

**DEPARTMENT OF TRANSPORT****NOTICE 1044 OF 2015****PUBLICATION OF THE PERFORMANCE AGREEMENT BETWEEN THE  
MINISTER OF TRANSPORT AND THE BOARD OF CROSS-BORDER ROAD  
TRANSPORT AGENCY****CROSS-BORDER ROAD TRANSPORT ACT 1998 (ACT 4 OF 1998) NATIONAL  
LAND TRANSPORT (ACT 5 OF 2009)**

In terms of section 22A (3) of the Cross-Border Road Transport Act, 1998, as amended, read together with section 91 of the National Land Transport Act, 2009, the Minister of Transport hereby publishes Performance Agreement entered into between the Minister and the Board of Directors of Cross-Border Road Transport Agency for the financial 2015/16



Ms Dipuo Peters, MP

Minister of Transport

Date: 18/08/2015



## **PERFORMANCE AGREEMENT**

Entered into by and between

**GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

**HEREIN REPRESENTED BY THE MINISTER OF  
TRANSPORT**

and

**THE BOARD OF  
THE CROSS BORDER ROAD TRANSPORT AGENCY**

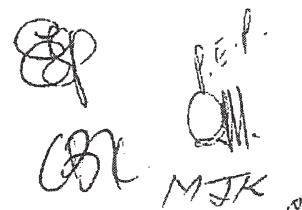
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## PERFORMANCE AGREEMENT

## MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY

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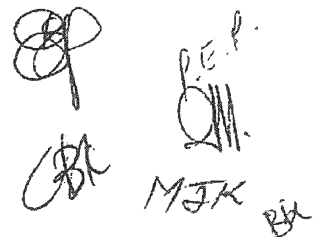
**1 INTRODUCTION**

- 1.1 The Entity has been established in terms of the Act and is listed in Part 2 of Schedule Three of the PFMA and the objectives and the functions of the Entity are governed by the Act;
- 1.2 In terms of sections 5 and 6 of the Amendment Act, it is clear that the intention of the Executive Authority is to enter into a Performance Agreement with each of the transport agencies which fall within the mandate of the Executive Authority.
- 1.3 The Performance Agreement represents the agreement between the Executive Authority and the Accounting Authority. It is a reflection of the expectations of each party expressed in terms of the outcomes and outputs in the Strategic Plan and the Annual Performance Plan.
- 1.4 The Accounting Authority must, in terms of the PFMA, comply with its fiduciary duties and manage all revenue, expenditure, assets and liabilities of the Entity effectively and efficiently;
- 1.5 The Executive Authority and the Accounting Authority wish to –
- 1.5.1 establish a transparent and accountable working relationship on matters relating to the implementation of the provisions of the PFMA, the Companies Act (if applicable) and the Act;
- 1.5.2 enter into this Performance Agreement, to assist the Parties to measure the Accounting Authority and the Entity's performance, and to support and manage the working relationship between them; and
- 1.5.3 enter into this Performance Agreement to give effect to the intention of the Executive Authority as recorded in the Amendment Act.

**2 DEFINITIONS AND INTERPRETATION****2.1 Definitions.**

In this Shareholder Agreement, the following expressions and words have the meaning assigned to them below and derivative expressions and words will have a corresponding meaning, unless inconsistent with or otherwise indicated by the context –

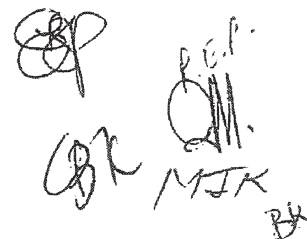
- 2.1.1 "Accounting Authority" means the Board of Directors as appointed in accordance with the Act;

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- 2.1.2 "Act" means the Cross-Border Road Transport Act (Act No. 4 of 1998), as amended;
- 2.1.3 "Articles" means the articles of association of the Entity in terms of the Companies Act;
- 2.1.4 "Amendment Act" means the Transport Agencies General Laws Amendment Act (Act 42 of 2007);
- 2.1.5 "Chairperson" means the Chairperson of the Accounting Authority;
- 2.1.6 "Committee" means a Committee of the Accounting Authority required in terms of the PFMA and the Regulations;
- 2.1.7 "Companies Act" means the Companies Act (Act No. 61 of 1973), as amended;
- 2.1.8 "Company Secretary" means the person appointed as the Secretary of the Accounting Authority as defined in the Companies Act and;
- 2.1.9 "Department" means the National Department of Transport;
- 2.1.10 "Director" means a member of the Accounting Authority as referred to in the Act and Companies Act;
- 2.1.11 "Entity" means The Cross Border Road Transport Agency;
- 2.1.12 "Effective Date" means date of signature of this Agreement by the last Party signing in time;
- 2.1.13 "Executive Authority" means the Minister of Transport or his/her delegate;
- 2.1.14 "Financial Year" means the Financial Year beginning on 1 April of a specific year and ending on 31 March of the following year;
- 2.1.15 "King Report" means the King Report on Corporate Governance for South Africa, 2002, as updated and amended;
- 2.1.16 "Member" means a member of a Committee;
- 2.1.17 "Memorandum" means the Memorandum of Association of the Entity;
- 2.1.18 "Month" means a calendar month;
- 2.1.19 "Parties" means the Executive Authority and the Accounting Authority or any one of them as the context may indicate;



