

**GAUTENG PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY**

DIRECTORATE: PUBLIC TRANSPORT

**THE PROVISION OF MIDI BUS PASSENGER TRANSPORT SERVICES
BETWEEN PRETORIA STATION. AND .GALLAGHER ESTATES, MIDRAND**

1. DEFINITIONS

- 1.1. Words in the singular also include words in the plural and vice versa where the context permits.
- 1.2. Except where the context indicates otherwise, in the contract documents any word or expression to which a meaning has been assigned in the Act, shall have that meaning and the following words and expressions shall have the following meanings:
- "accepted", "approved", "authorised", "directed", "ordered" and "rejected"** means accepted, approved, authorised, directed, ordered or rejected by the Tender Board, Employer or Representative;
- "Act"** or **"the Act"** means the National Land Transport Transition Act, 2000 (Act No. 22 of 2000); or as amended;
- "agreed"** means agreed in writing by the Employer or the Representative on the one hand and the Operator on the other hand;
- "authorised stop"** means a stop, rank or terminal authorised by the relevant local authority and/or traffic authority and agreed to by the Representative and the Operator;
- "band"** or **"kilometre band"** means a range of kilometres as set out in Form 12 of the Tender Forms within which the total monthly revenue kilometres operated by the Operator will fall and to which a particular tendered rate applies;
- "capacity"** in respect of buses means the maximum number of persons that may lawfully be carried in the bus, including all seated and standing passengers but excluding the driver;
- "claim form"** means the total of the prescribed forms and certificates which are to be completed, signed and submitted by the Operator to the Representative in support of its monthly claim;
- "commencement date"** means the date on which the services will commence as stated in the Special Conditions or the letter of acceptance of the tender;
- "contract rates"** means the tendered rates tendered by the successful tenderer and accepted by the Employer as being the rates applicable to the contract;
- "core city"** means a core city as defined in the Act;
- "day"** includes Saturdays, Sundays and public holidays;
- "Deputy"** or **"Representative's Deputy"** means the person appointed as such by the Employer, or by the Supervising and Monitoring Firm (SMF) with the written consent of the Employer, to perform the functions of such Deputy in this contract;
- "duty"** means a document providing written instructions to a bus driver regarding the relevant shift;
- "early trip"** means a trip where the vehicle concerned departs from the departure point or any intermediate timing point specified in the time table, before the time listed in the time table;
- "emergency"** means a situation which is beyond the control of the Operator, for example strikes, stayaways, riots, *vis major*, etc., and which makes the provision of the services or part thereof impossible;
- "Employer"** means the Provincial Administration /Transport Authority/Core City, or a person designated by that authority to act on its behalf or, in the case of a provincial administration any transport authority or core city to which that administration has ceded its rights and delegated its obligations;
- "midibus"** means a motor vehicle designed or lawfully adapted by a registered manufacturer in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry from nineteen (19) to thirty-five (35) seated persons, excluding the driver;
- "minibus"** means a motor vehicle designed or lawfully adapted by a registered

manufacturer in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry from nine (9) to eighteen (18) seated persons, excluding the driver

"month" means a calendar month;

"OEM" means the Original Equipment Manufacturer;

"operating licence" means an operating licence as defined in the Act which is necessary to enable the Operator to provide the services in terms of the contract, and where the Operator is already in possession of such licence before the commencement date, includes any renewal, amendment or transfer of such licence(s) necessary to enable it to provide the services;

"Operator" means the person, company, close corporation, joint venture, partnership or consortium whose tender has been accepted by the Tender Board, and includes the Operator's executors, administrators, trustees, judicial managers or liquidators, as the case may be, but not, except with the written consent of the Employer, any cessionary, delegate or sub-contractor of the Operator or substitute Operator;

"Party" or **"Parties"** means the Employer and/or the Operator, as the context indicates;

"payment certificate" means the claim form, which is in accordance with Form 23 of the Tender Forms, certified by the Representative and subject to the approval of the Employer, stating an amount which the Operator will be paid by the Employer for services provided in terms of the contract;

"permit" means a public road carrier permit issued in terms of the Road Transportation Act, 1977, or a similar authority issued in terms of a previous law as defined in the Act, which is necessary to enable the Operator to provide the services in terms of the contract, and includes any renewal, amendment or transfer of such permit(s) necessary to enable it to provide the services;

"positioning kilometres" or **"dead kilometres"** means kilometres travelled by a vehicle with or without passengers—from a depot to the starting point of a scheduled trip; from the end of a scheduled trip to a depot; or from the end of a scheduled trip to the starting point of the next scheduled trip; for which the Operator is not entitled to be compensated in terms of this contract;

