

**THE SUPPLY OF QUALITY ROAD-BASED SUBSIDISED BRT REA VAYA PHASE
1A PUBLIC TRANSPORT SERVICES FOR THE CITY OF JOHANNESBURG IN
TERMS OF SECTION 42 OF THE NATIONAL LAND TRANSPORT ACT 5 OF 2009**

THIS CONTRACT IS CONCLUDED BETWEEN:

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

(hereinafter called 'the Contracting Authority' (CA)) of the one part, herein
represented by

Lutando Sithembele Maboza in his capacity as the Executive Director: Transport

AND

LITSAMAISO (Pty) Ltd (Registration Number: 2013/146129/07)

(Hereinafter called 'the Operator') of the other part, herein represented by
Nelson Rikhotso in his capacity as the Chief Executive Officer

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1. DEFINITIONS

- 1.1 In this contract, words in the singular also include words in the plural and *vice versa* where the context permits.
- 1.2 In this contract any word or expression to which a meaning has been assigned in the Act or the National Road Traffic Act has the meaning assigned to it by those Acts, as amended from time to time, and the following words and expressions shall have the following meanings, except where the context indicates otherwise:

"accepted", "approved", "authorised", "directed", "ordered" and "rejected" means accepted, approved, authorised, directed, ordered or rejected by the CA or Representative;

"Act" or "the Act" means the National Land Transport Act 5 of 2009 as amended;

"agreed" means agreed in writing by the CA or the Representative on the one hand and the Operator on the other hand;

"authorised stop" means a stop at a terminal authorised by the CA;

"articulated buses" means a bus that is 18 meter long which carries a minimum of 110 passengers and which have station level doors on the right-hand side of the bus only on the trunk routes.

"Automated Fare Collection Systems" means electronic equipment as part of the EFVE for the collection of fares and validation of fare media, passes, smart cards or value cards;

"buses" means a bus as defined in terms of the Act, being articulated buses and complementary buses.

"business day" means any day other than a Saturday, Sunday or official public holiday;

"business plan" means the business plan contemplated in Schedule 4;

"BBBEE Codes of Good Practice" means Codes of Good Practice on Broad Based Black Economic Empowerment (BBBEE) gazetted for the bus industry in terms of section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003 on 21 August 2009 (*Government Gazette* 32511);

"CA" means contracting authority being the City of Johannesburg Metropolitan Municipality, a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 and as contemplated in section 155 of the Constitution of the RSA, 1996 as a category A municipality, or the assignee, once the CA has ceded its rights and delegated its obligations pursuant to this contract to it;

"capacity" in respect of buses means the maximum number of persons that may lawfully be carried in the buses, including all seated and standing passengers, but excluding the driver as specified in the relevant roadworthy certificate or legislation;

"commencement date" means the date on which the services to be provided by the Operator will commence or such other date as may be agreed between the Parties in writing;

"complementary buses" means a bus which have kerb level doors on the left-hand side of the bus and station level doors on the right-hand side of the bus, which operate on the complementary routes and feeder routes and stop at Feeder Stops and Trunk Stations and that can carry 70 passengers.

"contract" or "this contract" means this contract between the CA and the Operator resulting from the acceptance of the Operator's tender by the CA, including the Schedules;

"contract rates" means the fixed and variable contract rates tendered by the successful Operator and accepted by the CA as being the rates applicable to this contract;

"clause" means a clause of these terms and conditions of this contract;

"day" includes all days, i.e. weekdays, Saturdays, Sundays and public holidays;

"date of first registration" means in relation to a bus the date of first registration-

- (a) pursuant to the original manufacture of the bus; or
- (b) the date of manufacture shown on its compliance plate or chassis compliance plate,

"depot" means the one or more areas identified by the CA from time to time, which are owned and/or leased by the CA and which are leased to the Operator to enable it to render the bus services, including the parking, cleaning, repair and maintenance of buses, pursuant to the right of use agreement in terms of clause 25.

"Deputy" or "Representative's Deputy" means the person appointed as such by the CA, or by the Supervising and Monitoring Firm (SMF) with the written consent of the CA, to perform the functions of such Deputy as set out in this contract;

"drivers" means those drivers employed by the Operator to operate the buses

"duty / bus schedule" means a document providing written instructions to a driver of a bus specifying the various trips to be operated;

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

"early trip" means a trip where the bus concerned departs from the departure point or any intermediate timing point specified in the timetable, before the time listed in the timetable;

"late trip" means a trip where the bus concerned arrives late at the arrival station/ authorised stop.

"EFVE" means fully operational electronic fare validation and collection equipment which is designed and intended to be used to record information electronically about a fare media when the fare media is inserted into the equipment, or presented to the equipment for scanning, as more fully described in the Electronic Fare Collection Guidelines issued by the Department in November 2007, as amended from time to time and subject to the Regulations relating to Integrated Fare Systems published under Notice R.511 in Government Gazette no. 34363 of 17 June 2011;

"end of term period" means the last twelve (12) months of the term of this contract or, if a termination notice is given by the CA, the period between the date that the termination notice is given and the termination date;

"fare" means the money to be collected by the CA from passengers in exchange for the right to travel on the buses

"fare evasion" occurs where a person uses public transport without a valid fare media and includes, but is not limited to-

- (a) using such transport with no fare media or concession, or with a fare media or concession that has expired or is defaced, altered or fraudulent;
- (b) using a fare media in the wrong zone or route or overriding the zone; and/or
- (c) using a fare media that was not validated;

"financial records" means proper books of account and all other financial and planning records of the Operator and any sub-contractors relating to the services that would ordinarily be maintained and compiled in terms of generally acceptable accounting practice including, but not limited to-

- (a) Cash flow records;
- (b) Financial modelling reports;
- (c) Notes, documents and data supporting the records and reports contemplated in (a) and (b) including management information systems, ledgers, spreadsheets, payroll registers, invoices, supplier invoices, bank statements, tax returns and insurance policies; and
- (d) Audited financial statements prescribed by any applicable legislation;

"financial report" means a detailed report and analysis by the Operator and any sub-contractors of its financial performance under this contract including copies of the Operator's most recent financial records referred to in the definition of "financial records", which must be its audited records where the law requires auditing;

"fixed contract rate" means the amount paid per bus per month to compensate the Operator for fixed or capital costs in terms of clause 37 as calculated in accordance with Schedule 9, and shall be fixed for the duration of the contract, but subject to escalation in terms of clause 35 and subject to Item 2.8 in Schedule 9 of MTCD;

"form" means a form shown in Volume 3 of MTCD;

"item" means a paragraph of the relevant schedule to this contract;

"MTCD" means, the **"Model Tender and Contracts Documents"**, the standardised tender and contract documentation issued in terms of the Act published under Notice 568 of 2013 in Government Gazette No. 36524 of 05 June 2013

"MFMA" means the Local Government: Municipal Finance Management Act 56 of 2003;

"month" means a calendar month calculated from the first day of the month to the last day of the month;

"NLTA" means the National Land Transport Act 5 of 2009, as amended.

"National Road Traffic Act" means the National Road Traffic Act 93 of 1996;

"National Road Traffic Regulations" means the National Road Traffic Regulations, 2000 promulgated under the National Road Traffic Act;

"On-board Unit" means that part of the units provided by the CA that facilitate daily operations of the Rea Vaya BRT System.

"OEM" means the original equipment manufacturer;

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

"operational records" means those records of the Operator and any sub-contractors relating to the operational aspects of the services of a kind that would ordinarily be maintained and which will at least include the following:

- (a) revenue kilometres operated;
- (b) trip cancellations and services not operated, including reasons;
- (c) environmental incidents and emergencies;
- (d) passengers conveyed;
- (e) any records relating to the operational aspects of the conduct of the services required by any legislation;
- (f) records of the services rendered by any sub-contractor in terms of Schedule 14; and
- (g) accidents involving injuries or fatalities.

"operational report" means a detailed report and analysis by the Operator of its operational performance under this contract including, but not limited to-

- (a) an analysis of trips not operated, trips cancelled and trips operated late and early;
- (b) an analysis of revenue kilometres completed;
- (c) an analysis of the condition of buses operated and inspected and details of buses found not to be contract compliant;
- (d) an analysis of the actual availability of buses for scheduled trips;
- (e) an analysis of the passengers transported subdivided as required by the CA;
- (f) details of complaints received;
- (g) details of the services rendered by any sub-contractor in terms of Schedule 14; and
- (h) any other information required by the CA,

which report must be in the form required by the CA and which enables the CA to measure the Operator's performance against any applicable performance benchmarks;

"Operator" means Litsamaiso Proprietary Limited (registration number: 2013/146129/07), a private company duly incorporated in accordance with the company laws of South Africa as described on page 1 of this contract, including its executors, administrators, trustees, judicial managers or liquidators, as the case may be, but not, except with the written consent of the CA, any cessionary, delegate or sub-contractor of the Operator;

"ownership control" means the ability to exercise or to influence substantially the exercise, of any of the financial and operating policies of the Operator so as to obtain a benefit from its activities;

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

"passenger kilometre capacity" means the capacity of a bus in terms of passenger kilometres over a specific route distance calculated by multiplying the legally seated capacity of the bus by the trip kilometres;

"payment certificate" means the claim form certified by the Representative and subject to the approval of the CA, being the total of the forms and certificates required by the CA to be completed, signed and submitted by the Operator in support of its monthly claim, and which is in accordance with Form 1 in Volume 3;

"peak us" means a bus required by the Operator to provide services during the peak periods described in the timetable;

"positioning kilometres" or "dead kilometres" mean kilometres travelled by the buses 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;

"Rea Vaya BRT System" means the bus rapid transit system established by the CA.

"rapid transport bus" means a bus authorised to operate along a trunk lane in a Rea Vaya BRT system, and which has a regulated floor height and door configuration designed to facilitate speedy access of passengers to and from dedicated loading facilities, and includes the sub-categories set out under the same definitions in the National Road Traffic Regulations;

"Rebuilt bus" means a bus rebuilt in accordance with the specifications set out in Schedule 1;

"Replacement Buses" means the buses purchased by the Operator as a result of a loss or damage beyond repair to the buses.

"Rehabilitated bus" means a bus rehabilitated in accordance with the specifications set out in Schedule 1;

"Representative" means the person appointed as such by the CA, or by the SMF with the written consent of the CA, to supervise and monitor the services and to perform the functions of Representative in this contract, or a person authorised by the CA to act on its behalf. "Representative" also includes the Representative's delegate contemplated in clause 32. If no such person is formally appointed, the word "Representative" means any person duly appointed by the CA to represent it and notified to the Operator in writing;

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

"routes" means a fixed path from origin to destination along a series of roads with intermediate stops as specified in Schedule 7 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 and which will become revenue kilometres if operated;

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

"separate agreement" means a new agreement between the CA and the Operator for operating additional services which were not contemplated in this contract, are not required for the proper fulfilment of the this contract and do not amount to variations in terms of clause 16;

"service area" means the residential, business, industrial and other areas served by the routes, as described in Schedule 7, in which the services will be operated;

"services" means the services for the transportation of passengers along the routes by specified buses at specified times and frequencies and stopping at specified locations, which are to be provided in terms of this contract;

"Signature Date" means the date upon which both Parties have signed this contract or in the event of they having signed the contract on different dates, the dates of the last signature;

"SMF" (Supervising and Monitoring Firm) means a firm appointed by the CA if it so decides to act on its behalf for the supervision and monitoring of the services;

"specifications" means the specifications set out in Schedule 7 in which the services including routes, distances, fares, timetables, stops and any additional related information are described, and includes the bus specifications set out in Schedule 2;

"stations" means the designated Rea Vaya BRT System bus stations at which passengers board and alight from the buses in Phase 1A

"sub-contractor" means an entity that has the approval of the CA to provide an agreed portion of the services as shown in Schedule 14 of this contract;

"tender" means tender number: **CoJ/TRP001/22-23**

"tender amount" means the total amount in the Operator's tender submission for the provision of the specified services as shown on Tender Form 12, which amount is only relevant for evaluation purposes and to determine whether the CA will have adequate funds to cover the contract payments 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 documents" means the documents comprising, among others, the Tender Rules, Conditions of Contract, 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 (variable contract rates) and the amounts per bus (fixed contract rates) as shown in Tender Form 12 of Tender Document;

"tenderer" means the person, close corporation, company, joint venture, partnership, trust 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 CA;

"timetable" means a schedule of passenger carrying trips approved by the CA, 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 16;

"trip" means the operation of a bus, carrying fare paying passengers, travelling in a single direction on a route as set out in the authorised timetable, including any variations approved by the CA or Representative in writing in terms of clause 16;

"trunk lanes" means the lanes constructed on public roads for the exclusive use of the Rea Vaya BRT System buses.

