

**VOLUME 5: SERVICE LEVEL AGREEMENT**

Initials of the authorised representative of the bidder  
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Initials of witness 1 \_\_\_\_\_  
Initials of witness 2 \_\_\_\_\_

**SERVICE LEVEL AGREEMENT  
PROVISIONING OF LEARNER TRANSPORT FOR THE WESTERN CAPE EDUCATION  
DEPARTMENT**

entered into by and between

**THE WESTERN CAPE GOVERNMENT VIA THE WESTERN CAPE EDUCATION DEPARTMENT**

(duly authorised thereto and represented herein by [insert name and surname] in  
[his/her] capacity as [insert designation] for the WCED)

(**"WCED"**)

and

**SERVICE PROVIDER**

[insert description]

(**"Service Provider"**)

(collectively hereinafter referred to as the **"Parties"**)

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### LIST OF ANNEXURES

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Annexure B: Service Level Schedule

Annexure C: Schedule of Authorised Vehicles

Annexure D: Pricing Schedule

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**INTRODUCTION**

A. The WCED requires the provisioning of Learner transport services for a period of 7 (seven) years **(Please note that the intended seven year contract period is still under review and will be finalised at a later date)** for [insert the number of learners] Authorised Learners on Route [insert route/s number/s] with the following pick up and drop off points [populate the table with the pick-up and drop off points] –


B. The WCED has appointed the Service Provider under Bid Number: B/WCED [insert].

C. The Service Provider has agreed to accept the appointment on the terms and conditions as contained in this Agreement.

**WHEREBY THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

1.1. In this Agreement unless the context indicates a contrary intention a word or expression which denotes –

1.1.1. any gender shall include the other genders;

1.1.2. a natural person shall include juristic persons and vice versa; and

1.1.3. the singular shall include the plural and vice versa.

1.2. The terms and conditions contained in the General Conditions of Contract (GCC), incorporated herein, and annexed hereto as Annexure "A", form part of the Agreement between the Parties.

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- 1.3. In the event of any inconsistency between the provisions of parts of the Agreement and/or the bid documentation, the following order will prevail –
  - 1.3.1. The Agreement, excluding the annexures, will prevail over the annexures to the Agreement;
  - 1.3.2. The Special Conditions of Contract will prevail over the GCC;
  - 1.3.3. The GCC will prevail over the other annexures to the Agreement;
  - 1.3.4. The bid specifications; and
  - 1.3.5. The bid proposal of the Service Provider to the extent it does not conflict with the bid specifications.
- 1.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 1.5. The cancellation or termination of this Agreement shall not affect the provisions of this Agreement which of necessity must continue to have effect after such cancellation or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.6. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of it shall not apply to this Agreement.
- 1.7. Words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning assigned to such words and expressions in that clause.
- 1.8. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meaning –

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- 1.8.1. **“Adult Supervisor”** means an adult person of 21 (twenty one) years or older who remains on a Vehicle during the conveyance of pre-primary and primary school Learners and who is to ensure the safety of such Learners;
- 1.8.2. **“Agreement”** means this Service Level Agreement, which also constitutes special conditions of contract as contemplated in the GCC, and which comprises of –
- 1.8.2.1. the Special Conditions of Contract;
- 1.8.2.2. Bid Response which is incorporated herein by reference (to the extent that the Bid Response does not conflict with the Specifications and in which case the provisions of the Specifications shall prevail);
- 1.8.2.3. the Specifications;
- 1.8.2.4. the GCC; and
- 1.8.2.5. any other annexures annexed hereto;
- 1.8.3. **“Applicable Law”** means South African law and any of the following, from time to time, to the extent that it applies to a Party, or the Services –
- 1.8.3.1. Any South African statute, regulation, policy, by-law, directive, notice or subordinate legislation;
- 1.8.3.2. the common law;
- 1.8.3.3. any binding court order, judgment or decree;
- 1.8.3.4. any applicable South African industry code, policy or standard enforceable by-law; or
- 1.8.3.5. any applicable direction, policy or order that is given by a South African regulator having the force of law;

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- 1.8.4. **"Authorised Learner"** means those Learners authorised by the WCED to make use of the Services on the Routes and are listed on the Register of Authorised Learners;
- 1.8.5. **"Authorised Stop"** means a pick-up or drop-off point authorised by the WCED in the Bid Documents;
- 1.8.6. **"BBBEE"** means broad-based black economic empowerment as contemplated in the Board-Based Black Economic Empowerment Act 53 of 2003;
- 1.8.7. **"Bid Documents"** means Volumes 1 to 6 of the Bid Documents which includes the bid invitation, general contract conditions, Specifications, Special Conditions of Contract, SLA and annexures;
- 1.8.8. **"Bid Response"** means the submitted documentation from the Service Provider in response to the bid invitation contained in the Bid Documents;
- 1.8.9. **"Business Day"** means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 1.8.10. **"Calendar Day"** means any day of the week and includes weekends and statutory public holidays in the Republic of South Africa;
- 1.8.11. **"Calendar Month"** means the period of time that begins on the 1st (first) Calendar Day of any given month and shall consist of the number of Calendar Days in such month, ending on the last Calendar Day of the same month;
- 1.8.12. **"Claim Form"** means the prescribed forms and certificates which are to be completed, signed and submitted by the Service Provider in support of its monthly claim;
- 1.8.13. **"Claim Month"** means from the 16<sup>th</sup> (sixteenth) Calendar Day of each Calendar Month or the first School Day thereafter to the 15<sup>th</sup> (fifteenth) Calendar Day of the