"Representative" means the person appointed as such by the Employer, or by the Supervision and Monitoring Firm with the written consent of the Employer, to supervise and monitor the services and to perform the functions of Representative in this contract, or a person authorised by the Employer to act on its behalf. "Representative" also includes its delegate under clause 23.3;

"revenue kilometres" means scheduled kilometres actually operated on approved routes for which the Operator is entitled to be compensated in terms of this contract;

"route" means a fixed path from origin to destination along a series of roads with intermediate stops as specified in the contract documents or otherwise agreed to between the Parties;

"scheduled kilometres" means those kilometres which are authorised in accordance with the time table, as approved and amended from time to time;

"scheduled trips" means those trips which are authorised in accordance with the time table, as approved and amended from time to time;

"service area" means the residential, business, industrial and other areas served by the routes, as described in the Specifications (Volume 4), in which the services will be operated;

"services" means the transportation of passengers along a route by specified vehicles at specified times and frequencies and stopping at specified locations, which is to be provided in terms of this contract;

"special conditions of contract" or **"special conditions"** means any amplification or amendment or addition to or departure from the General Conditions pertaining to the specific contract as set out in the Special Conditions (Volume 3);

"specifications" means the specifications as set out in the Specifications (Volume 4) in which the routes, distances, services, fares, time tables, performance criteria, stops and any additional related information are described;

"standing kilometres" means kilometres which are scheduled in accordance with the time

table and for which the Operator is compensated where it is unable to operate scheduled trips, as contemplated in clause 20.3 of the General Conditions;

"supplementary agreement" means a new contract between the Employer and the Operator for operating additional services outside the service area which were not contemplated in the original contract, are not required for the proper fulfilment of the original contract and do not amount to variations in terms of clause 32;

"time table" means a schedule of passenger carrying trips approved by the Employer, indicating all departure times from points of origin and specified intermediate points (not necessarily all authorised stops) as well as arrival times at destinations on each route for specified days, subject to any variation thereof in terms of clause 32;

"transport authority" means a transport authority as defined in the Act;

"trip" means the operation of a vehicle, carrying fare paying passengers, travelling in a single direction on a route as set out in the authorised time table, including any variations approved by the Employer or Representative in writing in terms of clause 32;

"unsuitable vehicle" means a vehicle which is materially different from those specified in Form 10 of the Tender Forms and clause 10 of the Special Conditions in terms of age, make, model or otherwise, or which the Employer in its discretion deems to be unsuitable to provide the services adequately;

"waybill" means a document provided by the Operator that reflects duty, route and trip details (including details of passengers carried and tickets issued and cancelled per trip).

2. COMMENCEMENT DATE AND DURATION

- 2.1. The Operator must commence the services on 3 July 2006.
- 2.2. The contract shall run for 12 calendar months.
- 2.3. The Representative may on instructions of the Employer instruct the Operator to continue operating the services for a maximum additional period of three (3) months after the expiry date. Three (3) months' prior notice shall be given in writing if the contract period is to be so extended.

3. OPERATION OF SERVICES

- 3.1. The Operator must exercise the highest degree of skill, care and diligence in the provision of the services and operate the services strictly in accordance with the Specifications, as well as the other relevant provisions of the contract, to the satisfaction of the Representative. The Operator must comply with and strictly adhere to the Representative's instructions and directions regarding the operation of the services, subject to clause 5.2. The Operator must take instructions and directions only from the Employer, the Representative or Deputy, or a duly authorised delegate of the Representative. The Operator must provide for each trip a vehicle having the passenger capacity as specified in the definitions of "midibus", that conforms fully with the requirements and regulations of the Road Traffic Act, 1989 (Act 29 of 1989) or other applicable legislation and applicable SABS specifications.
- 3.2. The Operator shall have no cause to refuse to convey a person on a trip or part thereof unless the passenger capacity will be exceeded at the time in question by the person wishing to be conveyed, or on grounds of violent, abusive or otherwise offensive conduct on the part of that person or other grounds contemplated in the Act or applicable road traffic legislation.
- 3.3. Should the Operator become aware of circumstances or problems which have prevented it, are preventing it or will prevent it from providing the services as specified, it must, as soon as is reasonably possible after becoming so aware, advise the Representative or the Deputy of such circumstances or problems and also indicate the manner in which the provision of the services were, are or are going to be influenced thereby, if applicable. Such advice must be confirmed in writing as soon as reasonably possible. The Operator must in such circumstances comply with clause 9.

