

Version - June 2005

DEPARTMENT OF TRANSPORT

NATIONAL LAND TRANSPORT TRANSITION ACT, 2000 (ACT NO. 22 OF 2000)

MODEL TENDER AND CONTRACT DOCUMENTS

NOTICE 1149 OF 2005

I, JEFFREY THAMSANGA RADEBE, Minister of Transport ("the Minister"), hereby under section 47(4)(b) of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) ("the Act") publish model tender and contract documents for subsidised service contracts in the Schedule.

SCHEDULE

Table of Contents

1. Volume 1: Tender Rules
2. Volume 2: General Conditions of Contract
3. Volume 3: Special Conditions of Contract
4. Volume 4: Specifications
5. Volume 5: Tender Forms

Explanatory note: The content of Volumes 1, 2 and 3 (Tender Rules, General Conditions and Special Conditions) 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 4 (Specifications) may be amended without such consent. Volume 5 (Tender 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.

Version – June 2005

..... PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN AND

TENDER NO.

VOLUME 1: TENDER RULES (of 5 volumes)

[Applicable to all tenders and apply except in so far as amended by the Special Conditions of Contract or other documents.]

The Director-General: Transport/Chief Executive Officer
Directorate:
P O Box

Date:

TENDER NO.

TENDERER'S ADDRESS FORM FOR THE DELIVERY OF ADDENDA

[NOT PART OF TENDER RULES: To be completed and handed to the Employer by each prospective tenderer on collection of tender documents.]

PARTICULARS OF TENDERER FOR THE PURPOSE OF DISPATCHING ADDENDA:

Name of prospectivetenderer:

Name of **contact** person:

Physical address in the Republic of South Africa:
.....
.....

Postal address:
.....
.....

Telefax number:

Telephone number:

ACKNOWLEDGEMENT ~~OF~~ RECEIPT OF DOCUMENTS:

I hereby acknowledge receipt of all five volumes of the Tender Documents

.....
FOR PROSPECTIVE TENDERER

.....
DATE

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VOLUME 1: TENDER RULES

1. DEFINITIONS

Any word or expression used in these Tender Rules to which a meaning has been assigned in the General Conditions has that meaning, unless the context indicates otherwise.

2. TENDER NOTICES

Notices inviting tenders will be published in the Provincial/Municipal Tender Bulletin.

3. CHARGE FOR DOCUMENTS

Upon collection of tender documents by a prospective tenderer, a charge as prescribed in the Tender Bulletin will be levied.

4. APPLICATION OF TENDER RULES

These Tender Rules as well as the instructions given in the official tender notice shall be binding upon all tenderers submitting a tender to provide the **services**.

5. AGENT

If applicable, each foreign tenderer shall state in its tender the name of its accredited agent in the Republic of South Africa in whom the necessary legal competence is vested and who has been duly appointed to sign contracts, and shall also indicate a *domicilium citandi et executandi* in the Republic.

6. VALIDITY PERIOD

The period for which tenders are to remain valid and binding is indicated in the tender notice and is calculated from the closing time on the understanding that tenders are to remain in force and binding until the close of business on the last day of the period calculated. If this day falls on a Saturday, Sunday or public holiday, the tender is to remain valid and binding until the close of business on the following working day, unless the Employer informs the tenderer in writing before this time that the tender is no longer valid. The Employer reserves the right to extend the period for which the tender is to remain valid for a further thirty (30) days on written notice to the tenderer.

7. DOCUMENTS TO ACCOMPANY TENDER

- 7.1 Interm of section **31(4)** of the RoadTransportationAct, **1977** [or *replacing provincial legislation - if applicable*] the tenderer must request permission from the competent Local Road Transportation Board/Operating Licence Board (board) to submit a tender or tenders for the provision of the services if it is not already the holder of the necessary permits or operating licences. The letter of approval from the board must be attached to the tender documents (see Form 2 of the Tender Forms).
- 7.2 In addition to any other documents that may be required, the following documents must be attached to the tender, if applicable:
- (a) in the **case** of an operator who also undertakes unscheduled minibus 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 tenderer 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 subcontractors, 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 tenderer, subcontractor or party concerned, is registered for **tax** purposes. (Submissions to the Receiver concerned are to be made on form **STS.1** "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 **18, 19** and **20** in Volume **5**. In the case of Form **20** "Declaration of Financial Support by Owner", every firm or entity that exercises ownership control, as defined in section **48(6)(a)** of the National Land Transport Transition Act, 2000 (**Act No. 22** of 2000) (the Act), over the tenderer must complete the form. In the case of doubt, the tenderer must ask the Employer for written confirmation that completion thereof is or is not required.

- (e) All tenderers must complete the affidavit in Form 7 of Volume 5 regarding previous convictions for relevant offences **(if any)** committed by the tenderer or any of its directors/members/office bearers.

8. UNDERTAKING

8.1 The submission of a tender by any tenderer will amount to an undertaking by ~~it~~—

- (a) not to oppose applications made to the Operating Licence Board of the Province for or in connection with the operating licences necessary to enable the successful tenderer to provide the services to which the tender relates;
- (b)** to surrender to such board for appropriate amendment all permits and operating licences that are route or network based and provide authority to pick up or ~~set~~ down passengers in the service area that will compete with trips in relation to the services proposed in the tender documents.

8.2 Rule **8.1** will not apply to dedicated services and private hires provided under contract in the ~~service~~ area for entities other than the Employer or for interprovincial or cross ~~border~~ road transport services.

9. TENDERER'S DUTY TO SATISFY HIM- OR HERSELF AS TO THE EXTENT OF SERVICES AND ATTENDANCE AT MEETINGS

9.1 ~~It~~ is the duty of the tenderer to inform and satisfy ~~him or herself~~ fully as to the nature and extent of the services and conditions in respect of which it is tendering. No claims of any nature will be entertained on the basis of a tenderer's failure to make such inquiries.

9.2 The Employer will arrange an information meeting, attendance at which is compulsory. A ~~sen~~rice area inspection will be held after the information meeting, attendance of which is not compulsory. Attendance at all other meetings of tenderers is compulsory. Notice of such meetings will be given to all persons who have collected tender documents.

9.3 If any meeting of tenderers arranged by the Employer, except the service area inspection, have not been attended by the tenderer ~~him-~~ or herself, or a representative of the tenderer who must ~~be~~—

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

this will disqualify the tenderer.

- 9.4 Minutes of the information meeting will be issued to tenderers as part of the addenda. Questions asked at such meeting and inspection will be minuted and replied to in addenda. Only replies minuted in such addenda will be binding on the Employer.

10. DATA AND OTHER STATISTICS

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

11. INFORMATION

- 11.1 The tenderer must submit with the tender all applicable information and data as may be required in terms of these tender 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 tenderer must furnish such additional information within seven (7) working days of being called upon to do so or the tender will not be considered further.
- 11.2 The tenderer shall make sufficient allowance in the relevant tendered rates for all costs in connection with the preparation and furnishing of any information that may be required by the Employer as contemplated in rule 11.1.
- 11.3 All written information submitted by the tenderer together with and in support of the tender shall form part of the tenderer's offer.
- 11.4 Any explanation desired by a tenderer regarding the meaning or the interpretation of the tender documents must be requested in writing from the Employer and with sufficient time allowed for a reply to reach all tenderers before the closing of tenders. Any such explanation provided to any tenderer concerning the tender documents will be furnished to all tenderers by way of written addenda as provided for in rule 11.6.

- 11.5** No oral representations or statements by any officer, employee or agent of the Employer shall affect or **modify** any terms or obligations of these tender 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.
- 11.6** If during the tender period the Employer wishes to make additional information available to tenderers or to make amendments to the tender documents, **this** will be issued in the form of addenda. The addenda will be sequentially **numbered**, dated and hand **delivered** or sent by telefax to the addresses of all tenderers who have already drawn tender documents. For **this** purpose all tenderers must provide their physical and postal addresses and telephone and **telefax** numbers, **if** any. All addenda issued shall be regarded as part of the tender documents and tenderers must acknowledge receipt thereof in writing **by** hand or telefax within twenty four **(24)** hours after receipt. Such acknowledgement of receipt must also be **indicated** on the covering page to the Tender Forms. Should receipt of all addenda not be acknowledged as aforesaid the Employer reserves the right to reject the tender.

12. COSTS AND LOSSES INCURRED BY THE TENDERER

Neither the Employer nor the Tender Board will be liable for any costs or losses which may be incurred by any tenderer in the preparation and submission of a tender or attending meetings and in visiting the service area in connection therewith, and such costs and losses will be for the tenderer's own account

13. TENDER ALL-INCLUSIVE

- 13.1** The tenderer must, before tendering, satisfy him- or herself as to the **correctness** and **sufficiency** of the tender and of the rates stated in the Schedule of Quantities (Form **12** of the Tender Forms). Such rates shall (except in so far as is otherwise provided) cover all the tenderer's obligations under the contract.
- 13.2** The tenderer must allow in the tender for full compensation for all general preliminaries, all expenses incurred in complying with the General and Special Conditions and Specifications, all other costs, positioning kilometres as well as everything else necessary for the execution of the contract in accordance with the tender documents. The tenderer's attention is drawn to the fact that the services may be varied during the contract period under clause **32** of the General Conditions, which could lead to an increase or decrease of monthly revenue kilometres. Tenderers are 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. They 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 tendered 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. Tendered rates will be fixed for the contract period, subject to clause 20.12 of the General Conditions.

13.3 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 tendered rates must provide for this. Any possible future increases in the rate of VAT will be reflected automatically in the escalation factor.

13.4 The tenderer must allow in the tender 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 5.1 and 32 of the General Conditions, as well as any other factors which the tenderer may consider relevant.

13.5 Tenderers are advised to take cognisance of the implications for their current and future labour forces of the length of the contract period, subject to clause 8.4 of the General Conditions.

13.6 Where the services were previously subject to an interim contract as defined in the Act, the successful tenderer will be required to contribute an amount of **0.75 %** (Nought point seven five percent) of actual amounts paid by the Employer in terms of the contract (excluding penalties and escalation) into the Bus Industry Restructuring Fund. The Operator will be required to pay two instalments in this regard, as follows:

- a) the first instalment will be calculated as **0.375%** (Nought point three seven five percent) of the tender amount and will be payable by the operator not later than **14 days after the end** of the first twelve months of operation;
- b) the second instalment will be calculated as **0.375%** (Nought point three seven five percent) of the tender amount and be payable by the operator not later than **14 days after** the end of the twenty-fourth month of operation.

At the end of the contract period, the difference between **0.75%** (Nought point seven five percent) of the tender amount and the **0.75%** (Nought point seven five percent) of amounts actually paid

(excluding penalties and escalation) by the Employer in terms of the contract will be calculated, whereupon the difference will be refunded to the Operator directly from such Fund, or be payable by the Operator to such Fund, as the case may be, not later than **14** days after the end of the contract period.

14. TENDER QUALIFICATION

Tenders must be submitted **strictly** in accordance with the tender documents, **i.e. without** qualifications. where an alternative tender is submitted, it will be added to the unqualified tender submitted in terms of clause **152**.

15. ALTERNATIVE TENDERS

15.1 The tender documents are drafted on the basis that the services are to be provided with the type of vehicles as specified in clause 7.2 of the Special Conditions of Contract and clause **14** of the **Specifications**.

15.2 No alternative tender will be considered unless a tender without any qualifications and **strictly** on the basis of the tender documents is also submitted.

15.3 If the Employer does not make provision for an alternative method of providing the **services** and the tenderer, in addition to its unqualified tender as required in terms of rule **14**, desires to submit for consideration such alternative method or any other variation, separate forms of tender, and/or a statement must accompany the tender setting out the alternative or variation proposed. In **such a case** the following procedure must be **observed**:

- (a) Proposals involving modification of the services in whole or in part should be notified in confidence to the Employer as early as possible during the tender period. The Employer reserves the right not to consider an alternative tender unless **this** prior notification has been given not later than fourteen (**14**) days after publication of the tender in terms of rule 2. The Employer may, following receipt of the notification and after such consultation with the tenderer as the Employer may consider necessary, give a preliminary opinion as to the acceptability of the modifications proposed; **this** opinion will however not be binding on the Employer. In their own interest tenderers are advised to provide as much information as possible about the modifications when submitting an alternative tender, including **full time tables**.

- (b) If the tenderer does decide to submit an alternative tender, it must be accompanied by supporting information to enable its technical acceptability and tendered rates to be **assessed** fully.
- (c) When an alternative tender is submitted it must be made in the form of an alternative offer, showing the financial or other implications of the **qualification(s)** on the unqualified tender.
- (d)** Any alternative tender involving modifications to the services will be assessed on its merits.
- (e) A decision whether or not to adopt operationally acceptable modified services will be governed among other things by the amount of the overall saving which the Employer can reliably be expected to achieve.

16. COMBINATIONS OF TENDERS

Tenderers may tender for the combination of two or more contracts where such combinations could result in the combined tender amount being reduced. In the case of a combination the savings to the Employer will be in the form of reduced contract rates. For each combination a separate schedule of quantities must be submitted in accordance with Form 12 of the Tender Forms on which the reduced rates must be **specified**.

17. COMPLETION AND SIGNING OF TENDER FORMS

17.1 All appropriate tender forms, schedules and certificates contained in Volume 5 (Tender Forms) must be fully and properly completed, signed and witnessed where indicated, in black ink, as provided for, and **submitted** with the other tender documents as part of the tenderer's tender. Every page of the Tender Forms which is not signed, and every page of the other tender documents, must be initialled by or on behalf of the tenderer. Persons signing or initialling must be duly **authorised**.

17.2 The Schedule of Quantities (Form 12 of the Tender Forms) must be fully priced and totalled in the currency of the Republic of South Africa to show the amount of the tender. **It** should be noted that the tender amount is only relevant for purposes of tender evaluation and calculating the amount of the **suretyship(s)**, and will not necessarily reflect the actual amount payable to the successful tenderer over the period of the contract. Tenderers should also note that the kilometres indicated on Form 12 are only estimates and will not necessarily be the kilometres operated over the contract period.

17.3 Where the space provided in the bound documents is insufficient, separate schedules may be drawn up in accordance with the given formats. These schedules must then be bound together

with a suitable contents page and submitted with the tender documents. All such schedules must be signed, witnessed and initialled as specified in rule 17.1.

- 17.4** A tender submitted by a company, close corporation or other legal person must be accompanied by a resolution or agreement of the directors or members which must be substantially in accordance with Form 4 of the Tender Forms. The tender must be signed by a duly authorised person.
- 17.5** A tender submitted by a partnership must be accompanied by a written partnership agreement.
- 17.6** A tender submitted by a consortium of two or more parties must be accompanied by a signed memorandum of understanding between the parties to such consortium, as well as Form 5 of the Tender 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 the contract documents the term "consortium" is intended to have the specific meaning of a form of partnership involving mainly companies, authorities or close corporations, which will each be jointly and severally liable to the Employer. Loose business arrangements will not be considered. Within 10 days after the contract is awarded, 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 agreement is rejected and not amended to the satisfaction of the Employer.
- 17.7** If all tender forms are not fully and properly completed, signed, witnessed and initialled the tender shall be void unless otherwise decided by the Tender Board.
- 17.8** When a combined tender is submitted, a full set of tender forms for each combination is required, and each page must be clearly marked 'Tender no. in combination with Tender no.'. Volumes 1 to 4 must also be submitted.

18. ALTERATIONS TO TENDER DOCUMENTS

No unauthorised alteration or addition shall be made to any part of the tender documents. If any such unauthorised alteration or addition is made the tender may be declared void unless otherwise decided by the Tender Board.

19. TENDER WITHDRAWAL OR MODIFICATION PRIOR TO CLOSING TIME AND DATE

Any tenderer has the right to withdraw, modify or correct its tender after it has been delivered, provided the request for such withdrawal, modification or correction together with full details of *such modification* or correction is received at the address given for submission of tenders, in writing either by hand or mail, before the closing time and date set for the receipt of tenders. The original tender as amended by such written communication will be considered as the tenderer's offer.

20. SUBMISSION AND CLOSING OF TENDERS

20.1 All the Tender Forms (Volume 5) as well as all supporting documents, must be submitted to the Tender Board *strictly* in accordance with these Tender Rules and the instructions given in the official tender notice published in the Tender Bulletin. Tenderers must check the numbers of the pages and *satisfy* themselves that none are missing or duplicated. The Employer will not be *liable* in respect of claims arising from the *fact* that pages are missing or duplicated.

20.2 Each tender must be submitted in a separate sealed envelope and be clearly marked with the contract number, title and closing date and the name and address of the tenderer, provided that a combined tender may be submitted in a single envelope marked with all relevant contract numbers. The envelope shall not contain documents relating to any tender other than that indicated on the envelope.

20.3 All tenders received shall be kept unopened and in safe custody. If a tender is received in an open envelope, such envelope will be sealed. If a tender is received without the relevant information on the envelope, such envelope will be opened, the information ascertained and written on the envelope, where after the envelope will be resealed.

20.4 Tenders close at the time specified in the tender advertisement.

20.5 The Employer may consider an extension of the closing date should circumstances justify such action. It will normally only be extended if there is sufficient time to *publish* an amending *notification* before the original closing date.

20.6 No tenders forwarded by telegram, facsimile or similar apparatus shall be considered. However, photostat copies of tenders which are lodged in the prescribed manner and in which the relevant forms are signed in black ink after being copied, shall be accepted as valid tenders. The tender forms except Form **13** must not be retyped or redrafted except in the case of an alternative tender where a separate schedule of quantities must be submitted in accordance with Form **12** of the Tender Forms.