"trunk routes" means the Rea Vaya BRT System routes which are authorised by the CA and exclusively used for the Phase 1A buses, and are exclusively comprised of trunk lanes.

"unsuitable Bus" means a bus which is materially different from those specified in Schedule 2 and Form 11 in terms of age, make, model or otherwise, or which the CA and/or Representative in their discretion deem to be unsuitable to provide the services adequately or which does not comply with the National Road Traffic Act or other applicable legislation;

"variable contract rates" means the rates per revenue kilometres agreed upon between the Parties as being the rates used to calculate payments to the Operator under clause 37 and as described in Schedule 9;

"Vehicle" means a public transport bus as defined in this contract;

"waybill" means a document provided by the Operator that details duty, route and trip details (including details of passengers carried and tickets issued and cancelled per trip and revenue collected) as shown in Form 24.

2. PREAMBLE

WHEREAS:

- 2.1 The CA previously concluded a negotiated in terms of section 41 of the Act for the provision of scheduled passenger transport services forming part of Phase 1A of the CA's Rea Vaya BRT System.
- 2.2 Pursuant to the expiry of the section 41 negotiated contract, the CA has taken the necessary steps in accordance with section 42 of the Act to procure the continued bus operating services forming part of the CA's Rea Vaya BRT System through a public tender process, which was advertised under the tender No. **CoJ/TRP001/22-23**
- 2.3 The Operator submitted a bid in response to the tender, and was recommended as a preferred bidder.
- 2.4 This subsidised service contract is accordingly entered into pursuant to section 42 of the Act and the outcome of the tender process, subject to the terms and conditions set out herein.

3. COMMENCEMENT DATE AND DURATION

- 3.1 The Operator must commence the services on **1st February 2026** or as otherwise agreed between the Parties in writing.
- 3.2 The contract shall run for seven years, but the CA may, in its sole discretion, and depending on the performance of the Operator as gauged by the method shown in Schedule 8, extend the contract for a further period of not more than five (5) years. The CA must, irrespective of its decision to so extend the contract or terminate it, notify the Operator in writing of its decision no later than the start of the end of term period. Should the CA have decided to extend the contract for a further period of five (5) years, the Operator must confirm in writing that it will continue for the extended period or terminate its services at the expiry of the initial contract period no later than nine (9) months before the expiry of the initial period. This will allow the CA to secure the services of a new service provider through a tendering process.
- 3.3 Should the CA decide to extend the contract period in terms of clause 3.2, the Parties must negotiate new contract rates for the period of the extension as soon as possible after the Operator is notified of the CA's decision. Once new rates have been agreed upon, they will apply as from the start of the extended five (5) year period of the contract and for the purposes of clause 35 (Escalation) the base month shall be the month prior to the month in which the extended five-year period starts. Should the Parties not have agreed on new rates within ninety (90) days of the start of the end of term period, the CA may, despite a previous decision to extend the contract, terminate the contract on giving the operator not less than ninety (90) days written notice.
- 3.4 It is recorded that the CA may request tenders for the provision of the services in substantially the same service area as required by the Act before the start of the end of term period for a period commencing on termination of this contract. If this is done, any new contract awarded shall amount to a totally new contract based on the terms and conditions set out in the relevant tender documents.
- 3.5 If the subsequent contract is awarded to a different operator, the Operator undertakes to give its full support and co-operation in effecting the transition of the services to that other operator including, but not limited to, submitting the relevant operating licenses to the applicable regulatory entity for cancellation or amendment.
- 3.6 Nothing in this contract is intended to give to, nor shall give the Operator a legitimate expectation regarding any extension of this contract, being either an extension

contemplated in clause 3.2 or otherwise, or an expectation to be appointed as the operator in any extended or subsequent contract. The appointment of an operator for any extended period or subsequent contract is in the sole and absolute discretion of the CA.

4. INDEPENDENT CONTRACTOR

- 4.1 The Operator shall act as an independent contractor and not as an employee or Representative of the CA and does not have the authority to bind the CA contractually to any other party. The CA 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 and the Operator hereby unequivocally and unconditionally indemnifies the CA against any such claim.
- 4.2 The Operator must obtain the prior written approval of the CA for any changes in ownership control, which approval will not be withheld unreasonably.
- 4.3 If approval is granted for a change of ownership control, the Operator must provide the CA within seven days with the particulars of any such change as shown in Form 22 of MTCD in respect of the new person or entity exercising such control. Failure to do so will result in the imposition of a penalty in accordance with Schedule 6 of MTCD or alternatively the CA may terminate the contract in terms of clause 45.

5. DATA AND OTHER STATISTICS

- 5.1 All data and statistics of whatever nature provided by the CA concerning existing or former services are provided in good faith as the best information available to the CA at the relevant time, to assist the Operator. No guarantee of the correctness of the data and statistics is given by the CA and no claims by the Operator arising from incorrect data or statistics or as a result of incorrect estimates made by the Operator will be entertained. The Operator must note that services required to be provided in terms of this contract might differ from existing or former services provided in the service area.
- 5.2 It is the duty of the Operator to inform and satisfy itself fully as to the nature and extent of the services and conditions in respect of which it is contracting. No claims of any nature will be entertained on the basis of a failure to make such enquiries.
- 5.3 Six months after the commencement date the CA must arrange a meeting with the Operator to compare the scheduled weekly kilometres provided by the CA before that date with the actual scheduled weekly kilometres since that date. If there is a deviation of more than 10% (ten percent) which is either positive or negative, the Parties must re-negotiate the contract rates to take account of the variation. If the Parties are unable to agree on new contract rates within fourteen (14) days after the date of the meeting, either Party may declare a dispute in terms of clause 39.

6. INFORMATION

- 6.1 The Operator must submit all applicable information and data as may be required in terms of this contract within the required time frames. The CA may if it regards the information supplied as insufficient, call for further information. The Operator must furnish such additional information within seven (7) days of being called upon to do so, in writing failing which penalties will be imposed in accordance with Schedule 6.
- 6.2 Any explanation desired by the Operator regarding the meaning or the interpretation of this contract must be requested in writing from the CA and the CA must respond in writing within seven (7) days. No oral explanations will be binding unless confirmed in writing. Such an explanation will not be regarded as an amendment of this contract unless the Parties agree to it in writing as contemplated in clause 44.2, and will not amount to a variation unless made in terms of clause 16.
- 6.3 No oral representations or statements by the Representative or any other officer, employee of the CA shall affect or modify any terms or obligations of this contract.
- 6.4 The CA will not be responsible for any oral instructions, nor for any written information provided by any person other than the CA, the Representative or a dedicated official appointed by the CA to manage this contract.
- 6.5 The Operator must retain all information and records pertaining to this contract and keep it available to the CA for inspection for the duration of this contract and for at least three (3) years after the expiry or termination of this contract.

7. CONTRACT RATES ALL-INCLUSIVE

- 7.1 In terms of the Tender Rules, the Operator has satisfied itself as to the correctness and sufficiency of the contract rates which shall (except in so far as is otherwise provided) cover all of the Operator's obligations under this contract.
- 7.2 The contract rates are calculated to cover full compensation for all general preliminaries, expenses incurred in complying with the conditions and specifications, other costs, dead kilometres as well as everything else necessary for the execution of this contract. No claims of whatever nature will be entertained based on the fact that they are too low or do not cater for all eventualities or that they were incorrectly calculated.
- 7.3 The Operator must also make sufficient allowance in the contract rates for all costs in connection with the preparation and furnishing of any information that may be required by the CA as contemplated in clause 6.1.
- 7.4 The Operator's attention is drawn to the fact that the services may be varied during the contract period under clause 16, which could lead to an increase or decrease of weekly scheduled kilometres.
- 7.5 The Operator is advised that the services may have been rationalized and that routes, timetables etc. may not necessarily be the same as those operated previously.

- 7.6 Scheduling of buses for optimal use thereof, subject to the agreed timetables, will be the responsibility of the CA. Contract rates will be fixed for the contract period, subject to clauses 5.3 and 37.23.
- 7.7 Monthly payments to the Operator, as well as fares paid by passengers, are not subject to Value Added Tax (VAT). VAT is payable by the Operator on certain items such as tyres and lubricants, and the contract rates must provide for this. Any possible future increases in the rate of VAT will be reflected automatically in the escalation factor.

8. INVESTIGATION OF OPERATOR

- 8.1 The CA or its Representatives may inspect the Operator's premises and facilities (including workshops and depots), as well as buses by means of which the Operator provides or proposes to provide the services, at any reasonable time. The Operator must give full co-operation in this regard.
- 8.2 The CA may appoint chartered accountants or other consultants to report on the financial resources or any operational aspects of the Operator at any time during the contract period or, if necessary, thereafter.
- 8.3 The Operator must provide all reasonable assistance in such an investigation and on request by such accountants or consultants provide documentation or other information within seven (7) days, failing which penalties will be imposed in accordance with Schedule 6.
- 8.4 The Operator must permit the CA or its Representatives to inspect at any reasonable time, and ensure that any sub-contractor permits the CA to inspect-
- (a) the books, records and other material kept by or on behalf of the Operator or sub-contractor (including any records relating to employees and the sub-contractor); and
 - (b) the Operator's or sub-contractor's premises, depots and contract Buses, in order to-
 - (i) check or audit any information supplied to the CA under this contract; or
 - (ii) monitor the performance of the Operator or sub-contractor or compliance by the Operator or sub-contractor with its obligations under this contract.
- 8.5 If, at any time during the contract period, the CA and/or its Representatives believes reasonably that the solvency of the Operator is in doubt and/or, the Operator commits an act of insolvency or is insolvent, as contemplated in clause 45(1)(a), and such act is likely to affect adversely the continuity of the services, the CA may request the Operator to provide a statement of financial position certified by its directors, members, trustees or auditors. The Operator must comply with the CA's request within seven (7) days or a period mutually agreed upon.
- 8.6 If any survey or inspection conducted in terms of this contract reveals that information previously supplied to the CA was in any material respect inaccurate, the Operator shall be liable for any damages suffered by the CA as a result thereof which will be dealt with *mutatis mutandis* in the manner set out in clause 37.22 and will be in addition to the CA's rights to impose a penalty as provided for in Schedule 6 or to terminate this contract in terms of clause 45.