4. PAYMENT FOR SERVICES

- 4.1. The Operator shall be paid monthly for providing the services set out in the

- Contract, in an amount calculated by multiplying the total revenue kilometres by the contract rate for the band concerned, plus an amount calculated by multiplying total standing kilometres by the rate specified therefore, less any penalties. The total scheduled kilometres per month will be used to determine the said band. Actual route distances as agreed between the Operator and the Representative shall be used to calculate revenue kilometres for each trip, provided always that the onus is on the Operator to prove that trips have been operated. The Operator will not be paid for positioning kilometres.
- 4.2. Standing kilometres will only be paid where scheduled trips are cancelled as provided for in clause 4 where applicable, and only for a maximum period of seven (7) days per event. After the aforementioned period of seven (7) days the Employer may, in its discretion, extend the period for which standing kilometres will be paid and/or amend the time table. The rates for standing kilometres shall be sixty percent (60%) of the contract rates.
- 4.3. The Operator must total the revenue kilometres operated as well as standing kilometres on each route for the particular month without rounding off any figures further than one decimal point.
- 4.4. Once a total has been obtained the total kilometre amount is to be rounded off to the nearest full kilometre. As soon as possible, but not later than seven (7) days after the end of each month, the Operator must submit to the Representative a monthly claim form To support the Operator's monthly claims and to enable proper monitoring of performance, the Operator must supply the Employer with the following daily written statistical data and information for the route in the format required by the Employer, on a weekly basis or as otherwise requested by the Employer in writing:
- 4.4.1. actual departure and arrival time of each trip and late and early trips, with proper identification of trip;
- 4.4.2. revenue kilometres of each trip;
- 4.4.3. detail of trips not operated and reasons therefore, and
- 4.4.4. any other information that may reasonably be required from time to time by the Employer which may be relevant to the contract.
- 4.4.5. The Operator must retain the abovementioned data and information and keep it available to the Employer for inspection for at least three (3) years after the end of the contract period.
- 4.5. When all the information has been supplied and the duly completed and signed monthly claim forms have been submitted to the Representative, the claim forms will be certified by the Representative if it is satisfied with the contents and correctness thereof. Claim forms must be prepared in the first instance by the Operator, and checked and certified as correct and payable by the Representative in terms of the contract.
- 4.6. The Representative may, before it submits the claim forms to the Employer as a payment certificate, make any correction or modification to that payment certificate or any previous payment certificate(s) and shall have the right to withhold certification in respect of any part of the services not being operated to its satisfaction. The Representative must submit the payment certificate to the Employer as soon as possible, but not later than seven (7) days after receipt thereof, error free, from the Operator. Where the Representative has amended a claim form or payment certificate, it must supply a copy of the amended form or certificate to the Operator.
- 4.7. The Employer shall effect payment to the Operator as soon as possible but not later than fourteen (14) days after receipt of the error free payment certificate from the Representative. All payments shall be made directly into the bank account of the Operator, details of which must be supplied by the Operator. The Employer reserves the right to reject any payment certificate submitted to it by the Representative because of errors contained therein. Such rejected payment certificate shall be referred back to the Representative for correction purposes and no discussions in this regard will be entered into between the Employer and the Operator.
- 4.8. Should the Operator, for whatever reason, owe any amount to the Employer, the Employer shall have the right to set it off against any moneys that may be owing to the Operator by the Employer in terms of a monthly payment certificate.

- 4.9. The certification or approval of a payment certificate by the Representative and/or the Employer shall not be deemed to be approval of, or waiving of rights regarding any services or other matter in respect of which it was issued, or be taken to be an admission of the due performance of the contract or any part thereof, or of the accuracy of any claim made by the Operator, and no certificate shall revoke or prejudice any of the rights and powers of the Employer and the Representative. No such certificate shall deprive the Employer or the Representative of any right they may have regarding wrongful acts or breach of contract on the part of the Operator that may appear or become known later.
- 4.10. The Employer may, in its sole discretion and with the consent of the accounting officer of the Employer as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999) and any other relevant person or body, amend the contract rates in the case of extraordinary circumstances. Such amendment will take effect from the date, as determined by the Employer, upon which such circumstances arose. For the purposes of this sub-clause "extraordinary circumstances" shall include, but not be limited to—
- 4.10.1. the fact that road or other physical conditions have deteriorated or improved to an unforeseeable extent;
- 4.10.2. the fact that there has been an unforeseeable number of strikes, stayaways, boycotts or incidents of unrest of a general nature, i.e. not confined to the Operator's organisation; and
- 4.10.3. any other unforeseeable circumstance that is extraordinary in the opinion of the Employer,