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next Calendar Month or the last School Day prior to the 15<sup>th</sup> (fifteenth) Calendar Day, excluding weekends, public holidays and school holidays;

- 1.8.14. "**Code of Conduct**" means the document prepared by the Service Provider and provided to the WCED on the Commencement Date, that sets out the manner in which drivers are to act in respect of Learners and render the Services;
- 1.8.15. "**Commencement Date**" means the date on which the Services will commence which is [insert date];
- 1.8.16. "**District Office**" means a regional office of the WCED where a Route is situated;
- 1.8.17. "**Driver's Licence**" means a license issued to an individual to legally drive a Vehicle as more fully set out in the NRTA;
- 1.8.18. "**Emergency**" means a situation which is beyond the control of the Service Provider, and which includes strikes, stay-aways, riots, *vis maior*, and which makes the provision of the Services or part thereof impossible;
- 1.8.19. "**Head of Department**" means the head of and accounting officer of the WCED;
- 1.8.20. "**Head Office**" means the central office of the WCED which is situated in Cape Town;
- 1.8.21. "**Initial Termination Date**" means the date that falls on the last Calendar Day of the last School Term in which the 7<sup>th</sup> (seventh) anniversary of the Commencement Date falls;
- 1.8.22. "**Learner**" means a Learner as defined in SASA that have been approved by the WCED to be transported on the Route and as more fully set out in the Bid Documents;
- 1.8.23. "**NLTA**" means the National Land Transport Act 5 of 2009;

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- 1.8.24. "**NRTA**" means the National Road Traffic Act 93 of 1996;
- 1.8.25. "**Operating Licence**" means a licence required by section 50 of the NLTA and granted and issued in accordance with the NLTA and its regulations which is necessary to enable the Service Provider to provide the Services in terms of this Agreement, and where the Service Provider is already in possession of such licence before the Commencement Date, includes any renewal, amendment or transfer of such licence necessary to enable him or her to provide the Services;
- 1.8.26. "**PRE**" means the Provincial Regulatory Entity or any other provincial regulatory authority vested with the power to issue Operating Licenses;
- 1.8.27. "**Principal**" means an educator appointed or acting as the head of a School to which the Service Provider provides Services;
- 1.8.28. "**Professional Driving Permit**" means a permit issued to certain classes of drivers as more fully set out in the NRTA and its regulations;
- 1.8.29. "**Register of Authorised Learners**" means the register kept by a Principal in which the details of Authorised Learners qualifying for and using the Learner transport scheme are indicated;
- 1.8.30. "**Revenue Kilometres**" means kilometres actually operated on approved Routes for which the Bidder is entitled to compensation in terms of this Agreement;
- 1.8.31. "**Road Accident Fund**" means the fund created in terms of the Road Accident Fund Act 56 of 1996 for the payment of compensation in accordance as set out in the Road Accident Fund Act for loss or damage wrongfully caused by the driving of motor vehicles;
- 1.8.32. "**Roadworthy Certificate**" means a certificate issued in terms of section 42 of the NRTA confirming that a Vehicle complies with various requirements and may be driven on a road;

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- 1.8.33. "**Route**" means the Learner transport Route stretching from the first pick-up point to the last drop off point on such Route and as more fully set out in the Bid Documents and in the Preamble to this Agreement;
- 1.8.34. "**SASA**" means the South African Schools Act 84 of 1996;
- 1.8.35. "**School**" means a public school as defined in the South African Schools Act 84 of 1996 and which School is situated in the Western Cape Province;
- 1.8.36. "**School Day**" means a day on which public Schools are open for learning during School Terms and excludes weekends and public holidays of the Republic of South Africa;
- 1.8.37. "**School Term**" means a quarterly portion of the academic year in which Schools hold classes;
- 1.8.38. "**Service Level Schedule**" means the document annexed hereto marked as Annexure "B" which more fully sets out the details regarding the Services to be provided by the Service Provider;
- 1.8.39. "**Services**" means the transportation of Learners along a Route by specified Vehicles at specified times and frequencies and stopping at specified locations in accordance with the Specifications, Special Conditions of Contract and the Service Level Schedule;
- 1.8.40. "**Special Conditions of Contract**" means any amplification or amendment or addition to or departure from the conditions of contract for learner transport schemes contained in the Bid Documents;
- 1.8.41. "**Specifications**" means the Specifications as set out in Volume 4 of the Bid Documents in which the Routes, distances, Services, fares, time tables, performance criteria, stops and any additional related information are described;
- 1.8.42. "**Substitute Service Provider**" means the Substitute Service Provider as defined in clause 5 of this Agreement;

