambers. Sandton, Johannesburg. The purpose of this hearing was for parties to limit issues which would form the subject matter of the arbitration hearing, and agree on the timelines by which to file further pleadings and notices, replies to same and as well preparation of the relevant trial bundles.

3.1.3 It was further agreed in the pre-arbitration hearing the arbitration would commence on the 11<sup>th</sup> of September 2017 to the 22<sup>nd</sup> of September 2017. A copy of the signed arbitration minutes

kim

## DIALE MOGASHOA ATTORNEYS

is attached herewith for your records. We as well attach a copy of a simplified timeline of the minutes for your ease of reference.

- 3.1.4 On the 11<sup>th</sup> of August 2017, Plaintiff failed to deliver its replies to Defendant's request for further particulars as per the pre-arbitration minutes, and despite an undertaking to file these by the 14<sup>th</sup> of August 2017, such replies were not filed.
- 3.1.5 Whilst our office was busy preparing for the arbitration proceedings, and on or about 20<sup>th</sup> of August 2017, our office received communication from PRASA regarding certain of its members who had been served with subpoenas by the Commissioner on the Liquidation of Siyaya Consulting Engineers. This was in terms of Section 417 and 418 of the Companies Act No.71 of 2008.
- 3.1.6 We addressed a letter to the Attorneys of Siyaya Consulting Engineers(in liquidation) enquiring about the nature of the inquiry as well as the documents that PRASA's representatives were supposed to bring, and testify on, at the inquiry. We however were not provided with any such documents.
- 3.1.7 We, nevertheless attended the enquiry on the days that Messrs Letsame Rathaba, Sorin Baltac, Tonie Vermeulen, and Johan Edwards, were called on to testify.
- 3.1.8 Our extent of involvement in the inquiry was very limited as we were not allowed to cross-examine the witnesses or ask any questions during their testimonies.
- 3.1.9 We nevertheless made representations to the commissioner that we would want to be furnished with his report once it had been finalised. We still have not received a copy of this report and therefore cannot comment as to the nature of its contents and findings.
- 3.1.10 Again, on 25<sup>th</sup> of August 2017, Plaintiff failed to deliver its trial bundles. The Defendant subsequently did not supplement these bundles.
- 3.1.11 The Defendant served Plaintiff with its application to compel Plaintiff to file further and better discovery. The Plaintiff never filed notices to oppose such an application, neither have they filed such discovery.
- 3.1.12 On the 6<sup>th</sup> of September 2017, the Defendant served Plaintiff with its application to compel Plaintiff to file its replies to its request for further particulars. Plaintiff has not filed its notices to oppose such an application.
- 3.1.13 It is as a result of these aforementioned delays that the Defendant addressed letter to the Plaintiff requesting that the arbitration be postponed, with the Plaintiff to tender the costs. A copy of Plaintiff's heads of argument as well as Defendant's reply to the heads of argument regarding the postponement is attached herewith for your records.
4. We trust that you will find the above in good order and await to hear from you soon.

kim

DIALE MOGASHOA ATTORNEYS

Yours faithfully



**DIALE MOGASHOA ATTORNEYS**

**Per: Madimpe Mogashoa**

**Direct Tel: 012 433 7145**

**Direct Fax: 086 614 0125**

**Email: madimpe@dm-inc.co.za**

**W: 6352**



kim

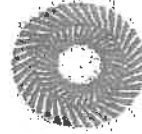


# MMD11

MMD11

www.prasa.com

Removed



prasa

PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

URGENT MEMORANDUM

To:	ACTING GROUP CHIEF EXECUTIVE OFFICER: MR ZIDE
From:	CHAIRPERSON, INTERIM BOARD: ADV. TAN MAKHUBELE SC
Date:	28 November 2017
Subject:	SIYAYA CONSULTING ENGINEERS (PTY) LTD (IN LIQUIDATION) : ENQUIRY IN TERMS OF SECTION 417(1) AND 418 (2) OF THE COMPANIES ACT 61 OF 1973

Dear Mr. Zide,

1. I refer to various discussions between us about this matter as well as our brief discussion with the Group Executive: Legal, Risk and Compliance, Ms Martha Ngoye on 14/11/17.
2. I confirm receipt of a report from Prasa's attorneys (Diale Mogashoa Attorneys) dated 21 November 2017. It appears from the contents of the report that Diale Mogashoa Attorneys were appointed to defend five (5) civil actions that were instituted by Siyaya DB Consulting Engineers (Pty) Ltd and Siyaya Rail Solutions (Pty) at the Gauteng Division, High Court, Pretoria. The former, which instituted four (4) of the actions subsequently went into liquidation.

  
kim






3. It is not clear from the report of Mogashoa Diale Attorneys whether they were subsequently appointed to represent Prasa to deal with the liquidation matter. As Acting Group CEO, such instructions would have come from you.

4. It also appears from the report that at some point the matters were referred to arbitration, but what is not clear is whether this happened before Siyaya Consulting Engineers went into liquidation or not.

5. You are aware that attorneys acting for Siyaya Consulting Engineers (In Liquidation) approached on or about 14 November 2017 and that they provided me with a copy of an Interim Report of the enquiry in terms of the Companies Act that was prepared by the Commissioner and dated 15 September 2017. They also attached copies of email communication between Mr. Madipe Mogashoa of Mogashoa Diale and Advocate Francois Botes SC. The email communication is also attached in Mogashoa Diale Attorneys report.

