

GENERAL NOTICE

NOTICE 3163 OF 2003

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

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

SCHEDULE

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

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

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

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

or by post to

The National Department of Transport
Private Bag x 193
PRETORIA
0001

For attention: Mr JD de Villiers

OR

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

Closing date for submissions: 28 November 2003

MR AM OMAR, MP
MINISTER OF TRANSPORT

PROVINCIAL ADMINISTRATION OF PROVINCE

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

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

VOLUME 1: TERMS AND CONDITIONS OF CONTRACT

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THIS CONTRACT IS CONCLUDED BETWEEN:

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

AND

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

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

NOW THIS CONTRACT WITNESSES AS FOLLOWS:

1. DEFINITIONS

1.1 In this contract, words in the singular also include words in the plural and *vice versa* where the context permits.

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

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

"Act" or "the Act" means the National Land Transport Transition Act, 2000 (Act No. 22 of 2000), or as amended;

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

"authorised stop" means a stop, rank or terminal authorised by the relevant local authority and/or traffic authority and agreed to by the Representative and the Operator;

"band" or "kilometre band" means a range of kilometres as set out in Form 9 of the Forms within which the total monthly revenue kilometres operated by the

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

"bus" means a motor vehicle designed or lawfully adapted, by a registered manufacturer in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry more than 35 persons, excluding the driver and specified in Form 7, by means of which the Operator proposes to provide the services and includes a double decker bus, medium bus, standard bus and train bus;

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

"capacity" in respect of buses means the maximum number of persons that may lawfully be carried in the bus, including all seated and standing passengers, but excluding the driver;

"claim form" means the total of the prescribed forms and certificates which are to be completed, signed and submitted by the Operator to the Representative in support of its monthly claim;

"commencement date" means the date on which the services will commence as stated in clause 20;

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

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

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

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

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

"day" includes Saturdays, Sundays and public holidays:

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

contract;

"double decker bus", means a bus which-

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

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

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

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

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

"emergency" means a situation which is beyond the control of the Operator, for example strikes, stayaways, riots, vis major, etc., and which makes the provision of the services or part thereof impossible;

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

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

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

"midibus", means a motor vehicle designed or lawfully adapted, by a registered manufacturer in compliance with the Road Traffic Act, 1969 (Act No. 29 of 1989), to carry from nine (9) to eighteen (18) seated persons, excluding the driver;

"minibus", means a motor vehicle designed or lawfully adapted, by a registered manufacturer in compliance with the Road Traffic Act, 1989 (Act No. 29 of 1989), to carry from nineteen (19) to thirty-five (35) persons, excluding the driver,

"month" means a calendar month;

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

"OEM" means the Original Equipment Manufacturer;

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

"Operator" means the person, company, close corporation, joint venture, partnership or consortium party to this contract, and includes the Operator's executors, administrators, trustees, judicial managers or liquidators, as the case may be, but not, except with the written consent of the Employer, any cessionary, delegate or sub-contractor of the Operator or substitute Operator;

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

"payment certificate" means the claim form certified by the Representative and subject to the approval of the Employer, stating an amount which the Operator will be paid by the Employer for services provided in terms of the contract, set out in accordance with Form 21 of the Forms;

"permit" means a public permit as defined in the Road Transportation Act, 1977 (Act No. 74 of 1977), and/or a replacing provincial law, which is necessary to enable the Operator to provide the services in terms of the contract, and where the Operator is already in possession of such permit before the commencement date, includes any renewal, amendment or transfer of such permit(s) necessary to enable it to provide the services;

"positioning kilometres" or **"dead kilometres"** means kilometres travelled by a vehicle with or without passengers -

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

for which the Operator is not entitled to be compensated in terms of this contract;

"Representative" means the person appointed as such by the Employer, or by the Supervision and Monitoring Firm with the written consent of the Employer, to supervise and monitor the services and to perform the functions of Representative in this contract, or a person authorised by the Employer to act on its behalf. Representative also includes its delegate under clause 32.3;

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

(i) **Body rebuilt by a registered bus bodybuilder**

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

(ii) **Electrical**

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

SABS 1327.

(iii) Mechanical

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

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

(i) Body rehabilitated by a registered bus body builder

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

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

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

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

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

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

"service area" means the residential, business, industrial and other areas served by the routes, as described in the Specifications (Volume 2), in which the services will be operated;

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

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

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

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

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

"standing kilometres" means kilometres which are scheduled in accordance with the time table and for which the Operator is compensated where it is unable to operate scheduled trips, as contemplated in clause 30.3;

"supplementary agreement" means a new contract between the Employer and the Operator for operating additional services outside the service area which were not contemplated in the original contract, are not required for the proper fulfilment of the original contract and do not amount to variations in terms of clause 41;

"time table" means a schedule of passenger carrying trips approved by the Employer, indicating all departure times from points of origin and specified intermediate points (not necessarily all authorised stops) as well as arrival times at destinations on each route for specified days, subject to any variation thereof in terms of clause 41;

"train bus" means a bus which –

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

"trip" means the operation of a vehicle, carrying fare paying passengers, travelling in a single direction on a route as set out in the authorised time table, including any variations approved by the Employer or Representative in writing in terms of clause 41;

"unsuitable vehicle" means a vehicle which is materially different from those specified in Form 7 of the Forms in terms of age, make, model or otherwise, or which the Representative in its discretion deems to be unsuitable to provide the services adequately;

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

2. PERMISSION TO PROVIDE SERVICES

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

3. UNDERTAKING

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

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

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

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

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

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

this will constitute a material breach of contract.

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

5. DATA AND OTHER STATISTICS

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

6. INFORMATION

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

7. COSTS AND LOSSES INCURRED BY THE OPERATOR

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

8. CONTRACT RATES ALL-INCLUSIVE

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

9. **BUSINESS PLAN**

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

10. COMPLETION AND SIGNING OF CERTAIN FORMS

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

11. INVESTIGATION OF OPERATOR

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

12. OWNERSHIP AND CONFIDENTIAL NATURE OF DOCUMENTS

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

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

13. ADDITIONAL QUALIFICATION FOR OPERATOR

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

14. ACCESS AND DISCLOSURE

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

15. ACCOUNTING MATTERS

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

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

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

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

16. BUS STOPS

16.1 Only authorised stops shall be used by the Operator.

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

17. CANCELLATION OF SCHEDULED TRIPS ON A TEMPORARY BASIS

17.1 Cancellation of scheduled trips is not permitted unless -

- (a) agreed to in writing by the Representative in terms of clause 41;
- (b) they form part of a reduced service during holiday periods and have been approved by the Representative at least fourteen (14) days in advance;
- (c) the cancellation is due to unforeseen road closures, obstructions, floods or weather conditions;
- (d) in the opinion of the Employer the cancellation results from immediate danger to life or of personal injury and/or serious damage to property; or
- (e) the cancellation is in the opinion of the Employer due to strike or stayaway action of a general nature, i.e. not confined to the Operator's organisation.

17.2 Where the Representative or Deputy orders the Operator to provide services in circumstances where the Operator is of the opinion that there is immediate danger to life or of personal injury or of serious damage to property, the Operator may refuse to comply, in which case the matter shall be referred to the Employer for decision within twenty-four (24) hours. If the Employer decides that there was in fact such danger, standing kilometres will be paid for the services not provided: if not, the Operator shall be penalized in accordance with clause 44 for not providing the services and standing kilometres will not be paid. Should the Operator be dissatisfied with the Employer's decision, the Operator may declare a dispute under clause 35.

- 17.3 Where the Operator is of the opinion that scheduled trips should be cancelled due to boycott action, either against the Operator's firm or generally, the Operator must refer the matter to the Employer via the Representative for decision. If the Employer decides that such cancellation is justified, standing kilometres will be paid for the services not provided: if not, the Operator shall be penalized in accordance with clause 44 for not providing the services and standing kilometres will not be paid. Should the Operator be dissatisfied with the Employer's decision, the Operator may declare a dispute under clause 35.
- 17.4 The Operator must inform the Representative within 24 (twenty four) hours after the cancellation of any scheduled trips and also when the trips are recommenced. The Operator must also confirm the cancellation and recommencement to the Representative in writing and notify it of the reasons for the cancellation. The Representative must investigate and confirm the reasons for all cancellations.

18. CESSION, DELEGATION AND SUB-CONTRACTING

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

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

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

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

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

22. DOMICILIA AND COMMUNICATION

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

The Employer:

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

The other particulars of the Parties are:

Employer's telefax number:

Employer's telephone number:

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

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

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

22.3 Communication must be maintained by using the following methods:

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

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

19. CHOICE OF LAW

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

20. COMMENCEMENT DATE AND DURATION

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

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

20.3 The Representative may on instructions of the Employer instruct the Operator to continue operating the services for a maximum additional period of three (3) months after the expiry date. Three (3) months' prior notice shall be given in writing if the contract period is to be so extended.

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

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

21. CONTRACT DOCUMENTS

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

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

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

23. ENTIRE CONTRACT

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

24. ESCALATION

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

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

$$\left(b \times \frac{F_i}{F_0} \right) + \left([1 - b] \times \frac{CPIX_i}{CPIX_0} \right)$$

in which the symbols have the following meanings:

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

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

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

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

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

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

The amount "Ac' shall be determined by the formula $Ac = T + S - F$

The symbols in the formula have the following meanings :

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

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

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

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

25. **FARES**

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

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

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

26. INDEPENDENT CONTRACTOR

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

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

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

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

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

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

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

- 27.7 The Operator must forthwith upon the occurrence of any of the following events notify the Representative in writing of the details thereof:
- (a) Any revocation, suspension or refusal to renew any licence or permit necessary for the provision of the services; and
 - (b) The imposition of any condition upon such licence or permit or any other circumstance which would prevent the Operator from providing the services in accordance with the contract.
- 27.8 In addition to the information referred to in clause 27.1, the Operator must supply the Employer with additional information, if so requested by the Employer, for information purposes, as part of the Bus Information System (BIS).
- 27.9 In addition to the information referred to in clause 27.1, if and when so requested by the Employer, the Operator must supply the Employer with the value of cash received from cash passengers per route per month and the number of multi-journey ticket (MJT) sales per MJT ticket type and destination category per month.
- 27.10 The Operator must, notify the Employer within seven days of any change regarding ownership control over the Operator as contemplated in section 48(6)(a) of the Act and complete a declaration in accordance with Form 18 in respect of any new person or entity exercising such ownership control.