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- 1.8.43. "**Term**" shall bear the meaning ascribed to such term in clause 4.1 of this Agreement;
- 1.8.44. "**Time Schedule**" means a schedule approved by the Principal, indicating all departure times from points of origin and intermediate points as well as arrival times at destinations on each Route for School Days, subject to any variation thereof in terms of clause 14;
- 1.8.45. "**Vehicle**" means a motor vehicle designed or adapted for the conveyance of not less than 10 (ten) Learners (including the driver), by means of which the Service Provider proposes to provide the Services and includes –
- 1.8.45.1. "bus" which means a bus as defined in the NRTA (designed or modified to carry more than 35 (thirty five) persons including the driver) and includes a double decker bus, standard bus, maxi-bus, bus-train and bi-articulated bus;
- 1.8.45.2. "minibus" which means a motor vehicle designed or modified solely or principally for conveying more than 9 (nine) but not more than 16 seated persons, including the driver;
- 1.8.45.3. "midibus" which means a motor vehicle designed or modified solely or principally for conveying more than 16 (sixteen) but not more than 35 (thirty five) persons, including the driver, and for the purposes of the NRTA is a type of sub-category of bus;
- 1.8.45.4. "standard bus" which meaning a bus with a capacity of not less than 58 (fifty eight) persons and not more than 70 (seventy) seated persons;
- 1.8.45.5. "maxi-bus" which means a bus with 3 (three) axles and a seating capacity of between 71 (seventy one) and 90 (ninety) passengers, including the driver;

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1.8.45.6. "bus-train" which means a bus-train as defined in the regulations to the NRTA, which–

1.8.45.6.1. consists of two sections connected to form a unit;

1.8.45.6.2. can swivel in a horizontal plane at the connection between such sections;

1.8.45.6.3. is designed or adapted solely or principally for the conveyance of the driver and at least 100 (one hundred) other persons; and

1.8.45.6.4. has a continuous passageway over the length thereof;

1.8.45.7. "bi-articulated bus-train" which means a bus which–

1.8.45.7.1. consists of three sections connected to form a unit;

1.8.45.7.2. can swivel in a horizontal plane at the connection between such sections;

1.8.45.7.3. is designed or adapted solely or principally for the conveyance of the driver and at least 116 (one hundred and sixteen) other persons; and

1.8.45.7.4. has a continuous passageway over the length thereof;

1.8.45.8. Or any other Vehicle adapted according to the latest requirements of the South African Bureau of Standards, the Standards Act 29 of 1993, the NRTA and its regulations, or any other Applicable Law;

1.8.46. "**Vehicle Licence**" means the licencing and registration document issued to the owner of a Vehicle as more fully set out in the NRTA, relevant provincial laws and regulations and municipal by-laws;

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1.8.47. **"VAT"** means Value Added Tax levied in terms of the Value-Added Tax Act 89 of 1991; and

1.8.48. **"WCED"** means the Western Cape Education Department which includes the Head Office, District Office, Principal and public ordinary schools.

1.9. Any references in the GCC to the terms "Supplier" and "Purchaser" shall be references to the terms "Service Provider" and "WCED" respectively in this Agreement.

## **2. APPOINTMENT**

2.1. The WCED hereby appoints the Service Provider for purposes of rendering the Services to the WCED with effect from the Commencement Date.

2.2. The Service Provider hereby accepts the appointment with effect from the Commencement Date and agrees to render the Services to the WCED on the terms and conditions set out herein.

2.3. The awarding of this bid and the conclusion of this Agreement are based on the information provided by the Service Provider in its bid. The Service Provider shall maintain its status in respect of its BBBEE compliancy and tax matters for the duration of this Agreement. Should any deviation or changes occur, the Service Provider shall advise the Head Office (Directorate: Procurement Management) accordingly. Material deviations may result in the WCED having to apply remedial action, suspending or terminating this Agreement. If any material deviations occur as a result of a change in legislation, the Service Provider shall be afforded a reasonable amount of time to comply with the legislative change. The Service Provider shall for the duration of this Agreement be in possession of a valid tax clearance certificate.

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**3. RELATIONSHIP OF THE PARTIES**

- 3.1. The Service Provider, in furnishing the Services hereunder, is acting as an independent contractor. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.
- 3.2. Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind, between any of the Parties; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its affiliates' behalf with regard to the other Party and its affiliates other than as specifically set out herein.
- 3.3. Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

**4. DURATION**

- 4.1. This Agreement shall commence on the Commencement Date, unless otherwise provided for in this Agreement, remain in force for 7 (seven) years **(Please note that the intended seven year contract period is still under review and will be finalised at a later date)** and terminate on the Initial Termination Date or continue for such further period (if any) in the event that the WCED elects to extend the Agreement in accordance with the extension process set out in clause 4.4 below (the "Term").
- 4.2. By the latest during the second last School Term prior to the Initial Termination Date, the WCED will, in writing, notify the Service Provider of its intention to extend the Agreement in accordance with the provisions set out in this Agreement.
- 4.3. If no written notice of extension is received by the Service Provider from the Head Office (Directorate: Procurement Management) by the latest during the last School Term prior to

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the Initial Termination Date, then the Agreement shall *ipso facto* terminate on the Initial Termination Date, unless the Parties agree otherwise in writing.

4.4. Extension process –

4.4.1. In the event of the Head Office (Directorate: Procurement Management) notifying the Service Provider of its intention to extend this Agreement, it shall simultaneously provide the Service Provider with details of its requirements regarding the duration of the extended term.

4.4.2. This Agreement will be extended on the same terms and conditions contained herein, unless agreed otherwise in writing by the Parties.

