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## GENERAL NOTICE

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### NOTICE 3163 OF 2003

#### NOTICE OF THE MINISTER OF TRANSPORT'S INTENTION TO PUBLISH THE MODEL NEGOTIATED CONTRACT DOCUMENTS

I, ABDULAH MOHAMED OMAR, Minister of Transport ("the Minister"), hereby under sections 47 (3)(d) and 47(4)(b) of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) ("the Act") publish for public comment the Model Negotiated Contract Documents for subsidised service contracts in the Schedule.

### SCHEDULE

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1. Volume 1: Terms and Conditions of Contract
2. Volume 2: Specifications
3. Volume 3: Forms

**Explanatory note:** Volume 1 (Terms and Conditions of Contract) and Volume 2 (Specifications) may be amended by contracting authorities, with the prior written agreement of the Minister or an official in the Department to whom that function has been delegated under section 8 of the Act. Volume 3 (Forms) shall be adapted and completed where appropriate. After the full public transport subsidy function has been assigned to a contracting authority, together with concomitant financial responsibility, the Minister will grant consent for that authority to amend any of the volumes.

interested persons may make comments or representations relating to the above-mentioned, by delivering it to the following address:

The National Department of Transport  
Room 4098  
Forum Building  
Struben Street  
PRETORIA

or by post to

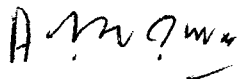
The National Department of Transport  
Private Bag x 193  
PRETORIA  
0001

For attention: Mr JD de Villiers

OR

by fax to the following number:  
(012) 323 9370

Closing date for submissions: 28 November 2003



**MR AM OMAR, MP  
MINISTER OF TRANSPORT**

**PROVINCIAL ADMINISTRATION OF ..... PROVINCE**

**PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES  
BETWEEN ..... AND .....**

**CONTRACT NO. ....  
(Negotiated Contract in terms of section 47(3) of the  
National Land Transport Transition Act, 2000)**

**VOLUME 1: TERMS AND CONDITIONS OF CONTRACT**

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## THIS CONTRACT IS CONCLUDED BETWEEN:

1. The ..... Provincial Administration (hereinafter called "the Employer") of the one part, herein represented by ..... in his/her capacity as .....

AND

2. ....  
( called "the Operator") of the other part, herein represented by ..... in his/her capacity as .....

WHEREAS the Employer is desirous that certain passenger transport services be provided as detailed in these contract documents and the Operator agrees to provide the said services in terms of the contract;

## NOW THIS CONTRACT WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

- 1.1 In this contract, words in the singular also include words in the plural and *vice versa* where the context permits.
- 1.2 In these contract documents any word or expression to which a meaning has been assigned in the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) ("the Act") shall have the meaning assigned to it by that Act, and the following words and expressions shall have the following meanings, except where the context indicates otherwise:

**"accepted", "approved", "authorised", "directed", "ordered" and "rejected"** means accepted, approved, authorised, directed, ordered or rejected by the 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 9 of the Forms within which the total monthly revenue kilometres operated by the

Operator will fall and to which a particular contract rate applies;

**"bus"** 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 more than 35 persons, excluding the driver and specified in Form 7, by means of which the Operator proposes to provide the services and includes a double decker bus, medium bus, standard bus and train bus;

**"Business Plan"** means the business plan contemplated in section 47(3)(e) of the Act, attached as Annexure A;

**"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 clause 20;

**"contract"** means this agreement for the operation of the services as described in, among others, clause 21, including the terms and conditions set out in the contract documents as well as in such other documents which the Parties may agree in writing shall form the basis of the contract;

**"contract amount"** means the total amount estimated for the provision of the specified services as shown on Form 9, which amount is only relevant for evaluation purposes and to calculate the sum of the suretyship(s) and is subject to adjustment in respect of—

- (a) arithmetical errors that may occur in the priced schedules and are corrected;
- (b) acceptance of alternative offers;

**"contract documents"** means the documents listed in clause 21;

**"contract rates"** means the amounts per revenue kilometre agreed for providing the services, in respect of each kilometre band as shown in the Schedule of Quantities (Form 9) and which include the contributions to the Interim Industry Restructuring Fund contemplated in clause 8.7;

**"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;

**"double decker bus"**, means a bus which—

- (i) consists of two decks connected to form a unit; and
- (ii) has a capacity of not less than eighty (80) persons and not more than one hundred and ten (110) persons;

**"duty"** means a document providing written instructions to a bus driver regarding the relevant shift;

**"duty board"** means a board that displays the duty/shift number of a particular bus for identification purposes;

**"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;

**"EE"** (electronic information and ticket equipment) means fully operational electronic equipment which has the capacity to provide, record and accumulate the information contemplated in clause 27, including hardware with uninterrupted power supply (UPS) and software, that are acceptable to the Employer and compatible with the systems used by the Representative;

**"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 of ....., or a person designated by that Administration to act on its behalf or any transport authority or core city to which that authority has ceded its rights and delegated its obligations;

**"financial ringfencing"** in relation to a business entity or undertaking has the meaning assigned thereto in section 48 of the Act;

**"forms"** means the forms set out in Volume 3;

**"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 nine (9) to eighteen (18) 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 nineteen (19) to thirty-five (35) persons, excluding the driver;

**"month"** means a calendar month;



**"multi-journey ticket"** means a ticket for a number of inbound and outbound trips on a specified route, valid for a period expiring on the date specified thereon;

**"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 party to this contract, 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 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, set out in accordance with Form 21 of the Forms;

**"permit"** means a public permit as defined in the Road Transportation Act, 1977 (Act No. 74 of 1977), and/or a replacing provincial law, 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 permit before the commencement date, 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—

- a) from a depot to the starting point of a scheduled trip;
- b) from the end of a scheduled trip to a depot; or
- c) 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 32.3;