28. INSURANCE

- 28.1 The Operator must take steps to ensure the safety of passengers and property. The Employer shall not be liable for any loss or damages resulting from damage to property or the death of or injury to any person which is caused by an intentional or negligent act or omission of the Operator or its agents or employees and the Operator hereby indemnifies the Employer against all claims, demands; lawsuits, damages, costs (including attorney and client costs), charges and expenses whatsoever in this regard. Nothing contained in this provision shall, however, be deemed to render the Operator liable for, or to indemnify the Employer against, any compensation or damages for or with respect to injuries or damage to persons or property resulting from any negligent act or omission done or committed during the currency of the contract by the Employer or its servants or for or in respect of any claims, demands, lawsuits, damages, costs, charges and expenses in respect thereof or pertaining thereto.
- 28.2 The Operator must effect and maintain throughout the duration of the contract, at its own expense, public liability insurance and such other insurance and in such amounts as the Employer may from time to time direct, with an insurance company chosen by the Operator and acceptable to the Employer, registered with the Financial Services Board established by the Financial Services Board Act, 1990, and registered in the Republic of South Africa in terms of the Short Term Insurance Act, 1998 or other applicable legislation. Proof of such

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

29. OPERATION OF SERVICES

- 29.1 The Operator must exercise the highest degree of skill, care and diligence in the provision of the services and operate the services strictly in accordance with the Specifications, as well as the other relevant provisions of the contract, to the satisfaction of the Representative. The Operator must comply with and strictly adhere to the Representative's instructions and directions regarding the operation of the services, subject to clause 17.2. The Operator must take instructions and directions only from the Employer, the Representative or deputy, or a duly authorised delegate of the Representative.
- 29.2 Depending on the requirements of the contract as to which type or combination of types of buses are to be provided by the Operator, it must provide for each trip a vehicle having the passenger capacity as specified in the definitions of "minibus", "midibus", "medium-bus", "standard bus", "double decker bus" and/or "train bus", as the case may be.
- 29.3 The Operator shall have no cause to refuse to convey a person on a trip or part thereof unless the passenger capacity will be exceeded at the time in question by the person wishing to be conveyed, or on grounds of violent, abusive or otherwise offensive conduct on the part of that person or other grounds contemplated in the Act or applicable road traffic legislation, or because the person refuses to pay the fare.
- 29.4 Should the Operator become aware of circumstances or problems which have prevented it, are preventing it or will prevent it from providing the services as specified, it must, as soon as is reasonably possible after becoming so aware, advise the Representative or the Deputy of such circumstances or problems and also indicate the manner in which the provision of the services were, are or are going to be influenced thereby, if applicable. Such advice must be confirmed in writing as soon as reasonably possible. The Operator must in such circumstances comply with clause 37.

30. PAYMENT FOR SERVICES

- 30.1 The Operator shall be paid monthly for providing the services set out in the Specifications and for approved variations in accordance with clause 41, in an amount calculated by multiplying the total revenue kilometres by the contract rate for the band concerned, plus an amount calculated by multiplying total standing kilometres by the rate specified therefor, less any penalties. The total scheduled kilometres per month will be used to determine the said band. The amount thus payable will be escalated in terms of clause 24, after which amounts to be withheld under clauses 44.5.8 or 44.5.9 will be deducted. Actual route distances as agreed between the Operator and the Representative shall be used to calculate revenue kilometres for each trip, provided always that the onus is on the Operator to prove that trips have been operated. The Operator will not be paid for positioning kilometres.
- 30.2 Standing kilometres will only be paid where scheduled trips are cancelled as provided for in clause 171(c), (d) and (e), and clauses 17.2 and 17.3 where applicable, and only for a maximum period of seven (7) days per event. After the aforementioned period of seven (7) days the Employer may, in its discretion, extend the period for which standing kilometres will be paid and/or amend the time table. If standing kilometres paid amount to more than thirty percent (30%) of the monthly scheduled kilometres for three (3) consecutive months, either party may terminate the contract in terms of clause 39. The rates for standing kilometres shall be sixty percent (60%) of the contract rates for the band concerned as determined in terms of clause 30.1.
- 30.3 The Operator must total the revenue kilometres operated as well as standing kilometres on each route for the particular month without rounding off any figures further than one decimal point. Once a total has been obtained the total kilometre amount is to be rounded off to the nearest full kilometre.
- 30.4 As soon as possible, but not later than seven (7) days after the end of each month, the Operator must submit to the Representative a monthly claim form in the format set out in Form 21 containing *inter alia* the information set out in clause 27.1 and proof of payment of insurance premiums in terms of clause 28.
- 30.5 When all the information has been supplied as specified in clause 27 and the duly completed and signed monthly claim forms have been submitted to the Representative, the claim forms will be certified by the Representative if it is satisfied with the contents and correctness thereof. Claim forms must be prepared in the first instance by the Operator, and checked and certified as correct and payable by the Representative.
- 30.6 The Representative may, before it submits the claim forms to the Employer as a payment certificate, make any correction or modification to that payment certificate or any previous payment certificate(s) and shall have the right to withhold certification in respect of any part of the services not being operated to its satisfaction. The Representative must submit the payment certificate to the

- Employer as soon as possible, but not later than seven (7) days after receipt thereof, error free, from the Operator. Where the Representative has amended a claim form or payment certificate, it must supply a copy of the amended form or certificate to the Operator.
- 30.7 The Employer shall effect payment to the Operator as soon as possible but not later than fourteen (14) days after receipt of the error free payment certificate from the Representative. All payments shall be made directly into the bank account of the Operator, details of which must be supplied by the Operator. The Employer reserves the right to reject any payment certificate submitted to it by the Representative because of errors contained therein. Such rejected payment certificate shall be referred back to the Representative for correction purposes and no discussions in this regard will be entered into between the Employer and the Operator.
- 30.8 Should the Operator, for whatever reason, owe any amount to the Employer, the Employer shall have the right to set it off against any moneys that may be owing to the Operator by the Employer in terms of a monthly payment certificate.
- 309 Where the Operator fails to install EE as required by clause 27.2, the interest saved by it on the purchase price thereof as determined by the Employer, calculated at prevailing prime overdraft rates, shall be deducted from the unescalated total.
- 30.10 The certification or approval of a payment certificate by the Representative and/or the Employer shall not be deemed to be approval of, or waiving of rights regarding any services or other matter in respect of which it was issued, or be taken to be an admission of the due performance of the contract or any part thereof, or of the accuracy of any claim made by the Operator, and no certificate shall revoke or prejudice any of the rights and powers of the Employer and the Representative. No such certificate shall deprive the Employer or the Representative of any right they may have regarding wrongful acts or breach of contract on the part of the Operator that may appear or become known later.
- 30.11 The Employer may, in its sole discretion and with the consent of the relevant treasury in terms of regulation 8.7.1 of the Treasury *Regulations for Departments and Constitutional Institutions* issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and any other relevant body, amend the contract rates in the case of extraordinary circumstances. Such amendment will take effect from the date, as determined by the Employer, upon which such circumstances arose. Information used to make a decision in this regard, will be escalated according to the escalation formula set out in clause 24, where appropriate. For the purposes of this sub-clause "extraordinary circumstances" shall mean—
- (a) the fact that road or other physical conditions have deteriorated or improved to an unforeseeable extent;

- (b) the fact that there has been an unforeseeable number of strikes, stayaways, boycotts or incidents of unrest of a general nature, i.e. not confined to the Operators organisation; and
- (c) any other unforeseeable circumstance that is extraordinary in the opinion of the Employer.

31. PERMITS AND OPERATING LICENCES

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

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

31.4 The Employer undertakes not to enter into any similar agreement with any other operator of public transport services for the same route or routes until expiry or termination of the contract, unless the Employer considers it necessary to appoint a substitute operator in accordance with clause 37. The Employer may also seek tenders for the renewal of the services prior to the expiry of the contract so that all tender formalities may be completed in order to allow for continuity of the services.

31.5 At the end of the contract period, or if the contract is terminated in terms of clause 39, the Operator undertakes to surrender the operating licences or permits to the competent board in respect of all routes on which the services have been conducted in accordance with the requirements of the Act or other applicable legislation for cancellation or amendment, whichever is applicable, and undertakes not to oppose any applications for operating licences made by other operators who may obtain contracts from the Employer to continue the services in so far as they relate to the routes in question.

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

32.1 The function of the Representative is to administer and supervise the contract in accordance with the provisions thereof. In this regard it shall perform all the duties of the Representative as described in the contract and at all times endeavour to be just to the Employer and the Operator. In so far as it is not in conflict with the duty to be just to both Parties, the Representative must ensure that the Employer's interests in the contract are protected.

32.2 It is the duty of the Representative or Deputy to supervise the operation of the services as provided by the Operator on behalf of the Employer, to monitor such services to ensure compliance with the Specifications and to arrange and chair monthly project meetings. The Representative shall have no authority to release the Operator from any of its obligations in terms of the contract, nor shall it be empowered, except as stipulated in the contract documents, to issue any order that would impede the Operator, give rise to additional expenditure for the Employer or result in an amendment to the services.

32.3 The Representative may from time to time, with the written consent of the Employer, delegate in writing to an authorised person any of the powers and functions vested in it, and must furnish the Operator with a copy of all such written delegations of powers and functions. Any written direction or written approval given to the Operator by such a delegate in accordance with such delegation (but not otherwise) shall be binding on both the Operator and the Employer in the same way as if it had been given by the Representative, provided always that-

- (a) failure of a person authorised by the Representative to make a ruling or issue an instruction shall not prejudice the power of the Representative to make such ruling or issue such instruction later; and
- (b) should the Operator be dissatisfied with any decision of a person authorised by the Representative, it shall be entitled to refer the matter to the Representative within seven (7) days, who must thereupon confirm, vary or reverse the decision.

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

- 32.4 It is also the duty of the Representative's Deputy to supervise the operation of the services as provided by the Operator on behalf of the Employer and to monitor such services to ensure compliance with the Specifications. Other functions of the Representative's deputy include among other things to arrange and chair meetings with the Operator other than monthly project meetings, to develop a monitoring strategy and to ensure that all relevant information required by the Employer is forwarded in accordance with the formalities prescribed.
- 32.5 Despite any provisions to the contrary in the contract, the Employer shall have the right to reverse or amend a direction or decision of the Representative and to make or issue new ones. Any such reversed, amended or new direction or decision shall for the purposes of this contract be deemed to have been issued by the Representative.
- 32.6 The Employer and Representative shall have the right to investigate any complaints, objections or representations made by passengers, local authorities or other interested persons relating to the services.
- 32.7 Should the Operator become aware that any of its employees have threatened the Representative, the Deputy or any of the monitoring staff, the Operator shall be obliged to take immediate disciplinary or other appropriate steps to prevent a recurrence.
- 32.8 All communications between the Operator and the Employer shall take place via the Representative except where specifically provided otherwise.
- 32.9 For purposes of this contract the Employer may decide not to appoint a Supervision and Monitoring Firm in which case it will designate officials to perform the functions of the Representative and Deputy Representative.