21. OPENING OF TENDERS

21.1 Tenders shall be opened in public as soon as practicable after the closing time.

21.2 The names of the tenderers shall be read out and the tender amounts disclosed.

22. TENDER WITHDRAWAL OR MODIFICATION AFTER CLOSING TIME AND DATE

22.1 Except as is herein provided no tenderer may withdraw, modify or amend its tender after the time and date set for the closing of tenders.

22.2 The Employer reserves the right, but is not obliged, to correct arithmetical errors in the tender and thus adjust the tender amount. The tenderer will be informed of the effect of any corrections on the tender amount prior to the acceptance of the tender.

22.3 In the event of there being tendered rates which are in the opinion of the Employer excessively low or high or not in proper balance with other rates, the Employer may ask the tenderer for clarification and/or to amend such tendered rates or coefficients. Such excessively low or high rates or imbalances may prejudice the tender. Any amendment of such rates shall be done without altering the tender amount. Should the tenderer fail to clarify or amend the tender in a manner acceptable to the Employer, or at all, this may prejudice the tender.

22.4 Should a tenderer withdraw its tender after the closing time of tenders and within the period for which it has agreed that the tender shall remain open for acceptance, or fail to sign the contract when called upon to do so, or fail to provide a suretyship(s) as required by clause **29.1** of the General Conditions the Employer may, without prejudice to its other rights, agree to the withdrawal of such tender or cancel the contract that may have been entered into between the tenderer and the Employer and such tenderer must then pay to the Employer any additional expense incurred by the State having either to accept any less favourable tender or, if fresh tenders have to be invited, the additional expenditure incurred by the invitation of fresh tenders and by the subsequent

acceptance of any less favourable tender; the State shall also have the right to recover such **additional** expenditure by set-off against moneys which may be due or become due to such tenderer or on its behalf for the due fulfilment of this or any other tender or contract and pending the ascertainment of the amount of such **additional expenditure** to retain such moneys, guarantee or deposit as security for any loss the State may sustain by reason of the default. Tenderers should note that should their tender be accepted and should they be unwilling or unable to **commence** the services on the commencement date due to circumstances that are within their control, and the Employer decides to make alternative arrangements without cancelling the contract, they will be held liable for all attendant costs and damages.

22.5 When, in the circumstances mentioned in rule 22.4, it is not deemed desirable to invite fresh tenders, the Tender Board may in its discretion accept another tender from those already received.

23. EVALUATION OF TENDERER

23.1 The Employer **reserves** the **right** to evaluate the tenderer fully in terms of the tenderer's **ability** to perform the contract and the tenderer must assist the Employer in any reasonable way requested by the Employer in **this** regard.

23.2 As part of the evaluation process the Employer may inspect the tenderer's premises and facilities (including workshops and depots), as well as buses by means of which the tenderer proposes to provide the services. The tenderer must give full co-operation in this regard.

23.3 The Employer shall have the right to appoint a firm of chartered accountants or other consultants to report on the financial resources of any tenderer or any other relevant aspects, either ~~at~~ the time of evaluating the tender or after the awarding of the contract. The tenderer must provide all reasonable assistance in such an investigation.

23.4 Subject to the Preferential Procurement Policy Act, 2000 (Act No. 5 of 2000), at least the following evaluation criteria will be used to evaluate the tenderers:

Qualifying Criteria

- Completion of tender forms
- Correctness of tenders
- HDI Equity Ownerships requirements
- Percentage executive management positions held by HDIs
- Financial ringfencing

Financial Criteria

- ☞ Cost of tender
- ☞ Suretyships
- ☞ Financial sustainability
- ☞ Bus ownership/financing

Operational Criteria

- ☞ Previous operational record
- ☞ Electronic equipment
- ☞ Vehicle profile and Depots
- ☞ Services and maintenance schedule
- ☞ Additional/spare bus capacity

Black Economic Empowerment

- ☞ Extent to which milestones as set out in the Bus Sector BEE Charter Strategy and BEE Scorecard have been achieved

24. DISQUALIFICATION OF TENDERERS

- 24.1** The Employer may reject a tender from a person, firm or corporation who has committed an act contemplated in clause 30.3(d) to (l) of the General Conditions in respect of this or a previous tender or contract, or a tender from a person, firm or corporation that is or was a shareholder, member or director of such a firstmentioned firm or corporation.
- 24.2** Any restriction imposed upon any person, firm or corporation may, for the purpose of these rules, be applied to any other undertaking with which such person, firm or corporation is associated. The expression "person, firm or corporation" includes an authorised employee or agent of such person, firm or corporation.
- 24.3** The Employer may take into account any decision of any tender board of the State, or other state department or any provincial administration or municipality or transport authority with regard to the restriction of a tenderer in the evaluation process.
- 24.4** Decisions of the Employer to disqualify any person, firm or corporation in terms of rules 24.1 to 24.3 and any revocation or variation of such decisions may be communicated by the Employer to all tender boards concerned.

25. DISQUALIFICATION OF TENDER

The tender of any tenderer which does not conform with these Tender Rules and the instructions reflected in the official tender notice, if any, shall be void unless accepted by the Tender Board.

26. TENDER ACCEPTANCE

26.1 All tenders duly submitted and accepted as valid tenders shall be taken into consideration by the Employer unless these rules provide otherwise.

26.2 The successful tenderer shall be notified by the Employer by telefax or post of the fact that its tender has been accepted. In this regard the Post Office shall be regarded as the tenderer's agent, and delivery of such acceptance to the Post Office shall be treated as delivery to the tenderer. Any time period stipulated in this contract which is to be calculated from the time of the aforesaid notice, must be calculated from the date of faxing or posting of such notice, as the case may be.

26.3 Once the tenderer has been advised in writing of the acceptance of its tender, the contract, as defined in the General Conditions, will come into being, subject to the provisions in the various contract documents relating to, among other things, amendment or cancellation and any conditions stipulated in the letter of acceptance. After acceptance of a tender the successful tenderer will be called "the Operator" in the contract documents.

27. OWNERSHIP AND CONFIDENTIAL NATURE OF DOCUMENTS

All tender and contract documents relating to this tender shall be regarded as confidential, shall remain the property of the Employer and may not be sold or otherwise disposed of, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) and provided that information contemplated in Chapter 4 of that Act will not be disclosed except where disclosure is compulsory in terms of law.

28. ADDITIONAL QUALIFICATION FOR TENDERER

- 28.1** No tender will be considered if the company, close corporation, joint venture, partnership or consortium 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 Tenderer, or performing services on behalf of, or in the capacity as agent of the tenderer) does not operate according to business principles with financial ringfencing, as required by section **48** of the **Act**.
- 28.2** Historically Disadvantaged Individuals shall have more than fifty percent (50%) equity ownership in the company, close corporation, joint venture, partnership or consortium, for the tender to be considered.
- 28.3** More than fifty percent (50%) of executive management positions of the company, close corporation, joint venture, partnership or consortium shall be held by Historically Disadvantaged Individuals, for the tender to be considered.
- 20.4** Tenderers must also comply with any other relevant provisions of the Act as regards requirements or qualifications for tenderers, which may include prescriptions by the Minister of Transport under section **48(3)** of the **Act**.

Version- June 2005

Schedule: Volume 2: General Conditions of Contract

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

DIRECTORATE: PUBLIC TRANSPORT

**THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEENAND**

TENDER NO.

**VOLUME 2: GENERAL CONDITIONS
OF CONTRACT (of 5 volumes)**

[Applicable to all tenders and apply except in so far as amended by the Special Conditions of Contract or other documents.]

The Director-General: Transport/Chief Executive Officer
Directorate:
P O Box

Date:

VOLUME 2: GENERAL CONDITIONS OF CONTRACT

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VOLUME 2: GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

1.1 Where the General Conditions of Contract are referred to in the contract documents, they shall also include any Special Conditions, unless the contrary is required by the context.

1.2 Words in the singular also include words in the plural and vice versa where the context permits.

1.3 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;

"BEE Scorecard" means the scorecard contained in the Bus Sector BEE Charter Strategy;

"Bus Sector BEE Charter Strategy" means the bus sector black economic empowerment strategy and intercity, coach tour and charter strategy;

"bus-train" means a bus which—

- (i) consists of two sections connected to form a unit;
- (ii) can swivel in a horizontal plane at the connection between such sections;
- (iii) is designed or adapted solely or principally for the conveyance of the driver and at least one hundred (100) other persons; and
- (iii) has a continuous passageway over its length;

"**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**" means the agreement which results from the acceptance of the tenderer's tender by the Tender Board for the operation of the **services** as described in, among others, the Specifications, including the terms and **conditions** set out in the contract documents as well as in the letter of acceptance of the tender and in such other documents which the Parties to the contract may agree in writing **shall** form the basis of the contract;

"**contract documents**" means the documents listed in clause 10;

"**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;

"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 16**, 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 /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;

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

"Historically Disadvantaged Individual" means a South African citizen who due to the **apartheid** policy that had been in place, had no franchise in national elections prior to the introduction of **the** Constitution of the Republic of South Africa, **1993** (Act No. **110** of **1993**) or the Interim Constitution (Act No. 200 of **1993**) and/or who is a female: and/or who has a **disability**. Provided that a person who obtained South African citizenship on or after the coming of the Interim **Constitution**, is not deemed to be a Historically Disadvantaged Individual.

"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;

"multijourney ticket" or "MJT" 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 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 subcontractor 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—

- 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 23.3;

"Rebuilt vehicle" 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 Road Traffic Act, 1989 (Act No. 29 of 1989) are met in each and every instance and that a roadworthy certificate is mandatory for each vehicle to be used, and that the vehicle complies with the following:

(l) Body

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

"Rehabilitated vehicle" means that 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 Road Traffic Act, 1989 are met in each and every instance and that a roadworthy certificate is mandatory for each vehicle to be used, and that the vehicle 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**;
- (9) 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
- (9) 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;

"scheduledtrips" 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;

"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;

"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;

"standard bus" means a bus with a capacity of thirty-six (36) to seventy (70) seated persons, excluding the driver, and the number of standing passengers authorised by the relevant roadworthy certificate;

"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;

"tender" means a written offer on the official tender forms issued pursuant to an invitation to tender;

"**tender amount**" means the total amount in a tenderer's tender for the provision of the specified services as shown on Tender Form 12, 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;

"**Tender Board**" means the provincial or municipal tender board or committee or other entity responsible to perform the following main functions related to ~~this~~ contract:

- (a) The acceptance or rejection of tenders;
- (b) the awarding of contracts;
- (c) the approval of amendments to the contract documents, including contract rates; and
- (d) the termination of contracts;

"**tender documents**" means the documents comprising, among others, the Tender Rules, General Conditions, Special Conditions, Specifications, Tender Forms and addenda, inviting tenders for the operation of the services;

"**tendered rates**" means the amounts per revenue kilometre tendered for providing the services, in respect of each kilometre band as shown in the Schedule of Quantities (Tender Form 12) and which include the contributions to the Bus Industry Restructuring Fund Contemplated in tender rule 13.7;

"**tenderer**" means the person, close corporation, company, joint venture, partnership or consortium submitting a *bona fide* offer to provide the services specified in the tender documents, but excludes any assignee of the tenderer without the written consent of the Employer;

"**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. ACCESS AND DISCLOSURE

- 2.1 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 Employer and the Auditor-General shall at all reasonable times have access to the financial statements and other relevant documentation of the operator.
- 2.2 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.
- 2.3 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, or, where applicable, proof that application has been made for such licence, permit or requirement. Such proof must be furnished not later than two (2) working days from the date of receipt of a written request.
- 2.4 The Operator must notify the Employer within seven (7) 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 20 in Volume 5 in respect of any new person or entity exercising such ownership control.

3. ACCOUNTING MATTERS

- 3.1 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.

3.2 Where in terms of ~~his~~ 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.

4. BUS STOPS

4.1 Only authorised stops shall be used by the Operator.

4.2 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.

5. CANCELLATION OF SCHEDULED TRIPS ON A TEMPORARY BASIS

5.1 Cancellation of scheduled trips is not permitted unless—

- (a) agreed to in writing by the Representative in terms of clause **32**;
- (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.

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 under clause 26.

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 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 under clause 26.

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. CESSION, DELEGATION AND SUB-CONTRACTING

6.1 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. In applying for consent for a sub-contract, the Operator must supply to the Employer a copy of the proposed sub-contracting agreement, which must specify;

- (a) routes to be operated;
- (b) timetable trips to be operated;
- (c) revenue-kilometres to be operated per month;
- (d) rates and tariffs to be paid;
- (e) penalties; and
- (f) must contain details of vehicles to be used as required by Form 10 of the Tender Forms.

6.2 The Operator will provide proof of registration or payment by its intended sub-contractor with respect to insurance, tax, levies required by law,

- 6.3 The sub-contracting agreement will be subject to approval by the Employer, who may not unreasonably withhold such approval.
- 6.4 Should the Employer refuse such consent or fail to respond to the Operator's request within 7 (seven) working days, the Operator may declare a dispute under clause 26.
- 6.5 If consent is given for a **sub-contract under clause 6.1**, no contract between the Employer and the subcontractor 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 subcontractor 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.
- 6.6 The Operator will ensure that its subcontractor is formalised into a business entity within **six** months of the commencement date of the contract
- 6.7 The Employer may at any time withdraw consent for a sub-contract after **giving** not less than **thirty (30)** days' notice to the Operator, where
- (a) the contract of the Operator is terminated as set out in clause **30**;
 - (b) application is made for the sequestration of the Sub-contractor's estate;
 - (c) the sub-contractor publishes a notice of surrender of its estate or presents a petition for the acceptance of the surrender of its estate as insolvent;
 - (d) the Sub-contractor makes a compromise with its creditors or assigns in favour of its creditors;
 - (e) the Sub-contractor agrees to carry out the contract under the supervision of a committee representing **its** creditors;
 - (f) the Subcontractor commits any other act of insolvency, or goes into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or the Operator is placed under judicial management;
 - (g) judicial execution is levied on the Sub-contractor's goods;
 - (h) the Operator's or Sub-contractor's operating licences or **permit(s)** necessary to provide the services are withdrawn or suspended;
 - (i) the Sub-contractor has offered, promised or given a bribe or other gift or remuneration to any officer or employee in the service of the Employer or SMF in connection with the obtaining or execution of this contract;

- (j) the Sub-contractor has acted in a fraudulent manner in obtaining or executing a contract with any government department, provincial administration, municipality, public body, company or person;
- (k) the Sub-contractor has approached anyone including any official or agent of the Employer, the Representative or any person in the service of the SMF before or after the contract was signed, with the aim of influencing the award of the contract in its favour;
- (l) the Sub-contractor has given notice of inability to sign or execute the contract;
- (m) the Sub-contractor has abandoned its obligations in terms of the contract;
- (n) the Sub-contractor has deliberately furnished inaccurate information either as regards its previous experience or the vehicles at its disposal for the services, or with regard to any other material information; or
- (o) the Sub-contractor is deceased where it is a natural person; and

In the event that consent is withdrawn 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.

- 6.8** 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.
- 6.9** The Operator will not be allowed to sub-contract more than fifty percent (50%) of the revenue kilometres of the contract in any particular month. Where a combination of contracts has been tendered for and accepted, the Operator may choose whether ~~this~~ will apply to the combined services or to each individual contract, subject to the agreement of the Employer.

7. 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, bylaws 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.

8. COMMENCEMENT DATE AND DURATION

- 8.1** The Operator must commence the services on the commencement date as stated in clause 2 of the Specifications or as otherwise stated in the letter of acceptance of the tender.
- 8.2** The contract shall run for the period as stated in clause 2 of the Specifications.

- 8.3** 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.
- 8.4** At the end of the contract period the Employer may decide to invite new tenders for the provision of services in substantially the same service area. If this is done, such invitation shall amount to a totally new contract on the terms and conditions set out in the new tender documents.
- 8.5** If a subsequent contract is awarded to a different operator, the Operator must give its full cooperation in effecting the transition of the services to the new operator.

9. CONFIDENTIALITY

The Parties must keep confidential and not disclose without prior written consent of the other Party any trade, business or confidential 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.

10. CONTRACT DOCUMENTS

- 10.1** All the documents constituting the contract are to be read in conjunction with each other.
- 10.2** 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 it which it could not reasonably have anticipated, it may declare a dispute in accordance with clause 26.
- 10.3** In case of a conflict the order of precedence of the documents shall be as follows:
- (a) the letter of acceptance of the tender;
 - (b) completed Tender Forms (Volume 5) and Addenda, if any;
 - (c) Special Conditions (Volume 3);
 - (d) Specifications (Volume 4);

- (e) General Conditions (Volume 2);
- (9) Tender Rules (Volume 1),

subject to any amendments in writing contemplated in clause 12. These documents, together with any such amendments, constitute the contract documents.

11. **DOMICILIA AND COMMUNICATION**

- 11.1 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 Tender 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 Tender Forms.

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

- 11.2 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.

- 11.3 Communication must be maintained by using the following methods:

- (a) hand delivery;
- (b) registered mail, which method may only be used after tender acceptance;
- (c) telefax or telegram; or
- (d) courier.

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

- (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 or telegram; or
- (d) on the day after dispatch, if delivered by courier.