**"Rebuilt bus"** means that a new body has been built on a rebuilt chassis, that all the compulsory vehicle standards applicable to the body as laid down by the latest requirements of the South African Bureau of Standards (SABS), the Standards Act, 1993 (Act No. 29 of 1993) and /or the National Road Traffic Act, 1996 (Act No. 93 of 1996) are met in each and every instance and that a roadworthy certificate is mandatory for each bus to be used, and that the bus complies with the following:

(i) **Body rebuilt by a registered bus body builder**

- (a) Body superstructure conforming to SABS 1563: 1992 roll-over protection requirements;
- (b) New lights conforming to SABS 1046: head lights, front position, front end outline, identification, front rear and side indicators, rear position and stop, reverse, high-mounted stop, rear end outline, number plate;
- (c) Rear reflectors and side reflectors (where fitted) conforming to SABS 1046;
- (d) Chevron conforming to SABS 1329;
- (e) Seats and anchorages conforming to SABS 1564;
- (f) Seat belts on all unprotected seats conforming to SABS 1080/1430;
- (g) Class II rear view mirrors conforming to SABS 1436;
- (h) Laminated windscreen/s to SABS 1191, and shatterproof windows to SABS 1193; partitions conforming to SABS 1193/1472;
- (i) Emergency exits to have an unimpeded opening of 450mm x 900mm above and/or between backrests, decals facing inside and outside to be fitted to all emergency exits (50mm letter size);
- (j) Minimum ceiling height 1,75m;
- (k) Individual axle massloads to be established and mass distribution to be within permissible limits, seated and standing passengers to be based on 68kgs per passenger, with luggage based on 100kgs per cubic metre;
- (l) Notices with permissible number of seated and standing passengers, and luggage where applicable (75mm letter size);
- (m) Steps and floors to be covered with non-slip material; engine bonnets to be secure and correctly fitted.

(ii) **Electrical**

- (a) New wiring harness to be fitted;
- (b) Wiring conforming to SABS 1376 and electrical connectors to

**SABS 1327.****(iii) Mechanical**

- (a) Chassis stripped and cleaned (either shot-blasted or sand-blasted);
- (b)
- (c) Cracked components to be replaced ; loose rivets or bolts to be replaced to OEM specifications;
- (d) Bent chassis members to be straightened;
- (e) Full paint treatment to be applied to chassis;
- (f) Reconditioned or new engine, fuel pump, compressor, gearbox, radiator alternator, starter motor, steering pump and box, differential, front and rear axles, steering components, to be fitted, to OEM specifications;
- (g) Springs to be scragged and shock absorbers be replaced;
- (h) New colour-coded air hoses are to be fitted throughout, with reconditioned brake valves;
- (i) Air reservoirs and fuel tanks to be cleaned;
- (j) Fuel pipes are to be renewed;
- (k) New tyres to be fitted to front wheels, and new or newly retreaded tyres to rear wheels, all with the same tread patterns.

**“Rehabilitated bus”** means that only the floor and the inner and outer cladding of the body be removed to facilitate close *in situ* examination and repair of the superstructure framing, that new cladding and floor fitted and that all the compulsory requirements (excepting rollover conforming to SABS 1563) as laid down by the latest requirements of the South African Bureau of Standards (SABS), the Standards Act, 1993 (Act No. 29 of 1993) and /or the National Road Traffic Act, 1996 are met in each and every instance and that a roadworthy certificate is mandatory for each bus to be used, and that the bus complies with the following:

**(i) Body rehabilitated by a registered bus body builder**

- (a) Lights conforming to SABS 1046: head lights, front position, front end outline, identification, front rear and side indicators, rear position and stop, reverse, high-mounted stop, rear end outline, number plate;
- (b) Rear reflectors , and side reflectors (where fitted) conforming to SABS 1046;
- (c) Chevron conforming to SABS 1329;
- (d) Seats and anchorages conforming to SABS 1564;
- (e) Seat belts on all unprotected seats conforming to SABS 1080/1430;
- (f) Class II rear view mirrors conforming to SABS 1436;
- (g) Laminated windscreen/s to SABS 1191, and shatterproof windows to SABS 1193; partitions conforming to SABS 1193/1472;

- (h) Emergency exits to have an unimpeded opening of 450mm x 900mm above and/or between backrests, decals facing inside and outside to be fitted to all emergency exits (50mm letter size);
  - (i) Minimum ceiling height 1,75m;
  - (j) Notices with permissible number of seated and standing passengers, and luggage where applicable (75mm letter size);
  - (k) Steps and floors to be covered with non-slip material; engine bonnets to be secure and correctly fitted.
- (ii) **Electrical**
- (a) Electrical wiring to be reworked and is in safe working order.
- (iii) **Mechanical**
- (a) Chassis to be inspected *in situ*;
  - (b) Cracked chassis members to be replaced, to OEM specifications;
  - (c) Bent chassis members to be straightened;
  - (c) Springs to be scragged and shock absorbers be replaced;
  - (d) Air reservoirs and fuel tanks to be cleaned;
  - (e) Fuel pipes are to be renewed; and
  - (f) New tyres to be fitted to front wheels, and new or newly retreaded tyres to rear wheels, all with the same tread patterns.

**"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 2), 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;

**"SMF" (Supervising and Monitoring Firm)** means a firm appointed by the

Employer to act on its behalf for the supervision and monitoring of the services;

**"specifications"** means the specifications as set out in the Specifications (Volume 2) in which the routes, distances, services, fares, time tables, performance criteria, stops and any additional related information are described;

**"standard bus"**, means a bus with a capacity of not less than fifty eight (58) persons and not more than one hundred and one (101) persons, excluding the driver;

**"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 30.3;

**"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 41;

**"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 41;

**"train bus"** means a bus which—

- (i) consists of two sections to form a unit;
- (ii) can swivel in a horizontal plane at the connection between such sections;
- (iii) has a continuous passageway over the length thereof; and
- (iv) has a capacity of not less than one hundred and two (102) persons and not more than one hundred and eighty four (184) persons, excluding the driver;

**"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 41;

**"unsuitable vehicle"** means a vehicle which is materially different from those specified in Form 7 of the Forms in terms of age, make, model or otherwise, or which the Representative 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. PERMISSION TO PROVIDE SERVICES