33. RELAXATION

Except as otherwise stated, no latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of

any obligation hereunder or the enforcement of any right arising from this contract and no single or partial exercise of any right by either Party shall under any circumstance be construed to be an implied consent by such Party or operate as a waiver or a novation, or otherwise affect any of that Party's rights in terms of or arising from this contract or stop such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. No waiver on the part of either party of any rights arising from a breach of any provision of this contract will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

34. SERVICES OUTSIDE THE CONTRACT

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

35. SETTLEMENT OF DISPUTES

- 35.1 The Operator may appeal to the Employer against the imposition of any penalty imposed in terms of clause 44, or against any variation made by the Representative in terms of clause 41 in respect of which the Employer's consent is not required, by giving written notice to the Employer within fourteen (14) days of the penalty or variation coming to its knowledge. The Employer must give a decision on the matter within fourteen (14) days of receipt of such notice. If the Operator is not satisfied with the decision, it may declare a dispute in terms of clause 35.2.
- 35.2 Should any dispute or difference of any nature whatsoever arise between the Parties in connection with or arising from the contract the Party declaring the dispute or difference must notify the Representative in writing, and the Parties together with the Representative must attempt to resolve the matter within twenty-one (21) days of the notice. If no resolution can be achieved within that period, the dispute or difference must be settled by way of mediation as provided for hereunder.
- 35.3 Mediation procedure is commenced by either Party giving the other written notification that the matter must proceed to mediation. Where such a notification is delivered-
- (a) the Parties must each in writing nominate a mediator who is or has been a judge or practising advocate of not less than ten (10) years standing. This will take place within twenty-one (21) days after the notice to proceed to mediation and if the Parties cannot agree on one mediator within a further seven (7) days, the Association of Law Societies of the

RSA shall be requested to nominate a mediator within fourteen (14) days after the request;

- (b) the Parties must commit themselves in every respect to the speedy finalisation and solution of the mediation proceedings;
- (c) any party may furnish the mediator in advance with written documentation and information and may make the same available to the other party;
- (d) the mediator must establish and regulate procedures for the mediation so long as the Parties continue to agree to participate in the mediation process;
- (e) the Parties acknowledge that mediation is a voluntary process that may be terminated at any time by any party on written notice to the other;
- (f) the mediator must give each Party the opportunity to present its case by means of written and/or oral representations and to submit settlement alternatives, and the mediator must aid the Parties in reaching a mutually acceptable agreement;
- (g) the mediator must record the settlement reached by the Parties, if any, and request the Parties to sign the draft settlement within 3 (three) days after a settlement has been reached and give a copy thereof to each Party;
- (h) the Parties must pay the costs of the mediator in equal shares, unless the mediator orders one Party to pay a larger share or the full amount;
- (i) the signed settlement shall be final and binding on both Parties;
- (j) the mediator shall not have the power to render a binding decision or award in the dispute, nor will it be empowered to force any party to settle the dispute;
- (k) any information, documentation and material disclosed or made available to the mediator privately or in caucus will remain confidential and will not be disclosed by it or any party to without the prior consent of the party who made available such information, documentation or material;
- (l) mediation will take place on a confidential and "without prejudice" basis. The Parties undertake that they will never subpoena any person who is a party to or who is involved in the mediation, including the mediator, for the purpose of giving evidence as to what took place during mediation. The Parties must ensure that the confidentiality of the mediation process is assured.

35.4 If the Parties are unable to reach a settlement within sixty (60) days the mediator must certify this in writing and either Party may institute proceedings in the appropriate court for settlement of the dispute.

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

36. **SIGNING OF CONTRACT**

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

contract documents. The contract document shall be prepared at the expense of the Employer in accordance with the Forms, where applicable, with such amendments as are agreed to by the Employer and the Operator. Such contract document shall incorporate the documents mentioned in clause 21 and shall have the purpose of consolidating all the terms of the agreement between the Parties. Two contract documents will be signed, one for each Party.

37. SUBSTITUTE OPERATOR

- 37.1 The written consent of the Employer shall be required before the Operator may appoint any substitute operator.
- 37.2 In the event of an industrial dispute or staff stay-away, or any other situation affecting the Operator's organisation and its ability to provide the services, the Operator shall be responsible to make all reasonable attempts to provide the services, including the option of finding alternative licensed operators to cover all scheduled trips. If there is no time to obtain prior written authority of the Representative or Employer before the appointment of the substitute operator, the Operator must inform the Representative of the particulars of such substitute operator and the Representative must obtain the written consent of the Employer within three (3) days of the appointment of the substitute operator.
- 37.3 The appointment of a substitute operator under clause 37.1 shall not be valid for more than thirty (30) days, whereafter the provisions of clause 18 ("Cession, Delegation and Sub-contracting") shall apply. The Employer shall nevertheless only deal with and issue instructions to the Operator and the Operator shall bear full responsibility for the provision of the services in accordance with the contract.
- 37.4 At the end of the month when claims are submitted, all details such as time, trips and days covered by the substitute operator must be submitted. The Operator will be paid at the applicable contract rates for these trips and it will be the Operator's responsibility to reimburse the substitute operator fully.
- 37.5 If the Operator is not able for any reason to provide scheduled trips for any consecutive period of twenty four (24) hours and fails to arrange for a substitute operator, it shall immediately inform the Employer to this effect, to enable the Employer to arrange for a substitute operator if it so desires. Unless the Operator can prove that it was prevented from operating due to circumstances beyond its control, it shall be liable for all the associated extra costs, and penalties in terms of clause 44 will be imposed for scheduled trips not operated. Such circumstances shall not include disputes, stayaways or strikes confined to the Operator's organisation.

38. SURETYSHIP

- 38.1 The Operator must, not later than fourteen (14) days after signing the contract documents, provide one or more suretyships from a banking institution registered in terms of the Banks Act, 1990, or an insurer registered in terms of the Short Term Insurance Act, 1998 or the Long Term Insurance Act, 1998 to do insurance business, or the Small Business Development Corporation, or cash, negotiable government stock, negotiable approved municipal stock, or a security bond to the satisfaction of the Employer, or such other form of security as may be approved by the Employer, for four percent (4%) of the contract amount, as security for the due and faithful fulfilment by it of all the terms and conditions of the contract. Where appropriate, the suretyship shall be in accordance with Form 20 of the Forms to the satisfaction of the Employer. Such suretyship(s) shall cover the full contract period. Where an Operator fails to furnish a suretyship(s) within such time or furnishes a suretyship(s) which is/are unacceptable, the Employer may give the Operator written notice to furnish an acceptable suretyship(s) within fourteen (14) days of such notice. If this is not done or if a further suretyship(s) provided is unacceptable, the Employer may cancel the contract without further notice. Whether or not a suretyship is acceptable shall be in the sole discretion of the Employer.
- 38.2 Upon expiry of the contract the surety(ies) shall be released unless the Operator still has to meet outstanding obligations and claims in terms of the contract and the cost of such obligations cannot be covered by any outstanding payment standing to the Operator's credit.
- 38.3 The cost of providing suretyships as well as the stamp duty thereon shall be for the Operator's account.
- 38.4 In lieu of or in addition to suretyships, the Employer may, in its discretion, in writing impose special audit requirements on the Operator, in which case the latter shall be obliged to comply therewith.

39. TERMINATION OF CONTRACT

39.1 Where—

- (a) application is made for the sequestration of the Operator's estate;
- (b) the Operator publishes a notice of surrender of its estate or presents a petition for the acceptance of the surrender of its estate as insolvent;
- (c) the Operator makes a compromise with its creditors or assigns in favour of its creditors;
- (d) the Operator agrees to carry out the contract under the supervision of a committee representing its creditors;
- (e) the Operator commits any other act of insolvency, or goes into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or the Operator is placed under judicial management;
- (f) judicial execution is levied on the Operator's goods;

- (g) the Operator delegates, cedes or subcontracts the contract or part thereof without having obtained the Employers consent in writing;
- (h) the penalties imposed in terms of clause 43 excluding amounts withheld under clauses 43.6.8, 43.6.9, 43.6.10 and 43.6.11 thereof, amount to more than 10 percent (10%) per month of the total amount payable in respect of the monthly payment certificates for any three (3) consecutive months or for any five (5) months during the contract period;
- (i) the Operator's operating licences or permit(s) necessary to provide the services are withdrawn or suspended;
- (j) the Operator fails at any stage to comply with the requirements of section 48 of the Act,
- (k) the Operator has offered, promised or given a bribe or other gift or remuneration to any officer or employee in the service of the Employer or SMF in connection with the obtaining or execution of this contract;
- (l) the Operator has acted in a fraudulent manner in obtaining or executing a contract with any government department, provincial administration, municipality, public body, company or person;
- (m) the Operator has approached anyone including any official or agent of the Employer, the Representative or any person in the service of the SMF before or after the contract was signed, with the aim of influencing the award of the contract in its favour;
- (n) the Operator has given notice of inability to sign or execute the contract;
- (o) the Operator has abandoned its obligations in terms of the contract;
- (p) the Operator has deliberately furnished inaccurate information either as regards its previous experience or the vehicles at its disposal for the services, or with regard to any other material information;
- (q) the Operator is discovered to have provided incorrect, false or fraudulent information as contemplated in clause 27.5;
- (r) the Operator is deceased where it is a natural person, or
- (s) the Operator fails to implement the Business Plan referred to in clause 9 and three percent (3%) of the gross certificate value payable to the Operator has been withheld as contemplated in clause 43.6.10 for six (6) consecutive months.

the Employer may after at least fourteen (14) days' written notice to the Operator, and all sureties, without prejudice to any other rights the Employer may have—

- (i) terminate the contract and, if appropriate, claim damages, or
- (ii) institute a claim for damages and/or sue for specific performance against the Operator, and/or
- (ii) claim any other lawful remedy the Employer may have.

39.2 Where the Operator—

- (a) fails to provide a suretyship as required by clause 38;

- (b) without reasonable excuse has failed to commence the services on the commencement date, or has suspended the services after receiving from the Representative or the Employer written notice to proceed;
- (c) consistently fails to observe the Specifications, notwithstanding the fact that penalties have been imposed, with the result that the quality of the services is unacceptable to the Employer;
- (d) fails to submit copies of its annual financial statements, auditor's report and other data as required by clause 15;
- (e) fails to maintain in force the insurance required by clause 28;
- (f) subject to clause 17.2, has failed or refused to carry out a written instruction of the Representative regarding any matter on which the Representative is authorised to give such an instruction;
- (g) has breached any other term of the contract,

the Employer may give the Operator at least fourteen (14) days' written notice to rectify the matter, and, without prejudice, to any other rights the Employer may have-

- (i) if the Employer has notified the Operator of its intention to do so in that notice, take steps itself or have steps taken by others on its behalf to give effect to the breach, or the Representative's orders not carried out by the Operator, without terminating the contract and without prejudice to any other rights of the Employer in terms of the contract, or
- (ii) if the Operator has not remedied the breach within the said 14 days, after not less than seven days' written notice to the Operator and all sureties -
 - (aa) terminate the contract and, if appropriate, claim damages, or
 - (bb) institute a claim for damages and/or sue for specific performance against the Operator, and/or
 - (cc) claim any other lawful remedy the Employer may have.

39.3 Where the contract is terminated under clause 39.1 or 39.2, the Employer may call upon the sureties in writing to make good to the Employer all loss, costs and damages as the case may be. To reduce its liability the surety may, with the consent of the Employer, find an alternative acceptable operator to continue the services or the Employer may itself employ another operator to complete the contract or any part thereof at its option.

39.4 Should the amounts the Employer must pay to complete the contract where it is terminated as contemplated in clauses 39.1 and 39.2, exceed the sum that would have been payable to the Operator on due completion by it, the Operator shall upon demand pay to the Employer the difference and it shall be deemed a debt due by the Operator to the Employer and shall be recoverable accordingly: Provided that, should the Operator on demand not pay such amount to the Employer, it may, without prejudice to any other rights the Employer may have, be deducted by the Employer from any sum due to or that may become due to

the Operator under this or any previous or subsequent contract between the Operator and the Employer.