9. MANAGEMENT OF THE SERVICES

9.1 The CA shall-

- (a) Determine the routes, trips, fares and timetable of the services;
- (b) Determine the operating hours for each day, which may differ for Fridays, Saturdays, Sundays, and public holidays;
- (c) Prescribe other terms, conditions or operational rules deemed necessary for the provision of the services;
- (d) Provide instructions and directions to the Operator; and
- (e) In its sole and absolute discretion as per clause 15, amend the bus schedules, routes or timetable in the case-
 - (i) of an emergency; or
 - (ii) of other events beyond the reasonable control of the CA.

9.2 The Operator shall at all times comply with the written directions, terms, conditions and operating rules and/or standard operating procedures provided to it by the CA or its designated Representatives.

9.3 The Operator may not, except in instances as contained in paragraphs 15 and 16, deviate from the timetable and must ensure at all relevant times that it provides sufficient buses and trained drivers, mechanics and other staff to enable it to comply with the specifications and to provide the services adequately, and to be on standby to avoid any interruption or delay in providing the services.

9.4 The Operator must during the full period of the contract ensure at all times that it maintains adequate levels of fuel, in order to ensure efficient and uninterrupted delivery of the services. If the Operator uses off-premises fuel storage facilities, it must put in place adequate contingency arrangements to the satisfaction of the CA to ensure adequate and timeous delivery of fuel. However the Operator will not incur penalties where failure to provide services is due to fuel shortages that are beyond the Operator's control.

9.5 The CA or its Representatives may conduct random spot checks to ensure compliance with clauses 9.3 and 9.4.

10. BUSINESS PLANNING; RECORDS AND REPORTING

10.1 The Operator must within the time periods stated in this contract or, where no time period is indicated, within the time required by the CA, submit the Contract Management Plans, Business Plans, operational reports and other information set out in Schedule 4, and must assist the Representative or SMF to provide the reports and other information set out in Schedule 5.

10.2 The Operator and any companies holding shares in the Operator must at all times comply with good governance principles as contemplated in the King IV Report on Corporate Governance for South Africa, 2016 ("King IV") and must comply with the Companies Act, 71 of 2008, as amended (the "Companies Act") and other applicable legislation regarding good governance, business planning, records and reporting. Should the memorandum of incorporation, shareholders' agreement, founding statement, constitution or like document(s) of the Operator or any companies holding shares in the Operator be amended, the Operator must supply the CA with copies of those documents within seven (7) days of the amendment, failing which the Operator will be deemed to have failed to comply with clause 4.3 and a penalty will be imposed as contemplated in that clause.

11. PROVISION OF SERVICES

- 11.1 The Operator must, on each day on which the services specified by the CA in Schedule 7 are to be provided, operate those services in accordance with the routes, buses, timetables and fare tables set out in that Schedule, and any other conditions set out in this contract, and not make any change to the service without obtaining the prior written approval of the CA in terms of clause 16, except in the case of emergency or another event contemplated in clause 15.
- 11.2 It is the responsibility and prerogative of the CA to develop and plan the services in accordance with its obligation in terms of the Act. This includes, among others the planning and specification of routes, timetables, vehicle types to be used, fare structures and scheduling of services to ensure optimal utilisation of buses and capital cost.
- 11.3 The CA may also prescribe minimum service levels and assess performance, and may, where appropriate, vary the services in terms of clause 16.
- 11.4 The CA may, after consulting the Operator, issue protocols and standard operating procedures from time to time indicating how the services are to be provided, or where applicable how the Operator must work together with other operators of public transport modes. If such protocols or operating procedures will result in additional costs for the Operator that do not amount to variations under clause 16, the Parties must agree on additional compensation for the Operator.
- 11.5 The Operator accepts that the routes assigned to it in the specifications may not always be for its exclusive use and may also be used by other public transport operators, as directed or decided by the CA. If other operators are allowed to compete with the Operator at a later stage and this is likely to impact adversely on the Operator's income, the Parties may negotiate additional compensation for the Operator. This will not apply to other operators and taxi operators operating the routes on the commencement date.
- 11.6 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 this contract, to the satisfaction of the CA. The Operator must comply with and strictly adhere to the written instructions and directions of the CA and Representative regarding the operation of the services, subject to clause 15. The Operator must take written instructions and directions only from Representatives or authorised officials and of the CA, identified in terms of clause 32.
- 11.7 Depending on the requirements of this contract as to which type or combination of types of buses are to be provided by the Operator, the Operator must provide for each trip a vehicle having the passenger capacity as specified in the definitions of "complementary buses" and "articulated buses", as the case may be and that conforms fully with the requirements and attributes of clause 24 and Schedule 2.

- 11.8 The Operator may not refuse to convey a person on a trip or part thereof unless the passenger capacity will be exceeded at the time in question or on grounds of violent, abusive or otherwise illegal or offensive conduct on the part of that person or other grounds contemplated in the Act or the National Road Traffic Act, or because the person refuses to pay the fare or present an invalidated travel pass or submit an invalidated fare medium. .
- 11.9 Should the Operator become aware of circumstances or problems which have prevented, are preventing or will prevent the Operator from providing the services as specified, the Operator must, as soon as is reasonably possible but not later than eight (8) hours and/or within the same operational day after becoming so aware, advise the CA 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 within twenty-four (24) hours. The Operator must in such circumstances comply with clause 15.
- 11.10 In addition to any statutory obligations, the Operator must immediately after its occurrence, report to the CA or 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) business days of the occurrence.

12. OPERATING LICENSES AND PERMITS

- 12.1 The Operator must promptly do everything in its power to obtain and maintain in force all operating licenses or permits, including licenses 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.
- 12.2 The Operator must apply for the necessary operating licenses or amendments not later than seven (7) days after the delivery of the buses in terms of Regulation 16 of the National Land Transport Regulations, 2009 and the CA and competent regulatory entity shall provide all necessary information and assistance to the Operator to obtain the necessary operating licenses , or amendments to existing permits or operating licenses , or approval of fare increases, as the case may be, covering the contract routes in terms of section 56 of the Act. When such licenses are issued, the Operator must supply copies to the CA within five (5) days.
- 12.3 The Operator must take all reasonable steps to obtain the granting and issuing of the operating licenses or amendments referred to in clause 12.2 as expeditiously as possible. If for any reason the necessary operating licenses or amendments have not been granted and issued by a date being fourteen (14) days prior to the commencement date and the CA in its discretion after consultation with the Operator decides that it is unlikely that the Operator will obtain the operating licenses in time to enable it to provide the services on the commencement date, the CA 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 acting in bad faith (*mala fide*) or the

failure to obtain operating licenses 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 licenses are obtained.

12.4 Should another operator or interested person oppose, challenge or appeal against the granting of such operating licenses, the Operator must do everything necessary to defend or counter the opposition, challenge or appeal, subject to the directions of the CA, and the costs thereof shall be borne by the CA, provided that if the opposition, challenge or appeal arises as a result of the Operator's failure to do all things reasonably necessary as contemplated in this clause, the Operator shall bear all costs associated therewith.

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

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

13. TIMETABLES

13.1 Subject to this clause and clause 16, the services reflected in the timetables provided in Schedule 7 are the services that the CA requires the Operator to operate as on the commencement date.

13.2 Due to the lapse of time between the drafting of the tender and contract documents and the commencement date, as well as possible changing circumstances, variations to the timetables may be necessary before the commencement of the services. If this is the case, the Parties must agree on appropriate timetables at least fifteen (15) days before the commencement date. If this is not done the timetables in Schedule 7 as at the date of signing of this contract shall be operated on the commencement date until further notice from the CA.

13.3 The CA will formulate a proposed timetable to apply during holiday periods, after consulting the Operator, at least fourteen (14) days prior to public holidays and/or holiday periods. Such timetable will be binding on the Operator for such holiday period.

14. SUBMISSION OF DUTIES

14.1 Subject to clause 13, the Operator must submit a document to the CA containing all the duties and timetables to be operated for each category of operating day and bus on a weekly basis not later than 8:00 each Wednesday morning.

14.2 No changes may be effected to the duty numbers without seven (7) days' prior written notification to the Representative.

15. TEMPORARY INTERRUPTION OF SERVICES

- 15.1 Cancellation of scheduled trips that form part of a reduced service during holiday periods is permitted if the CA or Representative approves them in writing at least fourteen (14) days in advance.
- 15.2 Cancellation of scheduled trips other than that due to a strike or stay away action or *vis major* event that is reasonably beyond the Operator's control or could not be prevented by the Operator, is not permitted unless the CA or Representative approves them in writing at least fourteen (14) days in advance.
- 15.3 Cancellation of other scheduled trips by the Operator is not permitted unless in the opinion of the CA or Representative the cancellation-
- (a) is due to unforeseen emergencies, road closures, obstructions, floods or weather conditions or other circumstances or problems contemplated in clause 11.8; or
 - (b) results from immediate danger to life or of personal injury and/or serious damage to property, and
- the CA or Representative has approved the cancellation in advance, and if such approval was granted telephonically or by the SMS, the approval has been confirmed in writing by the CA within forty-eight (48) hours of having been given.
- 15.4 Cancellation of scheduled trips by the Operator must be agreed to in writing by the CA or Representative.
- 15.5 The discretion on whether a scheduled trip is validly cancelled or not shall lie solely with the CA, and the Operator may declare a dispute under clause 39 if dissatisfied with the CA's decision.
- 15.6 Where the Representative directs 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, due to violence, conflict, serious intimidation of drivers or boycott action, either against the Operator's firm or generally, the matter shall be referred to the CA for decision within twenty (24) hours and the CA's decision will be final. If the CA decides that there was not in fact such danger, the Operator will be penalized under Schedule 6 for not providing the services. Should the Operator be dissatisfied with the CA's decision, the Operator may declare a dispute under clause 39.
- 15.7 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, through the Representative, refer the matter to the CA for decision. If the CA decides that such cancellation is justified the variable contract rate will not be paid for services not provided but the fixed contract rate will still be paid: if not, the Operator shall be penalised in accordance with Schedule 6 for not providing the services. Should the Operator be dissatisfied with the CA's decision, the Operator may declare a dispute under clause 39.
- 15.8 The Operator must inform the Representative immediately of any proposed cancellation of any scheduled trips in terms of this clause and the Parties must then meet on an urgent basis to agree to the deviation, if any, to be allowed, and the re- commencement of the services. If they fail to reach an agreement within three (3) hours of having met for the first time, the CA's decision will be final and binding on the Parties.

- 15.9 For the purposes of this clause "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.

16. VARIATIONS

- 16.1 The Operator must comply with the services set out in the specifications in Schedule 7 in respect of routes, timetables, buses and fare structures.

- 16.2 The CA or Representative may after consultation with the Operator make the following variations to the services within the service area:

- (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 necessarily 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;
- (e) to change the timetable of any portion of the services;
- (f) to make alterations in connection with vehicle capacities as contemplated in clause 16.3,

and no such variation shall in any way invalidate or vitiate this contract. The Representative must notify the Operator in writing of any such variations made to the existing services and the Operator must comply with any such variations. The CA must give passengers not less than fourteen (14) days' notice of such variations, including any intended changes to the timetable unless a shorter period is approved by the Representative.

- 16.3 The Parties may agree in writing for a variation in the types of buses which are used to provide the services, on the basis of a change in passenger demand or the utilisation of better suited buses with a different capacity from those included in this contract. Prior to the CA consenting to such a variation the financial implications thereof on the contract rates (*if any*) and timetable shall be agreed upon in writing. The decision of the CA in this regard shall be final and be communicated to the Operator in writing within fourteen (14) days of receipt of the request.