4.4.3. The Service Provider shall, upon receipt of the aforementioned notice of intention to extend the Agreement, provide to the Head Office (Directorate: Procurement Management), within 1 (one) Calendar Month thereafter, its proposal (pertaining to pricing and any relevant terms and conditions) for extension of the Agreement, which shall be on terms and conditions no less favourable to the WCED than the terms and conditions contained herein.

4.4.4. The Parties shall negotiate in good faith to reach agreement of the extension terms and conditions. In the event that the Parties fail to reach agreement by the beginning of the Calendar Month prior to the Initial Termination Date, then this Agreement shall, *ipso facto*, terminate on the Initial Termination Date.

4.4.5. Any extension shall be subject to the relevant approval prescripts by the Head of Department.

**5. SUBSTITUTE SERVICE PROVIDER**

5.1. The written consent of the Head Office (Directorate: Procurement Management) shall be required before the Service Provider may appoint any Substitute Service Provider.

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- 5.2. In the event of an industrial dispute or staff stay-away, or any other situation affecting the Service Provider and its ability to provide the Services, the Service Provider shall be responsible for taking all reasonable steps to render the Services by means of the use of a Substitute Service Provider. If due to an Emergency there is no time to obtain prior written approval from the WCED before the appointment of the Substitute Service Provider, the Service Provider must inform the WCED of the particulars of such Substitute Service Provider and then obtain the written approval of the Head Office (Directorate: Procurement Management) within 3 (three) Business Days of the appointment of the Substitute Service Provider.
- 5.3. The appointment of a Substitute Service Provider under this clause shall not be valid for more than ninety (90) Calendar Days. The Head Office (Directorate: Procurement Management) shall nevertheless only deal with and issue instructions to the Service Provider who shall bear full responsibility for the provision of the Services in accordance with this Agreement. It shall at all times be the responsibility of the Service Provider to liaise with the Substitute Service Provider.
- 5.4. When claims are submitted, proof of delivery, to the satisfaction of the WCED, covered by the Substitute Service Provider must be submitted. The Service Provider will be paid in accordance with this Agreement for any trips made by the Substitute Service Provider and it will be the Service Provider's responsibility to reimburse the Substitute Service Provider fully.
- 5.5. If the Service Provider is unable for any reason to provide the Services in accordance with the Time Schedule for any consecutive period of 48 (forty eight) hours and fails to arrange for a Substitute Service Provider, the Service Provider shall immediately inform the District Office to this effect, to enable the District Office to make alternative arrangements. Unless the Service Provider 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 this Agreement for the failure to render the Services. Circumstances beyond the control of the Service Provider shall not include disputes, stay-aways or strikes confined to the Service Provider only.

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**6. CESSION TO THE SCHOOLS IN TERMS OF SASA**

- 6.1. Section 21 of SASA authorises the Head Office, on application by a School, to allocate certain functions to it which entails that a School can apply to the WCED to take over the Learner transport functions of the WCED in respect of that specific School.
  
- 6.2. The WCED thus reserves the right to cede and delegate to a School its rights and obligations in terms of this Agreement, in which case the School shall replace the WCED as a Party to this Agreement. The WCED further undertakes in such cases to give the Service Provider 3 (three) Calendar Months' notice of such cession and delegation.

**7. TERMINATION OF APPOINTMENT**

- 7.1. Notwithstanding any other provision in this Agreement, the WCED shall be entitled to terminate this Agreement forthwith by written notice to the Service Provider if the Service Provider –
  - 7.1.1. enters into insolvency;
  
  - 7.1.2. commits a fraudulent or dishonest act;
  
  - 7.1.3. is, through its own actions, prevented from performing its duties for a period exceeding 5 (five) days;
  
  - 7.1.4. is guilty of any conduct which is prejudicial to the WCED's interest;
  
  - 7.1.5. has a civil judgment entered against it;
  
  - 7.1.6. renders a standard of service which is below the standards set out in the Specifications and the annexures thereto and fails to remedy such standard of service within 7 (seven) Calendar Days of receiving written notice informing it of such breach;

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7.1.7. fails to provide a valid tax clearance certificate during the contract period if the WCED requests it; and

7.1.8. due to a change during the contract period, qualifies for lower BBBEE status points than its status points as at the conclusion of this Agreement.

7.2. If the WCED is of the opinion that –

7.2.1. the Service Provider made any intentional or negligent misrepresentation to it whether at the time of the bid evaluation, in the completion of the Bid Documents or in the execution of the Agreement;

7.2.2. the Service Provider, in relation to obtaining the bid giving rise to the this Agreement with the WCED, or in relation to the execution of this Agreement, has or has caused to be promised, offered or given to an official, employee or any other person any bribe, commission, gift, loan, advantage or any other consideration whatsoever;

7.2.3. the Service Provider or any entity or person with whom the Service Provider is actively associated with or, where the Service Provider is a company or partnership, any manager, director or any person who wholly or partly exercises or may exercise control over such a company or partnership, has acted fraudulently or in bad faith or in any improper manner in the obtaining of or in the execution of this Agreement; or

7.2.4. if the Service Provider in conducting its business, has contravened or, neglected to comply with statutory requirements and as a result thereof, has been found guilty of a criminal offence;

then the WCED may cancel this Agreement immediately without prejudice to any other remedies it may have.