12. ENTIRE CONTRACT

12.1 On acceptance of a tender, the documents mentioned in clause 10 and approved alterations and addenda 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.

12.2 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.

13. ESCALATION

13.1 The values of payment certificates shall be increased or decreased in the manner described in clause 20.2 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

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

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.

The suffix "o" denotes the basic index applicable to the base month. The base month shall be the month prior to the month in which the closing date for the tender falls. The actual base month will be specified in the Specifications.

The suffix "t" denotes the current index and price. The current indices 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 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.

13.2 By adding the amount for standing kilometres to the payment amount before applying the escalation formula, the rate for standing kilometres is effectively escalated.

13.3 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.

13.4 The escalation factor will be calculated by the Employer and must not be reflected in the Schedule of Quantities (Tender Form 12).

14. FARES

14.1 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.

14.2 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.

41.3 Fares must be increased annually in consultation with the Employer and the increase must on average be equal to or exceed the escalation factor unless the Employer decides otherwise or as specified in clause 16 of the Specifications. All fare increases must be discussed with the Representative three (3) months in advance and be increased as indicated above, unless the

Operator applies to the Employer in writing for a greater or lesser increase. The Employer must respond in writing within fourteen (14) working days of receipt of the request, failing which the Operator may declare a dispute under clause 26. The actual fares will be rounded upward 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.

- 14.3 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.

15. 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.

16. INFORMATION AND ELECTRONIC INFORMATION AND TICKET EQUIPMENT (EE)

- 16.1 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.

- 16.2 To collect and supply that portion of the required data and information (as listed in clause 16.1) which is capable of being electronically collected, the Operator must, within the time specified in clause 5.5.9 of the Special Conditions, 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**.

- 16.3** If the Operator fails to install EE or keep it in a working condition, penalties shall be imposed as set out in clause 5 of the Special Conditions.
- 16.4** 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.
- 16.5** 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.
- 16.6** 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.
- 16.7** 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.

16.8 In addition to the information referred to in clause 16.1, 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).

16.9 In addition to the information referred to in clause 16.1, 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.

17. INSURANCE

17.1 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 his 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 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.

17.2 The Operator must effect and maintain throughout the duration of the contract, at its own expense, public passenger liability insurance for at least R10m (Ten Million Rand) per any one incident and full comprehensive vehicle insurance based on the realistic market value of the vehicle(s) 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 insurances shall *infer 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.

18. OPERATION OF SERVICES

- 18.1 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.
- 18.2 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 "bus-train", as the case may be and that conforms fully with the requirements of clause 10 of the Special Conditions and the attributes specified in Form 10 of the Tender Forms as submitted by the Operator with its tender and approved by the Employer..
- 18.3 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.
- 18.4 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 28.

19. OWNERSHIP OF DOCUMENTS

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.

20. PAYMENT FOR SERVICES

- 20.1 The Employer shall pay to the Operator a single, lump sum payment as stated in clause 18 of the Specifications to defray establishment ~~costs~~ over and above the amounts payable for revenue kilometres.
- 20.2 The Operator shall be paid monthly for providing the services set out in the Specifications and for approved variations in accordance with clause 32, 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 13, after which amounts to be withheld under ~~clauses 5.5.8, 5.5.9~~ or 5.5.10 of the Special Conditions ~~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.
- 20.3 Standing kilometres ~~will~~ only be paid ~~where~~ scheduled trips are cancelled as ~~provided~~ for in ~~clause 5.1 (c), (d) and (e), and clauses 5.2 and 5.3~~ 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 30.7. The rates for standing kilometres shall be ~~sixty~~ percent (60%) of the ~~contract~~ rates for the band concerned as determined in terms of clause 20.2.
- 20.4 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.

- 20.5** 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 prescribed by the Employer in Tender Form **23**, containing in **alia** the information set out in clause **16.1**.
- 20.6** When all the information has been supplied as specified in clause **16** 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.
- 20.7** 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.
- 20.8** 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 certificates 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.
- 20.9** 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.
- 20.10** Where the Operator fails to install EE as required by clause **16.2**, 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.
- 20.1.1** 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 matters 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.

20.12 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. Should the information supplied under rule 11.7 of the Tender Rules be used to make a decision in **thii** regard, it will be escalated according to the escalation formula set out in clause 13, where appropriate. For the purposes of **thii** sub-clause "extraordinary circumstances" shall include, but not be limited to—

- (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,

and excludes natural growth in patronage and ~~service~~ requirements.

21. PENALTIES

Penalties shall be imposed against the Operator for each offence in accordance with clause 5 of the Special Conditions and the Representative shall advise the Operator on a weekly basis of penalties so imposed.

22. PERMITS AND OPERATING LICENCES

22.1 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.

- 22.2** 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 tender. 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 and the contract (Form 22 of the Tender Forms) will be completed.
- 22.3** The operating licences or amendments referred to in clause **22.2** must be applied for within seven (7) days of the date on which the tender is accepted 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.
- 22.4** 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 28. The Employer may 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.
- 22.5** At the end of the contract period, or if the contract is terminated in terms of clause 30, 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.

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

23.1 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.

23.2 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.

23.3 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.

- 23.4** 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.
- 23.5** 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.
- 23.6** 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.
- 23.7** 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.
- 23.8** All communications between the Operator and the Employer shall take place via the Representative except where specifically provided otherwise.

24. 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.

25. 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~~.

26. SETTLEMENT OF DISPUTES

26.1 Mediation in nonurgent matters

26.1.1 The Operator may appeal to the Employer against the imposition of any penalty imposed in terms of clause **21**, read with clause 5 of the Special Conditions, or against any variation made by the Representative in terms of clause **32** 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 **26.1.2**.

26.1.2 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 or, where applicable, by arbitration under clause **26.2**.

26.1.3 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;
- (g) 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 three (3) 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 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.

26.1.4 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.

26.2 Arbitration in urgent matters

26.2.1 Where a dispute is declared under clause 26.1.2 and the Employer certifies in writing that the matter is urgent, clauses 26.1.3 and 26.1.4 will not apply, and the matter must proceed to urgent arbitration as follows:

26.2.1.1 Except as otherwise provided in this contract, the arbitration proceedings shall be conducted in accordance with the arbitration laws of the Republic of South Africa.

26.2.1.2 The arbitration proceedings must be conducted on an informal basis, it being the intention that a decision should be reached as expeditiously and inexpensively as possible, but in any event within 30 days after the dispute was declared under clause 26.1.2, subject only to the due observance of the principles of justice.

26.2.1.3 The parties must each nominate an **arbitrator** in writing within four days of receiving the notification of the dispute under clause 26.1.2. If they fail to agree on an **arbitrator** within three days thereafter, or a party fails to nominate an arbitrator, the Bar Council of the area in which the contract is executed must be asked to nominate an arbitrator on an urgent basis, who must be an advocate with at least ten years' experience in practice at the bar and will be appointed in writing by the Employer.

26.2.1.4 Within 10 days after the arbitrator is appointed, each party must submit to the arbitrator a full written statement of **his**, her or **its** case in which must be set out all the evidence, sworn statements, facts, submissions and expert opinion as such party deems necessary to support its contentions in regard to the **matter(s)** in dispute and simultaneously serve a copy thereof on the other party. The arbitrator may, on good cause being shown, grant the party an extension of not more than five days to submit such statement of case. If a party fails to submit a statement of case within such time limits, the arbitrator may proceed to make an award without **it**,

26.2.1.5 Within seven days after receipt of the copy of the other party's statement of case, either party may submit a further supplementary statement to the **arbitrator**, and must serve a copy thereof on the other party.

26.2.1.6 If the **arbitrator** considers that the matter cannot be decided on the papers before it, the **arbitrator** may call for other evidence or for witnesses to **testify** at a place determined by the arbitrator. **Witnesses** must **testify** in the presence of both parties, who may question such witnesses. The arbitrator may appoint a commissioner to take evidence of any person within or outside the Republic and forward it to the arbitrator as if it were a **commissioner** appointed by the court;

26.2.1.7 Subject to **this** clause, the arbitrator shall have discretion and all powers allowed by law to ensure the just, expeditious, economical and final determination of the dispute, including the matter of costs, and without derogating from the generality of the foregoing, shall also have the power—

- (a) to determine the official language in which the proceedings shall be conducted and to order any party to cover the cost of an interpreter;
- (b) to determine the time, place and venue of the hearing and the hours

- during which it will take place;
- (c) to strike out or dismiss a claim or defence on grounds of failure by a party to comply timeously with any ruling or interim award by the arbitrator, or on grounds of delaying conduct by a party which is likely to cause substantial prejudice to the other party;
 - (d) to proceed with the arbitration in the absence of or without hearing a party who is in default or fails to appear or to comply with any ruling or interim award of the arbitrator;
 - (e) to make any ruling or give any direction necessary or advisable for the just, expeditious, economical and final determination of all disputed matters raised in the statements of case, including the matter of costs;
 - (f) to determine the validity of the contract and order its rectification;
 - (g) to permit the amendment of a party's statement of case (but not affidavits submitted therewith) and require a party to amend its statement of case so that it is not evasive and, on application of a party, to strike out from the other party's statement averments which are vague, scandalous, vexatious or irrelevant;
 - (h) to make rulings or give interim awards on matters of onus, admissibility of evidence and procedure, including ones of an interlocutory or interim nature, and rulings or interim awards relating to costs and the implementation of interim or final awards;
 - (i) to make such findings of fact and law as may be required for purposes of the proceedings and the award, including an order as to costs, and including an award whereby a party is restrained from any conduct, either on an interim or final basis
 - (j) before making a final award and on the application of a party, to state any question of law arising in the course of the proceedings as a special case for the opinion of senior counsel, which opinion shall be final and binding on the arbitrator and the parties, and not subject to appeal;
 - (k) in determining the procedure for the arbitration, and after hearing the

parties, to **direct**—

- (i) that the dispute must be determined summarily at an informal hearing attended by both **parties**;
- (ii) the summary trial of an issue to decide whether any issue or point has no reasonable prospect of success and should be dismissed or struck out, or as to whether an interim award should be made for a sum indisputably due (**whether** on account of a debt or damages or on any other basis);
- (iii) that a party should furnish more particulars or details on any issue;
- (iv) that a party must produce or make available for **inspection** to the other party and to the arbitrator any document, property or thing under the control of the first party;
- (v) that there shall be one or more inspections **in loco**;
- (vi) that there should be discovery on oath or **otherwise** of documents and recordings (subject to valid legal objection), either in regard to all relevant matters or in regard to issues determined by the arbitrator;
- (vii) that parties must provide each other with a **list** of names of witnesses to be called, with a statement of the substance of **their** evidence and that, save with the leave of the **arbitrator**, no witness shall be called in respect of whom such name and summary has not been provided;
- (viii) that the hearing should proceed on documents (**including written** submissions), only, without the presentation of other evidence.

26.2.1.8 The arbitrator must at all times have regard to the intention of the parties underlying the contract, and especially the need for passengers to be served by prompt and affordable public transport, and must resolve the dispute in a summary manner. The arbitrator must in any event do all in its power make an award within thirty

(30) days after it was appointed, or as soon as possible thereafter.

26.2.1.9 Any award made by the arbitrator—

- (a) shall be final and binding on the parties;
- (b) shall be carried into effect forthwith by the parties;
- (c) may be made an order of court by a party only if the other party fails to heed the terms of the award, and
- (d) may include an order directing the unsuccessful party to pay the costs of the arbitrator and the expenditure incurred by the successful party.

26.2.1.10 This sub-clause constitutes each party's irrevocable consent to arbitration proceedings and neither party shall be entitled to withdraw from such proceedings or to claim that it is not bound by this clause, once the Employer has certified that the matter is urgent under this sub-clause.

26.3 General matters regarding disputes

26.3.1 Nothing in this contract will prevent a party from approaching a court for urgent relief.

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

26.3.3 This clause shall survive the termination or cancellation of the contract.

27. SIGNING OF CONTRACT

27.1 After the acceptance of the tender, as contemplated in rule 26 of the Tender Rules, the Operator shall within seven (7) days of being called upon to do so, sign the contract document (Form 22). The contract document shall be prepared at the expense of the Employer in accordance with Form 22 of the Tender Forms, with such amendments as are agreed to by the Employer and the Operator. Such contract document shall incorporate the documents mentioned in clause 10 and shall have the purpose of consolidating all the terms of the agreement between the Parties. Where feasible, alterations made by means of addenda will be incorporated in the text of the relevant volumes. Two contract documents will be signed, one for each Party.

27.2 The fact that the contract document referred to in clause 27.1 has been signed will not derogate from the provisions of rule 26.3 of the Tender Rules, which provides that a binding contract will

come into being as soon as the tenderer has been advised in writing that its tender has been accepted.

28. SUBSTITUTE OPERATOR

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

28.2 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.

28.3 The appointment of a substitute operator under this clause shall not be valid for more than thirty (30) days, whereafter the provisions of clause 6 ("Cession, Delegation and Sub-contracting") shall apply. 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.

28.4 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.

28.5 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.

29. SURETYSHIP

- 29.1** The Operator must, not later than fourteen (14) days after acceptance of its tender in terms of rule **26** of the Tender Rules and before signing the contract referred to in clause 27, provide one ~~or~~ more suretyships from a banking institution registered in terms of the Banks Act, **1990**, ~~or~~ an insurer registered in terms of the Short Term Insurance Act, **1998** ~~or~~ the Long Term Insurance Act, **1998** to ~~do~~ insurance business, or the Small Business Development Corporation, ~~or~~ cash, negotiable government stock, negotiable approved municipal stock, ~~or~~ a security bond to the satisfaction of the Employer, ~~or~~ such other form of security as may be approved by the Tender Board, for ten percent (10%) of the tender amount, ~~or such~~ other percentage thereof as stated in clause **12** of the Specifications, as security for the due and faithful fulfilment by it of all the terms and conditions of the contract. Where appropriate, the suretyship shall be in accordance with Form **21** of the Tender Forms to the satisfaction of the Employer. Such suretyship(s) shall cover the full contract period. Where an Operator fails to furnish a suretyship(s) within such time ~~or~~ furnishes a suretyship(s) which is/are unacceptable, the Employer may give the Operator written notice to furnish an acceptable suretyship(s) within fourteen (**14**) days of such notice. If this is not done ~~or~~ if a further suretyship(s) provided is unacceptable, the Employer may cancel the contract without further notice and exercise the rights set out in rule 22.4 of the Tender Rules. Whether ~~or~~ not a suretyship is acceptable shall be in the sole discretion of the Employer.
- 29.2** Upon expiry of the contract the ~~surety(ies)~~ shall be released unless the Operator still has to meet outstanding obligations and claims in terms of the contract and the cost of such obligations cannot be covered by any outstanding payment standing to the Operator's credit.
- 29.3** The ~~cost~~ of providing suretyships as well as the stamp duty thereon shall be for the Operator's account.
- 29.4** In lieu of ~~or~~ in addition to suretyships, the Employer may, in its discretion, in writing impose special audit requirements on the Operator, in which case the latter shall be obliged to comply therewith.

30. TERMINATION OF CONTRACT

- 30.1** Where the Employer discovers that—
- (a) the Operator has committed an act of insolvency ~~or~~ is actually insolvent in that the Operator's liabilities exceed its assets;
 - (b) 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;
 - (c) the Operator has made a compromise with its creditors or assigned in favour of its

creditors;

- (d) the Operator has agreed to carry out the contract under the supervision of a committee representing its creditors;
- (e) 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;
- (g) judicial execution has been levied on the Operator's goods,

the Employer may demand in writing that the Operator deposit in cash with the Employer an amount equal to the percentage of the tender amount specified in clause 11 of the Specifications in addition to any suretyship provided under clause 29. 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.

- 302 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.

The said percentage of penalties is determined as follows:

"Percentage" = (unescalated penalties + unescalated amount payable) X 100.

"Unescalated penalties" means penalties imposed according to clause 5 of the Special Conditions, but excluding monies withheld or forfeited according to clauses 5.5.8, 5.5.9 and 5.5.10, and do not include the value of revenue kilometres for which payment is not made.

"Unescalated amount payable" is calculated as follows:

(Scheduled km minus DNO km) X (rate per km)

"DNO km" includes the kilometre distance of services penalised according to clause 5.5.1 and

5.5.2(b) of the Special Conditions where revenue kilometres are not paid.

30.3 Where—

- (a) the Operator delegates, cedes or sub-contracts the contract or part thereof without having obtained the Employer's consent in writing; or
- (b) the Operators' operating licences or permit(s) necessary to provide the services are withdrawn or suspended; or
- (c) the Operator fails at any stage to comply with the requirements of section 48 of the Act; or
- (d) 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
- (e) 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
- (f) the Operator has approached anyone including any official or agent of the Tender Board or Employer, the Representative or any person in the service of the SMF before or after tenders have been called for, with the aim of influencing the award of the contract in its favour; or
- (g) the Operator, when advised that its tender has been accepted, has given notice of inability to sign or execute the contract; or
- (h) the Operator has entered into any agreement or arrangement, whether legally binding or not, with any other person, firm or company to refrain from tendering for this contract, or as to the amount of the tender to be submitted by either Party; or
- (i) the Operator has disclosed to any other person, firm or company the exact or approximate amount of its proposed tender before the closing date for tenders, except where disclosure, in confidence, was necessary in order to obtain insurance premium quotations required for the preparation of the tender; or
- (j) the Operator has abandoned any of its obligations in terms of the contract; or
- (k) the Operator has deliberately furnished inaccurate information in its tender either as regards its previous experience or the vehicles at its disposal for the services, or with regard to any other material information; or
- (l) the Operator is discovered to have provided incorrect, false or fraudulent information as contemplated in clause 16.5; or
- (m) the Operator is deceased where it is a natural person; or
- (n) the Operator fails to deposit an amount contemplated in clause 30.1 within seven (7) days of being required to do so in writing; or
- (o) the penalties imposed in terms of clause 5 of the Special Conditions calculated in the

manner set out in clause 30.2, 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; or

- (p) the Operator consistently fails to observe the Specifications, whether or not penalties have been imposed, with the result that the quality of the services is unacceptable to the Employer,

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. For the purpose of paragraph (p), 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 under clause 26.