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- 2.1.20 "PFMA" means the Public Finance Management Act (Act 1 of 1999), as amended;
- 2.1.21 "Regulations" means the Treasury Regulations to the PFMA initially published under GNR 345 of 9 April 2001, as amended;
- 2.1.22 "Representative" means a person appointed by the Parties in terms of this Performance Agreement to fulfil and administer the functions set out herein on behalf of the Party which appointed such person;
- 2.1.23 "Performance Agreement" means this document, as detailed in sections 5 and 6 of the Transport Agencies General Laws Amendment Amendment Act, including all annexures hereto;
- 2.1.24 "Statute" means any act of Parliament or regulation thereto or any other enactment having the force of law;
- 2.1.25 "Strategic Plan" means the Strategic Plan of the Entity, under Regulation 30.1.3 of the Regulations; and
- 2.1.26 "Writing" means handwritten, type-written or printed communication, including telegram, facsimile transmission, electronic transmission or any like communication and in "Writing" and "Written" shall have corresponding meanings.

2.2 Interpretation.

In this Performance Agreement –

- 2.2.1 unless the context indicates a contrary intention an expression which denotes -
- 2.2.1.1 any reference to the singular includes the plural and *vice versa*;
- 2.2.1.2 any reference to the natural person includes legal persons and *vice versa*; and
- 2.2.1.3 any reference to a gender includes the other genders;
- 2.2.2 when any number of days is prescribed same shall, unless otherwise specifically stated, be reckoned exclusively of the first and inclusively of the last working day;
- 2.2.3 where words have been defined in the body of this Performance Agreement, such words shall, unless otherwise required by the context, have the meanings so assigned to them throughout this Performance Agreement;

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- 2.2.4 where any provision contemplates a notice to be given or agreement to be reached between the Parties, such notice or agreement shall be in writing, unless expressly provided otherwise;
- 2.2.5 if any provision of this Performance Agreement is in any way inconsistent with the provisions of the PFMA, the Companies Act, or the Act, the relevant provision of the PFMA, the Companies Act, or the Act shall prevail, and this Performance Agreement shall be read in all respects subject thereto; and

**3 PURPOSE OF PERFORMANCE AGREEMENT**

- 3.1 The purpose of this Performance Agreement is to –
- 3.1.1 formalise and regulate the working relationship between the Executive Authority and the Accounting Authority, by amongst others, the roles and responsibilities of each party; and
- 3.1.2 give effect to the intention of the Executive Authority as captured in sections 5 and 6 of the Amendment Act.

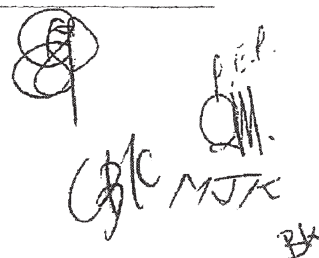
**4 LEGISLATIVE MANDATE OF THE ENTITY**

- 4.1 The legislative mandate of the Entity is set out in the Act and the Entity is required to perform and comply with this legislative mandate.
- 4.2 Concurrent with achieving the legislative mandate, the Entity shall deliver on and adhere to the national priorities of Government in so far as such priorities fall within the ambit of authority of the Entity.
- 4.3 The Accounting Authority shall integrate any governmental policy, relating to the Entity, into its Strategic Plan, key performance measures and indicators and borrowing programme in order to execute its legislative mandate.

**5 CRITICAL ASSUMPTIONS**

The Parties have assumed that the timeous submission of the documentation under this Performance Agreement being provided to the Accounting Authority is critical to:

- 5.1 the Department making informed decisions; and

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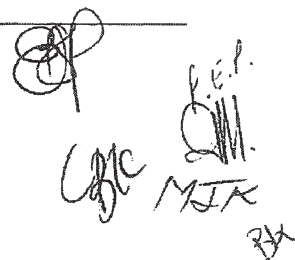


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- 5.2 providing the National Treasury and the Executive Authority with information which enables the efficient execution of the Executive Authority's mandate.
- 5.3 accordingly, the following documentation are required by the date allocated next to the document name annually–
- 5.3.1 Strategic Plan and Annual Performance Plan
- 1<sup>st</sup> draft by end of August
  - 2<sup>nd</sup> draft by end of November; and
  - Final draft by end of January
- 5.3.2 Performance Agreement, - End of February; (Draft – End of January)
- 5.3.3 Budget Inputs – End of February
- 5.3.4 MTEF Inputs where applicable - End of July
- 5.3.5 ENE Inputs - End of November
- 5.3.6 Annual Reports - End of August
- 5.3.7 AGM Notices - End of August

**6 ROLES AND RESPONSIBILITIES OF THE EXECUTIVE AUTHORITY**

- 6.1 As stated in section 63 of the PFMA, the role and responsibility of the Executive Authority is to exercise the Executive Authority's ownership powers to ensure that the Entity complies with the Act, the PFMA and the financial policies of the Executive Authority.
- 6.2 The Executive Authority may, in writing or other means desirable, instruct the Accounting Authority to discontinue any activity of the Accounting Authority within a specified period, where such activity is contrary to the strategic or economic interest of the Republic of South Africa.
- 6.3 The Executive Authority may, intervene in the following as the Executive Authority sees fit:
- 6.3.1 the overall assessment of the Accounting Authority's performance on the basis of the Entity's actual performance in delivering the desired outcomes and objectives of the Entity and pre-agreed objectives of Government;