7.3. The following Service related incidents shall entitle the WCED to give notice of termination of the Agreement forthwith if –

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- 7.3.1. Learners are dropped off late at School in the morning or picked up late after School in the afternoon more than 3 (three) times in a Calendar Month or otherwise as a regular occurrence;
  - 7.3.2. Vehicles are overloaded and Learners are forced to stand in such overloaded Vehicles;
  - 7.3.3. the Service Provider, regardless of the reason, does not transport the Learners without informing the Principal or making alternative arrangements;
  - 7.3.4. the drivers should jeopardise the lives of the Learners in any manner including through their conduct and/or their failure to apply the rules of the road;
  - 7.3.5. the Service Provider uses the same Vehicle for providing the Services in terms of this Agreement for also providing services in terms of another agreement;
  - 7.3.6. the Vehicles used by the Service Provider do not have valid Vehicle Licences or do not have Roadworthy Certificates;
  - 7.3.7. If the WCED becomes aware that a driver does not have a valid Driver's License and Professional Driving Permit; and
  - 7.3.8. If the Service Provider does not have its Vehicle tested for roadworthiness as required by the NRTA or on request by the WCED.
- 7.4. Should the WCED determine that there is no longer a need for the Services, it reserves the right to cancel this Agreement on 1 (one) School Term's written notice to the Service Provider. In the event that the Agreement is cancelled due to the Services no longer being needed, the Service Provider must send an invoice to the WCED for all outstanding amounts within 14 (fourteen) Calendar Days of the last School Day on which the Services are rendered. This outstanding invoice will be paid by the WCED within 30 (thirty) Calendar Days of the date thereof and in accordance with the usual procedures set out in clause 12 below and once paid, the Service Provider will have no further claims against the Department.

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**8. REPRESENTATIONS AND WARRANTIES**

8.1. General representations and warranties –

- 8.1.1. The Service Provider represents and warrants that for the Term, the Services shall conform to and operate in accordance with the Specifications and the Service Level Schedule.
- 8.1.2. The Service Provider represents and warrants that it shall perform its obligations in terms of this Agreement with promptness and in accordance with the standards agreed upon in this Agreement. Without limiting the generality of the foregoing, the Service Provider represents and warrants that it (and including, but not limited to, its employees, agents, representatives and Substitute Service Providers) shall have the necessary skills, experience, expertise, capacity and knowledge reasonably required to perform the Services in accordance with the requirements set out in this Agreement.
- 8.1.3. The Service Provider represents and warrants that it shall render the Services in terms of this Agreement in a cost effective manner.
- 8.1.4. The Service Provider represents and warrants that it shall not do, nor omit to do anything which would adversely impact on, or prejudice the Department's reputation in any way whatsoever.
- 8.1.5. In the light of the essential nature of the Services to the WCED, it is hereby recorded and agreed that the Service Provider hereby irrevocably and unconditionally undertakes and warrants in favour of the WCED that for so long as the Term endures it shall not disrupt or interfere with the provision the Services.

8.2. Representations and warranties relating to the provision of the Services –

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8.2.1. The Service Provider warrants that the Vehicles listed in Annexure "C" annexed hereto are in proper working order, roadworthy and available and will be used to fulfil its obligations in terms of this Agreement.

8.2.2. The Service Provider warrants that the Vehicles listed in Annexure "C" annexed hereto are to be used exclusively for rendering the Services during the agreed pick-up and drop-off times in the mornings and afternoons on School Days and shall not be used for the provision of other transport services during this time.

**9. DUTIES OF THE WCED**

9.1. The WCED hereby entrusts all such powers and duties to the Service Provider as are required to enable the Service Provider to lawfully perform its duties effectively and competently in terms of this Agreement.

9.2. It is the duty of the Head Office to monitor such Services and to ensure compliance with this Agreement, the Service Level Schedule and the Specifications.

9.3. The WCED shall have the right to investigate any complaints, objections or representations made by interested parties relating to the Services.

**10. DUTIES OF THE SERVICE PROVIDER**

10.1. The Service Provider shall perform the Services according to best practices and with the requisite skills, expertise and knowledge.

10.2. The Service Provider shall ensure that all Services conform to all the Specifications and render the Services strictly in accordance with the Service Level Schedule annexed hereto as Annexure "B".

10.3. The Service Provider shall make itself available to attend meetings called by the Head Office, District Office and/or Principal and provide any feedback and/or information requested during those meetings.

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- 10.4. The Service Provider shall provide reports to the WCED as requested by the WCED in writing.
- 10.5. The Service Provider shall ensure that it provides the Principal with the Code of Conduct by the Commencement Date, which may not exclude any of the provisions contained in the pro forma Code of Conduct annexed to the Bid Documents.