6. In their report, Diale Mogashoa Attorneys indicated that they became aware on 20 August 2017 after receiving communication from Prasa that certain "members" have received subpoena to appear in the liquidation enquiry. They attended the enquiry, but were not allowed to cross-examine witnesses. They also allege that the Commissioner has not provided them with a report.

  
kim  
  


You have noted from the bundle of documents from Siyaya's attorneys (in liquidation) that these assertions may not be entirely correct. However, As Acting Group CEO, the instructions with regard to the liquidation enquiry proceedings and handling of the High Court actions would have come from you. Kindly confirm the nature of the instructions that were given to Mogashoa Diale in this regard. Please attach copies of such instructions.

7. It is clear from the Interim report of the Commissioner that the witnesses that testified at the liquidation enquiry include former and existing employees of Prasa. These witnesses would have attended the enquiry with your knowledge and understanding of the evidence that they were going to tender.

8. Should the contents of the Commissioner's report be correct, it is clear that the witnesses made major concessions with regard to the liability of Prasa in the civil actions launched by Siyaya Consulting Engineers (now in liquidation). However, despite these concessions, Mogashoa Diale Attorneys appear to still want to proceed with the arbitration proceedings. They however did not address the prospects of success at the arbitration proceedings in view of the evidence that has already been led at the liquidation enquiry.



Kindly confirm if these are your instructions to Mogashoa Diale and the nature of evidence (and witnesses) that you intend to lead at the pending arbitration proceedings.

9. Kindly request the officials indicated hereunder who testified at the liquidation enquiry to submit written reports and confirm their testimony.

(a) Mr. AM Vermeulen (Infrastructure Operations at Prasa Rail)

(b) Mr. V Kobuwe (Executive Manager for Infrastructure)

(c) Mr. S Baltic (General Manager: Signaling and Communications)

9.1 I will only and if absolutely necessary and appropriate involve former employees that testified after receiving a report from you and Ms Ngoye as well as Mogashoa Diale Attorneys on your defence strategy particularly in view of the concessions by current employees during the liquidation enquiry.

10. Please advise Mogashoa Diale Attorneys that I have read their report dated 21 November 2017 and that we shall revert to them before the end of next week with instructions and a decision of further handling of this matter.

11. Lastly, it appeared from our discussions in the presence of Ms Martha Ngoye that she was aware of at least the fact that there

Kim

was a liquidation enquiry. Kindly request her to write a report about the involvement of her unit, in particular with regard to provision of instructions to Mogashoa Diale Attorneys on the issues that I have raised above.

12. The reports from you, Ms Ngoye and the officials indicated in paragraph 9 must reach me on or before 12:00 on Friday, 30 November 2017 to enable me to report to the Board of Control on 01 December 2017.

Adv. TAN Makhubale SC



kim



# MMD12





**prasa**  
PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

www.prasa.com

**MMD 12**

**CERTIFIED EXTRACT OF SPECIAL BOARD MEETING RESOLUTION  
MADE AT A MEETING HELD AT  
3<sup>RD</sup> FLOOR BOARDROOM, PRASA CORPORATE OFFICE,  
1040 BURNETT STREET, HATFIELD PRETORIA  
ON FRIDAY, 1 DECEMBER 2017**

**BoC Resolution No.2-1/12/17**

Kindly Take Notice that at the Special Board of Control meeting held on the 1<sup>st</sup> December 2017 the Board resolved as follows:

**1. ON COLLATION OF INVESTIGATION REPORTS**

The Acting Group CEO should collate and/or collect all the Investigative Reports from the various parties that were tasked to investigate maladministration in Prasa, both print and electronic and attachments and it should be placed in one safe repository under the care of the Board of Control through the Office of the Company Secretary.

- The Secretariat should obtain confirmation from the Legal and Finance Departments that the information provided to the Secretariat for the purposes of the Special Board meeting of the 1 December 2017 was complete.
- The Secretariat must create an inventory detailing all the reports and documents submitted by different Departments.

**2. Submission Of Litigation Matters**

- The Executive Legal Risk and Compliance must hand over all the litigation files relating to contract and/or contractors, emanating from the investigations to the office of the Company Secretary.

- The litigation files submitted should be accompanied by a progress report on the status of the matters before Court.

### **3. PAYMENT MADE TO WERSKMANS ATTORNEYS**

- Finance and the Legal Department should provide the Board with a detailed statement of account for the invoices paid to Werskmans Attorneys.
- The Statement of account and /or the invoices must be accompanied by the corresponding work done and also should be linked to the objectives of the investigation as per the instruction given to Werskmans and /or the Terms of Reference.

### **4. THE STATUS OF THE LEGAL PANEL**

- Management should provide a report to the Board on the status of the Legal Panel, and provide reasons why the Legal Department still uses a Legal Panel that appears to have expired.
- The Legal Panel is suspended with immediate effects.
- Any Legal Services sought, must be procured through SCM processes and, in consultation with the Chairperson of the Board of Control on all matters relating to the investigations only.

### **5. AUTHORITY IN TERMS OF SECTION 34 OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT**

- Management should provide the Board with a signed resolution in terms of Section 34 of the Prevention and Combating of Corrupt Activities Act and the rationale to pass such resolution conferring to the GE LRC the authority to transact in terms of Section 34.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located at the bottom right of the page.

- Provide the Board with a report that details whether the GE LRC has acted in terms of such authority conferred to her and if so what is it that she has done to date.
- 6. The Company Secretary should provide a report at the Governance and Performance Committee scheduled to take place on the 6<sup>th</sup> December 2017 on the implementation of the above Resolution.
- 7. The Board of Control will issue a statement on the cause of action; it intends to take on the Investigations Reports after the Governance and Performance Committee meeting.

This done and signed at Hatfield on the \_\_\_\_\_ 2017.

---

**TUMI MOHUBE**  
**COMPANY SECRETARY**

---

**DATE**

A handwritten signature in black ink, consisting of a series of loops and flourishes, located at the bottom right of the page.