5. CANCELLATION OF SCHEDULED TRIPS ON A TEMPORARY BASIS

- 5.1. Cancellation of scheduled trips is not permitted unless—
- 5.1.1. agreed to in writing by the Representative;
- 5.1.2. the cancellation is due to unforeseen road closures, obstructions, floods or weather conditions;
- 5.1.3. in the opinion of the Employer the cancellation results from immediate danger to life or of personal injury and/or serious damage to property; or
- 5.1.4. the cancellation is in the opinion of the Employer due to strike or stayaway action of a general nature, i.e. not confined to the Operator's organisation.
- 5.2. Where the Representative or Deputy orders the Operator to provide services in circumstances where the Operator is of the opinion that there is immediate danger to life or of personal injury or of serious damage to property, the Operator may refuse to comply, in which case the matter shall be referred to the Employer for decision within twenty-four (24) hours. If the Employer decides that there was in fact such danger, standing kilometres will be paid for the services not provided: if not, the Operator shall be penalized in accordance with clause 5 of the Special Conditions for not providing the services and standing kilometres will not be paid. Should the Operator be dissatisfied with the Employer's decision, the Operator may declare a dispute.
- 5.3. Where the Operator is of the opinion that scheduled trips should be cancelled due to boycott action, either against the Operator's firm or generally, the Operator must refer the matter to the Employer via the Representative for decision. If the Employer decides that such cancellation is justified, standing kilometres will be paid for the services not provided: if not, the Operator shall be penalized in accordance with clause 5 for not providing the services and standing kilometres will not be paid. Should the Operator be dissatisfied with the Employer's decision, the Operator may declare a dispute.
- 5.4. The Operator must inform the Representative within twenty-four hours after the cancellation of any scheduled trips and also when the trips are recommenced. The Operator must also confirm the cancellation and recommencement to the Representative in writing and notify it of the reasons for the cancellation. The Representative must investigate and confirm the reasons for all cancellations.

6. PENALTIES

- 6.1. The services shall be fully monitored in the first month of operation and all offences shall be listed, but penalties will not be imposed. Thereafter penalties shall be imposed as

set out hereunder. In both cases revenue kilometres shall only be paid for trips which have been operated.

- 6.2. It is the duty of the Operator to report all trips not operated, late and early trips, revenue kilometres operated and any other information which is relevant to the calculation of monthly claims. Where the Representative reports more trips not operated than those reported by the Operator for three consecutive months, from the fourth month penalties will be doubled for the remaining contract period for all infringements not reported by the Operator.
- 6.3. No vehicle shall leave the first point of departure before the time listed in the time table or more than five minutes thereafter, failing which penalties will be imposed as set out below.
- 6.4. The Operator will be expected to adhere strictly to the requirements of the Contract. Penalties will be imposed in the following events:
 - 6.4.1. Failing to provide specified trips
 - 6.4.2. Where a trip has not been provided, a penalty of R250 (Two Hundred and Fifty Rand) will be imposed, and no revenue kilometres will be paid.
 - 6.4.3. Providing trips that depart late or early
- 6.5. In the case of a trip that—
 - 6.5.1. departs more than fifteen (15) minutes late from the departure point or any transfer point, a penalty of twenty five percent (25%) of the amount that the Employer would have paid for the trip concerned will be imposed, but revenue kilometres will be paid;
 - 6.5.2. departs more than thirty (30) minutes late from the departure point or any transfer point, the trip will be deemed not to have been operated, no revenue kilometres will be paid but the R250 penalty will not be applied;

7. VEHICLE BREAKDOWNS

- 7.1. The Operator is expected to provide a replacement vehicle for breakdowns as follows:
 - 7.1.1. At the starting point of a route or within an eight (8) kilometre radius of these points, within thirty (30) minutes;
 - 7.1.2. At other points, within forty-five (45) minutes;
- 7.2. Where a replacement vehicle is so provided, no penalty will be imposed and revenue kilometres will be paid. If a replacement vehicle is provided, but not within the stated time, a penalty of forty percent (40%) of the amount that the Employer would have paid for the trip concerned will be imposed, but revenue kilometres will be paid. If no replacement vehicle is provided, penalties will be imposed for a trip not provided as set out in clause 5.4.2. In all cases, however, where there are more than two percent (2%) vehicle breakdowns per month, a penalty of two hundred rand (R200,00) per breakdown over 2% will be imposed. This percentage will be based on the average number of peak vehicles per day totalled over the month in question.