- 2.1 In terms of section 31(4) of the Road Transportation Act, 1977 (Act No. 74 of 1977), or replacing provincial legislation, the Operator must request permission from the competent Operating Licence Board/Local Road Transportation Board (board) before making it known that it is willing to provide services if it is not already the holder of the necessary permits or operating licences. The letter of approval from the board is attached as Form 2 of the Forms. The telephone number of the board is ....., its fax number is ..... and its postal address is .....
- 2.2 In addition to any other documents that may be required, the following documents must be attached, if applicable:
- (a) in the case of an operator who also undertakes unscheduled minibuss taxi-type services, proof of registration with the Registrar by submitting the relevant certificate of registration or provisional registration;
  - (b) a certificate or declaration from the Department of Labour that the Operator has complied with section 53 of the Employment Equity Act, 1998 (Act No. 55 of 1998), once that section has been brought into effect;
  - (c) A valid, original tax clearance certificate, and in the case of a consortium/association or the utilisation of sub-contractors, a valid original tax clearance certificate in respect of each sub-contractor or party to such consortium, issued by the office of the South African Receiver of Revenue (SARS) where the Operator, sub-contractor or party concerned, is registered for tax purposes. (Submissions to the Receiver concerned are to be made on an ST5.1 form "Application for Tax Clearance Certificate" which is available from the Receiver concerned.)
  - (d) Where applicable, duly completed and signed undertakings/declarations/certificates in the form set out in Forms 16, 17 and 18 of the Forms. In the case of Form 18 "Declaration of Financial Support by Owner", every firm or entity that exercises ownership control, as defined in section 48(6)(a) of the Act, over the Operator must complete the form. In the case of doubt, the Operator must ask the Employer for written confirmation that completion thereof is or is not required.
  - (e) The Operator must complete the affidavit in Form 19 of the Forms regarding previous convictions for relevant offences (if any) committed by the Operator or any of his/her/its directors/members/office bearers.

### **3. UNDERTAKING**

The signing of this contract by the Operator will amount to an undertaking by it not to oppose applications made to the Operating Licence Board of the Province for or in connection with the operating licences necessary to enable any future successful tenderer to provide the services to which the contract relates.

### **4. OPERATOR'S DUTY TO SATISFY ITSELF AS TO THE EXTENT OF SERVICES AND ATTENDANCE AT MEETINGS**

4.1 It is the duty of the Operator to inform and satisfy itself fully as to the nature and extent of the services and conditions in respect of which it is contracting. No claims of any nature will be entertained on the basis of a failure to make such inquiries.

4.2 The Employer will arrange a site meeting, attendance at which is compulsory. A service area inspection will be held after the site meeting, attendance of which is not compulsory. Attendance at all other meetings is compulsory.

4.3 If any compulsory meeting arranged by the Employer has not been attended by the Operator itself, or a representative of the Operator who must be—

- (a) suitably qualified to comprehend the implications of the services to be provided; and
- (b) in the direct employ of the Operator; or
- (c) a consultant or agent commissioned by the Operator,

this will constitute a material breach of contract.

4.4 Minutes of site inspections and other meetings will be issued to the Operator. Questions asked at such meetings and inspections will be minuted and replied to in writing. Only replies minuted in writing will be binding on the Employer.

### **5. DATA AND OTHER STATISTICS**

All data and statistics of whatever nature provided by the Employer concerning existing or former services are provided in good faith as the best information available to the Employer at the relevant time, to assist the Operator. No guarantee of the correctness of the data and statistics is given by the Employer and no claims by the Operator arising from incorrect data or statistics or as a result of incorrect estimates made by the Operator of existing or potential passengers will be entertained. The Operator must note that services required to be provided in terms of this contract might differ from existing or former services provided in the service area.



## **6. INFORMATION**

- 6.1 The Operator must submit all applicable information and data as may be required in terms of these contract documents, including that required in terms of the certificates, schedules and forms. The Employer reserves the right, in the event of such details being insufficient, to call for further information. The Operator must furnish such additional information within fourteen (14) days of being called upon to do so.
- 6.2 The Operator shall make sufficient allowance in the relevant contract rates for all costs in connection with the preparation and furnishing of any information that may be required by the Employer as contemplated in clause 6.1.
- 6.3 All written information submitted by the Operator shall form part of the contract.
- 6.4 Any explanation desired by the Operator regarding the meaning or the interpretation of the contract documents must be requested in writing from the Employer and with sufficient time allowed for a reply to reach the Operator. Any such explanation will be provided in writing. No oral explanations will be binding unless confirmed in writing as provided for above.
- 6.5 No oral representations or statements by any officer, employee or agent of the Employer shall affect or modify any terms or obligations of these contract documents. The Employer will not be responsible for any oral instructions, nor for any written information provided by any person other than the Employer or its duly appointed agent.
- 6.6 The Operator must supply the estimated income and expenditure required by Form 10 of the Forms for the first year of the contract period to demonstrate the cost structure on which the contract has been based. If such information is not provided the Employer reserves the right to cancel the contract. The information will be treated as confidential.
- 6.7 The Operator must indicate on Form 12 the management organisation structure proposed to manage the contract, and state which staff categories will be full time and which will be part time.

## **7. COSTS AND LOSSES INCURRED BY THE OPERATOR**

The Employer will not be liable for any costs or losses which may be incurred by the Operator in the preparations for the contract or attending meetings and in visiting the service area in connection therewith, and such costs and losses will be for the Operator's own account.