**11. INSURANCE**

- 11.1. The Service Provider must take reasonable steps to ensure the safety of passengers and property. The WCED 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 Service Provider or its agents or employees.
- 11.2. The Service Provider shall obtain public liability insurance, which is to the satisfaction of the WCED and in particular to cover claims that may lead to liability resulting from incidents not covered by the Road Accident Fund, at its own cost commensurate with the risks associated with rendering the Services.
- 11.3. The Service Provider warrants that it will maintain an insurance policy cover that satisfies the WCED contemplated in clause 11.1 for the Term.
- 11.4. The Service Provider shall, at the Commencement Date and thereafter on a quarterly basis, submit to the Head Office, proof of the validity and continuance of its insurance policy.
- 11.5. Any non-compliance or the failure to make regular payments of premiums, resulting in the cancellation or suspension of the insurance policy, will constitute a material breach of this Agreement and any damage and/or loss suffered by the WCED as a result thereof shall be borne by the Service Provider.
- 11.6. Clause 11.1 will survive the termination of this Agreement.

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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**12. INVOICING AND PAYMENTS**

- 12.1. The WCED shall pay the Service Provider in accordance with the pricing schedule attached hereto as Annexure "D".
- 12.2. The costs referred to in 12.1 above are all-inclusive of all costs associated with rendering the Services which includes VAT, all costs associated with the provision of divers, Adult Supervisors and Vehicles, petrol and/or diesel costs, operational costs, administrative costs and the costs associated with obtaining Operating Licences and complying with Applicable Law.
- 12.3. The WCED shall pay the said amounts within 30 (thirty) Calendar Days of receipt of a detailed and valid tax invoice, Claim Form and a copy of the Register of Authorised Learners.
- 12.4. The following details must be reflected on the invoices contemplated in clause 12.3 –
  - 12.4.1. The total amount payable with reference to the specific Services that have been rendered during a particular Claim Month;
  - 12.4.2. The invoice number; and
  - 12.4.3. VAT payable.
- 12.5. The WCED will verify the correctness of a tax invoice, and notify the Service Provider of any possible discrepancies within 10 (ten) Business Days of receipt of the tax invoice. If the WCED identifies any material discrepancies, the tax invoice will be referred back to the Service Provider, and the amount due will be payable within 30 (thirty) Calendar Days from receipt of a corrected tax invoice, provided that the provisions of clauses 12.3 and 12.4 have been complied with. Undisputed amounts on an invoice shall be paid by the WCED in accordance with clause 12.3.
- 12.6. No payment shall be made in respect of Services that have been rendered that do not comply with the requirements in this Agreement and its annexures.

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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12.7. All payments in terms of this Agreement shall be made in South African Rand by way of an electronic banking transfer into the bank account of the Service Provider (located in the Republic of South Africa), details of which will be specified in the relevant invoice, quoting the invoice number against which payment is to be made.

**13. PENALTIES**

13.1. The Services shall be monitored and penalties will be imposed as set out in this clause for all offences listed.

13.2. The WCED will advise the Service Provider on a monthly basis of penalties to be imposed.

13.3. Revenue Kilometres shall in all cases only be paid for trips which have been operated.

13.4. No Vehicle shall leave the first point of departure before the time listed in the Time Schedule or more than 15 (fifteen) minutes thereafter, failing which penalties will be imposed as set out below.

13.5. The Service Provider will be expected to adhere strictly to the requirements of the Specifications. Penalties will be imposed as follows –

	<b>Event</b>	<b>Penalty</b>
13.6.1	Where a trip has not been provided:  i. 1 <sup>st</sup> Occurrence per Route per Claim Month;  ii. 2 <sup>nd</sup> Occurrence per Route per Claim Month;  iii. 3 <sup>rd</sup> Occurrence and more per Route per Claim Month.	R500.00 (five hundred Rand)  R700.00 (seven hundred Rand)  R1000.00 (one thousand Rand)

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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13.6.2	<p>Late arrival and departure from schools:</p> <p>i. Vehicle departs from first point of departure before the time stated in the Time Schedule or after 15 minutes thereafter;</p> <p>ii. Vehicle has not arrived at School within 30 (thirty) minutes after School starting time;</p> <p>iii. Vehicle arrives at School 30 (thirty) minutes or more after School starting time;</p> <p>iv. Vehicle has not arrived at School within 30 (thirty) minutes of the School closing time.</p>	<p>R150.00 (one hundred and fifty Rand)</p> <p>R250.00 (two hundred and fifty Rand)</p> <p>R500.00 (five hundred Rand)</p> <p>R500.00 (five hundred Rand)</p>
13.6.3	<p>Vehicle breakdowns:</p> <p>i. Failure to provide a replacement Vehicle to transport Learners to School in the morning;</p> <p>ii. Failure to provide a replacement Vehicle in the afternoon within 2 (two) hours of breakdown.</p> <p>Should the Service Provider fail to provide a replacement Vehicle such conduct will constitute a serious breach. The WCED will not compensate the Service Provider and reserves the right to institute breach procedures if no alternative arrangements are made to transport the Learners to and from School.</p>	<p>No remuneration for trip</p> <p>No remuneration for trip</p>
13.6.4	<p>Failure to pick-up or drop-off Authorised Learners at authorised points.</p>	<p>R250.00 (two hundred and fifty Rand)</p>