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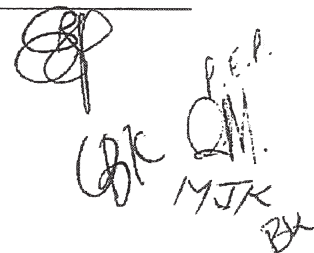


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- 6.3.2 the overall monitoring and reporting to Parliament of the financial, commercial and socio-economic strategic performance of the Entity. For this purpose, the Accounting Authority shall report to the Executive Authority on the matters and at the intervals stipulated in the PFMA and the Performance Agreement; and
- 6.3.3 The Executive Authority has the right to solicit independent advice and audit support in the discharge of Executive Authority role and functions in terms of the Performance Agreement and Annual Performance Plan, herein referred to Annexure A.

**7 UNDERTAKINGS BY THE EXECUTIVE AUTHORITY**

- 7.1 The Executive Authority undertakes to –
- 7.1.1 provide an environment that encourages the discretion of the Accounting Authority regarding matters falling within its authority, as provided for in the Act 5 and this Performance Agreement;
- 7.1.2 expedite the implementation of critical decisions;
- 7.1.3 facilitate the proper constitution of the Accounting Authority and to fill vacancies that arise promptly;
- 7.1.4 promote the Entity's programmes in Cabinet where such programmes have been approved by the Executive Authority;
- 7.1.5 engage with the Accounting Authority, before exercising any of his or her powers in terms of the Act, if the exercise of such power will –
- 7.1.5.1 affect the performance of the Entity's functions;
- 7.1.5.2 commit the Entity to implement or give effect to a decision made by the Executive Authority; or
- 7.1.5.3 have a substantial financial impact on the Entity;
- 7.1.6 facilitate the adjustment of agreed measures and indicators and/or provide the resources to enable the Entity to meet any such issued directives or any agreed plans; and
- 7.1.7 Meet the Board of Directors of the Agency at least once a quarter.



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**8 THE ENTITY****8.1 Role of the Accounting Authority**

The Accounting Authority collectively represents the Entity and all acts of or under the Authority of the Board, will be Acts of the Entity.

**8.2 Responsibilities of the Accounting Authority**

8.2.1 The Accounting Authority is responsible for the performance of the Entity and is fully accountable to the Executive Authority for such performance.

8.2.2 The Accounting Authority is bound by and shall abide by; its statutory and fiduciary duties and will exercise the fiduciary duties of due diligence care and skill.

8.2.3 The Accounting Authority adopts as guiding principles the prescripts of the King III Report on Corporate Governance.

8.2.4 The Directors of the Accounting Authority will disclose any personal interest in decisions taken by the Accounting Authority in the conflict register referred to in clause 8.2.9.18.17 below.

8.2.5 The Directors of the Accounting Authority agree to be individually and severally liable pursuant to the PFMA and the Companies Act, for fraud, reckless trading, failure to disclose interest in contracts, falsifying books and records, or making false statements.

8.2.6 The Directors agree that, with respect to negligence by a Director, the level of such liability referred to in 8.2.5 above, will vary according to the degree of a Director's obligation to be involved in the day-to-day activities of the Entity.

8.2.7 The Accounting Authority is responsible for timeously and prudently undertaking all key activities required for the efficient and effective running of the Entity, including capital decisions within the ordinary course of business.

8.2.8 The Accounting Authority shall provide a quarterly reporting package, the first of which is due on 31 July 2015 and is to cover the period of 1 April 2015 to 30 June 2015, to the Executive Authority. Subsequent quarterly reporting package will be provided to the Executive Authority for each Financial Year by the date indicated opposite the period stated below –

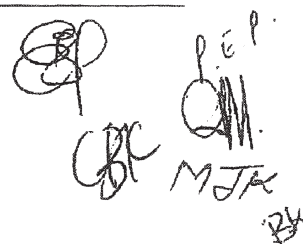
8.2.8.1 31 October 2015 for the period 1 July 2015 to 30 September 2015;