## **8. CONTRACT RATES ALL-INCLUSIVE**

- 8.1 The Operator must satisfy him- or herself as to the correctness and sufficiency of the contract rates stated in the Schedule of Quantities (Form 9 of the Forms). Such rates shall (except in so far as is otherwise provided) cover all the Operator's obligations under the contract.
- 8.2 The Operator must allow for full compensation for all general preliminaries, all expenses incurred in complying with the conditions and Specifications of the contract, all other costs, positioning kilometres as well as everything else necessary for the execution of the contract in accordance with the contract documents. The Operator's attention is drawn to the fact that the services may be varied during the contract period under clause 41, which could lead to an increase or decrease of monthly revenue kilometres. The Operator is also advised and must be aware that passenger numbers on the various routes may vary from time to time, and that any passenger statistics that may be provided in the Specifications are only estimates that may turn out to be different in practice. The Operator must also be advised that the services may have been rationalized and that routes, time tables etc. may not necessarily be the same as those operated by previous operators in the service area. The contract rates are intended to compensate the Operator fully for all costs and expenses and no claims of whatever nature, for example due to the fact that the number of buses that may be required at any time may vary, will be entertained. Scheduling of buses for optimal use thereof, subject to the agreed timetables, will be the responsibility of the Operator. Contract rates will be fixed for the contract period, subject to clause 30.11.
- 8.3 Monthly payments to the operator, as well as fares paid by passengers, are not subject to Value Added Tax (VAT). VAT is payable by the Operator on certain items such as tyres and lubricants, and the contract rates provide for this. Any possible future increases in the rate of VAT will be reflected automatically in the escalation factor.
- 8.4 Allowance is made in the contract rates for increases and decreases in scheduled kilometres, for example due to changes in demand and seasonal factors and for reduced services during holiday periods, as contemplated in clauses 17.1 and 41.
- 8.5 The Operator is advised to take cognisance of the implications for its current and future labour forces of the fact that the contract period will be five (5) years.

## **9. BUSINESS PLAN**

The Business Plan submitted by the Operator in terms of section 47(3)(e) of the Act is attached as Annexure A, and shall form part of the contract documents. If the Operator has any doubt as to the nature of a statement or the interpretation of contract documents or any point of doubt or difficulty, the Operator must clear it with the Employer as early as possible during the contract period.

## **10. COMPLETION AND SIGNING OF CERTAIN FORMS**

- 10.1 The Schedule of Quantities (Form 9 of the Forms) must be fully priced and totalled in the currency of the Republic of South Africa to show the contract amount. It should be noted that the contract amount is only relevant for purposes of calculating the amount of the suretyship(s) and contributions to the industry restructuring fund, and will not necessarily reflect the actual amount payable to the Operator over the period of the contract. The Operator must also note that the kilometres indicated on Form 9 are only estimates and will not necessarily be the kilometres operated over the contract period.
- 10.2 Where the Operator is a company, close corporation or other legal person it must submit a resolution or agreement of the directors or members which must be substantially in accordance with Form 3 of the Forms.
- 10.3 Where the Operator is a consortium of two or more parties, it must submit a signed memorandum of understanding between the parties to such consortium, as well as Form 4 of the Forms, in which is defined precisely the conditions under which the consortium will function, its period of duration, the persons authorised to represent and obligate it, the participation of the several parties forming the consortium, the benefits that will accrue to each party and any other information necessary to permit a full appraisal of its functioning. In this contract the term "consortium" is intended to have the specific meaning of a form of partnership involving mainly companies, close corporations or other legal persons. Within 10 days after the contract is signed, a final signed consortium agreement must be submitted to the Employer, failing which the contract may be terminated. Such agreement shall be subject to the approval of the Employer, who may likewise terminate the contract if the consortium agreement is rejected and not amended to the satisfaction of the Employer.

## **11. INVESTIGATION OF OPERATOR**

- 11.1 The Employer may inspect the Operator's premises and facilities (including workshops and depots), as well as buses by means of which the Operator proposes to provide the services at any reasonable time. The Operator must give full co-operation in this regard.
- 11.2 The Employer shall have the right to appoint a firm of chartered accountants or other consultants to report on the financial resources of the Operator at any time during the contract period or, if necessary, thereafter. The Operator must provide all reasonable assistance in such an investigation.

## **12. OWNERSHIP AND CONFIDENTIAL NATURE OF DOCUMENTS**

The Parties must keep confidential and not disclose without prior written consent of the other Party any information supplied by either Party, or that is contained in the contract documents, being information contemplated in Chapter 4 of the Promotion of Access to

Information Act, 2000 (Act No. 2 of 2000), except where obliged to do so in terms of law. All contract documents shall remain the property of the Employer and may not be, sold or otherwise disposed of. Also, all documents and data prepared by the Operator in connection with the services which are lodged with the Employer shall become the property of the Employer.

### **13. ADDITIONAL QUALIFICATION FOR OPERATOR**

- 13.1 For the duration of the contract period, the business entity or undertaking of the Operator through which the services are to be performed (including, where appropriate, the business entity or undertaking of any person or entity exercising ownership control over the business or undertaking of the Operator, or performing services on behalf of, or in the capacity as agent of the Operator) must operate according to business principles with financial ringfencing, as required by section 48 of the Act.
- 13.2 The Operator must also comply with any other relevant provisions of the Act as regards requirements or qualifications for public transport operators, which may include prescriptions by the Minister of Transport under section 48(3) of the Act.

### **14. ACCESS AND DISCLOSURE**

- 14.1 The Employer, the Representative, the Deputy and any person authorised by them shall at all reasonable times have access to all vehicles, workshops and depots of the Operator for the purpose of monitoring service quality, patronage, ticket and general inspection and the Operator must afford every facility for and render every assistance regarding such access or in obtaining the right thereto. The Auditor-General shall at all reasonable times have access to the financial statements and other relevant documentation of the operator.
- 14.2 The Operator must inform all its employees of the identity, powers and duties of the Representative and Representative's Deputy and monitoring staff. For purposes of identification the Representative will provide its staff with a unique personal identity card with photograph.
- 14.3 The Operator must, at the request of the Representative, produce proof of the validity of all licences, permits and other requirements arising from the contract. Such proof must be furnished not later than seven (7) days from the date of receipt of a written request.