30.4 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—

- (a) (i) terminate the contract and, if appropriate, claim damages, or
 (ii) institute a claim for damages and/or sue for specific performance against the Operator, and/or
 (iii) claim any other lawful remedy the Employer may have, or
- (b) without prejudice to its rights under paragraph (a) or to any other rights of the Employer in terms of the contract, the Employer may, without terminating the contract, take steps itself or have steps taken by others on its behalf to give effect to the Representative's orders not carried out by the Operator, and **notify** the Operator in writing that—
- (i) such steps have been taken; and
 (ii) the Operator must satisfy the Employer by written proof within a time stated in the notice that the Operator will be able to resume the services to the Employer's satisfaction by a stated date; and
 (iii) the Operator must resume the services to the satisfaction of the Employer by that date;
 (iv) if the Operator fails to comply with either (ii) or (iii), the Employer may act under paragraph (a).

30.5 The Employer may terminate the contract on three (3) months' written notice of such termination being given to the Operator, where—

- (a) there has been some defect, error or failure to comply with applicable laws or rules in the tender process or in awarding the contract that requires the contract to be terminated;
- (b) applicable transport planning shows that the services are no longer required or required to be subsidised or are no longer required in their present form or that another transport mode will be more suitable;
- (c) national, provincial or local transport policy requires it.

In such a case the Employer will be obliged to pay to the Operator such damages as the Operator is able to prove, provided that such damages shall not exceed ten percent (10%) of the value of the uncompleted services. Apart from the foregoing, the Operator shall not be entitled to claim any other amounts whatsoever in respect of such termination of the contract.

30.6 Where the contract is terminated under clause 30.2 to 30.4 the Employer may require the Operator to continue providing the services for a maximum of thirty (30) days after the date of termination.

30.7 Where the contract is terminated under clause 30.2 to 30.5—

- (a) the Operator must leave the service area at the expiry of the period contemplated in clause 30.6, or on the date of termination of the contract, as required by the Employer, despite the fact that a dispute has been declared under clause 26 or that any party has applied to a court for relief under the contract, and whether or not the Operator disputes the validity of the relevant notice of termination;
- (b) the Operator undertakes not to operate services in the service area after the expiry of the period contemplated in clause 30.6, or on the date of termination of the contract, as the case may be, despite the fact that the Operator may hold operating licences or permits authorising such operation, and undertake to submit any such licences or permits to the relevant operating licence board for cancellation;
- (c) the Employer may call upon the sureties in writing to make good to the Employer all loss, costs and damages as the case may be. To reduce its liability the surety may, with the consent of the Employer, find an alternative acceptable operator to continue the services, on the same terms and conditions, or the Employer may itself employ another operator to complete the contract or any part thereof at its option.

- 30.8** 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.
- 30.9** 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.
- 30.10** 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.
- 30.11** 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.
- 30.12** In the case of termination of the contract in terms of this clause, except for clause **30.10**, 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.

31. TIME TABLES

- 31.1** Subject to clauses **31.2** and **32**, the services reflected in the time tables provided in the Specifications are the services that the Employer requires the Operator to operate as on the date of the publication of this tender.
- 31.2** 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.

31.3 If variations of the time tables result in an increase or decrease of revenue kilometres, the provisions of clauses 32.1 and 32.2 shall apply.

31.4 The Operator must formulate a proposed timetable to apply during holiday periods for approval by the Representative at least fourteen (14) days prior to public holidays and/or holiday periods. If the Operator fails to do this, the Representative must formulate such a time table which will be binding on the Operator for such holiday period.

32. VARIATIONS

32.1 The Representative may after consultation with the Operator recommend the following variations to the services within the service area, but the prior written consent of the Employer is mandatory before any variation is effected:

- (a) to increase or decrease the number of scheduled trips on any route or routes;
- (b) to omit any route or add a new route;
- (c) to lengthen, shorten or alter an existing route, where "alter" means to change the route without increasing or decreasing the kilometre length thereof;
- (d) to alter the number or location of authorised stops, in consultation with the relevant local authority and/or traffic authority where applicable; and
- (e) to change the time table of any portion of the services;
- (9)** to make alterations in connection with vehicle capacities as contemplated in clause 32.6

and no such variation shall in any way invalidate or vitiate the contract. The Representative must notify the Operator in writing of any variations made to the existing services and the Operator must comply with any such variations. The Operator may object to such variations in writing addressed to the Employer within seven (7) working days of receipt of the Representative's notification. Should any variations be approved, the Operator must give to passengers not less than seven (7) days' notice, unless a shorter period is approved by the Employer of any intended changes to the time table.

32.2 If during the course of the contract it becomes necessary to vary the services as provided for in clause **32.1**, the following shall apply:

- (a) If the variation results in an increase or decrease of scheduled kilometres, the total kilometres for the particular month may fall into a different kilometre band shown on Form 12 of the Tender Forms, in which case the contract rate for that band must be applied;
- (b) if the variation results in an increase or decrease of scheduled kilometres which is outside of the bands provided on Form **12** of the Tender Forms, and such increase or decrease is less than fifteen percent (15%) below the bottom band or above the top band, the contract rates for the bottom or top band shall apply, as the *case* may be. If such increase or decrease is more than fifteen percent (15%), but less than twenty percent (**20%**) outside of the bottom or top band, as the case may be, the contract rates shall be adjusted based on existing contract rates, subject to the approval of the Tender Board (and accounting officer and other relevant persons or authorities, where applicable). In the event of a dispute regarding such adjustments, paragraphs (c) and (d) apply with the necessary changes; or
- (c) if the variation results in an increase or decrease of more than twenty percent (**20%**) above or below the said bands for a consecutive period of three months, the contract rates and bands must be renegotiated based on existing rates.
- (d) If the Parties fail to agree on such adjusted or renegotiated rates and bands, the contract shall be terminated, provided that the Operator shall continue to provide the services for at least ~~six~~ (6) months after the date on which such negotiations broke down, but shall not be obliged to provide services for such period which are more than twenty percent (**20%**) above the highest band, or more than twenty percent (20%) below the lowest band.

32.3 The Operator may apply in writing to the Employer for a variation in the types of vehicles which are used in providing the services, on the basis of a change in passenger demand or the utilization of better suited vehicles with a different capacity from those included in the tender. Prior to the Employer consenting to such a variation the financial implications thereof on the contract rates and time table shall be agreed upon in writing. The decision of the Employer in **this** regard shall be final and be communicated to the Representative and the Operator in writing.

32.4 Where the Operator is obliged to vary the services in the case of an emergency and such variation results in an increase or decrease of revenue kilometres, the provisions of clause **32.2** will apply, provided that approval for such variation must be obtained from the Employer within twenty-four (**24**) hours in the *case* of an increase.

32.5 If it appears to the Operator that the passenger demand on a particular route or trip regularly exceeds vehicle passenger capacities, the Operator may apply to the Employer for permission to

introduce additional trips to cater for such passengers. If written permission is granted and additional trips introduced, the Employer shall compensate the Operator therefor at the contract rates retrospectively from the first day upon which the passenger demand exceeded 45% of the seated capacity of the bus per trip and all costs incurred by the Operator prior to that day shall be for the Operator's own account. However, the Employer will not, as a policy matter, subsidise dedicated school trips.

32.6 If it appears to the Representative that the passenger demand on a particular route or trip is regularly less than fifty percent (50%) of the possible passenger kilometre capacity for a legally seated standard bus, the Representative must advise the Operator and the Employer accordingly. The Employer may at the request of the Operator approve that —

- (a) the standard bus on the particular route or trip be replaced with a midibus at eighty percent (80%) of the applicable contract rate for a standard bus for the relevant kilometres, or
- (b) the Operator continue operating the standard bus, in which case the Operator will be paid at eighty percent (80%) of the applicable contract rate for a standard bus for the relevant kilometres.

If the Employer does not approve the application, the Representative must remove the trip or route from the time table in terms of clause 32.1

32.7 If the Employer requires services to be provided in areas outside the service area these will be negotiated under a supplementary agreement.

32.8 If —

- (a) the Employer fails to respond to an objection of the Operator under clause 32.1 within 7 (seven) working days;
- (b) the Employer fails to respond to a request by the Operator under clause 32.3 within 7 (seven) working days;
- (c) the Employer fails to provide approval in response to a request by the Operator under clause 32.4 with the required 24 hours; or
- (d) the Employer fails to respond to a request for permission by the Operator under clause 32.5 within 7 (seven) working days or the Operator is dissatisfied with the Employer's response,

the Operator may declare a dispute under clause 26.

33. VEHICLES

- 33.1 The Operator is required to submit with its tender a statement on Form 10 of the Tender Forms, showing what vehicles will be available for the services immediately upon award of the contract and what vehicles will be purchased or leased. Copies of signed purchase and lease agreements are to be provided to the Employer on request before the tender is awarded, if necessary subject to a suspensive condition that the agreements will be effective only if the tender is awarded. The onus is on the Operator to decide what vehicles it will indicate on the said form for use in the provision of the services. ~~During the tender evaluation stage these completed statements will be used,~~ among other things, to assess the Operator's capacity to operate services of the magnitude concerned. Only vehicles shown in the completed Form 10 as submitted with the tender may be used to provide the services, unless the written consent of the Employer is obtained in advance.
- 33.2 The type and condition of all vehicles to be provided by the Operator for the provision of the services must correspond with the requirements of clause 7.2 of the Special Conditions and clause 14 of the Specifications. 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.
- 33.3 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 5 of the Special Conditions.
- 33.4 The Operator must display identification stickers or decals on vehicles used in providing the services if requested to do so by the Employer.
- 33.5 Any accident damage shall be repaired so that the vehicle complies with the Specifications.
- 33.6 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.
- 33.7 No vehicles with hard seats will be permitted.
34. **EMPLOYMENT OBLIGATIONS AND RESPONSIBILITIES**

34.1 Employment and labour issues, including—

- job guarantees and employment obligations;
- minimum wages;
- minimum conditions of employment;
- obligations towards the Bus Industry Restructuring Fund;
- other relevant labour matters,

in the first round of tendering following an interim contract, are governed by—

- (a)** The Agreement concluded between the National Department of Transport, the Southern African Bus Operators' Association and participating transport unions on 24 November 1997 ("the Tripartite Heads of Agreement"), which is attached as Annexure A for information purposes, and
- (b)** The latest Main Agreement of the South African Road Passenger Bargaining Council (SARPBAC), being such Agreement as revised or amended from time to time.

34.2 Clause 34.1 applies to all successful tenderers, whether or not the Operator is the same person or entity that operated the services, or substantially the same services, before the commencement date of the first tendered contract after an interim contract. It involves, among other things, that the Operator will be obliged to employ a minimum number of workers directly from the previous operator, where applicable.

Version – June 2005

Schedule: Volume 3: Special Conditions of Contract

.....PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEENAND

TENDER NO.

VOLUME 3: SPECIAL CONDITIONS OF CONTRACT (of 5 volumes)

The Director-General: Transport/Chief Executive Officer

Directorate:

P O Box

Date:

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VOLUME 3: SPECIAL CONDITIONS OF CONTRACT

1. PREFACE

The following Special Conditions of contract must be read with the General Conditions of Contract and other contract documents. These Special Conditions are intended to **amplify**, amend, add to or depart from the General Conditions, as the case may be, to the extent specified. They will take precedence over the General Conditions in the case of conflicting provisions.

2. DEFINITIONS (CLAUSE 1 OF GENERAL CONDITIONS)

Any word or expression used in these Special Conditions to which a meaning has been assigned in the General Conditions shall bear that meaning, unless the context indicates otherwise.

3. DISPLAY OF VEHICLE AND DUTY NUMBERS

3.1 All vehicles used for the provision of the services must—

- (a) display on the front and rear of the vehicle, the fleet number of the vehicle; and
- (b) display behind the lower right front windscreen of the vehicle the duty number that is being operated.

3.2 The Operator must equip, maintain and identify the vehicles in accordance with the Specifications and the destination and shift number shall be correctly displayed at the front of each vehicle for every trip.

4. EMPLOYER MAY DECIDE NOT TO APPOINT SMF

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.

5. PENALTIES (CLAUSE 21 OF GENERAL CONDITIONS)

5.1 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.

5.2 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.

5.3 Failure to provide information

Once the four stages of installing **EE** contemplated in clause 5.5.9 are complete, information provided on patronage must be accurate. Such information must reflect at least eighty percent (80%) of observed patronage based on a joint on-board census carried out by the Representative and the Operator. If the information provided is less than 80% of observed patronage in any month, five percent (5%) of the gross certificate value payable to the Operator, i.e. after escalation, of the applicable month's payment certificate will be forfeited. Compliance with this clause will be proved by comparing patronage observed by the monitors with that reflected by EE on at least **30%** of the **trips** for the month in question. Should this sample not comply, the penalty will be levied for the whole contract.

5.4 No vehicle shall leave the first point of departure before the time listed in the time table or more than five (5) minutes thereafter, failing which penalties will be imposed as set out below.

5.5 The Operator will be expected to adhere strictly to the requirements of the Specifications. Penalties will be imposed in the following events:

5.5.1 Failing to provide specified trips

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.

5.5.2 Providing trips that depart late or early

In the case of a trip that —

- (a) departs between six (6) and fifteen (15) minutes late from the departure 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;
- (b) departs more than fifteen (15) minutes late from the departure point or any transfer point, 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;
- (c) 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;

- (d) is an early trip, 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.

5.5.3 Vehicle breakdowns

- (a) The Operator is expected to provide a replacement vehicle for breakdowns as follows:
- (i) At the starting point of a route or within an eight (8) kilometre radius of these points, within thirty (30) minutes;
 - (ii) At other points, within forty-five (45) minutes;
- provided that no breakdowns will be accepted as such inside depots.
- (b) 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 5.5.1. 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.

5.5.4 Failing to display correct destinations or duty boards or to display any destinations or duty boards at all

Where destinations or duty boards have not been installed, the Operator shall have two (2) weekdays to remedy the situation, whereafter a penalty of two hundred rand (R200,00) per bus per day will be imposed. Where destinations or duties have been incorrectly displayed, a penalty of two hundred rand (R200,00) will be imposed.

The Operator must report within twenty four (24) hours the fact that any bus has provided services with a different duty number than that reflected in the time table. In case of default of so reporting a fine of two hundred rand (R200,00) per bus per day will be imposed. The onus will be on the Operator to prove that the trips have been operated, failing which revenue kilometres will not be paid and the trip will be deemed as not operated and the operator will be penalised in terms of clause 5.5.1.

5.5.5 Failing to pick up or set down passengers at authorised stops

Where passengers were not picked up or set down at an authorised stop, a penalty of two hundred rand (R200) will be imposed, except where the lawful capacity of the vehicle would have been exceeded or a passenger has refused to pay the fare or on grounds of violent, abusive or otherwise offensive conduct on the part of a passenger or other grounds contemplated in the Act or applicable road traffic legislation.

5.5.6 Vehicles in an unsatisfactory condition

- (a) 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.
- (b) **Where**, in the discretion of the Representative, vehicles leave a depot in an unsatisfactory condition as contemplated in clause 33.7 of the General Conditions, i.e. —
- (i) dirty on the outside or inside or with wet seats, a penalty of one hundred rand (R100) per bus will be imposed;
 - (ii) 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;
 - (iii) with missing or broken seats, a penalty of fifty rand (R50) per seat will be imposed;
 - (iv) with broken or missing doors, or doors that cannot be closed properly, a penalty of five hundred rand (R500) per bus will be imposed.
- (c) In the case of (b) (ii) to (iv), the Operator shall have two (2) weekdays to remedy the situation, whereafter a further penalty per day will be imposed, subject to paragraph (a). **If** a penalty is imposed in respect of a particular bus under (b)(ii) to (iv) 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.
- (d) Penalties under (b) (ii) - (iv) will not apply immediately to buses leaving overnight parking areas that are not depots: in such a case where infringements are noted, the Operator shall have two (2) weekdays to remedy the situation, whereafter penalties will be imposed as set out above, but subject to paragraph (a).
- (e) The Representative must inform the Operator before the commencement date of the standards that will be applied in respect of this clause.
- (g) Penalties under (b)(i) shall not apply to buses leaving overnight parking areas that are not depots.

5.5.7 Deviating from routes

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.

5.5.8 Failing to provide the right type, quality and age of vehicles as specified in Form 10 of the Tender Forms

- (a) Where the Operator fails to provide the right type, quality and specification of vehicles as specified in Form 10 of the Tender Forms read with clause 33.3 of the General Conditions, 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 on a *pro rata* basis, for example if one of two hundred (200) buses is not according to specifications, **1/200** of five percent 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.
- (b) 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.
- (c) 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.