- 16.4 If it appears to the Operator that the passenger demand on a particular route or trip regularly exceeds vehicle passenger capacities, the Operator must apply to the CA for permission to introduce additional trips to cater for such passengers, and such permission will not be unreasonably withheld. If written permission is granted and additional trips introduced, the CA shall compensate the Operator therefore at the applicable variable and fixed contract rates as from the first day of the week following the approval and all costs incurred by the Operator prior to that day shall be for the Operator's own account.

- 16.5 If it appears to the Operator or Representative that the passenger demand on a particular route or trip is regularly less than fifty (50%) percent of the possible passenger kilometre capacity for a legally seated vehicle, the CA may at the request of the Operator or Representative approve that-

- (a) the vehicle on the particular route or trip be replaced with an alternative type of vehicle at the applicable fixed and variable contract rate for the vehicle with the lower seating capacity for the relevant kilometres; or
- (b) the Operator continues operating the vehicle, in which case the Operator will be paid at the applicable fixed and variable contract rate for the vehicle with the lower seating capacity as the CA might consider appropriate for the circumstances for the relevant kilometres.

If the CA does not approve the application it may remove the trip or route from the time table in terms of clause 16.2.

- 16.6 Where a variation is made or approved in terms of this clause, any cost to the Operator occasioned by such variation will be catered for in the fixed and variable contract rates calculated as indicated in Schedule 9.
- 16.7 Where approved variations in terms of this clause result in the amount of revenue kilometres that the Operator had to operate on the commencement date being increased or decreased by more than 15% during peak periods in a period of three (3) months, the fixed contract rate will be renegotiated based on the principles in Schedule 9. If the Parties cannot agree on a new rate, the matter will be treated as a dispute under clause 39, and the Operator will continue to be remunerated based on the tendered rates that applied on the commencement date until a new fixed contract rate is determined. The new rate will then apply retrospectively as from the date that the variation was implemented, and the difference will be made up in the next weekly payment following the resolution of the dispute.
- 16.8 If the CA requires services to be provided in areas outside the service area or on special occasions these will be negotiated under a separate agreement the terms of which will have no bearing on this contract and may not impact negatively on the Operator's obligations in terms of this contract.
- 16.9 Services provided in terms of clause 16.8 will be provided at rates as set out in Schedule 9 and as requested by the CA in writing, subject to the availability of buses and staff as agreed to by the Operator, keeping in mind that, once agreed to, such commitments shall in no way relieve the Operator from operating the scheduled trips as provided in the timetable applicable to this contract.

17. CESSION AND DELEGATION

- 17.1 The Operator may not cede its rights or delegate its obligations under this contract or any part thereof, or any benefit or interest therein, to another person, whether as security or otherwise, without the prior written consent of the CA. The CA may regard a contravention of this sub-clause as a material breach of contract justifying termination thereof in terms of clause 45.
- 17.2 It shall be in the sole discretion of the CA to grant or refuse such consent, which shall not be withheld unreasonably.
- 17.3 The CA may at any time during the currency of this contract cede its rights or delegate its obligations in terms thereof to a Municipal entity or Provincial Public entity as defined in the MFMA or PFMA, as the case may be.

18. SUB-CONTRACTING

- 18.1 To implement government policy relating to the promotion of small business and BBBEE, the Operator must sub-contract the services as specified in Schedule 14 and as per sub-contractors evaluated during the tender.

- 18.2 If there is any change of the sub-contractor(s) after the awarding of the tender, the Operator must, advertise the services to be sub-contracted in local newspapers for not less than fourteen (14) days, and after receiving the names of interested parties submit these to an evaluation committee, to be established for this purpose, consisting of representatives of the Operator and the CA for discussion. The CA must consider the views of such committee, but the CA must make the final decision.
- 18.3 The sub-contracting envisaged in clause 18.2 must be finalized and implemented within three months after the last day of such advertisement and until termination of this contract.
- 18.4 The sub-contractor and sub-contracting must comply with the Schedule 14 as per tender document.
- 18.5 The Operator must communicate any change in shareholding or ownership in the sub-contractor to the CA in writing within seven (7) days of the change coming to its notice.
- 18.6 The CA may set selection criteria for sub-contractors and directives for the Operator in the use and management of sub-contractors, and the Operator must comply with such criteria and directives. Such criteria or directives may include, but need not be limited to, requirements regarding the use of experienced management assistance by the sub-contractor.
- 18.7 The Operator must conclude a written sub-contracting agreement complying with the criteria and scope specified in Schedule 14.
- 18.8 The Operator may not amend the sub-contracting agreement without the prior written approval of the CA. If the Operator does so penalties will be imposed in accordance with Schedule 6.
- 18.9 The Operator must, if required in writing by the CA, provide proof of registration or payment by its intended sub-contractors of insurance premiums and taxes and levies required by law and provide a tax clearance certificate from the SA Revenue services for each sub-contractor,
- 18.10 If consent is given for a sub-contract under this clause no contract between the CA and the sub-contractor shall come into being and the Operator shall not be released from any liability or obligation under this contract, and it shall be responsible for the acts and omissions of any sub-contractor or its representatives or servants as fully as if they were the acts or omissions of the Operator or of the Operator's representatives or servants.
- 18.11 The Operator must ensure that each sub-contractor is formalised into a business entity approved by the CA within six (6) months of the commencement date of this contract, if such had not been done before awarding of tender.
- 18.12 The Operator must ensure that a monthly payment certificate, the format of which is approved by the CA is compiled in respect of payments from the Operator to the sub-contractor and attached to the Operator's monthly payment certificate. The Operator's payment certificate will not be processed for payment if such certificate is not attached.
- 18.13 The Operator must ensure that payment into the dedicated bank account of the sub-contractor is effected by electronic funds transfer within two (2) working days of receiving payment from the CA, failing which the sub-contractor may lodge a dispute directly with the CA within seven (7) days in which the City would deduct the subcontractors' claim from future payments to the Operator pending the dispute resolution process between the Operator and sub-contractor. Such a dispute should be resolved within fourteen (14) days and the CA must be notified as soon as an outcome has been made.

- 18.14 The CA may at any time withdraw consent for a sub-contract after giving not less than thirty (30) days' notice to the Operator where the sub-contractor does not meet the CA's qualification criteria for sub-contractors or commits an act or omission contemplated in clause 45.
- 18.15 In the event that consent for a sub-contract is withdrawn no claim against the CA 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 CA against any claims and costs so incurred.

19. ACCESSIBLE PUBLIC TRANSPORT

- 19.1 The Operator must provide the number of buses that accommodate special categories of passengers, as defined in the Act, including providing wheelchairs, as required by the vehicle specifications outlined in Schedule 2.
- 19.2 In the case of a rapid transport bus as defined in the National Road Traffic Regulations, there are different requirements, which are obtainable from the Department, the Operator must comply with these requirements and should it fail to do so the penalties as set out in Schedule 6 will apply each month until compliance takes place.

20. DISPLAY OF VEHICLE AND DUTY NUMBERS

All buses used for the provision of the services must display fleet numbers and duty numbers as specified in Schedule 2.

21. INFORMATION TO AND FROM PASSENGERS

- 21.1 The Operator must ensure that up-to-date timetables and fares tables as supplied by the CA are available on all buses and at other places required by the CA in compliance with Consumer Protection Act 68 of 2008 in this regard.
- 21.2 The CA may operate an information centre, a shopfront information service and a customer call centre. The Operator must maintain close links with these services and provide accurate, timely information as required by the CA. In addition the Operator must facilitate a "help desk" facility to respond to enquiries and to communicate directly with customers, especially about service changes, as directed by the CA.
- 21.3 The Operator must participate in passenger liaison and information dissemination processes established by the CA and attend monthly or more frequent meetings in this regard. All complaints received by the CA will be forwarded to the Operator for a written response within fourteen (14) working days, failing which a penalty will be imposed in terms of Schedule 6. Such response must include a report on the incident in the format provided in Form 3 with, where required by the CA or its Representative, a program for the prevention of similar incidents.
- 21.4 The Operator must in the first instance manage all customer complaints received by it relating to the services. The Operator must formulate a Customer Complaints Policy within thirty (30) days of the commencement date for approval by the CA. Failure to do so will result in penalties being imposed in terms of Schedule 6. Once approved, the Operator must comply with the Customer Complaints Policy. The Operator must also provide the CA and its Representatives with every assistance in dealing with passenger complaints received by the CA, and must take such remedial measures as may be

agreed between the Parties without prejudice to the right of the CA to take action under other relevant provisions of this contract where persistent failure to deal with complaints is adjudged by the CA to contravene those conditions.

- 21.5 Where the Operator receives complaints directly from the public, it must report these to the Representative, in writing, within fourteen (14) working days, with details of the complaint, the date and time of the event leading to the complaint and the date of receipt of the complaint itself, the nature of the complaint and the immediate actions taken to address it. The Operator must keep a Passenger Complaints Register to record these complaints and details for the duration of this contract. The CA may provide a *pro forma* register which the Operator must use. Failure to comply with this clause will result in the imposition of a penalty in terms of Schedule 6.

22. BUSES

- 22.1 The Operator must submit a statement on Tender Form 11 showing the buses per vehicle category that will be available for the services on the commencement date and whether the buses will be purchased or leased. The numbers and types of buses must comply with those specified in Schedule 2. Copies of signed purchase agreements must be provided to the CA on request. The onus is on the Operator to decide what buses it will indicate on the said Form for use in the provision of the services. These completed statements will be used, among others, to assess the Operator's capacity to operate services of the magnitude concerned and whether the Buses comply with Schedule 2.
- 22.2 Only Buses shown in the completed Form 11 may be used to provide the services, unless the written consent of the CA is obtained in advance to replace buses with others of the same or better quality and age, to enable the CA to assess whether the buses are acceptable. Where such consent has not been obtained, the revenue kilometres operated by such buses will not be paid, the Operator will not be allowed to claim fixed cost for the buses and the Operator will be penalised in terms of Schedule 6.
- 22.3 The number of buses must make allowance for at least ten percent (10%) spare capacity. This spare capacity must be maintained at all times during the period of this contract. When applying for operating licenses or amendments thereof under clause 12 the Operator must ensure that application is made for sufficient buses to comply with this requirement.
- 22.4 All buses must conform to the requirements and regulations of the National Road Traffic Act and other applicable legislation and applicable SABS specifications.
- 22.5 The type and condition of all buses to be provided by the Operator for the provision of the services must correspond with the requirements of Schedule 2 at all times. When so ordered by the CA, the Operator must remove from the services any unsuitable buses. The approval or disapproval of any vehicle by the CA shall not in any way release the Operator from its obligations in terms of this contract.
- 22.6 A detailed fleet list of the buses per vehicle category that will be available for the services on the commencement date, in the format required by the CA, must be submitted to the CA not later than fourteen (14) days before the commencement date.
- 22.7 If the Operator, without the written authority of the CA, fails to provide the right type, with reference to quality and age, of buses as specified in Schedule 2 and listed on Tender Form 11 within three (3) months of the commencement date or, at a later stage in the contract period, within thirty (30) days after being instructed to do so by the CA, then a penalty will be imposed in terms of Schedule 6.
- 22.8 The Operator must ensure that each vehicle-

- (a) is operated and maintained in accordance with the OEM's specifications, recommendations and service standards and is serviced at the times required or recommended by that OEM; and
 - (b) is properly licensed and has a current roadworthy certificate issued in compliance with the National Road Traffic Act.
- 22.9 The CA may inspect the buses at any time during the contract period and at any location. It may require the Operator to produce specific buses at the CA's cost for a more comprehensive inspection at the nearest acceptable testing station directed by the CA with due regard to the fact that the vehicle should be detained for as short a period as possible.
- 22.10 The Operator must withdraw a vehicle failing an inspection contemplated in clause 22.9 from service until repaired and successfully re-tested at a location to be determined by the CA. The inspection fees will be for the account of the Operator.
- 22.11 The CA will install all buses, either permanently or temporarily with communication equipment capable of transmitting and receiving messages between vehicle(s) and the control centre. Such system will be owned and maintained by the CA. The Operator must report faults by logging a call with the operations call center to attend to any technical glitches.
- 22.12 The Operator will be held responsible where any vehicle may not be used, or where the license of a vehicle may not be renewed due to demerit points being awarded against the Operator or its drivers in terms of the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (AARTO Act), and if the Operator fails to supply sufficient and compliant replacing buses this will be regarded as a breach of this clause and penalties will be imposed accordingly.