8. VEHICLES IN AN UNSATISFACTORY CONDITION

- 8.1. Vehicles must be roadworthy and comply at all times with the National Road Traffic Act, 1996 and other relevant legislation. Where a vehicle fails to comply with any legal requirement, it must be withdrawn from service immediately until the defect is rectified, and penalties will be imposed for failing to operate.
- 8.2. Where, in the discretion of the Representative, vehicles leave a depot in an unsatisfactory condition as stipulated below
 - 8.2.1. dirty on the outside or inside or with wet seats, a penalty of one hundred rand (R100) per bus will be imposed;
 - 8.2.2. not in a good state of repair or with a leaking roof, one or more broken or missing windows or in an unhygienic condition, a penalty of two hundred rand (R200) per bus will be imposed;
 - 8.2.3. with missing or broken seats, a penalty of fifty rand (R50) per seat will be imposed;
 - 8.2.4. with broken or missing doors, or doors that cannot be closed properly, a penalty of five hundred rand (R500) per bus will be imposed.

8.2.4.1. In the case of 7.2.1 to 7.2.4 the Operator shall have two (2) weekdays to remedy the situation, whereafter a further penalty per day will be imposed. If a penalty is imposed in respect of a particular bus more than three times in any fourteen (14) day period, the Operator must withdraw that bus and replace it until such time as it has been repaired so as to comply with the specifications.

8.2.4.2. The Representative must inform the Operator before the commencement date of the standards that will be applied in respect of this clause..

9. DEVIATING FROM ROUTES

9.1. Where there is a deviation from a route, a penalty of two hundred rand (R200) will be imposed, but approved revenue kilometres will be paid.

9.2. Failing to provide the right type, quality and age of vehicles as specified in the Contract

9.2.1. Where the Operator fails to provide the right type, quality and specification of vehicles as specified, five percent (5%) of the total amount payable in respect of the relevant month's payment certificate, with a minimum of two hundred and fifty rand (R250) will be withheld. However, no penalty will be imposed if the Operator provides vehicles of substantially the same quality and specification, which in the opinion of the Representative are suitable.

9.2.2. No escalation or interest will be payable to the Operator on the monies withheld as contemplated above and such monies will only be paid after compliance with the specifications.

9.2.3. If the Operator does not comply with the requirements within three (3) months from the date that the monies were first withheld, it will forfeit such monies.

10. SUBSTITUTE OPERATOR

10.1. The written consent of the Employer shall be required before the Operator may appoint any substitute operator.

10.2. In the event of an industrial dispute or staff stay-away, or any other situation affecting the Operator's organisation and its ability to provide the services, the Operator shall be responsible to make all reasonable attempts to provide the services, including the option of finding alternative licensed operators to cover all scheduled trips. If there is no time to obtain prior written authority of the Representative or Employer before the appointment of the substitute operator, the Operator must inform the Representative of the particulars of such substitute operator and the Representative must obtain the written consent of the Employer within three (3) days of the appointment of the substitute operator.

10.3. The appointment of a substitute operator under this clause shall not be valid for more than thirty (30) days. The Employer shall nevertheless only deal with and issue instructions to the Operator and the Operator shall bear full responsibility for the provision of the services in accordance with the contract.

10.4. At the end of the month when claims are submitted, all details such as time, trips and days covered by the substitute operator must be submitted. The Operator will be paid at the applicable contract rates for these trips and it will be the Operator's responsibility to reimburse the substitute operator fully.

10.5. If the Operator is not able for any reason to provide scheduled trips for any consecutive period of twenty four (24) hours and fails to arrange for a substitute operator, it shall immediately inform the Employer to this effect, to enable the Employer to arrange for a substitute operator if it so desires. Unless the Operator can prove that it was prevented from operating due to circumstances beyond its control, it shall be liable for all the associated extra costs, and penalties in terms of clause 5 of the Special Conditions will be imposed for scheduled trips not operated. Such circumstances shall not include disputes, stayaways or strikes confined to the Operator's organisation.

11. TIME TABLES

11.1. The services reflected in the time tables provided in the Tender documents are the services that the Employer requires the Operator to operate.

- 11.2. Due to the lapse of time between the drafting of the tender documents and the commencement date, as well as possible changing circumstances, variations to the time tables may be necessary before commencement of the services. If this is the case, the Representative and the Operator shall decide on appropriate time tables which will be submitted to the Employer for its approval at least fourteen (14) days before the commencement date. If this is not done the time tables in the Specifications shall be operated on the commencement date until further notice from the Representative.

12. VEHICLES

- 12.1. The type and condition of all vehicles to be provided by the Operator for the provision of the services must correspond with the requirements and regulations of the Road Traffic Act, 1989 (Act 29 of 1989) or other applicable legislation and applicable SABS specifications.
- 12.2. When so ordered by the Employer, the Operator must remove from the services any unsuitable vehicles. The approval or disapproval of any vehicle by the Employer or the Representative shall not in any way release the Operator from its obligations in terms of the contract.
- 12.3. If the Operator, without the written authority of the Employer, fails to provide the right type, with reference to quality and age, of vehicles as specified in its tender within three (3) months of the commencement date or, at a later stage in the contract period, within sixty (60) days after being instructed to do so by the Employer, then a penalty shall be imposed as contemplated in clause
- 12.4. The Operator must display identification stickers or decals on vehicles used in providing the services if requested to do so by the Employer.
- 12.5. Any accident damage shall be repaired so that the vehicle complies with the Specifications.
- 12.6. All buses must be clean inside and outside when they leave a depot. Prior to the commencement date, the Operator, Employer and Representative (if appointed) must agree on guidelines as to what constitutes cleanliness in the operating circumstances.
- 12.7. No vehicles with hard seats will be permitted.

