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SERVICE LEVEL AGREEMENT

("SLA")

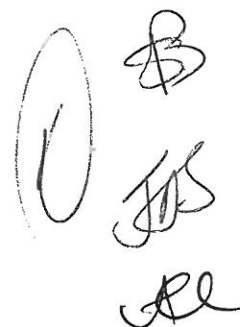
Between

Proash Business Services (Pty) Ltd
Registration Number:1992/006532/07

("the Contractor")

and

ETC Joint Venture
(Company to be incorporated)
("the Customer")

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WHEREAS the Customer has tendered for the Gauteng Open Road Tolling Project ["GORT Project"] for the South African National Roads Agency (Pty) Ltd ["SANRAL"] and in the event the Customer is awarded the GORT Project it wishes to engage the Services of the Contractor as an independent contractor to supply services, subject to the terms and conditions contained in this Agreement, which agreement shall not be construed to amount to a relationship of employment, agency or partnership;

AND the Contractor has agreed to the services subject to the terms and conditions contained in this Agreement.

NOW THEREFORE the Parties agree as follows:

1. INTERPRETATION

- 1.1 Unless otherwise appears from the context, words in the singular may include the plural (and vice versa); and words signifying one gender may include the other gender as well as artificial persons such as companies, close-corporation and trusts (and vice versa).
- 1.2 Headings to clauses are for reference purposes only and are not to be used in the interpretation of the meaning of any words or text.
- 1.3 This Agreement shall be binding on and enforceable by the executors, administrators, trustees, permitted assignees or liquidators of the Parties as fully and effectively as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's executors, administrators, trustees, permitted assignees or liquidators, as the case may be.
- 1.4 The rule of interpretation that an agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.
- 1.5 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 1.6 All amounts referred to in this Agreement are exclusive of VAT and the Party responsible for making payment of any such amount to another shall be obliged to add VAT to the relevant payment at the relevant rate in accordance with the provisions of the Value Added Tax Act, No. 89 of 1991, as amended.

2. DEFINITIONS

The following words shall have the meaning as assigned to them:

- 2.1 "**Commencement Date**" means the date of commencement as defined by SANRAL in the tender documentation for the Gauteng Open Road Tolling Project ["GORT Project"];
- 2.2 "**Confidential Information**" means information of a confidential nature including, but not limited to:

- (a) the details of the Services;
- (b) price information of the Services;
- (c) the terms of this Agreement;
- (d) information or material proprietary to or deemed to be proprietary to that Party;
- (e) information designated as confidential by that Party;
- (f) information acquired by the other Party solely by virtue of the provision of the Services;
- (g) trade secrets of that Party;
- (h) intellectual property rights;

2.3 **"Contractor"** means Proash Business Services (Pty) Ltd ["Proash"] with registered address at 290 Barry Hertzog Ave, Greenside, 2193.

2.4 **"Customer"** means the company to be incorporated by the ETC Joint Venture in the event it is awarded the GORT Project by SANRAL and for the purposes of this agreement chooses as its *domicilium citandi et executandi* Suite 305, Foyer 3, The Colosseum, Century City 7446;

2.5 **"Day"** shall be any business day excluding public holidays, Saturdays and Sundays;

2.6 **"Duties and Functions"** means those obligations and responsibilities that have to be provided by the Parties in terms of this Agreement; by the Contractor as stipulated in **Schedule 1**;

2.7 **"Effective Date"** shall be the date the Agreement was signed by the last signatory;

2.8 **"ETC Joint Venture"** means the entity which has submitted a tender for GORT Project;

2.9 **"Intellectual Property Rights"** means any and all intellectual and industrial property rights including rights of or in co connection with:

- (a) any confidential information;
- (b) copying (including future copyright);
- (c) inventions (including patents);
- (d) trademarks and service marks;

Whether or not now existing, and whether or not registered and includes any rights to apply for the registration, renewal or extension of such rights and includes all renewals and extensions of such rights.

2.10 **"Parties"** shall be Contractor and the Customer;

2.11 **"Service Fee"** means the payment of a fee to the Contractor by the Customer for the Services as set out in detail in **Schedule 2: Service Fees**;

2.12 **"the Services"** means those services to be provided by Contractor to the Customer



in terms of **Schedule 1** ;

3. SUSPENSIVE CONDITION

This Agreement is subject to the suspensive condition that the contract for the GORT Project be awarded by SANRAL to the ETC Joint Venture.