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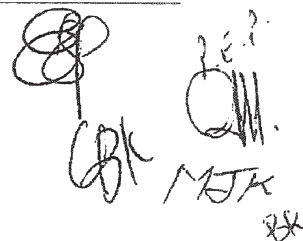
- 8.2.8.2 31 January 2016 for the period 1 October 2015 to 31 December 2015;  
and
- 8.2.8.3 30 April 2016 for the period 1 January 2016 to 31 March 2016.
- 8.2.9 The Accounting Authority shall ensure that:
- 8.2.9.1 each member of the Accounting Authority is fully aware of, and complies with all applicable Statutes, government policies and codes of business practices;
- 8.2.9.2 Each member of the Accounting Authority shows full commitment to the envisaged oversight role by attending all scheduled and or necessary meetings called outside of the annual schedule.
- 8.2.9.3 a member of the Accounting Authority who fails to attend three successive scheduled meetings without acceptable cause shall be recommended to the Executive Authority for removal from the Accounting Authority.
- 8.2.9.3.1 The acceptable causes shall only be the sickness of the member and a death in the family of the member.
- 8.2.9.4 Unless so mandated the discussions of the Accounting Authority inside a meeting of the Accounting Authority shall remain confidential.
- 8.2.9.5 it concludes a Performance Agreement with the Executive Authority on or before start of a new financial year;
- 8.2.9.6 the Directors of the Accounting Authority have unrestricted access to accurate, relevant information of the Entity;
- 8.2.9.7 new and existing Directors of the Accounting Authority attend effective induction, education and training;
- 8.2.9.8 the Directors of the Accounting Authority act on a fully informed basis, in good faith, with diligence, skill and care and in the best interest of the Entity, whilst taking account the interests of all stakeholders, including employees, creditors, customers, suppliers and local communities;
- 8.2.9.9 the Entity acts in accordance with, and achieves the key performance measures and indicators set in the Annual Performance Plan;

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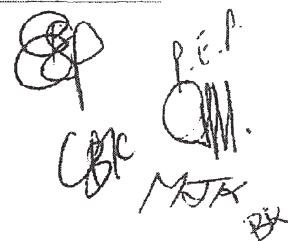
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- 8.2.9.10 the key performance measures and indicators the Executive Authority requires, as set out in this Performance Agreement and Annexure A, are achieved and can be measured;
- 8.2.9.11 the Entity maintains adequate accounting records and the Entity prepares financial statements for each Financial Year, which fairly presents the affairs of the Entity;
- 8.2.9.12 the Entity consistently applies suitable accounting policies, supported by reasonable and prudent judgments and estimates, in the preparation of the financial statements;
- 8.2.9.13 the Entity maximises the benefits from the resources allocated to it and undertake rigorous auditing processes and proactive financial management;
- 8.2.9.14 the Entity pursues efficiency and sustainability of the entity through developing enhanced administrative, evaluation, information and technical processes;
- 8.2.9.15 the Entity holds that number of annual general meetings and in the manner prescribed in the Companies Act if the entity is bound by the Companies Act, failing which, the Company should hold those as require to maintain its good corporate governance undertakings captured in this Performance Agreement;
- 8.2.9.16 develops a clear definition of the levels of materiality or sensitivity in order to determine the scope of delegation of authority and ensures that it reserves specific powers and authority to itself;
- 8.2.9.17 that all delegations of authority are reduced to writing and kept under review; and
- 8.2.9.18 the Entity –
- 8.2.9.18.1 investigates, and where appropriate, researches or employs methodologies that will be to the national benefit or could contribute directly or indirectly to alleviating the financial burden of those to whom the Entity provides services;
- 8.2.9.18.2 diligently adheres to the corporate objectives statement, Strategic Plan, reporting requirements for the relevant Financial Year;

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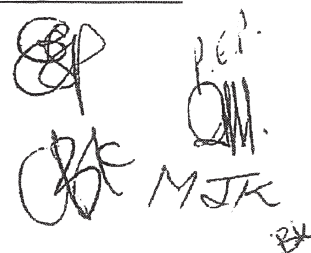
- 8.2.9.18.3 diligently carries out all necessary actions of the Entity in accordance with PFMA, the Companies Act, the Regulations and this Performance Agreement;
- 8.2.9.18.4 only engages in transactions within its ordinary course of business; and
- 8.2.9.18.5 only disposes of assets in accordance with the PFMA and the Act, within the normal course of business.
- 8.2.9.18.6 it gives strategic direction to and controls the Entity through the person of the CEO;
- 8.2.9.18.7 ensures that the Accounting Authority's plans and strategies are implemented;
- 8.2.9.18.8 complies with Statutes, government policies and codes of business practice;
- 8.2.9.18.9 develops and implements an effective succession plan for Executive Directors and adhere thereto;
- 8.2.9.18.10 develops and oversees the implementation of effective internal control procedures in accordance with the PFMA, the Regulations, the King Report and best practice governance;
- 8.2.9.18.11 communicates with the Executive Authority and relevant stakeholders openly and promptly;
- 8.2.9.18.12 formulates, monitors and reviews corporate strategy, major plans of action, risk policy, annual budgets and business plans;
- 8.2.9.18.13 maintains adequate accounting records on an annual or such more frequent basis as the Accounting Authority may determine;
- 8.2.9.18.14 at least annually, appraises the performance of the Directors, and Chairperson;
- 8.2.9.18.15 reviews and evaluates its required mix of skills and experience and other qualities in order to assess the effectiveness of the entire Accounting Authority, its Committees and the contribution of each individual Director during his/her entire term of office;