13. ESTABLISHMENT

- 13.1. During the period between the signing of the contract and the commencement date, the Operator must arrange the following activities, among others:
- 13.1.1. acquisition of the required vehicles as specified in the contract;
 - 13.1.2. recruitment and training of necessary personnel, if these are not already available;
 - 13.1.3. development of bus schedules and operating data, management control systems and information systems;
 - 13.1.4. preparation of driver duties, waybills and other forms necessary for the services;
 - 13.1.5. other activities necessary for the commencement of the services requested by the Representative or Employer.
- 13.2. Within ten (10) days after the letter of acceptance has been received, the Operator must prepare a programme listing the activities required by the contract, stating target starting and completion dates for each activity. The Representative and/or Employer will arrange meetings with the Operator and co-ordinate activities to facilitate the smooth transfer of responsibility for the operation of the services from the existing to the new contract.

14. SUBMISSION OF OPERATING DATA

- 14.1. Trip information. Trip information for all approved trips must be provided on a weekly basis or as otherwise required by the Employer. The contract data base will be maintained by the Representative and will contain the information of all approved trips and be updated on a monthly basis.
- 14.2. The data entry may be undertaken by hand (typed in from the appropriate waybills).
- 14.3. Passenger perceptions of the service. It is expected of the Operator to report on a

monthly basis in writing on complaints received from passengers. The report should include the date and time that the complaint had been received and the actions taken to address specific complaints.

15. POWERS AND DUTIES OF THE REPRESENTATIVE AND THE REPRESENTATIVE'S DEPUTY, AND AUTHORITY OF THE EMPLOYER

- 15.1. The function of the Representative is to administer and supervise the contract in accordance with the provisions thereof. In this regard it shall perform all the duties of the Representative as described in the contract and at all times endeavour to be just to the Employer and the Operator. In so far as it is not in conflict with the duty to be just to both Parties, the Representative must ensure that the Employer's interests in the contract are protected.
- 15.2. It is the duty of the Representative or Deputy to supervise the operation of the services as provided by the Operator on behalf of the Employer, to monitor such services to ensure compliance with the Specifications and to arrange and chair monthly project meetings. The Representative shall have no authority to release the Operator from any of its obligations in terms of the contract, nor shall the Representative be empowered, except as stipulated in the contract documents, to issue any order that would impede the Operator, give rise to additional expenditure for the Employer or result in an amendment to the services.
- 15.3. The Representative may from time to time, with the written consent of the Employer, delegate in writing to an authorised person any of the powers and functions vested in it, and must furnish the Operator with a copy of all such written delegations of powers and functions. Any written direction or written approval given to the Operator by such a delegate in accordance with such delegation (but not otherwise) shall be binding on both the Operator and the Employer in the same way as if it had been given by the Representative, provided always that—
- 15.3.1. failure of a person authorised by the Representative to make a ruling or issue an instruction shall not prejudice the power of the Representative to make such ruling or issue such instruction later; and
- 15.3.2. should the Operator be dissatisfied with any decision of a person authorised by the Representative, it shall be entitled to refer the matter to the Representative within seven (7) days, who must thereupon confirm, vary or reverse the decision.
- 15.4. The Representative shall remain liable to fulfill all its duties in terms of the contract notwithstanding the appointment of a delegate.
- 15.5. Despite any provisions to the contrary in the contract, the Employer shall have the right to reverse or amend a direction or decision of the Representative and to make or issue new ones. Any such reversed, amended or new direction or decision shall for the purposes of this contract be deemed to have been issued by the Representative.
- 15.6. The Employer and Representative shall have the right to investigate any complaints, objections or representations made by passengers, local authorities or other interested persons relating to the services.
- 15.7. Should the Operator become aware that any of its employees have threatened the Representative, the Deputy or any of the monitoring staff, the Operator shall be obliged to take immediate disciplinary or other appropriate steps to prevent a recurrence.
- 15.8. All communications between the Operator and the Employer shall take place via the Representative except where specifically provided otherwise.