- 39.5 Termination of the contract shall be without prejudice to any rights of the Employer in respect of any antecedent breach of contract by the Operator.
- 39.6 In the event of the Employer breaching any terms or conditions of the contract the Operator may give the Employer at least thirty (30) days' written notice of such breach, calling upon the Employer to remedy the same. Should the Employer fail to remedy the breach in accordance with the notice, this contract may either be terminated after a further fourteen (14) days' written notice, or at the option of the Operator, it may institute a claim for damages and/or sue for specific performance against the Employer, or claim any other lawful remedy that the Operator may have against the Employer, without prejudice to any other rights the Operator may have.
- 39.7 Should standing kilometres paid to the Operator amount to more than thirty percent (30%) of the monthly scheduled kilometres for three (3) consecutive months, either party may terminate the contract on thirty (30) days' written notice to the other party. Neither party shall have any claim against the other arising out of such termination.
- 39.8 The Employer may, for any reasons other than those contemplated above, terminate this contract on three (3) months' written notice of such termination being given to the Operator. In such a case it will be obliged to pay to the Operator such damages as the Operator is able to prove, provided that such damages shall not exceed ten percent (10%) of the value of the uncompleted services. Apart from the foregoing, the Operator shall not be entitled to claim any other amounts whatsoever in respect of such termination of the contract.
- 39.9 In the case of termination of the contract in terms of this clause 39 the Employer may immediately appoint auditors to check and verify all relevant books, records and other data of the Operator, and the Operator shall give full cooperation in that regard and make all such information available to the Employer on request.

40. TIME TABLES

- 40.1 Subject to clauses 40.2 and 41, the services reflected in the timetables provided in the Specifications are the services that the Employer requires the Operator to operate as on the date of signing of the contract.
- 40.2 Due to the lapse of time between the drafting of the contract documents and the commencement date, as well as possible changing circumstances, variations to the time tables may be necessary before commencement of the services. If this is the case, the Representative and the Operator shall decide on appropriate time tables which will be submitted to the Employer for its approval at least

fourteen(14) days before the commencement date. If this is not done the time tables in the Specifications shall be operated on the commencement date until further notice from the Representative.

40.3 If variations of the time tables result in an increase or decrease of revenue kilometres, clauses 31.1 and 41.2 shall apply.

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

41. VARIATIONS

41.1 The Representative may after consultation with the Operator make the following variations to the services within the service area, but the prior written consent of the Employer is mandatory before any variation that results in an increase in revenue kilometres is effected:

- (a) to increase or decrease the number of scheduled trips on any route or routes;
- (b) to omit any route or add a new route;
- (c) to lengthen, shorten or alter an existing route, where "alter" means to change the route without increasing or decreasing the kilometre length thereof;
- (d) to alter the number or location of authorised stops, in consultation with the relevant local authority and/or traffic authority where applicable; and
- (e) to change the time table of any portion of the services;
- (f) to make alterations in connection with vehicle capacities as contemplated in clause 41.6

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

41.2 If during the course of the contract it becomes necessary to vary the services as provided for in clause 41.1, the following shall apply:

- (a) if the variation results in an increase or decrease of scheduled kilometres, the total kilometres for the particular month may fall into a different kilometre band shown on Form 9 of the Forms, in which case the contract rate for that band must be applied;

- (b) if the variation results in an increase or decrease of scheduled-kilometres which is outside of the bands provided on Form 9 of the Forms, and such increase or decrease is less than fifteen percent (15%) below the bottom band or above the top band, the contract rates for the bottom or top band shall apply, as the case may be. If such increase or decrease is more than fifteen percent (15%), but less than twenty percent (20%) outside of the bottom or top band, as the case may be, the contract rates shall be adjusted based on existing contract rates, subject to the approval of the Treasury and Cabinet, where applicable. In the event of a dispute regarding such adjustments, paragraph (c) applies with the necessary changes; or
 - (c) if the variation results in an increase or decrease of more than twenty percent (20%) above or below the said bands for a consecutive period of three months, the contract rates and bands must be renegotiated based on existing rates. If the Parties fail to agree on such renegotiated rates and bands, the contract shall be terminated, provided that the Operator shall continue to provide the services for at least six (6) months after the date on which such negotiations broke down, but shall not be obliged to provide services for such period which are more than twenty percent (20%) above the highest band, or more than twenty percent (20%) below the lowest band.
- 41.3 The Operator and/or the Representative may apply in writing to the Employer for a variation in the types of vehicles which are used in providing the services, on the basis of a change in passenger demand or the utilization of better suited vehicles with a different capacity from those included in the contract. Prior to the Employer consenting to such a variation the financial implications thereof on the contract rates and time table shall be agreed upon in writing. The decision of the Employer in this regard shall be final and be communicated to the Representative and the Operator in writing.
- 41.4 Where the Operator is obliged to vary the services in the case of an emergency and such variation results in an increase or decrease of revenue kilometres, the provisions of clause 41.2 will apply, provided that approval for such variation must be obtained from the Employer within twenty-four (24) hours in the case of an increase.
- 41.5 If it appears to the Operator that the passenger demand on a particular route or trip regularly exceeds vehicle passenger capacities, the Operator may apply to the Representative for permission to introduce additional trips to cater for such passengers. If permission is granted and additional trips introduced, the Employer shall compensate the Operator therefor at the contract rates only if and when the passenger demand consistently exceeds forty-five percent (45%) of the legal seated passenger capacity of the bus per trip: provided that the Employer will not, as a policy matter, subsidize dedicated school trips. Such compensation shall be paid retrospectively as from the first day upon which the passenger demand so exceeded 45% of the seated capacity of the bus and all

costs incurred by the Operator prior to that day shall be for the Operators own account.

- 41.6 If it appears to the Representative that the passenger demand on a particular route or trip is regularly less than fifty percent (50%) of the possible passenger kilometre capacity for a legally seated standard bus, the Representative must advise the Operator and the Employer accordingly. The Employer may at the request of the Operator approve that-
- (a) the standard bus on the particular route or trip be replaced with a midibus at eighty percent (80%) of the applicable contract rate for a standard bus for the relevant kilometres, or
 - (b) the Operator continue operating the standard bus, in which case the Operator will be paid at eighty percent (80%) of the applicable contract rate for a standard bus for the relevant kilometres.

If the employer does not approve the application, the Representative may remove the trip or route from the time table in terms of clause 41.1

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

42. VEHICLES

- 42.1 The Operator is required to submit a statement on Form 7 of the Forms, showing what vehicles will be available for the services immediately upon commencement of the contract and what vehicles will be purchased or leased. Copies of signed purchase and lease agreements are to be provided to the Employer on request. The onus is on the Operator to decide what vehicles it will indicate on the said form for use in the provision of the services. These completed statements will be used, among other things, to assess the Operator's capacity to operate services of the magnitude concerned. Only vehicles shown in the completed Form 7 may be used to provide the services, unless the written consent of the Employer is obtained in advance.
- 42.2 The type and condition of all vehicles to be provided by the Operator for the provision of the services must correspond with the requirements of the Specifications. When so ordered by the Representative, the Operator must remove from the services any unsuitable vehicles. The approval or disapproval of any vehicle by the Employer or the Representative shall not in any way release the Operator from its obligations in terms of the contract.
- 42.3 If the Operator, without the written authority of the Representative, fails to provide the right type, with reference to quality and age, of vehicles as specified in the contract within three (3) months of the commencement date or, at a later stage in the contract period, within sixty (60) days after being instructed to do so

by the Representative, then a penalty will be imposed as contemplated in clause 44.

- 42.4 The Operator must display identification stickers or decals on vehicles used in providing the services if requested to do so by the Representative or the Employer.
- 42.5 The Operator must equip, maintain and identify the vehicles in accordance with the Specifications and the destination and shift number shall be correctly displayed at the front of each vehicle for every trip.
- 42.6 Any accident damage shall be repaired so that the vehicle complies with the Specifications.
- 42.7 All buses must be clean inside and outside when they leave a depot. Prior to the commencement date, the Operator, Employer and Representative (if appointed) must agree on guidelines as to what constitutes cleanliness in the operating circumstances.
- 42.8 No vehicles with hard seats will be permitted.
- 42.9 All vehicles operated on the contract must be painted in a uniform livery. Where an approved sub-contractor is used, the livery of the sub-contractor may differ from that of the Operator. Where there is more than one sub-contractor the livery of the different sub-contractors may differ from each other, but each individual sub-contractor's vehicle must be identifiable. The vehicles must be clearly identifiable by the community and the SMF to the satisfaction of the Employer.

43. **PENALTIES**

- 43.1 Penalties shall be imposed against the Operator for each offence in accordance with this clause and the Representative shall advise the Operator on a weekly basis of penalties so imposed. Where the penalties so imposed, excluding amounts withheld under clauses 43.6.8, 43.6.9, 43.6.10 and 43.6.11, amount to more than 10 percent (10%) per month of the total amount payable in respect of the monthly payment certificates for any three (3) consecutive months or for any five (5) months during the contract period, the Employer may terminate the contract.
- 43.2 The services shall be fully monitored in the first month of operation and all offences shall be listed, but penalties will not be imposed. Thereafter penalties shall be imposed as set out hereunder. In both cases revenue kilometres shall only be paid for trips which have been operated.

- 43.3 It is the duty of the Operator to report all trips not operated, late and early trips, revenue kilometres operated and any other information which is relevant to the calculation of monthly claims. Where the Representative reports more trips not operated than those reported by the Operator for three (3) consecutive months, from the fourth month penalties will be doubled for the remaining contract period for all infringements not reported by the Operator.
- 43.4 The Operator shall be obliged to report within twenty four (24) hours the fact that any bus has provided services with a different duty number from that reflected in the time table. In case of default of so reporting a fine of two hundred and fifty rand (R250,00) per bus per day will be imposed. The onus will be on the Operator to prove that the trips have been operated, failing which revenue kilometres will not be paid and the trip will be deemed as not operated and the operator will be penalised in terms of clause 43.5.1.
- 43.5 No vehicle shall leave the first point of departure before the time listed in the time table or more than five (5) minutes thereafter, failing which penalties will be imposed as set out below.
- 43.6 The Operator will be expected to adhere strictly to the requirements of the Specifications. Penalties will be imposed in the following events:

43.6.1 Failing to provide specified trips

Where a trip has not been provided, a penalty a of two hundred and fifty rand (R250) will be imposed, and no revenue kilometres will be paid.

43.6.2 Providing trips that depart late or early

In the case of a trip that-

- (a) departs between six (6) and fifteen (15) minutes late from the departure point, a penalty of twenty-five percent (25%) of the amount that the Employer would have paid for the trip concerned will be imposed, but revenue kilometres will be paid;
- (b) departs more than fifteen (15) minutes late from the departure point or any transfer point, a penalty of forty percent (40%) of the amount that the Employer would have paid for the trip concerned will be imposed, but revenue kilometres will be paid;
- (c) departs more than thirty (30) minutes late from the departure point or any transfer point, the trip will be deemed not to have been operated, no revenue kilometres will be paid and the two hundred and fifty rand (R250.00) penalty will not be applied;
- (d) is an early trip, a penalty of forty percent (40%) of the amount that the Employer would have paid for the trip concerned will be imposed, but revenue kilometres will be paid.

43.63 Vehicle breakdowns

- (a) The Operator is expected to provide a replacement vehicle for breakdowns as follows:
- (i) At the starting point of a route or within an eight (8) kilometre radius of these points, within thirty (30) minutes;
 - (ii) At other points, within forty-five (45) minutes;
- provided that no breakdowns will be accepted as such inside depots.
- (b) Where a replacement vehicle is so provided, no penalty will be imposed and revenue kilometres will be paid. If a replacement vehicle is provided, but not within the stated time, a penalty of forty percent (40%) of the amount that the Employer would have paid for the trip concerned will be imposed, but revenue kilometres will be paid. If no replacement vehicle is provided, penalties will be imposed for a trip not provided as set out in clause 43.5.1. In all cases, however, where there are more than two percent (2%) vehicle breakdowns per month, a penalty of six hundred rand (R600,00) per breakdown over 2% will be imposed. This percentage will be based on the average number of peak vehicles per day totalled over the month in question.