<p>Initials of the authorised representative of the bidder _____</p>	<p>Initials of witness 1 _____  Initials of witness 2 _____</p>
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13.6.5	<p>Vehicles in unsatisfactory condition:</p> <ul style="list-style-type: none"> <li>i. Unauthorised Vehicle used;</li> <li>ii. Use of a Vehicle without a valid Vehicle Licence or Roadworthy Certificate;</li> <li>iii. Use of a Vehicle with obvious defects (i.e. defective door, missing window, loose or broken seat).</li> </ul> <p>Where it is discovered that a Vehicle is used that does not have a Vehicle Licence and/or Roadworthy Certificate, the Service Provider must make arrangements for a licensed and roadworthy replacement Vehicle within 2 (two) hours, failing which the WCED may arrange for alternative transport and the Service Provider shall be held liable for the costs.</p>	<p>R750.00 (seven hundred and fifty Rand)</p> <p>R750.00 (seven hundred and fifty Rand)</p> <p>R250.00 (two hundred and fifty Rand)</p>
13.6.6	<p>Deviating from Route:</p> <p>Deviation from the Route unless the Service Provider can show that the deviation was a response to an unexpected situation such as weather or road incident.</p> <p>The Service Provider will only be compensated for approved Revenue Kilometres. Anticipated Route deviations due to bad weather and road conditions are excluded if the Service Provider informs the WCED within 24 (twenty four) hours of such Route deviation. The WCED will determine the validity and the distance of the deviation.</p>	<p>R300.00 (three hundred Rand)</p>

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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13.6.7	Display of vehicle identification:  Failure to display Vehicle identification that Learners are being transported in terms of paragraph 2.7 of the Special Conditions of Contract.	R300.00 (three hundred Rand)
13.6.8	Failing to provide the WCED with any information or documentation applicable to the Contract.	R500.00 (five hundred Rand)
13.6.9	Failing to present approved Vehicles for inspection or testing as required by the WCED.	R750.00 (seven hundred and fifty Rand)
13.6.10	Drivers and Adult Supervisors failing to comply with the conditions set out in the Code of Conduct.	R500.00 (five hundred Rand)
13.6.11	Failing to submit a Claim Form and invoice within three (3) Business Days after the 15 <sup>th</sup> (fifteenth) day of a Claim Month.	R250.00 (two hundred and fifty Rand)

13.6. Penalties will be imposed per Vehicle per day or per occurrence.

13.7. Notwithstanding the penalties above, the WCED reserves the right to place the Service Provider in breach for the abovementioned transgressions in terms of clause 17 below.

#### **14. ENTIRE AGREEMENT AND ASSIGNMENT**

14.1. This Agreement replaces any other previous verbal or written agreement entered into between the Parties.

14.2. This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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14.3. The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

14.4. Notwithstanding any provision to the contrary in the Agreement, the primary responsibility for supplying the Services vests with the Service Provider and it may not subcontract, assign, cede, delegate or transfer, in whole or in part, any of its obligations to perform in terms of this Agreement to any other person, without the prior written consent of the WCED.

**15. WAIVER**

15.1. No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.

15.2. No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.

15.3. No indulgence, leniency or extension of time which any Party ("*the Grantor*") may grant or show the other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

**16. SEVERABILITY**

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

**17. BREACH**

17.1. Should a Party breach any of the terms and conditions of this Agreement and remain in such breach for 7 (seven) Calendar Days after receipt of a written notice calling upon it to

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remedy such breach, then the Party who served such notice shall be entitled, in addition to any remedy which it may have in law, to cancel this Agreement.

17.2. In the case where the Service Provider remains in breach despite the notice as contemplated in clause 17.1, the WCED may impose penalties as contemplated by clause 22 of the GCC and, in particular, clause 13 above, or claim damages in lieu of penalties.

17.3. Notwithstanding the provisions of clauses 17.1 and 17.2, the WCED may elect to appoint a third party without notice to render part of the Services at the Service Provider's expense if the Service Provider fails to render any part of the Services for a period of more than 24 (twenty four) hours.

**18. SETTLEMENT OF DISPUTES**

18.1. Without detracting from a Party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of or in connection with this Agreement, the parties may, by mutual consent, follow the mediation and/or arbitration procedure as set out in clauses 18.2 and 18.3.

18.2. Mediation –

18.2.1. Subject to the provisions of clause 18.1, any dispute arising out of or in connection with this agreement may be referred by the parties without legal representation to a mediator.

18.2.2. The dispute shall be heard by the mediator at a place and time to be determined by him or her in consultation with the parties.

18.2.3. The mediator shall be selected by agreement between the parties.

18.2.4. If an agreement cannot be reached upon a particular mediator within 3 (three) Business Days after the Parties have agreed to refer the matter to mediation, then

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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the President of the Cape Law Society shall nominate the mediator within 7 (seven) Business Days after the Parties have failed to agree.

18.2.5. The mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the Parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.

18.2.6. The Parties shall have 7 (seven) Business Days within which to finalise their representations. The mediator shall within 7 (seven) Business Days of the receipt of the representations express in writing an opinion on the matter and furnish the Parties each with a copy thereof by hand or by registered post.

18.2.7. The opinion so expressed by the mediator shall be final and binding upon the Parties unless a Party is unwilling to accept the opinion expressed by the Mediator. In such event, the aggrieved Party may institute legal proceedings in a court of competent jurisdiction, unless the Parties agree to refer the dispute to arbitration in accordance with clause 18.3. The expressed opinion of the mediator shall not prejudice the rights of either Party in any manner whatsoever in the event of legal proceedings or arbitration, as the case may be.