4. PAYMENT OF THE SERVICE FEE

In consideration of the Contractor carrying out its obligations under the Agreement, the Customer shall pay the Contractor the Service Fees as agreed to in accordance with **Schedule 2: Service Fees**.

5. WARRANTIES AND LIMITATION OF LIABILITY

- 5.1 Both Parties warrant that it has not relied on any term, condition, warranty, undertaking, inducement or representation made by or on behalf of the other Party which has not been stated expressly in this Agreement.
- 5.2 Neither Party will be liable to the other Party for any claim or demand against the other, its officers, managers, partners, principals, employees, agents, or for any amounts representing loss of profit, loss of business or special, indirect, incidental, consequential or punitive damages of any nature whatsoever, including, without limitation, any damages arising out of or in connection with any malfunctions, delays, loss of data, interruption of service or loss of business or anticipatory profits, even if either has been advised of the possibility of such damages.
- 5.3 If either Party is held or found liable to the other Party for any matter relating to or arising in connection with this Agreement or the provision of the Services, whether based on action or claim in contract, negligence, delict or otherwise, the amount of damages that shall be entitled to be recovered shall be limited to the amount payable for the Services.
- 5.4 Both Parties shall be under a duty to mitigate any costs suffered or incurred as a result of any breach of this Agreement by the other Party.
- 5.5 Proash warrants that it is a BB-BEE exempt micro enterprise and receives the service fee as a direct contribution in support of its development as an enterprise. Proash confirms that it accepts the contribution in order to develop its enterprise as defined in Schedule 1 to the Broad-based Black Economic Empowerment Act 2003 (read with Statement 600 of the Codes of Good Practice governing the measurement of BEE compliance). Proash will provide the necessary documentation in support of this warranty and undertakes to maintain this status for the duration of the Agreement.
- 5.6 Proash warrants that it is compliant with all legislation relating to procurement and corporate governance in South Africa and will in no way harm the GORT Project



through any actions which do not comply with such legislation or with good business practices.

6. CONFIDENTIALITY

- 6.1 Both Parties agree that Confidential Information disclosed to the other Party by the disclosing Party shall be used by the other Party solely in connection with the provision of the Services.
- 6.2 Neither Party shall use the Confidential Information of the other Party for any purpose other than in the lawful carrying out of its obligations under this Agreement.
- 6.3 Either Party may only disclose the other Party's Confidential Information to any third party, except to those third parties expressly excluded otherwise in this Agreement, with the prior written consent of that Party.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Parties acknowledge that each Party has certain and specific Intellectual Property Rights and that neither Party shall seek to exploit or use any such material for its own purposes.
- 7.2 The Contractor covenants and agrees with the Customer that the use of material by the Contractor does not and will not infringe the Intellectual Property Rights of any other person.

8. PERIOD OF CONTRACT

This Agreement will commence on the Commencement Date and will continue in effect until one hundred and fourteen months after the Commencement Date or until the Contract between SANRAL and the Customer is terminated, whichever occurs first.

9. TERMINATION OF CONTRACT

- 9.1 The Customer shall be entitled to terminate this Agreement upon 60 (sixty) days written notice to the Contractor in the event that the Customer's GORT Contract with SANRAL is cancelled or curtailed prematurely.
- 9.2 In addition to any rights of cancellation, which either Party may have at Common Law, this Agreement may be cancelled as follows namely:
 - (a) By either Party ("the innocent Party") in the event of the other Party ("the offending Party") committing a material breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of written notice given by the innocent Party to the offending Party drawing attention to the breach and demanding that it be remedied;



- (b) By either Party if the one Party ("the offending Party") is at any time placed in liquidation, whether provisional or final, or if it compromises with its creditors, or if it has had any judgement given against it and such judgement is final or becomes final and is not satisfied within 21 (twenty one) days;

9.3 Termination of this Agreement for whatsoever reason shall not affect the rights of either Party's outstanding debts and/or obligations in terms of the Agreement. Each Party acknowledges and agrees with the other that the undertakings given in relation to Confidential Information and Intellectual Property Rights shall survive the termination of this Agreement.