23. INDEMNITY AND INSURANCE

- 23.1 The Operator must take steps to ensure the safety of passengers, the general public and property (public liability insurance). The CA shall not be liable for any loss or damages resulting from damage to property or the death of or injury to any person which is caused by an intentional or negligent act or omission of the Operator or its agents, employees or sub-contractors and the Operator hereby indemnifies the CA against all claims, demands, lawsuits, damages, costs (including attorney and client costs), charges and expenses whatsoever in this regard
- 23.2 The Operator must effect and maintain throughout the duration of this contract, at its own expense, public liability insurance and SASRIA cover for at least ten million rand (R10m), all risks insurance and supplementary insurance in respect of civil commotion, riot and strikes, and full comprehensive vehicle insurance based on the realistic market value of the vehicle(s) for the amounts and deductibles, if any, determined by the CA by notice in writing to the Operator from time to time, with an insurer chosen by the Operator and acceptable to the CA, registered as required by applicable legislation. Proof of such insurance must be submitted to the CA prior to the commencement date and the Operator must advise the CA in writing of any changes thereto. Proof of payment of monthly premiums must be attached to the monthly payment certificate.
- 23.3 If the Operator for any reason fails to take out or maintain such insurance, the CA may pay any premium due on such policy on the Operator's behalf and set such amount off against any amount due to the Operator in terms of this contract, plus an administration fee of ten percent (10%) of each premium so paid. This right is in addition to any other remedy that the CA may have.

24. DEPOTS

- 24.1 The Operator will be granted right of use of the depots by the CA and the Operator must maintain it in terms of the maintenance plan approved by the CA.
- 24.2 All maintenance facilities as required by the Operator must be provided in the depots at the cost of the Operator. Such facilities must be adequate for the type of operations, as required by the CA.

25. RIGHT OF USE OF THE DEPOTS

- 25.1 The CA retains ownership of all its depots.
- 25.2 The CA hereby grants the Operator the right of use of the following depots on the terms and conditions set out in the right of use agreement, attached hereto for information purposes:

Depot _____ situated at _____

Depot _____ situated at _____

26. STAFF

- 26.1 The Operator must provide a staff complement able to provide the services to be rendered in terms of this contract. Subject to section 197 of the Labour Relations Act 66 of 1995 (as amended) (the “**LRA**”) in respect of the previous operation of the services, the Operator must source the required employees from the Operator of that previous contract and guarantee the jobs of those employees. Those jobs relate to the number of actual employees required by the Operator to execute this contract and exclude sub-contracting requirements, set-asides, reduction in the scope of the services and other measures taken by organs of state and decisions taken by the Business Rescue Practitioner (the “**BRP**”) or any other legally appointed restructuring agent whom the Operator has no or little control, in respect of both the previous contract and this contract.
- 26.2 Without derogating from clause 26.1, where the decisions taken by the BRP or any other legally appointed restructuring agent has been declared by a competent court to render section 197 of the LRA inapplicable, the Operator may amend the terms of employment of existing employees whose contracts have been adversely affected, following meaningful consultation with the CA, the employees and recognised trade unions.
- 26.3 The Operator must conduct business in full compliance with all applicable labour legislation.
- 26.4 The Operator must ensure that all staff is properly trained, experienced and otherwise fit and proper for the duties to be performed by them under this contract.
- 26.5 The Operator must ensure that the sub-contractor ensure that all dedicated staff engaged in the sub-contracted services listed in Schedule 14 is provided with appropriate training in particular in the following areas:
- (a) occupational health and safety issues;
 - (b) customer care as applicable to interactions with the Operator's personnel or the public;
 - (c) inspection and supervision of services;
 - (d) contract management; and
 - (e) compilation of claims
- 26.6 For the avoidance of doubt, the Operator's obligations to ensure the provision of training by sub-contractors shall apply solely in respect of the services expressly listed in

Schedule 14.

- 26.7 If the Operator becomes aware that any member of staff is not fit and proper to execute his/her duties effectively, the Operator must take appropriate action to ensure that its ability to perform its obligations under this contract is not at risk.
- 26.8 The Operator must at all times and at its own expense provide and pay the remuneration of a fully competent, proficient and appropriately licensed driver for each vehicle used on this contract who in all ways complies with the provisions of applicable legislation. All such drivers must maintain the highest standards of courtesy and consideration to the public and to the CA's employees and agents. No driver may smoke, drink alcohol or take prohibited drugs on any vehicle, or be in any way under the influence thereof, whilst driving a vehicle in terms of this contract and must at all times adhere to the rules of the road and other prescriptions of the National Road Traffic Act.
- 26.9 The Operator must ensure that each driver holds the necessary professional driving permit required to drive the buses and-
- (a) has a thorough and detailed knowledge of the fares, routes and timetables;
 - (b) is provided with training in accordance with appropriate industry practice, as reasonably required by the CA;
 - (c) is attired in a clean, well maintained and appropriate uniform as required by the CA;
 - (d) has been the subject of appropriate security checks by the Operator as required by the CA;
 - (e) is familiar and well trained in the use of the EFVE system; and
 - (f) has a detailed knowledge and understanding of the driver's obligations regarding fare evasion and invalid travel cards.
- 26.10 The Operator must supply sufficient, competent management and support staff to manage this contract and oversee operations in accordance with Form 16 of MTCD.
- 26.11 If the Operator becomes aware that any driver is not fit and proper for any of the reasons referred to above, the Operator must source another/other drivers who are qualified to ensure that its ability to perform its obligations under this contract is not at risk in any material way.
- 26.12 The CA may require members of staff employed by the Operator and who perform their duties in view of the public to wear uniforms at all times while on duty, and the Operator must ensure that they purchase such uniforms for its staff members and that those staff members wear such uniform as prescribed by the CA.
- 26.13 The Operator must ensure that the uniforms are kept in good condition and worn in a professional manner and in accordance with the standards required by the CA, and must replace uniforms from time to time with the prior approval of the CA.
- 26.14 The Operator must sign the Occupational Health and Safety Agreement attached as Schedule 13.

27. AUTHORISED REA VAYA BUS STOPS

- 27.1 The Operator may only use the authorised stops.
- 27.2 All buses operating along the routes must stop at authorised stops, except where-
- a) the stop is not part of the route being operated;
 - b) the vehicle is operating express services and displays a sign to that effect;
 - c) the vehicle is not in service; or
 - d) the vehicle is full and displays a sign to that effect.
- 27.3 buses must stop at any stop where requested to do so by a Representative or an authorised officer as defined in the Act.
- 27.4 At any authorised stops, and the transfer points identified in Schedule 7, drivers must not allow passengers to board or alight until the vehicle has arrived at the authorised bus stop to facilitate queuing and boarding.
- 27.5 buses must not be parked at authorised stops, other than while loading or unloading, so as to avoid causing delays to other traffic.
- 27.6 Where authorised stops are used for transferring between feeder stops and trunk stops, or as timing points specified in the approved service plan, buses must not be delayed for longer than required to complete the transfer or maintain timetable adherence.

28. ADVERTISING ON BUSES

Advertising on buses is allowed only with the written consent of the CA and must comply with Schedule 3.

29. IMAGE AND MARKETING

- 29.1 The City shall determine the corporate image, logo and trademarks of the Rea Vaya BRT System which shall include the design and appearance of the buses as well as the uniforms of drivers and officials, with due regard to operational health and safety requirements.
- 29.2 The Operator must contribute to and conform to the CA's style guide for image and marketing provided in Schedule 11, the CA's corporate identity manual, which will define the use of graphics, information signage, timetables, advertising material and vehicle livery.
- 29.3 The CA wishes to develop a co-operative relationship to enhance the marketing of public transport. This will focus on the generic benefits of public transport and the marketing of special events. The Operator must participate in agreed marketing programs and initiate and conduct them as directed by the CA. If there are costs involved for the Operator that are not envisaged elsewhere in this contract, the CA will bear those costs.

30. FARES

- 30.1 The primary method of fare payment and access to the integrated public transport services will be through contactless bank issued EMV (Europay Master Visa) dual interface smart cards hosting the Department's AFC Data Structure as more fully described in the Electronic Fare Collection Guidelines published by the Minister as well as Schedule 10 and the

Regulations referred to in the definition of EFVE.

- 30.2 The fares to be charged by the CA on all routes described in the specifications shall be set by the CA, and the Operator must comply with the Act and other applicable legislation in this regard.
- 30.3 All fares will be collected and handled by the CA.
- 30.4 The Operator must support fare enforcement and take all reasonable efforts to minimise fare evasion as directed by the CA. In this regard the Operator must-
 - (a) comply with the written directions of the CA in relation to fare evasion and take any steps in that regard directed by the CA; and
 - (b) the driver is responsible for ensuring that all passengers tap in on the on-board units at the beginning of their trip for the validators to open, and tap out at the end to complete their trip. The drivers must take steps to ensure passengers are not allowed to board where the on-board units show insufficient funds.
 - (c) provide the CA with a Fare Evasion Plan for approval by the CA, not later than fourteen (14) days before the commencement date. The Operator must comply with such Plan once approved, and failure to do so will result in the imposition of penalties in terms of Schedule 6. The CA may direct changes to that Plan from time to time and the Operator must implement any changes forthwith.
- 30.5 Fares will be increased at least once per annum as determined by the CA. The increase maybe based on the annual published Consumer Price Index (CPI) and any other economic factors that the CA considers relevant. The CA will give passengers notice of new fares annually and after it has been approved by Council.
- 30.6 Without limiting the CA's rights, the CA or an Representative appointed by it may audit the Operator's performance of its obligations under this clause at any time.

31. ELECTRONIC FARE VALIDATION AND COLLECTION EQUIPMENT (EFVE) TICKETING SYSTEM AND FARE COLLECTION

- 31.1 The CA shall supply and install the on-board units EFVE Ticketing System and electronic equipment relating thereto at stations and in buses.
- 31.2 The Operator must ensure that the equipment are functioning in all buses and at all times and the Operator must inform/report the CA immediately in the event the equipment is faulty
- 31.3 The Operator must-
 - (a) only use the EFVE Ticketing System as approved by the CA;
 - (b) not use the EFVE Ticketing System for the purpose of providing services other than those contracted with the CA without the consent of the CA;
 - (c) not give access to the EFVE Ticketing System to any party other than the CA and its authorised Representatives for any purpose whatsoever;
 - (d) not attempt to access or modify raw patronage or revenue data stored in the EFVE Ticketing System;
 - (e) not at any time permit a vehicle to leave a depot should there be any defect in the EFVE or if it becomes defective during operation, replace the vehicle immediately.
 - (f) make its staff available for training in such equipment as and when required by the CA.
- 31.4 The Operator must ensure that passengers validate fare media pon boarding except when passengers are transferring to a replacement vehicle in the event of breakdown

(in this situation the Operator must ensure that passengers do not validate their tickets).