### **15. ACCOUNTING MATTERS**

- 15.1 The Operator must keep proper accounting and financial records in respect of the contract in accordance with generally accepted accounting practice and have such records audited annually. The Operator must further annually, within six (6) months of the end of the Operator's financial year, submit to the Employer

copies of such financial statements, together with the auditors' report and such operating data as the Employer may require. All accounting records and waybills must be kept for a period of at least three (3) years after termination or expiration of the contract and may be kept on microfilm.

15.2 Where in terms of this contract any amount is owing to the Employer by the Operator, a certificate under the hand of the official of the Employer responsible for management of the contract shall be *prima facie* proof—

- (a) that such amount is owing;
- (b) of the fact that such official signed the certificate, and
- (c) that the relevant amount is due and payable.

## **16. BUS STOPS**

16.1 Only authorised stops shall be used by the Operator.

16.2 All stops, including intermediate stops, must be authorised by the Representative and any relevant authority with due consideration to regulations and proclamations of such authority that may be applicable.

## **17. CANCELLATION OF SCHEDULED TRIPS ON A TEMPORARY BASIS**

17.1 Cancellation of scheduled trips is not permitted unless—

- (a) agreed to in writing by the Representative in terms of clause 41;
- (b) they form part of a reduced service during holiday periods and have been approved by the Representative at least fourteen (14) days in advance;
- (c) the cancellation is due to unforeseen road closures, obstructions, floods or weather conditions;
- (d) 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
- (e) 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.

17.2 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 44 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 under clause 35.

- 17.3 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 44 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 under clause 35.
- 17.4 The Operator must inform the Representative within 24 (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.

## **18. CESSION, DELEGATION AND SUB-CONTRACTING**

- 18.1 The Operator shall not cede its rights or delegate its obligations under the contract or any part thereof, or any benefit or interest therein, to another person, or sub-contract any portion of the services, without the prior written consent of the Employer.
- 18.2 If consent is given for a sub-contract under clause 18.1, no contract between the Employer and the sub-contractor shall come into being and the Operator shall not be released from any liability or obligation under the contract, and it shall be responsible for the acts and omissions of any sub-contractor or its agents or servants as fully as if they were the acts or omissions of the Operator or of the Operator's agents or servants.
- 18.3 The Employer shall have the right at any time to withdraw consent for a sub-contract on thirty (30) days' notice, and in that event no claim against the Employer by the Operator or any other person on the grounds of the granting of such consent or the withdrawal thereof shall be entertained, and the Operator indemnifies the Employer against any claims and costs so incurred.
- 18.4 The Employer may at any time during the currency of this contract cede its rights and delegate its obligations in terms thereof to any transport authority or core city.
- 18.5 The Operator will not be allowed to sub-contract more than fifty percent (50%) and not less than ten percent (10%) of the revenue kilometres of the contract in any particular month. The said minimum of 10% must be sub-contracted to small business entities contemplated in the National Small Business Act, 1996 (Act No. 102 of 1996).

- 18.6 The Operator must take all necessary steps to implement the requirements of section 47(3)(g) of the Act and the provisions of the Business Plan relating to transfer of majority ownership to persons disadvantaged by unfair discrimination, in a timeous manner.

21.3 In case of a conflict the order of precedence of the documents shall be as follows:

- (a) completed Forms (Volume 3);
- (b) Specifications (Volume 2);
- (c) Terms and Conditions (Volume 1);
- (d) Business Plan (Annexure A)

subject to any amendments in writing contemplated in clause 23. These documents, together with any such amendments, constitute the contract documents.

## 22. DOMICILIA AND COMMUNICATION

22.1 The *domicilia citandi et executandi* in the Republic of South Africa of the Parties for the service of notices and legal documents for all purposes arising out of or in connection with this contract shall be:

The Employer: .....

The Operator: The address provided in Form 1 of the Forms

The other particulars of the Parties are:

Employer's telefax number: .....

Employer's telephone number: .....

Operator's telefax number: As stated in Form 1 of the Forms.

Operator's telephone number: As stated in Form 1 of the Forms.

22.2 The Parties must give notice in writing of any change of the abovementioned *domicilia* and other relevant particulars, at least fourteen (14) days prior to such new particulars becoming effective.

22.3 Communication must be maintained by using the following methods:

- (a) hand delivery;
- (b) registered mail;
- (c) telefax, telegram, or telex; or
- (d) courier.

22.4 Any notice given in terms of this contract must be in writing and shall be deemed to have been received by the addressee—



## **19. CHOICE OF LAW**

The law of the Republic of South Africa shall be applicable to this contract and any matter arising therefrom. The Operator must abide by all applicable statutes, regulations, ordinances, by-laws and other laws and binds him- or herself to accept the jurisdiction of the courts of law of the Republic of South Africa in respect of any matter arising out of this contract.

## **20. COMMENCEMENT DATE AND DURATION**

20.1 The services shall commence on ..... or such later date as may be agreed to in writing between the Parties.

20.2 The duration of this contract shall be five (5) years.

20.3 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.

20.4 At the end of the contract period, if the services will continue to be subsidised, the Employer must invite new tenders for the provision of services in terms of section 47 of the Act. If these are in substantially the same service area, such invitation shall amount to a totally new contract on the terms and conditions set out in the new tender documents.

20.5 If a subsequent contract is awarded to a different operator, the Operator must give its full co-operation in effecting the transition of the services to the new operator.

## **21. CONTRACT DOCUMENTS**

21.1 All the documents constituting the contract are to be read in conjunction with each other.

21.2 The several documents constituting the contract are to be regarded as mutually explanatory. In the case of ambiguities or discrepancies in these documents, or in the case of uncertainty as to the meaning or intention of any part of these documents, the Operator must refer this to the Representative so that it may be explained and rectified. The Operator shall be responsible for the consequences arising from neglect to take this precaution. When the Representative is notified of such ambiguities, discrepancies or uncertainties, it must, in consultation with the Employer, issue instructions to the Operator directing what is to be done: provided always that if the Operator is of the opinion that the Representative's instructions will result in additional expenses for the Operator which the Operator could not reasonably have anticipated, it may declare a dispute in accordance with clause 35.