10. NOTICES

- 10.1 The Parties choose as *domicilium citandi et executandi* for the purpose of giving any notice, service of any process and for any other purpose arising from the Agreement, as their respective addresses mentioned in Clause 2 of this Agreement.
- 10.2 Each of the Parties shall be entitled from time to time to give written notice to amend the *domicilium citandi et executandi* by giving any other address within the Republic of South Africa, which shall not be a post office box or poste restante.
- 10.3 All notices given in terms of this Agreement shall be valid and effective only if in writing.
- 10.4 Any notice which:
- (a) Is delivered by hand during normal business hours at the *domicilium citandi et executandi*, shall be presumed, until the contrary is proven, to have been received at the time of the hand delivery; or
 - (b) Is posted by prepaid registered post from any address within the Republic of South Africa to the addressee's *domicilium citandi et executandi* shall be presumed, until the contrary is proven, to have been received by the addressee on the 4th (fourth) Day after the date of posting; or
 - (c) Is transmitted by facsimile or electronic mail shall be deemed in the absence of proof to the contrary, to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours or within 24 (twenty four) hours of transmission where it is transmitted outside normal business hours.

11. DISPUTE RESOLUTION

A dispute between the Parties relating to any matter arising out of this Agreement shall be resolved by means of discussion between the individuals/ Parties directly involved with the execution of this Agreement. Should this dispute not be resolved within 5 (five) Days after such a dispute arose or after such extended period of time, as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute, within five (5) Days after it had been

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referred to them. Should the dispute not be resolved by the senior executives within this period, the matter shall be referred to arbitration in terms of Clause 12.

12. ARBITRATION


- 12.1 A dispute between the Parties relating to any matter arising out of this Agreement or the interpretation thereof shall be referred to arbitration by either Party, by way of a notice to the other Party wherein the full particulars of the dispute are set out.
- 12.2 The arbitration proceedings shall be held in Cape Town and shall be within the provisions of the Arbitration Act.
- 12.3 The presiding arbitrator of such arbitration proceedings shall be:
- (a) If the matter in dispute is primarily a technical matter, a suitably qualified person agreed upon between the Parties and failing such agreement, a suitably qualified person nominated by the chairperson for the time being of the society of that discipline.
 - (b) If the matter in dispute is primarily a legal matter, a practising advocate or attorney with at least ten (10) years experience agreed upon by the Parties and failing such agreement nominated by the President of the Law Society of the Kwazulu Natal Division of the High Court of South Africa.
 - (c) If the matter in dispute is primarily an accounting matter, an independent auditor with at least ten (10) years experience agreed upon by the Parties and failing such agreement nominated by the President of the South African Chartered Accountants Council.
- 12.4 The decision of the arbitrator shall be final and binding upon the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 12.5 No clause in this Agreement, which refers to arbitration, shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtain interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

13. GENERAL TERMS

- 13.1 Each of the Parties shall bear its own costs incurred as a result of the negotiation, drafting and finalising of this Agreement.
- 13.2 Should the law relating to any surveillance or law enforcement issues as they are contemplated by the provisions of this Agreement, be altered or amended in a way as to adversely affect the rationale or basis of this Agreement, in that it becomes substantially impossible for either one or both of the Parties to perform their obligations, it is then agreed that the Parties shall either re-negotiate the relevant terms of the agreement or terminate it by mutual consent. In the absence of the Parties reaching agreement, the provisions of clause 14 relating to arbitration shall apply.



- 13.3 The failure of the Customer to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.
- 13.4 If any term or provision of this Agreement is found to be invalid or of no force and effect, effect shall be given to the Parties' intentions as reflected in that particular provision and the other provisions of the Agreement shall be severable and remain in full force and effect.
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Signed for and on behalf of ETC Joint Venture:

By its duly authorised representative (who warrants that he is so authorised)-

Full Name of representative: D Dewey

Signature: 

Date: 08/09/09

Place: Johannesburg

Witness:

Name: ASHLENE CONSUL

Signature: 

Signed for and on behalf of the Proash Business Services (Pty) Ltd:

By its duly authorised representative (who warrants that he is so authorised)-

Full Name of representative: MSC BAWA

Signature: 

Date: 08/09/09

Place: JOHANNESBURG

Witness:

Name: JANE ANNE SCRIVEN

Signature: 

Schedule 1: The Services

BB-BEEE strategy

Provision of Strategic BB-BEE advisory service by the Contractor, including but not limited to:

- Actively providing advice and support regarding the development of an optimal B-BBEE Plan for the ETC Joint Venture and provide a written plan to that affect
- Continually monitor related legalisation, guidelines and trends to promote timeous understanding and compliance with the regulatory framework of BB-BEE entities and update the B-BBEE Plan accordingly, which updates will be made timeously with recommendations and proposals as to all courses of action available to the Customer

The Contractor will conduct monitoring and review of BB-BEE status with management of the ETC Joint Venture and provide advice regarding compliance and scorecard improvements in the form of written Reports, which reports will include recommendations and proposals of all courses of action available to the Customer

Identification of BB-BEE entities

The Contractor will provide support services to identify and report on potential BB-BEE Exempt Micro Enterprises ["EME's"] and Qualifying Small Enterprises ["QSE's"] accredited contractors with suitable capabilities regarding outsourced supply, services and other opportunities in respect of the GORT Project.

Enterprise development

The Contractor shall provide advisory services regarding the development of new enterprises in order to meet the objectives of the promulgated BB-BEEE Codes of Good Practice, in the form of written Reports, which reports will include recommendations and proposals of all courses of action available to the Customer


Human Resources development

The Contractor shall develop strategic plans as well as provide continuous advice and support regarding training and skills development in accordance with SETA requirements and provide implementation planning as well as management support where requested by the Customer in order to implement the strategies.

The Contractor shall provide written Reports, which reports will include recommendations and proposals of all courses of action available to the Customer on all relevant aspects of appropriate Employment Equity and Skills Development Plans in order to meet the GORT Project targets.

Corporate social investment program

The Contractor shall provide written Reports, which reports will include recommendations and proposals of all courses of action available to the Customer in respect of a Corporate Social

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investment Program.

The Contractor shall screen project proposals, assess merits and community benefits of these proposals.

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Schedule 2: Service Fees

The Customer will pay the following Service Fees to the Contractor for the Services:

1. An amount based on 8% (eight percent) value of the Contract Participation Goals ["CPG"] to be set and which will be based on the initial tendered amount for the GORT Project;
2. The GORT Project value is estimated to be approximately R10 billion (ten billion rand). The Contract Participation Goals for outsourced work are 3% (three percent) for the design build phase and 6% (six percent) for the operations phase of the GORT Project.
3. The total value of the work to be outsourced in terms of the CPG is therefore R40 million (forty million rand). This Service Fee is estimated to be at least 1.25 times (one point two five times) the market rate for similar services to be rendered; hence this Service Fee incorporates an enterprise development premium as envisaged in terms of the Broad-based Black Economic Empowerment Act 2003.
4. No additional payment, over and above the R40 million (forty million rand), will be payable by the Customer to the Contractor. In particular, no adjustments for any reason, including inflation, will be made in respect of this amount. All calculations the Service Fees paid are *exclusive* of value added tax. *W B MS JKL*
5. In the event that the scope or duration of the GORT Project Contract with SANRAL is extended, an increase to the Service Fee will be negotiated should the Contractor be required to provide any additional support work. The calculation of the additional service fee will be based on the principles used to determine this Service Fee, which will reflect time related price adjustments. This will also apply to other Open Road Tolling contracts awarded by SANRAL to the ETC JV where through prior arrangement the Contractor has acted as an advisor and provided support.

Payment Schedule:

Item	Amount
milestone 1: design approval by SANRAL to Customer for GORT system [approximately 3 months after contract commencement]	R 1 000 000
milestone 2: operations certificate issued [approximately 18 months after contract commencement]	R 4 000 000
milestone 3: end year one operations	R 1 000 000
milestone 4: end year two operations	R 1 000 000
milestone 5: end year three operations	R 1 000 000
milestone 6: end year four operations	R 1 000 000
milestone 7: end year five operations	R 1 000 000
milestone 8: end year six operations	R 1 000 000
milestone 9: end year seven operations	R 1 000 000
fixed monthly retainer for 114 months payable from commencement date [payable one month in arrears]	R 245 614 per month

[All amounts are *exclusive* of VAT] *W B MS JKL*

W B MS JKL