5.5.9 Failing to install or to have operational EE

- (a) The Operator shall install and commission EE and provide information therefrom as follows:
 - Stage A1: install required electronic equipment (**EE**) on all buses within ninety (90) days of the commencement date;
 - Stage A2: EE on buses to be commissioned, i.e. **EE** to be in full working order, drivers to be trained in its use and **EE** to be providing usable information within one hundred and fifty (150) days of the commencement date;
 - Stage B1: depot computer to be installed and commissioned within ninety (90) days of the commencement date;
 - Stage B2: depot computer to be processing information obtained from EE on buses within one hundred and fifty (150) days of the commencement date.
- (b) Where the Operator fails to complete these Stages within the time indicated to the satisfaction of the Employer, three percent (3%) of the gross certificate value payable to

the Operator, i.e. after escalation, will be withheld from each month's payment certificate after expiry of such date in respect of each Stage not completed, until the end of the month in which the Stage is completed (i.e. 3% per Stage to a maximum of 12%). No interest will be payable on monies so withheld and the monies will only be paid to the Operator in the first payment certificate issued after the Stage has been completed to the satisfaction of the Employer. Where monies are so withheld for three (3) months they will be forfeited. Where Stages A1 and A2 have been completed for some but not all of the vehicles, the penalty will be applied on a pro rata basis (on a similar basis to that illustrated in Clause 5.5.8(a)) in respect of those vehicles in which those Stages have not been completed.

- (c) The four Stages will only be regarded as complete where EE in all buses and in the depot is fully operational and supplying all required information as specified in Clause 16.1 of the General Conditions.
- (d) Whether or not EE is installed, the onus will always be on the Operator to supply the Representative with the correct information as specified in clause 16 of the General Conditions by using manual methods, intensive monitoring or other methods approved by the Employer. This must be done from the beginning of the second month of operation to the satisfaction of the Employer. Where this is not done, three percent (3%) of the gross Certificate value payable to the Operator, before escalation, of the applicable month's payment certificate will be forfeited, where applicable over and above the penalties provided for in (b) and (c), and the Employer may regard this as a breach of a material term of the contract.
- (e) If EE which has been installed and has been operational becomes defective and unable to supply the required information, the Operator shall have such EE repaired within three (3) days, failing which it will be deemed not to have been installed and the above penalties will apply in respect of the Stage to which the defective equipment relates, and on a *pro rata* basis where applicable.
- (9) This clause is subject to clause 16.4 of the General Conditions, which provides that the Employer may decide not to pay any claim without adequate documented proof of the required information and data.

5.5.10 Failing to implement the Bus Sector BEE Charter Strategy

If the Operator fails to comply with the targets and milestones of the Bus Sector BEE Scorecard as set out in the Bus Sector BEE Charter Strategy, three percent (3%) of the gross certificate value

payable to the Operator, i.e. before escalation will be withheld from each month's payment certificate. No interest will be payable on monies so withheld and the monies will only be paid to the operator in the first payment certificate issued after compliance has been proved to the satisfaction of the Employer. Where monies are so withheld for three (3) months they will be forfeited.

5.5.10 Failing to implement the goals of the RDP

If the Operator fails to implement the goals of the RDP published in Government Gazette No, 16085 dated 23 November 1994 referred to in clause 11, within the times stated in the Proposal to the satisfaction of the Employer, three percent (3%) of the gross certificate value payable to the Operator, i.e. before escalation will be withheld from each month's payment certificate after expiry of such date in respect of each Stage not completed until the end of the month in which the Stage is completed (i.e. 3% per Stage). No interest will be payable on monies so withheld and the monies will only be paid to the operator in the first payment certificate issued after the Stage has been completed to the satisfaction of the Employer. Where monies are so withheld for three (3) months they will be forfeited.

5.6 Notwithstanding the above, no penalty will be imposed if trips are cancelled as contemplated in clause 5.1 of the General Conditions.

5.7 Notwithstanding the above, no penalty will be imposed if the Operator furnishes the Representative with a reason for the failure which is acceptable to the Employer.

6. ESTABLISHMENT

6.1 During the period between the signing of the contract and the commencement date, the Operator must arrange the following activities, among others:

- (a) completion of all application and other procedures for the granting and issuing of necessary operating licences in terms of clause 22 of the General Conditions and insurance and suretyship in terms of clauses 17 and 29 thereof, respectively;
- (b) acquisition of the required vehicles as specified in the contract;
- (c) procurement of offices, depots, workshops and stores;
- (d) recruitment and training of necessary personnel, if these are not already available;
- (e) development of bus schedules and operating data, management control systems and information systems;
- (f) preparation of driver duties, waybills and other forms necessary for the services;
- (g) establishment of liaison groups with employers of commuters and communities where

passengers reside;

- (h) preparation of publicity material for passengers;
- (i) other activities necessary for the commencement of the services requested by the Representative or Employer.

6.2 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.

6.3 With reference to Tender Form 10, the Operator must supply the Employer with copies of lease or purchase agreements in respect of all buses that it intends to lease or purchase for use on the contract within **10** days of the notification of the tender being awarded. Failure to do so shall be regarded as a material breach of contract.

7. BUS SPECIFICATION

7.1 Livery

It is a requirement that all vehicles operated on the contract must be painted with a uniform livery. Where an approved sub-contractor(s) is used, the livery of the sub-contractor(s) may differ from the main Operator. Where there is more than one subcontractor, the livery of the different sub-contractor(s) may differ from each other, but each individual sub-contractor(s) vehicles must be identifiable. The vehicles must be clearly identifiable by the community and the SMF to the satisfaction of the Employer.

7.2 Vehicle standards

All vehicles must conform with the requirements and regulations of the Road Traffic Act, **1989** (Act 29 of **1989**) or other applicable legislation and applicable SABS specifications.

Details of the existing or proposed vehicles to be used on the services are to be provided on Form 10.

Standard buses also shall conform with the following requirements:

Minimum number of seats	58
Maximum number standing	43
Minimum engine power	As specified in clause 14 of the Specifications

No vehicle older than fifteen (15) years may be used to provide the specified service during the contract period whereafter it should be rebuilt or rehabilitated. No vehicle older than fifteen (15) years may be rebuilt or rehabilitated.

The age of a vehicle shall be determined from the date of first registration of the chassis and tenderers must provide proof of this date during the evaluation phase. Tenderers proposing to use vehicles that have been rebuilt or rehabilitated as defined in the General Conditions (clause 1) must provide full details of the work carried out and the date of completion thereof. The Representative will monitor the age of the vehicles continuously from the commencement date of the contract and must report on their ages to the Employer to ensure compliance.

A fully rebuilt vehicle shall be deemed to be three (3) years old on the date of the completion of the rebuilding and a rehabilitated vehicle shall be deemed to be eight (8) years old on the date of the completion of the rehabilitation. No vehicle with a chassis age of more than twenty-seven (27) years may be used during the contract period.

Each model of the same new body being built onto a different make of rebuilt chassis shall be inspected by SABS for conformance to compulsory vehicle and Road Traffic Act and Regulations and a letter will be handed to each registered bus body builder stating that the new body complies to compulsory vehicle standards. The chassis Vehicle Identity Number of the first vehicle of such a rebuilt batch or make will be quoted, and registers must be kept of all subsequent rebuilds separately for the different makes of rebuilt chassis.

All vehicles shall adhere to Class 1 accessibility requirements and comply to the following:

- (a) door opening to be 850mm wide with 1450mm head clearance;
- (b) first step to be 250mm above ground (retractable first step is also permissible), following steps with a maximum high of 230mm and a minimum depth of 200mm;
- (c) use of high-contrast colours on steps, grab rails, seat frames and edges of stairs, including black, but excluding red and green;
- (d) sufficient grab handles or handles be fitted with 25 to 35mm diameter and accessible from ground level, with colour contrast;
- (e) lettering on all signs inside the vehicle to be 25mm for a viewing distance of 7,5m;

- (9) audible announcement and visual display to be available;
- (g) reserved seating near entrances for people with disabilities, the elderly, pregnant women or passengers with any other mobility difficulties.

Modifications to vehicles for adherence to Class 1 accessibility requirements must be completed within twelve (12) months of the commencement date.

7.3 Alternative vehicle types

Should the Operator intend to use minibuses, midibuses or bus-trains, all must conform with the requirements and regulations of the Road Traffic Act, 1989 (Act 29 of 1989) or any other legislation and applicable SABS specifications.

Details of the existing or proposed vehicles and the appropriate mechanical and passenger loading information must be included on Form 10.

7.4 Route and destination equipment

A removable duty number board shall be displayed behind the right lower front windscreen visible from outside. The letter size shall be 150mm and be made from reflective material. The colour of the numbers must contrast with the background colour of the duty board to facilitate legibility.

A board or scroll stating the destination of each trip must be displayed on the front of the vehicle. The letter size must be at least 150mm and be adequately legible (readable) in all lighting conditions, such as early in the morning or at night. The colour of the letters must contrast with the background colour of the board or scroll to facilitate legibility.

8. BLACK ECONOMIC EMPOWERMENT AND THE BUS SECTOR BEE CHARTER STRATEGY

- 8.1 The Operator shall comply with the targets and milestones of the Bus Sector BEE Scorecard as set out in the Bus Sector BEE Charter Strategy.
- 8.2 More than three and a half percent (3.5%) of salaries and remuneration of staff employed for the execution of the contract, shall be spent on skills development, education and training of staff.
- 8.3 More than two percent (2%) of total turnover on the contract shall be spent on social and community projects.

- 8.4** The Operator's compliance with the targets and milestones of the Bus Sector BEE Scorecard, percentage of salaries and remuneration of **staff** spent on skills development, **education** and training and percentage of total turnover on the contract spent on social and community projects **will be** monitored by the Employer. Non-compliance therewith shall **be** regarded as a material breach of contract as contemplated in terms of clause **30** of the General Conditions. **Without prejudice to its rights** under the said clause **30**, **penalties** Will **be imposed** on the Operator for failure to comply under clause 5.5.10.

Version – June 2005

Schedule: Volume 4: Specifications

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

DIRECTORATE: PUBLIC TRANSPORT

**PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN AND
TENDER NO.**

VOLUME 4: SPECIFICATIONS (of 5 Volumes)

The Director-General: Transport/Chief Executive Officer
Directorate:
P O Box
.....

Date:

VOLUME 4: SPECIFICATIONS

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VOLUME 4: SPECIFICATIONS

1. OPERATING LICENCES/ PERMITS

1.1 Existing operating licences/permits

..... (the current operator) currently holds permits/operating licences for the routes described in this tender. If a different Operator is awarded this tender, the current operator has undertaken to relinquish its current permits/operating licences for the routes as described in the tender. Certain services outside the scope of this tender may still be operated by the current operator.

1.2 Proposed operating licences for this contract

The successful tenderer, if not already in possession of operating licences or permits, must submit applications for operating licences to the provincial Operating Licence Board (board), in terms of clause 22 of the General Conditions, for the provision of public transport services as described in the specifications. The Employer will notify the board in writing of the award of the tender to the Operator. The Operator shall submit an application to the board for operating licences in terms of section 40 of the Act and other applicable legislation, which will be granted only for the contract period. As soon as the operating licences have been granted by the board, the accepted tenderer must notify the Employer and the Form of Contract (Form 22) will then be completed.

If the contract is terminated before the expiry date of the contract, the operating licences or permits for these services must be returned by the Operator to the board, for cancellation.

2. COMMENCEMENT OF SERVICES AND DURATION OF CONTRACT (CLAUSES 8.1 AND 8.2 OF GENERAL CONDITIONS)

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

2.2 The duration of this contract shall be seven (7) years, subject to clause 8 of the General Conditions.

3. STATISTICS OF EXISTING SERVICES

Statistics on trips related to cash ticket and multi-journey ticket sales with regard to these services, as supplied by the current operator are shown in Table 3.1.

TABLE 3.1: SUMMARY OF MONTHLY OPERATIONAL STATISTICS OF EXISTING SERVICE

																					TOTAL	AVE	
Number of passengers using cash tickets																							
Number of passengers using Multi journey tickets																							
Total passenger trips																							
Total income cash																							
Total MJT income																							
Total income from ticket sales																							

Rules 10 and 13.2 of the Tender Rules must be noted in this regard. Tenderers are to note that the new services will not necessarily have the same routes and trips as the existing services.

A passenger census was conducted in _____. These results are attached in Appendix A. Tenderers are nevertheless advised to carry out their own investigations into existing and potential passenger numbers.

4. SERVICES TO BE PROVIDED

4.1 The service area

4.1.1 Terrain and operating environment

The roads used for bus routes are mostly _____. The terrain within the service area is _____.

4.1.2 Competitive modes of transport

Competitive modes of public transport are minibus-taxis.

4.1.3 Private hire and contracts

When vehicles are not required to operate according to the time table they may be used for other purposes including private hires or other contracts as well as on the non-subsidised routes, subject to the applicable permits or operating licences being held or issued by the provincial Operating Licence Board. Such commitments shall in no way relieve the Operator from operating the scheduled trips as provided in the timetables. Caution must be taken as the information contained in **this** document does not include private hires, other contracts as well as non-subsidised routes.

4.1.4 Scholars

Scholars may use scheduled buses. In general, school trips in the peak period requiring a dedicated bus have been omitted.

4.2 Depots, terminals and bus parking

The existing bus stops and terminals authorised by the local authorities are to be used by the Operator.

The current operator utilises a depot in _____ where the buses are kept and serviced during the day. The tenderer should make own arrangements for depots, ranks and the servicing, maintenance and parking of vehicles to be used for the contract, subject to municipal by-laws, regulations and approvals.

4.3 Routes

4.3.1 Route descriptions

SAMPLE ROUTE DESCRIPTION

Route 93 From Thaba'Nchu (Bultfontein I Suburb) to Bloemfontein (Central Park Bus Terminus)

Forward Journey:

Depart from Bultfontein 1 Terminus, stop 1 (0 km), proceed on unnamed street to stop 2 next to House nr **325 (0.2 km)**, proceed to stop 3 next to house nr **33 (0.5 km)**, proceed to stop 4 next to house nr **301 (0.8 km)**, turn right into unnamed street and proceed to stop 5 next to house nr **450 (1.2 km)**, proceed to stop 6 next to house nr **673 (1.5 km)**, turn left into unnamed street and proceed to stop 7 next to house nr **709 (1.9 km)**, turn right into road **B12/01/01** and proceed, turn left into unnamed road and proceed through Bultfontein 2 Suburb to stop 8 next to Mokulane Primary School (**2.9 km**), proceed to stop 9 next to Mottalepule Trading Store (**3.4 km**), proceed to stop 10 next to house nr **1418 (3.7 km)**, proceed to stop 11 next to house nr **1300 (4.1 km)**, proceed to stop 12 next to house nr **969 (4.5 km)**, turn right into unnamed street and proceed to stop 13 next to house **916 (4.9 km)** proceed to stop 14 next to house nr **948 (5.2 km)** proceed to stop 15 next to house nr **1439 (5.5 km)**, proceed and enter Bultfontein 3 Suburb to stop 16 next to Assembly Church (**6.2 km**), proceed to stop 17 next to house nr **460 (6.5 km)**, turn left into unnamed street and proceed to stop 18 next to house nr **447 (6.8 km)**, proceed to stop 19 next to house nr **435 (7.2 km)**, proceed to stop 20 next to house nr **76 (7.5 km)**, turn right into unnamed street and enter Bultfontein 4 Suburb, proceed to stop 21 next to house nr **453 (7.8 km)**, turn left into unnamed street and proceed to stop 22 next to Lobogang Restaurant (**8.2 km**), turn right into Road **D105/01/01** and proceed, turn left into Road **B12/01/01** and proceed, turn right into Manyane Highway and enter Seloseshu Suburb, proceed to stop 23 at the Works Department (**10.5 km**),

proceed to stop **24** next to house nr **577 (11.1 km)**, proceed to stop **25** next to house nr **838 (11.6 km)**, proceed to stop **26** next to house nr **811 (12.0 km)**, turn left into Poloka Road and proceed to stop **27** next to Poloka Sanatorium (**13.3 km**), proceed to stop **28** next to Tshipinare Secondary School (**19.9 km**), turn right into Road **B13/01/01** and proceed, turn right into Road **P5/1** or **N8** and proceed to Albert Cross stop **29 (16.9 km)**, proceed to stop **30** at Serwalo (**19.9 km**), proceed to stop **31** at Hoenderplaas (**22.5 km**), proceed to stop **32** next to Suburb H (**26.5 km**), proceed to **Botshabelo** Cross Stop **33 (27.8 km)**, proceed to Botshabelo West stop **34 (32.1 km)**, proceed to Vadersgift stop **35 (41.4 km)**, proceed to Likhatlong stop **36 (45.5 km)**, proceed to Sannaspos stop **37 (49.7 km)** proceed till Bright Side stop **38 (57.9 km)**, proceed to Bloemindustria stop **39 (62.6 km)**, proceed till Strathmore stop **40 (66 km)**, proceed to Coleman stop **41 (70.5 km)**, proceed to Maselspoort Cross stop **42 (73.6 km)**, proceed to Airport stop **43 (74.3 km)**, proceed to Race Course stop **44 (76.4 km)**, proceed to Market stop **45 (77.9 km)**, enter Bloemfontein on Maselspoort Road and proceed to Loco stop **46 (79.8 km)**, proceed to Subway stop **47 (80.6 km)**, turn left into Harvey Road and proceed to Station stop **48 (81.7 km)**, proceed and turn right into Douglas street, turn right into Hanger street and enter Central Park Terminus stop **49 (82.2 km)**.