- (a) on the date of delivery, if delivered by hand;
- (b) on the eighth (8th) day following the date of posting, if sent by prepaid registered mail;
- (c) on the day after dispatch, if sent by telefax, telegram or telex; or
- (d) on the day after dispatch, if delivered by courier.

## 23. ENTIRE CONTRACT

- 23.1 The documents mentioned in clause 21 and approved alterations thereto shall constitute the full agreement between the Parties, and no other representations or terms shall form part thereof unless reduced to writing and signed by or on behalf of the Parties.
- 23.2 No amendment of this contract or of any provisions or terms thereof, and no extension of time or waiver or relaxation or suspension of any of the provisions or terms of this contract shall be of any force or effect unless reduced to writing and signed by both parties hereto.

## 24. ESCALATION

- 24.1 The values of payment certificates shall be increased or decreased in the manner described in clause 30.1 by applying the following adjustment factor, calculated according to the formula and conditions below:

The value of each payment certificate shall be increased or decreased by the amount obtained by multiplying "Ac", defined below, by the adjustment factor determined according to the formula

$$\frac{(b \times F_t) + ([1 - b] \times CPIX_t)}{F_o \quad CPIX_o}$$

in which the symbols have the following meanings:

"b" is the coefficient deemed to represent the proportionate value of fuel and the value shall be 0.102 (10.2%).

"F" is the diesel fuel price of wholesale diesel with 0.3% and 0.05% sulphur content published by the Department of Minerals and Energy on a monthly basis.

"CPIX" is the Consumer Price Index excluding the interest rate on mortgage bonds as published monthly by Statistics South Africa.

The suffix "o" denotes the basic indices and prices applicable to the base month. The base month shall be the month prior to the month in which the commencement date falls.

The suffix "t" denotes the current indices and prices. The current indices and prices are applicable to the month in which the last day of the period falls to which the relevant certificate of payment relates.

If any index or price relevant to any particular certificate is not known at the time the value of the certificate is calculated, the latest published figures shall be used. Any correction that may be necessary shall be made by increasing or decreasing the subsequent monthly payments to the Operator.

The amount "Ac" shall be determined by the formula  $Ac = T + S - F$

The symbols in the formula have the following meanings:

"T" is the total value of revenue kilometres as certified in the certificate under consideration, before any adjustment made in terms of this clause.

"S" is the total value of standing kilometres for the period of the certificate under consideration.

"F" is the total value of penalties imposed for the period of the certificate under consideration.

- 24.2 By adding the amount for standing kilometres to the payment amount before applying the escalation formula, the rate for standing kilometres is effectively escalated.
- 24.3 Should it be necessary to make a pecuniary correction later as a result of any dispute over revenue kilometres, or as a result of an arithmetical error or any other cause, the price adjustment factor in force during that period in which the services were performed, shall be used.
- 24.4 The escalation factor will be calculated by the Employer and must not be reflected in the Schedule of Quantities (Form 9).

## **25. FARES**

- 25.1 The onus of collecting fares will be on the Operator, and all fares collected by the Operator shall be retained by it for its own account.
- 25.2 The cash and multi-journey ticket fares to be charged by the Operator on all routes described in the Specifications shall be subject to approval by the Employer and the onus will be on the Operator to comply with the Act and other applicable legislation in this regard. Fares must be increased annually in consultation with the Representative and the increase must on average be equal

to or exceed the escalation factor unless decided otherwise by the Employer or as specified in clause 5 of the specifications..

- 25.3 Cash ticket fares shall not be increased annually until such time that it is equal to multi-journey ticket prices. Thereafter cash ticket fares shall be increased with the same percentage as multi-journey ticket fares.
- 25.4 All fare increases must be discussed with the Representative three (3) months in advance. The actual fares will be rounded upwards to the nearest ten (10) cents. Notice of change of fares must be given to the passengers in the manner stipulated by the Employer, at least twenty-eight (28) days prior to the date of change.
- 25.5 The current, approved fare table must be available in each vehicle and the Operator shall be responsible for the maintenance of proper records of fares.

## **26. INDEPENDENT CONTRACTOR**

The Operator shall act as an independent contractor and not as an employee or agent of the Employer and does not have the authority to bind the Employer contractually to any other party. The Employer shall not be liable to pay any retrenchment or severance benefits to any of the employees of the Operator on dismissal or on expiry of the contract period.

## **27. INFORMATION AND ELECTRONIC INFORMATION AND TICKET EQUIPMENT (EE)**

- 27.1 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 each route in the format required by the Employer, on a weekly basis or as otherwise requested by the Employer in writing:
- (a) actual departure and arrival time of each trip and late and early trips, with proper identification of trip;
  - (b) revenue kilometres of each trip;
  - (c) cash and multi-journey ticket passenger numbers for each trip;
  - (d) detail of trips not operated and reasons therefor; and
  - (e) any other information that may reasonably be required from time to time by the Employer which may be relevant to the contract.

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.

- 27.2 To collect and supply that portion of the required data and information (as listed in clause 27.1) which is capable of being electronically collected, the Operator

must, within the time specified in clause 44.5.9, have installed and use on all vehicles the required EE equipment. The onus will however still be on the Operator to supply the correct information by means of other methods. Installation of EE shall not be complete until the operator has supplied the Employer with a certificate from the South African Bureau Of Standards (SABS) certifying that the EE installed by the Operator meets SABS standards and a letter from the supplier of the EE confirming that no significant changes have been made to the equipment since the last test carried out by the SABS.