- 31.5 The Operator shall provide assistance to passengers, as required, seeking to validate their ticket.
- 31.6 The CA shall provide the Operator with a copy of the Manual of Ticketing and Revenue Procedures not later than seven days before the commencement date.
- 31.7 All fare collection systems installed in the buses shall remain the property of the CA.
- 31.8 Should the EFVE become obsolete during the life of this contract and be replaced by a new or upgraded EFVE, the Operator must, at the cost of the CA-
- (a) participate in project teams associated with the planning for a new or upgraded system;
 - (b) assist the CA with implementation of the new or upgraded system;
 - (c) make staff available for training on the operation of the new or upgraded system;
 - (d) make buses and depot facilities available to the CA for installation of new or upgraded equipment; and
 - (e) provide any other reasonable assistance the CA requests.
- 31.9 Should the CA decide to implement new monitoring methods or equipment it may provide additional or different equipment, at the cost of the CA, at any time during the contract period. The CA will then negotiate with the Operator who must give full co-operation to the CA in this regard and see to it that the additional or new equipment is installed in all Buses as required by the CA within the time so required. In this regard clause 31.8 will apply with the necessary changes.
- 31.10 All other issues related to the EFVE operation, support, maintenance, etc. will be dealt with as more fully described in Schedule 10.

32. MONITORING AND CONTROL

- 32.1 This contract includes allowance for performance incentives and penalties. In order to manage these and ensure that service quality is maintained, as well as to facilitate the payment of the Operator's claims, the CA appoint an independent Supervision and Monitoring Firm (SMF) which shall-
- (a) Administer and supervise this contract to ensure contract compliance;
 - (b) Monitor the operation of the services according to an approved monitoring strategy;
 - (c) Impose penalties for non-compliance where necessary and calculate performance values;
 - (d) Arrange and chair weekly penalty meetings and monthly contract meetings with the Operator;
 - (e) Arrange and chair meetings (other than monthly contract meetings) with the Operator;
 - (f) Verify and certify the Operator's payment certificates;
 - (g) Measure the Operator's performance against KPI benchmarks in terms of this contract;

- (h) (Identify and assist the CA and Operator with routing and scheduling problems when necessary;
 - (i) Where appropriate, adjust services in terms of clause 16;
 - (j) Report any unusual events to the contract manager appointed by the Operator as soon as it becomes aware of them. This will not excuse or exonerate the Operator from any of its obligations in terms of this contract relating to such events; and
 - (k) Execute any other functions allocated by the CA.
- 32.2 Work to be carried out by the Representative and/or SMF in terms of clause 32.1 is detailed in Schedule 5.
- 32.3 The CA may decide not to appoint a SMF in which case it will designate officials to perform the functions of the Representative and/or SMF.
- 32.4 The Representative and SMF have no authority to release the Operator from any of its obligations in terms of this contract, nor are they empowered, except as stipulated in this contract, to issue any order that would impede the Operator, give rise to additional expenditure for the CA or result in an amendment to the services.
- 32.5 Despite any contrary provisions in this contract, the CA may reverse or amend a direction or decision of the Representative or SMF and make or issue new ones. Any such reversed, amended or new direction or decision shall for the purposes of this contract be deemed to have been issued by the Representative.
- 32.6 The CA, Representative and SMF may investigate any complaints, objections or representations made by passengers, local authorities or other interested persons relating to the services.
- 32.7 Should the Operator become aware that any of its employees have threatened the Representative or his/her delegates, the Representative's Deputy or employees of the SMF or CA the Operator must take immediate disciplinary or other appropriate steps to prevent a recurrence.
- 32.8 All communications between the Operator and the CA shall take place via the Representative except where specifically provided otherwise.
- 32.9 The Operator must inform all its employees of the identity, powers and duties of the Representative, Deputy and monitoring staff. For purposes of identification the SMF must provide its staff with a unique personal identity card with photograph.
- 32.10 With the objective of ensuring that services are provided as specified, the CA may direct that all buses be fitted with on-board Global Positioning System Tracking (APTMS) devices or other monitoring equipment. Provision for the installation of this equipment must be made in the costing of the services where buses will be solely owned by the Operator.
- 32.11 The CA will, through the Representative and, once installed, using the electronic monitoring equipment installed in the buses, monitor the services on a daily basis to optimize service provision to passengers through adjustment of timetables, quality of buses, customer relations and other aspects.

33. PENALTIES

- 33.1 The services shall be fully monitored in the first three (3) months of operation and all offences listed, but penalties will not be imposed in the first, second and third months. Thereafter penalties shall be imposed as set out in Schedule 6. In both cases revenue kilometres will only be paid for trips which have been operated.
- 33.2 The fact that a penalty has been imposed will not affect or prejudice any other remedy that the CA may have, and will not preclude the CA from exercising its other rights or remedies in terms of this contract for non-fulfilment by the Operator of its obligations.
- 33.3 The CA may include the Operator on its database of suppliers/ Service Providers restricted from doing business with the CA for a period of five (05) years for non-performance or three (03) years for under-performance if such performance is reasonably deemed to be material, following an adverse finding against the Operator.

34. COSTING OF SERVICE PROVISION

- 34.1 This contract is priced on the basis of a two part cost structure (a variable and fixed cost component) for every vehicle type to be used on this contract.
- 34.2 The various cost elements and the manner in which the variable and fixed cost per vehicle type is calculated is more fully described in Schedule 9.
- 34.3 The variable cost component of this contract will be subject to escalation as indicated in clause 35.
- 34.4 The fixed cost component of the contract will be subject to escalation as indicated in clause 35.

35. ESCALATION AND CALCULATION OF MONTHLY PAYMENT

- 35.1 The fixed and variable contract rates shall be escalated monthly, in the manner set out in clause 35.2, but will be limited to the percentage increase in the Public Transport Operations Grant allocated to the CA by the Grant Framework published in terms of the Division of Revenue Act for the financial year in question.
- 35.2 The fixed and variable contract rates shall be escalated monthly, in the following manner:
- 35.2.1 The escalation formula set out in this clause is designed to compensate for variations in input costs affecting the agreed rates for the provision of the services.
- 35.2.2 The fixed costs, after deduction of 50% (fifty percent) of the value of the penalties applicable to the particular month, will be escalated by the adjustment factor Y determined according to the formula set out below and:

$$Y = (1 - x) \left[\left(a \times \frac{Lt}{Lo} \right) + \left(b \times \left(\frac{CPI_t}{CPI_o} \right) \right) \right]$$

Where $a + b = 1$

And in which the symbols have the following meanings:

"x" is the proportion of fixed costs not subject to adjustment and its value is 2% {0,02}.

"a" is the coefficient deemed to represent the proportionate value of labour costs linked to labour categories as determined by the Bargaining Council. A value of (...%) shall be applied for this contract.

"b" is the coefficient deemed to represent the proportionate value of the other fixed costs. A value of (...%) shall be applied for this contract.

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"L" is the labour index for all hourly paid employees as published in Table C-3-Steel and Engineering Industries Federation of South Africa (SEIFSA) "Index of actual Labour Cost", SEIFSA Price and Index Pages.

"CPI" is the Consumer Price Index as published monthly by Statistics South Africa.

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

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

- 35.2.3 The variable costs, after deduction of 50% (fifty percent) of the value of the penalties applicable to the particular month, will be escalated by the variable cost adjustment factor Z determined according to the formula as set out below:

$$Z = (1 - x) \left[\left(c \times \frac{F_t}{F_o} \right) + \left(d \times \left(\frac{PPI_t}{PPI_o} \right) \right) \right]$$

Where $c + d = 1$

And in which the symbols have the following meanings:

"x" is the proportion of variable costs not subject to adjustment and its value is 2% (0,02).

"c" is the coefficient deemed to represent the proportionate value of fuel. A value of (...%) shall be applied for this contract.

"d" is the coefficient deemed to represent the proportionate value of the other variable costs. A value of (...%) shall be applied for this contract.

"F" is the "Fuel Index" and shall be determined as:

$$F = \alpha \times \frac{P_t}{P_o} + \beta \times \frac{D_t}{D_o} \text{ where } \alpha + \beta = 1$$

P_o , P_t , D_o and D_t are the actual monthly petrol and diesel prices as published by the Department of Minerals and Energy on a monthly basis and are available on the following web address: http://www.dme.gov.za/energy/liquid_prices.stm

α and β are the coefficients representing the proportion of petrol and diesel respectively, used in operating the fleet. The Operator must provide values for these, which will be adjusted in accordance with adjustments to the fleet.

"PPI" is the Producer Price Index for Imported Goods as published monthly by Statistics South Africa in P0142.1.

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

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

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

35.2.5 The amount payable to the Operator "Ac" shall be determined by the formula:

$$Ac = Y \times (F - 50\%P) + (V - 50\%P)$$

The symbols in the formula have the following meanings:

"Y" is the fixed cost escalation factor as determined in terms of clause 35.2.2.

"F" is the total fixed cost component of the claim, reflecting the fleet available for service as certified by the Representative and will be determined by multiplying the fixed cost per bus as determined in terms of Schedule 9 by the number of buses operated (peak plus 10% spare capacity).

"Z" is the variable cost escalation factors determined in terms of clause 35.2.3

"V" is the total variable cost component as certified by the Representative in the certificate under consideration and will be determined by multiplying the variable cost rate per kilometre as determined in terms of Schedule 9 by the number of scheduled kilometres actually operated.

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

36. PERFORMANCE MONITORING

36.1 The underlying policy objectives of performance monitoring are to-

- (a) measure the reliability, punctuality and general operational efficiency of the services by means of a review of key performance indicators (KPIs);
- (b) measure the customer satisfaction with the services rendered;
- (c) encourage improved service provision and quality by providing for a remedial process where performance problems are identified and addressed; and
- (d) provide for a mechanism where compliance with KPIs can be used as a motivation for possible subsequent extension of the contract after the initial contract period up to the maximum period allowed by the Act.

36.2 The first six (6) months from the commencement date will be considered as an establishment phase, and performance during that period will not be used in the performance measurement process, although penalties will be imposed after the third (3rd) month in accordance with clause 33 and Schedule 6. Thereafter, the performance of the Operator will be assessed on a monthly basis according to the following KPIs established by the CA:

- a) **Reliability** which measures the Operator's ability to operate the contract timetable in terms of the percentage of scheduled trips actually operated. Trips not operated due to circumstances beyond the Operator's control (e.g. accidents, traffic and strikes) are not taken into account for calculation purposes;
- b) **Punctuality** which measures the Operator's ability to operate on-time. It is calculated in terms of the percentage of on-time departures and arrivals at terminal points and selected intermediate points;
- c) **Driver quality** which measures the technical ability (driving skills) and attitude of drivers as well as consideration for passengers. It is assessed through the following:
 - (i) complaints reported by passengers in which case it is calculated as the percentage of trips operated for which complaints were received; and
 - (ii) surveys whilst buses are in service to evaluate vehicle handling and customer interaction. In this instance it is calculated as the percentage of surveys that indicates that remedial action is required.