Return Journey:

Central Park Bus Terminus, proceed north along Hanger Street, turn right into Charles Street and proceed into Signal Street, turning left at the Junction into Glen Road and proceed, turning left into Alexandra Avenue at the Slipway, continue as described above but in the opposite direction (**82.0 km**).

4.4 Scheduling and Timetables

- 4.4.1** The timetables have been prepared for Monday to Friday, Saturday and Sunday services. It has been estimated that initially single decker standard class buses are required to provide the service as indicated on the timetables included in Appendix B. The tenderer however should prepare its own estimate of the number of buses required to operate the services.
- 4.4.2** The timetables have been prepared assuming standard buses will be operated. However, if the Tenderer proposes to operate other vehicle categories (with different passenger capacities), the Tenderer must submit a revised timetable, indicating which type of vehicle is to be used on each trip. This shall constitute an alternative tender as contemplated in tender rule **15**.
- 4.4.3** The timetables included in this document represent most of the trips currently provided, however some of the existing trips have been omitted where passenger numbers were observed to be less than the required number. The timetables provided in Appendix B are not necessarily the timetables which will be operated when the new contract services are implemented. Prior to the

start of operations the actual scheduled kilometre timetable will be decided by the Representative and the Operator as provided in clause 31.2 of the General Conditions.

- 4.4.4** Adjustment or improvements may be negotiated between the Operator and the Employer, or the Representative, and implemented as soon as possible.
- 4.4.5** Where the majority of factories in a specific area close on a weekday which is between a public holiday and a weekend then a limited service should replace the normal **Monday-Friday** operation. The Representative must be advised in advance of the timetable to be operated on such a day.
- 4.4.6** A summary of the trips and average trip kilometres for each of the routes are set out in Table 4.1.

Route number	TENDER	PROPOSED SERVICES BETWEEN	Route Description	Kilometres	Bus Trips Per Day				Kilometres/day				
					Mon - Thur	Fri	Sat	Sun	Mon - Thur	Fri	Sat	Sun	
TOTAL													

4.5 Cost savings and sub-contracting

The Employer will have no objections to the Operator leasing equipment such as vehicles, ticket machines and computer data equipment, instead of purchasing the equipment, provided they meet the standard of requirements specified in the contract documents. The Employer will welcome the use of sub-contractors for selected services, subject to suitable contracts being entered into between the Operator and the subcontractors.

5. FARES

5.1 Adult cash and multi-journey ticket (MJT) fares

The adult cash and multi-journey ticket fare structures are shown in Appendix C.

5.2 Scholar fares

The scholar cash and multi-journey ticket fare structures are shown in Appendix C.

5.3 Fare increases

A fare increase of —% was implemented on ———

5.4 Electronic ticket machines

The details of manufacturers or agents known to market electronic ticket machine equipment (EE) can be obtained from Mr E Cornelius of the Southern African Bus Operators Association (SABOA) at tel: (011) 787-5863 or fax (011) 787-5898.

6. SCHEDULE OF QUANTITIES

6.1 Using a fleet of standard buses

From the summary of the trips given in Table 4.1, the average estimated monthly revenue kilometre to be operated has been calculated as follows:

_____ km per Mon - Thur	x 17	=	_____ km
_____ km per Friday	x 4	=	_____ km
_____ km per Saturday	x 4	=	_____ km
_____ km per Sunday	x 4	=	_____ km
Estimated total per month			_____ km

Operating according to the timetables included in Appendix B will involve approximately revenue km of travel per month on the routes for a standard bus. The distance travelled from a depot to the terminus or any other journey not listed on the timetable will not be included in the total revenue kilometre that are to be operated.

The number of kilometres operated per month will also vary with seasonal demand and the general economic growth of the area. The estimated number of months of operation at the various bands of revenue kilometres per month are included in the Schedule of Quantities (Tender Form 12).

It is anticipated that most months will operate at the middle kilometre bands but no guarantee is given in this regard. The upper and lower bands are anticipated to cover months when more or less kilometres are operated. There is no specific month order for the estimated number of months for which a kilometre band will be applicable.

6.2 Using a mixed fleet of vehicles

Should Tenderers elect to submit a tender based on a mixed fleet of vehicles, the number of kilometres per month for each type of vehicle and the estimated number of kilometres to be operated for the five years for each kilometre band for each vehicle category will have to be inserted in the appropriate columns on an amended Schedule of Quantities Form (Form 12).

7. SUBMISSION OF OPERATING DATA

7.1 Duty numbers

Prior to the commencement date the Operator shall submit a complete list of proposed driver

duties for Monday to Friday, Saturdays and Sundays. The duty shall have a number and list the starting and end destination names for each trip, together with the appropriate route number and times.

7.2 Trip information

Trip information for all approved trips must be provided on a weekly basis or as otherwise required by the Employer (see clause 16.1 of the General Conditions). 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.

The data entry may be undertaken by hand (typed in from the appropriate waybills). If the electronic ticket machines (EE) are not yet installed, or are not yet fully operational, this data information must be provided by manual methods from the first day of operation. Liaison with the Representative must take place during the establishment period on the procedures to be followed.

7.3 Use of electronic data transfer

If the EE data systems are operational, the daily trip information shall be extracted directly from the EE using an electronic data transfer programme capable of interfacing with the EE software. The cost of developing the programme is to be included in the Tenderer's tender rates. Where the EE data is incorrect or incomplete, the onus is on the Operator to ensure that the correct information or augmented information is collected and entered manually.

The software which is used to record the daily trip information must be capable of generating an ASCII file on floppy disk and a paper-based report showing all passenger statistics, revenue kilometres and penalty trips for the entire month in question. This report, duly signed by the Operator, together with the completed electronically-based daily trip data, must be submitted to the Representative not later than seven (7) days after the end of the month. The report, which should be in agreement, will constitute the kilometre claim which the Representative will use for checking the monthly claim form.

7.4 Passenger perceptions of the service

Apart from the normal liaison between the Operator and passengers, such as commuter interest groups, surveys and occupancy counts, 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.

8. RAIL CONCESSIONING

It is government's intention to implement rail concessioning in certain areas as and when appropriate. Should such rail concessioning be contemplated in an area covered by this contract during the period of the contract, negotiations on any alterations to the contract that the Employer deems necessary in this regard and their possible effect on aspects such as fares will be entered into with the Operator.

9. RIGHT OF FIRST REFUSAL OF CURRENT OPERATOR

The current operator, namely enjoys a right of first refusal in terms of the agreement concluded between the National Department of Transport, the Southern African Bus Operators' Association and participating transport unions on 24 November 1997 ("the Tripartite Agreement") (see Annexure A to Volume 2 "General Conditions") read with the relevant interim contract with the Employer. In terms of that right, if that operator tenders for the services under this tender, and its tender is not more than ten percent (10%) higher than the most acceptable tender, that operator will have the right to be awarded the new contract at the rates and on the basis tendered by the tenderer which the Tender Board has decided has submitted the most acceptable tender. The relevant clause reads as follows:

" " *

10. SUB-CONTRACTING

The Operator will be obliged to sub-contract at least ten percent (10%) of the revenue kilometres of the contract in each particular month. The said minimum of 10% must be subcontracted to small business entities contemplated in the National Small Business Act, 1996 (Act No. 102 of 1996).

11. PERCENTAGE TO BE DEPOSITED UNDER CLAUSE 30.1 OF GENERAL CONDITIONS

The percentage of the tender amount to be deposited in the circumstances contemplated in clause 30.1 of the General Conditions shall be percent (....%).

12. SURETYSHIP

The suretyship required in terms of clause 29 of the General Conditions shall be for percent (....%) of the tender amount.

13. TAXI RECAPITALISATION

Tenderers are advised that it is government's intention to implement ~~recapitalisation~~ of the minibus taxi industry as and when appropriate. Should such ~~recapitalisation~~ be contemplated in an area covered by this contract during the period of the contract, variations may be effected under clause **32** of the General Conditions, or negotiations on any alterations to the contract that the Employer ~~deems~~ necessary ~~in this regard and their possible effect on aspects such as fares~~ will be entered into with the Operator outside of the contract.

14. MINIMUM ENGINE POWER OF VEHICLES

The minimum engine power of vehicles used on the contract shall bekW in inland areas and kW in coastal areas

15. ESCALATION (CLAUSE 13 OF GENERAL CONDITIONS)

The base month indices applicable to this contract shall be those for

16. FARE INCREASES

The date for annual fare increases for this contract will be in the month of each year starting on, unless the Parties agree otherwise.

Fares must be increased annually in consultation with the Employer and the average increase must be equal to or exceed the escalation factor unless the Employer decides **otherwise**. 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.

17. APPROVAL FROM OPERATING LICENCE BOARD TO TENDER

In terms of section **31(4)** of the Road Transportation Act, **1977**, or other applicable legislation, the tenderer must have authority to tender from the relevant operating licence **board/local** road transportation board (board) (see Tender Rule 7).

The telephone number of the board is (...)

its telefax number is (...) and

its postal address is P.....

A letter granting approval to tender is required (see Tender Form 2).

18. ESTABLISHMENT COST (CLAUSE 20.1 OF GENERAL CONDITIONS)

The Employer shall pay to the Operator a single, lump sum to defray establishment costs of percent (... %) of the tender amount over and above the amounts payable for revenue kilometres. The amount will be paid within ... (...) days after the services have commenced to the satisfaction of the Employer and will not be subject to escalation. If the Operator fails to provide the services for at least ~~six~~ (6) months from the commencement date for any reason, the amount will be refundable to the Employer.

APPENDIX A

PASSENGER CENSUS FIGURES

APPENDIX B

TIMETABLES

APPENDIX C

FARE STRUCTURES

APPENDIX D
JOURNEYS CURRENTLY OPERATED ON THESE SERVICES
BUT NOT INCLUDED IN THE TENDER

Version – June 2005

Schedule: Volume 5- Tender Forms

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

DIRECTORATE: PUBLIC TRANSPORT

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

TENDER NO.

VOLUME 5: TENDER FORMS (of 5 volumes)

[Applicable to all tenders and apply except in so far as amended by the Special Conditions of Contract or other documents.

All applicable Tender Forms must be completed and signed or initialled by or on behalf of the tenderer. Failure to do so may invalidate the tender (see Tender Rule 17.1 and 17.7.]

The Director-General: Transport/Chief Executive Officer

Directorate:

P O Box

.....

Date:

(i)

**THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN AND****TENDER NO.****VOLUME 5: TENDER FORMS****CONTENTS****1. FORMS TO BE COMPLETED BY OR ON BEHALF OF THE TENDERER**

TAX CLEARANCE CERTIFICATE

ACKNOWLEDGEMENT OF RECEIPT OF ALL ADDENDA

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FORM 2 APPROVAL TO TENDER

FORM 3 CERTIFICATE OF TENDERER'S ATTENDANCE AT THE SITE MEETING

FORM 4 CERTIFICATE OF AUTHORITY FOR SIGNATORY IN RESPECT OF
LEGAL PERSONAFORM 5 CERTIFICATE OF AUTHORITY FOR SIGNATORY AND
DECLARATION OF JOINT AND SEVERAL LIABILITY
IN RESPECT OF A CONSORTIUMFORM 6 CERTIFICATE OF NON-COLLUSIVE TENDER IN RESPECT OF
A SINGLE TENDERER (COMPANY, CLOSE CORPORATION,
PARTNERSHIP, NATURAL PERSON etc.)

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FORM 10 SCHEDULE OF EXISTING OR PROPOSED VEHICLES

FORM 11 SCHEDULE OF ELECTRONIC INFORMATION AND
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FORM 12 SCHEDULE OF QUANTITIES

FORM 13 ESTIMATED INCOME AND EXPENDITURE FOR FIRST 12 MONTHS
OF CONTRACT

(ii)

FORM 14	OPERATING LICENCES OR PERMITS HELD BY TENDERER
FORM 15	RDP PROPOSAL
FORM 16	PROPOSED ORGANISATION STRUCTURE
FORM 17	SCHEDULE OF EMPLOYEES NEEDED FOR CONTRACT
FORM 18	DECLARATION AND UNDERTAKING IN TERMS OF SECTION 48 OF THE ACT
FORM 19	CERTIFICATE OF CONDITIONS OF A LOAN, GUARANTEE OR OTHER FINANCIAL ASSISTANCE PROVIDED TO THE TENDERER
FORM 20	DECLARATION OF FINANCIAL SUPPORT BY OWNER
FORM 21	PASSENGER LIABILITY INSURANCE

2 FORMS FOR COMPLETION ONLY AFTER TENDER IS ACCEPTED

FORM 21	PRO FORM DEED OF SURETYSHIP
FORM 22	PRO FORMA CONTRACT
FORM 23	PRO FORM PAYMENT CERTIFICATE

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-----PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

TAX CLEARANCE CERTIFICATE

(To be inserted)

-----PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN ----AND ---

TENDER NO.

ACKNOWLEDGEMENT OF RECEIPT OF ALL ADDENDA

[To be completed by all tenderers submitting tenders.]

PARTICULARS OF TENDERER:

Name of tenderer:

Address of tenderer:

.....

.....

Name of contact person:

Telephone number:

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA:

I acknowledge receipt of the following addenda:

- 1. Addendum No. dated (Number of pages received)
- 2. Addendum No. dated (Number of pages received)
- 3. Addendum No. dated(Number of pages received)
- 4. Addendum No. dated (Number of pages received)
- 5. Addendum No. dated (Number of pages received)

TENDERERS SIGNATORY ON BEHALF OF TENDERER

DATE

.....PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 1: FORM OF TENDER

1. I/we having examined the tender documents for the provision of the above services, including all addenda issued after the date the tender documents were collected, hereby tender to render all or any of the services described in the attached documents to the Provincial Administration/Transport Authority/Core City on the terms and conditions and in accordance with the specifications stipulated in the tender documents (and which shall be taken as part of, and incorporated into, this tender at the rates and on the terms inserted therein, which according to Form 12 of the Tender Forms give a total tender amount of R.....
.....
.....(words)
2. I/we agree that—
 - (1) the offer herein shall remain binding upon me/us and open for acceptance by the Tender Board during the validity period indicated and calculated from the closing time of the tender until or such period for which it may be extended.
 - (2) if I/we withdraw my/our tender within the period for which I/we have agreed that the tender shall remain open for acceptance, or fail to sign the contract when called upon to do so, the Employer may, without prejudice to its other rights, agree to the withdrawal of my/our tender or cancel the contract that may have been entered into between me/us and the Employer and I/we will then pay to the Employer any additional expense incurred by the Employer having either to accept any less favourable tender or, if fresh tenders have to be invited, the additional expenditure incurred by the invitation of fresh tenders and by the subsequent acceptance of any less favourable tender; the Employer may also recover such additional expenditure by set off against moneys which may be due or become due to me/us or on my/our behalf for the due fulfilment of this or any other tender or contract and pending the ascertainment of the amount of such additional expenditure to retain such monies, guarantee or deposit as security for any loss the Employer may sustain by reason of my/our default;
 - (3) if my/our tender is accepted the acceptance may be communicated to me/us by letter or order by ordinary post or registered post and that the Post Office shall be regarded as my/our agent, and delivery of such acceptance to the Post Office shall be treated as delivery to me/us;

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- (4) the law of the Republic of South Africa shall govern the contract created by the acceptance of my/our tender and the we choose *domicilium citandi et executandi* in the Republic at (full physical address of this place)
-
-
-
3. I/we undertake to give notice in writing of any change of the above *domicilium citandi et executandi* and related particulars, at least fourteen (14) days prior to such new particulars becoming effective.
4. I/we undertake to acknowledge receipt of all communications from the Employer.
5. I/we acknowledge that any notice given in terms of this contract must be in writing and shall be deemed to have been received by the addressee —
- (1) on the date of delivery if delivered by hand;
- (2) on the eighth (8th) day following the date of posting, if posted by pre paid mail;
- (3) on the day after despatch, if sent by courier, telefax, telegram or telex.
6. I/we have prepared this tender based on the specifications provided.
7. I/we furthermore confirm that ~~I/we~~ have satisfied ~~myself/ourselves~~ as to the ~~correctness~~ and validity of my/our tender; that the rates quoted cover all the ~~work/item(s)~~ specified in the tender documents and that the rates cover all my/our obligations under a resulting contract and that ~~I/we~~ accept that any mistakes regarding rates and calculations will be at my/our risk.
8. I/we hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me/us under this agreement as the ~~principal(s)~~ liable for the due fulfilment of ~~this~~ contract.
9. I/we understand that the Tender Board is not bound to accept the lowest or any particular tender it may receive, and that it or the Employer will not defray any expenses incurred by me/us in tendering.
10. If my/our tender is accepted, I/we undertake to sign the pro ~~forma~~ contract (Form 22) included in this document within seven (7) days of being called upon to do so by the Employer.
11. If my/our tender is accepted, and until the pro forma contract (~~Form 22~~) is prepared and executed, this tender, together with the written acceptance thereof, shall constitute a binding contract between me/us and the Employer and shall be deemed for ~~all~~ purposes to be the contract

agreement, together with the other documents listed in clause 10 of the General Conditions, in so far as they are applicable.