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

Where destinations or duty boards have not been installed, the Operator shall have two (2) weekdays to remedy the situation, whereafter a penalty of two hundred rand (R200,00) per bus per day will be imposed. Where destinations have been incorrectly displayed, a penalty of two hundred rand (R200,00) will be imposed and where duties have been incorrectly displayed, a penalty of sixty rand (R60,00) will be imposed.

The Operator must report within twenty four (24) hours the fact that any bus has provided services with a different duty number than that reflected in the time table. In case of default of so reporting a fine of two hundred rand (R200,00) per bus per day will be imposed. The onus will be on the Operator to prove that the trips have been operated, failing which revenue kilometres will not be paid and the trip will be deemed as not operated and the operator will be penalised in terms of clause 43.6.1.

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

Where passengers were not picked up or set down at an authorised stop, a penalty of two hundred rand (R200,00) will be imposed, except where the lawful capacity of the vehicle would have been exceeded or a passenger has refused to pay the fare or on grounds of violent, abusive or otherwise offensive conduct on the part of the passenger or other grounds contemplated in the Act or applicable road traffic legislation.

43.6.6 Vehicles in an unsatisfactory condition

- (a) Where, in the discretion of the Representative, vehicles leave a depot in an unsatisfactory condition, i.e. –
 - (i) dirty on the outside or inside, a penalty of one hundred rand (R1 00,00) per bus will be imposed;
 - (ii) not in a good state of repair or with a leaking roof, one or more broken windows or in an unhygienic condition, a penalty of two hundred (R200,00) per bus will be imposed;
 - (iii) with missing, broken or wet seats, a penalty of fifty rand (R50,00) per bus will be imposed;
 - (iv) with broken or missing doors, a penalty of five hundred rand (R500.00) per bus will be imposed.
- (b) In the case of (a) (ii) to (iv), the Operator shall have two (2) weekdays to remedy the situation, whereafter a further penalty per day will be imposed. If a penalty is imposed in respect of a particular bus under (ii) to (iv) more than three times in any fourteen (14) day period, the Operator must withdraw that bus and replace it until such time as it has been repaired so as to comply with the specifications.
- (c) Penalties under (a) (ii) - (iv) will not apply immediately to buses leaving overnight parking areas that are not depots: in such a case where infringements are noted, the Operator shall have two (2) weekdays to remedy the situation, whereafter penalties will be imposed as set out above.
- (d) The Representative must inform the Operator before the commencement date of the standards that will be applied in respect of this clause.
- (e) Penalties under (a)(i) shall not apply to buses leaving overnight parking areas that are not depots.

43.6.7 Deviating from routes

Where there is a deviation from a route, a penalty of two hundred rand (R200,00) will be imposed, but approved revenue kilometres will be paid.

43.6.8 Failing to provide the right type, quality and age of vehicles as specified in Form 7 of the Forms

- (a) Where the Operator fails to provide the right type, quality and specification of vehicles as specified in Form 7 of the Forms read with clause 42.3 and clause 2.2 of the specifications, five percent (5%) of the total amount payable in respect of the relevant month's payment certificate will be withheld on a pro rata basis, for example if one of two hundred (200) buses is not according to specifications, 1/200 of five

percent will be withheld. However, no penalty will be imposed if the Operator provides vehicles of substantially the same quality and specification, which in the opinion of the Representative are suitable.

- (b) No escalation or interest will be payable to the Operator on the monies withheld as contemplated above and such monies will only be paid after compliance with the specifications.
- (c) If the Operator does not comply with the requirements within three (3) months from the date that the monies were first withheld, it will forfeit such monies.

43.6.9 Failing to install or to have operational EE and failing to provide specified information

- (a) The Operator shall install and commission EE and provide information therefrom as follows:
 - Stage A1: install required electronic equipment (EE) on all buses within ninety (90) days of the commencement date;
 - Stage A2: EE on buses to be commissioned, i.e. EE to be in full working order, drivers to be trained in its use and EE to be providing usable information within one hundred and fifty (150) days of the commencement date;
 - Stage B1: depot computer to be installed and commissioned within ninety (90) days of the commencement date;
 - Stage B2: depot computer to be processing information obtained from EE on buses within one hundred and fifty (150) days of the commencement date.
- (b) Where the Operator fails to complete these Stages within the time indicated to the satisfaction of the Employer, three percent (3%) of the gross certificate value payable to the Operator, i.e. after escalation, will be withheld from each month's payment certificate after expiry of such date in respect of each Stage not completed, until the end of the month in which the Stage is completed (i.e. 3% per Stage to a maximum of 12%). No interest will be payable on monies so withheld and the monies will only be paid to the Operator in the first payment certificate issued after the Stage has been completed to the satisfaction of the Employer. Where moneys are so withheld for three (3) months they will be forfeited. Where Stages A1 and A2 have been completed for some but not all of the vehicles, the penalty will be applied on a pro rata basis (on a similar basis to that illustrated in clause 44.5.8(a)) in respect of those vehicles in which those Stages have not been completed.
- (c) The four Stages will only be regarded as complete where all EE in buses and in the depot is fully operational and supplying all required information as specified in clause 27.1. Once the four Stages have been completed, if less than eighty percent (80%) of information in terms of trips and kilometres is provided in any month, five percent (5%) of the gross

certificate value payable to the Operator, i.e after escalation, of the applicable month's payment certificate will be forfeited, in the discretion of the Employer.

- (d) Whether or not EE is installed, the onus will always be on the Operator to supply the Representative with the correct information as specified in clause 27 by using manual methods, intensive monitoring or other methods approved by the Employer. This must be done from the beginning of the second month of operation to the satisfaction of the Employer. Where this is not done, three percent (3%) of the gross certificate value payable to the Operator, i.e. after escalation, of the applicable month's payment certificate will be forfeited, where applicable over and above the penalties provided for in (b) and (c), and the Employer may regard this as a breach of a material term of the contract.
- (e) If EE which has been installed and has been operational becomes defective and unable to supply the required information, the Operator shall have such EE repaired within three (3) days, failing which it will be deemed not to have been installed and the above penalties will apply in respect of the Stage to which the defective equipment relates, and on a *pro rata* basis where applicable.
- (f) The Employer may, in its discretion, grant the Operator extensions of time or reduce the penalties in respect of paragraphs (a) to (e) above.
- (g) This clause is subject to clause 27.4, which provides that the Employer may decide not to pay any claim without adequate documented proof of the required information and data.

43.6.10 Failing to implement the Business Plan

If the Operator fails to implement the Business Plan referred to in clause 9, within the times stated in that Plan to the satisfaction of the Employer, three percent (3%) of the gross certificate value payable to the Operator, i.e. after escalation will be withheld from each month's payment certificate after expiry of such date in respect of each Stage not completed until the end of the month in which the Stage is completed (i.e. 3% per Stage). No interest will be payable on monies so withheld and the monies will only be paid to the operator in the first payment certificate issued after the Stage has been completed to the satisfaction of the Employer. Where monies are so withheld for three (3) months they will be forfeited.

43.6.11 Failing to implement the goals of the RDP

If the Operator fails to implement the goals of the RDP published in *Government Gazette* No. 16085 dated 23 November 1994 referred to in clause 11, within the times stated in the Proposal to the satisfaction of the Employer, three percent

(3%) of the gross certificate value payable to the Operator, i.e. before escalation will be withheld from each month's payment certificate after expiry of such date in respect of each Stage not completed until the end of the month in which the Stage is completed (i.e. 3% per Stage). No interest will be payable on monies so withheld and the monies will only be paid to the operator in the first payment certificate issued after the Stage has been completed to the satisfaction of the Employer. Where monies are so withheld for three (3) months they will be forfeited.

43.7 Notwithstanding the above, no penalty will be imposed if trips are cancelled as contemplated in clause 17.1.

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

44. ESTABLISHMENT

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

- (a) completion of all application and other procedures for the granting and issuing of necessary operating licences in terms of clause 31 and insurance and suretyship in terms of clauses 28 and 38, respectively;
- (b) acquisition of the required vehicles as specified in the contract;
- (c) procurement of offices, depots, workshops and stores;
- (d) recruitment and training of necessary personnel, if these are not already available;
- (e) development of bus schedules and operating data, management control systems and information systems;
- (f) preparation of driver duties, waybills and other forms necessary for the services;
- (g) establishment of liaison groups with employers and communities where passengers reside;
- (h) preparation of publicity material for passengers;
- (i) other activities necessary for the commencement of the services;
- (j) other activities requested by the Representative.

44.2 Within ten (10) days after signing the contract the Operator must prepare a programme listing the activities required by the contract, stating target starting and completion dates for each activity. The Representative and for Employer will arrange meetings with the Operator and co-ordinate activities to facilitate the smooth transfer of responsibility for the operation of the services from the existing to the new contract.

44.3 With reference to Form 7, the Operator must supply the Employer with copies of lease or purchase agreements in respect of all buses that it intends to lease or

purchase for use on the contract. within 10 days of the notification by the Employer. Failure to do so may be regarded as a material breach of contract.

45. DISPLAY OF VEHICLE AND DUTY NUMBERS

All vehicles used for the provision of the services must –

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

46. SUBMISSION OF DUTIES

In accordance with clause 40.2, the Operator must submit a document to the Representative containing all the duties and timetables to be operated for each category of operating day according to clause 7.1 of the Specifications.

47. GOALS OF THE RDP

47.1 The Operator must indicate on Form 14 how it intends promoting the achievement of the objectives of the Reconstruction and Development Programme (RDP) during the contract period. This will be done by means of a written submission contained in the Business Plan in which actions to be taken in this regard are set out, clearly marked and hereinafter called the "Social Investment and Transformation Proposal."

47.2 The key programmes of the RDP are based on the following principles, which can be used as a framework, for drafting the Social Investment and Transformation Proposal (It is provided as a guide only to assist and should not be seen as exhaustive):

(a) **Meeting basic needs through –**

- upliftment of communities
- improvement in quality of life
- promotion of productive employment opportunities
- promoting the availability of safe, affordable, accessible, environmentally sensitive transport
- wage structures
- promotion of increased efficiency and productivity.

(b) **Developing human resources through–**

- socio-economic development
- occupational advancement
- affirmative action programmes, eg. organisational structure, including management

technology transfer
 identification and promotion of education and training
 opportunities at all levels within the company.

(c) **Building the economy through–**

- promotion of economic empowerment eg. sub-contracting, franchising, etc.
- support of emerging entrepreneurs e.g. small operators.

(d) **Democratising state and society through –**

- liaison with interest groups and forums
- community involvement in identification, prioritisation and implementation of services
- negotiation and participative structures for employers ensuring, among other things, gender equity in the company's employment/ appointment/training policy.

(e) **Implementing (a) - (d) above–**

Time frames within which the abovementioned actions will be implemented must be provided within the context of the Business Plan.

- 47.3 The said Social Investment and Transformation Proposal for the implementation of the principles of the RDP will be regarded as a material term of the contract and compliance therewith in terms of the programme submitted by the Operator will be monitored to the satisfaction of the Employer. Non-compliance therewith, in the discretion of the Employer, may be regarded as a material breach of contract as contemplated in terms of clause 39. Without prejudice to its rights under clause 39, penalties will be imposed on the Operator for failure to comply with the "RD Proposal" under clause 44.5.10, and the Employer will inform the communities where passengers reside of the failure.
- 47.4 The implementation and evaluation criteria and/or preference allocation will be discussed at the compulsory site meeting.