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- 8.2.9.18.16 establishes an appropriate mechanism for reporting the results of the Accounting Authority assessment to the Executive Authority;
- 8.2.9.18.17 monitors and manages potential conflicts of interest of the Directors and Management promptly and keeps a register of the conflicts of interests of all its employees;
- 8.2.9.18.18 the members of the Accounting Authority quarterly and annually declare their membership in other boards;
- 8.2.9.18.19 always maintains the highest standard of integrity, responsibility and accountability and ensures that it finds a fair balance between conforming to corporate governance principles and the performance of the Entity;
- 8.2.9.18.20 closely monitors the process of disclosure and communication and exercises objective judgment on the affairs of the Entity and its independent of management;
- 8.2.9.18.21 deals expeditiously with the Directions given by the Executive Authority and promote and support the policies of Government; and
- 8.2.9.18.22 support the Executive Authority and the Department with the development and implementation of the national strategic objectives.
- 8.2.9.18.23 The Accounting Authority warrants that it is fully conversant with all relevant statutory and fiduciary requirements having a direct or indirect bearing on –
- 8.2.9.18.24 the Performance Agreement ; and
- 8.2.9.18.25 the Accounting Authority's fiduciary duties.
- 8.2.9.19 Should the Accounting Authority become aware of any circumstances or problems, which has prevented it, is preventing it or will prevent it from performing its duties or functions that will have a significant effect on such duties and functions, it shall, as soon as is reasonably possible after becoming aware thereof, advise the Executive Authority in writing of such circumstances or problems.
- 8.2.10 The Accounting Authority undertakes not to delegate responsibility under the PFMA requirements stated below –



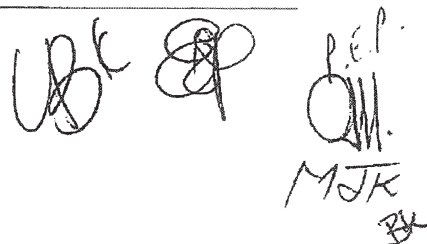
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- 8.2.10.1 development of the Strategic Plan for the Entity;
- 8.2.10.2 carrying out the quarterly reporting;
- 8.2.10.3 preparation of the annual report and financial statements;
- 8.2.10.4 submissions in terms of Section 54 (2) of the PFMA; and
- 8.2.10.5 development of the Materiality Framework ; and
- 8.2.10.6 applications for variation or renegotiation of the Performance Agreement.
- 8.3 Services by the Entity to the Executive Authority and Department
- 8.3.1 The Entity will provide those services as are required in terms of its legislative mandate, the Act and the Executive Authority's objectives.
- 8.3.2 The Entity will make itself aware of any changes to its service obligations but subject to, the provisions of clause 7.1.6 above, take all necessary steps to efficiently begin providing such services.
- 8.3.3 The Entity will provide technical support as required by the Department when the latter is negotiating and concluding international agreements with other states.
- 8.3.4 The Entity will remain abreast with international and national affairs in the cross-border road transport industry and make recommendations to the Executive Authority and the Department with regard to matters connected with national transport policy.
- 8.3.5 The Entity shall, upon request of the Executive Authority –
- 8.3.5.1 assist the Executive Authority, or any other person whom the Executive Authority may designate, in any investigation, prosecution or any other steps resulting from occurrence of any industry matter; or
- 8.3.5.2 furnish the Executive Authority, or such other person, with information, documents, written declarations or any other evidence which it has in its possession and which is related to such incident.
- 8.3.6 The Entity undertakes to co-operate and liaise with relevant law enforcement agencies regarding information in their possession that may be required by a court of law.



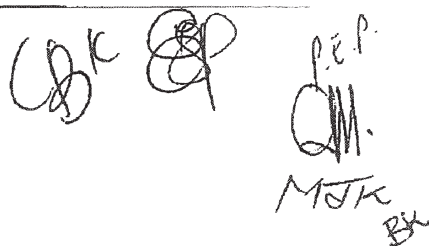
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- 8.3.7 The Accounting Authority undertakes to keep the Executive Authority informed on matters of concern between the Entity and other state departments and authorities within the Republic of South Africa.
- 8.3.8 The Accounting Authority undertakes to notify the Executive Authority of any agreements, which the Entity may enter into with other state departments.
- 8.3.9 The Entity undertakes to provide the information necessary to execute departmental functions and responsibilities as and when requested.
- 8.3.10 The Entity undertakes to provide Board resolutions under the signature of the Company Secretary (provided a delegation of authority is given by the Chairperson) or Chairperson to accompany documentation and submissions where approval by Executive Authority is necessary.
- 8.4 National Strategic Objectives
- 8.4.1 The Accounting Authority shall support, and undertake to assist the Executive Authority and the Department with the development and implementation of the National Transport Policy.
- 8.4.2 The Executive Authority shall formally document and communicate to the Accounting Authority any national strategic objectives to ensure that the strategic objectives of the Entity coincide with the national policy.
- 8.4.3 The Accounting Authority shall ensure that the Entity shall implement such policies, to promote and support certain specified key objectives of Government and shall report through its Chairperson to the Executive Authority.
- 8.4.4 The Accounting Authority shall implement at least the following policies –
- 8.4.4.1 those which the Executive Authority requires;
- 8.4.4.2 those which are legislated;
- 8.4.4.3 employment equity policy;
- 8.4.4.4 procurement policy, which takes into account Black Economic Empowerment and a fair and objective procurement process in terms of the BEE guidelines as set by the Department of Trade and Industry;
- 8.4.4.5 position the Entity to deal with the global and economic challenges facing the cross-border road transport industry by delivering a predictable safe, efficient and reliable service to all the Entity users;

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**PERFORMANCE AGREEMENT****MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY**

- 8.4.4.6 publish, and revise as or when required, review, a code of ethics and accountability of the Accounting Authority and the Entity; and
- 8.4.4.7 alignment of the Entity's overall operations with global cross-border road transport matters and trends as well as aligning the operations cluster with the Entity's strategies and all relevant stakeholders like the Department and those who use its services.