16. RELAXATION

Except as otherwise stated, no latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder or the enforcement of any right arising from this contract and no single or partial exercise of any right by either Party shall under any circumstance be construed to be an implied consent by such Party or operate as a waiver or a novation, or otherwise affect any of that Party's rights in terms of or arising from this contract or stop such Party from enforcing at any time and without notice, strict and punctual compliance with each and

every provision or term hereof. No waiver on the part of either party of any rights arising from a breach of any provision of this contract will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

17. SETTLEMENT OF DISPUTES

17.1. Mediation in non-urgent matters

17.2. The Operator may appeal to the Employer against the imposition of any penalty imposed, or against any variation made by the Representative in respect of which the Employer's consent is not required, by giving written notice to the Employer within fourteen (14) days of the penalty or variation coming to its knowledge. The Employer must give a decision on the matter within fourteen (14) days of receipt of such notice. If the Operator is not satisfied with the decision, it may declare a dispute.

17.3. Should any dispute or difference of any nature whatsoever arise between the Parties in connection with or arising from the contract the Party declaring the dispute or difference must notify the Representative in writing, and the Parties together with the Representative must attempt to resolve the matter within twenty-one (21) days of the notice. If no resolution can be achieved within that period, the dispute or difference must be settled by way of mediation as provided for hereunder.

17.4. Mediation procedure is commenced by either Party giving the other written notification that the matter must proceed to mediation. Where such a notification is delivered—

17.4.1. the Parties must each in writing nominate a mediator who is or has been a judge or practising advocate of not less than ten (10) years standing. This will take place within twenty-one (21) days after the notice to proceed to mediation and if the Parties cannot agree on one mediator within a further seven (7) days, the Association of Law Societies of the RSA shall be requested to nominate a mediator within fourteen (14) days after the request;

17.4.2. the Parties must commit themselves in every respect to the speedy finalisation and solution of the mediation proceedings;

17.4.3. any party may furnish the mediator in advance with written documentation and information and may make the same available to the other party;

17.4.4. the mediator must establish and regulate procedures for the mediation so long as the Parties continue to agree to participate in the mediation process;

17.4.5. the Parties acknowledge that mediation is a voluntary process that may be terminated at any time by any party on written notice to the other;

17.4.6. the mediator must give each Party the opportunity to present its case by means of written and/or oral representations and to submit settlement alternatives, and the mediator must aid the Parties in reaching a mutually acceptable agreement;

17.4.7. the mediator must record the settlement reached by the Parties, if any, and request the Parties to sign the draft settlement within three (3) days after a settlement has been reached and give a copy thereof to each Party;

17.4.8. the Parties must pay the costs of the mediator in equal shares, unless the mediator orders one Party to pay a larger share or the full amount;

17.4.9. the signed settlement shall be final and binding on both Parties;

17.4.10. the mediator shall not have the power to render a binding decision or award in the dispute, nor will it be empowered to force any party to settle the dispute;

17.4.11. any information, documentation and material disclosed or made available to the mediator privately or in caucus will remain confidential and will not be disclosed by it or any party without the prior consent of the party who made available such information, documentation or material;

17.4.12. mediation will take place on a confidential and "without prejudice" basis. The Parties undertake that they will never subpoena any person who is a party to or who is involved in the mediation, including the mediator, for the purpose of giving evidence as to what took place during mediation. The Parties must ensure that the confidentiality of the mediation process is assured.

17.5. If the Parties are unable to reach a settlement within sixty (60) days the mediator

must certify this in writing and either Party may institute proceedings in the appropriate court for settlement of the dispute.

18. GENERAL MATTERS REGARDING DISPUTES

- 18.1. Nothing in this contract will prevent a party from approaching a court for urgent relief.
- 18.2. The Operator must, notwithstanding any dispute, difference or settlement procedure, continue to provide the services in accordance with the contract.
- 18.3. This clause shall survive the termination or cancellation of the contract.