ANNEXURE A
BUSINESS PLAN

Draft - 24 July 2003

PROVINCIAL ADMINISTRATION OF PROVINCE

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

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

VOLUME 2: SPECIFICATIONS

CONTENTS

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2. Bus specification
3. Statistics of existing services
4. Services to be provided
5. Fares
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10. Percentage to be deposited under clause 39 of terms and conditions of contract
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APPENDIX A: PASSENGER CENSUS FIGURES

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APPENDIX C: FARE STRUCTURES

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

1. OPERATING LICENCES/PERMITS

1.1 Existing operating licences /permits.

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

1.2 Proposed operating licences for this contract

The Operator, if not already in possession of operating licences or permits, must submit applications for operating licences to the provincial Operating Licence Board (board), in terms of clause 31 for the provision of publictransport services as described in these specifications. The Employer will notify the board in writing of the award of the contract to the Operator. The Operator shall submit an application to the board for operating licences in terms of section 40 of the Act, which will be granted only for the contract period. As soon as the operating licences have been granted by the board, the Operator must notify the Employer.

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

2. BUS SPECIFICATION

2.1 Livery

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

2.2 Bus Standards

All buses must conform to the requirements and regulations of the National Road Traffic Act, 1996 or applicable legislation and applicable SABS specifications.

Details of the existing or proposed buses to be used on the services are to be provided on Form 7.

Standard buses also shall conform with the following requirements:

Minimum number of seats	58
Maximum number standing	43
Minimum engine power	As specified in clause 13 of the Specifications

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

The age of a bus shall be determined from the date of first registration of the chassis and the Operator must provide proof of this. If the Operator proposes to use buses that have been rebuilt or rehabilitated as defined in clause 1 of the Terms and Conditions of Contract, it must provide full details of the work carried out and the date of completion thereof.

The Representative will monitor the age of the vehicles continuously from the commencement date of the contract and must report on their ages to the Employer to ensure compliance.

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

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

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

- (a) door opening to be 850mm wide with 1450mm head clearance;
- (b) first step to be 250mm above ground (retractable first step is also permissible), following steps with a maximum high of 230mm and a minimum depth of 200mm;

- (c) use of high contrast colours on steps, grab rails, seat frames and edges of stairs, including black, but excluding red and green;
- (d) sufficient grab handles or handles be fitted with 25 to 35mm diameter and accessible from ground level , with colour contrast;
- (e) lettering on all signs inside the vehicle to be 25mm for a viewing distance of 7,5m ;
- (f) audible announcement and visual display to be available;
- (g) reserved seating near entrances for people with disabilities, the elderly, pregnant women or passengers with any other mobility difficulties.

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

2.3 Alternative Bus Types

Should the Operator intend to use mini, midi or train buses all buses must conform with the requirements and regulations of the National Road Traffic Act, 1996 or applicable legislation and applicable SABS specifications.

Details of the existing or proposed buses and the appropriate mechanical and passenger loading information must be included on Form 7.

2.4 Route and Destination Equipment

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

A board or scroll stating the destination of each trip must be displayed on the front of the bus. The letter size must be at least 200mm and be adequately legible (readable) in all lighting conditions, such as early in the morning or at night. The colour of the letters must contrast with the background colour of the board or scroll to facilitate legibility.

3. STATISTICS OF EXISTING SERVICES

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

The provisions of clauses 5 and 82 must be noted in this regard. The Operator must note that the new services will not necessarily have the same routes and trips as the existing services.

A passenger census was conducted in..... These results are attached in Appendix A. The Operator is nevertheless advised to carry out the Operator's own investigations into existing and potential passenger numbers.

4. SERVICES TO BE PROVIDED

4.1 The service area

4.1.1 Terrain and operating environment

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

4.1.2 Competitive modes of transport

Competitive modes of public transport are minibus-taxis.

4.1.3 Private hire and contracts

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

4.1.4 Scholars

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

4.2 Depots, terminals and bus parking

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

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

4.3 Routes

4.3.1 Route numbers

The route numbers for the services required are to be:

Route 1 Bus Terminus to

The above routes are shown on Figures 1 to

4.3.2 Route descriptions

SAMPLE ROUTE DESCRIPTION

Route From to

4.4 Scheduling and Timetables

- 4.4.1 The timetables have been prepared for Monday to Friday, Saturday and Sunday services. It has been estimated that initially -- single decker standard class buses are required to provide the service as indicated on the timetables included in Appendix B. The Operator however should prepare its own estimate of the number of buses required to operate the services.
- 4.4.2 The timetables have been prepared assuming standard buses will be operated. However, if the Operator proposes to operate other vehicle categories (with different passenger capacities), the Operator must submit a revised timetable, indicating which type of vehicle is to be used on each trip. This shall be subject to approval by the Employer.
- 4.4.3 The timetables included in this document represent most of the trips currently provided, however. some of the existing trips have been omitted where passenger numbers were observed to be less than the required number. The timetables provided in Appendix B are not necessarily the timetables which will be operated when the new contract services are implemented. Prior to the start of operations the actual scheduled kilometre timetable will be decided by the Representative and the Operator as provided in clause 40.2.
- 4.4.4 Adjustment or improvements may be negotiated between the Operator and the Employer, or the Representative, and implemented as soon as possible.
- 4.4.5 Where the majority of factories in a specific area close on a weekday which is between a public holiday and a week-end then a limited service should replace the normal Monday-Friday operation. The Representative must be advised in advance of the timetable to be operated on such a day.

44.6 A summary of the trips and average trip kilometres for each of the routes are set out in Table 4.1.

4.5 Cost savings and sub-contracting

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

5. FARES

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

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

5.2 Scholar fares

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

5.3 Fare increases

A fare increase of -% was/will be implemented by the existing operator on -----

6. SCHEDULE OF QUANTITIES

6.1 Using a fleet of standard buses

The procedure used to estimate the revenue kilometres anticipated over the contract period is set out below:

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

----- km per Mon - Thur	x 17	=	----- km
----- km per Friday	x 4	=	----- km
----- km per Saturday	x 4	=	----- km
----- km per Sunday	x 4	=	----- km
Estimated total per month			<u>----- km</u>

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

The number of kilometres operated per month will also vary with seasonal demand and the general economic growth of the area. The estimated number of months of operation at the various bands of revenue kilometres per month are included in the Schedule of Quantities (Form 9).

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

6.2 Using a mixed fleet of vehicles

Should the Operator elect to use a mixed fleet of vehicles, the number of kilometres per month for each type of vehicle and the estimated number of kilometres to be operated for the five years for each kilometre band for each vehicle category will have to be inserted in the appropriate columns on an amended Schedule of Quantities Form (Form 9).

7. SUBMISSION OF OPERATING DATA

7.1 Duty numbers

Prior to the commencement date the Operator shall submit a complete list of proposed driver duties for Monday to Friday, Saturdays and Sunday. The duty shall have a number and list the starting and end destination names for each trip, together with the appropriate route number and times.

7.2 Trip information

Trip information for all approved trips must be provided on a monthly basis (see clause 27.1). The existing contract data base maintained by the Representative contains the information of all approved trips and is updated on a monthly basis.

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

7.3 Use of electronic data transfer

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

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

7.4 Passenger perceptions of the service

Apart from the normal liaison between the Operator and passengers, such as commuter interest groups, surveys and occupancy counts, it is expected of the Operator to report on a monthly basis in writing on complaints received from passengers. The report should include the date and time that the complaint had been received and the actions taken to address specific complaints.

8. RAIL CONCESSIONING

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

9. SUB-CONTRACTING

- 9.1 The Operator will be obliged to sub-contract at least ten percent (10%) of the revenue kilometres of the contract in each particular month. The said minimum of 10% must be sub-contracted to small business entities contemplated in the National Small Business Act, 1996 (Act No. 102 of 1996).
- 9.2 The Operator will provide proof of registration or payment by its intended sub-contract or with respect to *insurance, tax, levies required by law*.
- 9.3 The sub-contracting agreement will be subject to approval by the Employer, who may not unreasonably withhold such approval. Should the Employer refuse such consent or fail to respond to the Operator's request within 7 (seven)

working-days, the Operator may declare a dispute under clause 26. If consent is given for a sub-contract under clause 6.1, no contract between the Employer and the sub-contractor shall come into being and the Operator shall not be released from any liability or obligation under the contract, and it shall be responsible for the acts and omissions of any sub-contractor or its agents or servants as fully as if they were the acts or omissions of the Operator or of the Operator's agents or servants.

- 9.4 The Operator will ensure that its sub-contractor is formalised into a business entity within six months of the commencement date of the contract.
- 9.5 The Employer may at any time withdraw consent for a sub -contract after giving not less than thirty (30) days' notice to the Operator, where-
- (a) the contract of the Operator is terminated as set out in clause 39;
 - (b) application is made for the sequestration of the Sub-contractor's estate;
 - (c) the sub-contractor publishes a notice of surrender of its estate or presents a petition for the acceptance of the surrender of its estate as insolvent;
 - (d) the Sub-contractor makes a compromise with its creditors or assigns in favour of its creditors;
 - (e) the Sub-contractor agrees to carry out the contract under the supervision of a committee representing its creditors;
 - (f) the Sub-contractor commits any other act of insolvency, or goes into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or the Operator is placed under judicial management;
 - (g) judicial execution is levied on the Sub-contractor's goods;
 - (h) the Operator's or Sub-contractor's operating licences or permit(s) necessary to provide the services are withdrawn or suspended;
 - (i) the Sub-contractor has offered, promised or given a bribe or other gift or remuneration to any officer or employee in the service of the Employer or SMF in connection with the obtaining or execution of this contract;
 - (j) the Sub-contractor has acted in a fraudulent manner in obtaining or executing a contract with any government department, provincial administration, municipality, public body, company or person;
 - (k) the Sub-contractor has approached anyone including any official or agent of the Employer, the Representative or any person in the service of the SMF before or after the contract was signed, with the aim of influencing the award of the contract in its favour;
 - (l) the Sub-contractor has given notice of inability to sign or execute the contract;
 - (m) the Sub-contractor has abandoned its obligations in terms of the contract;
 - (n) the Sub-contractor has deliberately furnished inaccurate information either as regards its previous experience or the vehicles at its disposal for the services, or with regard to any other material information; or
 - (o) the Sub-contractor is deceased where it is a natural person.

In that event no claim against the Employer by the Operator or any other person on the grounds of the granting of such consent or the withdrawal thereof shall be entertained, and the Operator indemnifies the Employer against any claims and costs so incurred.

9.6 The Employer may at any time during the currency of this contract cede its rights and delegate its obligations in terms thereof to any transport authority or core city.

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

10. PERCENTAGE TO BE DEPOSITED UNDER CLAUSE 39 OF TERMS AND CONDITIONS OF CONTRACT

The percentage of the tender amount to be deposited in the circumstances contemplated in clause 39.4 of the Terms and Conditions of Contract shall bepercent (....%).

11. SURETYSHIP

The suretyship required in terms of clause 38 of the Terms and Conditions of Contract shall be for.....percent (.....%) of the tender amount.