The data collated is shared with the operator in order to take action and address any areas of weakness that are identified. Remedial action taken by the Operator is also monitored;

- d) **Vehicle availability** which measures the Operator's ability to have available and operate the number of buses to operate the contract timetable. It is calculated as the percentage of scheduled trips that were not operated due to insufficient buses and/or spare capacity ;
- e) **Vehicle quality** which measures the Operator's ability to maintain and operate the quality of buses required in terms of Schedule 2. It is evaluated in terms of both the general and technical condition of buses;
 - (i) General vehicle condition relates to the general appearance of buses that is assessed through inspections or monitoring at terminals and intermediate timing and monitoring points. It is calculated as the percentage of trips operated that incurred penalties related to unsatisfactory buses as per item 6.2 of Schedule 6;
 - (ii) Technical vehicle condition relates to the technical performance/quality of buses. It is calculated as the number of scheduled trips that were not operated due to breakdowns caused by poor vehicle maintenance or failure to adhere to maintenance procedures. It is also assessed through technical bus inspections at depots by suitably qualified staff. Defects are noted and given a score, with higher scores for more serious defects. The key measure is the average number of points per buses, with a target of zero. The evaluation also includes an assessment of maintenance procedures and the operator's vehicle pass rate at roadworthy certificate tests.

The results of the assessments are made available to the Operator in order to take action and address any areas of weakness that are identified. Action taken is also monitored;

- f) **Safety** relates to the Operator's ability to provide a safe service. Failure can result in the loss of this contract whilst unsatisfactory performance can also lead to the failure to win new contracts. It is measured as the percentage of trip operated that were involved in accidents directly caused by either poor driving skills or judgement of drivers, poor vehicle maintenance, insufficient or poor safety policies, procedures and risk assessments or failure to implement or adhere to such policies and procedures. Checks on safety policies, procedures and risk assessments are conducted through visits to operating premises and interviews with operational staff. These visits are followed by a report highlighting areas

of concern and an action plan. This plan is then reviewed in consultation with the Operator and forms the basis of the next inspection.

- g) **Revenue protection** measures the Operator's commitment to implement fare evasion procedures and its ability to ensure that the observed fare evasion is kept below two percentage (2%). It is assessed through random audits conducted by the CA;
- h) **Passenger satisfaction** is measured through passenger satisfaction surveys to assess and monitor passengers' satisfaction with the quality of services provided and identify areas for improvement;
- i) **Contract compliance** relates to the Operator's ability to comply with the contract specifications. Areas that will be specifically focused on include the following:
 - (i) Submission of information and reports;
 - (ii) Adherence to decisions taken and instructions given by the CA;
 - (iii) Training of staff; and
 - (iv) failure to report faulty ticketing equipment immediately.

36.3 The KPI performance benchmarks (standards) against which the Operator's performance will be measured are summarised in Schedule 8.

36.4 The Operator's performance in terms of the KPI benchmarks will be reported on by a Representative in its monthly monitoring reports and at monthly contract meetings.

36.5 The CA will commission annual customer satisfaction surveys, as more fully described in Schedule 8, to obtain customers' viewpoints on aspects related to, but not limited to-

- a) service delivery;
- b) authorised stops and their proximity to points of origin and destination;
- c) passenger comfort;
- d) fare media;
- e) information services (including timetables);
- f) personal safety;
- g) Affordability of the fares;
- h) staff service; and
- i) accessibility.

36.6 This contract may be renewed by the CA for a further period of five years in terms of clause 3.2 if the Operator, on the CA's assessment, has met the conditions as set out in clause 36.8.

36.7 The extension of the contract for years eight to twelve will be subject to a Contract Performance Review that will take place during the last three months of year five of this contract based on the monthly reviews contemplated in clause 36.2. The decision of the Contract Performance Review for the purpose of extension will be made in the first month of year six (6).

Detailed information on the review process is given in Schedule 8.

36.8 Extension of this contract for a subsequent term will only be considered if the CA is satisfied that-

- (a) The Operator has met the Reliability Benchmark in all of the sixty-nine (69) months considered for assessment;
- (b) The Operator has met the Punctuality Benchmark in at least sixty-one (61) of the sixty-nine (69) months considered for assessment;

- (c) The Operator has met the Customer Experience Benchmark in at least forty-three (43) of the sixty-nine (69) months considered for assessment;
 - (d) The Operator has on average over the sixty-nine (69) months considered for assessment met at least ninety-five per cent (95%) of the Performance Benchmarks; and
 - (e) The Operator has not been issued with a letter for breach of any of the contract conditions during the course of the contract that has not been remedied or waived in accordance with the requirements of this contract to the CA's reasonable satisfaction.
- 36.9 The details of the performance assessment regime may be varied from time to time by the CA in consultation with the Operator.
- 36.10 If the Operator fails to meet any KPI benchmark, the Operator must, at its own cost-
- (a) investigate and report to the CA within five (5) business days the underlying causes of the failure to meet the performance benchmark; and
 - (b) on being required to do so by the CA, take the necessary action to address the reasons for not achieving the performance benchmarks.
- 36.11 The Parties must meet periodically and at least annually to review the Operator's performance against the performance benchmarks and, if appropriate, discuss what steps the Operator should take to improve such performance. Information regarding these reviews is given in Schedule 8.
- 36.12 The CA's Representative and/or SMF must maintain all minutes, attendance registers of all meetings and reports.
- 36.13 In addition to the forms and schedules in this contract, the CA's Representative and/or SMF must complete and sign the CA's **SCM monthly supplier performance monitoring documents**, inform the Operator of such completion and ensure that the Operator makes inputs and signs. The monitoring documents must be completed for the duration of the contract.

37. PAYMENT FOR SERVICES AND SUPPORTING DOCUMENTATION

- 37.1 The Operator shall be paid monthly for providing the services set out in Schedule 7 and for approved variations in accordance with clause 16, in an amount calculated by multiplying the total revenue kilometres operated by vehicle class by the applicable variable contract rates, plus an amount calculated by multiplying the number of peak buses per class operated by the applicable fixed contract rates, less any penalties.
- 37.2 The Operator will not be paid for positioning or dead kilometres.
- 37.3 The amount payable as calculated in clause 37.1 will be escalated in terms of clause 35, after which amounts to be withheld under clause 35 and Schedule 6 will be deducted. Actual route distances as set out in Schedule 7 or agreed between the Operator and the Representative shall be used to calculate revenue kilometres for each trip.
- 37.4 The onus is on the Operator to prove that trips have been operated. The Operator must note that regulator sheets and depot departure documents are not considered as evidence of a trip having operated in accordance with the timetable.
- 37.5 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 CA in Form 1.

- 37.6 To support the calculation of the Operator's monthly claims and to enable proper monitoring of performance, the Operator must supply the CA monthly with the following written statistical data and information for each driver's duty/shift or part thereof as part of a journey analysis report in the format set out in Schedule 12:
- (i) the scheduled and actual departure and arrival time of each trip, late and early trips, with proper identification of trip;
 - (ii) detail of trips not operated and reasons therefore;
 - (iii) revenue kilometres of each trip;
 - (iv) any other information that may be required from time to time by the CA which may be relevant to the operation of the contract;

The Operator must retain the abovementioned data and information and keep it available to the CA for inspection for at least three (3) years after the end of the contract period.

- 37.7 The Operator must total the revenue kilometres operated on each route for the particular month without rounding off any figures.
- 37.8 Claim forms must be prepared by the Operator, and checked and certified as correct and payable by the Representative.
- 37.9 The monthly claim forms will only be certified by the Representative if he/she is satisfied with the contents and correctness thereof and all the information has been supplied as specified in this clause.
- 37.10 The Representative may, before submitting a claim form to the CA as a payment certificate, make any correction or modification to that certificate or any previous payment certificate(s) and may withhold certification in respect of any part of the services not being operated to his/her satisfaction.
- 37.11 The Representative must submit the payment certificate to the CA 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, he/she must supply a copy of the amended form or certificate to the Operator.
- 37.12 The CA must 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 will be made directly into the bank account of the Operator, details of which must be supplied by the Operator. The CA may reject any payment certificate submitted by the Representative that contains errors. The rejected certificate must be returned to the Representative for correction and no discussions in this regard will be entered into between the CA and the Operator.
- 37.13 Should the Operator, for whatever reason, owe an amount to the CA, the CA may set it off against any moneys that may be owing to the Operator by the CA in terms of a monthly payment certificate.
- 37.14 The certification or approval of a payment certificate by the Representative and/or the CA shall not be deemed to be approval of, or waiving of rights regarding any services or other matter in respect of which it was issued, or be taken to be an admission of the due performance of the contract or any part thereof, or of the accuracy of any claim made by the Operator, and no certificate shall revoke or prejudice any of the rights and powers of the CA and the Representative. No such certificate shall deprive the CA 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.
- 37.15 To collect and supply that portion of the required data and information as listed in clauses 31 and 32 which is capable of being electronically collected, the Operator must, within thirty (30) days after the equipment has been made available to the Operator, ensure that the EFVE equipment selected, provided and paid for by the CA and tracking devices are

- installed and in use on all buses.
- 37.16 While EFVE and tracking devices have not yet been installed, the onus will be on the Operator to supply the correct information by means of manual waybills. The CA may decide not to pay any claim without adequate documented proof of the required data and information. ÷.
- 37.17 The Operator must ensure that EFVE and/or tracking equipment is in a working condition and must report the issue immediately to the CA, failing which the penalties shall be imposed in terms of Schedule 6.
- 37.18 In the event that EFVE and tracking devices become defective, the alternative method of presenting the required data and information will be by using hand-written emergency waybills that are signed by the driver as to the correctness of the detail and also by the Operator certifying that the EFVE malfunctioned. The emergency waybill must detail all of the information required in Form 24. These signed and certified waybills must be presented to the Representative within twenty-four (24) hours of each occurrence.
- 37.19 The software which is used to record the daily and monthly summarised trip information must be capable of generating an Excel file.
- 37.20 In addition to any information requested in terms of clause 37.6, the CA may at any time request the Operator to provide any information regarding the operation of the contract, including, but not limited to, cost elements that influence the provision of services, and any other matter that may affect payments to the Operator. The Operator must comply with such a request within seven (7) days, or such other period as the CA may determine, which may be less than seven (7) days where information is urgently required. Failure to do so will result in penalties being imposed in terms of Schedule 6. Unless the Operator, upon written request, was granted an extension.
- 37.21 Where the Operator is performing more than one negotiated contract, subsidised service contract, current tendered contract or interim contract contemplated in Chapter 5 of the Act, all information must be provided separately per contract, i.e. consolidated information in respect of more than one such contract will not be acceptable.
- 37.22 If in the opinion of the CA the Operator provides incorrect, false or fraudulent information linked to any claim which may prejudice the CA, then in addition to any other remedies the CA may have or action it may take, all future payments to the Operator or a portion thereof as determined by the CA may be withheld until the amount (*quantum*) of the CA's damages can be determined. Thereafter the CA 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 this contract. If the CA suspects that such incorrect, false or fraudulent information is being provided-
- (a) the CA 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 a Representative shall be *prima facie* proof of the amount (*quantum*) of damages suffered by the CA; 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;
- provided that the CA may not act in terms of this sub-clause unless it has notified the Operator in writing of its intention to do so, and has allowed the Operator not less than seven (7) days to respond to the allegations, which are set out in the notice. If the Operator fails to respond within that time or provides reasons that are unacceptable to the CA, the CA may proceed with the action as set out above.
- 37.23 The CA may, with the consent of the accounting officer of the CA as required by the MFMA

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 CA, upon which such circumstances arose. For the purposes of this 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; or
- (b) any other unforeseeable circumstance that is extraordinary in the opinion of the CA, but excludes natural growth in patronage and service requirements;

provided that the CA may not act in terms of this sub-clause unless it has notified the Operator in writing of its intention to do so, and has allowed the Operator not less than seven days to comment on the proposed amended rates, which are set out in the notice together with the reasons for the proposed change. If the Operator fails to respond within that time or provides reasons that are unacceptable to the CA, the contract rates will be amended as from the date of expiry of the said period of seven days. If the Operator is dissatisfied with the amended rates it may declare a dispute under clause 39.