18.2.8. The cost of mediation shall be determined by the mediator.

18.2.9. Liability for such cost shall be apportioned by the mediator and shall be due and payable to the Mediator on presentation of his or her written account.

18.3. Arbitration –

18.3.1. Subject to the provisions of clause 18.1, the Parties may agree to refer any dispute arising out of or in connection with this Agreement, to arbitration.

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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18.3.2. Arbitration shall be held in Cape Town informally and otherwise in accordance with the provisions of the Arbitration Act 42 of 1965, it being intended that, if possible, it shall be held and concluded within 10 (ten) Business Days.

18.3.3. Save as otherwise specifically provided herein, the arbitrator shall be if the matter in dispute is –

18.3.3.1. primarily a legal matter, a practising Senior Advocate of the Cape Bar;

18.3.3.2. any other matter, an independent and suitably qualified person as may be agreed upon between the Parties to the dispute.

18.3.4. If agreement cannot be reached on whether the question in dispute falls under 18.3.3.1 or 18.3.3.2 and/or upon a particular arbitrator within 3 (three) Business Days after the Parties have agreed to refer the dispute to arbitration, then the Chairperson for the time being of the Cape Bar Council shall –

a) determine whether the question in dispute falls under 18.3.3.1 or 18.3.3.2; and/or

b) nominate the arbitrator within 7 (seven) Business Days after the Parties have failed to agree.

18.3.5. The arbitrator shall give his or her decision within 5 (five) Business Days after the completion of the arbitration. The arbitrator may determine that the costs of the arbitration are to be paid either by one or the other or by both of the Parties.

18.3.6. The decision of the arbitrator shall be final and binding and may be made an order of the Western Cape High Court, Cape Town, upon the application by any Party to the arbitration.

18.4. Notwithstanding the provisions contained in clause 27 of the GCC, disputes between the Parties shall be governed exclusively by, and settled in terms of, clauses 18.1 to 18.3 of this Agreement.

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**19. CONFIDENTIALITY**

- 19.1. Save as otherwise provided in this Agreement, the Parties shall treat as strictly secret and confidential the existence and nature of all discussions and negotiations relating to the subject matter of this Agreement, it being agreed and undertaken by the Parties that no disclosure of whatsoever nature or kind of the content of this Agreement shall be made to any person without the prior written consent of the other Party.
  
- 19.2. The Parties shall not during the currency of this Agreement or at any time thereafter, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any personal information of any person obtained during the course of rendering the Services, unless compelled by law to disclose such information.

**20. INDEMNITY**

- 20.1. The Service Provider specifically indemnifies the WCED against all and any claims, including claims for consequential damages, which might arise from personal injury, death, loss or damage to property or person, or any other claim of whatsoever nature, arising from negligence, gross negligence or any other cause howsoever, which any person may have or institute against the WCED and where the cause of such claim can be directly or indirectly attributed to the rendering of the Services by the Service Provider.
  
- 20.2. Clause 20.1 shall survive the termination of this Agreement.

**21. NOTICES AND DOMICILIUM**

- 21.1. The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings, the transmission of invoices and credit notes in terms of this Agreement, the following addresses:

**The WCED:**

The Head of the WCED  
Grand Central Building  
Plein Street

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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Cape Town  
8000

**The Service Provider**

[Designation]

[Address]

- 21.2. All notices referred to in clause 21.1 above that are to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.
- 21.3. If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 7 (seven) Business Days after the date of posting.
- 21.4. A written notice or communication actually received by a Party shall be deemed to be adequate notice notwithstanding that it was not delivered or sent to its chosen domicilium address. If transmitted by electronic mail message be deemed to have been received by the addressee on the expiration of 24 (twenty four) hours after transmission.

**22. FORCE MAJEURE**

- 22.1. Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves –
  - 22.1.1. that the failure was due to an impediment beyond its control;
  - 22.1.2. that it could not reasonably be expected to have taken the impediment and its effects upon the Party's ability to perform into account at the time of the conclusion of this Agreement; and
  - 22.1.3. that it could not reasonably have avoided or overcome the impediment or its effects.

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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22.2. An impediment, as aforesaid, may result from events such as the following (this list is not exhaustive) –

22.2.1. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;

22.2.2. natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;

22.2.3. explosions, fires, destruction of machines, of factories and of any kind of installations;

22.2.4. acts of authority, whether lawful or unlawful, part from acts from which the party seeking relief has assumed the risk by virtue of any other provisions of this Agreement.

22.3. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the impediment relied upon, and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than 60 (sixty) Business Days, either of the Parties shall be entitled to terminate this Agreement.

SIGNED ON BEHALF OF THE WCED AT ..... ON THIS THE .....

DAY OF ..... 2017

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:-

1. ....(witness)

2. ....(witness)

.....  
[insert name and surname] on behalf of  
the WCED being duly authorised

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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SIGNED ON BEHALF OF THE SERVICE PROVIDER AT ..... ON THIS THE  
..... DAY OF ..... 2017

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:-

1. ....(witness)

2. ....(witness)

.....  
[insert name and surname] on behalf of  
the Service Provider being duly  
authorised

Initials of the authorised representative of the bidder _____	Initials of witness 1 _____ Initials of witness 2 _____
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