12. TAXI RECAPITALISATION

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

13. MINIMUM ENGINE POWER OF VEHICLES

The minimum engine power of vehicles used on the contract shall beKW in inland areas and.....KW in coastal areas

14. ESCALATION UNDER CLAUSE 24 OF TERMS AND CONDITIONS OF CONTRACT

The base month indices applicable to this contract shall be those for The indices for the..... Province will be applicable to this contract.

15. DATEFORFARE INCREASES

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

APPENDIX A

PASSENGER CENSUS FIGURES

APPENDIX B
TIMETABLES

APPENDIX C
FARE STRUCTURES

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

PROVINCIAL ADMINISTRATION OF..... PROVINCE

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

CONTRACT NO

VOLUME 3: TENDER FORMS

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

CONTRACT NO

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..... PROVINCIAL ADMINISTRATION

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

CONTRACT NO.... .

TAX CLEARANCE CERTIFICATE

(TO BE INSERTED)

..... PROVINCIAL ADMINISTRATION

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

CONTRACT NO

FORM 1: FORM OF CONTRACT

1. I/we having examined the contract documents for the provision of the above services, hereby undertake to render all or any of the services described in the attached documents to the Employer on the terms and conditions arid in accordance with the specifications stipulated in the contract documents (and which shall be taken as part of, and incorporated into, this document at the rates and on the terms inserted therein, which according to Form 12 give a total contract amount of R

(words)

2. I/We agree that-

(1) if We fail to fulfil the contract when called upon to do so, the Employer may, without prejudice to its other rights, cancel the contract that may have been entered into between me/us and the Employer and I/we will then pay to the Employer any additional expense incurred by the Employer having either to accept any less favourable tender or, if tenders have to be invited, the additional expenditure incurred by the invitation of tenders and by the subsequent acceptance of any less favourable tender; the Employer may also recover such additional expenditure by set off against moneys which may be due or become due to me/us or on my/our behalf for the due fulfilment of this or any other tender or contract and pending the ascertainment of the amount of such additional expenditure to retain such monies, guarantee or deposit a security for any loss the Employer may sustain by reason of my/our default;

(2) the law of the Republic of South Africa shall govern this contract and the we choose *domicilium citandi at executandi* in the Republic at (full physical address)

- 3. I/We undertake to give notice in writing of any change of the above *domicilium citandi et executandi* and related particulars, at least fourteen (14) days prior to such new particulars becoming effective.
- 4. I/we undertake to acknowledge receipt of all communications from the Employer
- 5. I/we acknowledge that any notice given in terms of this contract must be in writing and shall be deemed to have been received by the addressee -
 - (1) on the date of delivery if delivered by hand;
 - (2) on the eighth (8th) day following the date of posting, if posted by pre paid mail;
 - (3) on the day after despatch, if sent by courier, telefax, telegram or telex.
- 6. I/we furthermore confirm that I/we have satisfied myself/ourselves as to the correctness and validity of the contract documents; that the rates quoted cover all the work/item(s) specified in the contract documents and that the rates cover all my/our obligations under the contract and that I/we accept that any mistakes regarding rates and calculations will be at my/our risk.
- 7. I/we hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me/us under this agreement as the principal(s) liable for the due fulfilment of this contract
- 8. I/we agree that any action arising from this contract may in all respects be instituted against me/us and I/we hereby undertake to satisfy fully any sentence or judgement which may be pronounced against me/us as a result of such action.
- 9. I/we undertake to commence the services on the commencement date.
- 10. I/we undertake to provide a suretyship in accordance with the pro forma deed of suretyship (Form 19) to the satisfaction of the Employer within fourteen (14) days after signing the contract documents.
- 11. I/we undertake to provide proof of insurance in terms of clause 17.
- 12. I/we declare that I/we have *participated/ not participated* in the submission of any other offer for the operation of the services described in the attached documents. If in the affirmative state the name(s) of the tenderer(s) involved:

.....

.....
- 13. Are you duly authorised to sign this document? *YES/NO

14. Has the Declaration of Interest (Form 8) been duly completed and included with the other forms?
*YES/NO

** Delete whichever is not applicable*

<p>SIGNATURES OF AUTHORISED REPRESENTATIVE(S).....</p> <p>DATE</p>
--

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

Name of the Operator (in block letters)

Postal address (in block letters)

Telephone Number(s)

Facsimile number(s)

Tender number

Name of contact person (block letters)

Company tax reference number

IMPORTANT CONDITIONS

1. Failure on the part of the Operator to sign this Form I and thus to acknowledge and accept the conditions in writing or to complete the attached forms, questionnaires and specifications in all respects, may lead to cancellation of the contract.
2. If any of the conditions on this Form 1 are in conflict with any terms, conditions, stipulations or provisions incorporated in Volume 1, such special conditions, stipulations or provisions will apply.

..... PROVINCIAL ADMINISTRATION
THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN..... AND.....

CONTRACT NO.....

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

Provincial Operating Licence Board

Private Bag X

.....

.....

Date

The Head of Department
.....Province
Department of
.....
.....
.....

Sir

**THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN :-
CONTRACT NO**

An application has been received from
requesting permission to provide public transport (bus) services.

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

Yours faithfully

CHAIRMAN
OPERATING LICENCE BOARD/LOCAL ROAD TRANSPORTATION BOARD

* Delete whichever is not applicable

.....PROVINCIAL ADMINISTRATION

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

CONTRACT NO

FORM 3: CERTIFICATE OF AUTHORITY FOR SIGNATORY IN RESPECT OF LEGAL PERSONA

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

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

SIGNED AT..... ON THE..... DAY OF 20

ON BEHALF OF THE COMPANY/CLOSE CORPORATION/OTHER LEGAL PERSONA

CAPACITY

.....

SIGNATURE OF SIGNATORY

WITNESSES :

1.

2

* *Delete whichever is not applicable*

..... PROVINCIAL ADMINISTRATION

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

CONTRACT NO

**FORM 4: CERTIFICATE OF AUTHORITY FOR SIGNATORY AND DECLARATION OF JOINT
AND SEVERAL LIABILITY IN RESPECT OF A CONSORTIUM**

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

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

resolved/agreed at a meeting held at..... on the day of20..... that:

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

shall be final and binding on the consortium; and

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

SIGNED AT ON THIS THE DAY OF 20

SIGNATURES OF ALL PARTIES TO THE CONSORTIUM:

1.

for:

2.

for

3.

for

.....

SIGNATORY

WITNESSES:

1.

2.

** Delete whichever is not applicable*

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

1.

2.

3.

..... PROVINCIAL ADMINISTRATION

THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN AND

CONTRACT NO

FORM 5: DECLARATION OF INTEREST

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

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

In order to give effect to the above, the following questionnaire must be completed:

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

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

2. Do you, or any person connected with the Operator, have any relationship (family, friend or other) with a person employed by the State or the Employer or their administration who may be involved with this contract?

YES/NO*

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

3. Are you, or any person connected with the Operator, aware of any relationship (family, friend or other) between the Operator and any person employed by the State or the Employer or their administration who may be involved with this contract?

YES/NO*

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

SIGNED AT..... ON THIS THE DAY OF 20

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

WITNESSES:

1.

2.

POSITION OF DECLARANT

** Delete whichever is not applicable*

..... PROVINCIAL ADMINISTRATION

**THE PROVISION OF PUBUC PASSENGER TRANSPORT SERVICES
BETWEEN.....AND.....**

CONTRACT NO.

**FORM 6: SCHEDULE OF EXISTING PASSENGER TRANSPORT SERVICES OPERATED BY
OPERATOR**

In the table provided below the Operator must provide details of existing passenger transport services operated by it, if any.

Service Area	Number of Routes	Number & Type of vehicles	Approx. Total Daily km	Average Daily Passengers

* Delete whichever is not applicable

..... PROVINCIAL ADMINISTRATION

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

CONTRACT NO

FORM 7: SCHEDULE OF EXISTING OR PROPOSED VEHICLES

- Note:**
1. All vehicles used must be roadworthy as required by the National Road Traffic Act, 1996.
 2. The Operator must only supply details of those vehicles that are intended for use on this contract
 1. Certificates of homologation for all vehicle types to be used during the contract period must be attached to this schedule.
 2. A copy of the last vehicle licence issued must be attached for vehicles that are currently owned by the Operator.
 3. Where vehicles are to be purchased or leased a copy of the vehicle licence and proof it has been registered in terms of the National Transport Information System (NaTIS) must be produced before the commencement date.
- A. In Table A provided below the Operator must provide details of its current vehicle fleet to be used on this contract, including spare vehicles.
- B. In Table B provided below the Operator must provide details of new or additional vehicles that are to be acquired for this contract.

*** Delete whichever is not applicable**

TABLE A: CURRENT FLEET TO BE USED ON CONTRACT

N = New

U = Used

P = Purchased L= Leased

Vehicle Reg. No.	Type & Model Name of engine and chassis manufacturer	N/U	P/L *	Type of bus according to classification Standard :S Midi: M Train: T	Name of Body Manufacturer	Year of first registration of Chassis	Year of rebuild/ rehabilitation		Age (years)		Engine			Passenger Capacity	
							body	chassis	Engine	Current Body on chassis	Type	kw out-put	Year Re-con	Seated	Standing

AVERAGE AGE CALCULATION: CHASSIS BODIES

* Copies of contracts to be provided if requested

TABLE B: NEW OR ADDITIONAL VEHICLES TO BE ACQUIRED

N = new U = Used P = Purchased L = Leased

Vehicle Reg. No.	Type & Model Name of engine and chassis manufacturer	N/U	P/L *	Type of bus according to classification Standard : S Midi: M Train: T	Name of Body Manufacturer	Year of first registration of Chassis	Year of rebuild/ rehabilitation		Age (years)		Engine			Passenger Capacity	
							body	chassis	Engine	Current Body on chassis	Type	kw output	Year Recon	Seated	Standing

AVERAGE AGE CALCULATION: CHASSIS BODIES

* Copies of contracts to be provided if requested

..... PROVINCIAL ADMINISTRATION

THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN AND

TENDER NO

FORM 8: SCHEDULE OF ELECTRONIC INFORMATION AND TICKET EQUIPMENT (EE)

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

ELECTRONIC TICKET MACHINES

Manufacturer/Supplier		Model	Total number
Contact Person	Telephone Number	Proposed installation date	

* *Delete whichever is not applicable*

..... **PROVINCIAL ADMINISTRATION**

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

FORM 9: SCHEDULE OF QUANTITIES

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

Band	Scheduled revenue kilometres per Month	Estimated Number of Months	Estimated kilometre quantity during 5 years	Contract rate (T R) per kilometre	Amount (1 R x Quantity)
				R c	R c
1	Greater than 200 000	4	800000		
2	180 001 -200000	6	1140000		
3	150 001 -180 000	40	6600000		
4	120001-150000	5	675000		
5	Less than 120 000	5	600 000		
	Total Tender Amount	60	9815000	SubTotal	
				Establishment Cost 1.0% of sub total cost	
				Total Contract Amount	

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

.....
DATE

CONTRACT NO.**FORM 10: ESTIMATED INCOME AND EXPENDITURE FOR FIRST 12 MONTHS OF CONTRACT**

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

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

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

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

..... PROVINCIAL ADMINISTRATION

**THE PROVISION OF PUBUC PASSENGER TRANSPORT SERVICES
BETWEEN AND.....**

FORM 11: PROPOSED ORGANISATION STRUCTURE

The management organisation structure that is proposed to be established to manage the contract, as supplied by the Operator in its Business Plan by means of an organogram, is indicated below:

..... PROVINCIAL ADMINISTRATION

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

FORM 12: OPERATING LICENCES OR PERMITS HELD BY OPERATOR

The Operator must provide details of operating licences or permits held by it in terms of the Act or other applicable legislation, below.