- 27.3 If the Operator fails to install EE or keep it in a working condition, penalties shall be imposed as set out in clause 44.
- 27.4 While EE has not yet been installed or has become defective, the Operator must provide the information and data by means of an alternative system which has been approved by the Employer and is capable of providing all the required information and data. The Employer may decide not to pay any claim without adequate documented proof of the required information and data.
- 27.5 If in the opinion of the Employer the Operator provides incorrect, false or fraudulent information which may prejudice the Employer, then in addition to any other remedies the Employer may have or action it may take, all future payments to the Operator or a portion thereof as determined by the Employer may be withheld until the amount (*quantum*) of the Employer's damages can be determined. Thereafter the Employer may deduct the outstanding amount of such damages from any moneys due to the Operator. However, the services shall continue subject to the provisions of the contract. If the Employer suspects that such incorrect, false or fraudulent information is being provided—
- (a) the Employer may immediately appoint auditors to check and verify all books and records of the Operator and the Operator hereby accepts liability for all auditors', attorney and own client and other costs so incurred, unless it is found that no incorrect, false or fraudulent information has been provided as contemplated above;
  - (b) a certificate under the hand of the responsible officer of the Employer shall be *prima facie* proof of the amount (*quantum*) of damages suffered by the Employer; and
  - (c) the onus of proof shall be on the Operator to prove that its officials, servants or agents did not act in a collusive manner or with fraudulent intent or in a negligent manner.
- 27.6 In addition to any statutory obligations, the Operator must, within twenty-four (24) hours of its occurrence, report to the Representative any accident in which persons have been injured or killed. This must be followed by a written report containing full details of the occurrence within four (4) weekdays of the occurrence.

27.7 The Operator must forthwith upon the occurrence of any of the following events notify the Representative in writing of the details thereof:

- (a) Any revocation, suspension or refusal to renew any licence or permit necessary for the provision of the services; and
- (b) The imposition of any condition upon such licence or permit or any other circumstance which would prevent the Operator from providing the services in accordance with the contract.

27.8 In addition to the information referred to in clause 27.1, the Operator must supply the Employer with additional information, if so requested by the Employer, for information purposes, as part of the Bus Information System (BIS).

27.9 In addition to the information referred to in clause 27.1, if and when so requested by the Employer, the Operator must supply the Employer with the value of cash received from cash passengers per route per month and the number of multi-journey ticket (MJT) sales per MJT ticket type and destination category per month.

27.10 The Operator must notify the Employer within seven days of any change regarding ownership control over the Operator as contemplated in section 48(6)(a) of the Act and complete a declaration in accordance with Form 18 in respect of any new person or entity exercising such ownership control.

## **28. INSURANCE**

28.1 The Operator must take steps to ensure the safety of passengers and property. The Employer shall not be liable for any loss or damages resulting from damage to property or the death of or injury to any person which is caused by an intentional or negligent act or omission of the Operator or its agents or employees and the Operator hereby indemnifies the Employer against all claims, demands, lawsuits, damages, costs (including attorney and client costs), charges and expenses whatsoever in this regard. Nothing contained in this provision shall, however, be deemed to render the Operator liable for, or to indemnify the Employer against, any compensation or damages for or with respect to injuries or damage to persons or property resulting from any negligent act or omission done or committed during the currency of the contract by the Employer or its servants or for or in respect of any claims, demands, lawsuits, damages, costs, charges and expenses in respect thereof or pertaining thereto.

28.2 The Operator must effect and maintain throughout the duration of the contract, at its own expense, public liability insurance and such other insurance and in such amounts as the Employer may from time to time direct, with an insurance company chosen by the Operator and acceptable to the Employer, registered with the Financial Services Board established by the Financial Services Board Act, 1990, and registered in the Republic of South Africa in terms of the Short Term Insurance Act, 1998 or other applicable legislation. Proof of such

insurance must be submitted to the Employer prior to the commencement date of the services and the Operator must advise the Employer in writing of any changes thereto and provide the Employer with proof of payment of monthly premiums on demand. Such insurance shall *inter alia* provide cover in respect of loss or damage suffered by reason of damage to property or death of or injury to any person resulting from an intentional or negligent act or omission by the Operator or its agents or servants in connection with the provision of the services. On receipt of a written motivation the Employer may accept the fact that the Operator is self-insured if it has sufficient unencumbered assets in the Employer's opinion to cover the relevant risks, but notwithstanding this, the Employer may demand that the Operator obtain insurance cover as contemplated above at any time.

## **29. OPERATION OF SERVICES**

- 29.1 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 17.2. The Operator must take instructions and directions only from the Employer, the Representative or deputy, or a duly authorised delegate of the Representative.
- 29.2 Depending on the requirements of the contract as to which type or combination of types of buses are to be provided by the Operator, it must provide for each trip a vehicle having the passenger capacity as specified in the definitions of "minibus", "midibus", "medium-bus", "standard bus", "double decker bus" and/or "train bus", as the case may be.
- 29.3 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, or because the person refuses to pay the fare.
- 29.4 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 37.

## **30. PAYMENT FOR SERVICES**

- 30.1 The Operator shall be paid monthly for providing the services set out in the Specifications and for approved variations in accordance with clause 41, 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 therefor, less any penalties. The total scheduled kilometres per month will be used to determine the said band. The amount thus payable will be escalated in terms of clause 24, after which amounts to be withheld under clauses 44.5.8 or 44.5.9 will be deducted. 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.
- 30.2 Standing kilometres will only be paid where scheduled trips are cancelled as provided for in clause 17.1(c), (d) and (e), and clauses 17.2 and 17.3 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. If standing kilometres paid amount to more than thirty percent (30%) of the monthly scheduled kilometres for three (3) consecutive months, either party may terminate the contract in terms of clause 39. The rates for standing kilometres shall be sixty percent (60%) of the contract rates for the band concerned as determined in terms of clause 30.1.
- 30.3 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. Once a total has been obtained the total kilometre amount is to be rounded off to the nearest full kilometre.
- 30.4 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 in the format set out in Form 21 containing *inter alia* the information set out in clause 27.1 and proof of payment of insurance premiums in terms of clause 28.
- 30.5 When all the information has been supplied as specified in clause 27 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.
- 30.6 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.