19. TERMINATION OF CONTRACT

- 19.1. Where the Employer discovers that—
 - 19.1.1. the Operator has committed an act of insolvency or is actually insolvent in that the Operator's liabilities exceed its assets;
 - 19.1.2. the Operator has published a notice of surrender of its estate or has presented a petition for the acceptance of the surrender of its estate as insolvent;
 - 19.1.3. the Operator has made a compromise with its creditors or assigned in favour of its creditors;
 - 19.1.4. the Operator has agreed to carry out the contract under the supervision of a committee representing its creditors;
 - 19.1.5. the Operator has been sequestrated or gone into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or the Operator has been placed under judicial management;
 - 19.1.6. judicial execution has been levied on the Operator's goods,
- 19.2. the Employer may demand in writing that the Operator deposit in cash with the Employer an amount equal to 30% percentage of the contract amount specified. The Employer will hold the said amount in trust as a pledge for the remainder of the contract period to cover any failure by the Operator to fulfil its obligations under the contract and/or any damages the Employer may suffer, and will repay it to the Operator within 14 days after expiry or termination of the contract, after deduction of any amounts owing by the Operator to the Employer. The Operator must comply with such a demand within seven days of receipt thereof, failing which the Employer may terminate the contract under clause 30.3.
- 19.3. Where the penalties imposed in terms of clause 5 of the Special Conditions, amount to more than ten percent (10%) in a particular month of the total amount payable in respect of the monthly payment certificate for that month, the Employer may deliver a written notice to the Operator informing it that the contract will be terminated without further notice if such penalties so exceed ten percent (10%) in any subsequent month. If such a notice is sent and the penalties do again exceed that percentage in any subsequent month, the Employer may terminate the contract without further notice and without granting the Operator any further opportunity to rectify the matter.
- 19.4. Where—
 - 19.4.1. the Operator delegates, cedes or sub-contracts the contract or part thereof without having obtained the Employer's consent in writing; or
 - 19.4.2. the Operators' operating licences or permit(s) necessary to provide the services are withdrawn or suspended; or
 - 19.4.3. the Operator fails at any stage to comply with the requirements of section 48 of the Act; or
 - 19.4.4. the Operator has offered, promised or given a bribe or other gift or remuneration to any officer or employee in the service of the Employer, Tender Board or SMF in connection with the obtaining or execution of this contract; or
 - 19.4.5. the Operator has acted in a fraudulent manner in obtaining or executing a contract with any government department, provincial administration, municipality, public body, company or person; or
 - 19.4.6. the Operator has abandoned any of its obligations in terms of the contract; or
 - 19.4.7. the Operator is deceased where it is a natural person; or

19.4.8. the penalties imposed amount to more than five percent (5%) per month of the total amount payable in respect of the monthly payment certificates, i.e. before deduction of penalties, for any three (3) consecutive months or for any five (5) months during the contract period;

the Employer may, without prejudice to any other rights the Employer may have, terminate the contract and, if appropriate, claim damages from the Operator, in addition to any other lawful remedy the Employer may have. The Operator will be regarded as having consistently failed to observe the Specifications where the Representative provides a written certificate to that effect. If the Operator disagrees with the Representative's opinion, it may declare a dispute.

- 19.5. Where the Operator has breached or failed to comply with any term of the contract, the Employer may give the Operator at least fourteen (14) days' written notice to rectify the matter, and, if the Operator has not remedied the breach within the said 14 days, without prejudice to any other rights the Employer may have, the Employer may—
- 19.5.1. terminate the contract and, if appropriate, claim damages, or
- 19.5.2. institute a claim for damages and/or sue for specific performance against the Operator, and/or
- 19.5.3. claim any other lawful remedy the Employer may have.
- 19.6. Where the contract is terminated the Employer may require the Operator to continue providing the services for a maximum of thirty (30) days after the date of termination.
- 19.7. Should the amounts the Employer must pay to complete the contract where it is terminated as contemplated in this clause exceed the sum that would have been payable to the Operator on due completion by it, the Operator shall upon demand pay to the Employer the difference and it shall be deemed a debt due by the Operator to the Employer and shall be recoverable accordingly: Provided that, should the Operator on demand not pay such amount to the Employer, the Employer may, without prejudice to any other rights the Employer may have, deduct such difference from any sum due to or that may become due to the Operator under this or any previous or subsequent contract between the Operator and the Employer.
- 19.8. Termination of the contract shall be without prejudice to any rights of the Employer in respect of any antecedent breach of contract by the Operator.
- 19.9. In the event of the Employer breaching any terms or conditions of the contract, the Operator may give the Employer at least thirty (30) days' written notice of such breach, calling upon the Employer to remedy the same. Should the Employer fail to remedy the breach in accordance with the notice, this contract may either be terminated after a further fourteen (14) days' written notice period, during which the Operator must still provide the services under the contract, or at the option of the Operator, it may institute a claim for damages and/or sue for specific performance against the Employer, or claim any other lawful remedy that the Operator may have against the Employer, without prejudice to any other rights the Operator may have.
- 19.10. Should standing kilometres paid to the Operator amount to more than thirty percent (30%) of the monthly scheduled kilometres for three (3) consecutive months, either party may terminate the contract, but not less than thirty (30) days after the end of the third such month. Neither party shall have any claim against the other arising out of such termination.
- 19.11. In the case of termination of the contract in terms of this clause, the Employer may immediately appoint auditors to check and verify all relevant books, records and other data of the Operator, and the Operator shall give full cooperation in that regard and make all such information available to the Employer on request.