Date of issue	Issuing authority	Routes/Area	No. of buses

* Delete whichever is not applicable

PROVINCIAL ADMINISTRATION

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

FORM 13: PASSENGER LIABILITY INSURANCE

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

Limit of liability per single claim: R

Insurer:

Period of Insurance to

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

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

.....
DATE

** Delete whichever is not applicable*

..... PROVINCIAL ADMINISTRATION

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

FORM 14: SOCIAL INVESTMENT AND TRANSFORMATION PROPOSAL

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

NO	DESCRIPTION OF ACTION	MEASURABLE OUTPUT	IMPLEMENT- ATION DATE	ESTIMATED VALUE (R)
1				
2				
3				
4				
5				
6				
7				
8				

* *Delete whichever is not applicable*

..... PROVINCIAL ADMINISTRATION

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

FORM 15: SCHEDULE OF EMPLOYEES NEEDED FOR CONTRACT

BARGAINING UNIT JOB CATEGORIES		
JOB CATEGORY	NUMBER	MINIMUM WAGE*
A. TRAFFIC		
Driving Instructor		
Senior Inspector		
Inspector		
Driver/Conductor, Conductor, OMO		
Regulator, Transport Officer, Rank Despatcher, Point Controller		
Senior Regulator		
Despatcher, Route Despatcher, Sub-Depot Despatcher		
Sales Point Controller, Clipcard Seller, Season Ticker Seller		
Ticket Seller, Cashier Mobile, Driver Cashier Mobile		
Flycheck Driver, Chauffeur, Service Vehicle Driver		
Light Vehicle Driver, Mobile Driver		
Roster Clerk (Traffic), Traffic Clerk		
Private Hire Clerk, Special Hire Clerk		

Ticket Office Clerk, Cashier, Setright Clerk
Senior Ticket Office Clerk
Senior Operations Clerk
Senior Cashier
Operations Clerk, Clerk (Traffic)
Duty Staff Bus Driver
Operator
Hostess, Steward

(3) ENGINEERING
Artisan (negotiated for)
Operatives (grades A, B, C and D)
Honorary Artisan
Trade Worker (Grades P16 to P14)
Trade Trainee (Grades P16 to P14)
Grade 5
Technician
Assistant Technician
Grade 4
Artisan's Assistant
General Hand
Trade Assistant (P19 to P17)
Works Staff, General Worker
Tyre Attendant

Tyre Programmer		
Senior Engineering Clerk, Engineering Clerk		
Stores Clerk, Stores Assistant		
Driver Shunter, Technical Driver		
JOB CATEGORY	NUMBER	MINIMUM WAGE*
Setright Mechanic		
Vehicle Checker (FOWL.)		
Fuel Attendant		
Steam Jenny Operator, Steam Cleaner		
Bus Cleaner, Cleaner, Bus Washer		
Fork Lift Driver		
Greaser		
Workshop Cleaner, Cleaner, Yard Cleaner		
Handyman, Handyman Estates		
Labourer		
Trimmer, Upholsterer		
Assistant Handyman		
Spray Painter, Painter, Signwriter		
Assistant Painter		
Stores Driver, Heavy Vehicle Driver		
Data Typist, Data Input Clerk		
Stores Data Clerk		
Shedman (Grades A3 to A5)		
Shunter Driver		

Taco Mechanic, Taco Clerk		
Brake Attendant		
C ADMINISTRATION		
Schedule Clerk, Ticket Clerk, Clerk		
Senior Clerk		
Data Capture Clerk		
Telephonist, Telephonist/Receptionist		
Gate Keeper, Security Guard, Night Watchman		
Messenger		
Typist/Clerk		
Chef-Cook		
Tea Person, Canteen Assistant		
Planning Clerk, Register Clerk		
TOTAL		

***NOTE:**

Minimum wage excludes all benefits.

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

The Operator is advised that the minimum wage offered must, where the current operator is a member of the South African Bus Employers Association (SABEA) be in accordance with the Agreement concluded in the National Bargaining Council; or if not a member of SABEA, be no lower than that specified in applicable Legislation.

..... PROVINCIAL ADMINISTRATION

THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES

BETWEEN AND

FORM 16: DECLARATION AND UNDERTAKING IN TERMS OF SECTION 48 OF THE ACT

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

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

I confirm that [the Operator] –

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

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

.....
Authorised signatory

..... PROVINCIAL ADMINISTRATION

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

**FORM 17: CERTIFICATE OF CONDITIONS OF A LOAN GUARANTEE OR OTHER FINANCIAL
ASSISTANCE PROVIDED TO THE OPERATOR**

Instructions

The purpose of this form is to illustrate what forms of assistance are provided to the Operator by third parties. The Employer will use the form to determine whether a the Operator is the recipient of an unfair advantage as defined in the Act. This form must be completed by any entity that provides or intends to provide assistance to the Operator, including but not limited to:

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

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

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

The Operator is urged to ensure that this form is completed by any organisation which provides or intends to provide assistance to the Operator. If in doubt, the Operator must discuss the question with the Employer through the main contact person as indicated in the contract documents.

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

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

Loans

Guarantees

Suretyships

Facility(ies)

Other (specify)

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

1. **Description**

- a) Present value of assistance
- b) Future value of assistance already negotiated
- c) Date of expiry of assistance
- d) Repayment terms
- e) Security (nature, value)
- f) Name(s) of entilyfies) providing security, directly or indirectly

- g) Cost of assistance (e.g. interest at prime rate)
- h) Other material terms and conditions pertaining to the assistance

2. **Description**

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

3. **Description**

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

4. **Description**

- a) Present value of assistance

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

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

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

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

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

.....

Branch Manager/CEO

.....

Full names

.....

Date

Official stamp of Financier:

PROVINCIAL ADMINISTRATION
THE PROVISION OF PUBUC PASSENGER TRANSPORT SERVICES
BETWEEN AND

FORM 18: DECLARATION OF FINANCIAL SUPPORT BY OWNER

Instructions:

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

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

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

- 1.
- 2.
- 3.
- 4.

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

Material particulars of such assistance are set out below.

- 1. **Description**
- a) Present value of assistance
- b) Future value of assistance already negotiated
- c) Date of expiry of assistance

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

2. Description

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

3. Description

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

4. Description

- a) Present value of assistance
- b) Future value of assistance already negotiated
- c) Date of expiry of assistance

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

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

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

.....
Chief Executive Officer

.....
Date

..... PROVINCIAL ADMINISTRATION
THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN AND

FORM 19: AFFIDAVIT REGARDING PREVIOUS CONVICTIONS FOR OFFENCES

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

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

hereby make oath/affirmation and say:

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

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

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

.....
Commissioner of Oaths

* *Delete whichever is not applicable.*

..... PROVINCIAL ADMINISTRATION
THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN AND

FORM 20: PRO FORMA DEED OF SURETYSHIP

WHEREAS a contract has been concluded between the Employer and the Operator (hereafter called "the contract"):

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

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

I/We, the undersigned, (name) and (name)
in my/our respective capacities as (position) and
(position) of (hereafter referred to as the "the Guarantor") and
being duly authorised to sign and incur obligations in the name of the Guarantor by virtue of a resolution of the Board of Directors of the Guarantor, a certified copy of which is attached hereto, hereby irrevocably and unconditionally guarantee and bind the Guarantor, jointly and severally to the Employer as guarantor and co-principal debtor, in solidum, with the Operator for the due and proper performance and completion of the contract by the Operator and undertake on behalf of the Guarantor that;

1 The Guarantor shall---

1.1 pay without delay to the Employer on first written demand any loss or damage which the Employer may sustain as well as any penalties or claims and legal costs to which the Employer may become entitled by reason of the non-fulfilment or breach by the Operator of the terms of the aforesaid contract, always provided that the liability of the Guarantor under this guarantee shall not exceed the sum of R (in words.....);

1.2 make such payment to the Employer at _____

- 2. The Guarantor hereby renounces the benefits of the exceptions *non numerate pecuniae, non cause debiti, ordinis seu excussionis of divisionis* and *do duobus vet pluribus mis debentli*, the meaning of which I/we am/are fully acquainted with, and all legal exceptions which may be pleaded against the validity of the Guarantee.
- 3. This Guarantee shall be irrevocable and shall remain in force and effect from the date hereof and shall expire on the date when the Employer has notified the Operator that all its obligations or all its outstanding obligations in terms of the contract have been fulfilled.

- 4. The Guarantor agreed and declare that all admissions and acknowledgements of indebtedness by the Operator shall be binding on the Guarantor, that the indebtedness of the Operator to the Employer shall at all times be determined and proved by a written certificate of the official of the Employer responsible for the management of the contract, and such certificate shall be binding on the Guarantor and be *prima facie* proof of the Guarantor's indebtedness and will be valid as a liquid document against the Guarantor for the purposes of proceedings including but not limited to provisional sentence proceedings instituted against the Guarantor in any court of law having jurisdiction.
- 5. The Employer shall be entitled without prejudice to its rights hereunder to give time to and compound with, release from liability or make any other arrangement with the Operator or its assigned liquidators, judicial managers and any such actions shall not exonerate the Guarantor from its liability hereunder.
- 6. Neither the failure of the Employer to enforce strict or substantial compliance by the Operator with the Operators obligations, nor any act, conduct, or omission by the Employer prejudicial to the interests of the Guarantor, will discharge the Guarantor from liability under this Guarantee.
- 7. This guarantee shall exist independently of the contract or amendment, variation or novation thereof.
- 8. No change or addition to or other amendments of the terms of the contract or any of the contract documents which may be made between the Employer and the Operator shall in any way release the Guarantor from any liability under this Guarantee, and the Guarantor hereby waives notice of such change, addition or amendments.
- 9. No variation, relaxation, waiver of, addition to, deletion from or cancellation of this Guarantee or any terms thereof shall be of any force or effect unless reduced to in writing, signed by the Employer.
- 10. The Guarantor chooses as its *domiciliurn citandi et executandi* and for the purpose of the service of all legal process the following physical address:
- 11. The Employer shall be entitled, without reference to me/us, to release any sureties or other securities held by it, or to give time to or compound or make any other arrangement with the Operator.
- 12. This guarantee is neither negotiable or transferable and shall remain in full force and effect until 30 days after the expiration date of the contract, unless I/we are advised in writing by the Employer before the said expiration date of its intention to institute claims, and the particulars thereof, in which event this guarantee shall remain in full force and effect until all such claims have been paid or liquidated.
- 13. The law of the Republic of South Africa shall be applicable to this guarantee and to any matter arising therefrom and I/we hereby accept the jurisdiction of the courts of the Republic of South Africa in respect of any matter arising from this guarantee.

SIGNED AT ON THIS THE DAY OF..... 20

.....
on behalf of SURETIES

WITNESSES:

1. Name:

2. Name:

SIGNED AT ON THIS THE DAY OF20

.....
SURETIES

WITNESSES:

1. Name:

2. Name:

..... PROVINCIAL ADMINISTRATION
THE PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES
BETWEEN AND

FORM 21: PAYMENT CERTIFICATE