38. RELAXATION

- 38.1 Except as otherwise stated, no latitude, extension of time or other indulgence which may be given or allowed by either Party to the other will 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 strict compliance with the terms of this contract.
- 38.2 A failure by either Party to enforce any provision of this contract shall not constitute a waiver of that provision or affect that Party's right to require performance thereof at any time in the future.

39. SETTLEMENT OF DISPUTES

- 39.1 The Operator may appeal to the CA against the imposition of any penalty in terms of clause 33 or Schedule 6 or against any variation in terms of clauses 16 or 37.23, by giving written notice to the CA within fourteen (14) days of the penalty or variation coming to its knowledge. If the Operator is not satisfied with the CA's decision, it may declare a dispute in terms of clause 39.2.
- 39.2 Should any dispute or difference of any nature whatsoever arise between the Parties in connection with or arising from this contract, whether a dispute contemplated in clause 39.1 or otherwise, the Party declaring the dispute or difference must notify the other Party in writing, and the Parties 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 in the manner provided for in regulation 7 of the National Land Transport Regulations on Contracting for Public Transport Services, 2009 published under Notice R.877 of 31 August 2009 in *Government Gazette* 32535 or, where applicable, by arbitration under regulation 8 of those Regulations, reading in the necessary changes, unless the Parties agree in writing to another dispute resolution procedure.
- 39.3 Where the proceedings contemplated in clauses 39.1 and 39.2 are deemed to be inappropriate by a Party to the dispute, nothing in this contract will prevent a Party from approaching a court for urgent relief.
- 39.4 The Operator must despite any dispute, difference or settlement procedure continue to provide the services in accordance with this contract.

39.5 This clause shall survive the termination or cancellation of this contract.

40. OWNERSHIP AND CONFIDENTIAL NATURE OF DOCUMENTS

The Parties must keep confidential and not disclose without prior written consent of the other Party any information supplied by either Party, or that is contained in the contract documents, being information contemplated in Chapter 4 of the Promotion of Access to Information Act 2 of 2000, except where obliged to do so in terms of law. All contract documents shall remain the property of the CA 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 CA shall become the property of the CA.

41. CHOICE OF LAW

The law of the Republic of South Africa shall be applicable to this contract and any matter arising there from. The Operator must abide by all applicable statutes, regulations, ordinances, by-laws and other laws and binds itself 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.

42. CONTRACT DOCUMENTS

42.1 All of the documents constituting this contract are to be read in conjunction with each other.

42.2 The several documents constituting this 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 is responsible for the consequences arising from neglect to take this precaution. When the Representative is notified of such ambiguities, discrepancies or uncertainties, he/she must, in consultation with the CA, issue instructions to the Operator directing what is to be done: provided always that if the Operator is of the opinion that the Representative's instructions will result in additional expenses for the Operator which the Operator could not reasonably have anticipated, the Operator may declare a dispute in accordance with clause 39.

42.3 In case of a conflict the order of precedence of the documents shall be as follows subject to any amendments in writing contemplated in clause 44:

- (a) These Conditions of Contract;
- (b) Tender Rules;
- (b) Schedules 1 to 13; and
- (c) Forms (Volume 3).

These documents, together with any such amendments, constitute the contract documents.

43. DOMICILIA AND COMMUNICATION

43.1 The *domicile citandi et executandi* in 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 CA:

Address: 158 Civic Boulevard, Braamfontein, Johannesburg
telephone number: 0860 562 874
Email address: LutandoM@joburg.org.za
Attention: Mr. Lutando Sithembele Maboza

The Operator:

Address: 2406 Forbes Road, Meadowlands West Zone 9, Johannesburg
Telephone: 011 988 6558
Email: nrikhotso@litsamaiso.co.za
Attention: Mr. Nelson Rikhotso

- 43.2 The Parties must give notice in writing of any change of the abovementioned *domicillia* and other relevant particulars, at least fourteen (14) days prior to such new particulars becoming effective.
- 43.3 Communication must be maintained by using the following methods:
- (a) hand delivery to a responsible person during ordinary business hours at the domicilium address mentioned in clause 43.1;
 - (b) prepaid registered post;
 - (c) electronic mail (e-mail).
- 43.4 Any notice given in terms of this contract must be in writing and shall be deemed to have been received by the addressee, unless the contrary is proved-
- (a) on the date of delivery, if delivered by hand;
 - (b) on the eighth day following the date of posting, if sent by prepaid registered post; or
 - (c) on the day after dispatch, if sent by email, provided that the recipient has acknowledged receipt by telefax or e-mail on that day.

44. ENTIRE CONTRACT

- 44.1 On acceptance of the tender the documents mentioned in clause 42 and approved alterations thereto shall constitute the full agreement between the Parties, and no other representations or terms shall form part thereof unless reduced to writing and signed by or on behalf of the Parties.
- 44.2 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 subject to the MFMA processes and the CA's Supply Chain Management processes.

45. BREACH

- 45.1 Where the CA discovers that-
- (a) the Operator has committed an act of insolvency or is insolvent;
 - (b) the Operator has made a compromise with its creditors or assigned in favour of its creditors;
 - (c) the Operator has agreed to carry out the contract under the supervision of a committee representing its creditors;
 - (d) the Operator has been sequestered 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 or becomes subject to business rescue proceedings in terms of Chapter 6 of the Companies Act 71 of 2008; or
- (e) judicial execution has been levied on the Operator's goods,

the CA may, subject to the Companies Act, 2008, demand in writing that the Operator deposit in cash with the CA not more than ten (10%) percent of the amounts estimated to be due to the Operator over the remainder of the contract period (excluding an extension for the five (5) year period contemplated in clause 3.2). The CA 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 this contract and/or any damages the CA may suffer, and will repay it to the Operator within fourteen (14) days after expiry or termination of this contract, after deduction of any amounts owing by the Operator to the CA. The Operator must comply with such a demand within seven (7) days of receipt thereof, failing which the CA may terminate this contract.

- 45.2 Where the penalties imposed in terms of Schedule 6 amount to more than ten (10%) percent in a particular consecutive four-week period of the total amount payable in respect of that period, the CA may deliver a written notice to the Operator informing it that this contract will be terminated on further written notice if such penalties so exceed ten (10%) percent in any subsequent four-week period. If such a notice is sent and the penalties do again exceed that percentage in any subsequent four-week period, the CA may terminate this contract forthwith on further written notice and without granting the Operator any further opportunity to rectify the matter.

45.3 Where-

- (i) the Operator delegates, cedes or sub-contracts the contract or part thereof without having obtained the CA's consent in writing; or
- (ii) the Operator has approached anyone including any official or Representative of the CA, 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
- (iii) the Operator, when advised that its tender has been accepted, has given notice of its inability to sign or execute this contract; or
- (iv) 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; or
- (v) 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
- (vi) the Operator has deliberately furnished inaccurate information in its tender either as regards its previous experience or the buses at its disposal for the services, or with regard to any other material information; or
- (vii) the Operator's operating licenses necessary to provide the services are withdrawn or suspended; or
- (viii) the Operator fails at any stage to comply with the requirements of the Act; or
- (ix) the Operator has offered, promised or given a bribe or other gift or remuneration to any officer or employee in the service of the CA in connection with the tender process or the obtaining or execution of this contract; or
- 0) the Operator has acted in a fraudulent manner in obtaining or executing any contract; or
- (k) the Operator has abandoned any of his or her obligations in terms of this contract; or
- (l) the Operator is discovered to have provided incorrect, false or fraudulent

- information at any stage;
- (m) the Operator consistently fails to observe the specifications set out in any of the Schedules whether or not penalties have been imposed, with the result that the quality of the services is unacceptable to the CA; or
- (n) the ownership control in the Operator has changed without the consent of the CA,

the CA may, without prejudice to any other rights it may have, terminate this contract and, if appropriate, claim damages from the Operator, in addition to any other lawful remedy the CA may have. For the purpose of paragraph (m), the Operator will be regarded as having consistently failed to observe the specifications where the CA provides a written certificate to that effect. If the Operator disagrees with the CA's opinion, he or she may declare a dispute under clause 39.

45.4 Where the Operator has breached or failed to comply with any term of the contract as contemplated in clause 45.3, or commits another breach of the terms or conditions of this contract other than one contemplated in clause 45.2 (excessive penalties - in which case that sub-clause applies), the CA may give the Operator at least thirty (30) days' written notice to rectify the matter, and, if the Operator has not remedied the breach within the said thirty (30) days, without prejudice to any other rights the CA may have, the CA may

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

45.5 The CA may terminate this 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 this contract that requires this contract to be terminated; or
- (b) applicable transport planning shows that the services are no longer required or are no longer required in their present form or that another transport mode will be more suitable; or
- (c) national, provincial or local transport policy requires it.

In such a case the CA must pay to the Operator such damages as the Operator is able to prove, provided that such damages shall not exceed ten percent 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.

45.6 Where this contract is terminated under this clause the CA may require the Operator to continue providing the services for a maximum of thirty (30) days after the date of termination, but subject to section 41(3) and 42(5) of the Act.

45.7 Where this contract is terminated-

- (a) the Operator must leave the service area at the expiry of the period contemplated in clause 45.6, or on the date of termination of this contract, as required by the

- CA, despite the fact that a dispute may have been declared under clause 39, or that any Party has applied to a court for relief, 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 45.6, or on the date of termination of this contract, as the case may be, despite the fact that the Operator may hold operating licenses or permits authorising such operation, and undertakes to submit any such licenses or permits to the relevant regulatory entity for cancellation; and
 - (c) the CA may employ another operator to complete the contract or any part thereof at its option.
- 45.8 Should the amounts the CA must pay to have the services provided for the remainder of the period of this 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 CA the difference and it shall be deemed a debt due by the Operator to the CA and shall be recoverable accordingly.
- 45.9 Termination of this contract shall be without prejudice to any rights of the CA in respect of any antecedent breach of contract by the Operator.
- 45.10 In the event of the CA breaching any terms or conditions of this contract, the Operator may give the CA at least fourteen (14) days' written notice of such breach, calling upon the CA to remedy the same. Should the CA fail to remedy the breach in accordance with the notice, this contract may either be terminated by the Operator giving a further fourteen (14) days' written notice, during which the Operator must still provide the services under this contract, or at the option of the Operator, it may institute a claim for damages and/or sue for specific performance against the CA, or claim any other lawful remedy that the Operator may have against the CA, without prejudice to any other rights the Operator may have.
- 45.11 Should more than thirty (30%) percent of the monthly scheduled kilometres not be provided for three (3) consecutive months due to reasons contemplated in clause 15, either Party may terminate this contract, but not less than thirty (30) days after the end of the third (3rd) such month. Neither Party shall have any claim against the other arising out of such termination.
- 45.12 In the case of termination of this contract in terms of this clause, except for clause 45.10, the CA 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 CA on request.

46. GENERAL MATTERS

- 46.1 This document and its annexures constitute the entire contract between the Parties and neither Party may rely on any representation, undertaking, term or condition that is not included in this document.
- 46.2 No agreement to vary, add to or cancel this contract shall be of any force or effect unless reduced to writing and signed on behalf of the Parties.
- 46.3 This contract will be signed as two identical originals, which both together will constitute the entire agreement between the Parties.

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 2025

FOR THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY (CA)

Name of the official with delegated authority:

WITNESSES:

1. _____ Name: _____

2. _____ Name: _____

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 2025

FOR OPERATOR, LITSAMAISO (PTY) LTD (DULY AUTHORISED THERETO)

Name of the duly authorized persons

WITNESSES:

1. _____ Name: _____

2. _____ Name: _____