- 12. I/we undertake to commence the services on the commencement date.
- 13. I/we undertake to provide a suretyship in accordance with the pro forma deed of suretyship (Form 21) to the satisfaction of the Employer within fourteen (14) days after my/our tender has been accepted.
- 14. I/we undertake to provide proof of insurance in terms of clause 17 of the General Conditions.
- 15. I/we declare that I/we have *participated/not participated" in the submission of any other offer for the operation of the services described in the attached documents. If in the affirmative state the name(s) of the tenderer(s) involved:

.....

- 16. Are you duly authorised to sign this tender? *YES/NO
- 17. Has the Declaration of Interest (Form 8) been duly completed and included with the other tender forms/ *YES/NO

*** Delete whichever is not applicable**

SIGNATURE(S) OF TENDERER OR ASSIGNEE(S)

DATE..

Capacity and particulars of the authority
 under which this tender is signed:

Name of the Tenderer (in block letters)

Postal address (in block letters)

Telephone Number(s)

Facsimile number(s)

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Tender number

Name of contact person (block letters)

Tenderer's tax reference number

NB: ALL TENDERS AND SUPPORTING DOCUMENTS MUST BE SEALED IN AN ENVELOPE CLEARLY MARKED WITH:

TENDER No.

PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES BETWEEN

and must be placed in the tender box at the Office of the Tender Board, situated at

.....

Not later than 11.00 on

when all tenders will be opened in public and the names of the tenderers shall be read out and the tender amounts disclosed.

IMPORTANT CONDITIONS

1. Failure on the part of the tenderer to sign this Tender Form 1 and thus to acknowledge and accept the conditions in writing or to complete the attached forms, questionnaires and specifications may invalidate the tender.
2. Tenders must be submitted on the official forms.
3. Despite clause 10.3 of the General Conditions, if any of the conditions on **this** Tender Form 1 are in conflict with any Special Conditions, stipulations or provisions incorporated in the tender, such special conditions, stipulations or provisions will apply.

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.....PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY
DIRECTORATE: PUBLIC TRANSPORT
TENDER NO.

**FORM 2: APPROVAL TO TENDER IN TERMS OF SECTION 31(4) OF
THE ROAD TRANSPORTATION ACT, 1977, OR OTHER APPLICABLE LEGISLATION**

The Operating Licence Board/
Local Road Transportation Board
Private Bag X
.....
.....
Date

The Director General: Transport/Chief Executive Officer
Directorate: Public Transport
.....
.....
.....

Sir

**TENDER NO.: THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN:**

An application has been received from
requesting permission to tender for advertised tenders.

The Operating Licence Board/Local Road Transportation Board has duly considered the application and approval to tender has been granted in terms of section 31(4) of the Road Transportation Act, 1977, or other applicable legislation *[if applicable]*.

Yours faithfully

CHAIRPERSON
OPERATING LICENCE BOARD/LOCAL ROAD TRANSPORTATION BOARD

* *Delete whichever is not applicable*

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----- PROVINCIALADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 3: CERTIFICATE OF TENDERER'S ATTENDANCE AT THE INFORMATION MEETING

This is to certify that I,

being the Tenderer/representative of the Tenderer*, of (address)

.....

.....

and with telephone number attended the information meeting held on ..

.....(date).

.....
TENDERER/TENDERER'S REPRESENTATIVE*

.....
DATE

CAPACITY OF REPRESENTATIVE: ;

CONFIRMATION OF ATTENDANCE:

.....
for EMPLOYER

.....
DATE

* Delete whichever is not applicable

.....PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 4: CERTIFICATE OF AUTHORITY FOR SIGNATORY IN RESPECT OF LEGAL PERSONA

Signatories for companies or close corporations or other legal persona must establish their authority by attaching a copy of the relevant resolution of the board of directors/members or authority as applicable, duly signed and dated. An example is shown below.

"The board of directors/members/ _____ (other)" of _____ resolved at a meeting held at _____ on the day of _____ 20 that Mr/Ms _____ (the signatory), whose signature appears below, has been duly authorised to sign all documents in connection with tender(s) number(s) _____ on behalf of the company/close corporation/..... (other)*.

SIGNED AT ON THIS THE DAY OF 20

.....
ON BEHALF OF THE COMPANY/CLOSE CORPORATION/.....

CAPACITY

.....
SIGNATURE OF SIGNATORY

WITNESSES:

1.....

2.

* Delete *whichever is* not *applicable*

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.....PROVINCIALADMINISTRATION/
 TRANSPORT AUTHORITYICORE CITY
 DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

**FORM 5: CERTIFICATE OF AUTHORITY FOR SIGNATORY AND DECLARATION OF JOINT AND
 SEVERAL LIABILITY IN RESPECT OF A CONSORTIUM**

Signatories for consortia must establish their authority by attaching a copy of the relevant resolution/agreement of the parties to such consortium, duly signed and dated.

We, the undersigned,

carrying on business as a consortium under the name and style of

.....

resolved/agreed at a meeting held at. on the.day of.20 ... that:

1. with regard to tenders by the consortium to the Employer, we bind ourselves or respective corporations, or companies *in solidum* for any indebtedness, obligation or liability which may become due, owing and payable to the Employer by the consortium. We undertake immediately to discharge the debt, obligation or liability to the Employer on demand. We renounce the *beneficium ordinis seu excussionis et divisionis* and all other legal exceptions that could be raised or pleaded in answer to any claim by the Employer, thus allowing the Employer to enforce this undertaking against any one or more of us and cause execution to be levied against our assets without any prior or simultaneous action against the consortium or any other of us;
2. we individually indemnify the Employer and will immediately pay to the Employer on demand the amount of any claim which may be owing by the consortium. We undertake that our liabilities to the Employer in terms hereof, shall not be affected by any change in the composition of the consortium from time to time unless the Employer has expressly released us therefrom in writing. Any amounts and due dates of any liability, obligations or debt owed by the consortium shall be proved by a certificate signed by any official of the Employer;
3. the Employer may regard this consortium as a legal person and that we will give due notice in writing in the event of any alteration in the composition of the consortium. Such notice will be binding on the consortium if given in its name by any of the signatories hereto. Should any conflicting instructions be given at any time by different parties, the Employer shall be entitled to act or decline to act on any of the instructions in its absolute discretion, which decision by the Employer shall be final and binding on the consortium; and

4. Mr/Ms (the signatory), whose signature appears below, has been duly authorised to sign all documents in connection with tender(s) number(s) on behalf of the consortium.

SIGNED AT ON THIS THE DAY OF 20

SIGNATURES OF ALL PARTIES TO THE CONSORTIUM:

1.....

for:

2.

for:

3.

for:

.....
SIGNATORY

WITNESSES:

1.....

2.

* Delete whichever is not applicable

FULL NAMES OF COMPANIES, CLOSE CORPORATIONS, PARTNERSHIPS AND/OR NATURAL PERSONS FORMING THE CONSORTIUM:

1.....

2.

3.

12

.....PROVINCIAL ADMINISTRATION/
 TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

**FORM 6: CERTIFICATE OF NON-COLLUSIVE TENDER (IN RESPECT OF A SINGLE TENDERER
 (COMPANY, CLOSE CORPORATION, PARTNERS) NATURAL PERSON ETC.)**

I/we certify that this is a bona fide tender.

I/we also certify that I/we have not done and I/we undertake that I/we shall not do any of the following acts at any time before the hour and date specified for the closure of submission of tenders for this contract:

- (a) Fix or adjust the amount of this tender by, or under, or in accordance with any agreement or arrangement with any other person or, where applicable, any person outside the consortium;
- (b) communicate to a person or, where applicable, any person outside the consortium, other than the person calling for these tenders, the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
- (c) cause or induce any other person or, where applicable, any person outside the consortium, to communicate to me/it the amount or approximate amount of any rival tender for this contract;
- (d) enter into any agreement or arrangement with any other person or, where applicable, any person outside the consortium, to the effect that such person will refrain from tendering for this contract, or as to the amount of any tender to be submitted or the conditions on which a tender is made, nor cause or induce any other person to enter into any such agreement or arrangement;
- (e) offer or pay or give or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person or, where applicable, any person outside the consortium, for doing or having done or causing or having caused to be done in relation to any tender or proposed tender for this contract, any act or thing of the sort described above.

In this certificate, the term —

"person" includes any persons, body of persons or association, whether corporate or not; and

"agreement or arrangement" includes any agreement or arrangement, whether formal or informal and whether legally binding ~~or~~ not.

"person outside the consortium" means a person other than a partner or an employee of a partner ~~or~~ the partnership ~~or~~ a company or close corporation being part of the consortium, or any employee of such a person, company or close corporation.

SIGNED AT **ON THIS THEDAY OF** **20**

.....
TENDER SIGNATORY ON BEHALF OF TENDERER

WITNESSES:

1.....

2.

..... PROVINCIAL ADMINISTRATIOW
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 7: IDAVIT REGARDING PREVIOI CONVICTIONS FOR OFFENCES

[To be completed by or on behalf of the tenderer.]

I, the undersigned,, chief executive officer/managing director/managing member/other (specify) of ("thetenderer")

hereby make oath/affirmation and say:

The tenderer and/or any director, member or other office bearer of the tenderer have/have not* been convicted of any of the following offences (state date of conviction and the court involved):

- An offence under the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) or a previous law, e.g. operating public transport without the necessary operating licence or permit
.....
- Any offence involving dishonesty or tax evasion
- An offence under the National Road Traffic Act, 1996, the Road Traffic Act, 1989 or other road traffic legislation for which a fine of more than R2000 or imprisonment for more than three months was imposed
- An offence listed in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)
.....
- Possession of an unlicensed firearm or dangerous weapon as defined in the Dangerous Weapons Act, 1968 (Act No. 71 of 1968), or illegal possession of explosives
.....

A conspiracy, incitement or attempt to commit an offence mentioned above
.....

[If space is insufficient, provide details on a separate sheet.]

SIGNED and sworn to/affirmed before me at on this day of
..... 20..... by the deponent who acknowledged that he/she knows and understands
the contents of this affidavit.

.....
Commissioner of Oaths

• *Delete whichever is not applicable.*

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

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 8: DECLARATION OF INTEREST

Any natural or legal person, including a person employed by the State, including a provincial administration, transport authority or core *city* (called "the State" in this document) or a person who acts on behalf of the State or a person having a kinship with a person employed by the State, including blood relationship, may make an offer or offers in terms of this tender invitation. In view of possible allegations of **favouritism** should the resulting tender, or part thereof, be awarded to persons employed by the State, or to persons who act on behalf of the State or to persons connected with or related to them, it is required that the tenderer or his or her authorized representative declares his or her position *vis-à-vis* the evaluating authority and/or his or her interest, where —

- the tenderer is employed by the State or acts on behalf of the State; and/or
- the natural or legal person on whose behalf the tender document is signed has a relationship with a person who is involved with the evaluation of the tender or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation of the tender.

In order to give effect to the above, the following questionnaire must be completed and submitted with the tender:

1. Are you or any person connected with the tenderer employed by the State, the Employer or the Tender Board? YES/NO*

If so, state particulars:

.....

.....

2. Do you, or any person connected with the tenderer, have any relationship (family, friend or other) with a person employed by the State, the Employer or the Tender Board or their administration who may be involved with the evaluation or adjudication of this tender?

YES/NO*

If so, state particulars:
.....
.....

- 3. Are you, or any person connected with the tenderer, aware of any relationship (family, friend or other) between the tenderer and any person employed by the State, the Employer or the Tender Board or their administration who may be involved with the evaluation or adjudication of this tender?

YES/NO*

If so, state particulars:
.....
.....

SIGNED AT ON THIS THE DAY OF 20

.....
TENDERERSIGNATORY ON BEHALF OF TENDERER

WITNESSES:

1.

2.

.....
POSITION OF DECLARANT

* Delete whichever is not applicable

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..... PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

**FORM 9: SCHEDULE OF EXISTING PASSENGER TRANSPORT SERVICES
OPERATED BY TENDERER**

In the table provided below the Tenderer must provide details of existing passenger transport services operated by him or her, if any.

<i>Service Area</i>	Number of Routes	Number & Type of vehicles	Approx. Total Daily km	Average Daily Passengers

• *Delete whichever is not applicable*

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.....PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT
TENDER NO.

FORM 10: SCHEDULE OF EXISTING OR PROPOSED VEHICLES

- Note:**
1. All vehicles used must be roadworthy as required by the Road Traffic Act, 1989.
 2. Tenderers must only supply details of those vehicles that are intended for use on this contract.
 1. Certificates of homologation for all vehicle types to be used during the contract period **must be** attached to this schedule.
 2. A copy of the last vehicle licence issued **must** be attached to this schedule for vehicles that are currently owned by the Operator.
 3. ,Where vehicles are to be purchased or leased a copy of the vehicle licence and proof ~~that~~ they have been registered in terms of the National Transport Information System (NaTIS) must be produced before the commencement of operation of this tender.
- A. In Table A provided below the Tenderer must provide details of his or her current vehicle fleet to be used on this contract, including spare vehicles.
- B. In Table B provided below the Tenderer must provide details of new or additional vehicles that are to be acquired for this contract.

22

.RAGE AGE CALCULATION: CHASSIS BODIES
pies of contracts to be provided if requested

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

DIRECTORATE: PUBUC TRANSPORT

TENDER NO.

FORM 11: SCHEDULE OF ELECTRONIC INFORMATION AND TICKET EQUIPMENT (EE)

In the table provided below the Tenderer must provide details of the electronic ticket machines that will be used in all vehicles in order to meet the data collection requirements of the Employer as set out in clause 16.1 of the General Conditions.

ELECTRONIC TICKET MACHINES

Manufacturer	Model	Total number
Contact person	Telephone number	Proposed installation date

.....PROVINCIAL ADMINISTRATIO
 TRANSPORT AUTHORITY CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO. ---

FORM 12: SCHEDULE OF QUANTITIES

Note: The number of months allocated in the schedule is only an estimate. The Operator will be paid each month for the actual scheduled revenue kilometres operated according to the **relevant** band (see clause 32.2 of the General Conditions).

Band	Scheduled revenue kilometres per Month	Estimated number of months	Estimated kilometre quantity during 5 years	Tender rate (T R) per kilometre		Amount (T R x Quantity)	
				R	c	R	c
1	Greater than 200 000	4	800 000				
2	180 001 - 200 000	6	1 140 000				
3	150 001 - 180 000	40	6 600 000				
4	120 001 - 150 000	5	675 000				
5	Less than 120 000	5	600 000				
Total Tender Amount		60	9 815 000	Sub Total			
Establishment Cost 1.0% of sub total cost							
Total Tender Amount							

.....
 TENDERER'S SIGNATORY ON BEHALF
 OF TENDERER

DATE

..... PROVINCIAL ADMINISTRATION/TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 13 : ESTIMATED INCOME AND EXPENDITURE FOR FIRST TWELVE MONTHS OF CONTRACT

For evaluation purposes, the tenderer must supply the estimated income and expenditure required by this form for the first year of the contract period to demonstrate the cost structure on which the tender has been based. If such information is not provided the Employer reserves the right not to consider the tender. The information will be treated as confidential.

MONTH	1	2	3	4	5	6	7	8	9	10	11	12	TOTAL
1. PAID KMS 1000km													
2. TOTAL OPERATING REVENUE													
Cash R1000													
MJT R1000													
Scholars R1000													
Kilometre Subsidy R1000													
Contract* R1000													
Special Hire* R1000													
3**. TOTAL EXPENDITURE R1000													
Profit (Loss) 2 minus 3 R1000													

* Contract and Special Hire revenue is to be included for evaluation purposes only.

** A full disclosure of these costs is to shown on the next page.

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____PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 15: RDP [SOCIAL INVESTMENT AND TRANSFORMATION] PROPOSAL

The tenderer must provide details of actions to be taken in support of reconstruction and development of the community served by the bus service (Special Conditions clause 13), below.

No.	DESCRIPTION OF ACTION	MEASURABLE OUTPUT	IMPLEMENTATION DATE	ESTIMATED ANNUAL VALUE (R)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

..... PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY KORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 16: PROPOSED ORGANISATION STRUCTURE

The management organisation structure that is proposed to be established to manage the contract must be indicated by means of an organogram.

Tenderers must indicate the management organisation structure proposed to manage the contract. Tenderers must state which staff categories will be full time and which will be part time.

-----PROVINCIAL ADMINISTRATION
 TRANSPORT AUTHORITY/CORE CITY
 DIRECTORATE PUBLIC TRANSPORT

TENDER NO.