**9 CORPORATE GOVERNANCE**

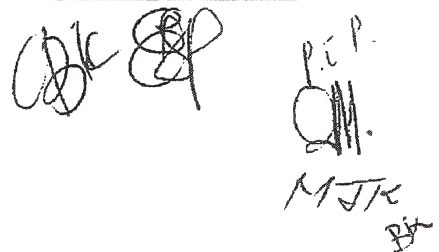
- 9.1 Subject to the provisions of the Act, the Entity will comply with the PFMA and the Regulations and shall comply, as far as is reasonably possible, with the King Report. The Accounting Authority must establish Committees to improve its effectiveness. Committees shall be formed as required by the business, provided that no less Committees shall be formed than the minimum set out by the PFMA and the Regulations.
- 9.2 The Parties shall, where applicable, implement good practice guidelines as recommended in the King Report and the Protocol on Governance in the Public Sector, 2002.
- 9.3 The Entity is required to support the Department on the finalisation of the appointment process of the Chief Executive Officer.
- 9.4 The Accounting Authority shall ensure that the employment contract with the Chief Executive Officer is concluded and a copy is provided to the Executive Authority.

**10 TREATMENT OF DEVELOPMENTAL OBJECTIVES**

The Accounting Authority shall ensure that recommendations of the Presidential Commission on SOE that are relevant to the entity are incorporated into its planning processes.

The Parties agree that the Entity's corporate objectives shall include developmental and socio-economic objectives and that the achievement of all such objectives shall be measured through quarterly and annual reports encompassing reports on: the reporting systems and –

- 10.1 key performance measures and indicators Annexure A; and PFMA reports
- 10.2 Governance reports (Annexure B) as stipulated in this Performance Agreement.



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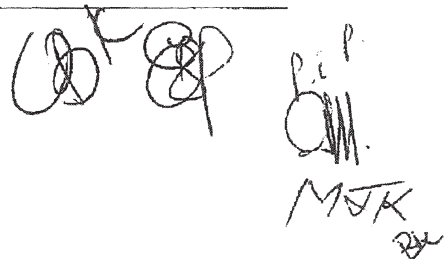
**PERFORMANCE AGREEMENT****MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY****11 DURATION AND PROCESS OF CONCLUDING PERFORMANCE AGREEMENT**

- 11.1 The content of the Performance Agreement shall remain the same but will be reviewed annually by the Executive Authority, in accordance with Regulation 30.1 of the Regulations.
- 11.2 The following minimum supporting documentation relating to this Performance Agreement is to be maintained by the Accounting Authority and access thereto is to be provided to the Executive and/or the Department on any reasonable request therefore –
- 11.2.1 fraud prevention plan;
  - 11.2.2 any approved amendments to the documents stated in 10.1 and 10.2 above;
  - 11.2.3 code of ethics;
  - 11.2.4 corporate governance schedules;
  - 11.2.5 management's register of conflicts of interest;
  - 11.2.6 risk management plan; and
  - 11.2.7 the signed statement of responsibility and delegations.

**12 QUARTERLY EVALUATION**

If the Executive Authority establishes that, after any quarterly assessment of the measures and indicators, the Entity fails–

- 12.1 to meet any one or more of the agreed measures and indicators by 25% or more for 2 (two) successive quarters, or for the year as a whole taking into account results to date and future forecasts; or
- 12.2 to meet the projected income or net cash; or
- 12.3 to adhere to the corporate objectives statement; or
- 12.4 to comply with the PFMA; or
- 12.5 to comply with any Statutes ; or
- 12.6 comply with governance matters; or
- 12.7 comply with quarterly performance indicators and measures indicated in the Annual Performance Plan; then the Executive Authority may, execute his executive authority in a manner that is consistent with his mandate.

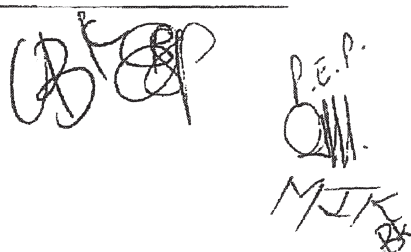
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## PERFORMANCE AGREEMENT

## MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY

**13 BUDGETING AND FINANCING CYCLE**

- 13.1 The Parties recognize that the Executive Authority before the commencement of the new Financial Year must approve the Entity's annual budget.
- 13.2 The Entity shall deal with any allocations or transfers from the national government, as listed in the schedules to the Division of the Revenue Act for the applicable Financial Year, in accordance with the provisions of the PFMA and the Regulations.
- 13.3 Payments to the Entity shall take account of –
- 13.3.1 actual outputs to be delivered;
  - 13.3.2 capital expenditure incurred in terms of the business plan for the year;
  - 13.3.3 the agreed minimum funds that will be at the Entity's disposal; and
  - 13.3.4 other relevant factors mentioned in the Act, the PFMA and the Regulations.
- 13.4 The Executive Authority undertakes to pay all amounts due to the Entity, provided that the Department has received the legislated PFMA clearance certificate relating to such amounts.
- 13.5 The Parties agree that, prior to the submission of the Entity's annual budget to the Executive Authority, the Chairperson and the Executive Authority shall consult and come to an agreement on the Entity's annual budget and for this purpose the Accounting Authority shall submit the annual budget to the Executive Authority no later than 30 November of each Finance Year.
- 13.6 Parties agree that the annual budget of the Entity shall include a projection of revenue, expenditure for that year.
- 13.7 The Accounting Authority shall before incurring any additional funding not provided for in the annual budget request approval in writing from the Executive Authority for onwards transmission and approval by the National Treasury.
- 13.8 The Entity shall not, without the approval of the Executive Authority, enter into transactions which bind or may bind the Entity to any future financial commitments except entering into lease agreements on behalf of the Agency and any other operational matters which is within prerogative of the Board.

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## PERFORMANCE AGREEMENT

## MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY

**14 COMMUNICATION BETWEEN EXECUTIVE AUTHORITY AND ACCOUNTING AUTHORITY**

- 14.1 The Executive Authority may interact with the Accounting Authority and/or the Chairperson as the Executive Authority sees fit.
- 14.2 Communication between the Executive Authority and the Chairperson, with respect to the national agenda and the matters relating to the Executive Authority's role in respect of the Entity, is anticipated to be enhanced through interactions in the Executive Authority/Chairperson forum.

**15 GENERAL OBLIGATIONS AND UNDERTAKINGS BY THE PARTIES TO ONE ANOTHER****15.1 Liaison with the Media**

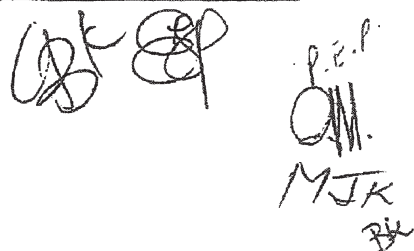
- 15.1.1 The Parties agree to advise each other in advance of any intention to liaise with the media, particularly if the subject matter to be addressed may have an adverse effect on the powers, rights and privileges of the other Party.
- 15.1.2 However, the above does not in any way deprive a Party of its right to freely communicate with the public on matters that relate to its core-function.
- 15.1.3 The Parties shall maintain an open and transparent relationship and appraise each other of decisions or planned decisions timeously, to avoid the occurrence of embarrassment and surprises; this applies especially to dealings with the media and other third parties.
- 15.1.4 The Parties agree that the Entity will only conduct media liaisons in consultation with the Department.

**15.2 Interaction with Foreign States and International Organisations**

Before any agreements representing South Africa's interest are negotiated or entered into, permission from the Executive Authority must be sought, clearly outlining the Entity's intentions and the implications for the Executive Authority and South Africa.

**15.3 Access to Information**

With reference to section 8.3.9 and in addition to information referred to in the Act and this Performance Agreement relating to the annexures hereto, the Accounting Authority undertakes to, on reasonable request –

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## PERFORMANCE AGREEMENT

## MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY

- 15.3.1 furnish the Executive Authority and/or the Department, with any such information as may be required from time to time;
- 15.3.2 provide the Executive Authority and/or the Department with copies of agendas, reports and confirmed minutes of every Accounting Authority meeting; and
- 15.3.3 by the Executive Authority, provide the Executive Authority and/or the Department with an updated report or information on the Entity's activities and financial position.

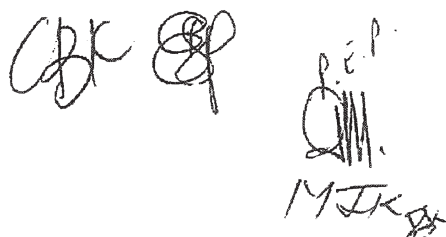
## 16 GENERAL

16.1 No Variation

- 16.1.1 Except for and as provided for previously in this Performance Agreement relating to the annexures hereto, no variation or consensual cancellation of this Performance Agreement, and no addition to this Performance Agreement, including this clause, shall be of any force or effect unless reduced to writing and signed by the Parties.
- 16.1.2 The Parties shall follow a process to be determined by the Department to effect any variations to this Performance Agreement.

16.2 Conflict Resolution

- 16.2.1 In the event of either Party failing to comply with any provision of this Performance Agreement, or if any dispute arises between the Parties as to the interpretation, application or performance of any provision of this Performance Agreement (including, but not limited to, whether or not the Entity has met its measures and indicators, proposed or new regulations and/or a decision by the Executive Authority affecting the agreed measures and indicators), the matter shall first be referred to the Representatives of the Parties who will use their best endeavours to resolve the dispute within fourteen (14) days of the dispute having been referred to them.
- 16.2.2 Should the Parties' Representatives fail to resolve the dispute within fourteen (14) days, the Parties' Representatives shall refer the dispute to the Executive Authority and the Chairperson, who shall use their best endeavours to resolve the dispute.