- 30.7 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.
- 30.8 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.
- 30.9 Where the Operator fails to install EE as required by clause 27.2, the interest saved by it on the purchase price thereof as determined by the Employer, calculated at prevailing prime overdraft rates, shall be deducted from the unescalated total.
- 30.10 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.
- 30.11 The Employer may, in its sole discretion and with the consent of the relevant treasury in terms of regulation 8.7.1 of the *Treasury Regulations for Departments and Constitutional Institutions* issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and any other relevant 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. Information used to make a decision in this regard, will be escalated according to the escalation formula set out in clause 24, where appropriate. For the purposes of this sub-clause "extraordinary circumstances" shall mean—
- (a) the fact that road or other physical conditions have deteriorated or improved to an unforeseeable extent;

- (b) 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
- (c) any other unforeseeable circumstance that is extraordinary in the opinion of the Employer.

### 31. PERMITS AND OPERATING LICENCES

- 31.1 The Operator must promptly do everything in its power to obtain and maintain in force all operating licences or permits, including licences and permits required by local authorities, pay all fees and levies and issue all notices as may be necessary for or be connected with the due operation of the services in accordance with the Act and other applicable legislation.
- 31.2 It shall be the Operator's responsibility to apply timeously to the competent operating licence board (board) for the necessary operating licences, or amendments to existing permits or operating licences, or approval of fare increases, as the case may be, covering the contract routes unless the Operator is already in possession of such licences, permits, amendments or approvals. The Employer will provide a letter to the board notifying it of the awarding of the contract. The operating licences must be applied for for the duration of the contract period only. When such licences are issued, the Operator must supply copies to the Employer forthwith.
- 31.3 The operating licences or amendments referred to in clause 31.2 must be applied for within seven (7) days of the date on which the contract is signed and the Operator must take all reasonable steps to obtain the granting and issuing thereof as expeditiously as possible. If required by the Employer, the Operator must inform the Employer in writing on a weekly basis of the progress made regarding such applications. If for any reason, whether due to the act or omission of the Operator or not, the necessary operating licences or amendments have not been granted and issued by a date being fourteen (14) days prior to the commencement date and the Employer in its discretion after consultation with the operator decides that it is unlikely that the Operator will obtain the licences in time to enable it to provide the services on the commencement date, the Employer may—
- (a) cancel the contract after having given seven (7) days' notice of its intention to do so, in which event the Parties shall be entitled to restitution with no claims against each other, unless the Operator was in bad faith (*mala fide*) or the failure to obtain operating licences timeously or at all, was due to its fault or negligence; or
  - (b) postpone the commencement date on written notice to the Operator, in which event, if the Operator is providing services before the commencement date on some or all of the routes in question in terms of another contract or arrangement, the Operator must continue providing

the services according to that contract or arrangement until the operating licences are obtained.

- 31.4 The Employer undertakes not to enter into any similar agreement with any other operator of public transport services for the same route or routes until expiry or termination of the contract, unless the Employer considers it necessary to appoint a substitute operator in accordance with clause 37. The Employer may also seek tenders for the renewal of the services prior to the expiry of the contract so that all tender formalities may be completed in order to allow for continuity of the services.
- 31.5 At the end of the contract period, or if the contract is terminated in terms of clause 39, the Operator undertakes to surrender the operating licences or permits to the competent board in respect of all routes on which the services have been conducted in accordance with the requirements of the Act or other applicable legislation for cancellation or amendment, whichever is applicable, and undertakes not to oppose any applications for operating licences made by other operators who may obtain contracts from the Employer to continue the services in so far as they relate to the routes in question.

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

- 32.1 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.
- 32.2 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 it 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.
- 32.3 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—

- (a) 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
- (b) 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.

The Representative shall remain liable to fulfill all its duties in terms of the contract notwithstanding the appointment of a delegate.

- 32.4 It is also the duty of the Representative's Deputy to supervise the operation of the services as provided by the Operator on behalf of the Employer and to monitor such services to ensure compliance with the Specifications. Other functions of the Representative's deputy include among other things to arrange and chair meetings with the Operator other than monthly project meetings, to develop a monitoring strategy and to ensure that all relevant information required by the Employer is forwarded in accordance with the formalities prescribed.
- 32.5 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.
- 32.6 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.
- 32.7 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.
- 32.8 All communications between the Operator and the Employer shall take place via the Representative except where specifically provided otherwise.
- 32.9 For purposes of this contract the Employer may decide not to appoint a Supervision and Monitoring Firm in which case it will designate officials to perform the functions of the Representative and Deputy Representative.

### **33. 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.

#### **34. SERVICES OUTSIDE THE CONTRACT**

In addition to the services which the Operator is obliged to provide in accordance with this contract, it may operate any other passenger transport, provided that the operation of such transport does not in any way interfere with or inhibit its ability to provide the services in terms of this contract.

#### **35. SETTLEMENT OF DISPUTES**

- 35.1 The Operator may appeal to the Employer against the imposition of any penalty imposed in terms of clause 44, or against any variation made by the Representative in terms of clause 41 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 in terms of clause 35.2.
- 35.2 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.
- 35.3 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—
- (a) 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;

- (b) the Parties must commit themselves in every respect to the speedy finalisation and solution of the mediation proceedings;
- (c) any party may furnish the mediator in advance with written documentation and information and may make the same available to the other party;
- (d) the mediator must establish and regulate procedures for the mediation so long as the Parties continue to agree to participate in the mediation process;
- (e) 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;
- (f) 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;
- (g) the mediator must record the settlement reached by the Parties, if any, and request the Parties to sign the draft settlement within 3 (three) days after a settlement has been reached and give a copy thereof to each Party;
- (h) 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;
- (i) the signed settlement shall be final and binding on both Parties;
- (j) 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;
- (k) 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 to without the prior consent of the party who made available such information, documentation or material;
- (l) 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.

35.4 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.

35.5 The Operator must, notwithstanding any dispute, difference or settlement procedure, continue to provide the services in accordance with the contract.

### **36. SIGNING OF CONTRACT**

After the Minister has granted exemption for the negotiated contract under section 47 of the Act, the Operator shall within seven (7) days of being called upon to do so, sign the