FORM 17 SCHEDULE OF EMPLOYEES NEEDED FOR COI

JOB CATEGORY	NUMBER	MINIMUM WAGE*
Inspector		
Driver/Conductor, Conductor, OMO		
Regulator, Transport Officer, Rank Despatcher, Point Controller		
Senior Regulator		
Despatcher, Route Despatcher, Sub-Depot Despatcher		
Sales Point Controller, Clipcard Seller, Season Ticker Seller		
Ticket Seller, Cashier Mobile, Driver Cashier Mobile		
Flycheck Driver, Chauffeur, Service Vehicle Driver		
Light Vehicle Driver, Mobile Driver		
Roster Clerk (Traffic), Traffic Clerk		
Private Hire Clerk, Special Hire Clerk		
Ticket Office Clerk, Cashier, Setright Clerk		
Senior Ticket Office Clerk		
Senior Operations Clerk		
Senior Cashier		
Operations Clerk, Clerk (Traffic)		
Duty Staff Bus Driver		
Operator		

Hostess, Steward		
(5) ENGINEERING		
Artisan (negotiated for)		
Operatives(grades A, B, C and D)		
Honorary Artisan		
Trade Worker (Grades P16 to P14)		
Trade Trainee (Grades P16 to P14)		
Grade 5		
Technician		
Assistant Technician		
Grade 4		
Artisan's Assistant		
General Hand		
Trade Assistant (P19 to P17)		
Works Staff, General Worker		
Tyre Attendant		
Tyre Programmer		
Senior Engineerina Clerk, Engineerina Clerk		
Stores Clerk, Stores Assistant		
Driver Shunter, Technical Driver		
JOB CATEGORY	NUMBER	MINIMUM WAGE"
Setright Mechanic		
Vehicle Checker (FOWL)		
Fuel Attendant		
Steam Jenny Operator, Steam Cleaner		
Bus Cleaner, Cleaner, Bus Washer		
Fork Lift Driver		
Greaser		
Workshop Cleaner, Cleaner, Yard Cleaner		
Handyman, Handyman Estates		
Labourer		
Trimmer, Upholsterer		

Assistant Handyman		
Spray Painter, Painter, Signwriter		
Assistant Painter		
Stores Driver, Heavy Vehicle Driver		
Data Typist, Data Input Clerk		
Stores Data Clerk		
Shedman (Grades A3 to A5)		
Shunter Driver		
Taco Mechanic, Taco Clerk		
Brake Attendant		

***NOTE:**

These wages are the minimum that will be paid per month to employees required to operate this tender.

The Tenderer is advised that minimum wages must be in accordance with the latest Main Agreement of the South African Road Passenger Bargaining Council (SARPBAC). (see clause 34 of the General Conditions).

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.....PROVINCIALADMINISTRATION/
TRANSPORT AUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 1 } DECLARATION AND UNDERTAKING IN REFERENCE OF SECTION 48 OF THE ACT

[To be signed by the person specified in Form 1 as authorised to sign tender documents on behalf of the tenderer.]

I, _____ in my capacity as _____ of _____ [the tenderer], and duly authorised to make this declaration, hereby confirm that I am aware of and understand the requirements of section 48 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) ("the Act"), pertaining to the requirements for qualification as a tenderer for a subsidised service contract.

I confirm that _____ [the tenderer]—

- (a) conducts his/her/its public transport operations according to business principles with financial ringfencing, as required by section 48 of the Act; and
- (b)
 - (i) is liable to pay income tax; or
 - (ii) if not liable to pay income tax, was the operator of a subsidised service on 1 October 1996, which service was not previously subject to an interim contract or a current tendered contract; and
- (c) has not received for the purposes of the present tender and any contract which may be awarded to the tenderer as a consequence of the present tender, and will not for the duration of any contract which may be awarded to it pursuant to that tender, receive any unfair advantage as regards access to financial or other support or resources from any organ of state, unless such advantage is part of a scheme which applies generally, approved by the Minister, to protect or advance public transport operators disadvantaged by unfair discrimination.

I am aware that should any aspect of the above declaration be proved false or incorrect, it may result in the disqualification of the tenderer, or in termination of any contract awarded to the tenderer pursuant to the above tender.

Authorised signatory

----- PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

**FORM 19: CERTIFICATE OF CONDITIONS OF A LOAN, GUARANTEE OR OTHER FINANCIAL
ASSISTANCE PROVIDED TO THE TENDERER**

Instructions

The purpose of this form is to illustrate to the evaluating committee what forms of assistance are provided to the tenderer by third parties. The evaluating committee will use the form to determine provisionally whether a tenderer is the recipient of an unfair advantage as defined in the Act.

This form must be completed by any entity that provides or intends to provide assistance to the tenderer, including but not limited to:

- its banker;
- any ultimate holding company/entity;
- any direct holding company/entity;
- any subsidiary company/entity or;
- any fellow subsidiary company/entity.

The types of assistance to be listed include, but are not limited to:

- Bank overdrafts
- Guarantees
- Suretyships
- Lease of the bus fleet
- Hire of the bus fleet
- Funds advanced to the tenderer
- Expenditure paid on behalf of the tenderer
- Loan accounts (current and long term)

Tenderers are urged to ensure that this form is completed by any organisation which provides or intends to *provide* assistance to the tenderer. *If in doubt*, tenderers must discuss the question with the Employer through the main contact person as indicated in the tender documents.

In the case of the *tenderer's* banker, the form must be signed by the bank manager. In the case of any other organisation, the form must be signed by a person with the necessary *authority* (e.g. the chief financial officer or equivalent, or the chief executive officer or equivalent). *If in doubt*, tenderers must discuss the question with the Employer through *the* main *contact* person as indicated in the tender documents.

I,, in my capacity as Branch Manager/Chief Executive Officer of (**“the Financier”**), and duly authorised to provide this **certificate** on behalf of the Financier, hereby confirm that the Financier has provided (the tenderer) with financial assistance in the form of (mark applicable one(s) with an X):

- Loans
- Guarantees
- Suretyships
- Facility(ies)**
- Other (**specify**)

Particulars of any and all material financial assistance provided to the tenderer and the terms and conditions thereof are **set** out below:

- 1. Description**

- a)** Present value of assistance
- b)** Future value of assistance already negotiated
- c)** Date of expiry of assistance
- d)** Repayment terms
- e)** Security (nature, value)
- f)** **Name(s)** of entity(ies) providing security, directly or indirectly
-
- g)** Cost of assistance (e.g. interest at prime rate)
- h)** Other material terms and conditions pertaining to the assistance
-

- 2. Description

 - a) Present value of assistance
 - b) Future value of assistance already negotiated
 - c) Date of expiry of assistance
 - d) Repayment terms
 - e) Security (nature, value)
 - f) Name(s) of entity(ies) providing security, directly or indirectly
 - g) Cost of assistance (e.g. interest at prime rate)
 - h) Other material terms and conditions pertaining to the assistance

- 3. Description

 - a) Present value of assistance
 - b) Future value of assistance already negotiated
 - c) Date of expiry of assistance
 - d) Repayment terms
 - e) Security (nature, value)
 - f) Name(s) of entity(ies) providing security, directly or indirectly
 - g) Cost of assistance (e.g. interest at prime rate)
 - h) Other material terms and conditions pertaining to the assistance

- 4. Description

 - a) Present value of assistance
 - b) Future value of assistance already negotiated
 - c) Date of expiry of assistance
 - d) Repayment terms
 - e) Security (nature, value)
 - f) Name(s) of entity(ies) providing security, directly or indirectly
 - g) Cost of assistance (e.g. interest at prime rate)
 - h) Other material terms and conditions pertaining to the assistance

[Particulars may be attached by means of an annexure.]

I confirm that the Financier's decision to provide all facets of the above financial assistance to the tenderer was based solely on commercial considerations, following an evaluation of the operations and financial position of the tenderer.

I specifically record that except as indicated above, the decision to provide financial assistance to the tenderer was not directly or indirectly influenced by the intervention of any organ of state.

I confirm that the above particulars accurately represent all of the material aspects of the agreement between the Financier and the tenderer, and that no undisclosed terms, conditions or warranties apply.

Branch Manager/CEO

Full names

Date

Official stamp of Financier:

-----PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITY CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 20: DECLARATION OF FINANCIAL SUPPORT BY IER

Instructions:

1. This form must be completed *for* each participant in a *consortium/joint* venture and all *sub-contractors* to the *Operator/consortium/joint* venture that are known at the time of tendering. The form must also be *submitted during* the *course* of the contract in respect of each *future* sub-contractor.
2. This form must be completed by each *person/entity* exercising ownership control over the tenderer *or* each *consortium/joint* venture member.
3. *If there* is any uncertainty regarding *the entities* within a group of *entities* that must sign this declaration, *tenderers* must ask the Employer *for* guidance.

I,, in my capacity as Chief Executive Officer of (“the Owner), and duly authorised to make this declaration, hereby confirm that the Owner exercises ownership control over (“the tenderer”) as contemplated in section 48(6)(a) of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000).

I further confirm that the Owner has made or provided financial assistance or support to the tenderer by means of the following:

1.
2.
3.
4.

(including investments, grants, subsidies, concessions, loans, guarantees *or* other means)

Material particulars of such assistance are set out below:

- 1.** Description
 - a)** Present value of assistance
 - b)** Future value of assistance already negotiated
 - c)** Date of expiry of assistance
 - d)** Repayment terms
 - e)** Security (nature, value)
 - f)** Name(s) of entity(ies) providing security, directly or indirectly
 - g)** Cost of assistance (e.g. interest at prime rate)
 - h)** Other material terms and conditions pertaining to the assistance
-
- 2.** Description
 - a)** Present value of assistance
 - b)** Future value of assistance already negotiated
 - c)** Date of expiry of assistance
 - d)** Repayment terms
 - e)** Security (nature, value)
 - f)** Name(s) of entity(ies) providing security, directly or indirectly
 - g)** Cost of assistance (e.g. interest at prime rate)
 - h)** Other material terms and conditions pertaining to the assistance
-
- 3.** Description
 - a)** Present value of assistance
 - b)** Future value of assistance already negotiated
 - c)** Date of expiry of assistance
 - d)** Repayment terms
 - e)** Security (nature, value)
 - f)** Name(s) of entity(ies) providing security, directly or indirectly
 - g)** Cost of assistance (e.g. interest at prime rate)
 - h)** Other material terms and conditions pertaining to the assistance

- 4. **Description**
- a) Present value of assistance
- b) Future value of assistance already negotiated
- c) Date of expiry of assistance
- d) Repayment terms
- e) Security (nature, value)
- f) Name(s) of entity(ies) providing security, directly or indirectly
-
- g) Cost of assistance (e.g. interest at prime rate)
- h) Other material terms and conditions pertaining to the assistance
-

I specifically record that, except as indicated above, the decision to provide financial assistance to the tenderer was not directly or indirectly influenced by the intervention of any organ of state.

I confirm that the above particulars accurately represent all of the material aspects relating to the financing arrangements between the Owner and the tenderer, and that no undisclosed terms, conditions or warranties apply.

Chief Executive Officer

.....

Date

PROVINCIAL ADMINISTRATION

THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEENAND

FORM 21: PASSENGER LIABILITY INSURANCE

The Operator must provide details of its Passenger Liability Insurance, below.

Limit of liability per single claim: R.

Insurer:

Period of Insurance to

The Operator must attach a letter or certificate of confirmation of insurance hereto

.....
OPERATOR/SIGNATORY ON BEHALF
OF OPERATOR

DATE

**FORMS TO BE COMPLETED
ONLY AFTER TENDER IS ACCEPTED**

.....PROVINCIALADMINISTRATION/
TRANSPORTAUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO. —

FORM 22: DEED OF SURETYSHIP

WHEREAS
(hereinafter called the Employer) on the day of 20..... notified

.....
(hereinafter called the Operator) that the Operator's tender for the provision of public passengertransport services between and surrounding areas has been accepted;

AND WHEREAS, in accordance with the provisions of the tender documents, a contract between the Employer and the Operator thus came into being (hereafter called "the contract"):

AND WHEREAS it is provided by such contract that the Operator shall provide the Employer with security by way of suretyship for the due and faithful fulfilment by him or her of all the terms and conditions of such contract;

AND WHEREAS I/we
the undersigned, acting herein in my/our capacity as
and as such duly authorised to represent has/have at the request of the Operator,
agreed to give such security;

I/We, the undersigned, (name) and
..... (name)
in my/our respective capacities as (position) and
..... (position) of
.....(hereafter referred to as the
"the Guarantor")

and being duly authorised to sign and incur obligations in the name of the Guarantor by virtue of a resolution of the Board of Directors of the Guarantor, a certified copy of which is attached hereto, hereby irrevocably and unconditionally guarantee and bind the Guarantor, jointly and severally to the Employer as guarantor and co-principal debtor, in solidum, with the Operator for the due and proper performance and completion of the contract by the Operator and undertake on behalf of the Guarantor that; 1 The Guarantor shall— 1.1 pay without delay to the Employer on first written demand any loss or damage which the Employer may sustain as well as any penalties or claims and legal costs to which

the Employer may become entitled by reason of the non-fulfilment or breach by the Operator of the terms of the aforesaid contract, always provided that the liability of the Guarantor under this guarantee shall not exceed the sum of R (n words);

1.2 make such payment to the Employer at _____

- 2. The Guarantor hereby renounces the benefits of the exceptions *non numerate pecuniae, non causa debiti, ordinis seu excussionis et divisionis* and *de duobus vel pluribus reis debendi*, the meaning of which I/we am/are fully acquainted with, and all legal exceptions which may be pleaded against the validity of the Guarantee.
- 3. This Guarantee shall be irrevocable and shall remain in force and effect from the date hereof and shall expire on the date when the Employer has notified the Operator that all his or her obligations or all his or her outstanding obligations in terms of the contract have been fulfilled.
- 4. The Guarantor agreed and declare that all admissions and acknowledgements of indebtedness by the Operator shall be binding on the Guarantor, that the indebtedness of the Operator to the Employer shall at all times be determined and proved by a written certificate of the official of the Employer responsible for the management of the contract, and such certificate shall be binding on the Guarantor and be *prima facie* proof of the Guarantor's indebtedness and will be valid as a liquid document against the Guarantor for the purposes of proceedings including but not limited to provisional sentence proceedings instituted against the Guarantor in any court of law having jurisdiction.
- 5. The Employer shall be entitled without prejudice to its rights hereunder to give time to and compound with, release from liability or make any other arrangement with the Operator or his or her assigned liquidators, judicial managers and any such actions shall not exonerate the Guarantor from its liability hereunder.
- 6. Neither the failure of the Employer to enforce strict or substantial compliance by the Operator with the Operator's obligations, nor any act, conduct, or omission by the Employer prejudicial to the interests of the Guarantor, will discharge the Guarantor from liability under this Guarantee.
- 7. This guarantee shall exist independently of the contract or amendment, variation or novation thereof.
- 8. No change or addition to or other amendments of the terms of the contract or any of the contract documents which may be made between the Employer and the Operator shall in any way release the Guarantor from any liability under this Guarantee, and the Guarantor hereby waives notice of such change, addition or amendments.
- 9. No variation, relaxation, waiver of, addition to, deletion from or cancellation of this Guarantee or any terms thereof shall be of any force or effect unless reduced to in writing, signed by the Employer.
- 10. The Guarantor chooses as its *domicilium citandi et executandi* and for the purpose of the service of all legal process the following physical address:
.....
- 11. The Employer shall be entitled, without reference to me/us, to release any sureties or other securities held by it, or to give time to or compound or make any other arrangement with the Operator.
- 12. This guarantee is neither negotiable or transferable and shall remain in full force and effect until 30 days after the expiration date of the contract, unless I/we are advised in writing by the Employer before the said expiration

date of its intention to institute claims, and the particulars thereof, in which event this guarantee shall remain in full force and effect until all such claims have been paid or liquidated.

- 13. The law of the Republic of South Africa shall be applicable to this guarantee and to any matter arising therefrom and I/we hereby accept the jurisdiction of the courts of the Republic of South Africa in respect of any matter arising from this guarantee.

SIGNED AT ON THIS THE DAY OF 20

.....
on behalf of SURETIES

WITNESSES:

1..... Name:

2..... Name:

-----PROVINCIALADMINISTRATION/
TRANSPORTAUTHORITY/CORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 23: CONTRACT

THIS CONTRACT CONCLUDED BETWEEN The ----- Provincial Administration/Transport Authority/Core City
(hereinafter called "the Employer") of the one part, herein represented by

.....
in his/her capacity as

AND

(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 the tender documents for Tender No and a tender by the Operator for the provision of the said services has been accepted;

NOW THIS CONTRACT WITNESSES AS FOLLOWS:

1. The Operator shall provide the services in accordance with the contract documents listed in clause 10.3 of the General Conditions.
2. This contract is awarded for a period of five (5) years from date of commencement.
3. In the event of discrepancies or differences between or in any documents forming part of, or connected with, or bearing upon the contract, they shall be determined and resolved in accordance with the provisions of clause 10 of the General Conditions of Contract.
4. In consideration of the payment made by the Employer to the Operator, as hereinafter mentioned, the Operator hereby undertakes to provide the said services in conformity in all respects with the provisions of the contract.
5. The Employer hereby undertake to pay the Operator in consideration of the said provision of services the amounts at the times and manner prescribed by the contract. The amounts to be paid by the Employer to the Operator for the due and faithful performance of the contract shall be at the rates shown in the Schedule of Quantities, Form 12 of the Tender Forms.

6. The operator undertake to surrender the public permits/operating licences to the relevant operating licence board in accordance with the Act and other applicable legislation for cancellation or amendment, as the case may be, at the end of the contract period, or if the contract is terminated in terms of clause 30 of the General Conditions, and undertakes not to oppose any applications for operating licences made by other operators whom may obtain contracts from the Employer to continue the services in so far as they relate to the routes in question.

SIGNED AT ON THIS THE DAY OF 20

.....
EMPLOYER

WITNESSES:

1..... Name:

2 Name:

.....
for OPERATOR (duly authorised thereto)

WITNESSES:

1. Name:

2 Name:

..... PROVINCIAL ADMINISTRATION/
TRANSPORT AUTHORITYKORE CITY

DIRECTORATE: PUBLIC TRANSPORT

TENDER NO.

FORM 23: PRO FORMA PAYMENT CERTIFICATE