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## PERFORMANCE AGREEMENT

## MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY

16.2.3 Should the Executive Authority and the Chairperson fail to reach an agreement in regard to the resolution of the dispute, the Executive Authority may refer the matter to an independent third party appointed by the Executive Authority or his delegate (where allowed).

16.2.4 The matter shall be resolved by the decision of the Executive Authority, or where applicable, the person appointed in terms of clause 16.2.3 above.

16.2.5 The matter shall be resolved at the Executive Authority's discretion and any decision by the Executive Authority or such person shall be final and binding on the Parties.

16.3 Whole Agreement

16.3.1 This Performance Agreement, together with the annexures hereto (and any amendments or later annexures as approved by the Entity's relevant Executive Authority) constitute the whole agreement between the Parties. No instructions, agreements, representations or warranties between the Parties other than those set out herein, are binding on the Parties.

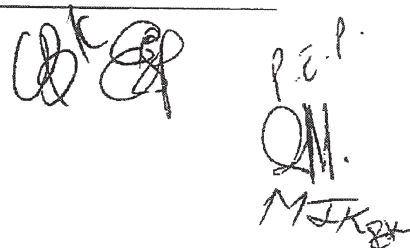
16.3.2 All undertakings and annexures to this Performance Agreement are declared active when this document is signed.

16.4 Domicilia and Notices

16.4.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Performance Agreement at which addresses all processes and notices arising out of or in connection with this Performance Agreement, may validly be served upon or delivered to the Parties.

16.4.2 For purposes of this Performance Agreement the Parties' respective addresses shall be –

16.4.2.1 Executive Authority:  
Department of Transport  
Forum Building  
C/O Struben and Bosman Streets  
Pretoria, South Africa

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## PERFORMANCE AGREEMENT

## MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY

Marked for the attention of - Ms Thuli Letsoalo, Director, Roads  
Public Entity Oversight

16.4.2.2

The Entity:

Cross Border Road Transport Agency

Glen Manor Office Park

Building 3, 138 Frikkie de Beer Street

Menlyn

Pretoria, South Africa

Marked for the attention of: Ms Pam Pokane, Chairperson of the  
Board

or at such other address in the Republic of South Africa of which the Party concerned may notify the other in Writing provided that no street address mentioned in this sub clause shall be changed to a post office box or poste restante.

16.4.3

Any notice given in terms of this Performance Agreement shall be in Writing and shall -

16.4.3.1

if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;

16.4.3.2

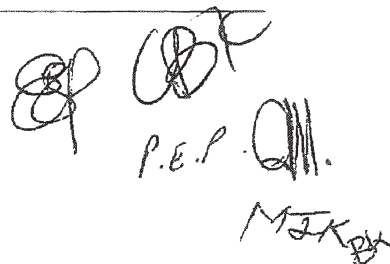
if transmitted by facsimile, be deemed to have been received by the addressee on the first (1<sup>st</sup>) business day following the date of dispatch, unless the contrary is proved.

16.4.4

Notwithstanding anything to the contrary contained or implied in this Performance Agreement, a written notice or communication actually received by one of the Parties from another, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

THUS DONE AND SIGNED AT Randburg ON THIS  
23rd DAY OF MARCH 2015.



- 22 -

  
P.E.P. M.K.P.

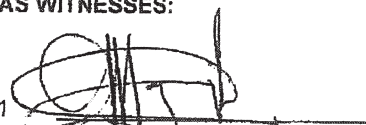
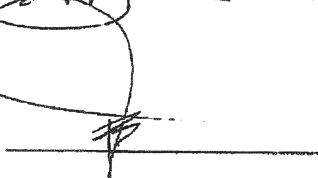
## PERFORMANCE AGREEMENT

MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY

## AS WITNESSES:

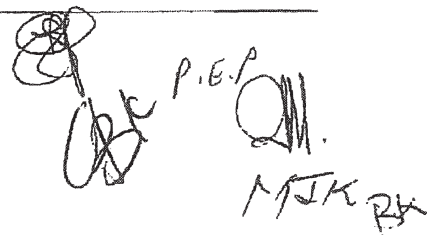
1 2   
CHAIRPERSON OF THE BOARD OF THE  
CROSS BORDER ROAD TRANSPORT AGENCY  
DULY AUTHORISED HERETOTHUS DONE AND SIGNED AT PRETORIA ON THIS  
31st DAY OF MARCH 2015.

## AS WITNESSES:

1   
2   
MINISTER OF TRANSPORT  
DULY AUTHORISED HERETO

**PERFORMANCE AGREEMENT****MINISTER OF TRANSPORT AND THE BOARD OF THE CROSS BORDER ROAD TRANSPORT AGENCY****PERFORMANCE AGREEMENT****MINISTER OF TRANSPORT AND THE C-BRTA****ANNEXURE B**

1. Income, balance sheet and cash flow achieved as compared to the budgeted performance anticipated in the Strategic Plan and actual performance in prior periods.
2. Actual revenue, expenditure compared with the estimated revenue, expenditure.
3. Annexure A for the upcoming Financial Year.
4. Achievement of key performance measures and indicators as per existing Annexure A.
5. Strategic Plan implementation and achievements.



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